

Gus J. Solomon Inn
May 17, 2022 Pupilage Group:
“Channel Surfing the Waves of Change Prompted by COVID-19”

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Recommendations of the
Alternatives to the Bar Exam
Task Force, Oregon State Board
of Bar Examiners (June 18,
2021)

OREGON STATE BOARD OF BAR EXAMINERS

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June 18, 2021

Oregon State Board of Bar Examiners
16037 SW Upper Boones Ferry Road
Tigard, Oregon 97224

Re: Recommendation of the Alternatives to the Bar Exam Task Force

Dear Board Members:

For the reasons discussed below, the Alternatives to the Exam Task Force respectfully requests immediate adoption of the Oregon Experiential Pathway and the Supervised Practice Pathway models as alternatives to the bar exam. The Task Force further requests that the Court order the formation of implementation committees to draft the implementing Rules for Admission.

I. Executive Summary

As charged by the Oregon Supreme Court, the Alternatives to the Exam Task Force (“the Task Force”) assessed alternatives to the bar examination as pathways to attorney licensure. We studied alternative models including (1) supervised practice as it exists in Canada, (2) the emergency models from Utah and Washington D.C., (3) diploma privilege as it exists in Wisconsin, and (4) a curriculum-based experiential learning model in place at the University of New Hampshire. The Task Force researched each model, spoke to constituents in the jurisdictions where these models are in place, and consulted with stakeholders in Oregon. Two principles guided our mission: consumer protection and equity. With these considerations in mind, the Task Force also considered how to improve the models currently employed in other jurisdictions.

As a result of our research, the Task Force recommends the Court adopt two alternative pathways to admission: an experiential learning pathway (Oregon Experiential Pathway or OEP) and a supervised practice pathway (SPP). The OEP is a curriculum-based model with a focus on experiential coursework during an applicant’s last two years of law school culminating in a capstone portfolio

submitted to the Oregon State Bar Board of Bar Examiners (BBX) to measure minimum competence. By contrast, the SPP is a post-graduation model where applicants work directly under a licensed attorney for 1000-1500 hours of practice and submit a portfolio of work samples to the BBX to measure minimum competence. These pathways are “alternatives” to an applicant sitting for and passing the Uniform Bar Examination (UBE) and are not proposed as replacements for that pathway to admission. The Task Force recommends that Oregon continue to offer passage of the UBE as a pathway to admission. Continuing to offer the UBE will provide law graduates who chose to take the exam with a portable exam score that can be used to apply for licensure in 35 additional jurisdictions.

Currently, there are several components to admission in addition to sitting for and passing the bar examination, including graduating from an ABA accredited law school, passing a character and fitness review, and passing the Multistate Professional Responsibility Examination (MPRE).¹ The proposed alternative pathways are intended to offer only an alternative to a single component of admission: sitting for and passing the Uniform Bar Examination (UBE). The other components of admission would remain unchanged by the adoption of these alternative pathways.

Additionally, while the UBE is coordinated by the National Conference of Bar Examiners, the BBX currently maintains oversight over that aspect of bar admission by recommending a passing score to the Court and grading the Multistate Essay Examination and the Multistate Performance Examination. Accordingly, the Task Force sought to ensure that the BBX also maintains oversight over the two proposed alternative pathways. This is accomplished in two ways: (1) the BBX will be responsible for supervising applicants’ compliance with the rules applicable to their chosen pathway and for documenting completion of the requirements; and (2) the BBX will review of representative work samples to ensure the applicant meets minimum competence requirements (referred to for each pathway as an “Exam Alternative Portfolio” or EAP).

An applicant’s EAP will provide sufficient material to measure the applicant’s skills and abilities against the minimum competence standard and offer examination of work performed under realistic law practice conditions. Therefore, the BBX’s review of an applicant’s EAP under either alternative pathway should

¹ See *Supreme Court of the State of Oregon Rules for Admission of Attorneys*, OSBAR.ORG (Jan. 1, 2021), https://www.osbar.org/_docs/rulesregs/admissions.pdf.

constitute an “examination of the applicant” and avoids the need for legislative changes to ORS 9.220.² Both alternative pathways, however, will require new rules for admission to be drafted to operationalize the recommendation of the Task Force.

Both of these alternative pathways will rely heavily on volunteer support from the Oregon legal community. But even with ample volunteer support, they will create significant additional work for the admissions staff of the OSB. It is likely that if the Court approves these alternatives, the admissions department will require additional staff or technology upgrades. Due to the increased work for the OSB, the Court will need to consider, following the implementation phase when cost increases are more certain, whether applicants applying for admission through these pathways would pay an increased application fee. We believe any increased admissions cost would be far outweighed by the value the applicants receive from being able to start practice immediately upon graduation and in savings from not needing to prepare for the bar exam.

This report reviews the considerations of the Task Force (Section II), the recommendations of the Task Force (Section III), an in depth look at the two recommended pathways (Sections IV and V).

II. Considerations of the Task Force: Consumer Protection and Equity

In considering alternative pathways to licensure, the Task Force asked two questions: (1) Will this model provide adequate consumer protection by ensuring applicants to the practice of law demonstrate the minimum competence to practice law prior to licensure; and (2) Will this model increase accessibility to and equity in the profession by removing unnecessary barriers to entry.

² “An applicant for admission as attorney must apply to the Supreme Court and show that the applicant . . . (3) Has the requisite learning and ability, which must be shown by the examination of the applicant, but the judges or under their direction.” OR. REV. STAT. § 9.220(3) (2021).

In considering the first guiding question, the Task Force looked to the Oregon Essential Eligibility Requirements (RFA 1.25), adopted by the Court in 2019.³

The Task force also considered the Building Blocks of Minimum Competence identified by the Institute for the Advancement of the American Legal System (“IAALS”). IAALS is “a national, independent research center dedicated to facilitating continuous improvement and advancing excellence in the American legal system.”⁴ In October 2020, IAALS published the result of a two-year

³ RFA 1.25 provides:

The board considers demonstration of the following attributes, and the likelihood that one will utilize these attributes in the practice of law, to be essential for all applicants seeking admission to the Oregon Bar:

- a. Knowledge of the fundamental principles of law and application;
- b. The ability to competently undertake fundamental legal skills commensurate with being a lawyer, such as legal reasoning and analysis, recollection of complex factual information and integration of such information with complex legal theories, problem solving, and recognition and resolution of ethical dilemmas; and
- c. Ability to:
 - i. Communicate honestly, candidly, and civilly with clients, attorneys, courts, and others;
 - ii. Conduct financial dealings in a responsible, honest, and trustworthy manner;
 - iii. Conduct oneself with respect for and in accordance with the law;
 - iv. Demonstrate regard for the rights, safety, and welfare of others;
 - v. Demonstrate good judgment on behalf of clients and in conducting one’s professional business;
 - vi. Act diligently, reliably, and punctually in fulfilling obligations to clients, lawyers, courts, and others;
 - vii. Comply with deadlines and time constraints;
 - viii. Comply with the requirements of applicable state, local, and federal laws, rules, and regulations; any applicable order of a court or tribunal; and the Rules of Professional Conduct.

⁴ *See About IAALS*, IAALS.DU, <https://iaals.du.edu/about> (last visited June 16, 2021).

research study of the building blocks of minimum competence to practice law.⁵ Through the study, including an academic review and 50 focus groups with practicing attorneys, IAALS identified the following core competencies:

- The ability to act professionally and in accordance with the rules of professional conduct
- An understanding of legal processes and sources of law
- An understanding of threshold concepts in many subjects
- The ability to interpret legal materials
- The ability to interact effectively with clients
- The ability to identify legal issues
- The ability to conduct research
- The ability to communicate as a lawyer
- The ability to see the “big picture” of client matters
- The ability to manage a law-related workload responsibly
- The ability to cope with the stresses of legal practice
- The ability to pursue self-directed learning.

To ensure adequate consumer protection, any alternative to the current examination must adequately assess applicants against the Essential Eligibility Requirements in RFA 1.25 and the 12 core competencies identified by IAALS.

The Task Force also sought to remove unnecessary barriers to attorney licensing and ensure that all applicants had a fair opportunity to demonstrate their competence to practice law. As such, the Task Force wanted to ensure that the alternatives it proposed did not further perpetuate or exacerbate already existing disparities in the profession. Similarly, the Task Force wanted to ensure that the proposed alternatives did not introduce new sources of disparities. Some of the questions that arose were: whether curriculum requirements in the OEP would place undue burdens on non-traditional law students and how to mitigate such effects; how to ensure the SPP model does not solely benefit law graduates with pre-existing connections in the field; how to craft a fair and unbiased rubric system to review applicants’ EAPs; and how to mitigate any stigma in the legal

⁵ See DEBORAH JONES MERRITT & LOGAN CORNETT, BUILDING A BETTER BAR: THE TWELVE BUILDING BLOCKS OF MINIMUM COMPETENCE (Dec. 2020), https://iaals.du.edu/sites/default/files/documents/publications/building_a_better_bar.pdf (providing additional information about the study and a further explanation of each competency).

community for applicants who gain licensure through an alternative model. In considering these factors, the Task Force concluded that no single model could completely address these concerns. These issues are addressed in more depth in Sections III, IV, and V.

III. Recommendation of the Task Force

The Task Force unanimously concluded that consumers can be protected and equity served by offering applicants alternatives to the traditional bar exam. The success other jurisdictions have had using pathways other than the bar examination confirms this conclusion. The Task Force found that the different pathways it explored could be crafted in a manner that ensured minimum competency standards were met. Each pathway, however, had its own advantages and drawbacks in terms of equity and access issues. The Task Force believes providing two alternative methods of proving competence will capture the advantages and avoid some of the drawbacks of the single methods adopted in other jurisdictions. For example, having the OEP model available to applicants reduces the concern that only applicants with connections to the Oregon legal market will be able to access an alternative licensure method, which would be the case if the SPP was the only model. On the flip side, having the SPP model as an option provides an alternative path to licensure for graduates who, for various reasons, could not commit to a course of experiential learning in law school or who come from out-of-state law schools. Thus, for the reasons discussed in Sections IV and V the Task Force recommends the Court adopt *both* the Oregon Experiential Pathway and the Supervised Practice Pathway.⁶

⁶ The Task Force unanimously voted to recommend the Oregon Experiential Pathway. One task force member voted against recommending the Supervised Practice Pathway until the parameters of the program were further defined. The remaining members voted to recommend the Court adopt the SPP with further details of the program to be determined by an implementation task force.

The Task Force also considered a third alternative: true “diploma privilege” as offered in Wisconsin to graduates of University of Wisconsin or Marquette University. Under the Wisconsin model students of in-state law schools are admitted to the state bar upon completion of a prescribed curriculum of predominantly doctrinal courses and passage of the MPRE and a character and fitness review. The subcommittee that studied the Wisconsin model recommended adoption of the model but with an increased focus on experiential learning and an additional course in practice skills. With these changes, the proposed model became very similar to the model being proposed by the OEP. The subcommittee that crafted the OEP also recommended a

Each of the models proposed below will require an implementation period to allow for drafting and implementation of the Rules of Admission. The Task Force does not, however, believe a change in state law is required. Because both alternative pathways require EAPs to be submitted to and assessed by the BBX, applicants are still required to demonstrate their “requisite learning and ability . . . by the examination of the applicant” as required by ORS 9.220. Additionally, it does not appear that either proposed model will raise the same dormant commerce clause concerns that the Wisconsin model has raised. The SPP model is open to all applicants regardless of whether they attended an in-state or out-of-state law school. The OEP is primarily focused on in-state law schools because of the partnership between the BBX and the law schools that is required to implement the program. But if an out-of-state law school believed it would have sufficient applicants in Oregon to build a curriculum that met the requirements of the OEP, the BBX would entertain applications from out-of-state schools to participate in the program. Thus, Oregon would not be discriminating against out-of-state applicants.

IV. Oregon Experiential Pathway

The Task Force unanimously recommends immediate adoption of a two-year curriculum-based experiential pathway to licensure. This Part addresses, in separate subsections, the rationale supporting that recommendation. Section A discusses the importance and value of creating an experiential pathway. Section B describes, in more tangible terms, the benefit of an experiential pathway to licensure. Section C considers the potential drawbacks of such a pathway. Finally, Section D outlines the framework for implementation.

A. Introduction

The Task Force unanimously recommends immediate adoption of a two-year curriculum-based experiential pathway to licensure, which, as noted above, we propose calling the Oregon Experiential Pathway. Applicants applying for admission through the OEP would complete a set curriculum during law school,

change to the New Hampshire model that made it more similar to the Wisconsin model: rather than being an avenue to only a select few students each year, the program would be open to all interested applicants. As the two curriculum-based models largely began to merge to have a focus on experiential learning open to all students, the Task Force voted to recommend only the OEP as the curriculum-based model recommended to the Court.

culminating in a capstone portfolio or examination assessed by the BBX—an EAP. The OEP would focus on assessing competence in skills including legal research and writing, issue spotting, legal analysis, argument development, understanding of the law, attention to detail, written and oral advocacy, and teamwork—directly addressing the competencies in RFA 1.25 and the IAALS Building Blocks. The OEP will provide the means for new lawyers to develop skills faster, to serve clients well, and to provide legal employers with a cohort of practice-ready law school graduates. Assessment of those skills would occur while a student was still in law school through a handful of key mechanisms: (1) incorporation of formative feedback from professors throughout the program, (2) intensive self-reflection by participants, and (3) summative feedback and assessment provided by a dedicated bar examiner at the end of each semester throughout the program.

At the core of the OEP is recognition of the value of experiential learning. The experiential focus reinforces the curricular changes that have already begun at each of the Oregon schools. More specifically, law schools across the country are in a period of transformation—moving from traditional doctrinal-focused courses to an innovative and experiential legal education. Although this trend toward implementation of experiential learning in law schools has been happening for quite some time, in 2015, the ABA, for the first time, mandated that every law student complete at least six credit hours of experiential learning prior to graduation.

Historically, students have satisfied experiential learning requirements through law clinics and externships. However, in their 2015 reforms, the ABA also introduced simulation courses as a third and new way to meet this experiential learning requirement. These still relatively new ABA standards around experiential learning have already fostered innovation and growth in law clinics, externships, and simulation courses at law schools across the country. Establishment of the OEP not only incorporates that trend but affirms its importance.

The OEP would focus students on completion of certain practice-based benchmarks, including, for instance, the creation of documents (transactional and litigation-focused), simulated client interviews, depositions, and trial practice. Further illustrations might include students negotiating for actual clients or representing them in court proceedings. Those experiences could be supplemented by student exploration of ethical issues in the context of simulated exercises, in addition to engaging legal reasoning and analysis, issue spotting, and problem-solving skills. Ideally, the OEP would also cultivate students' practice management

skills, including how to address time constraints and appropriately manage deadlines. The OEP might do so by incorporating exercises built around the use of fee agreements, engagement letters, time keeping, billing, and the use of associated technology.

Collectively, the OEP model would prepare students to be admitted to practice. Accordingly, and upon successful completion of the program, students would be admitted to practice following graduation, passage of the MPRE, and clearance of character and fitness requirements.

B. Benefits of the OEP

The Task Force believes there are manifold benefits to the OEP. Most importantly, adoption of the OEP would continue the transformation of both legal education and bar admission while providing an alternative and durable pathway to licensure that works to address any gap between legal education and law practice. At the local level, this experiential pathway would help address Oregon's well-documented access-to-justice gap at a time of demographic transition in the bar.

Moreover, rather than measuring a narrowly-defined type of "minimum competency," the OEP would measure a candidate's ability to perform fundamental types of legal work. Program graduates would be practice-ready, having demonstrated the competencies needed to provide effective and responsible legal services. OEP graduates will have received robust formative and summative feedback, thereby giving them the confidence and experience necessary to effectively spot substantive legal issues, gather relevant information, craft a compelling written product, advance a client's position through oral argument and negotiation, and at a general level, serve clients professionally and competently.

We also believe that the OEP can serve as a durable recruiting strategy for Oregon law schools and the bar more generally. This program could be another way to attract diverse students to study, stay, and practice in the state. Offering an experience-focused pathway for practice allows law schools to consider a more holistic approach to admissions with less focus on standardized test scores and more emphasis on life experiences. And as discussed above, adoption of an experiential pathway to licensure will incentivize law schools to innovate in the curriculum rather than simply offer the same set of bar courses that have remained static, despite dramatic changes in the substance of modern legal practice.

We already have evidence of the benefits of adopting an experiential model. In New Hampshire, their sole law school runs the Daniel Webster Scholar Honors Program (“DWS”) where students hone their skills in both simulated and real settings—counseling clients, working with practicing lawyers, taking depositions, appearing before judges, negotiating, mediating, and drafting business documents—while creating portfolios of written and oral work for bar examiners to assess every semester. Through completion of an experiential capstone project, successful DWS participants pass a variant of the New Hampshire Bar exam during their last two years of law school and are sworn into the New Hampshire bar the day before graduation.

Focus groups of stakeholders report that DWS graduates are “a step ahead of new law school graduates.” They also report that the feedback DWS participants receive, coupled with personal reflection, encouraged continual improvement and proved invaluable with respect to fundamental skill development. DWS graduates gain practical skills, confidence, and a cohort community.

The DWS approach also successfully meets students’ expectations for practice readiness. From the student perspective, DWS students benefit from regular feedback gleaned from a career practitioner which provides a different perspective from that offered by a professor. This structure also provides additional support for students as they evaluate career options. Students engage in interviews with confidence knowing that they have firsthand experience with the language, projects, and expectations of practice.

DWS graduates are immediately employable because they are admitted to the bar following graduation and clearance of character and fitness. Employers appreciate that predictability and report not needing to invest as much in training and mentoring. They also know that these candidates are dedicated to practicing in the state, and they can hire with the confidence of knowing graduates have a portfolio of experience from which to draw when working with real clients.

C. Drawbacks of the OEP

The Task Force discerns few, if any, meaningful drawbacks of the OEP model. However, there are three that are worth mentioning and acknowledging. First, depending on its construction and implementation, maintenance of the OEP could prove to be resource intensive. Investments would need to be made by the bar, law schools, and the broader legal community to make the program successful.

This is particularly important as the Task Force is recommending that the OEP is broadly accessible to Oregon law students rather than limiting it in the same manner as the DWS program. Second, a defined OEP curriculum may necessarily limit some student choices, although the curriculum proposed below seeks to address that concern. Third, the program will likely only be open to applicants who attend an in-state law school. While the BBX would entertain applications for partnerships with out-of-state schools, it is unlikely that an out-of-state school would craft such a resource intensive program for a few students who may wish practice in Oregon. This drawback is addressed by having a second alternative pathway open to all out-of-state applicants who would otherwise qualify to sit for the Oregon bar exam.

D. Implementation

The Task Force requests immediate adoption of the OEP with a charge to the Oregon law schools to prepare a curricular path for alternative licensure for the class of 2024 and a charge to the BBX to develop an assessment plan for such applicants. In doing so, we offer the following general recommendations, followed by a set of specific recommendations.

1. General recommendations

First, following adoption, the Supreme Court and OSB should set broad standards for the program and provide the law schools with flexibility to implement the OEP based on their respective curricular capacity. As discussed more fully below, certain baseline classes might be required (e.g., Evidence, Criminal Procedure, Business Transactions, etc.), but schools should have some discretion to design a program that otherwise meets the standards. We recommend that law schools adopt programs that include a curriculum broader and deeper than just litigation and business transactions; doing so via requirements like Indian law, family law, or civil rights law may help to attract a diverse group of students.

Second, we recommend charging an OEP Implementation Task Force with (a) drafting appropriate licensure admission rules, and (b) creating rubrics that will guide completion of a graduate's capstone project.

Finally, we recommend expressly encouraging holistic admission practices including admitting law students on more than an evaluation of LSAT/GPA in order to ensure reliance on more inclusive criteria, such as work experience, life experience, and/or overcoming personal challenges. Law schools will inherently be

encouraged to do so if they have the confidence that all first-year students can apply for the OEP program. Accordingly, we recommend making clear that the OEP will be open to all students in the spring of 1L year (rather than limiting participation to those pre-selected for the program).

2. Specific recommendations

The Task Force anticipates that law schools would need at least the entirety of the 21-22 academic year to implement the program. We are hopeful that the OEP could be available beginning in the fall of the 2022 to the class of 2024 who would have the opportunity to opt into the OEP at the end of the first year of study. We imagine law schools would use the 21-22 academic year to implement the following curriculum, comprising three core pillars: (1) foundational courses beyond the first year, (2) experiential requirements, and (3) completion of a capstone project. Students would need to complete courses listed from each pillar to be eligible to submit their capstone project. We further imagine a division in workflow where Oregon's law schools would be responsible for implementation of the OEP curriculum while BBX would be responsible for assessing the graduate's capstone.⁷ With those introductory comments in mind, the Task Force recommends that the implementation committee in consultation with the three law schools create curriculum and experiential requirements that satisfy the OEP requirements. We would expect any law school applying to participate in the OEP to provide a proposed curricular path that meets the objectives of the OEP.

The Task Force provides the following as an example of curriculum that would provide an applicant the opportunity to experience the knowledge, skills, and clinical activities supportive of a successful OEP program:

Foundational Courses Beyond the Required First Year Courses: (range: ~20-24 credits, noting that credits assigned by the law schools for completing these courses can vary)

- Successful completion of the following foundational upper-level courses:
 - Professional Responsibility (2-3)
 - Evidence (3-4)

⁷ -The implementation committee must determine who will assess whether the work produced in an applicant's EAP meets or exceeds the minimum competence standard. The Task Force recommends that it be volunteer experienced attorneys.

- Two of the following:
 - state/ local law (2-3),
 - constitutional or statutory interpretation (2-3), or
 - administrative law or processes (2-3).
- Take 3 of the following:
 - Criminal Procedure (3),
 - Business Associations (3),
 - Family Law (3),
 - Trusts & Estates (3),
 - Personal Income Tax (3).
- Successful completion of a graduate writing requirement (2-3 credits) that complies with ABA Standard 303(a)(2).

Experiential Requirements (15 credits)

- Successful completion of no fewer than 9 credits of closely supervised clinical work or simulation coursework.
- Successful completion of up to 6 credits of externship work.

EAP Capstone Requirement (for development by the OEP Implementation Task Force during AY21-23)

- To be developed in partnership with BBX. We could imagine, for instance, the creation of performance tests using case files and a limited universe of materials. We could alternatively imagine creation of a capstone project that relies on a rubric generated by the OEP Implementation Task Force. The rubric could serve as a curricular planning tool for students and, in doing so, could permit development of EAPs that students could begin during the fall of their second year. That rubric should consider the building blocks of minimum skills competence alongside ABA learning outcomes.

The requirements in this curriculum, including the first-year, total between 65-69 credits, although most of those requirements allow considerable choice among subject areas. Since ABA accreditation standards require at least 83 credits of academic work to secure a J.D., the course requirements in this example permit at least 14 credits (i.e., a full semester) of completely elective courses. The system,

in other words, structures the JD program while still allowing considerable student choice.

V. Supervised Practice Pathway

Apart from adopting the OEP, the Task Force also recommends adoption of a Supervised Practice Pathway. Part V, in Section A, addresses the rationale for creating such a pathway. Section B then offers a more detailed discussion of implementation considerations. Finally, in Section C, Part V addresses an assortment of other considerations relevant to the creation of a successful Supervised Practice Pathway.

A. Rationale for a Supervised Practice Pathway

The Task Force also recommends adoption of a supervised practice pathway to licensure, which we propose calling the Supervised Practice Pathway (“SPP”). The SPP model has applicants establish their minimum competence by (a) engaging in 1000 to 1500 hours of supervised legal practice (the specific set of hours to be determined by an implementation committee), and (b) submitting to the BBX an EAP of non-privileged work-product done during the applicant’s supervised practice to assure that the applicant is developing the skills necessary for admission.

In crafting this recommended pathway, the Task Force seriously considered two jurisdictions that have employed a supervised practice path to admission: Canada, which has long employed an “articling” program, and Utah, which adopted a modified diploma-privilege/supervised practice program for 2020. We believe that the success of the programs in both jurisdictions demonstrate that the goal of protecting the consumer can be met through a supervised practice pathway. As discussed in the OEP section, our confidence is bolstered by the knowledge that one of the most effective ways to train new practitioners to provide competent representation is through practical experience.

Rather than recommending a wholesale adoption of the Utah or Canada program, the Task Force recommends that Oregon should craft its own model. The recommended model pulls not only from lessons learned in both of those jurisdictions but also from the New Hampshire DWS program and the BBX’s experience in grading applicants’ work on the Multistate Performance Exam (MPE). We believe that the recommended SPP provides a meaningful alternative pathway to law graduates interested in becoming admitted in Oregon while still

protecting the consumer. Indeed, the consumer is assured that a licensed, practicing lawyer is supervising the applicant's work prior to their admission to the Bar, and that a newly admitted lawyer who has taken this pathway was only admitted after gaining meaningful practical experience designed to ensure the person met the competency requirements set forth in RFA 1.25 and the IAALS Building Blocks.

To understand the recommended SPP, we provide a very brief overview of the programs we reviewed and what the Task Force took from those programs. To practice law in a Canada, one must complete a post-law school apprenticeship referred to as "articling." Generally, each province requires a 9-to-12-month articling term, which is accompanied by some type of "barrister" or "solicitor" exams that occur during the articling period and are administered by the relevant licensing authority. Some programs also include a formal practice orientated educational program that must be completed during the articling year.

While the Task Force feels confident that people who are admitted through these articling programs meet the requirements of minimum competence, we also recognize that some of the strictures of a 9-to-12-month apprenticeship create unfair barriers that keep others—people who are qualified to practice law—from being admitted. One significant barrier is the availability of meaningful, paid articling positions and who gets selected for those positions. The Task Force is hopeful that because the Oregon SPP will not be the only pathway for admission, this problem of access will be somewhat alleviated. Whether this is a significant issue is, however, something that the Court and the BBX should be careful to periodically review as the program is implemented.

The Task Force believes that two other points of emphasis can help alleviate equity concerns of a supervised practice pathway without compromising the development of an applicant's legal skills. First, we believe that the program should explicitly authorize applicants to have more than one qualified supervising attorney. Second, although the Task Force is recommending that the Court leave the precise number of hours required for admission through this pathway to an implementation committee, we believe the Court should expressly direct the committee to set the requirement in terms of hours contemporaneously measured and documented in six-minute increments rather than as a term of months to be documented only upon completion of the program or even monthly intervals. This assures that an applicant is not beholden to a single supervising attorney to accomplish the work needed for admission.

Measuring experience in hours rather than months is important for numerous reasons. First, it may be difficult for an applicant to find a supervised attorney who is willing to provide supervision for the entire period, but there may be practitioners who could provide meaningful supervision for a shorter term or for a particular project. Second, there may be meaningful pro bono opportunities that an applicant could participate in (while receiving the appropriate supervision) that would not be available if the applicant were tied to a single supervisor or a metric like “months.” Finally, it is an unfortunate reality that any type of apprenticeship, regardless of the profession, creates a potential for exploitation because the apprentice does not want to suffer a set-back in training by leaving an otherwise untenable situation; we believe that the two suggestions we have made help to alleviate at least some of that concern. Finally, the Task Force believes that so long as the work being done fits within the program’s requirements for the development of legal skills and the attorney providing the supervision is qualified to do so, these two provisions will not create any consumer protection concerns.

Additionally, most Canadian provinces do still employ exams (albeit not “bar exams” as we know them here in the United States) as part of their articling programs. The Task Force believes that because the SPP is going to serve as an alternative to sitting for and passing a bar examination, a better alternative to gauging the success of the supervised practice would be to implement a “portfolio” review by the BBX—an EAP. As discussed above, the New Hampshire DWS, participants create portfolios of legal work-product that is submitted to bar examiners for their review and assessment. As this Court knows, one component of the UBE is the Multistate Performance Test, which is designed to test applicant’s practical legal skills, rather than substantive legal knowledge, by requiring examinees to complete an ordinary practice skill (e.g., drafting a memorandum to a supervising attorney, or a persuasive memorandum or brief). BBX members and Court-approved “co-graders” have become adept at grading the MPT. We believe that an EAP requirement could be crafted as part of the SPP that would assure that the completion of the required hours of supervised practice is operating to develop the applicant’s legal skills and that the applicant is competent to practice law.

In addition to reviewing Canada’s program, the Task Force also looked at Utah’s 2020 modified-diploma privilege/supervised practice program.⁸ The Utah

⁸ See UTAH STATE BAR DIPLOMA PRIVILEGE RESOURCES, <https://utahdiplomaprivilegeorg.wordpress.com/> (last visited June 16, 2021).

program was adopted by the Utah Supreme Court in recognition of the difficulties created by the pandemic. Applicants were eligible for admission to practice after only 360-hours of supervised practice, but the pool of applicants were limited (as relevant to this discussion) to those who had not previously sat for any bar examination and who had graduated from an ABA-accredited law school with a Bar Examination passage rate of 86% or greater.

Utah has created detailed rules regarding what is required by a supervised attorney in this context to both ensure the protection of the consumer and the development of the applicant's legal skills. It has created detailed rules regarding the legal activities that qualify in the program and the Task Force believes those activities appropriately target developing an applicant's legal competence, while protecting the consumer. In sum, the Task Force believes that Utah's program has developed a great deal of the "infrastructure" necessary to implement a SPP here in Oregon.

However, because of the circumstances under which it was adopted, the Utah program attempted to ensure minimum competence standards were met not through supervised practice hours alone, but also by restrictions that were tied to success in bar examinations (either one's individual success or one's school's historical success). Because one reason for developing this alternative pathway is the recognition of some of the institutional inequities of bar examinations, the Task Force believes that it is inappropriate to tie this pathway to any type of bar exam metric. Rather, we believe that the assurance of appropriate competence can be accomplished in two other ways: (a) increasing the hours required by the program from 360 to somewhere between 1000 and 1500 hours; and (b) employing an EAP requirement.

One advantage of the SPP is that it is available to graduates of any qualified law school, whether that school is in Oregon or another jurisdiction.⁹ Moreover, the SPP would not be limited to either new graduates or those who have never taken and failed a bar examination; instead, if one were qualified under Rule for Admission 3.05 to sit for the Oregon bar exam, one would be qualified to apply for admission through the SPP. Additionally, the Task Force believes that, once approved, the rules and infrastructure required to adopt the SPP could be crafted relatively quickly. It is likely such a program could be available to graduates in the class of 2022. Finally, we believe that this pathway fully meets the Court's

⁹ See RFA 3.05(1).

obligation to ensure that an applicant meets minimum competence requirements before admission while creating a meaningful alternative pathway for those for whom the bar exam is a less than desirable option.

In sum, the Task Force recommends that the Supreme Court adopt—as an alternative to the bar examination and not a replacement for it—a supervised practice pathway to admission. Although the details of this pathway, including the specific licensure admission rules, should be carefully crafted by an implementation committee, the Task Force outlines several parameters for the program below.

B. Implementation Considerations

This Section addresses considerations relevant to implementation of the SPP. Subsection 1 first considers a candidate’s eligibility for the SPP. Subsection 2 then discusses the requirements to serve as a supervising attorney in the SPP. Subsection 3 then proposes a set number of required supervised practice hours. Subsection 4 offers guidance on what constitutes eligible supervised practice activities. Finally, Subsection 5 discusses how to evaluate candidates seeking admission to licensure pursuant to the SPP.

1. Eligibility

The SPP offers an alternative to a single component of admission: sitting for and passing the UBE. Neither avenue for admission should be considered better or worse than the other. Accordingly, the Task Force recommends that the universe of people who are deemed qualified applicants for admission via the SPP should mirror (but not expand or contract) the universe of people who are deemed qualified to sit for the Oregon bar exam. Those qualifications are set out in Rule for Admission 3.05; accordingly, the Task Force will not set them out in further detail here.¹⁰

The Task Force believes it is important to explicitly note the following:

¹⁰ We note that RFA 3.05(4), which involves being able to sit for an exam prior to graduation from law school under specified limited circumstances necessarily does not, for obvious reasons, apply to SPP applicants.

- One need not seek admission via the SPP immediately upon becoming a qualified applicant;¹¹
- One need not only seek admission via the SPP. The implementation committee should be sure to address how fees should be structured if a person seeks admission via both the bar examination and the SPP at the same time or sequentially;
- Prior failure of a bar examination has no impact on a person's ability to seek admission via the SPP;¹² and
- There is no “cap” on how many people can apply for admission via the SPP at any one time, but the Task Force notes that, at least initially, there is unlikely to be infrastructure within the BBX or, more broadly, the OSB, to formally assist an otherwise qualified applicant locate a qualified supervising attorney. As the SPP program develops, the BBX and the OSB should explore whether it can develop more formal ways to offer such assistance.

2. Supervising Attorney Requirements

A supervising attorney must have:

- An active Oregon license;
- 5-7 years' experience¹³ as a licensed attorney with two of those years being engaged in practice in Oregon;

¹¹ For example, most applicants will become eligible to apply for admission under RFA 3.05(1), which provides that the applicant—in addition to being at least 18 years of age at the time of admission—has graduated from an ABA accredited law school. Just as an applicant is not required to seek admission by applying to sit for the bar examination immediately upon graduation from that law school, an applicant is not required to seek admission via SPP immediately upon graduation from law school.

¹² See RFA 3.05.

¹³ Years of experience for supervisors should be determined by the implementation committee, perhaps with different requirements for different practice areas.

- No record of public discipline; and
- Completed any training requirements *and* formally agree to serve as a supervising attorney *before* the attorney supervises any practice activities. There are several workable models available for an implementation committee to consider for supervising attorney certification and training. Regardless of the model ultimately recommended by the implementation committee, however, the Task Force thought an appropriate guiding principle would be that no hours could be earned unless the supervising attorney was formally qualified and aware *at the time the hours were being earned* that the applicant was documenting them as supervised practice hours. (There can be no “*nunc pro tunc*” certification of hours.)

Most supervised attorney programs involve recognition that a supervising attorney will often delegate to another licensed attorney (even one who does not meet all of the other requirements for serving as a supervising attorney) the obligation of directly supervising an SPP applicant’s daily activities. (For example, a partner in a firm may be the supervising attorney, while a “3rd year” associate is, on a daily basis, working directly with the SPP applicant). With appropriate rules in place, the Task Force thought that the use of such intermediate supervisors was appropriate.

The Task Force notes that the implementation committee must also determine whether an exception to the active license requirement should be made for federal judges acting as supervisors.¹⁴ The resolution of this issue likely turns on the specific activities that the implementation committee recommends qualify as supervised practice hours, a point left unresolved by the Task Force. If the final implementation rules include as qualifying activities work for a judge, then the Task Force believes it is also appropriate to create an exception to the supervising attorney requirements for federal judges.

There is no limit on the number of qualified supervised attorneys an applicant may have.

¹⁴ Oregon state court judges are required to maintain active Oregon licenses; federal judges are not required to do so.

3. Supervised Practice Hours

The Task Force believes that an applicant seeking to be admitted via SPP needs to complete 1000 to 1500 hours of supervised practice in approved qualified activities, the equivalent of 9-12 months of full-time practice. The activity should be completed employing six-minute increments and contemporaneously kept time records that are approved/certified by the supervising attorney. Those hours must be completed within a set window of time.

A majority of the Task Force agreed that the rules should be drafted in a manner that made it possible for some portion of the qualifying hours to be earned during law school. However, there were three points that the Task Force believed were worthy of additional reflection by an implementation committee. First, the Task Force agreed that if this was permitted, there should be a cap on how many hours can be earned while in law school. (For example, 200 hours of a 1000-hour requirement might be permitted.) Second, the activity must qualify for credit in all other respects. In other words, the supervising attorney must be certified as a supervised attorney before the work is completed; and the activity must be for a qualifying activity, etc. One complicating factor is that the Task Force recommended that only attorneys with active Oregon licenses could supervise practice; the Task Force was aware when it did so that this may limit the ability of people attending law school outside of Oregon to earn supervised practice hours during the school year. Ultimately, the Task Force considered the requirement of supervision by an active Oregon lawyer sufficiently important to justify that decision; the implementation committee, in consultation with the Court and other stakeholders, may reach a different conclusion. Third, there should be a cap on how long the hours used in law school can be used by an applicant. For instance, the rules may provide that the hours can only be used if a person seeks admission via the SPP within a specified period after graduation.

Collectively, the salient theme of the Task Force's timing recommendations is that, while the Task Force believes that it is important for there to be flexibility built into the process for those applicants who are not able to simply secure a position with a single employer and complete 1000 to 1500 hours of supervised practice in 9-to-12-months after graduating from law school, we also believe that consumer protection dictates that the supervised practice hours occur within a reasonably condensed period of time to ensure that the lessons that are learned through repetition and consistent exposure to concepts are not lost to time. We

appreciate, however, that there are numerous models for how those interests might be appropriately balanced.

4. Supervised Practice Activities and Payment

The Task Force believes that the list of qualifying activities should be focused on activities that tangibly relate to developing the applicant's legal competence as detailed in the essential eligibility requirements in RFA 1.25 and the Building Blocks identified by IAALS. Qualifying activities (whether paid, unpaid, pro bono, or low bono) would likely include, but not be limited to:

- All activities related to the direct representation of clients;
- Advising businesses and their employees;
- Developing or implementing policies and practices for nonprofit organizations or government agencies;
- Meeting with the Supervising Attorney or attorneys on case matters, professional development or ethical matters;
- CLE courses and other professional trainings or workshops as would be typical of an attorney in that area of practice (but with a limitation on the number of CLE hours that qualify).

The Task Force recommends that administrative, ministerial and purely paralegal activities be deemed to not qualify or that a cap be placed on the number of hours that can be earned while engaged in those activities.

The Task Force further recommends that the implementation committee carefully consider whether to set explicit policies on activities such as “document review” that, while important to a client and in practice, may have limited professional growth components.

We also recommend that the implementation committee discuss with practitioners and other stakeholders whether to include as qualifying activities “the assistance and counsel to judges.” As noted above, if this activity is included, an exception to the requirement that the supervising attorney have an active Oregon license should be carved out for federal judges.

Two important points of reference for the implementation committee would be the “Law Student Appearance Program,” contained in the Rules for Admission, and the New Lawyer Mentoring Program. While admission via the SPP is not intended to replace either of these programs, the implementation committee will want to consider how they interact and whether amendments to those programs would be required for them all to work with each other properly.

While supervised practice hours can be completed in appropriate pro bono or low bono settings, it should be made explicit that this program is not intended to provide admitted members of the Bar, whether those members are solo practitioners, members of small firms or large firms, with free or low-cost labor. Applicants working for supervising attorneys can and should be paid a reasonable wage for their work. Moreover, it is likely that—assuming a practitioner properly accounts for the practice in client retainer agreements—much of the work of a SPP applicant will be of a nature that it could be properly billed to clients.

5. Evaluation of Participants Seeking Admission Via the SPP

The Task Force offers three core recommendations to guide further consideration about how to evaluate applicants applying for licensure through the SPP:

- Documentation of Supervised Practice Activities. Procedures should be implemented to ensure that every aspect of an SPP applicant’s participation in the program is appropriately documented with the BBX. For example, there should be clear procedures for registering a qualified supervising attorney, and a clear procedure for documenting hours worked, etc.
- EAP Review and Certification. The Task Force recommends that the implementation committee also craft an EAP requirement, modeled somewhat after New Hampshire’s DWS program, that calls upon an SPP applicant to submit non-privileged written work product to the BBX at regular intervals throughout the SPP period so that the BBX can ensure that, before the applicant is recommended for admission, the BBX has seen work product by the applicant that demonstrates minimum competency for admission. The EAP review regulations will have to carefully layout what process is due (and what procedure will be used) if the BBX is concerned at any point that the work product submitted fails to meet minimum competency requirements.

- BBX Oversight. The BBX will remain responsible for admission recommendations to the Court.¹⁵ A favorable recommendation in this context will effectively certify that the applicant has completed the ordinary prerequisites to admission (graduation requirements, passing the MPRE, payment of fees, passing character and fitness evaluation), met all of the practical requirements of the SPP, and that the applicant's EAP demonstrates minimum competence.

C. Other Considerations

Although there would be a great deal of work to be done, the Task Force believes that it is possible to craft the regulations and procedures necessary to establish a meaningful version of the SPP by the summer of 2022. Whether such a program could be launched by that time will depend on whether the infrastructure required by those regulations is immediately available and the resolution of the outstanding questions noted through Section V of this Report and in the Report of the Supervised Practice Pathway subcommittee to the Task Force. Once those questions are resolved and proposed procedures drafted, the Court will be in a position to either order the immediate implementation of the program or to direct the BBX to work on securing the resources needed to permit its implementation.

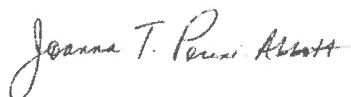
Also, as previously noted, the SPP pathway to admission will not include any formal assistance by the OSB or BBX to applicants looking for supervising attorneys. Nor, very likely, will the OSB or BBX be able to develop meaningful partnerships with non-profits or other organizations through which applicants might be able to engage in meaningful practice development activities while simultaneously providing important assistance to underserved communities. However, we hope that as the program becomes more robust the OSB and the BBX will be able to play a greater role in both of those areas.

¹⁵ Like the OEP program, this will require a great deal of volunteerism on the part of bar membership. The program requires many experienced lawyers who wish to train a new apprentice, and other experienced lawyers to assess whether the EAP of the apprentice meets or exceeds the minimum competence standard.

VI. Conclusion

The Task Force believes that there is substantial evidence to support offering alternative pathways to licensure that maintain and enhance rigor, while ensuring that new lawyers enter the profession with the knowledge and skills that they need to serve clients. Both the OEP and the SPP meet this call. For the reasons discussed above, the Alternatives to the Exam Task Force respectfully requests immediate adoption of the Oregon Experiential Pathway and the Supervised Practice Pathway models as alternatives to the bar exam. The Task Force further requests that the Court order the formation of implementation committees to draft the implementing Rules for Admission.

Sincerely

A handwritten signature in cursive script that reads "Joanna T. Perini-Abbott".

Joanna Perini-Abbott
Chair, Alternatives to the Exam Task Force
Oregon State Board of Bar Examiners

Supplement to the Alternatives
to the Bar Exam Task Force
Report, Oregon State Board of
Bar Examiners (Nov. 29, 2021)

OREGON STATE BOARD OF BAR EXAMINERS

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November 29, 2021

Sent via electronic mail to:

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And via First Class Mail

Chief Justice Martha Walters
Oregon Supreme Court
1163 State St NE
Salem, OR 97301

Re: Supplement to the Alternatives to the Bar Exam Task Force Report

Madam Chief Justice:

Pursuant to the request of the Court and the Oregon State Board of Bar Examiners, the following is the Supplemental Report to the June 18, 2021 Alternatives to the Bar Examination Task Force Report.

I. INTRODUCTION.

Following the Oregon Supreme Court's grant of diploma privilege in July of 2020 to graduates of the Oregon law schools, the Court charged the Oregon State Board of Bar Examiners (BBX) to convene the Alternatives to Exam Task Force (ATE) to examining whether, in the future, "Oregon should grant admission to the Bar on some basis in addition to passage of the Oregon Bar Exam or the Uniform Bar Examination (UBE)."¹ The Task Force delivered a report to the BBX on June 18, 2021, recommending adoption of two alternatives: (1) a law school curricular model titled the Oregon Experiential Pathway (OEP), and (2) a post-graduation model in which an applicant works

¹ See *September 14, 2020 Letter to Oregon State Bar Board of Bar Examiners*, OR. ST. BAR TASK FORCES (Sept. 14, 2020), <https://taskforces.osbar.org/files/2021/02/CJLetterReAdmissionsBBXTaskForces.pdf>.

closely with a licensed practitioner for 1,000 to 1,500 hours titled the Supervised Practice Pathway (SPP).² The Board of Bar Examiners met on June 25, 2021 and agreed to advance both pathways to the Court for consideration and adoption.

As reflected in the June 18 Report, the ATE recommendation presumed that securing a passing score on the Uniform Bar Examination (UBE) would remain a pathway for admission to practice law in Oregon. Thus, once adopted, the creation of two new alternative pathways would authorize three total “pathways” for admission to the practice of law,³ in addition to admission through reciprocity.⁴

The Court discussed the June 18 Report during a public meeting on July 7, 2021, and afterward set a period for public comment, closing on August 23, 2021. After the close of the public comment period, the Court issued five questions to the ATE:

1. As contemplated by the Task Force, to what extent would the proposed alternative pathways measure aspects of legal competency that are the same as or different from those that you understand to be measured by the UBE?
2. There appears to be some public perception that the alternative pathways would measure a different (and maybe more relevant) kind of competence to practice law than does successful performance on the UBE. To the extent that a comprehensive bar exam like the UBE is viewed as a measure of academic/analytical/critical-thinking competency, is it accurate to view the proposed alternative pathways as measuring different aspects of legal competency? Did your investigation reveal any complementary measures that could

² Alternatives to the Exam Taskforce, *Alternatives to the Exam (ATE)*, OR. ST. BAR TASK FORCES (June 18, 2021), <https://taskforces.osbar.org/ate/> [hereinafter *June 2021 Report*].

³ Implementation will include not only making final substantive decisions regarding the program and their specific criteria but comprehensively revising the Rules for Admission of Attorneys (RFA). *See* OR. SUP. CT., RULES FOR ADMISSION OF ATTORNEYS 31 (2021), <https://www.osbar.org/docs/rulesregs/admissions.pdf> [hereinafter RFA].

⁴ *See id.* at 62-76.

be used in conjunction with an alternative pathway to reassure the public that new attorneys possess the type of legal competency that a bar exam is perceived as testing?

3. Based on the jurisdictions that have offered some form of alternative pathway to licensing of law school graduates, what benefits or hoped-for benefits have others identified in creating those non-exam pathways to licensure?
4. Have there been any studies or assessments of whether those jurisdictions that have offered some form of alternative pathway to licensing of law school graduates have realized the hoped-for benefits?
5. Have any jurisdictions used alternative pathways to licensing as a way to address the need for lawyers to serve underrepresented communities and populations?

The Court's questions largely incorporated the overarching themes of the public commentary. This supplemental submission to the Court first summarizes the public comments and then separately addresses each of the Court's questions.

If the Court votes to move these proposals forward, the ATE expects that implementation committees will be formed. The implementation committees would consider additional public comments and research to craft the specifics of each alternative pathway plan. The plans, as implemented, would be subject to this Court's approval. This supplement leaves certain questions for the implementation committee to address.

II. SUMMARIZING THE PUBLIC COMMENTARY.

The public comments vary widely. Many commentators flatly oppose abandonment of the bar exam, while others assert that the bar exam is useless. And, of course, many comments take intermediate positions. Several themes appear more than once in the commentary.

The first theme is that the bar exam tests a common set of material that all lawyers should know when they enter the profession. These comments express

a desire that lawyers possess a shared base of knowledge that ranges across different areas of practice.

Against this first theme, other commentators asserted that this shared base of knowledge is a product of success in law school, not the result of the bar exam. Some commentators pointed out that the UBE does not test Oregon law. Others asserted that the bar exam does not test skills or knowledge that are critical to success as an attorney.

A second theme is that the bar exam ensures a high standard for those admitted to practice law, and they worry that doing away with the bar exam is equivalent to lowering standards. Proponents of the second theme also suggested that the bar exam tests competencies that help to prevent new lawyers from engaging in malpractice and/or violating rules of professional conduct. Commentators who addressed this issue worried that clients would suffer harm, that the image of the profession would diminish, and that malpractice claims and premiums would increase.

As with the first theme, other commentators asserted that the bar exam does not measure all of the correct standards and that the bar exam itself is an unfair measurement of academic standards.

Both of these themes—and the responses to them—relate directly to the “academic/analytical/critical-thinking” competency in the Court’s question. They also relate to the more general question of what competencies are required for the practice of law.

A third theme centered on the experience of studying for the bar. Commentators who support the bar exam maintained that preparing for the bar exam allowed them to pull together and see connections among the materials they learned in law school, and also to learn topics they had not studied before. Some also asserted that this process tests an applicant’s work ethic, grit, and executive function. Other commentators disputed this notion, claiming instead that the bar exam was needlessly stressful and that it bore little relationship to the stresses of legal practice. Critics also tended to highlight the financial stress that can accompany the bar, because applicants often are not able to combine work and study. Several commentators also noted that this experience is often inequitable depending on the familial and financial resources and responsibilities of individual test-takers.

Fourth, and related to the third theme, some commentators suggested that the traditional bar exam tests the kind of “thinking on one’s feet” that lawyers are required to demonstrate in courtroom and other high-pressure settings. And as with the third theme, other commentators responded that the bar exam experience is not similar to the kinds of skills that lawyers need in practice.

Finally, some commenters thought that the shared experience of studying for and passing the traditional bar exam provides a commonality and bond for all members of the profession. Many lawyers found value in the idea that future lawyers should be examined in the way that they were examined, standing apart from specific competencies.

Collectively, these comments reflect disagreement about the bar exam, what it measures, and what it represents. Although they disagreed on many things, commentators shared a concern about measuring the proper competencies to practice law, both in the form of high academic standards, but also in the form of other important skills and abilities. These concerns are shared by the Task Force and were central to the Task Force’s initial recommendation.

III. QUESTION 1.

As contemplated by the Task Force, to what extent would the proposed alternative pathways measure aspects of legal competency that are the same as or different from those that you understand to be measured by the UBE?

Through different ways, each pathway to admission—OEP, SPP and a passing UBE score—allows this Court to satisfy its obligation to ensure that an applicant has the requisite learning and ability to be admitted to practice in Oregon. Subsection A first outlines background necessary to frame a more detailed responsive explanation. Subsection B then addresses the fundamental question raised by Question 1, and then in Subsection C considers competencies measured by the UBE. Collectively, the ATE, submits in this response and more fully in the answer to Question 2, that the proposed alternative pathways are capable of testing both current and previously untested aspects of legal competency and have the promise to provide a measurable basis for doing so.

A. Introduction

Each jurisdiction in the United States is responsible for determining its own methodology for assessing the competency of a lawyer to practice in that jurisdiction. ORS 9.220 tasks the Supreme Court with ensuring that an applicant has the “requisite learning and ability” to be admitted to practice law. The methodology for establishing competence to practice is not static. The Court, through its Rules for Admission, has already adopted a variety of methods by which people at different stages of their legal careers can demonstrate the requisite learning and ability for admission. The ATE proposes that the Court adopt two others.

Until 2017, Oregon administered its own examination. At that time, Oregon used some UBE materials, including the full multiple-choice section (the “MBE”), the multi-state performance test (the “MPT”) and certain substantive essays (the “MEE”), but it also still drafted some of its own substantive essays focused on Oregon law. Additionally, the BBX was not bound to the grading rubrics proposed by the National Conference of Bar Examiners (“NCBE”). In 2017, after extensive discussions with the law schools and other stakeholders in the state, Oregon adopted the UBE in full. This Court still determines what constitutes a passing score on the UBE for admission in Oregon, but since adopting the UBE in full, Oregon no longer drafts any of its own Oregon-specific essay questions and must grade following the rubrics provided by the NCBE.

The UBE score applicants receive when sitting for the bar in Oregon is portable to forty other jurisdictions.⁵ Applicants in those forty jurisdictions can likewise apply to Oregon if they have secured at least the UBE score set for admission in Oregon. This offers an important benefit not just the person taking the exam but also to Oregon’s bench, bar, law schools, legal employers, and legal consumers because it encourages lawyers who have established (or plan to establish) their competence through the UBE examination to consider practicing in Oregon.

Not only was the ATE expressly *not* tasked with determining whether the any consideration should be given to abolishing the UBE as a pathway to admission, the Task Force operated with the assumption that the UBE *would remain* a pathway to admission in Oregon. This was critically important to crafting the pathways proposed by the Task Force. Notably, the UBE is already “scalable”:

⁵ NCBE LIST OF UBE JURISDICTIONS, <https://www.ncbex.org/exams/ube/list-ube-jurisdictions>.

hundreds of people take it in Oregon each year, thousands take across the country annually. The UBE therefore offers applicants who qualify the opportunity to seek admission in Oregon pursuant to RFA 3.05 and in any other out-of-state jurisdiction that accepts the candidate's UBE score.

Understanding that the Court intended for the UBE to remain a licensure pathway, the ATE focused its efforts on proposing alternative pathways; or, stated differently, the ATE did not focus on creating a "substitution" for the UBE. As detailed in our initial report and here, we believe each of the pathways ensure that those who are admitted through them will be required to demonstrate their competence before they are admitted to practice. As the programs are implemented and improved over time, they may well develop in ways that increase the number of applicants who can establish their competence through them. And as other jurisdictions follow Oregon's lead, admission through these pathways may become more "portable" and, thus, more attractive to applicants. But whether those developments would lead this Court to abolish offering the UBE as a pathway to admission, let alone whether it should happen *now*, is not something before this Task Force.

Moreover, we note that although it can be a valuable exercise to compare and contrast what the OEP, SPP and a passing score on the UBE measure, in so doing, that inquiry should not distract attention from of the more fundamental question of whether each pathway ensures that the applicant has the requisite foundational learning and ability necessary for admission to practice law in Oregon. Accordingly, before addressing the Court's questions, we believe that the Court should first reflect on what competencies should be measured as part of the licensing process.

B. Competencies To Practice Law.

The Institute for Advancement of the American Legal System (IAALS) commissioned a two-year national study to discern what constitutes "minimum competence" to practice law, based on focus groups with 201 practicing lawyers.⁶ The report that resulted from the IAALS study contends that

⁶ IAALS is "a national, independent research center dedicated to facilitating continuous improvement and advancing excellence in the American legal system." *About*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., <http://iaals.du.edu/about> (last visited Nov. 8, 2021).

“although the bar exam has existed for more than a century, there has never been an agreed-upon, evidence-based definition of minimum competence. Absent such a definition, it is impossible to know whether the bar exam is a valid measure of the minimum competence needed to practice law or an artificial barrier to entry.”⁷

That said, this Court has adopted Essential Eligibility Requirements for Admission and the IAALS study detailed “building blocks” skills. In putting forth the proposed alternatives, the ATE attempted to propose plans that would measure all of the EERs and the IAALS building blocks. We believe that a pathway that ensures that, in combination with a passing score on the Multistate Professional Responsibility Exam, requires applicants to demonstrate competency in all of the above areas and demonstrates that the applicant has the requisite learning and ability to be admitted in Oregon.

Rules 1.20 and 1.25 of the Supreme Court of the State of Oregon Rules for Admission of Attorneys are provided below:

1.20 Standards of an Attorney: An attorney should have a record of conduct that demonstrates a level of judgment and diligence that will result in adequate representation of the best interests of clients and that justifies the trust of clients, adversaries, courts, and the general public with respect to professional duties owed.

1.25 Essential Eligibility Requirements: The board considers demonstration of the following attributes, and the likelihood that one will utilize these attributes in the practice of law, to be essential for all applicants seeking admission to the Oregon Bar:

- a. Knowledge of the fundamental principles of law and application;

⁷ See DEBORAH JONES MERRITT & LOGAN CORNETT, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., BUILDING A BETTER BAR: THE TWELVE BUILDING BLOCKS OF MINIMUM COMPETENCE 3 (2020), [https://iaals.du.edu/sites/default/files/documents/publications/building a better bar.pdf](https://iaals.du.edu/sites/default/files/documents/publications/building%20a%20better%20bar.pdf) [hereinafter BUILDING A BETTER BAR].

- b. The ability to competently undertake fundamental legal skills commensurate with being a lawyer, such as legal reasoning and analysis, recollection of complex factual information and integration of such information with complex legal theories, problem solving, and recognition and resolution of ethical dilemmas; and
- c. Ability to:
 - i. Communicate honestly, candidly, and civilly with clients, attorneys, courts, and others;
 - ii. Conduct financial dealings in a responsible, honest, and trustworthy manner;
 - iii. Conduct oneself with respect for and in accordance with the law;
 - iv. Demonstrate regard for the rights, safety, and welfare of others;
 - v. Demonstrate good judgment on behalf of clients and in conducting one's professional business;
 - vi. Act diligently, reliably, and punctually in fulfilling obligations to clients, lawyers, courts, and others;
 - vii. Comply with deadlines and time constraints;
 - viii. Comply with the requirements of applicable state, local, and federal laws, rules, and regulations; any applicable order of a court or tribunal; and the Rules of Professional Conduct.

The IAALS study sought to determine the “building block” skills and attributes that are most important for new lawyers. Academic, analytical, and critical-

thinking competencies are essential to the successful practice of law, but they are not the only competencies that lawyers should possess. The study identified the following core competencies:

- The ability to act professionally and in accordance with the rules of professional conduct;
- An understanding of legal processes and sources of law;
- An understanding of threshold concepts in many subjects;
- The ability to interpret legal materials;
- The ability to interact effectively with clients;
- The ability to identify legal issues;
- The ability to conduct research;
- The ability to communicate as a lawyer;
- The ability to understand the “big picture” of client matters;
- The ability to manage a law-related workload responsibly;
- The ability to cope with the stresses of legal practice; and
- The ability to pursue self-directed learning.⁸

As discussed below, the ATE concluded that the current iteration of the UBE (along with the MPRE) may measure some of these building blocks and Essential Eligibility Requirements, though not all. In contrast, the Oregon Experiential Pathway and the Supervised Practice Pathway (along with the MPRE) do require an applicant to demonstrate competency in all of the above areas.

C. Competencies Measured by the Uniform Bar Exam vs. Alternative Pathways.

According to the National Conference of Bar Examiners (NCBE), the Uniform Bar Exam (UBE) tests “knowledge of general principles of law, legal analysis and reasoning, factual analysis, and communication skills to determine readiness to enter legal practice in any jurisdiction.”⁹

⁸ *Id.* at 31.

⁹ *Understanding the Uniform Bar Examination*, NAT’L CONF. OF BAR EXAM’RS, <https://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F209> (last visited Nov. 8, 2021).

The UBE is comprised of the Multistate Essay Exam (MEE), two Multistate Performance Test (MPT) tasks, and the Multistate Bar Exam (MBE). The MEE is weighed at 30% of the total score, the MBE at 50%, and the MPT at 20%.

The MEE is designed to test the exam-taker's writing skills as well as the ability to:

- (1) identify legal issues raised by a hypothetical factual situation;
- (2) separate material which is relevant from that which is not;
- (3) present a reasoned analysis of the relevant issues in a clear, concise, and well-organized composition; and
- (4) demonstrate an understanding of the fundamental legal principles relevant to the probable solution of the issues raised by the factual situation.”¹⁰

The MBE also tests the above skills by having exam-taker's apply legal principles and legal reasoning to analyze various fact patterns.¹¹ The MPT further tests an exam-taker's ability to use these lawyering skills in a “realistic” situation and complete tasks that entry-level attorneys should be able to complete.¹² This portion of the exam is designed to evaluate fundamental legal skills regardless of the area of the law in which the skills are applied.

With respect to the question of academic/analytical/critical-thinking competency, the IAALS report reached five conclusions about the current bar exam's ability to test minimum competence:

- Closed-book exams offer a poor measure of minimum competence to practice law;

¹⁰ *Multistate Essay Examination*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/mee/> (last visited Nov. 8, 2021).

¹¹ *Multistate Bar Examination*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/mbe/> (last visited Nov. 8, 2021).

¹² *Multistate Performance Test*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/mpt/> (last visited Nov. 8, 2021).

- Time constraints on exams similarly distort assessment of minimum competence;
- Multiple choice questions bear little resemblance to the cognitive skills lawyers use;
- Written performance tests, in contrast, resemble many of the tasks that new lawyers perform; and
- Practice-based assessments, such as ones based on clinical performance, offer promising avenues for evaluating minimum competence.¹³

Notably, the National Conference of Bar Examiners (NCBE) agrees at least in part with the IAALS. In an April 2021 report, the NCBE’s testing task force presented a thorough review of the UBE, concluding that the bar exam should test fewer subjects and should test less broadly and deeply within the subjects covered, and that greater emphasis should be placed on assessment of lawyering skills to better reflect real-world practice and the types of activities newly-licensed lawyers perform.¹⁴

Based on the conclusions, the NCBE Report proposed a different approach to the UBE: “[A]n integrated exam structure to assess both legal knowledge and skills holistically in a single, practice-related examination.”¹⁵ But by the NCBE’s

¹³ BUILDING A BETTER BAR, *supra* note 7, at 63.

¹⁴ NAT’L CONF. OF BAR EXAM’RS, FINAL REPORT OF THE TESTING TASK FORCE 20 (2021), <https://nextgenbarexam.ncbex.org/wp-content/uploads/TTF-Final-Report-April-2021.pdf>.

¹⁵ The Report explains,

An integrated exam permits use of scenarios that are representative of real-world types of legal problems that NLLs [newly-licensed lawyers] encounter in practice. Realistic scenarios are used in the current exam, but in discrete components comprised of stand-alone items, whereas an integrated exam includes item sets and a combination of item formats (e.g., selected-response, short-answer, and extended constructed-response items) within the same component. An item set is a collection of test questions based on a single scenario or stimulus such that the questions pertaining to that scenario are developed and presented as a unit. Item sets can be assembled so that all items within a set are either of the same format or of different formats. Stand-alone questions will still be used, and the exam will not consist of item sets exclusively. NCBE aims to have prototypes of integrated exam questions available later this year to share with stakeholders.

own admission, at least four to five years remain until its completion.¹⁶ A debate will no doubt continue between NCBE and IAALS about the best ways to test this set of competencies—particularly around the issues of closed-book exams, time constraints, and multiple-choice questions. In sum, both the NCBE and the most current and careful analysis of the UBE’s efforts recognize that present efforts are not entirely adequate to test the competencies that the UBE is intended to address.¹⁷

The ATE likewise concluded that the current iteration of the Bar Exam does not measure all the IAALS building blocks and Essential Eligibility Requirements. For example, the traditional bar exam may help to test understanding of legal processes and sources of law, understanding of threshold concepts, ability to interpret legal materials, and ability to identify legal issues. The bar exam does not measure the ability to communicate honestly, candidly, and civilly with clients, attorneys, courts, and others; the ability to interact effectively with clients; the ability to conduct research; and the ability to see the big picture.

Again, the ATE engaged in work requested by the Court with an assumption that Oregon will continue to offer the UBE as a pathway to admission.

Id.

¹⁶ *Next Generation of the Bar Exam*, NCBE.ORG, <https://www.ncbex.org/about/nextgen-bar-exam/> (last visited Nov. 8, 2021) (noting the next generation of the bar exam “will take four to five years to develop and implement”).

¹⁷ We note for the Court’s review that New York has reviewed the NCBE’s most recent report and expressed concerns that fall into roughly four categories. N.Y. ST. BAR ASS’N, THIRD REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON THE NEW YORK BAR EXAMINATION 7-13 (2021), <https://nysba.org/app/uploads/2021/06/9.-Task-Force-on-the-New-York-Bar-Examination-with-staff-memo.pdf>. First, the NY Task Force expressed a concern that the NCBE exam reforms propose *continuing* to test what the report characterized as the “law of nowhere.” *Id.* at 7. Second, it observes that the reform efforts remove certain core subject matter competencies. *Id.* at 8 (noting that the “new examination would no longer directly test family law, trusts and estates, secured transactions, and conflict of laws”). Third, it expressed concerns with the logistical testing method of the revised exam; that is, what the NY Task Force characterized as “a test delivered and answered solely by a computer.” *Id.* at 9 (noting that “[e]xclusive use of computer-based examinations may be unfair to persons with cognitive disabilities”). Finally, the NY Task Force expressed *continuing* concerns with NCBE’s scoring practices, noting that currently and, in the proposed revision, a candidate might get different raw scores in different jurisdictions, thereby leading a candidate to be “‘minimally competent’ to practice law in one UBE jurisdiction and ‘not minimally incompetent’ in another[.]” *Id.* at 10.

Accordingly, while noting these perceived limitations of the examination, the ATE observes that Oregon has relied on a passing score on a bar examination (currently the UBE) as a basis for admissions in Oregon for decades. This framework for licensure works to protect the legal consumer in the sense that members who are admitted via this pathway are generally proven through their practice to have been competent.¹⁸

Despite the ATE's belief that accepting the UBE as a continued option for admission is appropriate, reliance on the current bar exam as an exclusive pathway also excludes from admission other applicants who also have the requisite learning and ability to practice law in Oregon.¹⁹ There is indeed troubling evidence showing an exclusionary intention when bar exams were initially adopted.²⁰ The modern bar remains exclusionary; indeed, recently released ABA data reflects that white bar takers in 2020 had a first-time pass rate that was 22% higher than Black first-time takers and 12% higher than Hispanic first-time takers.²¹ The Court's willingness to consider the impact of this data on licensure is consistent with its historically proactive approach to considering ways to improve the admission processes in Oregon.

¹⁸ The UBE pathway measures skills and attributes like "thinking, reasoning, reading, learning, attention span, and memory" as well as "tenacity, delayed gratification, self-discipline, and self-control." Raul Ruiz, *Leveraging Noncognitive Skills to Foster Bar Exam Success: An Analysis of the Efficacy of the Bar Passage Program at FIU Law*, 99 NEB. L. REV. 141, 161-70 (2020).

¹⁹ The exam disproportionately excludes those who have fewer personal resources. Applicants with less time for bar preparation, due to personal circumstances, higher debt, higher unemployment levels, and other household circumstances are less likely to pass. N.Y. ST. BD. OF LAW EXAM'RS & ACCESSLEX INST., ANALYZING FIRST-TIME BAR EXAM PASSAGE ON THE UBE IN NEW YORK STATE 2-6 (2021), <https://www.accesslex.org/NYBOLE>.

²⁰ Dan Subotnik, *Does Testing = Race Discrimination?: Ricci, the Bar Exam, the LSAT, and the Challenge to Learning*, 8 U. MASS. L. REV. 332, 365 (2013) ("In the early twentieth century, the bar was already expressing great concern over the quality of new applicants for admission, especially immigrants and their families and individuals of mixed-race parentage.").

²¹ *Summary Bar Pass Data: Race, Ethnicity, and Gender*, ABA LEGAL ED. & ADMISSIONS TO THE BAR (July 2021), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/20210621-bpq-national-summary-data-race-ethnicity-gender.pdf.

The ATE leaves it to the NCBE to continue its efforts to improve the UBE without further commentary. The ATE's efforts, as discussed in more detail in response to Question 2, were centered on crafting additional pathways to admission that would offer a true alternative to taking and passing the UBE. In doing so, the ATE focused on not duplicating the exam but instead crafting pathways that would require applicants to demonstrate the same IAALS / EER skills as measured by the current iteration of the UBE *and* others that are not. We believe that the OEP and SPP proposals provide alternative pathways to admission to the bar that both strengthen and enhance the standards for admission.

IV. QUESTION 2.

There appears to be some public perception that the alternative pathways would measure a different (and maybe more relevant) kind of competence to practice law than does successful performance on the UBE. To the extent that a comprehensive bar exam like the UBE is viewed as a measure of academic/analytical/critical-thinking competency, is it accurate to view the proposed alternative pathways as measuring different aspects of legal competency? Did your investigation reveal any complementary measures that could be used in conjunction with an alternative pathway to reassure the public that new attorneys possess the type of legal competency that a bar exam is perceived as testing?

The Oregon Experiential Pathway and the Supervised Practice Pathway offer distinct avenues for testing and measuring competence to practice law. Accordingly, the different methods may carry with them different public perceptions. The OEP presents a novel approach to legal education curriculum, while SPP resembles apprenticeships that may be familiar to the public because of their role in training and assessing members of other professions. Each pathway requires a separate examination of how it would function to measure competency, and complementary measures are best considered within the context of each program.

A. Oregon Experiential Pathway.

The OEP assesses different competencies, but the thorough nature of its design renders complementary measures unnecessary, as the answers to the Court's questions explain. Subsubsection (i) first considers whether the OEP measures

competencies different from the UBE, and subsection (ii) addresses how best to reassure the public that adopting the OEP will serve as an adequate measurement of legal competency.

i. Does the OEP Measure Different Competencies from the UBE?

Yes. The OEP alternative pathway aspirationally seeks to test both current and previously untested aspects of legal competency and to provide a measurable basis for doing so.

But before proceeding further, we pause to clarify what competencies the current Oregon Experiential Pathway proposal seeks to cover and measure. It would require graduating law students to take a core curriculum in law school that covers traditional areas, largely leaving the traditional foundational first year completely untouched, while requiring study of core upper-level areas. These requirements, which provide broader and deeper coverage of academic subjects than any two-day bar exam can include, would essentially remain unchanged for an OEP graduate. Similarly, law students still must write a substantial research paper that resembles a law review note, demonstrating their academic and analytical skills. Materials from these academic requirements would be included in the portfolio assessed by the BBX thus providing a more meaningful evaluation of in-depth analytical work than is possible on a two-day exam. Thus, there is a significant overlap between the goals of the OEP and the goals of the bar exam with respect to academic, analytical, and critical-thinking skills.

The OEP proposal, as currently proposed,²² would also require students to take fifteen credits of experiential study—an increase from the six credits that the ABA already requires of accredited law schools. Experiential work of this kind is often analogous to answering essay questions or performance tests on the bar exam. Experiential work can also help measure several other kinds of competence (or at least progress towards competence): legal research, interpreting legal issues, interacting with clients, communicating as a lawyer,

²² The Court may, of course, direct the implementation committee to ascertain whether this is the correct number of credits. It is expected that the implementation committee will work closely with the law schools to make recommendations to the Court on this point.

and seeing the big picture. It can also introduce students to managing a workload, coping with the stresses of practice, and self-directed learning.

Students enrolled in a criminal defense clinic or simulation, for example, must understand and apply the statutes under which their clients are charged, the constitutional case law affecting any searches or interrogations; the rules of evidence, statutes and rules governing collateral consequences, and statutes defining speedy trial and discovery rights. Two attachments illustrate the use and assessment of analytic and other skills in that context. Other clinics and simulations pose similarly complex interactions among doctrinal fields.

The OEP proposal, therefore, aims to assess competence in legal research and writing, issue spotting, legal analysis, argument development, understanding of the law, and attention to detail, and of keen importance, it seeks to do so more fully than the bar exam. The OEP could also provide insight into competencies and knowledge that the UBE omits: the ability to act professionally in context; understanding of state and local legal processes (including administrative, transactional, and ADR contexts); effective interaction with clients; thorough research; oral and written communication of all types; an ability to see the big picture of client matters and frame appropriate solutions; teamwork; and case management.

- ii. Did your investigation reveal any complementary measures that could be used in conjunction with an alternative pathway to reassure the public that new attorneys possess the type of legal competency that a bar exam is perceived as testing?*

The goal of the OEP is to provide a complete alternative to the UBE, so that coursework, a research paper, and experiential learning will substitute for the experiences of studying for, taking, and passing the bar exam. Also, the additional experiential credits beyond those required by the ABA could help law students develop skills faster, so that they will be closer to “practice-ready” when they graduate.

The OEP proposal suggests ways of measuring the competencies that experiential learning fosters. Clinicians and other educators have developed tools for this kind of assessment; samples appear as attachments. These skills, moreover, would be assessed by educators and, critically, by BBX volunteers

(through extensive review of portfolios providing video and written samples of student work). Portfolios, including video, will have clear guidelines designed to protect all client confidences. The OEP is also likely to be superior to the bar exam for assessing such things as work ethic, executive function, and decision making under pressure, because they would be assessed in a closer context to the work that lawyers actually do.

In addition, students pursuing the OEP would probably demonstrate as much, or more, commitment and work ethic as their peers who take a traditional bar exam.²³ Clinics, simulations, and externships require greater time commitments and diligence than do doctrinal courses. Students in experiential courses cannot defer their work to an end-of-semester exam. Instead, they must stay current with their work throughout the semester. Students are often assessed on how promptly they respond to client or supervisor requests, as well as on how effectively they prepare for hearings and other commitments. That preparation, just as in post-graduate practice, frequently requires intense evening and weekend work. A semester of experiential work probably tests commitment, grit, and resilience more effectively than 10 weeks of preparation for a 12-hour exam.

Nonetheless, the central and most difficult question for the OEP proposal is whether the public will be reassured that it will provide an adequate measurement of legal competency that a bar exam is perceived as testing. We are confident, however, that implementation issues can be addressed collaboratively with the three law schools to identify the best path forward for execution. Any implementation effort will no doubt need to consider a variety of factors, including whether to require classes on Oregon law, and whether the content of required classes is consistent across law schools.

Finally, one of the concerns about measuring competence at the time of licensing is to avoid later issues with malpractice and ethical issues. On this topic, there is no evidence that the traditional entry-level examination predicts which lawyers will encounter such problems.²⁴ Though national data is lacking,

²³ On this point, the OEP committee heard feedback from administrators of the Daniel Webster Scholars program at the University of New Hampshire Franklin Pierce School of Law indicating that candidates sometimes dropped out of the program because it was too rigorous.

²⁴ For a discussion of the impact of Wisconsin diploma privilege, see Milan Markovic, *Protecting the Guild or Protecting the Public? Bar Exams and the Diploma Privilege*, GEO. J. LEGAL ETHICS (forthcoming 2022), available at <https://ssrn.com/abstract=3789235>.

a thorough Connecticut study revealed that nearly 40% of disciplinary sanctions relate to communication and diligence, the largest cohesive block of professionalism problems.²⁵ There is no obvious reason why the bar exam would better predict which lawyers would run into that type of trouble than would the OEP proposal, particularly given that OEP would subject law graduates to more extended and direct screening for that type of problematic behavior. This predictive difficulty is enhanced by the current dynamic reflecting that more discipline tends to take place later in legal careers.²⁶

Wisconsin comes closest to offering predictive insights into whether an alternative licensing path impacts malpractice and ethics issues. Indeed, Wisconsin maintains a diploma privilege for graduates of Wisconsin law schools, thereby making the jurisdiction a natural experiment for understanding the bar examination's impact on screening out future discipline. To that end, a recent study of discipline data revealed that Wisconsin's bar complaint and misconduct charging rates are similar to or less than that of attorneys in other states.²⁷ Perhaps most importantly, the study found that "the rate of public discipline against Wisconsin attorneys who were admitted via the diploma privilege is the same as that of Wisconsin attorneys admitted via bar examinations."²⁸ Although the OEP is not a "diploma privilege" proposal, the Wisconsin findings at least broadly suggest that the traditional bar exam—by itself—is not predictive of lawyer discipline.

As for the public image of the profession, we would all like to see it improve and it is hard to know whether the traditional bar exam has served as the appropriate measure of quality assurance. Enhanced experiential training could train students to avoid these issues in a supervised context and prospective lawyers pursuing the OEP would still need to pass the MPRE.

²⁵ See LESLIE C. LEVIN, CHRISTINE ZOZULA & PETER SIEGELMAN, LAW SCH. ADMISSION COUNCIL, A STUDY OF THE RELATIONSHIP BETWEEN BAR ADMISSIONS DATA AND SUBSEQUENT LAWYER DISCIPLINE 14 (2013), available at <https://ssrn.com/abstract=2258164>.

²⁶ David Adam Friedman, *Do We Need a Bar Exam for Experienced Lawyers?*, 12 UC IRVINE L. REV. (forthcoming 2022) (manuscript at 11-15), <https://ssrn.com/abstract=3803623>; see also Nancy B. Rapoport & Joseph R. Tiano, Jr., *Using Data Analytics to Predict an Individual Lawyer's Legal Malpractice Risk Profile: Becoming and LPL "Precog"*, 6 U. PA. J. L. & PUB. AFFAIRS, 267, 297-304 (2020) (explaining that the major "markers" of legal malpractice include staffing and workflow efficiency, billing practices, firm governance, matter oversight, and fiduciary risk).

²⁷ Markovic, *supra* note 24, at 15-24.

²⁸ *Id.*

B. Supervised Practice Pathway.

The SPP assesses different competencies from those tested on the current bar examination. Subsubsection (i) first addresses whether the SPP measures competencies different from the UBE, and subsubsection (ii) addresses how best to reassure the public that adopting the SPP will serve as an adequate measurement of legal competency.

i. Does the SPP Measure Different Competencies from the UBE?

Yes. The SPP alternative pathway seeks to test both the competencies currently tested by the UBE and those previously untested aspects of legal competency.

The SPP would require a person who otherwise meets all of the requirements found in RFA 3.05 to sit for the bar examination offered in Oregon to, instead, pursue admission in Oregon by gaining hands-on experience for 1000 to 1500 hours under the careful supervision of experienced, practicing Oregon lawyers. The reference to *hours*, not months, is significant. An applicant in the SPP model must achieve 1000-1500 hours of actual legal practice. Handling administrative work, while a necessary and real part of legal practice, would not count towards an applicant's requirements. The implementation committee will need to carefully define what counts and what does not, but the Task Force expects that these 1000-1500 hours will be spent engaging with clients, appearing in court, drafting and editing legal documents, investigating and analyzing facts, and conducting legal research.

The applicant would be doing this work under the supervision of an experienced Oregon attorney who has taken a training program on how to be a supervising attorney. The implementation committee will need to carefully define the responsibilities of a supervising attorney so that the parameters are clear from the outset. Thereafter, the supervising attorney would be responsible for certifying that the applicant met the hours requirement doing the approved types of work.

Through the course of that apprenticeship period, the applicant would put together a portfolio of work product demonstrating to the BBX the applicant's knowledge of general principles of law, legal analysis and reasoning, factual analysis, and communication skills, the competencies tested by the UBE. The portfolio can be thought of as a "real world MPT." Rather than placing an

applicant in an artificial setting to test whether they have the ability to use lawyering skills in a realistic situation and complete tasks that entry-level attorneys should be able to complete, the portfolio tests an applicant's ability to complete such tasks in a *real* setting. For example, the MPT often asks an applicant to persuasively draft a section of a brief based on an "law library" and factual summary provided to the applicant, within 90 minutes. For an SPP portfolio, that applicant will not be given a factual summary or law library. Rather, the applicant will need to interview a client (or review discovery), develop the facts, research the law, and then draft the section of a brief that is used in the client's case and in the portfolio. While not under the same 90-minute time pressure imposed by the MPT, the applicant will be under real time pressures of legal practice and completing a more multifaceted task.

The portfolio most obviously aligns with the MPT, but it will also test similar skills as those tested by the MEE and the MBE. As noted above, the MEE seeks to test an exam taker's writing skills, ability to identify legal issues raised by factual situations, separate material which is relevant that which is not, and present a reasoned analysis of the relevant issue in a clear, concise, and well-organized composition. All of these skills will be assessed in the work product provided in the SPP portfolio. The MBE also tests an applicant's ability to apply legal principles and legal reasoning to various fact patterns. Again, this is a skill that will permeate an applicant's portfolio and their everyday experiences throughout their supervised practice period.

Portfolio assessment is a common tool in professional licensing regimes, and in fact has recently been added as an option for teacher licensing in Oregon.²⁹ The Daniel Webster Scholars Program, on which the OEP is partially based, has shown that portfolio assessment can be successful in attorney licensing. For that reason, the ATE recommends that the SPP include a portfolio assessment similar to that of the OEP to ensure applicants meet the BBX's competence standards. The portfolio will be assessed by the BBX, the same entity that currently grades the bar exam to determine applicants' competency to practice law. The NCBE, the entity that administers the UBE, has agreed to provide assistance to Oregon to develop the assessment tool for the portfolio to ensure that the assessment of the portfolio will be standardized and repeatable across admission methods. This assistance will specifically ensure that the assessment of the portfolio aligns with the competencies the BBX seeks to assess, that the

²⁹ OR. ADMIN. R. 581-022-2410 (2021); ORS 342.147(1)(b).

assessment of the SPP portfolio is comparable to the assessment of the OEP portfolio, and that the assessment results are reliable and repeatable.³⁰

In addition to the portfolio assessment, the successful completion of 1000-1500 hours of legal work will also require an applicant to demonstrate a variety of other competencies, currently untested. For example, through the course of completing their hours, an applicant will necessarily demonstrate: the ability to act professionally and in accordance with the rules of professional conduct; the ability to interact effectively with clients; the ability to communicate as a lawyer; the ability to see the “big picture” of client matters; the ability to manage a law-related workload responsibly; the ability to cope with the stresses of legal practice; and the ability to pursue self-directed learning. It will also provide applicants the ability to more fully develop their understanding of state and local legal processes, including in the administrative, transactional, and ADR contexts, all of which are rarely taught in law school.

The only issue not comprehensively addressed is the broadness (in terms of subject areas) of the bar exam, but we believe that the depth of meaningful experience offered by the SPP more than makes up for this lack of breadth. It is also worth noting that the UBE itself does not test Oregon law, but, instead, general principles in different subject areas. Nevertheless, this potential lack in breadth of subject-area could be mitigated in several ways through implementation. Options the implementation committee may consider are: requiring applicants to complete a variety of tasks across a variety of practice areas as part of their apprenticeship year;³¹ requiring a breadth of CLEs during the apprenticeship period that exposes the applicant to a variety of areas of law; or requiring the portfolio to demonstrate work-product across several substantive topics. None of these specific measures are being expressly recommended from the Task Force. Rather, this list is provided just to show that there are numerous options the implementation committee may consider in addressing this issue.

³⁰ Notably, there will be clear guidelines on portfolio items designed to protect client confidences.

³¹ British Columbia has a similar requirement. *See Application*, THE LAW SOC'Y OF B.C., <https://www.lawsociety.bc.ca/Website/media/Shared/docs/forms/MS-admissions/articling-check.pdf> (last visited Nov. 8, 2021).

- ii. *Did your investigation reveal any complementary measures that could be used in conjunction with an alternative pathway to reassure the public that new attorneys possess the type of legal competency that a bar exam is perceived as testing?*

As detailed above, the assurances to the public that new attorneys admitted through the SPP possess the type of legal competency that the bar exam is perceived as testing will not be found in a complementary measure to the SPP but in communicating the rigors of the SPP itself to the public. Because of its scope (1000-1500 practice hours), timing (the vast majority of hours will likely take place *after* graduation from an ABA accredited law school), and supervision requirements (by both active, trained, supervising attorneys and the BBX's portfolio review), we believe that the public will be assured that people admitted via this pathway possess the type of legal competency that a bar exam is perceived as testing.

For most people who are just graduating from law school, studying for and taking the UBE, will likely remain an “easier” pathway to admission as compared to the arduous admission process anticipated by the SPP. For some, however, even if they have the requisite skills and knowledge to be admitted to practice in Oregon, proving it via the UBE may pose an undue burden. Such an applicant might include a graduate who must work full-time, or act as a full-time caregiver (or both) during the time the applicant is trying to establish the applicant's competence to be admitted. For this applicant, a non-passing score on the UBE might more reasonably be understood to reflect a lack of resources to prepare for the examination, rather than a lack of competence to practice law.³² Another SPP candidate might be someone who has the requisite knowledge and skills for admission but for whom a standardized test (such as the UBE) presents a barrier that is unrelated to the question of competence.

³² The cost of the bar review course and the loss of work time studying for and taking the bar and awaiting admission is a significant burden on law students from underrepresented communities. Illustratively in this regard, the Oregon Minority Lawyers Association spends all of its resources generated from fundraising on bar review course grants to students in need. Of course, even that work does not compensate for being out of work for up to three months. Both the OEP and SPP allow students to secure work in the law without incurring bar review course expenses. Adoption of these ATEs will promote the entry to practice of lawyers from underrepresented communities and may free up some fundraising efforts from the Oregon Minority Lawyers Association for other purposes.

Because the SPP is intended to provide an *alternative* to the UBE, as noted in the initial Task Force report, we believe that the Court should resist any temptation to incorporate formal testing into this pathway for admission (beyond passing the MPRE, which remains a requirement of all pathways). When fully implemented to ensure a high quality of supervision, activities (practice activities and continuing legal education requirements) and BBX review, such testing is unnecessary.

However, as detailed in IV(B)(i), while the SPP does not contemplate testing in the form of a single (or multi-) day written examination, it will require applicants to submit substantive work-product to be evaluated by the BBX. Such an evaluation is the functional equivalent of a test but removes the artificial constraints that are inherent with a timed, closed-book exam.

Moreover, one significant benefit of the SPP as an alternative to admission is that it is *not* dependent on a law school developing a particular qualifying curriculum. Thus, applicants from law schools outside of Oregon who are qualified to sit for the Oregon bar examination can seek admission through the SPP. For that reason, while the implementation committee may end up recommending a requirement that a particular course has been taken during law school (for instance, civil procedure or evidence), the ATE strongly believes that every effort should be made to minimize requirements that *unnecessarily* tie participation in this pathway to particular activities in law school. If there is an educational requirement, beyond graduation from a qualifying law school that is deemed a necessary prerequisite to participation in this pathway, a post-graduation equivalent should be offered whenever feasible.

Many jurisdictions in Canada include, *in addition* to articling with an admitted lawyer, courses and required classes on the practice of law. For example, the Professional Legal Training Course (“PLTC”) in British Columbia is a ten-week program that emphasizes practical skills training, ethics, practice management and practice and procedure.³³ Classes are taught by full-time faculty with many years of teaching and practice experience and by practicing lawyers who volunteer to share their expertise. PLTC provides students with excellent up-to-date materials prepared by practitioners in the jurisdiction and students

³³ *PLTC Practice Material*, THE LAW SOC’Y OF B.C., <https://www.lawsociety.bc.ca/becoming-a-lawyer-in-bc/admission-program/professional-legal-training-course/pltc-practice-material/> (last visited Nov. 8, 2021).

must pass open book multiple-choice tests on the basics of practicing in the jurisdiction. Subjects covered include criminal procedure, civil procedure, business, real estate, wills, practice management, ethics and family law. A number of other jurisdictions have a standardized educational program known as the Practice Readiness Education Program (PREP), which is designed to help new students gain practical legal knowledge and gain competencies in lawyer skills, practice management, professional ethics, as well as forming an understanding of the personal attributes needed to practice law successfully.³⁴

While the ATE is impressed by the vigor of the educational programming being offered by some of the Canadian jurisdictions, we do not believe that the creation of these types of comprehensive post-law school courses is something that is needed to assure “the public that new attorneys possess the type of legal competency that *a bar exam is perceived as testing*.” Instead, these jurisdiction specific, practice-focused programs are likely good examples of the type of CLE programming Oregon should strive to make available to *all* new practitioners to Oregon (including those who sit for the UBE).³⁵

For those seeking admission via the SPP, specifically, we believe that the goal of assuring an exposure to a variety of legal areas during the supervisory period is best accomplished by establishing a set of requirements within the SPP itself, such as requiring the completion of tasks in different practice areas, the attendance at particular CLEs or a requiring a broad range of topics to be addressed within the practitioner’s portfolio.

There is a degree to which the public may be concerned about increased malpractice claims if the SPP is adopted. We believe that concern is misplaced. Being a competent lawyer requires much more than a base knowledge of legal theories and concepts that are tested by the UBE. It also requires: caring about

³⁴ *CPLED Competency Framework*, CANADIAN CENTRE FOR PRO. LEGAL EDUC., <https://cpled.ca/about-cpled/competency-framework/> (last visited Nov. 8, 2021).

³⁵ Oregon offers a far more abbreviated form of practice management education for new lawyers through its annual “Learning the Ropes” program. *2021 Learning the Ropes*, OR. ST. BAR PRO. LIAB. FUND, <https://osbplf.org/cle-classes/2021-learning-the-ropes/> (last visited Nov. 8, 2021). It also publishes extensive topic-specific practice manuals (“Bar Books”), online versions of which are free for members. *Bar Books*, OR. ST. BAR, <https://www.osbar.org/legalpubs/BarBooks.html> (last visited Nov. 8, 2021). It does not, at this juncture, have specific, comprehensive, subject-matter educational programs available targeted to new lawyers.

what you do; being curious, diligent and organized; being capable of recognizing your limitations; staying within your area of expertise; knowing what you don't know; and being a good communicator. Consistent with that, the great majority of legal malpractice cases are not the result of faulty analysis or lack of legal knowledge. Instead, the main causes are things like simple negligence, procrastination, lack of diligence, failure to communicate with clients, poor planning or strategy, failing to investigate, not recognizing conflicts, wandering away from one's area of expertise, making promises one cannot keep, not doing what one said one would do, taking bad cases or simply being human and failing to notice a rule change or an error in a document. Missed deadlines of various kinds are a major cause of legal malpractice claims. The ATE believes that the SPP pathway, which provides hands-on meaningful practice *under the supervision* of a licensed, practicing lawyer, is a meaningful way to train new lawyers how to avoid malpractice claims once they are admitted to the bar.

There is no pathway to admitting applicants to the bar that offers one-hundred percent assurance that the applicants admitted are competent to practice and those who are not admitted are not competent. As the Oregon State Bar's Standard Setting Task Force recognized in its June 23, 2021, report to the Board of Bar Examiners, despite best efforts, every bar exam is presumed to have a number of "false positives" and "false negatives":

A false positive occurs when an examinee passes the bar exam, but their true knowledge and skill do not meet the minimum competence standard. A false negative occurs when an examinee fails the bar exam, but they have requisite knowledge and skill to meet the minimum competence standard. In standard setting, false positives and negatives are assumed to occur on every exam; generally are represented by a bar exam score near the pass score level; and represent statistical anomalies that make up a small percentage of all examinees.

While false positives and negatives might be statistical anomalies, the life-altering impact they have on applicants who fail the bar exam or on legal consumers harmed by a lawyer who is not

minimally competent should be addressed in the setting of the standard.³⁶

The goal of a pathway to admission to practice is to minimize the false positives (those admitted who are not competent) and false negatives (those not admitted who are competent).

Just as the Court has regularly assessed the bar exam with an eye on that goal, so too, the Task Force believes, the Court should be prepared to routinely assess the SPP to make sure it remains focused on that goal. Because the SPP is an entirely new pathway to admission in the United States, the BBX has been in touch with IAALS about the possibility of having IAALS help the BBX develop a plan to objectively evaluate the SPP once implemented. This type of evaluation is important to ensure: (1) the program is meeting its stated goals and (2) that it can adapt and improve over time. Just as the bar exam has not been static over the years (and is about to undergo major changes in the next few years), the ATE does not view the SPP (or the OEP) as static. Conducting this type of contemporaneous (or close to contemporaneous) review and evaluation of the SPP should serve to reassure the public about the efficacy of the pathway.

In sum, because it is in an entirely new pathway for admission in United States jurisdictions, we believe that the BBX and the Court should be proactive about reviewing and adjusting the program as it is being implemented, we also believe that the SPP pathway, as proposed, which involves extensive practitioner *and* BBX supervision of an applicant *before* admission, should assure the public that an applicant admitted via this pathway has demonstrated the requisite knowledge and skill to practice in Oregon.

V. QUESTIONS 3 & 4.

Based on the jurisdictions that have offered some form of alternative pathway to licensing of law school graduates, what benefits or hoped-for benefits have others identified in creating those non-exam pathways to licensure?

Have there been any studies or assessments of whether those jurisdictions that

³⁶ June 23, 2021 Letter to Oregon State Bar Board of Bar Examiners, OR. ST. BAR TASK FORCES (June, 23, 2021), <https://taskforces.osbar.org/files/2021/02/CJLetterReAdmissionsBBXTaskForces.pdf>.

have offered some form of alternative pathway to licensing of law school graduates have realized the hoped-for benefits?

The experiences of other jurisdictions can help inform the Court about the benefits of creating alternative pathways to licensure for law school graduates. The ATE has paid particularly close attention to the implementation experience and the observed outcomes from New Hampshire's initiative, which from the inception of these proposals, has served as an important model. Admittedly, there is a lack of data from other jurisdictions measuring how these alternative pathways address diversity and equity concerns. IAALS has, however, offered to partner with the OSB in creating tools to measure whether these pathways, once adopted, are meeting the stated goals. This ongoing assessment will be critical to the success of these programs. With that in mind, and given the distinct nature of the alternative pathways, the benefits of each are discussed separately.

A. Oregon Experiential Pathway.

The OEP is inspired by the University of New Hampshire's Daniel Webster Honor Scholars Program ("DWS"). DWS scholars are admitted to the New Hampshire Bar without taking the bar examination. We note at the outset that the OEP proposal has the promise to have a more widespread impact than DWS, in that it will ideally grow to be open to all students at law schools that offer the pathway.

In any event, Nixon Peabody is the largest and most prestigious law firm in New Hampshire and has a national presence. Senior Partner Scott O'Connell reports that DWS graduates are outstanding and his predisposition is to hire DWS graduates over those who take the bar examination because "they see the gray areas" and upon graduation "are reliable in litigation."

Gordon Macdonald, the Chief Justice of the New Hampshire Supreme Court, was the Chair of the New Hampshire BBX in the implementation phase of the DWS program. He also served as Attorney General where he employed DWS scholars. He reports that the BBX had no qualms about admitting DWS scholars without examination, and that DWS produces "practice ready attorneys who are head and shoulders above the graduates of the country's finest institutions in serving clients." He calls DWS the "future of the profession." He offered to testify to the Oregon Supreme Court in favor of "exporting" the program. Though the DWS

program is a selective program, it follows that expanding the program, if it helps students who perform at the top-tier by traditional law school assessment measure, will help all students become more practice-ready.

Regarding the public comment about collecting empirical data to measure the success of ATE, the Oregon BBX may be able to measure the results of the OEP by comparing the number of ethics complaints and malpractice claims filed against OEP admittees versus those who passed the bar examination. The law schools may be able to compare the employment rates of OEP admittees versus those who passed the bar examination.

B. Supervised Practice Pathway

The SPP, while drawing from other jurisdictions, is charting a new path for establishing one's competence for admission to the Bar. Several jurisdictions employed a one-time diploma privilege in response to the pandemic but it is likely too early to draw meaningful conclusions from those admissions.³⁷ Moreover, those admissions did not include a requirement of 1000-1500 substantive practice hours working under the supervision of a practicing Oregon lawyer *as well as* the submission of a portfolio of work-product that must document the applicant's competence to the Board of Bar Examiners *before* the person is admitted to the Bar.

Canada has long used a form of "articling" as its *exclusive* pathway to admit members to practice and, thus, the jurisdictions there do not offer particular insight responsive to Questions 3 and 4. Beyond that, while the various articling programs employed in Canadian jurisdictions will provide an implementation committee with a great deal of information (from possible language for rules to forms and training programs), the systems are too different from the pathway the ATE is recommending to offer meaningful insight on the strength of the Oregon proposal.

Oregon's SPP program is based on the ATE's conclusion, based upon the research and information discussed throughout this supplement and the initial

³⁷ While no formal studies have been done assessing the effect of diploma privilege on malpractice claims or ethics complaints (and it is likely too early to have meaningful data on this point), "Wisconsin's complaint rate is nearly identical to the jurisdictional average despite its maintenance of the diploma privilege." See Markovic, *supra* note 24, at 18.

Task Force Report, that there are people who have the “requisite learning and ability” required by ORS 9.220 for admission for whom the requirement that they secure a passing score on UBE is a barrier to admission. No public good is served by excluding a qualified applicant from the practice of law. Indeed, the public is better-served by admission policies that recognize the limitations inherent in any approach that offers only one pathway to admission. The ATE has proposed that Oregon develop a pathway (the SPP) that is sufficiently vigorous (hours of supervised practice) and monitored by the Bar (portfolio review by the BBX) that the public, the Court and the Bar can feel confident that those who pursue it and secure admission through it meet the requirements of competency to practice law in Oregon.

While it is not a study or an assessment, the basis for believing that the SPP will accomplish the hoped-for goal of admitting members who are competent but for whom the UBE is creating an unwarranted barrier is found in the lived-experience in Oregon. Numerous members of the task force are aware of individuals who they perceive, based upon years of experience in practice, to be competent to practice but who have taken the UBE and not secured a passing score for Oregon. Sometimes these individuals have taken the exam more than one time. Some will have missed (on more than one occasion) by just a few heart-breaking points. Applicants who fall into this category (competent but not securing a passing score in Oregon) commonly have a score that would permit admission in a different UBE state. Often those applicants *have* Oregon employment; lawyers in Oregon who want to hire these applicants as lawyers but must, instead, keep them in the position of clerk or paralegal.

The resources drained from taking and retaking the bar exam while (usually) having to support at least oneself financially is significant and can make passing on future attempts that much more difficult. The Oregon State Bar has developed the ReBar program to offer assistance to such applicants if their membership to the Oregon bar would also “contribute to the OSB’s historically and/or currently underrepresented membership, or otherwise advance the Diversity & Inclusion Department’s mission,”³⁸ but too often, the more reasonable solution for an applicant will be to leave the jurisdiction. The ATE has proposed an alternative pathway that it believes, when fully implemented,

³⁸ *ReBar Program*, OR. ST. BAR, <https://www.osbar.org/diversity/programs.html#rebar> (last visited Nov. 8, 2021).

will provide a viable approach for competent applicants to secure admission in Oregon, while weeding out those who cannot make such a demonstration.

VI. QUESTION 5.

Have any jurisdictions used alternative pathways to licensing as a way to address the need for lawyers to serve underrepresented communities and populations?

Oregon has unique needs and can benefit from the advantages that each pathway affords. The OEP will pull more students deeper into clinical educational experiences. The clinics at our law schools will, in addition to building skills, provide a broader set of graduates with experience in serving underrepresented communities and populations, as a formal component of their legal education. Students will learn directly about the challenges that the legal profession faces in serving these communities in ways that many might not otherwise. The SPP can address the problem differently, providing an attractive opportunity to inspire law school graduates to begin their practice experience in underserved parts of our state. The OEP and the SPP engage with law students and new law graduates in substantially different ways, as discussed next.

A. Oregon Experiential Pathway.

OEP clinical expansion will increase opportunities to serve underserved communities and populations as many (though not all) of the people who are served by clinics are drawn from low-income and marginalized populations. For example, the University of Oregon School of Law has a Domestic Violence Clinic, where law students have an opportunity to learn how to effectively represent low-income survivors of domestic violence, sexual assault, and stalking in civil legal matters, including protective order proceedings, family law matters, and employment and housing issues. At Lewis & Clark Law School, The Criminal Justice Reform Clinic (CJRC) guides students on projects that include addressing wrongful convictions and innocence; criminal justice reform including death penalty, amicus, and Eighth Amendment work; clemency petitions; and legal issues facing individuals returning to the community from incarceration. At Willamette University College of Law, students in the Immigration Clinic have the opportunity to represent clients, engage in factual and legal research in the area of immigration law, engage in

in-depth legal analysis and writing, and learn to work collaboratively in a team setting. That Clinic also engages in human rights fact-finding and reporting, work that has previously included a report on "Human Trafficking and Native Peoples in Oregon."

These are just a few examples of clinics at Oregon law schools where students can simultaneously enhance their legal skills while serving marginalized communities. Though hardly a panacea for the access-to-justice gap, expansion of student clinical opportunities through the OEP would expand the numbers of clients served in the public interest. Moreover, there is at least some evidence that clinical education affirms and enhances student interest in public interest law.³⁹ But more broadly, the OEP would help to establish an educational culture that expressly embraced public interest law through enhanced clinical and experiential learning, which would place public service options at the center of a student's legal education.

To be sure, enhanced exposure to public interest law may not alone generate sufficient student interest to practice in underserved and unrepresented communities. But it is at least a new and creative way to address a familiar problem. Oregon is in the bottom half of states in terms of lawyers per capita,

³⁹ See Sally Maresh, EDUCATING FOR JUSTICE: SOCIAL VALUES AND LEGAL EDUCATION 154 (Jeremy Cooper & Louise G. Trubek eds., 1997). Through a small empirical study, Maresh found that 96% of students with a predisposition to pursuit of public interest legal work, expressed retention of that commitment after participating in a clinic. *Id.* at 163. For those with no expressed predisposition, 57% of those students indicated that their clinical experience made them more likely to consider practicing public interest law. *Id.* at 163. As factors in their attitudinal change, students mentioned

a 'personalization' of the plight of the poor, a realization that many of their clients needed representation through not fault of their own, a recognition that the integrity of the judicial system is dependent on equal access to representation regardless of individual resources, and that the 'right' to counsel is not an inalienable right.

Id. at 164. Of course, longitudinal studies would be welcome in this area. But the benefits of clinical education are something to behold, more broadly, and are not limited to this purpose. See Richard J. Wilson, THE GLOBAL EVOLUTION OF CLINICAL LEGAL EDUCATION: MORE THAN A METHOD 23, n.65 (2018) (better upper-level student engagement, "increased moral judgment capacity" and improved skill development).

some distance behind our nearest comparator, Washington.⁴⁰ When studies show that “84 % of people [in Oregon] with a legal problem did not receive legal help of any kind,⁴¹ the crisis is evident.

B. Supervised Practice Pathway.

Utah’s 2020 temporary “diploma privilege,” which also required 360-hours of supervised practice, affirmatively encouraged applicants to complete those supervised practice hours through public service.⁴² Providing services to various public interest law firms and organizations while working under the supervision of an admitted attorney could be an excellent way to both gain supervision and serve under-represented communities. The ATE does not believe that there should be an expectation that any formal partnerships with the Bar will be adopted as part of initial implementation of the SPP, however, this could be something that is worked out between the Bar and certified pro bono programs in the future.

The expectation or directive to pursue pro bono opportunities to meet SPP supervision hours without having formal partnerships in place with related public interest firms has the very real potential of creating an undue burden on the very public interest groups that such a directive would be hoping to assist. Certified Pro Bono Programs endeavor to provide supervision to their volunteers on pro bono matters. These programs do not have unlimited staff capacity to do this. So, although pro bono service could be a way of obtaining supervised hours, we do not want to set an unrealistic expectation that legal nonprofits have the capacity to supervise all people who might be interested in the SPP.⁴³

⁴⁰ AM. BAR ASS’N, ABA PROFILE OF THE LEGAL PROFESSION 3 (2020). Oregon has a per capita rate of 2.9 per 1,000 population, while Washington has a rate of 3.5. *Id.*

⁴¹ BARRIERS TO JUSTICE: A 2018 STUDY MEASURING THE CIVIL LEGAL NEEDS OF LOW-INCOME OREGONIANS 1 (2018), <https://olf.osbar.org/files/2019/02/Barriers-to-Justice-2018-OR-Civil-Legal-Needs-Study.pdf>.

⁴² *Diploma Privilege Frequently Asked Questions*, UTAHDIPLOMAPRIVILEGE.ORG <https://utahdiplomaprivilegeorg.wordpress.com/> (last visited Nov. 8, 2021).

⁴³ In the implementation phase, the committee should consider how to encourage attorneys across practice areas and backgrounds to serve as supervising attorneys so the burden does not disproportionately fall on attorneys who already disproportionately sign up to volunteer and mentor throughout the legal community.

The nature of the SPP program the ATE is proposing is one in which the applicant must be *meaningfully supervised* in completing legal work for consumers. Accordingly, a supervising attorney—whether the attorney is working in private practice, for a governmental entity or a public interest group—must have the infrastructure in place to train and supervise an applicant. With time, there may well be partnerships that develop as a public interest firm figures out how it might fund a position within the firm that could offer the appropriate supervision and training for volunteers or, alternatively, to fund a staff position for an applicant seeking admission through the SPP. As capacity for supervision at legal nonprofits grows, legal services to marginalized communities would be expanded. However, it is not a foregone conclusion that Oregon’s public interest firms will be able to provide the appropriate supervision at the outset.

An expectation or directive to pursue pro bono opportunities could also create an unrealistic expectation with law students and recent grads that such opportunities will be readily available in Oregon when they may not be. While, with time, the ATE believes that partnerships between the OSB and employers may grow such that the Bar could play a role in assisting applicants with finding a match for supervised practice, it is not something that we believe can, realistically, be a formal part of the program at its initiation as it will require tremendous resources. Instead, initially, we anticipate the burden will be on a person who seeks this pathway to secure supervising attorney(s).

One arena in which the SPP could prove to provide meaningful growth for underserved populations would be the potential that small law firms in underserved parts of the state may find this program as a meaningful way to hire and train new lawyers. Currently (and, seemingly, for the foreseeable future), all of Oregon’s law schools are in the Willamette Valley and the bar exam is administered there. The incentive to seek employment in that region is heightened. Employers in more rural parts of Oregon could likely see an improvement in their ability to recruit attorneys by participating in the SPP. Applicants who work for a rural law office and make a connection with a Supervising Attorney and other attorneys in the region, could very likely want to stay and practice for that firm or in that community.

Another valuable way that the SPP could aid in serving people from underrepresented communities, is by helping to increase the diversity of the state’s lawyers. Achieving a more diverse bench and bar will improve access to

justice for all Oregonians. The passage rates of the bar exam are not race neutral. There are people who are competent to practice law, who for a variety of reasons cannot pass the bar exam. The bar exam, while seemingly okay at admitting lawyers who are competent, can in some circumstances, create institutional barriers that improperly exclude others who are *also* competent to practice law in Oregon. Adopting these alternative pathways serves as a meaningful effort to try to alleviate what might otherwise be an improper barrier to admission without sacrificing the important goal of ensuring that those who are admitted, by whatever means, are competent.

VII. CONCLUSION.

The proposed alternative pathways test both current and previously untested aspects of legal competency and seek to provide a measurable basis for doing so. Stated differently, the proposals hold out the promise of assessing a broad range of academic/analytical/critical thinking competencies while also assessing additional skills competencies that the bar exam currently does not test at all.

These “alternative pathways” are not intended as options that lessen the requirements for demonstrating competence for admission; indeed, as detailed throughout, the robustness and vigor of these pathways may well create practitioners who are better prepared to take on practice independently than their cohorts who sit for and pass the UBE. That said, while many task force members have concerns about the bar exam as a method of measuring competence, the ATE has not recommended eliminating the bar exam. The Court’s charge was to study and identify alternatives to the bar exam, rather than a substitution for the exam. Moreover, the portability of the UBE exam score provides Oregon’s legal employers with the most diverse pool of applicants possible, which represents one of the strongest vehicles for building a more diverse and equitable bar in the shortest amount of time. Finally, Oregon’s law schools would lose a valuable recruiting tool if Oregon did not offer an exam that afforded its law school applicants a portable score to more than 40 other UBE states. By offering alternatives to licensure beyond the UBE, the task force intends to allow applicants to decide the best pathway for their particular career goals and life situation.

Whether it is through the OEP, the SPP, or the UBE, the responsibility for evaluating whether the applicant has met the criteria required by the pathway

would rest, in the first instance, with the BBX and, ultimately, the Oregon Supreme Court. Once implemented, we believe that Oregon's legal employers and consumers will come to recognize the practice-ready quality of graduates produced by these programs, and members admitted through them will be considered welcome and important additions to the Oregon bar. We therefore recommend that the Court authorize the adoption of these alternative pathways to the bar exam, contingent on the Court's approval of final implementation language to be developed through the work of implementation committees for each pathway.

Respectfully submitted,



Joanna Perini-Abbott
Chair, Alternatives to the Examination Task Force

CC via email:

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Caroline Wong, Vice-Chair of the Oregon State Board of Bar Examiners

ATTACHMENT A

Client Matter Analysis

This planning sheet requires clinic students to identify key legal and extra-legal issues related to their client's matter. The sheet is a tool for guiding investigation and preparing strategy. The sheet is also useful to prepare for negotiations, hearings, or a trial. Students complete the planning sheet; supervisor's then review, offer feedback, and make assessments. This particular planning sheet was designed for a clinic that represents indigent clients charged with misdemeanor crimes. With minor adjustments, this type of tool is used in clinics focused on civil litigation, transactional counseling, immigration, and other matters.

Client Name: _____

Charged Crime: __*[If a client is charged with multiple crimes, students complete this sheet for each charged crime]*_____

Elements of the Crime	Prosecutor's Likely Evidence	Issues/Objections/Contrary Evidence	Story
<i>In this column, students list each statutory element of the charged crime—referring to case law if courts have added glosses to those elements. This requires close statutory analysis and case law research.</i>	<i>Here, students list each piece of evidence (witness testimony, document, etc.) that the prosecutor might introduce to prove each element. This requires the ability to apply the law to the facts of the case—as well as to understand the types of evidence a prosecutor might gather. In addition to preparing for plea bargaining, hearings, and trials, this list reminds students to request specific items through discovery.</i>	<i>In this column, students list objections (both constitutional and rule-based) to any contemplated evidence, as well as contrary evidence they might introduce. This requires thorough knowledge and application of the rules of evidence and constitutional doctrine. This also allows students to strategize evidence they want to gather.</i>	<i>Here, students plan how they will weave their evidence (and objections to the prosecutor's evidence) into a comprehensive story if the case goes to trial. This column also allows them to record portions of the client's story (such as a desire to enter rehab for an addiction) that would not be admissible at trial but are relevant for plea bargaining.</i>

ATTACHMENT B

Sample Interview Assessment Form for Simulated Client Interview

This form is typical of one that professors in experiential courses use to assess a student's initial interview of a simulated client. Other students or community members are trained to play the role of the simulated client. The student's interview of that simulated client is videotaped to aid the student's self-reflection as well as assessment by a supervisor.

In some programs, these assessment forms are available electronically. A bar examiner or other assessor can watch the video online, review assessments entered by the professor and student, and add their own assessment.

Name of Student Who Conducted the Interview: _____

Name of Individual Completing This Assessment: _____

Evaluate each component on a scale of 5 (Excellent) to 1 (Failure) as follows:

- 5 (Excellent): Outstanding independent work
- 4 (Good): Performs well, and is learning to work independently
- 3 (Satisfactory): Performs with basic competence, and is learning to work independently
- 2 (Almost Satisfactory): Needs maximum supervision/oversight to perform competently
- 1 (Poor): Does not perform competently

In addition to providing these numerical ratings, please give specifics when requested. If possible, give the time stamps for the portions of the video illustrating your points.

1. The student lawyer was courteous and respectful:

How did the student lawyer demonstrate courtesy and respect (or fail to do so)?

2. The student lawyer was adequately prepared for the interview:

3. The student lawyer explained their role as law student to the client:

4. The student lawyer explained confidentiality in a way that client could understand:

Please comment on the student lawyer's explanation of both their status and confidentiality:

5. The student lawyer built rapport with client:

Please comment on the student lawyer's development of rapport with the client:

6. The student lawyer obtained all relevant information and, where relevant, documents, from the client:

7. The student lawyer elicited the client's goals and named them back for the client:

8. The student lawyer applied a client-centered approach (e.g., recognizing and responding to the client's personal, cultural and other perspectives):

How did the student lawyer demonstrate this client-centered approach?

9. The student lawyer identified potential additional sources of facts, information and evidence regarding client's situation:

10. The student lawyer provided space and opportunity for client questions and concerns: _____

11. The student lawyer closed by articulating next steps for both them and the client, and made a commitment for the next contact:

12. Please offer any other comments on the student lawyer's interaction with the client:

2021 HB 2534 (Enrolled)

Enrolled House Bill 2534

Sponsored by Representative HELM, Senator FREDERICK, Representative GRAYBER; Representatives DEXTER, MEEK, NERON, PHAM, SOLLMAN, Senator PATTERSON (Presession filed.)

CHAPTER

AN ACT

Relating to removal of discriminatory restrictions in governing documents; creating new provisions; amending ORS 93.270; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 93.270 is amended to read:

93.270. (1) A person conveying or contracting to convey fee title to real property, or recording a declaration under ORS 94.580, may not include in an instrument for that purpose a provision:

(a) Restricting the use of the real property by any person or group of persons by reason of race, color, religion, sex, sexual orientation, national origin or disability.

(b) Restricting the use of the real property:

(A) As a certified or registered family child care home pursuant to ORS 329A.250 to 329A.450 or as the premises of an exempt family child care provider participating in the subsidy program under ORS 329A.500; or

(B) By any home or facility that is licensed under ORS 443.400 to 443.455 or 443.705 to 443.825 to provide residential care alone or in conjunction with treatment or training or a combination thereof.

(2) A condominium that includes units used for residential purposes or planned community, including a community not subject to ORS 94.550 to 94.783, may not include in a recorded instrument governing the community and may not enforce any provision that would restrict the use of the community or the lots or units of the community because of race, color, religion, sex, sexual orientation, national origin, marital status, familial status, source of income, disability or the number of individuals, including family members, persons of close affinity or unrelated persons, who are simultaneously occupying a dwelling unit within occupancy limits.

~~[(2)]~~ **(3)** Any provision in an instrument executed in violation of subsection (1) **or (2)** of this section is void and unenforceable.

~~[(3)]~~ **(4)** An instrument that contains a provision restricting the use of real property in a manner listed in subsection (1)(b) of this section does not give rise to any public or private right of action to enforce the restriction.

~~[(4)(a)]~~ **(5)(a)** An instrument that contains a provision restricting the use of real property by requiring roofing materials with a lower fire rating than that required in the state building code established under ORS chapter 455 does not give rise to any public or private right of action to enforce the restriction in an area determined by a local jurisdiction as a wildfire hazard zone. Pro-

hibitions on public or private right of action under this paragraph are limited solely to considerations of fire rating.

(b) As used in this subsection, “wildfire hazard zones” are areas that are legally declared by a governmental agency having jurisdiction over the area to have special hazards caused by a combination of combustible natural fuels, topography and climatic conditions that result in a significant hazard of catastrophic fire over relatively long periods each year. Wildfire hazard zones shall be determined using criteria established by the State Forestry Department.

SECTION 2. The amendments to ORS 93.270 by section 1 of this 2021 Act apply to instruments recorded on, before or after the effective date of this 2021 Act.

SECTION 3. Section 4 of this 2021 Act is added to and made a part of ORS 94.550 to 94.783.

SECTION 4. (1) On or before December 31, 2022, each homeowners association shall review each governing document currently binding on the planned community, or the lots or the lot owners within the planned community and shall:

(a) Amend or restate each document as necessary to remove all restrictions against the use of the community or the lots not allowed under ORS 93.270 (2); or

(b) Execute and record a declaration that the homeowners association has reviewed the governing documents binding on the planned community and that the documents do not contain any restriction, rule or regulation against the use of the community or the lots by a person or group of persons because of race, color, religion, sex, sexual orientation, national origin, marital status, familial status, source of income, disability or the number of individuals, including family members, persons of close affinity or unrelated persons, who are simultaneously occupying a dwelling unit within occupancy limits.

(2) Notwithstanding ORS 94.590 or 94.625 or any requirement of the declaration or bylaws, an amendment to or a restatement of the declaration or bylaws under subsection (1)(a) of this section is effective and may be recorded without the vote of the owners or the board members if the amendment or restatement includes a certification signed by the president and secretary of the homeowners association that the amended or restated declaration or bylaws does not change that document except as required under this section and as may be necessary to correct scriveners’ errors or to conform format and style.

SECTION 5. Section 6 of this 2021 Act is added to and made a part of ORS chapter 100.

SECTION 6. (1) On or before December 31, 2022, each association of a condominium that includes units used for residential purposes shall review each governing document currently binding on the condominium or the units or unit owners within the condominium and shall:

(a) Amend or restate each document as necessary to remove all restrictions against the use of the condominium or the units not allowed under ORS 93.270 (2); or

(b) Execute and record a declaration that the association has reviewed the governing documents binding on the condominium and that the documents do not contain any restriction, rule or regulation against the use of the condominium or the units by a person or group of persons because of race, color, religion, sex, sexual orientation, national origin, marital status, familial status, source of income, disability or the number of individuals, including family members, persons of close affinity or unrelated persons, who are simultaneously occupying a dwelling unit within occupancy limits.

(2) Notwithstanding ORS 100.110, 100.135, 100.413 or any requirement of the declaration or bylaws, an amendment to or a restatement of the declaration or bylaws under this section, upon submission and approval of the Real Estate Commissioner under ORS 100.123, 100.125, 100.668 and 100.675, is effective and may be recorded without the vote of the owners or the board members if the amended or restated declaration or bylaws includes a certification signed by the president and secretary of the association that the amended or restated declaration or bylaws does not change that document except as required under this section and as may be necessary to correct scriveners’ errors or to conform format and style.

SECTION 7. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by House April 10, 2021

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate May 10, 2021

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

.....
Shemia Fagan, Secretary of State

Executive Order 20-03

(Mar. 8, 2020)



EXECUTIVE ORDER NO. 20-03

DECLARATION OF EMERGENCY DUE TO CORONAVIRUS (COVID-19) OUTBREAK IN OREGON

ORS 401.165 *et seq.* empowers the Governor to declare a state of emergency upon determining that an emergency has occurred or is imminent. Pursuant to that authority, I find that the novel infectious coronavirus has created a threat to public health and safety, and constitutes a statewide emergency under ORS 401.025(1).

The novel coronavirus causes an illness known as COVID-19. Coronavirus are a group of viruses that can cause respiratory disease, with the potential to cause serious illness or loss of life.

As of March 8, 2020, there are 14 presumptive or confirmed coronavirus cases in Oregon, 430 cases in the United States, and 101,927 cases worldwide, in a total of 94 countries. In the United States there have been 19 deaths, and worldwide there have been 3,486 deaths. On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak a “public health emergency of international concern.” On January 31, 2020, the Secretary of the U.S. Department of Health and Human Services declared a public health emergency for the United States. Two counties in Oregon and several states also have declared states of emergency in response to the coronavirus outbreak, including California and Washington.

According to the U.S. Centers for Disease Control and Prevention, COVID-19 presents a “high” potential public health threat, both globally and in the United States. It spreads person-to-person through coughing and sneezing, close personal contact, such as touching or shaking hands, or touching an object or surface with the virus on it, and then touching your mouth, nose, or eyes. The symptoms are fever, cough and difficulty breathing.

On January 21, 2020, the Oregon Health Authority, Public Health Division activated its incident management team to prepare for and respond to COVID-19. On February 28, 2020, the Governor announced the convening of a Coronavirus Response Team tasked with coordinating state and local agencies and health authorities in preparation for response to COVID-19. On March 2, 2020, the Governor activated the State Emergency Coordination Center.





**EXECUTIVE ORDER NO. 20-03
PAGE TWO**

In order to ensure the state is fully prepared for COVID-19 and that state and local authorities have the resources needed to respond to COVID-19, a declaration of emergency is necessary.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED THAT:

1. The Oregon Health Authority and the state Public Health Director shall take all actions necessary and authorized under ORS 401.651 to 401.670, ORS 433.443, and ORS 431A.015 to respond to, control, mitigate, and recover from the emergency, including but not limited to:
 - (a) Deploying emergency volunteer health care professionals under ORS 401.661;
 - (b) Designating emergency health care centers under ORS 401.657;
 - (c) After consultation with appropriate medical experts, creating and requiring the use of diagnostic and treatment guidelines and providing notice of those guidelines to health care providers, institutions and facilities;
 - (d) Issuing guidelines for private businesses regarding appropriate work restrictions, if necessary.
2. If needed, I will request assistance through the Emergency Management Assistance Compact under ORS 402.105 and the Pacific Northwest Management Assistance Arrangement under ORS 402.250.
3. The Office of Emergency Management shall, in consultation with the Director of the Oregon Health Authority and state Public Health Director, if necessary, take any action authorized under ORS 433.441. All agencies identified as part of the Governor's Coronavirus Response Team are directed to provide liaisons for the State Emergency Coordination Center. All state government agencies shall utilize and employ state personnel, equipment, and facilities for any and all activities as requested and coordinated by the Oregon Office of Emergency Management. All citizens are to heed the advice of emergency officials with regard to this outbreak in order to protect their health and safety.



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PAGE THREE

4. As necessary to respond to the emergency, I authorize all executive agencies of state government to take, upon further direction from me or my office, any actions authorized under the provisions set forth in ORS 401.168 through 401.192.
5. State agencies shall develop and implement procedures, including waiving rules or adopting temporary rules within the agency's authority, consistent with recommendations from the state Public Health Director, designed to prevent or alleviate the public health threat.
6. This declaration serves as a public health emergency for purposes of ORS 653.616, which permits employees to use sick time as specified in ORS 653.616(6).
7. Persons who believe that they have been subjected to excessive prices for essential consumer goods associated with the coronavirus outbreak are encouraged to report that conduct to the Oregon Department of Justice Consumer Protection hotline, at 1-877-877-9392.

This state of emergency shall exist for sixty days from the date of this Executive Order, unless extended or terminated earlier by the Governor. These findings and this order were initially made by verbal proclamation at 8:14 p.m. on the 7th day of March, 2020, and confirmed in writing by this Executive Order on this 8th day of March, 2020.

Done at Portland, Oregon this 8th day of March, 2020.

Kate Brown
GOVERNOR

ATTEST:

Bev Clarno
SECRETARY OF STATE



2020 HB 4212 (Enrolled)

Enrolled House Bill 4212

Sponsored by Representative KOTEK; Representatives KENY-GUYER, LEIF, NERON, NOSSE, PRUSAK, REARDON, SCHOUTEN, SOLLMAN, WILLIAMS (at the request of Joint Committee on the First Special Session of 2020)

CHAPTER

AN ACT

Relating to strategies to protect Oregonians from the effects of the COVID-19 pandemic; creating new provisions; amending ORS 18.784, 93.810, 194.225, 194.290, 194.305, 194.400 and 458.685; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

LOCAL GOVERNMENT AND SPECIAL GOVERNMENT BODY PUBLIC MEETINGS AND OPERATIONS

SECTION 1. (1) Notwithstanding ORS 192.610 to 192.690, the governing body of a public body may hold all meetings by telephone or video conferencing technology or through some other electronic or virtual means. When a governing body meets using telephone or video conferencing technology, or through other electronic or virtual means, the public body shall make available a method by which the public can listen to or observe the meeting. If a governing body meets using telephone or video conferencing technology, or through other electronic or virtual means:

(a) The public body does not have to provide a physical space for the public to attend the meeting; and

(b) If the telephone or video conferencing technology allows the public body to do so, the public body shall record the meeting and make the recording available to the public. This paragraph does not apply to executive sessions.

(2) If the governing body of the public body elects not to use telephone or video conferencing technology or other electronic or virtual means to conduct meetings, all persons attending meetings held in person must maintain social distancing, including maintaining intervals of six feet or more between individuals, wherever possible.

(3) For any executive session at which the media are permitted to attend, whether conducted in person or using electronic or virtual means, the governing body shall provide a means for media to attend the executive session through telephone or other electronic or virtual means.

(4) Notwithstanding ORS 192.610 to 192.690 or any other applicable law or policy, any public testimony or comment taken during a meeting need not be taken in person if the public body provides an opportunity to submit testimony or comment by telephone or video conferencing technology, or through other electronic or virtual means, or provides a means

of submitting written testimony, including by electronic mail or other electronic methods, and the governing body is able to consider the submitted testimony in a timely manner.

(5) Notwithstanding any requirement that establishes a quorum required for a governing body to act, the minimum number of members of a governing body required for the body to act shall exclude any member unable to attend because of illness due to COVID-19.

(6) If the public health threat underlying the declaration of a state of emergency issued by the Governor on March 8, 2020, or compliance with an executive order issued under ORS 401.165 to 401.236 in connection with that emergency, causes a municipal corporation or council of governments to fail to comply with ORS 294.305 to 294.565 or 294.900 to 294.930, the municipal corporation or council of governments may make reasonable expenditures for continued operations within the existing or most recently adopted budget, provided that any failure to comply with ORS 294.305 to 294.565 or 294.900 to 294.930 is cured as soon as is reasonably practicable.

(7) Notwithstanding ORS 221.770, a city may satisfy the requirements of holding a public hearing under ORS 221.770 (1)(b) and (c) by holding the hearing in accordance with this section and by making certification to the Oregon Department of Administrative Services as soon as is reasonably practicable after the city adopts its budget.

(8) As used in this section:

(a) Terms used in this section have the meanings given those terms in ORS 192.610, except that “public body” excludes the state or any board, department, commission, council, bureau, committee, subcommittee, advisory group or other agency of the state.

(b) “Budget” and “municipal corporation” have the meanings given those terms in ORS 294.311.

(c) “Council of governments” has the meaning given that term in ORS 294.900.

SECTION 2. Section 1 of this 2020 special session Act is repealed 30 days after the date on which the declaration of a state of emergency issued by the Governor on March 8, 2020, and any extension of the declaration, is no longer in effect.

GARNISHMENT MODIFICATIONS

SECTION 3. ORS 18.784 is amended to read:

18.784. (1) Except as provided in subsection (6) of this section, if a writ of garnishment is delivered to a financial institution that has an account of the debtor, the financial institution shall conduct a garnishment account review of all accounts in the name of the debtor before taking any other action that may affect funds in those accounts. If the financial institution determines from the garnishment account review that one or more payments described in subsection (3) of this section were deposited in an account of the debtor by direct deposit or electronic payment during the lookback period described in subsection (2) of this section, an amount equal to the lesser of the sum of those payments or the total balance in the debtor’s account is not subject to garnishment.

(2)(a) The provisions of this section apply *[only]* to payments described in subsection (3)(a) to (f) of this section that are deposited during the lookback period that ends on the day before the day on which the garnishment account review is conducted and begins on:

[(a)] (A) The day in the second calendar month preceding the month in which the garnishment account review is conducted, that has the same number as the day on which the period ends; or

[(b)] (B) If there is no day as described in *[paragraph (a) of this subsection,]* **subparagraph (A) of this paragraph**, the last day of the second calendar month preceding the month in which the garnishment account review is conducted.

(b) The provisions of this section apply to payments described in subsection (3)(g) of this section that are deposited during the lookback period that ends on the day before the day on which the garnishment account review is conducted and begins on March 8, 2020.

(3) The provisions of this section apply only to:

(a) Federal benefit payments;

- (b) Payments from a public or private retirement plan as defined in ORS 18.358;
- (c) Public assistance or medical assistance, as defined in ORS 414.025, payments from the State of Oregon or an agency of the State of Oregon;
- (d) Unemployment compensation payments from the State of Oregon or an agency of the State of Oregon;
- (e) Black lung benefits payments from the United States Department of Labor; *[and]*
- (f) Workers' compensation payments from a workers' compensation carrier~~].~~; **and**
- (g) **Recovery rebate payments made under section 2201(a) of the Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136) deposited in an account of the debtor at any time, unless:**

(A) The writ of garnishment is issued to collect:

- (i) **A judgment in a criminal action that requires the defendant to pay restitution; or**
- (ii) **A civil judgment against a person who has been convicted of a crime if the civil judgment is based on the same underlying facts as the conviction; and**

(B) The writ of garnishment contains the following statement: "This Garnishment Has Been Issued to Collect a Criminal Money Judgment that Awards Restitution or a Civil Judgment Based on a Criminal Offense."

(4) The provisions of this section apply only to a payment that a financial institution can identify as being one of the types of payments described in subsection (3) of this section from information transmitted to the financial institution by the payor.

(5) A financial institution shall perform a garnishment account review only one time for a specific garnishment. If the same garnishment is served on a financial institution more than once, the financial institution may not perform a garnishment account review or take any other action relating to the garnishment based on the second and subsequent service of the garnishment.

(6) A financial institution may not conduct a garnishment account review under this section if a Notice of Right to Garnish Federal Benefits from the United States Government or from a state child support enforcement agency is attached to or included in the garnishment as provided in 31 C.F.R. part 212. If a Notice of Right to Garnish Federal Benefits is attached to or included in the garnishment, the financial institution shall proceed on the garnishment as otherwise provided in ORS 18.600 to 18.850.

(7) The provisions of this section do not affect the ability of a debtor to claim any exemption that otherwise may be available to the debtor under law for any amounts in an account in a financial institution.

SECTION 4. ORS 18.784, as amended by section 3 of this 2020 special session Act, is amended to read:

18.784. (1) Except as provided in subsection (6) of this section, if a writ of garnishment is delivered to a financial institution that has an account of the debtor, the financial institution shall conduct a garnishment account review of all accounts in the name of the debtor before taking any other action that may affect funds in those accounts. If the financial institution determines from the garnishment account review that one or more payments described in subsection (3) of this section were deposited in an account of the debtor by direct deposit or electronic payment during the lookback period described in subsection (2) of this section, an amount equal to the lesser of the sum of those payments or the total balance in the debtor's account is not subject to garnishment.

(2)~~[(a)]~~ The provisions of this section apply **only** to payments described in subsection (3)~~[(a) to (f)]~~ of this section that are deposited during the lookback period that ends on the day before the day on which the garnishment account review is conducted and begins on:

~~[(A)]~~ **(a)** The day in the second calendar month preceding the month in which the garnishment account review is conducted, that has the same number as the day on which the period ends; or

~~[(B)]~~ **(b)** If there is no day as described in ~~[subparagraph (A) of this paragraph,]~~ **paragraph (a) of this subsection**, the last day of the second calendar month preceding the month in which the garnishment account review is conducted.

[(b) The provisions of this section apply to payments described in subsection (3)(g) of this section that are deposited during the lookback period that ends on the day before the day on which the garnishment account review is conducted and begins on March 8, 2020.]

(3) The provisions of this section apply only to:

(a) Federal benefit payments;

(b) Payments from a public or private retirement plan as defined in ORS 18.358;

(c) Public assistance or medical assistance, as defined in ORS 414.025, payments from the State of Oregon or an agency of the State of Oregon;

(d) Unemployment compensation payments from the State of Oregon or an agency of the State of Oregon;

(e) Black lung benefits payments from the United States Department of Labor; **and**

(f) Workers' compensation payments from a workers' compensation carrier[; and].

[(g) Recovery rebate payments made under section 2201(a) of the Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136) deposited in an account of the debtor at any time, unless:]

[(A) The writ of garnishment is issued to collect:]

[(i) A judgment in a criminal action that requires the defendant to pay restitution; or]

[(ii) A civil judgment against a person who has been convicted of a crime if the civil judgment is based on the same underlying facts as the conviction; and]

[(B) The writ of garnishment contains the following statement: "This Garnishment Has Been Issued to Collect a Criminal Money Judgment that Awards Restitution or a Civil Judgment Based on a Criminal Offense."]

(4) The provisions of this section apply only to a payment that a financial institution can identify as being one of the types of payments described in subsection (3) of this section from information transmitted to the financial institution by the payor.

(5) A financial institution shall perform a garnishment account review only one time for a specific garnishment. If the same garnishment is served on a financial institution more than once, the financial institution may not perform a garnishment account review or take any other action relating to the garnishment based on the second and subsequent service of the garnishment.

(6) A financial institution may not conduct a garnishment account review under this section if a Notice of Right to Garnish Federal Benefits from the United States Government or from a state child support enforcement agency is attached to or included in the garnishment as provided in 31 C.F.R. part 212. If a Notice of Right to Garnish Federal Benefits is attached to or included in the garnishment, the financial institution shall proceed on the garnishment as otherwise provided in ORS 18.600 to 18.850.

(7) The provisions of this section do not affect the ability of a debtor to claim any exemption that otherwise may be available to the debtor under law for any amounts in an account in a financial institution.

SECTION 5. (1) The amendments to ORS 18.784 by section 4 of this 2020 special session Act become operative on September 30, 2020.

(2) The amendments to ORS 18.784 by section 3 of this 2020 special session Act apply to garnishments issued on or before the operative date specified in subsection (1) of this section.

JUDICIAL PROCEEDING EXTENSIONS AND ELECTRONIC APPEARANCES

SECTION 6. (1)(a) Notwithstanding any other statute or rule to the contrary, during the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect, and continuing for 60 days after the declaration and any extension is no longer in effect, and upon a finding of good cause, the Chief Justice of the Supreme Court may extend or suspend any time period or time requirement established by statute or rule that:

(A) Applies in any case, action or proceeding after the case, action or proceeding is initiated in any circuit court, the Oregon Tax Court, the Court of Appeals or the Supreme Court;

(B) Applies to the initiation of an appeal to the magistrate division of the Oregon Tax Court or an appeal from the magistrate division to the regular division;

(C) Applies to the initiation of an appeal or judicial review proceeding in the Court of Appeals; or

(D) Applies to the initiation of any type of case or proceeding in the Supreme Court.

(b) The Chief Justice may extend or suspend a time period or time requirement under this subsection notwithstanding the fact that the date of the time period or time requirement has already passed as of the effective date of this 2020 special session Act.

(2)(a) Notwithstanding ORS 133.060 (1), during the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect, and continuing for 90 days after the declaration and any extension is no longer in effect, the date specified in a criminal citation on which a person served with the citation shall appear may be more than 30 days after the date the citation was issued.

(b) During the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect, and continuing for 60 days after the declaration and any extension is no longer in effect, the presiding judge of a circuit court may, upon the motion of a party or the court's own motion, and upon a finding of good cause, postpone the date of appearance described in paragraph (a) of this subsection for all proceedings within the jurisdiction of the court.

(3)(a) Notwithstanding ORS 136.290 and 136.295, and subject to paragraph (b) of this subsection, during the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect, and continuing for 60 days after the declaration and any extension is no longer in effect, the presiding judge of a circuit court may, upon the motion of a party or its own motion, and upon a finding of good cause, order an extension of custody and postponement of the date of the trial beyond the time limits described in ORS 136.290 and 136.295.

(b) Notwithstanding paragraph (a) of this subsection, for a defendant to whom ORS 136.290 and 136.295 applies, the presiding judge may not extend custody and postpone the defendant's trial date if, as a result, the defendant will be held in custody before trial for more than a total of 180 days, unless the court holds a hearing and proceeds as follows:

(A) If the defendant is charged with a violent felony, the court may deny release upon making the findings described in ORS 135.240 (4), notwithstanding the fact that a court did not previously make such findings; or

(B) If the defendant is charged with a person crime, the court may set a trial date that results in the defendant being held in custody before trial for more than a total of 180 days, but not more than a total of 240 days, if the court:

(i) Determines the extension of custody is based upon good cause due to circumstances caused by the COVID-19 pandemic, public health measures resulting from the COVID-19 pandemic or a situation described in ORS 136.295 (4)(b) caused by or related to COVID-19; and

(ii) Finds, by clear and convincing evidence, that there is a substantial and specific danger of physical injury or sexual victimization to the victim or members of the public by the defendant if the defendant is released, and that no release condition, or combination of release conditions, is available that would sufficiently mitigate the danger.

(c) The result of a hearing held pursuant to this subsection does not affect the ability of a party to request a modification of the release decision under ORS 135.285.

(d) This subsection does not authorize a defendant to be held in custody before trial for a period longer than the maximum term of imprisonment the defendant could receive as a sentence under ORS 161.605 and 161.615.

(e) If the court proceeds under paragraph (b)(B) of this subsection, the defendant shall continue to be eligible for security release and the court may maintain, lower or raise the security amount at the hearing.

(f) As used in this subsection:

(A) "Good cause" means situations described in ORS 136.295 (4)(b), circumstances caused by the COVID-19 pandemic or public health measures resulting from the COVID-19 pandemic.

(B) "Person crime" means a person felony or person Class A misdemeanor, as those terms are defined in the rules of the Oregon Criminal Justice Commission.

(C) "Release decision" has the meaning given that term in ORS 135.230.

(4)(a) Notwithstanding any other statute or rule to the contrary, during the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect, and continuing for 90 days after the declaration and any extension is no longer in effect, the Chief Justice may direct or permit any appearance before a court or magistrate to be by telephone, other two-way electronic communication device or simultaneous electronic transmission.

(b) If an appearance is set to occur by electronic means as described in paragraph (a) of this subsection, a presiding judge may instead order that the appearance be in person if, upon the request of a party, the presiding judge determines that there is a particular need for an in-person hearing or that a party has a constitutional right to an in-person hearing.

(5) The Chief Justice may delegate the exercise of any of the powers described in this section to the presiding judge of a court.

(6) Nothing in this section affects the rights of a defendant under the Oregon and United States Constitutions.

SECTION 7. (1) If the expiration of the time to commence an action or give notice of a claim falls within the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect, or within 90 days after the declaration and any extension is no longer in effect, the expiration of the time to commence the action or give notice of the claim is extended to a date 90 days after the declaration and any extension is no longer in effect.

(2) Subsection (1) of this section applies to:

(a) Time periods for commencing an action established in ORS chapter 12;

(b) The time period for commencing an action for wrongful death established in ORS 30.020;

(c) The time period for commencing an action or giving a notice of claim under ORS 30.275; and

(d) Any other time limitation for the commencement of a civil cause of action or the giving of notice of a civil claim established by statute.

(3) Subsection (1) of this section does not apply to:

(a) Time limitations for the commencement of criminal actions;

(b) The initiation of an appeal to the magistrate division of the Oregon Tax Court or an appeal from the magistrate division to the regular division;

(c) The initiation of an appeal or judicial review proceeding in the Court of Appeals; or

(d) The initiation of any type of case or proceeding in the Supreme Court.

SECTION 8. (1) Sections 6 and 7 of this 2020 special session Act are repealed on December 31, 2021.

(2) The repeal of section 6 of this 2020 special session Act by subsection (1) of this section does not affect the release status of a defendant determined under section 6 (3) of this 2020 special session Act.

EMERGENCY SHELTER

SECTION 9. ORS 446.265 and sections 10 and 11 of this 2020 special session Act are added to and made a part of ORS chapter 197.

SECTION 10. (1) As used in this section and section 11 of this 2020 special session Act, “emergency shelter” means a building that provides shelter on a temporary basis for individuals and families who lack permanent housing.

(2) A building used as an emergency shelter under an approval granted under section 11 of this 2020 special session Act:

(a) May resume its use as an emergency shelter after an interruption or abandonment of that use for two years or less, notwithstanding ORS 215.130 (7).

(b) May not be used for any purpose other than as an emergency shelter except upon application for a permit demonstrating that the construction of the building and its use could be approved under current land use laws and local land use regulations.

SECTION 11. (1) A local government shall approve an application for the development or use of land for an emergency shelter on any property, notwithstanding ORS chapter 195, 197, 215 or 227 or ORS 197A.300 to 197A.325, 197A.405 to 197A.409 or 197A.500 to 197A.521 or any statewide land use planning goal, rule of the Land Conservation and Development Commission, local land use regulation, zoning ordinance, regional framework plan, functional plan or comprehensive plan, if the emergency shelter:

(a) Includes sleeping and restroom facilities for clients;

(b) Will comply with applicable building codes;

(c) Is located inside an urban growth boundary or in an area zoned for rural residential use as defined in ORS 215.501;

(d) Will not result in the development of a new building that is sited within an area designated under a statewide land use planning goal relating to natural disasters and hazards, including floodplains or mapped environmental health hazards, unless the development complies with regulations directly related to the hazard;

(e) Has adequate transportation access to commercial and medical services; and

(f) Will not pose any unreasonable risk to public health or safety.

(2) An emergency shelter allowed under this section must be operated by:

(a) A local government as defined in ORS 174.116;

(b) An organization with at least two years’ experience operating an emergency shelter using best practices that is:

(A) A local housing authority as defined in ORS 456.375;

(B) A religious corporation as defined in ORS 65.001; or

(C) A public benefit corporation, as defined in ORS 65.001, whose charitable purpose includes the support of homeless individuals and that has been recognized as exempt from income tax under section 501(a) of the Internal Revenue Code on or before January 1, 2017; or

(c) A nonprofit corporation partnering with any other entity described in this subsection.

(3) An emergency shelter approved under this section:

(a) May provide on-site for its clients and at no cost to the clients:

(A) Showering or bathing;

(B) Storage for personal property;

(C) Laundry facilities;

(D) Service of food prepared on-site or off-site;

(E) Recreation areas for children and pets;

(F) Case management services for housing, financial, vocational, educational or physical or behavioral health care services; or

(G) Any other services incidental to shelter.

(b) May include youth shelters, veterans’ shelters, winter or warming shelters, day shelters and family violence shelter homes as defined in ORS 409.290.

(4) An emergency shelter approved under this section may also provide additional services not described in subsection (3) of this section to individuals who are transitioning from

unsheltered homeless status. An organization providing services under this subsection may charge a fee of no more than \$300 per month per client and only to clients who are financially able to pay the fee and who request the services.

(5) The approval of an emergency shelter under this section is not a land use decision and is subject to review only under ORS 34.010 to 34.100.

SECTION 12. Sections 10 and 11 of this 2020 special session Act are repealed 90 days after the effective date of this 2020 special session Act.

SECTION 12a. The repeal of sections 10 and 11 of this 2020 special session Act by section 12 of this 2020 special session Act does not affect an application for the development of land for an emergency shelter that was completed and submitted before the date of the repeal.

SECTION 13. (1) Notwithstanding ORS 203.082 (2), a political subdivision may allow any person to offer any number of overnight camping spaces on the person's property to homeless individuals who are living in vehicles, without regard to whether the motor vehicle was designed for use as temporary living quarters. A religious institution offering camping space under this section shall also provide campers with access to sanitary facilities, including toilet, handwashing and trash disposal facilities.

(2) A local government may regulate vehicle camping spaces under this section as transitional housing accommodations under ORS 446.265.

SECTION 14. Section 13 of this 2020 special session Act is repealed 90 days after the effective date of this 2020 special session Act.

SECTION 15. Section 16 of this 2020 special session Act is added to and made a part of ORS 458.600 to 458.665.

SECTION 16. (1) As used in this section:

(a) "Low-barrier emergency shelter" means an emergency shelter, as defined in section 10 of this 2020 special session Act, that follows established best practices to deliver shelter services that minimize barriers and increase access to individuals and families experiencing homelessness.

(b) "Navigation center" means a low-barrier emergency shelter that is open seven days per week and connects individuals and families with health services, permanent housing and public benefits.

(2) The Oregon Department of Administrative Services may award grants to local governments to:

(a) Plan the location, development or operations of a navigation center;

(b) Construct, purchase or lease a building for use as a navigation center;

(c) Operate a navigation center that has been constructed, purchased or leased under paragraph (b) of this subsection; or

(d) Contract for the performance of activities described in this subsection.

SECTION 17. Section 16 of this 2020 special session Act is repealed on January 2, 2022.

NOTE: Section 18 was deleted by amendment. Subsequent sections were not renumbered.

NOTARIAL ACTS

SECTION 19. Section 20 of this 2020 special session Act is added to and made a part of ORS chapter 194.

SECTION 20. (1) As used in this section:

(a) "Communication technology" means an electronic device or process that:

(A) Allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and

(B) When necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a visual, hearing or speech impairment.

(b) "Foreign state" means a jurisdiction other than the United States, a state or a federally recognized Indian tribe.

(c) "Identity proofing" means a process or service by which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

(d) "Outside the United States" means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands and any territory, insular possession or other location subject to the jurisdiction of the United States.

(e) "Remotely located individual" means an individual who is not in the physical presence of the notary public who performs a notarial act under subsection (3) of this section.

(2) A remotely located individual may comply with ORS 194.235 by using communication technology to appear before a notary public.

(3) A notary public located in this state may perform a notarial act using communication technology for a remotely located individual if:

(a) The notary public:

(A) Has personal knowledge under ORS 194.240 (1) of the identity of the remotely located individual;

(B) Has satisfactory evidence of the identity of the remotely located individual by a verification on oath or affirmation from a credible witness appearing before and identified by the notary public as a remotely located individual under this section or in the physical presence of the notary public under ORS 194.240 (2); or

(C) Has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;

(b) The notary public is reasonably able to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a signature;

(c) The notary public, or a person acting on behalf of the notary public, creates an audiovisual recording of the performance of the notarial act; and

(d) For a remotely located individual who is located outside the United States:

(A) The record:

(i) Is to be filed with or relates to a matter before a public official or court, governmental entity or other entity subject to the jurisdiction of the United States; or

(ii) Involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; and

(B) The act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.

(4) If a notarial act is performed under this section, the certificate of notarial act required by ORS 194.280 and the short form certificate provided in ORS 194.285 must indicate that the notarial act was performed using communication technology.

(5) A short form certificate provided in ORS 194.285 for a notarial act subject to this section is sufficient if it:

(a) Complies with rules adopted under subsection (8)(a) of this section; or

(b) Is in the form provided in ORS 194.285 and contains a statement substantially as follows: "This notarial act involved the use of communication technology."

(6) A notary public, a guardian, conservator, trustee or agent of a notary public, or a personal representative of a deceased notary public shall retain the audiovisual recording created under subsection (3)(c) of this section or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rule adopted under subsection (8)(d) of this section, the recording must be maintained for a period of at least 10 years after the recording is made.

(7) Before a notary public performs the notary public's initial notarial act under this section, the notary public shall notify the Secretary of State that the notary public will be performing notarial acts with respect to remotely located individuals and identify the technologies the notary public intends to use. If the Secretary of State has established standards

under subsection (8) of this section or ORS 194.360 for approval of communication technology or identity proofing, the communication technology and identity proofing used by the notary public must conform to those standards.

(8) In addition to adopting rules under ORS 194.360, the Secretary of State may adopt rules under this section regarding the performance of a notarial act. The rules may:

(a) Prescribe the means of performing a notarial act involving a remotely located individual using communication technology;

(b) Establish standards for communication technology and identity proofing;

(c) Establish requirements or procedures to approve providers of communication technology and the process of identity proofing; and

(d) Establish standards and a period for the retention of an audiovisual recording created under subsection (3)(c) of this section.

(9) Before adopting, amending or repealing a rule governing the performance of a notarial act with respect to a remotely located individual, the Secretary of State shall consider:

(a) The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the recommendations of the National Association of Secretaries of State;

(b) Standards, practices and customs of other jurisdictions that have laws substantially similar to this section; and

(c) The views of governmental officials and entities and other interested persons.

SECTION 21. ORS 194.225 is amended to read:

194.225. (1) A notarial officer may perform a notarial act authorized by this chapter or by law of this state other than this chapter.

(2) A notarial officer may not perform a notarial act with respect to a record to which the officer or the officer's spouse is a party, or in which either the officer or the officer's spouse has a direct beneficial interest. A notarial act performed in violation of this subsection is voidable.

(3) A notarial officer may certify that a tangible copy of an electronic record is an accurate copy of the electronic record.

SECTION 22. ORS 194.225, as amended by section 21 of this 2020 special session Act, is amended to read:

194.225. (1) A notarial officer may perform a notarial act authorized by this chapter or by law of this state other than this chapter.

(2) A notarial officer may not perform a notarial act with respect to a record to which the officer or the officer's spouse is a party, or in which either the officer or the officer's spouse has a direct beneficial interest. A notarial act performed in violation of this subsection is voidable.

[(3) A notarial officer may certify that a tangible copy of an electronic record is an accurate copy of the electronic record.]

SECTION 23. ORS 194.290 is amended to read:

194.290. (1) The official stamp of a notary public must:

[(1)] (a) Include the notary public's name, jurisdiction, commission expiration date and other information required by the Secretary of State by rule; and

[(2)] (b) Be a legible imprint capable of being copied together with the record to which it is affixed or attached or with which it is logically associated.

(2) The official stamp of a notary public is an official notarial seal for all purposes under the laws of this state.

SECTION 24. ORS 194.290, as amended by section 23 of this 2020 special session Act, is amended to read:

194.290. *[(1)]* The official stamp of a notary public must:

[(a)] (1) Include the notary public's name, jurisdiction, commission expiration date and other information required by the Secretary of State by rule; and

[(b)] (2) Be a legible imprint capable of being copied together with the record to which it is affixed or attached or with which it is logically associated.

[(2) The official stamp of a notary public is an official notarial seal for all purposes under the laws of this state.]

SECTION 25. ORS 194.305 is amended to read:

194.305. (1) A notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.

(2) Before a notary public performs the notary public's initial notarial act with respect to an electronic record, a notary public shall notify the Secretary of State that the notary public will be performing notarial acts with respect to electronic records and identify the technology the notary public intends to use. If the Secretary of State, by rule, has established standards pursuant to ORS 194.360 for approval of technology, the technology must conform to the standards. If the technology conforms to the standards, the Secretary of State shall approve the use of the technology.

(3) A county clerk may accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that a record accepted for recording be an original, if the notarial officer executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.

SECTION 26. ORS 194.305, as amended by section 25 of this 2020 special session Act, is amended to read:

194.305. (1) A notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.

(2) Before a notary public performs the notary public's initial notarial act with respect to an electronic record, a notary public shall notify the Secretary of State that the notary public will be performing notarial acts with respect to electronic records and identify the technology the notary public intends to use. If the Secretary of State, by rule, has established standards pursuant to ORS 194.360 for approval of technology, the technology must conform to the standards. If the technology conforms to the standards, the Secretary of State shall approve the use of the technology.

[(3) A county clerk may accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that a record accepted for recording be an original, if the notarial officer executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.]

SECTION 27. A tangible copy of an electronic record containing a notarial certificate that is accepted for recording by a county clerk before the effective date of this 2020 special session Act satisfies any requirement that the record be an original, if the notarial officer executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.

SECTION 28. ORS 93.810 is amended to read:

93.810. The following are subjects of validating or curative Acts applicable to this chapter:

- (1) Evidentiary effect and recordation of conveyances before 1854.
- (2) Evidentiary effect and recordation of certified copies of deeds issued by the State Land Board before 1885 where the original deed was lost.
- (3) Defective acknowledgments of married women to conveyances before 1891.
- (4) Foreign instruments executed before 1903.
- (5) Deeds of married women before 1907, validity; executed under power of attorney and record as evidence.
- (6) Conveyances by reversioners and remainderpersons to life tenant.
- (7) Decrees or judgments affecting lands in more than one county.
- (8) Irregular deeds and conveyances; defective acknowledgments; irregularities in judicial sales; sales and deeds of executors, personal representatives, administrators, conservators and guardians; vested rights arising by adverse title; recordation.

- (9) Defective acknowledgments.
- (10) Title to lands from or through aliens.
- (11) An instrument that is presented for recording as an electronic image or by electronic means and that is recorded before June 16, 2011.

(12) A tangible copy of an electronic record containing a notarial certificate that is accepted for recording by a county clerk before the effective date of this 2020 special session Act.

SECTION 29. ORS 93.810, as amended by section 28 of this 2020 special session Act, is amended to read:

93.810. The following are subjects of validating or curative Acts applicable to this chapter:

- (1) Evidentiary effect and recordation of conveyances before 1854.
- (2) Evidentiary effect and recordation of certified copies of deeds issued by the State Land Board before 1885 where the original deed was lost.
- (3) Defective acknowledgments of married women to conveyances before 1891.
- (4) Foreign instruments executed before 1903.
- (5) Deeds of married women before 1907, validity; executed under power of attorney and record as evidence.
- (6) Conveyances by reversioners and remainderpersons to life tenant.
- (7) Decrees or judgments affecting lands in more than one county.
- (8) Irregular deeds and conveyances; defective acknowledgments; irregularities in judicial sales; sales and deeds of executors, personal representatives, administrators, conservators and guardians; vested rights arising by adverse title; recordation.
- (9) Defective acknowledgments.
- (10) Title to lands from or through aliens.
- (11) An instrument that is presented for recording as an electronic image or by electronic means and that is recorded before June 16, 2011.

[(12) A tangible copy of an electronic record containing a notarial certificate that is accepted for recording by a county clerk before the effective date of this 2020 special session Act.]

SECTION 30. ORS 194.400 is amended to read:

194.400. (1) The fee that a notary public may charge for performing a notarial act may not exceed \$10 per notarial act, **except that a notary public may charge a fee not to exceed \$25 per notarial act for a notarial act performed under section 20 of this 2020 special session Act.**

(2) A notary public may charge an additional fee for traveling to perform a notarial act if:

- (a) The notary public explains to the person requesting the notarial act that the fee is in addition to a fee specified in subsection (1) of this section and is in an amount not determined by law; and
- (b) The person requesting the notarial act agrees in advance upon the amount of the additional fee.

(3) If a notary public charges fees under this section for performing notarial acts, the notary public shall display, in English, a list of the fees the notary public will charge.

(4) A notary public who is employed by a private entity may enter into an agreement with the entity under which fees collected by the notary public under this section are collected by and accrue to the entity.

(5) A public body as defined in ORS 174.109 may collect the fees described in this section for notarial acts performed in the course of employment by notaries public who are employed by the public body.

SECTION 31. ORS 194.400, as amended by section 30 of this 2020 special session Act, is amended to read:

194.400. (1) The fee that a notary public may charge for performing a notarial act may not exceed \$10 per notarial act, *except that a notary public may charge a fee not to exceed \$25 per notarial act for a notarial act performed under section 20 of this 2020 special session Act*.

(2) A notary public may charge an additional fee for traveling to perform a notarial act if:

(a) The notary public explains to the person requesting the notarial act that the fee is in addition to a fee specified in subsection (1) of this section and is in an amount not determined by law; and

(b) The person requesting the notarial act agrees in advance upon the amount of the additional fee.

(3) If a notary public charges fees under this section for performing notarial acts, the notary public shall display, in English, a list of the fees the notary public will charge.

(4) A notary public who is employed by a private entity may enter into an agreement with the entity under which fees collected by the notary public under this section are collected by and accrue to the entity.

(5) A public body as defined in ORS 174.109 may collect the fees described in this section for notarial acts performed in the course of employment by notaries public who are employed by the public body.

SECTION 32. (1) Sections 19, 20 and 27 of this 2020 special session Act are repealed on June 30, 2021.

(2) The amendments to ORS 93.810, 194.225, 194.290, 194.305 and 194.400 by sections 22, 24, 26, 29 and 31 of this 2020 special session Act become operative on June 30, 2021.

NOTE: Section 33 was deleted by amendment. Subsequent sections were not renumbered.

ENTERPRISE ZONE TERMINATION EXTENSIONS

SECTION 34. Section 35 of this 2020 special session Act is added to and made a part of ORS 285C.050 to 285C.250.

SECTION 35. (1) Notwithstanding ORS 285C.245 (2):

(a) An enterprise zone that would otherwise terminate on June 30, 2020, shall terminate on December 31, 2020.

(b) If this section takes effect after June 30, 2020, the sponsor of an enterprise zone that terminated on June 30, 2020, may rescind the termination and the enterprise zone shall terminate on December 31, 2020.

(2) Notwithstanding ORS 285C.250 (1)(a), the sponsor of an enterprise zone described in subsection (1) of this section may redesignate the enterprise zone under ORS 285C.250 on any date before January 1, 2021. The redesignation may not take effect before December 31, 2020.

(3) All other deadlines that relate to the termination date and redesignation of an enterprise zone described in subsection (1) of this section shall be interpreted as relating to December 31, 2020.

INDIVIDUAL DEVELOPMENT ACCOUNT MODIFICATIONS

SECTION 36. ORS 458.685 is amended to read:

458.685. (1) A person may establish an individual development account only for a purpose approved by a fiduciary organization. Purposes that the fiduciary organization may approve are:

(a) The acquisition of post-secondary education or job training.

(b) If the account holder has established the account for the benefit of a household member who is under the age of 18 years, the payment of extracurricular nontuition expenses designed to prepare the member for post-secondary education or job training.

(c) If the account holder has established a savings network account for higher education under ORS 178.300 to 178.360 on behalf of a designated beneficiary, the funding of qualified higher education expenses as defined in ORS 178.300 by one or more deposits into a savings network account for higher education on behalf of the same designated beneficiary.

(d) The purchase of a primary residence. In addition to payment on the purchase price of the residence, account moneys may be used to pay any usual or reasonable settlement, financing or

other closing costs. The account holder must not have owned or held any interest in a residence during the three years prior to making the purchase. However, this three-year period shall not apply to displaced homemakers, individuals who have lost home ownership as a result of divorce or owners of manufactured homes.

(e) The rental of a primary residence when housing stability is essential to achieve state policy goals. Account moneys may be used for security deposits, first and last months' rent, application fees and other expenses necessary to move into the primary residence, as specified in the account holder's personal development plan for increasing the independence of the person.

(f) The capitalization of a small business. Account moneys may be used for capital, plant, equipment and inventory expenses and to hire employees upon capitalization of the small business, or for working capital pursuant to a business plan. The business plan must have been developed by a financial institution, nonprofit microenterprise program or other qualified agent demonstrating business expertise and have been approved by the fiduciary organization. The business plan must include a description of the services or goods to be sold, a marketing plan and projected financial statements.

(g) Improvements, repairs or modifications necessary to make or keep the account holder's primary dwelling habitable, accessible or visitable for the account holder or a household member. This paragraph does not apply to improvements, repairs or modifications made to a rented primary dwelling to achieve or maintain a habitable condition for which ORS 90.320 (1) places responsibility on the landlord. As used in this paragraph, "accessible" and "visitable" have the meanings given those terms in ORS 456.508.

(h) The purchase of equipment, technology or specialized training required to become competitive in obtaining or maintaining employment or to start or maintain a business, as specified in the account holder's personal development plan for increasing the independence of the person.

(i) The purchase or repair of a vehicle, as specified in the account holder's personal development plan for increasing the independence of the person.

(j) The saving of funds for retirement, as specified in the account holder's personal development plan for increasing the independence of the person.

(k) The payment of debts owed for educational or medical purposes when the account holder is saving for another allowable purpose, as specified in the account holder's personal development plan for increasing the independence of the person.

(L) The creation or improvement of a credit score by obtaining a secured loan or a financial product that is designed to improve credit, as specified in the account holder's personal development plan for increasing the independence of the person.

(m) The replacement of a primary residence when replacement offers significant opportunity to improve habitability or energy efficiency.

(n) The establishment of savings for emergency expenses to promote financial stability and to protect existing assets. As used in this paragraph, "emergency expenses" includes expenses for extraordinary medical costs or other unexpected and substantial personal expenses that would significantly impact the account holder's noncash assets, health, housing or standard of living if not promptly addressed.

(2)(a) [If an emergency occurs,] An account holder may withdraw all or part of the account holder's deposits to an individual development account for [a purpose not described in subsection (1) of this section. As used in this paragraph, "emergency" includes making payments for necessary medical expenses, to avoid eviction of the account holder from the account holder's residence and for necessary living expenses following a loss of employment.] emergency expenses as defined in subsection (1)(n) of this section, without regard to whether the account was established for emergency savings.

(b) The account holder must reimburse [the account] an account established for a purpose listed under subsection (1)(a) to (m) of this section for the amount withdrawn under this subsection [within 12 months after the date of the withdrawal. Failure of an account holder to make a timely reimbursement to the account is grounds for removing the account holder from the individual

development account program]. Until the reimbursement has been made in full, an account holder may not withdraw any matching deposits or accrued interest on matching deposits from the account **except under this subsection.**

(3) If an account holder withdraws moneys from an individual development account for other than an approved purpose, the fiduciary organization may remove the account holder from the program.

(4)(a) If the account holder of an account established for the purpose set forth in subsection (1)(c) or (j) of this section has achieved the account's approved purpose in accordance with the personal development plan developed by the account holder under ORS 458.680, the account holder may withdraw, or authorize the withdrawal of, the remaining amount of all deposits, including matching deposits, and interest in the account as follows:

(A) For an account established for the purpose set forth in subsection (1)(c) of this section, by rolling over the entire withdrawal amount, not to exceed the limit established pursuant to ORS 178.335, into one or more of the savings network accounts for higher education under ORS 178.300 to 178.360, the establishment of which is the purpose of the individual development account; or

(B) For an account established for the purpose set forth in subsection (1)(j) of this section, by rolling over the entire withdrawal amount into an individual retirement account, a retirement plan or a similar account or plan established under the Internal Revenue Code.

(b) Upon withdrawal of all moneys in the individual development account as provided in paragraph (a) of this subsection, the account relationship shall terminate.

(c) The rollover of moneys into a savings network account for higher education under this subsection may not cause the amount in the savings network account for higher education to exceed the limit on total contributions established pursuant to ORS 178.335.

(d) Any amount of the rollover that has been subtracted on the taxpayer's federal return pursuant to section 219 of the Internal Revenue Code shall be added back in the determination of taxable income.

(5) If an account holder moves from the area where the program is conducted or is otherwise unable to continue in the program, the fiduciary organization may remove the account holder from the program.

(6) If an account holder is removed from the program under subsection [(2),] (3) or (5) of this section, all matching deposits in the account and all interest earned on matching deposits shall revert to the fiduciary organization. The fiduciary organization shall use the reverted funds as a source of matching deposits for other accounts.

NOTE: Sections 37 through 39 were deleted by amendment. Subsequent sections were not re-numbered.

RACE AND ETHNICITY DATA COLLECTION AND REPORTING DURING COVID-19 PANDEMIC

SECTION 40. (1) As used in this section:

(a) **"COVID-19"** means a disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(b) **"Encounter"** means an interaction between a patient, or the patient's legal representative, and a health care provider, whether that interaction is in person or through telemedicine, for the purpose of providing health care services related to COVID-19, including but not limited to ordering or performing a COVID-19 test.

(c) **"Health care provider"** means:

(A) An individual licensed or certified by the:

(i) State Board of Examiners for Speech-Language Pathology and Audiology;

(ii) State Board of Chiropractic Examiners;

(iii) State Board of Licensed Social Workers;

(iv) Oregon Board of Licensed Professional Counselors and Therapists;

- (v) Oregon Board of Dentistry;
- (vi) State Board of Massage Therapists;
- (vii) Oregon Board of Naturopathic Medicine;
- (viii) Oregon State Board of Nursing;
- (ix) Oregon Board of Optometry;
- (x) State Board of Pharmacy;
- (xi) Oregon Medical Board;
- (xii) Occupational Therapy Licensing Board;
- (xiii) Oregon Board of Physical Therapy;
- (xiv) Oregon Board of Psychology; or
- (xv) Board of Medical Imaging;

(B) An emergency medical services provider licensed by the Oregon Health Authority under ORS 682.216;

(C) A clinical laboratory licensed under ORS 438.110; and

(D) A health care facility as defined in ORS 442.015.

(d) “Telemedicine” means the delivery of a health service through a two-way communication medium, including but not limited to telephone, Voice over Internet Protocol, transmission of telemetry or any Internet or electronic platform that allows a provider to interact in real time with a patient, a parent or guardian of a patient or another provider acting on a patient’s behalf.

(2) The authority shall adopt rules:

(a) Requiring a health provider to:

(A) Collect encounter data on race, ethnicity, preferred spoken and written language, English proficiency, interpreter needs and disability status in accordance with the standards adopted by the authority under ORS 413.161; and

(B) Report the data in accordance with rules adopted under ORS 433.004 for the reporting of diseases.

(b) Prescribing the manner of reporting.

(c) Ensuring, to the extent practicable, that the data collected and reported under this section by health care providers is not duplicative.

(d) Establishing phased in deadlines for the collection of data under this section, beginning no later than October 1, 2020.

(3) The authority may provide incentives to health care providers and facilities to help defer the costs of making changes to electronic health records or similar systems.

(4) Data collected by health care providers under this section is confidential and subject to disclosure only in accordance with the federal Health Insurance Portability and Accountability Act privacy regulations, 45 C.F.R. parts 160 and 164, ORS 192.553 to 192.581 or other state or federal laws limiting the disclosure of health information.

SECTION 41. Section 40 of this 2020 special session Act may be enforced by any means permitted under the law by:

(1) A health professional regulatory board specified in section 40 of this 2020 special session Act with respect to a provider under the jurisdiction the board.

(2) The Oregon Health Authority or the Department of Human Services with regard to health care facilities under each agency’s respective jurisdiction.

(3) The authority with regard to emergency medical services providers licensed under ORS 682.216 and clinical laboratories licensed under ORS 438.110.

SECTION 41a. Section 40 of this 2020 special session Act is amended to read:

Sec. 40. (1) As used in this section:

(a) “COVID-19” means a disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(b) “Encounter” means an interaction between a patient, or the patient’s legal representative, and a health care provider, whether that interaction is in person or through telemedicine, for the

purpose of providing health care services related to COVID-19, including but not limited to ordering or performing a COVID-19 test.

(c) "Health care provider" means:

(A) An individual licensed or certified by the:

(i) State Board of Examiners for Speech-Language Pathology and Audiology;

(ii) State Board of Chiropractic Examiners;

(iii) State Board of Licensed Social Workers;

(iv) Oregon Board of Licensed Professional Counselors and Therapists;

(v) Oregon Board of Dentistry;

(vi) State Board of Massage Therapists;

(vii) Oregon Board of Naturopathic Medicine;

(viii) Oregon State Board of Nursing;

(ix) Oregon Board of Optometry;

(x) State Board of Pharmacy;

(xi) Oregon Medical Board;

(xii) Occupational Therapy Licensing Board;

(xiii) Oregon Board of Physical Therapy;

(xiv) Oregon Board of Psychology; or

(xv) Board of Medical Imaging;

(B) An emergency medical services provider licensed by the Oregon Health Authority under ORS 682.216;

(C) A clinical laboratory licensed under ORS 438.110; and

(D) A health care facility as defined in ORS 442.015.

(d) "Telemedicine" means the delivery of a health service through a two-way communication medium, including but not limited to telephone, Voice over Internet Protocol, transmission of telemetry or any Internet or electronic platform that allows a provider to interact in real time with a patient, a parent or guardian of a patient or another provider acting on a patient's behalf.

(2) The authority shall adopt rules:

(a) Requiring a health provider to:

(A) Collect encounter data on race, ethnicity, preferred spoken and written language, English proficiency, interpreter needs and disability status in accordance with the standards adopted by the authority under ORS 413.161; and

(B) Report the data in accordance with rules adopted under ORS 433.004 for the reporting of diseases.

(b) Prescribing the manner of reporting.

(c) Ensuring, to the extent practicable, that the data collected and reported under this section by health care providers is not duplicative.

[(d) Establishing phased in deadlines for the collection of data under this section, beginning no later than October 1, 2020.]

(3) The authority may provide incentives to health care providers and facilities to help defer the costs of making changes to electronic health records or similar systems.

(4) Data collected by health care providers under this section is confidential and subject to disclosure only in accordance with the federal Health Insurance Portability and Accountability Act privacy regulations, 45 C.F.R. parts 160 and 164, ORS 192.553 to 192.581 or other state or federal laws limiting the disclosure of health information.

SECTION 41b. (1) Section 41 of this 2020 special session Act becomes operative on December 31, 2020.

(2) The amendments to section 40 of this 2020 special session Act by section 41a of this 2020 special session Act become operative on December 31, 2021.

SECTION 42. Section 43 of this 2020 special session Act is added to and made a part of the Insurance Code.

SECTION 43. An insurer transacting insurance in this state may not consider any information collected and reported under section 40 of this 2020 special session Act to:

- (1) Deny, limit, cancel, rescind or refuse to renew a policy of insurance;
- (2) Establish premium rates for a policy of insurance; or
- (3) Establish the terms and conditions of a policy of insurance.

PHYSICIAN ASSISTANTS

SECTION 44. Section 45 of this 2020 special session Act is added to and made a part of ORS 677.495 to 677.535.

SECTION 45. (1) Notwithstanding any other provision of ORS 677.495 to 677.535, a physician assistant may, without entering into a practice agreement, perform services and provide patient care within the physician assistant's scope of practice in accordance with subsection (2) of this section.

(2) A physician assistant may perform services and provide patient care as described in subsection (1) of this section only in compliance with guidelines and standards established by one or more supervising physicians.

(3) A physician assistant who performs services and provides patient care under this section is exempt from any chart review and onsite supervision requirements described in ORS 677.495 to 677.535 or rules adopted by the Oregon Medical Board pursuant to ORS 677.495 to 677.535.

(4) The board may adopt rules to carry out this section.

SECTION 46. (1) As used in this section:

(a) "Physician assistant":

(A) Has the meaning given that term in ORS 677.495; and

(B) Means a person licensed to practice as a physician assistant in another state or territory of the United States.

(b) "Telehealth" means the use of electronic and telecommunications technologies to provide health care services.

(2) A physician assistant may use telehealth to perform services for and provide patient care to a patient who is located across state lines from the physician assistant if the services and patient care are within the physician assistant's scope of practice.

(3) The Oregon Medical Board may adopt rules to carry out this section.

SECTION 47. Sections 45 and 46 of this 2020 special session Act are repealed on the date on which the declaration of a state of emergency issued by the Governor on March 8, 2020, and any extension of the declaration, is no longer in effect.

CAPTIONS

SECTION 48. The unit captions used in this 2020 special session Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2020 special session Act.

EMERGENCY CLAUSE

SECTION 49. This 2020 special session Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2020 special session Act takes effect on its passage.

Passed by House June 26, 2020

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate June 26, 2020

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2020

Approved:

.....M.,....., 2020

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2020

.....
Bev Clarno, Secretary of State

*Bond v. Shriners Hospital for
Children, “Findings &
Recommendations on Def.
MTD,”* Case No. 3:20-cv-
01943-SB (D. Or. Mar. 1, 2021)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

LORI BOND,

Case No. 3:20-cv-01943-SB

Plaintiff,

**FINDINGS AND
RECOMMENDATION**

v.

SHRINERS HOSPITAL FOR CHILDREN,

Defendant.

BECKERMAN, U.S. Magistrate Judge.

Plaintiff Lori Bond (“Bond”) filed this action against defendant Shriners Hospital for Children (“Shriners”), alleging claims for age discrimination and whistleblower retaliation under [OR. REV. STAT. \(“O.R.S.”\) §§ 659A.030 and 659A.199](#). ([ECF No. 6, Ex. 1](#).) Pending before the Court is Bond’s motion to remand, or in the alternative, to amend her complaint ([ECF No. 6](#)), and Shriners’ motion to dismiss ([ECF No. 4](#)). For the reasons explained below, the Court recommends that the district judge deny Bond’s motions to remand and to amend, and grant Shriners’ motion to dismiss.

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BACKGROUND¹

I. BOND’S COMPLAINT

Bond filed this action in the Multnomah County Circuit Court (“state court”) on October 1, 2020, alleging claims for age discrimination and whistleblower retaliation under [O.R.S. §§ 659A.030](#) and [659A.199](#), after Shriners terminated her employment on June 12, 2019. ([Compl. ¶ 27.](#))

II. PROCEDURAL HISTORY

After filing her case in state court on October 1, 2020, Bond served Shriners with the summons and complaint on October 9, 2020. ([Pl.’s Mot. to Remand Ex. B-1.](#)) On November 9, 2020, at 4:43 p.m., Shriners timely filed a Notice of Removal in this court, asserting diversity jurisdiction under [28 U.S.C. § 1332\(a\)](#). ([Notice of Removal, ECF No. 1.](#)) This court sent an automatic Electronic Case Filing (“ECF”) notice to all counsel of record at the time of filing (4:43 p.m.), notifying the parties that Shriners had filed the Notice of Removal. ([Decl. of Amanda Bryan \(“Bryan Decl.”\) Ex. 1.](#)) Fifty minutes later, at 5:33 p.m., Bond’s counsel attempted to file an amended complaint (“FAC”) in state court, adding Robert Bernstein, M.D. (“Bernstein”), as a defendant. ([Bryan Decl. Ex. 2; Pl.’s Mot. to Remand Ex. B-2.](#)) However, the state court rejected Bond’s filing because counsel entered the newly named defendant incorrectly into the electronic filing system. ([Bryan Decl. Ex. 3.](#))

¹ The Court accepts the complaint’s well-pleaded factual allegations as true and construes all inferences in favor of Bond. *See Mashiri v. Epsten Grinnell & Howell*, 845 F.3d 984, 988 (9th Cir. 2017). In resolving Bond’s motion to remand, the Court may consider the allegations in Bond’s complaint, as well as extrinsic evidence. *See Viramontes v. FCA US LLC*, No. 20-2046, 2020 WL 2318203, at *2 (C.D. Cal. May 11, 2020) (“[I]n the context of a motion to remand due to lack of diversity jurisdiction, it is ‘well established that courts may pierce the pleadings . . . and examine evidence,’ [and] . . . ought to construe facts in favor of the plaintiff where there is disputed evidence.”) (citation omitted).

Just a few minutes later, at 5:41 p.m., Shriners filed a Notice of Filing of Removal in state court (“Notice of Filing”) ([Bryan Decl. Ex. 5](#)), and e-mailed a copy of both the Notice of Removal and the Notice of Filing to Bond’s counsel at 5:46 p.m. ([Bryan Decl. Ex. 6](#).) At 6:02 p.m., Bond’s counsel e-mailed Shriners’ counsel, stating that he “just received notification from Pacer that [counsel] filed a Notice of Removal” and that “[a]s a professional courtesy, I am attaching an Amended Complaint that was filed today as well that I think will destroy the diversity argument and anticipate that we will be remaining in Multnomah County.” ([Bryan Decl. Ex. 4](#).) The e-mail noted that Bond’s counsel “never received . . . a Notice of Removal or anything that was filed in either court,” and that he was “surprised” that Shriners’ counsel had not conferred with Bond’s counsel before filing the Notice of Removal in federal court. (*Id.*)

On November 10, 2020, Shriners mailed by first class mail to Bond’s counsel its Notice of Removal and Notice of Filing. ([Pl.’s Mot. to Remand Ex. B-4](#).) That same day, Bond’s counsel refiled the rejected FAC and cured the electronic filing defect per Oregon’s electronic filing procedures. Bond’s counsel also filed a letter with the state court clerk, requesting that the filing relate back to the original time of filing, which the court granted. ([Bryan Decl. Ex. 3](#).)

On November 11, 2020, Bernstein was served at his place of employment. ([Pl.’s Mot. to Remand Ex. B-5](#).) On November 13, 2020, Bond’s counsel received the first class mailing from Shriners of its Notice of Removal and Notice of Filing. ([Decl. of Nicholas Yanchar \(“Yanchar Decl.”\) ¶ 4](#).) The chronology of these events is documented in the following timeline:

<u>Event</u>	<u>Venue</u>	<u>Time Stamp</u>	<u>Date Stamp</u>
Shriners files Notice of Removal	Federal Court	4:43 p.m.	November 9, 2020
Court sends ECF Notice to Bond’s and Shriners’ counsel	Federal Court	4:43 p.m.	November 9, 2020

<u>Event</u>	<u>Venue</u>	<u>Time Stamp</u>	<u>Date Stamp</u>
Bond attempts to file FAC	State Court	5:33 p.m.	November 9, 2020
Court rejects FAC	State Court	After 5:33 p.m.	November 9, 2020
Shriners files Notice of Filing	State Court	5:40 p.m.	November 9, 2020
Shriners emails Notice of Removal and Notice of Filing to Bond's counsel		5:46 p.m.	November 9, 2020
Bond's counsel acknowledges receipt of ECF notice		6:02 p.m.	November 9, 2020
Bond refiles FAC, requesting relation-back, which state court approves	State Court		November 10, 2020
Bernstein served with summons and complaint			November 10, 2020
Bond's counsel receives mailed copies of Notices			November 13, 2020

On November 16, 2020, Shriners filed a motion to dismiss this action. ([Def.'s Mot. at 1](#), [ECF No. 4](#).) On November 23, 2020, Bond filed a motion to remand, arguing that she properly added Bernstein, a diversity-destroying defendant and citizen of the forum state, as a defendant prior to removal, and therefore this court lacks diversity jurisdiction under [28 U.S.C. § 1441\(b\)](#).² ([Pl.'s Mot. to Remand at 4-9](#).) Alternatively, Bond requests leave to amend her complaint in federal court to add Bernstein as a defendant. ([Id. at 2](#).)

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² [28 U.S.C. § 1441\(b\)](#) provides: "A civil action otherwise removable solely on the basis of [diversity jurisdiction] may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought."

LEGAL STANDARDS

I. REMOVAL AND REMAND

“A defendant may remove an action to federal court based on federal question jurisdiction or diversity jurisdiction.” *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009) (citing 28 U.S.C. § 1441). However, “it is to be presumed that a cause lies outside the limited jurisdiction of the federal courts and the burden of establishing the contrary rests upon the party asserting jurisdiction.” *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006) (brackets omitted) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)).

“A motion to remand is the proper procedure for challenging removal.” *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009) (citing 28 U.S.C. § 1447(c)). “The removal statute is strictly construed, and any doubt about the right of removal requires resolution in favor of remand.” *Id.* (citing *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (per curiam)). This “‘strong presumption against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper,’ and that the [district] court resolves all ambiguity in favor of remand to state court.” *Hunter*, 582 F.3d at 1042 (quoting *Gaus*, 980 F.2d at 566). Accordingly, “[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.” *Gaus*, 980 F.2d at 566 (citing *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979)).

II. MOTION TO DISMISS

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the

reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* ““The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully.”” *Mashiri*, 845 F.3d at 988 (quoting *Twombly*, 550 U.S. at 556).

DISCUSSION

I. MOTION TO REMAND

Bond moves to remand pursuant to 28 U.S.C. § 1441(b), on the ground that this court lacks diversity jurisdiction because Bond filed her FAC in state court before removal was complete, which destroyed diversity jurisdiction. (Pl.’s Mot. to Remand at 4-6.) Shriners responds that jurisdiction vested with this court at the time it filed the Notice of Removal, and that Bond’s later filing of a FAC did not destroy this Court’s diversity jurisdiction. (Def.’s Resp. in Opp’n to Pl.’s Mot. to Remand (“Def.’s Opp’n”) at 5-7.) For the reasons explained below, the Court recommends that the district judge deny Bond’s motion to remand.

“[R]emoval is effected by the defendant taking three procedural steps: filing a notice of removal in the federal court, filing a copy of this notice in the state court, and giving prompt written notice to all adverse parties.” *Miller v. Aqua Glass, Inc.*, No. CIV. 07-3088-CL, 2008 WL 2854125, at *1 (D. Or. July 21, 2008), *adhered to on reconsideration*, No. CIV. 07-3088-CL, 2008 WL 3411657 (D. Or. Aug. 11, 2008) (citation omitted); *see also* 28 U.S.C. § 1446(d) (“Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.”).

The threshold dispute here is whether the Court should evaluate diversity jurisdiction at the time Shriners filed its Notice of Removal in federal court, or after it completed all three

procedural steps to effect removal. The Court assumes without deciding that it must evaluate diversity jurisdiction after Shriners satisfied the third procedural step. *See* 14C Charles Alan Wright & Arthur R. Miller, *Fed. Prac. & Proc. Juris.* § 3736 (rev. 4th ed.) (“[T]he sounder rule, and the one most consistent with the language of Section 1446(d) of Title 28, is that removal is not effective until the defendant has taken all the steps required by the federal statute.”); *see also Moniz v. Lujan*, Civil No. 14-00465 DKW-RLP, 2015 WL 3965915, at *3 (D. Haw. June 29, 2015) (“The Ninth Circuit has not directly addressed whether the federal court obtains jurisdiction immediately upon the filing of the Notice of Removal with the clerk of the federal court, or only after all three procedural steps to effecting removal are completed.”). When Shriners completed the third and final removal step here, Bond had not yet properly filed her FAC adding Bernstein as a defendant, and therefore diversity jurisdiction still existed at the time Shriners effected removal.

Several courts have concluded that when a plaintiff files an amended complaint before the state court receives notice of removal, the amended complaint is the operative complaint. *See, e.g., Anthony v. Runyun*, 76 F.3d 210, 213-14 (8th Cir. 1996) (“Because the [plaintiffs] filed their amended complaint the day before the notice of removal was filed [in state court], they argue that the district court was bound to consider it. We agree.”); *Jacquin v. Nestle Purina Petcare Co.*, No. 4:20-cv-00467-SNLJ, 2020 WL 3489347, at *2 (E.D. Mo. June 26, 2020) (“Plaintiffs filed their amended petition before the notice of removal was filed in state court. Hence the amended petition controls.”); *Willich v. Wells Fargo Bank, N.A.*, No. 3:12-cv-544-J-32 JBT, 2012 WL 13098510, at *4 (M.D. Fla. Aug. 13, 2012) (holding that “because [the plaintiff] filed the Amended Complaint in state court prior to the State Notice, the state court retained jurisdiction to accept the Amended Complaint”); *Thomas v. North Carolina*, No.

1:10CV226, 2010 WL 2176075, at *4 (M.D.N.C. May 21, 2010) (“[B]ecause Plaintiff filed her Amended Complaint before the state court received the State Notice, the amendment occurred before, not after, removal.”); *Luri v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.*, No. 1:09-CV-1664, 2010 WL 1254282, at *3 (N.D. Ohio Mar. 24, 2010) (“[W]hen [plaintiff] filed his amended pleading at 1:35 p.m., he destroyed diversity among the parties.”). This authority, however, does not address the specific issue before the Court, i.e., whether diversity is destroyed when a plaintiff *attempts* to amend the complaint prior to the third removal step but the state court rejects the electronic filing and only later relates the resubmission back to the time of the original submission. That question requires an examination of Oregon’s electronic filing (“e-filing”) rules.

In Oregon courts, e-filing “requires the filer to enter some data that a court clerk might otherwise enter for a document filed in paper form.” *Otnes v. PCC Structural, Inc.*, 299 Or. App. 296, 301 (2019). Oregon courts have recognized that “[w]ith a filer’s entry of that added data comes the risk that the filer may make clerical mistakes, entering erroneous data that unwittingly prevents filing.” *Id.* These mistakes may include entering “the wrong case type, the wrong filing code, the wrong court location, or the wrong responsible party.” *Id.*; see also OREGON JUD. DEP’T, *Policy and Standards for Acceptance of Electronic Filings in the Oregon Circuit Courts, Version 1.0*, at 2 (May 22, 2015), available at <https://www.courts.oregon.gov/services/online/Documents/eFile/OJD-Policy-and-Standards-for-Acceptance-of-Electronic-Filings-in-the-Oregon-Circuit-Courts.pdf> (last visited March 1, 2021) (“Electronic Filing Acceptance Standards”).

To address the problem of filing errors, Oregon Uniform Trial Court Rule (“UTCRC”) 21.080 provides that, “if the court rejects a document submitted electronically for filing, the

electronic filing system will send an email to the filer that explains why the court rejected the document[.]” [UTCRC 21.080\(5\)](#). Under Oregon’s electronic filing policy, “[e]lectronic filings returned (‘rejected’) through the [Oregon Judicial Department’s] eFiling system are not considered filed with the court.” *Electronic Filing Acceptance Standards*, at 2. To effectuate filing of a rejected submission, “[a]n efiler must correctly resubmit the electronic filing to the circuit court and have it accepted by the court, in order to be considered successfully filed.” *Id.* [UTCRC 21.080\(5\)\(a\)](#) governs the procedure for correcting clerical errors with electronically filed pleadings, and provides that:

A filer who resubmits a document within 3 days of the date of rejection under this section may request, as part of the resubmission, that the date of filing of the resubmitted document relate back to the date of submission of the original document to meet filing requirements.

[UTCRC 21.080\(5\)\(a\)](#). The rule states that the filer must include a cover letter that sets out the reason that would justify relation back to the original submission. *Id.* The rule also provides that a responding party may object to the request to allow relation back to cure a failed filing. [UTCRC 21.085\(5\)\(b\)](#). The Oregon Court of Appeals has concluded that, “[g]iven the two provisions allowing a filer to request relation back and an opponent to object to that request, UTCRC 21.080(5) necessarily gives the trial court discretion to allow or disallow relation back to cure a failed filing,” and therefore “[r]elation back is not a matter of right simply because a document is resubmitted, this time properly.” *Otnes*, 299 Or. App. at 302. Rather, “the rule gives the trial court discretion to consider the nature of the reason for rejection, the reasonableness of an excuse offered, and the type of document.” *Id.* at 303.

With these state court e-filing rules in mind, the Court finds that the operative complaint at the time of removal was Bond’s original complaint, not her amended complaint. Removal requires three steps: (1) filing a Notice of Removal in federal court; (2) filing a Notice of Filing

in the state court; and (3) and giving prompt written notice to all adverse parties. *See Aqua Glass*, 2008 WL 2854125, at *1 (identifying the three requirements). Shriners filed the Notice of Removal in federal court at 4:43 p.m. on November 9, 2020, filed the Notice of Filing in state court at 5:40 p.m. that same day, and provided written notice of removal to Bond’s counsel via e-mail at 5:46 p.m., thereby effecting removal as of 5:46 p.m. on November 9, 2020.³

Although Bond first attempted to file her amended complaint at 5:33 p.m., the court rejected the filing. *See Otnes*, 299 Or. App. at 303 (noting that the plaintiff’s first attempt at e-filing a motion was rejected, and therefore the plaintiff “failed to achieve filing” on the filing deadline). Bond did not attempt to cure the defect until the following day. (Bryan Decl. Ex. 3.) Under Oregon’s electronic filing procedures, the state court did not accept nor file Bond’s FAC until November 10, 2020, the day after Shriners perfected removal.⁴ By that time, Shriners’ removal had already divested the state court of its jurisdiction over the case, and therefore the

³ Bond argues that notice by email does not satisfy the requirement of “written notice” in 28 U.S.C. § 1446(d), because the email did not comply with electronic service rules, and therefore Shriners did not provide “written notice” until Bond’s counsel received the removal documents in the mail on November 13, 2020. (Pl.’s Mot. to Remand at 6.) Contrary to Bond’s assertions, the plain language of the statute does not require formal service of the Notice of Removal, but requires only that defendants “give written notice” to adverse parties. 28 U.S.C. § 1446(d); *see Rigsby v. Arizona*, No. CV 11-1696-PHX-DGC (ECV), 2012 WL 273703, at *3 (D. Ariz. Jan. 31, 2012) (“Section 1446(d) does not require service of the Notice of Removal, it simply requires that a defendant give written notice that the Notice of Removal has been filed.”); *Runaj v. Wells Fargo Bank*, 667 F. Supp. 2d 1199, 1202 (S.D. Cal. 2009) (“Section 1446(d) does not require ‘formal’ or ‘personal’ service of a notice of removal upon a plaintiff; it merely requires ‘written notice.’”); *see also Titan Finishes Corp. v. Spectrum Sales Grp.*, 452 F. Supp. 2d 692, 695-96 (E.D. Mich. Aug. 14, 2006) (holding that the defendant satisfied 28 U.S.C. § 1446(d) by “sen[ding] Plaintiff’s counsel an email and voice mail messages notifying Plaintiff of Defendants’ removal”).

⁴ Bond argues that Shriner’s removal was also deficient because Shriners was required to obtain Bernstein’s consent prior to removal pursuant to 28 U.S.C. § 1446(b)(2)(A) (requiring that “all defendants who have been properly joined and served must join in or consent to the removal of the action”), but Bond had not properly joined or served Bernstein at the time Shriners effected removal, and therefore his consent was not required.

state court did not have jurisdiction to consider whether to accept Bond's post-removal resubmission of the FAC, nor did the state court have jurisdiction to grant Bond's relation back request. See *Roman Cath. Archdiocese of San Juan, P.R. v. Acevedo Feliciano*, 140 S. Ct. 696, 700 (2020) (holding that following removal, "the state court loses all jurisdiction over the case, and, being without jurisdiction, its subsequent proceedings and judgment are not simply erroneous, but absolutely void" and "every order thereafter made in that court is *coram non judice*, meaning 'not before a judge'") (simplified); *Holmes v. AC & S, Inc.*, 388 F. Supp. 2d 663, 667 (E.D. Va. 2004) (noting that once the Notice of Removal is filed in both courts, the state court is divested of its jurisdiction and "the federal court takes the case in the posture in which it departed the state court"); see also *Mansaray v. Mut. Benefit Ins. Co.*, No. PX 17-0098, 2017 WL 2778824, at *4 (D. Md. June 26, 2017) (holding that "the operative complaint at the time of removal was the original and not the proposed amended complaint" because the "[p]laintiff's motion to amend was never accepted in [state] court prior to removal, and so cannot be considered in the diversity analysis").⁵

For these reasons, Bond's original complaint was the operative complaint at the time of removal, diversity jurisdiction existed at the time of removal, and the district judge should deny Bond's motion to remand.

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⁵ Bond argues that the court's decision in *Miller v. Fry's Elecs., Inc.*, No. 08-541-HA, 2008 WL 4186905 (D. Or. Sept. 5, 2008), requires remand here. (Pl.'s Mot. to Remand at 5.) In *Miller*, the plaintiff filed his amended complaint one hour before the defendant filed his Notice of Removal in federal court. See *Miller*, 2008 WL 4186905, at *1. The Court held that "defendant's Notice of Removal, having been filed one hour after plaintiff's FAC was filed, was plainly timely as to the amended complaint," and thus remand was appropriate. *Id.* at *2. In contrast here, Bond did not properly file her FAC until after Shriners had already completed the removal process.

II. MOTION TO DISMISS

Having determined that remand is not warranted, the Court turns to Shriners' motion to dismiss. Shriners moves to dismiss Bond's complaint on the ground that her claims are time-barred by the applicable one-year statute of limitations set forth at [O.R.S. § 659A.875](#). (Def.'s [Mot. at 3](#).) Bond responds that Oregon House Bill 4212, which extended the filing deadlines for certain legal matters during a declared state of emergency due to COVID-19, tolled the statute of limitations for her claims.⁶ ([Pl.'s Resp. at 1-2](#).) For the reasons explained below, the Court recommends that the district judge grant Shriners' motion to dismiss.

A. Statute of Limitations

[O.R.S. § 659A.875\(1\)](#) provides that "a civil action alleging an unlawful employment practice . . . must be commenced within one year after the occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS 659A.820[.]"⁷ Here, the latest incident of alleged discrimination and retaliation occurred on June 12, 2019, the date on which Shriners terminated Bond's employment. ([FAC ¶ 28](#).) Bond filed her complaint in state court on October 1, 2020, more than one year later. Accordingly, the parties do not dispute that, absent application of House Bill 4212, Bond's claims are time-barred.

⁶ The Court takes judicial notice of House Bill 4212 ([Pl.'s Resp. Ex. A](#)) and Governor Kate Brown's ("Governor Brown") Executive Orders ([Pl.'s Resp. Exs. B, C, and D](#)). See [Rueda Vidal v. Bolton](#), 822 F. App'x 643, 644 (9th Cir. 2020) ("On a motion to dismiss, a court may take judicial notice of 'documents crucial to the plaintiff's claims, but not explicitly incorporated in his complaint.'" (quoting [Parrino v. FHP, Inc.](#), 146 F.3d 699, 706 (9th Cir. 1998))).

⁷ O.R.S. § 659A.875 was amended by the Oregon Workplace Fairness Act, Senate Bill 726, which extended the statute of limitations for claims arising under O.R.S. § 659A.030. See [S.B. 726, § 6\(b\), 80th Leg., Reg. Sess. \(Or. 2019\)](#) ("A civil action . . . alleging a violation of ORS 659A.030 . . . must be commenced not later than five years after the occurrence of the alleged violation[.]"). However, the amendment applies only to "conduct prohibited by O.R.S. 659A.030 . . . occurring on or after the effective date of this 2019 Act [September 29, 2019]." [Id.](#) § 10.

B. House Bill 4212

On March 8, 2020, Governor Brown signed Executive Order 20-03, which declared a state of emergency due to the threat that the COVID-19 coronavirus posed to public health and safety. ([Pl.’s Resp. Ex. B.](#)) On May 1, 2020, Governor Brown issued Executive Order 20-24, extending the state of emergency through July 6, 2020. ([Id. Ex. C.](#)) On June 30, 2020, Governor Brown signed Executive Order 20-30, which extended the state of emergency through September 4, 2020. ([Exec. Order No. 20-30.](#))

In response to the COVID-19 pandemic and the emergency declarations issued by Governor Brown, the Oregon Legislative Assembly enacted House Bill 4212, which became effective on June 30, 2020. [H.B. 4212, 80th Leg., 1st Spec. Sess. \(Or. 2020\)](#). As relevant here, House Bill 4212 extended the filing deadlines for certain legal matters during the declared state of emergency. Specifically, Section 7(1) of House Bill 4212 provides that if the time to commence an action expires during the state of emergency, the time is extended to ninety days after the state of emergency ends:

If the expiration of the time to commence an action or give notice of a claim falls within the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of that declaration, is in effect, or within 90 days after the declaration is no longer in effect, the expiration of the time to commence the action or give notice of the claim is extended to a date 90 days after the declaration and any extension is no longer in effect.

[H.B. 4212 § 7\(1\)](#). The current state of emergency has been extended “through May 2, 2021, unless extended or terminated earlier by the Governor.” ([Exec. Order No. 21-05.](#)) To date, Governor Brown has extended the COVID-19 state of emergency six times. [Id.](#)

The legislation also expressly authorized the Chief Justice of the Oregon Supreme Court to extend or suspend certain time periods during the COVID-19 state of emergency. Section

6(1)(b) provides that, upon a finding of good cause, the Chief Justice may extend or suspend the listed time periods even if the time period had already passed:

The Chief Justice may extend or suspend a time period or time requirement under this subsection notwithstanding the fact that the date of the time period or time requirement has already passed as of the effective date of this 2020 special session Act.

[H.B. 4212 § 6\(1\)\(b\)](#). However, importantly, the Chief Justice’s statutory authority to revive an expired time period applies only under the following circumstances:

- (A) Applies in any case, action or proceeding *after* the case, action or proceeding is initiated in any circuit court, the Oregon Tax Court, the Court of Appeals or the Supreme Court;
- (B) Applies to the initiation of an appeal to the magistrate division of the Oregon Tax Court or an appeal from the magistrate division to the regular division;
- (C) Applies to the initiation of an appeal or judicial review proceeding in the Court of Appeals; or
- (D) Applies to the initiation of any type of case or proceeding in the Supreme Court.

[Id. § 6\(1\)\(a\)\(A\)-\(D\)](#) (emphasis added). Notably, the Legislature did not include time periods to commence cases, actions, or proceedings in the list of time periods that the Chief Justice may revive if the time period had already passed as of the effective date of House Bill 4212. To date, the Chief Justice has issued two orders extending statutory time periods pursuant to her authority under Section 6(1)(b), neither of which are relevant to the Court’s analysis here. (See [Bryan Decl. Ex. 2.](#))

C. Analysis

Shriners argues that House Bill 4212 does not revive the statute of limitations for civil actions that were not timely commenced before June 30, 2020 (i.e., the effective date of House Bill 4212), and therefore Bond’s claims are time-barred because the applicable statute of

limitations had already expired by June 30, 2020. (Def.’s Mot. at 4-8.) Bond responds that House Bill 4212 extended the relevant statute of limitations to ninety days after the COVID-19 state of emergency ends, and therefore she timely filed her claims. (Pl.’s Resp. at 7.)

Under Oregon law, the Legislature “may choose to revive actions that previously became extinguished under the statute’s old time limitation.” *Owens v. Maass*, 323 Or. 430, 439 (1996). “In order to revive such actions, the legislature must express its intent to do so in the text of the new enactment.” *Id.*; see also *Denny v. Bean*, 51 Or. 180, 186 (1908) (“When a remedy has been once barred by statute, a later enactment establishing a longer period of time in which the remedy may be enjoyed, will not be given a retroactive construction to revive the lost remedy, unless that intention is affirmatively expressed in the act.”) In other words, “despite the fact that an action already may have become time-barred, it may be revived and subjected to a new, extended time limitation if the legislature expresses such an intent in the new enactment. Without an *express* authorization to *revive* actions previously time-barred, the ability to exercise such a statutory right *no longer exists*.” *Owens*, 323 Or. at 439-40 (emphasis in original).

However, the Legislature is not required to use “magic words of revival” to indicate its intent to revive otherwise time-barred claims. *Doe v. Silverman*, 287 Or. App. 247, 253 (2017) (“Ultimately, we reject defendant’s assertion that the legislature was required to use some sort of magic words of revival for the [] amendment to apply retroactively to otherwise time-barred claims. Our task in construing statutes is solely to determine what the legislature intended. . . . We will not presume to negate that expressed intention by applying an archaic notion that magic words of revival had to be used here—a notion that has no basis in our modern jurisprudence on statutory construction.”); see also *Vill. at Main St. Phase II, LLC v. Dep’t of Revenue*, 356 Or. 164, 183 n.4 (2014) (en banc) (“[T]axpayers contend that there is a presumption that statutes

apply prospectively. That is not an accurate statement of current law. As more recent cases make clear, the controlling question is one of legislative intent, determined not by the invocation of presumptions but by the usual rules of statutory construction.”); *Delehant v. Bd. on Police Standards & Training*, 317 Or. 273, 278 (1993) (“Retroactive application of a rule is not automatically impermissible, however. The question is one of intent[.]”).

To interpret House Bill 4212, the Court’s task is to discern the intent of the Legislature by applying Oregon’s statutory interpretation principles. See *Powell’s Books, Inc. v. Kroger*, 622 F.3d 1202, 1209 (9th Cir. 2010) (a federal court interpreting Oregon law should “interpret the law as would the [Oregon] Supreme Court”); see also *Vill. at Main St.*, 356 Or. at 183 (“Whether a statute applies retroactively is a question of legislative intent, determined by the usual tools of statutory construction.”).

Under Oregon law, the “first step” of statutory interpretation is an examination of the text and context of the statute. *Portland Gen. Elec. Co. v. Bureau of Lab. & Indus.*, 317 Or. 606, 610 (1993), *superseded by statute*, O.R.S. § 174.020; see also *State v Gaines*, 346 Or. 160, 171 (2009) (en banc) (noting that, despite the amendments to O.R.S. § 174.020, “[t]he first step remains an examination of text and context”). Next, “courts may consider the legislative history of a statute, regardless of whether the statute is ambiguous, if the legislative history is useful to the court’s analysis.” *Humbert v. Liberty Mut. Fire. Ins. Co.*, No. 3:19-cv-01740-SB, 2020 WL 5099556, at *3 (D. Or. Aug. 5, 2020) (citing *Gessele v. Jack in the Box, Inc.*, 427 F. Supp. 3d 1276, 1299 (D. Or. 2019) (applying the Oregon Supreme Court’s methodology for interpreting a statute: (1) ““examination of text and context[.]”” (2) ““consideration of pertinent legislative history that a party may proffer . . . [which] the court will consult . . . after examining text and context, even if the court does not perceive an ambiguity in the statute’s text, where that

legislative history appears useful to the court’s analysis” and (3) “[i]f the legislature’s intent remains unclear after examining text, context, and legislative history, the court may resort to general maxims of statutory construction to aid in resolving the remaining uncertainty.” (quoting *Gaines*, 346 Or. at 171-72)).

The Court begins with the text and context of House Bill 4212. For convenience, the Court repeats it here:

If the expiration of the time to commence an action or give notice of a claim falls within the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of that declaration, is in effect, or within 90 days after the declaration is no longer in effect, the expiration of the time to commence the action or give notice of the claim is extended to a date 90 days after the declaration and any extension is no longer in effect.

H.B. 4212 § 7(1). There is nothing in the statutory text to suggest that the extension provided by Section 7(1) applies retroactively to already time-barred claims. See *Owens*, 323 Or. at 439-40 (“In order to revive such actions, the legislature must express its intent to do so in the text of the new enactment.”); *Denny*, 51 Or. at 186 (“When a remedy has been once barred by statute, a later enactment establishing a longer period of time in which the remedy may be enjoyed, will not be given a retroactive construction to revive the lost remedy, unless that intention is affirmatively expressed in the act.”).

The context of Section 7 further supports the conclusion that the statute did not revive Bond’s claims. Another section of the bill, Section 6(1)(b), granted the Chief Justice of the Oregon Supreme Court the authority to revive time periods that had already expired as of the effective date of House Bill 4212, but limited that authority to specific matters, including cases that had already been filed in circuit court. *H.B. 4212 § 6(1)(b)*. In contrast, the plain text of Section 7, applicable here because it applies to extend time periods “to commence an action,”

does not provide an option to revive a time period that had already passed as of June 30, 2020.⁸ See *Owens*, 323 Or. at 437 (“[W]hen the legislature incorporates words of retroactivity in one provision of a statute and omits similar words from another provision, that omission may support a conclusion that the legislature either did not intend the latter provision to apply retroactively or, at least, did not consider that issue.” (citing *Boone v. Wright*, 314 Or. 135, 138 (Or. 1992) (en banc))).

Additionally, nothing in House Bill 4212’s legislative history suggests that the Legislature intended to apply Section 7 retroactively to revive statutes of limitation that had already expired. See *Humbert*, 2020 WL 5099556, at *3 (“Courts may consider the legislative history of a statute, regardless of whether the statute is ambiguous, if the legislative history is useful to the court’s analysis.”). Indeed, Bond acknowledges that the Legislature did not mention Section 7 in its discussions of the bill. (See *Pl.’s Resp. at 10*, “The legislative history of HB 4212 demonstrates that the bill was discussed publicly on the floor for a little over an hour. During that open floor debate there was no discussion about § 7.”)

Finally, Bond argues that the *Erie* doctrine requires the Court to follow a state court judge’s recent decision finding that House Bill 4212 suspended statutes of limitations beginning on March 8, 2020. (*Pl.’s Resp. at 4-6*, citing *Ex. E, Order on Def.’s ORCP 21 Mot. & Mot. Summ. J., Martus v. Foster, et al.*, No. 20CV12957 (Sept. 22, 2020)). The Court disagrees. While federal courts sitting in diversity apply substantive state law, *Erie R.R. Co. v. Tompkins*,

⁸ Bond argues that Section 6 of House Bill 4212 is “not applicable” to the Court’s statutory analysis interpreting Section 7. (*Pl.’s Resp. at 10-11*.) The Court disagrees. “Relevant context includes other provisions of the same statute and other related statutes.” *Gessele*, 427 F. Supp. 3d at 1299 (quoting *Matter of Comp. of Gadalean*, 364 Or. 707, 719 (2019)); see also *Weldon v. Bd. of Lic. Pro. Couns. & Therapists*, 353 Or. 85, 95 (2012) (“The context of a statute includes all provisions contained in the session law, including parts of the session law not codified as part of the statute being interpreted.”).

304 U.S. 64, 80 (1938), *Erie* applies only to state law declared by “the legislature or its highest court.” *Guar. Tr. Co. of N.Y. v. York*, 326 U.S. 99, 112 (1945). In any event, the parties in the *Martus* case did not brief the statutory interpretation issues discussed herein, the circuit court did not consider *Owens v. Maass* which controls here, and the court’s analysis of House Bill 4212 was dicta. For those reasons, the Court declines to follow that opinion here. *Cf. Stellar J. Corp. v. Smith & Loveless, Inc.*, 580 F. App’x 604, 607 (9th Cir. 2014) (“This Court is ‘not bound by dicta of state appellate courts.’”) (quoting *Minn. Mut. Life Ins. v. Ensley*, 174 F.3d 977, 983 (9th Cir. 1999)).

The Legislature could have revived statutes of limitation that expired between March 8, 2020 and June 30, 2020, or provided the Chief Justice with revival authority, but for reasons not apparent in the legislative record, it did not do so. *See Boone*, 314 Or. at 142 (“The legislature could easily have provided a third date from which to calculate the 120-day period, such as the effective date of the amendment for convictions and appeals that became final before the effective date. The Legislature did not do so, however. For us now to read in a third date would disregard the legislatively mandated rule of construction that courts ascertain only what is contained in a statute and refrain from inserting what is not.”). Even if it makes good policy sense to revive statutes of limitation that expired during this short “donut hole” not addressed by the legislation, it is not the Court’s role to rewrite the statute.

Having considered the text, context, and legislative history of House Bill 4212, the Court concludes that Section 7 did not revive the statute of limitations for civil actions that had already

expired prior to June 30, 2020. Accordingly, the Court finds that Bond's claims are time-barred and recommends that the district judge grant Shriners' motion to dismiss.⁹

III. LEAVE TO AMEND

In the alternative to her motion to remand, Bond seeks leave to amend her complaint to add Bernstein as a defendant. (*See Pl.'s Mot. to Remand at 2.*) In light of the Court's conclusion that Bond's claims are time-barred, the Court recommends that the district judge deny Bond's motion for leave to amend her complaint. *See Murphy v. Am. Gen. Life Ins. Co.*, 74 F. Supp. 3d 1267, 1280 (C.D. Cal. Jan. 15, 2015) (denying motion to amend the complaint because "it appears that [the plaintiff's] claim against [the defendant]—even if well pled—would be time-barred").

CONCLUSION

For the reasons stated, the Court recommends that the district judge DENY Bond's motions to remand and to amend (*ECF No. 6*), GRANT Shriners' motion to dismiss (*ECF No. 4*), and dismiss this case without prejudice.

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⁹ The Court recommends that the district judge dismiss Bond's claims without prejudice, as it is conceivable that the Legislature could amend the law to toll statutes of limitation that expired in the early days of the COVID-19 state of emergency, and the state of emergency continues.

SCHEDULING ORDER

The Court will refer its Findings and Recommendation to a district judge. Objections, if any, are due within fourteen (14) days. If no objections are filed, the Findings and Recommendation will go under advisement on that date. If objections are filed, a response is due within fourteen (14) days. When the response is due or filed, whichever date is earlier, the Findings and Recommendation will go under advisement.

DATED this 1st day of March, 2021.



HON. STACIE F. BECKERMAN
United States Magistrate Judge

2021 SB 813 (Enrolled)

Enrolled Senate Bill 813

Sponsored by COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

CHAPTER

AN ACT

Relating to civil proceedings; amending section 7, chapter 12, Oregon Laws 2020 (first special session); and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 7, chapter 12, Oregon Laws 2020 (first special session), is amended to read:

Sec. 7. (1) If the expiration of the time to commence an action or give notice of a claim falls within the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect, or within 90 days after the declaration and any extension is no longer in effect, the expiration of the time to commence the action or give notice of the claim is extended to a date 90 days after the declaration and any extension is no longer in effect.

(2) Subsection (1) of this section applies to:

(a) Time periods for commencing an action established in ORS chapter 12;
(b) The time period for commencing an action for wrongful death established in ORS 30.020;
(c) The time period for commencing an action or giving a notice of claim under ORS 30.275; and
(d) Any other time limitation for the commencement of a civil cause of action or the giving of notice of a civil claim established by statute.

(3) Subsection (1) of this section does not apply to:

(a) Time limitations for the commencement of criminal actions;
(b) The initiation of an appeal to the magistrate division of the Oregon Tax Court or an appeal from the magistrate division to the regular division;
(c) The initiation of an appeal or judicial review proceeding in the Court of Appeals; or
(d) The initiation of any type of case or proceeding in the Supreme Court.

(4) Subsection (1) of this section applies to expirations of the time to commence an action or give notice of a claim occurring:

(a) On or after March 8, 2020, and on or before the date 90 days after the declaration of a state of emergency issued by the Governor on March 8, 2020, and any extension of the declaration, is no longer in effect; or

(b) During the time in which any other declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect, or within 90 days after the declaration and any extension is no longer in effect.

SECTION 2. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by Senate May 4, 2021

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House June 9, 2021

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

.....
Shemia Fagan, Secretary of State

Executive Order 22-03 (Mar. 17, 2022)



EXECUTIVE ORDER NO. 22-03

TERMINATING COVID-19 STATE OF EMERGENCY; RESCINDING EXECUTIVE ORDER 20-03, EXECUTIVE ORDER 21-29, AND EXECUTIVE ORDER 21-36

Since early 2020, the COVID-19 pandemic has upended life for Oregonians. More than 6,930 Oregonians have lost their lives to this deadly disease since March 2020, and at least 28,159 Oregonians have been hospitalized with COVID-19.

Oregonians—frontline workers, children, parents, families, businesses, and all of us—have worked together during the last two years to protect each other. In March 2020, with Oregon facing unprecedented challenges, I issued Executive Order 20-03, declaring a state of emergency for COVID-19. Pursuant to that emergency declaration, at various times during the pandemic I have used my statutory emergency authorities to take extraordinary actions, when necessary, to keep Oregonians safe. Oregon’s cautious, science-driven approach to the pandemic undoubtedly saved lives. Oregon’s case rates and deaths remain among the lowest in the nation. Had our rates been as high as the average state, we would have lost at least 5,700 more Oregonians. These are our neighbors, family members, and friends who are still with us today as a result of the collective effort and sacrifice of Oregonians to keep each other safe as this pandemic raged.

Today, lifesaving vaccines and booster shots are readily available and free of cost to any Oregonian age five and up. Through the tireless efforts of our frontline health care workers, pharmacists, community organizations, National Guard troops, volunteers, public health workers, and community members throughout the state, more than 3.1 million Oregonians, including more than 90% of Oregon’s seniors, have received at least one dose of a COVID-19 vaccine. We have worked to continue to close equity gaps for Black, Indigenous, Latino, Latina, Latinx, Asian, Pacific Islander, Tribal, and Oregonians of color. Oregonians have come together by the millions to protect themselves, their families, and their communities by becoming vaccinated.

In June 2021, the state’s pandemic response shifted from acute emergency response to long-term management and recovery. At that time, I rescinded executive orders that had imposed COVID-19 safety measures. Although we knew the pandemic was not over, and recovery would be a longer-term proposition, it was time to begin transitioning from managing the pandemic under the Governor’s statutory emergency powers to managing the COVID-19 pandemic under ordinary government processes like legislative action and agency rulemaking—as we would any other established public health challenge.



EXECUTIVE ORDER NO. 22-03

PAGE TWO

This transition to ordinary government processes for managing COVID-19 has been tested twice during the last nine months, as the Delta and Omicron variants arrived in Oregon. While those who were vaccinated were well protected, both variants drove up cases, hospitalizations and, tragically, deaths, and strained our state's hospital capacity. When it became necessary to put in place mandatory safety requirements for the public, I remained steadfast that our transition to ordinary government processes should continue, whenever possible. Accordingly, necessary public health and safety requirements for the Delta and Omicron variants—such as requirements for face coverings, vaccinations for K-12 school teachers and staff, and vaccinations for health care workers—were promulgated through agency rulemaking processes authorized under the Oregon Administrative Procedures Act, not pursuant to my emergency powers.

Admittedly, the COVID-19 state of emergency at times continued to be of critical importance during recent months. For example, emergency authorities allowed me to quickly and efficiently direct the state executive branch workforce to get vaccinated, to help protect both them and the community. As a result of that directive, 98 percent of the state workforce is in compliance with state requirements, including 85 percent who are now fully vaccinated. Additionally, prior to the Legislative Assembly's enactment of Senate Bill 1529 (2022) earlier this month, an emergency declaration had been necessary to activate and support hundreds of volunteers for SERV-OR, the state's volunteer medical provider program. The emergency declaration provided other flexibilities and supports, as well, such as activating statutory liability protections for K-12 schools, allowing flexibility for court deadlines, allowing flexibility for health care licensing, and allowing the state to continue to draw down federal disaster aid such as enhanced SNAP benefits.

But thanks to our collaboration with the Legislative Assembly and state agencies, the emergency declaration itself is no longer necessary to our ongoing COVID-19 response. We have learned throughout the pandemic to be prepared for the unexpected with this virus. As we continue to navigate future COVID-19 variants, our goals remain the same: to save lives, support doctors, nurses, and health care workers, and keep Oregon businesses, schools, and communities open. I am confident that we can navigate those challenges, together, relying on the normal governmental processes set forth in our laws.





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As this pandemic and other disasters like catastrophic wildfires have taught us, a sudden crisis can require the Governor to invoke extraordinary emergency authorities, in order to respond immediately and to keep people safe. But those powers must be used carefully and sparingly, and only when absolutely necessary, as they temporarily alter the normal balance of power. Emergency powers cannot—and should not—go on forever. Instead, response efforts should be transitioned to normal government processes and authorities, as soon as possible, to ensure that essential checks and balances remain in place.

The Legislative Assembly's partnership and engagement on pandemic-related issues—including its efforts during three extraordinary special sessions in 2020—have been essential to accomplishing that goal. Efforts by the Oregon Health Authority and other state agencies have been essential too, as they have transitioned our pandemic response to agency rulemaking processes. Because of these efforts, Oregon now is in a position in which it can meet the challenges of COVID-19, using normal legislative and agency authorities and processes. For that reason, it is time to end the COVID-19 state of emergency.

NOW, THEREFORE, IT IS DIRECTED AND ORDERED:

1. Effective Date. The directives of this Executive Order shall be effective as of 12:01 a.m., April 1, 2022.
2. Rescinding Executive Order 20-03; Terminating COVID-19 State of Emergency. Following consultation with public health officials, and pursuant to my authority under ORS 401.204(1), I hereby proclaim and order that Executive Order 20-03 is rescinded, and that the COVID-19 state of emergency declared therein is terminated, as of the effective date of this Executive Order.
3. Rescinding Executive Order 21-36. Executive Order 21-36, which previously extended the COVID-19 state of emergency, is rescinded as of the effective date of this Executive Order.





EXECUTIVE ORDER NO. 22-03
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4. Rescinding Executive Order 21-29. Executive Order 21-29, which imposed a COVID-19 vaccination requirement for the executive branch of state government pursuant to the Governor's emergency authorities, is rescinded as of the effective date of this Executive Order.

Done at Salem, Oregon, this 17th day of March, 2022.



A handwritten signature in blue ink, reading "Kate Brown".

Kate Brown
GOVERNOR

ATTEST:

A handwritten signature in blue ink, reading "Shemia Fagan".

Shemia Fagan
SECRETARY OF STATE

Executive Order 21-36

(Dec. 21, 2021)

EXECUTIVE ORDER NO. 21-36

CONTINUING STATE EFFORTS TO SUPPORT ONGOING COVID-19 VACCINATION, RESPONSE, AND RECOVERY EFFORTS; EXTENDING EXECUTIVE ORDER 20-03; RESCINDING EXECUTIVE ORDER 21-15 AND EXECUTIVE ORDER 21-31

Since early 2020, the COVID-19 pandemic has upended life for Oregonians. More than 5,500 Oregonians have lost their lives to this deadly disease since March 2020, and more than 21,800 Oregonians have been hospitalized with COVID-19. Oregon's frontline workers, children, parents, families, and businesses have all navigated immense challenges as we have worked together to protect the health and lives of Oregonians.

The arrival of safe and effective vaccines in late 2020 marked a new, hopeful phase in our state's collective efforts to fight the pandemic. Together, we worked our way through the early days of a painfully limited supply of vaccines from the federal government. Lifesaving vaccines are now readily available and free of cost to any Oregonian age five and up. Through the tireless effort of our frontline healthcare workers, pharmacists, community organizations, National Guard troops, volunteers, public health workers, and community members throughout the state, we have now vaccinated more than three million Oregonians. Oregonians have come together by the millions to protect themselves and their community by becoming vaccinated. And, now that research shows that booster doses are necessary to maintain protection, particularly against the new Omicron variant, Oregonians are stepping up once again to get their boosters and to help family, friends, and neighbors get boosters as well. That community spirit is the Oregon I know.

In June 2021, the state's pandemic response shifted from acute emergency response to long-term management and recovery. At that time, in Executive Order 21-15, I rescinded executive orders that had imposed COVID-19 safety measures. Although we knew the pandemic was not over, and recovery would be a longer-term proposition, it was time to begin transitioning from managing the pandemic under emergency powers to managing the pandemic under ordinary government processes like legislative action to address the ongoing eviction crisis, and agency rulemaking to address COVID-19—as we would any other established public health challenge.

That transition to ordinary government processes for managing COVID-19 was tested almost immediately, as the new Delta variant arrived in Oregon. The Delta variant quickly drove up cases, hospitalizations and, tragically, deaths, to numbers not previously seen in this pandemic. While those who were vaccinated were, thankfully, well protected



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from severe disease from the Delta variant, hospital capacity quickly became strained to the breaking point, threatening access to medical care for all Oregonians. When it became clear that additional steps would be necessary to manage the wave of infections from the Delta variant, I took steps like activating the National Guard to help support our hospitals, and working with the Oregon Health Authority to contract with and bring in skilled healthcare workers to support exhausted hospital staff.

However, when it became necessary to put in place mandatory safety requirements for the public, I remained steadfast that our transition to ordinary government processes should continue, whenever possible. Thus, those requirements were promulgated through agency rulemaking processes authorized under the Oregon Administrative Procedures Act. As a result, the safety requirements that are in place today regarding face coverings, vaccinations for K-12 school teachers and staff, and vaccinations for healthcare workers do not rely on my emergency powers; instead, they are included in agency administrative rules.

There were times, however, where the continuing activation of a state of emergency has been critically important in supporting the ongoing battle against COVID-19 and the Delta variant, and supporting the state's recovery.

- Emergency authorities allowed me to quickly and efficiently direct the state workforce that I oversee to get vaccinated by earlier this fall, to help protect both them and the community.
- By law, the state's volunteer medical provider program, SERV-OR, can only activate and support volunteers during a governor-declared emergency. Currently, there are 450–500 SERV-OR volunteers activated and deployed around the state. These volunteers are performing critical services like supervising and providing vaccinations at vaccination clinics, supporting hospital workers, and even providing mental health support to our exhausted frontline medical professionals who have seen unimaginable tragedy over the last 18 months. Having an emergency declaration in place has allowed the important work of these medical volunteers to continue.
- Similarly, having the emergency declaration in place has allowed state licensing boards greater flexibility around professional health licensing, ensuring that we have as much flexibility with our healthcare workers as possible.



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- Furthermore, a state-level emergency declaration ensures that the state continues to be able to access all federal disaster relief funds that are available, such as enhanced Supplemental Nutrition Assistance Program (SNAP) benefits, to ensure Oregonians have access to the support they need as they continue to navigate challenging and uncertain times.
- Liability protections for K-12 schools, authorization for extension of certain court deadlines, and other matters are also dependent, by statute, on the existence of a declared state of emergency.

We have learned throughout the pandemic to be prepared for the unexpected with this virus. The new Omicron variant, spreading quickly around the globe, offers yet another challenge that we learn more about each day. However, as we continue to navigate Delta, Omicron, and any other future variants that COVID-19 brings, my goals remain the same: to save lives, support doctors, nurses, and health care workers, and keep Oregon businesses, schools, and communities open.

We all are tired of this virus. We are all tired of the actions we must take to mitigate the risks of the virus. And yet, this virus continues to threaten and cause widespread sickness, hospitalization, and death for all Oregonians. Even for those who will not be made seriously ill by COVID-19, threats to hospital capacity impact us all. This deadly and highly communicable disease continues to require a community response. I find that the statutory criteria for an ORS Chapter 401 emergency declaration continue, unfortunately, to be satisfied.

NOW, THEREFORE, IT IS DIRECTED AND ORDERED:

Pursuant to my authorities under ORS Chapter 401, I am issuing the following directives:

1. Executive Order 20-03 Extended to Continue to Support Recovery. Pursuant to ORS 401.165, and based on the findings above, I find that although we have reached the point where the vast majority of pandemic-related business and public health restrictions to control the spread of COVID-19 have been transitioned to non-emergency authorities, the needs associated with Oregon's ongoing efforts to respond to and recover from the effects of the COVID-19 pandemic constitute an ongoing statewide emergency. Thus, effective today, December 21, 2021, I hereby



EXECUTIVE ORDER NO. 21-36 **PAGE FOUR**

continue this state of emergency, and further extend Executive Order 20-03 until June 30, 2022.

2. Access to Federal Recovery Assistance and Support. The extension of Executive Order 20-03 set forth in paragraph 1 of this Executive Order is intended in part to ensure that Oregon can continue to receive any federal funding, support, and other assistance with the state's COVID-19 response, including but not limited to funding and support from FEMA for COVID-19 response activities and continued state eligibility for enhanced SNAP benefits.
3. Rescinding Executive Order 21-15 and Executive Order 21-31. Executive Order 21-15 is rescinded and replaced by the directives in this Executive Order (Executive Order 21-36). Notwithstanding that rescission, Executive Order 21-31, relating to childcare, is continued and will remain effective until 11:59 p.m. on December 31, 2021, when it will expire by its own terms, and will not be extended.

Other Provisions

4. Discretion; No Right of Action. Any decision made by the Governor pursuant to this Executive Order is made at her sole discretion. This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of Oregon, its agencies, departments, or any officers, employees, or agents thereof.
5. Legal Effect. This Executive Order is issued under the authority conferred to the Governor by ORS 401.165 to 401.236, and, pursuant to ORS 401.192, has the full force and effect of law.





EXECUTIVE ORDER NO. 21-36
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6. Duration. This Executive Order shall remain in effect until June 30, 2022, unless extended or terminated earlier by the Governor.

Done at Salem, Oregon, this 21st day of December, 2021.



A handwritten signature in black ink, reading "Kate Brown".

Kate Brown
GOVERNOR

ATTEST:

A handwritten signature in blue ink, reading "Shemia Fagan".

Shemia Fagan
SECRETARY OF STATE

Sharnel Mesirow, “COVID-19
State of Emergency Extended
Through December 31, 2021,”
Oregon Professional Liability
Fund Blog (Sept. 10, 2021), *last
accessed* Apr. 14, 2022

Blogs (/blogs/) / View Blog Post (/blogs/view-blog-post.html)

10

SEP
2021



COVID-19 STATE OF EMERGENCY EXTENDED THROUGH DECEMBER 31, 2021

***Disclaimer:** No appellate court has yet interpreted the operative language of HB 4212. Each practitioner should review the law to determine whether and how it might apply in any particular circumstance. This material is provided for informational purposes only and does not establish, report, or create the standard of care for attorneys in Oregon, nor does it represent a complete analysis of the topics. Readers should conduct their own appropriate legal research. The information presented does not represent legal advice.*

COVID-19 State of Emergency Declaration

On April 29, 2021, Oregon Governor Kate Brown issued Executive Order No. 21-10 (https://www.oregon.gov/gov/Documents/executive_orders/eo_21-10.pdf), which was the seventh extension of Executive Order No. 20-03 (https://www.oregon.gov/gov/Documents/executive_orders/eo_20-03.pdf) and the COVID-19 State of Emergency since her original order declaring an emergency on March 8, 2020. On June 25, 2021, Governor Brown then issued Executive Order No. 21-15 (https://www.oregon.gov/gov/Documents/executive_orders/eo_21-15.pdf), which extended Executive Order No. 20-03 and the state of emergency to December 31, 2021, unless extended or terminated earlier by the Governor.

2020 Legislation: House Bill 4212

As a comprehensive measure to address issues related to COVID-19, House Bill 4212 (<https://olis.oregonlegislature.gov/liz/2020S1/Downloads/MeasureDocument/HB4212/Enrolled>) became effective on June 30, 2020. The operative language of HB 4212 has not yet been interpreted by appellate courts as of the date of this writing. Among numerous other provisions, the bill authorizes the Oregon Supreme Court to suspend or extend time periods that apply to court proceedings, including most civil matters, including tolling the period for the commencement of civil actions. See HB 4212, Sec 6-7. Specifically, Section 7(1) of HB 4212 states: "If the expiration of the time to commence an action or give notice of a claim falls within the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect, or within 90 days after the declaration and any extension is no longer in effect, the expiration of the time to commence the action or give notice of the claim is extended to a date 90 days after the declaration and any extension is no longer in effect."

Section 7(1) applies to the following:

- Time periods for commencing an action under ORS Chapter 12;
- The time period for commencing an action for wrongful death in ORS 30.020;
- The time period for commencing an action or giving notice of claim under ORS 30.275 (tort claim notice); and
- Any other time limitation for the commencement of a civil cause of action or the giving of notice of a civil claim established by statute.

Section 7(1) does not apply to:

- Time limitations for the commencement of criminal actions;
- The initiation of an appeal to the magistrate division of the Oregon Tax Court or an appeal from the magistrate division to the regular division;
- The initiation of an appeal or judicial review proceeding in the Court of Appeals; or
- The initiation of any type of case or proceeding in the Supreme Court.

2021 Legislation: Senate Bill 813

Senate Bill 813 (<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB0813/Enrolled>), which modifies HB 4212, became effective July 14, 2021. SB 813 was intended to clarify HB 4212's statute-of-limitations provisions and states that Section 7(1) applies to "expirations of the time to commence an action or give notice of a claim occurring: (a) On or after March 8, 2020, and on or before the date 90 days after the declaration of a state of emergency issued by the Governor on March 8, 2020, and any extensions of the declaration, is no longer in effect; or (b) During the time in which any other declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect, or within 90 days after the declaration and any extension is no longer in effect."

Unknown Effect of Legislation

HB 4212, Section 8, provides that Sections 6 and 7 are repealed on December 31, 2021. SB 813 does not repeal or amend Section 8 of HB 4212 or otherwise reference the automatic repeal of HB 4212, Sections 6 and 7.

It is currently unknown whether statutes of limitations will be extended for 90 days after the automatic repeal on December 31, 2021. The effects of HB 4212 and SB 813 on statutes of limitations (other than those specified) are unknown, and practitioners are cautioned NOT to rely on any provisions that purport to extend or toll statutes of limitations. As always, the PLF strongly encourages lawyers to file lawsuits impacted or potentially impacted by HB 4212 early and not wait until the last minute to file.

Categories: / InPractice / by Sharnel Mesirow (/blog/staff-authors/sharnel-mesirow/)

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PROCRASTINATION: A STORY AND SOME RESOURCES FOR SOLUTIONS (/BLOG/THRIVING-TODAY/PROCRASTINATION--A-STORY-AND-SOME-RESOURCES-FOR-SOLUTIONS/)



23

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WHAT CAN YARD WORK LAWYERS ABOUT PROJECT MANAGEMENT? (/BLOG/INPRACTICE-YARD-WORK-TEACH-ABOUT-PROJECT-MANAGEMENT/)

Many malpractice claims arise from a client's or third party's allegation about what occurred, or didn't occur, during the representation. While it may not seem necessary to document things that did not occur, or in situations involving third parties rather than just your client, proper documentation of these events can help protect you from certain malpractice traps.

🔍 Client Relations (/blog/topics-of-interest/client-relations/), Communication (/blog/topics-of-interest/communication/), File Retention (/blog/topics-of-interest/file-retention/), Malpractice Prevention (/blog/topics-of-interest/malpractice-prevention/), Risk Management (/blog/topics-of-interest/risk-management/)

The following is a fictional account of someone who is wrestling with the age-old challenge and uniquely human experience of procrastination. Although the story is not "true" from a factual standpoint, it contains much "truth" in the larger sense of the word – and many people will undoubtedly recognize themselves in this narrative.

🔍 Client Relations (/blog/topics-of-interest/client-relations/), Communication (/blog/topics-of-interest/communication/), File Retention (/blog/topics-of-interest/file-retention/), Malpractice Prevention (/blog/topics-of-interest/malpractice-prevention/), Risk Management (/blog/topics-of-interest/risk-management/)

Anne, the owner of a two-person law firm and a single mother, pulls into her driveway after a stressful day at the office. She steps out of her front yard full of patchy grass, weeds, and random weeds. Her eyes glance over at her neighbor's perfectly manicured lawn. She lets out a long sigh..

🔍 Time Management (/blog/topics-of-interest/time-management/)

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2021 SB 329 (Enrolled)

Enrolled Senate Bill 329

Sponsored by Senator JOHNSON; Senator LIEBER, Representatives DEXTER, NERON, SOLLMAN, WEBER (at the request of Condominium Working Group) (Presession filed.)

CHAPTER

AN ACT

Relating to communities governed by declarations; creating new provisions; amending ORS 94.550, 94.572, 94.573, 94.635, 94.640, 94.650, 94.652, 94.670, 94.673, 94.780, 100.005, 100.117, 100.407, 100.420 and 100.423; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

ELECTRONIC MEETINGS AND NOTICE

SECTION 1. ORS 94.640 is amended to read:

94.640. (1) The board of directors of an association may act on behalf of the association except as limited by the declaration and the bylaws. In the performance of their duties, officers and members of the board of directors are governed by this section and the applicable provisions of ORS 65.357, 65.361, 65.367, 65.369 and 65.377, whether or not the association is incorporated under ORS chapter 65.

(2) Subject to subsection (7) of this section, unless otherwise provided in the bylaws, the board of directors may fill vacancies in its membership for the unexpired portion of any term.

(3) At least annually, the board of directors of an association shall review the insurance coverage of the association.

(4) The board of directors of the association annually shall cause to be filed the necessary income tax returns for the association.

(5) The board of directors of the association may record a statement of association information as provided in ORS 94.667.

(6)(a) Unless otherwise provided in the declaration or bylaws, at a meeting of the owners at which a quorum is present, the owners may remove a director from the board of directors, other than directors appointed by the declarant or individuals who are ex officio directors, with or without cause, by a majority vote of owners who are present and entitled to vote.

(b) Notwithstanding contrary provisions in the declaration or bylaws:

(A) Before a vote to remove a director, owners must give the director whose removal has been proposed an opportunity to be heard at the meeting.

(B) The owners must vote on the removal of each director whose removal is proposed as a separate question.

(C) Removal of a director by owners is effective only if the matter of removal was an item on the agenda and was stated in the notice of the meeting if notice is required under ORS 94.650.

(c) A director who is removed by the owners remains a director until a successor is elected by the owners or the vacancy is filled as provided in subsection (7) of this section.

(7) Unless the declaration or bylaws specifically prescribe a different procedure for filling a vacancy created by the removal of a director by owners, the owners shall fill a vacancy created by the removal of a director by the owners at a meeting of owners. The notice of the meeting must state that filling a vacancy is an item on the agenda.

[(8)(a) All meetings of the board of directors of the association shall be open to owners, except that at the discretion of the board, the board may close the meeting to owners other than board members and meet in executive session to:]

[(A) Consult with legal counsel.]

[(B) Consider the following:]

[(i) Personnel matters, including salary negotiations and employee discipline;]

[(ii) Negotiation of contracts with third parties; or]

[(iii) Collection of unpaid assessments.]

[(b) Except in the case of an emergency, the board of directors of an association shall vote in an open meeting whether to meet in executive session. If the board of directors votes to meet in executive session, the presiding officer of the board of directors shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.]

[(c) A contract or an action considered in executive session does not become effective unless the board of directors, following the executive session, reconvenes in open meeting and votes on the contract or an action, which must be reasonably identified in the open meeting and included in the minutes.]

[(9) The meeting and notice requirements in subsections (8) and (10) of this section may not be circumvented by chance or social meetings or by any other means.]

[(10) In a planned community in which the majority of the lots are the principal residences of the occupants, meetings of the board of directors must comply with the following:]

[(a) For other than emergency meetings, notice of board of directors' meetings shall be posted at a place or places on the property at least three days prior to the meeting or notice shall be provided by a method otherwise reasonably calculated to inform lot owners of such meetings;]

[(b) Emergency meetings may be held without notice, if the reason for the emergency is stated in the minutes of the meeting; and]

[(c) Only emergency meetings of the board of directors may be conducted by telephonic communication or by the use of a means of communication that allows all members of the board of directors participating to hear each other simultaneously or otherwise to be able to communicate during the meeting. A member of the board of directors participating in a meeting by this means is deemed to be present in person at the meeting.]

[(11)] (8) The board of directors, in the name of the association, shall maintain a current mailing address of the association.

[(12)] (9) The board of directors shall cause the information required to enable the association to comply with ORS 94.670 (8) to be maintained and kept current.

[(13) As used in this section, "meeting" means a convening of a quorum of members of the board of directors at which association business is discussed, except a convening of a quorum of members of the board of directors for the purpose of participating in litigation, mediation or arbitration proceedings.]

SECTION 2. Section 3 of this 2021 Act is added to and made a part of ORS 94.550 to 94.783.

SECTION 3. (1) Except as provided in subsection (2) of this subsection, all meetings of the board of directors of an association are open to owners' attendance. An owner does not have any right to participate in a meeting except as may be provided by the governing documents or by the board.

(2)(a) The board may close the meeting to owners and meet in an executive session to:

- (A) Consult with legal counsel; or
- (B) Consider the following:
 - (i) Personnel matters, including salary negotiations and employee discipline;
 - (ii) Negotiation of contracts with third parties; or
 - (iii) Collection of unpaid assessments.

(b) Except in the case of an emergency, the board may not meet in executive session unless voted for by the board in an open meeting and the presiding officer of the board states the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

(c) A contract or an action considered in executive session is not effective unless the board, following the executive session, reconvenes in an open meeting and votes to approve the contract or action, which must be included in the minutes.

(3) The meeting and notice requirements in this section may not be circumvented by chance or social meetings or by any other means.

(4) A meeting may be conducted as an electronic meeting if:

(a) The meeting allows all participating board members at the meeting to:

(A) Hear and communicate to each other simultaneously; and

(B) Have access to materials before or during the meeting necessary to participate or vote in the meeting.

(b) The meeting allows all persons attending the meeting to simultaneously hear all participating board members.

(c) Any notice of the electronic meeting to board members or owners states:

(A) Whether the meeting may or must be attended by electronic means;

(B) The electronic means to be used;

(C) Subject to subsection (2) of this section, how owners may attend the electronic meeting by:

(i) Telephone;

(ii) If applicable, Internet connection; and

(iii) If applicable, by meeting at a physical location; and

(D) Any other information to enable an owner to attend the meeting.

(5) A person participating in an electronic meeting is considered present at the meeting for all purposes.

(6) In a planned community where the majority of the lots are the principal residences of the occupants, for meetings of the board other than emergency meetings, notice of meetings must include the information required under subsection (4)(c) of this section and must be:

(a) Posted at a place or places on the property at least three days prior to the meeting; or

(b) Provided by a method otherwise reasonably calculated to inform lot owners of the meetings, including by electronic communication under ORS 94.652.

(7) As used in ORS 94.640 and this section, "meeting" means a convening of a quorum of members of the board of directors at which association business is discussed, except a convening of a quorum of members of the board of directors for the purpose of participating in litigation, mediation or arbitration proceedings.

SECTION 4. ORS 94.650 is amended to read:

94.650. (1) The homeowners association shall *[hold]* **conduct** at least one meeting of the owners each calendar year.

(2)(a) Special meetings of the association may be called by the president of the board of directors, by a majority of the board of directors or by the president or secretary upon receipt of a written request of a percentage of owners specified in the bylaws of the association. However, the

bylaws may not require a percentage greater than 50 percent or less than 10 percent of the votes of the planned community for the purpose of calling a meeting.

(b) If the bylaws do not specify a percentage of owners that may request the calling of a special meeting, a special meeting *[shall]* **must** be called if 30 percent or more of the owners make the request in writing. Notice of the special meeting *[shall]* **must** be given as specified in this section.

(c) Business transacted at a special meeting *[shall]* **must** be confined to the purposes stated in the notice.

(3) If the owners request a special meeting under subsection (2) of this section and the notice is not given within 30 days after the date the written request is delivered to the president or the secretary, an owner who signed the request may set the **date**, time and place of the meeting and give notice as provided in subsection (4) of this section.

(4) Not less than 10 or more than 50 days before any meeting called under this section, the secretary or other officer specified in the bylaws shall cause the notice to be hand delivered or mailed to the mailing address of each owner, or to the mailing address designated in writing by the owner, and to all mortgagees that have requested the notice.

(5) The notice of a meeting *[shall]* **must** state the **date**, time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes or any proposal to remove a director or, **if the officer is elected by the owners, to remove an officer.**

(6) Mortgagees may designate a representative to attend a meeting called under this section.

(7) A meeting of owners under this section, including special meetings, may be conducted as an electronic meeting if the electronic meeting:

(a) Allows all owners participating to hear each other simultaneously and to be able to communicate during the meeting.

(b) Provides for the verification that a person participating is an owner or is otherwise authorized to participate in the meeting.

(c) Provides for owners to have access to material necessary to participate or vote during or before the meeting.

(8) A person participating in an electronic meeting is considered present at the meeting for all purposes.

SECTION 5. ORS 94.652 is amended to read:

94.652. (1) Subject to subsection (2) of this section and notwithstanding any requirement under the declaration or bylaws or ORS 94.550 to 94.783, in the discretion of the board of directors of the homeowners association, any notice, information or other written material required to be given to an owner or director under the declaration or bylaws or ORS 94.550 to 94.783, **that otherwise complies with the requirements of ORS 94.550 to 94.783**, may be given by electronic mail, facsimile or other form of electronic communication.

(2) Notwithstanding subsection (1) of this section, electronic mail, facsimile or other form of electronic communication may not be used to give notice of:

(a) Failure to pay an assessment;

(b) Foreclosure of an association lien under ORS 94.709; or

(c) An action the association may take against an owner.

(3) An owner or director may decline to receive **or to continue to receive** notice by electronic mail, facsimile or other form of electronic communication and may direct the board of directors to provide notice in the manner required under the declaration or bylaws or ORS 94.550 to 94.783.

(4) Notice by electronic communication under this section is considered delivered and effective when it:

(a) Is initiated to an address, location or system designated by the recipient for that purpose; or

(b) Is posted on an electronic network and a separate record of the posting has been delivered to the recipient together with instructions regarding how to obtain access to the posting on the electronic network.

SECTION 6. ORS 100.420 is amended to read:

100.420. (1)[(a)] **Except as provided in subsection (2) of this section**, all meetings of the board of directors *[of the association of unit owners shall be open to unit owners except that, in the discretion of the board,]* **are open to unit owners' attendance. An owner does not have any right to participate in a meeting except as may be provided by the governing documents or the board.**

(2)(a) The board may close the meeting to unit owners and meet in executive session to:

(A) Consult with legal counsel.

(B) Consider the following:

(i) Personnel matters, including salary negotiations and employee discipline;

(ii) Negotiation of contracts with third parties; or

(iii) Collection of unpaid assessments.

(b) Except in the case of an emergency, *[the board of directors of an association shall vote in an open meeting whether to meet in executive session. If the board of directors votes to meet in executive session, the presiding officer of the board of directors shall state]* **the board may not meet in executive session unless voted for by the board in an open meeting and the presiding officer of the board states** the general nature of the action to be considered, as precisely as possible, when and under what circumstances the deliberations can be disclosed to owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

(c) A contract or an action considered in executive session *[does not become]* **is not** effective unless the board *[of directors]*, following the executive session, reconvenes in open meeting and votes *[on]* **to approve** the contract or action, which must be reasonably identified in the open meeting and included in the minutes.

[(2)] (3) The meeting and notice requirements in this section may not be circumvented by chance or social meetings or by any other means.

[(3) *Except as provided in subsection (4) of this section, board of directors' meetings may be conducted by telephonic communication or by the use of a means of communication that allows all members of the board of directors participating to hear each other simultaneously or otherwise to be able to communicate during the meeting. A member of the board of directors participating in a meeting by this means is deemed to be present in person at the meeting.*]

(4) **A meeting may be conducted as an electronic meeting if:**

(a) **The meeting allows all participating board members at the meeting to:**

(A) **Hear and communicate to each other simultaneously; and**

(B) **Have access to materials before or during the meeting necessary to participate or vote in the meeting.**

(b) **The meeting allows all persons attending the meeting to simultaneously hear all participating board members.**

(c) **Any notice of the electronic meeting to board members or unit owners states:**

(A) **Whether the meeting may or must be attended by electronic means;**

(B) **The electronic means to be used;**

(C) **Subject to subsection (2) of this section, how unit owners may attend the electronic meeting by:**

(i) **Telephone;**

(ii) **If applicable, Internet connection; and**

(iii) **If applicable, by meeting at a physical location; and**

(D) **Any other information to enable a unit owner to attend the meeting.**

(5) **A person attending or participating in an electronic meeting is considered to be attending or participating at the meeting for all purposes.**

[(4)] (6) In condominiums where the majority of the units are the principal residences of the occupants, *[meetings of the board of directors shall comply with the following]* **for meetings other than emergency meetings, notice of the meeting must include the information required under subsection (4)(c) of this section and must be:**

(a) *[For other than emergency meetings, notice of board of directors' meetings shall be]* Posted at a place or places on the property at least three days prior to the meeting; or *[notice shall be]*

(b) Provided by a method otherwise reasonably calculated to inform unit owners of *[such meetings]* **the meetings, including by electronic communication under ORS 100.423.**

[(b) Only emergency meetings of the board of directors may be conducted by telephonic communication or in a manner described in subsection (3) of this section.]

[(5) Subsection (4)(a) of this section first applies to property submitted to the provisions of this chapter prior to October 3, 1979, upon receipt by the board of directors of the association of unit owners of a written request from at least one unit owner that notice of board of directors meetings be given in accordance with subsection (4)(a) of this section.]

[(6)] (7) As used in this section, "meeting" means a convening of a quorum of members of the board of directors at which association business is discussed, except a convening of a quorum of members of the board of directors for the purpose of participating in litigation, mediation or arbitration proceedings.

SECTION 7. ORS 100.407 is amended to read:

100.407. (1) The association of unit owners shall *[hold]* **conduct** at least one meeting of the owners each calendar year.

(2)(a) Special meetings of the association may be called by the chairperson or president of the board of directors, by a majority of the board of directors or by the chairperson, president or secretary upon receipt of a written request of a percentage of unit owners specified in the bylaws. However, the bylaws may not require a percentage greater than 50 percent or less than 10 percent of the unit owners for the purpose of calling a meeting.

(b) If the bylaws do not specify a percentage of unit owners that may request the calling of a special meeting, a special meeting *[shall]* **must** be called if 30 percent or more of the unit owners make the request in writing. Notice of the special meeting *[shall]* **must** be given as specified in this section.

(3) If the unit owners request a special meeting under subsection (2) of this section and the notice is not given within 30 days after the date the written request is delivered to the chairperson or president or the secretary, a unit owner who signed the request may set the **date**, time and place of the meeting and give notice as provided in subsection (4) of this section.

(4)(a) Not less than 10 nor more than 50 days before any meeting called under this section, the secretary or other officer of the association specified in the bylaws shall cause the notice to be hand delivered or mailed to the mailing address of each unit owner or to the mailing address designated in writing by the unit owner, and to all mortgagees that have requested the notice.

(b) The notice *[shall]* **must** state the **date**, time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes or any proposal to remove a director or, **if the officer is elected by the owners, to remove an** officer of the association.

[(c)] (5) Mortgagees may designate a representative to attend a meeting called under this section.

(6) **A meeting of owners under this section, including special meetings, may be conducted as an electronic meeting if the electronic meeting:**

(a) **Allows all owners participating to hear each other simultaneously and to be able to communicate during the meeting.**

(b) **Provides for the verification that a person participating is an owner or is otherwise authorized to participate in the meeting.**

(c) **Provides for owners to have access to material necessary to participate or vote during or before the meeting.**

(7) **A person participating in an electronic meeting is considered present at the meeting for all purposes.**

SECTION 8. ORS 100.423 is amended to read:

100.423. (1) Subject to subsection (2) of this section and notwithstanding any requirement under the declaration or bylaws or this chapter, in the discretion of the board of directors of the association of unit owners, any notice, information or other written material required to be given to a unit owner or director under the declaration or bylaws or this chapter, **that otherwise complies with this chapter**, may be given by electronic mail, facsimile or other form of electronic communication acceptable to the board of directors.

(2) Notwithstanding subsection (1) of this section, electronic mail, facsimile or other form of electronic communication may not be used to give notice of:

- (a) Failure to pay an assessment;
- (b) Foreclosure of an association lien under ORS 100.450;
- (c) An action the association may take against a unit owner; or
- (d) An offer to use the dispute resolution program under ORS 100.405.

(3) A unit owner or director may decline to receive **or continue to receive** notice by electronic mail, facsimile or other form of electronic communication and may direct the board of directors to provide notice in the manner required under the declaration or bylaws or this chapter.

(4) Notice by electronic communication under this section is considered delivered and effective when it:

(a) Is initiated to an address, location or system designated by the recipient for that purpose; or

(b) Is posted on an electronic network and a separate record of the posting has been delivered to the recipient together with instructions regarding how to obtain access to the posting on the electronic network.

CONFORMING AMENDMENTS

SECTION 9. ORS 94.550 is amended to read:

94.550. As used in ORS 94.550 to 94.783:

(1) "Assessment" means any charge imposed or levied by a homeowners association on or against an owner or lot pursuant to the provisions of the declaration or the bylaws of the planned community or provisions of ORS 94.550 to 94.783.

(2) "Blanket encumbrance" means a trust deed or mortgage or any other lien or encumbrance, mechanic's lien or otherwise, securing or evidencing the payment of money and affecting more than one lot in a planned community, or an agreement affecting more than one lot by which the developer holds such planned community under an option, contract to sell or trust agreement.

(3) "Class I planned community" means a planned community that:

(a) Contains at least 13 lots or in which the declarant has reserved the right to increase the total number of lots beyond 12; and

(b) Has an estimated annual assessment, including an amount required for reserves under ORS 94.595, exceeding \$10,000 for all lots or \$100 per lot based on:

(A) For a planned community created on or after January 1, 2002, the initial estimated annual assessment, including a constructive assessment based on a subsidy of the association through a contribution of funds, goods or services by the declarant; or

(B) For a planned community created before January 1, 2002, a reasonable estimate of the cost of fulfilling existing obligations imposed by the declaration, bylaws or other governing document as of January 1, 2002.

(4) "Class II planned community" means a planned community that:

(a) Is not a Class I planned community;

(b) Contains at least five lots; and

(c) Has an estimated annual assessment exceeding \$1,000 for all lots based on:

(A) For a planned community created on or after January 1, 2002, the initial estimated annual assessment, including a constructive assessment based on a subsidy of the association through a contribution of funds, goods or services by the declarant; or

(B) For a planned community created before January 1, 2002, a reasonable estimate of the cost of fulfilling existing obligations imposed by the declaration, bylaws or other governing document as of January 1, 2002.

(5) "Class III planned community" means a planned community that is not a Class I or II planned community.

(6) "Common expenses" means expenditures made by or financial liabilities incurred by the homeowners association and includes any allocations to the reserve account under ORS 94.595.

(7) "Common property" means any real property or interest in real property within a planned community which is owned, held or leased by the homeowners association or owned as tenants in common by the lot owners, or designated in the declaration or the plat for transfer to the association.

(8) "Condominium" means property submitted to the provisions of ORS chapter 100.

(9) "Declarant" means any person who creates a planned community under ORS 94.550 to [94.785] **94.783**.

(10) "Declarant control" means any special declarant right relating to administrative control of a homeowners association, including but not limited to:

(a) The right of the declarant or person designated by the declarant to appoint or remove an officer or a member of the board of directors;

(b) Any weighted vote or special voting right granted to a declarant or to units owned by the declarant so that the declarant will hold a majority of the voting rights in the association by virtue of such weighted vote or special voting right; and

(c) The right of the declarant to exercise powers and responsibilities otherwise assigned by the declaration or bylaws or by the provisions of ORS 94.550 to 94.783 to the association, officers of the association or board of directors of the association.

(11) "Declaration" means the instrument described in ORS 94.580 which establishes a planned community, and any amendments to the instrument.

(12) "Electric vehicle charging station" or "charging station" means a facility designed to deliver electrical current for the purpose of charging one or more electric motor vehicles.

(13) "Electronic meeting" means a meeting that is conducted through telephone, teleconference, video conference, web conference or any other live electronic means where at least one participant is not physically present.

[(13)] (14) "Governing document" means articles of incorporation, bylaws, a declaration or a rule, regulation or resolution that was properly adopted by the homeowners association or any other instrument or plat relating to common ownership or common maintenance of a portion of a planned community that is binding upon lots within the planned community.

[(14)] (15) "Governing entity" means an incorporated or unincorporated association, committee, person or any other entity that has authority under a governing document to maintain commonly maintained property, to impose assessments on lots or to act on matters of common concern on behalf of lot owners within the planned community.

[(15)] (16) "Homeowners association" or "association" means the organization of owners of lots in a planned community, created under ORS 94.625, required by a governing document or formed under ORS 94.574.

[(16)] (17) "Majority" or "majority of votes" or "majority of owners" means more than 50 percent of the votes in the planned community.

[(17)] (18) "Mortgagee" means any person who is:

(a) A mortgagee under a mortgage;

(b) A beneficiary under a trust deed; or

(c) The vendor under a land sale contract.

[(18)] (19) "Owner" means the owner of any lot in a planned community, unless otherwise specified, but does not include a person holding only a security interest in a lot.

[(19)] (20) "Percent of owners" or "percentage of owners" means the owners representing the specified voting rights as determined under ORS 94.658.

[(20)(a)] **(21)(a)** “Planned community” means any subdivision under ORS 92.010 to 92.192 that results in a pattern of ownership of real property and all the buildings, improvements and rights located on or belonging to the real property, in which the owners collectively are responsible for the maintenance, operation, insurance or other expenses relating to any property within the planned community, including common property, if any, or for the exterior maintenance of any property that is individually owned.

(b) “Planned community” does not mean:

(A) A condominium under ORS chapter 100;

(B) A subdivision that is exclusively commercial or industrial; or

(C) A timeshare plan under ORS 94.803 to 94.945.

[(21)] **(22)** “Purchaser” means any person other than a declarant who, by means of a voluntary transfer, acquires a legal or equitable interest in a lot, other than as security for an obligation.

[(22)] **(23)** “Purchaser for resale” means any person who purchases from the declarant more than two lots for the purpose of resale whether or not the purchaser for resale makes improvements to the lots before reselling them.

[(23)] **(24)** “Recorded declaration” means an instrument recorded with the recording officer of the county in which the planned community is located that contains covenants, conditions and restrictions that are binding upon lots in the planned community or that impose servitudes on the real property.

[(24)] **(25)** “Special declarant rights” means any rights, in addition to the rights of the declarant as a lot owner, reserved for the benefit of the declarant under the declaration or ORS 94.550 to 94.783, including but not limited to:

(a) Constructing or completing construction of improvements in the planned community which are described in the declaration;

(b) Expanding the planned community or withdrawing property from the planned community under ORS 94.580 (3) and (4);

(c) Converting lots into common property;

(d) Making the planned community subject to a master association under ORS 94.695; or

(e) Exercising any right of declarant control reserved under ORS 94.600.

[(25)] **(26)** “Successor declarant” means the transferee of any special declarant right.

[(26)] **(27)** “Turn over” means the act of turning over administrative responsibility pursuant to ORS 94.609 and 94.616.

[(27)] **(28)** “Unit” means a building or portion of a building located upon a lot in a planned community and designated for separate occupancy or ownership, but does not include any building or portion of a building located on common property.

[(28)] **(29)** “Votes” means the votes allocated to lots in the declaration under ORS 94.580 (2).

SECTION 10. ORS 94.572 is amended to read:

94.572. (1) A Class I or Class II planned community created before January 1, 2002, that was not created under ORS 94.550 to 94.783 is subject to this section and ORS 94.550, 94.573, 94.574, 94.576, 94.577, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3) and (4), 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.762, 94.770, 94.775, 94.777, 94.779 and 94.780 **and section 3 of this 2021 Act** to the extent that those statutes are consistent with any governing documents of the planned community.

(2) If the governing documents of a planned community described in subsection (1) of this section do not provide for the formation of a homeowners association, the requirements of this section are not effective until the formation of an association in accordance with ORS 94.574.

(3) If a provision of the governing documents of a planned community described in subsection (1) of this section is inconsistent with this section, the owners may amend the governing documents using the procedures in ORS 94.573.

SECTION 11. ORS 94.573 is amended to read:

94.573. (1)(a)(A) The owners in a Class I or Class II planned community created before January 1, 2002, that was not created under ORS 94.550 to 94.783 may amend any provision of the planned community's governing documents to conform with this section and ORS 94.550, 94.572, 94.574, 94.576, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3) and (4), 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.762, 94.770, 94.775, 94.777, 94.779 and 94.780 **and section 3 of this 2021 Act**.

(B) An amendment to any provision of a planned community's governing documents made pursuant to this paragraph must be executed in accordance with the procedures for the adoption of amendments prescribed by, and subject to any limitations specified in, the planned community's governing documents.

(C) Nothing in this section or ORS 94.572 requires the owners to amend a declaration or bylaws to include the information required by ORS 94.580 or 94.635.

(b) If a planned community's governing documents do not provide procedures to amend the provisions of the governing documents:

(A) The owners may amend the inconsistent provisions of a governing document other than by-laws to conform with this section and ORS 94.550, 94.572, 94.574, 94.576, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3) and (4), 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.762, 94.770, 94.775, 94.777 and 94.780 **and section 3 of this 2021 Act** by a vote of at least 75 percent of the owners in the planned community.

(B) The owners may amend the inconsistent provisions of the bylaws to conform with this section and ORS 94.550, 94.572, 94.574, 94.576, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3) and (4), 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.762, 94.770, 94.775, 94.777, 94.779, and 94.780 **and section 3 of this 2021 Act** by a vote of at least a majority of the owners in the planned community.

(C) The owners may adopt an amendment to the provisions of a governing document at a meeting held in accordance with the governing documents or by another procedure permitted by the governing documents that follows the procedures prescribed in ORS 94.647, 94.650 or 94.660.

(2) The owners of a planned community described in subsection (1) of this section shall execute, certify and record an amendment adopted pursuant to subsection (1) of this section to:

(a) A recorded declaration as provided in ORS 94.590 (2), (3) and (5).

(b) The bylaws or any other governing document as provided in ORS 94.590 (3). If the bylaws or other governing document to which the amendment relates were recorded, the owners shall cause an amendment to the bylaws or other governing document to be recorded in the office of the recording officer of every county in which the planned community is located.

(3) An amendment adopted pursuant to subsection (1) of this section shall include:

(a) A reference to the recording index numbers and date of recording of the governing document, if recorded, to which the amendment relates; and

(b) A statement that the amendment is adopted.

SECTION 12. ORS 94.635 is amended to read:

94.635. The bylaws of an association adopted under ORS 94.625, or amended or adopted under ORS 94.630, shall provide for the following:

(1) The organization of the association of owners in accordance with ORS 94.625 and 94.630, including when the initial meeting shall be held and the method of calling that meeting.

(2) If a Class I planned community, the formation of a transitional advisory committee in accordance with ORS 94.604.

(3) The turnover meeting required under ORS 94.609, including the time by which the meeting shall be called, the method of calling the meeting, the right of an owner under ORS 94.609 (3) to call the meeting and a statement of the purpose of the meeting.

- (4)(a) The method of calling the annual meeting and all other meetings of the owners in accordance with ORS 94.650; and
- (b) The percentage of votes that constitutes a quorum in accordance with ORS 94.655.
- (5)(a) The election of a board of directors and the number of persons constituting the board;
- (b) The powers and duties of the board;
- (c) Any compensation of the directors; and
- (d) The method of removing directors from office in accordance with ORS 94.640 (6).
- (6) The terms of office of directors.
- (7) The method of calling meetings of the board of directors in accordance with [ORS 94.640 (10)] **section 3 (6) of this 2021 Act** and a statement that all meetings of the board of directors shall be open to owners.
- (8) The offices of president, secretary and treasurer and any other offices of the association, and the method of selecting and removing officers and filling vacancies in the offices.
- (9) The preparation and adoption of a budget in accordance with ORS 94.645.
- (10)(a) The program for maintenance, upkeep, repair and replacement of the common property;
- (b) The method of payment for the expense of the program and other expenses of the planned community; and
- (c) The method of approving payment vouchers.
- (11) The employment of personnel necessary for the administration of the planned community and maintenance, upkeep and repair of the common property.
- (12) The manner of collecting assessments from the owners.
- (13) Insurance coverage in accordance with ORS 94.675 and 94.685.
- (14) The preparation and distribution of the annual financial statement required under ORS 94.670.
- (15) The method of adopting administrative rules and regulations governing the details for the operation of the planned community and use of the common property.
- (16) The method of amending the bylaws in accordance with ORS 94.630. The bylaws may require no greater than an affirmative majority of votes to amend any provision of the bylaws.
- (17) If additional property is proposed to be annexed pursuant to ORS 94.580 (3), the method of apportioning common expenses if new lots are added during the fiscal year.
- (18) Any other details regarding the planned community that the declarant or the association consider desirable. However, if a provision required to be in the declaration under ORS 94.580 is included in the bylaws, the voting requirements for amending the declaration shall govern the amendment of that provision of the bylaws.

SECTION 13. ORS 94.670 is amended to read:

94.670. (1) A homeowners association shall retain within this state the documents, information and records delivered to the association under ORS 94.616 and all other records of the association for not less than the period specified for the record in ORS 65.771 or any other applicable law except that:

(a) The documents specified in ORS 94.616 (3)(o), if received, must be retained as permanent records of the association.

(b) Proxies and ballots must be retained for one year from the date of determination of the vote, except that proxies and ballots relating to an amendment to the declaration, bylaws or other governing document must be retained for one year from the date the amendment is effective.

(2)(a) All assessments, including declarant subsidies and all other association funds, shall be deposited and maintained in the name of the association in one or more separate federally insured accounts, including certificates of deposit, at a financial institution, as defined in ORS 706.008, other than an extranational institution. Except as provided in paragraph (b) of this subsection, funds must be maintained in an association account until disbursed.

(b) Subject to any limitations imposed by the declaration or bylaws, funds of the association maintained in accounts established under this subsection may be used to purchase obligations of the United States government.

- (c) All expenses of the association shall be paid from the association account.
- (3) The association shall keep financial records sufficiently detailed for proper accounting purposes.
- (4) Within 90 days after the end of the fiscal year, the board of directors shall:
 - (a) Prepare or cause to be prepared an annual financial statement consisting of a balance sheet and income and expenses statement for the preceding fiscal year; and
 - (b) Distribute to each owner and, upon written request, any mortgagee of a lot, a copy of the annual financial statement.
- (5) Subject to ORS 94.671, the association of a planned community that has annual assessments exceeding \$75,000 shall cause the financial statement required under subsection (4) of this section to be reviewed within 300 days after the end of the fiscal year by an independent certified public accountant licensed in the State of Oregon in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.
- (6) The association of a planned community created on or after January 1, 2004, or the association of a planned community described in ORS 94.572 that has annual assessments of \$75,000 or less shall cause the most recent financial statement required by subsection (4) of this section to be reviewed in the manner described in subsection (5) of this section within 300 days after the association receives a petition requesting review signed by at least a majority of the owners.
- (7) An association subject to the requirements of subsection (5) of this section may elect, on an annual basis, not to comply with the requirements of subsection (5) of this section by an affirmative vote of at least 60 percent of the owners, not including the votes of the declarant with respect to lots owned by the declarant.
- (8)(a) The association shall provide, within 10 business days of receipt of a written request from an owner, a written statement that provides:
 - (A) The amount of assessments due from the owner and unpaid at the time the request was received, including:
 - (i) Regular and special assessments;
 - (ii) Fines and other charges;
 - (iii) Accrued interest; and
 - (iv) Late payment charges.
 - (B) The percentage rate at which interest accrues on assessments that are not paid when due.
 - (C) The percentage rate used to calculate the charges for late payment or the amount of a fixed charge for late payment.
- (b) The association is not required to comply with paragraph (a) of this subsection if the association has commenced litigation by filing a complaint against the owner and the litigation is pending when the statement would otherwise be due.
- (9)(a) Except as provided in paragraph (b) of this subsection, the association shall make the documents, information and records described in subsections (1) and (4) of this section and all other records of the association reasonably available for examination and, upon written request, available for duplication by an owner and any mortgagee of a lot that makes the request in good faith for a proper purpose.
- (b) Records kept by or on behalf of the association may be withheld from examination and duplication to the extent the records concern:
 - (A) Personnel matters relating to a specific identified person or a person's medical records.
 - (B) Contracts, leases and other business transactions that are currently under negotiation to purchase or provide goods or services.
 - (C) Communications with legal counsel that relate to matters specified in subparagraphs (A) and (B) of this paragraph and the rights and duties of the association regarding existing or potential litigation or criminal matters.
 - (D) Disclosure of information in violation of law.
 - (E) Documents, correspondence or management or board reports compiled for or on behalf of the association or the board of directors by its agents or committees for consideration by the board of

directors in executive session held in accordance with [ORS 94.640 (8)] **section 3 (2) of this 2021 Act.**

(F) Documents, correspondence or other matters considered by the board of directors in executive session held in accordance with [ORS 94.640 (8)] **section 3 (2) of this 2021 Act.**

(G) Files of individual owners, other than those of a requesting owner or requesting mortgagee of an individual owner, including any individual owner's file kept by or on behalf of the association.

(10) The association shall maintain a copy, suitable for the purpose of duplication, of the following:

(a) The declaration and bylaws, including amendments or supplements in effect, the recorded plat, if feasible, and the association rules and regulations currently in effect.

(b) The most recent financial statement prepared pursuant to subsection (4) of this section.

(c) The current operating budget of the association.

(d) The reserve study, if any, described in ORS 94.595.

(e) Architectural standards and guidelines, if any.

(11) The association, within 10 business days after receipt of a written request by an owner, shall furnish the requested information required to be maintained under subsection (10) of this section.

(12) The board of directors, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs for furnishing the documents, information or records.

SECTION 14. ORS 94.673 is amended to read:

94.673. (1) The homeowners association of a subdivision that received preliminary plat approval before July 1, 1982, shall comply with the provisions of ORS 94.640 (1), (3) , (4) and (8) [to (11)] and 94.670 **and section 3 of this 2021 Act** if:

(a) An owner submits a written request to the homeowners association to comply with the provisions;

(b) The subdivision otherwise conforms to the description of a planned community under ORS 94.550; and

(c) The subdivision is not otherwise exempted under ORS 94.570.

(2) A homeowners association board of directors is not subject to ORS 94.780 unless the association fails to comply with subsection (1) of this section after receiving a written request from an owner.

SECTION 15. ORS 94.780 is amended to read:

94.780. (1) Failure of the declarant, association, any association member or any other person subject to ORS 94.550 to 94.783 to comply with applicable sections of ORS 94.550 to [94.785 *shall be*] **94.783 is** cause for suit or action to remedy the violation or to recover actual damages. The prevailing party is entitled to reasonable attorney fees and court costs.

(2) Failure of an association to accept administrative responsibility under ORS 94.616 [*shall be*] **is** a defense for the declarant against an action brought under this section.

(3) A suit or action arising under this section must be commenced within one year after the discovery or identification of the alleged violation.

SECTION 16. ORS 100.005 is amended to read:

100.005. As used in this chapter, unless the context requires otherwise:

(1) "Acknowledged" means, with respect to a signature on a document or a signed document, that the document is acknowledged in the form and manner provided for the acknowledgment of a deed.

(2) "Assessment" means any charge imposed or levied by the association of unit owners on or against a unit owner or unit pursuant to provisions of the declaration or the bylaws of the condominium or provisions of this chapter.

(3) "Association of unit owners" or "association" means the association provided for under ORS 100.405.

(4) "Association property" means any real property or interest in real property acquired, held or possessed by the association provided for under ORS 100.405.

(5) "Blanket encumbrance" means a trust deed or mortgage or any other lien or encumbrance, mechanic's lien or otherwise, securing or evidencing the payment of money and affecting more than one unit in a condominium, or an agreement affecting more than one such unit by which the developer holds such condominium under an option, contract to sell or trust agreement.

(6) "Building" means a multiple-unit building or single-unit buildings, or any combination thereof, comprising a part of the property. "Building" also includes a floating structure described in ORS 100.020 (3)(b)(D).

(7) "Certified by the association" or "executed by the association" means signed by the secretary and the president or chairperson of the association.

(8) "Commissioner" means the Real Estate Commissioner.

(9) "Common elements" means the general common elements and the limited common elements.

(10) "Common expenses" means:

(a) Expenses of administration, maintenance, repair or replacement of the common elements; and

(b) Expenses declared common by this chapter or by the declaration or the bylaws of the particular condominium.

(11) "Condominium" means:

(a) With respect to property located within this state:

(A) The land, if any, whether fee simple, leasehold, easement or other interest or combination thereof, and whether contiguous or noncontiguous;

(B) Any buildings, improvements and structures on the property; and

(C) Any easements, rights and appurtenances belonging to the property submitted to the condominium form of ownership under this chapter; and

(b) With respect to property located outside this state, the property that has been committed to the condominium form of ownership in accordance with the jurisdiction within which the property is located.

(12) "Conversion condominium" means real property that a declarant intends to submit to the condominium form of ownership under this chapter on which there is a building, improvement or structure that was occupied prior to any negotiation and that is:

(a) Residential in nature, at least in part; and

(b) Not wholly commercial or industrial, or commercial and industrial, in nature.

(13) "Declarant" means a person who records a declaration under ORS 100.100 or a supplemental declaration under ORS 100.110.

(14) "Declaration" means the instrument described in ORS 100.105 by which the condominium is created and as modified by any amendment recorded in accordance with ORS 100.135 or supplemental declaration recorded in accordance with ORS 100.120.

(15) "Developer" means a declarant or any person that acquires an interest in a condominium from declarant, successor declarant or subsequent developer for the primary purpose of resale.

(16) "Electric vehicle charging station" or "charging station" means a facility designed to deliver electrical current for the purpose of charging one or more electric motor vehicles.

(17) "Electronic meeting" means a meeting that is conducted through telephone, teleconference, video conference, web conference or any other live electronic means where at least one participant is not physically present.

~~[(17)]~~ (18) "Flexible condominium" means a condominium containing variable property that may be redesignated, reclassified or withdrawn from the condominium pursuant to ORS 100.150 (1).

~~[(18)]~~ (19) "General common elements," unless otherwise provided in a declaration, means all portions of the condominium that are not part of a unit or a limited common element, including but not limited to the following:

(a) The land, whether fee simple, leasehold, easement, other interest or combination thereof, together with any rights and appurtenances;

(b) The foundations, columns, girders, beams, supports, bearing and shear walls, windows, except glazing and screening, unit access doors, except glazing and screening, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances and exits of a building;

(c) The basements, yards, gardens, parking areas and outside storage spaces;

(d) Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal and incinerating;

(e) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(f) The premises for the lodging of janitors or caretakers of the property; and

(g) All other elements of a building and the condominium necessary or convenient to their existence, maintenance and safety, or normally in common use.

[19] **(20)** “Governing document” means articles of incorporation, bylaws, a declaration or a rule, regulation or resolution that was properly adopted by the association of unit owners or any other instrument or plat relating to common ownership or common maintenance of a portion of a condominium that is binding upon units within the condominium.

[20] **(21)** “Leasehold” means the interest of a person, firm or corporation that is the lessee under a lease from the owner in fee and that files a declaration creating a condominium under ORS 100.100.

[21] **(22)** “Limited common elements” means those common elements designated in the declaration, as reserved for the use of a certain unit or number of units, to the exclusion of the other units.

[22] **(23)** “Majority” or “majority of unit owners” means more than 50 percent of the voting rights allocated to the units by the declaration.

[23] **(24)** “Mortgagee” means any person who is:

(a) A mortgagee under a mortgage;

(b) A beneficiary under a trust deed; or

(c) The vendor under a land sale contract.

[24] **(25)** “Negotiation” means any activity preliminary to the execution by either developer or purchaser of a unit sales agreement, including but not limited to advertising, solicitation and promotion of the sale of a unit.

[25] **(26)** “Nonwithdrawable variable property” means property which pursuant to ORS 100.150 (1)(b):

(a) Is designated nonwithdrawable in the declaration and on the plat; and

(b) Which may not be withdrawn from the condominium without the consent of all of the unit owners.

[26] **(27)** “Percent of owners” or “percentage of owners” means the percent of the voting rights determined under ORS 100.525.

[27] **(28)** “Purchaser” means an actual or prospective purchaser of a condominium unit pursuant to a sale.

[28] **(29)** “Recorded” means to cause to be recorded by the county officer in the real property records for each county in which the condominium is located.

[29] **(30)** “Recording officer” means the county officer charged with the duty of filing and recording deeds and mortgages or any other instruments or documents affecting the title to real property.

[30] **(31)** “Reservation agreement” means an agreement relating to the future sale of a unit which is not binding on the purchaser and which grants purchaser the right to cancel the agreement without penalty and obtain a refund of any funds deposited at any time until purchaser executes a unit sales agreement.

[31] **(32)** “Sale” means any disposition or transfer of a condominium unit, or an interest or estate therein, by a developer, including the offering of the property as a prize or gift when a

monetary charge or consideration for whatever purpose is required by the developer. As used in this subsection, "interest or estate" includes a lessee's interest in a unit for more than three years or less than three years if the interest may be renewed under the terms of the lease for a total period of more than three years. "Interest or estate" does not include any interest held for security purposes or a timeshare regulated or otherwise exempt under ORS 94.803 and 94.807 to 94.945.

[32)] **(33)** "Special declarant right" means any right, in addition to the regular rights of the declarant as a unit owner, reserved for the benefit of or created by the declarant under the declaration, bylaws or the provisions of this chapter.

[33)] **(34)** "Staged condominium" means a condominium that provides for annexation of additional property pursuant to ORS 100.115 and 100.120.

[34)] **(35)** "Successor declarant" means the transferee of any special declarant right.

[35)] **(36)** "Termination date" means that date described in ORS 100.105 (2)(b) or (7)(d).

[36)] **(37)** "Transitional committee" means the committee provided for under ORS 100.205.

[37)] **(38)** "Turnover meeting" means the meeting provided for under ORS 100.210.

[38)] **(39)** "Unit" or "condominium unit" means a part of the property which:

(a) Is described in ORS 100.020 (3);

(b) Is intended for any type of independent ownership; and

(c) The boundaries of which are described pursuant to ORS 100.105 (1)(d).

[39)] **(40)** "Unit designation" means the number, letter or combination thereof designating a unit in the declaration and on the plat.

[40)] **(41)** "Unit owner" means, except to the extent the declaration or bylaws provide otherwise, the person owning fee simple interest in a unit, the holder of a vendee's interest in a unit under a recorded installment contract of sale and, in the case of a leasehold condominium, the holder of the leasehold estate in a unit.

[41)] **(42)** "Unit sales agreement" means a written offer or agreement for the sale of a condominium unit which when fully executed will be binding on all parties. "Unit sales agreement" includes but is not limited to an earnest money receipt and agreement to purchase and other such agreements which serve as an agreement of sale for a cash transaction or which are preliminary to the execution of an installment contract of sale, but does not include a reservation agreement.

[42)] **(43)** "Variable property" means property described in ORS 100.150 (2) and designated as variable property in the declaration and on the plat.

[43)] **(44)** "Voting rights" means the portion of the votes allocated to a unit by the declaration in accordance with ORS 100.105 (1)(j).

SECTION 17. ORS 100.117 is amended to read:

100.117. (1) As used in this section and ORS 100.118, "document" means the declaration, supplemental declaration or bylaws of a condominium.

(2) Notwithstanding a provision in a document or this chapter, a document or an amendment to a document may be corrected by a correction amendment under this section to:

(a) Correct the omission of an exhibit to a document.

(b) Correct a mathematical mistake, including, but not limited to:

(A) The calculation of the stated interest of affected units in the common elements;

(B) The area in square feet of a unit specified in the declaration or supplement declaration; and

(C) Liability of a unit for common expenses or right to common profits.

(c) Correct an inconsistency within a document or between or among the documents or a plat, supplemental plat or plat amendment.

(d) Correct an ambiguity, inconsistency or error with respect to an objectively verifiable fact.

(e) Authorize a plat amendment by correction under ORS 100.118 or an affidavit of correction under ORS 100.118.

(f) Correct a provision that was inconsistent with this chapter at the time the document was recorded.

(g) Correct the omission of a provision required under this chapter.

(3) A correction amendment adopted under subsection (4) of this section must include:

- (a) The words "Correction Amendment" in or after the title;
 - (b) A reference to the recording index numbers and date of recording of the declaration, bylaws, plat, the document being corrected and any other applicable supplemental declarations, supplemental plats or amendments to the documents;
 - (c) A statement of the purpose of the correction; and
 - (d) A reference to any provisions of subsection (2) of this section that authorize the correction amendment.
- (4) The board of directors may adopt a correction amendment under this section after giving notice as provided in subsection (8) of this section. No action by the unit owners is required.
- (5) The declarant of the condominium may unilaterally adopt a correction amendment under this section to:
- (a) A document or an amendment to a document, before the conveyance of the first unit in the condominium.
 - (b) A supplemental declaration or an amendment to the supplemental declaration, before conveyance of the first unit created by the supplemental declaration.
 - (6) A correction amendment under this section is not effective unless:
 - (a) The amendment is approved by the Real Estate Commissioner under ORS 100.110 and, to the extent required, ORS 100.410 and 100.413, by the county assessor and by the county tax collector, if required, under ORS 100.110;
 - (b) The amendment is certified by the association as adopted in accordance with subsection (4) of this section and acknowledged or is certified by the declarant under subsection (5) of this section and acknowledged; and
 - (c) Is recorded.
 - (7) A correction amendment to a declaration or a supplemental declaration that corrects the boundary of a unit, common element, variable property or other property interest constitutes a conveyance to the extent necessary to effectuate the correction.
 - (8)(a) Except for a correction amendment adopted by a declarant under subsection (5) of this section, the notice of any meeting of the board of directors at which the board intends to consider adoption of a correction amendment under this section must:
 - (A) State that the board intends to consider the adoption of a correction amendment.
 - (B) Specify the document to be corrected.
 - (C) Include a description of the nature of the correction.
 - (b) At least three days before the meeting of the board of directors, a notice of the meeting must be given to all owners in the manner described in ORS 100.420 [(4)] **(6)**.
 - (9) The owner of a unit materially affected by the correction must be given notice of the meeting of the board of directors under subsection (8) of this section in the manner required under ORS 100.407 (4).
 - (10) The board of directors shall provide a copy of the recorded correction amendment and any plat amendment by correction or by affidavit of correction under ORS 100.118 recorded concurrently with the correction amendment to any owner described under subsection (9) of this section and to any owner if the correction changes that owner's:
 - (a) Allocation of voting rights;
 - (b) Liability for common expenses that changes the amount of any assessment; or
 - (c) Allocation of interest in the common elements.

UNIT CAPTIONS

SECTION 18. The unit captions used in this 2021 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2021 Act.

EMERGENCY CLAUSE

SECTION 19. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by Senate March 24, 2021

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House May 11, 2021

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

.....
Shemia Fagan, Secretary of State

Final Report of the OSB
Paraprofessional Licensing
Implementation Committee
(Apr. 1, 2022)

Oregon State Bar

Paraprofessional Licensing Implementation Committee

Final Report

April 1, 2022

Final Report of the Paraprofessional Licensing Implementation Committee

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Executive Summary

Background. In 2017, the Oregon State Bar (OSB or Bar) Futures Task Force recommended the establishment of a limited-scope license for paralegals as one tool to help address an intractable and widening access-to-justice gap among low and moderate-income individuals.¹ The OSB Futures Task Force Report urged that:

“We must broaden the options available for persons seeking to obtain legal services, while continuing to strive for full funding of legal aid and championing pro bono representation by lawyers.”

After over a year of discussion among themselves and with other lawyers, judges and community members, the OSB Board of Governors (BOG or Board) was persuaded to move forward with the Task Force recommendation. During this time, the 2018 Barriers to Justice Report² was released, finding that among legal aid eligible Oregonians, 84 percent of those with a civil legal problem are unable to access legal help, with persons of color disproportionately impacted. Oregon Judicial Department (OJD) data showed that the vast majority of litigants in Oregon dissolution and landlord-tenant proceedings continue to be unrepresented. And many expressed concern that the lack of affordable, accessible legal help is putting substantial strain on the courts, contributing to inequitable outcomes, and eroding public trust in the legal system.

Thus, to further its public service mission to advance a fair, inclusive, and accessible justice system, the BOG voted unanimously in September 2019 to establish the Paraprofessional Licensing Implementation Committee (“PLIC” or “Committee”). The Committee was charged with developing a program for licensing paralegals to perform limited-scope legal services in family law and landlord-tenant law cases, areas of high need where the vast majority of litigants are self-represented. In February 2020, the Board appointed Senior Judge Kirsten Thompson to chair the Committee and established the following charge for the Committee:

Engage stakeholders to develop a regulatory framework for licensing paralegals consistent with the recommendations of the OSB Futures Task Force Report in order to increase access to the justice system while ensuring the competence and integrity of the licensed paralegals and improving the quality of their legal services.

¹ The OSB Futures Task Force cited a number of authorities as proof of the access to justice gap in the United States and Oregon, including the 2016 American Bar Association Commission on the Future of Legal Services Report, which found that “[d]espite sustained efforts to expand the public’s access to legal services [over the past century], significant unmet needs persist” and that “[m]ost people living in poverty, and the majority of moderate-income individuals, do not receive the legal help they need.” The OSB Futures Task Force Executive Summary and full report can be found on the OSB website.

² The full report can be found on the OSB website at <https://olf.osbar.org/files/2019/02/Barriers-to-Justice-2018-OR-Civil-Legal-Needs-Study.pdf>

PLIC Workgroup Structure and Timeline. The Committee divided its work among three workgroups: the Regulation Workgroup (focused on scope of practice and other post-licensure requirements), the Admissions and Education Workgroup (focused on pre-licensure requirements), and the Stakeholders Workgroup (focused on stakeholder engagement). In developing its recommendations, the Committee sought to balance the Board’s interests in increasing access to justice and in ensuring competent and quality legal services. It was mindful throughout not to create barriers to entry or service that would not necessarily result in increased competence or quality of legal services. In addition, in keeping with Goal 1 of the OSB 2021-2023 Diversity Action Plan, the Committee thoughtfully considered impacts on diversity and equity in developing its recommendations.

The Committee and its workgroups met regularly from the fall of 2020 through the spring of 2022, engaging throughout with a broad range of stakeholders. The Committee itself was made up of two judges, two paralegals, two attorneys that practice family law, two attorneys that practice landlord-tenant law, a representative of the New Lawyers Division and a Public Member. Judge Thompson chaired the Committee. An advisory group was created to provide the Committee with additional input, which included representatives from the OSB House of Delegates, Oregon’s law schools, Oregon legal aid providers, the Oregon Trial Lawyers Association, the Oregon Association of Defense Counsel, the Oregon Circuit Court Judges Association, Oregon Community Colleges and other interested persons³. Agendas, minutes, and other resources informing the work have been updated regularly on the [OSB website](#) and widely disseminated. Judge Dan Harris reached out personally to a number of groups, including the Circuit Court Judges Association, the State Family Law Advisory Committee, the Tribal Court – State Court Forum, and numerous Bar sections and committees. The [July Bar Bulletin](#) included an article about the program, and Judge Thompson has given the Oregon Supreme Court updates about the Committee’s work at the Court’s public meetings in December 2020, March 2021, July 2021, and December 2021.

Summary. The Committee’s goal was to craft a program that would increase opportunities for low and moderate income Oregonians to receive legal assistance, especially when they otherwise would have gone without assistance. Two key principles guided the Committee throughout its deliberations: consumer protection and equity.

Generally, the Committee’s recommendations relate to the scope of practice allowed by the license, educational and other requirements to obtain a license, and regulatory requirements post-licensure. The recommendations largely follow those outlined by the OSB Futures Task Force, with notations where they deviate. This report also seeks to respond to specific questions and feedback raised by the Court, the BOG, and others during the public comment process.

To summarize, the Committee recommends that licensed paralegals (LPs) be permitted to provide a broad range of legal advice and assistance in the areas of family law and landlord-tenant law. LPs should be prohibited from providing certain types of assistance and in specific types of cases, where concerns about client protection outweigh any increase in access to legal help.

³ Rosters are available on the [OSB website](#).

To encourage a diversity of applicants, the Committee recommends that a broad range of educational backgrounds be accepted as a prerequisite for licensure. To ensure the requisite skills and knowledge, all should be required to have a minimum of 1500 hours of experience working under attorney supervision prior to licensure⁴, as well as 20 hours of coursework in topics directly relevant to their practice (e.g. ethics, civil procedure, family law, landlord-tenant law). In addition, applicants should be evaluated for character, fitness, and competence prior to receiving a license.

Finally, the Committee recommends that licensed paralegals be subject to the same regulatory requirements post-licensure as attorneys, including mandatory malpractice coverage, the use of IOLTA accounts, contributions to the Client Security Fund, and compliance with Rules of Professional Conduct specifically for LPs. These regulatory requirements are not unduly burdensome, and serve important consumer protection functions. The Committee also recommends that licensed paralegals be subject to the same restrictions on fee sharing and firm ownership as currently apply to attorneys.

The Committee would like to thank the Board of Governors for its leadership in moving this initiative forward and for its trust in and support of the Committee's work. The Committee would also like to thank the dozens of advisory members and interested parties who have contributed their time and effort throughout this process, and without whose contributions this report would not be possible.

Legal Paraprofessional Programs in Other States

The Committee considered the experiences of other states that have implemented or are considering implementing various types of limited scope licenses to provide legal services. Washington, Arizona, Utah, and the Province of Ontario currently have legal paraprofessional programs. Other jurisdictions are in various stages of developing programs.⁵

⁴ The one exception is those with a JD, who would be required to have 750 hours of supervised practice.

⁵ Minnesota is in the second year of a pilot project that will run through 2023. Minnesota's temporary licensure program was one of the inspirations for the temporary licensure rules in this report. California is moving forward with a proposal that has been undergoing a public comment period. Several other states are developing programs, including Colorado, Connecticut, Illinois, New Mexico, Nevada and both North and South Carolina. In Canada, Ontario has a longstanding paraprofessional program with thousands of license paralegals and Saskatchewan is exploring creating one.

		PLIC Recommendation for Oregon	Arizona	Utah	Washington	Ontario, Canada
Title		Licensed Paralegal	Legal Paraprofessional	Licensed Paralegal Practitioner	Limited License Legal Technician	Licensed Paralegal
Practice Area(s)		Family Law, Landlord-tenant Law	Family Law, limited jurisdiction civil, limited jurisdiction criminal where no jail time is involved. Some administrative law.	Family law, eviction, debt collection	Family law	Small claims, ADR, provincial offenses, summary convictions
Education and Experience	Minimum education	Associates Degree, with various waiver options.	Associate's Degree in paralegal studies or Bachelor's Degree	Associates degree	Associates degree	Accredited paralegal program graduate
	Required course work	20 hours of specific courses	Course work designated by rule.	Paralegal studies, practice area course	Paralegal studies, practice area course	General and practice area courses
	Law-related work experience	1,500 hours; 500 in family law and 250 in L/T.	Alternative path not requiring education; 7 years full time paralegal work	1,500 hours	3,000 hours	120 hours field work
Licensing Exam		Limited Testing⁶	Yes	Yes	Yes	Yes
Insurance/Bond		Yes, through PLF	No	Disclosure Required	Insurance	Insurance
Rules of Conduct		Yes	Yes	Yes	Yes	Yes
Scope of Services	Select forms	Yes	Yes	Yes	Yes	Yes
	Complete pre- approved forms	Yes	Yes	Yes	Yes	Yes

⁶ The PLIC does not recommend a general licensing exam, but does recommend that the Bar offer testing in scope of practice and ethics as an alternative to the applicant submitting a portfolio of work.

		PLIC Recommendation for Oregon	Arizona	Utah	Washington	Ontario, Canada
	Draft other legal forms	Yes	Yes	No	Yes, if approved by attorney	Yes
	File and serve forms	Yes	Yes	Yes	Yes	Yes
	Provide legal information	Yes	Yes	Yes	Yes	Yes
	Provide legal advice	Yes, within scope of practice	Yes, within scope of practice	Yes, limited in scope	Yes, limited in scope	Yes
	Negotiate on client's behalf	Yes	Yes	Yes, in mediation	No	Yes
	Appear in court	In limited circumstances	In limited circumstances	No	No	Yes
Other	Trust accounts	Yes	No	Yes	Yes	Yes
	Continuing education Oversight	Yes Board to be established	Yes LDP Board	Yes Board (TBD)	Yes LLLT Board	Yes Paralegal Standing Committee
Statute/Rule		TBD	ACJA 7-208	Draft Rule 14-802	APR 28	Law Society Act

Washington's Limited License Legal Technician (LLLT) Program

The experience in Washington is particularly instructive and worth discussion because it was the first state in the nation to consider the use of licensed paralegals and because it recently sunset its program.

In 2021, the Stanford Center on the Legal Profession released a report entitled "[The Surprising Success of Washington State's Limited License Legal Technician Program](#) (report)⁷." The report lays out the reasons the program was terminated, and how those reasons may differ from the conventional wisdom that the program was unsuccessful.

⁷ [The Surprising Success of Washington State's Limited License Legal Technician Program - White Paper - Stanford Law School](#), Jason Solomon and Nicole Smith, April 2021.

According to the report, Washington LLLTs successfully provided high quality legal services to clients who otherwise would likely have appeared in court without representation. In fact, many LLLTs continue to provide such services to this day, as those already licensed have been permitted to continue practicing even after the program's termination. LLLTs improved outcomes for these clients and, importantly, brought legal services to diverse communities throughout Washington that have traditionally struggled to find representation at all.

Two often cited reasons for the program's termination are cost and lack of interest, but the report argues that these explanations are inadequate.

According to the report, at the time the program was terminated, there were over 200 students on track to become LLLTs, and interest in the program was increasing rather than decreasing. For example, about twice as many applicants sat for the February 2021 exam as had for recent prior exams

As to the issue of cost, the report noted the program cost \$1.3 million over a period of seven years, which is less than \$200,000 per year. This comes out to about \$7 per Washington attorney per year. While reasonable people can disagree on whether it is appropriate for attorneys to subsidize the program, the actual cost imposed on attorneys was modest. It is also worth considering that the amount of time the program ran was likely not sufficient for the program to become self-funding, as was Washington's intention.

While Washington's program did manage to license many LLLTs, it is also worth noting that the program suffered from structural deficiencies that likely reduced the number of applicants. For example, the requirement for 3000 hours experience created practical and financial barriers to applicants who would have otherwise been well suited to become LLLTs. Washington LLLTs were also required to take courses offered only by law schools⁸ as a prerequisite to licensure. Law school proved expensive, and applicants were unable to secure student loans for such courses because they were not candidates for a law degree. Proposals were in place to reduce many of these barriers at the time the program was terminated.

The Committee learned from the Washington experience. The Committee's proposal reduces the number of experiential hours by half, aligning with the requirements of the Province of Ontario and other US states. Course requirements can be met through any institution willing to provide the courses. Allowing an immediate temporary license for highly experienced paralegals and those licensed by other jurisdictions provides a way to quickly scale up while details of the program (e.g. testing and portfolio requirements) are developed and newly interested applicants populate the pipeline.

There will be costs associated with an Oregon LP program, particularly with respect to the admissions components. In order to keep such costs to a minimum, the Committee originally recommended (in line with that of the Futures Task Force) not to conduct an independent assessment of the applicants' competence. Feedback received during the comment process resulted in the Committee changing its recommendation to require an independent assessment through either an exam or portfolio of work. Application and license fees will undoubtedly help to offset those costs, but it is unknown when or if the

⁸ Preliminary Evaluation of Washington's LLLT Program, March 2017, Rebecca Sandefur and Thomas Clark, https://www.americanbarfoundation.org/uploads/cms/documents/preliminary_evaluation_of_the_washington_state_limited_license_legal_technician_program_032117.pdf

program will ultimately be self-sustaining. It is worth noting, however, that an Oregon LP program was never intended as a revenue source, or even as a revenue neutral program, but as a necessary step in advancing the OSB's access to justice mission.

Admissions and Education Workgroup Recommendations

The Admissions and Education Workgroup was charged with recommending specific requirements for licensure. These include experiential and educational requirements, creation of multiple pathways to licensure, evaluation of applicant competency, and continuing legal education requirements.

Recommendation 1.2 of the OSB Futures Task Force provided that:

An applicant should have an associate's degree or higher 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.

The Committee agrees with this recommendation, including the exception for highly experienced paralegals and the exception for applicants with a J.D.

The Admissions and Education Workgroup was guided by the same two principles of competence and equity as was the Regulatory Workgroup and the entire PLIC. To that end, the workgroup focused on what education and training was necessary to demonstrate that an LP was competent to represent a client. It carefully considered what might be needed to expand the pool of competent LPs, paying special attention to diversity and equity, and encouraging the participation of those working in law or law-adjacent jobs in rural communities throughout Oregon. In reviewing existing and proposed paraprofessional licensing programs within the US and Canada, it asked whether those programs met these principles for an Oregon program.

The recommendations of the workgroup and the full Committee reflect the dual goals of public protection and increasing access to justice by ensuring licensure is available to Oregonians of diverse backgrounds and experience. The Committee recommends numerous methods of satisfying the education requirements in particular in an effort to ensure that the program is open to all well qualified applicants, and to avoid some of the barriers to entry that have been cited in Washington and other states.

The Committee recommends that a board of volunteer lawyers, members of the public, and ultimately licensed paralegals, be charged with reviewing and evaluating LP applicant competence, character, and fitness. The Committee also recommends a number of requirements for licensure that would apply to all applicants. Many of these general standards were discussed by both the Regulation Workgroup and Admissions and Education Workgroup.

General Standards for Licensure

The Committee recommends that LPs meet character and fitness requirements that are developed specifically for LPs and that are substantially the same as those that currently apply to lawyers. An LP should have a record of conduct that demonstrates a level of judgment and diligence likely to result in competent representation in the best interests of their clients and that justifies the trust of those clients, adversaries, courts, and the public concerning the professional duties and obligations owed to each group.

The following chart briefly summarizes the Committee's recommendation for education and experience requirements for licensed paralegals. Details of each of these pathways are in the sections that follow.

Required Education or Education Waiver	Required Substantive Experience
Associate's degree or higher in paralegal studies Or Associate's degree in any subject plus a paralegal certificate Or Bachelor's degree or higher in any subject	1,500 hours of substantive experience in the last three years.
J.D. from an ABA accredited law school	6 months or 750 hours of substantive experience.
Paralegal credentials from a nationally-recognized paralegal association Or Military paralegal experience Or Equivalent licensure in another jurisdiction ⁹	1,500 hours of substantive experience in the last three years.
N/A (Highly experienced paralegal education waiver)	Five years or 7,500 hours of substantive experience, with at least 1,500 hours in the last three years.
<ul style="list-style-type: none">• <u>All applicants</u> must have 500 hours of experience in family law and/or 250 hours of experience in landlord-tenant law for endorsement in those areas.• <u>All applicants</u> must complete 20 hours of designated pre-licensure coursework.• <u>All applicants</u> will be required to demonstrate competence in skills and knowledge necessary to engage in the activities within the scope of license, through either an exam or portfolio of work, or some combination of the two.	

⁹ This pathway could mirror attorney reciprocity rules currently in use, but will require evaluation of LP-type programs in other states to determine which closely enough mirror the Oregon program to be applicable.

Educational Requirements

The Committee recommends that an applicant be required to possess one of the following educational backgrounds in order to qualify for licensure:

- An associate's degree or higher in paralegal studies, from an accredited institution;¹⁰
- A juris doctor from an ABA accredited law school; or
- A bachelor's degree or higher in any course of study.¹¹

The first of these two options were recommended specifically by the Futures Task Force. The third is a recommended change from the Futures Task Force Recommendations. The goal of this recommendation is to encourage a larger and more diverse cross-section of Oregonians to seek licensure, including those who do not have a traditional legal education.

Experiential Requirements

One of the cornerstone goals of the Committee was to create a system that would license LPs who are qualified and competent to represent clients. The Committee believed that requiring substantial experience working as a paralegal under attorney supervision was a critical component to obtaining that level of competency. Experiential learning is widely recognized as an important method of developing and retaining skills and knowledge.

As was recommended by the Futures Task Force, the Committee recommends a minimum of 1,500 hours of "substantive paralegal experience" obtained under the supervision of an Oregon licensed attorney. Completion of the required minimum experience must be certified by the supervising attorney. Attorney certification of the required experience is a key component of ensuring that LPs have the minimum core competencies to practice independently in the future.

The 1,500 hours recommended by the Committee is equivalent to the required experience under Utah's program and half the hours originally required by Washington. The relatively high number of hours required in Washington has been considered a significant barrier to entry to some otherwise qualified candidates, and has been cited as one of several reasons that Washington had fewer LLLT's than might

¹⁰ The Futures Task Force originally recommended that licensure require a degree from an ABA-approved program. The Admissions and Education Workgroup, with the assistance and advise of the educators on the advisory committee, noted that restricting applicants to ABA-approved programs would limit the education options to only one community college in Oregon that currently has ABA-approval. Additionally, the workgroup noted that there are a number of important reasons a community college may choose not to seek ABA-approval for its paralegal program, the greatest of which are costs and administration.

¹¹ Some members of the Committee and advisory group have expressed disagreement with this third option, arguing that the program should not go this far beyond the educational waivers explicitly referenced in the Futures Task Force Report. They argue that, with the exception of the highly experienced paralegals who are able to substitute additional experience or certifications for the required education, some amount of legal education should be required of all applicants, and that a bachelor's degree in an unrelated subject ought not to be treated as equivalent to an associate's degree in paralegal studies.

have been hoped. Ensuring that Oregon's program is open and accessible to a diverse pool of applicants is one of the reasons the Committee chose to go with the number of hours required in Utah.

The Committee also recommends that individual LPs could be licensed to practice in family law, landlord-tenant law, or both. To that end, the Committee recommends that all applicants have a minimum of 500 hours in family law and/or 250 hours in landlord-tenant law for licensure in those areas.

Additionally, the Committee recommends that applicants who have a JD from an ABA accredited law school be permitted to satisfy the experience requirement with 750 hours of experience rather than the full 1,500. However, these applicants should still be required to meet the minimum 500 hours in family law and/or 250 in landlord-tenant law in order to be licensed in those areas. The Committee originally considered waiving the 500/250-hour requirements for JDs, but was persuaded by public feedback that law school was not an adequate substitute for the substantive subject area experience gained through working as a paralegal in those areas.

Education Waivers

The Committee recommends waiver of the standard education requirements for several categories of existing paralegals.

First, as recommended by the Futures Task Force, the Committee recommends a waiver of the educational requirements listed above for individuals who demonstrate either five years or 7,500 hours of substantive experience, with at least 1,500 hours of substantive experience in the last three years. These applicants would still be subject to other admissions requirements discussed below.

In addition, the Committee recommends education waivers be provided to three groups of practicing paralegals who may not have any specific college degree, but who also have demonstrated substantial experience in the practice areas:

- an applicant who possesses paralegal credentials from a nationally recognized paralegal association;¹²
- an applicant who is an active-duty, retired, former, or reserve member of a component of any branch of the US Armed Forces, qualified in a military operation specialty with a minimum rank of E6 or above in a paralegal specialty rate as a Staff Sergeant (Army and Marines), Petty Officer First Class (Navy), Technical Sergeant (Air Force), or higher as a supervisory paralegal within the noted branch of service; and
- an applicant with an equivalent license in another jurisdiction. This process could be modeled after reciprocity rules for attorneys, and would require an evaluation of which other states have programs that are sufficiently comparable to the Oregon program to be appropriate.¹³

¹² The Committee recommends that qualifying paralegal credentials would include one of the following: The National Association of Legal Assistants (NALA) Certified Paralegal Exam® (CP) with current CP® Credentials; The National Federation of Paralegal Associations' (NFPA) Paralegal Advanced Competency Exam® (PACE) with current RP® Credentials; or Paralegal Core Competency Exam® (PCCE) with current CRP™ credentials; or The NALS Professional Paralegal (PP) Exam with current PP™ Credentials.

These later groups would be required to demonstrate the normal 1,500 hours of substantive experience required for applicants who meet the standard educational requirements.

Allowing these education waivers was seen by the Committee as an important step in recruiting a diverse pool of well qualified applicants to the program. Allowing for appropriate reciprocity rules in particular was seen as removing a barrier to entry that would otherwise discourage applicants who might have considered coming to Oregon.

Pre-Licensure Coursework Requirements

The Committee recommends that all applicants have completed 20 hours¹⁴ of specifically designated courses specified by the Oregon State Bar. These courses could be offered either by the Bar directly or through Oregon Community Colleges working in consultation with the Bar. The Committee recommends that these courses include:

1. two hours on legal ethics for paralegals;
2. one hour on IOLTA account administration;
3. two hours on Oregon Rules of Civil Procedure to include:
 - a. Oregon State Specific Court Practice for Trial Court Rules,
 - b. Supplementary Local Rules; and
 - c. Uniform Trial Court Rules;
4. one hour on identifying scope-of-license issues and practical identification of mandatory referral scenarios;
5. one hour on limited scope law practice management skills for newly licensed paraprofessionals;
6. one hour on mental health/substance abuse in the legal profession; and
7. the remaining hours on the practice areas in which the applicant seeks endorsement.

All courses must be accredited by the Oregon State Bar, which should include continuing legal education (CLE) programs approved for attorneys or paralegals.

¹³ The Committee recommends that for reciprocity purposes, the 1,500 hours of required paralegal experience could be satisfied while working under the supervision of an attorney licensed in another jurisdiction.

¹⁴ The term “hours” refers to actual hours, as are used for OSB CLE requirements, and not to “credit hours” as used in some educational settings. Thus, 20 hours of pre-licensure coursework is intended to take approximately 20 actual hours to complete.

Evaluation of Core Competencies – Applicant Testing and Portfolio Submissions

The Committee spent considerable time discussing how to evaluate the competency of a potential LP. As with attorneys, identifying specific skill sets or attributes is difficult, and thus often not explicitly required as part of licensure. However, the Committee concluded it was important to set explicit expectations regarding LPs' core competencies.

The Committee recommends that a board or committee of volunteer lawyers, members of the public, and eventually LPs be authorized to assess whether applicants meet core competencies and make admissions recommendations to the Oregon Supreme Court. While some applicants will have gone through an Oregon-based paralegal studies program that may have considered these core competencies, many will have taken other pathways. The Committee makes no recommendation regarding curricula of educational institutions and does not recommend that the Bar approve individual paralegal programs.

The Committee recommends the Bar develop at least two methods for verifying an applicant's competency in both ethics and scope of practice, with strong emphasis on the need for flexibility in how to verify those competencies, and with the intention that an applicant could eventually use either method, or a combination of both, to satisfy licensure requirements:

1. The first method would be for the applicant to pass a written examination focused on legal ethics and scope of practice issues.
2. The second method would be the presentation of a portfolio of work to the licensure board that demonstrates competency to engage in activities within the scope of practice, as determined by the board.

The Committee understands that for logistical reasons, a testing option is a more straightforward assessment that could verify the applicant's competency through an examination. The Bar could choose to create and administer such an exam or rely on an existing assessment such as the Multistate Professional Responsibility Examination as the first option for verifying competency.

The portfolio, while a more equitable option than a standardized test, is more complicated in nature and will take time for the Bar to develop. The portfolio could include either sample work product or verification of the completion of various assessments to the licensure board that demonstrate the applicant's competency to engage in activities within the scope of practice, as outlined by the board. One possible example for verifying ethics may be providing proof of completing an ethics course offered by a law school or paralegal program.

The Committee notes that there are similarities between these recommendations and the recommendation of the Alternatives to the Bar Exam Committee with regard to the possible use of a portfolio requirement for attorney licensure. It is possible that efficiencies could be found in developing both of these programs simultaneously.

An example of core competencies, as applied to attorneys, was set out in the Institute for the Advancement of the American Legal System report Building a Better Bar¹⁵. In the report, the author lays out the following twelve core competencies:

- the ability to act professionally and in accordance with the rules of professional conduct;
- an understanding of legal processes and sources of law;
- an understanding of threshold concepts in many subjects;
- the ability to interpret legal materials;
- the ability to interact effectively with clients;
- the ability to identify legal issues;
- the ability to conduct research;
- the ability to communicate as a lawyer;
- the ability to see the “big picture” of client matters;
- the ability to manage a law-related workload responsibly;
- the ability to cope with the stresses of legal practice; and
- the ability to pursue self-directed learning.

While these are intended for lawyers, the Committee recommends that the Bar adopt a similar list of competencies for LPs.

Competencies a portfolio or a test might address could include:

1. knowledge and application of legal ethics;
2. knowledge and application of the scope in the specific practice area in which the candidate seeks endorsement;
3. knowledge and application of requirements to refer clients outside of that scope;
4. knowledge of and ability to competently apply the fundamental principles of law;
5. ability to competently undertake fundamental legal skills commensurate with being a licensed paralegal, such as legal reasoning and analysis, recollection of complex factual information and integration of such information with complex legal theories, problem-solving, and recognition and resolution of ethical dilemmas;
6. ability to:
 - a) communicate honestly, candidly, and civilly with clients, licensed paraprofessionals, attorneys, courts, and others;
 - b) conduct financial dealings in a reasonable, honest, and trustworthy manner;
 - c) conduct oneself with respect for and in accordance with the law;
 - d) demonstrate regard for the rights, safety, and welfare of others;

¹⁵ See DEBORAH JONES MERRITT & LOGAN CORNETT, BUILDING A BETTER BAR: THE TWELVE BUILDING BLOCKS OF MINIMUM COMPETENCE, at 31 (Dec. 2020), https://iaals.du.edu/sites/default/files/documents/publications/building_a_better_bar.pdf.

- e) demonstrate good judgment on behalf of clients and in conducting one's professional business;
- f) act ethically, diligently, reliably, and punctually in fulfilling obligations to clients, adversaries, courts, and others;
- g) comply with deadlines and time constraints;
- h) maintain confidentiality of client information and client data.

Temporary Practice Rules

To facilitate the program implementation, the Committee recommends that the Bar establish temporary practice rules analogous to those that currently exist for certified law students¹⁶. As with certified law students, applicants admitted to temporary practice would be permitted to practice only under the supervision of an attorney. In addition to the normal benefits of temporary practice rules; these rules would permit the Bar to begin licensing some LPs on a temporary basis while the program is developed.

To qualify for temporary licensure, an applicant should have to demonstrate:

- their intention to become a licensed LP in Oregon;
- that they currently meet the educational requirements, or qualify for an education waiver;
- that they have 1,500 hours of “substantive paralegal experience” under the supervision of an Oregon licensed attorney, including 500 hours in family law and/or 250 hours in landlord tenant law; and
- that they have completed five of the required 20 hours of pre-licensure coursework. These 5 hours must include 2 hours in ethics, 1 hour on IOLTA compliance, 1 hour on scope of practice, and 1 hour on mental health and substance abuse.

Applicants who meet those criteria would be permitted to practice for up to one year, under attorney supervision, without meeting testing requirements or submitting a portfolio, and without completing the remaining 15 required hours of pre-licensure coursework.

The Committee considered inclusion of temporary practice rules to be another important step in removing barriers to entry to the program – especially for low and moderate income applicants. By allowing individuals with substantial experience and who meet most requirements for licensure to begin their practice while completing licensure requirements, Oregon will make entry into the program both more desirable and more feasible for many well qualified applicants.

¹⁶ Section 13 of the Admissions Rules of the Oregon State Bar outlines the Law Student Appearance Program, which would be the model for this proposal.

Regulation Workgroup Recommendations

The Regulation Workgroup was charged with recommending a state-level regulatory framework for implementing paraprofessional licensing. This framework, as defined by the Futures Task Force, includes defining the scope of practice¹⁷ for LPs in two specific subject-matter areas (family law and landlord-tenant law), 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 LP licensing.

*Scope of Practice – Family Law*¹⁸

The Committee recommends that LPs be authorized to provide legal advice and assistance in family law matters 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 workgroup members, input from the Committee as a whole, advisory members, and 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.

1. Family Law Tasks within the Scope of LP License

The Committee 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 provide legal advice.* 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

¹⁷ Scope of practice limitations included in this report focus on LPs who are not working under the direct supervision of an attorney. As with unlicensed paralegals, LPs who are working under the direct supervision of an attorney would not be restricted in the types of cases with which they could assist to the same extent as an unlicensed paralegal employed by an attorney or firm.

¹⁸ 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.

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.

- *Select and complete pattern forms; draft and serve pleadings and documents, including orders and judgments.* In many basic cases, standard documents and pleadings are already available through the OJD 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 or pleadings to the litigants' benefit, and provide clarity and accuracy in filling out the documents consistent with the requirements of case law, Oregon Revised Statutes, Oregon Rules of Civil Procedure, Uniform Trial Court Rules, and Supplementary Local Rules. LP assistance with pleadings would also presumably help to clarify the nature of a litigant's position for the opposing party and the court and enable the court to proceed more efficiently.
- *File documents and 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.
- *Draft, serve, and complete discovery and issue 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 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 be able to assist litigants in this crucial aspect of the process.
- *Attend depositions, but not take or defend them.* The Committee 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.

- *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.* LPs would help prepare clients regarding what to expect and help them prepare so that such sessions will be more efficient and effective. LPs could attend these sessions to advise clients on their options and discuss various proposals.
- *Participate in and assist with hearing, trial, and arbitration preparation.* LPs would prepare clients for court appearances (e.g., prepare clients for direct-examination, cross-examination, and oral argument; issue subpoenas; prepare witnesses; prepare and submit exhibits; draft asset and liability statements; 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 standard procedural family law appearances, ex parte matters, evidentiary proceedings, and informal domestic relations trials. 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. An LP would be able to assist a client to organize, mark, and submit exhibits that the client would offer.
- Review and provide legal advice to clients regarding a variety of documents, including pleadings, notices, opinion letters, court orders, and judgments. . 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.¹⁹

2. Family Law Practice outside the Scope of LP License

The Committee 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 to the circuit court of administrative determinations to establish or modify child support. Appeals have their own procedural rules and deadlines and can be quite complicated. This is

¹⁹ This requirement is partly in response to feedback received from attorneys and the public who stressed the importance of LPs understanding the limits on their scope of representation, and that they be trained on when and how to refer a client to an attorney.

especially true of appeals from trial court determinations and decisions of the Oregon 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.

There is, however, a situation in which LP assistance in an “appeal” should be permitted. In certain circumstances, appeals of administrative child support judgments may be taken to the circuit court for a hearing de novo. ORS 25.513(6). When such appeals concern the establishment or modification of child support, they involve a circumscribed and limited subject matter area that primarily covers information an LP would be expected to know already as part of a circuit court trial-level practice. If LPs are permitted to assist in the preparation of cases before a trial court to establish or modify child support, they should be permitted to assist in the preparation of de novo appeals from administrative child support determinations in these specific instances 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 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 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 and DROs. While prohibited from drafting such provisions themselves, LPs should be allowed to use language for QDROs and DROs provided by these specialized attorneys.
- *Third-party custody and 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 v. 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 is warranted: 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 is requested.* Contempt can be punitive or remedial. Punitive contempt can be initiated only 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. Respondents seldom have that option. For many respondents, FAPA cases 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 case alone may have a huge impact on the litigants, these 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, which LPs would not be educated in. Therefore, LPs should not 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 Committee recommends that if an LP represents a party in an already-existing family law matter, 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 (EPPDAPA) cases, Sexual Abuse Protection Order (SAPO) cases, 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. EPPDAPA and SAPO cases have concerns similar to those for FAPA cases, as cited above. Therefore, cases that involve EPPDAPA, SAPO, guardianships, or adoptions should be excluded from LP practice.

Scope of Practice – Landlord-Tenant Law

The Committee recommends that LPs be authorized to provide legal advice and offer guidance, document preparation services, and courtroom representation on landlord-tenant 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, ORS chapter 90), including freedom from illegal treatment and access to decent, safe, and sanitary housing. Landlords may 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 nonlawyer 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 nonlawyer agents already allowed in FED actions. Tenants do not enjoy a reciprocal right to nonlawyer 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 nonlawyer agents would also have the additional choice of representation by an LP who is trained, licensed, and covered by the Professional Liability Fund (PLF).

The Committee recommends that LPs’ scope of practice on landlord-tenant issues be limited to those concerning residential rental agreements under ORLTA and the FED provisions found at ORS 105.126–105.168. The scope of practice would be limited to only residential tenancies. The specific types of cases that the Committee 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 Committee advisory members experienced in landlord-tenant law, (including both private practitioners and those who provide representation through legal aid organizations), input from the Committee 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 Committee 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.

1. Landlord-Tenant Law Tasks within the Scope of LP License

The Committee recommends that LPs be allowed to engage in the following tasks in the course of a landlord-tenant 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 landlord-tenant matters.
- Meet with potential clients to evaluate and determine needs and goals, and provide legal advice, including on claims or defenses (e.g., notices of intent to terminate tenancy, inspection of premises, rent increase). 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., those who are not able to obtain representation from legal aid organizations) 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. 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.
- Review, prepare, and provide legal advice to clients regarding a variety of documents, including pleadings, notices, opinion letters, court 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, and security deposit accountings.
- *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(4)), 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 them.* While discovery timelines for FED cases can make depositions impractical, they require only "reasonable notice," which case law 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 Committee 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, attend, and participate in judicial settlement conferences.* LPs would help prepare clients regarding what to expect and help them prepare so that such sessions will be more efficient and effective. LPs could attend these sessions to advise clients on their options and discuss various proposals.
- *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, 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. The Committee recommends that LPs should be permitted to respond to questions from the court.
- 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.

2. Landlord-Tenant Practice outside the Scope of LP License

The Committee recommends that the following types of landlord-tenant 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 relief 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 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.

Scope of Practice – Future Expansion

Two key principles guided the Committee throughout its deliberations: consumer protection and equity. These two principles should guide any future expansion of the program. In practice, the Committee asked itself a number of questions related to each of these principles:

- Adequate consumer protection. How complex are the legal matters and tasks? Are the education and experience requirements sufficient to teach the complexity? Are the assessments adequate to ensure competency?
- Increase in equity and access to justice. Is there currently a significant lack of affordable legal assistance in the matters and tasks at issue? Would more affordable legal assistance result in more equitable outcomes? Are marginalized and underrepresented communities disproportionately affected by the lack of legal assistance? Do the barriers to entry into the profession preclude a diversity of professionals available to serve the diversity of communities within Oregon?

In discussing these principles, the Committee frequently considered the possibility of future expansion of the program. In many cases, persuasive arguments could be made that licensure in other areas of law could expand access to justice while adhering to these consumer protection and equity principles.

The Committee deliberately chose to limit its formal recommendations to licensure in family law and landlord-tenant cases for two reasons. First, as recommended by the Futures Task Force, the Committee’s charge was limited to those two subject areas. Second, the Committee was deliberately constructed to include attorneys who practice in those areas, and did not necessarily include practitioners in other areas into which some recommended expansion.

The Committee agreed, however, that future expansion into other areas of law should be considered and guided by the principles and questions cited above. One recommended expansion is the licensure of a class of LPs as document preparers. Licensed document preparers would have to meet similar admissions and regulatory requirements as recommended in this report, but would not need specific experience in any particular legal subject area. They would not be permitted to offer substantive legal advice but would be permitted to assist clients with filling out forms and answering questions about court processes and procedures. Several states have a long and successful history of licensing document

preparers.²⁰ Document preparers have proven to be a useful resource for many individuals whose primary legal need is assistance navigating the court system.

The more commonly discussed potential area of future expansion is into areas of law beyond family law and landlord-tenant law. The National Center for State Courts Civil Justice Initiative released a report²¹ outlining recommendations for improving the civil justice system generally. One set of problems discussed in the report are those experienced in so-called “high-volume dockets”, which the report defines as “typically composed of cases involving consumer debt, landlord-tenant, and other contract claims.”²² These types of contract claims, which also include mortgage foreclosure, represent almost two thirds of all non-domestic relations cases in civil courts in the United States.²³

Although these types of cases are extremely numerous, they tend to share many of the same legal and factual issues. Plaintiffs are usually businesses and thus likely to be represented by an attorney or in some case another agent authorized by statute. As the report notes however:

“Defendants, in contrast, are likely to be self-represented individuals, who are often of low or modest income. These defendants often face additional barriers that impede effective navigation of the civil justice system and their ability to present an effective defense. Barriers may include limited literacy; limited English proficiency; cognitive impairments including mental illness; and distrust of the courts based on prior experience or upbringing in a different culture.”²⁴

Many of the equity and consumer protection goals that have guided the Committee might also be met by permitting LPs to represent clients in some of these other areas that have been identified as suffering from high rates of self-representation. Utah and Arizona already license paralegals in some consumer debt collection cases; California is recommending licensure in this area as well.

Other areas of law discussed where there is a significant lack of legal representation that results in inequitable outcomes that disproportionately affect marginalized communities include non-criminal traffic citations, criminal record expungements, and small claims. Several other jurisdictions either have approved or are considering licensure of paralegals to provide legal advice and assistance in these areas of law.

Additional Regulatory Requirements

In addition to knowing and following the substantive and procedural aspects of family law and landlord-tenant law, LPs should be required to comply with the same requirements in dealing with clients and the public as apply to attorneys.

²⁰ Arizona and California are two examples. See OSB Futures Task Force Report, pgs 9-10.

²¹ Call to Action: Achieving Civil Justice for All; Recommendations to the Conference of Chief Justices by the Civil Justice Improvements Committee; https://www.ncsc.org/data/assets/pdf_file/0021/25581/ncsc-cji-report-web.pdf

²² Id. Recommendation 11, page 33.

²³ Id. Pages, 8, 9 and 10.

²⁴ Id. Appendix I, page 4. https://www.ncsc.org/data/assets/pdf_file/0017/25721/ncsc-cji-appendices-i.pdf

This would include:

- Rules of Professional Conduct for LPs. The rules should be nearly identical to those that exist for lawyers, with adjustments only where necessary given the limitations on the scope of practice.
- Interest on Lawyer Trust Accounts (IOLTA), IOLTA-related certification requirements.
- participation in the Client Security Fund.
- Mandatory Continuing Legal Education (MCLE).
- prohibition on sharing fees or from sharing ownership in a firm with individuals not licensed by the Oregon State Bar.
- Mandatory malpractice coverage through the Professional Liability Fund (PLF). The PLF provides valuable assistance to attorneys in best practices, ongoing practice management, liability reduction, and other crucial services. The public would benefit substantially if the same were made available to LPs. The representative from the PLF at the meetings is supportive and the PLF is actively developing a framework for providing insurance for LPs. We understand that it will be a separate parallel fund that would not affect lawyer assessment amounts.

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. Much of this work has already begun. Draft Rules for Licensing Paralegals, Minimum Continuing Legal Education Rules, and Rules of Professional Conduct for LPs are available in Appendixes G, H and I.

The Committee 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 or rule categories (e.g., an addition to the Oregon Rules of Civil Procedure (ORCPs) that “all rules in the ORCPs applicable to attorneys shall also apply to LPs”), unless specifically noted. Another option would be to change the text of specific rules in each major statute or rule category.

In response to feedback received, the Committee recommends that LPs have the same privileges and responsibilities with regard to signing documents on behalf of clients as apply to attorneys, when acting within the scope of their practice. Additional statutory or rule changes may be required in order to effectuate this recommendation. (e.g., a change to ORCP 17 A to add “licensed paraprofessional” or “licensed paralegal” to the list of who must sign a pleading, motion, or other document).

The Committee recommends changing the text of specific rules or statutes to add LPs to promote clarity with regard to which rules or 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 Committee was that changes should be made to specific applicable statutes, rules, and regulations subject to Legislative Counsel’s recommendation on how best to proceed.

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 (ORCPs)*
- *Uniform Trial Court Rules (UTCs)*
- *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)*²⁵
- *ORS 9.568 (State Lawyers Assistance Committee)*

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 107.005 et seq. (dissolution, annulment, and separation)*
- *ORS chapter 109 (parent and child rights and relationships)*
- *rules related to informal domestic relations trials (IDRTs, 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, and 513)*
- *Supplementary Local Rules (SLRs), 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 chapter 90 (Oregon Residential Landlord and Tenant Act)*
- *ORS chapter 91 (tenancy)*
- *ORS chapter 105 (property rights)*
- *ORS 20.075 (factors to be considered by a court in awarding attorney fees)*

²⁵ The Committee has recommended that LPs be made mandatory reporters of child and elder abuse, as attorneys are now. As this would require a statutory change, the Committee decided not to recommend abuse reporting MCLE requirements unless and until the legislature makes LPs mandatory reporters.

- *ORS 40.090 et seq. (Oregon Evidence Code, including rules 202, 503, 503-1, 504-5, 509-2, 511, and 513)*
- *Supplementary Local Rules (SLRs), including specifically those reserved in Chapter 18 for landlord-tenant proceedings*

Stakeholders Workgroup Report

The Stakeholders Workgroup worked throughout the past year to inform the legal community and other Oregonians of the paralegal licensure proposal and to solicit input on the proposal prior to its presentation to the Oregon Supreme Court. If the proposal is approved, outreach will likely continue in order to inform decisions on the administration of the program.

In the Committee's July 2021 Progress Report, the workgroup identified three broad categories of individuals from whom it was important to solicit input:

- OSB and OJD groups
- external legal advocacy groups
- public and community advocacy groups

The workgroup continues to believe that soliciting input from all of these groups is critical.

Opportunities for Input

The OSB created a new web page for the purpose of soliciting public input on the proposal in November of 2021²⁶. In addition to providing basic information about the proposal, the web page included a feedback form individuals could fill out to provide input. To date, the Bar has received well over 350 comments through this form.

The OSB took public comments on the proposal at the November 2021 and the February 2022 BOG meetings. Additionally, the OSB has been receiving input on the proposal at the paraprofessionalcommittee@osbar.org email address for the last year. These comments have been compiled by OSB staff and are available in Appendixes B, C and D of this report.

Lara Media Report

The OSB commissioned Lara Media, an Oregon based research company, to conduct research into Oregonians' interest in a licensed paralegal program. The research and [linked report](#) focus especially on the effect such a program would have on BIPOC (Black, Indigenous, and people of color) communities and on low and moderate income Oregonians. Lara Media conducted both surveys and focus groups of Oregonians and provided results of its research to the Bar in February of 2022.

²⁶ This web page can be found at <https://www.osbar.org/lp>.

Surveys

In the fall of 2021 the OSB sent out targeted surveys to two specific groups. The first was sent to students and alumni of the two community college paralegal programs in Oregon²⁷. The second was sent to judges and court staff. While both surveys invited broad input, the purpose of the student survey was to gauge interest in becoming an LP. The purpose of the judicial survey was to gauge the level of difficulty courts currently have with unrepresented parties and to what extent those parties would benefit from consulting with LPs prior to appearance. Results of these surveys can be found in Appendixes E and F.

Direct Outreach

Over the past several months, Senior Judge Dan Harris has presented to the Oregon Judicial Conference, the State Family Law Advisory Committee, several OSB sections, and numerous other groups. The purpose of this outreach has been to inform these major stakeholder groups of the proposal and to directly solicit suggestions and input. The comments he has received have been reported back to the Committee and incorporated into the draft proposal. This outreach will continue until the Supreme Court makes its final decision.

Evaluating the Program

The Committee had several discussions on how the OSB or the courts would evaluate the efficacy of an LP program after it is implemented. As has been discussed, there exists a well-documented access to justice gap, in particular in family law and landlord-tenant cases. While attorney representation rates in these cases are low across the board, rates of representation are even lower for persons of color, rural residents, and low-income residents generally. The explicit goal of an LP program is to allow new opportunities to provide legal services to Oregonians who are currently unserved by attorneys. Documenting whether or not this occurs is a critical metric in evaluating the program.

One framework for how this might be accomplished is contained in the report *Assessing Improvements in Access to Justice*²⁸ recently published by the National Center for State Courts.

To paraphrase the report, one important prerequisite to this evaluation is ensuring that Oregon courts are able to collect information in the case management system that will distinguish between attorney-represented, LP-represented, and self-represented parties. Based on initial conversations with the OJD, it appears that the current case management system would be able to accomplish this task. The OJD also has baseline statistics on the number of parties currently appearing in court without an attorney. In the future, with this information it should be possible to measure how many parties use LPs and how many remain self-represented, and to evaluate case outcomes for these different groups.

²⁷ Portland Community College and Umpqua Community College currently host the only two paralegal programs in Oregon.

²⁸ *An Evaluation Framework for Allied Legal Professional Programs: Assessing Improvements in Access to Justice*; State Justice Institute and National Center for State Courts; Andrea L Miller Ph.D., J.D., Paula Hannaford-Agor, J.D., Kathryn Genthon, M.S.; May 2021.

Additionally, the report recommends the development of user satisfaction surveys that could be distributed to court users who had retained the services of LPs at some point in the process. This could involve directly soliciting feedback from LPs or taking a random sample of all court users to determine the overall percentage who worked with an LP. The OSB would also have the ability to distribute surveys directly to LPs, to inquire about representation rates, case types, or any other information that would be helpful in evaluating the program.

Regardless of how the forms are distributed, there are certain key pieces of information that should be gathered. One of the most important will be whether the individual using the LP understood the scope of practice limitations that the LP operated under and whether they felt their representation was impacted by that restriction. It could also be informative to inquire into whether the LP ever discussed referral to an attorney with their LP at any point during the representation.

Another method of collecting information on LP usage may be through standard court forms. Currently, when self-represented litigants file certain court forms, they are asked whether they consulted with an attorney prior to filing the form. FAPA forms are one example of this. It may be possible that in the future the OJD could include questions on some family law and landlord-tenant forms that ask whether the individual consulted with either an attorney or an LP prior to filing the form.

While specific recommendations regarding evaluating the program are beyond the scope of this Committee, members generally supported having a formal method of evaluating the success of the program.

Next Steps

When the Futures Task Force recommended that the OSB develop a license for paralegals, the Task Force sought to balance three interests: protecting consumers, increasing access to justice, and cost-efficiency. With respect to cost-efficiency, the Task Force sought to take advantage of existing system-wide efficiencies within the OSB for the administration of a new license. The Committee agrees that cost efficiency should be considered in development and administration of the LP program, that the existing procedure to regulate lawyers be used to regulate LPs, and that fees assessed be used to help fund the program.

SB 768, which passed into law in 2021, expands the OSB's governing statute to allow for associate membership in the Bar under ORS 9.241. It provides in pertinent part:

(3) Notwithstanding ORS 9.160, the Supreme Court may adopt rules pursuant to ORS 9.210 to admit individuals with substantial legal education as associate members of the Oregon State Bar without taking the examination required by ORS 9.210. An individual admitted as an associate member under this subsection must meet all character and fitness requirements under ORS 9.220.

This change allows another class of membership administered and regulated by the OSB, pursuant to Supreme Court rules, rather than creating a separate, duplicative licensing entity. This lays the groundwork for developing the program's next phase.

Once approved by the BOG and submitted to the Oregon Supreme Court, OSB staff will determine how best to organize the program and develop a budget for BOG consideration. A proposed next step includes a request for OSB staff to implement the program, subject to review and approval by the Oregon Supreme Court.

Appendices

- A – Lara Media Report
- B – Summary of Public Comment received via web form.
- C – Table of Public Comments Received via the web form.
- D – Table of Public Comments Received via email.
- E – Judges and Court Staff Survey
- F – Students and Paralegals Survey
- G – Proposed Rules for Licensing Paralegals
- H – Proposed Oregon Rules of Professional Conduct for Licensed Paralegals
- I – MCLE Rules with proposed amendments for Licensed Paralegals
- J – Bar Rules of Procedure with proposed amendments for Licensed Paralegals



Oregon
State
Bar

Oregon State Bar's Licensed Paraprofessional Program

RESEARCH REPORT | JANUARY 2022

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Executive Summary

The Oregon State Bar has inquired Oregonians whether the State is interested in a new legal assistance practitioner through a new program, the Licensed Paraprofessional Program. This new program will provide a new path for people to help communities in need of accessible legal assistance and more options for seeking legal help.

The Oregon State Bar, a judicial arm of the Oregon Supreme Court, hired Lara Media Service to conduct research to answer the question, Should the Oregon State Bar start the Licensed Paraprofessional Program as a means to bridge the gap of legal help accessible for Oregonians in need?

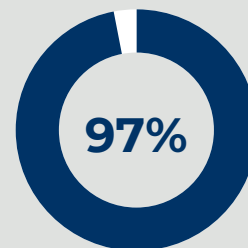
Lara Media Services, a market research firm from Portland, OR, designed a research plan to answer this question by coordinating one conversation with Oregonians who have been historically negatively impacted by the civil legal system (Black, Indigenous, People of Color, and low to moderate individuals). The plan consisted of one conversation with Oregonians who speak predominantly Spanish and a statewide survey of low to moderate earning Oregonians.

The focus group findings concluded that Oregonians want more access to culturally responsive legal assistance professionals and that this program is on the right path to address this gap. The survey results concluded that 97% of Oregonians favor a newly licensed paraprofessional, and 80% would be more open to consulting an attorney after working with this licensed paraprofessional.

Lara Media Services recommends the Oregon State Bar implement this new program with a culturally responsive communication plan as soon as possible. It will be necessary to examine further how these newly licensed paraprofessionals can be leveraged to bridge the gap of legal help accessibility.



Should the Oregon State Bar start the Licensed Paraprofessional Program as a means to bridge the gap of legal help accessible for Oregonians in need?



of Oregonians favor a newly licensed paraprofessional



would be more open to consulting an attorney after working with this licensed paraprofessional

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Introduction

“Every Oregonian deserves a justice system that is accessible and accountable. The legitimacy of our democracy depends on the premise that injustices can be addressed fairly within the bounds of the law, no matter who you are or where you live. Let us work together in Oregon, to ensure that justice is a right, not a privilege—for everyone.”

– Chief Justice Martha Walters,
Oregon Supreme Court.
(Oregon Law Foundation, Portland State
University Survey Research Lab, 2019)



In late 2021, the Oregon State Bar reached out to Lara Media Services to help them better understand the accessibility issues faced by low to moderate-income Oregonians when seeking legal help. This is a much-needed effort to make legal services more understandable and equitable. This problem is both national and local. The Oregon State Bar has the opportunity to create programming and services that reach the often underserved communities, and they want to understand how to do it better.

The quote below from Jason Solomon and Noelle Smith highlights the current issue in the US.

“It is a shameful irony that the nation with one of the world’s highest concentrations of lawyers does so poorly in making legal services available to its citizens. The U.S. ranks just 109 out of 128 countries in access to justice and affordability of civil legal services, below Zambia, Nicaragua, and Afghanistan. Two-thirds of American adults reported having a civil legal problem in the past year, but only one-third of those received any help. And the access to justice problem is not limited to low-income Americans; [the] access to justice gap is now enveloping an entirely new class of self-represented party—those who are modest and of moderate means.”

(Solomon & Smith, 2021)

The civil legal system has been challenging to navigate without legal assistance. In the report *“Barriers to Justice: A 2018 Study Measuring the civil legal needs of low-income Oregonians,”* 52.8% of surveyed participants sought legal help from an experienced legal problem, but 84.2% of people who needed a lawyer could not obtain one. The current level of legal practitioners met only 15% of the civil legal needs of low-income Oregonians (Oregon Law Foundation, Portland State University Survey Research Lab, 2019).

84.2%
of people
who needed a lawyer
could not obtain one.

Source: “Barriers to Justice: A 2018 Study Measuring the civil legal needs of low-income Oregonians”

These accessibility issues are not new, however. In the year 2000, The State of Access to Justice in Oregon report found that low and moderate-income people in Oregon had a great need for civil legal services that were not met by the existing legal services delivery network at the time. The report stated that “Lower-income people obtained legal assistance for their problems less than 20% of the time.” It continued by stating, “People obtaining representation have a much more favorable view of the legal system and are satisfied with the outcome of the case 75% of the time when represented by a legal services lawyer.” In contrast, “Most people who experience a legal need and don’t obtain representation feel very negatively about the legal system, and about 75% are dissatisfied with the outcome of the case.” (Dale, 2000)

There is an unmet need. According to the Legal Services Corporation, 86% of low-income American’s civil legal problems in the United States receive inadequate to no legal help in 2017, 71% of low-income households experience at least one civil legal problem, and low-income Americans do not seek professional legal help for 80% of their civil legal problems (Legal Services Corporation, 2017). With hopes of bridging this gap of inaccessibility, the Oregon Supreme Court is considering creating a new type of legal provision, a Licensed Paralegal, to provide some legal services that, until now, only lawyers may provide. Similar to the introduction of Nurse Practitioners to the medical field, a Licensed Paralegal would be allowed to provide limited legal services [only] in family law cases (divorces, custody, parenting time, etc.) and landlord/tenant cases. These are two of the areas of law with the greatest unmet need for legal assistance in Oregon.

A Licensed Paralegal would have specific requirements for education and experience and would be subject to many of the rules and regulatory requirements that currently exist for lawyers. The intent is to provide access to legal help for those who currently cannot afford a lawyer or who otherwise would go to court with no legal assistance. This is one part of the solution to address the lack of equity and access in Oregon’s legal system, especially for the most marginalized communities that lack trust, understanding, and equity in the justice system.

Background

The Oregon State Bar (OSB), a public corporation and an arm of the Oregon Judicial Department, licenses and disciplines lawyers, regulates the practice of law, and provides various services to bar members and the public. OSB does not receive any direct financial support in the form of taxpayer dollars from the General Fund, but is funded entirely by licensing fees and revenue from various member service programs. The Oregon Supreme Court has the authority to appoint the Disciplinary Board and the Board of Bar Examiners members. The OSB values are the integrity of ethics and standards, fairness in the justice system for all, leadership among legal professionals and the community, diversity in the community, justice in the rules of law, accountability of its decisions and action, excellence in its programs and services, sustainability through education and advancement, and the well-being of legal professionals for their professional duties and administrative effectiveness. (Oregon State Bar, n.d.)

Lara Media Services (LMS) values OSB's commitment and passion for listening and working within all communities to address Oregon residents' barriers to accessing legal services. We recognize that OSB aims to do so in a just, equitable, inclusive, and culturally responsible manner that reaches and benefits diverse populations, especially those lacking the means of hiring legal assistance providers.

LMS is a certified MBE, WBE, DBE, ESB firm (Certification #7923), and B-Corp. LMS is Latina-owned, and 100% of our team is multicultural and multilingual. Our vision is to create an equitable world where everyone can be seen, heard, and treated as a valuable and necessary member of society. Our ability to listen, respond, develop proven and effective strategies, and design culturally responsible research methods tailored to the underserved and underrepresented communities is unmatched. LMS promotes assertive communication and engagement strategies for organizations aiming to connect with the hearts and minds of communities of color through sustainable and dynamic solutions. We are confident that LMS's unique approach and expertise on similar past projects and objectives will help OSB see and better understand the thoughts and interests of Oregon residents in OSB's Licensed Paraprofessional Program.



Research Study

The goal of the OSB is to know whether Oregonians want a new alternative for legal help, a licensed paraprofessional. The licensed paralegal program would offer Oregon residents additional options when they require legal services. In some cases, licensed paralegals may be able to offer assistance to clients at a lower cost than a traditional attorney while still providing high-quality services.

OSB understands that Oregon residents have a high level of unmet legal need. Legal help providers can only serve 15% to 20% of financially eligible clients, and 84% of people with family law cases do not have an attorney. This puts many Oregon residents, especially low-income residents, underrepresented communities, and persons of color, at a disadvantage because they are often forced to represent themselves in court and may be unaware of legal options available to them.

OSB decided to work with an outside expert, LMS, to research two avenues to solicit input from the public, focusing on reaching Oregonians who have traditionally struggled to receive adequate legal representation and whose input may not be adequately captured without this targeted effort. Importantly, this includes Oregonians for whom English is not their native language.

Lara Media Services' research and findings will inform OSB of the public opinion of a new paraprofessional licensure services proposal through community survey results and focus groups. This will help OSB learn about the programs and services that are most important to often underserved community members. OSB aims to understand why community members do not currently hire professional legal help and the legal needs and priorities of people who don't hire lawyers for legal counsel.

Through this research, LMS will provide the public's answer to the question,

*“Should Oregon have a new alternative to legal help
in the form of a licensed paraprofessional?”*

Methodology

LMS gathered qualitative and quantitative data by coordinating and facilitating virtual focus groups and implementing a questionnaire shared via community interceptors and social media links.

The following report synthesizes the quantitative and qualitative results from the survey and the focus groups. The findings have been organized into three main topics.

Experience with the Current Legal System

LMS strives to understand and communicate the current barriers underserved community members face and what channels they use to seek information.



Understanding of the Licensed Paralegal Program

LMS inquired about the current understanding of Paralegal Professionals and the Paralegal Professional Program to gather initial feedback on the potential benefits and challenges.



Spanish Group Specifics

LMS will highlight the critical differences that Spanish-speaking participants shared in the language-specific focus group.



Focus Groups Methodology

Focus groups are an exploratory research method and provide vast amounts of qualitative data. This method is used when there is a need to explore issues in-depth and understand thoughts, feelings, challenges, and aspirations. LMS encourages participants to be fully engaged and empowers them to let their voices be heard. Trust is built throughout the session, as each person's opinion is vital. LMS aimed to have a diverse group of participants to capture the sentiment of multiple perspectives.



For this project, LMS utilized the following research methodology

- ① LMS engaged OSB project personnel to identify priority audiences and essential considerations when developing the discussion guide. The priority population identified was Oregon residents – residing in urban and rural areas – of low income, who were a part of underrepresented communities, or identified as persons of color.
- ② Once OSB and LMS identified the priority audiences, LMS developed a discussion guide in collaboration with OSB project personnel to define the number of questions, topics, and expected outcomes.
- ③ Priority audiences were invited to participate in the discussion. LMS and OSB identified two (2) focus groups to conduct:
 - a) Spanish speakers with a household income of \$60,000 or less from across the State.
 - b) English Speakers with a household income of \$60,000 or less from across the State, with priority given to under-represented communities or persons of color.
- ④ LMS recruited 12 participants for each group through social media and with the help of LMS trusted community advocates that live and work in rural areas. LMS leveraged the relationships developed with community leaders and the database of Oregonians acquired over the 20+ years of existence to gather participants that met the criteria and needs of this research project. LMS contacted approximately 60 people, of which 40 wanted to participate, and after the screening, LMS registered 24 according to the participant profile needed.
- ⑤ Focus group participants were required to have access to an electronic device with a camera and microphone in order to engage in the conversations. LMS offered to lend tablets to participants in need of electronic devices; none were requested. LMS also offered Zoom Video conferencing training to all participants who requested assistance; two requested training.
- ⑥ LMS virtually hosted, coordinated, and facilitated two discussion groups: One in English and one in Spanish, on December 21, 2021, from 5:30 to 7:30 pm to deeply understand the perceptions, ideas, behaviors, and barriers of the participants with the Oregon legal system.
- ⑦ The discussion guide included fourteen questions about participants' experience with the legal system, their understanding of paralegals, and their interests in having alternatives to lawyers for civil legal counsel.
- ⑧ LMS provided a demographic survey to focus group participants in order to capture participants' demographics.
- ⑨ A summary of the information gathered is included in this report.

Focus Groups Participants

All participants met the pre-selected criteria, belonging to either low and median-income groups or historically underrepresented communities. Each focus group had residents from multiple counties, including Deschutes, Hood River, Jackson, Lane, Lincoln, Marion, Multnomah, Umatilla, and Washington county. The Spanish group consisted of ten (10) Oregonians who identified as Hispanic or Latino/a/x Oregonians. The English group consisted of eleven (11) Oregonians of diverse racial backgrounds.

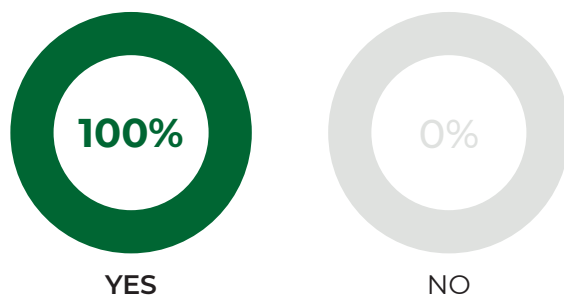
All participants were compensated \$100 for their time and insights. LMS utilized various methods to compensate focus group participants, including Venmo, Cash App, PayPal, gift cards, and physical checks.

Each participant provided LMS with the following demographic information before the focus group.

Due to rounding, some totals may differ by ± 1 from the sum of separate responses or due to participants selecting multiple choices (particularly in the case of races and/or ethnicity).

Focus Groups Participants Demographic's Outline:

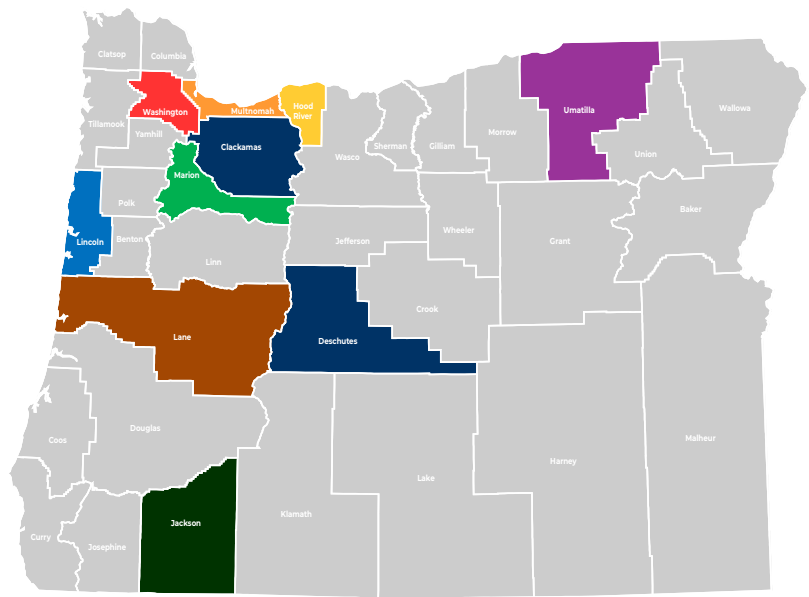
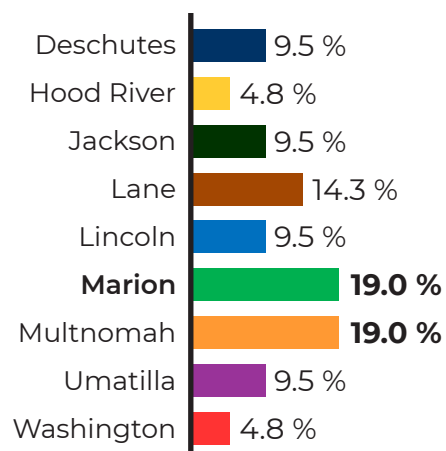
1. Is your combined yearly household income equal or less than \$60,000?



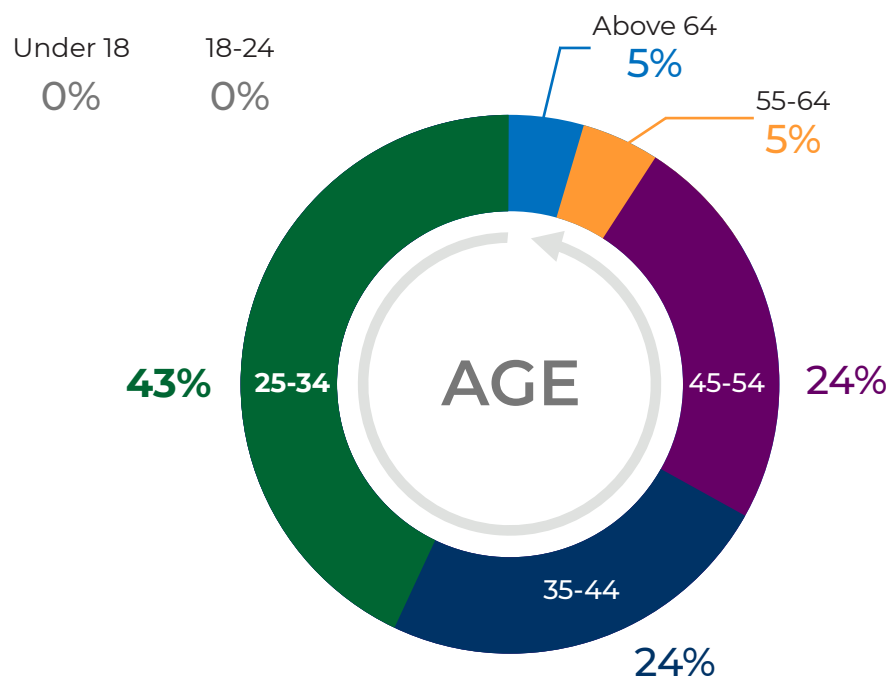
2. Do you live in the state of Oregon?



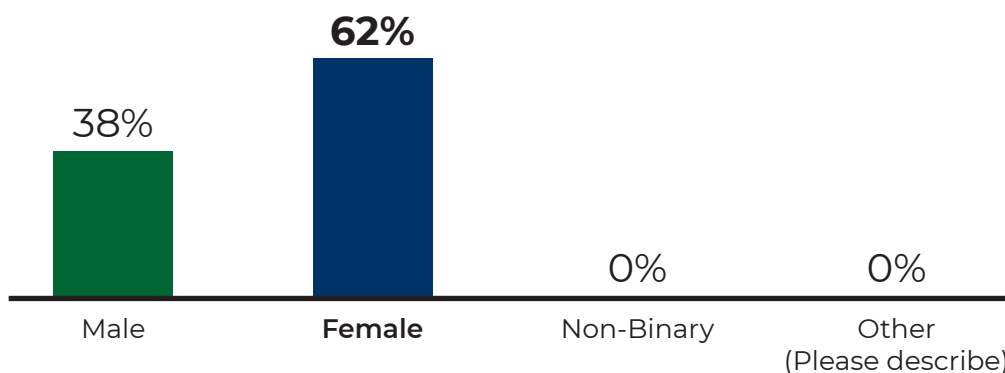
3. What county do you live in?



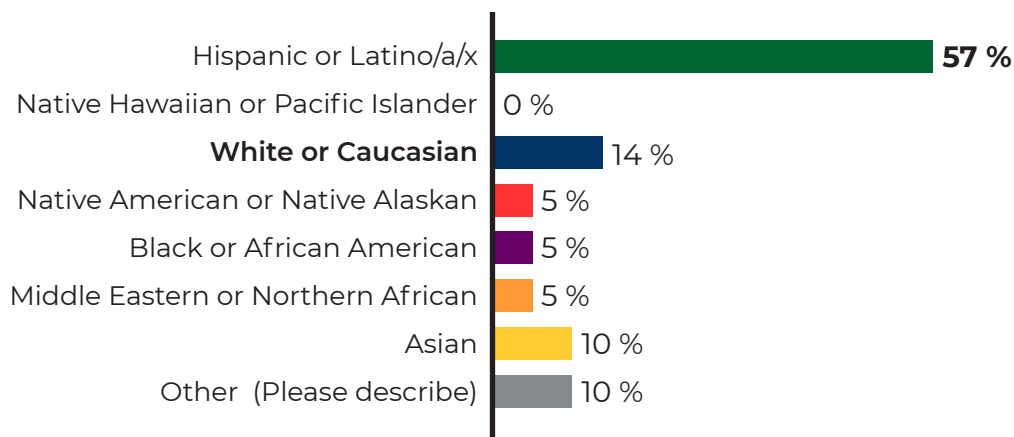
4. What is your age?



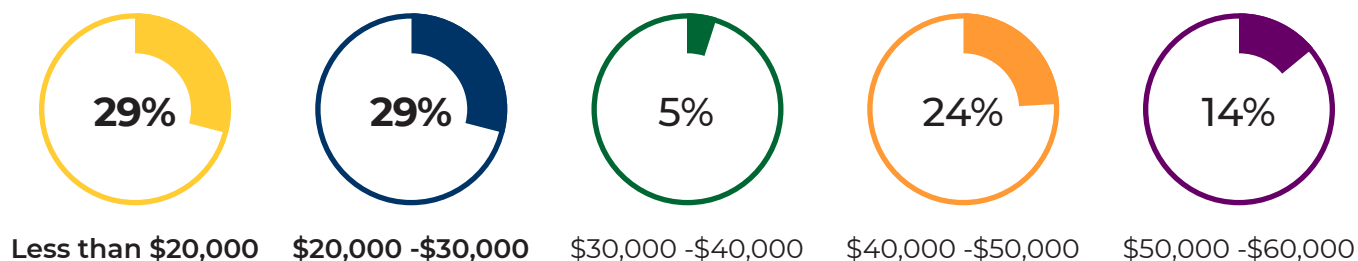
5. What gender do you identify with?



6. What is your racial identity?



7. In 2020, What was your household income?

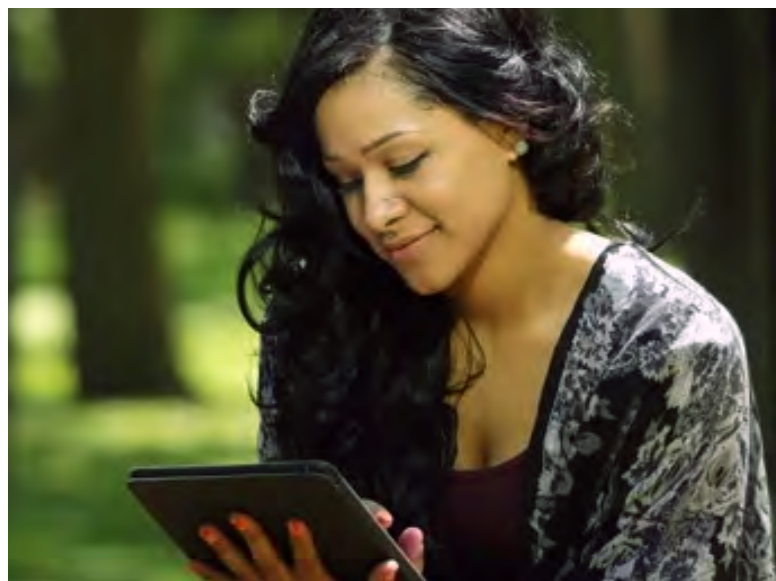


Survey Methodology

- ① LMS engaged OSB project personnel to identify priority audiences and important considerations to develop the questionnaire and identify a priority population to survey.
The priority population identified was Oregon residents – residing in urban and rural areas – of low income, who were a part of underrepresented communities, or identified as persons of color.
- ② Once OSB and LMS identified the priority audiences, LMS developed a survey in collaboration with OSB project personnel to define the number of questions, topics, and expected outcomes. OSB gave the targets of having a confidence level of 90% and having a margin of error of (+) (-) 5%.
- ③ With OSB direction, LMS calculated the sample size based on the Oregon population and identified priority audience:
 - a) Oregon's population and median income: 4,246,155 and \$62,818 (United States Census Bureau, 2021)
 - b) Moderate: \$50,254 (Board of Governors of the Federal Reserve System, 2018)
 - c) N=262 unique survey responses.
- ④ LMS recruited participants through social media and through the support of LMS trusted community advocates who live and work in rural areas.
 - a) Two hundred sixty-two (262) unique survey answers were gathered via outreach conducted through the phone, online & social media link and intercepted by community advocates.
- ⑤ The survey campaign began December 22, 2021, and closed January 11, 2022, intending to survey 262 unique participants throughout the state while focusing on rural areas.
- ⑥ Participants received a \$10 compensation after responding to the survey.

Survey Participants

Survey participants were required to live in Oregon, have a low to moderate household income and be over 18 years old. Surveys allowed us to obtain data quantified and compared to other research or community engagement methods. LMS administered surveys to participants in various ways, by phone, social media, and the majority by interceptor using tablets where communities shop, entertain and socialize. OSB and LMS agreed upon the list of questions. The questionnaires were sent via email and administered online and in-person with an interceptor.



Participants could answer the survey in different ways depending on their preference.

Options:

They clicked on a link texted to them and filled out the survey on phones or tablets.

They answered questions asked by an interviewer while the interviewer filled out the survey.

They had an interceptor answer or filled out the survey for them.

The survey averaged five minutes to complete. All survey participants were compensated \$10. LMS utilized various methods to compensate participants, including Venmo, Cash App, PayPal, Starbucks, and supermarket gift cards. LMS did not provide OSB with any materials that include the participants' identity, including video, audio, or transcripts of the round table conversation, surveys, etc. Their anonymity allows them to provide honest answers crucial to the project.

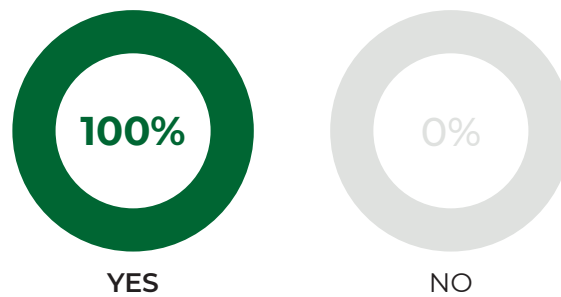
The survey included questions intended to find information about the public's interest in the program, the unmet legal need in the community, and questions that are likely to come from the public. The surveys distributed also included demographic information to determine the level of support within the surveyed groups. LMS administered the surveys in English and Spanish with diverse communities across the state to obtain 262 surveys.

The survey example is attached in the Appendix. Survey participants provided the following demographic information.

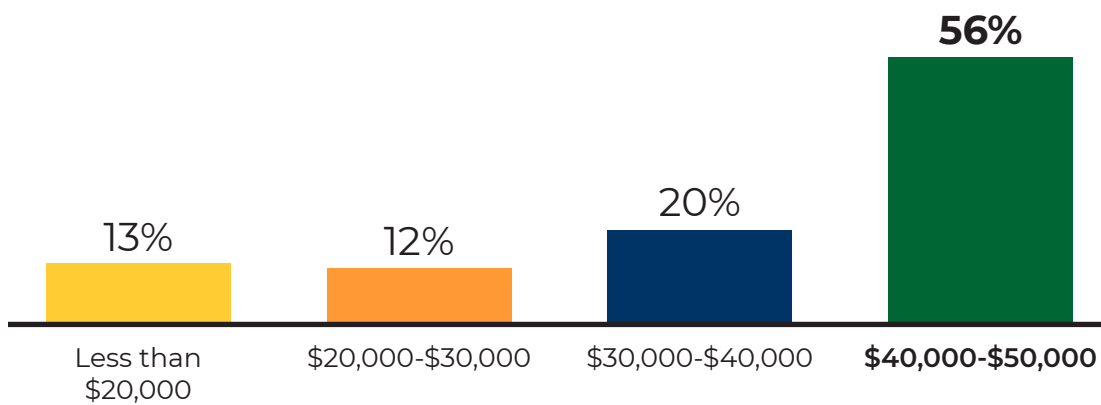
Due to rounding, some totals may differ by ± 1 from the sum of separate responses or due to participants selecting multiple choices (particularly in the case of races and/or ethnicity).

Survey Participants Demographic's Outline:

1. Is your combined yearly household income equal or less than \$50,000?



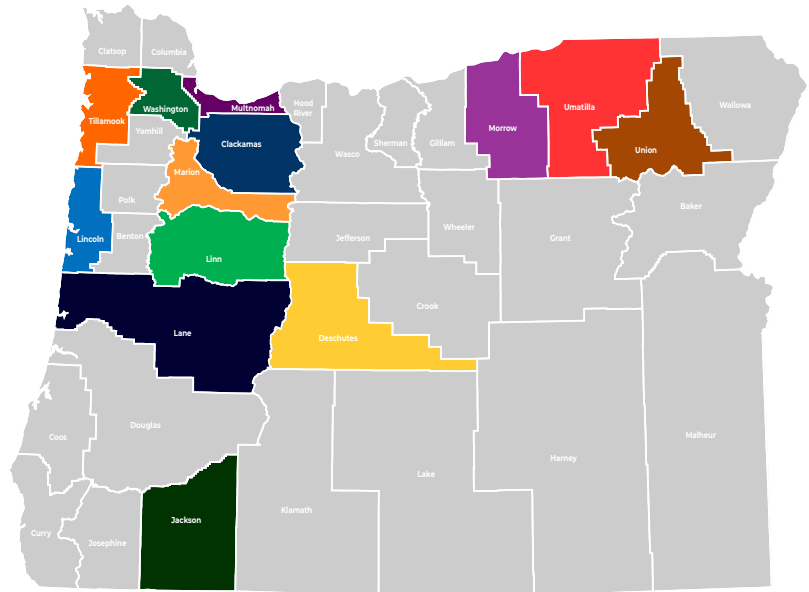
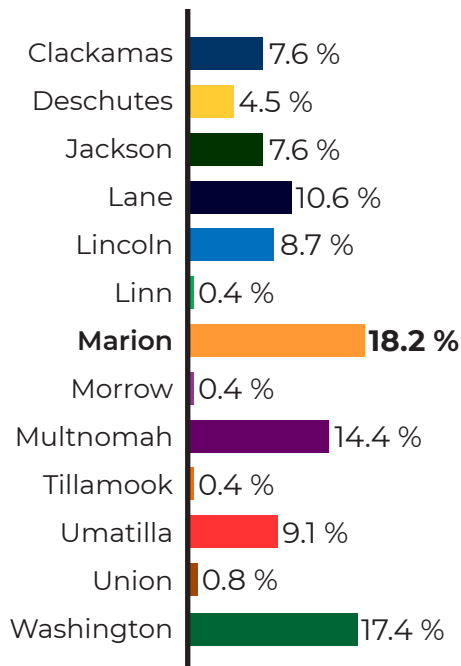
2. In 2020, What was your household income?



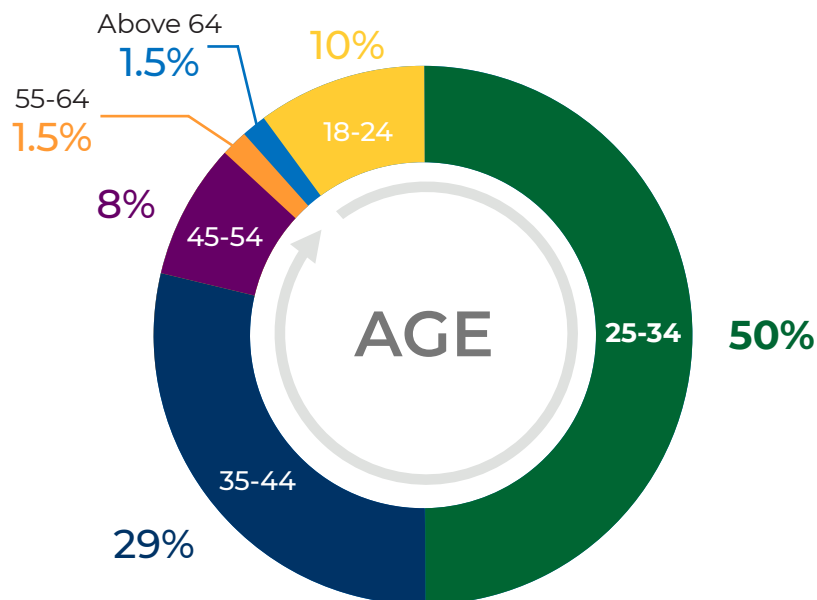
3. Do you live in the state of Oregon?



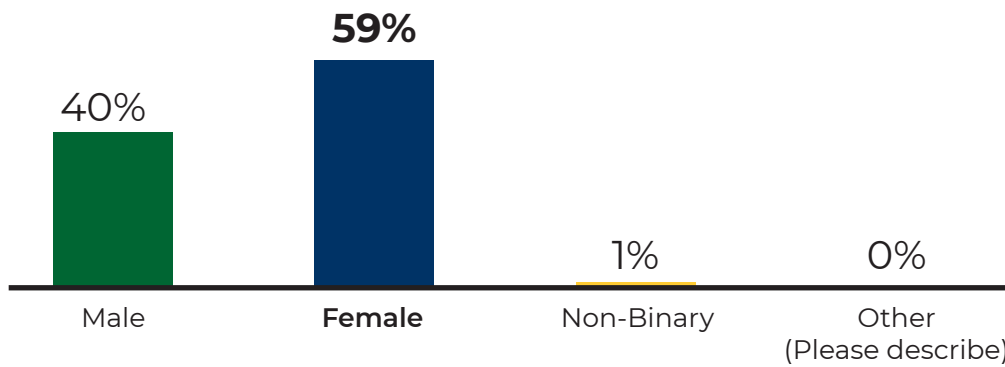
4. What county in Oregon do you live in?



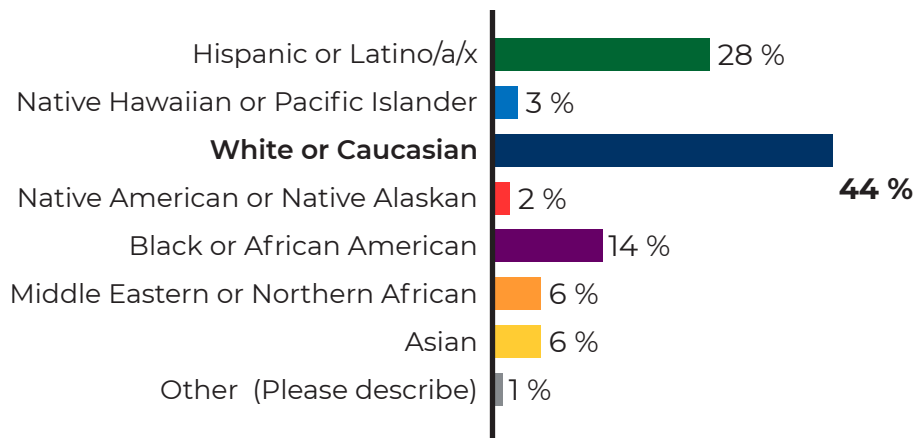
5. What is your age?



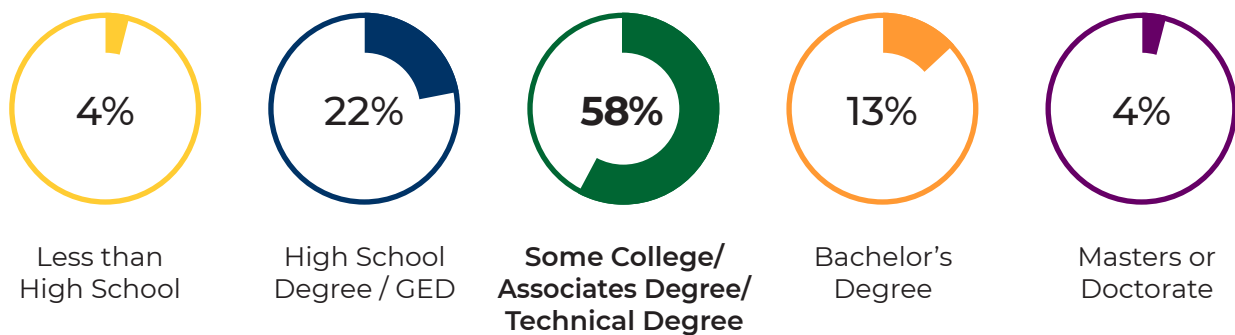
6. Which of the following best represents your gender?



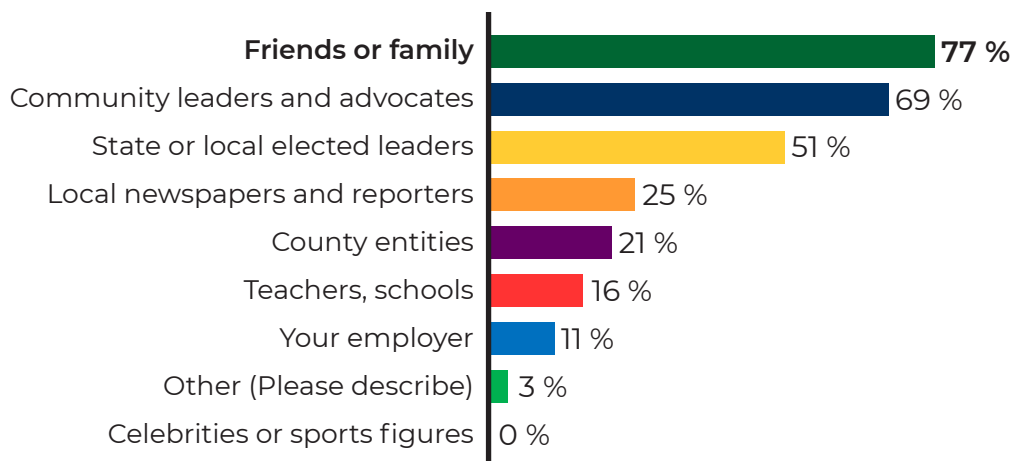
7. When asked about your racial or ethnic identity, how do you identify?



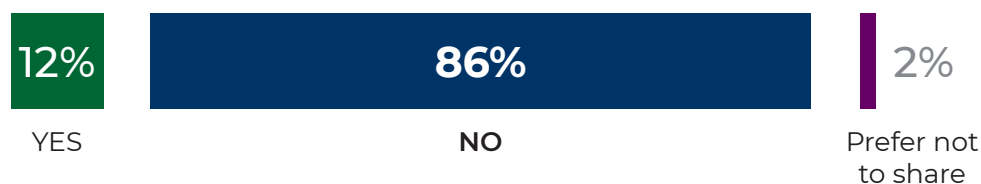
8. What is your highest level of education?



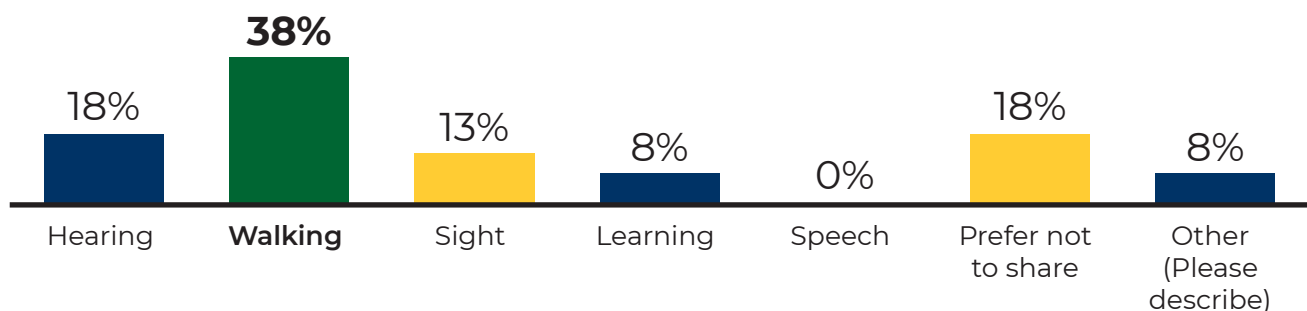
9. Which of the following messengers would you trust to share important information with you? (Select up to 3)



10. Are you impacted by a disability?



11. Where are you impacted by disabilities? (Select all that apply)



Findings Overview

In the findings section, we take many of the quotes and themes and attempt to weave them into a narrative that helps the Oregon State Bar see and understand the participants' sentiments, underlying desires, needs, and gaps of legal understanding. Something worth noting is that the line between civil and criminal law was vague, at best, for focus group participants. Many of their comments show they fail to recognize the difference between the two and where this program would fit.

Experience with the Current Legal System

Current Barriers

- Participants feel that racial discrimination is embedded in the country's legal system and Oregon. Many stories were shared that exemplified a lack of equity and inclusion.
- There is an urgent lack of finances and information.
- Culturally responsive and appropriate language resources are not readily available.

Information Channels

Participants use the internet as their first or second source of information. They use social media outlets to look for information. They ask friends and family, and community members they trust. Some have called attorneys advertising on Radio or TV but didn't have a good experience. Many wished there were more self-guided resources available, and the resources were easy to understand, direct, and without using jargon.

Understanding of the Licensed Paralegal Program

Defining Paralegal Professionals

There was a lack of understanding of what a paralegal does. Most participants did not understand what a licensed paralegal meant, with some of them having worked with public notaries and confusing the terms. Some had heard the term paralegals prior but did not know the difference and needed certifications or job descriptions.

Initial Feedback

- **Opportunities** – Many see this program as progress to providing more equitable, accessible, inclusive, and it has the opportunity to bring more diverse professionals with diverse backgrounds and languages. This will potentially create relationships between the paralegals and the underserved communities. Participants think these paralegals will be more open and better able to listen and help them in their legal matters.

● Challenges

- The limitations of licensed paralegals will mitigate the need for legal counsel. Still, it must establish a new equitable system that takes serious measures to address the disparities the Black, Indigenous, and people of color (BIPOC) communities face when navigating the civil legal system.
- Participants are either unaware of or unsatisfied with lawyers' current level of oversight, and they worry that licensed paralegals might have a similar problem.

Participant Recommendations

Participants would like to see additional information regarding the program that needs to be distributed so that it's on the radar of the communities this program will directly impact if it becomes a reality. They also want transparency on the process and vetting to become a licensed paralegal and how they will be held accountable. Lastly, they would like this program to provide gateways for BIPOC and multilingual individuals the opportunity to become paralegals or provide opportunities for them to access the system.

Spanish Group Specifics

Spanish immigrants that participated had a more significant challenge of protecting their rights from expensive attorney charges and abuse treatment. Police and the legal system highly target the Latinx population; even with close to 400,000 Spanish speakers, getting good quality Spanish translators and language access remains a challenge in the courts of Oregon. Spanish speakers want to communicate appropriately with both the court and their attorney. Attorneys have charged them a considerable amount and haven't resolved their problems or complicated them more. They change the attorney hoping to find a solution but continue to struggle to have their voices heard — and understood — in civil court.

Current Barriers

The Spanish-speaking community was not given the same level of service as proficient English speakers, saying their voices were not being heard from the lawyers they contracted. The community also faces transportation barriers and emphasizes the proximity of lawyers as necessary to the communities needing service.

Initial Feedback

Many Spanish-speaking participants saw this program as a gateway for giving migrant farmworkers affordable legal assistance.

Findings

Experience with the Current Legal System

Current Barriers

Most of the participants have had negative experiences with the legal system, and about half of those have had experience hiring an attorney or lawyer for a legal matter. Many, however, expressed a lack of knowledge of legal matters and difficulty accessing legal assistance as the main reasons they did not seek assistance. Several commented that if they had known where to find assistance or how to hire a good lawyer, they might have been more willing to press charges or go to court. Others said they had sought lawyers recommended to them or had seen online but were told they would not take their cases. Some were charged a lot of money and haven't resolved their cases.

Quote: *"No lawyer wanted to help me with my case because they didn't see any profit in doing it."*

Many of these participants said they were left with nowhere to turn and that lawyers and law firms' strict and unknown policies related to case selection made it difficult for many people to access legal assistance. They believe that this applies especially when dealing with courts outside of the normal sphere of family or criminal cases, such as immigration and housing, where good legal help and resources are even harder to find.

Quote: *"I need help with my problem, but it has been very difficult finding a good lawyer. The ones I have hired so far are very expensive, and they haven't helped me at all."*

Language barriers also played a large part in the lack of accessibility. Participants advocated for more accessible multilingual assistance and resources for the BIPOC communities. They stressed that people often have difficulty finding services in their native languages. Navigating the legal system can be especially difficult for those with low English proficiency, especially when trying to understand the large amount of legal jargon that lawyers and legal assistants often use.

Quote: *"[Finding a lawyer] that speaks my language [is important] because I will be able to communicate better."*

Many legal services also do not direct their resources towards BIPOC and immigrant communities, leaving many with a lack of information on how the legal system works and their rights. This lack of knowledge and resource availability often leaves them vulnerable in legal situations, unwilling to push for legal assistance, and more likely to accept charges. It can also cause confusion, leading to misinformation and challenging interactions with English-speaking police officers or other authorities.

Quote: *“Language can be a huge barrier in terms of access to legal support and advice. In the Asian community, when there is need for legal advice and service, people tend to not want to go that route because they, culturally, do not want to create more trouble and work for themselves, and they end up just paying the ticket or pleading guilty and giving in.”*

Money was also a significant barrier for the majority of participants. Many had been reluctant to push legal matters or seek legal help because they could not afford a defense attorney or lawyer. With a lack of pro bono legal assistance, many find it better to fold and accept the charges against them. Participants shared several examples of how they paid large amounts of money to attorneys who never supported them with their cases.

Quote: *“Most good layers are expensive for immigrants like me and other people that work for minimum wage. For some with low income, it is difficult to find a good lawyer that can help you with your case.”*

Quote: *“Growing up in the black community, you are guilty until proven innocent, and you can’t prove yourself innocent unless you have the money. In the court system, they all work for each other. It is about who you know, it is about what you know, and it is about how much money you have. People like us, when we get in trouble, they are looking to get us time to spend in jail. We have nobody to stand for us unless you have money for a lawyer and to fight the case.”*

While some participants are aware of and have used public defense attorneys in their past, many participants considered them to be of lower quality and doubted their capabilities. Several participants stated that they would only trust a lawyer when seeking legal assistance, and another commented on the low number of discharges in cases involving public attorneys. Participants did recognize that public attorneys are often overworked and underpaid but ultimately believed that this contributes to a poor defense system for those going to court and that better assistance is needed in many cases.

This negative view of the courts was a continuous theme throughout the first part of the discussion. The type of legal matters that participants had experienced varied vastly, from criminal cases and restraining orders to traffic tickets and eviction notices, as well as cases involving either the immigration or family court of law. But the consensus for most participants was that the court rarely works to represent BIPOC communities' rights fairly.

Quote: *"A lot of people in my community don't get treated right in the legal system. So many times, if you are not working with a lawyer, you get a differential treatment."*

Several also believe that the court system sets people up for failure, making it difficult to escape the system once someone enters it. One participant stated, "I had to miss days at work in order to get the services of a lawyer, so I am always missing money due to the legal system." Another commented how the hoops he had to jump through made it difficult to earn money and, therefore, keep a roof over their head after his arrest.

Quote: *"I was arrested in 2015, and having the information on my records has affected me in my hunt for a new job."*

Others felt that personal and racial prejudice played a large part in the court system, saying that BIPOC community members were treated more harshly in courts and not afforded the same opportunities as their white counterparts. One Native American participant emphasized that prejudice is a significant barrier for his community in obtaining fair trials and legal assistance throughout the civil legal system. Another participant believed that "the [legal] system was built on putting black people in prison" and that it is "a system built on racial profiling" that needs to be fixed before it could meet the needs of the people it claims to serve.

Quote: *"Most Native American usually run into a barrier because most of the time there is more than one person in the line of the system that, because of their bias, ends up complicating things down the line, and I don't think that that is really understood as an issue because they don't see their biases as a blanket."*

Information Channels

Many participants currently obtain their information from the internet, books, acquaintances or friends, and family members who know legal matters well or have gone through a similar experience. Two said their employer offered legal services to employees for a small fee as a work benefit. Meanwhile, others rely on community and nonprofit organizations' services, such as Causa, BLM, churches, PCUN, Mano a Mano, Unete, Next Door, to procure resources, legal advice, legal knowledge, and informational classes. The consensus from both focus groups is that they are very likely to trust a lawyer or other form of legal assistance when they are recommended to them by a person or organization they trust.

When asked what programs they believed would be helpful for them and their communities, many preferred getting in person or over the phone legal assistance and getting legal assistance in preparing and checking forms that they had filed out.

Quote: *"Having a legal advocate in the court system that can help people navigate would be a good starter, and then everything else listed (in the study question) would be a second option; otherwise, by themselves, they are like a black hole that you are stepping into."*

"Everyone should have all of these options," one participant argued; "It would be good to have paralegal services that had a bit more hand-holding," another agreed, "... and helped walk people through the process." Participants want to be provided with more information and be listened to and understood by someone who can connect with someone who looks like them and understand them better to remove barriers and address their needs. Many believe that a hotline or in-person help from knowledgeable lawyers or legal assistants would help people handle the legal system cleanly. People often tend to miss a lot of nuances and inside information when self-educating themselves.

Quote: *"I favor some sort of personal interaction to get better answers because by just watching a video or visiting the website, you might miss a lot of nuances of interacting with the court system."*

They also stated that it was imperative to provide resources for the diverse legal circumstances in their communities, as it can be challenging to find information about how to obtain assistance in different legal fields.

Several, however, also advocated for more accessible self-education resources, such as a website, online video, and legal training. They believe that these would help give people the baseline information when dealing with legal terms and charges and help them better use the knowledge and experience in-person assistance could provide. One participant put the importance of these resources into perspective, talking about a personal experience in which a manager had abused the rights of their employees because they were not English proficient and did not know their rights.

One participant in the other focus group shared similar thoughts, “[I]f you don’t know your rights, you don’t have them. Something about waiting for someone else to educate you on those rights isn’t sitting well with me. It would be better for people to do their own research so that they can learn how to navigate the system themselves.”

The majority agree that having more than one or all of these options readily available and accessible would provide the best experience and assurance of legal help for the majority of people. Several also recommended spreading these resources in multiple languages or providing multilingual options when talking to a legal assistant over the phone or in person for those with low English proficiency.

Quote: *“[I think it would be important to have] a hotline with interpretation services and having information in various languages.”*

Another mentioned the importance of having these benefits available to rural communities or those who may not have access to computer technology as many would not be able to access assistance or resources reliant on online services.

Quote: *“There are people here in rural communities that don’t have access to [the] internet and don’t have email and are not text savvy to communicate.”*

Understanding the Licensed Paraprofessional Program

Defining what are Paralegal Professionals

Before presenting the Oregon State Bar's plan for the Licensed Paraprofessional Program, participants were asked if they had any previous knowledge of a licensed paralegal. About half of the participants had heard of paralegal professionals before, and these previous understandings defined the lens through which they would view the program. One participant defined paralegals as having had "some legal training about how the law works but not as in-depth as to how lawyers would venture. Their training would help them to be able to prepare documents accurately and understand various legal terms and situations to assist lawyers." Another participant added, "they can also help people independently to process paperwork when there is no battle and only mutually agreed upon terms, [but they] can't make legal decisions for legal attorneys, rep people in court, or give legal advice."

Quote: *The Spanish group had a slightly different understanding of a paralegal than the English group. They defined a licensed paralegal as "a person that is recognized by the state to provide legal advice," or "a person that studies but is under supervision of someone with more experience."*

Initial Feedback

Opportunities:

Quote: *"Knowing paralegals and attorneys who work through that equality and racial lens, who work for and care for the community, those would be things that I would look for. Will this program give us that?"*

Despite earlier reservations, most participants believed that Oregon State Bar's Licensed Paraprofessional Program was an excellent first step towards helping fill the gap in much-needed legal assistance in their communities and voted for them to implement the program. "I give them credit for the family services," said one, "but it also needs to reach across the board and help with a lot of further matters." Many were also eager to see an organization providing more affordable assistance to their communities, with one participant commenting, "if this is low-cost though, I can see it being very accessible to a lot of people."

Quote: *"I think anything they can do to help the minorities is good; it is a step in the right direction."*

Multiple participants saw the program as a chance to strengthen the bond between the regular community and the licensed paralegals. The belief that “the courts don’t care, ... they don’t get to know you, [and] don’t take you into account” is prevalent in the BIPOC community. One participant recounted her experience, saying, “I was sent to another city to get my police report, and I didn’t have good service. I felt humiliated... I’m afraid of being ignored again.” They want legal assistance that will obtain results and leave them feeling heard on their issues. Participants hope that Oregon State Bar’s Licensed Paraprofessional Program will help provide the BIPOC community with licensed paralegals who are “more honest and benefit the community” due to their knowledge and previous experience. This program, many argue, could help ease the worry that little to no results would be obtained when getting legal assistance because those providing the legal help don’t care about the people they are helping.

Quote: *“It is better than what we have now. There is a systemic problem with the legal system that needs to be addressed and not just give solutions to these areas, but there need to be more solutions to equity as far as how the system processes people and the accessibility of inaccessibility to our communities.”*

Challenges:

After being presented with Oregon State Bar’s Licensed Paraprofessional Program, participants were skeptical about the feasibility of such a program. Additionally, many did not believe that it would be adequate to provide the pro bono legal service required by the BIPOC community due to the limited help licensed paralegals can provide. In contrast, they said there is a wide variety of cases for which their communities need legal assistance. “That sounds great for family and tenant cases,” commented one participant, “but for a lot of immigration and other cases for communities of color, it won’t help- not enough to fix the disparity.” One participant added, “it’s a good start, but we need more!”

Quote: *“When we are talking about legal access to minorities and communities of color, I think it should be across the board, and this only touches two pieces. And we talked about fairness in the court system and due process and all those other things, and these don’t even touch that.”*

One of the most pressing concerns for these groups was the lack of accountability they perceived inherent in the system. They worried that this would allow these licensed paralegals to abuse the trust of the communities they claimed to serve, making it harder for people to find quality services. “Lawyers,” one participant commented, “have a possibility of losing their license to hold them accountable for their actions. How will these paralegals be held accountable? Will these [restrictions] be provided for by the legal liability law? [Or will they be provided] by the Oregon [State] Bar?”

Quote: *“I worry about the oversight; a program like that would need a lot of structure... the consequence about it not going about correctly would be deserving parents do not get time with their children or lose out in a divorce.”*

Others worried about the oversight of the educational programs themselves. Many believed that the only way to ensure the quality of a good paralegal was for them to have quality education and prior experience. As stated by one participant; “a class like this would need a lot of structure... [if they] had a class that taught you a lot of the legal process but not how the legal system works it could make it hard for people to get the help they need or the highest form of representation/help they could receive.” “Lawyers charge what they do due to the cost of their education,” another participant commented. “I think it might be better if we made more accessible lawyer education programs that might help the prices and might encourage more lawyers to exist and help the problem that way.”

Quote: *“There is much mistrust because there are many people passing as lawyers and stealing from their clients. I would need more information about their credentials and references to trust someone like that instead of a real lawyer.”*

Several also expressed concerns that too many new benefits for paralegals could take away from people seeking out professional lawyers. They believed that this might cause a shortage of lawyers and hurt people by giving them less than qualified assistance. “Paralegals,” one woman argued, “are not good for criminal cases, not meant to replace lawyers, and not trained to do that either. Putting them in when people have quick amicable cases is fine. Still, for cases where you need a proper lawyer, you need more than a paralegal.”

The majority agreed, expressing concerns that this program would “turn into more of a welfare option” and provide “legal representation of last resort” rather than filling a gap or seeking to help people get a good and accurate representation. “I think,” said one, “that people might be tricked into thinking that paralegals have the same capability as a lawyer when they really do not. That might cause problems with what people expect and the help they actually get in these cases and might do more harm than good.” Another commented, “if you are representing people who are underrepresented, you have to have a higher quality of help or people will turn their noses up at it and it won’t go anywhere.”

Quote: *“In my community, if people don’t get the same results they would with a lawyer, they are not going to trust them in the future.”*

Participant Recommendations

Participants believe that a better presentation of the program would be to style it as a first step in the legal assistance package and not the entire product. “I think it would be very helpful to have... a great place to get advice and legal help and then move on from there if you need more help,” said one participant.

Quote: *“For the trust [of the community], there should be an understanding that if there is something out of the scope of the paralegal, they disclose that and refer you to a regular lawyer.”*

The majority also argued that getting a second opinion and preliminary legal advice would make people more open to consulting an attorney and help them get a better understanding of how the legal system works. As stated by one participant, “I think it would be a good thing to help fill the role of legal advice and help in open and shut cases, because people sometimes feel that they pay lawyers for very little. If you find through a paralegal that you need more help, then that could help people feel that they are moving in the right direction and be better about getting more help.”

Quote: *“It is a great access point for those who otherwise may not consider getting legal [help] or support.”*

However, many also stressed the need for transparency about the educational backgrounds and the quality of help that clients would be receiving. “[There] needs to be a strong emphasis on the paralegal who went to school for it vs. someone who has a lot of experience versus someone who has a license.” One participant suggested that a vetting system would be better in helping the community get the reliable assistance they need, saying that “just because [licensed paralegals] are available does not mean they are good. [There] needs to be a system that provides that accountability. If not, it’s a gamble who you get. [I] don’t know how that long-term accountability will be put in place.” Many also felt that when receiving legal assistance, clients should be made aware of the role and capabilities of a licensed paralegal in the legal system.

Quote: *“If it is not very clear what they can and can’t do, [it] can be misleading for people to believe that a licensed paralegal can do almost the same thing that a lawyer can.”*

These two clarifications, they believe, will help their communities better trust and understand the assistance they are receiving from the Oregon State Bar. Several participants also recommended that perhaps it would be best to have a new name for licensed paralegals working under this program due to their previous experiences with licensed paralegals' limitations, such as "lawyer practitioner."

Quote: *"Making a clear distinction between a paralegal and a licensed paralegal will make a huge difference in understanding what they are."*

Lastly, participants hope Oregon State Bar's Licensed Paraprofessional Program will provide the community with multilingual services and resources. Having licensed paralegals available for diverse races/ethnicities and developing resources in various languages will make the legal system more accessible for those with limited English proficiency. This is essential to providing more accessible legal help for everyone. One participant who works for a local organization serving the Asian community affirmed, "Representation really matters. I have clients calling all the time calling for Asian lawyers who speak their language."

Quote: *"Racial representation really matters. I have clients calling wanting to talk to lawyers that speak their language. People want to be assured that they are going to get the help they need and be able to help with their particular situations."*

This gap in service is a significant reason why so many people, particularly those with low English proficiency and BIPOC communities, are hesitant to or have trouble seeking legal assistance. Language support will help people trust their legal assistance providers and better understand their services.

Spanish Group Specifics

Current Barriers

One barrier particular to the Spanish Focus Group was the ineffective service provided by Law firms and lawyers in diverse types of law. One participant commented that the service provided to her by one lawyer was inefficient and slow and that the lawyer did not do what she had paid her to do.

Quote: *“I have paid two lawyers to obtain my report, and I haven’t gotten it. Lawyers have charged me without serving my needs, and the police didn’t do their jobs. I don’t feel heard.”*

Others also agreed that they had had several experiences procuring legal help that left them feeling dissatisfied and unheard.

Quote: *“The service tends to be slow. It is a frustrating process. [But] since English is my second language, I feel [that] I need their services. So mostly, I feel that my hands are tied.”*

They believe that another step towards making legal assistance more accessible is providing good customer service.

Quote: *“Lawyers should have a friendly service and be faster and more effective. It feels like they don’t pay much attention in our cases as clients.”*

When lawyers don’t take the necessary time to understand the cases and the challenges of the BIPOC clients and their communities, they are less likely to trust them or seek their help. Lawyers need to be held accountable to the communities they serve, participants advocated. People need a way to voice their concerns and dissatisfaction with the current methods of operation.

Other barriers for this community included the locations of lawyers’ offices. A participant mentioned that a lawyer’s office is usually located in big cities and far away from rural areas. It is harder to find and reach when the office is not near the Latinx community. Another barrier was the challenge of finding good lawyers; “many are simply interested in getting money, not in helping people.”

Participants Responses and Reaction

Most of the Spanish focus groups' participants' concerns were listed above in the general Participant Feedback section due to their similarities with the general BIPOC and low-income participants' feedback. It is worth noting that the following responses were only mentioned in the Spanish focus group.

As a whole, the group was more open to the idea of using a paralegal as an authorized legal assistant and believed that they would be a reliable option for legal assistance, especially if that legal help were provided in a wide range of languages. Participants' main hopes were that the program would bring farmworkers and other essential workers more opportunities to obtain legal assistance. They often have limited schedules and speak indigenous languages. They also earn low incomes, making it difficult to afford legal assistance. Participants also believed that this program would mutually benefit the community and offer new career opportunities to paralegal participants. The paralegals will help the community find good legal services. While the community helps provide paralegals with more experience in the legal field, which helps paralegals continue their education to become lawyers.

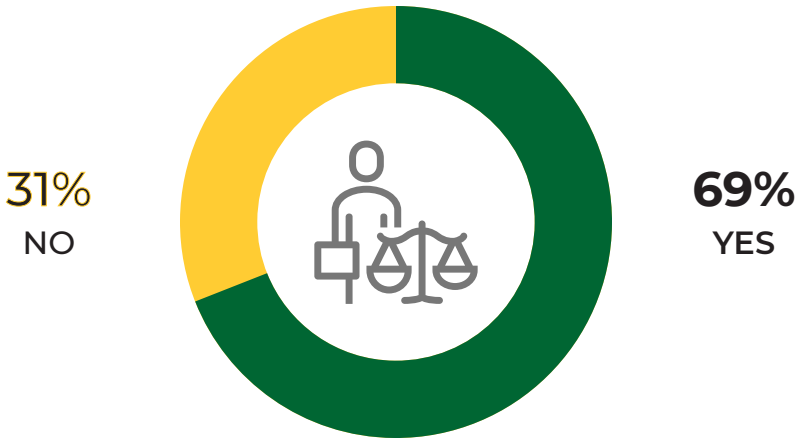
The Spanish focus group defined a licensed paralegal as "a person that is recognized by the state to provide legal advice," or "a person that studies but is under supervision of someone with more experience." The general focus group, however, defined licensed paralegals, saying, "they can also help people independently to process paperwork when there is no battle and only mutually agreed upon terms, [but they] can't make legal decisions for legal attorneys, [represent] people in court, or give legal advice." Overall, the Spanish focus group's definitions differed significantly from that of the English-speaking focus groups and seemed to have directly influenced the differences in their views of Oregon State Bar's Licensed Paraprofessional Program.



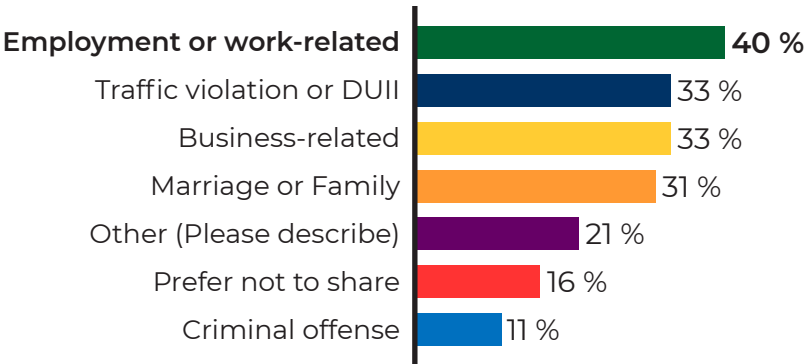
The group was more open to the idea of using a paralegal as an authorized legal assistant and believed that they would be a reliable option for legal assistance, especially if that legal help were provided in a wide range of languages.

Survey Results

12. Have you or a family member ever hired or used the services of an attorney/ lawyer?



13. What kind of legal matter (consulting or problem) did the lawyer assist you with? (select all that apply)



14. Have you ever had a legal problem where you wish you could have hired a lawyer?



15. Why didn't you hire a lawyer?



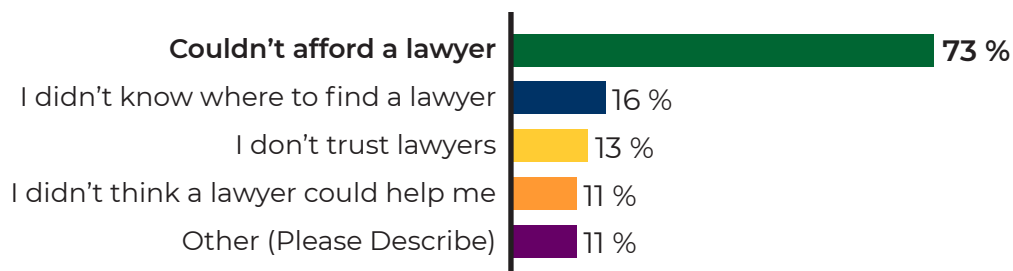
16. What has been your experience with the civil legal system?



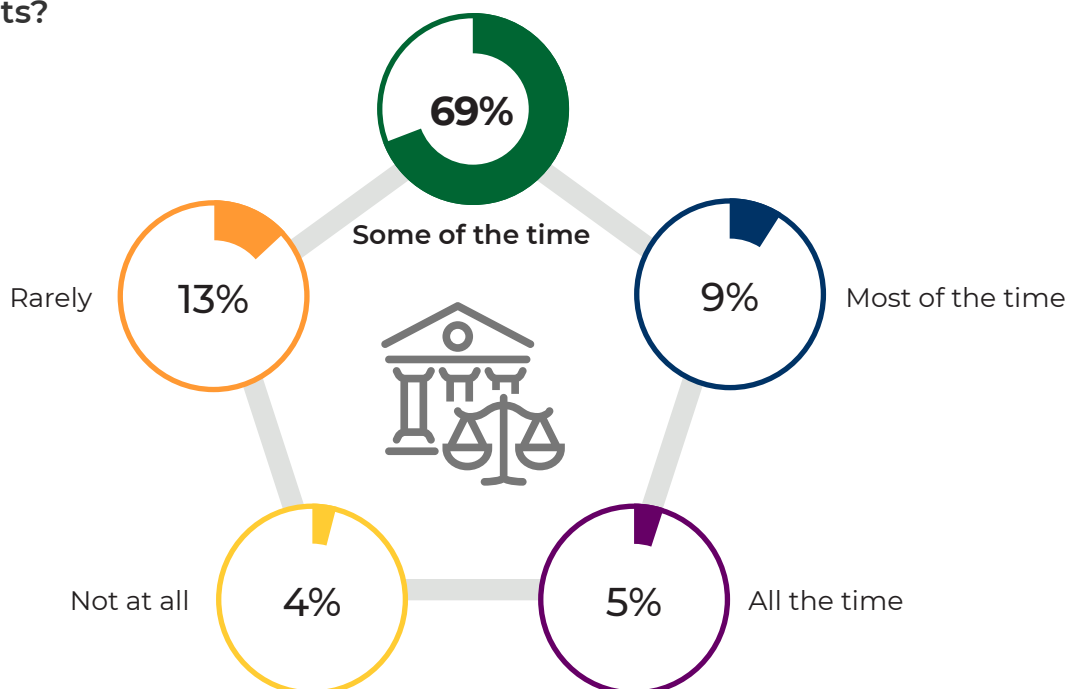
17. Have you or a family member ever represented yourself in court?



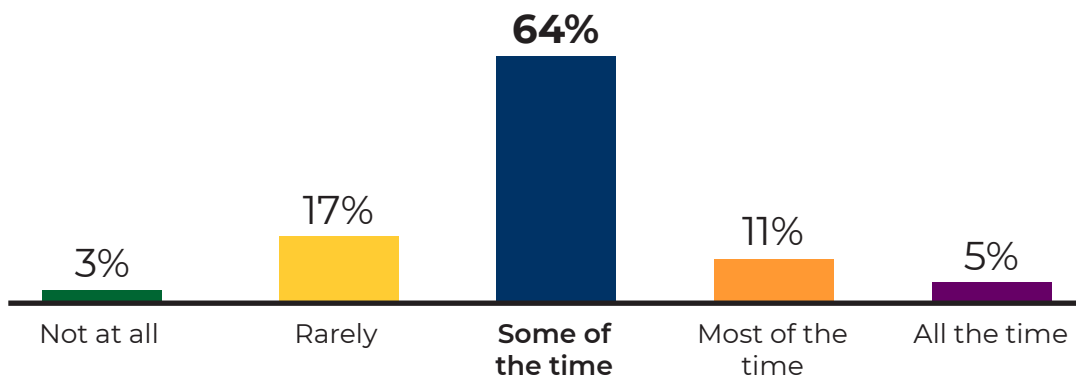
18. Why did you represent yourself? (select all that apply)



19. Do you believe the courts can work for you and your communities' protection and rights?



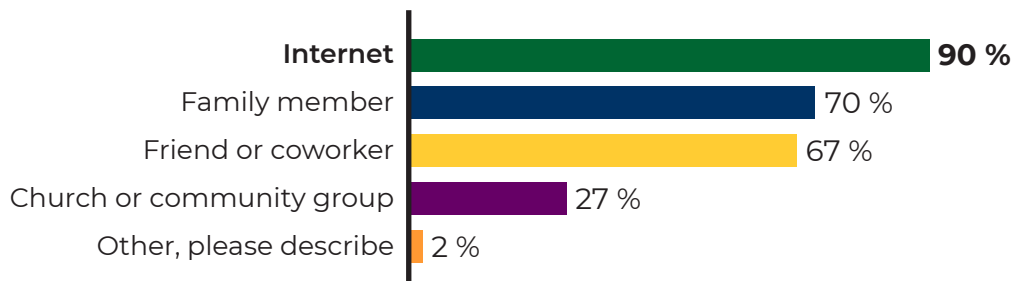
20. How often do you think you and your family, friends, and neighbors are treated fairly in the civil legal system? (choose one)



21. If you had a legal problem, which would be helpful to you?
(select all that apply)



22. How do you get legal information? (select all that apply)

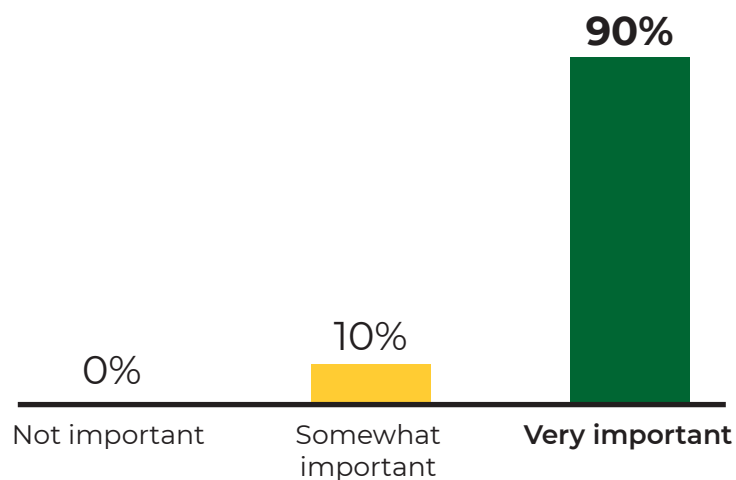


23. Do you know what a Licensed Paralegal is?

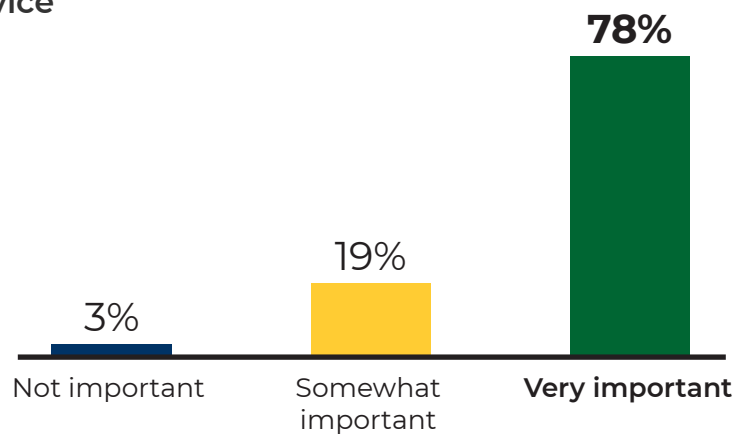


24. What factors are important to you in making this decision?

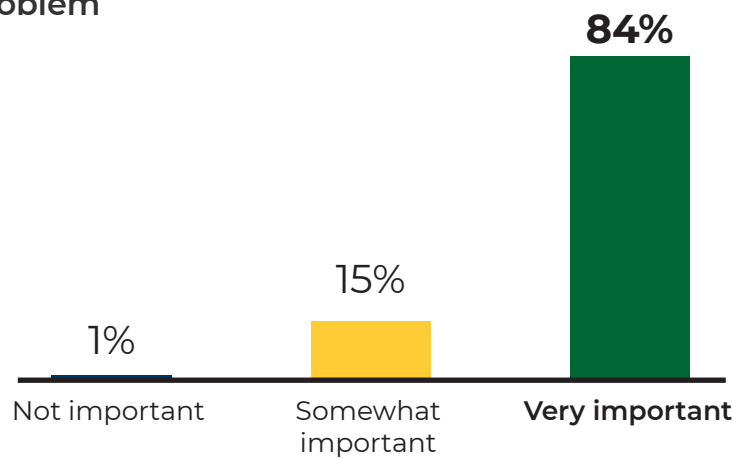
A. Cost



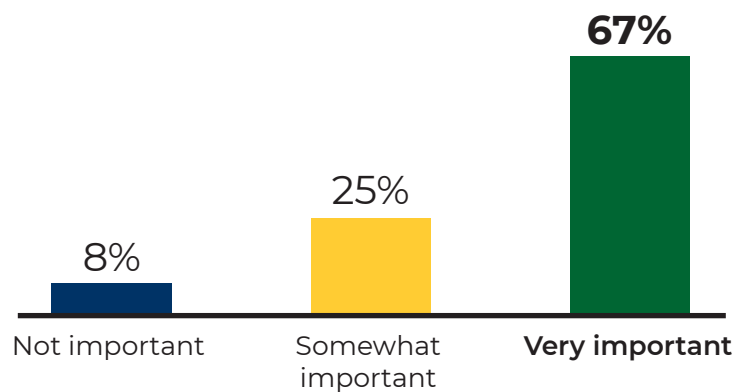
B. Location of service



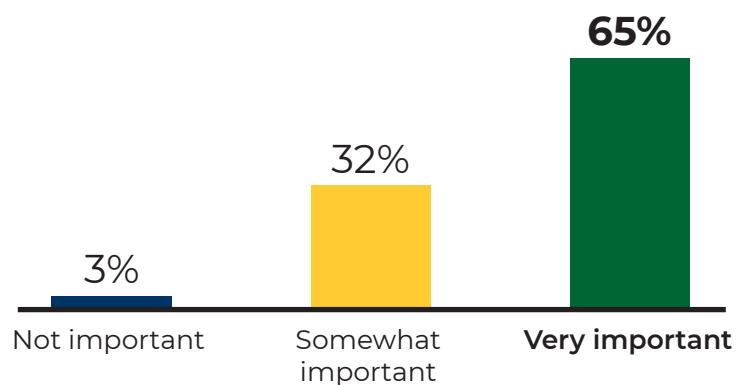
C. Type of legal problem



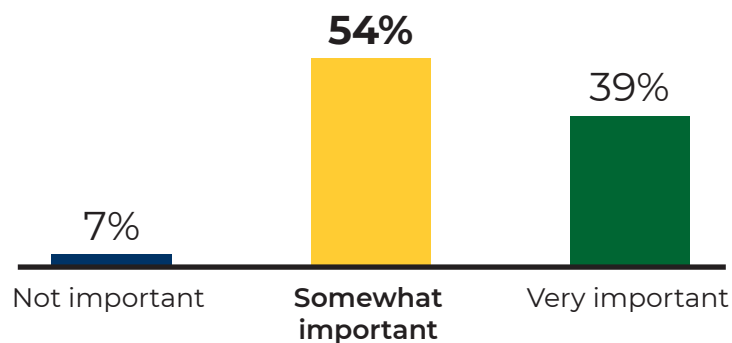
D. Firm recognition



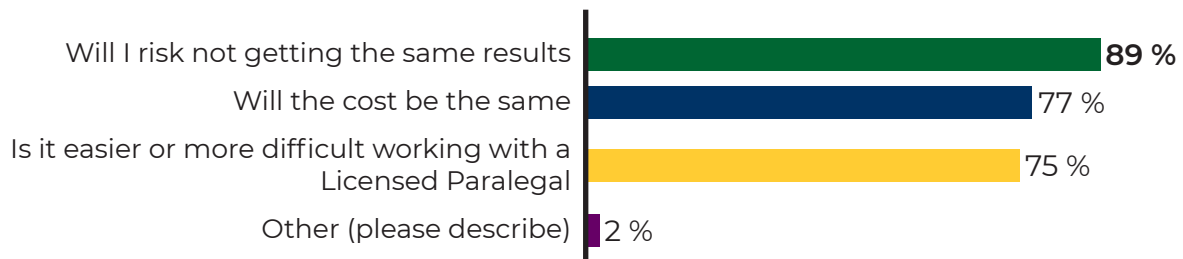
E. Good recommendation from a friend or family member



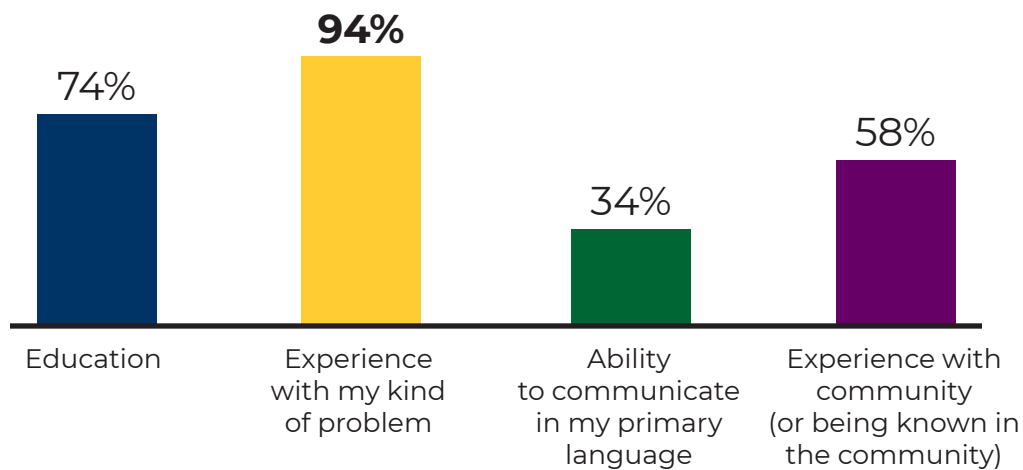
F. It was advertised in a way you trust



25. What concerns would you have about working with a Licensed Paralegal instead of a lawyer? (select all that apply)



26. What would you want to know about a Licensed Paralegal's background before a Licensed Paralegal assisted you with your legal problem? (select all that apply)



27. Do you think Oregon should implement a program to license paralegals?



28. Would you be more open to consult an attorney after working with a licensed paralegal?



Closing Remarks and Recommendations

The Oregon civil system has failed its residents. Our society has been woven with deeply racist policies that directly harm Black, Indigenous, and other people of color. These policies have led to an unequal legal system where marginalized communities have been systematically locked out of opportunities in courts, defense, and other legal procedures.

On top of these inequities, Spanish speakers found that deficits in language access are an additional barrier to getting a fair shot in the legal system. Spanish speakers are linguistically disadvantaged; justice is not just blind but deaf. One of the main concerns of these participants was the attorney's actions, the lack of accountability that exists, and the racial discrimination they had suffered. Crucial changes are needed to renew OSB's role of protecting the public. By ensuring competence and integrity by promoting professionalism, understanding, and respect of clients in the legal profession, OSB can reposition itself to protect historically underserved communities.

The OSB Paraprofessional Program can address some of the barriers for low and moderate-income Oregonians, especially for BIPOC and Limited English Proficiency communities. This program can bring access to legal services for diverse communities across Oregon. Providing competent bilingual and bicultural legal services offers the opportunity to increase trust in the legal system in general. It could be a door to justice and equity for all residents.

Beyond serving racially diverse Oregonians, this program will provide expanded legal job opportunities for women and people of color. There are substantial benefits of similar programs in other states, even though these programs have faced intense hostility from many lawyers and various state bars. These programs have provided legal services to many US residents who would have otherwise proceeded without representation, improved legal outcomes for moderate means clients, and empowered them to feel more confident in the courtrooms. Also, it has been proven that the lawyers in states already implementing these programs have expanded their practices by capturing previously untapped and distrustful legal system residents.



In Washington, Limited Licensed Legal Technicians (LLLTs) provided legal services to many Washingtonians who would have otherwise proceeded without representation in their family law cases. LLLTs provided expanded legal services to traditionally underserved communities, including Washington's immigrant communities. The program "provides access for women and people of color, who are also getting better results in their cases." LLLTs allowed for more efficient proceedings and better decision-making for family law judges and commissioners by reducing procedural errors, submitting high-quality work products, and preparing clients to present their cases effectively. (Solomon & Smith, 2021)

This program may help OSB drive its mission of improving the quality of legal services and increasing access to justice. It will help you advance a fair, inclusive, and accessible Justice system.

LMS recommends OSB of the following:

- Continue reaching, listening, and learning from underserved communities.
- Create and implement a strategic and culturally responsive communication and engagement plan and prioritize underserved audiences. This should include:
 - Awareness and education for OSB resources.
 - The benefits of the OSB Paraprofessional Program.
 - The development and testing of culturally responsive messages before distribution.
- Resist the pressure of not doing the program. This program will not solve all the injustice and lack of equity. Still, it will provide resources and address some of the injustice, lack of inclusivity, and bias in the Oregon Legal System. It is necessary to provide alternatives to Oregonians since the system has not worked and increased the lack of justice.
- Partner with local law schools and technical schools to implement legal resources and programs.
- Advertise and make it easy for Oregonians to report attorneys and their malpractices.
- Commit funds to collect more data on attorney services and do more with the data collected, such as making public and accessible malpractice claims against attorneys.

Appendix

A. Additional Quotes:

Quote: *"For us working in the fields, it is hard having to lose a workday to go to court; many times, you prefer to pay the ticket even if [it] is going to cost you more later."*

Quote: *"I have no trust in them [the justice system]. They look at us as minorities, and they say, 'you pretty much are already guilty,' without getting to know who you really are. It should not be based on the color of your skin."*

Quote: *"I have no trust in them [the justice system]. They look at us as minorities, and they say, 'you pretty much are already guilty,' without getting to know who you really are. It should not be based on the color of your skin."*

Quote: *"Here, in the county [I live in], I have seen the Hispanic kids getting harsher penalties than white kids; the system is very racist and unfair."*

Quote: *"I believe that if it is going to be a battle, you are better off with a lawyer if it is amicable and everybody is [on] the same page, and it is just a question of filing paperwork for civil stuff and the like, I think a legal paralegal is fine."*

Quote: *"I would want a very detailed description of what their services would be and perhaps referrals or recommendations from even other law firms."*

Quote: *"Lawyers should have a friendly service and be faster and more effective. It feels like they don't pay much attention in our cases as clients."*

B. OSB Focus Group Discussion Questions:

Oregon State Bar Discussion Guide

Part 1 - Who are we talking to? (this is part of a survey sent to the participants in advance)

1. Is your combined yearly household income equal or less than \$60,000?
 - a. Yes
 - b. No
2. Do you live in the state of Oregon?
 - a. Yes
 - b. No
3. What county do you live in?
 - a. (Short Text Response)
4. What is your age?
 - a. Under 18
 - b. 18-24
 - c. 25-34
 - d. 35-44
 - e. 45-54
 - f. 55-64
 - g. Above 64
5. Which of the following best represents your gender?
 - a. Male
 - b. Female
 - c. Non-binary
 - d. Please Describe:
6. When asked about your racial or ethnic identity, how do you identify?
 - a. Hispanic or Latino/a/x
 - a. Native Hawaiian or Pacific Islander
 - a. White or Caucasian
 - a. Native American or Native Alaskan
 - a. Black or African American
 - a. Middle Eastern or Northern African
 - a. Asian
 - a. Please Describe:
7. In 2020, What was your household income?
 - a. Less than \$20,000
 - b. \$20,000 - \$30,000
 - c. \$30,000 - \$40,000
 - d. \$40,000 - \$50,000
 - e. \$50,000 - \$60,000

8. Which of the following messengers would you trust to share important information?
(Select up to 3)

- a. Local newspapers and reporter
- b. Friends or family
- c. Community leaders and advocates
- d. Teachers, schools
- e. Your employer
- f. State or local elected leaders
- g. County entities
- h. Celebrities or sports figures

Part 2 - What is the respondent's experience with the legal system?

1. Have you or a family member ever hired or used the services of an attorney/lawyer?
 - a. If Yes: Q: What kind of legal matter (consulting or problem) did the lawyer assist you with?
 - b. If No: Q: Have you ever had a legal matter/problem where you wish you could have hired a lawyer?
 - If Yes: Why didn't you hire a lawyer?
2. What has been your experience with the civil legal system?
3. Have you or a family member ever represented yourself in court?
 - a. If Yes: Why did you represent yourself?
4. Do you believe the courts can work for your and your communities' protection and rights?
5. How often do you think you and your family, friends, and neighbors are treated fairly in the civil legal system?
6. If you had a legal matter/problem, which would be helpful to you?
 - a. Visiting a website
 - b. Viewing online videos
 - c. Attending a legal training
 - d. Calling a legal information hotline
 - e. Getting questions answered online by a lawyer
 - f. Talking to a lawyer on the phone or in-person
 - g. Having a lawyer check forms/letters/documents you prepared yourself
 - h. Having a lawyer prepare forms/letters/documents for you to file or send yourself
 - i. Having a lawyer take care of the problem or go to court for you
7. How do you get legal information now?
8. Do you know what a Licensed Paralegal is?

Part 3- Would the respondent use an LP? Would a Licensed Paraprofessional Program help address an unmet legal need? Is there a demand for these services?

Background for the respondent: At this stage, give the respondent background on the proposal. Here is some existing language we use on the OSB website:

The Oregon Supreme Court is considering the creation of a new type of legal provider, a Licensed Paralegal, to provide some legal services that, until now, only lawyers may provide. Similar to the introduction of Nurse Practitioners to the medical field, a Licensed Paralegal would be allowed to provide limited legal services [only] in family law cases (divorces, custody, parenting time, etc.) and landlord/tenant cases. These are two of the areas of law with the greatest unmet need for legal assistance in Oregon.

A Licensed Paralegal would have specific requirements for education and experience and would be subject to many of the rules and regulatory requirements that currently exist for lawyers. The intent is to provide access to legal help for those who currently cannot afford a lawyer or who otherwise would go to court with no legal assistance.

9. If you had a legal problem today, would you consider getting help from a Licensed Paralegal instead of a lawyer?
 - a. Why?
10. What factors are important to you in making this decision?
11. What concerns would you have about working with a Licensed Paralegal instead of a lawyer?
12. What would you want to know about a Licensed Paralegal's background or education before a Licensed Paralegal assisted you with your legal problem?
13. Do you think Oregon should implement a program to license paralegals?
14. Would you be more open to consult an attorney after working with a licensed paralegal?

C. OSB Survey:

Oregon State Bar Community Survey

Hello: This survey is intended for participants who make low to moderate income (up to \$50,000) and live in the state of Oregon.

1. Is your combined yearly household income equal or less than \$50,000?
 - a. Yes
 - b. No (End Survey, not qualified)
2. In 2020, What was your household income?
 - a. Less than \$25,000
 - b. \$25,000 - \$60,000
 - c. \$60,000 - \$75,000
 - d. \$75,000 - \$100,000
 - e. \$100,000+
3. Do you live in the state of Oregon?
 - a. Yes
 - b. No (End Survey, not qualified)
4. What county do you live in?
 - a. (Short Text)
5. What is your age?
 - a. 18-24
 - b. 25-34
 - c. 35-44
 - d. 45-54
 - e. 55-64
 - f. 65+
6. Which of the following best represents your gender?
 - a. Male
 - b. Female
 - c. Non-binary
 - d. Please Describe:
7. When asked about your racial or ethnic identity, how do you identify?
 - a. Hispanic or Latino/a/x
 - b. Native Hawaiian or Pacific Islander
 - c. White or Caucasian
 - d. Native American or Native Alaskan
 - e. Black or African American
 - f. Middle Eastern or Northern African
 - g. Asian
 - h. Please Describe:

8. What is your highest level of education?
- a. Less than High School
 - b. High School Degree / GED
 - c. Some College / Associates Degree / Technical Degree
 - d. Bachelor's Degree
 - e. Masters or Doctorate
9. Which of the following messengers would you trust to share important information?
(Select up to 3)
- a. Local newspapers and reporters.
 - b. Friends or family
 - c. Community leaders and advocates
 - d. Teachers, schools
 - e. Your employer
 - f. State or local elected leaders
 - g. County entities
 - h. Celebrities or sports figures
 - i. Please Describe:
10. Are you impacted by a disability?
- a. Yes
 - b. No (skip to question 12)
 - c. Prefer not to answer (skip to question 12)
11. Where are you impacted by disabilities? (Select all that apply)
- a. Hearing
 - b. Walking
 - c. Sight
 - d. Learning
 - e. Speech
 - f. Prefer not to share
 - g. Please Describe:
12. Have you or a family member ever hired or used the services of an attorney/lawyer?
- a. Yes
 - b. No (Skip to question 14)
13. What kind of legal matter (consulting or problem) did the lawyer assist you with?
(select all that apply)
- a. Traffic violation or DUI
 - b. Marriage or family
 - c. Employment or work-related
 - d. Business-related
 - e. Criminal offense
 - f. Please Describe:

14. Have you ever had a legal problem where you wish you could have hired a lawyer?
- a. Yes
 - b. No (skip to question 16)
15. Why didn't you hire a lawyer?
- a. Too expensive
 - b. I didn't think I needed one
 - c. I didn't know where to find one
 - d. Other (please describe)
16. What has been your experience with the civil legal system?
- a. It has been an easy experience with little to no confusion
 - b. It has been a somewhat straightforward experience with some confusion, but was easily resolvable
 - c. It has been somewhat of a challenging experience, but I got through it
 - d. It has been a very challenging experience due to laws feeling like an entirely different language than what I am used to
 - e. Other (please describe)
17. Have you or a family member ever represented yourself in court?
- a. Yes
 - b. No (skip to question 19)
18. Why did you represent yourself?
- a. Couldn't afford a lawyer
 - b. I didn't know where to find a lawyer
 - c. I don't trust lawyers
 - d. I didn't think a lawyer could help me
 - e. Other (please describe)
19. Do you believe the courts can work for your and your communities' protection and rights?
- a. Not at all, Rarely,
 - b. Some of the time,
 - c. Most of the time,
 - d. All of the time
20. How often do you think you and your family, friends, and neighbors are treated fairly in the civil legal system? (choose one)
- a. Not at all, Rarely,
 - b. Some of the time,
 - c. Most of the time,
 - d. All of the time

21. If you had a legal problem, which would be helpful to you? (select all that apply)
- a. Visiting a website
 - b. Viewing online videos
 - c. Attending a legal training
 - d. Calling a legal information hotline
 - e. Getting questions answered online by a lawyer
 - f. Talking to a lawyer on the phone or in person
 - g. Having a lawyer check forms/letters/documents you prepared yourself
 - h. Having a lawyer prepare forms/letters/documents for you to file or send yourself
 - i. Having a lawyer take care of the problem or go to court for you.
 - j. Other (please describe)
22. How do you get legal information? (select all that apply)
- a. Internet
 - b. Family members
 - c. Friends or coworkers
 - d. Church or community groups
 - e. Other (please describe)
23. Do you know what a Licensed Paralegal is?
- a. Yes
 - b. No

(Background for the respondent)

The Oregon Supreme Court is considering the creation of a new type of legal provider, a Licensed Paralegal, to provide some legal services that, until now, only lawyers may provide. A Licensed Paralegal would be allowed to provide limited legal services [only] in family law cases (divorces, custody, parenting time, etc.) and landlord/tenant cases. These are two of the areas of law with the greatest unmet need for legal assistance in Oregon.

The intent is to provide access to legal help for those who currently cannot afford a lawyer or who otherwise would go to court with no legal assistance.

24. If you had a legal problem today, would you consider getting help from a Licensed Paralegal instead of a lawyer?
- a. Yes
 - b. No
 - c. I need more information to make a decision

25. What factors are important to you in making this decision?

a. Cost

- Very Important
- Somewhat Important
- Not Important

b. Location of services

- Very Important
- Somewhat Important
- Not Important

c. Type of legal problem

- Very Important
- Somewhat Important
- Not Important

d. Firm recognition

- Very Important
- Somewhat Important
- Not Important

e. Good recommendation from a friend or family member

- Very Important
- Somewhat Important
- Not Important

f. It was advertised in a way you trust

- Very Important
- Somewhat Important
- Not Important

26. What concerns would you have about working with a Licensed Paralegal instead of a lawyer?

a. Will I risk not getting the same results

b. Will the cost be the same

c. Is it easier or more difficult working with a Licensed Paralegal

d. Other (please describe)

27. What would you want to know about a Licensed Paralegal's background or education before a Licensed Paralegal assisted you with your legal problem?

a. Education

b. Experience with my kind of problem

c. Ability to communicate in my primary language

d. Experience with the community (or being known in the community)

28. Do you think Oregon should implement a program to license paralegals?

a. Yes

b. No

29. Would you be more open to consult an attorney after working with a licensed paralegal?

a. Yes

b. No

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Summary of Public Input on Paralegal Licensure Proposal received through the OSB website

In the last week of November 2021, the Oregon State Bar published a new web page at www.osbar.org/LP. This page includes a link to a public comment form that individuals may use to submit comments on the proposal to the OSB. The first comment was received on November 27, 2021, and as of March 23, 2022, 375 responses had been received.

Of these respondents, 153 identified themselves as lawyers. Of those, 83 (54%) indicated they opposed the proposal, while 54 (35%) indicated they supported it. An additional 215 respondents identified themselves as members of the public (not lawyers or judges). Of those, 199 (92%) indicated they supported the concept while 12 (6%) indicated they were opposed to it. Six of the seven respondents who identified themselves as judges indicated they supported the proposal.

The form also asks respondents to provide additional written comments expressing their thoughts or concerns, which many respondents did. The responses are briefly summarized below.

Comments in Opposition

Complexity – The most common objection raised to the proposal is that the areas of law in question are too complex or technical for LPs to provide effective assistance. This objection was more frequently raised with respect to L/T cases, but some respondents raised it with regard to family law cases as well. Commenters often cited to recent changes in the law, including changes made due to COVID, and stressed that keeping up with these changes is extremely difficult even for lawyers.

Some respondents responded more generally that LPs were not qualified to handle these claims, but without discussion of the complexity of the law itself.

Confusing For Clients – Several respondents raised the objection that licensing paralegals would be confusing for consumers because they would not understand the scope of practice limitations, and wouldn't be able to determine when they needed a lawyer instead. Others expanded on this objection, suggesting that the LPs themselves would have difficulty staying within the scope of their licensure.

Other Options – Many respondents made the argument that the OSB and/or the State of Oregon should focus its efforts on increasing access to attorneys rather than seeking to license paralegals. These respondents often acknowledged the need for additional services, but suggested solutions such as funding increases for legal aid, opening/reopening law school clinics, requiring lawyers to provide pro bono services, and mandatory mediation.

One respondent followed up on this concern by pointing out that a high proportion of self-represented individuals report being unaware of legal services that are currently available. The suggestion was made that if LPs were licensed, considerable effort would need to be expended to make sure the public was aware that this option existed.

Effect on Lawyers – Many respondents also argued that licensing paralegals would be bad for lawyers. Some suggested that the cost of insuring LPs against malpractice would ultimately be borne by attorneys. Others argued that allowing LPs to practice independently would discourage individuals from going to law school, or would be disrespectful to attorneys who put in the time and effort to become licensed. Other objections that were raised in the comments include that the program was tried and failed in Washington, and that it would create a two-tiered system of justice where less wealthy individuals wouldn't have access to a lawyer.

Comments in Favor

Need For Services – Comments in favor of the proposal were often more general than the comments made in opposition. Numerous commenters expressed their belief that there was a great need for additional legal assistance without going into detail about how it should be addressed. As mentioned above, this belief was also stressed by some who objected to the proposal.

Cost of Legal Services – Most of the substantive comments in favor of the proposal focused on issues related to cost. These usually focused on the high cost of hiring an attorney and the reality that many individuals cannot afford to hire an attorney for most case types. Some respondents discussed experiences attempting to direct those in need to legal services, and that very often services were not available.

Cost of Legal Education – A few commenters also pointed out that the cost of a law degree may be unreasonably high and may itself be an access to justice barrier, in that legal education costs are ultimately passed along to legal consumers. This concern was expressed both by individuals who supported and opposed the proposal.

Training Concerns – Some commenters expressed that they generally supported the proposal but were concerned about training requirements. One commenter suggested that 500 hours was inadequate to demonstrate competence in family law. Others more generally expressed the importance of adequate training, and suggested that LPs needed to have a formal mechanism to seek guidance from attorneys when they run into trouble.

Have you ever had a civil legal need (not criminal) where you felt you needed an attorney?	Did you hire an attorney for your legal need?	If a licensed paralegal with limited skills in your specific area of need had been available to hire at a lower cost, would you have considered that option?	Why didn't you hire an attorney for your legal need?	Please comment on why you didn't hire an attorney for your legal need.	If a licensed paralegal with limited skills in your specific area of need had been available to hire at a lower cost, would you have considered that option?	Do you think Oregon should start a program for licensed paralegals who would be allowed to give limited legal advice in cases involving Family Law and Landlord/Tenant issues?	Please share any further information about your experience seeking legal assistance, or your thoughts about whether Oregon should create a Licensed Paralegal program.	
Yes	Yes	No			No		I strongly oppose allowing paralegals to practice law without a license. The public will not understand the difference and won't know why they are not receiving the same services as from a licensed attorney. Paralegals are very important in my practice but I have direct oversight of all their work. This oversight is needed in ensuring a proper representation. I have review the proposed changes and don't believe there will be sufficient oversight for paralegals opting for licensing.	Lawyer
Yes	Yes	No			No		Very bad idea. It is called mission, or in this case, legalization creep!	Member of the public (not a lawyer or judge)
No	No		I thought I could do it myself. The problem was resolved without needing an attorney		No	No	I firmly oppose the creation of a Licensed Paralegal program. The court system in general has gone to great lengths to accommodate self- represented litigants in areas where hiring an attorney is not appropriate. The state bar provides access to attorneys for legal help when cost is prohibitive, and many attorney donate pro bono work. While these programs could be improved and expanded, this is the appropriate way to provide access to legal services - through licensed attorneys only. Accrediting paraprofessionals is confusing to the general public and damaging to the perception of how the practice of law is viewed. Family law and Landlord tenant law are not "lesser" area of law that do not require the formal training of a law license by virtue of simply being the most commonly requested services by low income litigants. I want to fully acknowledge that the status quo is not adequately addressing the needs of all those who seek out the services of court in the areas of family law and landlord tenant issues. However, there is not a single doubt in my mind- not even for one moment- that the creation of a new licensing program for paralegals in the State of Oregon will do anything to ameliorate this issue; indeed I am most certain that it will create new issues and exacerbate existing problems. I strongly urge the board of governors to reject the proposal to form a licensed paralegal program.	Lawyer
Yes	Yes	No			No	No	Reducing education requirements to practice law is a disservice to the public. It is also a disservice to those who have spent the time, money, and effort to graduate from an accredited law school and pass a Bar exam.	Lawyer
Yes	No		Other: (Comment box will appear below after selecting)	I am an attorney licensed with the Oregon State Bar OSB #183278	No	No	Licensing a paralegal to practice law, even to a limited extent, is like licensing a nurse to perform an open heart surgery. The entry price to become a lawyer is very high and may be unreasonable. First, you will have to attend a college and attain at least BS or BA, then prepare and take LSAT, then, if admitted, survive 3-4 years in law school, graduate as a JD, and at the end study again and pass the bar exam. You will end up with an enormous amount of student debt which, in most circumstances, you would have to pay back for the rest of your legal career. Now, imagine an individual who does not want to go to law school and pass the bar but who wants to tap into a market of legal services and practice of law protected, for now, by the bar license. Regardless of what tests or studies would be required from such individuals to license them, I consider it a cheating on the real lawyers who truly earned their rites of passage into the legal career. It will create an enormous disadvantage and legal market dilution for the Oregon lawyers. The Washington Supreme Court sunset the system last year due to lack of interest and cost. https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians/decision-to-sunset-llit-program	Lawyer
No	No		Other: (Comment box will appear below after selecting)	I am an attorney.	No	No	While dom relations and landlord tenant clients will have and always have had issues with affording legal counsel, this is not my preferred way to try to address this. Further, as a landlord-tenant practitioner, I know it is one of the most technical and regulated areas of the law, for which para-professionals should not be engaged by the unsuspecting public. Leveraging further funding for legal aid and having a pro-bono clearing house (that vets the actual financial qualifications of the proposed client) would encourage at least me to handle engage in more pro-bono work. That said, my accounts receivable are large due to people who refuse to or can't pay me for work I have done for them. I don't know how the economics of this could possibly entice any paraprofessional to go through the system, and like Washington State's program, may be abandoned after time and money spent creating the program.	Lawyer

Yes	Yes	No				No	It is very discouraging to we lawyers who have attended law school and followed all the necessary rules to be admitted to practice law. I think much more thought has to go into tis proposal. Why will lawyers still need to pay all the dues, etc. and the cost of law school, put all of a sudden anyone won't have to. I think it diminishes the law field-- greatly !!!	Lawyer
Not sure	No		I thought I could do it myself		No	No	Speaking to landlord-tenant law in particular, the law is complex and changing. Also, adverse attorneyâ€™s fees are provided by law against non-prevailing parties. Attorneys who do not practice regularly in this area should not. For the same reason paralegals should not. Although I am concerned about the lack of representation for many litigants, this isnâ€™t the answer. I think this will just lead to poor service with legal detriment, especially for under represented communities.	Lawyer
Yes	Yes	No				No	The comparison to a nurse practitioner is a false analogy because such nurses are highly trained with masters level credentials. Access to legal help is a problem. The answer is to make lawyers for these areas more affordable and availableâ€”not to diminish the fundamental competence of the representation. These cases can quickly demand competence in procedure, constitutional law, and other areas. It would violate our fundamental ethical duties to outsource this practice to someone other than a trained lawyer. This proposal is the wrong answer to an urgent problem.	Lawyer
Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	I began practicing law as a Legal Aid attorney, and the paralegals I worked with knew far more than I. Many wanted to be attorneys, but could not afford it. They were uniformly knowledgeable and committed. This proposal could not come at a better time--except yesterday!	Judge
Yes	Yes	No				No	" However, after careful consideration of the overall costs of sustaining the program and the small number of interested individuals, a majority of the court determined that the LLLT program is not an effective way to meet these needs, and voted to sunset the program. " chrome-extension://efaidnbmninnibpcjpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fwww.wsba.org%2Fdocs%2Fdefault-source%2Flicensing%2Fllt%2F1-2020-06-05-supreme-court-letter-to-steve-crossland-et-al.pdf%3Fsvrsn%3D8a0217f1_7&clen=335987 I do landlord/tenant law and volunteer as a Board member at the Center for Nonprofit Legal Services in Medford. I just don't think this will work. It would be better to train and pay real lawyers to do this work. It didn't work in Washington and it won't work here.	Lawyer
Yes	Yes	Not sure				Not sure	While this proposal may help alleviate some of the unmet need, Oregon should seriously consider shortening the duration requirement for attorneys licensed in other jurisdictions (i.e. shortening duration the requirement from 5 of 7 years of active, substantial, and continuous practice to 3 of 5 years). This requirement should be changed at least for Idaho, Washington, Alaska, and Utah.	Lawyer
Yes	Yes	No				Yes	I am a member of the Solo and Small Firm Practitioners Section of the bar and as such I want to write in strong SUPPORT of the committee proposal to license paraprofessionals. I DISSENT from the knee-jerk reaction against this proposal exhibited by many of my colleagues in the section. It is clear that the proposal is carefully thought out and I urge the Board of Governors to reject the fearmongering by its hidebound opponents.	Lawyer
Yes	Yes	No				No		Lawyer
Yes	Yes	No				No	Among dumb ideas, this has to rate at the top! There is legal aid for those not able to afford an attorney. Do you do away with it if this dumb idea is adopted? The attorneys that work at Legal aid are mostly volunteers I suppose you could start a list of names of Attorneys that practice in one or both areas of Family law and Landlord/tenant issues. I see mission creep coming in the near future. That is, the Supremes and bar will want to include other areas where a licensed paralegal would be allowed to give legal advice; i.e. preparing an IRS 706 form for an estate and the Oregon equivalent.	Member of the public (not a lawyer or judge)
Yes	Yes	No				No	I do not want Oregon courts turned into a system where clients with money hire competent attorneys and those modest means are limited to relatively unskilled paralegals. We should be focusing our efforts on real attorneys performing pro bono and low bono services to those in need of real legal representation.	Lawyer

No	No		Other: (Comment box will appear below after selecting)	n/a	No	Yes	There is a great community need for lower cost family law services. This kind of program would improve access to justice for many families that don't have the benefit of legal help during a conflict.	Lawyer
Yes	Yes	Not sure				Yes		Member of the public (not a lawyer or judge)
No	No		Other: (Comment box will appear below after selecting)	No need	No	No	The definition of the unauthorized practice of law is "The practice of law by a person, typically a nonlawyer, who has not been licensed or admitted to practice law in a given jurisdiction." Only lawyers may practice law. Permitting paralegals to practice law is illegal! It should remain that way.	Lawyer
Yes	Yes	No				No	I said no because family law issues are so complicated. I am less concerned about the landlord tenant issues representing a tenant in a residence. The statutes governing this area are so detailed and allow less wiggle room for the tenant side representative. I have worked with non attorney mediators in these situations; their training is detailed. Obviously, the mediators had to understand the issues and governing statutes to be a competent mediator. The feedback for the program has been really good.	Lawyer
No	No		Other: (Comment box will appear below after selecting)	Doesn't apply	Yes	Not sure	I am a current practicing attorney. Prior to law school I obtained a bachelor degree in paralegal studies. I would have loved to have this option available to me prior to law school as I would have most likely made my career in that world without having to go through law school. That being said, I have a four-year bachelors degree. My concern is that most paralegals have only a certification that is about a year long. That is not enough education in the legal area to be able to give legal advice and guidance. I think that if you make this a thing, which you should, there needs to be an education requirement (sorry if I missed it in the materials) prior to applying for licensing. One year or a "certificate" is not enough to have a "stepped up" paralegal career without a supervising attorney. I used to teach in a certification program for paralegals and I will say that there were quite a few who I would have grave concerns helping people without the assistance of a lawyer--but there were some who I would feel like that they grasped the material and came to understand it. This can be a wonderful, but potentially dangerous idea if not done correctly, and the ones that will be harmed will be the public with the attorneys to clean up the mess.	Lawyer
Yes	Yes	Yes				Yes	Regarding malpractice insurance through the Professional Liability Fund (PLF): It appears the report for the Board of Governors did not contain an analysis regarding the PLF's position on: insuring a new group of professionals; whether lawyers' PLF premiums would increase; what the limits of coverage would be; and whether acts of an LP outside the scope of practice would be covered. Providing this information about the PLF's proposed billing structure is critical for the public, including lawyers, to provide informed input on the proposal.	Lawyer
Yes	Yes	Yes				Yes		Lawyer
Yes	Yes	No				No		Lawyer
No	No		Other: (Comment box will appear below after selecting)	Never had a reason to yet.	Not sure	No	This is merely PR optics of legal representation for the have nots. Having a paralegal represent a family law and/or landlord tenant argument would be like bringing a knife to a gun fight. The opposing party (especially landlords) would hire an attorney expert in the field. The paralegal would give the client a false sense of representation. The deck will be stacked against them from step one, akin to putting a high school quarterback in an NFL game. Whatever happened to you can't practice law without a law degree and passing the bar? Who's going to pay for the paralegal's malpractice insurance?	Member of the public (not a lawyer or judge)

Yes	Yes	Yes				Yes	I strongly disagree that a prior disbarment or resignation Form B should just be a "consideration" in C&F Process. It should prevent individuals from becoming LPs, period. The bar and the court have an obligation to prevent disbarred lawyers from re-victimizing the public. Disbarred lawyers and those who resign while discipline is pending should not just be allowed to form a fiduciary relationship with clients under a different license. In Oregon, disbarment and Form B resignation is permanent; there is no good reason to make standard on this lower for a (likely) more vulnerable population of clients who cannot afford lawyers.	Lawyer
Yes	Yes	No				No	I do not believe that a licensed paralegal program is appropriate. I deal all the time with fiduciaries acting inappropriate and the havoc it causes on people's lives. Additionally, I see divorces none with and without attorneys that did not address issues that eventually lead to costly litigation in estate matters. I understand that the lower income population need assistance with legal matters, but to take it out of the hands of lawyers who are trained to see how these issues impact other areas of law and the implications would be irresponsible. Make pro-bono required for 3rd year law students and attorneys so that these clients are getting adequate representation.	Lawyer
Yes	No		Hiring an attorney was too expensive		No	No	Here's an idea: let us redirect the resources being used to develop this proposed program to reinstate law school legal clinics. When I was in law school, I felt my clinical experience was the best use of my outrageous tuition dollars. But my law school dissolved the legal clinic which obviously left a gaping hole in access to justice for the greater Portland area. To address the opening comment comparing a legal paraprofessional to a nurse practitioner, apples and oranges. A NP first earns a BSN which is a minimum of four years of higher education. Then, a NP continues to earn a Master's in nursing which is usually an 18-month program at a minimum. Comparing a proposed two-year program at a community college to a practitioner holding a Master's degree is not even close to "similar."	Lawyer
Yes	No		Hiring an attorney was too expensive		Yes	Yes		Lawyer
Yes	No		The problem was resolved without needing an attorney		Yes	Yes	I have worked at an Oregon law school for over 10 years. I get questions from the general public about finding legal help. I give out the information about the OSB Modest Means program and Legal Aid, but it's not enough. Legal Aid is very limited in the cases they take (understandably). Many folks also struggle paying for an attorney even at reduced rates. I have also worked as a librarian and have met with many patrons looking for legal help. Having the ability to refer folks to a licensed paralegal for legal advice would be wonderful.	Member of the public (not a lawyer or judge)
Yes	Yes	No				No	I believe the legal needs of means-limited persons in Oregon are not all being met. However, I believe the way to address this need is expansion of Oregon Legal Services, where people can be served by an attorney that understands overall legal issues, rather than narrow immediate problems like landlord tenant. A landlord tenant issue can easily be part of a much more complex problem that would not be identified by a paralegal. The people need attorneys who can help them with their overall problems, rather than merely specific issues.	Lawyer
Yes	Yes	Yes				Yes	There's a \$10,000 minimum retainer for a family attorney with experience with my assigned judge. The paperwork to enforce parenting plans is horrendous and inconsistent across county boundaries. If there were state wide specific forms that DID NOT vary across counties I would not have to drive clear across the state to file a country specific enforcement procedure. The entire tech submission forms is terribly inconsistent. Court should be like public transportation = easy on easy off. Seems like everything about family law is as difficult as is possible to complete. Not being able to pay a \$56 fee should not keep one from seeing their children. The whole fee structure for family court should be ZERO DOLLARS. Making a profit off of suffering is disgraceful.	Member of the public (not a lawyer or judge)

Yes	Yes	No				No	<p>Oregon already under-values the benefits of educated and tested attorneys and the public pays the price. Not the majority of the public, they either never use an attorney (whether it would help them or not) or are the large group that is unaware of the legal risks they take all the time.</p> <p>Oregon allows real estate brokers to basically practice law in every real estate transaction. In many other states in the US, attorneys are used in a home purchase. In Oregon, consumers routinely forego the attorney and rely upon the real estate brokers and the title company to assist them. Everybody saves about \$2,000 per party per transaction. The vast majority skate through unscathed. Many people buy a home with legal problems but are blissfully unaware. They, of course, become angry if the issues are uncovered by the next buyer. Maybe 5% blow up when a legal issue emerges. At this point, the cost of litigation inhibits most to just live with it. Everybody saves \$2,000, most others just live with the errors and a few pay a lot to rectify them.</p> <p>The opportunity for preventative maintenance is lost. We just deal with the blown engines. OSB is complicit in this. We ignore the unlawful practice of law by the real estate brokers when we could prevent it. We know what the problems are and we know how to fix them. We choose not to do so. This does not serve the public well.</p> <p>I recently was consulted on a do it yourself divorce. The wife knew it could be done without attorneys so she conditioned her agreement on doing so. She thought that involvement of attorneys would make the process more adversarial. So, the husband wrote up their dissolution order using a fill in the blank form that the court provided. He had to add an addendum cause the specific assets they had did not fit the form. He mistakenly said that a family trust they had could not be changed. Of course, five years later, it needs to be changed and they can't. So, they pay me a lot of money to work around it. If they had understood that attorneys are problem solvers they could have written the addendum properly and saved a lot expense, risk and heartache.</p> <p>There is general attitude in Oregon that experts are not to be trusted. The distrust of attorneys fits into this. This proposal makes it a self fulfilling prophecy. With less educated and trained para-professionals doing family law and landlord tenant work, there will be more train wrecks. Oregonians will see their attitudes re-enforced. We need better educated, more tested professionals, not less.</p> <p>This proposal does not recognize and value the benefits that bar admitted attorneys bring. I think this is worth focusing on. What will it mean to have less educated, tested and trained persons practicing law; but, held to a lesser standard of care? Possibly more claims based on "common sense". What the law should be instead of what it is.</p> <p>Law school is a great narrowing of thinking and a tremendous concentration on the law and the practice of law. A school to teach you to think like a lawyer. A painful three years of Socratic method. Vocational school, not graduate school. Much less interest and time on one's opinions on things and much more on what the cases say than an academic program. If you miss out on the narrowing and concentration, where are you?</p> <p>The bar exam tests whether you learned your lessons well. Without that, what is the check on the ignorant and the unskilled?</p>	Lawyer
Yes	Yes	Yes				Yes	<p>I think this would be a program of great benefit to those who need guidance in navigating a complex system, particularly to those in underserved areas and those with other non-financial barriers to access. LPs would be able to do more than assist with the mechanical aspects of cases; they could help clients understand court rules and statutes and preserve clients' rights through timely completion of deadlines and attendance and participation at hearings, and their ability to handle less complex/more routine matters may lower costs and expedite matters in the legal system overall. With proper training and oversight, the LP program could aid Oregonians in leveling the playing field vis-a-vis equitable access to quality advocacy.</p>	Member of the public (not a lawyer or judge)
Yes	No		Other: (Comment box will appear below after selecting)	I am a lawyer and handled it myself.	No	No	<p>I think it would be helpful to find out why the State of Washington instituted a program such as this and then withdrew it. There must have been issues/problems with the program.</p>	Lawyer

Yes	Yes	No				No	<p>This proposal will ultimately harm the legal profession in the eyes of the public, not help.</p> <p>My immediate question is this: Are licensed attorneys going to be placed into the same risk pool as "paraprofessionals"? The two risk pools should be separated. Attorneys should not be forced to share risk with unlicensed individuals practicing law.</p> <p>I understand the need for representation for certain populations, I get that. And I appreciate the effort to address that need. I am not convinced that "paraprofessionals" are the way to address that need. I believe this will likely fail, with attorneys stuck cleaning up the mess. As usual, the people the government is trying to help will be the ones ultimately left holding the proverbial bag. They will suffer, their matters will suffer from the negligence of untrained professionals. There is a reason nurse practitioners do not perform surgeries. The Bar is essentially allowing "paraprofessionals" to perform surgery. This is going to be a boon for the plaintiff's malpractice bar.</p> <p>From my perspective, this is a done-deal. Submitting letters in opposition to this plan would be wasted effort. The Bar and the Supreme Court (in my experience) rarely, if ever, change their collective minds. Once the Bar and the Supreme Court have a deep-thought, it is written in stone regardless of what attorneys and/or the public say (again, in my experience).</p> <p>I don't believe it is right to criticize someone's solution to a problem without offering your own solution, so here goes.</p> <p>The best way to handle this is through mandatory med-arb. Force the parties to settle their disputes, on their own, with a neutral third-party shepherding the dispute from beginning to end. Allow the third party to provide legal advice to each party as needed (in the third party's professional judgment) and make all discussions confidential and privileged (no attorney-client relationship between the third party and any of the "litigants"). The third party, when necessary (and in the third party's discretion) can make decisions on sticking points when the parties reach an impasse in order to move the settlement forward. No need for lawyers.</p> <p>This solution would need a change in the law, allowing for attorneys to offer this type of service, in exchange for a flat fee (maybe \$1000 per case? \$1500?). In the alternative (and I can't believe I am suggesting this) the state could set up a program like it did when the state created the Office of Administrative Hearings to handle these cases. Lawyers could handle as many cases as they like. Cases could be handled remotely (thanks be to Zoom!), and assigned either by the circuit court (eCourt?) or some other system. I would be willing to take 4-6 of these cases every month (at a rate of \$1000 per case) and I am certain there are many other lawyers who would agree to take cases as well. The details need to be worked out, but there are no insurmountable</p>	Lawyer
Yes	Yes	No				No	I do not think this program would be a net benefit for the citizens of Oregon. I do not think it should be enacted.	Lawyer
Yes	Yes	Yes				Yes	<p>Right now it is all or nothing if you are poor. Much will be cut and dried but a paralegal will be aware when they are getting into deep water and seek advice from a licensed attorney. It seems like there needs to a provision for this that does not necessarily tie them to one attorney.</p> <p>It should be acceptable to additionally advise on credit/debt issues within a limited area of practice.</p> <p>The whole point is keep people from committing dumb errors for lack of legal knowledge and dig themselves deep holes from which they can not escape.</p> <p>It should level the legal playfield so that those without attorneys are not taken advantage by those with access to attorneys, which happens far too often in divorce and custody cases.</p>	Member of the public (not a lawyer or judge)

Yes	Yes	No			No	<p>There is a real problem with people of modest means not having access to competent representation. I am confident that many of the potential people who would be seeking this license could do good work and help those that would otherwise not get help in many cases. I can't tell you how many people that I have worked with in the past decade (court staff, paralegals, legal assistants) that have unique insight and knowledge and competency that could carry out the aims of this program just fine. But remember that the problem is that people don't have access to legal representation. Giving them something less (the question asks about allowing "limited representation" is on point) doesn't seem to cure that problem. I think it could create a David and Goliath problem in many cases. How can you negotiate with a family law attorney if you can not try a case or deposition an opponent? Same in an FED? Sure a licensee could point that out to a client but will they do so at the expense of a potential fee that they could earn by otherwise saying that the settlement proposed by opponents attorney seems fine and I can write it up for my low fee? Not saying that would happen even in most cases but I think it would be fair to say that that conflict exists. Worse problem with an FED case. There are attorney fee statutes that allow lawyers to represent modest clients and they do so if they have a case for free. How does this potential barrier of getting in touch with those attorneys help? If you are a licensee that has been limited in your abilities by not being given all of the tools that your opponent potentially enjoys then does that solve the problem of fairness?</p> <p>In our culture people are ingrained that when faced with a legal problem, most people will tell them to talk to an attorney. I sympathize with the argument that if people can't afford an attorney then what does this harm. The potential harm is that for some people to skip that step (a client could be thrifty or referred or misinformed) and potentially avoid initially seeking the advice of an attorney or other programs like the bar referral service, legal aid, and other programs that are designed to combat the problem that this is trying to solve.</p> <p>I also think we have to give attention to Washington State's experience with their program. This was tried and this has failed. It ended up being a waste of time and money. Directing resources into this program that could otherwise be directed towards solutions of getting people full representation with all of the tools at hand is a mistake. Donate the money to legal aid and St. Andrews Legal clinic. This program creates the idea of a solution that gives us permission to take 10 years of vacation from finding plausible solutions until this fails to cure and might very well hurt a number of people along the way. This program is full of good intentions. But what do they say the road to hell is paved with?</p>	Lawyer
Yes	Yes	No			No	<p>I oppose the creation of a Licensed Paralegal program. The representation and practice of law is very complex and requires years of education in the myriad of issues which may arise in even the simplest of cases. For example, representation of a person in a family law matter requires extensive knowledge of tax law, laws on retirement assets, and other topics that a paralegal with less than a year of "experience" simply won't have. At a bare minimum, there needs to be required education - not just "experience" - related to the topics within the law that a paralegal may face in any given case. Additionally, the State and the Bar have an obligation to the public to ensure that paralegals know and understand these issues. In other words, there needs to be a bar examination. If the Court intends to allow some practice of law without an examination, why require it for any? This proposal places the public - the people that the education and testing requirements to practice law are there to protect - at risk to uneducated and untested people who, with the best intentions, may substantially harm their clients. And, that doesn't even turn to the issue of fairness to licensed attorneys - who pay substantial amounts to PLF - who are potentially going to have their premiums used to cover the errors and omissions of uneducated and untested practitioners of law. I agree - there is a lack of</p>	Lawyer
Yes	Yes	Yes			Yes	<p>Well trained, with over 5 years experience in the specific areas of landlord/tenant and/or simple divorce, could absolutely assist the public in their need for low cost legal assistance. Oftentimes, people are robbed by those professing to be able to assist the public with these type of matters, read UPL, and the people not only don't get the help they need but more often than not end up in more trouble due to the lack of correct representation. I whole heartedly support this concept of licensing paralegals to provide limited legal services to the public. Kudos to Oregon!</p>	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive	No	Yes	<p>There's a shortage of attorneys. We need more people familiar with the law to help people with limited means.</p>	Lawyer

Yes	Yes	No				No	I have been a legal assistant in the Rogue Valley for over 20 years. Although I do see how a paraprofessional program can be of great service to the community at large, I don't think it is the right step for Oregon to take at this time. My primary argument is supported by the article published today (November 29, 2021) in the Oregonian titled, "Oregon Bar proposes to let paralegals represent clients in some housing, family law cases". The seventh paragraph opens with "Of more than 1,000 people surveyed for the study, about half did not know where to look for help and hadn't heard of legal aid." How is adding another resource of any help people who don't even know the current resources even exist? It seems the better option would be to implement something that would make the current resources more visible. For example, rather than requiring a blip in a termination notice about legal aid, why not assemble a colorful pamphlet that landlords (or their attorneys) are required to provide to tenants that explicitly outlines the type of aid available and how to access it. This seems far more imperative, implementable, and cost effective than providing another, albeit affordable, resource that lower income people would still be unaware of. - Sabrina Carey	Member of the public (not a lawyer or judge)
Yes	Yes	No				No		Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	I think this is an outstanding solution for helping with backlogs. Please consider the military paralegals, who could also benefit from this. There are many National Guard and Reservist who are would also be great choices for completing what needs to be done to perform these duties.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	It seems like there is always a legal question for things, such as a simple divorce but it is too expensive to hire a lawyer.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	The idea of having a Licensed Paralegal is brilliant. There aren't too many bilingual attorneys that can assist or can speak a particular language. Having an LP who can speak the native language is excellent. There are more legal assistants with bi-lingual skills than attorneys. I have worked for a non-profit as a paralegal assisting attorneys for more than 12 years, and I can convey the high need for bilingual attorneys. Having LP's b allowed to give limited legal advice in cases involving Family Law and Landlord/Tenant issues is an excellent idea.	Member of the public (not a lawyer or judge)
Yes	Yes	No				Yes	Given that the reasonable agree that 1. a man representing himself in court has a fool for a client; 2. that our courts should suffer no fools; 3. that inducing the avoidable and expensive societal degradation following from 1. & 2. is foolish; let us then get out of the way of the market and let it provide the additional advocates families need now. To those I've injured, let the surge in quality referrals of satisfying cases be a salve. To those still not understanding the utility: this action will fund a legion of de facto social workers, at a profit to all.	Member of the public (not a lawyer or judge)

Yes	Yes	Not sure				Not sure	<p>Washington State had a similar program - LLLT - which has been closed to new members. the WA State Supreme Court's letter dated June 5, 2020 discontinues the LLLT program. The letter states in part that: "The program was an innovative attempt to increase access to legal services. However, after careful consideration of the overall costs of sustaining the program and the small number of interested individuals, a majority of the court determined that the LLLT program is not an effective way to meet these needs, and voted to sunset the program." Note that existing LLLTs may continue to provide services in the family law arena, and any individuals "in the pipeline" as of June 4, 2020 are allowed to complete the requirements for licensing by July 31, 2021. No new LLLTs will be admitted thereafter.</p> <p>The excellent budget analysis over the past several months by WSBA Treasurer Daniel Clark, following a detailed report to the court last year by prior WSBA Treasurer Dan Bridges, helped focus the court's attention on the significant cost to WSBA members since the LLLT program's inception: \$1.4 million to license 44 individuals, of which there are currently 38 in active practice. A request from the LLLT Board to spend nearly \$1 million more in member dues over the next 8 years to sustain the program, and to allow LLLTs to practice in two more areas "Washington administrative law" and "eviction and debt assistance," was declined by the court.</p> <p>Just some thoughts to inform your decision. The goal is laudable, but accomplishing it will be challenging. No argument there is a need - but how to best solve it continues to be debated. I wish your association every success in your desire to meet the need. Perhaps you can find a way where others have stumbled.</p>	Lawyer
No	No		Other: (Comment box will appear below after selecting)	N/A	Yes	Yes	<p>This is not my issue. I am only weighing in to say this is a GREAT idea. Will free up attorneys and help people in need quick more quickly.</p>	Member of the public (not a lawyer or judge)
Yes	Yes	No				No	<p>This is a slippery slope. Paralegals are incredibly valuable and supportive and can be a wonderful way to reduce legal fees, but there should be an attorney to oversee them. Allowing paralegals to practice law will be more confusing to the public and will lead to a situation where attorneys may be seen as unnecessary when they really are for that matter or the related matter. It is not unusual to have a matter start and appear simple but then an issue arises that makes it more complicated than expected. Having a licensed attorney is the best way to protect that.</p>	Lawyer
Yes	No		Hiring an attorney was too expensive		Yes	Yes	<p>I am a domestic violence survivor, my ex partner had all the money and when I left him I had nothing. He was able to continue to abuse me by using the courts to mess with my head. This caused more stress since I didn't understand even what the self help forms were or how to use them. Going to court alone against him and his attorney felt like I was still not being able to speak up. If I had the chance to have someone with knowledge of the courts I would have no problem having a paralegal help me. Please pass this law/program for all the many families out there that NEED HELP!!</p>	Member of the public (not a lawyer or judge)
Not sure	No		Hiring an attorney was too expensive		Yes	Yes	<p>I think this would be a great option given there is a huge gap in services for family law cases in Oregon. Hopefully this would also cost less</p>	Member of the public (not a lawyer or judge)
Yes	Yes	No				Not sure	<p>My primary concerns are having a pool of less trained para-professionals in the PLF pool will increase the risk profile, and thus the rates, of licensed Oregon attorneys, thus putting attorney services further out of reach of Oregonians. The focus should be on support for attorneys to handle matters (i.e., subsidies, credits, etc) in lieu of only providing low income people with as much access to justice as they can afford, and effectively relegating them to Greyhound-level minimal services while paying clients get first class attorneys.</p>	Lawyer

Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
No	No		The problem was resolved without needing an attorney		No	No	I worry this proposal would be burdensome for both paralegals and clients, especially in the family law context. Paralegals do not have law degrees and itâ€™s a slippery slope to allow them to represent clients in court. I donâ€™t disagree that there should be an expansion of access to legal resources, including attorneys, for individuals with modest means and would fully support state funds towards organizations like SALC or LASO or a new organization. However, any person authorized to give legal advice and represent clients in court should have a legal degree.	Lawyer
No	No		Other: (Comment box will appear below after selecting)	I did not have a civil legal need for myself. I work with people who have civil legal needs, please see comment	Yes	Yes	I am a domestic violence advocate with a legal advocacy focus. 99% of my clients have ongoing family law cases while I am working with them. One of the biggest challenges I see my clients face is a lack of options for legal representation. There are many ways my clients fall through the gaps: they cannot afford "regular attorneys"; Legal Aid is at full capacity and cannot take on more clients; the client makes too much for Legal Aid, but they are still "poor" and cannot afford other legal help. This challenge is heightened when the abuser has access to money, and can easily afford an attorney. I believe Oregon should start this program for paralegals, because I think it would give more access to justice for people that are living in poverty and that are already	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	Yes	No				No	Increase funding to legal aid and reduced rate services. Increase awareness programs so that people know where to find legal aid and reduced rate attorney services. This current proposal will ultimately cause more burden on those in need by providing inadequate assistance of non-counsel. There is no deadline for the proposal and requires attorney assistance removing any expediency or cost from the proposed services. A paralegal should not be representing anyone without insurance. The cost of new training programs, insurance programs, information programs, and the like does not guarantee effective or meaningful assistance, or that the same pro se folks will be able to FIND this assistance at a higher rate than their current ability to find an attorney. Lawyers have increased educational and professional responsibility requirements for a reason	Lawyer
Yes	No		Hiring an attorney was too expensive, I thought I could do it myself, Other: (Comment box will appear below after	I'm a former attorney myself, and chose to do my own divorce although Family Law was never my practice area. It was a fairly straightforward and uncontested divorce, but I did need some informal advice from	Yes	Yes	I consider myself a member of the public for purposes of this public comment opportunity, because I am no longer an actively practicing attorney in Oregon due to a career-change to nonprofit development. However, I do have the perspective of a lawyer, as well as that of a regular person, and I think this is a fabulous idea that is long overdue. Legal services are highly inaccessible for most ordinary people who are just trying to get by. Back when I was law student many years ago and the Lewis & Clark Legal Clinic was downtown, I had the privilege of representing tenants in FED court as a supervised law student. There is no question in my mind that this is an area licensed paralegals (many of whom are already expert in the technical details of areas such as LL-T & family law) are well-suited for. As a renter myself, and active in renters' rights groups, I know that there is a shameful dearth of affordable and competent legal help for tenants facing evictions and other LL-T issues. There simply are not enough attorneys specializing in this area to handle the need, which is only increasing due to post-Covid moratorium evictions. In addition, licensing paralegals would create a new skilled-career pathway that would not involve the outrageous costs (or tortures) of law school, but would provide workforce opportunities (and higher potential earning capacity) for more young people.	Member of the public (not a lawyer or judge)

Yes	Yes	No			No	<p>I am a landlord/tenant attorney. I challenge anyone on the OSB panel to spend a day at my firm and try to advise clients regarding landlord/tenant law. Landlord/tenant law has become one of the most technically complex areas of law, thanks to a myriad of hastily enacted, poorly written and internally inconsistent statutes and ordinances.</p> <p>FED judges see a mere tip of the legal iceberg. There is a whole world of fair housing issues, contract disputes, negligence demands, utility disputes, relocation expense claims, and so much more that FED judges never see.</p> <p>We have a full team of attorneys working full time on landlord/tenant issues. Neither my firm, nor any other firm specializing in landlord/tenant law, understands all of the laws. Even the authors of the judges will tell you, by their own admissions, that many of the current laws are ambiguous and problematic.</p> <p>The supposition that tenants lack access to legal advice and attorneys is baseless and misleading. From the time a small group of tenants' attorneys started mailing advertisement letters to all tenants in all local FEDs, through the time that Legal Aid figured out that it can be paid BOTH the grant money it receives PLUS attorney fees pursuant to ORS 90.255 and other statutes/laws, tenants' attorneys have been climbing out of the woodwork and seeking clients.</p> <p>Finally, the cavalcade of new statutes and ordinances, when coupled with massive rent losses and increased expenses, have driven landlords' expenses through the roof. The massive uptick in tenants' claims and litigation - much of which is frivolous or "innovative" - has likewise increased landlords' expenses.</p> <p>I've seen an exodus of mom 'n pop landlords from the business of being a landlord, and the expense related to the injection of paralegals looking for something to do into the litigation realm will exacerbate the problems.</p> <p>I'm a huge proponent of great landlord/tenant relationships. I remember the days when the public liked landlords. Alas, today's political machinations have largely steered the public's perception against landlords. Your proposal will further that rift. Those landlords who survive the current turmoil will adjust. Future tenants will pick up the tab. In other words, your proposal will fiscally harm the very people (tenants) this ill-conceived notion is purportedly intended to protect.</p> <p>Finally, if anyone took a serious look at the current issues, eliminating bad tenants from rental properties would ultimately benefit good tenants fiscally and in many other ways. Alas, I'd bet bad tenants will do bad things in bad cases.</p> <p>Respectfully, Jeffrey S. Bennett</p>	Lawyer
Yes	Yes	No			Yes	<p>I am Rex R. Bahr and >86 5035774666 2731 NE 132 97230</p>	Member of the public (not a lawyer or judge)
Yes	Yes	No			No	<p>I have handled cases where non lawyers have pretended to be lawyers, and messed them up incredibly. I have had 'settlement professionals' do horrible work and lie to people who then need me to get involved and clean up the mess. This is not a good idea.</p>	Lawyer

Yes	No		Other: (Comment box will appear below after selecting)	I was an attorney at the time so I self-represented.	Not sure	Yes	There is a continuing need for legal assistance in the areas of family law and landlord tenant law. Licensing paralegals will increase the continuum of resources available to meet those needs. Attorneys will continue to be necessary for many folks, but paralegal with adequate training, licensing, and insurance will be a good way to provide a resource for basic legal services when an attorney is not affordable or available.	Judge
Yes	Yes	Yes				Yes	As a retired attorney who practiced domestic relations law in Bend for 47 years, I believe the OSB proposal for expanded authority of paralegals to advise clients in this area has great merit. I have reviewed the detailed proposal and am in general agreement with the parameters of the proposal. My concern, as obviously is the committee's, would be that paralegals be trained in issues of what the courts normally do in custody cases, ie, who gets custody, what is the usual provision for parenting time and what factors can affect the "normal" parenting time award. Are there other parties who may have rights to parenting time? Property division: what does the court normally do in dividing property? What is the effect of separately held property and was it co-mingled during the marriage. What circumstances justify an unequal distribution? It would be imperative that the paralegal be trained in all of the aspects of the law pertaining to those areas in which he/she is authorized to advise the client. The paralegal should have an attorney or attorneys to which he/she could seek advice where the paralegal is unsure of what the law may be. Paralegals should be required to keep up on current statutes pertinent to domestic relations as well as recent case law which is constantly changing in important ways. If the program is properly managed and controlled I believe it would allow access to many people who now must struggle on their own and without a clue as to what the law is. It will probably be a great boon to the courts by streamlining cases which otherwise get bogged down with the court being required to explain either the law or court procedures. Good luck in your endeavors. Once again Oregon is out in front in providing much needed services to an under served population. Sincerely, Max Merrill	Lawyer
Yes	No		Hiring an attorney was too expensive.		Yes	Yes		Member of the public (not a lawyer or judge)
No	No		Other: (Comment box will appear below after selecting)	I haven't ever needed a lawyer.	Yes	Yes	I think anything that provides people with access to legal help at a lesser cost would be a good idea.	Member of the public (not a lawyer or judge)

Yes	Yes	Yes				Yes	My opinion is that it should have happened a long time ago.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	Legal services are extremely expensive; you are charged for every minute, even when you are just asking a question, or having a brief telephone catch up. A licensed Paralegal would be a great entry point.	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes		Lawyer
Yes	No		I thought I could do it myself		Not sure	Yes	My name is Valerie Sasaki and I'm an Oregon tax attorney. We have had a variety of paraprofessionals in tax practice for many years without a substantial negative impact to either client service or our business. In fact, licensed tax preparers and enrolled agents serve a valuable niche in helping the majority of individuals who don't have access to attorneys or CPAs to prepare their returns and represent them in simple tax matters. Are all of the paraprofessionals of equal skill or education? No. Some do not do a good job. However, from my perspective, their presence in the marketplace is a net positive. They take complex situations and help clients navigate them at a lower price point than we would, often in geographic areas that are not well served by attorneys. This is appropriate for many situations. Based on this experience, I'd support an increased role for paralegals to help clients in the areas of Family Law and landlord/tenant, provided that the parameters of where they are allowed to act and where they need to involve counsel are very clearly defined and enforced. I'm happy to discuss this further. 503-226-2966	Lawyer
Yes	Yes	Yes				Yes	As a lawyer practicing in family law, I have worked with several skilled paralegals who absolutely could and should be allowed to handle some of the proposed activities like drafting and filing pleadings. It's silly that they have to have them reviewed by an attorney every time after years of experience. I do have a concern that 1500 hours is not a lot of practical experience, that's less than a year of full-time work, and the requirement for the family law certification should be more than 500 hours. I think 2000 hours total and 1000 in family law would better ensure that clients are not being handed off to an inexperienced paralegal who is not well-versed in their specific issues. In a given year at a firm that exclusively does family law, you might handle plenty of divorces but only one or two adoptions, for example, but it would be tedious and impractical to specify that you must have x hours in divorce cases to handle divorce pleadings and x hours in adoptions to do adoptions, etc. Someone who gets their practical experience at a general litigation firm would be even less likely to have significant exposure to the range of family law cases. At any rate, I'm glad to see this program moving forward!	Lawyer
Yes	Yes	No				Not sure	I feel the Rent forgiveness is resulting in damages to the Landlords. Where's their representation. More accountability is needed to avoid fraud.	Member of the public (not a lawyer or judge)
Yes	Yes	No				Yes		Member of the public (not a lawyer or judge)

Yes	No		Hiring an attorney was too expensive		No	Yes	I am a licensed attorney in California. I represent tenants in evictions. I feel very strongly that this is a good idea and kudos to Oregon. Tenants who cannot find representation have a terrible time; even tenants with representation find themselves facing a legal system and a society that is weighted for the plaintiff in these matters. Please implement this excellent idea.	Lawyer
Yes	Yes	Yes				Yes	I support this strongly. Creating this program would be valuable and important for Oregonians and would show the Bar Association's commitment to equity for all residents of our state.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	No		I thought I could do it myself		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive, The problem was resolved without needing an attorney		Yes	Yes		Member of the public (not a lawyer or judge)
No	No		Other: (Comment box will appear below after selecting)	Never needed legal representation	Yes	Yes	This is a great alternative for those seeking legal representation on a restricted income! I fully support this matter.	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes		Member of the public (not a lawyer or judge)
No	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	Great idea! Certainly, there is such a need.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)

Yes	Yes	Yes				Yes	I am a paralegal practicing in Real Estate law (title Examinations) for over 40 years. And a former Legal Studies Program Director at a local University The need is great for those who cannot afford an Atty in Family Law and Real Estate	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes		Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive, Other: (Comment box will appear below after selecting)	It was assumed the cost of hiring a lawyer would be more than it was worth to hold the person accountable for their actions.	Yes	Yes		Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive, I thought I could do it myself		Yes	Yes	Great idea! So any people are in need of legal services that do not warrant a lawyer!	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	I see the multiple tracks for admission, think it should be a bit easier than the current OSB plan to get licensed if you already have a college degree or a couple years of experience. We, the bar, should make it accessible and realistic for more than mostly white employees of big Portland law firms.	Lawyer
Yes	No		Hiring an attorney was too expensive		Yes	Yes	I have done a lot of volunteer advocacy with tenants over the years and my current position is in Fair Housing where we see a desperate need for more legal representation for individuals experiencing both housing discrimination and LLT violations. In my county, Jackson County, the threshold for being able to qualify for nonprofit legal support is very high and its extremely rare that I've seen low-income tenants receive support. There are also no private attorneys in my area (that I know of) who represent tenants with the exception of one attorney but he also represents the local landlord association so he can often not take cases. As a result landlords are even more emboldened to break the law because they know people don't have access to legal help even if they do know their rights.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	No		Other: (Comment box will appear below)	I was able to find a pro-bono, otherwise I would not have had representation and I	Yes	Yes	As a medical paraprofessional, I have seen the incredible impact these programs can have in rural communities where resources are scarce and access to outside resources is an often better solution. To do that you need paraprofessionals to triage and ensure nobody falls through the cracks.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	I am currently trying to adopt my grandson. An attorney is too expensive but I am lost in all this paperwork! This program would be a huge help.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	I know I am not alone in this. People don't know where to find information, what their rights are or aren't and I'm reasonably educated and informed. I had access to a program at my university, as a student, like you describe, and it was very helpful. It got me through a tough period in my life and I'm still very grateful for it 30 years later.	Member of the public (not a lawyer or judge)

Yes	No		Hiring an attorney was too expensive, Other: (Comment box will appear below after selecting)	I gave up.	Yes	Yes		Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive, I thought I could do it myself		Yes	Yes	Just as I trust my nurse practitioner with routine medical needs, I would like to have access to a paralegal for potential legal issues. I find attorneys to be intimidating, and even when not, way out of my price range to even consider. As a result, legal needs go unmet.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
No	No		The problem was resolved without needing an attorney		Yes	Yes	I work for a small nonprofit organization here in Southern Oregon that is focused on community organizing to influence around housing, transit and a livable community. In the past year, tenants have experienced increased eviction threats due to the financial impacts of COVID19 and the devastating wildfire that hit our region. Many of the folk who have been the hardest hit financially in the past few years are extremely low income, elderly, disabled and non-english speaking folks. Often times, our community members are not able to gain access to legal representation because it is expensive or they do not know how to access it. I believe that licensing paralegals would make legal support more accessible to the people who need it most in our community and across the state.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Not sure	Yes	Please note, as a nurse practitioner, I was offended by Kirsten Thompson's comparison of a paralegal to a nurse practitioner. Nurse practitioners have at least a master's degree, if not a doctoral degree, and to imply that we have limited education is offensive. If you need a good comparison for a paralegal to a lawyer, you should be using a physician assistant who needs 2 years of educational preparation compared to the doctoral degree of a physician. Or better yet, pick a completely different field for comparison. Ms. Thompson's comment was poorly researched, grossly inaccurate, and degraded the nursing profession.	Member of the public (not a lawyer or judge)
Yes	Yes	No				No	I have the following concerns with this concept: 1. Who are going to train these paralegals and continue to train them as the law changes? What type of paralegal training will it require (AA or Certificate)? 2. If attorneys are going to be required to train these paralegals and there are not enough attorneys to provide the underlying services, how are the attorneys going to have the time resources to train these individuals? 3. The scope of representation is not defined. Will the paralegals be able to appear in court? Issue subpoenas? 4. How is liability coverage going to extended? Is the OSB going to be required to license, discipline and review the actions of these paralegals? Are they going to pay dues? 5. How is the cost of the new administration going to be paid? 6. If the need is acute how is this going to address the need? How is the OSB going to ensure that services get to needy communities? It appears that only firms that would be able to train these individuals would be large and in cities. 7. Is there going to be a licensing exam? Please provide the details of your proposal as soon as possible. I am an attorney providing legal services in a small community (Monmouth, Oregon). I see the need every day, but the feasibility is in the details.	Lawyer
Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	Please create a program to help tenants in need!	Member of the public (not a lawyer or judge)

Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive, I thought I could do it myself		Yes	Yes	Poor people very clearly need and deserve more supports of all kinds. Surveys like these should be unnecessary and we should help take care of each other.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	Yes	Not sure				Yes	I believe tenants need help in Oregon. So ...many pay rent but landlords never fix anything and tenants are afraid they will be evicted. There are more slumlords in Oregon than used to be. I think this may help with time frame of cases or advice. That only.	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	I think this is a great, creative idea and will definitely serve a need. If I were younger, and still seeking meaningful work, I'd want to be part of it.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive, I thought I could do it myself, The problem was resolved without needing an attorney, Other: (Comment box will appear below after selecting)	The lack of availability of attorneys	Yes	Yes	I think this is a great program and will help ease the bottleneck and expense of an attorney on smaller cases/matters. Give them credit where credit is due.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive, I thought I could do it myself, Other: (Comment box will appear below after selecting)	I'm trans and it's difficult to find anyone with legal experience who has expertise or experience with the weirdly complex issues that can come up around being trans - or how being trans can make otherwise fairly 'normal' bureaucracy exponentially more complicated.	Not sure	Yes	I think it's a good idea ... but I also think such people should be associated with a law firm or some other 'parent' legal body to provide advice and guidance if something turns complicated. Not sure how that would be managed, though.	Member of the public (not a lawyer or judge)

Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	This is not only a great idea, but an amazing way to help paralegals needing further income sources, as well as low income Oregonians to have access to low cost assistance. Way to go Oregon!!	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive, Other: (Comment box will appear below after selecting)	There weren't any attorneys willing to take my case in the time frame the court had given me.	Yes	Yes	In a lot of law firms paralegals with none or very little training do most if not all, the leg work in these areas of law. They get paid less & attorney's still charge the same exorbitant fees. I took a paralegal/legal assistant certification course online & gained certification 20yrs ago. I've given my unpaid for educated opinion, not legal advice, to close friends & family on numerous occasions. I've been very diligent, I've never given inaccurate information, & I've successfully helped get them through difficult situations. Although, I've never been paid, I know on numerous occasions attorney's got paid after saying & doing the exact same thing I'd suggested. For the most part, these were all cases involving Family, Landlord/Tenant, SSI/SSDI, & Small Claims laws. There's a huge need for access to basic legal services in my area. A vast majority of these situations could be resolved without legal representation or a courtroom. They just end up there because people are scared, don't understand the overwhelming paperwork involved, & the steps they need to follow. Most often people just need help getting started, navigating forms, & understand the legalese in documents. An "A la carte," form of legal advice where they can get help with specific questions, individual forms, & what to do next, from a paralegal is far more attainable, for most people, than paying an attorney. It makes more sense to use paralegals to unburden the court system, than attorney's taking on too many clients & not giving any of them adequate representation. Paralegals working independently makes more sense than Nurse Practitioners or Medical Assistants. There's a far greater chance of a P.A or M.A causing life threatening or physical harm to a person, than an Independent Paralegal could. I'd urge you to consider the requirements for a "Practicing Paralegal," & not make them unattainable. Long periods of school, or the need to work under an attorney for a length of time will hinder people & make it a less desirable career choice. Life experience, prior education/training, & letters of recommendation for a candidate should account for something. Competent "practicing," paralegals are a must. Adding to an over loaded legal system, the responsibility of training or educating these paralegals, would defeat their very purpose. Expensive educational requirements, that take long periods of time to complete, or an exam similar to the "Bar Exam," would all be counter productive in providing relief to the current legal system. For the most part access to a program like Lexus/Nexus, the ability to navigate it, knowledge of the legal system, & your responsibilities/limits as a licensed or practicing paralegal would be sufficient. Requiring an exam that covers those areas & making it available persons with a high school diploma, would be more than sufficient. If I had access to the kind of software, online legal library, & the go ahead, attorney's do, I'd be able to help a lot of people very efficiently & effectively. I hope you sincerely consider this option for paralegals & quickly. As a resident of Deschutes county I know there's no affordable legal advice. Free legal advice isn't available to everyone & what there is, seriously lacks availability, gas ridiculous requirements, & the follow through is less than desirable. I know this is a long response & I hope you make it through the whole thing. I'm passionate about this, I've even been working on the concept of a non-profit, to help people navigate the legal/medical systems & advocate for themselves. I'd love to talk to anyone interested in hearing more or in opposition of this idea. I'll talk to board members, planning committee's, legal persons, politicians, hold outs, & any or all of our Oregon Supreme Court members. This isn't just a great concept it's very much a needed one. The legal system was originally designed so anyone could represent themselves. It's no longer that way & everyday people need somewhere to turn, for the help they need, that they can afford.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	My sister accessed legal zoom, but I don't think that is good enough, can't be tailored for individual needs. I am a retired nurse and the idea of an LP, like an NP, is really excellent, as long as there is accountability along with regular training, as I am sure legal matters evolve. A fee scale, to avoid price gouging, would be good. Congratulations for considering the best ideas from everywhere for Oregonians. Thank you. Kathrine	Member of the public (not a lawyer or judge)
Yes	Yes	No				No	Not only do pro SE litigates make mistakes so do attorneys. This is discrimination. If you want more private citizens to invest in attorneys a. Make legal services more affordable b. Monitor and protect private citizens from unethical attorneys.	Member of the public (not a lawyer or judge)

Yes	No		I thought I could do it myself, Other: (Comment box will appear below after selecting)	I have always reviewed and acted in my own behalf when I have sued others (my auto insurance company, renters (I am a landlord)	Not sure	Not sure	I am concerned about this new approach as it seems to be unduly focused on renters and to hell with landlords (a landlord is by definition a heartless, scumbag interested only in profit and to hell with renters - RIGHT!) But wait, I have one rental that represents about 1/3 of my monthly income in retirement yet, this new law protects exactly who - as it sure doesn't represent me and my own interests! So, if I have a scumbag renter (which I do but can't evict due to state eviction restrictions) who abuses the system and has made it very difficult for me to evict them. Now, based on your new approach here, we will both need to get a lawyer (oh wait, their, the renters, is going to be paid for/heavily subsidized by this new program. The landlord here, ME, has to hire their own, full price lawyer in order to defend against the renter they are legally trying to evict! I am full AGAINST this new legal approach UNLESS I to, as a landlord, have the right to use this service as well! If this is a BS new service to only "protect" renters, then I am a firm NO on this new, suggested approach! Renters, good renters, may have a real issue and, don't get me wrong, there are bad landlords. But, landlords have issues as well with BAD RENTERS - so be sure you deal with equity on both sides and especially for rental property owners like me with ONE, again ONE rental unit that is a large part of my monthly, in retirement, income! Who is going to protect me from folks like you that only want to see this issue from a renters perspective!	Member of the public (not a lawyer or judge)
Yes	No		Other: (Comment box will appear below after selecting)	I am an attorney and sought advise of friends. Ultimate pro bono help!	Not sure	Yes	I am reflecting on Maureen McKnight's Oregonian article and totally agree with her position. As a young practicing attorney, I volunteered as an OLS instructor re simple divorce at Clackamas Community College. I was naive and inexperienced. My para legals were not. I learned much from this experience. People want simple answers and need to know when a "real" attorney is needed. Most people just want to avoid going bankrupt, during a divorce. Listening is a key and many para legals might just be better than their employers at taking time to learn and teach. A certified para legal with energy and time could serve this function. After my early "retirement" I helped OLS with land lord tenant cases. The work load for OLS attorneys and staff is overwhelming. Housing issues are often simple, but require great listening skills. Paralegals often already carry this load. These bare foot "lawyers" could really make a difference. Hooking them up with mentors (either practicing attorneys or inactive OSB members and judges) could help. Providing funding for training for public and non profits might also help. I am more concerned about the cost to consumers of certified paralegals in this program continuing to be a disincentive to getting any legal services. Cost/wage control might be necessary for this to really provide better services. This is all a good start. Good luck. Chuck Mitchell,810125 This proposal is long overdue and makes much sense. An addition might include OSB subsidizing the education and training of paralegals. This could involve providing scholarships, and financial rewards for achieving different levels of training competency.	Lawyer
Yes	Yes	Yes				Yes	Oregon has an enormous gap between court-provided facilitation services and full-service legal representation. Given the combination of required education and experience and the public protections provided in the proposal, I fully support moving forward with the plan.	Member of the public (not a lawyer or judge)
Yes	No		The problem was resolved without needing an attorney		No	No	Allowing an individual, not licensed to practice law, to provide legal advice and services, in essence devalues the education and services that attorney's provide. Taking the slippery slope argument, after paralegals have been allowed to do the proposed areas of law, do we then look for the next practice area that is underserved and allow paralegals to do that? This will impact attorney's who have spent time and money getting an education and are attempting to make a living for their own families. Our services have already been devalued by advent of the internet and form and filing companies popping up everywhere, who do things that should (to protect the public) only be done by attorneys. Attorney's already pay yearly fees from registration to CLE's. Take money from those sources and throw it to attorney's who can then provide reduced fee services to those that are truly needy (versus those just not wanting to pay for for services they need).	Lawyer
Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	We have spent our retirement in family court in Washington county going into our 7th year now for our grandchild . Being able to access a paralegal would have saved us hundreds of thousands of dollars. The system is completely broken and often does not consider the best interest of the child. The child is a commodity in family court for professionals such as therapists, psychologists, attorneys, reunification therapists, parenting coordinators, visitation supervisors, if you are identified as able to pay, you indeed will pay. Also abuse is ignored and we were told not to bring it up or we would possibly lose custody. It is an unregulated system in which a citizens review board at the very least should be implemented. So yes the option of a paralegal would be really helpful.	Member of the public (not a lawyer or judge)

Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	My brother desperately needs a lawyer to help him receive parenting time. Because he couldn't pay his legal fees from before, he can't now seek the court's assistance when his daughter's mother fails to give him his parenting time. This means she can deny him parenting time whenever she wants. And she does. The situation is completely unjust and there is no recourse for it.	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	<p>Legal matters seem to be a "game" of who has the most money to spend, which puts many at a great disadvantage, especially with the recent economic and other challenges COVID has wrought.</p> <p>A paralegal with experience in your area of focus has observed much and would understand key aspects that can help you win your case; example: how to properly format and write documents and present evidence with any filings, and include relevant statutory and case law references. While they cannot represent us in the courtroom, the wisdom gained during their years of experience can be invaluable to pro se clients at a fraction of the cost of paying an attorney's staff paralegal to write the same documents.</p> <p>This option also offers far more assistance (and hope) to the domestic violence population, who often have to rely upon non profit resources. Even the best of them cannot afford to retain an in-house attorney, but could afford to hire paralegals to support the victims who desperately need it and perhaps a consulting attorney for more complicated matters.</p> <p>This option could truly even the playing field for those who could not afford justice otherwise.</p>	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	I have opted to use an attorney on many occasions when a much less expensive paralegal could have handled my requests. (Divorce, drafting a will, reading a trust, etc.). Please free us from the bondage of law and bankruptcy allowing us to obtain legal advice at an affordable rate.	Member of the public (not a lawyer or judge)
Yes	Yes	No				Yes	Please consider reducing the reciprocity requirements for attorneys from 5 out of 7 years to 3 out of 5 years. That should be a higher priority than this proposal. At a minimum, re-establish the reciprocity program for neighboring states.	Lawyer
Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	Limited access to justice in Oregon is a major issue that requires a multi-pronged approach to solve. This program will add a useful option for individuals facing a legal issue in Oregon without any major disruption to the current system.	Lawyer
Yes	Yes	No				No	<p>This is ridiculous. At every turn we are dumbing down the requirements of the legal profession. Just because all people cannot afford legal services, don't dumb down the requirements for providing services. This a boon for paralegals and nothing more.</p> <p>Why would the Bar, which requires lawyers to be members, ask its membership to fund this effort? If this passes, let licensed paralegals fund all of this. Don't make lawyers fund it.</p>	Lawyer
Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	Yes	No				No	I don't think a paralegal should have the same certification as an attorney who has been accredited with a law degree. Also, if a paralegal goes through the steps and still pays for insurance, licensing, etc, they will likely raise their prices and charge a higher amount, closer to an attorney, so that wouldn't be helping those who couldn't afford an attorney anyway.	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	Great idea!	Member of the public (not a lawyer or judge)

Yes	No		Hiring an attorney was too expensive		Yes	Yes	PLEASE create some kind of program to help low income people with legal issues. The existing program for low cost attorneys is an absolute joke and only two attorneys even participate. I was not able to get help that way. The legal system is too complex for individuals with no training to navigate. The result is low income people lose every time.	Member of the public (not a lawyer or judge)
Yes	Yes	Not sure				Yes	I will be the first to sign up for this program!! As a young senior citizen who moved to Ashland, OR from norther CA four years ago, I considered taking the OR bar exam, but the expense of it as well as my concern about employment opportunities prompted me to work as a teacher instead. After I practiced as a licensed attorney in MA and CA, I returned to school (as I love learning!) to obtain my teaching credentials in English and Special Education. Teaching is not at all as it was in the past, and I would be excited to return to practicing law as a paralegal rather than as the attorney of record. How would this work? Would training be subsidized by the state at all? Would conference rooms be available for paralegals to meet with clients? If a law office decided to hire me as a specially trained paralegal in family and landlord-tenant practice, would the firm be responsible for my salary? I'm sure that these issues will be resolved after the Supreme Court's consideration of the legality of this new license, but I'm thinking out loud!! To conclude, I believe that such a program can only be helpful to civil litigants who otherwise would have no legal representation or legal advocate to advise them. Also, it would permit judges to remain in their official roles and not obscure their decisions based on a concern for violation fo unrepresented parties' rights. I welcome an opportunity to be part and parcel of this new program. Best of Luck Debra Halpern debraslaw@aol.com 415 987-9249	Lawyer
Yes	No		Hiring an attorney was too expensive		Yes	Yes	I'm an attorney in Washington and I think this is an excellent idea. I love our LLLT program. Paralegals have so much specialized knowledge to offer and this would be a great tool for improving access to legal services.	Lawyer
Yes	Yes	Yes				Yes	I am acquainted with two Paralegals, very bright and competent. Attorney costs increase on a regular basis. I do have my corporate attorneys on retainer and would not change that. Great idea and undoubtedly free up the Courts time for the expertise Judges dispense. Canâ€™t imagine lawyers thinking this would be a great idea?? David Halseth Portland Business Owner	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	By allowing good paralegals to help this may help the many cases of family law involving domestic violence that are normally exploited by lawyers. The abusers want to stay in control and punish victims and the victim is fighting to keep themselves and the children safe. These cases can drag on for years or until the children age out. They cost the family everything and the lawyers benefit by the prolonged conflict, trauma, and abuse. I hope this program allows for more families to have a quicker closure, more safety, and can start life over again without being financially devastated by the lawyers.	Member of the public (not a lawyer or judge)
Not sure	No		Other: (Comment box will appear below after selecting)	See comment below.	Yes	Yes	I haven't directly, but as a Tenants Rights hotline volunteer, I have become acutely aware of the chronically unmet need and limited resources available to tenants experiencing these most literally unsettling circumstances. I know that the very few attorneys specializing in Landlord/Tenant issues must be overwhelmed. There also may be eligibility requirements that must be met and in many cases fees that may be a barrier, as well. Some NPO's try to fill the gap but are limited. The Family Law component may be a touchier area.	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	100% good idea. The scarcity of affordable legal help in rural Oregon is appalling and clients depend on the generosity of attorneys (unusual), or a long payment schedule for their help at \$300/hr. I could have spent half of the cost in my situation, because attys find ways to extend the time in resolving situations/cases to make more money. Their paralegals know this.	Member of the public (not a lawyer or judge)

Yes	No		Hiring an attorney was too expensive		Yes	Yes	Please more civil legal help especially in rural Oregon. I am in Klamath Falls I was involved in accident left me disabled I moved here from Portland for quiet simpler life.I have been in current rental for 12 years I have been harassed ,coerced and unable to exercise my rights to equal enjoyment of property.I have been sent multiple notices on termination of tenancy for not letting landlord take more pictures of house to sell.I am survivor domestic violence and a qualified individual with disabilities.I have asserted my rights to peaceful enjoyment of rental.My landlord preyed upon every reasonable accommodation I asked him to consider heâ€™s ultimatum was either move out I. 27 days leave rental good condition ,find new rental ,let us list house online and give access to real estate agents when they want to come and go and if I do go along with it I will receive a favorable review.I have multiple texts messages photos of stranger claiming to have a right to use keys to come in and I havenâ€™t had peaceful night sleep since August My daughter and I have now got our 3rd lease violation notice with no cure and come to find out the landlord isnâ€™t a landlord heâ€™s the executor of will of house.I am facing court possibly or he will just sell and new owner will give me 30 days I am on hud so anything court related possibly will get me kicked out.I have no legal recourse until or if he takes me to court I donâ€™t deserve to be homeless I pay my rent on time and good tenant for 12 years.My landlord died from COVID July	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	Had a landlord take entire security deposit in what I thought was an unjust way, but instead of consulting a lawyer I just paid it because I figured it would be more expensive to fight it.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Not sure	Yes		Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	Utilization of our rights shouldn't be based on ability to hire a lawyer. As it stands a large portion of the public is isolated from the benefits of the law due to financial limitations.	Member of the public (not a lawyer or judge)
No	No		Other: (Comment box will appear below after selecting)	Have not had a civil legal need.	Yes	Yes	As a law student, I have developed an interest in both family law and housing law. I have learned that most tenants do not have representation and most landlords do. Usually, in legal matters, landlords win. Those tenants who are able to secure representation are much more likely to prevail than those who do not. Surely this is true even when limited in scope. Paralegals being an option for limited representation would expand the options both in number and cost for accessible representation. Further, in my family law clerking experiences, I have seen a need for low-income families to secure cheaper divorces and more effective mediation. Families who stay married and couple with other people create a complicated web of domestic relationships that hinder the family life. Further, when unhealthy family dynamics are at play, efficiency is of the essence. However, low income family law clinics as things stand are overburdened. I believe the OSB knows all of what I have expressed, but I wanted to reiterate it in order to show my full support for this proposal.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive, I thought I could do it myself		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	Several years ago, while living in California, my sister and I were navigating legal issues concerning the disposition of our parents' home and assets after their deaths. I recall that we were able to answer some of our concerns by going to a very reasonably-priced paralegal. He was very helpful, and saved us a lot of time and money. A similar service in Oregon would be very helpful to middle-class folks who need help in navigating the oftentimes expensive and confusing legal landscape. I do hope the Oregon Supreme Court will work to make this possibility happen.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	One of the classes of persons who are regularly tormented by landlords are the disabled. Many of these persons are "Section 8" tenants, and are generally considered undesirable, regardless of the nature of the disability. I am one of those persons. Disability Rights Oregon has one attorney to serve the the entire state of Oregon. The need for more is desperate. I know from experience that even mentioning that I have legal support has prompted landlords to back off whatever they are doing (usually harassment), or at least ease up. Please consider adding this area of Landlord Tenant law to your areas of support. Thank you ever so much. Truly.	Member of the public (not a lawyer or judge)

Yes	Yes	Yes				Yes	If the paralegals are allowed to give limited legal advice for pay. They should also be allowed to represent limited legal advice in a courtroom.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive, Other: (Comment box will appear below after selecting)	As a landlord, it was really hard to find an available Landlord/Tenant lawyer. There doesn't seem to be enough of them and they are expensive. The landlord/tenant laws have had a lot of changes and some of these new laws don't spell out all the technical detail well. My experience in talking to these lawyers has led me to believe that it would ultimately be a Judge's interpretation that decided the matter. I have spent hours searching for answers to my questions on the ever changing Oregon Landlord Tenant Law. Will these Para-Legals really know and fully	Yes	Not sure	See Above; I am a Landlord. If this service is to be made viable, I feel it should also be made available to the Landlords. It is hard to get accurate help from licensed Landlord-Tenant Lawyers as there are not enough of them to go around in Oregon's ever-changing Landlord-Tenant Law climate. Also, they are very expensive and that cost of business helps to drive up the rental costs.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	Lawsuits are a rich man's game. Wouldn't it be wonderful if ordinary citizens could have affordable access to legal advice?	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	I am a former law librarian who has worked for courts, firms and public law libraries. Paralegals who are trained in these areas you are suggesting would be an amazing resource. I would also recommend adding some simple will estate planning.	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes		Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive, I thought I could do it myself		Yes	Yes	I believe this would be a good option to bring fairness to a system that currently favors those with the money to spend, and does not always result in the best outcomes for the children.	Member of the public (not a lawyer or judge)

Yes	Yes	Yes				Yes	I think this would be a great program to allow the public to get legal help. A lot of the public feel hiring a lawyer is out of their reach financially. A licensed paralegal could be utilized by many different community programs that help the general public. Or a licensed paralegal could operate their own small business to help their community. It's a great idea!	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	I think this is a great idea.	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	I think this is a good idea. Please make it happen.	Member of the public (not a lawyer or judge)
Yes	No		Other: (Comment box will appear below after selecting)	Tenants collectively filed a class action suit(myself included)	Yes	Yes	We think this is a fantastic idea!	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	It's intimidating to think of hiring an attorney due to the excessive costs of their legal services. I completely support this change that would allow paralegals to handle landlord tenant law & family law.	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	As long as the paralegals would be required to be certified through educational tests, further structured education in Landlord/Tenant issues, and receive certificates, I would definitely consider this to be valuable in our court system. Since most of the litigants are not able to afford a lawyer (even a very low dollar amount) perhaps the state would consider a per case reimbursement to the legal firms participating. The backlog of cases that are tying up the court system would certainly benefit. I see this as a win-win for everyone	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	I feel that paralegals are an extremely high asset to the legal community, and a great resource for those that don't have the financial capability and resources to retain a licensed attorney. It is about time Oregon moves forward with letting licensed paralegals assist the community.	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	<p>I hired an attorney for a civil lawsuit that he blatantly failed to keep my interest valid when an arbitrator kept delaying a judgement and my attorney failed to inform me of the arbitrators lack of attention to my case and had been disciplined by the Oregon state bar before for dereliction of duty. This i lost my case due to statues of limitations. I contacted the OSBar they disciplined the arbitrator again but never informed me I could use the attorneys malpractice insurance. This cost me \$1000's in attorney fees and 10's of 1000's in lost civil awards.</p> <p>Bc I had never dealt with the legal system before and had no clue of my rights to claim my losses against the attorneys insurance i lost my business and was forced to file bankruptcy costing me ??? Who knows how much I lost in future income from my successful jewelry business at the time. This still effect's me today. I'm a paraplegic. I've been paralyzed for 30 years. This civil suit happened in 2001-2003.</p> <p>Do I respect lawyers. Dam few.</p> <p>Would I hire another attorney for a civil suit. Highly unlikely. I've been hurt by every lawyer I had the misfortune to deal with except one and he lived in the state of Washington 35 years ago.</p> <p>I think the paralegal licensing is a fantastic idea if there's truth in full disclosure if they screw up your case. This should be required information discussed during the first consult to let the client, plaintiff or defendant, knows if the attorney screws your case up in any way shape or form as to loose the case or parts of there within. The attorney or paralegal is required to help tge client to recover all said losses in the lawsuit the legal help failed to represent the case properly or any other failure and losses by the legal help. If you require this during any consultation with any paralegal or attorney so they know the clients are given full disclosure about their legal rights to be financially made whole, Then just maybe no one will have to go through what I went through and still suffer from my experience.</p> <p>Thank you for listening,</p> <p>Verl McCown, GGJE</p>	Member of the public (not a lawyer or judge)

Yes	No		Hiring an attorney was too expensive		Yes	Yes	I am a paralegal and worked in family law for almost 2 years. In total, I've been in the field for almost 5 years. Prior the joining the legal field, I was part of the medical field. There, we relied heavily on nurse practitioners (NP) and physician assistants (PA), so I can see the correlation. Paralegals are often an extension of their attorney. Moreover, I've heard from other paralegals that they're the ones who have been managing the cases from start to finish; the attorney just reviews the work and signs it off. Attorneys have us do this to (1) save the client money since our hourly rate is less than theirs and (2) save them time so they can focus on the legal strategy. Now, if a paraprofessional can take over some of their duties, such as attending a status check hearing, that would save clients so much money and allow the attorney to focus on more complex cases! Not only that, but it would give more people an accessible legal option. My questions about the program would be (1) how often would paraprofessionals have to renew their license? (2) Do they still need attorney supervision or can they work independently? (3) What is the fine line between giving legal advice in their area v. committing UPL?	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes		Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	I used to work for an attorney in Oregon that practiced in family law. Especially in family law, people that go through separation already have financial hardship due to now having two separate households. Attorneys charge upwards of 10 x the amount of minimum wage, which a lot of people just cannot afford at this time in their life. I am certain that a lot of family cases could be resolved by the average person if they had help filling out the forms and get some basic help in their situation at the fraction of the costs!	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	I wrote an earlier comment encouraging adding Fair Housing for ADA issues to the areas of Landlord-Tenant cases, citing the chronic discrimination against disabled persons. For this comment, I would like to note a program called Medical-Legal Partnership which serves low-income patients whose legal issues severely impact the patients' health. Prior to the pandemic the program was still in its pilot stage, however it has been in place for years now. I would love to see that program expand so that all medical providers could refer their patients with complex needs. At the very least, I would like to see all low-income clinics have access to this program. Expansion of MLP might be much easier with the supported services of paralegals. http://mlporegon.org/	Member of the public (not a lawyer or judge)
No	No		Other: (Comment box will appear below after selecting)	I have personally never needed attorney services. Question not applicable.	Yes	Yes	I am all for this proposal succeeding. As a property manager with The Housing Authority of Portland, I believe this would directly help us to better serve the community if we could effectively do our jobs in a timely manner. Delays in the courts put the community and staff in danger when staff is unable to remove a dangerous tenant from the building, especially coupled with no support from police. It is a major public safety and health issue that is felt throughout the community and is especially harmful given the population we serve. This proposal is a step in the right direction to addressing this issue.	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes		Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	This community has a DIRE need for affordable, competent and accessible legal aid. Unless you are affluent, 9 times out of 10 lower income individuals will be "hung out to dry" or just give up their rights because of this inequity.	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	I needed a lawyer for child custody. I couldn't afford a good one, or one I could afford to stay in my case. Therefore I have minimal amount of time with my son. I believe this service could have helped.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	I have been a certified paralegal since 1999 and I have owned my own business as a Paralegal it is difficult when I can't give clients the help they need because I am not an attorney even though I am capable of helping this would help people who do not have the funds to hire an attorney if this program is implemented I will definitely apply.	Member of the public (not a lawyer or judge)

Yes	Yes	No			No	<p>The Oregon State Bar already has an existing tool to help low-income Oregonians obtain legal services at a cheaper cost and that is the Modest Means Program. The Modest Means Program attorneys agree to take low-income clients at a rate of \$60, \$80, or \$100 per hour depending on their income.</p> <p>What hourly rate will the proposed para professions be allowed to bill? Do you realize that it will be near impossible to run this sort of business while undercutting the modest mean attorney rate?</p> <p>Why not redirect PLF or other state bar money to potentially subsidize attorneys in the Modest Means Program or provide a discount of bar and or PLF dues to attorneys who take Modest Means cases?</p> <p>The State Bar/Oregon has already increased the pool of attorneys by doing away with the bar passage requirement. Please do not dilute the legal profession further.</p>	Lawyer
Yes	No		I thought I could do it myself		No	<p>I previously participated in the Osbar modest means program for family law. If the costs of practicing as an attorney were reduced, such as PLF, bar dues, etc., or if there was a financial incentive or break from participating in MM, I would continue to participate in the program.</p> <p>Licensing paralegals to practice law creates a problematic risk and potential for numerous problems that attorneys later have to unwind. It also doesn't make sense to flood the legal market, I very clearly recall the legal market when it was flooded with attorneys and there were no jobs upon graduation. Flooding the legal market with paralegals makes no sense when there are many options available.</p>	Lawyer
Yes	No		Hiring an attorney was too expensive		Yes	<p>Landlord-tenant issues are very underserved, and Landlords have a lot more monetary resources to devote to these avoiding accountability than tenants as a class have to pursue them.</p>	Member of the public (not a lawyer or judge)
Yes	Yes	Yes			Yes	<p>I think this is a needed area! I have hired a lawyer many times and usually, each time, I have had to continue on my own due to costs. Because I am very resourceful, I was able to do that. Few can. That said, I believe that additional consideration needs to be given to those with experience and education. The education waiver is a great idea. I believe that current paralegal programs may not like it due to such lowering the number of students that may enroll in an official "paralegal" program. However, without such education waiver, it will lower the number of those available to the public that are indeed capable of performing such paralegal work.</p> <p>I have my bachelor's degree in education and math. I was a certified teacher. I have a year of graduate work in vocational rehabilitation. All of this would count under the current proposal as far as education. However, the most important and valuable, experience would not appear to count. For 25+ years, I have worked with low income and persons with disabilities. I have owned and managed my own 20 rentals, am using professional property management software, have been a member of a landlord association, paid to attend conferences, filed evictions, written legal briefs (over 5 for LUBA) where I prevailed, took and passed Oregon's property management exam (but chose not to become licensed for personal reasons), written IEPs and drafted mediated agreements, filed CCB complaints (and prevailed), and sued in small claims court. As an individual with experience in many areas that required me acting as my own lawyer, it appears none of my experiences would count. I have and am a landlord that works mostly with low income individuals and have always sought to protect their rights even as a landlord. Past tenants continue to contact me, asking for advice or help with a new landlord. My experiences (while owning my own property management company since 2004) have given me the skills to help with filling out forms and mediations, look up legal statutes, rules, and precedents/cases, apply legal concepts, coach, handle trust funds, etc. ...and the current proposal as written would exclude my experiences. I, personally, would love to give up/sell my property management practice to be able to help tenants and landlords who need help with tenant-landlord law! Yet, without an easier transition to the field as a licensed paralegal that truly considers one's experience in the licensing process, it is impossible....and the public misses out. This is even more important in rural areas. Please consider this in your planning.</p> <p>Thank you, Molly Jacobsen Livingstone Properties, LLC Roseburg, OR</p>	Member of the public (not a lawyer or judge)
Not sure	No		I thought I could do it myself		No	<p>I am not in favor of allowing the DE professionalism of the legal field. This will lead to more frivolous litigation and backup the courts. It is the same as allowing anyone with a medical background give out prescriptions. NO NO NO</p>	Lawyer
Yes	Yes	Yes			No	<p>I say, "no". I was on the receiving end of a divorce. The paralegal was telling me many things that could happen in my benefit; ie. locks changed, I would get compensated by legal owners of the property. She should receive half the debt because we were married when the debt occurred, for a couple of examples. In the end, the lawyer did not back any of this up. There was no monetary valued principles; it was all about strictly the money aspect. I got nothing, could have done no worse myself, and had to pay for services. Company was Warren Allen llc. Portland, Oregon</p>	Member of the public (not a lawyer or judge)

Yes	Yes	Yes				Yes	I am very interested in making this happen. I am in Deschutes County. This is very necessary. shaunaoregon@gmail.com	Member of the public (not a lawyer or judge)
Yes	No		I thought I could do it myself		Not sure	Yes		Lawyer
Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	During the difficult time of divorce and trauma, I had to make quick decisions and needed legal guidance. I had been abused and my children were in danger. Once I and my children were out of danger, we had to quickly move into my sisters house, I desperately needed advice of what to do. I couldn't afford rent yet let alone attorney fees. If this option would have been available it would have been amazing and would have helped a traumatic time be less chaotic for me and my children. I would have had guidance more quickly. I had to borrow 1000's of dollars from my employer to pay for an attorney, money I could have used on my 3 children, with abruptly being a single mother. Please consider this option for cases like mine. please consider how this will ease the pain that so many are going through at such a time.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive, I thought I could do it myself		Not sure	Yes	My experience is primarily in Landlord / tenant issues. I was a licensed Realtor for 30 some years. Few people understand the importance of lease agreements that protect both the Landlord and the tennant and that the legality of lease agreement vary from state to state. A well written lease agreement will attract responsible leasees because they are also protected and understand the relationship they are in. A rent discount incentive to pay by cash or cleared funds by the first of the month is highly likely to be successful. Renter insurance for the lessor and lessee, inspections prior to rental and on leaving will clear questions that come up on deposits for damage only if the language is clear. Also pet deposits for damage. If a HOA is involved the rules and regulations should accompany the lease and read prior to signing. Subletting or long term "guests should be addressed. A third party credit check will help eliminate the scammers. If these item are not in the standard lease agreement, add addendums and have all paperwork signed including who is responsible for repairs when appliances go down. I have three children who have now or have had rental properties. One listened to me and has had essentially care free rentals for years. Two thought the details were unnecessary and brought stress, misery and a big hit on their net gain. Attorneys are very expensive. A paralegal would be a good investment as a business practice. Good place to advertise would be the pages on internet that offer standard leases. Moral of the story is, if you don't listen to Mom, you'd better listen to a paralegal.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive, I thought I could do it myself, The problem was resolved without needing an attorney		Yes	Yes	This would be a much needed answer to a lot of Oregonians who really need this kind of help. My husband and I are both retired and live on a limited income and are renters. There is no way we could afford the cost of an attorney at the outrageous prices they charge today per hour, as they are out of control on their wages. Please vote this in without further ado. Thank you for so very much. Sheila	Member of the public (not a lawyer or judge)

No	No		Hiring an attorney was too expensive, I thought I could do it myself, The problem was resolved without needing an attorney		No	Yes	As an organizer for housing justice, it makes a lot of sense to me to reduce the cost of basic legal expertise for dealing with these common issues that are often intertwined with class, wealth, language, culture, and other differences between people.	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	100% support this program, there is a great need, and legal services should not be exclusionary. This program could assist regular working class people with everyday issues in a manner consistent with Oregon's equity and equality goals. Please fast track the Licensed Paralegal program. Thank you	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	<p>I was thrilled to see that the Oregon State Bar is moving ahead with the development of a license program for paralegals to assist clients in landlord/tenant and family law cases. It's my hope that this well thought out and important program comes to fruition, as these types of efforts are key to tackling the current access to justice crisis.</p> <p>I'm proud to have played a role in Utah's establishment of a similar program, our licensed legal practitioner program. This program has allowed qualified and competent paralegals to provide legal assistance to clients dealing with certain family law matters, debt collection matters, and forcible entry and unlawful detainer cases. Over two years since its launch, the program has expanded the number of citizens able to access affordable and competent legal assistance. At the same time, I understand, that our Office of Professional Conduct has yet to receive a single complaint related to the conduct of a licensed legal practitioner.</p> <p>The access to justice crisis affects every state in the nation, and Oregon is no exception. As you're well aware, data shows that high percentages of Oregonians with civil legal problems are unable to access legal help. This leads to large numbers of unrepresented parties, even in critically important cases such as eviction and family law. I'm so glad to see that the Oregon State Bar is taking such an important step in addressing the problem head on. It will take bold and innovative solutions to narrow the justice gap, and the current proposal is just that. I look forward to following the success of Oregon's program, and seeing how it inspires even more states to act.</p>	Judge
Yes	No		Hiring an attorney was too expensive		Yes	Yes	<p>Desperately important</p> <p>Especially in custody and visitation where one parent alienates a child deliberately from another parent, even instilling false memories to create vitriol. It's a horrible nightmare</p>	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes		Member of the public (not a lawyer or judge)
No	No		Other: (Comment box will appear below after selecting)		Yes	Yes	I am a social worker and I help low income pts everyday. It is very hard to find affordable/low income lawyers, especially if the pt speaks a language other than English. The few resources that exist are maxed out. So, I fully support having paralegals help with these matters! This is a fabulous idea!	Member of the public (not a lawyer or judge)
Not sure	No		The problem was resolved without needing an attorney		Yes	Yes		Member of the public (not a lawyer or judge)

Yes	No		Other: (Comment box will appear below after selecting)	Can't find a lawyer who is willing or able to take my case. They are either tied up with evictions or they want funding up front, and I don't blame them but I know that I have a winning case, but no one is taking it. I have before and after pictures I have proof of harrassment and discrimination.	Yes	Yes	It's a nightmare I still have not found a lawyer, and time is running out.	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes		Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	Paralegals in my experience have always been insightful and know basically EVERYTHING, they should be able to help for a lower cost, not everyone can afford an attorney.	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	I think this is a great, affordable option when there isn't anything being contested, but a person may need a little guidance with the paperwork.	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes		Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	It seems like a good way to help address equity and access issues for regular people who can't afford expensive legal help but still need and deserve help with many legal issues. I would like to see the program started soon.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive, I thought I could do it myself		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	I have had several attorneys withdraw from my case as they cannot manage my trauma and ptsd. I have found many paralegals to be easier to sit down with, not loaded with as many cases and just as knowledgeable!	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)

Yes	No		Hiring an attorney was too expensive		Yes	Yes	I cannot tell you how timely this proposal is. I wish it could start tomorrow. I have qualified and worked as a legal document preparer in Arizona and as an independent paralegal in Washington State. I started out with my own Private Investigation agency paired with volunteer work as a domestic violence advocate. I was propelled toward this career path after completing a lot of work on my own divorce in the 1990's and then completing paralegal certificate programs. After the success of my process working with my own attorney to do a lot of the work on my own case (I could not afford full attorney costs) I had many people who would mysteriously appear on my doorstep or call me asking for help. I was limited as to what I could do and skated a fine line. Most just needed basic legal help or document preparation for family, divorce, landlord/tenant issues related to domestic violence. As an advocate I knew the resources that were available and could direct individuals toward research materials, and inform them when an attorney was needed. I moved back to Oregon in 2018 and have always appreciated the progressive mindset of government regulations here. As someone who is fully aware of the great need for this option and the importance of a healthy connection and relationship between a licensed paralegal and attorneys, I support this proposal 100%.	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	I think this is a great idea as long as there is a certification and testing process in place.	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	From my experience all of the attorneys are backed up and I believe Hyppa paralegal had more rights if they would be able to complete their claim faster and cheaper	Member of the public (not a lawyer or judge)
Yes	No		Other: (Comment box will appear below after selecting)	The Attorneys wouldn't help me without \$5000 up front. QUID POR QUO WHOA ! created Hostile environment ongoing & ORS 659A421 delayed help is adverse actions increased poverty overburdened workforce being unhoused by deception .	Yes	Yes	Incompetence and Federal Law not followed or accessible in Oregon has created worse Unconscionable conditions Zero safety, Zero accountability of Law, Poverty overburdened workforce being unhoused by deception of VAWA Law and Federal Law not followed or accessible in Oregon. I can't live in a Hostile environment & overcharging is overburdening me without Remedys it's unlivable conditions.	Member of the public (not a lawyer or judge)
Not sure	No		The problem was resolved without needing an attorney		Not sure	Not sure		Member of the public (not a lawyer or judge)
No	No		Other: (Comment box will appear below after selecting)	We can afford legal representation. All my survey responses are from this perspective.	No	Yes	I support the LP proposal. As 84% of Oregonians can't access the justice system, probably a higher rate in family law, this proposal is a perfect public justice system response. I served 35 years in the CA judicial system as a manager and executive. A one stop administrative family law help station with experienced court staff assisted those in need of self help. If the OR trial courts do not have such a public access support system, then this proposal will facilitate access to justice. A research of online self help center video support should also be pursued. See cc-courts.org a court sponsored bar collaboration web initiative which even lawyers used! Ken Torre	Member of the public (not a lawyer or judge)
Yes	Yes	No				No	If Oregon keep lowering the bar, no pun intended. It will lower everything that comes with education and knowledge. Part of the path of education is staying away from corruption. Any educated person knows by lowering ones standards opens the door to all things being corrupted. Not a good idea. It's almost as bad as giving a diploma to a child that has not met the standard. Not a good path If you want it bad enough help paralegals get there bar, don't cheapen the scales! Just my opinion	Member of the public (not a lawyer or judge)

No	No		Hiring an attorney was too expensive		Yes	Yes	<p>This change is LONG overdue and is very similar to what the medical profession implemented decades ago.</p> <p>Originally, there were doctors and nurses, with all medical procedures requiring the participation and/or supervision of the doctor. Now we have doctors, nurse practitioners and nurses. With the nurse practitioners providing care for less complex issues without the supervision of a doctor. It works brilliantly and the original detractors (doctors who wanted to protect their lock on the market) were quickly proven wrong. NPs now provide a substantial portion of primary care services to Oregon residents and are the backbone of our primary care system.</p> <p>Implementing a licensed paralegal program will result in the same outcome as the medical industry embracing nurse practitioners.</p>	Member of the public (not a lawyer or judge)
Yes	Yes	Not sure				Yes	<p>If you do license paralegals, make a clearcut line of when the situation must be escalated to an attorney, and out of the hands of the paralegal. Ensure the paralegal acquires a 40 hour certificate in mediation because mediation is useful to resolve family and landlord cases. Require the paralegal certificate to be ABA accredited because there are many bogus paralegal programs. Most people cannot afford lawyers as they charge too much per hour. And putting a cap of attorney fees is unlikely to be passed as a law in USA. So then if people do not hire an attorney due to high cost, then they represent themselves in pro per, and are clueless as to how to navigate the legal system.</p>	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	<p>I know many people could use an affordable, skilled and licensed alternative to lawyers.</p>	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	Yes	No				No	<p>It is difficult to see how this would effectively work in practice. How will the restriction on "limited" advice be enforced in practice? Who will mentor, supervise, teach these paralegals? This will likely drive up costs as a person slightly more knowledgeable than a pro se litigant will be potentially be dealing with an attorney.</p> <p>Also, given that family law is one of major producers of malpractice actions and bar complaints having less highly trained advisors for a client seems to be a recipe for increasing malpractice claims.</p>	Lawyer
Yes	Yes	No				No		Judge
Yes	No		Hiring an attorney was too expensive		Not sure	Yes	<p>I practiced landlord/tenant law for about one year. During that time, the vast majority of those clients had both rudimentary legal needs which could have been addressed by a program like this and severely limited finances. If our goal is to serve our communities and make Oregon a more equitable legal landscape, this proposal is a no brainer. No individual should have to choose between suffering illegal behavior at their home and being able to put food on the table. I would encourage anyone who is against this proposal to ask someone making minimum wage for their opinion. In my experience, most lawyers are out of touch with the economic realities so many Oregonians face. If people cannot afford legal help, they will continue to suffer. Is there a more disgusting form of injustice than that which harms people who cannot protect themselves? Is it not our duty as stewards of the legal system to promote justice? Not everyone who has a passion for helping people through the law wants to be a lawyer - we should allow anyone who meets these new criteria to assist us in assisting everyone else.</p>	Lawyer

No	Yes	No				No	<p>I am strongly opposed to OR creating an LP program. As a member of the WSBA and practicing attorney in Washington state, I have first hand witnesses the failure of WA's LLLT program. It has failed to: (1) increase access to basic legal services, especially in underserved or rural areas; (2) it usually is not cheaper than attorneys, especially in underserved or rural areas; (3) it has failed to produce enough LLLTs to change the attorney market; and, (4) it fails to protect the public by giving them access to someone who lacks the basic skills to assist with their case.</p> <p>For two recent years, I served as the president of my rural county WA bar association. As an underserved and rural area, in desperate need of family law and landlord tenant lawyers, we had exactly one LLLT (and one that recently became an LLLT due to WA waiving the July 2020 bar exam -- they failed the LLLT exam two times before). The one practicing LLLT consistently had serious errors in their pleadings and proposed orders. They didn't understand the complexity of the law, nor other issues such as tax implications. Opposing counsel or our one superior court judge routinely stepped in assist the LLLT. More importantly, the LLLT wasn't cheaper than a local attorney.</p> <p>Instead of creating another ill fated LP program, you should create ways to assist new small town and solo attorneys. As a new lawyer, I wanted to practice in my rural community. I had the skills and network to start a successful small firm, including landlord tenant and family law practices areas at a low cost. However, my crushing student loan debt has kept me in the public sector, working towards public service loan forgiveness. Instead of opening my own firm, I have consistently taken on pro bono cases through our local legal aid clinic.</p> <p>In summary, the LP program won't fix the access or cost issue. Fundamentally, states need to do more to allow new attorneys to start their own practice. This comes down to lowering the cost of law school, creating scholarships for law students, and assisting solos with health insurance and practice basics.</p>	Lawyer
Yes	Yes	No				No	Bad legal advice can be more damaging than no advice.	Lawyer
Yes	No		Hiring an attorney was too expensive		Yes	Yes	I think this is a phenomenal idea. It would expand access to legal services and make it easier for ppl to exercise their rights.	Lawyer
Yes	No		Hiring an attorney was too expensive, I thought I could do it myself		Yes	Not sure	If the goal of this LP program is truly to reduce costs to the public, then the OSB must restrict the rates that LPs may charge for their limited services. Otherwise, this program will allow non-attorneys to profit from practicing law without requiring them to attend law school. Moreover, if this program is implemented, then LPs must adhere to the same rules of professional conduct that attorneys do, and must make it clear to the public that they are non-attorneys.	Lawyer
Yes	Yes	No				Not sure	The program should not be enacted if the public is not protected from incompetent advice through malpractice insurance from the PLF. The PLF should not pool the risk of attorney malpractice and paralegal malpractice; they are two different kinds of risk for two distinct classes of workers. The licensed paralegals should bear their own cost of malpractice insurance. Until that cost is factored in, there is no way to know the public will receive services at a lower cost than from attorneys.	Lawyer

Yes	Yes	Not sure				No	<p>I am opposed to LP program. Many of my family law cases as a lawyer were cleaning up serious errors in existing cases that were made by various "paralegals" either in Oregon or elsewhere. Some were so bad it seemed like kindergartners were in charge of the paperwork. The errors were grievous and affected substantial rights of the parties. Of course, I've also been retained to correct grievous mistakes made by the parties themselves in cases where they completed the paperwork without legal advice. Those were almost as bad, but at least they weren't "clothed" in legitimacy.</p> <p>What I very much support is some improvement in the OJD iForm family law self-service program. I use it often with a party who just wants legal review of their paperwork. The first time was long and drawn out and tried my patience, but I soon became a big fan. The step-by-step, guided process helps eliminate gross mistakes and essentially provides enough information to make informed choices about an issue that MUST be addressed. I think with some more tweaks, the on-line assistance can be really, really good. Some things that need tweaking are: the ability to go BACK and correct something that you later realize you did wrong; the ability to at least TALK about retirement accounts as personal property and to distribute them to one or the other party (not divide them, which requires a QDRO, but to award to one party or the other). Those are the two issues that leap to mind immediately.</p> <p>I do not believe the public is adequately protected by allowing paralegals to function AS LAWYERS. How can they have sufficient training if they don't have as many years of education, cross-subject information (like disabled children or parents, hidden assets, etc.) as lawyers do? Family law is extremely complex. It addresses a dozen issues in a single case. I have had to clean up other LAWYERS' mistakes in some cases. I think it misleads persons in need of legal advice to think that a nonlawyer will be able to adequately and accurately answer their questions and give correct advice.</p> <p>Let's put more effort into the self-guided iForm system that now does a fairly good job, to make it much, much better. Maybe a working group of practitioners and whoever designed the program would be a really good idea.</p>	Lawyer
Yes	Yes	No				No	<p>Lawyers go to law school for a reason. When physicians started letting nurse practitioners take off lower level patient it was a slippery slope that lead to lower quality patient care. This is a line in the sand.</p>	Lawyer
Yes	Yes	No				No	<p>The Bar, which is supported by lawyer fees should not be in the business of putting lawyers out of business. More important, the commodification of all sorts of professional services contributes to meaningful reductions in the quality of those services to people in need. This proposal will also impact the ability of new lawyers to be trained in the field in which they wish to work because licensed paralegals will take that work. It should also be noted that lower income clients get the benefit of the training lawyers obtain from wealthier clients who pay their fees. This allows an experienced lawyer to represent individuals of lesser means in their divorce or perhaps tenant matter, at lower cost due to their efficiency and skill. I am a lawyer but have been a client several times. I would not have wanted a licensed paralegal representing me. I fear the dumbing down of skills, lesser adherence to ethical obligations and just a generalized reduction of quality and respect for the legal profession.</p> <p>The bar should focus on being a bar organization and not on putting lawyers out of business and demeaning the profession.</p> <p>This is a mistake and I am glad I will be retiring soon. And note I do not work in either of the fields to be impacted by this mistake.</p>	Lawyer
Yes	Yes	No				No	<p>This would set a dangerous precedent! Attorneys have to go through so much intense training and it is helpful to have the balanced knowledge of laws in all areas (education, bar exam, etc.) not just a certain focus. Do not do this! Lawyers are also scraping by right now!</p>	Lawyer
No	No		I thought I could do it myself		Yes	Yes	<p>I am in complete support of a program that provides greater access to justice in these areas</p>	Lawyer
No	No		The problem was resolved without needing an attorney		No	No	<p>Oregon should not create a licensed paralegal program. This program and the bar exam alternative program devalue the degrees and professions of those who are already in practice. Paralegals will be asked to be making complex legal analysis that (especially in family law) can alter people's entire lives and they do not have the necessary qualifications (both through education and through ethical/character and fitness exams and licensing) to be effective representatives</p>	Lawyer

Yes	Yes	No				No	There is a push in both law and medicine for not fully licensed and trained folks (like nurse practitioners and paralegals) to be able to operate as, in effect, doctors and lawyers. I believe this push is not a good idea, and oppose expanding the ability of paralegals to do the same work as lawyers. Paralegals can already do a lot of legal work, but working with and under the supervision of a lawyer. This is appropriate. After all, the whole idea of law school and lawyer licensing is to equip those who are responsible for the provision of legal services with not just the technical knowledge, but also the professional judgment, and the advocacy skills, to provide good legal advice. To me this proposal is to allow people without that training to provide services that require that training. That certainly does not seem like a good deal to the consumer--it could lead to inadequate legal services. It isn't a good deal for we attorneys--work we would do better would flow to under-qualified paralegals. I understand that paralegals may wish they were lawyers, but they aren't, so I don't see their desire to do things lawyers do to be a legitimate reason to support this.	Lawyer
Yes	No		Hiring an attorney was too expensive		Yes	Yes	Oregon attorneys are beholden to the Bar when they mess up a case. What would be the counterpart to licensed paralegals?	Lawyer
No	No		Other: (Comment box will appear below after selecting)	Question N/A	Not sure	Yes	I think this would be great overall. In the Navajo Nation, I believe they allowed Navajo members to join the bar through similar requirements. It is a great way to provide access to legal representation or legal educators for the public. It is also a great way to allow access to the bar by minorities or by people of lower socioeconomic status. Additionally, I also think that paralegals can be much more knowledgeable about legal matters than many attorneys--especially newer attorneys (including me). I'm not sure how important the bar examination is, but that could be an additional requirement if people in the legal community are resistant to this new idea.	Lawyer
Yes	Yes	No				No	At our firm, we have 4 attorneys doing landlord-tenant cases. This is one of the most complex areas of law. The law is constantly changing and is filled with malpractice traps. Due to the complexity, I do not recommend it for paralegals to handle. This area of the law frequently overlaps with other areas of the law such as discrimination, and premises liability. Federal, state, county, and emergency mandates must all be considered. Jennie L. Clark, Attorney at Law	Lawyer
Yes	Yes	No				Yes	I strongly support Licensed Paralegals. I served on the OSB's first LLP task Force and have spoken publicly many times in support. The bottom line is this, many people need legal help and either cannot afford to hire a lawyer or choose not to. The resulting lack of access to legal help has crippled courts and the justice system and amounted to limiting access to justice. While a licensed legal professional may lack the knowledge and sophistication of an experienced lawyer, some legal help is better than none. For an assortment of reasons, and not very good reasons in my judgment, lawyers in general have failed to meet this critical need for legal services. William Howe, Gevurtz Menashe, Portland	Lawyer
Yes	Yes	No				Not sure	One of my primary concerns is in the realm of settlement. The skills and experience required to bring about a fair settlement are considerable. In my 20+ years experience practicing family law, these are learned over many years of practice as a lawyer dealing with another lawyer. I have grave concerns how a licensed paralegal would have these skills and be able to negotiate a settlement. As an attorney, I do not want to negotiate settlements with a paralegal. I vigorously try to settle all of my family law cases; I do not anticipate that would be likely if the opposing party is represented by a paralegal.	Lawyer
No	No		The problem was resolved without needing an attorney		No	No	This is ridiculous. If this passes, is the state of Oregon going to wipe away any debt lawyers incurred for attending law school. Licensed attorneys in Oregon, like myself, did not spend countless hours and racked up a heap of debt to watch a paralegal take my career over. Had law school, court costs, real estate prices not be so pricy and high, we lawyers wouldn't need to charge as much for our fees. Why don't the judges take a pay cut, how about the clerks of the court take a pay cut to reduce filing fees. Further, it is against the code of conduct for a NON LAWYER to engage in the practice of law. Once you give up one (or MULTIPLE) lawyer duties to non lawyers, the integrity of our profession goes out the window. This program cannot be created and if it is, the courts will experience a lot of mal practice suits. Why can't the paralegals that want to practice law, spend hundreds of thousands on law school, take, AND PASS, the Oregon Bar exam, and then charge whatever minimum fee they want to these people in need. This will show how broken law school costs are, and why an attorney needs to charge such fees for the maintaining of its practice. Creating this program would be the utmost largest problem of today's legal community; as countless struggling attorneys already are having a difficult time finding (and keeping) jobs, and repaying loans from attending law school and paying for the bar exam, among the thousands of dollars in attorney fees we pay to the state to maintain a professional license and keep insurance. At the heart of this program, is the unauthorized practice of law, for which is why the program must not exist.	Lawyer
Yes	Yes	Not sure				Not sure	If Oregon moves forward with this proposal, I strongly encourage limiting the practice areas to those which both have a strong public need and also a shortage of practicing lawyers. This should be limited to landlord tenant, domestic relations, immigration and small claims cases. I fear a strong backlash from practicing lawyers, especially newly minted attorneys, who feel slighted at the huge expense and debt many took on for their license, only to have their source of income significantly curtailed. By limited the scope of practice area for the LPs, we can ensure a balance of protecting the legal profession while also serving the general public.	Lawyer

Yes	Yes	Not sure				Not sure	<p>I am a family law practitioner (27 years). I see the need for more services to the general public, but I am concerned about this program as proposed.</p> <p>Your video compares Nurse Practitioners with Licensed Paralegals. NPs have advanced graduate degrees, very specialized graduate education, requirements for practical training, plus rigorous testing and licensing. In contrast, Physician Assistants are well educated and trained- but they cannot practice independently.</p> <p>I'm curious why the Bar isn't looking to adopt the NP rigor for licensing to this process (which I would support fully). From experience, many legal assistants who have years of experience in a law office don't have the skills or knowledge to advise clients. Many have no formal education beyond high school. A year or two as a legal assistant does not prepare the person to advise on the complex litigation issues presented in family law. I think it is a recipe for harm to clients.</p> <p>That said - I do fully support the concept of paralegal licensing similar to the nurse practitioner model if the Bar wants to give them the ability to open their own businesses.</p> <p>Otherwise I strongly encourage the Bar to start this program of licensing paralegals using a provisional plan where the paralegal would at least work under lawyer supervision. I think giving us all the opportunity to work out the "kinks" under supervision eliminates the risk to the public and gives the Bar a chance to measure success and refine the final licensing requirements for independent practice.</p>	Lawyer
No	Yes	No				Not sure	<p>I am an attorney practicing almost exclusively in residential landlord-tenant law, representing only landlords. I have personally experienced an uptick in the last year of Legal Aid attorneys engaging in excessive discovery, delay tactics, and requests for jury trials in simple FED cases that are designed to move along quickly. In my opinion, there is no doubt that these tactics are designed to drastically increase the legal costs for landlords in an effort to force them to either abandon the FED case or settle on unfavorable terms.</p> <p>Tenants do not pay their attorneys from Legal Aid, while landlords are expected to pay their attorneys. This is an inequitable use of primarily public funding that allows Legal Aid to continue using these tactics to drive up the costs of FED cases. In my considerable experience over 30 years of practice, these tactics do NOT occur when private attorneys are representing the tenant while working on a contingency basis. Attorneys working on contingency still zealously represent their tenant-clients, but while not using the delay and discovery tactics regularly employed by Legal Aid.</p> <p>ORCP 17 sanctions are of little use in these types of cases for at least a couple of reasons. First, judges are generally reluctant to impose sanctions personally against attorneys, which is the only kind of sanction that would have any meaningful effect on these kinds of tactics (sanctions against the tenant-clients would be essentially meaningless). Second, in many of these kinds of cases, the Legal Aid attorneys can reasonably argue that they are entitled to demand what turns out to be excessive discovery, and certainly are entitled to demand a jury trial for their clients. ORCP 17 does not help in these situations.</p> <p>As such, serious consideration should be given to placing limitations of some kind on the proposed paralegal program to ensure that it is not abused in a manner to increase the costs of litigation. It is easy to envision Legal Aid or even law firms employing large numbers of paralegals and expanding what I perceive to be an effort to continue making FED cases prohibitively expensive for landlords. Alternatively, the Oregon Supreme Court should explore changes to court rules to make it easier to bring sanctions for using these kinds of tactics, whether employed by attorneys or paralegals.</p> <p>Mark L. Busch Attorney at Law OSB No. 912272</p>	Lawyer
Yes	Yes	No				No	<p>I do not agree with such limited licenses to practice law. I would strongly vote against it if it were put to vote of the membership. I would encourage the board to follow the majority of the bar members for direction. Also, if the bar adopts such a limited license, I sincerely hope they limit the landlord tenant scope to only residential landlord tenant and not commercial landlord tenant matters. My preference would be to not allow, but from what I hear, that ship has sailed. Sad to think this decision is being made without majority of the bar supporting it.</p>	Lawyer
Yes	Yes	Not sure				Yes	<p>The current proposal involving paralegals seems designed to make the paralegals members of the Oregon State Bar. If that happens, that would technically make paralegals eligible to become (and run for) circuit court judges pursuant to ORS 3.050. An argument could also be made that they would be eligible to become (and run for) appellate judges, although it is less clear. I do not believe that is the intent of the program, and it may be worth looking into to avoid that becoming an unintended consequence.</p>	Judge
No	No		The problem was resolved without needing an attorney		No	No		Lawyer

Yes	Yes	Yes			Yes	This is an excellent idea for increasing access to justice, and I support it.	Judge
Yes	No		Hiring an attorney was too expensive, I thought I could do it myself. The problem was resolved without needing an attorney		No	No Things to consider: 1. What is the definition of "need" for legal services? Is it merely the appearance of a pro-se party in court? Or is it the concrete knowledge that the pro-se party just got "hosed" by representing themselves in court? In other words -- do we know for sure that if the pro-se party had obtained a lawyer or legal advice, his or her case would have turned out "better?" In my experience litigating against pro-se parties, the pro-se parties "lost" because they had no case to begin with, and not because I or the legal system abused them. Judges go above and beyond to make sure these people are given due process and due respect in court. 2. Sadly, when it comes to professional services, you often get what you pay for. If a goal of this program is to make legal services more affordable, I think it opens the public up to being abused by "LPs" who are charging "more affordable" rates than attorneys, but who are basically doing nothing more than helping clients fill out forms. The LPs won't be providing "issue spotting" or wholistic advice like an attorney would, based on years of academic training and polishing of the mind. Time after time I have reviewed documents that I KNOW were prepared by legal staff, and not attorneys. Time after time these documents were flawed, and did not consider the "big picture" of a matter. These professionals are still billed at up to \$175/hour for their services. 3. If the goal of this program is to make navigating the legal system easier, perhaps the legislature should revisit the messes it has created with statutes that are hard to understand and full of minefields. For example, landlord-tenant law has become a specialized legal practice area due to extreme risk to landlords who attempt DIY fixes to their problems. This wasn't always the case. The 2019 changes to the law were horrible for small landlords -- with the COVID-related amendments on top, even worse. 4. The LPs will not be a cure to basic human failings, or failings of the educational or social services systems. If you can't pay your rent, you will be evicted. If you marry unwisely, you'll end up divorced. If you are uneducated, you will struggle making contracts and understanding legal documents. you don't respond to the legal papers you've been served with, you'll end up with a judgment against you that will impact your life. 5. To the extent that any party to a legal proceeding is poor and is also a victim of abuse -- such as by an employer, or the police, or their spouse -- they should qualify for and be able to obtain legal aid. Invest in legal aid, law libraries, and even high school curricula that teach the basics of the Oregon legal system. Invest in more court staff or judges dedicated to uncontested divorces or child custody cases. Make law school more affordable so that qualified applicants can become lawyers, graduate with less debt, and perhaps be able to make a living billing their services at \$100/hour in an under-served community.	Lawyer
Yes	No		Hiring an attorney was too expensive		Yes	Yes	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive, I don't trust attorneys		Yes	Yes Before law school, I definitely found myself in the circumstances described in the questionnaire. Legal help has always seemed (even now) unattainable in all but the most dire circumstances. I think this is a fantastic opportunity to bring Oregon in line with other states and to take a meaningful step towards accessible justice. Having worked in family law for a time, and criminal defense for longer, I know how desperately people need help, especially at discounted rates. I also know how expert many paraprofessionals are compared even to the most seasoned attorneys. I do not think that law school gives twenty-somethings any expertise in landlord tenant law or family law that a 20-year veteran paraprofessional couldn't match 1000 times over. I also think paraprofessional licensing is an important step towards democratizing and diversifying the practice of law, especially in Oregon. The artificial barriers we've erected around our profession are anti-competitive and hold us back. They keep lawyers from improving, and much more importantly, keep the marginalized from practicing law or seeking representation. As a queer person from a working-class family, this concern is particularly salient to me and seems a particularly compelling reason to approve this important, commonsense reform.	Lawyer
Yes	No		Hiring an attorney was too expensive, I thought I could do it myself		Yes	Not sure I agree there is a large unmet need in the specified areas of law. I suppose I am concerned with some of the tasks proposed; answering for the client in court is probably the thing that concerns me most. I also think ABA accredited paralegal programs should be required for any paraprofessional seeking licensure. I was a paralegal for 15 years before I became a lawyer. I don't believe paralegals should be allowed to make court appearances or speak on behalf of the client.	Lawyer

Yes	No		Hiring an attorney was too expensive		Yes	Yes	Licensed paralegal programs like this have a lot of potential for extending access to justice in critical areas. However, these programs have failed in other states for a variety of reasons. Looking at the requirements for the proposed program, I anticipate that this one will fail as well, primarily for this reason: the requirements imposed on LPs to become licensed make it almost easier to just become a lawyer. That fact goes without saying, considering that the requirements are reduced, but not eliminated, if a candidate already has a JD. Particularly with respect to requirements for licensure, I would recommend looking at places where these programs work well--not just United States jurisdictions--and consider incorporating some of those approaches. Examples can be found in Kenya, Kyrgyzstan, and the United Kingdom. See 30 Wash Int'l L. J. 324 , 361-65 (March 2021), available at: https://digitalcommons.law.uw.edu/wilj/vol30/iss2/10 .	Lawyer
Yes	Yes	No				No	The use of licensed paralegal services in any or all family law cases is a poor idea, particularly when the case involves issues beyond just child custody, parenting time, and child support. Those cases alone can be difficult and complicated enough. Cases can become more complicated with multiple consequences involved when there are issues of division of property, both real property and personal property, division of liabilities, and when there is an issue of spousal support. It is unlikely that a lesser education and less experience will serve clients well in those situations. In addition, more widespread use of paralegal services in such cases only serves to diminish the value of services provided by attorneys, may increase the need for additional litigation to modify terms of a judgment (or to try to clean up problems created by a less than thorough or complete job done in the first place), and could create potential harm to litigants. There are even licensed attorneys who do not have a thorough understanding of the legal issues, procedures, and skills to provide all of the necessary services required for such cases, yet they are authorized to practice in that area of the law. Adding a group of people who are lacking in the legal education and experience to the mix, and who are not prepared to deal with all of the various issues that may arise will not serve the profession or the public well. It is often likely the litigant who chose to try to save money by using the services of a paralegal will end up spending much more for the services of an attorney later to attempt to correct or rectify problems that were created due to the lack of ability or experience of a paralegal. Therefore, Oregon should not create a Licensed Paralegal program that authorizes the type of authority that has been proposed.	Lawyer
Yes	Yes	No				Yes	Some years ago I went on record (but I can't locate the record) stating that the paralegal licensing program should start with JDs who are not admitted to the bar. Given that about 30% of the bar applicants never pass, there is a large pool available, and we at least know they were smart enough to graduate from university and law school. If that pool is inadequate, then open the pool larger from time to time. I spent six years on the OSB UPL committee, and I am concerned that there is the possibility that lawyers admitted in other jurisdictions, but not Oregon, could practice family law in Oregon (particularly family law - where I do not practice) without being admitted. Bottom line, I have mixed feelings about this program. There is an unmet need for legal help for consumers, and to aid judges in the courts where the pro se litigants are numerous. I also feel that providing a pool of inexpensive legal practitioners to act in housing court (another forum where I do not practice) is an indirect attempt to tilt the playing field (even more) in favor of tenants against landlords, and the victims will be mom and pop landlords. It will also make the economic conditions for young lawyers who did pass the bar and who are struggling with loans incrementally more difficult. Frederic Cann 781604 503 226 6529	Lawyer
Yes	Yes	No				No	I think this is a very bad idea. I work primarily with Latino immigrants who are easily misled by people who hold themselves out to be trained professionals but are not. These "professionals" or more often called "notarios" May have college degrees, but they do not have the skills and knowledge to properly assist others, relying solely on their bilingual abilities to convince unsuspecting victims that they are able to comprehend complicated legal procedures. The "notarios" often start by assisting in small matters such as a family or landlord disputes and then they move to more complicated matters such as immigration for which they are totally unprepared. They wreak havoc, and the result may be, I have seen it more than once, they get deported. Further, it is already a major undertaking to train a new attorney to be a competent advocate. New attorneys generally do not have well developed skills upon graduation from law school (god help us if they have even less education than that). They generally need the benefit of an experienced attorney mentor to learn procedure, writing, logic skills. The idea that a person who does not even have that minimum training should be tasked with guiding others in even the simplest legal procedures is frightful. The bar is already low, I spend countless hours mentoring young folks in writing, thinking and procedure. I can only imagine the frustration the courts will endure when they are faced with even less prepared individuals acting as advocates for those who often should rely on even more highly trained professionals. Instead of lowering your standards, I suggest you set up better mentoring programs, find ways to pay attorneys to handle lo bono cases, fund more legal aid attorneys. You are setting the entire bar up to become a mockery by lowering the professional standards to include people who, while sometimes no doubt could be competent enough to handle certain matters, are generally not well enough prepared to identify issues and creatively advocate. The poor level of representation will disproportionately affect the poor and immigrant populations, exactly the people who need better advocacy the most.	Lawyer
Yes	Yes	No				No		Lawyer
Yes	Yes	No				No	As a lawyer who has been in practice for 51 years, I strongly oppose independent paralegals. They should be employed by licensed attorneys and working under their supervision. C. Richard Noble, OSB # 701028	Lawyer

Yes	Yes	No				Yes	Oregon has a significant access to justice problem, and this paralegal licensing proposal is a targeted solution to a part of it. The proposal was vetted with all relevant stakeholders, was modified based on input, and is limited in scope. It's past time to continue to call out our access to justice problem while failing to advance solutions. To those who may oppose this solution, it's time for them to step up with solutions of their own. I fully support implementing the paralegal licensing proposal.	Lawyer
Yes	Yes	Yes				Yes	As someone who has been through both civil and criminal court, paralegals are superheroes to me. I would absolutely trust this profession with more legal responsibility and believe they would excel given this responsibility.	Member of the public (not a lawyer or judge)
Yes	Yes	No				Yes	I served on the Board for the Oregon PCC Paralegal Program for several years and was always impressed by the excellent standards under which they operated. All students received the full attention of their faculty and all students with whom I came into contact took the high standards seriously. Over the years I had the pleasure of supervising them when they came into our agency (Bureau of Labor and Industries) to work. Almost all were top students in their classes. Many times I thought that if law students had the advantage of a curriculum like the PCC Paralegal Program, more of them might be successful high achievers. An example is that in order to graduate, all paralegal students had to present an extensively researched project and answer questions about it and how they reached their conclusions. They had to submit a notebook with multiple sections illustrating their grasp of the principles of law under various factual scenarios. It was rigorous and we were asked to give our best critical reviews. Thank you for the opportunity to comment. Marcia Ohlemiller	Lawyer
Yes	Yes	Yes				Yes		Member of the public (not a lawyer or judge)
Yes	Yes	No				No	I am an attorney in Oregon. I have specialized in Tenant Landlord since 1996, representing tenants for most of those years and in the last 5 to 10, landlords too. When I started, I provided low cost legal help to tenants. At the time there was no one else who did this and nowhere, beyond Legal Aid, were the services I offered available. Here in the Eugene area this has changed in the last few years. Tenants now have several low costs options. Over the years I have found that many attys, not specialized in this area, believed tenant/landlord law was simple and anyone with a law degree could do it well. Needless to say I had a lot of success against these folks. The other problem has been landlord attys treating FED's like major law suits, filing multiple and sometimes inappropriate motions etc. These motions go to the motion judges, (not the judges on the FED docket) judges often not familiar with this area of law either. I have seen some really strange results. these could have been even worse if I did not have a full legal background. Tenant/landlord law is not simple or easy. It is complex and involves one of the most intimate issues folks face in life, the potential loss of their homes and the consequences that result from such a catastrophic loss. People who own their home sometimes have no idea how close to homelessness most renters are. Folks who live pay check to pay check have difficulty coming up with a deposit, first and last, application fees, etc. And the current housing market, at least in the Eugene/Springfield area, has rental units at a premium, with a very low vacancy rate. the scarcity of rentals in recent years has tended to increased landlord abuse. One reaction to this has been the formation of new tenant advocacy groups in the Eug. Spfd., Medford, and Bend areas. As the housing crises continues and grows and landlord learn to exercise their increased leverage the need for experienced and capable attorneys will increase. Glorified form filler will only make the situation worse. While many or even most FED are fairly simple, either the rent was paid or not, (is there a diminished rental value issues? Something not specifically or clearly outlined in the statute and something one studying the statute might never discover.) and some involve very complex issues. It took me many years and many trials to learn to identify some of these issues. This is not something that should be left in the hands of anyone without a complete background in the law, or just a primer on Chapters 90 and 105. Paralegals allowed to give legal advise may give tenants (and the bar) a sense that tenants area receiving adequate legal assistance, but that is not what will happen. Most will either be fly by night operations that collect money and "help" fill out the forms. the rest will be attached to some corporate landlord law firms and they will get only token supervision and landlord tainted advise. These paralegals, lacking the knowledge and training, will be unable to even recognize the complex issues that arise and will not be able refer a tenant to competent counsel. I understand the need for more affordable representation for tenants, but this is merely a token smoke screen, a way to squeeze more money out of poor folks without providing meaningful representation. It reinforces the widely held belief that tenant/landlord law is so simple that you could train a para legal for a few hours and they could do this aw well as an atty with 25+ years of experience. This is nothing like a physician's assistant, the analogy just doesn't hold up.	Lawyer
Yes	Yes	No				No	Lawyers are required to go to law school and to pass the bar for a reason. Even the simple cases can have hidden complexities that arise during a case. Non-licensed para-professionals are not equipped to handle this, and more damage (and costs) can be incurred for the parties. I do not let quasi- medical professionals work on me, and I would not want a non-lawyer giving me legal advice when my family, money, and children are at stake. The clerks at the courthouse and the internet dispense plenty of bad advice to pro-se litigants. Let's not compound the problem.	Lawyer

Yes	No		Hiring an attorney was too expensive, I thought I could do it myself		Yes	Yes	I think this is a really great idea, however I don't think LP's should be allowed to open their own practices. They should work in a lawyer's office or legal clinic so they have some oversight of the work they're doing. They should also be required to have appropriate insurance coverage in the event that they improperly handle the case and a client needs to recover against them. There should also be standardized rates that LP's can charge to ensure that the goals of access to legal services is maintained by keeping fees affordable.	Member of the public (not a lawyer or judge)
No	No		Hiring an attorney was too expensive		Yes	Yes	As a renter, I have had issues in the past with at least one unethical landlord, where I considered starting legal proceedings. I soon realized the cost of taking my issue to court would be even more expensive than breaking my lease and moving elsewhere. I wish I had had the opportunity to work with a paralegal at a lower cost. If that were the case, I might have been able to avoid moving, and could have helped to ensure that landlord was held accountable and not able to mistreat other renters in the future.	Member of the public (not a lawyer or judge)
Yes	Yes	Not sure				Yes	Too many Oregonians are unable to afford legal services, and so represent themselves. This does a disservice to them, to the Courts and to the public. Court staff takes unavailable time to assist those representing themselves, but can't really give them the help they need. People get evicted unnecessarily when a little bit of paralegal assistance could keep them in their homes, and keep down the expenses for landlords.	Lawyer
Yes	No		Hiring an attorney was too expensive, The problem was resolved without needing an attorney		Yes	Yes	Fully approve! Thank you for bringing this forward and looking forward to it coming to fruition.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		No	No		Lawyer
No	No		Other: (Comment box will appear below after selecting)	See statement below.	Yes	Yes	I have not personally needed an attorney. However, I am a paralegal for a Springfield Law Firm. I receive calls on a daily basis from individuals seeking legal assistance in the area of family law. Unfortunately, we are not able to assist all individuals seeking assistance as many find our services cost prohibitive. I believe having a certified paralegal program will enable those who cannot afford an attorney to receive appropriate assistance, especially in an area as important as family law where the outcome affects an entire family.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	It has seemed almost impossible to get assistance on my child's custody because every time I have a question nobody is allowed to give legal advice.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes		Member of the public (not a lawyer or judge)
Yes	Yes	No				No	Instead of creating a new level of licensure/certification and the associated bureaucracy to support it, please consider making it legal for a person to do whatever it is you want them to be able to do without a license at all, unregulated. Tax preparers aren't regulated, and the good ones thrive and the bad ones don't.	Lawyer

Yes	Yes	No				No	Dear Board, I am a collaborative family law attorney and mediator and have exclusively practiced family law in Oregon for over 20 years. I have strong concerns about the harm that will come to parties using paraprofessionals without attorney supervision. I am NOT worried about the impact to attorneys and mediators, the PP program will actually increase litigation and court congestion due to errors, necessary modifications/ needing to vacate judgments, etc. My biggest concerns lie in the potential for abuse of process if one person hires the PP with the intent to convince the other party it's done "by the book or by the law" and a large asset (business interests, pensions, unvested stock/ options etc) is completely missed or waived. The problem, I believe, lies in a PP, no matter how well intentioned, will not likely be able to spot an issue in complicated areas of asset valuation and will be acting as a scrivener without being able to flag potential risks or pros/ cons to the clients. The big difference of a "pro se" filing without any help as currently the option vs hiring a PP is the assumed trust that all is done per "Oregon laws" and "by the book." This is a false assumption that many people will fall into and cause loss of rights to a "fair and equitable distribution" or informed consent in anything but the very simplest cases. My recommendation is to have it be mandatory that use of a PP must be accompanied by at least a 30 min attorney review for issue spotting. We could have a volunteer panel at sliding scale rates to make it affordable and I would be the first to volunteer to help. It's similar in that mediators are required to recommend an attorney consult and this helps immensely in avoiding pitfalls for families. I worry that without attorney review, many people won't even know they mistakenly waived a share of a million dollar PERS pension for example, or by waiving spousal support at the time of the divorce, is is forever waived. The bottom line for me in 20 years is that family law is actually complex as it overlaps with business, property, pension law, and estate planning. I know my own paralegal with 23 years experience is still not comfortable drafting language for stock options, retirement accounts, and some property agreements for example. Many families' agreements cannot simply be "check the box" and this is misleading to the public that an attorney is not needed to avoid a costly mistake that may not be able to be reversed. Hopefully, an element of oversight and mandatory attorney review can be built into this program, especially since we can all work remotely by Zoom and many of my peers would gladly do low-bono to help make this workable to avoid harm to families. Thank you for this consideration.	Lawyer
Yes	No		Hiring an attorney was too expensive		Yes	Yes	I think this sounds like an absolutely amazing program some thing that is highly needed and necessary for well for many different reasons but especially since the pandemic him a lot of people are out of jobs out of money and I have always worked my butt off never had a lot of money but have come across many many many different times where I needed a lawyer and did not have the finances available to me things like custody battles on you know visitation with my child different laws screwing me over when I already had custody you know please not you know withholding my order judge is not holding my order you know when I paid and one for custody I had situations where I was discriminated at him a nonprofit job and lost my job and then have them turn around and say that I quit so I was unable to get unemployment and I didn't know where to turn and nobody's answering my questions and I ran out of time because of statute limitations I had situations where and the law felt that they were above me and my opinion on some things and press charges for me when it was unnecessary under the circumstances and therefore had to spend out rages amount of money on protecting my loved ones and helping my love ones there's just been so muchSo yes yes yes yes definitely if I had money I would pay for this program	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	Even to assist drafting complaints in argumentative briefs and forms that articulate ideas and legal issues with clarity and simplicity, something that lay persons struggle with or also are unable of being objective in their own cases of extreme emotion, thereby causing needless harm and prejudice to themselves.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive, I thought I could do it myself		Yes	Yes	Every person in a family law situation should have access to representation if they desire it, free of charge. There is no other way to ensure equity of access to the legal system and equity to low-income and underserved populations. But this program sounds like it has potential to help with the problem, so I strongly support it.	Member of the public (not a lawyer or judge)
Yes	No		Hiring an attorney was too expensive		Yes	Yes	This would be an advantage to low income citizens. The landlord/tenant portion would be a significant help. The family law side I believe would also be a great help for those who cannot afford an attorneys advice. I feel that in itself would help guide individuals with a starting point. I am a low income oregonian that has needed assistance with landlord issues and I feel being able to speak with a paralegal would be a great way to learn what I can do before finding funds for an attorney.	Member of the public (not a lawyer or judge)
Yes	Yes	Yes				Yes	I'm currently in a custody battle and am pro se after firing my attorney. I need a lawyer and it seems as though they are slammed with cases. A paralegal would be so much help right now.	Member of the public (not a lawyer or judge)
Yes	No		I thought I could do it myself		Not sure	No		Lawyer

Yes	Yes	Yes			Yes	I like the idea of this program, for all of the reasons you've described. I practice in Lincoln City, Oregon. It's a small town, and a rural area. We need more legal professionals in this area, especially in Family Law and Landlord/Tenant. We had five attorneys that practiced Family Law in Lincoln City until they either retired, died, moved away, or changed practice areas a few years ago. Now we have one. We had four that practiced Landlord/Tenant a few years ago. Now we have zero. This program would really help access to justice in North Lincoln County. Specifically, my paralegal will participate in this program if it's approved.	Lawyer
Yes	Yes	No			No	This is a bad idea. We have a complex legal system that depends on rigorous training and highly trained persons to navigate. It makes no sense to have such a system and then have lightly educated, trained and skilled persons implement it. The legal assistants don't know what they don't know. The clients don't know what they don't know. They are no check on this. The Courts do not have the time or resources to ride herd on it. All we have is the Bar. New lawyers take from 5 to 8 years to learn how to practice law. They, at least, have taken law school courses and passed the Bar. Even with that, they need a lot of additional training and skills to work in Oregon law. The public may want change. They may want lower cost legal services that are more accessible. Do they want a less complex and sophisticated legal system? It will be less nuanced and less fair; less tailored to each person and situation. It is a least a real possibility. What is not possible is a fair and nuanced system that tailors solutions to each person and situation that is less costly and more accessible. That does not exist and cannot exist. It is dishonest to pretend that it does. If it costs less and is more accessible, something is lost. It is not free. Empower legal assistants to work in LL/T and Dissolution cases and the cost to the public may go down and it may be accessible to more persons; however, it will not be legal system we have now. It will be a rougher form of justice and we attorneys will be picking up the mess for years to come.	Lawyer
Yes	Yes	Yes			Yes	It is so needed it is not even funny! I had gross malpractice by an attorney I hired and my case is possibly going into default. Someone to help with paperwork would have prevented this from going on as long as it has. The PLF does not have the ability to buy back two months of my life with my two young sons. I cannot get it back, ever. That is the true detriment. Now I am left scrambling with no one to help me and no understanding of how to respond to the petitioner's request for a default judgment. A licensed paralegal would be able to help and I wouldn't be stuck in the worst predicament of my entire life. So please make this happen.	Member of the public (not a lawyer or judge)
No	No		I thought I could do it myself, The problem was resolved without needing an attorney	Yes	Yes	I strongly support these proposals to allow licensed paralegals to practice family law and landlord-tenant law. I would support allowing licensed paralegals to provide representation in other areas of the law as well, such as small claims and administrative law-- especially in contested case hearings involving Oregon government agencies. I think there is a real need for affordable legal representation in these areas as well. -Weston Koyama OSB 193977	Lawyer
Yes	No		Hiring an attorney was too expensive	Yes	Yes		Lawyer
Yes	Yes	No			No	Your proposed program, as I understand it, has no provisions to ensure that it will accomplish the stated goal, to wit: making legal services available to people at a cost they can afford, or to otherwise prevent people from going to court without legal assistance. In truth, this program would only enable non-lawyers the ability to offer for-profit legal services, despite not having met the current law practice licensing requirements. Their services may be priced lower than that of a lawyer, but will be priced as high as possible to cover business expenses and profit - as high as the market will bear. Instead of creating a complex licensing system for non-lawyers, consider a program that allows paralegals (without a special license) to provide the kind of services you envision under the supervision of a law firm or non-profit, where the organization or a lawyer in the organization is responsible for training and supervising the paralegal to provide the kinds of limited scope legal services you envision. This way, law firms can tier their pricing and create services directed toward lower income people; and non-profits can better leverage their paralegals, who are less expensive to employ than lawyers. Bar associations need to stop viewing lawyers as the problem re access to justice and start viewing lawyers as part of the solution. Start with simple, easy to implement solutions.	Lawyer
Yes	No		Hiring an attorney was too expensive	Yes	Yes	I strongly support Oregon creating a licensed paralegal program. I work as a family and criminal law paralegal and I see time and time again when people pass on our services because they can't afford the hourly rate of an attorney. This program would be extremely helpful to our community.	Member of the public (not a lawyer or judge)

Yes	Yes	Yes				Yes	<p>To whom it may concern,</p> <p>My name is Irion Sanger, and I have been a practicing attorney and a member of the Oregon State Bar for over 20 years. I have also taught at Portland Community College's paralegal program for the last seven years. Based on my experience both as a teacher and as a practicing attorney, I fully support the development of a program to license qualified paralegals to provide limited legal services to clients in family law and landlord/tenant cases. There is an urgent need for greater access to legal services, particularly in these areas. There is already a shortage of lawyers available for public defense, which will only compound the problem of access to necessary legal services.</p> <p>According to the Civil Legal Needs study conducted by Legal Aid Services of Oregon in 2018, 84% of Oregonians with a legal problem did not receive help of any kind. According to this study, two of the top three reported legal problems were child support and divorce or legal separation, both of which would fall under the purview of the proposed PL program. In eviction proceedings, only about 17% of all parties were represented by lawyers. The most highly reported problem was trouble understanding court procedures and rules, which PLs would be able to do in many cases under the proposed program.</p> <p>One of the primary problems Oregon has faced in the last few decades is the lack of access to legal aid and services of Oregon's most vulnerable communities. Access to legal aid is disproportionately difficult for elderly, rural, low-income, non-English speaking, and minority communities. With the implementation of the PL program, the amount and diversity of legal professionals available would increase dramatically. Given the slowly eroding faith in the legal system, giving more people access to a more diverse group of legal professionals would be beneficial to all Oregonians.</p> <p>Respectfully,</p> <p>Irion A. Sanger OSB #003750</p>	Lawyer
Yes	Yes	No				No	<p>As a member of the public who has needed a lawyer a few times, once in a divorce, I do not want an under educated paralegal unable to attend court to handle my matter. This represents further commodification of professional services nation and multiple industry-wide that comes at great risk of a dumbing down of the level of service provided to the public.</p> <p>As a lawyer I deeply resent the state bar getting involved in a hell bent for leather effort to put lawyers out of business and to make the practice of law harder. Heaven help the practitioner dealing with a paralegal on the other end of the case.</p> <p>This is a mistake and I am deeply opposed to it but I am certain the powers that be will make it so. Asking for public comment is the usual government and quasi-governmental agency exercise aimed only at being able to bullshit about "hearing stakeholders" and such.</p>	Lawyer
Yes	No		Hiring an attorney was too expensive. The problem was resolved without needing an attorney		Yes	Yes	<p>I am a paralegal with a degree. I think this is wonderful and would love to pursue this. This is so awesome to see that Oregon is looking into doing this. Attorney's are way expensive. This would make it easier on a lot of people that need that extra help that don't have the funds for attorney services. I am excited to have learned about this and would love to get updates on this.</p>	Member of the public (not a lawyer or judge)

Date	Name	Comment
3/30/2022	Robert Harris	<p>Good afternoon Bik-Na and Matthew</p> <p>While well meaning, the paralegal licensing proposal is likely to cause a lot of problems for those seeking legal services.</p> <p>If there is a problem with affordability for tenants and clients seeking family law assistance, this proposal isn't the way to meet that need. I also think once passed, the non lawyer legal service industry will push to expand paralegal services in criminal defense, personal injury, estate, wills and trusts, and other areas of law. Think legal zoom offices all over Oregon. Any paralegal program – even if limited in the type of practice it allows now, better be ready to deal with this push and have rules in place to address those seeking to expand it. I don't know if the current rule has sufficient sideboards on it to anticipate forward thinking.</p> <p>Here's an example from just today. I got an email from a "paralegal" who was "helping" someone with a motorcycle accident injury case. They claimed that the victims legs were shattered, artery damage. Sounded like bad injuries. They emailed me because the statute of limitations was going to run in 60 days and Geico hadn't made any offer. They asked us to file a lawsuit. It's now been almost two years since the accident. No independent investigation has been done. No medical records have been requested and we haven't been able to help the victim find the right experts or record all the damages they incurred. Witness recollections have dimmed. This victim thought they were getting legal representation from a paralegal. I realize the paralegal is not allowed to practice law, but the thing is. that paralegal thought they knew what they were doing, but clearly simply doesn't have the knowledge training or experience and it's likely this will actually end up costing the victim. But since they were an "experienced paralegal" they represented to this victim that they would be able to help. You simply don't know what you don't know.</p> <p>I will also predict that there will be little cost savings to a client. Lawyers will not reduce their prices – if that is being assumed by the proponents of the plan – so I expect paralegals will charge what the market will bear. This will be particularly true if zoom or other competitors get involved in the market.</p> <p>Overall, this proposal seeks to address a real problem with an inadequate solution. Lack of sufficient training or oversight should cause you great pause.</p> <p>Let me know if you have any questions.</p> <p>Rob</p> <p>Robert J. Harris</p>

Date	Name	Comment
3/30/2022	Amy N. Velazquez	<p>Hello Bik-Na & Matt,</p> <p>I am reaching out related to the Paraprofessional Licensing Implementation as our local BOG reps. My understanding is the BOG is voting on this issue April 8th. I was originally invited by Sr. Judge Thompson to be on the committee which was exploring and in support of licensing. I declined, in part, because I fear that this program will negatively impact family law litigant and non-English speakers in particular.</p> <p>500 hours for family law with no exam or other requirements will have dire consequences for these clients in my opinion. More than half of my regular cases include family law modifications, or requests for the court to change prior judgments. A huge issue I predict is division of assets in divorce cases – that is a non-modifiable provision of a judgment in a divorce case. If a paraprofessional makes mistakes or otherwise does not appropriately capture division of assets in a judgment, depending on the timing/discovery of the issue by a litigant, the could potentially have no recourse to modify or change the terms of property division.</p> <p>Specifically as related non-English speakers (whom I deal with regularly, Spanish speakers), Notario fraud is already an issue that I have personally seen have terrible results. I have personally had to deal with “clean up” of poorly drafted judgments and other court orders done by a paralegal or notary service in family law matters.</p> <p>The Bar has provided practitioners with limited engagement/draft retainer agreements for use by attorneys to conduct “unbundled” services – such as to perform document review (and our statewide documents available free online are excellent for family law matters) appear and file documents on behalf of clients for specific purposes, without the need for a client to pay a full retainer. I believe this could and should be encouraged more by the Bar and other related organizations who focus on access to justice issues.</p> <p>My fear is the paraprofessional program expose potential clients to low quality non-attorney legal services which will likely impact underprivileged litigants seeking out assistance.</p> <p>I strongly request you both vote NO on this proposal.</p> <p>Best, Amy</p> <p>Amy N. Velázquez Attorney & Parent Coordinator</p>

Date	Name	Comment
3/30/2022	Terisa Page	<p>Good afternoon,</p> <p>I understand that the BOG is voting on this issue April 8th and I wanted to voice my concerns about this program.</p> <p>I believe that this will have unintended consequences and harm the very people that it is intended to help. The fact is that the licensing requirements for the paraprofessional program come nowhere near the schooling required to become an attorney. 1,500 hours of substantive work is less than some law firm's billable hours requirement for an associate attorney for a year. 500 hours for family law and 250 hours for land lord tenant law is simply unacceptable. There is no exam requirement to prove competency, simply an attorney stating that they have completed the hours working. The paraprofessional program is supposed to be comparable to that of a nurse practitioner, however, nurse practitioners must be a registered nurse (RN), hold a Bachelor of Science in Nursing (BSN), complete an NP-focused graduate master's or doctoral nursing program and successfully pass a national NP board certification exam. This is nowhere near the same requirements.</p> <p>What the paraprofessional program will do is erode the quality of legal services available to the most disadvantaged Oregonians seeking assistance. It will not help people gain Access to Justice and will instead allow for non-lawyer ownership of legal services with no oversight from lawyers or the Bar.</p> <p>I urge you to vote NO on this proposal.</p> <p>Thank you,</p> <p>Terisa Page Gault Attorney at Law Harris Velázquez Gibbens 165 SE 26th Avenue Hillsboro, Oregon 97123 Ph: (503) 648-4777 Fx: (503) 648-0989 tpage@harrislawsite.com</p>
3/29/2022	Shelley Fuller	<p>Hi Bik-Na. I hope you are doing well over at child support. You were a huge loss to us at the DA's office. Honestly, you're one of the few who I believe actually cares and wants to seek a fair result for everyone involved.</p> <p>I'm actually writing about the BOG vote coming up on paraprofessionals. I can tell you from experience that over the last 20 years, I have had to clean up after paralegals who didn't know what they were doing. So many messes and clients who didn't understand the process and filed defective pleadings that had to be amended. I am really concerned about the clients who are going to access these services. I don't think they're going to get quality help. I also think that a paralegal should not be allowed to give legal advice and hang their own shingle. We went through law school and a bar examine to be qualified as attorneys. No one should get to do our job without having done the work.</p> <p>The Bar needs to find other options for lawyers providing lower income legal services to this community, not create a new profession that we're going to have to clean up after. Please vote no on approving this program.</p> <p>Sincerely,</p> <p>Shelley L. Fuller Shelley L. Fuller, P.C. Attorney at Law 4800 SW Griffith Drive, Suite 135 – NEW SUITE # AS OF 12-1-21 Beaverton, OR 97005 Main Phone: 503-626-1808 Fax: 503-646-1128 Email: shelly@shelleyfullerlaw.com Website: www.shelleyfullerlaw.com</p>

Date	Name	Comment
3/22/2022	April Hatcher	<p>Dear Committee Members,</p> <p>Brian Cox gave an excellent presentation to our Lane County NALS group on March 15, 2022, concerning the OSB Paraprofessional Licensing Program; the presentation was extremely informative and educational, and Mr. Cox presented it very well to our group. The NALS group extends our appreciation to the Committee for providing this valuable information and for working so hard in creating this much needed program. We are helping to spread the word about this new program to other legal assistance/paralegals. I am very excited to apply to the program as soon as it goes live.</p> <p>Again, thank you, your hard work is much appreciated!</p> <p>Best regards,</p> <p>April Hatcher Certified Paralegal Phone: (541) 653-9656</p>
2/11/2022	Christopher Hill	<p>Oregon State Bar and Oregon Supreme Court:</p> <p>Thank you for considering the paraprofessional licensing proposal in an attempt to meet the need of unrepresented parties in family law and landlord tenant cases. My first preference for resolving that issue is to advocate for funding legal aid agencies to assist pro se parties, because it would not require changing the structure of the legal profession, and would not rely on faith in the market filling a need which it has thus far failed to fill. Under existing rules, one lawyer could hire any number of paralegals to work under the lawyer's supervision, assisting consumers with family law and landlord tenant legal issues, and charging lower rates because of the lower intensity of legal knowledge needed and higher reliance on staff support. The fact that a law firm like that does not exist should give the proponents of this proposal pause if there is any belief that the market will somehow fix or fill in where it currently does not, i.e. that offering a cheaper professional service will increase the number of people placing orders. My suggestion for funding legal aid agencies would essentially be creating a law firm like that or supporting existing firms to serve the needs of consumers who have unmet needs for legal advice, and would not rely on the market because it involves funding separate from the fees charged to consumers for the work.</p> <p>If the Oregon State Bar and the Oregon Supreme Court are going to advocate for licensed paraprofessionals, then I think the OSB and OSC need to regulate paraprofessionals as professionals. Consumers will be relying on paraprofessionals for legal advice, application of law to facts, selection of forms, ministerial execution of docketing, and advocacy coaching. In other words, virtually all the same things which lawyers do which consumers rely upon to be done competently. Because of the consumer reliance on paraprofessionals, the OSB and OSC should require the Oregon Rules of Professional Conduct to apply to paraprofessionals including IOLTA accounting, continuing education requirements, and insurance or Professional Liability Fund coverage for paraprofessionals should be required. For the PLF coverage, I would also suggest that the PLF have separate risk pools for lawyers and what I suspect will be a more frequent claims rate for paraprofessionals.</p> <p>Chris</p>
2/11/2022	Alex Coven	(via pdf)
2/10/2022	Simon Harding	<p>This is a mistake and will not serve the public well.</p> <p>I am deeply opposed to this effort.</p> <p>I am also deeply opposed to and deeply resentful of the state bar being involved in this effort. My dues should not support such efforts.</p>
2/9/2022	Jo Posey	(via pdf)

Date	Name	Comment
2/8/2022	Brandee Dudzik	<p>I read your proposal for LP's today and I wish I could shout YES! YES! YES! from the rooftops. I am the law librarian in Columbia County, OR., and we are the only county in Oregon (that I know of) that doesn't have a family law facilitator program at the courthouse. Not even a pro se kiosk.</p> <p>I have taken that mantle, so to speak, and basically the LP Program is what I am doing or would be the next natural step. As of now, I am only providing court forms support. How can I help make this happen?</p> <p>Warmly, Brandee Dudzik, M.S. Columbia County Law Librarian 503-928-2151 (I prefer texts)</p>
1/19/2022	Rochelle Love-Elder	<p>For many people, the cost of an attorney is out of reach. The scope of law the Paraprofessional would serve is so integrally connected to the welfare of our citizens, we cannot afford, as a community to let these types of cases remain underrepresented.</p> <p>This program will allow a larger number of qualified professionals to be available to community members at possibly a more affordable rate.</p> <p>For those interested in the program, like myself, this puts the possibility of practicing law within reach when before, the cost of attending a formal law school was prohibitive.</p> <p>With the experienced Attornies of this State overseeing and guiding the new Paraprofessionals, I don't see a downside. Thank you.</p> <p>Best Regards,</p> <p>Rochelle Love-Elder</p> <p>541-912-8804 Rochellellw@gmail.com 4900 Royal Ave 67, Eugene, OR 97402</p>

Date	Name	Comment
1/14/2022	Maren Schroeder	<p>Oregon State Bar Board of Governors:</p> <p>The National Federation of Paralegal Associations, Inc. (NFPA), a professional organization founded in 1974 as the first national paralegal association, is an issues-driven, policy-oriented professional association directed by its membership, comprising nearly 50 paralegal associations, and representing over 8,000 individual members. NFPA promotes leadership in the legal community, with a core purpose of advancing the paralegal profession.</p> <p>In pursuit of this purpose, NFPA supports and advocates expanding the paralegal role, in limited circumstances, to bridge the access to justice gap. The United States is ranked 41st across 139 countries for civil justice but is ranked near the bottom (126th) when it comes to people who can access and afford civil justice. Current endeavors, such as pro bono work and legal aid, are not enough to meet the need, and it is NFPA's view that qualified paraprofessionals should be trained and utilized in providing additional affordable legal assistance options to the people who need it most.</p> <p>NFPA has watched the development of limited licensing and paraprofessional practice projects throughout the United States. Oregon has proposed a comprehensive, well-researched proposal for a paraprofessional licensure program. We are especially impressed with the lengths the Oregon Paraprofessional Licensing Implementation Committee has gone to solicit the input of stakeholders throughout the state. We are hopeful that the Oregon plan has built on the experience of other states utilizing non-lawyer legal professionals to provide legal services to low- and middle-income families and individuals.</p> <p>NFPA first comprehensively addressed the issue of Non-Lawyer Practice in 2005 when it issued its first Position Statement on Non-Lawyer Practice, and again in 2017 when it approved its current Position Statement on Non-Lawyer Legal Professionals ("NLLP"), which outlines the suggested criteria for the creation of such a Project, to wit:</p> <p><i>NFPA supports legislation and adoption of court regulations permitting NLLPs to deliver limited legal services directly to the public, provided that such legislation or court regulation includes:</i></p> <ol style="list-style-type: none"> <i>1. Exceptions from the Unauthorized Practice of Law within the confines of the respective states' regulations and statements on Unauthorized Practice of Law;</i> <i>2. Postsecondary education standards in the specialized area of law in which the NLLP will practice;</i> <i>3. Ethical standards that are substantially similar to the ABA and NFPA;</i> <i>4. Continuing Legal Education ("CLE") consistent with NFPA's CLE standards;</i> <i>5. Bonding or insurance requirements as set forth by the jurisdictional authority; and</i>

Date	Name	Comment
		<p>6. A requirement that all NLLPs submit to advanced competency testing as to specialty practice area and limitation of practice as prescribed by the laws, regulations, or court rules of the jurisdiction with the regulating authority.</p> <p>Further, candidates for any NLLP plan shall have the following criteria:</p> <ol style="list-style-type: none"> 1. Attestation by a licensed attorney familiar with the NLLP's substantive experience and work history; and 2. Fitness and character criteria consistent with NFPA's Fitness and Character Model. <p>A review of the Oregon Paraprofessional Licensing Implementation Committee Licensing Recommendations satisfies us that Oregon's proposal meets these criteria. Specifically, NFPA appreciates the inclusion of a "Highly Experienced Paralegal II - Education Waiver" category that recognizes NFPA's CORE Registered Paralegals and PACE Registered Paralegals, who have passed one (or both) of our voluntary certification examinations. The Recommendations are comprehensive in nature, and we applaud the Oregon Paraprofessional Licensing Implementation Committee for their exceptional work.</p> <p>We are enthusiastic about the potential for this licensing program. The Recommendations, however, are ambitious, and we encourage the Implementation Committee to give a second look at other states' programs, especially those that have failed to self-sustain. It is not enough to just have education and training requirements - there must also be a cost-effective infrastructure to support the licensed paraprofessionals once they begin practicing. The Implementation Committee must work to create a respectful and safe space for licensed paraprofessionals to practice their growing responsibilities, and build support for the program within the legal services industry, to ensure the program is self-sustaining.</p> <p>NFPA recommends that Oregon consider expanding the scope of the program to include court appearances in certain cases and types of hearings and administrative proceedings, to further the goal of bridging the justice gap. For example, Minnesota's pilot project permits a Legal Paraprofessional to represent tenants in court, including in evidentiary hearings, and that has proven to be successful in allowing tenants to remain in their homes. For a licensed paraprofessional program to be successful, self-sustaining, and make a significant impact on our justice gap, licensed paraprofessionals must be empowered to represent individuals in certain courts of law and administrative proceedings. The needs of the represented individuals do not end at the courthouse doorstep, but rather increase when entering the courtroom. A move to allow limited courtroom appearances will help alleviate the burden pro se litigants place on an already strained justice system and judiciary.</p>
		<p>Overall, NFPA commends the Implementation Committee on its diligence to create a comprehensive plan for paraprofessional practice, which we believe has great potential for success, and support the proposal in its entirety as put forth by the Implementation Committee.</p> <p>Respectfully submitted, NATIONAL FEDERATION OF PARALEGAL ASSOCIATIONS, INC. 400 South 4th Street, Suite 754e Minneapolis, Minnesota 55415 /s/Maren Joyce Schroeder</p>
1/5/2022	Ken Goodin	<p>Hello,</p> <p>I am writing to express my support for this program. I've been practicing family law for 14 years and I believe this program would provide a much needed service to folks who cannot afford or do not need the services of an attorney. It could also help the court's overwhelmed resources by having things filed correctly versus incorrectly filed by pro se filers (my understanding is that almost 70% of domestic relations filings in Deschutes Co. where I primarily practice are filed pro se).</p> <p>Overall, with proper licensing requirements, I believe this program would be a great benefit to the community.</p> <p>Please let me know if you are interested further comments.</p> <p>Best,</p> <p>Ken OSB #066290</p>

Date	Name	Comment
12/13/2021	Laurie Cantelon	<p>The Oregon State Bar continues its march to further undercut the viability of its bar members and quality accessible legal work for Oregonians.</p> <p>I was on the task force to investigate whether it was a good idea to allow people to sit for the bar without benefit of law school. Through that process, I learned a lot about other such programs and their abysmal success rate. I understand why we ask these questions- attorney rates are too high- but OSB continues to dodge the actual root of the problem. Attorney rates in Oregon are high, because we have the highest bar requirements in the country (or had when I was admitted back in 2004). We are one of the only states in the union that require PLF insurance, even for pro bono work. There are many instances that I could have assisted clients with their emergent family law issues (as I practice principally in dependency), but because of PLF requirements and OPDS coverage, those emergency orders and filings are prohibited! It's ridiculous to require bar insurance in such instances.</p> <p>Finally, I practiced in civil family law before I went into public defense. The bar failed to protect us from practicing law without a license when it determined that Legal Zoom and the computer "form" generator programs weren't practicing law when they ask applicants questions and then generate a form. My law partner at the time and I argued to the bar that if a human asked those questions- they are practicing law without a license! But if a computer asks those questions, its form selection??? The failure of the bar to protect small law practices from the pilfering of bread/butter practice like small wills/trusts and business organization hurt the bottom line of small practices. Where else do small practitioners make up those business costs? But turning to family law and landlord tenancy. Now you're threatening to undercut that, too? How do you expect people to make money to cover the outrageous expense of our education and overhead costs?</p> <p>I have a mortgage on my life thanks to my student loans. I'll never be able to pay it off if the bar continues to cut out bread and butter practice. There are sensible ways to help practitioners and continue to provide quality practice- do something about bar/PLF fees! Stop cutting our viability by undercutting routine practice like family law, wills/trusts, business organization, and landlord tenancy. And for clients who are indeed indigent and just need a quick divorce or need to file emergency filings, like in my cases where we have immediate danger order filings required--- stop requiring PLF insurance for that stuff! It doesn't implicate PLF coverage. You're asking to have non-attorneys do things that attorneys can do, but they won't be burdened by our expenses that could easily be dealt with in rule changes, like lifting PLF insurance requirements for small estates, pro bono work, and talking to OPDS to see that immediate danger filings and the like are available to those of us trying to get DHS out of the picture- when DHS wants to be out of the picture- but people are too broke to hire an attorney to file immediate danger orders themselves.</p>
		<p>Stop making practice in Oregon painful for attorneys! The bar has chased out 3/4 of the people who graduated at WUCL in my year. They quit and are taking the financial hit. We Oregon graduates and bar members feel unvalued and when we work to just pay the bar and our schools, it robs attorneys who took up the profession, not because it was a family business, but because we wanted to help people and step into the middle class. Many of us in practice have employees. How are we to pay them? My babysitter earned more money than I did some years when I did my solo practice! When I look at the practice costs of solo attorneys, it's not much better today. They would make more money waiting tables at El Gaucho than doing the good competent work they do. And this is the bar's response to the problem? Wrong headed. OSB is failing in its mission to protect the public with this idea and its cutting off the livelihoods of attorneys that makeup its membership. LEC</p> <p>--</p> <p>Laurie E. Cantelon, Esq. Chief Deputy Public Defender, Juvenile Division Intermountain Public Defenders 215 SE Frazer Pendleton, OR 97801 Tel: 541.276.0244 Toll Free: 1.800.481.7392 Fax: 541.278.0529</p> <p>This email message may contain information that is privileged and/or confidential. The information contained in this email message is intended only for use of the person to whom it is addressed. If the reader of this message is not (1) the intended recipient or (2) the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone(541)276-0244, and destroy the original message. Thank you.</p>

Date	Name	Comment
12/7/2021	Solo and Small Firm Section	<p>The Solo and Small Firm Practitioner Section (SSF) is dedicated to the advancement of the interests and concerns of the solo and small firm practitioner. The section has approximately 840 members. The SSF received comments about the paraprofessional licensing implementation plan through the SSF list serve. We discussed the matter at the SSF executive committee meeting held 11/13/2021.</p> <p>The SSF comments are nearly unanimous in opposition to the paraprofessional program.</p> <p>The SSF Executive Committee is opposed to paraprofessional licensing as proposed by the Paraprofessional Licensing Implementation Committee (PLIC).</p> <p>The comments can be summarized into the following positions:</p> <p><u>In favor:</u></p> <p>(1) The ends justify the means. "...there might very well be some aspects of our work that could be performed by a paraprofessional such that the public would benefit..." and "Allowing paraprofessionals to give advice and assistance to unrepresented tenants may be an imperfect solution, but it is more quickly implemented and stands to offer real and meaningful benefit to vulnerable people."</p> <p><u>Opposed:</u></p> <p>(2) Competence - Relaxing the standards for admission to the practice of law increases the likelihood of incompetent representation. There is a purpose and underlying benefit to the bar and to the public embedded in the process to become a licensed attorney: Three years of law school, the cost of that education (both in years of lost income-earning potential and the price of a JD), the stress of the bar exam, and the sense of accomplishment upon passing. Paraprofessional licensing does away with these professional ideals and accomplishments and, in doing so, converts the profession of law into a "job."</p> <p>(3) Not enough weight or analysis was given to the State of Washington's program. There was a change in leadership that ultimately brought an end to Washington's paraprofessional licensing program. However, it is also true that there were only 77 licensed paraprofessionals after eight years. The PLIC solution is to relax the standards for admission to practice paraprofessional law. The SSF opposes this approach. (Competence part 2)</p>
		<p>(4) Economics and Access to Justice: The SSF has adopted the position statement of Attorney Scott Staab, quoted in part: Mr. Staab "has appeared in 488 Circuit Court cases representing defendants in FED matters in 17+ counties across the state. The idea that every unrepresented party in FED court has not had the benefit of counsel is false. During call dockets in the metro area, I have routinely spoken to 20%-25% of the defendants being called that day, and in rural areas it can be as high as 50%-100%. If the tenant has a solid eviction defense, they are currently able to get representation for free by myself, or a number of attorneys in the state depending on their region." He continues by saying: The licensed paralegal can give advice but then they "are not able to back it up. They can advise this person on what to do and get them to the trial, but then they are fed to the wolves. Individuals do not lose eviction cases from checking the wrong box because ORS 90 allows any defenses to pro se tenants at trial, not just defenses pled, they mainly lose because they do not have legitimate defenses. This proposal allows paralegals to charge money for a service they can only half provide." He continues with a thorough analysis of what happens when the paralegal reaches the limit of what they are allowed to do for the client and then has to refer the FED client to a licensed attorney for trial in a 2-3-week time frame. We emailed all of the SSF comments, including Mr. Staab's to the OSB to be included as an addendum to the BOG minutes and we hope that you will take the time to read them. This concern was apparently discussed by the PLIC. NOTE from (3/08/2021 PLIC Meeting Minutes, Page 6) "Chris Costantino stated that there is a distinction between helping someone fill out forms and advocacy in court. When the task force was thinking about this, the goal was the equity piece of giving people who no one is representing some help. The idea of assisting and advocacy are different. There may not be an easy answer, but the line on the advocacy piece is where there should be more thought." This idea and the problems Mr. Staab presented with the cutoff of services do not appear to be developed in any meaningful way.</p> <p>(5) Economics/Access to Justice: I read the PLIC and Workgroup minutes. It does not appear to me that anyone discussed what will happen to the paralegals in this program once they are in practice. [NOTE: PLIC Meeting minutes 1/25/2021: "...create better access to justice and more affordable legal services in routine areas."] A licensed paralegal will be subject to the same market forces as attorneys -- Office overhead, insurance (both malpractice and healthcare), the cost of housing, student loans. The idea that the paraprofessional will expand access to justice by serving historically underserved people (ie people who can't afford attorneys) is not supported by any notes in the PLIC minutes. Instead, what is going to happen to the paraprofessional is the same thing that happens solo and small firm attorneys -- they are going to make decisions about who to represent based on ability to pay. Or in an even more dire consequence, the paraprofessional will be swallowed up by online paid-advertisement for referral organizations.</p>

Date	Name	Comment
		<p>(6) The entire concept of licensing anyone to practice law besides attorneys undermines the profession. The family law and landlord tenant bar are made up of attorneys who have paid the price in time and education to practice in these areas of law and the paraprofessional licensing initiatives disrespects the attorneys who have chosen to work in these areas of law and undermines that portion of their license that they've dedicated to family law and LL-T law.</p> <p>(7) Stakeholder inclusion. From the PLIC and workgroup minutes, it does not appear that all of the necessary stakeholders were involved in processing the paraprofessional licensing recommendations. The SSF section became aware of this in November 2021. There isn't an all-bar hive mind. Communication is an intentional act. (Admissions and Workgroup Meeting Minutes 8/23/2021) "Concern about inclusion of hairstylists and barbers noted that in black and brown communities, this is where many seek counsel is this group a better target for education not inclusion in this program? Change name to Trusted Community Advisors. Move Barbers and Hairdressers from top of list – will receive pushback for including them in the list." "Outreach to the military and to the Tribal Courts in order to ensure the program addresses our underserved communities." Where was the outreach to the solo and small firm practitioners who will be providing the supervision to paraprofessionals?</p> <p>(8) Who is doing the supervision? NOTE: "Sue Gerhardt asked why an attorney would agree to [supervision] if the LP are going to be their competition." (4/05/2021 PLIC Meeting Minutes, p 2) NOTE: "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." (4/19/2021 PLIC Meeting Minutes, p 4). After that, there does not appear to be further discussions with the clinics about how the paraprofessionals will get their training hours. By inference, then it will fall on lawyers in practice – SSF lawyers, many of whom struggle through a year with good months and bad months, training the folks who will end up undercutting them in the market for legal services.</p> <p>We urge the PLIC to add SSF lawyers to conversation because our lawyers are in the front lines of access to justice for people not qualifying for Legal Aid and consider the market forces that paraprofessionals will meet when they enter the profession.</p> <p>The SSF believes that one of the ways that paraprofessional licensing will work is to add robust funding to clinics. Law clinics traditionally offer services to folks who are over income and don't qualify for legal aid services.</p>
		<p>Increased funding to law clinics will give the paraprofessional graduate an environment to earn their supervision hours with minimal financial burden on the paraprofessional and they will be serving the individuals in the economic range where access to justice matters most.</p> <p>Thank you for your time and consideration of the SSF position on this matter.</p> <p>_____ David James Robinson OSB #094887 Solo and Small Firm Executive Committee</p>
11/30/2021	Maureen McKnight	I substantially cut my oral remarks on the 20th due to the 3 minute limit imposed but attached is what I had prepared, plus a separate 1 pager of suggestions previously sent to the Committee chairs and Robin Wright.

Date	Name	Comment
		<p>President Wade and Members of the Board –</p> <p>My name is Maureen McKnight. I am a Senior Judge, having retired from the Multnomah County bench 2 years ago and now serving wherever the Chief Justice sends me. I speak today for myself, and not for the Oregon Judicial Department.</p> <p>My background is that of a family law attorney for 22 years followed by almost 18 years on the Multnomah County Family Law bench, where I was the Chief Family Court Judge. Prior to the bench I worked for 22 years at LASO and its predecessor firms, first specializing in individual family law casework and later coordinating systems advocacy statewide for Legal Aid clients in the family law arena. I was also a member of the State Family Law Advisory Committee for over 15 years. I list these experiences not because I'm speaking for any of those entities either but because this background very substantially informs my strong support for the Licensed Paralegal Proposal.</p> <p>The primary points I want to make today are twofold: the LP proposal is a solid one and we simply cannot wait any longer to act in light of the critical need for legal access.</p> <p>In the over 40 years that I have been a family law attorney and then judge, I am aware of over 22 different committees or groups focused on improving access to justice for Oregonians specifically in the family law arena. I have been involved in almost all: some I have convened, others have been bar-led or court-led or jointly-convened, some legislatively led, some headed by the Department of Justice's Child Support Program, and some organized by a community group. While a few have focused on domestic violence victims or the non-English-speaking, the great majority have had the broad charge of trying to improve legal access for all Oregonians in the family law arena. We all know the rates of self-representation in family law exceed 70% and that national and Oregon-specific studies have shown that the majority of people self-rep because they simply cannot afford an attorney.</p> <p>And those 40+ years of efforts have included:</p> <ul style="list-style-type: none"> • Legal Aid's teaching self-help divorce classes in the 1970s and 1980s, • to Legal Aid sending each judicial district a floppy 3.5" disk of 40 common family law forms,

Date	Name	Comment
		<ul style="list-style-type: none"> • the legislatively-enacted commission that produced the courthouse facilitator legislation in late 1997, • to unbundled services changes in professional rules, • setting up a Pro Se Assistance Project for attorneys to help self-represented litigants (SLRs) at the courthouse, • piloting interactive online restraining order forms in Multnomah County in the early 2000s, • to Informal Dispute Resolution trials in family law, to • OJD developing interactive court forms starting in 2014 and hiring a Forms Developer, to • settlement conferences where attorneys with pro tem commissions could both educate SLRs and try to settle basic family law matters, to • online instructions and efiing of court forms, and • now remote court facilitation and a • centralized portal for legal information. <p>During these 40+ years, in addressing specific strategies to increase access, is not as if all of these groups have missed THE ideal solution to providing legal access to the family law system. The ideal access – we all know -- is that everyone would have an attorney. But we all also know that is not happening so increased funding & support for legal services and pro bono programs remains critical since they are one of the most – if not the most -- effective arrows in the access quiver. But the access quiver has a LOT of arrows – and people can and do use one or more of them – to their benefit -- depending on the situation.</p> <p>The Licensed Paralegal proposal adds another arrow to that access quiver. It would authorize limited but meaningful help in limited but common situations for some people, those who can afford this less expensive help. And it incorporates client protections and regulatory oversight. It is not a panacea any more than court facilitators or interactive forms have been a panacea. But like those other arrows, licensed paralegals add to access. I strongly believe that objections to the proposal essentially based on the argument that the LPs are not attorneys epitomize the axiom that the perfect is the enemy of the good.</p> <p>I have gone over the proposal in depth. I do have a few suggestions separately submitted based on my experience but the concept is a solid one and an important one. I think what the Commission on Family Law Legal Services wrote in 1998 in completing its work on court facilitators remains true today: “We affirm the importance of experimentation on legal access efforts -- taking considered, prudent risks. We can experiment and refine, and experiment and fail, but we cannot fail to experiment.”</p> <p>I strongly urge the Board to support this proposal. Thank you for considering my comments.</p>

Date	Name	Comment
		<p>SUGGESTIONS of Maureen McKnight, Senior Judge on Licensed Paralegal Proposal</p> <p>Relationship, if any, between the paraprofessional and an attorney. I am not suggesting there needs to be direct supervision of work by any means (LPs are separately trained, licensed, and insured individuals) but I have found both at Legal Aid and with court staff that a legal paraprofessional who has a good working relationship with an attorney (or judge) tends to consult with that attorney/judge proactively and appropriately when needed. I was wondering about what discussion occurred at the Committee about having a mentor-attorney. I realize that would implicate at first glance liability for the attorney for the LP's work but that could be drafted away: it is the access to an attorney I'd want to encourage for an LP, not the oversight. Perhaps the LP having to file with OSB a document an attorney has signed confirming agreement to mentor on LP-initiated requests ??? I suppose attorneys could charge an LP for that mentoring but some may not. And it might happen naturally with LPs working out of attorney offices. But for independent LPs, it might be something helpful. Not a dealbreaker, just thinking about this point.</p> <p>The only other issues I saw from the 2-page chart are:</p> <p>-- clarifying (elsewhere) that LPs "attending" mediation would be attending to the same extent as attorneys. Some court-affiliated mediation programs don't allow attorneys to attend, as you know, as the encouragement of future productive communication between the parents is a goal of the sessions as much as reaching an agreement on the disputes currently at issue.</p> <p>-- "Respond to the court on behalf of clients to inquiries when requested" -- Perhaps other materials I couldn't locate make this clear but I was wondering if these were factual inquiries or positional inquiries. Since the LP providing unsworn facts is as much a legal problem as an attorney testifying -- whom I can directly instruct (unlike the LP) to then elicit testimony from his/her/their client on that point -- I assume the intent was to limit LP responses to "positional" answers, i.e., non-testimonial answers. Is that correct? If so, I think the word "nontestimonial" should be added to clarify the authority. We can't have testimonial information from an LP who is not excluded from the courtroom but sitting there the whole trial. And hearing unsworn factual information (as distinct from procedural info) from an LP is prejudicial to the other side's perception of fairness, particularly if that second party is self-representing, even if the Judge properly ignores it and says she is ignoring it.</p> <p>Also, it was not clear to me from the "when requested" language who was doing the requesting. I suppose it could be either the client or the Judge as long as what the LP says is non-testimonial.</p>

Date	Name	Comment
11/30/2021	Gail Bartley	<p>Dear Committee Members:</p> <p>I'm writing in support of the proposed opportunity for licensure of paralegals in Oregon which would allow them to act in some family law and landlord/tenant matters. I am a program manager with Saving Grace in Bend, OR, the domestic violence and sexual assault nonprofit serving Central Oregon for over 40 years. I manage two programs – Mary's Place, which provides supervised visitation and safe exchange services for families where there are safety issues around parenting time, related to domestic violence, sexual assault, stalking or child sex abuse. I also supervise our program which locates a bi-lingual (Spanish) advocate within the Deschutes County Courthouse to assist survivors with protective order, court accompaniment, divorce/custody and immigration as well as overall support. I've been in my role since 2005 and therefore have firsthand experience of the dire need for access to free or affordable legal assistance for survivors of intimate partner violence with children, who often have concurrent legal issues related to housing.</p> <p>The capacity of our local Legal Aid office is very limited and few family law attorneys make themselves available via the Modest Means program (which frankly is still unaffordable for the majority of our clients). It is virtually unheard of locally for family law attorneys to provide pro-bono services. Clients who do some financial resources often must resort to extreme measures to afford representation, such as second mortgage on a home, borrowing from friends or family, and going into debt that they will not reasonably be able to afford to pay off.</p> <p>Saving Grace has several legal advocates who provide support for survivors with divorce and custody cases, however, they must be extremely careful not to overstep into unauthorized practice of law. Yet most of the survivors we work with need additional assistance and guidance which could be provided by a paralegal with expertise in family law and/or landlord/tenant. We see time and time again that those survivors without any representation fare worse in family court than those with attorneys. While I understand that the proposed paralegal licensure would fall somewhere short of what might be provided by an attorney, in many cases it would be sufficient and I assume more affordable.</p> <p>For survivors of intimate partner violence with children, the post-separation period is often fraught with continued coercive control and abuse that plays out in the divorce/custody process. It is vitally important to the safety and long-term well being of these survivors and their children that they are able to access legal assistance in their family law cases. It is my experience that many family law attorneys lack in-depth knowledge of intimate partner violence, impacts on children and best practices for adult and child survivor safety in custody cases. I see a potential opportunity with this new paralegal program to develop greater expertise within these paraprofessional practitioners.</p>
		<p>And while as a DVSA program, our focus is on survivors, it is important to note that access to legal help is also an issue for those who have caused harm in their intimate relationships, many of whom cannot afford an attorney. I believe that access to free or affordable legal assistance is key to accessing justice to many of our most vulnerable Oregonians. I look forward to hearing more about the proposed program as it moves forward!</p> <p>Sincerely,</p> <p>Gail Bartley Program Manager Mary's Place Supervised Visitation and Safe Exchange Center Saving Grace Courthouse Advocacy Program Pronouns: she/her/hers Ph: (541) 322-7460 Web: saving-grace.org</p>

Date	Name	Comment
11/30/2021	Natalie Knowlton	<p>Greetings,</p> <p>I have attached, here, a written comment in support of the Proposed Oregon Legal Paraprofessional Licensing Program. I gave spoken public comment during the Nov. 20 BOG meeting, and David Wade suggested I might submit the remarks in writing.</p> <p>Thank you again for the opportunity to be heard.</p> <p>Best,</p> <p>Natalie Anne Knowlton, Esq. Director, Special Projects IAALS, Institute for the Advancement of the American Legal System</p> <p>Verbal Public Comment In Support of the Proposed Oregon Legal Paraprofessional Licensing Program</p> <p>The comment below was submitted by IAALS to the Oregon State Bar Board of Governors on November 20, 2021, in support of the Proposed Oregon Legal Paraprofessional Licensing Program.</p> <p>Hello, my name is Natalie Knowlton. I am the Director of Special Projects at IAALS, the Institute for the Advancement of the American Legal System at the University of Denver. We are a national non-profit research institute dedicated to continuous improvement in the American legal system.</p> <p>I am speaking today in support of the Proposed Oregon Legal Paraprofessional Licensing Program. And I commend the Oregon State Bar for pursuing this innovative proposal.</p> <p>My colleagues and I have conducted national research on the experience of self-represented litigants, particularly in family law cases. In one of these major studies, we partnered with the Multnomah County Family Court, thanks to the leadership of Judge Maureen McKnight. What we found is not surprising – good people and families trying to get through complicated processes.</p>

Date	Name	Comment
		<p>Many wanted legal help but could not access it. Said one unrepresented litigant from Multnomah County, "It cost me 50 bucks to find out I couldn't afford a lawyer."</p> <p>Another, in talking about the cost of a lawyer, said "I'd much rather put that money toward supporting children than trying to fight to get them."</p> <p>In fact, contrary to what the prior speaker said [sharing her opinion that clients want nothing less than licensed lawyers], our Cases Without Counsel interview protocol included a line of inquiry designed to assess whether study participants might have been receptive to receiving assistance from an authorized non-authority professional. The response in favor was overwhelming.</p> <p>"It's better to have someone that at least has some working knowledge of the system," said one individual, rather "than trying to navigate it alone when you know nothing." Another remarked, "When you're going through it, honestly, at that point, anybody— whether they're a lawyer or not—if they're qualified to give you that advice, you would appreciate it."</p> <p>The Legal Paraprofessional Licensing Program is a real opportunity to help Oregonians.</p> <p>As you heard in the earlier presentation, other states and countries are figuring out ways to adequately train, appropriately supervise, and sufficiently regulate new categories of legal services providers. Of course, the WA program is perhaps the most well-known of them all, and opponents will point to that program as evidence that the model does not work. But Washington's experience with implementing the model has no bearing on the paraprofessional model itself or on differing implementations of the model in other states.</p> <p>In voicing opposition, you will hear some in the legal community referencing notarios and giving other examples of unscrupulous actors operating outside current regulations who prey on the innocent public. This argument is a red herring, at best. The Legal Paraprofessional framework in the Oregon State Bar's proposal envisions an educated, trained, and regulated group of professionals – the exact opposite of the shady wild-card actors that are employed as a scare tactic to stop these kinds of innovation.</p> <p>On the topic of education, it bears mentioning that family law is not a required course in many law schools, nor is it one of the core tested subjects on the bar exam. Countless attorneys graduate every year and sit for the bar armed with only what they learned about family law in the prep course.</p>
		<p>As a licensed attorney, I am hard-pressed to understand how these lawyers are more qualified to serve simple domestic relations cases than proposed Legal Paraprofessional who will have undergone the thorough education and training outlined in the earlier presentation.</p> <p>We as a profession must move past our sense of superiority over other qualified professionals. We maintain this attitude to the detriment of the public.</p> <p>Finally, a word about pro bono and legal aid. There is no single solution to solve the justice crisis, and I can understand how complementary solutions must compete for scarce resources. But in the long and rich traditions of legal aid and pro bono, subsidized legal services have yet to successfully solve the justice crisis. We cannot volunteer ourselves out of this crisis. Nor can we stand by while waiting for unprecedented legal aid funding, the likes of which we have never seen.</p> <p>We must think about new services and new providers: Access to legal services can no longer be synonymous with access to a lawyer.</p> <p>Thank you for giving me the opportunity to speak and thank you, again, for being leaders in legal services innovation.</p> <p>Natalie Knowlton Director of Special Projects</p>

Date	Name	Comment
11/29/2021	J. Glenn Null	<p>Regarding malpractice insurance through the Professional Liability Fund (PLF): It appears the report for the Board of Governors did not contain an analysis, or any other information for that matter, regarding the PLF's position on the following:</p> <ul style="list-style-type: none"> • insuring a new group of professionals, • whether lawyers' PLF premiums would increase, • what the limits of coverage would be, and • whether acts of an LP outside the scope of practice would be covered. <p>Providing this information about the PLF's proposed billing structure is critical for the public, including lawyers, to provide informed input on the proposal.</p> <p>Thank you.</p> <p>Glenn</p> <p>J. Glenn Null, OSB# 040961 Lawyer</p>
11/29/2021	James Hargreaves	<p>Dear Reader</p> <p>While I strongly disagree with this whole proposal to allow “paraprofessionals” to practice law, I am not going to waste my time writing the lengthy memorandum that it would take to cover all of my objections, since I have no doubt that, at this juncture, this is a “done deal” and that calling for comments is simply a formality to make it appear that Bar members’ input was considered. I suggest that a meaningful attempt at Bar member feedback would be to have a vote of the members of the Bar on this issue. I’m quite sure the Bar is not about to do that.</p> <p>Even though I completely oppose this whole proposal, there is one issue that I have not seen addressed in your material that I think is important to understand, especially for members of the Bar. That is the question of finances. How is this whole new administrative structure that will be required around this program to be paid for? Does the Bar expect that it’s attorney members will foot the bill? And what about the PLF? How are the administration and costs of paying out claims going to be financed for this new group people?</p> <p>I eagerly await your response to these questions.</p> <p>Jim</p>

Date	Name	Comment
11/19/2021	Tonya Alexander	<p>Dear Committee, I am a collaborative attorney and mediator with over 20 years specializing in family law in Oregon. I am extremely afraid of the initiative for “para+D27professionals” and the harm it will cause to the public if passed. While it may be thought of as “access to justice,” or “helping increase equity,” the exact opposite will happen. Those with the most to lose, and no funds for an attorney who use a paraprofessional may have the biggest harm of all. Here are my concerns:</p> <p>1) unsupervised paraprofessionals drafting documents about pensions, real estate, spousal support, business interests, retirement division, stock options/ RSUs, etc etc. is a TERRIBLE idea as these are complex, technical, legal, and extremely impactful to lifelong ramifications to either or both parties in a family law proceeding. Maybe there is a misunderstanding that Family Law is “simple and straightforward??”</p> <p>2) Risk of harm to public is real and no malpractice insurance for these paraprofessionals to protect against negligence. To give an example, even someone like myself with 20 years’ experience, depends on CPAs, pension attorneys, business valuation experts, and the like for drafting documents in a divorce. A paraprofessional will not even likely be able to “spot” the issue or know when to ask for help. The “pension” could be left out or “unvested stock options” messed up in any number of ways creating a nightmare of legal documents and increased cost to remedy if that is even discovered.</p> <p>3) This will create a HUGE amount of litigation and clog the courts in judgments needing to be vacated, modified, supplemented, etc or leave families without remedy and inequitable outcomes they may not even know about for years. I believe this is why some big firms are in favor of this – self interest of increased litigation under the “guise of access to justice” and affordability to clients.</p> <p>I would be happy to discuss other solutions such as attorney supervision of paraprofessionals (similar to a paralegal working for an attorney now), but without supervision, this is a truly awful initiative. My current paralegal also has over 20 years’ experience and she doesn’t even feel comfortable drafting many sections of the divorce judgments due to complexity and need for legal or specialized expertise. I cannot fathom someone with 6 mos or one year experience doing this work adequately without harm to families.</p> <p>Best, Tonya Alexander</p> <p>ALEXANDER LAW, PC Tonya M. Alexander, Mediator & Attorney 1925 NE Stucki Avenue, Suite 410 Hillsboro, OR 97006</p>

Date	Name	Comment
11/19/2021	Celeste Mora	<p>Hello Judge Thompson,</p> <p>To follow-up on the conversation, we had over the phone on 11/18/21, I offer the following comment and authorize its use:</p> <p>The implementation of a paraprofessional licensing program will be of great benefit to our woefully underserved communities. The pandemic has only exacerbated the need for legal services and has exponentially increased the financial barrier to access of necessary legal services for people in our communities. As a legal assistant at the Oregon Law Center-Hillsboro regional office, that serves five counties in Oregon, I am, as many support staff in legal offices, the first face clients see and recognize when they reach out in their time of need. Most of the support staff at the Oregon Law Center are bilingual and that helps establish trust and breaks that immediate barrier of communication for some clients. Many of us have years of experience and are relied on because of that experience and firsthand knowledge of our communities and their needs. We see the efforts to diversify the attorney's that practice in the state of Oregon but that takes time and a significant financial commitment on behalf of people of color, that for us is increasingly harder to reach. Many times, I have had to turn away clients because they are just above our income limits and refer them to the private bar. Many times, they have returned and let me know they cannot afford the \$5,000 retainer. Unfortunately, there will never be a shortage of landlord tenant issues or family law cases. There are many capable individuals that can represent themselves in these cases but cannot access the basic guidance and use the tools already in place, such as pro se forms, because of language barriers and a lack of basic understanding of the judicial processes. Another focus of contention may be that there are members of the community that were negatively impacted using Notary Publics in the US versus "Notarios" in Mexico. In that instance the confusion arose because of the literal translation of the term Notary Public. In this case the distinction is clear when you are introduced as a paraprofessional, that translates to "paraprofesional" and would not confuse someone that may have used the services of a "Notario" in Mexico. Because of the increased need of legal services in our communities, I stand in favor of the paraprofessional licensing program.</p> <p>Thank you again for the opportunity.</p> <p>Best Regards,</p> <p>Celeste Mora Legal Assistant</p>

Date	Name	Comment
11/18/2021	North Carolina Justice for All Project	<p>Dear Members of the Board:</p> <p>Our team has reviewed Oregon's proposed Paraprofessional Licensing plan and believes this program would serve the best interest of the state of Oregon and its residents. We strongly support Oregon in pursuit of a Legal Paraprofessional Licensing Program.</p> <p>At its core, limited licensing is about providing access to justice. Access to justice is a precondition for the satisfaction of basic human needs. Without it, life, liberty, and the pursuit of happiness fall to the wayside. Even as you read this, Oregonians and people across the country are losing their livelihoods, homes, jobs, and more due to existing unauthorized practice of law (UPL) restrictions.</p> <p>For far too long, the legal profession has unwittingly stifled the voice of its nation's citizens by creating barriers to legal representation under the auspices of protection. Without a lawyer, citizens are frequently unable to challenge civil injustice or hold decision-makers accountable for wrongdoing.</p> <p>More funding for legal aid and increasing pro bono hours have been touted as remedies for access to justice disparities. However, despite the tremendous efforts of Legal Services Corporation, legal aid, pro bono, and low bono campaigns, the legal profession remains unable to make a meaningful dent in the access to justice problem.</p> <p>According to Legal Services Corporation, in 2019 Oregon's income cut-off for legal aid was \$16,100 per year for a single person and \$33,125 per year for a family of four.</p> <p>CHART</p> <p>According to A 2018 Study Measuring The Civil Legal Needs Of Low-Income Oregonians, "Low-income households struggle to afford even basic living expenses of food, shelter, and clothing. Poverty is pervasive in both urban and rural communities. People of color, single women with children, persons with disabilities, and those who have not obtained a high school diploma are overrepresented in the poverty population."2 According to the same study, "84% of people with a civil legal problem did not receive legal help of any kind."3</p> <p>As you know, this is only the tip of the access to justice iceberg.</p>

Date	Name	Comment
		<p>Many Oregonians above these income cut-offs cannot afford legal counsel, and the access to justice gap widens as the cost of living increases and outpaces wage growth.</p> <p>Notably, the World Justice Project reports that 50-percent of middle-income consumers also go without representation in many civil matters. Middle-income consumers may be able to afford something for legal services, but not the rates many lawyers are charging. As a result, instead of receiving the help they desperately need, they go without legal assistance. Those who cannot afford legal counsel but may be able to afford the services of a licensed paraprofessional.</p> <p>Keep in mind that while the law allows for self-representation, we've all heard the axiom, "He who represents himself has a fool for a client." Even lawyers typically hire other lawyers for their personal legal matters. We know that self-represented litigants are at a severe disadvantage compared to those who receive help from lawyers or legal aid organizations. Adding limited licensees to the list of legal providers offers an additional affordable option for Oregonians and potentially increases Oregon's pro bono provider pool.</p> <p>The access-to-justice crisis is indeed a crisis of inequity. As legal professionals, it is time to rethink how legal services are delivered. Refusing to take action exposes a collective disregard for the needs of our citizens. There exists an immediate need for regulatory reform. Oregon's program proposal demonstrates the commitment of Oregon paraprofessionals to meet that need. They have created a program to relieve the overly-burdened areas of Family Law and Landlord/Tenant matters in traditionally underserved communities.</p> <p>It is critical to address these issues for people struggling to resolve their problems, whether getting a divorce or getting an eviction dismissed. Expanding access to justice by approving a limited licensing program will relieve some of the burdens on an overwhelmed court system inundated with pro se litigants, meet the needs of Oregon's residents, and increase public trust in the legal profession, which is severely lacking.</p> <p>While some attorneys may be concerned about the limited data concerning the viability of paraprofessional licensing programs, data doesn't always precede innovation. Experimentation is a crucial part of innovation. States like Utah and Arizona are collecting data as they progress in their respective programs using an iterative and incremental process that will allow for cumulative adjustments to their programs while protecting their consumers.</p> <p>The availability of affordable legal services is in the best interest of Oregonians, the court system, and the justice system as a whole, notwithstanding some lawyers' apprehension about how it will affect them economically.</p>
		<p>We have a duty to serve the broader legal needs of society. Otherwise, we send the message that we are willing to sacrifice the needs of our citizens for the economic interests of lawyers. The legal profession should want the public to view lawyers as trusted advocates, not self-serving, disinterested business people. We should also remember that the medical profession faced this same dilemma some 40 years ago when Congress told the profession that it was not serving the consuming public. At that juncture, the medical profession began to see the advent of nurse practitioners, physician assistants, and other qualified medical providers even over the protest of doctors at that time. Now, these alternative medical professionals are an integral part of our medical system.</p> <p>A limited licensing program would not, by itself, eradicate the mounting crisis in access to affordable legal services. However, it would undoubtedly be a critical piece to the puzzle, and, if administered as this program proposes, one way to significantly narrow Oregon's access to justice gap.</p> <p>Respectfully submitted, Alicia Mitchell-Mercer S.M. Kernodle-Hodges Rachel Royal Shawana Almendarez Morag Polaski North Carolina Justice for All Project</p>

Date	Name	Comment
11/18/2021	Paul Thompson	<p>Greetings:</p> <p>I write today in opposition to the proposed paraprofessional program for landlord/tenant law. I represent both landlords and tenants, so I have a perspective on both sides of the “v.”.</p> <p>Firstly, LL/T law is highly specialized. There are so many pitfalls, traps, and easy ways for an experienced attorney to get into trouble, much less a paralegal. In FED court in Multnomah County, Judge Peterson starts every first appearance with a warning that even very experienced attorneys mess this area of law up all the time.</p> <p>I understand there is a gap between represented and pro se litigants and the need for additional services to low-income parties. FED work is very serious because it deals with something that is necessary – one’s housing. This is not an area to be taken lightly because the implications are so serious. Believe me, losing an FED and having your client evicted is one of the worst things. However, there has to be a better way to address this representation gap rather than potentially putting landlords and tenants at greater danger, especially if attorney fees are on the line.</p> <p>Overall, my most basic question is who is this supposed to help? My landlords are all your typical “mom and pop” businesses, with some only renting out a room in their house. The best thing I can do sometimes is to have them talk to me before they file because I can explain their rights and obligations to them prior to any notice. In this instance, the paraprofessional can only prepare documents for the landlord and negotiate on the landlord’s behalf. Because of their limited authority, a paraprofessional may not even know how a tenant making a good-faith complaint about the tenancy can have major implications in an FED.</p> <p>But this program does not help landlords because landlords can already appear via agent. A landlord can already have an outside company issue termination notices, attend first appearances, and negotiate on the landlord’s behalf.</p> <p>I also do not see how this helps tenants. When I represent tenants, I am almost always on contingency because they cannot pay my hourly rate. In my experience, the vast majority of tenants who come to me could barely afford to even pay the \$35.00 Lawyer Referral Service fee, much less pay hourly at practically any rate. We attorneys who represent tenants on contingency provide an access to justice that allows for very low income people to get representation and defend their rights, and their housing, in court.</p> <p>This program would not allow the paraprofessional to bring counterclaims or affirmative defenses on a tenant’s behalf. Often, we attorneys use any potential counterclaims or affirmative defenses to advance our clients’ interests, if possible. This program does not allow that, so there is little benefit to the tenant, while the paraprofessional gets paid to do something the tenant could do on their own. FEDs (evictions) are not always the cut and dried area of law that they seem to be. While the vast majority of cases are simply for non-payment of rent, statutes and case law govern FEDs and have all the nuance of other areas. An experienced attorney will know the questions to ask to determine whether a tenant has any counterclaims or affirmative</p>

Date	Name	Comment
11/18/2021	Miryam Gordon	<p>Hello!</p> <p>I think this program is a terrific idea and mirrors substantially what Washington has done. We here have had all the "push back" and negativity as well, but we believe that judicial officials and others in the family law arena (we can't provide services in landlord/tenant here) are coming to see and appreciate the contributions we can and have made to pro se clients desperate for help in their cases.</p> <p>I'd love to see a different word used than "paraprofessional" because it can mean that someone is >not< professional, when we pride ourselves on being as professional as possible to uphold our position in the legal community.</p> <p>I'd also like to suggest that you might explicitly look at the trend in the country for "informal trials" (we have begun to develop statutes in WA State around these, and allow your LPs to provide services in any such trial additions you might contemplate. Another area that is ripe for inclusion of LPs is the collaborative law arena and to allow LPs to become mediators as well. Agreement is the backbone of a lot of what LPs will be a part of servicing.</p> <p>We - >I< wish that the Washington Supreme Court had not suddenly yanked their approval of an intermediate license - between lawyers and "nothing" ... and hope that Washington will find a way to allow this kind of imperatively needed program again here. In the meantime, we licensed LLLTs will continue to provide as much help to the community as we can.</p> <p>in appreciation,</p> <p>Miryam Gordon Legal Technician, WSBA #157LLLT 12345 Lake City Way NE #200, Seattle WA 98125 LLLTGAL@gmail.com www.LLLT4U.com (message phone) 425-298-3567</p>

Date	Name	Comment
11/18/2021	Ralph Gzik	<p>Ms. Dyke,</p> <p>I am writing in my personal capacity regarding the Paraprofessional Licensing Program that is currently in development and under consideration by the BOG at the November 20, 2021 meeting.</p> <p>Upon first hearing about this program, my instant reaction was one of hesitation and potential opposition. My main concerns relating to the program were: (1) I believed it would take jobs from new lawyers, and (2) I was concerned about the breadth of the scope of representation paraprofessionals would provide. I have since reviewed the materials related to the program and assisted with the development of the program and no longer share the concerns listed above. Instead, I am a strong proponent and advocate.</p> <p>For years, attorneys in Oregon have strived to close the access to justice gap through pro bono representation, volunteer opportunities, and other altruistic endeavors. However, the gap in access to justice throughout Oregon remains in two key areas of law – landlord tenant law and family law. This program is poised to provide quality legal services in these two key areas to individuals that cannot afford an attorney in the traditional litigation process.</p> <p>Overall, I think it is easy to first be concerned when you hear the name of the program but upon a thorough review, it is clear the program will meet an otherwise unfulfilled gap with proper oversight.</p> <p>I will be at the BOG meeting and am happy to provide further input on my comments above.</p> <p>--</p> <p>Best Regards,</p> <p>Ralph Gzik Attorney Johnson Law, P.C. 1323 NE Orenco Station Pkwy, Ste. 210 Hillsboro, OR 97124</p>
11/17/2021	Terry Leggett	<p>As a retired judge I applaud these efforts to come up with a pathway for unrepresented clients to get help in the area of domestic relations. I have reviewed the proposal and hope that this small step can help the many people who appear in our courts.</p> <p>Any assistance can only bring results that benefit the parties and, in many cases, the children of these relationships. Fairness can only be achieved when all parties can present the court with the most complete set of relevant information. This is best done with the help of professionals.</p> <p>My only hope is that people in these situations that cannot afford to pay an attorney will still be able to afford a competent paraprofessional.</p> <p>Good luck with this effort.</p> <p>Sincerely, Terry Ann Leggett, Senior Judge</p>

Date	Name	Comment
11/17/2021	Troy Pickard	<p data-bbox="447 177 789 193">Dear Paraprofessional Licensing Committee,</p> <p data-bbox="447 228 1940 272">When it comes to licensing paraprofessionals to be lesser-practitioners in the field of landlord-tenant law, I have the appearance of a conflict - residential landlord-tenant law is the field I have worked in every day for the past decade. That having been said, I am not personally worried about paraprofessionals taking my work; there is more than enough work to go around.</p> <p data-bbox="447 306 1940 378">What I am concerned about is tenants (who almost always tend to be the indigent side of the equation) receiving what amounts to fake, uninsured legal representation. There is no doubt that access to justice is broadly lacking in landlord-tenant disputes (among many other fields of law). There are plenty of ways that this might be addressed - one way would be dramatically reducing the cost of becoming a lawyer by replacing a year of law school with a year of apprenticeship.</p> <p data-bbox="447 412 1940 483">But, I do not believe that Oregon's tenants would be well-served by allowing non-lawyers to give them bad advice. We have enough lawyers giving bad advice. With landlord-tenant law, the cost of bad advice is often dramatic, especially for tenants - they can be unexpectedly forced out of their homes through eviction court, and crushed under judgments for the landlord's attorney fees. Landlords, too, can suffer dramatic financial consequences if they get bad advice (which they frequently do already).</p> <p data-bbox="447 518 1940 589">The lawyers who are truly qualified to give residential landlord-tenant advice have worked hard to gain that expertise, and their clients truly benefit from that expertise. And if something goes wrong, an aggrieved client can at least look to the PLF for recompense. We should not allow non-lawyers to come in and offer legal assistance any more than we should allow non-dentists to come in and offer dental assistance.</p> <p data-bbox="447 623 548 639">-Troy Pickard</p> <p data-bbox="447 673 667 789">Troy Pickard Managing Attorney Portland Defender PC www.portlanddefender.com 503.592.0606</p>

Date	Name	Comment
11/17/2021	Janice Morgan Legal Aid Services Oregon	<p>To the Board of Governors:</p> <p>I write in support of the proposed licensing of paraprofessionals to provide limited legal services in family law and landlord/tenant cases. I am the Executive Director of Legal Aid Services of Oregon, a non-profit organization that provides free legal assistance in civil cases to low-income clients throughout Oregon.</p> <p>Many thousands of Oregonians need assistance with family law and landlord/tenant cases each year but cannot afford market rates for attorneys' fees. Paraprofessional licensing is designed to lower the costs of entering the legal profession, to allow paraprofessionals to offer their services at lower costs. By doing so, they can help to address the tremendous unmet need for legal assistance in these two discrete areas of the law.</p> <p>Oregon Judicial Department statistics show that in the past five years, 74% of family law cases had at least one unrepresented litigant and 83% of landlord/tenant cases had at least one unrepresented litigant. Studies show that most self-represented litigants would prefer legal assistance with their cases but do not obtain it because of the cost.</p> <p>In 2016, the Institute for the Advancement of the American Legal System (IAALS) produced a study on the experiences of self-represented litigants in family law cases.¹ IAALS conducted its research in four jurisdictions, including Multnomah County. The study concluded that, "Self-represented litigants in family court largely desire legal assistance, advice, and representation but it is not an option for them due to the cost and having other financial priorities. Attorney services are out of reach, while free and reduced-cost services are not readily available to many who need assistance."</p> <p>Other key findings from the study include the following:</p> <ul style="list-style-type: none"> - Self-represented litigants grapple with understanding the process, what to expect, and what is expected of them. They describe feeling lost or "in the dark," relating both to the individual steps and the big picture of the case. - Given the personal importance of their cases, litigants actively work to identify and utilize resources to help them understand the law and the court process. However, resources leveraged do not always address topics clearly or effectively enough to eliminate the need for more specific guidance. - The paperwork can become overwhelming. Forms, while helpful, are not sufficient because many are unclear about the appropriate content to include when completing them. The cycle of litigant mistakes and court rejections is taxing for both. - Litigants struggle with how to present their case to the court, including hearing or trial preparation, evidentiary matters, and courtroom procedures.

Date	Name	Comment
		<p>- Self-representation can negatively impact outcomes. By implication, this can directly affect children in family law cases. Some litigants have described simply giving up their rights when faced with the reality of the court process, including the time and energy required.</p> <p>- Self-representation adds substantial stress and anxiety to an already taxing emotional period in the life of a family.</p> <p>The struggles of self-represented litigants present challenges for the court system. They slow the processing of court cases, as the litigants are unable to comply with court rules. They force judges to decide cases without access to all of the relevant information that would lead to the most legally accurate result. They also leave the litigants with a negative view of the court system.</p> <p>Many attempts have been made to address this gap over many decades. Oregon attorneys have been generous in their efforts to address this need, through pro bono programs, the Oregon State Bar's Modest Means Program and other venues. The Oregon State Bar has permitted and promoted unbundled legal services. Courts have experimented with Informal Domestic Relations Trials and family law facilitators. Legal aid, the Bar, the courts and others have produced countless self-help materials, forms and instructions. Following the economic downturn that began in 2008, when the number of unemployed law graduates reached record levels, many efforts were made to match the market surplus of lawyers with this unmet need for legal assistance, including training and mentoring programs to encourage new lawyers to develop law practices addressing these needs. Nevertheless, these many creative and well-intentioned efforts have had no significant impact on the number of people struggling to represent themselves in family law and landlord/tenant cases. We seem unlikely to see a market in which enough lawyers can offer their services at low enough rates to meet the need for affordable legal assistance in family law and landlord/tenant cases.</p> <p>Permitting paraprofessionals to represent tenants in landlord/tenant cases would also help to level the playing field in these cases. Currently, under Oregon law, landlords may be represented in eviction cases by non-attorneys but tenants cannot. ORS 105.130(4). It is difficult to understand the justification for allowing a landlord to be represented by an unregulated lay person while denying a tenant representation by a trained and regulated paraprofessional in the same case.</p> <p>With appropriate education, training and oversight, paraprofessionals can provide quality legal assistance to people who are currently receiving none. Paraprofessional licensing is a step forward for access to justice in Oregon and I urge the Board of Governors to implement it. Thank you for the opportunity to comment.</p> <p>Sincerely, Janice R. Morgan Executive Director</p>

Date	Name	Comment
11/17/2021	Monica Goracke Oregon Law Commission	<p>Dear Board of Governors:</p> <p>I am the Executive Director of the Oregon Law Center, a statewide nonprofit law firm whose mission is to achieve justice for the low-income communities of Oregon by providing a full range of the highest quality civil legal services. I am writing to support the proposal to license paraprofessionals to provide limited legal services in family law and landlord/tenant cases.</p> <p>At legal aid, we receive many more requests from Oregonians for representation in family law and landlord/tenant cases than we can accept due to our limited resources. The number of self-represented litigants in Oregon courts bears out the great demand for assistance in these areas. While some of these individuals might not be able to afford even the more affordable fees charged by paraprofessionals, some likely could, and would benefit from having the help of a licensed paraprofessional to navigate the legal system.</p> <p>I believe the paraprofessional licensing program would make a positive difference not only for unrepresented litigants and their families directly, but indirectly as well. The courts would function more efficiently for everyone if more litigants had access to legal representation. Legal aid offices also spend time fielding calls and providing basic information to many individuals whom we cannot help. With more of those individuals able to receive help from licensed paraprofessionals, this would free up some of our time to assist more Oregonians whose low income qualifies them for our services.</p> <p>Oregon law (ORS 105.130(4)) currently permits landlords to be represented in court by non-attorneys, but not tenants. Allowing licensed and regulated paraprofessionals to represent tenants would rectify this inherent unfairness.</p> <p>At legal aid, we employ dedicated and talented legal support staff, many of whom provide invaluable legal assistance to our clients under the supervision of our attorneys. We know that paraprofessionals are highly capable of providing high quality legal assistance in housing and family law cases. The Bar's proposal requires appropriate education, training and oversight for that to happen. I do not believe that the paraprofessional licensing program will result in the supplanting of attorneys by paraprofessionals, because attorneys could take these cases now, but generally do not choose to. Rather, the proposal would cause many Oregonians who would otherwise receive no assistance to receive the help they need at a price they can afford.</p> <p>Sincerely yours, Monica Goracke Executive Director</p>
11/17/2021	Maya Crawford Peacock Lawyers Campaign for Equal Justice	<p>Dear Members of the Board of Governors:</p> <p>I write in support of the proposed licensing of paraprofessionals to provide limited legal services in family law and landlord/tenant cases. I am the Executive Director of the Lawyers' Campaign for Equal Justice (CEJ). Oregon lawyers established the CEJ in 1991, with the mission of making equal access to justice a reality for all Oregonians. Primarily, the CEJ is a support organization for Oregon's statewide legal aid programs. We raise funds for legal aid by fundraising within the legal community. In the past 31 years, CEJ has raised more than \$31 million through its annual fund drives. In our partnership with legal aid, we see a tremendous unmet need for critical legal services that paraprofessional licensing can help alleviate.</p> <p>The February 2019 publication of "Barriers to Justice: the 2018 Civil Legal Needs Study" shed light on the depth and severity of the access to justice problem in our state.¹ The study was commissioned by the Oregon Law Foundation, Oregon State Bar, Campaign for Equal Justice, Oregon Judicial Department, Legal Aid Services of Oregon, and the Oregon Law Center. It was later endorsed by the Oregon Department of Justice. The study assessed the ability of low-income Oregonians (folks at 125% of the Federal Poverty Income Guidelines or below) to access the civil justice system.</p> <p>The findings were stark. We learned that 75% of survey participants live in a household that experienced a legal problem in the 12 months prior to the survey. We learned that the typical low-income household in Oregon had more than 5 distinct legal problems in the past 12 months, and we learned that 84% of low-income people with a legal problem did not receive legal help of any kind.</p> <p>The need for legal services is especially high in family law and landlord-tenant cases. The study found that nearly 36% of survey respondents had a rental housing problem and nearly 23% had a family law/abuse problem. While the study findings pertain to Oregon's lowest-income residents, access to a lawyer is out of reach for many working class and middle income Oregonians. Furthermore, this study was undertaken prior to the pandemic, so it is quite likely that the number of Oregonians living in poverty is now higher, making access to justice for all an even farther goal.</p>

Date	Name	Comment
		<p>Oregon Judicial Department statistics show that 74% of family law cases had at least one unrepresented party and 83% of landlord-tenant cases had at least one unrepresented litigant. Many of these individuals are not unrepresented by choice. If they had access to a paraprofessional at a price they could afford, many would be more likely to find the help they desperately need.</p> <p>When people who are struggling to make ends meet lack legal representation, they are effectively shut out of the justice system. This in turn can lead to distrust of the justice system, a feeling that the justice system is only for the wealthy and the privileged. This perception isn't good for clients and isn't good for lawyers or how the community thinks about lawyers.</p> <p>Paraprofessional licensing is designed to lower the costs of entering the legal profession, to allow paraprofessionals to offer their services at lower costs. I do not think that licensed paraprofessionals will supplant attorneys in these two areas of law, as there are not attorneys meeting all of the needs of low and middle income Oregonians now. Paraprofessionals will help to address the tremendous unmet need for legal assistance in family law and landlord-tenant law. A licensure system that is designed to provide appropriate education, training, and oversight to paraprofessionals will provide additional assistance to a growing group of Oregonians who do not have meaningful access to justice. I urge the Board of Governors to adopt this recommendation.</p> <p>Sincerely, Maya Crawford Peacock Executive Director</p>
11/17/2021	Richard Slottee	<p>Good evening,</p> <p>I am voicing my support for the proposed Oregon Legal Paraprofessional Licensing Program. As someone who has represented low income Oregonians for many years, and administered a teaching clinic for law students for the majority of that time, I urge the Board of Bar Governors to move forward on the licensed paralegal proposal.</p> <p>I am acutely aware that the majority of individuals with family law problems and landlord-tenant issues are self-represented. Some are able to get help (but not legal advice) from court facilitators but the unmet need is significant and unfortunately is not able to be met by Legal Aid or pro bono attorneys, yet the consequences of family and housing problems are life-changing for these low-income and middle-income Oregonians. I believe the proposed educational preparation, practical experience, and formal regulation and insurance terms provide sufficient protections to implement this access-to-justice component, along with OSB oversight.</p> <p>Thank you Richard A. Slottee Attorney at Law OSB 722396</p>
11/16/2021	Blaine Clooten	<p>I disagree with Paraprofessional Licensing Implementation. This is a fundamental danger to consumer protection and will irreparably harm the legal profession. -Blaine Clooten. OSB #13329</p> <p>Blaine Clooten oregonlegalfirm.com 541-667-7993</p>

Date	Name	Comment
11/16/2021	Chris Newbold ALPS Malpractice Insurance	<p>To Whom It May Concern:</p> <p>It is my understanding the Oregon State Bar is considering options in enacting an alternative legal service delivery model in its pursuit of innovation and commitment to the access to justice cause. We commend you for exploring such options and your advancements in considering the proposed Legal Paraprofessional Licensing Program.</p> <p>As the nation's largest direct writer of lawyers' malpractice insurance, ALPS is uniquely positioned to provide carrier perspective on the insurability, risk and claims susceptibility of paraprofessional communities. As the endorsed malpractice carrier of the Washington State Bar Association and Utah State Bar, we've work side-by-side with bar leadership in providing malpractice insurance protection for Limited License Legal Technicians (LLTs) in Washington and Licensed Paralegal Practitioners (LPP) in Utah.</p> <p>As ALPS primary liaison to State Bars nationally, I hoped to provide some insights which may benefit your deliberations. In no particular order:</p> <ol style="list-style-type: none"> 1. From a risk perspective, we've deemed the overall risk among paraprofessional communities to be low. Practice scope is limited, State Bars employing such programs have enacted important educational checks and balances as part of licensure and the educational path required provided us healthy comfort as to their readiness to deliver professional services. In many respects, the licensing, educational and experiential requirements of paraprofessionals (along with limited scope) position them as more ready to engage in professional services (and better risks) than graduating law students passing the Bar and hanging up a shingle as a solo practitioner. For these reasons, from a carrier perspective, we've deemed the risk low. 2. Given the low risk, premiums associated with malpractice coverage for paraprofessional communities has generally fallen in the \$500 - \$1,000 range, well below our standard average of \$2,400 per policy. In part, most will start with a malpractice policy without prior acts coverage, thus providing for healthy premium credit as they embark upon a claims-made and reported policy. 3. ALPS' claims experience to date on risks associated with paraprofessional communities has supported our preliminary hypothesis, although our experience is admittedly early in the "honeymoon" period for an otherwise long-tail product. We've issued 36 policies since inception among LLTs in Washington and just issued our first LLP policy in Utah and have yet to pay out on any reported claim or circumstance.
		<p>4. We support your efforts to bring innovation in this area. The access to justice gap is real. Approximately 80% of low-income individuals cannot afford legal assistance. Middle class families struggle as well. We have shared our experience with Oregon Professional Liability Fund leadership as they contemplate product options.</p> <p>If we can be of further assistance in your decision-making process, please let us know.</p> <p>Respectfully submitted, Chris Newbold</p>
11/16/2021	Hannah Marchese	<p>To whom it may concern,</p> <p>As a facilitator in Jackson County working with litigants in both family and landlord/tenant cases I see this program being hugely beneficial. We see a definite gap in services for our community. Not only is retaining an attorney almost unattainable financially but our community is also struggling with finding available attorneys. Adding this service for Oregonians will not only open the door for many litigants to receive specialized assistance but will allow for more complicated cases to retain representation. Lets fill the gap!</p> <p>Hannah Marchese Family Law Facilitator</p>

Date	Name	Comment
11/16/2021	Jakob Wiley	<p>Dear Committee Members,</p> <p>Thank you for the opportunity to provide comments. I hesitantly support the proposed licensing scheme, with some significant reservations.</p> <p>My main concern is related to the control of the license and the institution that manages them. It is a trend of history for special licenses to be created that carve up the delivery of legal services. For example, realtors and contractors have been granted special authority to review, draft, and interpret certain kinds of legal documents. I don't believe that these special types of exceptions to the general rule that providing legal services requires a law license have been generally beneficial.</p> <p>In my experience, I believe the general public suffers when provided inferior legal services authorized by these pseudo-bar associations. The proposed family law and landlord/tenant law areas are critical to many people's lives, just like home purchase and construction.</p> <p>My solution is to ensure that the license remains firmly under the control of the Oregon State Bar Association and does not evolve into its own type of agency. The control of the delivery of proficient legal services in these areas should remain with attorneys, and not an appointed state board subject to the whims of politics. This solution is the only way I would support the change.</p> <p>Further, I would argue that such a paraprofessional license holder should remain under the direct supervision of a licensed attorney. But, such a requirement undermines the goal of reducing the limits on access to such services.</p> <p>What we really need is state funding for more public services and stable, living wages for attorneys doing this kind of work. Perhaps rather than eroding legal services, we should be funding more of it. Time spent lobbying for more public funding for these kinds of positions (more attorneys) might actually solve the problem of access to legal services, rather than slowly dissolving traditional attorney roles into several licenses with mediocre outcomes. There are plenty of struggling attorneys that would love to work in these areas, if they can survive doing it.</p> <p>Thank you, Jakob</p>
11/16/2021	Winter Drews	<p>Good Afternoon,</p> <p>As both an OSB Member and a Family Law Facilitator with Multnomah County, I wanted to reach out and say that I am wholeheartedly behind this proposal!</p> <p>My daily work with the Multnomah County Legal Resource Center involves meeting with pro se litigants who cannot afford or access an attorney, and by far the greatest need we see is in Family Law and Landlord Tenant Law. On a daily basis, I meet with people who need a small amount of targeted legal advice, and of course as a Facilitator I cannot provide it. I refer people to the OSB Referral Service and the Modest Means programs daily, and I know that the unmet need far outstrips the capacity of those programs.</p> <p>This proposed licensing program would help so many people who cannot access a lawyer. It would increase Access to Justice for historically underserved populations, and it would increase judicial/court efficiency by allowing more litigants to access legal advice, improving the quality and clarity of their filings.</p> <p>I am very excited by this proposal!</p> <p>Winter R. Drews (She/Her) Legal Resource Center Facilitator Multnomah County Circuit Court 1200 SW First Avenue, Room 02307 Portland, OR 97204 Phone 971-236-8670 Winter.R.Drews@ojd.state.or.us</p>

Date	Name	Comment
11/15/2021	Karrie K. McIntyre Circuit Court Judge	<p>Paraprofessional Licensing Committee Oregon State Bar c/o The Hon. Kirsten Thompson (ret.) Sent via email.</p> <p>Judge Thompson,</p> <p>I write to you in support of the work the paraprofessional licensing committee has been considering regarding family law and landlord tenant matters. In Lane County, I have handled cases regarding both subject matters in the six years I have been serving as a judge. My practice, prior to serving on the bench was primarily focused on domestic relations and criminal matters. I currently serve as the Chair for Statewide Family Law Advisory Committee and the Lane County Family Law Advisory Committee.</p> <p>At the national level, I serve on the National Council for Juvenile and Family Court Judges Family Violence and Domestic Relations Advisory Committee. I do not write on behalf of Lane County or any of these organizations but rather with my own position on the issues.</p> <p>In the 1990s Oregon Legislature established the Statewide Family Law Advisory Committee to advise the State Court Administrator and Chief Justice on issues relating to family law. At that time, the legislature and the courts could forecast the tidal wave of litigants who would need access to justice who could not afford the services of an attorney. The OJD established the Family Law Program and staffed it with specialized people who continue to work tirelessly to address the needs of litigants. We know from OJD statistics that the averages for cases where at least one party is self-represented are somewhere between 68-90% and in some counties that number is over 90%. OJD has responded with generating forms, providing facilitators, and having court connected mediation. All of these are worthy actions by OJD but still the weight of the work is crushing on our Branch.</p>
		<p>There have been studies done about litigants' ability and desire to pay for legal advice. I find, anecdotally, that most self-represented litigants would like to have an attorney, but they believe they cannot afford it. When a litigant does not seek assistance of an attorney, there is no longer an independent voice advising them about the legal substance of their claim, so, many cases are filed that may not have legal merit, or, are plead poorly and cannot prevail at a substantive hearing.</p> <p>Having a resource available to litigants at a reasonable price that can assist with form preparation, discovery requests, preparing for trials and depositions, would be a valuable contribution to our legal community and would assist the court in more efficiently addressing the needs of Oregon's families.</p> <p>Regarding the scope of work the paraprofessional would do, I disagree with scope of legal advice and degree of representation that is proposed. There are complicated legal issues in family law matters particularly related to jurisdiction, and financial issues like spousal support, division of retirement accounts, and property. Such issues are routinely addressed in case law out of our esteemed Appellate Courts. They also often require expert witness preparation and input to adequately address the issues. When we allow paraprofessionals to appear in mediations, and trials subject to court questioning, we are conferring upon them the mantle of a lawyer and simply put, they may not be educated and are not licensed in that capacity. I would have less hesitation in this regard if the paraprofessional was an extension of an attorney office and worked collaboratively, or with the oversight of an attorney.</p> <p>Lastly, I understand the scope of this project is limited to family law and landlord tenant, but in the context of family law, I do not see protective orders are within the scope for consideration for paraprofessional work. Often times, domestic relations cases closely track with protective orders, so it would be appropriate for the paraprofessionals to be educated specifically on domestic violence, the manner in which those cases have overlap, and the implications of those types of orders in domestic relations matters.</p> <p>Regarding Landlord Tenant issues, I have handled that docket exclusively for over a year and I endorse paraprofessional licensing without reservation.</p> <p>VERY TRULY YOURS, Signed Electronically Karrie K. McIntyre Circuit Court Judge</p>
11/14/2021	Ben Cox	

Date	Name	Comment
11/4/2021	Kate Hall	<p>To the members of the Paraprofessional Committee:</p> <p>I write to respectfully request that you do not implement this program in its current format. While I appreciate that the bar seeks to improve access to justice, it should not do so by effectively delegating legal services to people who lack the training to be able to serve them appropriately, or the insurance to make it right for their clients when mistakes are made.</p> <p>Reform, change, and experimentation are great when the outcome might be at all hopeful. I am supportive of Bar efforts to increase access to justice. However, in this instance, the experiment involves people who will be making irreversible decisions around their property and retirement in divorce while they are feeling like they are adequately supported in a vulnerable time with the help of someone that may not meet the standard for competency.</p> <p>For family law, the consequences are grave: if a mistake is made, parties may need to relitigate support issues (potentially multiple times, in the shadow of power/control or abuse). This particular experiment will mean that kids will have to deal with parents renegotiating inadequate parenting plans and the ensuing conflict that comes from uncertainty. Parental conflict is directly tied to statistically worse outcomes for children.</p> <p>There is already so much trauma around divorce. This particular experiment will increase that trauma and make it harder for people to trust helping professionals overall.</p> <p>Instead, the committee could recommend increased emphasis and funding for alternative dispute resolution for parties, apprenticeships as an alternate pathway for licensure, or restricting the paralegal work to modifiable actions only. The committee should also recommend the creation of a separate insurance risk pool for these paraprofessionals should this happen.</p> <p>Thank you for your consideration</p>
11/3/2021	Krista Mancuso	<p>To Whom it May Concern:</p> <p>I am writing to add my voice to the opposition to the implementation of paraprofessional licensing in Oregon. I started out my career working in Intellectual Property litigation in the Bay Area after law school, returned to Oregon in 2014, and made the decision in 2016 to open my own solo practice focused exclusively on family law. I was mainly self-taught with a handful of kind attorneys that answered the phone when I called. I built my practice on modest means clients and eventually the phone started ringing on its own. I worked hard and faced the high price of my bar dues (California and Oregon) and PLF expenses without the backing of a firm or the security of incoming clients (except for one brief year when I worked for a downtown Portland family law firm to try it out). I have ran my own practice while also providing clients with a reasonable hourly rate that I typically write down, or off. I have not charged some clients and I have drastically reduced final bills for others when the benefit to going to a hearing or trial outweighed their ability to pay for it. And often I have clients come through my doors with a mess of pro se paperwork or paperwork they completed with the assistance of untrained attorneys. Between google, divorce forums, and friends/family, people think they know more about family law than they actually do. And much of what they find online is not about Oregon, but about another state. Adding another opportunity to provide vulnerable and sometimes desperate clients with advice that is not coming from a lawyer gives me nightmares. I already only bill half my time spent on the work I do.</p> <p>I often must tell people hard truths knowing that they won't like what I say. And I often must face very unpleasant conversations with my clients or opposing parties/counsel. One thing that keeps me picking up the phone or answering that email is the weight of the responsibility that I bear with my bar license and malpractice insurance. It would be very easy to be sloppy or brush off the uncomfortable conversations if I was only filling out paperwork with someone and did not have both of those things breathing down my neck. I work every day knowing that if I could no longer practice law I would never pay the law school loans that still exist 11 years later, which I took on with the understanding that they would allow me to do the thing I always wanted to do (be a lawyer). No amount of CLEs in the entire world could replace that pressure. And, as an aside, I was in a paralegal program at the University of San Diego when I decided to apply to law school. I value work that paralegals do. But it is not the same as being a lawyer.</p> <p>When I first read about this program my initial gut reaction was to leave family law. It feels like the biggest slap in the face to what I do every day. It makes me resent the OSB even more as a solo attorney. While I have loved this area, I have no desire to be part of a system with lowered standards that I will, frankly, have to clean up. I have no desire to practice in an area where all my hard work and dedication to my practice is being de-valued. Rather than provide more access to family law help, I believe that you will find lawyers leaving family law. And those of us out here on our own are the ones that not only bear the weight of our bar dues and PLF fees, but we are the ones taking on the responsibility of cleaning up messes and offering reduced fees. To ask more is just offensive at this point.</p>

Date	Name	Comment
		<p>The list of things a licensed paraprofessional could do is long and wholly inappropriate. Nothing about family law is done in a vacuum without understanding the entire picture. This program is asking an attorney to, in essence, engage with a non-lawyer on the other side but is not actually the other client. This will only drive up costs for the client that does have a lawyer because the other person will be more confident but also ill-advised. When I look at the list at what a paraprofessional can do, it appears to be the majority of things I do every single day except for appear in court. A paraprofessional can meet with clients, fill out forms, file pleadings with the court, complete written discovery, attend depositions, represent a party in mediation and settlement meetings, assist in trial preparation, prepare clients for court appearances, and advise clients on how legal documents affect their right to appeal. This is BEING A LAWYER. This will not help those it intends to help. It will cause more problems than it will solve. And then people, who are already at their most vulnerable, will be faced with either hiring a lawyer to clean it up or living with the consequences.</p> <p>There are other ways to promote access to justice that don't come at de-valuing attorneys and harming those this intends to help by allowing them to be preyed upon by non-lawyers. Spend time on that. Push and promote the modest means program, and actively promote all lawyers to take these cases on, including a limited option (meaning that a lawyer can have only one or two at a time). The program can be overwhelming when you receive calls constantly. With a limited option and expectation that every lawyer have one modest means client, it will start to open the door to have more seasoned lawyers go back to the program. Create opportunities for newer youngers to be mentored through that program so that they feel confident taking more clients on. And we need to find a way to support the organizations doing the work for legal assistance that is either no cost or very low cost. They are out there, but they need more people. And support ways to reduce legal costs for those who are engaged through simplifying what we do that is a waste of money (like ridiculous requirements that force an attorney to go to court when things can quickly and easily be done remotely).</p> <p>This will not help more people. This will not protect more people. I am confident that it will do more harm than good to those it intends to serve. And I, for one, want nothing to do with it.</p> <p>Best, Krista</p>
11/3/2021	Scott Staab	<p>Dear Committee, My name is Scott Staab and I 100% oppose the idea of paralegals being licensed to represent individuals in landlord tenant matters. These are technical matters in a complex field of law that moves very rapidly and will have adverse outcomes of unintended consequences for many families hoping for a miracle.</p> <p>I have focused on FED matters since 2009, and since the beginning of 2019 I have officially appeared in 488 Circuit Court cases representing defendants in FED matters in 17+ counties across the state, and numerous more in Justice Courts. Much of that time evictions have been muted due to the pandemic. I do direct mail advertising, as well as receive numerous referrals from legal aid and other attorneys around the state. In past years I have sent more than 10,000 letters each year to households being evicted offering a free consultation and to take the case on at no cost to them if it is believed to be won. For each case I take I talk with dozens more giving them an accurate assessment of their legal position, the timeframes and procedures in place, as well as possible outcomes and consequences at stake.</p> <p>In the rural counties I may sign up 1 in 5 I talk to, and around the metro area it is closer to 1 in 20. The idea that every unrepresented party in FED court has not had the benefit of counsel is false. During call dockets in the metro area I have routinely spoken to 20%-25% of the defendants being called that day, and in rural areas it can be as high as 50%-100%. If the tenant has a solid eviction defense they are currently able to get representation for free by myself, or a number of attorneys in the state depending on their region.</p> <p>The proposal to allow paralegals to counsel tenants in the midst of an eviction has many flaws, and none bigger than the fact that this individual is giving advice and then are not able to back it up. They can advise this person on what to do and get them to the trial, but then they are fed to the wolves. Individuals do not lose eviction cases from checking the wrong box as ORS 90.105.137(8) allows any defenses to pro se tenants at trial, not just defenses pled, they mainly lose because they do not have legitimate defenses. This area of the law is statutory in basis, and if the landlord has taken the proper steps under the law, they are entitled to the property.</p> <p>This proposal allows paralegals to charge money for a service they can only half provide. If someone in need seeks counsel they would expect it to be complete. This proposal has the tenant still doing the trial on its own, or for an emergency cost in hiring an attorney for trial that will be 5 times the cost of the fee paid to the paralegal that got them into the trial track. Attorneys guarantee their advice because mainly the one giving the advice is fighting the fight, not telling our client how to do it if it were us. FED matters by law are required to go to trial within 14 days of the first appearance (approx 22 days after filing), and many times are set within a week.</p>

Date	Name	Comment
		<p>This tenant who sees an add for "\$379 to take care of your eviction" is not going to realize that once the negotiation fails, the paralegal helps them check the boxes on the eviction form (single page with 6 boxes), and marks and copies their exhibits, they are then on their own to learn the Oregon Rules of Civil Procedure and Oregon Evidence Code. In the alternative tenant shells out much much more money to get an attorney up to speed for a trial in days. The paralegal cannot be left to give this person advice, for a fee or not, and then just walk away with no repercussions or recourse to the aggrieved tenant.</p> <p>This would bring us to the issue of liability. Accountability is paramount to the judicial system at all levels, none the more so than for those giving life altering advice. These paralegals would need to have a regulatory body to oversee them and mandatory malpractice insurance with a rate to be established by the carrier group that would be taking on the pool of members. Advertising practices would need to be inline with what is acceptable for attorneys under the Rules of Professional Conduct. Any advertising should include a disclaimer that these services may be able to be obtained free from a licensed attorney and a 211 directory can be maintained with such a list. Courts would need to be informed if the tenant is being advised by an outside entity, and that information needs to be clearly stamped or printed on every document that the paralegal provided, drafted, advised on, or reviewed and that information would need to include their contact information and paralegal #. If they are working under an attorney that attorneys information would also need to be provided and their PLF insurance would cover the paralegal. If not, the insurance carrier would need to be required to have a "Repair" clause similar to that of the PLF. The Repair clause allows the claim to be addressed pre-emptively and would occur when the tenant realizes they got bad info and they have trial in two days or a week. Without a Repair clause the tenant will most likely not be able to afford or retain counsel and will end up with a formal eviction and a significant money award against him for the landlords costs and fees. A post judgment claim may pay the money judgment, but the eviction is there to stay. Without the insurance and notice requirements tenants are then left with no recourse for improper advice which is antithetical to the goals of the committee, the bar in general, and the public at large.</p> <p>Help is on the way! Craig Colby a godfather in FED and landlord tenant law in general is now a Senior Advisor at The Commons Law Center (a legal service non-profit) and is actively training a new generation of tenant advocates specializing in FED defense at no cost to nearly all. The project has been slow to get off the ground with the reduction in evictions based upon the pandemic, however they are up and running now and will be expanding all of their services statewide in the near future. Other approaches that are being under utilized in the state are forced mediation programs that are in place in Marion and Lincoln Counties as well as an extremely successful voluntary mediation program in Coos County. Once parties are required to verbalize their concerns in a setting with a third party they are many times able to compromise on an agreement and thereby removing the possibility of a formal eviction on ones rental history. Another approach used in Washington, Yamhill, Coos is to conditionally dismiss the FED action upon the entry of the stipulated agreement, thereby encouraging an agreement to be reached and to also not have the pending action be a barrier to suitable new housing and thus a barrier to complying with the agreement entered into.</p>
		<p>In summary it is my sincere belief that the formation of this new class of independent paralegals would create a predatory environment when individuals are at their most vulnerable and is not in the interest of the tenant, or the judicial system in general. Judgments for evictions cannot be corrected like other judgments and can result in a cycle of poverty than can be difficult to break out of. Allowing paralegals to go half way in giving advice and then stepping away is not the answer. This radical approach should not be adopted.</p> <p>I can be reached at 503-929-9262 if you have any questions about any of the information provided above.</p> <p>Best regards, Scott Tenant Advocate</p>

Date	Name	Comment
11/3/2021	Bob Casey	<p>Summary. I oppose the entire concept of paraprofessional licensing. I'm appalled that the Oregon State Bar is even considering this idea. Reasons fall into at least two areas:</p> <p>Protection of the Public. First, the public wouldn't be well served by such lax standards. Requirements for liability insurance, education, or ethics are slim to none.</p> <p>Undermining the Legal Profession – a Violation of Trust. Second, I believe the Oregon State Bar would be violating a trust it holds with licensed attorneys.</p> <p>One way of understanding this point would adapt the contract law concept of detrimental reliance. For many decades, the Oregon State Bar has imposed extensive requirements upon thousands of members who sought to become licensed attorneys:</p> <ul style="list-style-type: none"> - We spent 3 years of our lives, struggling in accredited law schools. - We spent large amounts, and often incurred huge debt. - We studied for, and passed a bar exam. - We subjected ourselves to a demanding code of professional ethics. - Each additional year, we paid hundreds of dollars in additional bar dues. - Each additional year, we paid thousands of dollars in additional professional liability premiums. - Every three years, we complied with mandatory continuing legal education requirements.
		<p>All this we did ... in exchange for our professional licenses. All this we did ... because the Oregon State Bar offered professional licenses in exchange. It's appalling, to think the Bar would now undermine those professional licenses. Instead, the Oregon State Bar must treat its members fairly.</p> <p>Do you want an example of how this would undermine our licenses? Think of the talented, dedicated attorneys who specialize in landlord/tenant law. That is a hard area of law practice. Those who enter that area deserve nothing but respect. However, this unwise initiative by the Oregon State Bar would eventually ruin the careers of many of those talented attorneys. The reason runs parallel to a principle in economics known as Gresham's Law, which maintains that "bad money drives good money out of circulation". In like manner, proliferation of paraprofessionals would cause the public to hire individuals with the most negligible qualifications and education, and stop engaging attorneys who satisfied the bar's extensive requirements for professional licensing and who actually knew what they were doing. The bad will drive out the good.</p> <p>I oppose this idea – every part of it. Please, stop this push to undermine our careers. And in the process, please rededicate the Oregon State Bar to only granting licenses to individuals who have satisfied stringent requirements regarding education, dues, ethics, and dedication to law practice.</p> <p>Bob Casey, Atty. OSB #874259</p>
11/3/2021	Judy Parker	<p>Dear Program Members,</p> <p>Please first allow me to thank you for the work done to date on this program. Helen asked me to participate with you but I declined because I knew that it was a thousand times more work than I was able to bear - so I appreciate your service to the state.</p> <p>Second, I wanted to share with you that I chaired a taskforce that urged the BOG and then the BBX and then the Supreme Court to adopt a law clerk program similar to Washington's, strictly regulated with much oversight.</p> <p>It got push-back aplenty but it went through the various rule-setter organizations. (Our focus was on regulation and safety nets and providing relief for rural and older lawyers.)</p> <p>And personally, my sister (my older sister, and one who tends to benchmark herself against me, which is annoying) is a paralegal in North Carolina (rather than attend law school like me). She attended Duke's paralegal program - one of the hardest in the state, if not the country.</p> <p>Paralegals there can draft pleadings AND file forms AND do all sorts of things that we don't allow paralegals to do here in Oregon. She keeps telling me to move to North Carolina and open an office and she'll do all the work and I'll have the name on the door. And my mother would be our receptionist. You can see why I'll stay in Oregon forever, thankyouverymuch. But my sister, she's brilliant and a hard worker and she'd be an excellent lawyer if she went to law school. So I also couch my thoughts with What would Karen Parker do with this program? She'd be awesome - but that's not sufficient to protect the public.</p>

Date	Name	Comment
		<p>So, it shocks me that I, of all people, would not welcome a paraprofessional licensing program and write to you to to urge against adoption of the program as currently designed.</p> <p>I do think that the hour minimum is intense (for all the right reasons) - 1500 hours is far longer than even law school and I think that the statutory and rule-based programs are solid.</p> <p>However, I do feel that we should include a strong safety net of advisory attorneys for such paraprofessionals. For example, our law clerk program had annual check ins with both the mentor and mentee as well as monthly status reports on the specific items being taught by the mentor.</p> <p>There's a reason why we require dental hygienists to operate under the auspices of a licensed dentist - and that's because we do need someone to be able to issue-spot greater issues rather than do a specific routine task - and that's because we know that lawyers should be aware of a swath of issues rather than just evictions or divorce settlements.</p> <p>Do I think that the concept is horrible? No. Do I think it should be tightened to protect the public? Yes. Unfortunately, I don't have experience in LL/T or family law, so I cannot point to specific issues that can be avoided but Scott Staub's letter soundly discusses those topics.</p> <p>Would Karen Parker be a good paraprofessional? Yes. Would I hire her for my own work? Sure. Would I refer her to my best friend. NO. I would always refer to a lawyer.</p> <p>Those are my inarticulate thoughts - take them as they are.</p> <p>But the most important thing is that you guys are rock stars for working on this during a pandemic.</p> <p>Thanks!</p> <p>Judy Parker</p>

Date	Name	Comment
11/3/2021	Anthony Stewart	<p>Good afternoon,</p> <p>Attorneys will adapt and the profession will evolve, but I'd like to share a perspective I've yet to see considered.</p> <p>I learned of this "paraprofessional" program from former bar chair Chris Costantino 2 years ago at a local bar event. Setting aside the very thoughtful concerns from other colleagues shared here and elsewhere (like OTLA's very good responsive letter), I'd suggest that those considering this type of program look to our neighboring state for a comparative analysis. Costantino assured me that she and the other attendee (I think it was Ms. Hierschbiel) would push for other states' experiences to be analyzed and implemented in the decision making process. Part of our job as attorneys is to identify similar precedent and argue that it informs the current analysis.</p> <p>Washington state implemented a similar program in 2012 -- with an arguably even worse sounding name -- Limited License Legal Technicians -- LLLT. A WA Bar directory search today reveals only 72 professionals with the LLLT credential in the state after nearly a decade (and not whether they are still active). In a state coming close to twice the size of Oregon, I question whether the resources and attention expended on that program could ever be justified for such a small cohort.</p> <p>Consider this 2020 ABA Journal article about how the WA Bar was initially supportive of the original 2012 rule adopted by the WA Supreme Court -- but then just about everyone ultimately shifted to an entirely inverted position by 2020. We're a year or so out of this specific news event, but I believe the article's report that the WA Supreme Court in June 2020 sunsetted the LLLT program remains the status quo.</p> <p>I'm not licensed in WA, but I'm sure there's plenty of WA- & OR-licensed attorneys in the affected practice areas. Did the LLLT program ever really serve the intended targets? Did it create a second class of quasi-attorneys that simply undercut the pricing of mid-range, non-nonprofit legal service providers? Where did most of the LLLT professionals end up practicing -- in major metro areas or in rural/underserved communities? Was there a cognizable impact on the quality of pleadings prepared and outcomes obtained for client, for the better or worse? Do judges in that state find that individuals who would otherwise appear pro se are better informed and better poised to navigate litigation? Did the LLLT program result in a cognizable increase or decrease in appeals in the relevant time period? Etc.</p> <p>I laud the contributions of time and energy into this proposal, but it is no excuse to lose sight of the powerful economic and behavioral incentives and disincentives at play with dramatic policy changes. Hopefully there will be a thoughtful consideration of these foreseeable issues (and the experience of other states) prior to enabling such a fundamental change to the provision of legal services in this state.</p> <p>-Anthony</p>

Date	Name	Comment
11/3/2021	Dady K. Blake	<p>I am writing to make comments re proposed LPL program. I am generally opposed to this program. I've no doubt that there are shortages in many areas of the law. Generally I believe that there is more the Bar can do to provide incentives and structure to both new and experienced attorneys to fill these gaps, versus creating a new program of uninsured paraprofessionals attempting to take the place of lawyers.</p> <p>I see problems with LPL acting in lieu of an attorney, including:</p> <p>No protection of clients against mistakes; most notably no insurance coverage requirement; No program of oversight for the paraprofessionals; A false sense of security by potential clients. And no where to turn for clients when things go wrong or they discover they need additional legal support.</p> <p>Most important, this process appears to have the Bar condoning and supporting the bifurcation of our legal system into halves and have-nots wherein the rich can afford fully licensed, experienced, insured and regulated legal practitioners and the have-nots get the paraprofessional. The Oregon State Bar needs to be advocating for all persons and not creating another Bar of paraprofessionals to attempt to meet the needs of the poor. Certainly we can do better than this.</p> <p>I've spent 1000s of hours volunteering on behalf of seniors and disabled. I've made it a point of pride to take on one difficult case involving the homeless or mentally ill each year. I know that the Bar can do more to support attorneys in these roles. Generally those of us who do this work, do it alone, without recognition or more importantly support. The Bar can do more.</p> <p>Thank you for your consideration.</p> <p>Dady Blake</p>
11/3/2021	Sara Yen	<p>Dear Committee Members:</p> <p>I strongly oppose creation of the paraprofessional license for landlord-tenant and family law practice. My reasons for opposition are many, but most can be summed up in the final paragraph in a letter submitted to your committee by attorney John Gear:</p> <p>The mission and emphasis by the Oregon State Bar should not be figuring out how to rationalize providing the poor with ersatz legal services, it should be on doing everything possible to reduce the cost and time required for people to become fully qualified attorneys so that we can meet the needs for competent legal help with an increased supply of those equipped to provide it.</p> <p>The committee proposal is a typical example of rightly identifying a problem, and coming up with the exact wrong solution.</p>
11/3/2021	Blaine Clooten	I disagree with Paraprofessional Licensing Implementation. This is a fundamental danger to consumer protection and will irreparably harm the legal profession. -Blaine Clooten. OSB 133294.
11/3/2021	Bear Wilner-Nugent	<p>This is not addressed at anyone in particular. But I will say that one of my general takeaways from this discussion is that it furnishes more evidence in support of a proposition I already considered fairly well established: that the majority of active posters on this listserv reflexively oppose any reform or change proposals at the statewide bar level, and are never more eager to unfurl the full force of their reasoning powers than in an effort to slow or stop innovation. And I imagine that many of the selfsame people consider themselves innovators with regard to, say, their use of digital law office technology. One of the real shortcomings of our profession is that so many of its members are so relentlessly hostile to experimentation.</p> <p>This whole discussion is really about economics more than it is about training or ethics. I wish more people were being intellectually honest about that. The chest-thumping and the obfuscation, all in favor of TRADITION!, are part of why this listserv is sometimes kind of a bummer for me to read. I can only hope that, in the fullness of time, new generations of lawyers will bring more openness to new ways of doing things.</p>

Date	Name	Comment
11/3/2021	Bob Casey	<p>From my vantage, I've watched bar-sponsored legislation that relaxed standards for wills, trusts, and probate. The result seems to be an increase in cases of estate planning that is badly-conceived or fraudulent.</p> <p>For example, recently I attended the deposition of someone with no professional training and whose education stopped at high school, who'd prepared transfer-on-death deeds for an elderly individual who'd been diagnosed with dementia for the preceding 13 years. She said she didn't know or consider...</p> <ul style="list-style-type: none"> - Legal standard for lack of capacity; - Legal standard for undue influence; - Possible effect on title insurance; - Possible effect on taxes; or - Restraint on ability to sell property after signatory's death. <p>It's a thing.</p> <p>There's a reason why licensed attorneys struggle over the hurdles to obtaining their professional license. It has to do with capable legal services for the public.</p> <p>Bob Casey, Atty. Portland, OR</p>
11/2/2021	Tina Stupasky	<p>Dear Paraprofessional Committee,</p> <p>I am writing today to express my deep concern about licensing paraprofessionals to practice law. An OSB endorsement of this proposal will give great credibility to the concept that one need not be a lawyer to practice law. It will result in the diminishment of the integrity and professionalism of the bar and of equal access to justice for all. Instead, we should continue to work on making sure all people who need a lawyer have a lawyer.</p> <p>The proposal is lacking in many ways. It requires no attorney supervision. It does not address diversity and inclusion. It does not prevent corporations from owning paraprofessional firms not licensed by the OSB. It does not require adequate malpractice insurance and, even if it did, the standard of practice will be lower making it more difficult for the client to recover in a malpractice claim. It will result in less equity. It does not address access to services issues. There will be less interest in making sure everyone who needs a lawyer has one. Those being represented by a paraprofessional will still not be represented by a lawyer who has ethical standards, and who has completed law school and passed the bar. They will not be on an even playing field in the courtroom, but will think they are somehow protected because the OSB has given the paraprofessional credibility by the mere fact that they allow them to practice law.</p> <p>We need to continue to work to make sure everyone who needs a lawyer, has one. Accepting anything less is failure.</p>
11/2/2021	Jan Kitchel	<p>Dear Committee,</p> <p>I am against any paraprofessional licensing. All paraprofessionals should work under the supervision of a licensed attorney. Law is too complicated and fraught with peril for people to give legal advice without their own connection to an attorney. The public will suffer, and attorneys will suffer. This would be a step back. Thank you.</p> <p>Best, Jan</p>

Date	Name	Comment
11/2/2021	Scott Staab	<p>Dear PLIC,</p> <p>As an individual that's practice as focused exclusively in FED defense work for the last decade and someone who cashes multiple checks from the PLF each year, I believe it is important to require these individuals that are being permitted to act as attorneys carry insurance equal to or superior to there fully licensed counterparts. The investment in a paralegal certificate and PLIC requirements pales in comparison to attending law school and the passing Bar exam and thus by nature they have much less vested in giving improper advice and the consequences that an eviction or judgment can have against those already vulnerable societies.</p> <p>Please feel free to contact me if you have any questions.</p> <p>Best regards, Scott</p>
11/2/2021	Krista Evans	<p>To whom it may concern:</p> <p>I just read the summary of the proposed program. I have been very concerned about this program since I first heard about it a couple of years back. My concerns are:</p> <ol style="list-style-type: none"> 1. Allowing paralegals to essentially practice law, unsupervised, at lower rates, significantly diminishes the value of Oregon lawyers' law degrees and admission to the Bar. Oregon attorneys don't need a lower priced source of competition, or a bargaining tool for potential clients who think we charge too much. 2. I don't practice family law, but I know it is very nuanced. Divorce and custody matters have lasting consequences on the parties. I believe permitting unlicensed individuals to assist clients with such matters, without the supervision or meaningful involvement of an attorney is a danger to the public. Attorneys spend four years in undergrad, three years in law school, and a couple of months studying for the bar exam before they can do many of the identified items without the assistance or supervision of an experienced attorney. I understand the goal is access to justice, but at what cost? Is it really justice if an unlicensed professional misses a big issue and one of the parties suffers severe adverse consequences? I know paraprofessionals will have some licensing requirements, however, it does not rise to the standards of a licensed attorney. 3. Does this program constitute the unlicensed practice of law? 4. Inflation is extremely high right now. Gas prices and food prices have gone up. Many companies and service providers are likely contemplating raising prices in response to the high prices of everything. Offering a low cost alternative to attorneys may very well take business from Oregon attorneys. 5. I don't practice family or landlord-tenant law. However, when might this program be expanded to include business law, estate planning and probate, or other practice areas? The competition among attorneys for clients is already there. Prepaid legal services, Legal Zoom, and Rocket Lawyer already undercut the pricing models of traditional law firms. I am very concerned that this program will further undercut the value of the law degrees and bar admission that we have spent so much time, money, and effort obtaining and maintaining. <p>Thank you.</p> <p>Best, Krista</p>

Date	Name	Comment
11/2/2021	Heather Brann	<p>Dear Committee,</p> <p>I'm highly opposed to this program.</p> <p>When mentoring young attorneys, I often quip that it costs \$30k per year to be a homeless attorney practicing out of your car. Apart from health insurance, PLF insurance is the largest single expense attorneys must have and rightly so. Many have advocated for higher mandatory limits on PLF to protect the general public.</p> <p>I don't see how this is anything other than simply advocating for lesser services, from less qualified people who are "driving uninsured" in the professional arena. You are considering creating an "Uber" to fix taxis.</p> <p>Isn't Uber great! It's cheaper, and more convenient! Until you find out that the workers are abused, lack the correct insurance, pressured into ever lower fees, aren't employees, don't get workers comp insurance, etc. etc. That \$1 savings is merely being stolen from other laws and safeguards in our society.</p> <p>By the same token, when an unsupervised paraprofessional gets sued for malpractice, what happens? A fly-by-night, non-lawyer firm has no assets and no insurance, and no obligation to be "backed" by a licensed Oregon attorney. Or perhaps they defense is—I'm not a REAL lawyer so I don't have to be competent! Giving the public the illusion of having a lawyer without any competence is like giving a placebo to a cancer patient. It only confuses and misleads the public, and opens the door to abuses of the disadvantaged. It will also open the door to similar schemes in other areas of law, since the public will be told that "sometimes you don't need a lawyer to be a lawyer."</p> <p>Attorneys can provide services at a lesser charge by using paralegals and legal professionals who are supervised by a fully licensed and insured attorney.</p> <p>Please scrap this idea and this ridiculous program.</p>
11/2/2021	Howard A. Newman	<p>Dear Agents of the Committee:</p> <p>Please register my opposition to the licensing program as envisioned currently. Though I will not directly be impacted by the program, it will, IMHO, negatively impact our profession. I will follow up at a later time with more specifics. However, from my time as a delegate (out of state) in the HOD, I know it is important to at least timely register a clear opinion one way or the other, which I do now. I am respectfully opposed.</p> <p>H</p>

Date	Name	Comment
11/2/2021	G Yoakum	<p>I am not necessarily opposed to this idea. There is clearly a demand for such services in certain areas that are bogging down our courts - family law and criminal law. Particularly with pro se litigants.</p> <p>If properly administered, this program might be a good thing. But that's also where I grow cautious - what does the oversight look like and who will pay for it? It may start out with glamour and glitter but eventually, I foresee watered-down regulatory oversight since it is a 'cheaper' way for non-lawyers to access revenue from legal work, which probably means they won't be chipping in as much for their own oversight. Limited budget means limited oversight.</p> <p>And if paralaawyers do not oversee themselves, who should pay? The state? Likely not. Licensed lawyers? That seems pretty unfair to those who actually committed to a course of study that takes discipline and a lot of patience to achieve. But 'fair' is not important. The result of our serious undertaking is it actually means something to those who achieve it. It has value, and therefore, most of us work to protect the integrity of our profession by our very conduct - whether we recognize it or not.</p> <p>One big advantage to the consumer using a licensed lawyer is that they have a forum for recourse in the event of malpractice. For us in actual practice, it's a dreadful, but necessary facet of law. And, because we (lawyers) pay substantial dues and insurance premiums to pay for self-regulation, there is some certainty that somebody that says they are a lawyer actually is entitled to practice law and appear in a tribunal. A quarrelsome lot by nature, the first thing we often do is check out our opposing party. Are they bona fide? Am I dealing with Gadfly or real Gravamen? Since the barriers to entry for a paralaawyer will necessarily be lower, the available recourse to the consumer will probably be limited.</p> <p>The presence of 'paralaawyers' and reduced rates for simple services is going to attract a lot of price-conscious consumers. Sometimes that is a good thing. But there are a lot of areas where that can be a very bad idea. For example - setting up a 'simple' Will appears to be easy. But after almost 30 years of practice, I know things can go quickly wrong if you miss something. Or if someone lies.</p> <p>If this program is introduced on a limited basis with a lot of oversight, study (and a hell of a lot of disclaimed liability to the consumer) then it might be worth trying out in some very narrow areas. On the other hand, a trusted friend practicing in Northern California has described the LA basin - which is heavily populated with paralaawyers - as a total unregulated mess where the judiciary is pretty much overwhelmed and lawyers have little reason to work collaboratively since they rarely cross paths twice.</p> <p>That would not be a place where I would want to spend much time. So, if you decide to try it out, be just as ready to toss it on the ash-heap.</p> <p>Grant Yoakum OSB #921600</p>

Date	Name	Comment
11/2/2021	Krista Evans	<p>Hello,</p> <p>I apologize for multiple emails, but wanted to share some additional thoughts regarding the proposed paraprofessional program.</p> <ol style="list-style-type: none"> 1. The summary indicated that all LPs must have 1500 hours of “substantive paralegal work”, including 500 hours of family law to represent family law clients, and 250 hours of landlord-tenant law to work on landlord-tenant cases. The minimum of 1500 hours could be accomplished in just seven months of full time employment. The thought that a paraprofessional with only seven months of law firm experience could represent clients alone in a huge matter like divorce or custody is very concerning. 2. Paralegals do not have experience (or significant experience) in researching, reading, analyzing, and synthesizing caselaw. How can anyone adequately represent a client in a family law proceeding without any knowledge or experience in legal research and Oregon caselaw ? 3. Law firms do not have uniform standards with respect to identifying employees as a paralegal versus a legal assistant. The firms I have worked at have very different standards for these separate roles. Some firms have significant overlap, where paralegals perform administrative tasks, and legal assistants perform some more substantive tasks that would constitute paralegal work. Because of the lack of uniform standards, one individual’s 1500 hours of paralegal experience will be vastly different than another individual’s 1500 hours of paralegal experience. 4. I know many attorneys are straddled with significant law school debt. The burden of this debt becomes even more significant if the value or even perceived value of our profession is diminished. The paraprofessional program will diminish the actual value and perceived value of our education and license to practice law. 5. The Oregon State Bar could do more to match prospective clients with modest means to new attorneys willing to take matters at lower rates. 6. When I previously heard about the paraprofessional program, the scope of what the LPs could do was much, much more narrow. 7. If a client uses an LP for a matter, and the LP makes significant mistakes, the client will spend more overall after he or she uses a licensed attorney to clean up the mistakes. Many mistakes or adverse consequences are permanent, and could not be fixed later by a licensed attorney. The risk to the public of receiving incorrect advice/counsel far outweighs the benefit to the public of lower cost legal services. 8. Under the proposed plan, how will unlicensed practice of law be prevented and identified if an LP goes beyond the scope of services they are licensed to perform? 9. I know that our Bar is self-governed by the Board of Governors. On significant issues affecting all attorneys such as this, all attorneys should have a meaningful opportunity to vote on and be heard on this matter. I first learned about the proposed program when I served on the Executive Committee of the Oregon New Lawyers Division several years ago. I did not hear about the program again until today through a listserve. Attorneys get hundreds of bar-related emails per month. It is easy to miss an email on an important topic such as the paraprofessional program. <p>Thank you for your consideration of my concerns.</p>
11/2/2021	Jennelle D. Gonzales	<p>I’m strongly opposed to the paraprofessional program because I think there’s a good chance disadvantaged minorities will be taken advantage of and fall through the cracks of our system.</p> <p>Most of my clients are low income Spanish speaking clients. Although, I don’t practice family law or landlord/tenant law, I think there should be greater protections in place for those who have had less of a formal education, those who don’t speak English, and those who need extra help understanding and accessing their rights. This paraprofessional program takes away one of the strongest protections in place: fear of disciplinary action by the bar. After working hard in law school, shelling out over a hundred thousand in tuition, and passing the bar exam, attorneys have a lot to lose if they mess up. Paraprofessional will have much less at stake and the chances for abuse increase.</p> <p>I can also easily imagine a situation where a paraprofessional puts pressure on their client to settle a case (even if it’s not in the client’s best interest), knowing they would be unable to litigate the case without the help of a real attorney.</p> <p>I urge the bar to reconsider this program. Licensed attorneys can hire paralegals to take on more cases and oversee their work. Licensing paralegals as attorneys is not the solution.</p>

Date	Name	Comment
11/2/2021	John Gear	<p>I write to strongly oppose the proposal to license paraprofessionals to undertake client representations in landlord-tenant and family law and to endorse all the points made by OTLA President Lara Johnson in her letter of 28 September. And I write as someone who is not happy with the status quo about conditions for under-represented people at all. But the maxim of “First do no harm” should control.</p> <p>Indeed, I was a member of the Alternative Pathways to Admission task force, which offered a proposal to reduce the cost and expand the pipeline of people who can become fully qualified attorneys by letting people who complete a rigorous clerking program sit the bar exam without attending law school. That is the approach that worked to train many of the greatest lawyers and judges in history up until the middle of the last century; that is the approach that needs to be revived and promoted, so that the kinds of people who want to provide affordable legal help to others can become fully licensed lawyers who can competently represent their clients—and who must carry liability coverage for when they fail to do so.</p> <p>Engineering technicians are not allowed to review and approve designs for bridges or buildings the way licensed engineers are. Pharmacy techs are not allowed to practice as pharmacists or counsel patients because what looks to the tech to be a routine prescription may be, to the qualified pharmacist, a fatal drug interaction event. While dental hygienists can, in some states, offer cleanings without a supervising dentist, the risk of a bad tooth cleaning is many orders of magnitude less than the life-changing risks that can easily arise from poor representation in the family law and landlord-tenant arenas.</p> <p>The mission and emphasis by the Oregon State Bar should not be figuring out how to rationalize providing the poor with ersatz legal services, it should be on doing everything possible to reduce the cost and time required for people to become fully qualified attorneys so that we can meet the needs for competent legal help with an increased supply of those equipped to provide it.</p>
11/2/2021	Susan Carter	<p>I just found out about this two days ago. I am not looking to decrease the access of very low to no income folks to services, but I believe that, at the very least, these issues need to be discussed among the populace of practicing attorneys as a whole, before the runaway train has crashed and burned. My colleagues have brought to light many issues I did not recognize before our round robin on the listserv. My own concerns are that those of us in the trenches, who actually represent lower income individuals on a regular basis, allowing for payment over time, reducing our fees, encouraging clients to perform some of the legwork themselves to lower costs and fees, have not been invited to the table in any form whatsoever. I do not believe many of these ideas are good, and I believe they will result in errors abounding, in clients being represented poorly, and in mistakes that can be ill afforded in family law, most of them surrounding children.</p> <p>I do not believe it is appropriate for the subcommittee to whom I addressed this email to provide any recommendations unless and until other family law attorneys have been involved in the process. Why was there never any outreach to the family law listserv? did the committee not think we could provide insight and offer ideas?</p>

Date	Name	Comment
11/2/2021	Michael McNichols	<p>To the Members of the Paraprofessional Licensing Implementation Committee:</p> <p>Please excuse the impersonal nature of my letter. I write it with sincerity and the hope and expectation that it will receive your full consideration. Please feel free to contact me should you desire any clarification of what I write below.</p> <p>I do have major concerns about the Proposed Oregon Legal Paraprofessional Licensing Program currently being considered (and formulated) by the Paraprofessional Licensing Implementation Committee. ("PLIC") My concerns about the proposed program arise from my 29 years of experience as an attorney in this state.</p> <p>I find it admirable that the bar's intent is to provide legal expertise to those who have historically been unable to afford access to these services Unfortunately, it appears to me that this could easily become one of those situation where bad consequences are born out of good intentions.</p> <p>On numerous occasions during my work as an attorney I have been approached by persons wanting me to review work that was already "substantially" completed but just need a final attorney review. I learned very early in my career that the potential risk in terms of potential malpractice exposure never justified accepting such engagements. I had to explain that the potential malpractice risk to me was the same irrespective of who else did the work that needed reviewing. That was a risk I was never willing to take.</p> <p>I also talked with clients who, although they had relied up what they thought was on competent advice provided by a non-attorney, often found them selves in legal quagmires because of that reliance and also because no attorney was willing to clean up the legal mess (with attendant legal liability) that had been created. In most every situation I encountered, the wronged consumer was in no position to be able to afford competent counsel to rectify the situation. They were also in no position to afford to seek legal remedies against the person who provided incompetent assistance. All of which leads to the question, will persons licensed under the proposed program be required to carry malpractice insurance?</p> <p>I am not aware of any minimum level of competence require by the Oregon State Bar to receive this license. Is there a qualifying exam? In order to become a real estate agent/broker in this state there is a comprehensive test to determine subject mastery. The same applies to Oregon notaries. And to Oregon nurses. And attorneys. Persons licensed under the Paraprofessional Licensing will be able to practice as a "standalone professional", evidently having no supervision whatsoever.</p>

Date	Name	Comment
		<p>It appears that the major winners in this situation will be the community colleges and for-profit colleges that implement programs awarding the certificate. Please let me know if I am misinformed but it appears to me that the OSB is relying on the community colleges and for-profit colleges to set the required level of competence. I am certain that members of this committee are aware of the problems that made headlines in recent years concerning for-profit institutions. The prior comments are not intended to denigrate the quality of education provided by the community colleges of this state which provide needed educational resources to non-traditional students. They are invaluable. However, I am aware of no other profession which allows its practitioners to engage in the profession without some type of competency examination or demonstration. Paraprofessional Licensing should be no exception.</p> <p>The stated goals of this program is assist those needing help with family law or landlord-tenant law. What will the Bar's position be when Paraprofessional Licensed practitioners seek to provide legal guidance beyond these two areas? Will this license be expanded to include business law, immigration law, estate planing or intellectual property? And if not, why not? The Bar's position is a slippery slope.</p> <p>One of the goals of this initiative is to serve the under represented members of the community. How will this goal be accomplished by the Paraprofessional Licensing program? In Oregon, notary fees are regulated by the state. Will the state also regulate how much Paraprofessional will be able to charge for there services? Is cultural sensitivity training a part of the Paraprofessional Licensing curriculum? Are there any stated procedures or benchmarks to determine how the program will successfully address this concern?</p> <p>I appreciate and I endorse OSB's aspiration to make access to competent legal service available to all Oregonians. The proposed Paraprofessional Licensing programs does not appear to be an solution to the problem. If anything this program has the potential to seriously harm those it seeks to assist.</p> <p>There is a need to address the stated problem. Granting the right to provide legal services to untested and minimally trained and minimal supervised practitioners is no solution. I do not see how this program can help those it is intended to help. Unfortunately, I do see significant negative consequences arising from this program.</p> <p>I appreciate the PLIC's consideration to my letter and my concerns about this committee's plan for licensed legal paraprofessionals in it's current form.</p> <p>Michael McNichols OSB #923956</p>

Date	Name	Comment
10/25/2021	Quinn Kuranz	<p>Dear Committee:</p> <p>I write to oppose implementation of an Oregon paraprofessional program. My practice is almost exclusively limited to representing people in claims for employment discrimination and unpaid wages. As such, I do not practice in an area that will be affected by the current proposed implementation of the paraprofessional program. However, I am a Spanish speaker and represent Spanish speaking members of our community. In representing Spanish speakers, I have seen people use what are referred to as “Notarios,” which are unlicensed individuals essentially doing what the bar is proposing with the paraprofessionals. The incidents I have encountered Notarios, the results have often resulted in a loss of rights to the individual or individuals who sought help in the first place. They are also often paying for the ‘privilege’ of having their rights and claims taken away through some form of malpractice. The bar’s proposal does nothing to prevent these Notarios from continuing their practice, and I believe that implementation of the paraprofessional programs will only provide cover to illegal notaries and paraprofessionals to act in a more open manner, alongside the bar’s proposal to have paraprofessionals engaged in representing individuals.</p> <p>I strongly urge the BOG, the HOD, and the Committee to stop what it is doing in this paraprofessional realm. Only attorneys, with legal training, insurance, oversight, ethical obligations, and understandings of the complexities of these situations should represent people in their legal affairs. This is more obviously and apparent when we are discussing individuals who are already living in the margins, about to be evicted, or are otherwise being taken advantage of. Implementing a situation that will simply monetize their claims, force them to pay, up front, fees and forms for that which they already do not have money to pay, will not increase access to justice for these people. It will merely compound the harm and financial ruin that they already face, and allow another person to take their money and kick them while they are already down.</p> <p>I write in strong opposition to this proposal, as this program will not provide a solution to the perception that people are unrepresented in landlord / tenant or family law matters.</p> <p>If we the bar truly wish to have an equal access to justice to those who cannot afford it, then we must seriously consider providing a constitutional right to counsel to tenants facing eviction in landlord/tenant proceedings as well as seriously support a true fee shifting bill that permits successful litigants the ability to recover and afford the legal services that they need. It appears that Washington State has already passed such a mandate, as have other cities and counties: http://civilrighttocounsel.org/major_developments.</p>
		<p>Further, this program will not accomplish the stated objective. Litigants will still be unrepresented in court, facing questions from a Judge or opposing counsel. They will not have someone in their corner, by their side, during what could be the most difficult and challenging part of the proceeding, at a trial or hearing. What this proposal does is merely gloss over, cover up, and give lip-service to justice, without actually providing justice to people. Other jurisdictions have tried this approach and it failed miserably. I do not understand this bar’s decisions to proceed like this in the face of overwhelming information that such programs will not achieve the desired goal of protecting individuals, who are often in some of the worst financial situations of their lives.</p> <p>I strongly oppose implementation of this program and urge you to vote not on its passage and stop all programs which will deny people true access to justice.</p> <p>Quinn E. Kuranz Attorney at Law</p>

Date	Name	Comment
10/22/2021	Sarah-Ray Rundle	<p data-bbox="443 172 905 188">Dear Paraprofessional Committee and Board of Governors,</p> <p data-bbox="443 225 1341 241">Below are my top concerns with the proposal for the Oregon Legal Paraprofessional Licensing Program that I read:</p> <ul data-bbox="443 279 1948 634" style="list-style-type: none"> <li data-bbox="443 279 1948 350">• Insurance. Attorneys in Oregon are required to have insurance to protect our clients. Paraprofessionals must also be required to have insurance for the same reasons that attorneys are required to be insured. Not requiring insurance is extremely troubling, given that paraprofessionals will have significantly less legal training than lawyers and will be representing clients in matters that could have catastrophic outcomes if the paraprofessional errs. In essence, the proposal would place consumers at greater risk for legal error without an insurance safeguard. <li data-bbox="443 381 1948 428">• Abuse reporting. No mention is made in the proposal about whether paraprofessionals will be mandatory reporters like attorneys are. This needs to be addressed because those working in family law may be more likely to encounter abuse and paraprofessionals should be required to report abuse. <li data-bbox="443 459 1948 531">• Education. Paraprofessionals must go through some kind of standardized certification process that includes education and a test for minimum competency even if they demonstrate substantial substantive experience in the field. Even notaries in Oregon are required to have standardized training. It is unconscionable to allow paraprofessionals to represent clients without being required to take training in legal ethics and abuse reporting and demonstrate that they understand how to understand the laws they will be working with. <li data-bbox="443 561 1948 634">• Continuing education. As the proposal currently stands, mandatory CLE requirements are a “potential” ongoing licensure requirement. Paraprofessionals must be required to complete continuing legal education. Having less formal training than attorney who are required to refresh on certain topics every few years, paraprofessionals should be required to complete as much, if not more, continuing legal education as attorneys.
		<p data-bbox="443 699 1948 873">Why are we focusing time and resources on figuring out how non-attorneys can practice law instead of focusing on expanding our legal aid programs to serve very low income Oregonians and on incentivizing innovative lawyers like Amanda Caffal to create firms to offer services to low income Oregonians? What if law school wasn't so expensive that lawyers have to charge ridiculous amounts of money to pay back their loans? What if PLF insurance was sliding scale so lawyers making less could pay less and pass those savings on to their clients? What if PLF and bar dues were lower for people whose hourly rate was below a certain dollar amount or performed some large number of pro bono hours per year? What if we had scholarship programs tied to working in legal aid in Oregon for a certain number of years? I can think of so many ways to expand legal services without licensing non-lawyers to practice law. But if we do license non-lawyers to practice law, they must be required to have insurance, report abuse, have standardized education, take a minimum competency test, and continuously refresh their legal education.</p> <p data-bbox="443 904 1948 1005">Also, please consider that The Limited License Legal Technician (LLLT) program in Washington was created in 2012 as an effort to respond to unmet legal needs of Washington residents who could not afford to hire a lawyer. Through this program, licensed legal technicians were able to provide narrow legal services to clients in certain family law matters. The program was an innovative attempt to increase access to legal services. However, after careful consideration of the overall costs of sustaining the program and the small number of interested individuals, a majority of the Washington Supreme Court determined that the LLLT program is not an effective way to meet these needs, and voted to sunset the program.</p> <p data-bbox="443 1008 1948 1079">Also, please consider how low income Oregonians will fare in their legal struggles when the other party is represented by an attorney. While I agree receiving some kind of help is better than proceeding pro se, I have witnessed people without a formal legal education assisting others in court and the results were similar to if the litigant had just proceeded pro se. I implore the board to focus its attention on expanding actual legal services to low income Oregonians.</p> <p data-bbox="443 1110 846 1127">Thank you for taking the time to read my concerns.</p> <p data-bbox="443 1157 520 1205">Sincerely, Sarah-Ray</p>

Date	Name	Comment
10/22/2021	Dona Marie Hippert	<p>Dear Paraprofessional Committee,</p> <p>I understand the committee is asking for comments on its proposed plan before delivering a final report to the Board of Governors in November. Could you please tell me what the deadline for comments is? Is the proposed plan the two page PowerPoint document found at https://paraprofessional.osbar.org/files/Proposed-Oregon-Legal-Paraprofessional-Licensing-Program-One-Pager.pdf, or is there something other than that?</p> <p>Many thanks! Dona</p>
10/22/2021	Jan Kitchel	<p>All,</p> <p>I think this would be disaster for clients, lawyers, and the entire legal system. There are plenty of lawyers to take care of any legal problem for any demographic sector. This will result in fraud, weirdness, and bad legal service. Please do not implement this plan. I understand Washington tried it and dropped it.</p> <p>Best, Jan</p>
10/22/2021	Brooks Cooper	<p>While I agree that access to justice, especially for lower income folks is a problem in our society, the problem is not solved by this proposal. It will be made worse. Without the fully panoply of protections for the public - RPCs, mandatory PLF, etc., the rights of lower income Oregonians will be in jeopardy.</p> <p>This problem can be solved by more robust funding of sources like Legal Aid by the society as a whole, not by a proposal such as this.</p>
9/27/2021	Kristina Allen	<p>The covanate of Oregon state, the ten camandments, the federal and state law of thus world. 1. Thal shalt not worship any strange gods before thy Lord's your God. 2 thal shalt not make unto you any graven images. 3 thal shalt not take thy Lord's your God's name in vain. 4. Thal shalt remember thy Lord's your God's sabbith day and keep it holy always. 5. Thal shalt honor thy father and thy mother always. 6. Thal shalt not kill. 7. Thal shalt not committ adultry. 8. Thal shalt not steal. 9. Thal shalt not bear false witness against thy NIEGHBORS. 1o.yhal shalt not want thy NIEGHBORS goods nor thy neighbors husband and wife. It's a felony to real thus covanate and is against the law not even lawyers are above these seals. Not to be broken. Sincerly, Federal police buissness.</p>
9/24/2021	April Hatcher	<p>Hello, my name is April Hatcher, Certified Paralegal. I recently became aware of the developing paraprofessional certification program for Oregon. I'm very excited about this and have been waiting a long time for this to come to light in Oregon. I intend to apply to become an Oregon licensed paraprofessional in the domestic relations specialty area as soon as it launches. I'm in the process of reviewing the materials posted on your webpage to learn more about what has been developed so far.</p> <p>Thank you for your hard work in developing this program!</p>
8/30/2021	Susan Tillitt	<p>Dear Paraprofessional Licensing Implementation Committee,</p> <p>I learned about your efforts to implement a paraprofessional license program while investigating my own landlord-tenant matter.</p> <p>In 2004, I received a paralegal certificate from the University of Washington. I attended the program on campus - I think this may have been before they offered an online program.</p> <p>Since then, I've been working in Intellectual Property management (5 years in private sector and 11 years at OSU), but have always held a place in my heart for affordable housing issues. When living in Seattle, I volunteered for nearly 2 years with the Washington Low Income Housing Network (June 1998 - February 2000 - right in the midst of the dot com boom and bust in Seattle).</p> <p>If there is any more information you can provide to me about the status of the licensing program, I would very much appreciate it. Also, if my letter of interest can be useful for the committee's efforts, please feel free to include this in your records.</p> <p>Thank you, Susan Tillitt</p>

Date	Name	Comment
8/12/2021	Donna Lee	<p>In response to your invitation for feedback, I oppose the proposed Oregon legal paraprofessional licensing program. Based on my training, experience practicing law, and experience working with paralegals, the level of competency required to carry out the legal assistance proposed could not be met by any one of the “multiple pathways” under consideration.</p> <p>Thank you.</p>
8/12/2021	Brian Williams	<p>Dear Committee:</p> <p>I received the attached description of the proposed paralegal licensing program through an email to the OADC membership and write to voice my concerns.</p> <p>I’ve been an attorney in Oregon since 1996, mostly handling civil litigation, and have served on a number of committees and boards over the years. My work experience does not include family law. I do have experience with landlord-tenant disputes and have taken and defended probably thousands of depositions and have tried dozens of cases. My work experience also includes defending lawyers in Oregon through the OSB PLF, which gives me more insight than most into the harm bad lawyers can cause.</p> <p>In Oregon, unlike in many other states, all lawyers are required to carry malpractice insurance. Lawyers do sometimes make honest mistakes, and a few make dishonest mistakes. Regardless of how the error occurs, legal malpractice can leave clients devastated. When someone undertakes to represent another in a legal matter, it sets up a situation where the client can be victimized. I did not see any discussion in the attached about whether malpractice insurance would be mandatory, and if so, how that would be handled. That is a huge issue. If the paraprofessional license is created, it is certain that there will be malpractice claims. What is the plan for that? Will the paralegal malpractice insurance premiums go into the same PLF risk pool as lawyers? I hope not! Similarly, what will the ethics rules be, and how will that be policed and enforced? Realtors can represent both buyers and sellers in transactions. Will paraprofessionals be allowed to represent both spouses in a divorce? I imagine the Committee has been talking about these issues. My understanding is that there is a plan to present this to the Supreme Court for approval, but the attached flyer has no discussion of these very important issues. Nobody should support this without a fuller explanation.</p> <p>The above issues are administrative in nature and are presumably things that can be addressed and solved. The bigger concern is that we already have a program that licenses people to represent others in conflicts in and out of courts. That has traditionally been reserved to lawyers, who can delegate much of that work to supervised staff. Representing clients is a tough job. It requires a significant understanding of a lot more than a narrow substantive area like family law. For example, how is someone supposed to advise clients on depositions if they don’t know the rules of evidence and have never tried a case to develop actual knowledge of how bad answers or a poor demeanor play out? Advising clients, preparing pleadings, assisting clients in trial, assisting clients in settlement decisions, interpreting opinion letters and orders, etc. all falls squarely within the job description of lawyers. It takes years to train an associate sufficient to allow an attorney to represent clients without supervision by a more experienced lawyer.</p>

Date	Name	Comment
		<p>Allowing paralegals, who do not have the benefit of the depth of academic training and are unsupervised, to go “into the trenches” to represent clients with only several weeks to several months of work experience in the designated field is a recipe for disaster. My opinion is that this falls into the category of a well-intentioned, bad idea.</p> <p>I will also share my anecdotal experience of hiring a number of new paralegals over the years. The stuff they learn in paralegal school is of little or no benefit when they come to work in our civil litigation practice. The education does not prepare them for the work (a criticism that I recognize can also be made of law school).</p> <p>Please appreciate these comments in the spirit in which they are intended. I get that access to justice is a problem. My opinion isn’t driven by a knee-jerk protectionist sentiment that the work of lawyers needs to be protected from competition. This program would have zero impact on my practice other than potentially having to deal with paralegals as opposing counsel, which I can imagine might sometimes be similar to dealing with some pro se litigants. The desire to improve access to justice through lower cost paraprofessionals does not justify allowing unqualified, unprepared people to represent clients. It lowers the admission threshold below the “minimum competency” standard for lawyers to be admitted and sets the stage for a lot of unintended harm to clients. It is a terrible idea in my view. There is no shortage of lawyers.</p> <p>Feel free to call or email if you would like further comment or discussion.</p> <p>Very Truly Yours,</p> <p>Brian B. Williams Hitt Hiller Monfils Williams LLP</p>
8/11/2021	Aryn Seiler	<p>This is a terrible idea for several reasons. Attorneys study long and hard, and sit for tortuous exams that test whether or not they can responsibly and professionally represent clients in legal matters large and small. Unless all of that was meaningless, and a waste of money, it does not make sense to allow people who have not proved themselves through those rigors to represent people in legal matters.</p> <p>The list of services outlined in the proposed program are first and second year attorney tasks. Those are baby lawyer tasks that a new associate or a clerk performs because they are relatively low risk and mistakes can be corrected. Why would you give that valuable beginner’s work to a non-attorney?</p> <p>The decision to expand paraprofessional services will water down the field, make it hard for new attorneys to get any real experience, and likely result in a lot of paraprofessional legal malpractice claims.</p> <p>This is a very bad idea and I don’t and won’t support it.</p>
8/9/2021	Kristina Allen	<p>The 10 commandments. Thus is the laws of the Federal and state laws of Oregon state. 1.thal shalt not worship any strange gods before thy lords your God. 2. Thal shalt not make unto you any graven images. 3. Thal shalt not take thy Lords your Gods name in vain. 4. Remember thy lords your Gods sabbith day and to keep it holy always. 5. Honor thy father and thy mother always. 6. Thal shalt not kill. 7.thal shalt not committ adultry. 8.thal shalt not steal. 9. Thal shalt not bear false witness against thy nieghbors. 10.thal shalt not want thy nieghbors goods nor thy nieghbors husband nor wife. Nobody is before or even above theses seals to thus covanate, not even layers, paralegals,case workers, or even so called law makers. Breaking these laws would be an violation to thus covanate and would be breaking the laws of this world, they would be convicting a crime and should be arrested rite away. Thank you most kindly, and have a great day! Sincerely,. Federal Police Business, Ms.Allen.</p>
7/26/2021	Susan Herzog	<p>I am a licensed California lawyer but now a resident of Oregon. I am currently on voluntary inactive status in California, but worked actively as a family law attorney for 25 years.</p> <p>Since there is currently no reciprocity among California and Oregon, until such time as I can take the Oregon bar exam, I’m interested in learning more about work options as a paraprofessional. Please provide me with information on my potential eligibility for work in the capacity as a family law paraprofessional. Thank you.</p> <p>Sincerely, Susan Chapkis-Herzog</p>

Date	Name	Comment
5/14/2021	Sam Johnson	<p>Hello, I was asked to give some input as a stakeholder currently doing evictions for landlords in Oregon. I am interested in getting a paraprofessional license when it becomes available. I see this as an opportunity for me to expand my services and continue to provide cost effective, efficient evictions for landlords.</p> <p>A little bit about my background, I graduated from University of Oregon with a Bachelor of Science. My father started a business assisting landlords with low cost non-attorney evictions in 1997. In 2006, I took over as the primary manager of the business. In addition, I became a licensed property manager in 2015 and my current portfolio is 105 units. Over the past 15 years, I have managed over 30,000 FED filings on behalf of landlords and have become an expert in what needs to happen to set up a strong case and how to navigate the court process.</p> <p>I read the draft requirements and I think you should consider another pathway to getting the paraprofessional licensing for people who have not been working for an attorney, but have considerable experience. In my case, it appears I meet all the requirements outlined, except I have never worked in a law office. Your current requirements would exclude someone like me because I do not have the 1500 hours working under an attorney. I have had an experienced landlord/tenant attorney on retainer for the last 14 years who has spent a considerable amount of time explaining processes and giving advice to educate me on specifics that allow me to competently assist my clients with this process at a high level. I would argue that I know more about landlord/tenant law than many attorneys that only dabble in that area of law. There are certainly several expert attorneys that specialize in this field and they are needed for cases that are complicated. The reality is that the vast majority of FED's filed are fairly cut and dry over non-payment issues and an attorney is not really necessary. I believe that my experience is relevant to the mission at hand, which is to provide the public competent and reliable legal services.</p> <p>In closing, I think that there are a small group of individuals in the state that have never worked in a law office, but have in depth knowledge in specific areas of law and could be great paraprofessionals. With the current proposed paths to a paraprofessional license we would be left with an insurmountable gap to meet your base requirements. I suggest that you give a path to people like me that have spent their career helping the public with this process. My suggestion is to allow people to submit a signed letter of recommendation from an attorney that knows their ability and can attest to their competence in lieu of the 1500 hour requirement.</p> <p>Thank you for the chance to be part of this process and I hope you find my input valuable. If you have any questions or would like more info from me please feel free to reach out!</p> <p>Regards, Sam Johnson</p>

Date	Name	Comment
5/8/2021	Nicole Danford	<p>Good Day,</p> <p>Thank you for establishing this new job opportunity/track for non-lawyers. I suppose more questions will evolve over time, but for now I wanted to know if someone could clarify the following:</p> <p>What will be the legal "status" of the paraprofessional relative to lawyers? Will they be perceived/seen as subordinate or "lower ranking" within the legal field and court system?</p> <p>What degree, certificate, job experience would be necessary?</p> <p>Will these types of cases have less of a priority versus cases handled by lawyers?</p> <p>If cases need legal representation, how would the committee establish the transition from the paraprofessional to a lawyer? (mitigating the potential risk of cases getting backed-up, neglected, etc?)</p> <p>I understand part of the paraprofessional's job duty would also require "emotional support." This requirement may create "a hybrid" type of job (increasing stakes) rather than a specialization. Could the committee consider implementing separate counseling and or therapeutic services for clients' emotional support instead? Or train a certain group of paraprofessionals in counseling/therapy?</p> <p>I very much appreciate your answers as this role seems like a great way to help service communities who are perhaps unable to afford legal representation. It would be great to be part of an efficient and streamlined field of work which functions as a long-term solution.</p> <p>With Regards, Nicole D.</p>
4/21/2021	Sheila Blackford	<p>Hello,</p> <p>Many lawyers facing retirement would be interested in providing these kinds of limited services for reduced fee IF they didn't have to pay for PLF coverage that is too costly to justify participating under these limited services at reduced fee parameters. Thus, many lawyer choose to leave the practice of law to obtain income from another source during retirement. Their legal experience, knowledge, and skills would be especially valuable in this.</p> <p>The ProBono Status Membership is a wonderful idea but lawyers are needing some source of income.</p> <p>I hope you will consider this idea.</p> <p>Sincerely,</p> <p>Sheila M. Blackford PLF Practice Attorney</p>

Date	Name	Comment
4/20/2021	Kim Tardie	<p>Good morning...</p> <p>I have been a legal assistant for 28 years, working in family law for 28 years and criminal defense 13 years, and I am going to graduate in June earning my AAS in Paralegal Studies. Crystal Sullivan, my advisor, is on the OSB Licensed Paraprofessional Committee and told me about the new program you are working on. I have been reading and following your planning etc. and was just wondering if there is a way to either join the committee or be provided some of the information to keep up on as you all work through the dynamics of creating this program. I am very interested in becoming a Licensed Paraprofessional especially as it would fit into my future plans when I decide to retire early and hopefully create a little business for myself helping family law clients maneuver through the divorce process and the judicial process.</p> <p>I already work full time for an attorney and as I said, I graduate in June, so I'm not ready to jump into anything until after I graduate since my plate is pretty full, but I definitely would be interested in either being in the loop or even engaged in some way while the discussions and planning are going on with the committee. I feel since I have an extensive amount of legal experience from an assistant/paralegal standpoint, and have helped many people, i.e., friends and family members, file their own divorces, I might have some good insight.</p> <p>Thank you so much for your time. Have a great day.</p>



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Portland, Oregon 97232
503-241-0818

February 9, 2022

Via email only to:
paraprofessionalcommittee@osbar.org

RE: Paraprofessional Licensing Program

Dear Members of the Board of Governors and the PLIC,

Thank you for the opportunity to provide public comment on this proposal at the November 20th BOG meeting. I am reaching out to provide suggestions on limiting the scope of work paraprofessionals should be licensed to perform in dissolution of marriage cases. I am also including a written copy of the testimony given at the November 20th meeting.

Supplemental Commentary: Limitations on the Scope of Work to be Performed by Paraprofessionals

The division of property in divorce cases often requires knowledge of many different areas of law. The assets to be divided in a divorce could include intellectual property, business interests, promissory notes, family trusts, inheritances, investment portfolios, stock options and/or restricted stock units, personal injury settlements, appreciation in value of separately held assets, biological material such as frozen embryos set aside for assisted reproduction, defined benefit plans, defined contribution plans—the list goes on. Division of these types of assets correctly requires some knowledge and understanding of the law related to each type of asset, such as estate planning, property, contract, intellectual property, personal injury, ERISA, etc. If either party in a divorce is insolvent, federal bankruptcy law might come into play. Frequently, the division of assets creates significant tax consequences to the parties which must be considered prior to trial or settlement. The training requirements proposed for a paraprofessional to provide legal advice in family law cases does not adequately cover these areas, nor should it be expected to in a two-year associate degree program.

I am concerned by the prospect of paraprofessionals drafting stipulated judgments (rather than merely helping parties understand and fill out court-provided forms) without attorney supervision because they are both binding legal contracts and enforceable court orders. Paraprofessionals may lack the skills and training required to reduce complex agreements to enforceable stipulated agreements. Drafting errors could plague clients for years to come and be extremely costly and time consuming to repair. For example, in spousal support cases, special consideration must be given to the wording of the findings and orders to avoid unintended consequences when either party moves to modify or terminate the support in the future. Unlike child support, there is no one-size fits all formula for determining spousal support, and spousal support is typically more difficult to modify than child support.

The Oregon State Bar should not hold licensed paraprofessionals out to the public as competent to handle these issues if the training and experience required to obtain licensure does not cover them. Rather than expanding the training, I am suggesting limiting the scope of work paraprofessionals could be licensed to perform to include only those areas in they will be trained through the licensing program. There are a variety of ways to do this. One would be to create a list of assets designated as complex, and a requirement that the licensed paraprofessional refer clients to an attorney when those assets are a part of the marital estate. Another would be to put limitations on the value of the marital estates on which paraprofessionals are licensed to provide advice, decreasing the likelihood that these more complicated assets will be involved.

ORS 107.485 is a statute allowing parties to file for summary dissolution of marriage without the need for a hearing on the merits in certain straightforward cases. The legislature determined that cases involving minor children, marriages of ten years or more, *real property, debts of \$15,000 or more, and/or personal property valued at \$30,000 or more* are too complicated to qualify for the summary dissolution process. The financial benchmarks in this statute could be incorporated into the scope of work for which paraprofessionals could be licensed in family law cases. Limitations on the size of the marital estate would alleviate concerns around the complexities of dividing certain

If the Bar does not restrict these complex issues from the scope of cases licensed paraprofessionals are allowed to handle, members of the public are likely to infer that they are just as qualified to assist on complex cases as they are on the cases this proposal intends them to handle (e.g., those in which the parties might not otherwise have representation). The program should have more safeguards in place than simply assuming licensed paraprofessionals will recognize when a case is beyond their experience and training and choose not to accept it.

Testimony given at the Board of Governor's Meeting, November 20, 2021

I am a collaborative attorney and mediator who has been practicing family law in Oregon for ten years. I am the past president of the Oregon Association of Collaborative Professionals. I currently serve on the Executive Committee of the Alternate Dispute Resolution Section of the OSB, and as cochair of the OTLA Family Law Section. I am not speaking on behalf of any of those organizations.

Licensing paraprofessionals to represent clients would create a dramatic change in how legal services are delivered in Oregon. Such a major change should not be implemented without engaging the sections of the Bar that will be most impacted, and the plan should not move forward until that engagement has occurred.

Providing accessible legal resources to underserved Oregonians is an admirable goal, but there are other places the Bar could focus its resources to provide a greater impact.

More and more, family law litigants are choosing to be pro se not because they cannot afford attorneys, but because they are opting out of the adversarial dispute resolution model offered by the court system. They are choosing not to hire attorneys because they are fearful of finding themselves embroiled in costly, time consuming and stressful litigation. There is a need for access to affordable alternative dispute resolution options within family law. At present, free or low cost mediation services are available through the county courts, but only to resolve issues related to child custody and parenting time. Expanding those programs to allow litigants to mediate property division and spousal support issues

would provide a tangible benefit to pro se litigants and help keep those cases off the courts' already overworked dockets.

Pro se litigants are already going to the self-help counters of their local courthouse for help filling out paperwork. The services available to low-income litigants through the courts should be expanded.

Law firms should be encouraged to allow their staff paralegals to deliver services directly to low-income clients in certain straightforward cases, allowing paralegals to advise pro se litigants within the safety net of a firm with immediate access to an attorney when needed.

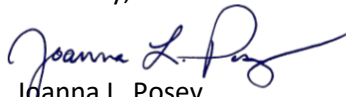
As a family law practitioner, the scope of the areas in which a paraprofessional could deliver legal advice under the current proposal is too broad, and the standards for licensing are too lax. At a minimum, there should be an admittance exam that tests whether the paraprofessional understands the boundaries within which they are permitted to practice, what to do when approached by a client who has issues beyond those boundaries, and how to inform potential clients about the limitations of their practice so that they can make an informed choice.

Looking at the admissions framework recommendations, a paralegal would only need 500 hours of experience working in the family law to become licensed paraprofessional in family law (in addition to 1,000 hours of substantive paralegal experience in any practice area). That is the equivalent of just over three months of full-time work at a family law firm, and it is simply not enough time for a paralegal to gain the knowledge and skill required to evaluate the scope of potential family law representation, let alone to provide effective legal advice. Family law paralegals typically do not get experience attending depositions or attending trials when working within law firms, yet this proposal would have them attending depositions and court hearings.

In divorce cases, the division of property is final, meaning it is difficult and often impossible to correct if a mistake is made during the initial divorce proceeding. The risk of mistake and malpractice when dealing with the disposition of the family home, retirement accounts, business interests, stock options, or RSUs is real and the dollar amounts are significant. Spousal support is another complex and technical area that is extremely impactful to the parties and can have lifelong ramifications if done incorrectly. These concerns could be addressed with caps on the total value of the marital estate or the incomes of the parties in cases paraprofessionals could handle.

I urge the BOG to postpone implementation of the paraprofessional program until there has been an opportunity for meaningful engagement with stakeholders, including the family law and landlord tenant sections of the Bar.

Sincerely,


Joanna L. Posey

SENT VIA EMAIL to paraprofessionalcommittee@osbar.org

February 11, 2022

Oregon State Bar
Attn: Susan Grabe, Chief Communications and Public Affairs Officer
16037 SW Upper Boones Ferry Road
P.O. Box 231935
Tigard, OR 97281-1935

RE: Public Comment on OSB's Paralegal Licensing Proposal

Dear Ms. Grabe,

The Women's Justice Project at Oregon Justice Resource Center is writing to comment on the Oregon State Bar's proposal to allow the Bar to license paralegals to provide limited legal services in family law and landlord-tenant cases. First, we generally support this proposal as it appears to be a valuable step towards narrowing the access-to-justice gap among Oregonians who cannot afford traditional legal services. However, we also submit this comment to highlight our concerns as pertains to a population that is often overlooked: those who are incarcerated in Oregon's prisons. Our primary concern is that the proposal is unlikely to meaningfully increase access to civil legal services for incarcerated persons. Further, the proposal may actually exacerbate the existing disparities and barriers faced by incarcerated persons who need civil legal assistance. We therefore ask the Oregon State Bar to consider targeted modifications to the proposal to address these concerns.

About Oregon Justice Resource Center and the Women's Justice Project

The Oregon Justice Resource Center ("OJRC") was founded in 2011. Our goal is to promote civil rights and improve legal representation for underserved communities, including people living in poverty and people of color. We work in collaboration with like-minded organizations to maximize our reach to serve these underrepresented populations, to train future public interest lawyers, and to educate our community on issues related to civil rights and civil liberties. We approach our work through a model of integrative, client-centered advocacy that includes direct legal services, public awareness and education campaigns, strategic partnerships, and coordinating our legal advocacy to promote criminal justice reform. Through our projects (Civil Rights Project, Oregon Innocence Project, Youth Justice Project, Women's Justice Project, and others), OJRC provides direct legal services to clients incarcerated in jails and prisons throughout the state of Oregon.

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The OJRC's Women's Justice Project ("WJP"), founded in 2015, is uniquely positioned to understand the civil legal needs of incarcerated individuals. WJP is the first and only program in Oregon to exclusively address issues related to women intersecting with the criminal legal system. The WJP provides civil legal assistance to people incarcerated in Coffee Creek Correctional Facility ("CCCF"), Oregon's only women's prison. They help clients identify non-criminal legal issues that are or might become barriers to successful reentry into the community, and work with clients to resolve their legal issues and address potential roadblocks before they are released. Family law and landlord-tenant issues are common areas of concern for WJP clients.

Why We Support the Paralegal Licensing Program

We recognize that many Oregonians are unable to access assistance with legal matters that may have tremendous consequences for their lives. These legal problems can impact the person's ability to access housing, maintain income, or receive adequate healthcare. Those unable to obtain legal assistance rarely experience their legal problems in isolation, as the negative consequences typically fall on the entire household. Further, we understand that our state's failure to provide access to legal services is even greater in historically marginalized communities, who have a disproportionately large number of legal problems. Expanding the available options for legal representation is especially important for underserved populations in our state, including persons of color, people with low incomes, and people living in rural areas.

Why Access to Legal Assistance During Incarceration is Important

Our work with incarcerated persons is founded in the understanding that almost everyone incarcerated in Oregon will return to our communities one day. Upon releasing from prison, individuals face numerous barriers to successful reentry. Many of these challenges are the result of civil legal matters that could have been addressed effectively if the incarcerated person did not have to wait until release to do so. Of course, not addressing legal issues promptly can make the problems more complicated, burdensome, or cause irreversible consequences. Unfortunately, legal assistance is extraordinarily difficult to access from prison. This makes it more difficult to successfully reintegrate into the wider community and makes recidivism more likely. Many people cycle through our criminal legal system more than once, caught in a cycle of poverty, marginalization, crime, and incarceration. Our communities thus pay a high price for our unwillingness to invest in legal services that can help people before they are released and increase their likelihood of successful reentry.

There are many civil legal issues affecting incarcerated people, ranging from debt to driver license suspension to landlord-tenant issues. To illustrate how an incarcerated person could benefit from legal assistance in landlord-tenant matters, consider the impact of eviction

records. Many landlords will screen out tenants who have been evicted. Incarcerated people often struggle with limited housing options upon release due not only to their criminal records, but records of evictions, many of which may be eligible for expungement. Access to a legal professional who can help with expungement of eviction records can make a tremendous difference in clearing the person's path to finding housing.

WJP clients receive assistance with a variety of civil legal issues, but help with family matters is the most common request. Of particular concern is ensuring that healthy parent-child relationships are maintained during incarceration. We have observed that it is very common for incarcerated mothers to be prevented from contacting their children by the other parent or caregiver, even when the mother's parental rights have not been terminated. This dynamic is particularly pernicious where the other parent is a domestic abuser of the mother, which is sadly very common. Clients often do not understand what their rights are or how to enforce them. Existing parenting time orders often do not address the mother's incarceration and contain no provisions specifying how contact is to proceed between an incarcerated mother and her child. Thus, having access to legal advice and assistance can make the difference between whether a mother and child will lose all contact for years, causing irreversible harm to that relationship, or whether that relationship will be preserved during the incarceration.

The beneficial effects of consistent and positive communication between incarcerated parents and their children is demonstrated by social science research. As of 2017, there were more than 70,000 children in Oregon who have an incarcerated parent, and of those 70,000 children, approximately half are under the age of ten.¹ Many things may influence a child's ability to cope with parental incarceration, such as family dynamics, available supports, degree of trauma for the child and caregivers, and details of the crime and/or incarceration. Studies have shown that maintaining contact between incarcerated parents and their child—with visits conducted in supportive, safe, and child-friendly environments—is likely to be the best option to mitigate the harmful effects of parental incarceration on families.² At the WJP, we have observed time and again the important role that access to legal assistance plays in ensuring these bonds are not severed by incarceration.

Incarcerated Persons Face Unique Barriers to Access to Justice

Given that it is already difficult to navigate the legal system without an attorney, being incarcerated creates further barriers. Even finding basic information about one's legal matter can

¹ Sarah Bardol, *Oregon's Bill of Rights for Children of Incarcerated Parents: A Step in the Right Direction*, 97 Or. L. Rev. 255, 255 (2019), available at https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/24374/OLR97%281%29_Bardol_FNL.pdf?sequence=1&isAllowed=y.

² Lindsey Cramer, Margaret Godd, Bryce Peterson, and Heather Sandstrom, *Parent-Child Visiting Practices in Prisons and Jails: A Synthesis of Research and Practice*, Washington, DC: Urban Institute (2017).

be very difficult from prison. While a prison facility may have a law library, access to the library and resources within the library can be limited. For example, prison staff and library coordinators regulate when and how an inmate is allowed access to the law library based on available staffing and operational needs. There is no opportunity for incarcerated people to browse the internet for helpful advice, or to call the local courthouse to speak to a court clerk. This commonly results in incarcerated individuals being unable to access what few legal resources are available in a timely manner.

While the Oregon Administrative Rules require Oregon Department of Corrections (“ODOC”) to make available “legal research materials” and “legal forms,”³ these materials are often outdated or contain incorrect statements of law. Indeed, the materials available in a prison law library often pale in comparison to the publicly accessible Self-Help Forms Center available on the Oregon Judicial Department’s website.⁴ Further, most laypersons, including incarcerated persons, usually do not know what forms are appropriate to their situation. Even when the correct form is used, people have no option except to fill them out as best they can without legal advice. This can result in people unwittingly harming their interests in court proceedings and/or the court rejecting their pleadings.

Additionally, incarcerated persons have a significantly reduced ability to contact court staff or court clerks, as they have limited access to telephones, and even less access to email and the internet. Usually, contacting the court by mail is the only option. Compared with e-filing documents, or making a quick phone call to ask a question, the mail is a slow method of communication. Prison mail processing systems can add days to the time it takes for a person’s item of mail to actually leave the facility. It can take several weeks for a person’s mail to be received and filed by the court. This can result in delays and/or missed deadlines. People are often left wondering whether the court received their mail, but do not have any way to find out other than to send more mail.

Being incarcerated also makes it more difficult to appear in court. For example, the policy at CCCF, the women’s prison, is that incarcerated persons may appear in person or by video for criminal case hearings, but not for civil cases. Appearances for civil matters must be done over the phone. This restriction can diminish the person’s ability to advocate for themselves effectively before a judge. Further, there can be significant logistical hurdles to arranging court appearances by telephone. Court staff are sometimes unwilling or do not know the procedure to contact the prison to facilitate the appearance. At times, particularly early in court proceedings, courts will assume that an individual’s failure to appear is willful, not realizing the person is incarcerated and does not have the ability to let the court know their whereabouts. Access to

³ See OAR 291-139-0130

⁴ Oregon Judicial Department, Forms Center, <https://www.courts.oregon.gov/forms/pages/default.aspx>.

telephones for court appearances can also be affected by scheduling errors by court staff or ODOC staff, lack of scheduling availability in the facility areas used for these calls, or emergencies like facility lockdowns or staff shortages.

One example in particular illustrates the unique difficulties faced by incarcerated individuals in accessing Oregon courts. Every individual incarcerated in an Oregon prison is assigned a State Identification Number (“SID” number). Incoming mail must contain the person’s SID number, or it will not be delivered.⁵ Something as simple as the court failing to include the SID number on an envelope can result in the person failing to receive a piece of mail that may be critical to a successful outcome in their legal matter. Others never receive copies of judgments in their cases and are left without a clear understanding of the outcome.

These barriers to accessing the courts are compounded by the financial realities facing a person in prison. Without financial assistance from friends or family outside of the prison walls, the vast majority of incarcerated persons lack the financial means to seek legal representation. They also often lack sufficient funds to pay for mailing documents to the courts, filing fees, civil process fees, and other costs associated with litigation. Incarcerated individuals generally earn between \$8 to \$82 a month for their prison work. From these earnings, up to 15% can be automatically deducted—5% for the general victim’s assistance compensation fund, 5% for the individuals transitional savings fund (up until that account contains \$500), and the remaining amount to pay court fines and fees (this deduction can be either 5% or 10%, depending on if the individual has exceeded \$500 in their transitional fund). This generally leaves a monthly balance of \$7.20 to \$73.80 from which the person must pay for certain basic needs.

Necessary purchases can quickly deplete the entirety of one’s monthly earnings. Those with any money in their accounts are required to purchase their own hygiene products, including soap, washcloths, shampoo, toothbrushes, toothpaste, etc. These items are not priced at a reduced rate, and “basic” hygiene needs can easily cost about \$20 a month. Incarcerated people also purchase other essential items each month such as paper, lotion, underwear, cough drops, vitamins, contact solution, and instant coffee. They pay for products necessary for managing health issues, such as back braces, wraps for joints, extra pillows, shoe lifts, and eyeglasses. Monthly earnings can also be quickly depleted due to the substantial expense of phone calls and mail. One 30-minute phone call costs \$2.70; three 30-minute phone calls per week would cost \$32.40 per month. One 28-minute video visit costs \$5.88. Ten envelopes with postage, one blue pen, and one pad of writing paper costs a total of \$7.96.

⁵ Oregon Department of Corrections, Sending a Letter, <https://www.oregon.gov/doc/contact-inmate/Pages/letters.aspx>.

Given these financial realities, even lower cost options for legal help, such as the Oregon State Bar Modest Means program, are still out of reach for most incarcerated persons. Similarly, as explained below, the option of licensed paralegals is not likely to ameliorate the access-to-justice problems that incarcerated people face.

Why the Current Paralegal Licensing Proposal is Unlikely to Improve Access to Legal Services for Most Incarcerated Persons

While the proposed Paralegal Licensing Program will expand access to available legal assistance, it is not likely to do so for the incarcerated population. First, while the program will increase the amount of lower-cost legal services for Oregonians, most incarcerated persons will remain unable to afford the services of a licensed paralegal. Presumably, licensed paralegals will offer their services at lower cost than most attorneys, but the financial barrier will still be insurmountable for most incarcerated persons. As discussed above, incarcerated Oregonians earn between \$8 and \$82 a month for their prison work, most of which is either automatically deducted or quickly depleted to pay for basic necessities or communication expenses. Without the financial assistance of outside friends or family, paying for the legal assistance of a licensed paralegal will be an impossibility.

Second, the traditional legal aid and nonprofit organizations that might hire licensed paralegals to expand their capacity do not offer services to incarcerated persons. As far as we are aware, WJP is the only program throughout the state of Oregon whose primary objective is providing civil legal representation to incarcerated clients. Other organizations may provide civil legal assistance to incarcerated clients from time to time, but it is not a committed approach.

Finally, the proposal has the potential to further disadvantage incarcerated persons in family law cases. When one parent is incarcerated, there is a clear power imbalance between that individual and the non-incarcerated parent. The non-incarcerated parent has access to legal assistance and to the family courts in a way that is simply unavailable to the incarcerated parent. This power imbalance is a particular problem when the incarcerated parent has been a victim of domestic abuse. Abusive ex-partners on the outside will often use the legal system as a means to manipulate or exercise control over the incarcerated parent, especially since the abuser has greater access to legal help by virtue of not being incarcerated.

At present, it is very common in family law cases involving an incarcerated parent that both parties are self-represented. However, the Paralegal Licensing Program makes it more likely that the non-incarcerated parent will be able to obtain legal assistance, while the incarcerated parent will still be left with no choice but to represent themselves. This means that the proposal will unintentionally exacerbate the power imbalance in these cases, and create greater potential for domestic abusers to use the legal system to their benefit. Incarcerated parents can expect

worse outcomes in their family court cases if the non-incarcerated parent has the assistance of a licensed paralegal.

Character and Fitness Standards Can Disproportionately Impact Marginalized Communities and Discourage Applications from Those with Criminal Histories

Finally, we would like to express our concern regarding how the proposed standards for assessing an applicant's character and fitness will impact those with criminal histories. Currently, the proposal recommends that "LPs meet the same character and fitness requirements that currently apply to lawyers" (Recommendation # 3(2)). The proposal further describes the standard for "Potentially Ineligible Individuals or Conduct" (Recommendation #8), "Factors Considered for Present Character" (Recommendation # 9), and "Rehabilitation/Character Reformation" (Recommendation # 10). "Existing procedures for evaluating character and fitness of applicants for a lawyer license would be used to evaluate the character and fitness of applicants for the paraprofessional license." (Organizational Structure, Pg. 28).

Unreasonable character and fitness standards further exacerbate the problem of improving access to legal services for incarcerated persons. Those with criminal convictions may wish to apply for the licensed paralegal program after completion of their sentence, and may be far more willing to provide low-cost or free legal services to those people who are currently incarcerated. Unfortunately, the character and fitness requirement will likely discourage persons with criminal histories from applying, and will likely exclude many applicants who do apply.

Character and fitness considerations should be narrowly tailored to avoid over-emphasizing an individual's prior criminal history, particularly given what we know about how marginalized communities and communities of color are disproportionately impacted by the criminal legal system. Context is important when reviewing someone's criminal history—and often the criminal conviction itself fails to accurately represent the seriousness of the person's conduct. Facts as articulated in a police report can be incomplete or inaccurate, but are frequently assumed to be a full and complete accounting of the individual's criminal behavior. Character and fitness considerations should balance and weigh the facts contained in law enforcement accounts with any competing information provided by the applicant.

It is also important to consider that persons from marginalized communities are afforded substantially less opportunities to demonstrate reform and rehabilitation. For someone with abundant financial resources, it may be much easier to pay restitution and court fines, access drug treatment or self-improvement programs, or have the available free time to participate in community service. It is extremely harmful to assume that an individual has not demonstrated reform merely because that person could not afford to pay restitution, or because they have struggled to access programming due to limited financial circumstances. Ultimately, it is

important that we not hold those with a criminal history to an idealized or biased standard of what it means to be “rehabilitated.”

For these reasons, it is critical that the persons empowered to make character and fitness decisions regarding the licensing of paralegals have an intimate knowledge of the criminal legal system and the inequities contained within it. The decision-makers in character and fitness determinations should include those who have worked as criminal defense attorneys, legal aid practitioners, or others in the legal community that understand the barriers facing those from marginalized communities and the disproportionate impact of our criminal legal system on communities of color. It is additionally important that the character and fitness process be transparent, so that applicants are aware of the basis behind the decisions to approve or reject someone’s application. Promoting transparency in this process will help ensure fairer and more just outcomes, and will encourage applications from those who might otherwise be discouraged from applying.

Recommendations

We respectfully request that the Oregon State Bar consider the information provided in this letter as it works to finalize the Paralegal Licensing Proposal to be submitted to the Oregon Supreme Court. We further encourage the Oregon State Bar to support and advocate for incarcerated individuals to have greater access to legal assistance on civil legal matters outside of the Paralegal Licensing Program.

Below are a list of recommendations that the Oregon State Bar could explore further for the purpose of modifying the proposal to better serve incarcerated persons. This list is not exhaustive, and we encourage you to think broadly about any and all recommendations that would improve access to legal services for incarcerated persons. For example:

- Create financial incentives for licensed paralegals and attorneys to provide pro bono legal assistance to incarcerated clients, such as reduced annual dues or reduced CLE registration fees;
- Establish an aspirational pro bono standard for licensed paralegals that mirrors the aspirational pro bono standard for licensed attorneys. As is the case for licensed attorneys in Oregon,⁶ permit qualified pro bono hours to be converted to MCLE credit requirements for renewal of licensed paralegal endorsements. Consider changes to the aspirational pro bono standard that encourages licensed paralegals and attorneys to work with incarcerated clients;

⁶ See MCLE Rule 5.11(b) and Regulation 5.300(b)

- Support and encourage broader advocacy for incarcerated persons to have greater access to legal assistance in civil legal cases (such as state funding for legal aid services offered in jails and prisons);
- Consider targeted changes to the character and fitness standards for licensed paralegals that would expand the ability of formerly incarcerated persons or persons with criminal convictions to successfully apply to become licensed paralegals;
- Provide CLE Access to currently incarcerated Oregonians who desire to apply for the licensed paralegal program upon release or during their term of incarceration.

Conclusion

Thank you for the opportunity to express our support for the Oregon State Bar's Paralegal Licensing Proposal. Once again, we urge the Oregon State Bar to consider incarcerated Oregonians when determining how to best implement this proposal. We believe that increasing access to available legal assistance for those in prison comports with the overarching goals of the proposal—to reduce the access-to-justice gap and ensure fairness and just outcomes for all Oregonians in our courts.

Sincerely,



Alexander Coven
WJP Staff Attorney



Sarah Bieri
WJP Staff Attorney

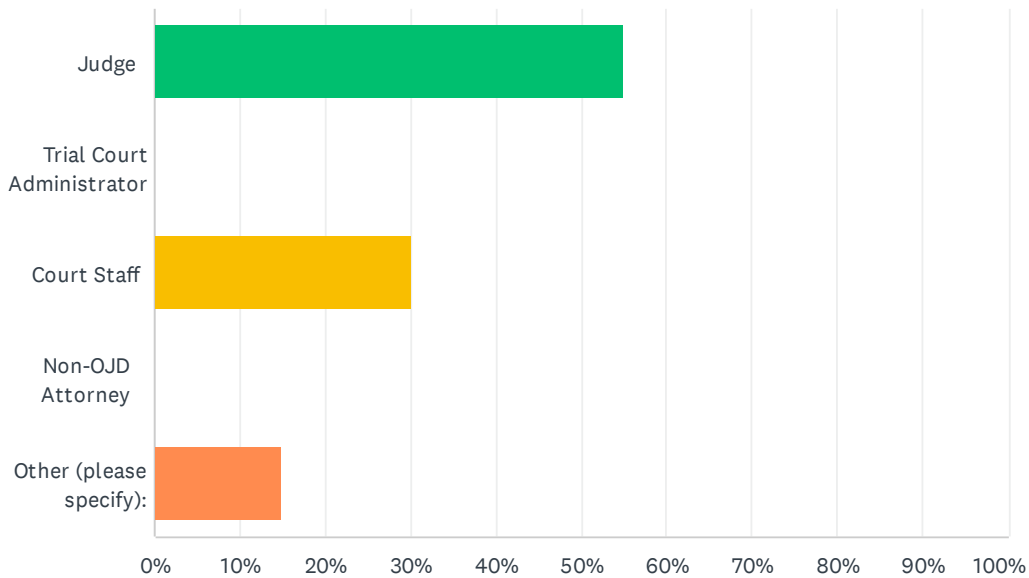


Julia Yoshimoto
WJP Director

Cc: Kellie Baumann, Public Affairs Administrative Assistant
Matt Shields, Public Affairs Staff Attorney

Q1 Are you a:

Answered: 20 Skipped: 0

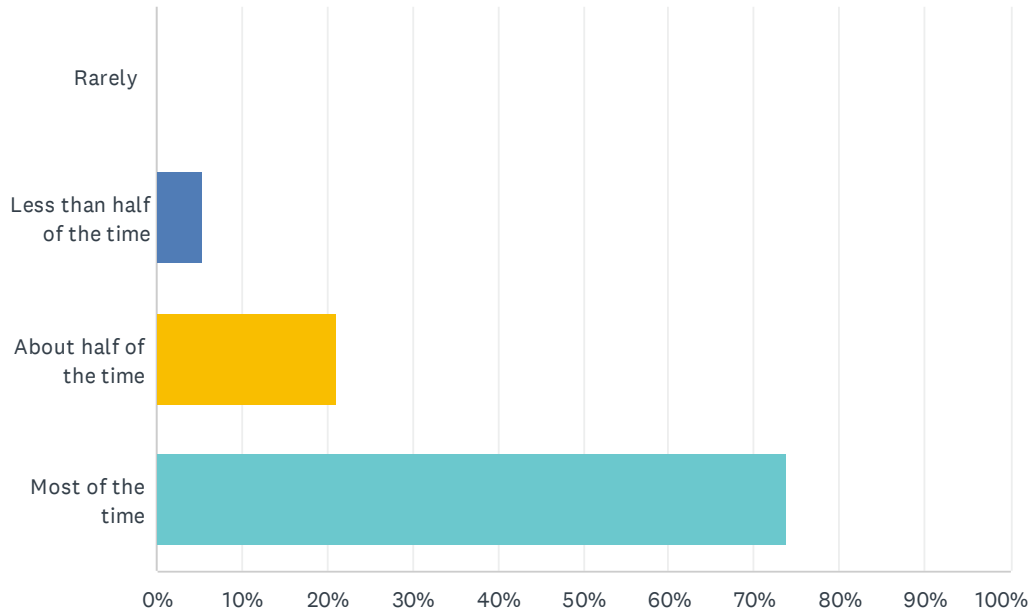


ANSWER CHOICES	RESPONSES	
Judge	55.00%	11
Trial Court Administrator	0.00%	0
Court Staff	30.00%	6
Non-OJD Attorney	0.00%	0
Other (please specify):	15.00%	3
TOTAL		20

#	OTHER (PLEASE SPECIFY):	DATE
1	Senior Judge	11/16/2021 11:30 AM
2	Family Law Facilitator	11/15/2021 10:19 AM
3	Court Supervisor	11/15/2021 8:11 AM

Q2 In your courthouse, how frequently do one or more parties appear in court without an attorney in family law cases?

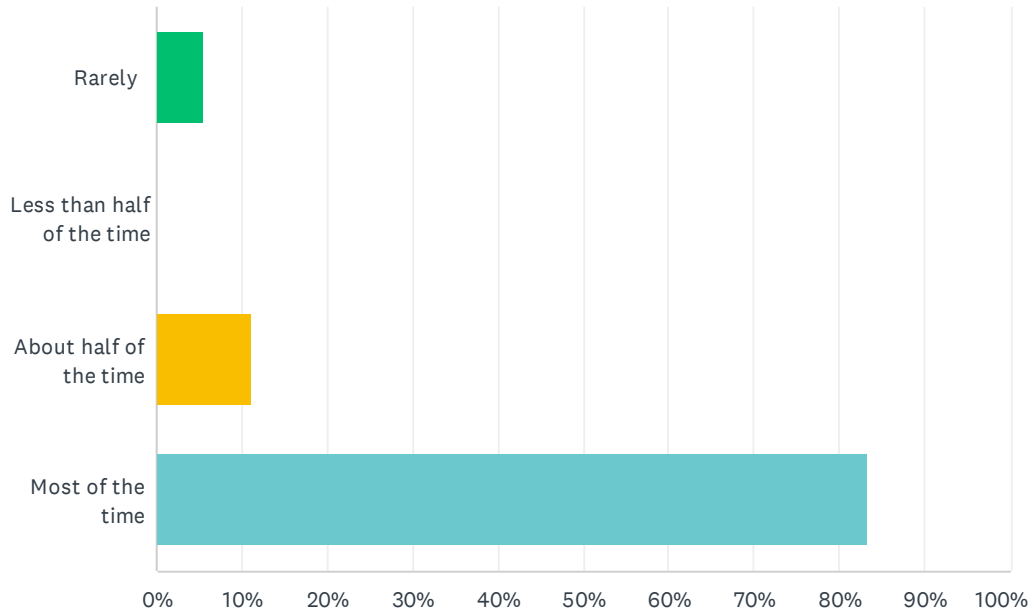
Answered: 19 Skipped: 1



ANSWER CHOICES	RESPONSES	
Rarely	0.00%	0
Less than half of the time	5.26%	1
About half of the time	21.05%	4
Most of the time	73.68%	14
TOTAL		19

Q3 In your courthouse, how frequently do one or more parties appear in court without an attorney in landlord/tenant cases?

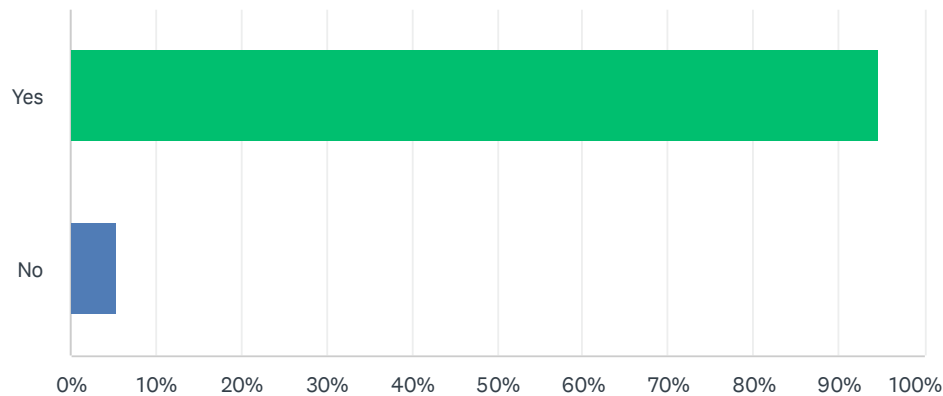
Answered: 18 Skipped: 2



ANSWER CHOICES	RESPONSES	
Rarely	5.56%	1
Less than half of the time	0.00%	0
About half of the time	11.11%	2
Most of the time	83.33%	15
TOTAL		18

Q4 In your experience, would unrepresented parties in your courthouse benefit from consulting with a non-lawyer licensed paralegal prior to appearing in court?

Answered: 19 Skipped: 1



ANSWER CHOICES	RESPONSES	
Yes	94.74%	18
No	5.26%	1
TOTAL		19

#	COMMENTS:	DATE
1	Courts lack enough facilitators to meet demand and offering a similar resource for procedural assistance and form preparation will improve access to justice. I cannot speak to LT demand because I do not handle those cases but expanding facilitation services to this arena, while a priority, is extremely difficult when facilitation services in family law are still not adequate.	11/16/2021 11:32 AM
2	Court facilitators are awesome, but we cannot advocate or help them formulate a strategy.	11/16/2021 10:06 AM
3	Particularly with form review for completeness.	11/15/2021 10:21 AM
4	this would help them prepare for court assisting on presenting exhibits and witnesses. this would be beneficial for both the court and the party.	11/15/2021 9:27 AM

Q5 What education or experience do you think a licensed paralegal should have before providing services to clients when not under the supervision of an attorney? (For example, additional education, mentorship, reporting requirements, CLE requirements, etc.)

Answered: 15 Skipped: 5

#	RESPONSES	DATE
1	Family law and Landlord tenant training, CLE, including ethics, access to justice, and Abuse reporting, mentoring	11/17/2021 2:40 PM
2	I believe that it depends on the complexity of the matter and that the OSB would need to set very specific guidelines/rules. CLE requirements, and either experience or additional education, seem like minimum requirements to insure the public is protected.	11/16/2021 3:19 PM
3	Domestic violence training, child abuse/elder abuse training, understanding of various dispute resolution options, understanding of where there is a line that they are no longer able to help, in terms of skill and knowledge	11/16/2021 1:12 PM
4	Aside from specifics such as procedural justice, domestic violence, racial/ethnic diversity, ableism, mental health, etc., think the overall educational/practice requirements proposed are adequate preparation but I believe that licensed paraprofessionals should provide to and maintain for OSB an attorney-documented mentor relationship, not to supervise the para's work (that attorney should not be liable for the para's work) but to offer an existing lifeline in the uncommon situation in which the licensed paraprofessional desires attorney input.	11/16/2021 11:43 AM
5	Additional studies for these case types.	11/16/2021 10:14 AM
6	Specialized education in the field. Both procedural and substantive. Perhaps limiting them to Informal Domestic Relation Trials (and making IDRT the default parties must opt out of).	11/16/2021 10:13 AM
7	Education in order to know the basics about family law cases -- the various stages of a family law case in court, what forms to fill out, etc.	11/16/2021 9:50 AM
8	Paralegal certification, education and experience in area (Family or LL/T) working	11/16/2021 9:49 AM
9	Successful completion of a rigorous paralegal program licensed or approved by the Oregon state bar, a minimum of 15 hours a year of continuing education, a process for discipline (including up to loss of loss of license) for misconduct paid for by fees paid by the paralegals.	11/16/2021 8:30 AM
10	supervised by an attorney	11/15/2021 11:34 AM
11	Ongoing legal training on updated forms, court practices, domestic violence, trauma informed interactions, and understanding the scope of services to not be giving actual legal advice but more facilitating completing materials and preparing for hearings.	11/15/2021 10:26 AM
12	Paralegal certificate or associates in Legal Administration and/or equivalent # of hours working in family law or landlord tenant cases in a legal or court setting. Also additional classes to supplement knowledge of all topics within these case types.	11/15/2021 8:14 AM
13	Traditional coursework, mentorship, certification examination, state licensing, CLE.	11/15/2021 6:37 AM
14	I was heartened to see the 1500 hour experience requirement with at least 500 in family law. I hope some of that includes cherry picking court hearings to observe and/or court dockets to observe.	11/14/2021 3:13 PM
15	Unknown	11/12/2021 2:31 PM

Q6 Is there any information you believe the court should have before making a decision?

Answered: 13 Skipped: 7

#	RESPONSES	DATE
1	I believe that the huge number of unrepresented litigants makes this a necessity.	11/16/2021 3:19 PM
2	I'm just reflecting on whether this will make a difference for low-income Oregonians, if it is set up so that the paralegals have to have insurance, IOLTA etc. Will it make it too hard for marginalized Oregonians to excel and find work in this new field? What about the court have a program for assigning paralegal via a consortium? Thinking of Mult Co.s lawyers for children program. Folks just need help, sometimes basic help, sometimes its a mess and everyone needs attorneys. I'm excited that we can chip away at the sheer number of folks navigating the system without understanding, but super concerned about those of us with the least resources, and visualizing that they are already priced out of the option for help.	11/16/2021 1:12 PM
3	I'm not sure what this question means since information varies by type of issue before the Court. Obviously, facts sufficient to rule are needed.	11/16/2021 11:43 AM
4	All information is useful.	11/16/2021 10:14 AM
5	Not sure I understand this question.	11/16/2021 10:13 AM
6	This approach would be very helpful.	11/16/2021 9:50 AM
7	The more the better	11/16/2021 9:49 AM
8	Licensing paralegals is a good step and will improve access to justice. The percentage of persons appearing as self represented parties is, however, regularly misstated. A great percentage of cases in which one or more parties are self represented are cases in which there is never an appearance in a courtroom. These are mostly stipulated matters, and at other times matters arising from default. This misstatement occurs with regards to all types of cases, but is especially true with respect to family law cases.	11/16/2021 8:30 AM
9	with the population increasing this also brings lots of family problems whether its physical or mental abuse we see it becoming more of a problem in our community. on a daily basis we see people who are scared to file anything with the court because the other party (or friends/relatives of the other party) threaten them or harass them. threats like calling INS or threats to hurt them, threats to get them fired form a job. also at times we see people file a restraining order then the respondent request a hearing on the order the petitioner is to scared to prepare correctly for the hearing and at times the orders get dismissed due to lack of preparation and lack of legal assistance. There is lots of children being abused and/or neglected because of the lack of free or affordable legal resources at times the parent allows it to continue thinking they can not do anything about it due to the repercussions of the other party. there is also a high number of people needing assistance with third party custody, example of this could be an aunt/uncle or grandparent trying to get custody or trying to intervene into a case maybe because both the biological parents are in bad situations the court does not provide assistance with this. These types of situations can be very crucial especially now a days with mental health being up at an alarming rate the same with the drug use.	11/15/2021 2:37 PM
10	With the development of family law policy and practices at OJD that focuses on providing access to justice in family law matters to self represented litigants the courts have been flooded with litigants who, because they do not seek legal advice prior to filing, no longer have a "gatekeeper" regarding legally sound claims and complete and accuratel legal filings. Any support that can be made available to these folks, will presumably ease the burdens on the courts and make court processes more efficient because information is available at a reasonable cost. I do not believe that paralegals should be permitted to participate in court proceedings on behalf of clients.	11/15/2021 10:26 AM
11	I'm not sure I understand this question. Before I make a decision to what? To allow the P to participate in the case? If they meet licensure requirements, I don't know on what authority I	11/14/2021 3:13 PM

Paralegal Licensing Survey - Judges and Courts

could excluder her/him. . .

12	This would be a great help to the people in our community that can not afford legal representation	11/12/2021 4:17 PM
13	Only attorneys should provide this kind of information	11/12/2021 2:31 PM

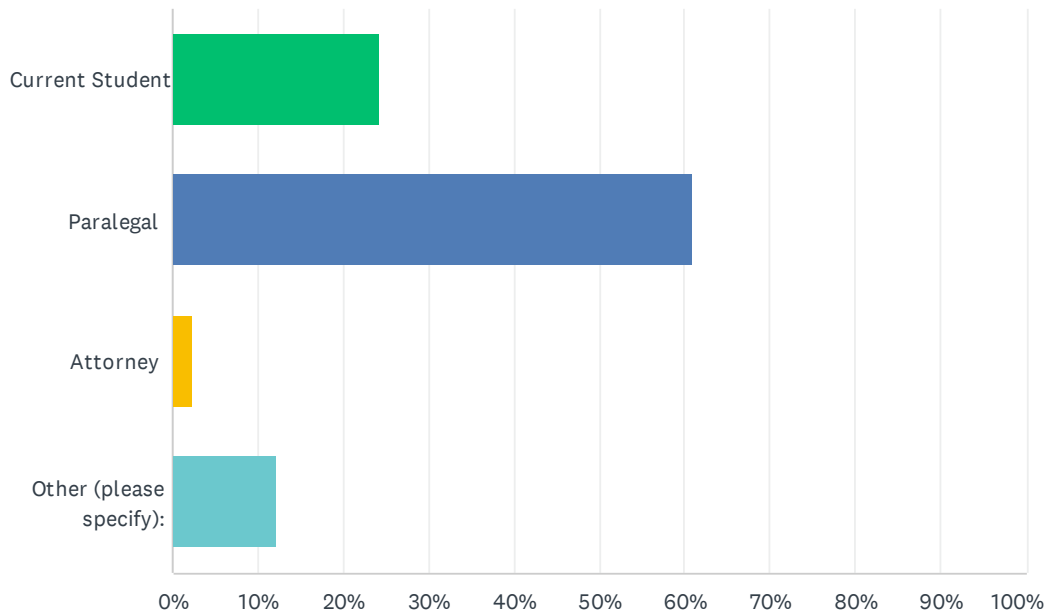
Q7 What county are you located in?

Answered: 18 Skipped: 2

#	RESPONSES	DATE
1	Deschutes	11/17/2021 2:40 PM
2	Multnomah	11/16/2021 3:19 PM
3	Multnomah	11/16/2021 1:12 PM
4	I served in Multnomah County but 2 1/2 years into Plan B service, I go where assigned, remotely or otherwise.	11/16/2021 11:43 AM
5	Jackson	11/16/2021 10:14 AM
6	Jackson	11/16/2021 10:13 AM
7	Clackamas	11/16/2021 9:50 AM
8	Clackamas	11/16/2021 9:49 AM
9	Multnomah.	11/16/2021 8:30 AM
10	Washington	11/15/2021 2:37 PM
11	lane	11/15/2021 11:34 AM
12	Lane	11/15/2021 10:26 AM
13	Deschutes	11/15/2021 9:55 AM
14	Marion	11/15/2021 8:14 AM
15	Clackamas.	11/15/2021 6:37 AM
16	Multnomah	11/14/2021 3:13 PM
17	Washington	11/12/2021 4:17 PM
18	Josephine	11/12/2021 2:31 PM

Q1 Are you a:

Answered: 254 Skipped: 0



ANSWER CHOICES	RESPONSES	
Current Student	24.41%	62
Paralegal	61.02%	155
Attorney	2.36%	6
Other (please specify):	12.20%	31
TOTAL		254

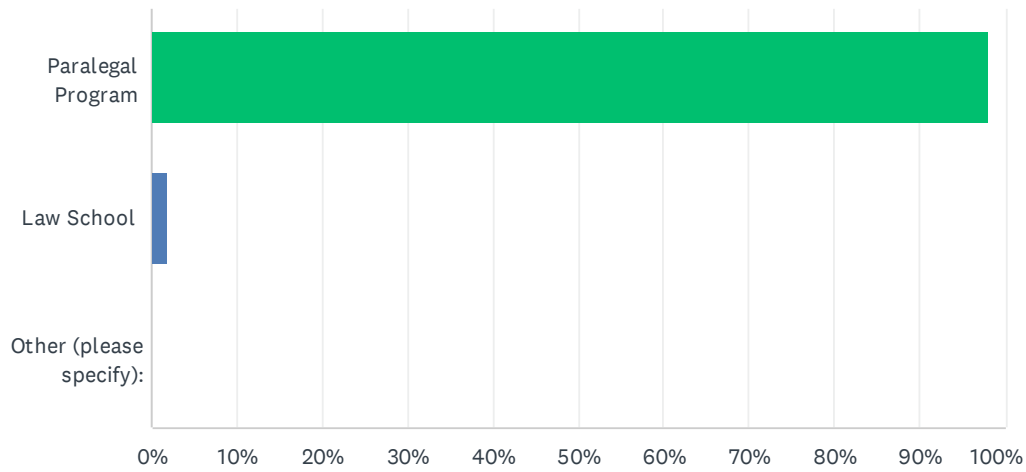
#	OTHER (PLEASE SPECIFY):	DATE
1	Escalated Complaint Specialist (financial services)	11/9/2021 3:53 PM
2	Retired Paralegal	11/8/2021 8:42 PM
3	Working as an accessibility aide at Portland Community College	11/8/2021 12:44 PM
4	currently in management - prior to that a paralegal for 20 plus years	11/8/2021 12:38 PM
5	Advisor for PL Program at PCC	11/8/2021 12:34 PM
6	Litigation Support Professional	11/8/2021 12:12 PM
7	Student in another program	11/6/2021 12:57 PM
8	Paralegal graduate not working in field	11/5/2021 8:07 PM
9	Project Assistant	11/5/2021 5:22 PM
10	Current paralegal and paralegal student	11/1/2021 9:42 AM
11	former student, graduated from PCC ABA program	10/29/2021 10:33 PM

Paralegal Licensing Survey

12	Legal assistant	10/29/2021 3:51 PM
13	Current student and legal assistant	10/28/2021 10:37 PM
14	Alumni from paralegal program at PCC	10/28/2021 10:20 PM
15	Alumni	10/28/2021 8:49 PM
16	Completed the program but do not work in the field	10/28/2021 7:48 PM
17	STAHM (paralegal program graduate)	10/28/2021 7:16 PM
18	Legal assistant	10/28/2021 6:59 PM
19	Former student	10/28/2021 6:42 PM
20	Court Clerk	10/28/2021 6:39 PM
21	Legal Assistant	10/28/2021 6:13 PM
22	Veterans service officer with paralegal degree	10/28/2021 5:52 PM
23	I have a paralegal degree, but I am working under another field and I am interested in getting back into the paralegal field	10/28/2021 5:37 PM
24	Have paralegal associates degree, work in government	10/28/2021 5:20 PM
25	Current paralegal student	10/28/2021 5:11 PM
26	I graduated from the paralegal program but have not worked as one.	10/28/2021 4:44 PM
27	Project Assistant	10/28/2021 3:58 PM
28	paralegal graduate	10/28/2021 3:54 PM
29	Circuit Court staff	10/28/2021 3:41 PM
30	Legal assistant	10/28/2021 3:40 PM
31	Legal operations coordinator	10/28/2021 3:34 PM

Q2 What type of program are you enrolled in?

Answered: 54 Skipped: 200



ANSWER CHOICES		RESPONSES
Paralegal Program		98.15% 53
Law School		1.85% 1
Other (please specify):		0.00% 0
TOTAL		54

#	OTHER (PLEASE SPECIFY):	DATE
	There are no responses.	

Q3 What school are you currently attending?

Answered: 54 Skipped: 200

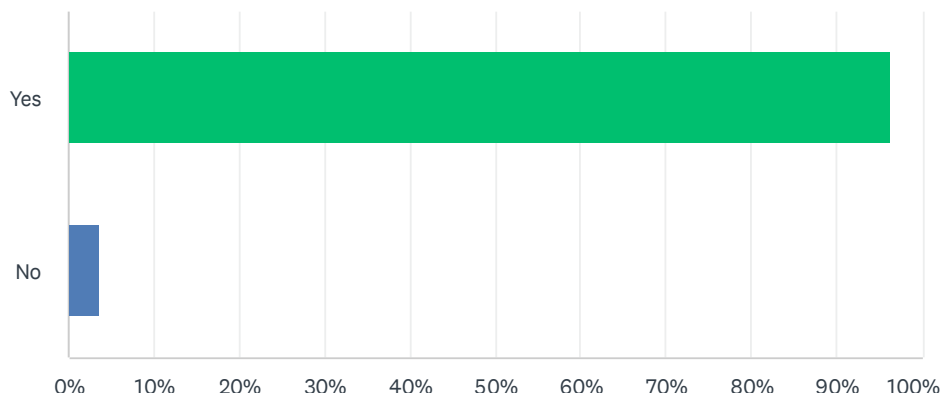
#	RESPONSES	DATE
1	Portland Community College	11/7/2021 1:15 PM
2	Portland Community College	11/4/2021 7:57 PM
3	Portland Community College	11/3/2021 1:07 PM
4	Portland Community College	11/2/2021 10:24 PM
5	Portland Community College	11/2/2021 3:03 PM
6	Portland Community College	11/1/2021 6:23 PM
7	Portland Community College	11/1/2021 12:12 PM
8	Portland Community College	10/31/2021 10:45 PM
9	Portland Community College	10/31/2021 10:02 PM
10	PCC	10/31/2021 10:42 AM
11	Portland Community College	10/31/2021 12:14 AM
12	Portland Community College	10/30/2021 9:17 PM
13	Portland Community College	10/30/2021 2:21 PM
14	PCC	10/30/2021 1:43 PM
15	Portland Community College	10/30/2021 1:24 PM
16	Portland Community College	10/30/2021 11:36 AM
17	Portland Community College	10/30/2021 8:31 AM
18	Portland Community College	10/30/2021 7:21 AM
19	Portland community college	10/29/2021 3:49 PM
20	PCC	10/29/2021 3:36 PM
21	PCC	10/29/2021 3:28 PM
22	Portland Community College	10/29/2021 10:54 AM
23	Portland Community College Paralegal Program	10/29/2021 10:11 AM
24	Portland Community College	10/29/2021 9:45 AM
25	Portland State University	10/29/2021 1:08 AM
26	Portland Community College	10/28/2021 10:22 PM
27	Portland Community College	10/28/2021 9:13 PM
28	Portland Community College	10/28/2021 9:12 PM
29	Portland Community College	10/28/2021 9:08 PM
30	PCC	10/28/2021 8:41 PM
31	Portland Community College	10/28/2021 7:13 PM
32	Portland Community College	10/28/2021 6:24 PM
33	Portland Community College	10/28/2021 5:59 PM

Paralegal Licensing Survey

34	Portland Community College	10/28/2021 5:56 PM
35	Portland Community College	10/28/2021 5:31 PM
36	Portland Community College	10/28/2021 5:20 PM
37	PCC	10/28/2021 4:54 PM
38	I also hold additional degrees, BA and MA	10/28/2021 4:54 PM
39	Portland Community College	10/28/2021 4:49 PM
40	Portland Community College	10/28/2021 4:19 PM
41	Portland Community College	10/28/2021 4:18 PM
42	Portland Community College	10/28/2021 4:16 PM
43	PCC	10/28/2021 4:04 PM
44	PCC	10/28/2021 4:03 PM
45	PCC	10/28/2021 3:47 PM
46	Portland Community College	10/28/2021 3:47 PM
47	Portland Community College	10/28/2021 3:41 PM
48	Portland Community College	10/28/2021 3:38 PM
49	Portland Community College	10/28/2021 3:36 PM
50	Portland Community College	10/28/2021 3:35 PM
51	Portland Community College	10/28/2021 3:34 PM
52	Portland Community College	10/28/2021 3:33 PM
53	Portland Community College	10/28/2021 3:32 PM
54	Portland Community College	10/28/2021 3:31 PM

Q4 Would you be interested in becoming a licensed paralegal if it meant you would be able to provide additional services that you couldn't today, or if it meant you could provide limited services without being employed by an attorney?

Answered: 54 Skipped: 200



ANSWER CHOICES	RESPONSES	
Yes	96.30%	52
No	3.70%	2
TOTAL		54

#	COMMENTS:	DATE
1	If I could be licensed to provide limited services in the area of family law, I would enjoy using my skills to help families who need these services but do not have the resources to hire an attorney.	11/1/2021 12:12 PM
2	I think that certification of paralegals is a natural step in progression. Nurses are certified and serve under doctors, why not allow paralegals to do the same instead of hamstringing their abilities. This gives them more options for careers and in turn seen as a more of a professional career. I think that the training I have received in school has geared me towards being able to practice some limited law. Of course, paralegals should absolutely be required to pass a bar exam to get this certification, but I think they can and would pass.	10/30/2021 2:21 PM
3	Especially in helping with certain administrative situations in family law and landlord/tenant.	10/30/2021 1:24 PM
4	I live in Vancouver and plan to work in WA but I think it would be a wonderful opportunity for paralegals as well as for clients who cannot afford attorney fees but who need some limited assistance. It would really open up the legal profession and make it more accessible. I would consider getting an OR license if it was open to me in order to assist people in OR as well as WA - I think WA already has the option.	10/30/2021 11:36 AM
5	I feel that Paralegals providing this service will make it easier for low income families to access legal services.	10/29/2021 9:45 AM
6	As I am still a novice, I would feel more comfortable getting my feet wet in the field first before striking out on my own. However, if this was a job within an organization like a non-profit, my answer would probably be different. I prefer to work in an organization vs. work for myself/be an entrepreneur.	10/28/2021 9:12 PM

Paralegal Licensing Survey

7	My interest is not necessarily in the fields being discussed, however, it may open the door down the road for my field of interest.	10/28/2021 4:18 PM
8	I am interested in licensing, but not for family law. Hopefully, there will be more options for licensing in the future.	10/28/2021 3:36 PM
9	It could help my career, save the big cases for lawyers.	10/28/2021 3:31 PM

Q5 What factors are important to you in making this decision?

Answered: 45 Skipped: 209

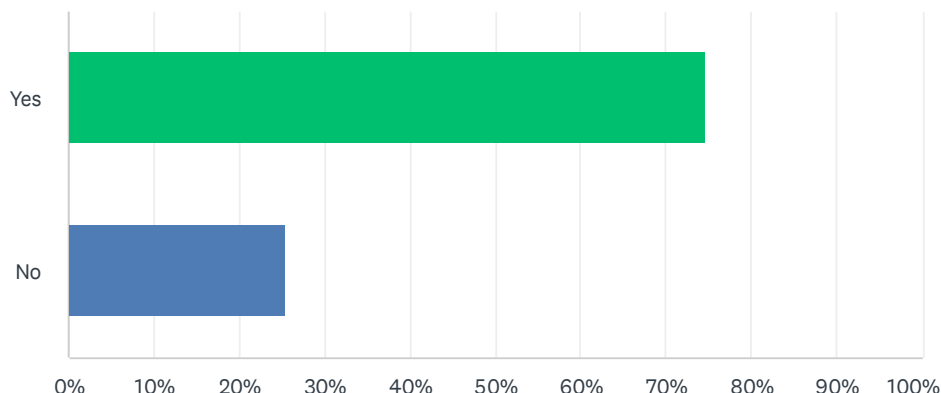
#	RESPONSES	DATE
1	Cost and time mostly. Will I recoup the expense of the additional licensing, and will I be able to complete the education while working as a paralegal?	11/7/2021 1:15 PM
2	The most important thing to me is being able to help more people.	11/4/2021 7:57 PM
3	My education and earning potential	11/2/2021 10:24 PM
4	Ability to provide better access to justice for public, increased earning potential	11/2/2021 3:03 PM
5	being a community asset.	11/1/2021 6:23 PM
6	I intend to work as a paralegal in civil litigation, but I am interested in family law, so I'm thinking that this would be something I could possibly do in my spare time.	11/1/2021 12:12 PM
7	*The areas of law in which I could provide services *The costs in terms of fees and liability insurance *Ensuring I'm adequately experienced before applying for licensure	10/31/2021 10:45 PM
8	I would like to opportunity to explore lots of work options to find the correct fit for me.	10/31/2021 10:02 PM
9	Salary and what type of limited services	10/31/2021 12:14 AM
10	That there are not enough low cost legal services.	10/30/2021 9:17 PM
11	My biggest factor in wanting paralegals to be able to practice in some regard is to give more people access to law help when they need it. I am an intern for a law firm and I see how expensive the billing is for people who seek help from lawyers. I know that not everyone can afford such a cost and have even read emails between the lawyers and clients closing services due to costs. This is where paralegals could come in and help those who seek some help but don't have the means for a high end lawyer. Legislation has made laws to have law be more accessible to the public with how it is written. Why not make the same for the actual practice. Ultimately, this is a free market, let the people decide where their money goes.	10/30/2021 2:21 PM
12	Who I could serve, and what areas I could cover. I'd also want to know how the responsibility (liability insurance) would work.	10/30/2021 1:24 PM
13	More extensive training in the 'how to' steps that concern each of the areas of law in which a licensed paralegal could practice. Advice on how to get the hours needed to qualify for the license. Advice on starting the business.	10/30/2021 11:36 AM
14	Job security	10/30/2021 7:21 AM
15	I want to help people with access to justice. So being able to provide specific services without the supervision of a attorney would be great. Although I am currently on track to go to law school I still think it is an important thing to have.	10/29/2021 3:49 PM
16	Required hours, whether there's an exam or a review of a portfolio, how positions would be marketed to future clients for best utilization.	10/29/2021 3:36 PM
17	Liability would be a concern. Would having a supervising attorney provide greater malpractice protections than acting alone? What is the cost of malpractice insurance if that exists? I would consider if those are the areas of law that I would want to work in full time? Also what the requirements would be and what continuing education or license renewal would be/cost.	10/29/2021 3:28 PM
18	The services I could provided under the supervision of an attorney or without. The type of services. The potential for higher pay.	10/29/2021 10:54 AM
19	If it related to animal law or conservation/environmental law.	10/29/2021 10:11 AM
20	I am graduating this term. I think a paralegal should have some experience in addition to certification or an Associates. But only about 1- 2 years as the needs are urgent.	10/29/2021 9:45 AM

Paralegal Licensing Survey

21	Cost!!!	10/29/2021 1:08 AM
22	Affordability, Accessibility for low-income and underserved communities	10/28/2021 10:22 PM
23	I'm not interested in the areas of law the licensing relates to.	10/28/2021 9:13 PM
24	I appreciate working for a paycheck and having someone else require hours from me in exchange for benefits (retirement and health insurance). I do not want to open my own business.	10/28/2021 9:12 PM
25	Accessibility for underserved communities.	10/28/2021 9:08 PM
26	I wouldn't consider the license if: - if many extra classes are required to get licensed; - if there is expensive yearly fee for the license; - if there is a test each year to keep the license.	10/28/2021 8:41 PM
27	ability to help communities with legal services they otherwise cannot afford; ability to work independently; ability to earn a little more money but still be able to provide quality affordable service to communities; and feel good about helping others (self satisfaction).	10/28/2021 7:13 PM
28	I want legal care to be accessible to everyone and I believe this will help.	10/28/2021 6:24 PM
29	More freedom, being better equipped to offer legal advice to friends.	10/28/2021 5:59 PM
30	Length of schooling for program and cost.	10/28/2021 5:56 PM
31	The process of becoming one.	10/28/2021 5:31 PM
32	Education level and the amount of money I could make.	10/28/2021 5:20 PM
33	Depends on the type of law & cost of licensing/UPL insurance.	10/28/2021 4:54 PM
34	Cost, time, administrative overhead of licensing to projected income. Scope of additional services the licensure would allow one to provide, e.g., if you can't do very much with the licensing it may very be cost/time ineffective.	10/28/2021 4:54 PM
35	How long it would take to become licensed, the cost of becoming licensed, and what the entry process entails.	10/28/2021 4:49 PM
36	Licensing process and cost Areas of practice	10/28/2021 4:19 PM
37	See answer above. I also want to see others advance, if they choose to.	10/28/2021 4:18 PM
38	Ability to obtain experience in a specific area of law	10/28/2021 3:47 PM
39	To foster a more just society by allowing more people access to legal services.	10/28/2021 3:41 PM
40	See #4.	10/28/2021 3:36 PM
41	The cost of law school and the enormity of people who need free or cheap legal help	10/28/2021 3:35 PM
42	Salary, schooling requirements	10/28/2021 3:34 PM
43	Potential income increase Increased responsibility and knowledge of legal procedures	10/28/2021 3:33 PM
44	More flexibility and potential for more paralegal autonomy will make legal services available to a broader cross-section of the community.	10/28/2021 3:32 PM
45	That their be some type of education training to go to every so often so we make sure we aren't breaking any laws.	10/28/2021 3:31 PM

Q6 Would you be interested in becoming a licensed paralegal if it meant you would be able to provide additional services that you couldn't today, or if it meant you could provide limited services without being employed by an attorney?

Answered: 138 Skipped: 116



ANSWER CHOICES	RESPONSES
Yes	74.64% 103
No	25.36% 35
TOTAL	138

#	COMMENTS:	DATE
1	It would depend on the education/experience requirements. I say no now only because I do not have experience in those areas of law.	11/11/2021 11:48 AM
2	I believe this should be extended to other areas such as providing assistance in civil small claims matters.	11/9/2021 7:56 PM
3	I have done my best to stay away from Family Law during my 27 years as a paralegal.	11/8/2021 8:51 PM
4	If trusts and estates were added to the limited license	11/8/2021 6:12 PM
5	I don't see how that would work very well.	11/8/2021 2:02 PM
6	It may also increase the amount my work I can do for my firm while attorneys are doing other work, and may increase the amount my firm can bill for my time.	11/8/2021 1:45 PM
7	I see too many attorney cut corners on 'what should be basic' forms and it is not always appropriate for the paralegal to make those decisions.	11/8/2021 1:40 PM
8	I would be willing to be a licensed paralegal for professional reasons but would not be interested in performing services outside of being employed by an attorney	11/8/2021 12:36 PM
9	I would be the first to sign up! I think this is an excellent idea and could be very beneficial to the legal profession and lower-income individuals who need representation in very basic rights that all people deal with.	11/3/2021 11:53 PM
10	My area of employment is in litigation	11/3/2021 7:41 AM
11	While I would like to be licensed in the applicable fields of law to provide these services, I	11/1/2021 12:07 PM

Paralegal Licensing Survey

currently have no experience or training in these fields, and have no plans to obtain them in the near future.

12	Because I truly believe that most Paralegals are professionals, well educated in certain public services and have strong passions to relate with public issues as listed.	10/29/2021 12:15 PM
13	I am not interested in those specific areas of law	10/29/2021 7:23 AM
14	I am a corporate/real estate paralegal so this doesn't exactly apply to me, but if the licensing expanded, I would be interested.	10/29/2021 7:22 AM
15	My position would not benefit from this; however, I would fully support anyone else doing so. I think it's a great idea	10/28/2021 9:26 PM
16	This would financially benefit the clients who can't afford attorney prices for simple work and I would love to help	10/28/2021 9:08 PM
17	Not at this time	10/28/2021 8:37 PM
18	If I was interested in family law, then licensure would be something I would want if I could provide limited services to clients on my own.	10/28/2021 7:54 PM
19	I work for an elder law practice and the additional services described would not fit in with my current employment.	10/28/2021 6:57 PM
20	interested in additional services while being employed by an attorney	10/28/2021 5:45 PM
21	I am interested but likely would not become a licensed paralegal under the proposed framework. I have nearly 5 years of family law experience but don't currently work as a family law paralegal, so I do not believe I would qualify with enough recent experience by the time this was adopted (if it is).	10/28/2021 4:54 PM
22	I would love to be able to better assist clients.	10/28/2021 4:45 PM
23	Currently I am three years away from retiring and I work for the appellate courts. My understanding from listening to discussions at the Supreme Court public meetings is the licensing would be in limited practice areas. In that case my answer is no. If I could be licensed to help people fill out appellate court forms, I would say yes.	10/28/2021 4:25 PM
24	I currently work in litigation for local government. I used to work in family law and miss it. I would love to be able to have my own business doing what I love.	10/28/2021 4:05 PM
25	The Washington state had a similar program and they discontinued it after only a few years.	10/28/2021 4:04 PM
26	Not if those additional services are limited to family and landlord-tenant law.	10/28/2021 3:53 PM
27	But not if it meant I had to go back to school when I am already a paralegal even though uncertified.	10/28/2021 3:49 PM
28	No one should provide services without supervision of an attorney.	10/28/2021 3:48 PM
29	Yes, but only if doing did not cause an extra financial burden. I am only making \$20/hr as a paralegal working for an attorney and I know that those who do "freelance" services make much less and have to try harder to get clients. It's not an appealing option.	10/28/2021 3:47 PM
30	My position wouldn't allow me to perform expanded services and would not be applicable in my current field.	10/28/2021 3:34 PM
31	Moving into a regulatory compliance role	10/28/2021 3:30 PM

Q7 What factors are important to you in making this decision?

Answered: 105 Skipped: 149

#	RESPONSES	DATE
1	Qualifications need to be reasonable. Passing a test of knowledge. Some qualification standards are so high you may as well be an attorney. I want to be a well qualified paralegal, not an attorney. I also don't want a lot college debt.	11/12/2021 1:59 PM
2	I'd like to see some legal services made more accessible to people with limited incomes.	11/12/2021 11:49 AM
3	Education and experience.	11/11/2021 11:48 AM
4	The need for legal services.	11/10/2021 11:16 PM
5	The two most important factors for me are 1) whether long time paralegals will be allowed to waive basic education requirements to obtain licensing and 2) whether licensed paralegals will be allowed to share fees with attorneys and have ownership interests in law firms.	11/10/2021 3:38 PM
6	Cost, and training requirements.	11/9/2021 7:56 PM
7	autonomy; the ability to put my knowledge to use and make independent judgments about cases	11/9/2021 6:58 PM
8	Parameters re scope, requirements for liability insurance and malpractice, & costs related to fees.	11/9/2021 4:22 PM
9	Time/money investment required to become licensed; scope of services I could provide.	11/9/2021 2:27 PM
10	Confidence in training, forms, and structure of program. Resource availability. Earning a higher wage.	11/9/2021 10:28 AM
11	Pro bono assistance to others	11/9/2021 9:01 AM
12	Training and education options to become certified; malpractice insurance available; type of law that I can practice.	11/8/2021 9:49 PM
13	Employability and cost of accomplishing it	11/8/2021 8:12 PM
14	I doubt my area of law is one that would be approved for this program.	11/8/2021 5:46 PM
15	I don't believe residential FED defense is available on a widespread basis to low income Oregonians. The time line in an FED or other rental matter are generally much too short to secure reasonably priced counsel.	11/8/2021 5:05 PM
16	Being able to offer legal assistance to low-income Oregonians is an important factor for me in making the decision to pursue becoming licensed. The reason why is that there are so many stories of hard-ship cases where people who I have come in contact with who are low income feel overwhelmed by the process of understanding and paying for access to legal assistance. I would like to help low income Oregonians by being a part of a process of assisting with some of the entry points of legal solutions.	11/8/2021 3:27 PM
17	I do not work in the suggested practice areas.	11/8/2021 3:20 PM
18	Cost of education, length of time to get educated, and if I am able to somewhat easily continue to continue to work while obtaining the qualifications/education	11/8/2021 3:11 PM
19	Cost - in terms of time/money vs. potential pay-off.	11/8/2021 2:54 PM
20	Higher wages are usually reflected with more licensing	11/8/2021 2:23 PM
21	I do not work in the areas of law that are proposed for licensing.	11/8/2021 2:07 PM
22	I can't speak to landlord/tenant law, but I don't see how it would work for family law. I have worked in family law for over 10 years and people just have too many questions to be able to	11/8/2021 2:02 PM

Paralegal Licensing Survey

work with them successfully in a limited capacity. I don't see how it would successfully be put into practice.

23	Requirements for becoming licensed, types of work that licensed paralegals may perform.	11/8/2021 1:45 PM
24	what liabilities would paralegals face.	11/8/2021 1:43 PM
25	Time and cost associated with obtaining license	11/8/2021 1:42 PM
26	Bar Complaint PLF Claim	11/8/2021 1:40 PM
27	Educational costs, income potential	11/8/2021 1:23 PM
28	I think that this type of licensing really tows a very thin line between providing services that paralegals are competent to provide and UPL. I personally, would not be comfortable walking that line.	11/8/2021 1:23 PM
29	Close to retirement. Probably interested if earlier in my career.	11/8/2021 12:57 PM
30	Being able to provide services to those who cannot afford an attorney, collaborating with attorneys, CLE's that are only provided to attorneys	11/8/2021 12:57 PM
31	Being able to provide lower cost services to those you need assistance but can't afford an attorney	11/8/2021 12:46 PM
32	Greater Employment opportunities as well as providing greater access of services to those in need	11/8/2021 12:45 PM
33	Possibly making extra income with my profession on the side of a current employment. Offering a service for a more affordable option to folks that are lower waged.	11/8/2021 12:39 PM
34	I am currently in law school, so this kind of license would be moot for me. If I were not in law school or planning to pursue a law degree, I would consider becoming a licensed paralegal.	11/8/2021 12:38 PM
35	speed of implementation; cost of additional studies	11/8/2021 12:38 PM
36	Training, insurance coverage, mentorship, cost of services.	11/8/2021 12:38 PM
37	I would need to know what services they are referring to. Attorney are constantly studying the laws. I would not feel comfortable practicing law, even if limited.	11/8/2021 12:37 PM
38	liability, potential inability to explain how something works without running into UPL territory	11/8/2021 12:36 PM
39	Prerequisite knowledge & costs	11/8/2021 12:34 PM
40	I would have gone to law school if I felt the need to be licensed as a paralegal.	11/8/2021 12:34 PM
41	More flexibility in job options	11/7/2021 2:09 AM
42	I am unsure as I'm worried that licensing would then become a requirement by most employers. I appreciate the room for additional growth and further credentials in the paralegal field that licensing would allow. Limiting the scope to family/ landlord tenant law seems like an arbitrary limitation but would make it less likely that employers would require every paralegal to be licensed. However the fact that it would allow us to do our jobs better and on a larger, more diverse scale, opens a lot of opportunities.	11/5/2021 6:02 PM
43	More responsibility, more substantive work, more lucrative, more autonomy	11/5/2021 6:31 AM
44	Proper training and education are important to me. I would want to feel prepared and ensure resources are available. The cost is important, as well.	11/3/2021 11:53 PM
45	Working in a non profit law firm, I see the tremendous need for fairly straight forward, competent, and affordable legal services. Generally these matters involve people's personals lives and basic living needs. There's so many Limited Scope matters I've seen hired on where either a paralegal could complete most the work for a much cheaper rate, or that the potential client declined legal assistance due to costs. Peoples inability to pay for our already much cheaper, sliding scale legal fees is the #1 reason they decline our service. There's an enormous gap to fair and equal justice that will require a remedy of solutions to meet all if Oregon's legal	11/3/2021 10:22 PM
46	I think about the help that I could offer people who would not be able to afford an attorney. Unfortunately, Law school is too expensive, and this would be an affordable option.	11/3/2021 8:51 AM

Paralegal Licensing Survey

47	Amount of additional education and cost	11/3/2021 8:12 AM
48	Area of law	11/3/2021 7:41 AM
49	Autonomy, legitimate licensing, increased flexibility in work schedule, increased earning capacity, increased respect for the paralegal profession	11/2/2021 8:54 PM
50	DDD	11/1/2021 3:09 PM
51	Certain demographics of our society cannot afford legal services, let alone food or shelter. This licensing program would be an asset to this demographic. Stipulations and safeguards would have to be in place to safeguard the consumer from fraudulent paralegals on these practices, though, and for those who go beyond the scope of this licensing program. Training and follow-up training would also be necessary to make sure those who are licensed are applying the latest case laws	11/1/2021 12:07 PM
52	Additional training and education and potential income.	11/1/2021 9:53 AM
53	I'm open to where the wind blows and I like keeping my options open but it agitates me to pain being subordinate to others is ever my limit in law. I will never own a business in a law firm. But if I could provide limited services without an attorney, then perhaps a window would open to remain in law while also being my own boss.	11/1/2021 8:06 AM
54	Increased salary. Increased responsibility.	10/30/2021 3:33 PM
55	Autonomy. Professionalism. The ability to expand services provided at the law firm that currently cost clients outrageous amounts	10/30/2021 1:33 PM
56	It depends on how much training (which is also money) is required to obtain license. It depends how broad or narrow the license is and if the requirements reflect that. For example, If I'm only interested in tenant law and only want to work on that, do I need the Family law component?	10/29/2021 2:24 PM
57	Based on my personal and professional experiences, paralegals are very patient, have good judgment, are persistent, are well organized people and have obtained legal research and writing skills.	10/29/2021 12:15 PM
58	My community. The amount of people that lack representation due to their income.	10/29/2021 10:01 AM
59	Greater access to legal services for those who are financially unable to retain attorneys.	10/29/2021 9:15 AM
60	I don't work in family law or landlord/tenant; I'd don't have enough experience to go out on my own; I prefer the stability of being an employee, rather than self employed. (Also, I have too much work as it is right now!!)	10/29/2021 8:37 AM
61	The amount of autonomy delegated to licensed paralegals and the ability to do some work in areas of law that directly help individuals in need.	10/29/2021 7:59 AM
62	The education	10/29/2021 7:22 AM
63	Happen by January 1,2022	10/29/2021 12:02 AM
64	Being able to be self-employed and not dependent on the whims of an attorney or the firm.	10/28/2021 11:13 PM
65	Earning potential would increase. I am knowledgeable about the law and would like to be considered more of an "expert" in a field I am well versed in.	10/28/2021 10:26 PM
66	I won't be changing positions before I retire (most likely) although it might be something I'd be interested in once I retire.	10/28/2021 9:26 PM
67	I would really need clarity on the education needed to in order to be able to be licensed in a limited capacity.	10/28/2021 9:08 PM
68	Availability and cost of liability insurance and public demand for services	10/28/2021 8:57 PM
69	Training, whether on the job or otherwise, explanation of scope, how would it be communicated to clients	10/28/2021 8:37 PM
70	Cost of schooling, how much money could be made in profession	10/28/2021 8:37 PM
71	Areas of law; I would like to be able to have a limited practice in personal injury law, wills and estates.	10/28/2021 8:29 PM

Paralegal Licensing Survey

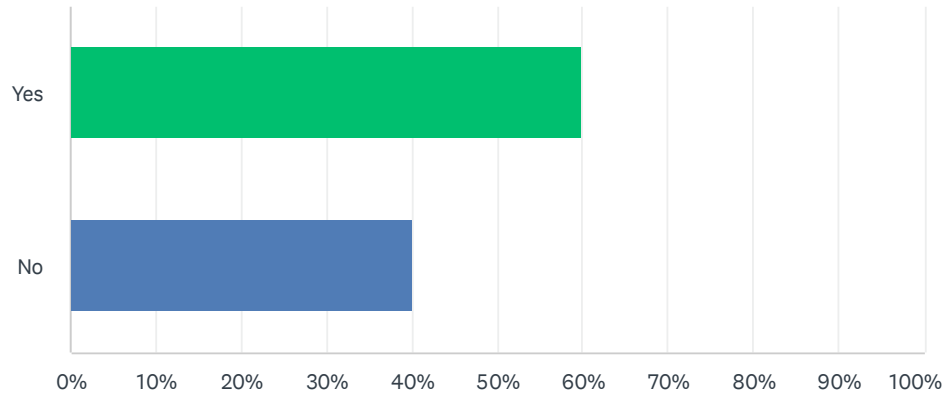
72	I have paralegal training, but work for the US Courts so at this point I wouldn't want to get the license.	10/28/2021 8:28 PM
73	Cost of license, any additional schooling needed, and limitations of license.	10/28/2021 8:08 PM
74	I currently work in criminal law under attorneys and I'm satisfied with the document management and analysis work that I do. Thus, I wouldn't need licensure under these circumstances.	10/28/2021 7:54 PM
75	Attorneys are expensive, especially during a pandemic, not everyone has access to funds to pay for an attorney to complete something a paralegal can do just as easily for a smaller price.	10/28/2021 7:45 PM
76	Whether the skills are useful to me or my employer.	10/28/2021 6:57 PM
77	The liability of not assessing the situation correctly	10/28/2021 6:48 PM
78	Ability to serve and guide people who cannot afford an attorney.	10/28/2021 6:21 PM
79	Potential to make more money and work for myself.	10/28/2021 6:19 PM
80	The qualifications that may be required. Could this cause some underserved communities to be excluded from job opportunities?	10/28/2021 5:56 PM
81	Licensing costs and renewal process	10/28/2021 5:53 PM
82	opportunities for career advancement, cost/hassle of getting licensed vs. perceived value of the license to employers	10/28/2021 5:45 PM
83	Being more of an asset to my organization. Ability to grow professional as a paralegal	10/28/2021 5:25 PM
84	The cost and time and effort required of becoming a licensed paralegal. I would like to be able to provide pro bono assistance to friends and family, if it were legal for me to do so, and I know I am qualified to provide that assistance but legally cannot, which disadvantages people who cannot afford an attorney. However, I would not spend substantial amounts of money or pay for liability insurance on an ongoing basis to help 1-2 people a year for free. If there were a mechanism for me to volunteer through an existing organization, like St. Andrew Legal Clinic, on a very occasional basis in addition to my regular full time job as a paralegal (no longer in family law) I would be interested in that, but I don't think that would be likely under the current proposed framework.	10/28/2021 4:54 PM
85	I cant afford law school but I would like to advocate for tenants more directly.	10/28/2021 4:50 PM
86	Fair compensation for the extra work involved.	10/28/2021 4:45 PM
87	sounds like practice areas would be limited. see answer to 2.	10/28/2021 4:25 PM
88	Broaden my professional abilities and services I can provide. Make me more competitive in the workforce.	10/28/2021 4:18 PM
89	I am an immigration law paralegal and I would love this opportunity. I have been helping in this field for 5 years. I am studying to apply for DOJ Accredited Representative status. My question is would paralegals be able to obtain dependency and special finding orders in Oregon State court in order to help minors apply for I-360 Special Immigrant Juvenile Status with USCIS.	10/28/2021 4:09 PM
90	What is the time and money expenditure to become licensed, and how effective could I be at running a business with only providing "limited" services - like how limited would it be?	10/28/2021 4:05 PM
91	lower-cost legal services for greater equity and justice in our state, the ability for paralegals to have a greater impact, that paralegals are highly capable, paralegals may be able to make a better income, however, length of program may be prohibitive, or a particular paralegal may not be interested in family or landlord/tenant law	10/28/2021 3:56 PM
92	I work in criminal defense, so those areas aren't relevant to me. Also, I can't currently picture a situation in which this sort of limited licensure would be of value to me professionally.	10/28/2021 3:53 PM
93	But not if it meant I had to go back to school when I am already a paralegal even though uncertified.	10/28/2021 3:49 PM
94	Most people don't think like an attorney. If we allow non attorneys to start acting like attorneys, confusion will start by those seeking legal help. It opens the door to bad legal advise.	10/28/2021 3:48 PM

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95	I already spent 20K in student loans to complete my 2 year paralegal degree in 2015 at PCC and I don't think I should have to pay additional fee's to obtain a license if I want to "freelance" and do side work when I already have a degree and have been working in the field for 5 years. Also, for those of us who spent good money on paralegal programs before the state started offering free community college should be able to get our balances waived or reduced. Knowing that If I had simply waited a a couple years to get my degree and it would have been free sucks because now I have student loans to pay back and am still not making significantly more than before I had a degree.	10/28/2021 3:47 PM
96	Neither of those types of law are my field of specialty; however, for paralegals who do have experience in those areas, I support the concept program.	10/28/2021 3:44 PM
97	Flexibility, money, the thought of working independently.	10/28/2021 3:43 PM
98	Practice area	10/28/2021 3:43 PM
99	Ethical rules and regulations.	10/28/2021 3:42 PM
100	Licensed Paralegals would be able to provide the necessary and quality legal services at a low cost for the clients. Licensed Paralegals would be able to reach those communities who are in most dire need of legal services and would be more accessible to Black and Brown communities, whom statisticly make up a large portion of the population in hospitals, jails/prisons, and Immigration related cases.	10/28/2021 3:39 PM
101	It's not required for my position and would not be applicable.	10/28/2021 3:34 PM
102	The funding and availability of the education to fulfill licensing requirements would be important to me. Also important to me would be the opportunity to provide low cost legal services to people who's access is limited by their finances.	10/28/2021 3:33 PM
103	Flexibility in work, opening up more opportunities for work, flexibility in helping clients	10/28/2021 3:32 PM
104	Autonomy of work and increasing availability of legal services for those that need it most and can't afford the price of an attorney.	10/28/2021 3:32 PM
105	Career expansion, more income, increased education	10/28/2021 3:31 PM

Q8 Do you believe working with a licensed paralegal would be beneficial in your law practice?

Answered: 5 Skipped: 249

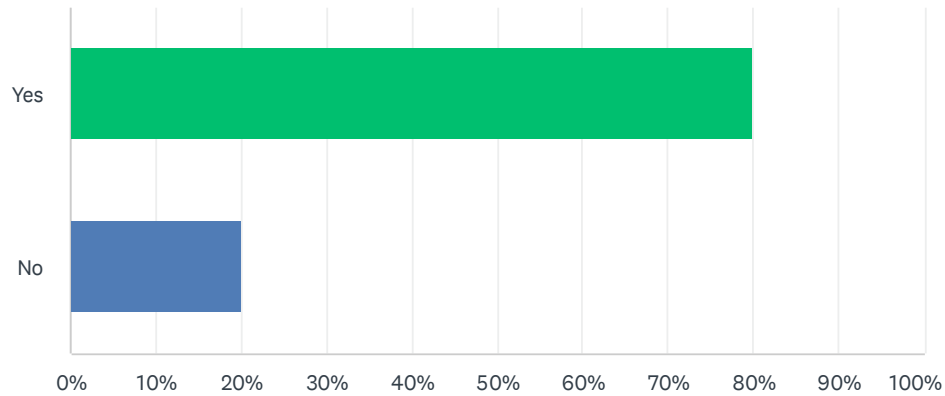


ANSWER CHOICES	RESPONSES
Yes	60.00% 3
No	40.00% 2
TOTAL	5

#	COMMENTS:	DATE
1	Licensing is a really bad idea- it just limits the profession to those who can buy a license-	11/8/2021 2:24 PM
2	I am currently a public defender in New York. However, I do believe that licensed paralegals would help those in need of important legal services who would otherwise not have access.	10/29/2021 6:42 AM

Q9 Would you refer someone in need of legal services to a licensed paralegal if the client's needs were clearly within the scope of their licensure?

Answered: 5 Skipped: 249



ANSWER CHOICES	RESPONSES	
Yes	80.00%	4
No	20.00%	1
TOTAL		5

#	COMMENTS:	DATE
1	I would refer them to an unlicensed paralegal if it was within the scope of what a paralegal can do without attorney supervision	11/8/2021 2:24 PM

Q10 What education or experience do you think a licensed paralegal should have before providing services to clients when not under the supervision of an attorney? (For example, additional education, mentorship, reporting requirements, CLE requirements, etc.)

Answered: 176 Skipped: 78

#	RESPONSES	DATE
1	Certification with a qualified entity. Passing a reasonable test. Yearly CLE requirement. Years of experience.	11/12/2021 2:02 PM
2	I believe a mentor would be very important at least for the first 3-5 years as a licensed paralegal, that they should have a paralegal degree and credentials (RP, CRP, etc.) have at least 5-7 years of experience as a paralegal, and have CLE and reporting requirements.	11/11/2021 11:58 AM
3	I believe that adequate direct subject matter experience is particularly important to safeguard the public and to avoid creating more problems for the court than it solves. I have worked as a family law paralegal for approximately 16 years. I began feeling really confident in my knowledge after 2-3 years. However, my level of experience is likely an outlier. Absent extensive prior experience, I believe that a mentor relationship (or perhaps an apprenticeship) with an attorney would go a long way toward preparing a newer paralegal once they have learned basic legal concepts in school. I also think that licensed paralegals should be subject to the same CLE and reporting requirements as attorneys.	11/10/2021 3:42 PM
4	Similar requirements to take the RP examination, and enhanced CLE requirements.	11/9/2021 7:57 PM
5	All of the factors mentioned in the question. I have 35 years experience as a paralegal. I was a member of initial cohort (2015) of LLLT students in Washington, and had my 3,000 experience hours already complete. We had three several month classes taught by the University of Washington Law School staff. In addition, Washington LLLTs have continuing education requirements. These requirements seem appropriate.	11/9/2021 7:07 PM
6	All of the above and will professional liability insurance be offered if a paralegal is sued?	11/9/2021 4:57 PM
7	additional education, reporting requirements, previous experience (number of hours TBD) as a paralegal under an attorney's supervision	11/9/2021 4:43 PM
8	1.Associates Degree in paralegal studies and 1 year of substantive experience OR 5 years of substantive experience OR paralegal certification and 1 year substantive experience (RP, CRP, CP) OR military paralegal and 1 year substantive experience 2. CLEs in the practice area to renew 3. Reporting requirements 4. Attorney attestation to verify experience	11/9/2021 4:30 PM
9	Recent experience as a paralegal in the subject area; CLE requirements, additional education specific to representing clients outside of attorney supervision.	11/9/2021 2:28 PM
10	Some paralegal work experience. A comprehensive training program. Continuing education and resources. Washington's program seems to be a good model.	11/9/2021 10:34 AM
11	Reporting requirements	11/9/2021 9:02 AM
12	Additional training courses, mentors, courses required to take and pass to become certified, same as Utah and Washington. Graduated from ABA-approved Paralegal program and/or 10 years of experience.	11/8/2021 9:59 PM
13	Additional education and mentorship	11/8/2021 8:52 PM
14	Education and mentorship	11/8/2021 8:13 PM
15	BA or BS, 5+ years of experience in area of law, continuing CLEs	11/8/2021 5:48 PM
16	Pass a subject matter exam, minimum amount of supervised experience, required CLEs.	11/8/2021 5:07 PM

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17	CLE requirements, educational threshold (i.e., undergraduate degree + experience or specific training such as a paralegal certificate).	11/8/2021 3:23 PM
18	Same requirements required to be certified by Oregon Paralegal Association.	11/8/2021 3:15 PM
19	CLE requirements, reporting requirements, minimum hours worked before becoming qualified.	11/8/2021 3:13 PM
20	Mix of basic education requirements (paralegal program) + reporting/CLE and experience.	11/8/2021 2:56 PM
21	on the job training is fine	11/8/2021 2:24 PM
22	CLE requirements	11/8/2021 2:23 PM
23	All of those--Additional education, mentorship, reporting requirements, CLE requirements.	11/8/2021 2:08 PM
24	mentorship, reporting requirements and CLEs should be required. I also think that working under an attorney or another licensed paralegal for a period of time should be required.	11/8/2021 1:50 PM
25	CLE requirements, which should be reported and should require elements regarding unauthorized practice of law, ethics and abuse reporting; paralegal education or equivalent experience (perhaps 5-10 years of experience); certification (not paralegal certificate from school, but certification from NALS, NALA or NFPA	11/8/2021 1:48 PM
26	mentorship, reporting requirements, CLEs	11/8/2021 1:45 PM
27	4-years degree; minimum 2-year working experience in the field; CLE requirements	11/8/2021 1:44 PM
28	Certification, such as Registered Paralegal with national accreditation	11/8/2021 1:41 PM
29	I think CLE requirements is a good idea. But the classes should be identified for this specific purpose.	11/8/2021 1:36 PM
30	Five years experience in field of practice, plus paralegal associate's degree or top-tier paralegal certification, plus recommendation by practicing attorney, plus some kind of examination.	11/8/2021 1:34 PM
31	CLE requirements; reporting requirements	11/8/2021 1:23 PM
32	Additional education; CLE requirements	11/8/2021 12:59 PM
33	Mentorship, Reporting Requirements, CLE Requirements, education if needed	11/8/2021 12:58 PM
34	Reporting requirements, CLE requirements, mentorship, exam	11/8/2021 12:54 PM
35	Certification from accredited school; internship with legal professional working in the same field.	11/8/2021 12:47 PM
36	A minimum number of years of experience, like 3-5, would be reasonable. In order to stay licensed, CLE requirements specifically within the family law and landlord/tenant areas should be in place as well.	11/8/2021 12:43 PM
37	all of the above!	11/8/2021 12:40 PM
38	CLE classes in the field. Mentorship, conference attendance on subject matter.	11/8/2021 12:40 PM
39	CLEs, certified paralegal thru a national organization	11/8/2021 12:38 PM
40	All of the requirements associated with becoming a Registered Paralegal (education minimums, testing, dues, CLE requirements, etc.), and mentorship by a more senior paraprofessional or attorney	11/8/2021 12:38 PM
41	CLE requirements (area of practice, ethics, and UPL), mentorship, attorney recommendations	11/8/2021 12:38 PM
42	At least 10 years of experience in the primary field (litigation, corporate, etc.)	11/8/2021 12:36 PM
43	N/A - do not know enough about it.	11/8/2021 12:35 PM
44	I think that a licensed professional practicing beyond standard paralegal services should have not only a paralegal or law degree/certification, but additionally a minimum number of supervised hours of work, CLE requirements, and regular reporting requirements.	11/8/2021 12:18 PM
45	Additional education and CLE definitely. Mentorship would be a neat idea.	11/7/2021 1:16 PM
46	Software tools such as case law, social work, human resources, advocacy	11/6/2021 1:01 PM

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47	Mentorship, Paralegal degree	11/5/2021 8:11 PM
48	Definitely CLEs, and even regular refreshers of basics taught in school (ethics/legal research/substantive law in the relevant fields)	11/5/2021 6:12 PM
49	All of it! Additional education, mentorship, reporting requirements, CLE requirements	11/5/2021 6:32 AM
50	Additional education, and training, as well as hands-on experience.	11/4/2021 8:00 PM
51	I think there should be an accompanying specialization course for the area of the law the paralegal intends to practice, with a degree included. I also think there should be a more formal test, very similar to the Bar exam in any of the fields they'd like to advise in.	11/3/2021 11:55 PM
52	A Associate in Paralegal, Paralegal Certificate, or Bachelors with a certain amount of experience working in a law firm setting. CLEs should be required.	11/3/2021 10:34 PM
53	Paralegal associates degree and CLEs	11/3/2021 8:13 AM
54	CLE, demonstration of experience under an attorney proficient in that area of law before licensing.	11/3/2021 7:48 AM
55	I think an additional year of paralegal school/training (3 years total as to mirror J.D. law school) and continuing legal education (or CLE's) thereafter.	11/2/2021 10:28 PM
56	ABA approved degree, CLE requirements similar to those of licensed attorneys, limited professional liability insurance, reporting requirements, passing a modified version of the bar exam	11/2/2021 9:04 PM
57	Certification, certain amount of CLE hours	11/2/2021 3:03 PM
58	Additional education and experience in the field.	11/1/2021 6:24 PM
59	Additional education on the specific area of law involved, internship, reporting requirements, and CLE requirements.	11/1/2021 12:17 PM
60	The licensee should have a certain number of years of experience working with an attorney in the applicable field of law. The licensee should have additional education and/or should pass a knowledge exam, as well as undergo continuing education periodically. Reporting requirements would be helpful as well.	11/1/2021 12:10 PM
61	Definitely additional or more in depth education than what is provided for a paralegal certificate, reporting requirements, and CLE training is especially important as some areas of legal practice change over time.	11/1/2021 9:55 AM
62	1) A completed education from an accredited ABA-rated program, 2) a minimum some-thousand hours of relevant work experience, 3) continuing legal education specifically tailored to nonlawyers, and, most of all, 4) a required professional liability insurance.	11/1/2021 8:12 AM
63	Actual experience under the supervision of an attorney would be more important to me than additional education. Mentorship would also be great, but I know the logistics of setting that up and maintaining that would be costly.	10/31/2021 10:58 PM
64	I would think a mentorship and good recommendations.	10/31/2021 10:06 PM
65	certification and some amount of time of mentorship or internship required	10/31/2021 10:44 AM
66	3 or more years as a Paralegal and meet certain education.	10/31/2021 1:26 AM
67	Cle requirements, mentored under an attorney,	10/30/2021 9:20 PM
68	Additional education and passing an exam.	10/30/2021 3:35 PM
69	At a bare minimum, a 2 degree in paralegal studies at a accredited school along with a bar test for certification. I don't think more than a bachelors degree would be necessary. There could also be a requirement that all practicing paralegals must work around practice at law firms with lawyers. Just an idea.	10/30/2021 2:27 PM
70	2 years experience under the supervision of an attorney	10/30/2021 1:43 PM
71	Certification through the national Federation paralegal Association. Minimum 25 CLE credits per year. Seven or more years experience in the related field	10/30/2021 1:35 PM

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72	There should be certification for different services, with experience in those areas, for instance helping with divorce papers, reviewing rental contracts, reviewing other legal documents, simple adoption, some consumer rights situations, etc.	10/30/2021 1:28 PM
73	More extensive training on all the suggestions above to be sure they understand the steps they will need to complete to act on behalf of a client. Perhaps even a list of steps for various situations. Specifics on when to refer a client to an attorney. How to know if the clients needs exceed my licensed capacity.	10/30/2021 11:41 AM
74	CLE requirements	10/30/2021 8:32 AM
75	Not sure	10/30/2021 7:22 AM
76	CLE requirements, membership, mentorship availabilities	10/29/2021 10:35 PM
77	Specific paralegal degree and/or certificate, CLE requirements, & no less than 2 years prior experience in the specific field (mentorship optional)	10/29/2021 4:19 PM
78	Degree or Certificate in Paralegal Studies and 700 hrs working at a firm doing Paralegal functions (can include college internship) (or) 1000 hrs of work experience in a legal firm doing Paralegal functions Pass the Oregon State Bar Exam?	10/29/2021 3:38 PM
79	Bachelors degree, certificate from paralegal program, a certain number of working hours and reporting requirements.	10/29/2021 3:37 PM
80	additional education, reporting requirements, CLE requirements	10/29/2021 2:50 PM
81	ABA approved paralegal degree, pass an OSB test to get certified, and do continuing CLEs.	10/29/2021 2:25 PM
82	I believe mentorship is important because there is only so much you can learn in a conventional education setting. Reasonable CLE requirements should be involved.	10/29/2021 2:25 PM
83	Bachelor Degree from accredited College or University and Associate Degree in Paralegal. Also, needs a Certificate from National Society from Legal Technology.	10/29/2021 12:24 PM
84	Certificate or degree Experience CLE requirements	10/29/2021 10:55 AM
85	Annual CLE requirements and reporting requirements. Mentorship on providing testimony in administrative hearings.	10/29/2021 10:18 AM
86	All of the above. Additional education is much needed. Having a mentor should be recommended, must follow CLE requirements.	10/29/2021 10:03 AM
87	Certification or Associates plus 1 - 2 years working under attorney supervision, and a mentor for 1 - 5 years. CLE to keep certification updated. By establishing all of these requirements, the public will have confidence in these services.	10/29/2021 9:48 AM
88	Mentorship, CLEs, and coursework/certification or training in the specific area of law in which they will be working (i.e., family law or landlord/tenant).	10/29/2021 9:19 AM
89	Additional education, mentorship, reporting requirements, CLE requirements.	10/29/2021 9:16 AM
90	All of the above. Also, a requirement to have worked in the field under an attorney for some period (perhaps 10 years.)	10/29/2021 8:41 AM
91	A paralegal certificate with 1 or 2 head of experience OR other degree AND at least 5 years of experience. Experience should be in one or both of the fields under consideration. Probably CLEs every so often as well.	10/29/2021 8:04 AM
92	A deep mentorship program, client list reporting, and knowledge testing.	10/29/2021 7:26 AM
93	CLEs	10/29/2021 7:25 AM
94	All of the suggestions in this example!	10/29/2021 7:23 AM
95	5 Years minimum as a paralegal with 0 infractions or disciplinary actions; clean record	10/29/2021 1:09 AM
96	A paralegal Degree	10/29/2021 12:04 AM
97	2 year paralegal degree with additional years of experience. CLE credits required just like attorneys.	10/28/2021 11:15 PM

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98	Paralegal education from an ABA certified school or a certain number of years of experience as a paralegal in a particular area of law. CLE requirements.	10/28/2021 10:28 PM
99	CLE, other certification	10/28/2021 10:23 PM
100	Some additional/specific education; I think CLE's would be beneficial. I work with Judges and they have CLE's - so I think it would be a good idea.	10/28/2021 9:27 PM
101	I think my answer for the previous question (about wanting a license or not) may have changed if I had more experience in the field. I think you should be required to complete 2-3 years in the field to get licensed.	10/28/2021 9:19 PM
102	I think a licensed paralegal should have reporting requirements and CLE requirements.	10/28/2021 9:14 PM
103	mentorship, reporting requirements, previous work experience	10/28/2021 9:11 PM
104	CLE requirements and specific course for the area of law prior to providing services	10/28/2021 9:10 PM
105	Annual CLE requirements	10/28/2021 8:58 PM
106	Education or work experience in the legal area. Degree in paralegal studies and/or current student towards becoming an attorney. Continued training	10/28/2021 8:53 PM
107	An AA or higher, CLE requirements, mentorship, reporting requirements.	10/28/2021 8:51 PM
108	Not education, but minimum 1 year experience in family law as a paralegal (not administrative worker).	10/28/2021 8:45 PM
109	12 credits of coursework and 1 year attorney supervision	10/28/2021 8:44 PM
110	Mentor ship, continuing CLE requirements	10/28/2021 8:34 PM
111	Reporting requirements- might be a good idea but it would depend how it was implemented. Mentorship and CLE requirements similar to (but less extensive than) the CLE requirements for attorneys. Some limited PLF option(s) seem necessary as well, but the cost could be prohibitive for many non-attorneys who otherwise would be assets to the community. Please put some thought into this issue.	10/28/2021 8:32 PM
112	I think a period of mentorship, 1-2 years, working in family law or landlord/tenant law would be most effective in training for independent practice.	10/28/2021 8:02 PM
113	CLE and reporting requirements. There should be a paraprofessional exam as well.	10/28/2021 7:54 PM
114	Internship (paid) or better yet something equivalent to a resident program doctors have for 1 year	10/28/2021 7:53 PM
115	Minimum BA Degree; Mentorship; CLE requirements. Reporting reporting might be needed maybe for the first 6 months to one year.	10/28/2021 7:18 PM
116	Minimum 5 years of supervised experience doing exactly what you'd do unsupervised and additional education yearly.	10/28/2021 7:04 PM
117	Additional education and CLE requirements.	10/28/2021 7:01 PM
118	All of the above	10/28/2021 6:49 PM
119	- Trauma informed practices - Most common family law procedures & forms - Confidentiality and document management	10/28/2021 6:27 PM
120	Mentorship and work experience	10/28/2021 6:25 PM
121	Interactive classes and testing.	10/28/2021 6:20 PM
122	Mentorship, CLE	10/28/2021 6:00 PM
123	Associates and/or working experience.	10/28/2021 5:57 PM
124	I believe a licensed paralegal should have additional education and CLE requirements.	10/28/2021 5:57 PM
125	Bachelor's degree and 2 years of experience, Associates and 4 years of experience, or 7+ years of experience without any degree	10/28/2021 5:56 PM
126	Associates Degree in relevant field; Ongoing CLEs	10/28/2021 5:48 PM

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127	Additional education, mentorship, reporting, malpractice insurance, and CLE.	10/28/2021 5:39 PM
128	Additional education	10/28/2021 5:38 PM
129	mentorship, some reporting requirements, minimal additional education, and/or training	10/28/2021 5:32 PM
130	Ability to take courses on top of their already obtained associates degree, mentorship would be a good idea, I think CLE's should be required absolutely.	10/28/2021 5:29 PM
131	mentorship, CLE requirements	10/28/2021 5:21 PM
132	Paralegal degree and a certain amount of hours training under a supervising attorney.	10/28/2021 5:14 PM
133	Highly contextual. One of the problems with most licensing programs is they don't take into account lived experience and additional work experience. They often require a lot of \$ upfront for coursework covering material one already knows. It is hard to figure out how to factor in other kinds of experience but doesn't mean we shouldn't try. I think many people who have worked in social work, for instance, could quickly become better at this area of the law, if not out of the gate better, than someone who had less work and lived experience but had a law degree. Seems to me you learn more by doing and living, then you do by schooling.... That said, the most crucial thing to me is ongoing hands-on practice combined with CLE/yearly training, i.e., must be practicing that area of law within a certain timeframe else recertify *and* do some continuing education, costs should be based on expected earnings.	10/28/2021 5:02 PM
134	Paralegal degree and 2 years experience in family law within the last 10 years OR 5 years of paralegal experience with at least 2 years in family law within the last 10 years	10/28/2021 4:57 PM
135	CLE requirements at minimum	10/28/2021 4:56 PM
136	It's important that they know the law like an attorney. They can't guess because it could jeopardize a future legal case. Needs additional education more than CLE requirements.	10/28/2021 4:53 PM
137	Additional education is really important. I think mentorship is a great idea, if that means one paraprofessional mentoring another.	10/28/2021 4:52 PM
138	I think they should have paralegal certificate, where from a college or organization. They should have to pass a knowledge based exam in their practice area. And CLE should be required. Ethics and in their practice area. I have a certificate for NFPA an 8 hours CLE is required every two years	10/28/2021 4:49 PM
139	See the now-sunset Washington LLLT requirements.	10/28/2021 4:46 PM
140	The person should have their paralegal certificate from an accredited program like Portland Community College. Experience is also very, they should have at least 3 years experience working as a paralegal.	10/28/2021 4:31 PM
141	I agree with all the examples listed. However, I would hope that additional education should not be charged to the paralegal as a kinda helping hand or stepping stone to obtaining it. Mentorships with private and public orgs to guide the paralegal with real world field experience or simply to provide CLEs training and tutorials for paralegals. Reporting requirements are crucial but the reporting process shouldn't too technical, cumbersome, or difficult for the paralegal.	10/28/2021 4:30 PM
142	Definitely CLE requirements and additional education.	10/28/2021 4:24 PM
143	CLE requirements.	10/28/2021 4:22 PM
144	All of those mentioned	10/28/2021 4:20 PM
145	Graduate the Paralegal program. Mentorship for at least 1 year.	10/28/2021 4:17 PM
146	I think a licensed paralegal should have at least a bachelors (in anything) and a graduate level class in the area for licensure (family law). Alternatively (or in addition), maybe a pathway with a certain timeframe of mentor/sponsorship by an attorney. Periodic CLE requirements for renewal.	10/28/2021 4:09 PM
147	A paralegal certificate, a bachelor's degree - or equivalent on-the-job training over a 3 year period. Additionally, supervised practice in the area of law for the license for an additional year or 2. Perhaps testing in the field. Yes to CLE, less than a bar-licensed attorney.	10/28/2021 4:02 PM
148	At least 2 years in an ABA approved paralegal program or 2 years of mentorship/internship	10/28/2021 4:01 PM

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under an attorney as well as having to pass a test.

149	CLE requirements similar to what attorneys have to go through + accreditation from a certified paralegal program	10/28/2021 3:58 PM
150	1. Bachelor's degree in a legal field and some experience on a legal office. 2. Have a designated attorney that they can reach out to if they ever needed advice. 3. Definitely continuing education requirements, just not sure what exactly that should look like.	10/28/2021 3:55 PM
151	I think all of those should be required.	10/28/2021 3:54 PM
152	Additional education/certification and mentorship	10/28/2021 3:53 PM
153	I don't think any paralegal should be providing services we're not supervised by an attorney. I do also believe that paralegals should have to participate in continuing education.	10/28/2021 3:50 PM
154	CLE Requirements Certification Requirements	10/28/2021 3:49 PM
155	Additional education, mentorship, CLE requirements, reporting requirements, 5 yrs professional experience in legal field, shadowing court staff	10/28/2021 3:47 PM
156	Additional education and reporting requirements sound like they should be required, and mentorship and CLE requirements sound reasonable too.	10/28/2021 3:46 PM
157	Definitely CLE requirements and a mini bar exam/licensing test for the license: family law or landlord/tenant.	10/28/2021 3:45 PM
158	CLE Requirements	10/28/2021 3:44 PM
159	Additional education, experience, and CLE requirements	10/28/2021 3:44 PM
160	Experience working in the area for a law firm, being supervised by an attorney. For years. 5+	10/28/2021 3:43 PM
161	mentorship and CLE	10/28/2021 3:42 PM
162	Definitely the Paralegal Program and an exam afterwards	10/28/2021 3:42 PM
163	An ABA certified paralegal degree or certificate, yearly continuing education hours/classes, additional licensing requirements, licensing exam	10/28/2021 3:41 PM
164	At least two years of experience and an associates degree or certificate	10/28/2021 3:39 PM
165	Mentorship, CLE requirements, Critical Race Theory	10/28/2021 3:36 PM
166	Report to a governing body Specific consequences for working outside of legal capacity Yearly CLE requirements	10/28/2021 3:36 PM
167	Mentorship and additional ongoing education with regular recertification	10/28/2021 3:35 PM
168	A class devoted to the specifics of the licensed field would be useful. A non-onerous experience requirement, such as one year working under attorney supervision, could regulate the licensing.	10/28/2021 3:35 PM
169	Completion of approved Paralegal Curriculum from an accredited organization or school. State Test & Certification (Think Security Guards & DPSST)	10/28/2021 3:35 PM
170	Mentor ship, reporting requirements, CLE's.	10/28/2021 3:34 PM
171	Formal legal education of some kind, as well as supervised internship/practicum in the subject area of practice.	10/28/2021 3:33 PM
172	Paralegal certificate, mentorship and CLEs	10/28/2021 3:33 PM
173	6 months to a year of legal education from a program licensed by the bar, with CLE requirements.	10/28/2021 3:33 PM
174	Mentorship. Additional education except I feel that what I learned in the paralegal program was nothing even close to what I needed to know.	10/28/2021 3:33 PM
175	I'm open to anything.	10/28/2021 3:33 PM
176	Mentorship, reporting requirements, CLE's	10/28/2021 3:31 PM

Q11 Is there any other information you think the court should have before making a decision?

Answered: 95 Skipped: 159

#	RESPONSES	DATE
1	A college degree does not make a qualified paralegal. A certification/working knowledge/continuing education does.	11/12/2021 2:02 PM
2	I think the need for quality, affordable legal assistance to ALL is so very important, in these and other areas of law.	11/11/2021 11:58 AM
3	I am excited by this potential opportunity to serve the court and the public. I believe that with adequate education and experience, licensed paralegals can help alleviate the legal assistance gap that low and middle income Oregonians and the court tackle daily.	11/10/2021 3:42 PM
4	I believe this should be extended to other areas such as providing assistance in civil small claims matters.	11/9/2021 7:57 PM
5	I believe allowing competent paralegals to assist those who are underserved is an important step in the right direction. Regulation is critical in establishing the appropriate parameters for such a program. I think it is important to allow licensed paralegals to access the same benefits as attorneys, i.e., legal resources available through the Bar, and be subject to the requirement of mandatory malpractice insurance.	11/9/2021 7:07 PM
6	Should paralegal malpractice insurance be required?	11/9/2021 4:43 PM
7	Need to have multiple eligibility pathways to address equity of the applicants because there is no standard for what a paralegal is or how they come to be in that role. If you limit the way they are already a paralegal, you add barriers to the program and set it up to fail.	11/9/2021 4:30 PM
8	Do it!	11/9/2021 2:28 PM
9	Legal services need to be available for low and middle income people. Hopefully, attorneys will see this as a chance to leverage basic, uncomplicated tasks to make room for work that is better suited for their higher level of education and experience.	11/9/2021 10:34 AM
10	This is a service that is needed in the community as legal services are expensive and paralegals are educated and can manage certain levels of work same as attorneys.	11/8/2021 9:59 PM
11	Job experience	11/8/2021 8:52 PM
12	No	11/8/2021 8:13 PM
13	Review of other programs	11/8/2021 5:48 PM
14	I think Washington's program is failing because they made the requirements too difficult and too expensive.	11/8/2021 5:07 PM
15	what type of liability insurance will be required	11/8/2021 3:23 PM
16	Not sure	11/8/2021 2:56 PM
17	how much more its going to cost to get "licensed"	11/8/2021 2:24 PM
18	Background check	11/8/2021 2:23 PM
19	paralegals should not represent client's in court.	11/8/2021 1:45 PM
20	The term " paralegal" can mean many things for different law firms. Just because your title is "paralegal" doesn't mean you are qualified. Something to consider.	11/8/2021 1:36 PM
21	You should consider licensing for consumer bankruptcy. Debtors have a special need for lower-cost services.	11/8/2021 1:34 PM

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22	Candidates should be required to have worked with an attorney for a number of years (work experience) prior to applying.	11/8/2021 12:59 PM
23	Not that I can think of at the moment	11/8/2021 12:58 PM
24	Criminal history of the applicant, any Bar reprimand or suspension	11/8/2021 12:54 PM
25	Ensure that there is proper vetting and licensure in place so as to prevent unnecessary future issues.	11/8/2021 12:47 PM
26	A licensed paralegal should be required to pass a character and fitness exam to ensure that we don't have paralegals engaging in UPL or worse.	11/8/2021 12:43 PM
27	To practice or advise in law is not to be taken or treated lightly	11/8/2021 12:38 PM
28	If the court is considering licensing paraprofessionals in specific fields, then I think additional education and testing in that specific field should be required.	11/8/2021 12:38 PM
29	N/A	11/8/2021 12:35 PM
30	As a former family law paralegal, I think there are incredible complexities to allowing non-lawyers to provide some limited legal services. This requires significant oversight, reporting, and care. I think that the OSB should not move forward with this plan without significant oversight and awareness.	11/8/2021 12:18 PM
31	How much will the license cost? Renewal? Re-testing to meet the updated knowledge.	11/6/2021 1:01 PM
32	I would hope that licensure would not require those with many years of relevant experience in the paralegal field to then obtain a degree to be licensed.	11/5/2021 6:12 PM
33	There are to many Oregonians going without legal help and jarring up an already very busy court system. There's a huge legal need not being met and we have to start coming up with solutions now.	11/3/2021 10:34 PM
34	I fully support the program, especially for family law matters. People in my family have had need of st andrews legal aid clinic, simple matters could definately be handled by a paralegal. This would provide greater access, relief to overburdened aid clinics and, encourage those in need to get help even if the don't meet aid thresholds.	11/3/2021 7:48 AM
35	Success and graduation rates of the program, how this could alleviate some issues in the legal field, how this could assist those who may not otherwise be able to afford/seek legal help	11/2/2021 10:28 PM
36	Paralegals are underrated and under appreciated. Many of us are more knowledgeable than the attorneys we work under, and our abilities are often times disregarded because we don't have bar numbers. Especially among brand new attorneys who graduate law school and pass the bar with no practical knowledge of how to actually do their jobs. We are the unsung heroes of the legal profession.	11/2/2021 9:04 PM
37	I think a licensed paralegal would have to be very careful to stay within the bounds of the role here. I think the role of the licensed paralegal should be limited to assisting clients in filling out forms to initiate and respond to litigation.	11/1/2021 12:17 PM
38	No.	11/1/2021 12:10 PM
39	Providing affordable legal support is an important social service that licensed nonlawyers would be able to provide. Too many legal needs go unmet by people of modest means because they, like so many other people, cannot afford the hourly rate of attorneys that helps to cover an attorney's expenses from education, licensing, and so on.	11/1/2021 8:12 AM
40	The dissenting opinion from the Washington Supreme Court regarding the elimination of Washington's program was insightful. Washington's program is likely a cautionary tale as much as it is an inspiring one, and we would be wise to learn from that dissenting opinion. My hope is that any licensing program in Oregon would include collaboration with stakeholders while working through needed improvements before any option of elimination would even be considered.	10/31/2021 10:58 PM
41	No	10/31/2021 10:06 PM
42	To consider how this would help the people with low cost legal services. I also think that there should be a limit to how much a licensed paralegal can charge for services.	10/30/2021 9:20 PM

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43	Making clear distinctions between certified paralegals/registered paralegals/licensed paralegals/or any other variation. Maybe a page on OSB website to explain the differences.	10/30/2021 3:35 PM
44	Standard background check	10/30/2021 1:35 PM
45	The court needs to recognize how difficult life gets for poor and working class people who cant afford good legal help. Many "big" problems could be stopped early if affordable legal help would be available early in a disagreement.	10/30/2021 1:28 PM
46	I think it's an excellent idea to make the legal system more accessible. I would suggest the business fees involved be lower than fees for attorneys since the paralegal, even though licensed, will not charge as much as an attorney. If this is going to be an option, please don't price paralegals out of the profession by making the startup costs so high they can't get started or keep their business running.	10/30/2021 11:41 AM
47	Listen to community members and individuals (pros and cons) on what licensed paralegals can do.	10/29/2021 10:35 PM
48	This may be a very good advancement in the legal field. Paralegals (for the most part) are thorough and diligent by nature and training in order to best assist their attorneys.	10/29/2021 4:19 PM
49	I think its a good idea for providing affordable legal services to people who cannot afford the cost of an attorney.	10/29/2021 3:38 PM
50	Minimizing legal cost in family matters and encouraging public or citizens to utilize paralegal services first to resolve certain matters.	10/29/2021 12:24 PM
51	I currently work at a non-profit. The landlord/tenant issues should be highest priority as well as family law due to the effects on low income families during COVID.	10/29/2021 9:48 AM
52	Creating a paraprofessional program is needed to ensure there are legal providers available to meet a growing need. It will provide a lower-cost alternative, and true paralegals are doing much of the same work as attorneys. However, it seems like there could be a lot of variability in the standard of work provided (paralegals enter the field through many different paths, and some are more skilled and knowledgeable than others), so it's important to have training or certification that to ensure that a paraprofessional is ready to provide services. It would also be helpful to have a mentor program, and perhaps an assigned attorney who can answer questions or talk through a complex legal issue, if the need arises.	10/29/2021 9:19 AM
53	I think only experienced paralegals should be licensed (or the additional education so through they might as well go to law school.)	10/29/2021 8:41 AM
54	Based on the outcome of Washington's LLLT program, the success of Oregon's program may hinge on whether it is well communicated to the public and/or it's acceptance by attorneys.	10/29/2021 8:04 AM
55	A framework for how much a licensed paralegal would charge for services.	10/29/2021 7:26 AM
56	Consider the areas of estate planning and probate too.	10/28/2021 10:28 PM
57	Follow Washington	10/28/2021 10:23 PM
58	I think that this program could be successful, but, it may be a few years before it's truly successful. As it's completely new, folx may be hesitant at first to take the financial risk. Also, I think it would be a good idea to open this idea to social workers and other fields similar to a paralegal to see if there would be interest. I would also like to see an immigration services option for document preparation as well.	10/28/2021 9:19 PM
59	The financial benefit to the public. It really would benefit the community.	10/28/2021 9:10 PM
60	The benefit to Oregonians to have a lower cost alternative and give access to more individuals.	10/28/2021 8:51 PM
61	The program needs to balance educational requirements against the expected pay for licensed paralegals. If the requirements are too high, they will deter paralegals from seeking licensure because there won't be the financial incentive.	10/28/2021 8:44 PM
62	Who is going to fund the licensing?	10/28/2021 8:34 PM
63	Look at other states where independent licensed paralegals have been successful.	10/28/2021 8:02 PM
64	I think of all the legal drafting I've done over the past four years, and at least 50% (if not more)	10/28/2021 7:54 PM

Paralegal Licensing Survey

of it has just been changing names around on templates. Attorneys are always overwhelmed with work (at least in the offices I've worked in). I think having positions to allow attorneys to clear up some of their caseloads would be helpful to everyone.

65	Parameters regarding legal liability to prevent practicing attorneys from targeting paralegals or accusing them of violating UPL	10/28/2021 7:53 PM
66	Education, background check, character check.	10/28/2021 7:18 PM
67	No, I believe the court is well aware of the shenanigans all humans pull at times.	10/28/2021 7:04 PM
68	No	10/28/2021 6:25 PM
69	Making a decision about what?	10/28/2021 5:57 PM
70	How paralegals are going to remain compliant with CLEs	10/28/2021 5:56 PM
71	I think the court is well aware of how unaffordable legal services currently are for middle and lower income persons - volunteer pro bono service are an inadequate and inappropriate/inefficient solution	10/28/2021 5:48 PM
72	no	10/28/2021 5:32 PM
73	I think this may help with fee costs for individuals seeking advice for not so complicated matters	10/28/2021 5:29 PM
74	Making sure that the program would be accessible and equitable.	10/28/2021 5:14 PM
75	I am sure there is. I'd have to think longer on this and no more about the details of the proposal before the court before I could answer this question.	10/28/2021 5:02 PM
76	I think it should consider whether people would seek licensing to provide pro bono assistance and possibly have some easier mechanisms to allow people to do that, especially if it was part of some kind of legal clinic. The court admittedly has difficult decisions to balance ensuring competency and protection of the public against promoting access to justice. If there are significant costs or barriers to licensing, it is less likely that people will seek licensing to provide pro bono services, which will reduce the effectiveness of the program.	10/28/2021 4:57 PM
77	This would provide many more people with access to legal help they need. ((but you probably know this already))	10/28/2021 4:56 PM
78	I think looking into the paralegals background. I believe the job carries a lot of weight and responsibility. There should be extra testing on the subjects applied for.	10/28/2021 4:53 PM
79	Try to make it as accessible of a program as possible. I think there is a lot people interested in getting licensed.	10/28/2021 4:52 PM
80	I know that the court has looked at other states that license paralegals. I think that to find out from them what works and what doesn't is important.	10/28/2021 4:49 PM
81	I would like an assurance that they will not abruptly end the program like they did in Washington.	10/28/2021 4:46 PM
82	Plenty of attorneys are subsidized by their employers with access to LexisNexis, various programs, and various trainings. It would be beneficial to the young paralegal to have equal access to these resources as well.	10/28/2021 4:30 PM
83	My definition of a licensed paralegal is someone who either has a paralegal degree, a paralegal certificate plus some experience, or enough experience to equate a degree.	10/28/2021 4:24 PM
84	I think the PLF should also be involved similarly as with attorneys. Mandatory dues/malpractice insurance and then support from the PLF like attorneys have.	10/28/2021 4:09 PM
85	Making 'more' possible in this way for clients and paralegals would be a boost to all concerned in Oregon! Thank you.	10/28/2021 4:02 PM
86	I worked hard to become a paralegal. I took out student loans, completed internships and spend hundreds of hours in person in the classroom (because there were no ABA approved online classes for paralegal certification in Oregon in 2015). If you let just anybody become a "licensed paralegal" it is not fair to the rest of us who had to put in the hard work and hours just to graduate and only make \$20/hr. Paralegals in Oregon do not make as much as they do in	10/28/2021 4:01 PM

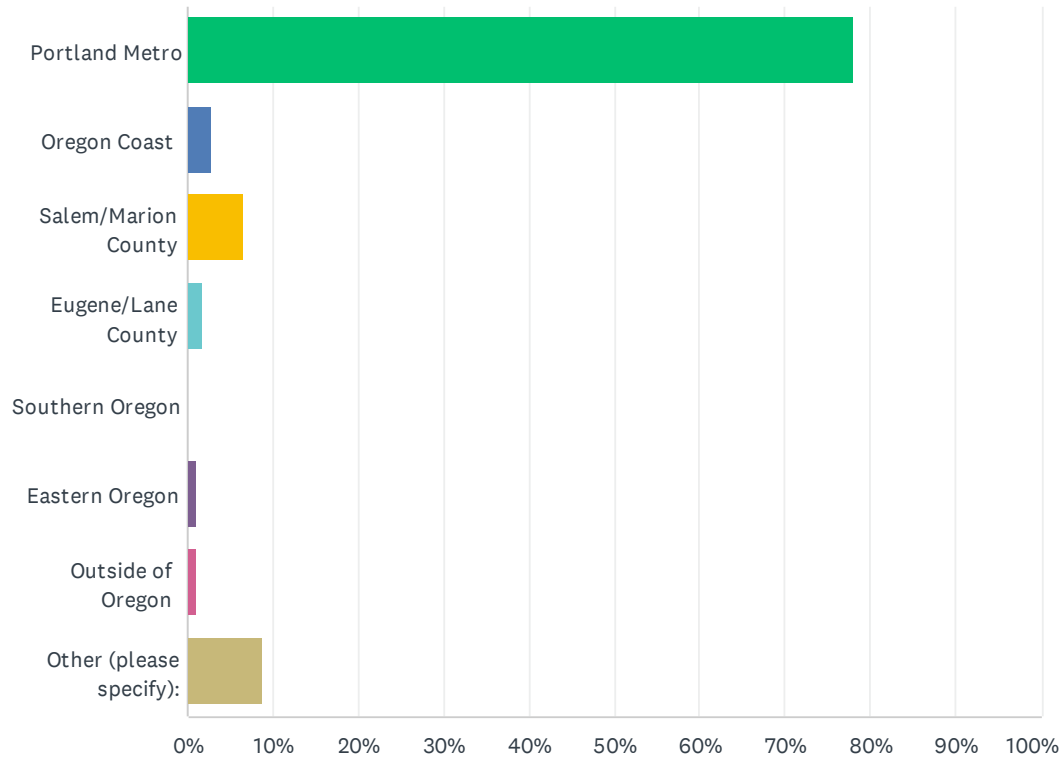
Paralegal Licensing Survey

other parts of the country and paralegal programs should not be able to advertise that you can make 60-80K per year as a paralegal when that is not true for our job market. I went from making \$16/hr in customer service to \$20/hr as a paralegal and now I have 20K in student loans. I feel like I got tricked. Other than meeting with the client, I do 90% of the attorneys work and they simply review it and sign their name on it. Not only should we be getting paid more but we should be recognized for our hard work. Allowing anyone to obtain a license to do freelance work is a disservice to the legal community and to those who turn to freelance paralegals who have not been properly educated and are more likely to get bad legal advice. Also people who offer freelance services on Craigslist etc should have to educate their customers about UPL and provide a link on how to file a complaint for UPL if they obtain bad service.

87	The court should really sit back and think about how easy miss information gets spread. If you have non-attorneys performing legal tasks it opens the door to miss information, misunderstanding of what a paralegal is and does, potential for paralegals practicing law. If a nurse wanted to be a doctor they would be a doctor. Same here.	10/28/2021 3:50 PM
88	Way to do a conflict check	10/28/2021 3:47 PM
89	I hope the Bar continues to move forward with this, in the interest of providing greater access to justice.	10/28/2021 3:46 PM
90	I just think this is great that Oregon is considering licensing like Washington did. It's too bad it is only for family law and landlord/tenant law, but I guess if you get too specialized that is where an attorney comes in. Hopefully, it will expand to other areas of law. But all in all a great start to help people who can't afford an attorney.	10/28/2021 3:45 PM
91	Limited license legal technicians could help fill the access gap due to legal services that many people experience due to the price of services. In order for the program to be successful, it will need continued funding and support.	10/28/2021 3:41 PM
92	Outside of large population centers (Portland Metro, Salem, Eugene) there is a population of citizens that desperately need legal services and can't afford the rates of a remote attorney.	10/28/2021 3:35 PM
93	No	10/28/2021 3:34 PM
94	Please make this program affordable.	10/28/2021 3:33 PM
95	This would greatly improve people's ability to access representation, particularly low income and underserved communities.	10/28/2021 3:33 PM

Q12 What part of Oregon do you work in, or hope to work in, after leaving school?

Answered: 182 Skipped: 72



ANSWER CHOICES	RESPONSES	
Portland Metro	78.02%	142
Oregon Coast	2.75%	5
Salem/Marion County	6.59%	12
Eugene/Lane County	1.65%	3
Southern Oregon	0.00%	0
Eastern Oregon	1.10%	2
Outside of Oregon	1.10%	2
Other (please specify):	8.79%	16
TOTAL		182

#	OTHER (PLEASE SPECIFY):	DATE
1	Columbia Gorge	11/9/2021 7:07 PM
2	currently working remotely from northeast Portland	11/9/2021 4:43 PM
3	I'm not in school. I work as a Paralegal in Portland.	11/9/2021 10:34 AM

Paralegal Licensing Survey

4	I work in all of Oregon, Washington, Idaho, Alaska and Utah	11/9/2021 9:02 AM
5	Washington County	11/5/2021 6:13 PM
6	Rural Washington County (currently working)	11/5/2021 6:12 PM
7	I currently work in the Portland metro area and would love to expand my knowledge to other parts of the U.S. and maybe Canada	11/2/2021 10:28 PM
8	The Columbia Gorge area	11/1/2021 9:55 AM
9	If in Oregon I would anticipate working in the Portland Metro area as well as St Helens and north coast.	10/30/2021 11:41 AM
10	North Carolina	10/30/2021 7:22 AM
11	Central Oregon/Bend Area	10/29/2021 2:25 PM
12	I currently live and work in Portland, but would consider relocating	10/28/2021 7:53 PM
13	hope to work in Marion county in a few years	10/28/2021 5:21 PM
14	Open to anywhere, especially if this allowed me to leave Portland	10/28/2021 5:02 PM
15	St. Helens, Oregon	10/28/2021 4:53 PM
16	Hillsboro, OR . This city along with others not in the metro area have a high population of Latinx members who are in dire need of legal representation and services. Most drive with out a license and driving all the way to Portland for these services makes the service unaccessible. We need to think of those who don't have the money or vehicle to travel into the city.	10/28/2021 3:42 PM



SUPREME COURT OF THE STATE OF OREGON

RULES FOR LICENSING PARALEGALS

EFFECTIVE _____, 2022

Oregon State Bar



Oregon State
Board of
Bar Examiners

RULES FOR LICENSING PARALEGALS IN OREGON

SECTION 1 – AUTHORITY; COMMON DEFINITIONS; FILING; CITATION

1.0 Statement of Regulatory Authority

The Rules for Licensing Paralegals in Oregon are Rules of the Supreme Court of the State of Oregon. Since licensed paralegals will be permitted to engage in the limited practice of law as associate members of the Oregon State Bar, the Rules for Licensing Paralegals are enacted pursuant to the Supreme Court's inherent authority to regulate the practice of law in Oregon, including regulating admissions to the Oregon State Bar, under Article VII (Amended), section 1, of the Oregon Constitution and ORS 9.006, including the statutory authority to direct the manner of examination of Applicants for admission to the Oregon State Bar under ORS 9.220.

1.1 Definitions Common to all Sections of These Rules

As used in These Rules, unless the context requires otherwise:

- (a) "Admissions Department" means the Admissions Department of the Oregon State Bar.
- (b) "Admissions Manager" means the Regulatory Counsel of the OSB, or such other OSB employee hired or appointed to oversee or manage the Admissions Department.
- (c) "Applicant" means an individual who submits an application with the Admissions Department to become a Licensed Paralegal in the State of Oregon.
- (d) "Application" means the form developed and provided by the Oregon State Bar for an Applicant to apply for a Paralegal License, together with any other document or form required by These Rules and related to an Applicant's attempt to become a Licensed Paralegal.
- (e) "Attorney OSB Member" means a regular member of the OSB, who is an attorney practicing law in Oregon. "
- (f) "Character and Fitness" means the combination of the following definitions in considering or analyzing an Applicant's qualifications for a Paralegal License:
 - (1) "Fit to provide Licensed Paralegal Services" or "Fitness" means an Applicant has been assessed to presently have the capacity to identify both professional and personal ethical issues, and is capable of exercising a level of judgment and discernment that would avoid conduct calling into question the Applicant's Good Moral Character.
 - (2) "Good Moral Character" or "Moral Character" or "Character" is given the same meaning as the term "Good Moral Character" is given in ORS 9.220(2)(b)

- (g) "Committee" means the Committee of Paralegal Assessors described in Section 2 of the RLP, and performs the various functions related the licensing of Licensed Paralegals as described in These Rules.
- (h) "Court" means the Oregon Supreme Court.
- (i) "Endorsed" or "Endorsed area of practice" means that an Applicant or Licensed Paralegal has established that they possess sufficient learning and ability in a specific area of the law, and pursuant to their Paralegal License (once issued to an Applicant), may provide Licensed Paralegal Services within that specific area of the law without the supervision of an Attorney OSB Member, subject to the Scope of Practice limitations established by These Rules.
- (j) "Endorsement" or "Endorsement Sought" means the area of law in which an Applicant intends to practice Licensed Paralegal Services. Presently, the only two areas of law that are eligible for Endorsement are Family Law and Landlord-Tenant Law. Before a Paralegal License can be issued, an Applicant must establish the Minimum Endorsement Experience in the area for which they are seeking an endorsement.
- (k) "Family Law" for the purposes of a Family Law Endorsed Licensed Paralegal's Scope of Practice, means dissolution of marriage, separation, annulment, custody, parenting time, child support, spousal support, modifications, and remedial contempt.
- (l) "Landlord-Tenant Law" or "Landlord-Tenant" for the purposes of a Landlord-Tenant Law Endorsed Licensed Paralegal's Scope of Practice, means landlord-tenant issues concerning residential rental agreements or tenancies subject to the Oregon Residential Landlord Tenant Act and the FED provisions relating to residential tenancies found in ORS 105.126–105.168.
- (m) "Licensed Paralegal" means an individual licensed by the State of Oregon as a Licensed Paralegal who is authorized under the law to perform limited legal services within a defined and Endorsed Scope of Practice.
- (n) "Licensed Paralegal Services" are services that were historically provided by Oregon attorneys to clients for a fee, or by paralegals under the supervision of an Attorney OSB Member, but may be provided by Licensed Paralegals without the supervision of an attorney, so long as the services are provided within the Scope of Practice authorized by These Rules, the Oregon Rules of Professional Conduct for Licensed Paralegals, Supreme Court Rules and the Oregon Revised Statutes.
- (o) "Military service" means extended active service in the armed forces of the United States or deployment with the National Guard.
- (p) "OSB" means the Oregon State Bar. Look at Bar and OSB and Bar
- (q) "OSB Adjudicator" means the Adjudicator of the OSB.
- (r) "OSB Member" means a regular or associate member of the OSB.

- (s) “OSB Staff” means the OSB staff member from the Admissions Department, or any other OSB staff member assigned to work with the Committee by the Admissions Manager.
- (t) “Paralegal License” or “License” means the license issued by the Court, permitting a paralegal to engage in Licensed Paralegal Services in Oregon without the supervision of an Attorney OSB Member.
- (u) “Scope of Practice” means the limited legal services permitted to be performed by a Licensed Paralegal within their Endorsed area of practice without the supervision of an Attorney OSB Member. Some policy guidance, and defined services that are within and outside of the Scope of Practice are identified in Section 11 to These Rules.
- (v) “Substantive Paralegal Experience” is the performance of substantive legal work authorized to be performed by Licensed Paralegals in an Endorsed area of Practice; or is substantive legal work performed under the employment or training of an Attorney OSB Member or an approved paralegal education program identified in RLP 4.2, and requires knowledge of legal concepts and processes that are customarily, but not exclusively, performed by a lawyer. The term does not include administrative functions.
- (w) “These Rules” means the Rules for Licensing Paralegals, also referred to as the “RLP.”

1.2 Filing

- (a) Any document required to be filed or submitted pursuant to These Rules, whether by an Applicant or third party, must be delivered through one the following means:
 - (1) Any electronic means authorized by These Rules, or provided by the Admissions Department specifically for the submission or filing of Paralegal License Applications and related documents. A document delivered through such electronic means shall be deemed submitted or filed at time and date that the electronic delivery is received by the Admissions Department. In order to protect the confidentiality of Applicant data per ORS 9.210(4), email delivery shall not be considered a valid means for Applicants to submit or file any required document; or
 - (2) First class mail through the United States Postal Service to the Oregon State Bar, Attn: Admissions Department, P. O. Box 231935, Tigard, Oregon 97281-1935. Documents delivered through this means shall be not be deemed filed or submitted until the documents are received by the Admissions Department. The date and time of the filing or submission shall be deemed to be date and time of United States Postal Service’s post mark.
- (b) If a document must be submitted or filed by a deadline provided by These Rules, or stated by the Admissions Department, and the document is filed or submitted through means other than those described in RLP 1.2(a), the filing shall not be deemed timely unless the document is actually received by the Admissions Department on or before the deadline.

1.3 Citation

- (a) These Rules may be cited as the “RLP.”

SECTION 2 – COMMITTEE of PARALEGAL ASSESSORS

There shall be a Committee of Paralegal Assessors to assess the qualifications of each Applicant for a Paralegal License pursuant to These Rules. In carrying out its responsibilities, the Committee shall be supported by the Admissions Manager and other OSB Staff. The Committee shall have no policy setting authority, but instead shall uphold the standards of a Paralegal License through the policies and procedures provided in These Rules.

2.1 Appointment of Members; Structure of Committee; Liaisons.

- (a) The OSB Board of Governors will recruit candidates for appointment to the Committee and nominate selected recruits to the Court on or before November 1 of each year, so that the Committee maintains a minimum of at least five Committee members at all times.
- (b) The Committee shall consist of:
- (1) At least five Committee members appointed by the Court. On or before December 31 of each year, at least one Committee member shall be appointed for a maximum of a three-year term to commence on the following January 1. At all times, at least four Committee members must satisfy one of the following qualifications:
 - (A) Be an active Licensed Paralegal by the OSB;
 - (B) Be an active Attorney OSB Member; or
 - (C) Be trained as a paralegal, and for the five years immediately preceding appointment, been continuously employed as a paralegal and supervised by an active Attorney OSB Member.
 - (2) At least one of the member of the Committee shall not be a member of the OSB (“Public Members”). Such member(s) shall be appointed by the Court upon nomination of the OSB Board of Governors and shall be appointed for a term of one year. Public Members shall have no responsibility for preparing or grading licensing assessment materials.
 - (3) A person who is connected with the faculty or governing body of a school offering degrees or certifications in paralegal studies, except an adjunct professor, is not eligible to become or remain a member of the Committee.
- (c) Each year, the Committee shall appoint a Committee member, who must be an active member of the OSB, to serve as a liaison to the Oregon State Board of Bar Examiners (“BBX”) to better understand the policies and procedures of the BBX in making its decisions related to applications for admission to the practice of law in Oregon. The Liaison will serve for a one year term, commencing on the following January 1.

- (d) The BBX shall appoint one of its members to be a liaison to the Committee, to assist the Committee in executing its responsibilities stated in These Rules.
- (e) Since the Committee shall not develop or establish any public policies related to These Rules, or any other law, regulation or rule, no officer need be elected and no public meetings will be held.

2.2 Duties

In addition to any other duties or obligations described in These Rules, the primary duty of the Committee shall be to evaluate and assess an Applicant's qualifications for a Paralegal License in the State of Oregon. The Committee shall ensure that each Applicant meets the minimum qualifications required by Section 5 of the RLP, through the processes outlined in Section 6 of the RLP; and by upholding the high standards expected by the Bench, Bar and general public of Licensed Paralegals defined in Section 7 of the RLP, pursuant to the process outlined in Sections 8 of the RLP. When necessary, a Committee member shall participate in a Character and Fitness proceeding pursuant to Section 9 of the RLP. Finally, the Committee shall make recommendations to the Court regarding Applicants whose qualifications for a Paralegal License were questioned, or otherwise not previously approved, by the Admissions Manager.

2.3 Activities and Decisions of the Committee

- (a) In determining an Applicant's qualifications for a Paralegal License, the Committee shall engage in the following non-exhaustive list of activities:
 - (1) Evaluate an Applicant's competence, learning and abilities to engage in a Licensed Paralegal practice through [the grading of an Entry Exam as described in RLP 6.7](#);
 - (2) [Evaluate appeals from Applicants whose request for accommodations on the Entry Exam were denied or modified by the Admissions Manager. In reviewing such appeals, the Committee shall follow the procedures outlined in RLP 6.5](#);
 - (3) If the Admissions Manager cannot approve an Applicant's character and fitness for a Paralegal License, then the Committee shall Review investigation materials provided by the Applicant, OSB Staff or a Special Investigator and evaluate such Applicant's Moral Character and Fitness to engage in a Licensed Paralegal Practice;
 - (4) Participate in evidentiary hearings related to an Applicant who has been recommended for denial of license in accordance with These Rules; and
 - (5) Make other recommendations to the Court regarding an Applicant's qualifications to engage in a Licensed Paralegal practice in Oregon, as required by These Rules.
- (b) Any decisions or action of the Committee shall be made or taken based upon a majority vote of all non-recused or absent members of the Committee.

2.4 Disclosure of Committee Records

Unless expressly authorized by the Court or by These Rules, the Committee shall not disclose any of its records, work product or proceedings in carrying out its duties.

- (a) The Committee may release an Applicant's Application file and related materials to:
 - (1) A special investigator appointed under RLP 8.3 – 8.4;
 - (A) A special investigator may reveal facts or information contained in the Applicant's Application file and related materials to any third party or source only pursuant to a release or waiver signed by the Applicant, which the OSB may require the Applicant to sign as part of the initial application for a Paralegal License.
 - (2) Any active Attorney OSB Member appointed by the Committee before the Court when an Applicant seeks Court review of an adverse licensure recommendation;
 - (3) Counsel appointed by the Committee when an Applicant initiates civil proceedings against the Committee in connection with the Applicant's application;
 - (4) Admissions authorities in other jurisdictions which guarantee the confidentiality of Applicant's files to the same extent as required under Oregon law; or
 - (5) An Applicant requesting a copy of their license application file, but the Committee may release only to the Applicant a true copy of that portion of the application form which was completed and submitted by the Applicant. The Committee may charge a reasonable administrative fee to an Applicant for providing the true copy.
- (b) Since all matters reviewed by the Committee will relate to a determination of whether an Applicant meets the requirements to become a Licensed Paralegal in the State of Oregon, and since all such matters are considered a judicial proceeding by these Rules, no materials reviewed by the Committee shall be considered a public record.

SECTION 3 - APPLICATION

3.1 Filing of Application

Applications for a Paralegal License shall be in the form prescribed by the Admissions Manager. They may be filed at any time. No Application will be considered submitted unless it is accompanied with the required application fee, and required documentation related to the Applicant's age, education and paralegal experience.

3.2 Application Fees and Refunds

- (a) Every Applicant must pay to the OSB, at the time of filing their Application, the required application

fee set by the Admissions Manager as stated on the online Admissions home page of the OSB website.

- (b) If the Applicant was previously denied a Paralegal License by the Court in a contested licensure case, such Applicant shall pay to the OSB any unpaid judgment for costs and disbursements assessed by the Court therein. This payment shall be in addition to, and must be paid concurrently with, the application fee required by RLP 3.2(a) above.
- (c) No refunds of any application fee may be provided to an Applicant, except as follows:
 - (1) If an Applicant provides the Admissions Department with a written request to withdraw their application within sixty (60) days of the Admission Department's receipt of their application, then the Applicant will be entitled to a refund of one-half of the application fee required by RLP 3.2(a) above; or
 - (2) If an Applicant is unqualified under the RLP for which they sought a License, then the Applicant shall be entitled to a refund of one-quarter of the application fee required by RLP 3.2(a) above.

3.3 Contents of Application

- (a) Each application shall be on a form prescribed by the Admissions Manager that is designed to provide the Admissions Manager or Committee with all information necessary to sufficiently evaluate and assess the Applicant's minimum qualifications, through the processes described in the RLP. At a minimum, the Application must contain or be accompanied by:
 - (1) An executed release and authorization to obtain at least the following information:
 - (A) the Applicant's motor vehicle driving record;
 - (B) the Applicant's education files and records related to their certifications, associates, bachelors or advanced degrees;
 - (C) credit information concerning the Applicant;
 - (D) the Applicant's disciplinary history and status in any organization or jurisdiction involved in the certification or licensing of paralegals or other profession for which Applicant previously sought or held a license.
- (b) Each Applicant must file a copy of one of the following forms prescribed by the OSB:
 - (1) A Certificate of Approved Degree Confirmation establishing that the Applicant is a graduate of an approved paralegal education program described in RLP 4.2 below; or
 - (2) A waiver form, with attached evidence establishing that the Applicant meets all of the requirements of at least one of the Education Waiver categories outlined in RLP 4.3 below.

(c) RESERVED FOR PORTFOLIO PROVISION...

(d) [Each Application must include evidence establishing that the Applicant has proven their knowledge of the Rules of Professional Conduct for Licensed Paralegals through one of the methods identified in RLP 6.2.

(e) [Prior to taking the entry exam described in RLP Section 6.4, an Applicant must complete their Application with the following documents, if applicable:]

(1) Each Applicant who is a licensed paralegal in another state, the District of Columbia, or a federal territory must file one copy of a certificate of good standing.

(A) The certificate of good standing shall be submitted by the proper licensing body in the given jurisdiction, and state the following:

- (I) the date of Applicant's license to practice paralegal services;
- (II) whether Applicant is entitled to engage in the practice of paralegal services;
- (III) whether Applicant is a member of the bar or other licensing board in good standing; and
- (IV) whether there is now pending, or ever has been, any complaint, grievance, disciplinary proceeding or disciplinary action against the Applicant, and, if any appear, the status thereof, the nature of the charge or charges, the full facts including the disposition thereof, the nature of the final judgment, order or decree, if any, rendered therein and the name and address of the person or body in possession of the record thereof.

(A) Each Applicant who claims certification of their qualifications by an organization dedicated to upholding the standards or professionalism or competence of paralegals, must submit a document from the organization establishing that the certification is current or active, and that the Applicant is in good standing with the organization.

3.4 Applicant Duties

- (a) **Cooperation.** Every Applicant has a duty to cooperate and comply with requests from the OSB Admissions Staff and the Committee, including but not limited to, requests to appear for scheduled Committee interviews, to execute releases and to obtain information and records from third parties for submission to the Admissions Department or Committee.
- (b) **Continuing obligation to report.** Every Applicant has a duty to report promptly to the OSB Admissions Staff any change, addition or correction to the information provided in his or her application, including but not limited to: changes in address, e-mail address, phone number(s), or

employment; criminal charges; disciplinary proceedings; traffic violations; and any other facts or occurrences that could reasonably bear upon the Character and Fitness of the Applicant.

3.5 Form of Petitions to Court for Waiver of RLP

Applicants barred from receiving a Paralegal License due to the enforcement of an RLP, may seek a waiver from the Court through the following petition process:

- (a) Any petition to the Court relating to an Application for Paralegal Licensure shall be signed and verified before a notary public or other official authorized to execute oaths. The Court will only consider Petitions from current applicants. Petitions shall be on 8 1/2" by 11" paper and contain the name, address, and telephone number of the Applicant and counsel, if any. Petitions shall be headed "IN THE SUPREME COURT OF THE STATE OF OREGON" and shall set forth those facts which petitioner believes will indicate reasons for granting the petition.
- (b) The original petition shall be filed with the Committee for evaluation and comment. The Committee may request additional information from the petitioner in support of the petition. When the information has been supplied or the petitioner states that he or she chooses not to submit additional responses to such requests, the Committee shall forward the petition to the Court along with the Committee's comments and recommendation.

SECTION 4 - QUALIFICATIONS OF APPLICANTS

Prior to receiving a Paralegal License in Oregon, an Applicant must establish, by clear and convincing evidence, that the Applicant satisfies all requirements for such License, including the age, learning and ability, and the Character and Fitness required by ORS 9.220.

4.1 Minimum Age Required

All Applicants must be at least eighteen (18) years old at the time the Applicant submits their Application for a Paralegal License. This requirement may be satisfied through an affidavit signed by the Applicant.

4.2 Approved Paralegal Educations

Applicants may meet the minimum learning required for a Paralegal License by obtaining one of the following degrees from a higher learning institution that meets the qualifications outlined in the relevant section:

- (a) Graduates of Approved Paralegal Programs: An associate's degree or higher in paralegal studies from an approved paralegal education program that requires sufficient demonstration of core competencies. A list of known approved programs can be found on the Admissions Homepage of the OSB. Applicants seeking a Paralegal License through an approved paralegal education, must submit an OSB Certificate of Approved Degree Confirmation form, which must verify that the

Applicant meets the approved paralegal education requirements, and shall be certified by the registrar of the higher education learning institution with the accredited paralegal program from which Applicant received at least an Associate's Degree in paralegal studies. Proof of an Applicant's graduation from The Certificate of Approved Degree Confirmation must be substantially similar to the Certificate of Approved Degree Confirmation contained in Attachment A1 to Appendix A; or

- (b) Graduates with Bachelor Degree from Higher Learning Institution: Obtained a bachelor's degree or higher in any course of study from a nationally accredited U.S. institution of higher learning. Applicants seeking licensure through this Education qualification must submit Certificate of Degree and Accreditation, which must be completed by the Registrar of the higher education learning institution from which Applicant graduated. The Registrar must certify applicable accreditations awarded to the institution and confirm all degrees received by Applicant. The Certificate of Degree and Accreditation must be substantially similar to the Certificate of Degree and Accreditation contained in Attachment A2 to Appendix A.
- (c) Graduates from an ABA Accredited Law School: Graduated from a law school approved by the American Bar Association, earning a Juris Doctor degree or Bachelor of Law (LL.B.) degree. Applicants seeking licensure through this Education qualification must submit Certificate of Graduation, which must be completed by the Registrar of the law school from which Applicant graduated. The Certificate of Graduation must be substantially similar to the Certificate of Degree and Accreditation contained in Attachment A3 to Appendix A.

4.3 Education Waivers Available for Applicants

If an Applicant does not meet the requirements described in RLP 4.2, the Applicant may submit an Education Waiver Form, provided by the OSB, which establishes that the Applicant meets all of the requirements of one of the following waiver categories:

- (a) Highly Experienced Paralegal: Obtained on-the-job training provided through a minimum of 5 years of full-time Substantive Paralegal Experience or 7,500 hours of Substantive Paralegal Experience, with a minimum of 1,500 hours having been obtained within the three years immediately preceding the date of Applicant's application. All hours claimed for this waiver, must be verified by an Attorney OSB Member through the Highly Experienced Paralegal – Experience Verification Declaration contained in Attachment B1 to Appendix A.
- (b) Certified Paralegal: Passed one of the listed national paralegal certification exams, so long as the credential remains current and in good standing with the issuing organization on the date of application submission:
 - (1) The National Association of Legal Assistants (NALA) Certified Paralegal Exam® (CP) with current CP® Credentials;
 - (2) The National Federation of Paralegal Associations' (NFPA) (a) Paralegal Advanced Competency Exam® (PACE) with current RP® Credentials; or (b) Paralegal Core Competency Exam® (PCCE)

with current CRP™ credentials; or

(3) The NALS Professional Paralegal (PP) Exam with current PP™ Credentials.

(4) If the issuing organization does not issue Certificates of Good Standing, the applicant may ask the organization to complete the form contained in Attachment B2 of Appendix A (Verification of Certification – Certifying Body).

(c) Military Paralegal: Achieved the rank of E6 or higher as a member of any branch of the US Armed Forces, qualified in a military operation specialty as a supervisory paralegal within the noted branch of service. Applicants seeking licensure through this Education Alternative, must submit a DD-214 establishing the aforementioned rank and the military operation specialty.

(d) Out-of-State Paralegal Licensee: Be a currently active licensed paralegal (or, regardless of title, substantially equivalent to an Oregon Licensed Paralegal), in good standing with the licensing agency or relevant state body; and has lawfully engaged in providing Licensed Paralegal Services for at least one-thousand (1,000) hours per year, in two of the three years immediately preceding the date of their Application.

4.4 Mandatory Professional Education Requirements for Admission

Mandatory Education Requirements – All Applicants must complete twenty (20) hours of courses approved by the Admissions Department within twelve months immediately preceding the date the Application is submitted. Mandatory Course Subjects (in advance of a License):

(a) Three (3) hours must cover Diversity, Equity and Inclusion, and/or Access to Justice. The following three principles should guide access to Justice CLE credits:

- (1) Promote access to justice by eliminating systemic barriers that prevent people from understanding and exercising their rights.
- (2) Work to achieve fairness by delivering fair and just outcomes for all parties, including those facing financial, racial, gender, or equity disparities.
- (3) Address systemic failures that lead to a lack of confidence in the justice system by creating meaningful and equitable opportunities to be heard. Access to Justice Courses should include activities directly related to the practice of law and designed to educate the participants to recognize, identify and address within the legal profession barriers to access to justice arising from both the provision of legal services and from the practice of law and should address each of the following topics:

- (A) Age;
- (B) Culture;
- (C) Disability;
- (D) Ethnicity;
- (E) Gender and gender identity or expression;

- (F) Geographic location;
- (G) Immigration status;
- (H) National origin;
- (I) Race;
- (J) Religion;
- (K) Sex and sexual orientation;
- (L) Socioeconomic status; and
- (M) Veteran status.

- (b) Two (2) hours of Legal Ethics (Oregon Rules of Professional Responsibility for Licensed Paralegals);
- (c) One (1) hour must cover IOLTA account administration;
- (d) Three (3) hours must cover introductory Oregon Rules of Civil Procedures to include the following Oregon State Specific Court Practice Rules for Trial Courts:
 - (1) Uniform Trial Court Rules;
 - (2) Supplemental Local Rules; and
 - (3) Appendix – 15 c;
- (e) One (1) hour must cover identifying Scope of Practice limitations for a Licensed Paralegal and Practical Identification of Mandatory Referral Scenarios;
- (f) One (1) hour must cover education on limited scope law practice management skills for newly licensed paraprofessionals;
- (g) One (1) hour must cover mental health/substance abuse in the legal profession; and
- (h) The remaining eight (8) hours must cover the practice area for which the Applicant is seeking Endorsement and must be accredited by the OSB Minimum Continuing Legal Education Program Manager, which should include CLEs approved for attorneys or paralegals.

4.5 Substantive Paralegal Work Experience Required

In addition to any experience required from RLP 4.2 and 4.3, in order to establish the requisite learning and ability, an Applicant must satisfy the applicable experience outlined below in this RLP 4.4.

- (a) Admission Based on an Approved Paralegal Education or Bachelor Degree - Substantive Work Experience Requirements: Applicants seeking licensure through an approved paralegal education under RLP 4.2(a) or bachelor degree in any subject under RLP 4.2(b), must complete 1,500 hours of Substantive Paralegal Experience within the three years immediately preceding the submission of Applicant's Application, with no less than 500 hours being completed within each of the relevant three years. Any hours claimed for the requirements of this 4.4(a), are subject to the following:

- (1) Experiential Learning Hours - A maximum of 500 hours of the 1,500 hours may be completed through internships/externships and other experiential learning opportunities presented through the Applicant's accredited paralegal education. Any hours claimed to meet the requirements of this 4.4(a)(1) must be verified via the Paralegal Teacher Declaration contained in Attachment C1 to Appendix A.
 - (2) Work Related Hours - The total number of Experiential Learning Hours claimed under 4.4(a)(1), up to a maximum of 500 hours, shall be subtracted from 1,500 to determine the number Work Related hours needed to satisfy the 1,500 hours required under RLP 4.4(a). All hours claimed pursuant to RLP 4.4(a)(2), must be verified by an active Oregon State Bar Attorney Member through the Work Experience Declaration contained in Attachment C2 to Appendix A.
 - (3) Multi-Purpose Endorsement Hours – Hours spent training and working within the area of law for which Applicant seeks an Endorsement may be counted toward both the minimum 500 hours required in RLP 4.4(a) and 4.4(b) above, and the minimum hours required for an Endorsement under RLP 4.5 below.
- (b) Admission Based on an Juris Doctorate Degree - Substantive Work Experience Requirements: Juris Doctorate Work Related Hours - Applicants who have received a Juris Doctorate from an ABA accredited law school, and are seeking a Paralegal License through the Alternative Education provided by RLP 4.4(d), must complete 750 hours of Substantive Paralegal Experience within the 18-months immediately preceding the submission of the Applicant's Application, subject to the following:
- (1) All 750 hours must involve one of the Practice Areas related to the Endorsements described in RLP 4.5 below;
 - (2) The Applicant must receive at least one of the Endorsements described in RLP 4.6; and
 - (3) All 750 must be verified by an active OSB Member through the Work Experience Declaration contained in Attachment C2 to Appendix A.
- (c) Admission Based on Education Waiver – Substantive Work Experience Required: Applicants who meet the Education Waiver requirements stated in RLP 4.3, must meet the following applicable requirements. The applicability of the following requirements are based on the category of Education Waiver pursued by the Applicant in 4.3 above:
- (1) Work Related Hours - Applicants seeking a Paralegal License through an Education Waiver provided in RLP 4.3 must have completed 1,500 hours of Substantive Paralegal Experience within the three years immediately preceding the submission of the Applicant's Application, subject to the following:
 - (A) At least 500 of the 1,500 hours must have been completed in the last 12-months

immediately preceding the submission of Applicant's Application; and

- (B) All 1,500 hours must be verified by an active Attorney OSB Member through the Work Experience Declaration contained in Attachment C2 to Appendix A.
- (C) Hours spent training and working within the area of law for which Applicant seeks an Endorsement may be counted toward both the minimum 500 hours required in RLP 4.5(c)(1)(a) and (b) above, and the minimum hours required for an Endorsement under RLP 4.6 below.

4.6 Endorsement of Practice Area and Limitations on Experience Counted

Prior to a Paralegal License being issued, an Applicant must be endorsed in at least one of the following approved Scopes of Practice, by meeting the following requirements:

- (a) Family Law Endorsement: In order to be approved for a Family Law Endorsement, the Applicant must have completed 500 hours of experience within the 18-months immediately preceding the date of the Applicant's Application, which such hours must be focused on Family Law, with an emphasis in dissolution of marriages, separations, annulments, modifications, and matters involving child custody, parenting time, child support, spousal support, and remedial contempt. All 500 hours required for the Family Law Endorsement may be counted toward the Applicant's Substantive Paralegal Work, as well as Endorsement hours.
- (b) Landlord-Tenant Endorsement: In order to be approved for the Landlord-Tenant Endorsement, the Applicant must have completed 250 hours of experience within the 12-months immediately preceding the date of the Applicant's Application, which such hours must be focused on the rights and obligations of the parties under the Oregon Landlord-Tenant Act, preparation and filing of FED complaints, answers (including tenant counterclaims), replies to counterclaims and affirmative defenses, subpoenas, trial exhibits, FED stipulated agreements, declarations of noncompliance, requests for hearing on declarations of noncompliance, notices of restitution, and writs of execution. All 250 hours required for the Landlord-Tenant Endorsement may be counted toward the Applicant's Substantive Paralegal Work, as well as Endorsement hours.

4.7 Learning and Ability Assessment

An Applicant's learning and abilities within the area of law for which Applicant seeks Endorsement shall be demonstrated through the submission of their Portfolio, and through examinations designed to measure the Applicant's knowledge, legal skills and abilities in the areas of legal ethics and the Scope of Practice permitted by Licensed Paralegals. Any exam given to an Applicant, may also test the Applicant's learning and abilities in the area of practice for which the Applicant seeks Endorsement. The Applicant's abilities shall be assessed pursuant to the Processes outlined in Section 6 of These Rules, and measured against the Standards outlined in Section 5 of the RLP.

4.8 Character and Fitness Assessment

An Applicant's Character and Fitness shall be demonstrated through a background screening and, should

it be warranted, a thorough investigation conducted by OSB Staff, and any subsequent interviews or hearings required by the RLP. The Applicant's Character and Fitness shall be assessed pursuant to the Processes outlined in Sections 8 and 9 of the RLP, and measured against the standards outlined in Section 7 of the RLP.

SECTION 5 – POLICIES AND STANDARDS FOR ALL REQUIREMENTS OF LICENSED PARALEGALS

In reviewing all of an Applicant's qualifications for a Paralegal License, including Character and Fitness, the Committee shall uphold the following policies, standards and requirements:

5.1 Protection of the Public

The first priority of the OSB and Committee should be protection of the legal consumer public. Any significant doubts about an Applicant's qualifications to be licensed as a paralegal should be resolved in favor of protecting the public by recommending denial of a Paralegal License.

5.2 Nondiscrimination Policy

The second priority of the OSB and Committee is to execute the policies and standards established by the RLP in a manner that considers and fosters diversity and equity in the Oregon legal profession. In determining whether an Applicant meets the qualifications for a Paralegal License, the Board shall not discriminate against any Applicant on the basis of:

- (a) race, color, or ethnic identity;
- (b) gender or gender identity;
- (c) sexual orientation;
- (d) marital status;
- (e) creed or religion;
- (f) political beliefs or affiliation;
- (g) sensory, mental, or physical disability;
- (h) national origin;
- (i) age;
- (j) honorably discharged veteran or military status;
- (k) use of a trained service animal by a person with a disability; or
- (l) any other class protected under state or federal law.

5.3 Applicant has the Burden of Proof; Clear and Convincing Standard

The Applicant has the burden of proving that the Applicant meets each of the qualifications for a Paralegal License by clear and convincing evidence. This standard requires an Applicant to show that it is "highly probable" that the Applicant meets the qualification(s).

5.4 Standards of a Licensed Paralegal

A Licensed Paralegal should have a record of conduct that demonstrates a level of judgment and diligence that will result in competent representation of the best interests of clients and that justifies

the trust of clients, adversaries, courts, tribunals, interested third parties and the general public with respect to all professional duties owed. This standard should be demonstrated in the Portfolio, [any required examinations](#), and in the Character and Fitness investigation, including any interviews or hearings conducted.

5.5 Essential Eligibility Requirements

The OSB or Committee will consider the demonstration of the following attributes, and the likelihood that one will utilize these attributes in the practice of Licensed Paralegal Services, to be essential in considering the competence, learning, abilities, Moral Character and Fitness of all Applicants:

- (a) Have knowledge of the fundamental principles of law and the understood application of said principles, which includes the following:
 - (1) An understanding of legal processes and sources of law.
 - (2) A studied and retained understanding of threshold concepts in many legal subject matters.
 - (3) An established proficiency in methods of legal research of laws, rules, regulations and precedents.
 - (4) A recognition that self-directed learning is necessary in legal matters relevant to one's practice, in matters affecting clients or parties common to one's practice, and matters relevant to the legal profession or the judicial system;
- (b) Have the ability to competently undertake the fundamental legal skills commensurate with being a Licensed Paralegal, which includes the following:
 - (1) Effectively communicate with clients and potential clients in order to understand their legal needs, including any overarching goals related to the legal services sought, and recommend solutions or courses of action in a manner that the client understands the recommendation and the processes and estimated costs required to undertake those recommendations.
 - (2) Identify legal issues and facts relevant to such issues.
 - (3) Conduct or oversee efficient investigations and research for relevant issues, facts, rules and conclusions.
 - (4) Reasonably and appropriately interpret statutes, rules, regulations, opinions of courts and institutions, and other legal authorities or trusted learned sources.
 - (5) Perform legal reasoning and analysis that produces reasonable conclusions upon which clients, courts and other relevant third parties may rely.

- (6) Effectively communicate authoritative laws, legal analysis and conclusions to courts, tribunals, adversarial parties and other third parties relevant to a client's representation in a way that the relevant audience reasonably understands the basis for any opinion, position or recommendation.
 - (7) Identify and solve problems related to any representation, one's practice, the legal profession or the judicial system.
 - (8) When sufficient time for research or review is lacking, quickly recall factual information and integrate such information with legal theories in order to reach a reasonable solution for the presented issue.
 - (9) Manage one's workload and time to such an extent that all matters undertaken receive effective and diligent services.
 - (10) Develop and maintain systems, processes and habits that are effective in helping one cope with the stresses of the legal profession.
 - (11) Recognize ethical dilemmas in one's practice or life and resolve them in compliance with the Oregon Rules of Professional Conduct for Paralegals, or other relevant rules; and
- (c) Regardless of circumstance or consequence, have the judgment and Character to always:
- (1) Communicate honestly, candidly, and civilly with clients, attorneys, courts, and others;
 - (2) Conduct financial dealings in a responsible, honest, and trustworthy manner;
 - (3) Conduct oneself with respect for and in accordance with the law;
 - (4) Demonstrate regard for the rights, safety, and welfare of others;
 - (5) Demonstrate good judgment on behalf of clients and in conducting one's professional business;
 - (6) Act diligently, reliably, and punctually in fulfilling obligations to clients, lawyers, courts, and others;
 - (7) Comply with deadlines and time constraints;
 - (8) Comply with the requirements of applicable state, local, and federal laws, rules, and regulations; any applicable order of a court or tribunal; and the Oregon Rules of Professional Conduct.

SECTION 6 – PROCESS FOR ESTABLISHING LEARNING AND ABILITY

6.1 Reserved for Future Portfolio Provision

6.2 [Requisite Knowledge of the Professional Responsibilities of Licensed Paralegals

Every Applicant for a Paralegal License is required to prove that they have the requisite knowledge of the Professional Responsibilities of a Licensed Paralegal through one of the following methods:

- (a) Taken an approved course on the Rules of Professional Conduct applicable to Licensed Paralegals in Oregon, and achieved a grade average of 3.3 or higher on a 4.0-point scale (or equivalent by achieving a grade that is equal to 82.5% or higher on the point scale used by the academic institution where the course was taken);
- (b) If offered, passed a professional responsibility exam presented by the Oregon State Bar that tests the knowledge of examinees on the Oregon Rules of Professional Conduct for Licensed Paralegals.;
or
- (c) Achieved a score of [75-85?] or higher (“Passing Score”) on the Multistate Professional Responsibility Examination, and the Applicant must request that their score be transferred to the OSB Admissions Department prior to submission of their Application.
 - (1) The Multistate Professional Responsibility Examination (MPRE) is produced by the National Conference of Bar Examiners (NCBE). The MPRE will be conducted at the times, places and in the manner prescribed by the NCBE or its duly authorized representatives. Accommodation requests for the MPRE shall be directed to the NCBE, and any decisions related to such requests are made exclusively by the NCBE without input from the Committee, OSB or Court.
 - (2) Subject to the limitations stated in RLP 6.2(c)(1) above, an Applicant may take the MPRE at any location where it is given, and at any time offered by the NCBE. An Applicant may take the MPRE as many times as is necessary to pass.
 - (3) Applicants attempting to establish the requisite knowledge through the MPRE must achieve a Passing Score within 36 months prior to applying for a Paralegal License with the OSB.]

6.3 Prerequisites for Examination; Exam Cycles;

Every Applicant for a Paralegal License is required to pass the paralegal entry examination (“Entry Exam”) described in RLP 6.4 below.

- (a) No Applicant may sit for the Entry Exam unless and until they establish that they have the requisite knowledge of the Rules of Professional Conduct for Licensed Paralegals in Oregon pursuant to RLP 6.2 above.
- (b) No Applicant may sit for the Entry Exam unless or until the OSB or Committee has determined that

the Applicant meets all requirements for a Paralegal License with the only exception being that the Applicant's Character and Fitness will not be fully assessed until they pass the Entry Exam.

- (c) Within a reasonable time after determining that an Applicant qualifies to sit for the Entry Exam, the Admissions Manager shall provide written notice to the qualified Applicant that they are eligible to sit for the Entry Exam within the six months following the date of the notice ("Entry Exam Notice"). The Entry Exam Notice shall be sent through email or any other reasonable electronic means provided by the OSB.

6.4 Time, Place, Form and Manner of Entry Exam

The Entry Exam must test the Applicant's learning, ability to retain and apply the rules and laws related to the scope of practice for, and the referral obligations applicable to, Licensed Paralegals in the State of Oregon. Without limiting the foregoing, the OSB may test Applicants on other subjects relevant to being a Licensed Paralegal or the Endorsement being sought by the Applicant. If such other subjects will be included in the examination the OSB must provide notice to the Applicant taking the examination pursuant to RLP 6.6 below.

- (a) The OSB shall develop and maintain the questions that will make up the Entry Exam. The OSB may hire, retain or appoint any third-party to assist with the creation or development of the questions and formats that make up the Entry Exam, including the Committee, faculty of any paralegal program at any of Oregon's higher education institutions, and third-party vendors in the business of producing professional licensing examinations. No party shall be permitted to develop or create any Entry Exam question or exam format unless and until the party has agreed in writing that they will not disclose any information used to develop the question or format, nor the content of any question or format, and the OSB shall own the intellectual property rights to any such Entry Exam formats or questions.
- (b) The Entry Exam may be offered multiple times throughout each calendar year, and each Entry Exam shall take place at a time, place and location established by the OSB. The OSB may limit the number of Entry Exams per year in order to test as many Applicants as possible for any given Entry Exam, but must offer at least two Entry Exams per calendar year. In the OSB's discretion, Entry Exams may be administered on an individual or group basis.
 - (1) The OSB must take all reasonable efforts to develop a sufficient number of questions and formats to ensure that any Applicant who takes multiple attempts to pass the examination in any calendar year does not take the same exam twice in the same calendar year.
 - (2) Each Entry Exam shall take place within a single day, and may not exceed three hours in length, unless extended by testing accommodations provided pursuant to RLP 6.5 below.
- (c) If technology is sufficient to protect the intellectual property rights of the OSB and ensure that there is no significant reduction in the ability of the OSB or its proctors to observe possible cheating on an examination, the Entry Exam may be taken remotely using an Applicant's own computer or laptop equipment in an environment of Applicant's choosing, subject to exam procedures, exam conduct rules and environment restrictions established by the OSB.

6.5 Testing Accommodations for Entry Exam. Assessed by Admissions Manager. Appeal to Committee.

(a) Definitions. For the purpose of this rule:

- (1) The term “disability” means a disability as the term is defined under the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.) (ADA), amendments to the act, applicable regulations and case law.
- (2) The term “qualified professional” means a licensed physician, psychologist, or other health care provider who has comprehensive training in the field related to the Applicant’s claimed disability.

(b) An Applicant with a disability that substantially limits one or more major life activities and who desires an adjustment or modification to the standard testing conditions to alleviate the impact of the Applicant’s functional limitation on the examination process may request reasonable accommodation(s) to take the examination.

(c) Consistent with the requirements of the ADA, the Admissions Manager shall evaluate all timely and complete accommodation requests and determine the extent, if any, to which they will be granted. In fashioning an accommodation, the Admissions Manager shall strive for an accommodation that is reasonable, not unduly burdensome, consistent with the nature and purpose of the examination and which does not fundamentally alter the nature of the examination as necessitated by the Applicant’s disability.

(d) Applicants must file timely and complete accommodation requests using the forms prescribed by the Committee. The filing deadlines for requests shall be two months following the date Entry Exam Notice. Incomplete or untimely requests will be rejected except where: (a) disability occurs after the application filing deadline; or (b) the accommodation request does not cause an undue hardship on the Committee or the OSB.

(e) An Applicant requesting accommodations must fully complete the forms approved by the OSB and submit:

- (1) Medical and/or psychological verification completed by a qualified professional. The medical and/or psychological verification shall, at a minimum, describe:
 - (A) The basis of the assessment, including all tests used to diagnose the disability and the results of those tests;
 - (B) The effect of the disability on the Applicant's ability to take the examination under regular testing conditions; and
 - (C) The recommended accommodation.
- (2) A letter from the Applicant's law school setting forth any accommodations that were

provided to the Applicant for examinations taken at the law school.

- (3) A letter from each jurisdiction in which the Applicant has applied for a Paralegal License setting forth any accommodations that were provided to the Applicant for taking that jurisdiction's entry exam.
- (f) An Applicant who is breastfeeding may request accommodations to enable the Applicant to express milk during the examination. Request for this accommodation must be submitted timely using the procedures and forms prescribed by the OSB for specific testing accommodations. Applicants must submit medical documentation from a qualified medical provider supporting the request for accommodations, including verification that the Applicant is breastfeeding and the child's date of birth.
 - (g) The Admissions Manager shall notify the Applicant of any decision shortly after reaching a decision on the Applicant's accommodation request ("Accommodation Notice"). The Accommodation Notice shall be sent via email to the Applicant's email address stated in the Applicant's Application, or through such other reasonable electronic means authorized by the OSB.
 - (h) Any accommodation decision reached by the Admissions Manager that provides less than, or alternative to, those requested by the Applicant, may be appealed by the Applicant. The appeal must be requested in writing within two weeks of the date of the Accommodation Notice ("Appeal Notice"). The Appeal Notice must be addressed to the Committee and sent to the Admissions Department of the OSB. The Appeal Notice must be submitted via email to the Admissions Department of the OSB, or such other reasonable electronic means provided by the OSB. If the Applicant wishes to have additional supporting documentation considered on the appeal, then the Applicant must include the additional documentation with the Appeal Notice.
 - (i) Upon Receipt of an Appeal Notice, the Admissions Manager shall forward to the Committee the Appeal Notice. The Admissions Manager shall also submit with the Appeal Notice, all documentation and communications related to the Applicant's accommodation request and the Admissions Manager's decision relevant to the appeal. When forwarding the Appeal Notice and related materials to the Committee, the Admissions Manager shall include a written statement identifying the basis for the Admissions Manager's appealed decision, and identify the end date of the Exam Cycle for which the accommodation is sought.
 - (j) The Committee shall review any accommodation appeal de novo during the next regularly scheduled judicial proceeding of the Committee following the submissions of the Admissions Manager. The accommodation decision reached by the Committee shall be final, and no additional appeals or requests for reconsideration shall be considered related to the Applicant's accommodation requests for the relevant Exam Cycle. In making a decision on an accommodation appeal, the Committee shall comply with the terms of this RLP 5.2, and without limitation, consider at least the following information:
 - (1) The Admissions Manager's prior accommodation decision, or any basis for such decision provided by the Admissions Manager;

- (2) The contents of the Appeal Notice, including any basis for appeal stated by the Applicant;
- (3) The accommodation requests made by the Applicant related the Entry Exam for the relevant Exam Cycle; or
- (4) The accommodations suggested by any medical provider or other third party's accommodation suggestions that were offered in support of the Applicant's accommodation request.

6.6 Notice to Applicant; Contents of Examination; Manner of Examination and Accommodation

- (a) At least one month prior to the Entry Exam being administered, the Admissions Manager must notify each Applicant sitting for the next available Entry Exam of the following:
 - (1) The date upon which the examination will be given;
 - (2) The schedule for the exam day, including the start time, and end time or maximum length of time permitted, for the relevant exam session(s);
 - (3) How many questions will be asked of the Applicant within the exam session(s), and the general format of the questions (i.e. multiple choice, short answer, essay, etc.);
 - (4) If more than one session, any format differences between each session;
 - (5) The location of the examination;
 - (6) The general subject matter(s) upon which the Applicant will be tested;
 - (7) Any accommodations awarded to the Applicant pursuant to RLP 6.5 above;
 - (8) Equipment or items that the Applicant must bring to the exam site or exam room;
 - (9) Equipment or items that are not permitted at the exam site or in the exam room; and
 - (10) Any rules that apply to the Applicant's conduct before, during and after the exam.

6.7 Grading

- (a) The Entry Exam shall be graded by the OSB, or by any third party to which it delegates such duty, including the Committee, or a third-party vendor; however, no faculty of any paralegal program at any of Oregon's higher education institutions may grade an examination.
- (b) Grading must be completed within sixty-days of the date of the examination.

- (c) Within two-weeks of the completion of grading of the Entry Exam, the Admissions Manager must notify the Applicant of their score on the examination and identify whether the score is passing or failing.

6.8 Review of Examination Paper

- (a) Rubrics, point sheets and grading materials developed, created or used to grade the Entry Exam shall not be made public or provided to any parties, including Applicants, other than the Committee, the OSB or the Court.
- (b) There shall be no regrade performed on the Entry Exam.
- (c) There shall be no appeal or review of any portion of any question or answer to the Entry Exam, unless authorized by the OSB or the Court.
- (d) An Applicant who has failed the examination has the right:
 - (1) To be informed of the total score, scaled or otherwise and the score required to pass the examination in Oregon.
 - (2) If an Entry Exam involved essay questions, a failing Applicant may inspect and obtain, at the Applicant's expense, copies of the Applicant's handwritten or typewritten answer(s), and the essay question(s) to which the answer(s) apply, and the raw scores given for such answer(s).
- (e) After the administration of each exam, the Admissions Manager shall establish a date, time and place to inspect and/or obtain the materials as prescribed in paragraph (c)(2) of this rule, provided that:
 - (1) The date shall be no sooner than the 30th day, or later than the 60th day, following the mailing of the notice under RLP 6.7(c); and
 - (2) Disclosure of the information and inspection and copying of materials shall be permitted only under conditions which, in the opinion of the Admissions Manager, protect the security and contents of the Entry Exam.

6.9 Effects of Failing or withdrawing from Entry Exam; Expiration of Exam Cycle; Limits to Entry Exams and Exam Cycles.

- (a) An Applicant may only sit for one Entry Exam in any given Exam Cycle.
- (b) If an Applicant fails the Entry Exam during an Exam Cycle, then the Committee or OSB Staff shall send the Applicant written notice that the Applicant's Application for a Paralegal License is denied due to failing the Entry Exam. The Applicant must complete a new Application in order to gain a

new Exam Cycle and sit for another Entry Exam.

- (1) If an Applicant fails the Entry Exam, they may not gain a new Exam Cycle in Oregon until at least three months have passed since the date for which they were last notified that they failed an Entry Exam.
- (c) If an Applicant withdraws their Application during an Exam Cycle, then the Applicant waives the ability to be tested during that Exam Cycle, and must complete a new Application in order to gain a new Exam Cycle and sit for an Entry Exam.
- (d) If an Exam Cycle expires without the Applicant sitting for an Entry Exam, then the Applicant must complete a new Application in order to gain a new Exam Cycle and sit for another Entry Exam.
- (e) No Applicant may receive more than two Exam Cycles in any twelve-month period.
- (f) Without limiting any rule provided in RLP 6.1 – 6.8, there shall be no limit to the total number of Entry Exams taken by an Applicant in order to pass the examination.

Sections 7 – 9 are presently a work-in-progress. Please Skip to Sections 10 & 11

SECTION 7 –POLICIES FOR EVALUATING; MAKING RECOMMENDATIONS ON CHARACTER AND FITNESS

In addition to the Standards and Policies outlined in Section 5 of the RLP, the following Policies shall guide all recommendations based on the Character and Fitness for each Applicant.

7.1 Timing of Character and Fitness process and recommendations

In order to preserve the resources of the OSB and the Committee, no Applicant's Character and Fitness will be reviewed by the Committee unless and until the Applicant [has passed the Entry Exam](#). OSB Staff may perform initial background screenings, gather documents related to an Applicant's Character and Fitness and perform preliminary investigations, but shall not present such information to, and none of the processes outlined in this Section shall be attempted by, the Committee until after an Applicant [has passed the Entry Exam](#).

7.2 Identifying Relevant Conduct; Considering Weight of Conduct; and Evaluating

7.3 Considerations and Policies for Evaluating Maturation; Reformation or Rehabilitation

7.4 Order of Analysis. Focus on Conduct, and when conditions may be relevant.

7.5 Relevance of Scientific Evidence when analyzing Character and Fitness

7.6 Standards for Conditional Admission

SECTION 8 – PROCESS FOR ASSESSING CHARACTER AND FITNESS

- 8.1 Evaluation Protocols for Assessing an Applicant’s Current Character and Fitness
- 8.2 List of Applicants; Publication
- 8.3 Admissions Manager’s Investigation of Applicant’s Character and Fitness, Report to Committee
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- 8.6 Review of Independent Investigator’s Report, Deliberations and Recommended Disposition
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SECTION 9 – CONTESTED ADMISSIONS HEARINGS FOR APPLICANTS WHOSE MORAL CHARACTER OR FITNESS TO PRACTICE LAW IS AT ISSUE

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The Character and Fitness Review Proceeding

- 9.7 Hearing Notice
- 9.8 Discovery
- 9.9 The Proceeding

The Decision-Making Process

- 9.10 The Hearing Panel Decision Making Process
- 9.11 The Committee Decision Making Process
- 9.12 The Court's Review of the Committee's Decision

SECTION 10 - PARALEGAL LICENSING

10.1 Recommendation of Committee or BBX; Notice to Applicant; Oath of Office

- (a) Once the Admissions Manager or Committee has assessed that an Applicant should be recommended for a Paralegal License, OSB Staff shall notify the Applicant of the upcoming recommendation and require the Applicant to submit a signed Oath of Office to OSB Staff.
- (b) If a signed Oath of Office is received from a qualified Applicant, OSB Staff shall forward to the Court the Oath of Office, together with the relevant recommendation of the Admissions Manager or Committee.
- (c) For the sake of Judicial Efficiencies, OSB Staff may hold the Oath of Office and recommendation of an Applicant until a sufficient pool of Applicants has been established, so that the Court may issue one Order of Licensure to cover the entire pool, rather than an Order of Licensure for each individual Applicant.

10.2 Qualifications for Licensure; Order of Licensure

(a) Entry Exam Applicants

- (1) In order to be a Licensed Paralegal in Oregon, an Applicant must meet the following requirements:
 - (A) Be at least 18 years of age at the time the Paralegal License is issued;
 - (B) Have the requisite learning necessary for a Paralegal License, which is evidenced by one of the following:
 - (i) Graduation from an approved paralegal education program with at least an associate's degree in paralegal studies, coupled with the substantive paralegal work experience required by These Rules; or
 - (ii) Satisfy all of the requirements of one of the paralegal education alternatives, coupled with the substantive paralegal work experience required by These Rules.
 - (C) Have the requisite skills, abilities and learned knowledge required for a Paralegal License, which is demonstrated by the following:

- (i) Abilities and skills are established through the education and Substantive Paralegal Experience stated in an Application;
 - (ii) Requisite knowledge of the Rules of Professional Conduct for Licensed Paralegals in Oregon is established through one of the methods outlined in RLP 6.2; and
 - (iii) Requisite knowledge of the substantive law needed to practice in the Endorsement area(s) sought by the Applicant is established through [the OSB's Entry Exam for Licensed Paralegals in that Endorsed Scope of Practice](#);
- (D) Have the required Good Moral Character and Fitness, as determined by the Court through processes and procedures outlined in These Rules; and
- (E) Take the required Oath of Office in the form approved by the Court
- (2) If an Applicant has met the requirements of RLP 10.2(a)(1), to the Court's satisfaction, then the Court shall issue an Order of Licensure. The effective date of Applicant's Paralegal License shall be the date of the Order of Licensure.

(b) Reserved

10.3 Residency

Oregon residency is not required for an Oregon Paralegal License.

10.4 Address, Telephone Number, and Email Designation

- (a) Once a Paralegal Licensee has received their Paralegal License, and OSB Associate Member Number, the Applicant must immediately log into their Membership Portal provided by the OSB, and designate a current business address and telephone number, or in the absence thereof, a current residence address and telephone number. A post office address designation must be accompanied by a street address. The Paralegal Licensee must also designate a current email address to receive OSB communications.
- (b) It is the duty of all Paralegal Licensees to promptly notify the OSB in writing of any change in his or her business address or telephone number, or residence address or telephone number, or email address, as the case may be. A new designation shall not become effective until actually received by the OSB.

SECTION 11 - SCOPE OF PRACTICE RULES FOR LICENSED PARALEGALS IN OREGON

This Section 11 lists professional legal activities and services that Licensed Paralegals are authorized to engage in, without the supervision of an attorney, so long as the activity or service is provided in an

Endorsed practice area. Additionally, this Section 11 lists professional activities, legal services, and subject matters or issues that Licensed Paralegals are NOT authorized to engage in, unless they are supervised by an Attorney OSB Member. If a Licensed Paralegal's client or prospective client has need for services that the LP's is not authorized to provide, then the LP is affirmatively obligated to refer the client to an attorney or practitioner that is authorized to provide such services.

11.1 – Family Law Endorsed LPs - Scope of Practice

- (a) Within the Scope of Practice of Endorsed LP: Licensed Paralegals, Endorsed in Family Law, may engage in the following tasks in the course of representing or potentially representing Family Law clients, so long as such tasks pertain to an area of law within the definition of Family Law, and such representation would not otherwise violate any provision within the Rules of Professional Conduct for Licensed Paralegals:
- (1) Meet with potential Family Law clients to evaluate and determine needs and goals, and advise the clients regarding legal steps that can be taken to meet those needs and goals, if appropriate. As part of such a meeting, the LP should make an initial determination whether the potential client's Family Law concerns are within the scope of the LP's practice or whether a referral to an attorney would be appropriate.
 - (2) Enter a contractual relationship to represent a natural person (not including a business entity) in a Family Law matter.
 - (3) Assist by completing pattern forms and drafting and serving pleadings and documents, including orders and judgments in a Family Law matter. LPs may assist litigants in form selection and completion. LPs may explain the purpose of documents to litigants, help determine the appropriate document to use, help customize the information provided in the documents or pleadings to the litigants' benefit, and provide clarity and accuracy in filling out the documents consistent with the requirements of case law, Oregon Revised Statutes, Oregon Rules of Civil Procedure, Uniform Trial Court Rules, and Supplementary Local Rules.
 - (4) File Family Law related documents and pleadings with the court, electronically or otherwise.
 - (5) Assist a Family Law client 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 Family Law matters: custody and parenting time evaluations, drug and alcohol assessments, psychological evaluations, inspection of property, real and personal property appraisals, and vocational assessments. As part of this service, LPs should help the Family Law client become familiar with discovery requirements and procedures and assist litigants in their discovery efforts.

- (6) Attend Family Law depositions, but not take or defend them. LPs may 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..
- (7) Prepare for, participate in, and represent a party in Family Law settlement discussions, including mediation and settlement meetings. LPs may advise clients in advance on what to expect, and help them prepare for such sessions.
- (8) Prepare Family Law clients for judicial settlement conferences. LPs may help prepare clients regarding what to expect and help them prepare so that such sessions will be more efficient and effective. LPs may attend these sessions to advise clients on their options and discuss various proposals.
- (9) Participate and assist with preparations for Family Law hearings, trials, and arbitrations. LPs may prepare clients for Family Law court appearances (e.g., prepare clients for direct-examination, cross-examination, and oral argument; issue subpoenas; prepare witnesses; prepare and submit exhibits; draft asset and liability statements; and write memoranda to provide to the court).
- (10) Attend court appearances to provide support and assistance in Family Law procedural and ex parte matters. LPs may sit at counsel table during Family Law court appearances and respond to questions by the court in standard procedural family law appearances, ex parte matters, evidentiary proceedings, and informal domestic relations trials. An LP may assist clients in organizing, marking and submitting exhibits, but such exhibits must be offered by the client. LPs may not affirmatively represent a client directly during evidentiary hearings or other similar court appearances. For example, an LP is not allowed to make evidentiary objections, offer exhibits, or question witnesses.
- (11) Review Family Law opinion letters, court orders, and notices with a client and explain how they affect the client, including the right to appeal. LPs may inform the client about the significance of a court's determination and the right to appeal and the related timing, even if LPs are restricted from assisting in the appeals process. LPs may also provide Family Law referrals if a client is considering an appeal.
- (12) Notwithstanding the prohibition against providing services related to appeals, as stated in Section-2(b)(1) of Section 11, an LP may assist a client in an appeal made, pursuant to ORS 25.513(6), from an order of an administrative law judge or a default or consent order entered by an administrator relating to the establishment or modification of child support. The LP may file the document required to appeal the order to a circuit court for a de novo hearing. The LP may also assist in the preparation of the de novo hearing before the circuit court relating to the establishment or modification of child support.
- (13) Notwithstanding the prohibition against juvenile dependency situations stated in Section-2(b)(3) of Section 11, LP's may be allowed to provide limited divorce services to a client in a Family Law case with a consolidated or related associated juvenile court proceeding where the juvenile court's 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). If the client is represented by court-appointed counsel in the juvenile dependency case, and the divorce proceedings for which LP is providing services are within the LP's Scope of Practice, then the LP may continue to assist the client in their divorce, despite the divorce having a related juvenile court proceeding.

- (14) Notwithstanding Section-2(b)(13) of Section 11, which prohibits an LP from providing services to a client against whom a FAPA claim has been raised, an LP may continue providing services to an existing client if a FAPA claim is raised after the representation was already established, so long as the LP refers the client to a qualified FAPA attorney, who is an active OSB Member, for a consultation on the legal consequences of the FAPA claim. If after the consultation, the client still wishes to be represented by the LP, the LP may continue representing the client.
- (15) Refer Family Law clients or potential Family Law clients to attorneys for tasks or subject matters outside the Scope of Practice for the LP. LPs may refer potential Family Law clients on matters within their Scope of Practice to other LPs or attorneys who specialize in the potential Family Law client's issue. Additionally, LPs may refer clients and potential clients to lawyers for non-Family Law matters outside of their Scope of Practice. However, LPs have an ongoing obligation to refer Family Law clients to Attorney OSB Members, if information is discovered after the LP has already begun representing a client, and the new information indicates that there are matters or issues that could affect the Family Law matter for the client, and such matters or issues are outside of the Scope of Practice for the Family Law LP.

(b) Family Law matters outside the Scope of Practice for Family Law Endorsed LPs: Licensed Paralegals may **NOT** provide any services, or attempt to provide services, to a client or potential client related to the following matters or issues, regardless of whether the underlying area of the law involves Family Law, unless the LP does so under the supervision of an Attorney OSB Member:

- (1) Except as provided in Section 2(a)(12), LP's may not provide services related to appeals, whether they be related to orders from, or appeals to, an administrative body, a trial court, the Court of Appeals or the Court.
- (2) Matters involving stalking protective orders.
- (3) Except as provided in Section 2(a)(13), LP's may not provide services in matters related to Juvenile court cases (dependency or delinquency).
- (4) Modifications of custody, parenting time, or child support when the initial court order originates outside Oregon.
- (5) Matters involving premarital or postnuptial agreements.
- (6) Matters involving cohabitation agreements.

- (7) Matters involving qualified domestic relations orders (QDROs) and domestic relations orders (DROs). While prohibited from drafting such provisions themselves, LPs are allowed to use language for QDROs and DROs within their own documents provided, the language was provided by an Attorney OSB Member who specializes in QDROs and DROs.
- (8) Matters involving third-party custody and visitation cases (ORS 109.119).
- (9) Matters involving unregistered domestic partnerships (“Beal v. Beal cases”). This prohibition does not apply to registered domestic partnerships.
- (10) Litigation cases with third-party interveners.
- (11) Military divorces unless stipulated. An LP may represent one party when both parties agree on the dissolution terms, and the role of the LP is to assist in finalizing the divorce, so long as before the client signs any document, the client is referred to an Attorney OSB Member, who specializes in military divorces, and the client has been advised about the legal consequences and advantages of signing the documents prepared by the LP.
- (12) Matters involving remedial contempt when confinement is requested. While LPs may assist with remedial contempt matters, they may only do so when confinement is not before the court.
- (13) Stand-alone Family Abuse Prevention Act (FAPA) cases (ORS 107.700–107.735).
- (14) Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA) cases, Sexual Abuse Protection Order (SAPO) cases, guardianships, and adoptions.

11.2 – Landlord-Tenant Endorsed LPs - Scope of Practice

(a) Within the Scope of Practice of Endorsed Landlord-Tenant LPs: Licensed Paralegals, Endorsed in Landlord-Tenant Law, may engage in the following tasks in the course of representing or potentially representing Landlord-Tenant Law clients, so long as such tasks pertain to an area of law within the definition of Landlord-Tenant Law, and such representation would not otherwise violate any provision within the Rules of Professional Conduct for Licensed Paralegals:

- (1) Enter into a contractual relationship to represent a natural person or a business entity in a Landlord-Tenant matter.
- (2) Meet with potential Landlord-Tenant clients to evaluate and determine needs, goals, and advise on claims or defenses (e.g., notices of intent to terminate tenancy, inspection of premises, rent increase).
- (3) Review, prepare, and provide advice regarding a variety of Landlord-Tenant Law documents, including pleadings, notices, orders, and judgments. LPs are authorized to review any document pertaining to a residential tenancy, including, without limitation, 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, and security deposit accountings.

- (4) File Landlord-Tenant Law 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 are authorized to 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 are authorized to 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(4)), requests for hearing on declarations of noncompliance (ORS 105.148), notices of restitution, and writs of execution.
- (5) Assist in obtaining continuance requests to allow parties to make discovery requests or obtain other discovery in Landlord-Tenant matters.
- (6) Assist with and attend depositions related to Landlord-Tenant matters, but not take or defend them. LPs may work with clients to assist with the expedited timeframe in FED actions, including scheduling and compelling deposition appearances and preparing clients for being deposed and for taking a deposition.
- (7) Participate, prepare for, and represent a party in Landlord-Tenant settlement discussions, including mediation and settlement meetings.
- (8) Prepare parties for judicial settlement conferences in Landlord-Tenant matters. LPs may help prepare clients regarding what to expect and help them prepare so that such sessions will be more efficient and effective. LPs may attend these sessions to advise clients on their options and discuss various proposals.
- (9) Participate and assist with hearing and trial preparation in Landlord-Tenant matters. 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).
- (10) Attend court appearances involving Landlord-Tenant Law, and provide permitted support and assistance in procedural matters. LPs may sit at counsel table during court appearances and respond to questions by the court. LPs cannot affirmatively represent a client directly during evidentiary hearings or other similar court appearances, except if state law would allow representation of a client in the proceeding by a non-lawyer. .
- (11) Review opinion letters, court orders, and notices pertaining to a Landlord-Tenant Law involving a client and explain how they affect the client, including the right to appeal. LPs may be restricted from providing services related to appeals, but they may inform clients and prospective clients about the significance of a court's determination and the right to appeal and the related timing in Landlord-Tenant matters. Additionally, LPs may provide

referrals to an Attorney OSB Member if a client is considering an appeal.

- (12) Refer Landlord-Tenant Law clients or potential Landlord-Tenant Law clients to attorneys for tasks or subject matters outside the Scope of Practice for the LP. LPs may refer potential Landlord-Tenant Law clients on matters within their Scope of Practice to other LPs or attorneys who specialize in the potential client's legal issue. Additionally, LPs may refer clients and potential clients to lawyers for matters that do not involve Landlord-Tenant issues. However, LPs have an ongoing obligation to refer Landlord-Tenant Law clients to an Attorney OSB Member, if information is discovered after the LP has already begun representing a client, and the new information indicates that there are matters or issues that could affect the Landlord-Tenant Law matter, or the matter poses a significant legal challenge to the client's security, health or well-being, and such matters or issues are outside of the Scope of Practice for a Landlord-Tenant Law LP.
- (b) Landlord-Tenant issues outside the Scope of Practice of Landlord-Tenant Endorsed LPs: Licensed Paralegals may **NOT** provide any services, or attempt to provide services, to a client or potential client related to the following matters or issues, regardless of whether the underlying area of the law related to the matter or issue involves Landlord-Tenant Law, unless the LP does so under the supervision of an Attorney OSB Member:
 - (1) Affirmative plaintiff cases in circuit court. However, Landlord-Tenant Endorsed LPs may provide services related to Landlord-Tenant Law, if the client pursues a matter in small claims court that could otherwise have been brought through an affirmative plaintiff's case.
 - (2) Matters involving agricultural tenancies and leases.
 - (3) Matters involving affirmative discrimination claims (except if asserted as a counterclaim or defense of a Landlord-Tenant matter). Claims may be raised in state court, but 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 must then refer the case to an Attorney OSB Member.
 - (4) Matters involving commercial tenancies and leasing.
 - (5) 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. Such claims may be brought in the circuit court as well, and if raised previously in an FED, may create preclusion issues. Therefore, these claims, if a client wishes to counterclaim for personal injury damages, whether arising under a tort or ORLTA theory of liability, the LP must refer to an Attorney OSB Member.
 - (6) Matters involving injunctive relief in affirmative cases.
 - (7) Matters involving housing provided in relation to employment.

- (8) Matters involving affirmative subsidized housing claims. 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.

SECTION 12 - TEMPORARY PRACTICE PENDING LICENSURE BY CERTAIN APPLICANTS

12.1 Eligibility

Applicants who meet the following criteria may register with Regulatory Counsel's Office in order to perform legal services that would otherwise require Paralegal License, subject to the conditions and restrictions outlined in 12.1 to 12.4:

- (a) The Applicant must submit the Application for Temporary Practice Pending Licensure with Regulatory Counsel's office, together with the fee published on Regulatory Counsel's webpage on the OSB website;
- (b) Prior to the submission of the Application required by RLP 12.1, the Applicant must submit an Application for Paralegal Licensure to the Admissions Department pursuant to Section 3 of These Rules;
- (c) By filing the Application with Regulatory Counsel's Office, Applicant asserts that the Applicant has a good faith belief that they meet the requirements for a Paralegal License in Oregon.
- (d) Applicant must not have been subject to disciplinary suspension or disbarment in any other state, district or territory of the United States;
- (e) Applicant must not have been previously denied a Paralegal License in any other state, district or territory of the United States due to a determination that the Applicant lacked the requisite good moral character and fitness for such license;
- (f) Applicant must submit a certificate of good standing and disciplinary statement from every state, district or territory in which Applicant is a Licensed Paralegal;
- (g) Applicant must submit proof of one of the following:
 - (1) Employment with a company whose legal services are provided from an office physically located within the State of Oregon, and an affirmation that the Applicant will provide Licensed Paralegal services from such office;
 - (2) Employment with a law firm who has an office physically located within the State of Oregon, and an affirmation that the Applicant will provide Licensed Paralegal services from such office; or

- (3) Employment as a paralegal by an active member of the Oregon State Bar.
- (h) The employer or associated Oregon lawyer identified in 12.1(g) must identify a supervising attorney. The supervising attorney must sign a declaration acknowledging and agreeing that it is the supervising attorney's responsibility to oversee the conduct of the Applicant, which includes ensuring the Applicant's compliance with the Oregon Rules of Professional Conduct for Paralegals and avoidance of malpractice; and
- (i) Has never applied for temporary practice under these rules before (excluding reinstatement Applications authorized under 12.3(c)(2)).

12.2 Duration, Termination Limits and Disclosures Required – Practice Pending

- (a) No authorization to temporarily provide Licensed Paralegal Services under RLP 12.1 et seq., shall become effective until Applicant has established to the Oregon State Bar's satisfaction that Applicant meets the requirements of RLP 12.1 and, if providing Licensed Paralegal Services in private practice, has provided a certificate of insurance establishing that the Applicant's legal activities in the State of Oregon will be covered by a professional liability insurance policy from, or substantially equivalent to, the Oregon State Bar Professional Liability Fund Primary Coverage Plan.
- (b) Upon confirmation that an Applicant has met the requirements of RLP 12.1 and, if required, has sufficient insurance coverage to protect Oregon legal consumers, Regulatory Counsel shall provide Applicant notice that the Applicant is authorized to provide Licensed Paralegal Services subject to the terms of RLP 12.1 et seq., and other relevant laws, rules and regulations governing the Applicant's practice of law in Oregon.
- (c) The ability to Licensed Paralegal Services pending licensure under this section shall immediately terminate upon any of the following:
 - (1) if the Applicant receives a Paralegal License in Oregon;
 - (2) if the Applicant withdraws the Application for Paralegal Licensure or if such Application is denied;
 - (3) if the Applicant becomes disbarred, suspended, or resigns while a disciplinary action is pending in any other jurisdiction in which the Applicant is a Licensed Paralegal;
 - (4) if a formal complaint is filed against the Applicant by the Disciplinary Counsel's Office of the Oregon State Bar;
 - (5) if an indictment is filed against the Applicant; and
 - (6) if the Applicant a Paralegal Licenses in Oregon within one year of the date that the Applicant first filed their Application under RLP 12.1.

- (d) Upon termination of the practice pending licensure, the Applicant shall not undertake any new representation that would require the Applicant to be a Licensed Paralegal in Oregon and, within ten days, shall:
 - (1) cease to occupy an office or other systematic and continuous presence for providing Licensed Paralegal Services in Oregon unless authorized to do so pursuant to another Rule;
 - (2) notify all clients being represented in pending matters, and opposing counsel or co-counsel, of the termination of the Applicant's practice pending licensure in Oregon; and
 - (3) take all other necessary steps to protect the interests of the Applicant's clients.

12.3 Change in Office/Association

- (a) The Applicant's ability to provide Licensed Paralegal Services shall be immediately suspended if the employment with the company, law firm or lawyer that the Applicant originally sought practice pending licensure with under RLP 12.1(g) terminates.
- (b) Applicant must immediately notify Regulatory Counsel's Office of any termination of the employment identified in RLP 12.3(a).
- (c) Applicant's ability to practice pending Licensure shall be reinstated if Applicant meets the following requirements within ten days following the date that Applicant was required to send notice to Regulatory Counsel's Office under RLP 12.3(b).
 - (1) associates with another company, law firm or lawyer meeting the requirements under RLP 12.1(g);
 - (2) submits a new Application for Temporary Practice Pending Licensure under RLP 12.1(a);
 - (3) pay a new fee associated with Temporary Practice Pending Licensure under RLP 12.1(c); and
 - (4) have a new supervising attorney sign a new declaration identified in RLP 12.1(h).

12.4 Disciplinary Complaints, Program Oversight, Fees and Records

- (a) If a complaint is filed against the Applicant with the Client Assistance Office of the Oregon State Bar, the Applicant must immediately notify Regulatory Counsel, the Applicant's employer and supervising attorney. The Applicant must include with the notice the actual complaint materials filed by the complaining party. Regulatory Counsel shall forward the complaint to the Client Assistance Office and name the supervising attorney as an additional party against whom the complaint is filed.
- (b) The temporary practices permitted by RLP 12.1 to 12.4 shall be overseen and regulated by the Regulatory Counsel's Office. The Committee shall not be responsible for any regulatory decisions made related to an Applicant or Application pursuant to RLP 12.1 to 12.4.

- (c) RLP 2.4 shall not apply to any Applications or other documents submitted to the Regulatory Counsel's Office under RLP 12.1 to 12.4. All such documents shall be public records
- (d) Regulatory Counsel shall submit copies to the Admissions Department of any documents related to the Applicant's Application for Practice Pending Licensure.

Forms are presently a work-in-progress

APPENDIX A

FORMS USED IN THE LICENSING OF PARALEGALS IN OREGON

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APPENDIX A

Part I

Paralegal Education Program Forms



IN THE SUPREME COURT OF THE STATE OF OREGON

Certificate of Approved Degree Confirmation

Please Forward this Form to the Registrar of your Approved Paralegal Program

Application for a Paralegal License from the Oregon Stat Bar for:

(Student's Full Name (hereinafter, the "Applicant"))

I do hereby certify that:

- A. Applicant Studied in a Paralegal Program at: _____
- B. Applicant was awarded the degree of: _____
- C. Applicant received said degree on: _____
(Date conferred)
- D. Applicant's record does not reflect adversely on his/her fitness to provide Licensed Paralegal services; and during his/her attendance at this Paralegal Education Program, he/she has not been subject to any disciplinary action, except:

- E. Said Paralegal Education Program WAS ACCREDITED BY THE AMERICAN BAR ASSOCIATION or other Nationally recognized US Institution that Accredits Paralegal Programs, before the date on which applicant received said degree, and the Oregon State Bar has accepted said Accreditation as Valid and posted the name of the School in its list of Approved Paralegal Education Programs; and
- F. For the Institution of Higher Learning that Issued the Degree for the Paralegal Education Program,

I hold the title of: _____

Certified by: _____
(Print Name)

Signature: _____
(Original Signature Required)

Date of Certification: _____

Notary Verification	(SCHOOL OR NOTARY SEAL)
If school has no official seal, a notary execution must reflect the official and verified status of this certificate.	

Please return this completed form to: Oregon Board of Bar Examiners, PO Box 231935, Tigard, OR 97281-1935

OREGON RULES OF PROFESSIONAL CONDUCT FOR LICENSED PARALEGALS

(effective , 2022)

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RULE 1.0 TERMINOLOGY

(a) "Belief" or "believes" denotes that the person involved actually supposes the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that an LP promptly transmits to the person confirming an oral informed consent. See paragraph (g) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the LP must obtain or transmit it within a reasonable time thereafter.

(c) "Electronic communication" includes but is not limited to messages sent to newsgroups, listservs and bulletin boards; messages sent via electronic mail; and real time interactive communications such as conversations in internet chat groups and conference areas and video conferencing.

(d) "Firm" or "LP firm" denotes an LP or LPs in a partnership, professional corporation, sole proprietorship or other association authorized to practice law or authorized to practice only within the scope of practice of an LP license; or LPs employed in a private or public legal aid organization, a legal services organization or the legal department of a corporation or other public or private organization. Any other LP, including an office sharer or an LP working for or with a firm on a limited basis, is not a member of a firm absent indicia sufficient to establish a de facto firm among the LPs involved.

(e) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(f) "Information relating to the representation of a client" denotes both information protected by the attorney-client privilege or LP-client privilege under applicable law, and other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the LP has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the LP shall give and the writing shall reflect a recommendation that the client seek

independent legal advice to determine if consent should be given.

(h) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question, except that for purposes of determining an LP's knowledge of the existence of a conflict of interest, all facts which the LP knew, or by the exercise of reasonable care should have known, will be attributed to the LP. A person's knowledge may be inferred from circumstances.

(i) "Licensed Paralegal" or "LP" is an individual licensed by the State of Oregon as an associate member of the Oregon State Bar who is authorized under the law to perform limited legal services within a defined scope of practice.

(j) "Matter" includes any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and any other matter covered by the conflict of interest rules of a government agency.

(k) "Partner" denotes a member of a partnership, a shareholder in an LP firm organized as a professional corporation, or a member of an association authorized to practice as LPs.

(l) "Reasonable" or "reasonably" when used in relation to conduct by an LP denotes the conduct of a reasonably prudent and competent LP.

(m) "Reasonable belief" or "reasonably believes" when used in reference to an LP denotes that the LP believes the matter in question and that the circumstances are such that the belief is reasonable.

(n) "Reasonably should know" when used in reference to an LP denotes that an LP of reasonable prudence and competence would ascertain the matter in question.

(o) "Screened" denotes the isolation of an LP from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated LP is obligated to protect under these Rules or other law.

(p) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(q) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will

render a binding legal judgment directly affecting a party's interests in a particular matter.

(r) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and electronic communications. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Adopted 01/01/05

Amended 01/01/14: "Electronic communications" substituted for "email."

Comparison to Oregon Code

This rule replaces DR 10-101 and is significantly more expansive. Some DR 10-101 definitions were retained, but others were not incorporated into this rule.

The definition of "firm member" was eliminated as not necessary, but a reference to "of counsel" was retained in the definition of "firm." The definition of "firm" also distinguishes office sharers and lawyers working in a firm on a limited basis.

The concept of "full disclosure" is replaced by "informed consent," which, in some cases, must be "confirmed in writing."

The definition of "professional legal corporation" was deleted, as the term does not appear in any of the rules and does not require explanation.

The definitions of "person" and "state" were also eliminated as being unnecessary.

CLIENT-LP RELATIONSHIP

RULE 1.1 COMPETENCE

An LP shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Reasonably"

Comparison to Oregon Code

This rule is identical to DR 6-101(A).

RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LP

(a) Subject to paragraphs (b) and (c), an LP shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. An LP may take such action on behalf of the client as is impliedly authorized to carry out the representation. An LP shall abide by a client's decision whether to settle a matter.

(b) An LP may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(c) An LP shall not counsel a client to engage, or assist a client, in conduct that the LP knows is illegal or fraudulent, but an LP may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law within the scope of the LP's authorized areas of practice.

(d) Notwithstanding paragraph (c), an LP may counsel and assist a client regarding Oregon's marijuana-related laws. In the event Oregon law conflicts with federal or tribal law, the LP shall also advise the client regarding related federal and tribal law and policy.
Adopted 01/01/05

Amended 02/19/15: Paragraph (d) added

Defined Terms (see Rule 1.0):

"Fraudulent"

"Informed consent"

"Knows"

"Matter"

"Reasonable"

Comparison to Oregon Code

This rule has no real counterpart in the Oregon Code. Subsection (a) is similar to DR 7-101(A) and (B), but expresses more clearly that lawyers must defer to the client's decisions about the objectives of the representation and whether to settle a matter.

Subsection (b) is a clarification of the lawyer's right to limit the scope of a representation. Subsection (c) is similar to DR 7-102(A)(7), but recognizes that counseling a client about the meaning of a law or the consequences of proposed illegal or fraudulent conduct is not the same as assisting the client in such conduct. Paragraph (d) had no counterpart in the Oregon Code.

RULE 1.3 DILIGENCE

An LP shall not neglect a legal matter entrusted to the LP.

Adopted 01/01/05

Defined Terms (see Rule 1.0)

"Matter"

Comparison to Oregon Code

This rule is identical to DR 6-101(B).

RULE 1.4 COMMUNICATION

(a) An LP shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information

(b) An LP shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Knows"

"Reasonable"

"Reasonably"

Comparison to Oregon Code

This rule has no counterpart in the Oregon Code, although the duty to communicate with a client may be inferred from other rules and from the law of agency.

RULE 1.5 FEES

(a) An LP shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee or a clearly excessive amount for expenses.

(b) A fee is clearly excessive when, after a review of the facts, a lawyer or LP of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;**
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the LP;**
- (3) the fee customarily charged in the locality for similar legal services;**
- (4) the amount involved and the results obtained;**

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client; and

(7) the experience, reputation, and ability of the LP or LPs performing the services;

(8) [not used]

(c) An LP shall not enter into an arrangement for, charge or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of spousal or child support or a property settlement;

(2) [not used]

(3) a fee denominated as "earned on receipt," "nonrefundable" or in similar terms unless it is pursuant to a written agreement signed by the client which explains that:

(i) the funds will not be deposited into the LP's trust account, and

(ii) the client may discharge the LP at any time and in that event may be entitled to a refund of all or part of the fee if the services for which the fee was paid are not completed.

(d) A division of a fee between LPs and other LPs or lawyers who are not in the same firm may be made only if:

(1) the client gives informed consent to the fact that there will be a division of fees, and

(2) the total fee of the LPs and lawyers for all legal services they rendered the client is not clearly excessive.

(e) Paragraph (d) does not prohibit payments to a former firm member pursuant to a separation or retirement agreement, or payments to a selling LP for the sale of an LP practice pursuant to Rule 1.17.

(f) Before providing any services, an LP must provide the client with a written agreement, signed by the client(s), that:

(1) states the purpose for which the LP has been retained;

(2) identifies the services to be performed;

(3) identifies the rate or fee for the services to be performed and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation;

(4) includes a statement printed in 12-point boldface type that the LP is not an attorney and is limited to practice in only those areas in which the LP is licensed;

(5) includes a provision stating that the client may report complaints relating to an LP or the unauthorized practice of law to the Client Assistance Office of the Oregon State Bar, including a toll-free number and Internet website.

Adopted 01/01/05-

Amended 12/01/10: Paragraph(c)(3) added.

Defined Terms (see Rule 1.0):

"Firm"

"Informed Consent"

"Matter"

"Reasonable"

Comparison to Oregon Code

Paragraphs (a), (b) and (c)(1) and (2) are taken directly from DR 2-106, except that paragraph (a) is amended to include the Model Rule prohibition against charging a "clearly excessive amount for expenses." Paragraph (c)(3) had no counterpart in the Code. Paragraph (d) retains the substantive obligations of DR 2-107(A) but is rewritten to accommodate the new concepts of "informed consent" and "clearly excessive." Paragraph (e) is essentially identical to DR 2-107(B).

RULE 1.6 CONFIDENTIALITY OF INFORMATION

(a) An LP shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) An LP may reveal information relating to the representation of a client to the extent the LP reasonably believes necessary:

(1) to disclose the intention of the LP's client to commit a crime and the information necessary to prevent the crime;

(2) to prevent reasonably certain death or substantial bodily harm;

(3) to secure legal advice about the LP's compliance with these Rules;

(4) to establish a claim or defense on behalf of the LP in a controversy between the LP and the client, to establish a defense to a criminal charge or civil claim against the LP based upon conduct in which the client was involved, or to respond to allegations

in any proceeding concerning the LP's representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

(6) in connection with the sale of an LP practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the LP's change of employment or from changes in the composition or ownership of a firm. In those circumstances, an LP may disclose with respect to each affected client the client's identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the LP-client privilege or otherwise prejudice any of the clients. The lawyer or LP or lawyers or LPs receiving the information shall have the same responsibilities as the disclosing LP to preserve the information regardless of the outcome of the contemplated transaction.

(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer or LP serving as a monitor of an LP on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored LP to preserve information relating to the representation of the monitored LP's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.

(c) An LP shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Adopted 01/01/05

Amended 12/01/06: Paragraph (b)(6) amended to substitute "information relating to the representation of a client" for "confidences and secrets."

Amended 01/20/09: Paragraph (b)(7) added.

Amended 01/01/14: Paragraph (6) modified to allow certain disclosures to avoid conflicts arising from a change of employment or ownership of a firm. Paragraph (c) added.

Defined Terms (see Rule 1.0):

"Believes"

"Firm"

"Information relating to the representation of a client"

"Informed Consent"

"Reasonable"

"Reasonably"

"Substantial"

Comparison to Oregon Code

This rule replaces DR 4-101(A) through (C). The most significant difference is the substitution of "information relating to the representation of a client" for "confidences and secrets." Paragraph (a) includes the exceptions for client consent found in DR 4-101(C)(1) and allows disclosures "impliedly authorized" to carry out the representation, which is similar to the exception in DR 4-101(C)(2).

The exceptions to the duty of confidentiality set forth in paragraph (b) incorporate those found in DR 4-101(C)(2) through (C)(5). There are also two new exceptions not found in the Oregon Code: disclosures to prevent "reasonably certain death or substantial bodily harm" whether or not the action is a crime, and disclosures to obtain legal advice about compliance with the Rules of Professional Conduct.

Paragraph (b)(6) in the Oregon Code pertained only to the sale of a law practice.

Paragraph (b)(7) had no counterpart in the Oregon Code.

RULE 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), an LP shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client;

(2) there is a significant risk that the representation of one or more clients will be materially limited by the LP's responsibilities to another client, a former client or a third person or by a personal interest of the LP; or

(3) the LP is related to another lawyer or LP, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the LP knows is represented by the other lawyer or LP in the same matter.

(b) Notwithstanding the existence of a current conflict of interest under paragraph (a), an LP may represent a client if:

(1) the LP reasonably believes that the LP will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not obligate the LP to contend for something on behalf of one client that the LP has a duty to oppose on behalf of another client; and

(4) each affected client gives informed consent, confirmed in writing.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Believes"

"Confirmed in writing"

"Informed consent"

"Knows"

"Matter"

"Reasonably believes"

Comparison to Oregon Code

The current conflicts of interest prohibited in paragraph (a) are the self-interest conflicts currently prohibited by DR 5-101(A) and current client conflicts prohibited by DR 5-105(E). Paragraph (a)(2) refers only to a "personal interest" of a lawyer, rather than the specific "financial, business, property or personal interests" enumerated in DR 5-101(A)(1). Paragraph (a)(3) incorporates the "family conflicts" from DR 5-101(A)(2).

Paragraph (b) parallels DR 5-101(A) and DR 5-105(F) in permitting a representation otherwise prohibited if the affected clients give informed consent, which must be confirmed in writing. Paragraph (b)(3) incorporates the "actual conflict" definition of DR 5-105(A)(1) to make it clear that a lawyer cannot provide competent and diligent representation to clients in that situation.

Paragraph (b) also allows consent to simultaneous representation "not prohibited by law," which has no counterpart in the Oregon Code. According to the official Comment to MR 1.7 this would apply, for instance, in jurisdictions that prohibit a lawyer from representing more than one defendant in a capital case, to certain representations by former government lawyers, or when local law prohibits a government client from consenting to a conflict of interest.

RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a) An LP shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the LP acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in

writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the LP's role in the transaction, including whether the LP is representing the client in the transaction.

(b) An LP shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, confirmed in writing, except as permitted or required under these Rules.

(c) An LP shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the LP or a person related to the LP any substantial gift, unless the LP or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or individual with whom the LP or the client maintains a close familial relationship.

(d) Prior to the conclusion of representation of a client, an LP shall not make or negotiate an agreement giving the LP literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) An LP shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) [not used]

(2) an LP representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) An LP shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the LP's independence of professional judgment or with the client-LP relationship; and

(3) information related to the representation of a client is protected as required by Rule 1.6.

(g) An LP who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, unless each client gives informed consent, in a writing signed by the client. The

LP's disclosure shall include the existence and nature of all the claims involved and of the participation of each person in the settlement.

(h) An LP shall not:

(1) make an agreement prospectively limiting the LP's liability to a client for malpractice unless the client is independently represented in making the agreement;

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith;

(3) enter into any agreement with a client regarding arbitration of malpractice claims without informed consent, in a writing signed by the client; or

(4) enter into an agreement with a client or former client limiting or purporting to limit the right of the client or former client to file or to pursue any complaint before the Oregon State Bar.

(i) An LP shall not acquire a proprietary interest in the cause of action or subject matter of litigation the LP is conducting for a client, except that the LP may:

(1) acquire a lien authorized by law to secure the LP's fee or expenses.

(2) [not used]

(j) An LP shall not have sexual relations with a current client of the LP unless a consensual sexual relationship existed between them before the client-LP relationship commenced; or have sexual relations with a representative of a current client of the LP if the sexual relations would, or would likely, damage or prejudice the client in the representation. For purposes of this rule:

(1) "sexual relations" means sexual intercourse or any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the LP for the purpose of arousing or gratifying the sexual desire of either party; and

(2) "LP" means any LP who assists in the representation of the client, but does not include other firm members who provide no such assistance.

(k) While LPs are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

Adopted 01/01/05

Amended 01/01/13: Paragraph (e) amended.

Defined Terms (see Rule 1.0):

"Confirmed in writing"

"Information relating to the representation of a client"

"Informed consent"

"Firm"

"Knowingly"

"Matter"

"Reasonable"

"Reasonably"

"Substantial"

"Writing"

Comparison to Oregon Code

This rule has no exact counterpart in the Oregon Code, although it incorporates prohibitions found in several separate disciplinary rules.

Paragraph (a) replaces DR 5-104(A) and incorporates the Model Rule prohibition against business transactions with clients even with consent except where the transaction is "fair and reasonable" to the client. It also includes an express requirement to disclose the lawyer's role and whether the lawyer is representing the client in the transaction.

Paragraph (b) is virtually identical to DR 4-101(B).

Paragraph (c) is similar to DR 5-101(B), but broader because it prohibits soliciting a gift as well as preparing the instrument. It also has a more inclusive list of "related persons."

Paragraph (d) is identical to DR 5-104(B).

Paragraph (e) incorporates ABA Model Rule 1.8(e).

Paragraph (f) replaces DR 5-108(A) and (B) and is essentially the same as it relates to accepting payment from someone other than the client. This rule is somewhat narrower than DR 5-108(B), which prohibits allowing influence from someone who "recommends, employs or pays" the lawyer.

Paragraph (g) is virtually identical to DR 5-107(A).

Paragraph (h)(1) and (2) are similar to DR 6-102(A), but do not include the "unless permitted by law" language. Paragraph (h)(3) retains DR 6-102(B), but substitutes "informed consent, in a writing signed by the client" for "full disclosure." Paragraph (h)(4) is new and was taken from Illinois Rule of Professional Conduct 1.8(h).

Paragraph (i) is essentially the same as DR 5-103(A).

Paragraph (j) retains DR 5-110, reformatted to conform to the structure of the rule.

Paragraph (k) applies the same vicarious disqualification to these personal conflicts as provided in DR 5-105(G).

RULE 1.9 DUTIES TO FORMER CLIENTS

(a) An LP who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless each affected client gives informed consent, confirmed in writing.

(b) An LP shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the LP formerly was associated had previously represented a client:

(1) whose interests are materially adverse to that person; and

(2) about whom the LP had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter, unless each affected client gives informed consent, confirmed in writing.

(c) An LP who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

(d) For purposes of this rule, matters are "substantially related" if (1) the LP's representation of the current client will injure or damage the former client in connection with the same transaction or legal dispute in which the LP previously represented the former client; or (2) there is a substantial risk that confidential factual information as would normally have been obtained in the prior representation of the former client would materially advance the current client's position in the subsequent matter.

Adopted 01/01/05

Amended 12/01/06: Paragraph (d) added.

Defined Terms (see Rule 1.0):

"Confirmed in writing"

"Informed consent"

"Firm"

"Knowingly"

"Known"

"Matter"

“Reasonable”
“Substantial”

Comparison to Oregon Code

This rule replaces DR 5-105(C), (D) and (H). Like Rule 1.7, this rule is a significant departure from the language and structure of the Oregon Code provisions on conflicts. Paragraph (a) replaces the sometimes confusing reference to “actual or likely conflict” between current and former client with the simpler “interests [that are] materially adverse.” The prohibition applies to matters that are the same or “substantially related,” which is virtually identical to the Oregon Code standard of “significantly related.”

Paragraph (b) replaces the limitation of DR 5-105(H), but is an arguably clearer expression of the prohibition. The new language makes it clear that a lawyer who moves to a new firm is prohibited from being adverse to a client of the lawyer’s former firm only if the lawyer has acquired confidential information material to the matter while at the former firm.

Paragraph (c) makes clear that the duty not to use confidential information to the client’s disadvantage continues after the conclusion of the representation, except where the information “has become generally known.”

Paragraph (d) defines “substantially related.” The definition is taken in part from former DR 5-105(D) and in part from Comment [3] to ABA Model Rule 1.9.

**RULE 1.10 IMPUTATION OF CONFLICTS OF INTEREST;
SCREENING**

(a) While LPs are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited LP or on Rule 1.7(a)(3) and does not present a significant risk of materially limiting the representation of the client by the remaining LPs or lawyers in the firm.

(b) When an LP has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated LP and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated LP represented the client; and

(2) any LP or lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) When an LP becomes associated with a firm, no LP or lawyer associated in the firm shall knowingly represent a person in a matter in which that LP is disqualified under Rule 1.9, unless the personally disqualified LP is promptly screened from any form of participation or representation in the matter and written notice of the screening procedures employed is promptly given to any affected former client.

(d) A disqualification prescribed by this rule may be waived by the affected clients under the conditions stated in Rule 1.7.

(e) The disqualification of LPs associated in a firm with former or current government lawyers LPs is governed by Rule 1.11. dopted 01/01/05

Amended 12/01/06: Paragraph (a) amended to include reference to Rule 1.7(a)(3).

Amended 01/01/14: Paragraph (c) revised to eliminate detailed screening requirements and to require notice to the affected client rather than the lawyer’s former firm.

Defined Terms (see Rule 1.0):

“Firm”

“Know”

“Knowingly”

“Law firm”

“Matter”

“Screened”

“Substantial”

Comparison to Oregon Code

Paragraph (a) is similar to the vicarious disqualification provisions of DR 5-105(G), except that it does not apply when the disqualification is based only on a “personal interest” of the disqualified lawyer that will not limit the ability of the other lawyers in the firm to represent the client.

Paragraph (b) is substantially the same as DR 5-105(J).

Paragraph (d) is similar to DR 5-105 in allowing clients to consent to what would otherwise be imputed conflicts.

Paragraph (e) has no counterpart in the Oregon Code because the Oregon Code does not have a special rule addressing government lawyer conflicts.

The title was changed to include “Screening.”

**RULE 1.11 SPECIAL CONFLICTS OF INTEREST FOR
FORMER AND CURRENT GOVERNMENT OFFICERS AND
EMPLOYEES**

(a) Except as Rule 1.12, Rule 6.5, or law may otherwise expressly permit, an LP who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9 (c); and

(2) shall not otherwise represent a client in connection with a matter in which the LP participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When an LP is disqualified from representation under paragraph (a), no LP or lawyer in a firm with which that LP is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified LP is timely screened from any participation in the matter substantially in accordance with the procedures set forth in Rule 1.10(c); and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(c) Except as law may otherwise expressly permit, an LP having information that the LP knows is confidential government information about a person acquired when the LP was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that LP is associated may undertake or continue representation in the matter only if the disqualified LP is timely screened from any participation in the matter substantially in accordance with the procedures set forth in Rule 1.10(c).

(d) Except as law may otherwise expressly permit, an LP currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

(i) use the LP's public position to obtain, or attempt to obtain, special advantage in legislative matters for the LP or for a client.

(ii) use the LP's public position to influence, or attempt to influence, a tribunal to act in favor of the LP or of a client.

(iii) accept anything of value from any person when the LP knows or it is obvious that the offer is for the purpose of influencing the LP's action as a public official.

(iv) either while in office or after leaving office use information the LP knows is confidential government information obtained while a public official to represent a private client.

(v) participate in a matter in which the LP participated personally and substantially while in private practice or nongovernmental employment, unless the LP's former client and the appropriate government agency give informed consent, confirmed in writing; or

(vi) negotiate for private employment with any person who is involved as a party, an LP, or as lawyer for a party in a matter in which the LP is participating personally and substantially, except that an LP serving as a law clerk or staff LP to or otherwise assisting in the official duties of a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(e) Notwithstanding any Rule of Professional Conduct, and consistent with the "debate" clause, Article IV, section 9, of the Oregon Constitution, or the "speech or debate" clause, Article I, section 6, of the United States Constitution, an LP-legislator shall not be subject to discipline for words uttered in debate in either house of the Oregon Legislative Assembly or for any speech or debate in either house of the United States Congress.

(f) A member of an LP-legislator's firm shall not be subject to discipline for representing a client in any claim against the State of Oregon provided:

(1) the LP-legislator is screened from participation or representation in the matter in accordance with the procedure set forth in Rule 1.10(c) (the required affidavits shall be served on the Attorney General); and

(2) the LP-legislator shall not directly or indirectly receive a fee for such representation.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Confirmed in writing"

"Informed consent"

"Firm"

"Knowingly"

"Knows"

"Matter"

"Screened"

"Substantial"

"Tribunal"

"Written"

Comparison to Oregon Code

This rule has no exact counterpart in the Oregon Code, under which the responsibilities of government lawyers are addressed in DR 5-109 and DR 8-101, as well as in the general conflict limitations of DR 5-105. This rule puts all the requirements for government lawyers in one place.

Paragraph (a) is essentially the same as DR 5-109(B).

Paragraph (b) imputes a former government lawyer's unconsented-to conflicts to the new firm unless the former government lawyer is screened from participation in the matter, as would be allowed under DR 5-105(I).

Paragraph (c) incorporates the prohibitions in DR 8-101(A)(1), (A)(4) and (B). It also allows screening of the disqualified lawyer to avoid disqualification of the entire firm.

Paragraph (d) applies concurrent and former client conflicts to lawyers currently serving as a public officer or employee; it also incorporates in (d)(2) (i) –(iv) the limitations in DR 8-101(A)(1)-(4), with the addition in (d)(2)(iv) of language from MR 1.11 that a lawyer is prohibited from using only that government information that the lawyer knows is confidential. Paragraph (d)(2)(v) is the converse of DR 5-109(B), and has no counterpart in the Oregon Code other than the general former client conflict provision of DR 5-105. Paragraph (d)(2)(vi) has no counterpart in the Oregon Code; it is an absolute bar to negotiating for private employment while a serving in a non-judicial government position for anyone other than a law clerk or staff lawyer assisting in the official duties of a judicial officer.

Paragraph (e) is taken from DR 8-101(C) to retain a relatively recent addition to the Oregon Code.

Paragraph (f) is taken from DR 8-101(D), also to retain a relatively recent addition to the Oregon Code.

RULE 1.12 FORMER JUDGE, ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL

(a) Except as stated in paragraph (d) and Rule 2.4(b), an LP shall not represent anyone in connection with a matter in which the LP participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) An LP shall not negotiate for employment with any person who is involved as a party or as lawyer or LP for a party in a matter in which the LP is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. An LP serving as a law clerk or staff lawyer to or otherwise assisting in the official duties of a judge or other adjudicative officer may negotiate for employment with a party or lawyer or LP

involved in a matter in which the clerk is participating personally and substantially, but only after the LP has notified the judge or other adjudicative officer.

(c) If an LP is disqualified by paragraph (a), no lawyer or LP in a firm with which that LP is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified LP is timely screened from any participation in the matter substantially in accordance with the procedures set forth in Rule 1.10(c); and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

Adopted 01/01/05

Amended 01/01/14: References in paragraph (a) reversed.

Defined Terms (see Rule 1.0):

"Confirmed in writing"

"Informed consent"

"Firm"

"Knowingly"

"Matter"

"Screened"

"Substantial"

"Tribunal"

"Written"

Comparison to Oregon Code

Paragraph (a) is essentially the same as DR 5-109(A), with an exception created for lawyers serving as mediators under Rule 2.4(b).

Paragraph (b) has no equivalent rule in the Oregon Code; like Rule 1.11(d)(2)(vi) it address the conflict that arises when a person serving as, or as a clerk or staff lawyer to, a judge or other third party neutral, negotiates for employment with a party or a party's lawyer. This situation is covered under DR 5-101(A), but its application may not be as clear.

Paragraph (c) applies the vicarious disqualification that would be imposed under DR 5-105(G) to a DR 5-109 conflict; the screening provision is broader than DR 5-105(I), which is limited to lawyers moving between firms.

Paragraph (d) has no counterpart in the Oregon Code.

RULE 1.13 ORGANIZATION AS CLIENT

(a) An LP employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If an LP for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the LP shall proceed as is reasonably necessary in the best interest of the organization. Unless the LP reasonably believes that it is not necessary in the best interest of the organization to do so, the LP shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, referral to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the LP's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action or a refusal to act, that is clearly a violation of law, and

(2) the LP reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the LP may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the LP reasonably believes necessary to prevent substantial injury to the organization.

(d) [Not used]

(e) An LP who reasonably believes that he or she has been discharged because of the LP's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the LP to take action under either of those paragraphs, shall proceed as the LP reasonably believes necessary to assure that the organization's highest authority is informed of the LP's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, an LP shall explain the identity of the client when the LP knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the LP is dealing.

(g) An LP representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent may only be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Adopted 01/01/05

Amended 12/01/06: Paragraph (b) amended.

Defined Terms (see Rule 1.0):

"Believes"

"Information relating to the representation"

"Knows"

"Matter"

"Reasonable"

"Reasonably"

"Reasonably believes"

"Reasonably should know"

"Substantial"

Comparison to Oregon Code

This rule has no counterpart in the Oregon Code.

RULE 1.14 CLIENT WITH DIMINISHED CAPACITY

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the LP shall, as far as reasonably possible, maintain a normal client-LP relationship with the client.

(b) When the LP reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the LP may take reasonably necessary protective action within the scope of the LP license (if any), and may consult with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seek the appointment of a guardian ad litem.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the LP is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Believes"

"Information relating to the representation of a client"

"Reasonably"
"Reasonably believes"
"Substantial"

Comparison to Oregon Code

Paragraph (b) is similar to DR 7-101(C), but offers more guidance as to the circumstances when a lawyer can take protective action in regard to a client. Paragraph (a) and (c) have no counterparts in the Oregon Code, but provide helpful guidance for lawyers representing clients with diminished capacity.

RULE 1.15-1 SAFEKEEPING PROPERTY

(a) An LP shall hold property of clients or third persons that is in an LP's possession separate from the LP's own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate "Lawyer Trust Account" maintained in the jurisdiction where the LP's office is situated. Each lawyer trust account shall be an interest bearing account in a financial institution selected by the LP or law firm in the exercise of reasonable care. Lawyer trust accounts shall conform to the rules in the jurisdictions in which the accounts are maintained. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the LP and shall be preserved for a period of five years after termination of the representation.

(b) An LP may deposit the LP's own funds in a lawyer trust account for the sole purposes of paying bank service charges or meeting minimum balance requirements on that account, but only in amounts necessary for those purposes.

(c) An LP shall deposit into a lawyer trust account legal fees and expenses that have been paid in advance, to be withdrawn by the LP only as fees are earned or expenses incurred, unless the fee is denominated as "earned on receipt," "nonrefundable" or similar terms and complies with Rule 1.5(c)(3).

(d) Upon receiving funds or other property in which a client or third person has an interest, an LP shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, an LP shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation an LP is in possession of property in which two or more persons (one of whom may be the LP) claim interests, the property shall be kept separate by the LP until the

dispute is resolved. The LP shall promptly distribute all portions of the property as to which the interests are not in dispute.

Adopted 01/01/05

Amended 11/30/05: Paragraph (a) amended to eliminate permission to have trust account "elsewhere with the consent of the client" and to require accounts to conform to jurisdiction in which located. Paragraph (b) amended to allow deposit of lawyer funds to meet minimum balance requirements.

Amended 12/01/10: Paragraph (c) amended to create an exception for fees "earned on receipt" within the meaning of Rule 1.5(c)(3).

Defined Terms (see Rule 1.0):

"Law firm"
"Reasonable"

Comparison to Oregon Code

Paragraphs (a)-(e) contain all of the elements of DR 9-101(A)-(C) and (D)(1), albeit in slightly different order. The rule is broader than DR 9-101 in that it also applies to the property of prospective clients and third persons received by a lawyer. Paragraph (c) makes it clear that fees and costs paid in advance must be held in trust until earned unless the fee is denominated "earned on receipt" and complies with the requirements of Rule 1.5(c)(3).

RULE 1.15-2 IOLTA ACCOUNTS AND TRUST ACCOUNT OVERDRAFT NOTIFICATION

(a) A lawyer trust account for client funds that cannot earn interest in excess of the costs of generating such interest ("net interest") shall be referred to as an IOLTA (Interest on Lawyer Trust Accounts) account. IOLTA accounts shall be operated in accordance with this rule and with operating regulations and procedures as may be established by the Oregon State Bar with the approval of the Oregon Supreme Court.

(b) All client funds shall be deposited in the LP's or firm's IOLTA account unless a particular client's funds can earn net interest. All interest earned by funds held in the IOLTA account shall be paid to the Oregon Law Foundation as provided in this rule.

(c) Client funds that can earn net interest shall be deposited in an interest bearing trust account for the client's benefit and the net interest earned by funds in such an account shall be held in trust as property of the client in the same manner as is provided in paragraphs (a) through (d) of Rule 1.15-1 for the principal funds of the client. The interest bearing account shall be either:

(1) a separate account for each particular client or client matter; or

(2) a pooled lawyer trust account with subaccounting which will provide for computation of interest earned by each client's funds and the payment thereof, net of any bank service charges, to each client.

(d) In determining whether client funds can or cannot earn net interest, the LP or law firm shall consider the following factors:

(1) the amount of the funds to be deposited;

(2) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;

(3) the rates of interest at financial institutions where the funds are to be deposited;

(4) the cost of establishing and administering a separate interest bearing lawyer trust account for the client's benefit, including service charges imposed by financial institutions, the cost of the LP's or law firm's services, and the cost of preparing any tax-related documents to report or account for income accruing to the client's benefit;

(5) the capability of financial institutions, the LP lawyer or the law firm to calculate and pay income to individual clients; and

(6) any other circumstances that affect the ability of the client's funds to earn a net return for the client.

(e) The LP or firm shall review the IOLTA account at reasonable intervals to determine whether circumstances have changed that require further action with respect to the funds of a particular client.

(f) If an LP or firm determines that a particular client's funds in an IOLTA account either did or can earn net interest, the LP shall transfer the funds into an account specified in paragraph (c) of this rule and request a refund for the lesser of either: any interest earned by the client's funds and remitted to the Oregon Law Foundation; or the interest the client's funds would have earned had those funds been placed in an interest bearing account for the benefit of the client at the same bank.

(1) The request shall be made in writing to the Oregon Law Foundation within a reasonable period of time after the interest was remitted to the Foundation and shall be accompanied by written verification from the financial institution of the interest amount.

(2) The Oregon Law Foundation will not refund more than the amount of interest it received from

the client's funds in question. The refund shall be remitted to the financial institution for transmittal to the LP or firm, after appropriate accounting and reporting.

(g) No earnings from a lawyer trust account shall be made available to an LP or the LP's firm.

(h) An LP or firm may maintain a lawyer trust account only at a financial institution that:

(1) is authorized by state or federal banking laws to transact banking business in the state where the account is maintained;

(2) is insured by the Federal Deposit Insurance Corporation or an analogous federal government agency;

(3) has entered into an agreement with the Oregon Law Foundation:

(i) to remit to the Oregon Law Foundation, at least quarterly, interest earned by the IOLTA account, computed in accordance with the institution's standard accounting practices, less reasonable service charges, if any; and

(ii) to deliver to the Oregon Law Foundation a report with each remittance showing the name of the LP or firm for whom the remittance is sent, the number of the IOLTA account as assigned by the financial institution, the average daily collected account balance or the balance on which the interest remitted was otherwise computed for each month for which the remittance is made, the rate of interest applied, the period for which the remittance is made, and the amount and description of any service charges deducted during the remittance period; and

(4) has entered into an overdraft notification agreement with the Oregon State Bar requiring the financial institution to report to the Oregon State Bar Disciplinary Counsel when any properly payable instrument is presented against such account containing insufficient funds, whether or not the instrument is honored.

(i) Overdraft notification agreements with financial institutions shall require that the following information be provided in writing to Disciplinary Counsel within ten banking days of the date the item was returned unpaid:

(1) the identity of the financial institution;

(2) the identity of the LP or firm;

(3) the account number; and

(4) either (i) the amount of the overdraft and the date it was created; or (ii) the amount of the returned instrument and the date it was returned.

(j) Agreements between financial institutions and the Oregon State Bar or the Oregon Law Foundation shall apply to all branches of the financial institution. Such agreements shall not be canceled except upon a thirty-day notice in writing to OSB Disciplinary Counsel in the case of a trust account overdraft notification agreement or to the Oregon Law Foundation in the case of an IOLTA agreement.

(k) Nothing in this rule shall preclude financial institutions which participate in any trust account overdraft notification program from charging LPs or firms for the reasonable costs incurred by the financial institutions in participating in such program.

(l) Every LP who receives notification from a financial institution that any instrument presented against his or her lawyer trust account was presented against insufficient funds, whether or not the instrument was honored, shall promptly notify Disciplinary Counsel in writing of the same information required by paragraph (i). The LP shall include a full explanation of the cause of the overdraft.

(m) For the purposes of paragraph (h)(3), “service charges” are limited to the institution’s following customary check and deposit processing charges: monthly maintenance fees, per item check charges, items deposited charges and per deposit charges. Any other fees or transactions costs are not “service charges” for purposes of paragraph (h)(3) and must be paid by the lawyer or law firm.

Adopted 01/01/05

Amended 11/30/05: Paragraph (a) amended to clarify scope of rule. Paragraph (h) amended to allow remittance of interest to OLF in accordance with bank’s standard accounting practice, and to report either the average daily collected account balance or the balance on which interest was otherwise computed. Paragraph (j) amended to require notice to OLF of cancellation of IOLTA agreement. Paragraph (m) and (n) added.

Amended 01/01/12: Requirement for annual certification, formerly paragraph (m), deleted and obligation moved to ORS Chapter 9.

Amended 01/01/14: Paragraph (f) revised to clarify the amount of interest that is to be refunded if client funds are mistakenly placed in an IOLTA account.

Defined Terms (see Rule 1.0)

“Firm”

“Law Firm”

“Matter”

“Reasonable”

“Writing”

“Written”

Comparison to Oregon Code

This rule is a significant revision of the IOLTA provisions of DR 9-101 and the trust account overdraft notification provisions of DR 9-102. The original changes were prompted by the US Supreme Court’s decision in *Brown v. Washington Legal Foundation* that clients are entitled to “net interest” that can be earned on funds held in trust. Additional changes were made to conform the rule to banking practice and to clarify the requirement for annual certification.

RULE 1.16 DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), an LP shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct for Licensed Paralegals or other law;

(2) the LP’s physical or mental condition materially impairs the LP’s ability to represent the client; or

(3) the LP is discharged; or

(4) the continued representation will exceed the LP’s limited license.

(b) Except as stated in paragraph (c), an LP may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the LP’s services that the LP reasonably believes is criminal or fraudulent;

(3) the client has used the LP’s services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the LP considers repugnant or with which the LP has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the LP regarding the LP’s services and has been given reasonable warning that the LP will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the LP or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) An LP must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, an LP shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, an LP shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other representation, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The LP may retain papers, personal property and money of the client to the extent permitted by other law.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Believes"

"Fraud"

"Fraudulent"

"Reasonable"

"Reasonably"

"Reasonably believes"

"Substantial"

"Tribunal"

Comparison to Oregon Code

This rule is essentially the same as DR 2-110, except that it specifically applies to declining a representation as well as withdrawing from representation. Paragraph (a) parallels the circumstances in which DR 2-110(B) mandates withdrawal, and also includes when the client is acting "merely for the purpose of harassing or maliciously injuring" another person, which is prohibited in DR 2-109(A)(1) and DR 7-102(A)(1).

Paragraph (b) is similar to DR 2-110(C) regarding permissive withdrawal. It allows withdrawal for any reason if it can be accomplished without "material adverse effect" on the client. Withdrawal is also allowed if the lawyer considers the client's conduct repugnant or if the lawyer fundamentally disagrees with it.

Paragraph (c) is like DR 2-110(A)(1) in requiring compliance with applicable law requiring notice or permission from the tribunal; it also clarifies the lawyer's obligations if permission is denied.

Paragraph (d) incorporates DR 2-110(A)(2) and (3). The final sentence has no counterpart in the Oregon Code; it recognizes the right of a lawyer to retain client papers and other property to the extent permitted by other law. The "other law" includes statutory lien rights as well as court decisions determining lawyer ownership of certain

papers created during a representation. A lawyer's right under other law to retain papers and other property remains subject to other obligations, such as the lawyer's general fiduciary duty to avoid prejudicing a former client, which might supersede the right to claim a lien.

RULE 1.17 SALE OF LAW PRACTICE

(a) An LP or LP firm may sell or purchase all or part of an LP practice, including goodwill, in accordance with this rule.

(b) The selling LP, or the selling LP's legal representative, in the case of a deceased or disabled LP, shall provide written notice of the proposed sale to each current client whose legal work is subject to transfer, by certified mail, return receipt requested, to the client's last known address. The notice shall include the following information:

(1) that a sale is proposed;

(2) the identity of the purchasing lawyer or law firm or LP or LP firm, including the office address(es), and a brief description of the size and nature of the purchasing lawyer's or law firm's or LP's or LP firm's practice;

(3) that the client may object to the transfer of its legal work, may take possession of any client files and property, and may retain counsel other than the purchasing lawyer or law firm or purchasing LP or LP firm;

(4) that the client's legal work will be transferred to the purchasing lawyer or law firm or LP or LP firm, who will then take over the representation and act on the client's behalf, if the client does not object to the transfer within forty-five (45) days after the date the notice was mailed; and

(5) whether the selling LP will withdraw from the representation not less than forty-five (45) days after the date the notice was mailed, whether or not the client consents to the transfer of its legal work.

(c) The notice may describe the purchasing lawyer or law firm's or LP's or LP firm's qualifications, including the selling LP's opinion of the purchasing lawyer or law firm's or LP or LP firm's suitability and competence to assume representation of the client, but only if the selling LP has made a reasonable effort to arrive at an informed opinion.

(d) If certified mail is not effective to give the client notice, the selling lawyer shall take such steps as may be reasonable under the circumstances to give the client actual notice of the proposed sale and the other information required in subsection (b).

(e) A client's consent to the transfer of its legal work to the purchasing lawyer or law firm will be presumed if no objection is received within forty-five (45) days after the date the notice was mailed.

(f) If substitution of counsel is required by the rules of a tribunal in which a matter is pending, the selling lawyer shall assure that substitution of counsel is made.

(g) The fees charged clients shall not be increased by reason of the sale except upon agreement of the client.

(h) The sale of a law practice may be conditioned on the selling lawyer's ceasing to engage in the private practice of law or some particular area of practice for a reasonable period within the geographic area in which the practice has been conducted.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Known"

"Law firm"

"Matter"

"Reasonable"

"Tribunal"

"Written"

Comparison to Oregon Code

This rule continues DR 2-111 which, when adopted in 1995, was derived in large part from Model Rule 1.17.

RULE 1.18 DUTIES TO PROSPECTIVE CLIENT

(a) A person who consults with an LP about the possibility of forming a client-LP relationship with respect to a matter is a prospective client.

(b) Even when no client-LP relationship ensues, an LP who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.

(c) An LP subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the LP received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If an LP is disqualified from representation under this paragraph, no LP or lawyer in a firm with which that LP is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the LP has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the LP who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified LP is timely screened from any participation in the matter; and

(ii) written notice is promptly given to the prospective client

Adopted 01/01/05

Amended 12/11/09: Paragraph (d) amended to conform to ABA Model Rule 1.18 except for prohibition against disqualified lawyer being apportioned a part of the fee.

Amended 01/01/14: Paragraphs (a) and (b) amended slightly to conform to changes in the Model Rule.

Defined Terms (see Rule 1.0):

"Confirmed in writing"

"Informed consent"

"Firm"

"Knowingly"

"Matter"

"Screened"

"Substantial"

"Written"

Comparison to Oregon Code

This rule has no counterpart in the Oregon Code. It is consistent with the rule of lawyer-client privilege that defines a client to include a person "who consults a lawyer with a view to obtaining professional legal services." OEC 503(1)(a). The rule also codifies a significant body of case law and other authority that has interpreted the duty of confidentiality to apply to prospective clients.

COUNSELOR

RULE 2.1 ADVISOR

In representing a client, an LP shall exercise independent professional judgment and render candid advice. In rendering advice, an LP may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Adopted 01/01/05

Comparison to Oregon Code

This rule has no counterpart in the Oregon Code, although it codifies the concept of exercising independent judgment that is fundamental to the role of the lawyer and which is mentioned specifically in DRs 2-103, 5-101, 5-104, 5-108 and 7-101.

RULE 2.2 [RESERVED]

RULE 2.3 EVALUATION FOR USE BY THIRD PERSONS

(a) An LP may provide an evaluation of a matter affecting a client for the use of someone other than the client if the LP reasonably believes that making the evaluation is compatible with other aspects of the LP's relationship with the client.

(b) When the LP knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the LP shall not provide the evaluation unless the client gives informed consent.

(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Believes"

"Informed consent"

"Knows"

"Matter"

"Reasonably believes"

"Reasonably should know"

Comparison to Oregon Code

This rule is similar to DR 7-101(D), which was adopted in 1997 based on former ABA Model Rule 2.3. Paragraph (b) is new in 2002 to require client consent only when the evaluation poses a risk of material and adverse affect on the client. Under paragraph (a), when there is no such risk, the lawyer needs only to determine that the

evaluation is compatible with other aspects of the relationship.

RULE 2.4 LAWYER SERVING AS MEDIATOR

(a) An LP serving as a mediator:

(1) shall not act as an LP for any party against another party in the matter in mediation or in any related proceeding; and

(2) must clearly inform the parties of and obtain the parties' consent to the LP's role as mediator.

(b) An LP serving as a mediator:

(1) may prepare documents that memorialize and implement the agreement reached in mediation;

(2) shall recommend that each party seek independent legal advice before executing the documents; and

(3) with the consent of all parties, may record or may file the documents in court.

(c) The requirements of Rule 2.4(a)(2) and (b)(2) shall not apply to mediation programs established by operation of law or court order.

Adopted 01/01/05

Amended 01/01/14: Original paragraph (c) relating to firm representation deleted to eliminate conflict with RPC 1.12.

Defined Terms (see Rule 1.0):

"Matter"

Comparison to Oregon Code

This rule retains much of former DR 5-106.

ADVOCATE

RULE 3.1 MERITORIOUS CLAIMS AND CONTENTIONS

In representing a client or the LP's own interests, an LP shall not knowingly bring or defend a proceeding, assert a position therein, delay a trial or take other action on behalf of a client, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law, except that the respondent in a proceeding that could result in incarceration may, nevertheless so defend the proceeding as to require that every element of the case be established.

Adopted 01/01/05

Amended 12/01/06: Paragraph (a) amended to make applicable to a lawyer acting in the lawyer's own interests.

Defined Terms (see Rule 1.0):

“Knowingly”

Comparison to Oregon Code

This rule retains the essence of DR 2-109(A)(2) and DR 7-102(A)(2), although neither Oregon rule expressly confirms the right of a criminal defense lawyer to defend in a manner that requires establishment of every element of the case.

RULE 3.2 [RESERVED]

RULE 3.3 CANDOR TOWARD THE TRIBUNAL

(a) An LP shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the LP;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the LP to be directly adverse to the position of the client and not disclosed by opposing counsel;

(3) offer evidence that the LP knows to be false. If an LP, the LP’s client, or a witness called by the LP, has offered material evidence and the LP comes to know of its falsity, the LP shall take reasonable remedial measures, including, if permitted, disclosure to the tribunal. An LP may refuse to offer evidence that the LP reasonably believes is false;

(4) conceal or fail to disclose to a tribunal that which the LP is required by law to reveal; or

(5) engage in other illegal conduct or conduct contrary to these Rules.

(b) An LP who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if permitted, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, but in no event require disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, an LP shall inform the tribunal of all material facts known to the LP that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Adopted 01/01/05

Amended 12/01/10: Paragraphs (a)(3) and (b) amended to substitute “if permitted” for “if necessary;” paragraph

(c) amended to make it clear that remedial measures do not require disclosure of information protected by Rule 1.6.

Defined Terms (see Rule 1.0):

“Believes”

“Fraudulent”

“Knowingly”

“Known”

“Knows”

“Matter”

“Reasonable”

“Reasonably believes”

“Tribunal”

Comparison to Oregon Code

Paragraph (a)(1) is similar to DR 7-102(A)(5), but also requires correction of a previously made statement that turns out to be false.

Paragraph (a)(2) is the same as DR 7-106(B)(1).

Paragraph (a)(3) combines the prohibition in DR 7-102(A)(4) against presenting perjured testimony or false evidence with the remedial measures required in DR 7-102(B). The rule clarifies that only materially false evidence requires remedial action. While the rule allows a criminal defense lawyer to refuse to offer evidence the lawyer reasonably believes is false, it recognizes that the lawyer must allow a criminal defendant to testify.

Paragraphs (a)(4) and (5) are the same as DR 7-102(A)(3) and (8), respectively.

Paragraph (b) is similar to and consistent with the interpretations of DR 7-102(B)(1).

Paragraph (c) continues the duty of candor to the end of the proceeding, but, notwithstanding the language in paragraphs (a)(3) and (b), does not require disclosure of confidential client information otherwise protected by Rule 1.6.

Paragraph (d) has no equivalent in the Oregon Code.

RULE 3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL

An LP shall not:

(a) knowingly and unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. An LP shall not counsel or assist another person to do any such act;

(b) falsify evidence; counsel or assist a witness to testify falsely; offer an inducement to a witness that is prohibited by law; or pay, offer to pay, or acquiesce in payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case; except that an LP may advance, guarantee or acquiesce in the payment of:

(1) expenses reasonably incurred by a witness in attending or testifying;

(2) reasonable compensation to a witness for the witness's loss of time in attending or testifying; or

(3) a reasonable fee for the professional services of an expert witness.

(c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, knowingly make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the LP's does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, or the culpability of a civil litigant;

(f) advise or cause a person to secrete himself or herself or to leave the jurisdiction of a tribunal for purposes of making the person unavailable as a witness therein; or

(g) threaten to present criminal charges to obtain an advantage in a civil matter unless the LP reasonably believes the charge to be true and if the purpose of the LP is to compel or induce the person threatened to take reasonable action to make good the wrong which is the subject of the charge.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Believes"

"Knowingly"

"Matter"

"Reasonable"

"Reasonably"

"Reasonably believes"

"Tribunal"

Comparison to Oregon Code

Paragraph (a) is similar to DR 7-109(A).

Paragraph (b) includes the rules regarding witness contact from DR 7-109, and also the prohibition against falsifying evidence that is found in DR 7-102(A)(6).

Paragraph (c) is generally equivalent to DR 7-106(C)(7).

Paragraph (d) has no equivalent in the Oregon Code.

Paragraph (e) is the same as DR 7-106(C)(1), (3) and (4).

Paragraph (f) retains the language of DR 7-109(B).

Paragraph (g) retains DR 7-105.

RULE 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL

An LP shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte on the merits of a cause with such a person during the proceeding unless authorized to do so by law or court order;

(d) engage in conduct intended to disrupt a tribunal.

Adopted 01/01/05

Amended 12/01/06: Paragraph (b) amended to add "on the merits of the cause."

Defined Terms (see Rule 1.0):

"Known"

"Tribunal"

Comparison to Oregon Code

Paragraph (a) has no counterpart in the Oregon Code.

Paragraph (b) replaces DR 7-110, making ex parte contact subject only to law and court order, without additional notice requirements.

Paragraph (c) is similar to DR 7-108(A)-(F).

Paragraph (d) is similar to DR 7-106(C)(6).

Paragraph (e) retains the DR 7-108(G).

RULE 3.6 TRIAL PUBLICITY

(a) An LP who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the LP knows or reasonably should know will be disseminated by means of public

communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), an LP may state:

- (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
- (2) information contained in a public record;
- (3) that an investigation of a matter is in progress;
- (4) the scheduling or result of any step in litigation;
- (5) a request for assistance in obtaining evidence and information necessary thereto;
- (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest.

(c) Notwithstanding paragraph (a), an LP may:

- (1) reply to charges of misconduct publicly made against the LP; or
- (2) participate in the proceedings of legislative, administrative or other investigative bodies.

(d) No LP associated in a firm or government agency with a lawyer or LP subject to paragraph (a) shall make a statement prohibited by paragraph (a).

(e) An LP shall exercise reasonable care to prevent the LP's employees from making an extrajudicial statement that the LP would be prohibited from making under this rule.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Firm"
"Knows"
"Matter"
"Reasonable"
"Reasonably should know"
"Substantial"

Comparison to Oregon Code

Paragraph (a) replaces DR 7-107(A).

Paragraph (b) has no counterpart in the Oregon Code.

Paragraphs (c)(1) and (2) retain the exceptions in DR 7-107(B) and (C).

Paragraph (d) applies the limitation of the rule to other members in the subject lawyer's firm or government agency.

Paragraph (e) retains the requirement of DR 7-107(C).

RULE 3.7 LP AS WITNESS

(a) If, after undertaking employment in contemplated or pending litigation, an LP learns or it is obvious that the LP or a member of the LP's firm may be called as a witness other than on behalf of the LP's client, the LP may continue the representation until it is apparent that the LP's or firm member's testimony is or may be prejudicial to the LP's client.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Firm"
"Substantial"

Comparison to Oregon Code

This rule retains DR 5-102 in its entirety.

RULE 3.8 [NOT USED]

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Known"
"Knows"
"Tribunal"

Comparison to Oregon Code

Paragraph (a) is essentially the same as DR 7-103(A).

Paragraph (d) is essentially the same as DR 7-103(B), with the addition of an exception for protective orders.

RULE 3.9 ADVOCATE IN NONADJUDICATIVE PROCEEDINGS

An LP representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rule 3.3(a) through (c), 3.4(a) through (c), and 3.5.

Adopted 01/01/05

Comparison to Oregon Code

This rule has no counterpart in the Oregon Code.

RULE 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client an LP shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact when disclosure is necessary to avoid assisting in an illegal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Fraudulent"

"Knowingly"

Comparison to Oregon Code

This rule has no direct counterpart in Oregon, but it expresses prohibitions found in DR 1-102(A)(3), DR 7-102(A)(5) and DR 1-102(A)(7).

RULE 4.2 COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

In representing a client or the LP's own interests, an LP shall not communicate or cause another to communicate on the subject of the representation with a person the LP knows to be represented by a lawyer or LP on that subject unless:

(a) the LP has the prior consent of a lawyer or LP representing such other person;

(b) the LP is authorized by law or by court order to do so; or

(c) a written agreement requires a written notice or demand to be sent to such other person, in which case a copy of such notice or demand shall also be sent to such other person's lawyer or LP.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Knows"

"Written"

Comparison to Oregon Code

This rule retains the language of DR 7-104(A), except that the phrase "or on directly related subjects" has been deleted. The application of the rule to a lawyer acting in the lawyer's own interests has been moved to the beginning of the rule.

RULE 4.3 DEALING WITH UNREPRESENTED PERSONS

In dealing on behalf of a client or the LP's own interests with a person who is not represented by counsel, an LP shall not state or imply that the LP is disinterested. When the LP knows or reasonably should know that the unrepresented person misunderstands the LP's role in the matter, the LP shall make reasonable efforts to correct the misunderstanding. The LP shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the LP knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client or the LP's own interests.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Knows"

"Matter"

"Reasonable"

"Reasonably should know"

Comparison to Oregon Code

This rule replaces DR 7-104(B). It is expanded to parallel Rule 4.2 by applying to situations in which the lawyer is representing the lawyer's own interests. The rule is broader than DR 7-104(B) in that it specifically prohibits a lawyer from stating or implying that the lawyer is disinterested. It also imposes an affirmative requirement on the lawyer to correct any misunderstanding an unrepresented person may have about the lawyer's role. The rule continues the prohibition against giving legal advice to an unrepresented person.

RULE 4.4 RESPECT FOR THE RIGHTS OF THIRD PERSONS; INADVERTENTLY SENT DOCUMENTS

(a) In representing a client or the LP's own interests, an LP shall not use means that have no substantial purpose other than to embarrass, delay, harass or burden a third person, or knowingly use methods of obtaining evidence that violate the legal rights of such a person.

(b) An LP who receives a document or electronically stored information relating to the representation of the LP's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

Adopted 01/01/05

Amended 12/01/06: Paragraph (a) amended to make applicable to a lawyer acting in the lawyer's own interests.

Amended 01/01/14: Paragraph (b) amended to expand scope to electronically stored information.

Defined Terms (see Rule 1.0):

"Knowingly"

"Knows"

"Reasonably should know"

"Substantial"

Comparison to Oregon Code

This rule had no equivalent in the Oregon Code, although paragraph (a) incorporates aspects of DR 7-102(A)(1).

LAW FIRMS AND ASSOCIATIONS

RULE 5.1 RESPONSIBILITIES OF MANAGERS AND SUPERVISORY LPS

An LP shall be responsible for another LP's violation of these Rules of Professional Conduct if:

(a) the LP orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(b) the LP has managerial authority in the LP firm in which the other LP practices, or has direct supervisory authority over the other LP, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Knowledge"

"Knows"

"Law Firm"

"Partner"

"Reasonable"

Comparison to Oregon Code

This rule is essentially the same as DR 1-102(B) although it specifically applies to partners or others with comparable managerial authority, as well as lawyers with supervisory authority.

RULE 5.2 RESPONSIBILITIES OF A SUBORDINATE LP

(a) An LP is bound by the Rules of Professional Conduct for Licensed Paralegals notwithstanding that the LP acted at the direction of another person.

(b) A subordinate LP does not violate the Rules of Professional Conduct for Licensed Paralegals if that LP acts in accordance with a supervisory lawyer's or LP's reasonable resolution of an arguable question of professional duty.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Reasonable"

Comparison to Oregon Code

Paragraph (a) is identical to DR 1-102(C).

Paragraph (b) has no equivalent in the Oregon Code.

RULE 5.3 RESPONSIBILITIES REGARDING NONLP ASSISTANCE

With respect to a nonLP employed or retained, supervised or directed by an LP:

(a) an LP having direct supervisory authority over the nonLP shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the LP; and

(b) except as provided by Rule 8.4(b), an LP shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by an LP if:

(1) the LP orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the LP has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Adopted 01/01/05

Amended 01/01/14: Title changed from "Assistants" to "Assistance" in recognition of the broad range of nonlawyer services that can be utilized in rendering legal services.

Defined Terms (see Rule 1.0):

"Knowledge"

"Knows"

"Law firm"

"Partner"

"Reasonable"

Comparison to Oregon Code

This rule has no counterpart in the Oregon Code.

Paragraph (a) is somewhat similar to the requirement in DR 4-101(D), but broader because not limited to disclosure of confidential client information.

Paragraph (b) applies the requirements of DR 1-102(B) to nonlawyer personnel. An exception by cross-reference to Rule 8.4(b) is included to avoid conflict with the rule that was formerly DR 1-102(D).

RULE 5.4 PROFESSIONAL INDEPENDENCE OF AN LP

(a) An LP or LP firm shall not share legal fees with a nonlawyer or nonLP, except that:

(1) an agreement by an LP with the LP's firm or firm members may provide for the payment of money, over a reasonable period of time after the LP's death, to the LP's estate or to one or more specified persons.

(2) an LP who purchases the practice of a deceased, disabled, or disappeared LP may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that LP the agreed-upon purchase price.

(3) an LP or LP firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(4) an LP may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the LP in the matter; and

(5) an LP may pay the usual charges of a bar-sponsored or operated not-for-profit LP referral service, including fees calculated as a percentage of legal fees received by the LP from a referral.

(b) An LP shall not form a partnership with a nonlawyer or non-LP if any of the activities of the partnership consist of the practice of law.

(c) An LP shall not permit a person who recommends, employs, or pays the LP to render legal services for another to direct or regulate the LP's professional judgment in rendering such legal services.

(d) An LP shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer other than an LP owns any interest therein, except that a fiduciary representative of the estate of an LP or lawyer may hold the stock or interest of the LP or lawyer for a reasonable time during administration;

(2) a nonlawyer other than an LP is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation, except as authorized by law; or

(3) a nonlawyer other than an LP has the right to direct or control the professional judgment of an LP.

(e) An LP shall not refer a client to a nonlawyer other than another LP with the understanding that the LP will receive a fee, commission or anything of value in exchange for the referral, but an LP may accept gifts in the ordinary course of social or business hospitality.

Adopted 01/01/05

Amended 01/01/13: Paragraph (a)(5) added.

Defined Terms (see Rule 1.0):

"Firm"

"Law firm"

"Matter"

"Partner"

"Reasonable"

Comparison to Oregon Code

Paragraph (a)(1) is the same as DR 3-102(A)(1). Paragraph (a)(2) is similar to DR 3-102(A)(2), except that it addresses the purchase of a deceased, disabled or departed lawyer's practice and payment of an agreed price, rather than only authorizing reasonable compensation for services rendered by a deceased lawyer. Paragraph (a)(3) is identical to DR 3-102(A)(3). Paragraphs (a)(4) and 9a)(5) have no counterpart in the Oregon Code.

Paragraph (b) is identical to DR 3-103.

Paragraph (c) is identical to DR 5-108(B).

Paragraph (d) is essentially identical to DR 5-108(D).

Paragraph (e) is the same as DR 2-105, approved by the Supreme Court in April 2003.

RULE 5.5 UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE

(a) An LP shall not practice law outside the scope of their limited license or assist another in doing so, or practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) An LP who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and

continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the LP is admitted to practice law in this jurisdiction.

(c) An LP admitted in another jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with an LP or lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the LP, or a person the LP is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternate dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the LP's practice in a jurisdiction in which the LP is admitted to practice and are not services for which the forum requires pro hac vice admission;

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the LP's practice in a jurisdiction in which the LP is admitted to practice; or

(5) are provided to the LP's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission.

(d) An LP admitted in another jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that are services that the LP is authorized to provide by federal law or other law of this jurisdiction.

(e) An LP who provides legal services in connection with a pending or potential arbitration proceeding to be held in his jurisdiction under paragraph (c)(3) of this rule must, upon engagement by the client, certify to the Oregon State Bar that:

(1) the LP is in good standing in every jurisdiction in which the LP is admitted to practice; and

(2) unless the LP is employed in-house or an employee of a government client in the matter, that the LP

(i) carries professional liability insurance substantially equivalent to that required of Oregon LPs, or

(ii) has notified the LP's client in writing that the LP does not have such insurance and that Oregon law requires Oregon LPs to have such insurance.

The certificate must be accompanied by the administrative fee for the appearance established by the Oregon State Bar and proof of service on the arbitrator and other parties to the proceeding.

Adopted 01/01/05

Amended 01/01/12: Paragraph (e) added.

Amended 02/19/15: Phrase "United States" deleted from paragraphs (c) and (d), to allow foreign-licensed lawyers to engage in temporary practice as provided in the rule.

Defined Terms (see Rule 1.0):

"Matter"

"Reasonably"

"Tribunal"

Comparison to Oregon Code

Paragraph (a) contains the same prohibitions as DR 3-101(A) and (B).

Paragraph (b), (c), (d) and (e) have no counterpart in the Oregon Code.

RULE 5.6 RESTRICTIONS ON RIGHT TO PRACTICE

An LP shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of an LP to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a direct or indirect restriction on the LP's right to practice is part of the settlement of a client controversy.

Adopted 01/01/05

Comparison to Oregon Code

Paragraph (a) is similar to DR 2-108(A), but in addition to partnership or employment agreements, includes shareholders and operating "or other similar type of agreements," in recognition of the fact that lawyers associate together in organizations other than traditional law firm partnerships.

Paragraph (b) is similar to DR 2-108(B).

RULE 5.7 [RESERVED]

PUBLIC SERVICE

RULE 6.1 [RESERVED]

RULE 6.2 [RESERVED]

RULE 6.3 MEMBERSHIP IN LEGAL SERVICES ORGANIZATION

An LP may serve as a director, officer or member of a legal services organization, apart from the firm in which the LP practices, notwithstanding that the organization serves persons having interests adverse to a client of the LP. The LP shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the LP's obligations to a client under Rule 1.7; or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the LP.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Knowingly"

"Law firm"

Comparison to Oregon Code

This rule is similar to DR 5-108(C)(10 and (2).

RULE 6.4 LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS

An LP may serve as a director, officer or member of an organization involved in reform of the law or its administration, notwithstanding that the reform may affect the interest of a client of the LP. When the LP knows that the interest of a client may be materially benefited by a decision in which the LP participates, the LP shall disclose that fact but need not identify the client.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Knows"

Comparison to Oregon Code

This rule is similar to DR 5-108(C)(3).

RULE 6.5 NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICES PROGRAMS

(a) An LP who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the LP or the client that the LP will provide continuing representation in the matter:

(1) is subject to Rule 1.7 and 1.9(a) only if the LP knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the LP knows that another LP or lawyer associated with the LP in an LP or law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Knows"

"Law firm"

"Matter"

Comparison to Oregon Code

This rule has no equivalent in the Oregon Code. It was adopted by the ABA in 2002 to address concerns that strict application of conflict of interest rules might be deterring lawyers from volunteering in programs that provide short-term limited legal services to clients under the auspices of a non-profit or court-annexed program.

INFORMATION ABOUT LEGAL SERVICES

RULE 7.1 COMMUNICATION CONCERNING AN LP'S SERVICES

An LP shall not make a false or misleading communication about the LP or the LP's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Adopted 01/01/05

Amended 12/01/06: Paragraph (a)(5) reworded to conform to former DR 2-101(A)(5).

Amended 01/01/14: Model Rule 7.1 language substituted for former RPC 7.1.

Comparison to Oregon Code

The rule retains the essential prohibition against false or misleading communications, but not the specifically

enumerated types of communications deemed misleading.

RULE 7.2 ADVERTISING

(a) Subject to the requirements of Rules 7.1 and 7.3, an LP may advertise services through written, recorded or electronic communication, including public media.

(b) An LP shall not give anything of value to a person for recommending the LP's services except that an LP may:

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or an LP referral service;

(3) pay for an LP practice in accordance with Rule 1.17; and

(4) give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending an LP's services.

(c) Any communication made pursuant to this rule shall include the name and contact information of at least one LP or lawyer or LP firm or law firm responsible for its content.

Adopted 01/01/05

Amended 01/01/14: Revised to track more closely Model Rule 7.2 and eliminate redundant language.

Amended 01/01/17: Revised to remove "not-for-profit" from (2) and to require listing "contact information" in lieu of "office address."

Amended 01/13/20. Revised to add subsection (b)(4) and incorporate exception for giving "nominal gifts."

Defined Terms (see Rule 1.0):

"Law firm"

Comparison to Oregon Code

This rule retains DR 2-103's permission for advertising in various media, provided the communications are not false or misleading and do not involve improper in-person contact. It retains the prohibition against paying another to recommend or secure employment, with the exception of a legal service plan or not-for-profit lawyer referral service. The rule also continues the requirement that communications contain the name and office address of the lawyer or firm.

RULE 7.3 SOLICITATION OF CLIENTS

An LP shall not solicit professional employment by any means when:

- (a) the LP knows or reasonably should know that the physical, emotional or mental state of the subject of the solicitation is such that the person could not exercise reasonable judgment in employing an LP;
- (b) the person who is the subject of the solicitation has made known to the LP a desire not to be solicited by the LP; or
- (c) the solicitation involves coercion, duress or harassment.

Adopted 01/01/05

Amended 01/01/14: The title is changed and the phrase "target of the solicitation" or the word "anyone" is substituted for "prospective client" to avoid confusion with the use of the latter term in RPC 1.8. The phrase "Advertising Material" is substituted for "Advertising" in paragraph (c).

Amended 01/01/17: Deleting requirement that lawyer place "Advertising Material" on advertising.

Amended 01/11/18: Deleting requirements specific to "in-person, telephone or real-time electronic contact" and deleting exception for prepaid and group legal service plans

Defined Terms (see Rule 1.0):

"Electronic communication"
"Known"
"Knows"
"Matter"
"Reasonable"
"Reasonably should know"
"Written"

Comparison to Oregon Code

This rule incorporates elements of DR 2-101(D) and (H) and DR 2-104.

RULE 7.4 [RESERVED]

RULE 7.5 FIRM NAMES AND LETTERHEADS

(a) An LP shall not use an LP firm name, letterhead or other professional designation that violates Rule 7.1, including, but not limited to, stating, suggesting, or implying that the LP or LP firm is authorized to provide legal services outside the scope of the LP's or LP firm's limited scope of practice. A trade name may be used by an LP in private practice if it does not imply a connection with a government agency or with a public

or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) An LP firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the LPs in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of an LP holding a public office shall not be used in the name of an LP firm, or in communications on its behalf, during any substantial period in which the LP is not actively and regularly practicing with the firm.

(d) LPs may state or imply that they practice in a partnership or other organization only when that is a fact.

(e) [not used]

Adopted 01/01/05

Amended 01/01/14: The rule was modified to mirror the ABA Model Rule.

Defined Terms (see Rule 1.0):

"Firm"
"Law firm"
"Partner"
"Substantial"

Comparison to Oregon Code

This rule retains much of the essential content of DR 2-102.

RULE 7.6 [RESERVED]

MAINTAINING THE INTEGRITY OF THE PROFESSION

RULE 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS

(a) An applicant for licensure as an LP, or an LP in connection with an LP licensure application or in connection with a disciplinary matter, shall not:

- (1) knowingly make a false statement of material fact; or
- (2) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

(b) An LP admitted to practice in this state shall, within 30 days after receiving notice thereof, report in writing to the disciplinary counsel of the Oregon State Bar the

commencement against the LP of any disciplinary proceeding in any other jurisdiction.

(c) An LP who is the subject of a complaint or referral to the State Lawyers Assistance Committee shall, subject to the exercise of any applicable right or privilege, cooperate with the committee and its designees, including:

- (1) responding to the initial inquiry of the committee or its designees;
- (2) furnishing any documents in the LP's possession relating to the matter under investigation by the committee or its designees;
- (3) participating in interviews with the committee or its designees; and
- (4) participating in and complying with a remedial program established by the committee or its designees.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Knowingly"

"Known"

"Matter"

"Writing"

Comparison to Oregon Code

Paragraph (a) replaces DR 1-101, but is broader because the Oregon rule applies only to misconduct in connection with the lawyer's own or another person's application for admission and this rule applies to any "disciplinary matter." Paragraph (a)(2) replaces DR 1-103(C) but requires only that a lawyer respond rather than "cooperate."

Paragraph (b) is the same as DR 1-103(D). It is placed here because it pertains to the obligations of a lawyer regarding the lawyer's own professional conduct.

Paragraph (c) is the same as DR 1-103(F). It is placed here because it pertains to the obligations of a lawyer regarding the lawyer's own professional conduct.

RULE 8.2 JUDICIAL AND LEGAL OFFICIALS

(a) An LP shall not make a statement that the LP knows to be false or with reckless disregard to its truth or falsity concerning the qualifications or integrity of a judge or adjudicatory officer, or of a candidate for election or appointment to a judicial or other adjudicatory office.

(b) An LP who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Knows"

Comparison to Oregon Code

Paragraph (a) is essentially the same as DR 8-102(A) and (B), although the Oregon rule prohibits "accusations" rather than "statements" and applies only to statements about the qualifications of the person.

RULE 8.3 REPORTING PROFESSIONAL MISCONDUCT

(a) An LP who knows that another LP or lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that LP's or lawyer's honesty, trustworthiness or fitness as an LP or lawyer in other respects shall inform the Oregon State Bar Client Assistance Office.

(b) An LP who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This rule does not require disclosure of information otherwise protected by Rule 1.6 or ORS 9.460(3), or apply to LPs who obtain such knowledge or evidence while:

(1) acting as a member, investigator, agent, employee or as a designee of the State Lawyers Assistance Committee;

(2) acting as a board member, employee, investigator, agent or LP for or on behalf of the Professional Liability Fund or as a Board of Governors liaison to the Professional Liability Fund; or

(3) participating in the loss prevention programs of the Professional Liability Fund, including the Oregon Attorney Assistance Program.

(d) This rule does not require disclosure of mediation communications otherwise protected by ORS 36.220.

Adopted 01/01/05

Amended 1/11/2018 to add subsection "d" relating to mediation communications.

Defined Terms (see Rule 1.0):

"Knows"

"Substantial"

Comparison to Oregon Code

This rule replaces DR 1-103(A) and (E). Paragraph (a) is essentially the same as DR 1-103(A), although the exception for confidential client information is found in

paragraph (c). Also, the rule now requires that misconduct be reported to the OSB Client Assistance Office, to conform to changes in the Bar Rules of Procedure that were effective August 1, 2003.

Paragraph (b) has no counterpart in the Oregon Code, although the obligation might be inferred from DR 1-103(A).

Paragraph (c) incorporates the exception for information protected by rule and statute. It also incorporates the exception contained in DR 1-103(E).

RULE 8.4 MISCONDUCT

(a) It is professional misconduct for an LP to:

- (1) violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;**
- (2) commit a criminal act that reflects adversely on the LP's honesty, trustworthiness or fitness as an LP in other respects;**
- (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the LP's fitness to practice law;**
- (4) engage in conduct that is prejudicial to the administration of justice; or**
- (5) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law, or**
- (6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.**
- (7) in the course of representing a client, knowingly intimidate or harass a person because of that person's race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability.**

(b) Notwithstanding paragraphs (a)(1), (3) and (4) and Rule 3.3(a)(1), it shall not be professional misconduct for an LP to advise clients or others about, or to supervise lawful covert activity, in the investigation of violations of civil or criminal law or constitutional rights, provided the LP's conduct is otherwise in compliance with these Rules of Professional Conduct. "Covert activity," as used in this rule, means an effort to obtain information on unlawful activity through the use of misrepresentations or other subterfuge. "Covert activity" may be commenced by an LP or involve an LP as an advisor or supervisor only when the LP in good faith believes there is a reasonable possibility that

unlawful activity has taken place, is taking place or will take place in the foreseeable future.

(c) Notwithstanding paragraph (a)(7), an LP shall not be prohibited from engaging in legitimate advocacy with respect to the bases set forth therein.

Adopted 01/01/05

Amended 12/01/06: Paragraph (a)(5) added.

Amended 02/19/15: Paragraphs (a)(7) and (c) added.

Defined Terms (see Rule 1.0):

"Believes"

"Fraud"

"Knowingly"

"Reasonable"

Comparison to Oregon Code

This rule is essentially the same as DR 1-102(A).

Paragraph (b) retains DR 1-102(D).

RULE 8.5 DISCIPLINARY AUTHORITY; CHOICE OF LAW

(a) Disciplinary Authority. An LP admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the LP's conduct occurs. An LP not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the LP provides or offers to provide any legal services in this jurisdiction. An LP may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the Rules of Professional Conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the LP's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. An LP shall not be subject to discipline if the LP's conduct conforms to the rules of a jurisdiction in which the LP reasonably believes the predominant effect of the LP's conduct will occur.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Believes"

"Matter"

"Reasonably believes"

“Tribunal”

Comparison to Oregon Code

This rule has no counterpart in the Oregon Code. A similar version based on *former* ABA Model Rule 8.5 was adopted by the Supreme Court in 1996 as Bar Rule of Procedure 1.4.

BR 1.4(a) specifically provides that the Supreme Court’s jurisdiction over a lawyer’s conduct continues whether or not the lawyer retains authority to practice law in Oregon and regardless of where the lawyer resides.

BR 1.4(b)(1) is essentially the same as 8.5(b)(1).

BR 1.4(b)(2) applies the Oregon Code if the lawyer is licensed only in Oregon. If the lawyer is licensed in Oregon and another jurisdiction, the rules of the jurisdiction in which the lawyer principally practices apply, or if the conduct has its predominant effect in another jurisdiction in which the lawyer is licensed, then the rules of that jurisdiction will apply.

**RULE 8.6 WRITTEN ADVISORY OPINIONS ON
PROFESSIONAL CONDUCT; CONSIDERATION GIVEN IN
DISCIPLINARY PROCEEDINGS**

(a) The Oregon State Bar Board of Governors may issue formal written advisory opinions on questions under these Rules. The Oregon State Bar Legal Ethics Committee and General Counsel’s Office may also issue informal written advisory opinions on questions under these Rules. The General Counsel’s Office of the Oregon State Bar shall maintain records of both OSB formal and informal written advisory opinions and copies of each shall be available to the Oregon Supreme Court, Disciplinary Board, State Professional Responsibility Board, and Disciplinary Counsel. The General Counsel’s Office may also disseminate the bar’s advisory opinions as it deems appropriate to its role in educating LPs about these Rules.

(b) In considering alleged violations of these Rules, the Disciplinary Board and Oregon Supreme Court may consider any LP’s good faith effort to comply with an opinion issued under paragraph (a) of this rule as:

- (1) a showing of the LP’s good faith effort to comply with these Rules; and
- (2) a basis for mitigation of any sanction that may be imposed if the LP is found to be in violation of these Rules.

(c) This rule is not intended to, and does not, preclude the Disciplinary Board or the Oregon Supreme Court from considering any other evidence of either good faith or basis for mitigation in a bar disciplinary proceeding.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

“Written”

Comparison to Oregon Code

This rule is identical to DR 1-105, amended only to refer to “General Counsel’s Office” in the second sentence of paragraph (a), rather than only to “General Counsel,” to make it clear that opinions of assistant general counsel are covered by the rule.

DR 1-101	Rule 8.1(a)
DR 1-102(A)(1)	Rule 8.4(a)(1)
DR 1-102(A)(2)	Rule 8.4(a)(2)
DR 1-102(A)(3)	Rule 8.4(a)(3)
DR 1-102(A)(4)	Rule 8.4(a)(4)
DR 1-102(A)(5)	Rule 7.1(a)(5)
DR 1-102(B)(1)	Rule 5.1(c)(1)
DR 1-102(B)(2)	Rule 5.1(c)(2)
DR 1-102(C)	Rule 5.2(a)
DR 1-102(D)	Rule 8.4(b)
DR 1-103(A)	Rule 8.3(a)
DR 1-103(B)	Rule 8.3(b)
DR 1-103(C)	Rule 8.1(a)
DR 1-103(D)	Rule 8.1(b)
DR 1-103(E)	Rule 8.3(c)
DR 1-103(F)	Rule 8.1(c)
DR 1-104	Eliminated
DR 1-105	Rule 8.6
DR 2-101(A)(1)	Rule 7.1(a)(1)
DR 2-101(A)(2)	Rule 7.1(a)(2)
DR 2-101(A)(3)	Rule 7.1(a)(3)
DR 2-101(A)(4)	Rule 7.1(a)(4)
DR 2-101(A)(5)	eliminated
DR 2-101(A)(6)	Rule 7.1(a)(6)
DR 2-101(A)(7)	Rule 7.1(a)(7)
DR 2-101(A)(8)	Rule 7.1(a)(8)
DR 2-101(A)(9)	Rule 7.1(a)(9)
DR 2-101(A)(10)	Rule 7.1(a)(10)
DR 2-101(A)(11)	Rule 7.1(a)(11)
DR 2-101(A)(12)	Rule 7.1(a)(12)
DR 2-101(B)	eliminated
DR 2-101(C)	Rule 7.1(b)
DR 2-101(D)	Rule 7.3(b)

DR 2-101(E)	Rule 7.1(c)
DR 2-101(F)	Rule 7.1(d)
DR 2-101(G)	Rule 7.1(e)
DR 2-101(H)	Rule 7.3(c)
DR 2-102(A)	Rule 7.5(a)
DR 2-102(B)	Rule 7.5(b)
DR 2-102(C)	Rule 7.5(c)
DR 2-102(D)	Rule 7.5(d)
DR 2-102(E)	Rule 7.5(e)
DR 2-102(F)	Rule 7.5(f)
DR 2-103(A)	Rule 7.2(a)
DR 2-103(B)	Rule 7.2(b)
DR 2-103(C)	Rule 7.2(c)
DR 2-104(A)(1)	Rule 7.3(a)
DR 2-104(A)(2)	Rule 7.3(a)
DR 2-104(A)(3)	Rule 7.3(d)
DR 2-104(B)	Eliminated
DR 2-105	Rule 5.4(e)
DR 2-106(A)	Rule 1.5(a)
DR 2-106(B)	Rule 1.5(b)
DR 2-106(C)	Rule 1.5(c)
DR 2-107(A)	Rule 1.5(d)
DR 2-107(B)	Rule 1.5(e)
DR 2-108	Rule 5.6
DR 2-109	Rule 3.1
DR 2-110	Rule 1.16
DR 2-111	Rule 1.17
DR 3-101(A)	Rule 5.5(a)
DR 3-101(B)	Rule 5.5(a)
DR 3-102	Rule 5.4(a)
DR 3-103	Rule 5.4(b)
DR 4-101(A)-C	Rule 1.6(a)-(b)

DR 4-101(D)	Rule 5.3(b)
DR 5-101(A)(1)	Rule 1.7(a)(2)
DR 5-101(A)(2)	Rule 1.7(a)(3)
DR 5-101(B)	Rule 1.8(c)
DR 5-102	Rule 3.7
DR 5-103(A)	Rule 1.8(i)
DR 5-103(B)	Rule 1.8(e)
DR 5-104(A)	Rule 1.8(a)
DR 5-104(B)	Rule 1.8(d)
DR 5-105(A)(1)	Rule 1.7(b)(3)
DR 5-105(B)	Rule 1.0(i)
DR 5-105(C)	Rule 1.9(a)
DR 5-105(D)	Rule 1.9(a)
DR 5-105(E)	Rule 1.7(a)
DR 5-105(F)	Rule 1.7(b)
DR 5-105(G)	Rule 1.8(k)
DR 5-105(H)	Rule 1.9(b)
DR 5-105(I)	Rule 1.10(c)
DR 5-105(J)	Rule 1.10(b)
DR 5-106	Rule 2.4
DR 5-107	Rule 1.8(g)
DR 5-108(A)	Rule 1.8(f)
DR 5-108(B)	Rule 5.4(c)
DR 5-109(A)	Rule 1.12(a)
DR 5-109(B)	Rule 1.11(a)
DR 5-110	Rule 1.8(j)
DR 6-101(A)	Rule 1.1
DR 6-101(B)	Rule 1.3
DR 6-102(A)	Rule 1.8(h)(1)-(2)
DR 6-102(B)	Rule 1.8(h)(3)
DR 7-101(A)	Rule 1.2(a)

DR 7-101(B)	Rule 1.2(a)
DR 7-101(C)	Rule 1.14
DR 7-101(D)	Rule 2.3
DR 7-102(A)(1)	Rule 3.1, 4.4(a)
DR 7-102(A)(2)	Rule 3.1
DR 7-102(A)(3)	Rule 3.3(a)(4)
DR 7-102(A)(4)	Rule 3.3(a)(3)
DR 7-102(A)(5)	Rule 3.3(a)(1)
DR 7-102(A)(6)	Rule 3.4(b)
DR 7-102(A)(7)	Rule 1.2(c)
DR 7-102(A)(8)	eliminated
DR 7-102(B)	Rule 3.3(b)
DR 7-103	Rule 3.8
DR 7-104(A)(1)	Rule 4.2
DR 7-104(A)(2)	Rule 4.3
DR 7-105	Rule 3.4(g)
DR 7-106(A)	Rule 3.4(c)
DR 7-106(B)(1)	Rule 3.3(a)(2)
DR 7-106(B)(2)	eliminated
DR 7-106(C)(1)	Rule 3.4(e)
DR 7-106(C)(2)	eliminated
DR 7-106(C)(3)	Rule 3.4(e)
DR 7-106(C)(4)	Rule 3.4(e)
DR 7-106(C)(5)	eliminated
DR 7-106(C)(6)	Rule 3.5(d)
DR 7-106(C)(7)	Rule 3.4(c)
DR 7-107(A)	Rule 3.6(a)
DR 7-107(B)	Rule 3.6(b)
DR 7-107(C)	Rule 3.6(c)
DR 7-108(A)	Rule 3.5(b)
DR 7-108(B)	Rule 3.5(b)
DR 7-108(C)	eliminated
DR 7-108(D)	Rule 3.5(c)
DR 7-108(E)	Rule 3.5(c)

DR 7-108(F)	Rule 3.5(c)
DR 7-108(G)	Rule 3.5(e)
DR 7-109(A)	Rule 3.4(a)
DR 7-109(B)	Rule 3.4(f)
DR 7-110	Rule 3.5(b)
DR 8-101(A)(1)	Rule 1.11(c) & (d)(i)
DR 8-101(A)(2)	Rule 1.11(d)(ii)
DR 8-101(A)(3)	Rule 1.11(d)(iii)
DR 8-101(A)(4)	Rule 1.11(c) & (d)(iv)
DR 8-101(B)	eliminated
DR 8-101(C)	Rule 1.11(e)
DR 8-101(D)	Rule 1.11(f)
DR 8-102	Rule 8.2
DR 8-103	Rule 8.2(b)
DR 9-101(A)-(C)	Rule 1.15-1(a)-(e)
DR 9-101(D)(1)	Rule 1.15(a)
DR 9-101(D)(2)-(4)	Rule 1.15-2(a)-(h)
DR 9-102	Rule 1.15(i)-(l)
DR 10-101	Rule 1.0

Rule 1.0	DR 10-101
Rule 1.0(i)	DR 5-105(B)
Rule 1.1	DR 6-101(A)
Rule 1.2(a)	DR 7-101(A)&(B)
Rule 1.2(c)	DR 7-102(A)(7)
Rule 1.3	DR 6-101(B)
Rule 1.5(a)	DR 2-106(A)
Rule 1.5(b)	DR 2-106(B)
Rule 1.5(c)	DR 2-106(C)
Rule 1.5(d)	DR 2-107(A)
Rule 1.5(e)	DR 2-107(B)
Rule 1.6(a)-(b)	DR 4-101(A)-(C)
Rule 1.7(a)(1)	DR 5-105(E)
Rule 1.7(a)(2)	DR 5-101(A)(1)
Rule 1.7(a)(3)	DR 5-101(A)(2)
Rule 1.7(b)	DR 5-105(F)
Rule 1.7(b)(3)	DR 5-105(A)(1)
Rule 1.8(a)	DR 5-104(A)
Rule 1.8(b)	DR 4-101(B)
Rule 1.8(c)	DR 5-101(B)
Rule 1.8(d)	DR 5-104(B)
Rule 1.8(e)	DR 5-103(B)
Rule 1.8(f)	DR 5-108(A)
Rule 1.8(g)	DR 5-107
Rule 1.8(h)(1)-(2)	DR 6-102(A)
Rule 1.8(h)(3)	DR 6-102(B)
Rule 1.8(i)	DR 5-103(A)
Rule 1.8(j)	DR 5-110
Rule 1.8(k)	DR 5-105(G)
Rule 1.9(a)	DR 5-105(C)&(D)
Rule 1.9(b)	DR 5-105(H)
Rule 1.10(a)	DR 5-105(G)
Rule 1.10(b)	DR 5-105(J)

Rule 1.10(c)	DR 5-105(I)
Rule 1.11(a)	DR 5-109(B) & 8-101(B)
Rule 1.11(b)	DR 5-105(G)
Rule 1.11(c)	DR 8-101(A)(4)
Rule 1.11(d)(2)(i)-(iv)	DR 8-101(A)(1)-(4)
Rule 1.11(e)	DR 8-101(C)
Rule 1.11(f)	DR 8-101(D)
Rule 1.12(a)	DR 5-109(A)
Rule 1.14	DR 7-101(C)
Rule 1.15-1	DR 9-101(A)-(C) & (D)(1)
Rule 1.15-2(a)-(h)	DR 9-101(D)(2)-(4)
Rule 1.15-2(i)-(l)	DR 9-102
Rule 1.16	DR 2-110
Rule 1.17	DR 2-111
Rule 2.3	DR 7-101(D)
Rule 2.4	DR 5-106
Rule 3.1	DR 2-109 & 7-102(A)(1) & (2)
Rule 3.3(a)(1)	DR 7-102(A)(5)
Rule 3.3(a)(2)	DR 7-106(B)(1)
Rule 3.3(a)(3)	DR 7-102(A)(4)
Rule 3.3(a)(4)	DR 7-102(A)(3)
Rule 3.3(a)(5)	DR 7-102(A)(8)
Rule 3.3(b)	DR 7-102(B)
Rule 3.4(a)	DR 7-109(A)
Rule 3.4(b)	DR 7-102(A)(6) & 7-109(B)&(C)
Rule 3.4(c)	DR 7-106(A) & (C)(7)
Rule 3.4(e)	DR 7-106(C)(1), (3)&(4)

Rule 3.4(f)	DR 7-109(B)
Rule 3.4(g)	DR 7-105
Rule 3.5(b)	DR 7-108(A)&(B) & DR 7-110
Rule 3.5(c)	DR 7-108(D)-(F)
Rule 3.5(d)	DR 7-106(C)(6)
Rule 3.5(e)	DR 7-108(G)
Rule 3.6(a)	DR 7-107(A)
Rule 3.6(b)	DR 7-107(B)
Rule 3.6(c)	DR 7-107(C)
Rule 3.7	DR 5-102
Rule 3.8	DR 7-103
Rule 4.2	DR 7-104(A)(1)
Rule 4.3	DR 7-104(A)(2)
Rule 4.4(a)	DR 7-102(A)(1)
Rule 5.1(a)	DR 1-102(B)(1)
Rule 5.1(b)	DR 1-102(B)(2)
Rule 5.2(a)	DR 1-102(C)
Rule 5.3(B)	DR 4-101(D)
Rule 5.4(a)	DR 3-102
Rule 5.4(b)	DR 3-103
Rule 5.4(c)	DR 5-108(B)
Rule 5.4(d)	DR 5-108(D)
Rule 5.4(e)	DR 2-105
Rule 5.5(a)	DR 3-101
Rule 5.6	DR 2-108
Rule 6.3	DR 5-108(C)(1)&(2)
Rule 6.4	DR 5-108(C)(3)
Rule 7.1(a)(1)	DR 2-101(A)(1)
Rule 7.1(a)(2)	DR 2-101(A)(2)
Rule 7.1(a)(3)	DR 2-102(A)(3)

Rule 7.1(a)(4)	DR 2-102(A)(4)
Rule 7.1(a)(5)	DR 1-102(A)(5)
Rule 7.1(a)(6)	DR 2-101(A)(6)
Rule 7.1(a)(7)	DR 2-101(A)(7)
Rule 7.1(a)(8)	DR 2-101(A)(8)
Rule 7.1(a)(9)	DR 2-101(A)(9)
Rule 7.1(a)(10)	DR 2-101(A)(10)
Rule 7.1(a)(11)	DR 2-101(A)(11)
Rule 7.1(a)(12)	DR 2-101(A)(12)
Rule 7.1(b)	DR 2-101(C)
Rule 7.1(c)	DR 2-101(D)
Rule 7.1(d)	DR 2-101(F)
Rule 7.1(e)	DR 2-101(G)

Rule 7.2(a)	DR 2-103(A)
Rule 7.2(b)	DR 2-103(B)
Rule 7.2(c)	DR 2-103(C)
Rule 7.3(a)	DR 2-104(A)(1)
Rule 7.3(b)	DR 2-101(D)
Rule 7.3(c)	DR 2-101(H)
Rule 7.3(d)	DR 2-104(A)(3)
Rule 7.5(a)	DR 2-102(A)
Rule 7.5(b)	DR 2-102(B)
Rule 7.5(c)	DR 2-102(C)
Rule 7.5(d)	DR 2-102(D)
Rule 7.5(e)	DR 2-102(E)
Rule 7.5(f)	DR 2-102(F)

Rule 8.1(a)	DR 1-101 & 1-103(C)
Rule 8.1(b)	DR 1-103(D)
Rule 8.1(c)	DR 1-103(F)
Rule 8.2(a)	DR 8-102
Rule 8.2(b)	DR 8-103
Rule 8.3(a)	DR 1-103(A)
Rule 8.3(b)	DR 1-103(B)
Rule 8.3(c)	DR 1-103(E)
Rule 8.4(a)(1)-(4)	DR 1-102(A)(1)-(4)
Rule 8.4(b)	DR 1-102(D)
Rule 8.6	DR 1-105

Oregon State Bar
Minimum Continuing Legal Education
Rules and Regulations
(As amended effective ~~January 21~~, 2022)

Purpose

The purpose of minimum continuing legal education (MCLE) requirements is to further the OSB's mission to improve the quality of legal services and increase access to justice. MCLE assists Oregon lawyers and Licensed Paralegals (LPs) in maintaining and improving their knowledge, skills, and competence in the delivery of legal services to the public. This includes ensuring that Oregon lawyers and LPs receive education in equity in order to effectively and fully serve all Oregon communities. These Rules establish the minimum requirements for continuing legal education for members of the Oregon State Bar.

Rule One
Terms and Definitions

1.1 Active Member: An active member of the Oregon State Bar, as defined in Article 6 of the Bylaws of the Oregon State Bar, and includes LPs whose license is in good standing.

1.2 Access to justice: Identifying and eliminating barriers to equitable access to counsel, legal assistance, and resources faced by underserved and marginalized groups, and improving the delivery of legal services to the public.

1.3 Accreditation: The formal process of accreditation of activities by the MCLE Program Manager.

1.4 Accredited CLE Activity: An activity that provides legal or professional education to attorneys or LPs in accordance with MCLE Rule 5.

1.5 BOG: The Board of Governors of the Oregon State Bar.

1.6 Equity: Ensuring that all individuals and groups have fair access to the same opportunities and resources by identifying and eliminating barriers that face underserved and marginalized groups, by acknowledging and understanding ingrained and systemic structural biases in society, and by committing to address these disparities. Underserved and marginalized groups include, but are not limited to groups that are historically underrepresented based on factors of culture, disability, ethnicity, gender and gender identity or expression, geographic location, national origin, race, religion, sex, sexual orientation, veteran status, immigration status, and socioeconomic status.

1.7 Executive Director: The executive director of the Oregon State Bar.

1.8 Hour or Credit Hour: Sixty minutes of accredited group CLE activity or other CLE activity.

1.9 MCLE Committee: The Minimum Continuing Legal Education Committee appointed by the BOG to assist in the administration of these Rules.

1.10 MCLE Program Manager: The bar staff member designated by the Chief Executive Officer to assist in the administration of the MCLE Program.

1.11 New Lawyer Mentoring Program (NLMP): A mandatory mentoring program designed to increase the competence and professionalism of new lawyer admittees in Oregon.

1.12 NLMP Coordinator: The bar staff member designated by the Chief Executive Officer to assist in the administration of the NLMP.

1.13 NLMP Mentor: A lawyer recommended by the BOG and appointed by the Supreme Court to serve as a mentor in the NLMP Program.

1.14 New Admittee: A person is a new admittee from the date of initial admission as an active member of the Oregon State Bar through the end of his or her first reporting period.

1.15 Regulations: Any regulation adopted by the BOG to implement these Rules.

1.16 Reporting Period: The period during which an active member must satisfy the MCLE requirement.

1.17 Sponsor: An individual or organization providing a CLE activity.

1.18 Supreme Court: The Supreme Court of the State of Oregon.

Regulations to MCLE Rule 1 Terms and Definitions

1.100 Inactive or Retired Member. An inactive or retired member of the Oregon State Bar, as defined in Article 6 of the Bylaws.

1.110 Suspended Member. A member who has been suspended from the practice of law by the Supreme Court.

1.120 Regularly Scheduled Meeting. A meeting schedule for each calendar year will be established for the BOG and the MCLE Committee, if one is appointed. All meetings identified on the schedule will be considered to be regularly scheduled meetings. Any other meeting will be for a special reason and/or request and will not be considered as a regularly scheduled meeting.

1.130 Reporting Period. Reporting periods shall begin on May 1 and end on April 30 of the reporting year, except as otherwise provided in Rule 3.6.

1.140 MCLE Transcript. An MCLE transcript is the record of a bar member's MCLE credits reported during the member's reporting period. A member may view and modify their MCLE transcript by logging onto the electronic system provide by the Oregon State Bar. A member may access the system through the Oregon State Bar's website (<https://hello.osbar.org/>)

1.150 MCLE Compliance Report. An MCLE Compliance Report is an active bar member's MCLE transcript reflecting at least the minimum required credits for the member's reporting period.

Rule Two Administration of Minimum Continuing Legal Education

2.1 Duties and Responsibilities of the Board of Governors; Appointment of MCLE Committee.

(a) The Minimum Continuing Legal Education Rules shall be administered by the BOG. The BOG may modify and amend these Rules and adopt new rules subject to the approval of the Supreme Court. The BOG may adopt, modify and amend regulations to implement these Rules.

(b) The BOG shall develop the NLMP curriculum and requirements in consultation with the Supreme Court and shall be responsible for the NLMPs administration.

(c) The BOG may appoint an MCLE Committee to assist in the administration of these rules.

(d) There shall be an MCLE Program Manager who shall be an employee of the Oregon State Bar.

(e) There shall be an NLMP Coordinator who shall be an employee of the Oregon State Bar.

2.2 Duties of the MCLE Program Manager. The MCLE Program Manager shall:

- (a) Oversee the day-to-day operation of the program as specified in these Rules.
- (b) Approve applications for accreditation and requests for exemption, and make compliance determinations.
- (c) Develop the preliminary annual budget for MCLE operations.
- (d) Prepare an annual report of MCLE activities.
- (e) Perform other duties identified by the BOG or as required to implement these Rules.

2.3 Duties of the NLMP Coordinator. The NLMP Coordinator shall:

- (a) Oversee the day-to-day operation of the NLMP as specified in these Rules, including administration of enrollment and mentor matching.
- (b) Approve requests for NLMP exemption or extension requests from program participants as specified in these Rules.
- (c) Prepare an annual report of the NLMP and publish an NLMP Manual.
- (e) Perform other duties identified by the BOG or as required to implement these Rules.

2.4 Appointment of NLMP Mentors.

- (a) The Supreme Court may appoint NLMP mentors recommended by the BOG. Except as otherwise provided in these rules, to qualify for appointment, the mentor must be a lawyer member of the OSB in good standing with at least five years of experience in the practice of law, and have a reputation for competence and ethical and professional conduct.
- (b) Attorneys in good standing in another United States jurisdiction who are not OSB members, but are qualified to represent clients before the Social Security Administration, the Internal Revenue Service, the United States Patent and Trademark Office, or the United States Citizenship and Immigration Services office are eligible to be appointed as mentors, provided they meet the other requirements of these rules.
- (c) Attorneys in good standing in another United States jurisdiction who are not OSB members are eligible to be appointed as mentors with the recommendation of the NLMP Coordinator, provided they meet the other requirements of these rules.
- (d) An NLMP Mentor against whom charges of misconduct have been approved for filing by the State Professional Responsibility Board or who has been suspended under BR 7.1 for failure to respond to requests for information or records or to respond to a subpoena shall be removed from participation in the NLMP until those charges have been resolved by final decision or order. If an NLMP mentor is suspended from the practice of law as a result of a final decision or order in a disciplinary proceeding, the member may not resume service as an NLMP mentor until the member is once again authorized to practice law. For the purposes of this rule and rule 7.8(a), charges of misconduct include authorization by the SPRB to file a formal complaint pursuant to BR 4.1, Disciplinary Counsel's notification to the court of a criminal conviction pursuant to BR 3.4(a), and Disciplinary Counsel's notification to the court of an attorney's discipline in another jurisdiction pursuant to BR 3.5(a).

2.5 Expenses. The executive director shall allocate and shall pay the expenses of the program including, but not limited to staff salaries, out of the bar's general fund.

Rule Three Minimum Continuing Legal Education Requirement

3.1 Effective Date. These Rules, or any amendments thereto, shall take effect upon their approval by the Supreme Court of the State of Oregon.

3.2 Active Members.

(a) Minimum Hours. Except as provided in Rules 3.3 and 3.4, all active lawyer members shall complete a minimum of 45 credit hours of accredited CLE activity every three years as provided in these Rules. All active LP members shall complete a minimum of 40 credit hour of accredited CLE activity every three years.

(b) Ethics. At least five of the required hours shall be in subjects relating to ethics in programs accredited pursuant to Rule 5.14(a).

(c) Abuse Reporting. One hour for lawyer members must be on the subject of a lawyer's statutory duty to report child abuse and elder abuse (see ORS 9.114). One hour for LP members must be on the subject of an LPs duty to report child and elder abuse for LP members.

(d) Mental Health and Substance Use Education. At least one of the required hours shall be in subjects relating to mental health, substance use, or cognitive impairment that can affect a lawyer's or an LP's ability to practice law.

(e) Access to Justice. In alternate reporting periods, at least three of the required hours must be in programs accredited for access to justice pursuant to Rule 5.14(d).

(f) IOLTA Administration. One hour for LP members must be on the administration of Interest on Lawyer Trust Accounts (IOLTA).

(g) Oregon Rules of Civil Procedure. One hour for LP members must be on the Oregon Rules of Civil Procedure (ORCP).

(h) Scope of License. One hour for LP members must be on the LPs scope of license as defined in Section 11 of the Rules for Licensing Paralegals (RLPs).

(i) Substantive Law and Practice. 26 hours for LP members must be education specific to the LP's practice area for which they are licensed. LP's with licenses to practice in more than one practice area must complete 26 hour of education specific to each practice area for which the LP seeks renewal of licensure.

3.3 Reinstatements, Resumption of Practice After Retirement and New Admittees.

(a) An active member whose reporting period is established in Rule 3.6(c)(2) or 3.6(c)(3) shall complete 15 credit hours of accredited CLE activity in the first reporting period after reinstatement. Two of the 15 credit hours shall be devoted to ethics and one shall be devoted to mental health and substance use education. 12 of the credits for an active LP member must be specific to the LP's practice area for which they are licensed.

(b) The requirements in Rule 3.2(a) shall apply to new admittees who are active members in a three year initial reporting period pursuant to 3.6(b). New LPs and new lawyer admittees in a shorter initial reporting period shall complete 15 credit hours of accredited CLE activity in the first reporting period after admission as an active member, including a three credit hour OSB-approved introductory course in access to justice, two credit hours in ethics, one credit hour in mental health and substance use education and nine credit hours in practical skills. One of the ethics credit hours must be devoted to Oregon ethics and professionalism and four of the nine credits in practical skills must be devoted to

Oregon practice and procedure.

(c) New [lawyer](#) admittees shall enroll in the NLMP within 28 days of admission, except as otherwise provided in these rules. New [lawyer](#) admittees shall complete the requirements of the NLMP curriculum established by the BOG, complete a mentoring plan and file a NLMP Completion Certificate, and pay the accreditation fee provided in Regulation 4.600 in the first three year reporting period after admission as an active member.

3.4 Out-of-State Compliance.

(a) Reciprocity Jurisdictions. An active [lawyer](#) member whose principal office for the practice of law is not in the State of Oregon and who is an active member in a jurisdiction with which Oregon has established MCLE reciprocity may comply with these rules by filing a compliance report as required by MCLE Rule 7.1 accompanied by evidence that the member is in compliance with the requirements of the other jurisdiction and has completed a child and elder abuse reporting credit required in ORS 9.114. This filing shall include payment of the fee set forth in Regulation 3.200(a) for processing the comity certificate of MCLE compliance from the reciprocal state.

(b) An active member whose principal office for the practice of law is in the State of Oregon may obtain from the MCLE Program Manager a comity certification of Oregon MCLE compliance upon payment of the fee set forth in Regulation 3.200(b)

(c) Other Jurisdictions. An active member whose principal office for the practice of law is not in the State of Oregon and is not in a jurisdiction with which Oregon has established MCLE reciprocity must file a compliance report as required by MCLE Rule 7.1 showing that the member has completed at least 45 hours of accredited CLE activities as required by Rule 3.2.

3.5 [Reserved.]

3.6 Reporting Period.

(a) In General. All active members shall have three-year reporting periods, except as provided in paragraphs (b) and (c).

(b) New Admittees. The first reporting period for a new [lawyer](#) admittee shall start on the date of admission as an active member and shall end on April 30 of the next calendar year, except a new [lawyer](#) admittee admitted by reciprocity who has practiced law in another jurisdiction for three consecutive years immediately prior to admission in Oregon shall have a three year initial reporting period that begins May 1 the year following admission and ends April 30 three years later. All subsequent reporting periods shall be three years. [New LP members shall have a three year initial reporting period that begins May 1 the year following admission and ends April 30 three years later. All subsequent reporting periods shall be three years.](#)

(c) Reinstatements.

(1) A member who transfers to inactive, retired or Active Pro Bono status, is suspended, or has resigned and who is reinstated before the end of the reporting period in effect at the time of the status change shall retain the member's original reporting period and these Rules shall be applied as though the transfer, suspension, or resignation had not occurred.

(2) Except as provided in Rule 3.6(c)(1), the first reporting period for a member who is reinstated as an active member following a transfer to inactive, retired or Active Pro Bono status or a suspension, disbarment or resignation shall start on the date of reinstatement and shall end on April 30 of the next calendar year. All subsequent reporting periods shall be three years.

(3) Notwithstanding Rules 3.6(c)(1) and (2), reinstated members who did not submit a completed

compliance report for the reporting period immediately prior to their transfer to inactive, retired or Active Pro Bono status, suspension or resignation will be assigned a new reporting period upon reinstatement. This reporting period shall begin on the date of reinstatement and shall end on April 30 of the next calendar year. All subsequent reporting periods shall be three years.

Regulations to MCLE Rule 3 **Minimum Continuing Legal Education Requirement**

3.100 Out-of-State Compliance. An active [lawyer](#) member seeking credit pursuant to MCLE Rule 3.4(~~b~~[c](#)) shall attach to the member's compliance report filed in Oregon evidence that the member has met the requirements of Rule 3 with courses accredited in any jurisdiction. This evidence may include certificates of compliance, certificates of attendance, or other information indicating the identity of the crediting jurisdiction, the number of 60-minute hours of credit granted, and the subject matter of programs attended.

3.200 Reciprocity. An active [lawyer](#) member who is also an active member in a jurisdiction with which Oregon has established MCLE reciprocity (currently Idaho, Utah or Washington) may comply with Rule 3.4(a) by attaching to the compliance report required by MCLE Rule 7.1 a copy of the member's certificate of compliance with the MCLE requirements from that jurisdiction, together with evidence that the member has completed a child and elder abuse reporting training required in ORS 9.114. No other information about program attendance is required.

(a) Members shall pay a filing fee of \$25.00 with their submission of a comity certificate of MCLE compliance from a reciprocal jurisdiction.

(b) An active member whose principal office for the practice of law is in the State of Oregon may obtain from the MCLE Program Manager a comity certificate of Oregon MCLE compliance upon request and payment of a processing fee of \$25.00.

3.300 Application of Credits.

(a) Legal ethics, access to justice, [abuse reporting](#), [IOLTA administration](#), [Oregon Rules of Civil Procedure education](#), [LP scope of license education](#), and mental health and substance use education credits in excess of the minimum required can be applied to the ~~general or~~ practical skills requirement.

(b) ~~Practical skills credits can be applied to the general requirement. General, practical skills, specialty credits of any type listed in 3.300(a), and family law and landlord-tenant practice area education credits earned by lawyer members will be applied toward the lawyer member's total minimum credit requirement.~~

~~(c) Excess child and elder abuse reporting credits will be applied as general or practical skills credit. Access to Justice credits earned in a non-required reporting period will be credited as general credits.~~

~~(d)~~ [Lawyer mMM](#) Members in a three-year reporting period are required to [have complete](#) 3.0 access to justice credits in reporting periods ending 12/31/18 through 4/30/2021 and in alternate three-year periods thereafter.

3.400 Practical Skills Requirement.

(a) A practical skills program is one which includes courses designed primarily to instruct new admittees in the methods and means of the practice of law. This includes those courses which involve instruction in the practice of law generally, instruction in the management of a legal practice, and instruction in particular substantive law areas designed for new practitioners. A practical skills program may include but shall not be limited to instruction in: client contact and relations; court proceedings; low-income and other communities that lack access to or the ability to afford legal services; negotiation and settlement;

alternative dispute resolution; malpractice avoidance; personal management assistance; the impact of substance abuse, cognitive impairment and mental health related issues to a law practice; and practice management assistance topics such as tickler and docket control systems, conflict systems, billing, trust and general accounting, file management, and computer systems.

(b) A CLE course on any subject matter can contain as part of the curriculum a portion devoted to practical skills. The sponsor shall designate those portions of any program which it claims is eligible for practical skills credit.

(c) A credit hour cannot be applied to both the practical skills requirement and the ethics requirement.

3.500 Reporting Period Upon Reinstatement. A member who returns to active membership status as contemplated under MCLE Rule 3.6(c)(2) shall not be required to fulfill the requirement of compliance during the member's inactive or retired status, suspension, disbarment or resignation, but no credits obtained during the member's inactive or retired status, suspension, disbarment or resignation shall be carried over into the next reporting period.

3.600 Introductory Course in Access to Justice. In order to qualify as an introductory course in access to justice required by MCLE Rule 3.3(b), the three-hour program must meet the accreditation standards set forth in MCLE Rule 5.14(d) and must substantively relate to at least three of the following areas: age, culture, disability, ethnicity, gender and gender identity or expression, geographic location, national origin, race, religion, sex, sexual orientation, veteran status, immigration status, and socioeconomic status, and comply with the requirements of 5.400.

3.700 New Lawyer Mentoring Program Enrollment, Matching and Mentoring Plan.

(a) Within 28 days of admission, new [lawyer](#) admittees whose principal office for the practice of law is in the State of Oregon must file an NLMP Enrollment Form as required by Rule 3.3(c) or certify that they are exempt as provided in Rule 9.

(b) The NLMP Coordinator will match new [lawyer](#) admittees with NLMP mentors based principally on geography, and whenever possible, practice area interests. Upon request by the new [lawyer](#) admittee and NLMP mentor, the NLMP Coordinator may consider common membership in specialty or affinity bar organizations when establishing a match.

(c) The NLMP Coordinator will issue a notice to the new [lawyer](#) admittee and NLMP mentor as soon as an NLMP match is confirmed.

(d) The NLMP Coordinator may reassign a match upon request of the new [lawyer](#) admittee of NLMP mentor if the coordinator determines a match is not effective to meet the goals of the program.

(e) The new [lawyer](#) admittee is responsible for arranging the initial meeting with the NLMP mentor, and the meeting must take place within 28 business days of the new [lawyer](#) admittee's receipt of notice of the match. At the meeting, the new [lawyer](#) admittee and NLMP mentor will review the elements of their mentoring plan, including:

- (1) Introduction to the Legal Community;
- (2) Professionalism, the Oregon Rules of Professional Conduct and Cultural Competence;
- (3) Introduction to Law Office Management;
- (4) Working with Clients;
- (5) Career Development through Public Service, OSB programs, and quality of life issues; and
- (6) Practice Area Basic Skills.

(f) The NLMP Coordinator will publish an NLMP Manual consistent with NLMP curriculum developed by

the BOG, to provide additional information about developing and implementing and effective mentoring plan. The MCLE Committee may review and provide input on the NLMP Manual to the NLMP Coordinator.

(g) Subsections (b) through (e) do not apply if a new lawyer admittee has obtained a deferral as provided in Rule 9.

3.800 Filing NLMP Completion Certificate. Filing of an NLMP Completion Certificate as required by Rules 3.3(c) and 4.5(b) is defines as the electronic submission by the NLMP new lawyer admittee of their NLMP Completion Certificate by adding the certificate to their MCLE transcript through the electronic system provided by the Oregon State Bar via the internet during their first three-year reporting period. The electronic system for adding NLMP Certificates to MCLE transcripts can be accessed through the Oregon State Bar website (<https://hello.osbar.org/>).

Rule Four Accreditation Procedure

4.1 In General.

(a) In order to qualify as an accredited CLE activity, the activity must be given activity accreditation by the MCLE Program Manager.

(b) The MCLE Program Manager shall electronically publish a list of accredited programs.

(c) All sponsors shall permit the MCLE Program Manager or a member of the MCLE Committee to audit the sponsors' CLE activities without charge for purposes of monitoring compliance with MCLE requirements. Monitoring may include attending CLE activities, conducting surveys of participants, verifying attendance of registrants, and reviewing sponsor advertising activities and communications with Oregon State Bar members.

4.2 Group Activity Accreditation.

(a) CLE activities will be considered for accreditation on a case-by-case basis and must satisfy the accreditation standards listed in these Rules for the particular type of activity for which accreditation is being requested.

(b) A sponsor or individual active member may apply for accreditation of a group CLE activity by filing a written application for accreditation with the MCLE Program Manager. The application shall be made on the form required by the MCLE Program Manager for the particular type of CLE activity for which accreditation is being requested and shall demonstrate compliance with the accreditation standards contained in these Rules.

(c) An application for accreditation of a group CLE activity shall be accompanied by payment of the application fee required by MCLE Regulation 4.300. An additional program application and fee is required for a repeat live presentation of a group CLE activity.

(d) An application for accreditation of a group CLE activity must be electronically submitted no later than 30 days after the original program date for live programs and no later than 30 days after the production date for recorded programs. An application received more than 30 days after the original program date (live programs) or production date (recorded programs) is subject to a late processing fee as provided in Regulation 4.300.

(e) The MCLE Program Manager may revoke the accreditation of an activity at any time if it determines that the accreditation standards were not met for the activity. Notice of revocation shall be sent to the sponsor of the activity.

(f) Accreditation of a CLE activity obtained by a sponsor or an active member shall apply for all active

members participating in the activity.

4.3 Credit Hours. Credit hours shall be assigned in multiples of one-quarter of an hour. The BOG shall adopt regulations to assist sponsors in determining the appropriate number of credit hours to be assigned.

4.4 Sponsor Advertising.

(a) Only sponsors of accredited group CLE activities may include in their advertising the accredited status of the activity and the credit hours assigned.

(b) Specific language and other advertising requirements may be established in regulations adopted by the BOG.

4.5 NLMP Accreditation.

(a) The new lawyer admittee is responsible for ensuring that all requirements of the NLMP are completed.

(b) Upon completion of the NLMP, a new lawyer admittee shall file a NLMP Completion Certificate, executed by the new lawyer admittee for accreditation by the MCLE Program Manager.

4.6 Sponsor Attendance Reporting.

Within 30 days of a bar member's attendance of a live accredited CLE activity, or screening of a recorded accredited CLE program, the sponsor must either:

(a) post the credits earned by the bar member onto the bar member's MCLE Transcript via the attendance posting portal on the Oregon State Bar website (<https://hello.osbar.org/>); or

(b) electronically submit an attendance report to the MCLE Program Manager via the attendance reporting portal on the Oregon State Bar website (<https://hello.osbar.org/>) together with payment of the credit processing fee required by MCLE Regulation 4.350. The attendance report must include the following information:

- (1) sponsor name,
- (2) program title,
- (3) Event ID number as indicated in the Program Database on the Oregon State Bar website,
- (4) original program date,
- (5) first and last name of each Oregon bar member who earned credits from the activity,
- (6) Oregon bar number of each bar member listed,
- (7) the number and types of credits earned by each bar member, and
- (8) date of credit completion for each bar member.

**Regulations to MCLE Rule 4
Accreditation Procedure**

4.100 Application for Accreditation. A written application for accreditation pursuant to Rule 4.2 shall be submitted via the electronic system provided by the Oregon State Bar via the internet. An applicant may access the system through the Oregon State Bar website (<https://www.osbar.org/mcle/intex.html>).

4.200 Group Activity Accreditation.

(a) Review procedures shall be pursuant to MCLE Rule 8.1 and Regulation 8.100.

(b) The number of credit hours assigned to the activity shall be determined based upon the information

provided by the applicant. The applicant can view the number of credit hours assigned by searching the Program Database on the Oregon State Bar website (<https://hello.osbar.org/MCLE/Search/Accreditation>). The applicant shall be notified by email if more information is needed in order to process the application, or if the application is denied.

4.300 Accreditation Application Fees.

(a) An application for accreditation of a group CLE activity shall include payment of the following application fees:

(1) \$25 for a program that is 60 minutes or less and offered to all Oregon State Bar Members, without limitation, at no cost.

(2) \$40 for a program that is up to four hours long;

(3) \$75 for a program that is more than four hours long but not more than eight hours long;

(4) \$125 for a program more than eight hours long.

(b) An additional program sponsor fee is required for every repeat live presentation of an accredited activity, but no additional fee is required for a video or audio replay of an accredited activity.

(c) A late processing fee of \$40 is due for accreditation applications that are received more than 30 days after the original program date (live programs) or the production date (recorded programs). This fee is in addition to the accreditation application fee and accreditation shall not be granted until the fee is received.

(d) The MCLE Program Manager shall apply the MCLE sponsor fees to all sponsors regardless of the sponsor's entity type (private, governmental, or nonprofit), financial status, or relationship to the bar. The MCLE Program Manager shall collect a sponsor fee prior to processing all applications submitted by or on behalf of all program sponsors.

(e) The MCLE Program Manager may process applications submitted by individual bar members at no charge only if

(1) the bar member applicant is not in any way affiliated with the program sponsor; and

(2) the program sponsor is geographically located outside the state of Oregon; and

(3) the program was located outside of Oregon; and

(4) the program was not attended or viewed by any other Oregon bar members.

(f) An application for accreditation of a group CLE activity submitted by an individual bar member which does not satisfy the requirements of MCLE Regulation 4.300(e) shall be accompanied by payment of the applicable accreditation application fee pursuant to Regulation 4.300(a).

(g) An application for accreditation of a group CLE activity submitted by an individual bar member who is not in any way affiliated with the program sponsor is exempt from any late processing fee.

4.350 Credit Processing Fees.

(a) A sponsor of an accredited group CLE activity who does not post the credits earned by bar members onto the bar members' MCLE Transcripts via the attendance posting portal on the Oregon State Bar website (<https://hello.osbar.org/>) pursuant to MCLE Rule 4.6(a), but instead submits an attendance report to the MCLE Program Manager pursuant to MCLE Rule 4.6(b), must pay a credit processing fee of \$1.00 per credit reported.

(b) Individual bar members may post credits to their own MCLE transcripts at no charge by logging on to their Member Dashboard on the OSB website (<https://hello.osbar.org>).

4.400 Credit Hours.

(a) Credit hours shall be assigned to group CLE activities in multiples of one-quarter of an hour or 0.25 credits and are rounded to the nearest one-quarter credit.

(b) Credit Exclusions. Only CLE activities that meet the accreditation standards stated in MCLE Rule 5 shall be included in computing total CLE credits. Credit exclusions include the following:

- (1) Registration
- (2) Non-substantive introductory remarks
- (3) Breaks
- (4) Business meetings
- (5) Programs of less than 30 minutes in length

4.500 Sponsor Advertising.

(a) Advertisements by sponsors of accredited CLE activities shall not contain any false or misleading information.

(b) Information is false or misleading if it:

- (i) Contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading;
- (ii) Is intended or is reasonably likely to create an unjustified expectation as to the results to be achieved from participation in the CLE activity;
- (iii) Is intended or is reasonably likely to convey the impression that the sponsor or the CLE activity is endorsed by, or affiliated with, any court or other public body or office or organization when such is not the case.

(c) Advertisements may list the number of approved credit hours. If approval of accreditation is pending, the advertisement shall so state and may list the number of CLE credit hours for which application has been made.

(d) If a sponsor includes in its advertisement the number of credit hours that a member will receive for attending the program, the sponsor must have previously applied for and received MCLE accreditation for the number of hours being advertised.

4.600 NLMP Accreditation.

(a) The new lawyer admittee shall pay a NLMP accreditation fee of \$100.00.

Rule Five

Accreditation Standards for Category I Activities

5.1 Group CLE Activities. Group CLE activities shall satisfy the following:

(a) The activity must be offered by a sponsor having substantial, recent experience in offering continuing legal education or by a sponsor that can demonstrate ability to organize and effectively present continuing legal education. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction, and supervision of the activity; and

(b) The activity must be primarily intended for presentation to multiple participants, including but not limited to live programs, video and audio presentations (including original programming and replays of

accredited programs), satellite broadcasts and on-line programs; and

(c) The activity must include the use of thorough, high-quality written materials, unless the MCLE Program Manager determines that the activity has substantial educational value without written materials.

(d) The activity must have no attendance restrictions based on age, culture, disability, ethnicity, gender and gender identity or expression, geographic location, national origin, race, religion, sex, sexual orientation, veteran status, socioeconomic status, immigration status, marital, parental or military status or other classification protected by law, except as may be permitted upon application from a provider or member, where attendance is restricted due to applicable state or federal law.

5.2 Attending Classes.

(a) Attending a class at an ABA or AALS accredited law school may be accredited as a CLE activity.

(b) Attending other classes may also be accredited as a CLE activity, provided the activity satisfies the following criteria:

- (1) The MCLE Program Manager determines that the content of the activity is in compliance with other MCLE accreditation standards; and
- (2) The class is a graduate-level course offered by a university; and
- (3) The university is accredited by an accrediting body recognized by the U.S. Department of Education for the accreditation of institutions of postsecondary education.

5.3 Legislative Service. General credit hours may be earned for service as a member of the Oregon Legislative Assembly while it is in session.

5.4 Participation in New Lawyer Mentoring Program. New [lawyer](#) admittee NLMP participants and NLMP mentors may earn MCLE credit for participation in the NLMP.

5.5 Other Professionals. Notwithstanding the requirements of Rules 5.157, participation in an educational activity offered primarily to or by other professions or occupations may be accredited as a CLE activity if the MCLE Program Manager determines that the content of the activity is in compliance with other MCLE accreditation standards. The MCLE Program Manager may accredit the activity for fewer than the actual activity hours if the MCLE Program Manager determines that the subject matter is not sufficient to justify full accreditation.

Accreditation Standards for Category II Activities

5.6 Teaching Activities.

(a) Teaching credit may be claimed for teaching accredited continuing legal education activities or for courses in ABA or AALS accredited law schools.

(b) Credit may be claimed for teaching other courses, provided the activity satisfies the following criteria:

- (1) The MCLE Program Manager determines that the content of the activity is in compliance with other MCLE content standards; and
- (2) The course is a graduate-level course offered by a university; and
- (3) The university is accredited by an accrediting body recognized by the U.S. Department of Education for the accreditation of institutions of postsecondary education.

(c) Credit may not be claimed by an active member whose primary employment is as a full-time or part-time law teacher, but may be claimed by an active member who teaches on a part-time basis in addition to the member's primary employment.

(d) No credit may be claimed for repeat presentations of previously accredited courses unless the presentation involves a substantial update of previously presented material, as determined by the MCLE Program Manager.

5.7 Legal Research and Writing.

(1) Credit for legal research and writing activities, including the preparation of written materials for use in a teaching activity may be claimed provided the activity satisfies the following criteria:

- (a) It deals primarily with one or more of the types of issues for which group CLE activities can be accredited as described in Rule 5.13; and
- (b) It has been published in the form of articles, CLE course materials, chapters, or books, or issued as a final product of the Legal Ethics Committee or a final instruction of the Uniform Civil Jury Instructions Committee or the Uniform Criminal Jury Instructions Committee, personally authored or edited in whole or in substantial part, by the applicant; and
- (c) It contributes substantially to the legal education of the applicant and other attorneys; and
- (d) It is not done in the regular course of the active member's primary employment.

(2) The number of credit hours shall be determined by the MCLE Program Manager, based on the contribution of the written materials to the professional competency of the applicant and other attorneys.

5.8 Service as a Bar Examiner. Credit may be claimed for service as a bar examiner for Oregon, provided that the service includes personally writing or grading a question for the Oregon bar exam [or paralegal licensing exam](#) during the reporting period.

5.9 Legal Ethics Service. Credit may be claimed for serving on the Oregon State Bar Legal Ethics Committee, Client Security Fund Committee, Commission on Judicial Fitness & Disability, Oregon Judicial Conference Judicial Conduct Committee, State Professional Responsibility Board, and Disciplinary Board or serving as volunteer bar counsel or volunteer counsel to an accused in Oregon disciplinary proceedings.

5.10 Credit for Committee and Council Service. Credit may be claimed for serving on committees that are responsible for drafting court rules or jury instructions that are designed to aid the judicial system and improve the judicial process. Examples include service on the Oregon State Bar Uniform Civil Jury Instructions Committee, Uniform Criminal Jury Instructions Committee, Oregon Council on Court Procedures, Uniform Trial Court Rules Committee, and the District of Oregon Local Rules Advisory Committee.

5.11 Service as a Judge Pro Tempore. Credit may be claimed for volunteer service as a judge pro tempore.

Accreditation Standards for Category III Activities

5.12 Credit for Other Activities.

(a) **Personal Management Assistance.** Credit may be claimed for activities that deal with personal self-improvement, provided the MCLE Program Manager determines the self-improvement relates to professional competence as a lawyer.

(b) **Other Volunteer Activities.** Credit for volunteer activities for which accreditation is not available pursuant to Rules 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, or 5.11 may be claimed provided the MCLE Program Manager determines the primary purpose of such activities is the provision of legal services or legal expertise.

(c) **Business Development and Marketing Activities.** Credit may be claimed for courses devoted to business development and marketing that are specifically tailored to the delivery or marketing of legal services and focus on use of the discussed techniques and strategies in law practice.

Activity Content Standards

5.13 Group and Teaching CLE Activities

(a) The activity must have significant intellectual or practical content with the primary objective of increasing the participant's professional competence as a lawyer or LP; and

(b) The activity must deal primarily with substantive legal issues, legal skills, practice issues, or legal ethics and professionalism, or access to justice.

5.14 Ethics, Child and Elder Abuse Reporting, Mental Health and Substance Use Education, and Access to Justice.

(a) In order to be accredited as an activity in legal ethics under Rule 3.2(b), an activity shall be devoted to the study of judicial or legal ethics or professionalism, and shall include discussion of applicable judicial conduct codes, rules of professional conduct, or statements of professionalism.

(b) Child and elder abuse reporting programs must be devoted to the lawyer's statutory duty to report child abuse and elder abuse (see ORS 9.114).

(c) In order to be accredited as a mental health and substance use education credit under Rule 3.2 (d), and activity shall educate attorneys and LPs about causes, detection, response, treatment, or problem prevention related to mental health or substance use.

(d) In order to be accredited as an activity pertaining to access to justice for purposes of Rule 3.2(e), an activity shall be directly related to the practice of law and designed to educate attorneys and LPs to identify and eliminate from the legal profession, from the provision of legal services, and from the practice of law barriers to access to justice arising from biases against persons because of age, culture, disability, ethnicity, gender and gender identity or expression, geographic location, national origin, race, religion, sex, sexual orientation, veteran status, immigration status, and socioeconomic status.

(e) Portions of activities may be accredited for purposes of satisfying the ethics and access to justice requirements of Rule 3.2, if the applicable content of the activity is clearly defined.

5.15 IOLTA Administration, Oregon Rules of Civil Procedure, and Scope of License.

(a) In order to be accredited as IOLTA administration education, programs must be devoted to topics related to the administration of IOLTA accounts, such as understanding the types of lawyer trust accounts, the rules governing lawyer trust accounts in Oregon, how to open and close trust accounts, how to transfer funds into and out of trust accounts, and how to identify and reduce of liability risks arising from mismanagement of trust accounts.

(b) In order to be accredited as Oregon Rules of Civil Procedure education, programs must be devoted to the ORPCs and include topics such as recent updates to the ORPCs and practical applications of the ORPCs in family law or landlord- tenant related matters.

(c) In order to be accredited as Scope of License education, programs must be devoted to the parameters of the scope of license of LPs as defined in Section 11 of the RLPs, including the parameters within which

LPs are authorized to practice law, the types of matters in which LPs are permitted to provide legal advice and representation, and the practical identification of mandatory referral scenarios.

5.16 LP Practice Area Education

(a) Family Law. In order to be accredited as family law practice area education, programs must be devoted to substantive and practical education in Oregon family law and should include topics generally within the scope of LP license as defined in Section 11 of the RLPs, such as dissolution of marriage, separation, annulment, custody, parenting time, child support, spousal support, modifications, and remedial contempt.

(b) Landlord-Tenant. In order to be accredited as landlord-tenant law practice area education, programs must be devoted to substantive and practical education in Oregon landlord-tenant law, and should include topics generally within the scope of LP license as defined in Section 11 of the RLPs, such as residential rental agreements, amendments to residential rental agreements, eviction notices, notices of intent to enter rental property, rent increases, violations, security deposit accountings, and evictions,

Teaching Activity Content Standards

5.157 Other Professionals. Notwithstanding the requirements of Rules 5.6 and 5.13, credit may be claimed for teaching an educational activity offered primarily to other professions or occupations if the MCLE Program Manager determines that the content of the activity is in compliance with other MCLE accreditation standards and the applicant establishes to the MCLE Program Manager's satisfaction that the teaching activity contributed to the presenter's professional competence as a lawyer or LP.

Unaccredited Activities

5.168 Unaccredited Activities. The following activities shall not be accredited:

- (a) Activities that would be characterized as dealing primarily with personal self-improvement unrelated to professional competence as a lawyer; and
- (b) Activities designed primarily to sell services or equipment; and
- (c) Video or audio presentations of a CLE activity originally conducted more than three years prior to the date viewed or heard by the member seeking credit, unless it can be shown by the member that the activity has current educational value.
- (d) Repeat live, video or audio presentations of a CLE activity for which the active member has already obtained MCLE credit.

Regulations to MCLE Rule 5 Accreditation Standards

5.050 Written Materials.

- (a) For the purposes of accreditation as a group CLE activity under MCLE Rule 5.1(c), written material may be provided in an electronic or computer-based format, provided the material is available for the member to retain for future reference.
- (b) Factors to be considered by the MCLE Program Manager in determining whether a group CLE activity has substantial educational value without written materials include, but are not limited to: the qualifications and experience of the program sponsor; the credentials of the program faculty; information concerning program content provided by program attendees or monitors; whether the subject matter of

the program is such that comprehension and retention by members is likely without written materials; and whether accreditation previously was given for the same or substantially similar program.

5.100 Category I Activities

(a) Credit for legislative service may be earned at a rate of 1.0 general credit for each week or part thereof while the legislature is in session.

(b) [Lawyer](#) ~~4~~members who serve as mentors in the NLMP may earn a total of 8.0 CLE credits, including 2.0 ethics credits and 6.0 general credits, upon filing of a NLMP Completion Certificate. If a member serves as a mentor for more than one new lawyer, the member may claim up to 16.0 total credits, including 4.0 ethics credits, during the three year reporting cycle. If another lawyer assists with the NLMP completion, the mentoring credits must be apportioned between lawyers in a proportionate manner agreed upon by the NLMP mentors.

(c) Upon successful completion of the NLMP, new [lawyer](#) admittees earn 6.0 general/practical skills credits, which may be applied to the MCLE requirements of their first three-year MCLE reporting period.

5.200 Category II Activities.

(a) Teaching credit may be claimed at a ratio of one credit hour for each sixty minutes of actual instruction.

(b) With the exception of panel presentations, when calculating credit for teaching activities pursuant to MCLE Rule 5.6, for presentations where there are multiple presenters for one session, the number of minutes of actual instruction will be divided by the number of presenters unless notified otherwise by the presenter. Members who participate in panel presentations may receive credit for the total number of minutes of actual instruction.

(c) For the purposes of accreditation of Legal Research and Writing, all credit hours shall be deemed earned on the date of publication or issuance of the written work.

(d) One hour of credit may be claimed for each sixty minutes of research and writing, but no credit may be claimed for time spent on stylistic editing.

(e) Credit may be claimed for Legal Research and Writing that supplements an existing CLE publication. Research alone may be accredited if the applicant provides a statement from the publisher confirming that research on the existing publication revealed no need for supplementing the publication's content.

(f) Credit for Committee and Council Service pursuant to Rule 5.10. Members ~~m~~May claim three (3) general credits for each 12 months of committee and council service so long as the member regularly attends and participates in the work related to the functions of the committee.

(g) Service as a Bar Examiner. Three (3) credits may be claimed for writing a bar exam or local component question and three (3) credits may be claimed for grading a bar exam or local component question.

(h) Legal Ethics Service. Members may claim two ethics credits for each twelve months of service on committees and boards listed in Rule 5.9.

(i) Service as a Judge Pro Tempore. Members may claim one (1) general credits for every 2 hours of volunteer time spent on the bench as a judge pro tempore.

5.300 Category III Activities.

(a) Personal Management Assistance. Credit may be claimed for programs that provide assistance with issues that could impair a lawyer's professional competence (examples include but are not limited to programs addressing burnout, procrastination, gambling or other addictions or compulsive behaviors, and

other health related issues). Credit may also be claimed for programs designed to improve or enhance a lawyer's professional effectiveness and competence (examples include but are not limited to programs addressing time and stress management, career satisfaction and transition, and interpersonal/relationship skill-building).

(b) Other Volunteer Activities. Credit may be claimed for volunteer activities for which accreditation is not available pursuant to Rules 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, or 5.11. Credit may be claimed at a ratio of one credit hour for each two hours of uncompensated volunteer activities provided that the MCLE Program Manager determines the primary purpose of such activity is the provision of legal services or legal expertise. Such activities include but are not limited to:

(1) Providing direct pro bono representation to low-income clients referred by certified pro bono programs;

(2) Serving as a judge, evaluator, mentor or coach in any type of mock trial, moot court, congressional hearing or client legal-counseling competition, law-related class or law-related program at the high school level and above; and

(3) Teaching a legal education activity offered primarily to nonlawyers high school age and older.

(c) Business Development and Marketing Activities. Credit may be claimed for courses devoted to business development and marketing that are specifically tailored to the delivery or marketing of legal services and focus on use of the discussed techniques and strategies in law practices. Examples include but are not limited to courses focusing on business development approaches, strategies and techniques available to attorneys, marketing to clients seeking legal services, and website development to promote one's practice.

5.400 Access to Justice. A program is eligible for accreditation as an access to justice activity even if it is limited to a discussion of substantive law, provided the substantive law relates to access to justice issues involving age, culture, disability, ethnicity, gender and gender identity or expression, geographic location, national origin, race, religion, sex, sexual orientation, veteran status, immigration status, and socioeconomic status.

(a) Access to justice programming should be guided by these three principles:

(1) Promoting accessibility by eliminating systemic barriers that prevent people from understanding and exercising their rights.

(2) Ensuring fairness by delivering fair and just outcomes for all parties, including those facing financial and other disadvantages.

(3) Addressing systemic failures that lead to a lack of confidence in the justice system by creating meaningful and equitable opportunities to be heard.

(b) The presenters of access to justice and introductory access to justice programs should have the following qualifications in the topic being presented:

(1) Lived experience;

(2) Professional experience; or

(3) Substantial training.

5.500 Independent Study. Members may earn credit through independent screening or viewing of audio- or video-tapes of programs originally presented to live group audiences, or through online programs designed for presentation to a wide audience. A lawyer who is licensed in a jurisdiction that allows credit for reading and successfully completing an examination about specific material may use such credits to

meet the Oregon requirement. No credit will be allowed for independent reading of material selected by a member except as part of an organized and accredited group program.

5.600 Child and Elder Abuse Reporting. In order to be accredited as a child abuse and elder abuse reporting activity, the one-hour session must include discussion of an Oregon attorney's requirements to report child abuse and elder abuse and the exceptions to those requirements.

Rule Six

Credit Limitations per Category

6.1 In General.

(a) Category I Activities. Credits in this category are unlimited. Credit shall be allowed only for CLE activities that are accredited as provided in these Rules, and substantial participation by the active member is required. The MCLE Program Manager may allow partial credit for completion of designated portions of a CLE activity.

(b) Category II Activities. [For lawyer members, credits in this category are limited to 20 in a three-year reporting period and 10 in a shorter reporting period. For LP members, credits in this category are limited to 12 in a three year reporting period and 6 in a shorter reporting period. Credits claimed by LP members in this category must be directly related to ethics or procedural or substantive law topics within the scope of the LP's family law or landlord-tenant practice area.](#) No accreditation application is required.

(c) Category III Activities. [For lawyer members, credits in this category are limited to 6 in a three-year reporting period and 3 in a shorter reporting period. For LP members, credits in this category are limited to 5 in a three-year reporting period and 2 in a shorter reporting period. Credits claimed by LP members in this category must be directly related to substantive law topics within the scope of the LP's family law or landlord-tenant practice area.](#)~~No accreditation application is required.~~

(d) An active [lawyer](#) member may carry forward 15 or fewer unused credit hours from the reporting period during which the credit hours were earned to the next reporting period. [An active LP may carry forward 10 or fewer unused credit hours from the reporting period during which the hours were earned to the next reporting period.](#)

(e) Except as provided in Regulation 5.100(c) and Rule 6.1(d), credit for a particular reporting period shall be allowed only for activities participated in during that reporting period.

(f) Credits for service as a mentor in the NLMP are limited as set forth in Regulation 5.100(b).

Regulations to MCLE Rule 6

Credit Limitations

6.100 Carry Over Credit. No more than six ethics credits can be carried over for application to the subsequent reporting period requirement. Ethics credits in excess of the carry over limit may be carried over as general credits [for lawyer members](#). Abuse ~~reporting~~[education](#) credits earned in excess of the reporting period requirement may be carried over as general credits [for lawyer members](#), but a new abuse reporting education credit must be earned in each reporting period in which the credit is required. Access to justice credits may be carried over as general credits [for lawyer members](#), but new [access to justice](#) credits must be earned in the reporting period in which they are required. Carry over credits from a reporting period in which the credits were completed by the member may not be carried forward more than one reporting period.

6.200 Credits Earned in Excess of Credit Limitations. Any credits earned in excess of the credit limitations

set forth in MCLE Rule Six may not be claimed in the reporting period in which they are completed or as carry over credits in the next reporting period.

Rule Seven Compliance

7.1 Reports. Every active member shall electronically certify and submit their completed compliance report on or before 5:00 p.m. on May 31 of the year the active member's reporting period ends.

7.2 Recordkeeping.

(a) Every active member shall maintain records of participation in CLE activities for use in completing a compliance report and shall retain these records for a period of twelve months after the end of the member's reporting period.

(b) The MCLE Program Manager may maintain records of active members' participation in CLE activities as necessary to verify compliance with the MCLE requirement.

7.3 Audits of Bar Members.

(a) The MCLE Program Manager may audit compliance reports selected because of facial defects or by random selection or other appropriate method.

(b) For the purpose of conducting audits, the MCLE Program Manager may request and review records of participation in CLE activities reported by active members.

(c) Failure to substantiate participation in CLE activities in accordance with applicable rules and regulations after request by the MCLE Program Manager shall result in disallowance of credits for the reported activity and, in certain situations, assessment of the late filing fee specified in 7.5(b).

(d) The MCLE Program Manager shall refer active members to the Oregon State Bar Disciplinary Counsel for further action where questions of dishonesty in reporting occur.

7.4 Noncompliance.

(a) Grounds. The following are considered grounds for a finding of non-compliance with these Rules:

(1) Failure to complete the MCLE requirement for the applicable reporting period.

(2) Failure to electronically certify and submit a completed compliance report on time.

(3) Failure to provide sufficient records of participation in CLE activities to substantiate credits reported, after request by the MCLE Program Manager.

(b) Notice. In the event of a finding of noncompliance, the MCLE Program Manager shall send a written notice of noncompliance to the affected active member's electronic mail address on file with the bar pursuant to Bar Rules of Procedure. The notice shall set forth the deadline to cure noncompliance, established by the Chief Executive Officer, which is not less than 21 days from the date of the notice. The MCLE Program Manager shall send the notice by mail to any member who is not required to have an electronic mail address on file.

7.5 Cure.

(a) Noncompliance for failure to electronically certify and submit a completed compliance report by the due date can be cured by filing the completed report demonstrating completion of the MCLE requirement during the applicable reporting period, together with the late fee specified in MCLE Regulation 7.200, no later than the deadline set forth in the notice of noncompliance.

(b) Noncompliance for failure to complete the MCLE requirement during the applicable reporting period can be cured by doing the following no later than the deadline set forth in the notice of noncompliance:

- (1) Completing the credit hours necessary to satisfy the MCLE requirement for the applicable reporting period;
- (2) Electronically certifying and submitting the completed compliance report; and
- (3) Paying the late filing fee specified in MCLE Regulation 7.200.

(c) Noncompliance for failure to provide the MCLE Program Manager with sufficient records of participation in CLE activities to substantiate credits reported can be cured by providing the MCLE Program Manager with sufficient records, together with the late fee specified in MCLE Regulation 7.200, no later than the deadline set forth in the notice of noncompliance.

(d) Credit hours applied to a previous reporting period for the purpose of curing noncompliance as provided in Rule 7.5(b) may only be used for that purpose and may not be used to satisfy the MCLE requirement for any other reporting period.

(e) When it is determined that the noncompliance has been cured, the MCLE Program Manager shall notify the affected active member that he or she has complied with the MCLE requirement for the applicable reporting period. Curing noncompliance does not prevent subsequent audit and action specified in Rule 7.3.

7.6 Suspension. If the noncompliance is not cured within the deadline specified in the notice of noncompliance, the MCLE Program Manager shall recommend to the Supreme Court that the affected active member be suspended from membership in the bar.

7.7 Audits of Sponsors.

(a) The MCLE Program Manager may audit sponsors of CLE activities for compliance with these MCLE Rules and Regulations.

(b) The MCLE Program Manager may request materials and information related to the sponsor's CLE activities and accreditation application during an audit. If a sponsor declines to comply with the MCLE Program Manager's requests for materials and information during an audit, the MCLE Program Manager may revoke or withhold accreditation of the sponsor's CLE activities.

(c) The MCLE Program Manager may revoke accreditation of any CLE activity or withhold accreditation of future CLE activities if the audit determines the sponsor is not compliant with the MCLE Rules and Regulations.

(d) A sponsor may seek review of the MCLE Program Manager's decision to withhold or revoke accreditation under Rules 8.1.

7.8 Removal of NLMP Mentors

(a) Within 14 days of receipt by OSB of notice of charges against an NLMP mentor pursuant to 2.4(d) or suspension of an NLMP mentor pursuant to BR 7.1, the NLMP Coordinator shall provide written notice by email to the NLMP mentor and new admittee that the NLMP mentor is removed from serving as a mentor pursuant to MCLE Rule 2.4(d).

(b) Within 30 days, or as soon as reasonably practical, of removal of an NLMP mentor pursuant to Rule 2.4(d), the NLMP Coordinator shall select a new mentor for the new admittee pursuant to the criteria set forth in Regulation 3.700(b), and shall issue a notice to the new admittee and new NLMP mentor as soon as a new NLMP match is confirmed.

Regulations to MCLE Rule 7 Compliance

7.050 Electronically Certifying and Submitting Compliance Reports. Timely electronically certifying and submitting a completed compliance report as required by Rule 7.1 and 7.4(a)(2) is defined as the electronic certification and submission by the active bar member of their completed MCLE transcript through the electronic system provided by the Oregon State Bar via the internet on or before 5:00 p.m. on May 31 of the year the active member's reporting period ends. If May 31 is a Saturday or legal holiday, including Sunday, or a day that the Oregon State Bar office is closed, the due date shall be the next regular business day. The electronic system for certifying and submitting MCLE transcripts can be accessed through the Oregon State Bar website (<https://hello.osbar.org/>).

7.100. Member Records of Participation.

(a) In furtherance of its audit responsibilities, the MCLE Program Manager may review an active member's records of participation in Category I CLE activities. Records which may satisfy such a request include, but are not limited to, certificates of attendance or transcripts issued by sponsors, MCLE recordkeeping forms, NLMP mentoring plan checklist, canceled checks or other proof of payment for registration fees or audio or video tapes, course materials, notes or annotations to course materials, or daily calendars for the dates of CLE activities. For individually screened presentations, contemporaneous records of screening dates and times shall be required.

(b) Members claiming credit for Category II activities should keep course descriptions, course schedules or other documentation verifying the number of minutes of actual instruction, along with a sample of the written materials prepared, if applicable. Members claiming Legal Research and Writing credit should keep a log sheet indicating the dates and number of hours engaged in legal research and writing in addition to a copy of the written product.

(c) Members claiming credit for Category III activities should keep log sheets indicating the dates and number of hours engaged in pro-bono representation and other volunteer activities, along with course descriptions and course schedules, if applicable. Members claiming credit for direct pro-bono representation to low-income clients should also keep documentation establishing the referral by a certified pro bono provider.

7.200 Late Fees. Members who complete any portion of the minimum credit requirement after the end of the reporting period or who fail to file a completed compliance report by the filing deadline set forth in Rule 7.1 must pay a \$200 late fee.

7.250 Service of Notices of Noncompliance. Notices of Noncompliance served by the MCLE Program Manager pursuant to Rule 7.4(b) shall be sent via electronic mail to the member's last designated email address on file with the bar on the date of the notice. Notices shall be sent by regular mail (to the last designated business or residence address on file with the Oregon State Bar) to any member who is exempt from having an email address on file with the bar.

Rule Eight Review and Enforcement

8.1 Review.

(a) Decisions of the MCLE Program Manager. A decision, other than a suspension recommended pursuant to Rule 7.6, affecting any active member or sponsor is final unless a request for review is filed with the MCLE Program Manager within 21 days after notice of the decision is mailed. The request for review may

be by letter and requires no special form, but it shall state the decision to be reviewed and give the reasons for review. The matter shall be reviewed by the BOG or, if one has been appointed, the MCLE Committee, at its next regular meeting. An active member or sponsor shall have the right, upon request, to be heard, and any such hearing request shall be made in the initial letter. The hearing shall be informal. On review, the BOG or the MCLE Committee shall have authority to take whatever action consistent with these rules is deemed proper. The MCLE Program Manager shall notify the member or sponsor in writing of the decision on review and the reasons therefor.

(b) Decisions of the MCLE Committee. If a decision of the MCLE Program Manager is initially reviewed by the MCLE Committee, the decision of the MCLE Committee may be reviewed by the BOG on written request of the affected active member or sponsor made within 21 days of the issuance of the MCLE Committee's decision. The decision of the BOG shall be final.

(c) Suspension Recommendation of the MCLE Program Manager. A recommendation for suspension pursuant to Rule 7.6 shall be subject to the following procedures:

(1) A copy of the MCLE Program Manager's recommendation to the Supreme Court that a member be suspended from membership in the bar shall be sent by regular mail and email to the member.

(2) If the recommendation of the MCLE Program Manager is approved, the court shall enter its order and an effective date for the member's suspension shall be stated therein.

8.2 Reinstatement. An active member suspended for noncompliance with the MCLE requirement shall be reinstated only upon completion of the MCLE requirement, submission of a completed compliance report to the bar, payment of the late filing and reinstatement fees, and compliance with the applicable provisions of the Rules of Procedure.

Regulations to MCLE Rule 8 Review and Enforcement

8.100 Review Procedure.

(a) The MCLE Program Manager shall notify the active member or sponsor of the date, time and place of the BOG or MCLE Committee meeting at which the request for review will be considered. Such notice must be sent no later than 14 days prior to such meeting. If the request for review is received less than 14 days before the next regularly scheduled meeting, the request will be considered at the following regularly scheduled meeting of the BOG or MCLE Committee, unless the member or sponsor waives the 14 day notice.

(b) A hearing before the MCLE Committee may be recorded at the request of the active member or sponsor or the MCLE Committee. In such event, the party requesting that the matter be recorded shall bear the expense of such recording. The other party shall be entitled to a copy of the record of the proceedings at their own expense.

(c) The MCLE Program Manager shall notify the active member or sponsor of the decision and the reasons therefor within 28 days of the date of the review. A decision of the MCLE Committee shall be subject to BOG review as provided in Rule 8.1.

Rule Nine Exemptions, Deferrals, and Waivers

(a) Exemptions from MCLE Requirements

(1) A member who is in Inactive, Retired or Active Pro Bono status pursuant to OSB Bylaw 6.101 is exempt from compliance with these Rules.

(2) A member serving as Governor, Secretary of State, Commissioner of the Bureau of Labor and Industries, Treasurer, or Attorney General during all or part of a reporting period must complete the minimum credit requirements in the categories of ethics, access to justice, and abuse reporting ~~during the reporting periods set forth in MCLE Regulation 3.300(d)~~. Such a member is otherwise exempt from any other credit requirements during the reporting period in which the member serves.

(3) A new lawyer who has practiced law in another jurisdiction for two years or more upon admission to the Oregon State Bar is exempt from the NLMP requirements.

(4) The MCLE Program Manager may grant any other exemption from the NLMP Requirements with the consent of the NLMP Coordinator, for good cause shown.

(b) Deferral of NLMP Requirements

(1) A new lawyer whose principal office on file with the bar, pursuant to the Bar Rules of Procedure, is outside the State of Oregon is temporarily deferred from the NLMP requirements. A New lawyer whose principal office remains outside the State of Oregon for two years or more is exempt from the NLMP requirements.

(2) The following members are eligible for a temporary deferral from the NLMP requirements upon written request to the NLMP Coordinator:

- (i) A new member who is not engaged in the practice of law; and
- (ii) A new member serving as a judicial clerk.

(3) The NLMP Coordinator may otherwise approve a deferral for good cause shown. Such a deferral is subject to continued approval of the NLMP Coordinator.

(c) Expiration or termination of NLMP deferral

(1) A new lawyer who ceases to qualify for a deferral under section (b) must notify the NLMP Coordinator and enroll in the NLMP within 28 days of the change in circumstance that led to the deferral.

(d) Other Waiver, Exemption, Delayed or Substitute Compliance

(1) Upon written request of a member or sponsor, the MCLE Program Manager may waive, grant exemption from, or permit substitute or delayed compliance with any requirement of these Rules. The request shall state the reason for the waiver or exemption and shall describe a continuing legal education plan tailored to the particular circumstances of the requestor. The MCLE Program Manager may grant a request upon a finding that

(i) hardship or other special circumstances makes compliance impossible or inordinately difficult, or

(ii) the requested waiver, exemption, or substitute or delayed compliance is not inconsistent with the purposes of these Rules.

(2) If a new lawyer seeks approval of an exemption, or delayed or substitute compliance with the NLMP requirements, both the MCLE Coordinator and the NLMP Coordinator must approve the request.

**Regulations to MCLE Rule 9
Exemptions, Deferrals, and Waivers**

9.100 Waivers and Exemptions. The MCLE Program Manager will consider requests for waivers and

exemptions from the MCLE Rules and Regulations on a case by case basis.

9.200 NLMP Accreditation Fee Exemption. Any new lawyer participant who earns \$65,000 or less annually and whose employer will not pay the fee is exempt from payment of the accreditation fee provided in Regulation 4.600.

Rule Ten Amendment

These Rules may be amended by the BOG subject to approval by the Supreme Court. Amendments may be proposed by the MCLE Committee, the executive director, or an active member. Proposed amendments shall be submitted and considered in compliance with any regulations adopted by the BOG.

Rules of Procedure

(As approved by the Supreme Court by order dated February 9, 1984 and as amended by Supreme Court orders dated April 18, 1984, May 31, 1984, July 16, 1984, July 27, 1984, November 1, 1984, June 25, 1985, July 8, 1985, July 22, 1985, November 29, 1985, January 2, 1986, January 24, 1986, March 20, 1986, September 10, 1986, June 30, 1987, September 24, 1987, October 1, 1987, November 10, 1987, November 24, 1987, December 10, 1987, January 5, 1988, February 22, 1988, February 23, 1988, July 8, 1988, March 13, 1989, March 31, 1989, June 1, 1989, March 20, 1990, October 1, 1990, January 10, 1991, April 4, 1991, July 22, 1991, August 2, 1991, January 17, 1992, December 22, 1992, June 29, 1993, December 13, 1993, December 28, 1993, October 10, 1994, May 15, 1995, November 6, 1995, December 14, 1995, September 30, 1996, June 5, 1997; August 19, 1997, effective October 4, 1997; October 3, 1997; July 10, 1998; November 30, 1999; February 5, 2001; June 28, 2001; September 6, 2001; June 17, 2003, effective July 1, 2003; July 9, 2003, effective August 1, 2003; June 17, 2003, effective, January 1, 2004; December 8, 2003, effective January 1, 2004; December 9, 2004, effective January 1, 2005; January 21, 2005; April 26, 2007; August 29, 2007; January 17, 2008; March 20, 2008; October 19, 2009; January 1, 2011; December 10, 2010, effective June 1, 2011; July 21, 2011; June 6, 2012; April 5, 2013; August 13, 2013, effective November 1, 2013; August 10, 2015; May 3, 2017, effective January 1, 2018; May 22, 2019, effective September 1, 2019; October 27, 2019, effective December 1, 2019; January 9, 2020, effective January 15, 2020; October 15, 2020, effective November 14, 2020; December 8, 2020; January 26, 2021.)

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Title 1 — General Provisions

Rule 1.1 Definitions.

In these rules, unless the context or subject matter requires otherwise:

- (a) “Adjudicator” means the Disciplinary Board statewide adjudicator, one or more of whom is appointed by the Supreme Court to chair all trial panels and any attorney appointed to serve in the Adjudicator’s role in a particular proceeding pursuant to BR 2.4(e)(14) or BR 2.4(f)(2).
- (b) “Applicant” means an applicant for reinstatement to the practice of law in Oregon.
- (c) “Attorney” means a person who has been admitted to the practice of law in Oregon.
- (d) “Bar” means Oregon State Bar created by the Bar Act.
- (e) “Bar Act” means ORS Chapter 9.
- (f) “Bar Counsel” means counsel appointed by the SPRB or the Board to represent the Bar.
- (g) “BBX” means Board of Bar Examiners appointed by the Supreme Court.
- (h) “Board” means Board of Governors of the Bar.
- (i) “Chief Executive Officer” means the chief administrative employee of the Bar.
- (j) “Client Assistance Office” means a department of the Bar that reviews and responds to inquiries from the public about the conduct of attorneys [and LPs](#).
- (k) “Complainant” means the person who inquires about the conduct of an attorney [or LP](#) through the Client Assistance Office.
- (l) “Contested Admission” means a proceeding in which the BBX is objecting to the admission of an applicant to the practice of law after a character review proceeding.

(m) “Contested Reinstatement” means a proceeding in which the Bar is objecting to the reinstatement of an attorney or a former attorney or LP or former LP to the practice of law.

(n) “Disciplinary Board” means the board appointed by the Supreme Court to hear and decide disciplinary and contested reinstatement proceedings pursuant to these rules.

(o) “Disciplinary Board Clerk” means the person or persons designated in General Counsel’s Office of the Bar to receive and maintain records of disciplinary and reinstatement proceedings on behalf of the Disciplinary Board.

(p) “Disciplinary Counsel” means disciplinary counsel retained or employed by, and in the office of, the Bar and shall include such assistants as are from time to time employed by the Bar to assist disciplinary counsel.

(q) “Disciplinary proceeding” means a proceeding in which the Bar is charging an attorney or LP with misconduct in a formal complaint.

(r) “Examiner” means a member of the BBX.

(s) “Formal complaint” means the document that initiates a formal lawyer or LP discipline proceeding alleging misconduct and violations of disciplinary rules or statutory provisions.

(t) “General Counsel” means the General Counsel of the Bar.

(u) “Grievance” means an instance of alleged misconduct by an attorney or LP that may be investigated by Disciplinary Counsel.

(v) “Inquiry” means a communication received by the Client Assistance Office pertaining to an attorney or LP that may or may not allege professional misconduct.

(w) “Licensed Paralegal” or “LP” means a person who has been admitted to practice in Oregon under a Licensed Paralegal license.

~~(xw)~~ “Misconduct” means any conduct which may or does subject an attorney or LP to discipline under the Bar Act or the rules of professional conduct adopted by the Supreme Court.

~~(yx)~~ “Regulatory Counsel” means regulatory counsel retained or employed by, and in the office of, the Bar and shall include such assistants as are from time to time employed by the Bar to assist regulatory counsel.

~~(zy)~~ “Respondent” means an attorney or LP who is charged with misconduct by the Bar in a formal complaint or who is the subject of proceedings initiated pursuant to BR 3.1, BR 3.2, BR 3.3, BR 3.4, or BR 3.5.

~~(aaz)~~ “State Court Administrator” means the person who holds the office created pursuant to ORS 8.110.

~~(bbaa)~~ “Supreme Court” and “court” mean the Oregon Supreme Court.

~~(ccbb)~~ “SPRB” means State Professional Responsibility Board appointed by the Supreme Court.

~~(ddee)~~ “Trial Panel” means a three-member panel of the Disciplinary Board.

~~(eeed)~~ “Unlawful Practice of Law Committee” means the committee appointed by the Supreme Court to carry out the committee’s functions on behalf of the Bar pursuant to ORS 9.164.

(Rule 1.1 amended by Order dated November 10, 1987.)

(Rule 1.1(c) amended by Order dated February 23, 1988.)

(Rule 1.1(i) and (k) amended by Order dated July 22, 1991.)

(Rule 1.1(l) through (w) amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 1.1(b) and (i) amended by Order dated October 19, 2009.)

(Former Rule 1.1(a), (p), and (r) deleted; former Rule 1.1(i), (j), (k), (l), (m), (n), (o), (q), (s), (t), (u), (v), and (w) redesignated as Rule 1.1(l), (m), (n), (o), (p), (q), (r), (s), (w), (y), (z), (aa), and (bb); Rule 1.1(q), (s), (z), and (aa) amended; Rule 1.1(a), (i), (j), (k), (x), and (cc) added by Order dated May 3, 2017, effective January 1, 2018.)
(Rule 1.1(a) amended by Order dated May 22, 2019, effective September 1, 2019.)
(Rule 1.1(x) added and Rule 1.1 (y), (z), (aa), (bb), and (cc) redesignated as Rule 1.1(y), (z), (aa), (bb), (cc), and (dd) by Order dated December 8, 2020.)

Rule 1.2 Authority.

These “Rules of Procedure” are adopted by the Board and approved by the Supreme Court pursuant to ORS 9.005(8) and ORS 9.542, and govern exclusively the proceedings contemplated in these rules except to the extent that specific reference is made herein to other rules or statutes. These rules may be amended or repealed and new rules may be adopted by the Board at any regular meeting or at any special meeting called for that purpose. No amendment, repeal or new rule shall become effective until approved by the Supreme Court.

(Rule 1.2 amended by Order dated June 5, 1997, effective July 1, 1997.)
(Rule 1.2 amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 1.3 Nature Of Proceedings.

Disciplinary and contested reinstatement proceedings are neither civil nor criminal in nature but are sui generis, and are designed as the means to determine whether an attorney or LP should be disciplined for misconduct, or whether an applicant’s conduct should preclude the applicant from being reinstated to membership in the Bar.

(Rule 1.3 amended by Order dated October 19, 2009.)

Rule 1.4 Jurisdiction; Choice of Law.

(a) Jurisdiction. An attorney admitted to the practice of law in Oregon, and any attorney specially admitted by a court or agency in Oregon for a particular case, is subject to the Bar Act and these rules, regardless of where the attorney’s conduct occurs. An LP is subject to these rules regardless of where the LP’s conduct occurred. The Supreme Court’s jurisdiction over matters involving the practice of law by an attorney or an LP shall continue whether or not the attorney or LP retains the authority to practice law in Oregon, and regardless of the residence of the attorney or LP. An attorney may be subject to the disciplinary authority of both Oregon and another jurisdiction in which the attorney is admitted for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of Oregon, the rules of professional conduct to be applied shall be as follows:

(1) For conduct in connection with a proceeding in a court before which an attorney or LP has been admitted to practice, either generally or for purposes of that proceeding, the rules to be applied shall be the rules of the jurisdiction in which the court sits, unless the rules of the court provide otherwise; and

(2) For any other conduct,

(A) If the attorney is licensed to practice only in Oregon, the rules to be applied shall be the Oregon Code of Professional Responsibility and the Bar Act; and

(B) If the attorney is licensed to practice in Oregon and another jurisdiction, the rules to be applied shall be the rules of the jurisdiction in which the attorney principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the attorney is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

(c) Application. The provisions of BR 1.4 apply to conduct occurring on or before December 31, 2004. Conduct occurring on or after January 1, 2005, by an attorney or an LP is governed by Rule of Professional Conduct 8.5.

(Rule 1.4 amended by Order dated September 30, 1996.)

(Rule 1.4(c) added by Order dated April 26, 2007.)

(Rule 1.4(c) amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 1.5 Effective Date.

(a) These rules apply to all disciplinary and contested reinstatement proceedings initiated by the service of a formal complaint or statement of objections on a respondent or an applicant on or after January 1, 1984.

(b) The provisions of BR 1.5(a) apply except to the extent that in the opinion of the Supreme Court their application in a particular matter or proceeding would not be feasible or would work an injustice. In that event, the former or current rule most consistent with the fair and expeditious resolution of the matter or proceeding under consideration shall be applied.

(Rule 1.5(a) amended by Order dated July 22, 1991.)

(Rule 1.5(a) amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 1.5(a) and (b) amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 1.6 Citation Of Rules.

These Rules of Procedure may be referred to as Bar Rules and cited, for example, as BR 1.1(a).

Rule 1.7 Bar Records.

(a) Property of Bar. The records of the Bar and of its officers, governors, employees and committees, in contested admission, disciplinary and reinstatement proceedings are the property of the Bar.

(b) Public Records Status. Except as exempt or protected by law from disclosure, the records of the Bar relating to contested admission, disciplinary, and reinstatement proceedings are available for public inspection.

Rule 1.8 Service Methods.

(a) Except as provided in Rule 4.2 and Rule 8.9, any pleading or document required under these rules to be served on a respondent, applicant, ~~or attorney~~, or LP shall be

(1) sent to the respondent, applicant, ~~or attorney~~, or LP, ~~or~~ his or her attorney if the respondent, applicant, ~~or attorney~~, or LP is represented, by first class mail addressed to the intended recipient at the recipient's last designated business or residence address on file with the Bar, or

(2) served on the respondent, applicant, ~~or attorney~~, or LP by personal or office service as provided in ORCP 7 D(2)(a)-(c).

(b) Any pleading or document required under these rules to be served on the Bar shall be sent by first class mail addressed to Disciplinary Counsel at the Bar's business address or served by personal or office service as provided in ORCP 7 D(2)(a)-(c).

(c) A copy of any pleading or document served on Bar Disciplinary Counsel shall also be provided to Bar Counsel, if one has been appointed, by first class mail addressed to his or her last designated business address on file with the Bar or by personal or office service as provided in ORCP 7 D(2)(a)-(c).

(d) Service by mail shall be complete on deposit in the mail except as provided in BR 1.12.

(e) The parties may by mutual agreement serve any document other than the formal complaint and answer by email delivery to the email address identified in the Bar's membership records for the respondent, applicant, ~~or attorney~~, or LP, or his or her attorney if represented.

(Rule 1.8 amended by Order dated June 30, 1987.)

(Rule 1.8(a) amended by Order dated February 23, 1988.)

(Rule 1.8(a), (b) and (c) amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 1.8(d) amended by Order dated April 26, 2007.)

(Rule 1.8(a) amended by Order dated August 12, 2013, effective November 1, 2013.)

(Rule 1.8(a), (b), (c) amended; Rule 1.8(e) added by Order dated May 3, 2017, effective January 1, 2018.)

Rule 1.9 Time.

In computing any period of time prescribed or allowed by these rules, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday or legal holiday. As used in this rule, "legal holiday" means legal holiday as defined in ORS 187.010 and ORS 187.020.

(Rule 1.9 amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 1.10 Filing.

(a) Any pleading or document to be filed with the Disciplinary Board Clerk shall be delivered in person to the Disciplinary Board Clerk, Oregon State Bar, 16037 S.W. Upper Boones Ferry Road, Tigard, Oregon 97224, or by mail to the Disciplinary Board Clerk, Oregon State Bar, P. O. Box 231935, Tigard, Oregon 97281-1935. Any pleading or document to be filed with the Supreme Court shall be delivered to the State Court Administrator, Appellate Courts Records Section, 1163 State Street, Salem, Oregon 97301-2563, consistently with the requirements of the Oregon Rules of Appellate Procedure, including Chapter 16 (filing and service by electronic means). Any pleading or document to be filed with the Adjudicator or a regional chair shall be delivered to the intended recipient at his or her last designated business or residence address on file with the Bar.

(b) Filing by mail is complete on deposit in the mail in the following circumstances: All pleadings or documents, including requests for review, required to be filed within a prescribed time, if mailed on or before the due date by first class mail through the United States Postal Service.

(c) If filing is not done as provided in subsection (b) of this rule, the filing is not timely unless the pleading or document is actually received by the intended recipient within the time fixed for filing.

(d) A copy of any pleading or document filed under these Rules must also be served by the party or attorney delivering it on other parties to the case. All service copies must include a certificate showing the date of filing. "Parties" for the purposes of this rule shall be the respondent or applicant, or his or her attorney if represented; Disciplinary Counsel; and Bar Counsel, if any.

(e) Proof of service shall appear on or be affixed to any pleading or document filed. Such proof shall be either an acknowledgement of service by the person served or be in the form of a statement of the date of personal delivery or deposit in the mail and the names and addresses of the persons served, certified by the person who has made service.

(Rule 1.10 amended by Order dated June 30, 1987.)

(Rule 1.10(d) amended by Order dated February 23, 1988.)

(Rule 1.10(d) amended by Order dated February 5, 2001.)

(Rule 1.10(a), (b), (d) and (e) amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 1.10(a) amended by Order dated April 26, 2007.)

(Rule 1.10(a) amended by Order dated March 20, 2008.)

(Rule 1.10(f) added by Order dated October 19, 2009.)

(Rule 1.10(a), (b), (c), (d) amended; Rule 1.10(f) deleted by Order dated May 3, 2017, effective January 1, 2018.)

Rule 1.11 Designation of Contact Information.

(a) All attorneys [and LPs](#) must designate, on a form approved by the Bar, a current business address and telephone number, or if no business address is available, a post office or residential address and telephone number. A post office address designation must be accompanied by the county and state in which the lawyer [or LP](#) is geographically located.

(b) All attorneys [and LPs](#) must also designate an e-mail address for receipt of bar notices and correspondence except (i) attorneys [and LPs](#) whose status is retired and (ii) attorneys [and LPs](#) for whom reasonable accommodation is required by applicable law.

(c) An attorney [or LP](#) seeking an exemption from the e-mail address requirement in paragraph (b)(ii) must submit a written request to the Chief Executive Officer, whose decision on the request will be final.

(d) It is the duty of all attorneys [and LPs](#) promptly to notify the Bar in writing of any change in his or her contact information. A new designation is not effective until actually received by the Bar.

(Rule 1.11 amended by Order dated April 18, 1984, effective June 1, 1984. Amended by Order dated June 30, 1987.)

(Rule 1.11(a) and (b) amended by Order dated August 23, 2010, effective January 1, 2011.)

(Rule 1.11(a) amended, (b) and (c) added and former (b) now (d) redesignated by Order dated July 21, 2011.)

(Rule 1.11(a), (b), (c), and (d) amended by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 1.11(a) amended by Order dated January 26, 2021.)

Rule 1.12 Service Of Bar Pleadings Or Documents on Out-of-State Attorney [or LP](#).

(a) If an attorney [or LP](#), pursuant to BR 1.11, has designated an address that is not located within the State of Oregon, a formal complaint filed under BR 4.1 or a statement of objections filed under BR 8.9 may be:

(1) personally served upon the attorney [or LP](#); or

(2) served on the attorney [or LP](#) by certified mail, return receipt requested, to the attorney's [or LP's](#) last designated address on file with the Bar, in which case service shall be complete on the date on which the attorney [or LP](#) signs a receipt for the mailing.

(b) If service under either BR 1.12(a)(1) or BR 1.12(a)(2) is attempted but cannot be completed, a formal complaint or a statement of objections may be served on the attorney [or LP](#) by first class mail to the attorney's [or LP's](#) last designated address on file with the Bar, in which case service shall be complete seven days after such mailing. Proof of such service by mail shall be by certificate showing the date of deposit in the mail.

(c) Service of all other pleadings or documents on an attorney [or LP](#) who has designated an address that is not located within the State of Oregon shall comply with BR 1.8(a).

(Rule 1.12 amended by Order dated April 18, 1984, effective June 1, 1984. Amended by Order dated June 30, 1987.)

(Rule 1.12 amended by Order dated April 26, 2007.)

(Rule 1.12(a) and (c) amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 1.13 Electronic Signature and Submission.

(a) For purposes of this rule, "Form" means only a form made available by the Bar on its website for electronic submission to the Bar through the Bar's website and "filer" means the attorney using the Form and self-identified in the completed Form.

(b) As to any Form obtainable or accessible only by means of a login, the use of a filer's login constitutes the signature of the filer for purposes of these rules and for any other purpose for which a signature is required. In

lieu of a signature, the document shall include an electronic symbol intended to substitute for the signature, such as a scan of the filer's handwritten signature or a signature block that includes the typed name of the filer preceded by an "s" in the space where the signature would otherwise appear. Example of a signature block with "s/":

s/ Jane Q. Attorney [or LP](#)
 JANE Q. ATTORNEY [or LP](#)
 OSB # _____
 Email address _____

(c) When a Form requires a signature under penalty of perjury, in addition to signing and submitting the Form electronically, the filer shall sign a printed version of the Form and retain the signed Form in its original paper form for no less 30 days.

(d) An attorney [or LP](#) may submit a Form through the Bar's website at any time, except when the Bar's electronic filing system is temporarily unavailable.

(e) Filing a Form pursuant to this rule shall be deemed complete at the time of electronic submission.

(Rule 1.13 added by Order dated May 3, 2017, effective January 1, 2018.)

Title 2 — Structure And Duties

Rule 2.1 Qualifications of Counsel.

(a) Definition of Respondent. Notwithstanding BR 1.1(a), for the purposes of this rule, "respondent" means an attorney [or LP](#) who is the subject of an allegation of misconduct that is under investigation by the Bar, or who has been charged with misconduct by the Bar in a formal complaint.

(b) Bar Counsel. Any attorney admitted to practice law at least three years in Oregon may serve as Bar Counsel unless the attorney:

- (1) currently represents any respondent or applicant;
- (2) is a current member of the Disciplinary Board or has a firm member currently serving on the Disciplinary Board;
- (3) served as a member of the Disciplinary Board at a time when the formal complaint against the respondent was filed.

(c) Counsel for Respondent. Any attorney admitted to practice law in Oregon may represent a respondent unless the attorney:

- (1) is a current member of the Board or the SPRB;
- (2) served as a member of the Board or the SPRB at a time when the allegations about which the respondent seeks representation were under investigation by the Bar or were authorized to be charged in a formal complaint;
- (3) currently is serving as Bar Counsel;
- (4) is a current member of the Disciplinary Board or has a firm member currently serving on the Disciplinary Board;
- (5) served as a member of the Disciplinary Board at a time when the formal complaint against the respondent was filed.

(d) Counsel for Applicant. Any attorney admitted to practice law in Oregon may represent an applicant unless the attorney:

- (1) is a current member of the Board, the BBX, or the SPRB;
- (2) served as a member of the Board, the BBX, or the SPRB at a time when the investigation of the reinstatement application was conducted by the Bar;
- (3) currently is serving as Bar Counsel;
- (4) is a current member of the Disciplinary Board or has a firm member currently serving on the Disciplinary Board;
- (5) served as a member of the Disciplinary Board at a time when the statement of objections against the applicant was filed.

(e) Vicarious Disqualification. The disqualifications contained in BR 2.1(b), (c), and (d) also apply to firm members of the disqualified attorney's firm.

(f) Exceptions to Vicarious Disqualification.

- (1) Notwithstanding BR 2.1(b), (c), and (d), an attorney may serve as Bar Counsel or represent a respondent or applicant even though a firm member is currently serving on the Disciplinary Board, provided the firm member recuses himself or herself from participation as a trial panel member or regional chairperson in any matter in which a member of the firm is Bar Counsel or counsel for a respondent or applicant.
- (2) Subject to the provisions of RPC 1.7, and notwithstanding the provisions of BR 2.1(b), (c), and (d), an attorney may serve as Bar Counsel or represent a respondent or applicant even though a firm member is currently serving as Bar Counsel or representing a respondent or applicant, provided firm members are not opposing counsel in the same proceeding.
- (3) Notwithstanding BR 2.1(b), (c), and (d), an attorney in a Board member's firm may represent a respondent provided the Board member is screened from any form of participation or representation in the matter. To ensure such screening:
 - (A) The Board member shall prepare and file an affidavit with the Chief Executive Officer attesting that, during the period his or her firm is representing a respondent, the Board member will not participate in any manner in the matter or the representation and will not discuss the matter or representation with any other firm member;
 - (B) The Board member's firm shall also prepare and file an affidavit with the Chief Executive Officer attesting that all firm members are aware of the requirement that the Board member be screened from participation in or discussion of the matter or representation;
 - (C) The Board member and firm shall also prepare, at the request of the Chief Executive Officer, a compliance affidavit describing the Board member's and the firm's actual compliance with these undertakings;
 - (D) The affidavits required under subsections (A) and (B) of this rule shall be filed with the Chief Executive Officer no later than 14 days following the acceptance by a Board member's firm of a respondent as a client, or the date the Board member becomes a member of the Board.

(g) Investigators. Disciplinary Counsel may, from time to time, appoint a suitable person, or persons, to act as an investigator, or investigators, for the Bar with respect to grievances, allegations, or instances of alleged misconduct by attorneys [or LPs](#), and matters of reinstatement of attorneys [or LPs](#). Such investigator or investigators shall perform such duties in relation thereto as may be required by Disciplinary Counsel.

(Rule 2.1(b) amended by Order dated May 31, 1984, July 27, 1984, nunc pro tunc May 31, 1984.)

(Rule 2.1 amended by Order dated June 30, 1987.)

(Rule 2.1 amended by Order dated October 1, 1990.)

(Rule 2.1(d) amended by Order dated November 6, 1995.)

(Rule 2.1 deleted and new Rule 2.1 added by Order dated October 3, 1997.)

(Rule 2.1(f)(2) amended by Order dated April 26, 2007.)

(Rule 2.1(d)(2), 2.1(f)(3), 2.1(f)(3)(A), and 2.1(f)(3)(D) amended by Order dated October 19, 2009.)

(Former Rule 2.1(c)(3) and 2.1(c)(4) deleted; former Rule 2.1(c)(5), 2.1(c)(6), and 2.1(c)(7) redesignated Rule 2.1(c)(3), 2.1(c)(4), and 2.1(c)(5); Rule 2.1(a), 2.1(b)(1), 2.1(b)(2), 2.1(b)(3), 2.1(c), 2.1(c)(2), 2.1(c)(3), 2.1(c)(4), 2.1(c)(5), 2.1(d)(4), 2.1(e), 2.1(f)(1), 2.1(f)(2), 2.1(f)(3), 2.1(f)(3)(A), 2.1(f)(3)(B), 2.1(f)(3)(C), and 2.1(f)(3)(D) amended; and Rule 2.1(g) added by Order dated May 3, 2017, effective January 1, 2018.)

Rule 2.2 Disciplinary Counsel.

(a) Appointment. Disciplinary Counsel is retained and employed by the Bar.

(b) Duties.

(1) Disciplinary Counsel shall review and investigate, as appropriate, allegations or instances of alleged misconduct on the part of attorneys [or LPs](#), including grievances referred by the Client Assistance Office or the General Counsel and matters arising out of notifications from financial institutions that an instrument drawn against an attorney's [or LP's](#) Lawyer Trust Account has been dishonored. Disciplinary Counsel may initiate investigation of the conduct of an attorney [or LP](#) in the absence of receipt of a grievance referred by the Client Assistance Office based upon reasonable belief that misconduct has occurred, that an attorney [or LP](#) is disabled from continuing to practice law, or that an attorney [or LP](#) has abandoned a law practice or died leaving no attorney [or LP](#) who has undertaken the responsibility of either managing or winding down the law practice.

(2) Disciplinary Counsel has authority to issue and seek the enforcement of subpoenas to compel the attendance of witnesses, including the attorney [or LP](#) being investigated, and the production of books, papers, documents, and other records pertaining to the matter under investigation. Subpoenas issued pursuant to this rule may be enforced by application to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.

(3) For those grievances not dismissed pursuant to BR 2.6(b), Disciplinary Counsel may, in its discretion, offer diversion pursuant to BR 2.10.

(4) Disciplinary Counsel shall provide advice and counsel to the SPRB on the disposition of all grievances neither dismissed pursuant to BR 2.6(b) nor resolved by diversion pursuant to BR 2.10.

(5) Disciplinary Counsel shall seek, as appropriate, relief provided for in BR 3.1, 3.2, 3.3, 3.4, and 3.5.

(6) Disciplinary Counsel shall prosecute formal proceedings as directed by the SPRB, including any review or other proceeding before the Supreme Court.

(7) Disciplinary Counsel shall represent the Bar in all contested reinstatement proceedings.

(8) Disciplinary Counsel shall represent the Bar before the court in all contested admission proceedings.

(Rule 2.2 amended by Order dated October 19, 2009.)

(Former Rule 2.2 deleted; current Rule 2.2 added by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 2.2(b)(2) amended by Order dated May 22, 2019, effective September 1, 2019.)

Rule 2.3 State Professional Responsibility Board.

(a) Appointment. Members of the SPRB are nominated by the Board and appointed by the Supreme Court. The SPRB shall be composed of eight resident attorneys and two members of the public who are not attorneys. Two attorney members shall be from Board Region 5 and one attorney member shall be from each of the remaining Board regions located within the state of Oregon. The public members shall be at-large appointees. Members of the SPRB shall be appointed for terms of not more than four years and shall serve not more than four years consecutively. Members are eligible for reappointment to a nonconsecutive term not to exceed four years. Each year the Board shall nominate and the court shall appoint one attorney member of the SPRB as chairperson. In the event the chairperson is unable to carry out any responsibility given to him or her by these rules, the chairperson may designate another attorney member of the SPRB to do so.

(b) Duties of SPRB. The SPRB shall supervise the investigation of grievances, allegations, or instances of alleged misconduct on the part of attorneys and LPs and act on such matters as it may deem appropriate. A grievance from a client or other aggrieved person shall not be a prerequisite to the investigation of alleged misconduct by attorneys or LPs or the institution of disciplinary proceedings against any attorney or LP.

(c) Authority.

(1) The SPRB has the authority to dismiss grievances, allegations, or instances of alleged misconduct against attorneys or LPs; refer matters to Disciplinary Counsel for further investigation; issue admonitions for misconduct; refer attorneys or LPs to the State Lawyers Assistance Committee; direct Disciplinary Counsel to institute disciplinary proceedings against any attorney or LP; or take other action within the discretion granted to the SPRB by these rules.

(2) The SPRB has the authority to adopt rules dealing with the handling of its affairs, subject to the Board's approval.

(d) Resignation and Replacement. The court may remove, at its discretion, or accept the resignation of, any officer or member of the SPRB and appoint a successor who shall serve the unexpired term of the member who is replaced.

(Rule 2.3(b)(3) amended by Order dated April 4, 1991, effective April 15, 1991.)

(Rule 2.3(b)(1) amended by Order dated April 4, 1991, effective October 7, 1991. Amended by Order dated June 5, 1997, effective July 1, 1997. Amended by Order dated February 5, 2001.)

(Rule 2.3(b)(1) amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 2.3(b)(3) amended by Order dated July 9, 2003, effective August 1, 2003.)

(Rule 2.3(a) amended by Order dated December 8, 2003, effective January 1, 2004.)

(Rule 2.3(b)(1) amended by Order dated August 23, 2010, effective January 1, 2011.)

(Former Rule 2.3(a)(1), 2.3(a)(2)(A), 2.3(a)(2)(B), 2.3(a)(2)(C), 2.3(a)(2)(D), 2.3(a)(2)(E), 2.3(a)(2)(F), 2.3(a)(3)(A), 2.3(a)(3)(B), 2.3(a)(3)(C), 2.3(b), 2.3(b)(3)(C), 2.3(b)(3)(D), and 2.3(b)(3)(E) deleted; former Rule 2.3(b)(1), 2.3(b)(2), 2.3(b)(3), 2.3(b)(3)(A), 2.3(b)(3)(B), and 2.3(c) redesignated as Rule 2.3(a), 2.3(b), 2.3(c), 2.3(c)(1), 2.3(c)(2), and 2.3(d) by Order dated May 3, 2017, effective January 1, 2018.)

Rule 2.4 Disciplinary Board.

(a) Composition. The Supreme Court appoints members of the Disciplinary Board. The Disciplinary Board shall consist of the Adjudicator, 7 regional chairpersons, and 6 additional members for each Board region located within the state of Oregon, except for Region 1 which shall have 9 additional members, Region 5 which shall have 23 additional members, Region 4 which shall have 10 additional members, and Region 6 which shall have 11 additional members. The regional chairpersons shall be attorneys. Each regional panel shall contain 2 members who are not attorneys, except for Region 1 which shall have appointed to it 3 members who are not attorneys, Region 5 which shall have appointed to it 8 members who are not attorneys, and Region 4 and Region 6 which shall have appointed to it 4 members who are not attorneys. The remaining members of the Disciplinary Board, including the Adjudicator, shall be resident attorneys admitted to practice in Oregon for at least 3 years. Except for the Adjudicator, members of each regional panel shall either maintain their principal

office within their respective region or maintain their residence therein. The members of each region shall constitute a regional panel. Trial panels shall consist of the Adjudicator, 1 additional attorney member, and 1 public member, except as provided in BR 2.4(f)(3).

(b) Term.

(1) The Adjudicator shall serve pursuant to appointment of the court. Disciplinary Board members other than the Adjudicator shall serve terms of 3 years and may be reappointed. Regional chairpersons shall serve in that capacity for terms of 1 year, subject to reappointment by the court.

(2) Notwithstanding BR 2.4(a) and 2.4(b)(1), the powers, jurisdiction and authority of Disciplinary Board members other than the Adjudicator shall continue beyond the expiration of their appointment or after their relocation to another region for the time required to complete the cases assigned to them during their term of appointment or prior to their relocation, and until a replacement appointment has been made by the court. The regional chairpersons shall serve until a replacement appointment has been made by the court.

(c) Resignation and Replacement. The court may remove, at its discretion, or accept the resignation of, any member of the Disciplinary Board and appoint a successor. Any person so appointed to serve in a position that has term shall serve the unexpired term of the member who is replaced.

(d) Disqualifications and Suspension of Service.

(1) The disqualifications contained in the Code of Judicial Conduct apply to members of the Disciplinary Board.

(2) The following individuals shall not serve on the Disciplinary Board:

(A) A member of the Board or the SPRB shall not serve on the Disciplinary Board during the member's term of office. This disqualification also precludes an attorney or public member from serving on the Disciplinary Board while any member of his or her firm is serving on the Board or the SPRB.

(B) No member of the Disciplinary Board shall sit on a trial panel with regard to a subject matter considered by the Board or the SPRB while he or she was a member thereof or with regard to subject matter considered by any member of his or her firm while a member of the Board or the SPRB.

(3) A member of the Disciplinary Board against whom charges of misconduct have been approved for filing by the SPRB is suspended from service on the Disciplinary Board until those charges have been resolved by final decision or order. If a Disciplinary Board member is suspended from the practice of law as a result of a final decision or order in a disciplinary proceeding, the member may not resume service on the Disciplinary Board until the member is once again authorized to practice law. For the purposes of this rule, charges of misconduct include authorization by the SPRB to file a formal complaint pursuant to BR 4.1, the determination by the SPRB to admonish an attorney pursuant to BR 2.6(c)(1)(B) or BR 2.6(d)(1)(B) which admonition is thereafter refused by the attorney, Disciplinary Counsel's notification to the court of a criminal conviction pursuant to BR 3.4(a), and Disciplinary Counsel's notification to the court of an attorney's discipline in another jurisdiction pursuant to BR 3.5(a).

(e) Duties of Adjudicator.

(1) The Adjudicator shall coordinate and supervise the activities of the Disciplinary Board.

(2) Unless disqualified after a challenge for cause pursuant to BR 2.4(g), the Adjudicator shall serve as trial panel chairperson for each trial panel adjudicating a formal proceeding, a contested reinstatement proceeding, or a proceeding brought pursuant to BR 3.5; and shall preside in every proceeding brought pursuant to BR 3.1 or 3.4. Upon the stipulation of the Bar and a respondent or applicant, the Adjudicator shall serve as the sole adjudicator in a disciplinary proceeding, a contested reinstatement proceeding, or a

proceeding brought pursuant to BR 3.5 and shall have the same duties and authority under these rules as a three-member trial panel. In the event the Adjudicator is disqualified or otherwise unavailable to serve as trial panel chairperson, the regional chairperson shall appoint another attorney member of the Disciplinary Board to serve on the trial panel, with all the duties and responsibilities as the Adjudicator as to that proceeding from the date of appointment forward.

(3) The Adjudicator shall rule on all motions for default filed pursuant to BR 5.8.

(4) The Adjudicator shall determine the timeliness of and, as appropriate, grant or deny peremptory challenges and resolve all challenges for cause to the qualifications of all trial panel members other than the Adjudicator appointed pursuant to BR 2.4(e)(2), BR 2.4(e)(9), and BR 2.4(f).

(5) Upon receipt of written notice from the Disciplinary Board Clerk of a Supreme Court referral pursuant to BR 8.8, the Adjudicator shall appoint an attorney member and a public member from an appropriate region to serve on the trial panel with the Adjudicator. The Adjudicator shall give written notice to Disciplinary Counsel, Bar Counsel, and the applicant of such appointments and a copy of the notice shall be filed with the Disciplinary Board Clerk.

(6) The Adjudicator shall appoint an attorney member of the Disciplinary Board to conduct prehearing conferences as provided in BR 4.6.

(7) The Adjudicator may appoint Disciplinary Board members from any region to conduct prehearing conferences pursuant to BR 4.6, to participate with the Adjudicator in a show cause hearing pursuant to BR 6.2(d), to serve on trial panels to resolve matters submitted to the Disciplinary Board for consideration by the court, or when an insufficient number of members is available within a region for a particular proceeding.

(8) Upon receiving notice from the Disciplinary Board Clerk of a regional chairperson's appointment of an attorney member and a public member pursuant to BR 2.4(f)(1), and upon determining that either no timely challenge pursuant to BR 2.4(g) was filed or that a timely-filed challenge pursuant to BR 2.4(g) has either been denied or resulted in the appointment of a substitute member or members, the Adjudicator shall promptly establish the date and time of hearing pursuant to BR 5.4 and notify, in writing, the Disciplinary Board Clerk and the parties of the date and place of hearing. The Disciplinary Board Clerk shall provide to the trial panel members a copy of the formal complaint or statement of objections and, if one has been filed, the answer of the respondent or applicant.

(9) The Adjudicator shall rule on all questions of procedure and discovery, including such questions that may arise prior to the filing of a formal complaint, except as specifically provided elsewhere in these rules. The Adjudicator may convene the parties or their counsel before the hearing, to discuss the parties' respective estimates of time necessary to present evidence, the availability and scheduling of witnesses, the preparation of trial exhibits, and other issues that may facilitate an efficient hearing. The Adjudicator may thereafter issue an order regarding agreements or rulings made at such prehearing meeting.

(10) The Adjudicator shall convene the trial panel hearing, oversee the orderly conduct of the same and timely file with the Disciplinary Board Clerk the written opinion of the trial panel. In all trial panels in which the Adjudicator is a member of the majority, the Adjudicator shall author the trial panel opinion.

(11) In matters involving final decisions of the Disciplinary Board under BR 10.1, the Adjudicator shall review statements of costs and disbursements and objections thereto and shall fix the amount of actual and necessary costs and disbursements to be recovered by the prevailing party.

(12) The Adjudicator shall preside in all matters involving the filing of a petition for suspension pursuant to BR 7.1.

(13) Upon appointment by the court, the Adjudicator shall perform the duties of the court set forth in BR 3.2.

(14) In the event of the Adjudicator's unavailability to perform the functions set forth above, and upon written request made by General Counsel, the regional chairperson shall exercise the duties and responsibilities of the Adjudicator during the Adjudicator's unavailability. The regional chairperson's authority under this subsection shall cease upon order of the Adjudicator or the court. Unavailability for the purposes of this rule means the Adjudicator has taken a planned leave of more than 14 days, or is unavailable because of death or then existing physical or mental illness or infirmity.

(f) Duties of Regional Chairperson.

(1) Upon receipt of written notice from Disciplinary Counsel pursuant to BR 4.1(f) or written notice from the Adjudicator pursuant to BR 3.5(g) or 5.8(a), the regional chairperson shall appoint an attorney member and a public member to serve with the Adjudicator on the trial panel from the members of the regional panel. The regional chairperson shall give written notice to Disciplinary Counsel, Bar Counsel, and the respondent of such appointments, and a copy of the notice shall be filed with the Disciplinary Board Clerk. In the event a member is disqualified pursuant to BR 2.4(g) or becomes unavailable to serve, the regional chairperson shall appoint a replacement member, giving written notice of such appointment as is given of initial appointments.

(2) The regional chairperson shall rule on all challenges for cause to the Adjudicator or to any attorney appointed to the role of Adjudicator pursuant to this paragraph brought pursuant to BR 2.4(g). In the event the Adjudicator is disqualified for cause or is otherwise unavailable to chair a trial panel, the regional chairperson shall appoint an attorney member from within the region to serve in place of the Adjudicator who has all the duties and responsibilities of the Adjudicator in that proceeding. In the event no attorney member from within the region is available to serve in place of the Adjudicator, the regional chairperson shall so notify the Disciplinary Board Clerk, who will ask another regional chairperson to appoint an attorney member pursuant to the authority granted the Adjudicator in BR 2.4(e)(9). The attorney member so appointed shall have all the duties and responsibilities of the Adjudicator in that proceeding.

(3) The regional chairperson may serve on trial panels during his or her term of office.

(4) Upon written request from the General Counsel pursuant to BR 2.4(e)(14), the regional chairperson shall exercise the duties and responsibilities of the Adjudicator until such authority is terminated by order of the Adjudicator or the court.

(g) Challenges. The Bar and a respondent or applicant shall be entitled to one peremptory challenge of either the attorney member who is not the Adjudicator or the public member. A peremptory challenge shall be timely if filed in writing within ten days following that member's appointment to the trial panel with the Disciplinary Board Clerk. A challenge for cause as may arise under the Code of Judicial Conduct may be filed by the Bar, the respondent, or an applicant as to any member of the trial panel. A challenge for cause shall state the reason for the challenge and is timely if filed in writing within ten days following the date of the member's appointment to the trial panel or the date the trial panel member discloses to the parties information raising a disqualification issue, whichever is later. For purposes of this paragraph, the Adjudicator is deemed appointed to the trial panel on the same date that the regional chairperson appoints the other two members of the trial panel pursuant to BR 2.4(f)(1). The written ruling on a challenge shall be filed with the Disciplinary Board Clerk, who shall send copies of the ruling to all parties. The Bar and a respondent or applicant may waive a disqualification of a member in the same manner as in the case of a judge under the Code of Judicial Conduct.

(h) Duties of Trial Panel.

(1) Trial. The trial panel to which a disciplinary or contested reinstatement proceeding has been referred has a duty to promptly try the issues.

(2)

(A) Opinions. The trial panel shall issue a written opinion identifying the concurring members of the trial panel. A dissenting member shall be identified and may file a dissenting opinion attached to the majority opinion. The majority opinion shall include specific findings of fact, conclusions of law, and a disposition. In any matter in which the Adjudicator is not a member of the majority, the other attorney member shall author the trial panel opinion. The Adjudicator shall file the original opinion with the Disciplinary Board Clerk, and the Disciplinary Board Clerk shall send copies to the parties. The opinion shall be filed within 28 days after the conclusion of the hearing, the settlement of the transcript if required under BR 5.3(e), or the filing of briefs if requested by the Adjudicator pursuant to BR 4.8, whichever is later.

(B) Extensions of Time to File Opinions. If the trial panel requires additional time to issue its opinion, the Adjudicator may so notify the parties, indicating the anticipated date by which an opinion shall be issued, not to exceed 90 days after the date originally due. If no opinion has been issued within 90 days after the date originally due, either party may file a motion with the Disciplinary Board, seeking issuance of an opinion. Upon the filing of such a motion, the Adjudicator shall enter an order establishing a date by which the opinion shall be issued, not to exceed 120 days after the date it was originally due. If no opinion has been issued by 120 days after the date originally due, either party may petition the court to enter an order compelling the Disciplinary Board to issue an opinion by a date certain.

(3) Record. The trial panel shall keep a record of all proceedings before it, including a transcript of the proceedings and exhibits offered and received, and shall promptly file the record with the Disciplinary Board Clerk, after the hearing concludes.

(4) Notice. The Disciplinary Board Clerk shall promptly notify the parties of receipt of the trial panel opinion.

(i) Publications.

(1) Disciplinary Counsel shall cause to be prepared, on a periodic basis, a reporter service containing the full text of all Disciplinary Board decisions not reviewed by the court.

(2) Disciplinary Counsel shall have printed in the Bar Bulletin, on a periodic basis, summaries of the court's disciplinary proceeding, contested admission, and contested reinstatement decisions, and summaries of all Disciplinary Board decisions not reviewed by the court.

(Rule 2.4(a) amended by Order dated January 2, 1986, further amended by Order dated January 24, 1986 effective January 2, 1986, nun pro tunc.)

(Rule 2.4(d)(2) amended by Order dated September 10, 1986, effective September 10, 1986.)

(Rules 2.1, 2.6, 2.7 and 2.8 amended by Order dated June 30, 1987.)

(Rule 2.4(j) amended by Order dated October 1, 1987, effective October 1, 1987.)

(Rule 2.4(f)(1) amended by Order dated February 22, 1988.)

(Rule 2.4(d), (h) and (i) amended by Order dated February 23, 1988.)

(Rule 2.4(e) amended by Order dated March 13, 1989, effective April 1, 1989, corrected June 1, 1989.)

(Rule 2.4(i)(3) amended by Order dated March 20, 1990, effective April 2, 1990.)

(Rule 2.4(a) amended by Order dated January 10, 1991.)

(Rule 2.4(d), (e) and (i) amended by Order dated July 22, 1991.)

(Rule 2.4(b) amended by Order dated December 22, 1992.)

(Rule 2.4(a), (e) and (f) amended by Order dated December 13, 1993.)

(Rule 2.4(i)(3) amended by Order dated June 5, 1997, effective July 1, 1997.)

(Rule 2.4 (a) amended by Order dated July 10, 1998.)

(Rule 2.4(e), (f), (g), (h), (i) and (j) amended by Order dated February 5, 2001.)

(Rule 2.4(b)(2) and (i)(2)(a) and (b) amended by Order dated June 28, 2001.)

(Rule 2.4(b)(1) and (2); (e)(4); (f)(1); (g); (h); and (i)(2)(a) and (b), (3) and (4) amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 2.4(d)(3) added by Order dated January 21, 2005.)

(Rule 2.4(b)(2) amended by Order dated April 26, 2007.)

(Rule 2.4(g) and 2.4(h) amended by Order dated October 19, 2009.)

(Rule 2.4(a) amended by Order dated August 23, 2010, effective January 1, 2011.)

(Rule 2.4(e)(8) added by Order dated August 12, 2013, effective November 1, 2013.)

(Former Rule 2.4(f)(3), 2.4(f)(5), and 2.4(h) deleted; former Rule 2.4(e)(3), 2.4(e)(4), 2.4(e)(5), 2.4(e)(6), 2.4(e)(7), 2.4(e)(8), 2.4(f)(4), 2.4(i), and 2.4(j) redesignated as Rule 2.4(e)(4), 2.4(e)(5), 2.4(e)(6), 2.4(e)(7), 2.4(e)(11), 2.4(e)(12), 2.4(f)(3), 2.4(h), and 2.4(i); Rule 2.4(a), 2.4(b)(1), 2.4(b)(2), 2.4(c), 2.4(d)(1), 2.4(d)(2)(A), 2.4(d)(2)(B), 2.4(d)(3), 2.4(e), 2.4(e)(1), 2.4(e)(2), 2.4(e)(4), 2.4(e)(5), 2.4(e)(6), 2.4(e)(7), 2.4(e)(11), 2.4(e)(12), 2.4(f)(1), 2.4(f)(2), 2.4(h)(1), 2.4(h)(2)(A), 2.4(h)(2)(B), 2.4(h)(3), 2.4(h)(4), 2.4(i)(1), and 2.4(i)(2) amended; Rule 2.4(e)(3), 2.4(e)(8), 2.4(e)(9), and 2.4(e)(10) added by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 2.4(e)(8) and 2.4(e)(9) amended; Rule 2.4(e)(13), 2.4(e)(14), and 2.4(f)(4) added by Order dated May 22, 2019, effective September 1, 2019.)

(Rule 2.4(a) amended by Order dated October 27, 2019, effective December 1, 2019.)

(Rule 2.4(a) amended by Order dated January 9, 2020, effective January 15, 2020.)

Rule 2.5 Intake and Review of Inquiries and Complaints by Client Assistance Office.

(a) Client Assistance Office. The Bar shall maintain a Client Assistance Office, separate from that of Disciplinary Counsel. The Client Assistance Office shall, to the extent possible and resources permitting, receive, review, and respond to all inquiries from the public concerning the conduct of attorneys and LPs and may refer inquirers to other resources. The Client Assistance Office will consider inquiries submitted in person, by telephone or by e-mail, ~~but~~ may require the complainant to submit the matter in writing before taking any action. The Client Assistance Office will determine the manner and extent of review required for the appropriate disposition of any inquiry.

(b) Disposition by Client Assistance Office.

(1) If the Client Assistance Office determines that, even if true, an inquiry does not allege misconduct, it shall dismiss the inquiry with written notice to the complainant and to the attorney or LP named in the inquiry.

(2) If the Client Assistance Office determines, after reviewing the inquiry and any other information deemed relevant, that there is sufficient evidence to support a reasonable belief that misconduct may have occurred, the inquiry shall be referred to Disciplinary Counsel as a grievance. Otherwise, the inquiry shall be dismissed with written notice to the complainant and the attorney or LP.

(3) The Client Assistance Office may, at the request of the complainant, contact the attorney or LP and attempt to assist the parties in resolving the complainant's concerns, but the provision of such assistance does not preclude a referral to Disciplinary Counsel of any matter brought to the attention of the Client Assistance Office.

(c) Review by General Counsel. Any inquiry dismissed by the Client Assistance Office may be reviewed by General Counsel upon written request of the complainant. General Counsel may request additional information from the complainant or the attorney or LP and, after review, shall either affirm the Client Assistance Office dismissal or refer the inquiry to Disciplinary Counsel as a grievance. General Counsel may affirm the dismissal by adopting the reasoning of the Client Assistance Office without additional discussion. The decision of General Counsel is final.

(Rule 2.5 amended by Order dated January 17, 1992.)

(Rule 2.5(g) amended by Order dated October 10, 1994.)

(Rule 2.5(c), (f), (g), and (h) amended by Order dated June 5, 1997, effective July 1, 1997.)

(Rule 2.5(a), (b), (c), (d), (f), (h) and (i) amended by Order dated February 5, 2001.)

(Rule 2.5(a) and (b) added and former Rule 2.5(b) through (i) renumbered 2.6 by Order dated July 9, 2003, effective August 1, 2003.)

(Rule 2.5(a) and (b) amended and 2.5(c) added by Order dated August 29, 2007.)

(Rule 2.5(a), 2.5(b)(1), 2.5(b)(2), and 2.5(c) amended by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 2.5(c) amended by Order dated May 22, 2019, effective September 1, 2019.)

Rule 2.6 Investigations

(a) Review of Grievance by Disciplinary Counsel.

(1) For grievances referred to Disciplinary Counsel by the Client Assistance Office pursuant to BR 2.5(a)(2), Disciplinary Counsel shall, within 14 days after receipt of the grievance, mail a copy of the grievance to the attorney [or LP](#), if the Client Assistance Office has not already done so, and notify the attorney [or LP](#) that he or she must respond to the grievance in writing to Disciplinary Counsel within 21 days of the date Disciplinary Counsel requests such a response. Disciplinary Counsel may grant an extension of time to respond for good cause shown upon the written request of the attorney [or LP](#). An attorney [or LP](#) need not respond to the grievance if he or she provided a response to the Client Assistance Office and is notified by Disciplinary Counsel that further information from the attorney [or LP](#) is not necessary.

(2) If the attorney [or LP](#) fails to respond to Disciplinary Counsel or to provide records requested by Disciplinary Counsel within the time allowed, Disciplinary Counsel may file a petition with the Disciplinary Board to suspend the attorney [or LP](#) from the practice of law, pursuant to the procedure set forth in BR 7.1. Notwithstanding the filing of a petition under this rule, Disciplinary Counsel may investigate the grievance.

(3) Disciplinary Counsel may, if appropriate, offer to enter into a diversion agreement with the attorney [or LP](#) pursuant to BR 2.10. If Disciplinary Counsel chooses not to offer a diversion agreement to the attorney [or LP](#) pursuant to BR 2.10 and does not dismiss the grievance pursuant to BR 2.6(b), Disciplinary Counsel shall refer the grievance to the SPRB at a scheduled meeting.

(b) Dismissal of Grievance by Disciplinary Counsel. If, after considering a grievance, the response of the attorney [or LP](#), and any additional information deemed relevant, Disciplinary Counsel determines that probable cause does not exist to believe misconduct has occurred, Disciplinary Counsel shall dismiss the grievance. Disciplinary Counsel shall notify the complainant and the attorney [or LP](#) of the dismissal in writing. A complainant may contest in writing the action taken by Disciplinary Counsel in dismissing his or her grievance, in which case Disciplinary Counsel shall submit a report on the grievance to the SPRB at a scheduled meeting. The SPRB shall thereafter take such action as it deems appropriate.

(c) Review of Grievance by SPRB.

(1) The SPRB shall evaluate a grievance based on the report of Disciplinary Counsel to determine whether probable cause exists to believe misconduct has occurred. The SPRB shall either dismiss the grievance, admonish the attorney [or LP](#), direct Disciplinary Counsel to file a formal complaint by the Bar against the attorney [or LP](#), or take action within the discretion granted to the SPRB by these rules.

(A) If the SPRB determines that probable cause does not exist to believe misconduct has occurred, the SPRB shall dismiss the grievance and Disciplinary Counsel shall notify the complainant and the attorney [or LP](#) of the dismissal in writing.

(B) If the SPRB determines that the attorney [or LP](#) should be admonished, Disciplinary Counsel shall so notify the attorney [or LP](#) within 14 days of the SPRB's meeting. If an attorney [or LP](#) refuses to accept the admonition within the time specified by Disciplinary Counsel, Disciplinary Counsel shall file a formal complaint against the attorney [or LP](#) on behalf of the bar. Disciplinary Counsel shall notify the complainant in writing of the admonition of the attorney [or LP](#).

(C) If the SPRB determines that the complaint should be investigated further, Disciplinary Counsel shall conduct the investigation and notify the complainant and the attorney [or LP](#) in writing of such action.

(d) Reconsideration; Discretion to Rescind.

(1) An SPRB decision to dismiss a grievance or allegation of misconduct against an attorney [or LP](#) shall not preclude reconsideration or further proceedings on such grievance or allegation, if evidence that is not available or submitted at the time of such dismissal justifies, in the judgment of not less than a majority of SPRB, such reconsideration or further proceedings.

(2) The SPRB may rescind a decision to file a formal complaint against an attorney [or LP](#) only when, to the satisfaction of a majority of the entire SPRB, good cause exists. Good cause is:

(A) new evidence that would have clearly affected the SPRB's decision to file a formal complaint; or

(B) legal authority, not known to the SPRB at the time of its last consideration of the matter, that establishes that the SPRB's decision to file a formal complaint was incorrect.

(e) Approval of Filing of Formal Complaint.

(1) If the SPRB determines that a formal complaint should be filed against an attorney [or LP](#), or if an attorney [or LP](#) rejects an admonition offered by the SPRB, Disciplinary Counsel may appoint Bar Counsel. Disciplinary Counsel shall notify the attorney [or LP](#) and the complainant in writing of such action.

(2) Notwithstanding an SPRB determination that probable cause exists to believe misconduct has occurred, the SPRB shall have the discretion to direct that the Bar take no further action on a grievance or allegation of misconduct if one or more of the following circumstances exist:

(A) the attorney [or LP](#) is no longer an active member of the Bar or is not engaged in the practice of law, and is required under BR 8.1 to demonstrate good moral character and general fitness to practice law before resuming active membership status or the practice of law in Oregon;

(B) other disciplinary proceedings are pending that are likely to result in the attorney's [or LP's](#) disbarment;

(C) other disciplinary charges are authorized or pending and the anticipated sanction, should the Bar prevail on those charges, is not likely to be affected by a finding of misconduct in the new matter or on an additional charge; or

(D) formal disciplinary proceedings are impractical in light of the circumstances or the likely outcome of the proceedings.

An exercise of discretion under this rule to take no further action on a grievance or allegation of misconduct shall not preclude further SPRB consideration or proceedings on such grievance or allegation in the future.

(3) Notwithstanding an SPRB determination that probable cause exists to believe misconduct has occurred, the SPRB shall have the discretion to dismiss a grievance or allegation of misconduct if the SPRB, considering the facts and circumstances as a whole, determines that dismissal would further the interests of justice and would not be harmful to the interests of clients or the public. Factors the SPRB may take into account in exercising that discretion include, but are not limited to:

(A) the attorney's [or LP's](#) mental state;

(B) whether the misconduct is an isolated event or part of a pattern of misconduct;

(C) the potential or actual injury caused by the attorney's [or LP's](#) misconduct;

(D) whether the attorney [or LP](#) fully cooperated in the investigation of the misconduct; and

(E) whether the attorney or LP previously was admonished or disciplined for misconduct.

Misconduct that adversely reflects on the attorney's or LP's honesty, trustworthiness, or fitness to practice law shall not be subject to dismissal under this rule.

(f) Investigation of Inquiries Involving Disciplinary Counsel, General Counsel, or other Bar agents. Inquiries that allege misconduct concerning Disciplinary Counsel or General Counsel of the Bar, or that Bar Counsel has engaged in misconduct while acting on the Bar's behalf, shall be referred to the chairperson of the SPRB within seven days of their receipt by the Bar.

(1) If the SPRB chairperson determines that probable cause does not exist to believe misconduct has occurred, the SPRB chairperson shall dismiss the inquiry and notify the parties of the dismissal in writing. A complainant may contest the dismissal in writing, in which case the matter shall be submitted to the SPRB at a scheduled meeting. The SPRB shall thereafter take such action as it deems appropriate.

(2) If the SPRB chairperson determines the inquiry should be investigated, the SPRB chairperson may appoint an investigator of his or her choice to investigate the matter and to report on the matter directly to the SPRB. The same procedure shall, as far as practicable, apply to the investigation of such grievances as apply to members of the Bar generally.

(Rule 2.6 amended and 2.6(g)(3) added by Order dated July 9, 2003, effective August 1, 2003.)

(Rule 2.6 amended by Order dated December 8, 2003, effective January 1, 2004.)

(Rule 2.6(g)(1) amended by Order dated March 20, 2008.)

(Rule 2.6(f)(2) amended by Order dated October 19, 2009.)

(Rule 2.6(a)(2) amended by Order dated August 12, 2013, effective November 1, 2013.)

(Former Rule 2.6(e), 2.6(f), and 2.6(g) redesignated as 2.6(d), 2.6(e), and 2.6(f); former Rule 2.6(d) deleted; Rule 2.6(a)(3), Rule 2.6(e)(2)(A), 2.6(e)(2)(B), 2.6(e)(2)(C), 2.6(e)(2)(D), 2.6(e)(3)(A), 2.6(e)(3)(B), 2.6(e)(3)(C), 2.6(e)(3)(D), and 2.6(e)(3)(E) added; and 2.6(a), 2.6(a)(1), 2.6(a)(2), 2.6(b), 2.6(c), 2.6(c)(1), 2.6(c)(1)(A), 2.6(c)(1)(B), 2.6(c)(1)(C), 2.6(d)(1), 2.6(d)(2), 2.6(d)(2)(A), 2.6(d)(2)(B), 2.6(e), 2.6(e)(1), 2.6(e)(2), 2.6(e)(2)(C), 2.6(e)(3), 2.6(e)(3)(D), 2.6(f), 2.6(f)(1), and 2.6(f)(2) amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 2.7 Investigations Of Alleged Misconduct Other Than By Inquiry.

Allegations or instances of alleged misconduct that are brought or come to the attention of the Bar other than through the receipt of a written inquiry shall be evaluated using the procedure specified in BR 2.6 except as that rule may be inapplicable due to the lack of a written grievance or a complainant with whom to communicate.

(Rule amended and renumbered by Order dated July 9, 2003, effective August 1, 2003.)

(Rule 2.7 amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 2.8 Proceedings Not To Stop On Compromise.

Neither unwillingness nor neglect of the complainant to pursue a grievance or to participate as a witness, nor settlement, compromise or restitution of any civil claim, shall, in and of itself, justify any failure to undertake or complete the investigation or the formal resolution of a disciplinary or contested reinstatement matter or proceeding.

(Rule 2.7 amended by Order dated July 22, 1991.)

(Rule renumbered by Order dated July 9, 2003, effective August 1, 2003.)

(Rule 2.8 amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 2.9 Requests For Information And Assistance.

The Bar may request a complainant or applicant to supply and disclose to the investigating authorities of the Bar all documentary and other evidence in his or her possession, and the names and addresses of witnesses

relating to his or her inquiry, and may otherwise request the complainant to assist such investigating authorities in obtaining evidence in support of the facts surrounding his or her inquiry.

(Rule renumbered by Order dated July 9, 2003, effective August 1, 2003.)

(Rule 2.9 amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 2.10 Diversion.

(a) Diversion Offered by Disciplinary Counsel. As an alternative to seeking authority from the SPRB to offer an attorney [or LP](#) an admonition or to file a formal complaint, Disciplinary Counsel may offer to the attorney [or LP](#) to divert a grievance on the condition that the attorney [or LP](#) enter into a diversion agreement in which the attorney [or LP](#) agrees to participate in a remedial program as set forth in the agreement. An attorney [or LP](#) does not have a right to have a grievance diverted under this rule.

(b) Diversion Eligibility. Disciplinary Counsel may consider diversion of a grievance if:

- (1) The misconduct does not involve the misappropriation of funds or property; fraud, dishonesty, deceit or misrepresentation; or the commission of a misdemeanor involving moral turpitude or a felony under Oregon law;
- (2) The misconduct appears to be the result of inadequate law office management, chemical dependency, a physical or mental health condition, negligence, or a lack of training, education or other similar circumstance; and
- (3) There appears to be a reasonable likelihood that the successful completion of a remedial program will prevent the recurrence of conduct by the attorney [or LP](#) similar to that under consideration for diversion.

(c) Offer of Diversion.

- (1) If, after investigation, Disciplinary Counsel determines that an attorney [or LP](#) may have committed misconduct and that the matter is appropriate for diversion under this rule, Disciplinary Counsel may offer a diversion agreement to the attorney [or LP](#). The attorney [or LP](#) has 30 days from the date diversion is offered to accept and enter into the diversion agreement. Disciplinary Counsel may grant an extension of time to the attorney [or LP](#) for good cause shown.
- (2) An attorney [or LP](#) may decline to enter into a diversion agreement, in which case Disciplinary Counsel shall refer the grievance to the SPRB for review pursuant to Rule 2.6.

(d) Diversion Agreement.

- (1) A diversion agreement shall require the attorney [or LP](#) to participate in a specified remedial program to address the apparent cause of the misconduct. Such a remedial program may include, but is not limited to: appointment of a diversion supervisor; assistance or training in law office management; chemical dependency treatment; counseling or peer support meetings; oversight by an experienced practicing attorney; voluntary limitation of areas of practice for the period of the diversion agreement; restitution; or a prescribed course of continuing legal education. The attorney [or LP](#) shall pay the costs of a remedial program.
- (2) A diversion agreement shall require the attorney [or LP](#) to stipulate to a set of facts concerning the complaint or allegation of misconduct being diverted and to agree that, in the event the attorney [or LP](#) fails to comply with the terms of the diversion agreement, the stipulated facts shall be deemed true in any subsequent disciplinary proceeding.
- (3) A diversion agreement may be amended at any time by agreement between Disciplinary Counsel and the attorney [or LP](#). Disciplinary Counsel is not obligated to amend a diversion agreement to incorporate

additional complaints or allegations of misconduct made against the attorney [or LP](#) subsequent to the date of the original agreement.

(4) The term of a diversion agreement shall be no more than 24 months following the date of the last amendment to the agreement.

(5) In a diversion agreement, the attorney [or LP](#) shall agree that a diversion supervisor, treatment provider or any other person to whom the attorney [or LP](#) has been referred pursuant to the remedial program specified in the agreement shall report to Disciplinary Counsel any failure by the attorney [or LP](#) to comply with the terms of the agreement.

(6) If a diversion agreement is entered into between Disciplinary Counsel and the attorney [or LP](#), Disciplinary Counsel shall so notify the complainant in writing.

(e) Compliance and Disposition.

(1) If it appears to Disciplinary Counsel that an attorney [or LP](#) has failed to comply with the terms of a diversion agreement and Disciplinary Counsel determines that the allegation of noncompliance, if true, warrants the termination of the diversion agreement, Disciplinary Counsel shall provide the attorney [or LP](#) an opportunity to be heard, through written submission, concerning the alleged noncompliance. Thereafter, Disciplinary Counsel shall determine whether to terminate the diversion agreement and, if so, shall refer the matter to the SPRB for review pursuant to BR 2.6.

(2) If an attorney [or LP](#) fulfills the terms of a diversion agreement, Disciplinary Counsel thereafter shall dismiss the grievance with written notice to the complainant and the attorney [or LP](#). The dismissal of a grievance after diversion shall not be considered a prior disciplinary offense in any subsequent proceeding against the attorney [or LP](#).

(f) Public Records Status. The Bar shall treat records relating to a grievance diverted under this rule, a diversion agreement, or a remedial program as official records of the Bar, subject to the Oregon Public Records Law and also subject to any applicable exemption.

(Rule 2.10 added by Order dated July 9, 2003, effective August 1, 2003.)

(Rule 2.10(a), 2.10(c)(2), and 2.10(d)(4) amended by Order dated October 19, 2009.)

(Rule 2.10(a), 2.10(b), 2.10(c)(1), 2.10(c)(2), 2.10(d)(1), 2.10(d)(2), 2.10(d)(3), 2.10(d)(6), 2.10(e)(1), 2.10(e)(2), and 2.10(f) amended by Order dated May 3, 2017, effective January 1, 2018.)

Title 3 — Special Proceedings

Rule 3.1 Interlocutory Suspension During Pendency Of Disciplinary Proceedings.

(a) Petition for Interlocutory Suspension. At any time after Disciplinary Counsel has determined probable cause exists that an attorney [or LP](#) has engaged in misconduct, has evidence sufficient to establish a probable violation of one or more rules of professional conduct or the Bar Act, and reasonably believes that clients or others will suffer immediate and irreparable harm by the continued practice of law by the attorney [or LP](#), Disciplinary Counsel shall petition the Adjudicator for an order for interlocutory suspension of the attorney's [or LP's](#) license to practice law pending the outcome of the disciplinary proceeding.

(b) Contents of Petition; Notice to Answer; Service. A petition for the suspension of an attorney [or LP](#) under this rule shall set forth the acts and violations of the rules of professional conduct or statutes submitted by the Bar, together with an explanation of why interlocutory suspension is warranted under BR 3.1(a). If a formal complaint has been filed against the attorney [or LP](#), a copy shall be attached. The petition may be supported by documents or affidavits. The notice to answer shall provide that an answer to the petition must be filed with the Disciplinary Board Clerk within 14 days of service and that, absent the timely filing of an answer with the Disciplinary Board Clerk, the relief sought can be obtained. Disciplinary Counsel shall file the petition with

the Disciplinary Board Clerk and shall serve a copy, along with the notice of answer, on the attorney [or LP](#) pursuant to BR 1.8.

(c) Answer by Attorney [or LP](#). The attorney [or LP](#) shall file an answer to the Bar's petition with the Disciplinary Board Clerk within 14 days of service. The attorney [or LP](#) shall mail a copy of the answer to Disciplinary Counsel and file proof of mailing with the Disciplinary Board Clerk.

(d) Default; Entry of Order. The failure of the attorney [or LP](#) to answer the Bar's petition within the time provided in BR 3.1(c) constitutes a waiver of the attorney's [or LP's](#) right to contest the Bar's petition, and all factual allegations contained in the petition shall be deemed true. Not earlier than 14 days after service of the petition and in the absence of an answer filed by the attorney [or LP](#) named in the petition, the Adjudicator shall review the sufficiency of the petition. If the petition establishes a probable violation of one or more rules of professional conduct or the Bar Act, and a reasonable belief that clients or others will suffer immediate or irreparable harm by the continued practice of law by the attorney [or LP](#), the Adjudicator shall enter an appropriate interlocutory order suspending the attorney's [or LP's](#) license to practice law until further order of the Adjudicator or the Supreme Court. The Disciplinary Board Clerk shall send copies of the order to the parties.

(e) Answer filed; Setting hearing on interlocutory suspension. Upon the timely filing of the attorney's [or LP's](#) answer pursuant to BR 3.1(c), the Adjudicator shall hold a hearing on the Bar's petition not less than 30 days nor more than 60 days after the date the answer is filed. The Disciplinary Board Clerk shall promptly notify Disciplinary Counsel and the attorney [or LP](#) named in the petition of the date, time, and location of the hearing. The hearing shall take place consistently with BR 5.3(a), (b), (c), and (d). At the hearing, the Bar must prove by clear and convincing evidence that one or more rules of professional conduct or provision of the Bar Act has been violated by the attorney [or LP](#) named in the petition and that clients or others will suffer immediate or irreparable harm by the continued practice of law by the attorney [or LP](#). Proof that clients or others will suffer immediate or irreparable harm by the continued practice of law by the attorney [or LP](#) may include, but is not limited to, establishing within the preceding 12-month period:

- (1) theft or conversion of funds held by the attorney [or LP](#) in any fiduciary capacity, including but not limited to funds that should have been maintained in a lawyer [or LP](#) trust account;
- (2) three or more instances of failure to appear in court on behalf of a client notwithstanding having notice of the setting; or
- (3) abandoning a practice with no provision of new location or contact information to 3 or more clients.

If the attorney [or LP](#), having been notified of the date, time, and location of the hearing, fails to appear, the Adjudicator may enter an order finding the attorney [or LP](#) in default, deeming the allegations contained in the petition to be true, proceed on the basis of that default consistent with BR 3.1(d), and enter an appropriate order. The Disciplinary Board Clerk shall send copies of the order to the parties.

(f) Order of Adjudicator; Suspension; Restrictions on Trust Account; Notice to Clients; Custodian; Other Orders. The Adjudicator, upon the record pursuant to BR 3.1(d) or after the hearing provided in 3.1(e), shall enter an appropriate order. If the Adjudicator grants the Bar's petition and interlocutorily suspends the attorney's [or LP's](#) license to practice law, the order of suspension shall state an effective date. The suspension shall remain in effect until further order of the Adjudicator or the court. The Adjudicator may enter such other orders as appropriate to protect the interests of the suspended attorney [or LP](#), the suspended attorney's [or LP's](#) clients, and the public, including, but not limited to:

- (1) an order that, when served upon a financial institution, serves as an injunction prohibiting withdrawals from the attorney's [or LP's](#) trust account or accounts except in accordance with restrictions set forth in the Adjudicator's order.

(2) an order directing the attorney [or LP](#) to notify current clients and any affected courts of the attorney's [or LP's](#) suspension; and to take such steps as are necessary to deliver client property, withdraw from pending matters, and refund any unearned fees.

(3) an order appointing another attorney [or LP](#) as custodian to take possession of and inventory the files of the suspended attorney [or LP](#) and take such further action as necessary to protect the interests of the suspended attorney's [or LP's](#) clients. Any attorney [or LP](#) so appointed by the court shall not disclose any information contained in any file without the consent of the affected client, except as is necessary to carry out the order of the Adjudicator.

The Disciplinary Board Clerk shall send copies of the order to the parties.

(g) Costs and Expenses. The Adjudicator may direct that the costs and expenses associated with any proceeding under this rule be allowed to the prevailing party. The procedure for the recovery of such costs shall be governed by BR 10.7 as practicable.

(h) Duties of Attorney [or LP](#). An attorney suspended from practice under this rule shall comply with the requirements of BR 6.3(a) and (b). An attorney [or LP](#) whose suspension under this rule exceeds 6 months must comply with BR 8.1 to be reinstated. An attorney [or LP](#) whose suspension under this rule is 6 months or less must comply with BR 8.2 in order to be reinstated.

(i) Application of Other Rules. Except as specifically provided herein, Title 4, Title 5, and Title 6 of the Rules of Procedure do not apply to proceedings brought pursuant to BR 3.1.

(j) Accelerated Proceedings Following Interlocutory Suspension. When an attorney [or LP](#) has been interlocutorily suspended by order entered pursuant to BR 3.1(f), the related formal complaint filed by the Bar shall thereafter proceed and be determined as an accelerated case, without unnecessary delay. The interlocutory suspension shall expire 45 days after date of entry, unless the SPRB authorizes the filing of a formal complaint against the attorney [or LP](#) for one or more acts described in the petition as a basis for seeking the interlocutory petition. Unless extended by stipulation of the Bar and the attorney [or LP](#), and approved by the Adjudicator, the further order contemplated by BR 3.1(f) shall be entered not later than 270 days following the entry of the order of interlocutory suspension, subject to continuance for an additional period not to exceed 90 days upon motion filed by the Bar, served upon the attorney [or LP](#), and granted by the Adjudicator.

(k) Supreme Court Review. No later than 14 days after the entry of an order pursuant to BR 3.1(f), Disciplinary Counsel or the attorney [or LP](#) who is the subject of an order entered pursuant to BR 3.1(f) may request the Supreme Court to review the Adjudicator's order, including conducting a *de novo* review on the record, on an expedited basis. Unless otherwise ordered by the court, an interlocutory order of suspension, if entered, shall remain in effect until the court issues its decision.

(l) Termination of Interlocutory Suspension. In the event the further order of the court contemplated by BR 3.1(f) is not entered within the time provided by BR 3.1(j), the order of interlocutory suspension shall automatically terminate without prejudice to any pending or further disciplinary proceeding against the attorney.

(Rule 3.1(h) amended by letter dated December 10, 1987.)

(Rule 3.1 amended by Order dated February 23, 1988.)

(Rule 3.1(f) amended by Order dated March 13, 1989, effective April 1, 1989, corrected June 1, 1989.)

(Rule 3.1(a) and (g) amended by Order dated May 15, 1995.)

(Rule 3.1(g)(3) added and 3.1(h)-3.1(j) amended by Order dated October 19, 2009.)

(Former Rule 3.1(d), 3.1(f), 3.1(g) and 3.1(g)(1) deleted; former Rule 3.1(c), 3.1(e), 3.1(g)(2), 3.1(g)(3), 3.1(h), 3.1(i), and 3.1(j) redesignated 3.1(e), 3.1(f), 3.1(f)(1), 3.1(f)(3), 3.1(g), 3.1(j), and 3.1(l); Rule 3.1(c), 3.1(d), 3.1(e)(1), 3.1(e)(2), 3.1(e)(3), 3.1(f)(2), 3.1(h), 3.1(i), and 3.1(k) added; and Rule 3.1(a), 3.1(b), 3.1(e), 3.1(f), 3.1(f)(1), 3.1(f)(3), 3.1(g), 3.1(j), and 3.1(l) amended by Order dated May 3, 2017, effective January 1, 2018.)

**Rule 3.2 Mental Incompetency Or Addiction—
Involuntary Transfer To Inactive Membership Status.****(a) Summary Transfer to Inactive Status.**

(1) The Supreme Court may summarily order, upon ex parte application by the Bar, that an attorney [or LP](#) be placed on inactive membership status until reinstated by the court if the attorney [or LP](#) has been adjudged by a court of competent jurisdiction to be mentally ill or incapacitated.

(2) A copy of the order shall be personally served on the attorney [or LP](#) in the same manner as provided by the Oregon Rules of Civil Procedure for service of summons and mailed to his or her guardian, conservator and attorney of record in any guardianship or conservatorship proceeding.

(b) Petition by Bar.

(1) The Bar may petition the court to determine whether an attorney [or LP](#) is disabled from continuing to practice law due to:

- (A) a personality disorder; or
- (B) mental infirmity or illness; or
- (C) diminished capacity; or
- (D) addiction to drugs, narcotics or intoxicants.

The Bar's petition shall be mailed to the attorney [or LP](#) and to his or her guardian, conservator, and attorney of record in any guardianship or conservatorship proceeding.

(2)

(A) On the filing of such a petition, the court may take or direct such action as it deems necessary or proper to determine whether an attorney [or LP](#) is disabled. Such action may include, but is not limited to, examination of such attorney [or LP](#) by the qualified experts as the court shall designate.

(B) A copy of an order requiring an attorney [or LP](#) to appear, for examination or otherwise, shall be mailed by the State Court Administrator to the attorney [or LP](#) and to his or her guardian, conservator and attorney of record in any guardianship or conservatorship proceeding and to Disciplinary Counsel.

(C) In the event of a failure by the attorney [or LP](#) to appear at the appointed time and place for examination, the court may place the attorney [or LP](#) on inactive membership status until further order of the court.

(D) If, upon consideration of the reports of the designated experts or otherwise, the court finds that probable cause exists that the attorney [or LP](#) is disabled under the criteria set forth in BR 3.2(b)(1) from continuing to practice law, the court may order the attorney [or LP](#) to appear before the court or its designee to show cause why the attorney [or LP](#) should not be placed by the court on inactive membership status until reinstated by the court. The State Court Administrator shall mail such a show cause order to the attorney [or LP](#) and his or her guardian, conservator and attorney of record in any guardianship or conservatorship proceeding and to Disciplinary Counsel.

(E) After any show cause hearing as the court deems appropriate, if the court finds that the attorney [or LP](#) is disabled from continuing to practice law, the court may order the attorney [or LP](#) placed on inactive membership status. The State Court Administrator shall mail a copy of an order placing the attorney [or LP](#) on inactive membership status to the attorney [or LP](#) and his or her guardian,

conservator, and attorney of record in any guardianship or conservatorship proceeding, and to Disciplinary Counsel.

(3) Any disciplinary investigation or proceeding pending against an attorney [or LP](#) placed by the court on inactive membership status under this rule shall be suspended and held in abeyance until further order of the court.

(c) Disability During Disciplinary Proceedings.

(1) The court may order that an attorney [or LP](#) be placed on inactive membership status until reinstated by the court if, during the course of a disciplinary investigation or disciplinary proceeding, the attorney [or LP](#) files a petition with the court, with notice to Disciplinary Counsel, alleging that he or she is disabled from understanding the nature of the proceeding against him or her, assisting and cooperating with his or her attorney, or from participating in his or her defense due to:

(A) a personality disorder; or

(B) mental infirmity or illness; or

(C) diminished capacity; or

(D) addiction to drugs, narcotics or intoxicants.

(2) The court shall take or direct such action as it deems necessary or proper as provided in BR 3.2(b) to determine if the attorney [or LP](#) is disabled.

(3) The State Court Administrator shall mail a copy of the court's order to Disciplinary Counsel, Bar Counsel, and the attorney [or LP](#) and his or her guardian, conservator, and attorney of record in any guardianship or conservatorship proceeding, and the attorney of record in the Bar's disciplinary proceeding.

(4) Any disciplinary investigation or proceeding against an attorney [or LP](#) who the court places on inactive membership status under this rule shall be suspended and held in abeyance until further order by the court.

(5) If the court determines that the attorney [or LP](#) is not disabled under the criteria set forth in BR 3.2(c)(1), it may take such action as it deems necessary or proper, including the issuance of an order that any disciplinary investigation or proceeding against the attorney [or LP](#) that is pending or held in abeyance be continued or resumed.

(d) Appointment of Attorney. In any proceeding under this rule, the court may, on such notice as the court shall direct, appoint an attorney or attorneys to represent the attorney [or LP](#) if he or she is without representation.

(e) Custodians. In any proceeding under this rule, the court may, on such notice as the court shall direct, appoint an attorney or attorneys to inventory the files of the attorney [or LP](#) and to take such action as seems necessary to protect the interests of his or her clients. Any attorney so appointed by the court shall not disclose any information contained in any file without the consent of the affected client, except as is necessary to carry out the order of the court.

(f) Costs and Expenses. The court may direct that the costs and expenses associated with any proceeding under this rule be paid by the attorney [or LP](#), or his or her estate, including compensation fixed by the court to be paid to any attorney or medical expert appointed under this rule. The court may order such hearings as it deems necessary or proper to determine the costs and expenses to be paid under this rule.

(g) Waiver of Privilege.

(1) Under this rule, an attorney's or LP's claim of disability in a disciplinary investigation or disciplinary proceeding, or the filing of an application for reinstatement as an active member by an attorney or LP placed on inactive membership status under this rule for disability, shall be deemed a waiver of any privilege existing between the attorney or LP and any doctor or hospital treating him or her during the period of the alleged disability.

(2) The attorney or LP shall, in his or her claim of disability or in his or her application for reinstatement, disclose the name of every doctor or hospital by whom he or she has been treated during his or her disability or since his or her placement on inactive membership status and shall furnish written consent to divulge all such information and all such doctor and hospital records as the Bar or the court may request.

(h) Application of Other Rules.

(1) The Rules of Procedure that apply to the resolution of a formal complaint or statement of objections do not apply to transfers from active to inactive membership status under BR 3.2. The placement of an attorney or LP on inactive membership status under BR 3.2 does not preclude the Bar from filing a formal complaint against the attorney or LP. An attorney or LP placed on inactive membership status under BR 3.2 must comply with the applicable provisions of Title 8 of these rules to obtain reinstatement to active membership status.

(2)

(A) An attorney or LP transferred to inactive status under this rule shall not practice law after the effective date of the transfer. This rule shall not preclude the attorney or LP from providing information on the facts of a case and its status to a succeeding attorney or LP, and such information shall be provided on request.

(B) An attorney or LP transferred to inactive status under this rule shall immediately take all reasonable steps to avoid foreseeable prejudice to any client and to comply with all applicable laws and disciplinary rules.

(C) Notwithstanding BR 3.2(b)(3) and BR 3.2(c)(4), Disciplinary Counsel may petition the court to hold an attorney or LP transferred to inactive status under this rule in contempt for failing to comply with the provisions of BR 3.2(h)(2)(i) and (ii). The court may order the attorney or LP to appear and show cause, if any, why the attorney or LP should not be held in contempt of court and sanctioned accordingly.

(i) At the direction of the court, the duties of the court set forth in this rule may be fulfilled by the Adjudicator. In such instances the duties of the State Court Administrator shall be performed by the Disciplinary Board Clerk.

*(Rule 3.2(h) amended by Order dated March 13, 1989, effective April 1, 1989, corrected June 1, 1989.)
(Former Rule 3.2(b)(1)(i), 3.2(b)(1)(ii), 3.2(b)(1)(iii), 3.2(b)(1)(iv), 3.2(c)(1)(i), 3.2(c)(1)(ii), 3.2(c)(1)(iii), 3.2(c)(1)(iv), (c)(4), 3.2(h)(2)(i), 3.2(h)(2)(ii), and 3.2(h)(2)(iii) redesignated as Rule 3.2(b)(1)(A), 3.2(b)(1)(B), 3.2(b)(1)(C), 3.2(b)(1)(D), 3.2(c)(1)(A), 3.2(c)(1)(B), 3.2(c)(1)(C), 3.2(c)(1)(D), 3.2(c)(5), 3.2(h)(2)(A), 3.2(h)(2)(B), and 3.2(h)(2)(C); Rule 3.2(c)(4) added; and Rule 3.2(a)(2), 3.2(b), 3.2(b)(1)(C), 3.2(b)(2)(A), 3.2(b)(2)(D), 3.2(b)(2)(E), 3.2(b)(3), 3.2(c)(1), 3.2(c)(1)(C), 3.2(c)(2), 3.2(c)(3), 3.2(c)(5), 3.2(g)(1), 3.2(g)(2), 3.2(h)(1), 3.2(h)(2)(A), 3.2(h)(2)(B), and 3.2(h)(2)(C) amended by Order dated May 3, 2017, effective January 1, 2018.)*

(Rule 3.2(a)(2) amended and Rule 3.2(h)(2)(C)(i) added by Order dated May 22, 2019, effective September 1, 2019.)

Rule 3.3 Allegations Of Criminal Conduct Involving Attorneys or LPs.

(a) If the SPRB directs the filing of a formal complaint that alleges acts involving the possible commission of a crime that do not appear to have been the subject of a criminal prosecution, Disciplinary Counsel shall report the possible crime to the appropriate investigatory authority.

(b) On the filing of an accusatory instrument against an attorney [or LP](#) for the commission of a misdemeanor that may involve moral turpitude or of a felony, Disciplinary Counsel shall determine whether a disciplinary investigation should be initiated against such attorney [or LP](#).

(Rule 3.3 amended by Order dated March 31, 1989.)

(Rule 3.3(a) and 3.3(b) amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 3.4 Conviction Of Attorneys [or LPs](#).

(a) Petition for Interlocutory Suspension; Notice to Answer. Upon learning that an attorney [or LP](#) has been convicted in any jurisdiction of an offense that is a misdemeanor that may involve moral turpitude, a felony under the laws of this state, or a crime punishable by death or imprisonment under the laws of the United States and determining that immediate and irreparable harm to the attorney's [or LP's](#) clients or the public is likely to result if a suspension of the attorney's [or LP's](#) license to practice law is not ordered, Disciplinary Counsel shall petition the Disciplinary Board to interlocutorily suspend the attorney's [or LP's](#) license to practice law. The petition shall describe the conviction and explain the basis upon Disciplinary Counsel believes that immediate and irreparable harm to the attorney's [or LP's](#) clients or the public is likely to result if a suspension is not ordered. The petition shall include a copy of the documents that show the conviction and may be supported by documents or affidavits. A "conviction" for purposes of this rule shall be considered to have occurred upon entry of a plea of guilty or no contest or upon entry of a finding or verdict of guilty. The notice to answer shall provide that an answer to the petition must be filed with the Disciplinary Board Clerk within 14 days of service and that, absent the timely filing of an answer with the Disciplinary Board Clerk, the relief sought can be obtained. Disciplinary Counsel shall file the petition with the Disciplinary Board Clerk and shall serve a copy, along with the notice to answer, on the attorney [or LP](#) pursuant to BR 1.8.

(b) Answer by Attorney [or LP](#). The attorney [or LP](#) shall file an answer to the Bar's petition with the Disciplinary Board Clerk within 14 days of service. The attorney [or LP](#) shall mail a copy of the answer to Disciplinary Counsel and file proof of mailing with the Disciplinary Board Clerk.

(c) Default; Entry of Order. The failure of the attorney [or LP](#) to answer the Bar's petition within the time provided in BR 3.4(b) constitutes a waiver of the attorney's [or LP's](#) right to contest the Bar's petition, and all factual allegations contained in the petition shall be deemed true. Not earlier than 14 days after service of the petition and in the absence of an answer filed by the attorney [or LP](#) named in the petition, the Adjudicator shall review the sufficiency of the petition. If the petition establishes the attorney's [or LP's](#) conviction of a category of offense described in BR 3.4(a) and a reasonable belief that clients or others will suffer immediate or irreparable harm by the attorney's [or LP's](#) continued practice of law, the Adjudicator shall enter an appropriate interlocutory order suspending the attorney's [or LP's](#) license to practice law until further order of the Adjudicator or the Supreme Court. The Disciplinary Board Clerk shall send copies of the order to the parties.

(d) Answer filed; Setting hearing on interlocutory suspension. Upon the timely filing of the attorney's [or LP's](#) answer pursuant to BR 3.4(b), the Adjudicator shall hold a hearing on the Bar's petition not less than 30 days nor more than 60 days after the date the answer is filed. The Disciplinary Board Clerk shall promptly notify Disciplinary Counsel and the attorney [or LP](#) of the date, time, and location of the hearing. The hearing shall take place consistently with BR 5.3(a), (b), (c), and (d). At the hearing, the Bar must prove by clear and convincing evidence that the attorney [or LP](#) has been convicted of a category of offense described in BR 3.4(a) and that clients or others will suffer immediate or irreparable harm by the attorney's [or LP's](#) continued practice of law. Proof that clients or others will suffer immediate or irreparable harm by the attorney's [or LP's](#) continued practice of law may include, but is not limited to, establishing that a period of incarceration was imposed on the attorney [or LP](#) as a result of the conviction. If the attorney [or LP](#), having been notified of the date, time, and location of the hearing, fails to appear, the Adjudicator may enter an order finding the attorney [or LP](#) in default, deeming the allegations contained in the petition to be true, proceed on the basis of that default consistent with BR 3.4(c), and enter an appropriate order.

(e) Order of Adjudicator; Suspension; Restrictions on Trust Account; Notice to Clients; Custodian; Other Orders. The Adjudicator, upon the record pursuant to BR 3.4(c) or after the hearing provided in BR 3.4(d), shall enter an appropriate order. If the Adjudicator grants the Bar's petition and interlocutorily suspends the attorney's [or LP's](#) license to practice law, the order of suspension shall state an effective date. The suspension shall remain in effect until further order of the Adjudicator or the court. The Adjudicator may enter such other orders as appropriate to protect the interests of the suspended attorney [or LP](#), the suspended attorney's [or LP's](#) clients, and the public, including, but not limited to:

(1) an order that, when served upon a financial institution, serves as an injunction prohibiting withdrawals from the attorney's [or LP's](#) trust account or accounts except in accordance with restrictions set forth in the Adjudicator's order.

(2) an order directing the attorney [or LP](#) to notify current clients and any affected courts of the attorney's [or LP's](#) suspension; and to take such steps as are necessary to deliver client property, withdraw from pending matters, and refund any unearned fees.

(3) an order appointing an attorney as custodian to take possession of and inventory the files of the suspended attorney [or LP](#) and take such further action as necessary to protect the interests of the suspended attorney's [or LP's](#) clients. Any attorney so appointed by the Adjudicator shall not disclose any information contained in any file without the consent of the affected client, except as is necessary to carry out the order of the Adjudicator.

The Disciplinary Board Clerk shall send copies of the order to the parties.

(f) Costs and Expenses. The Adjudicator may direct that the costs and expenses associated with any proceeding under this rule be allowed to the prevailing party. The procedure for the recovery of such costs shall be governed by BR 10.7 as practicable.

(g) Duties of Attorney [or LP](#). An attorney [or LP](#) suspended from practice under this rule shall comply with the requirements of BR 6.3(a), (b), and (c). An attorney [or LP](#) whose suspension under this rule exceeds 6 months must comply with BR 8.1 to be reinstated. An attorney [or LP](#) whose suspension under this rule is 6 months or less must comply with BR 8.2 to be reinstated.

(h) Application of Other Rules. Except as specifically provided herein, Title 4, Title 5, and Title 6 of the Rules of Procedure do not apply to proceedings brought pursuant to BR 3.4.

(i) Supreme Court Review. No later than 14 days of the entry of an order pursuant to BR 3.4(e), Disciplinary Counsel or the attorney [or LP](#) who is the subject of an order entered pursuant to BR 3.4(e) may request the Supreme Court to review the Adjudicator's order, including conducting a *de novo* review on the record, on an expedited basis. Unless otherwise ordered by the court, an interlocutory order of suspension, if entered, shall remain in effect until the court issues its decision.

(j) Independent Charges. Whether or not interlocutory suspension is sought pursuant to BR 3.4(a), the SPRB may direct Disciplinary Counsel to file a formal complaint against the attorney [or LP](#) based upon the fact of the attorney's [or LP's](#) conviction or the underlying conduct.

(k) Relief From Suspension. If an attorney's [or LP's](#) conviction is reversed on appeal, and such reversal is not subject to further appeal or review, or the attorney [or LP](#) has been granted a new trial and the order granting a new trial has become final, any suspension or discipline previously ordered based solely on the conviction shall be vacated upon the Disciplinary Board's receipt of the judgment of reversal or order granting the attorney [or LP](#) a new trial. Reversal of the attorney's [or LP's](#) conviction on appeal or the granting of a new trial does not require the termination of any disciplinary proceeding based upon the same facts which gave rise to the conviction.

(Rule 3.4(d) amended by Order dated March 13, 1989, effective April 1, 1989.)

(Rule 3.4(e) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 3.4(e) amended by Order dated October 19, 2009.)

(Former Rule 3.4(d), 3.4(e), 3.4(g), and 3.4(h) deleted; former Rule 3.4(f) and 3.4(i) redesignated as 3.4(j) and 3.4(k); Rule 3.4(d), 3.4(e), 3.4(f), 3.4(g), 3.4(h), and 3.4(i) added; Rule 3.4(a), 3.4(b), 3.4(c), 3.4(j), and 3.4(k) amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 3.5 Reciprocal Discipline.

(a) Petition; Notice to Answer. Upon learning that an attorney [or LP](#) has been disciplined for misconduct in another jurisdiction not predicated upon a prior discipline of the attorney [or LP](#) pursuant to these rules, Disciplinary Counsel shall file with the Disciplinary Board Clerk a petition seeking reciprocal discipline of the attorney [or LP](#). The petition shall include a copy of the judgment, order, or determination of discipline in the other jurisdiction; may be supported by other documents or affidavits; and shall contain a recommendation as to the imposition of discipline in Oregon, based on the discipline in the jurisdiction whose action is reported, and such other information as the Bar deems appropriate. A plea of no contest, a stipulation for discipline, or a resignation while formal charges are pending is considered a judgment or order of discipline for the purposes of this rule. If the Bar seeks imposition of a sanction greater than that imposed in the other jurisdiction, it shall state with specificity the sanction sought and provide applicable legal authority to support its position. The notice to answer shall provide that an answer to the petition must be filed with the Disciplinary Board Clerk within 21 days of service and that, absent the timely filing of an answer with the Disciplinary Board Clerk, the relief sought can be obtained. Disciplinary Counsel shall file the petition with the Disciplinary Board Clerk and shall serve a copy, along with the notice to answer, on the attorney [or LP](#) pursuant to BR 1.8.

(b) Order of Judgment; Sufficient Evidence of Misconduct; Rebuttable Presumption. A copy of the judgment, order, or determination of discipline shall be sufficient evidence for the purposes of this rule that the attorney [or LP](#) committed the misconduct on which the other jurisdiction's discipline was based. There is a rebuttable presumption that the sanction to be imposed shall be equivalent, to the extent reasonably practicable, to the sanction imposed in the other jurisdiction.

(c) Answer of Attorney [or LP](#). The attorney [or LP](#) has 21 days from service to file with the Disciplinary Board an answer addressing whether:

- (1) The procedure in the jurisdiction which disciplined the attorney [or LP](#) was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
- (2) The conduct for which the attorney [or LP](#) was disciplined in the other jurisdiction is conduct that should subject the attorney [or LP](#) to discipline in Oregon; and
- (3) The imposition of a sanction equivalent to the sanction imposed in the other jurisdiction would result in grave injustice or be offensive to public policy.

The attorney [or LP](#) shall mail a copy of his or her answer to Disciplinary Counsel and file proof of mailing with the Disciplinary Board Clerk.

(d) Default; Hearing. If no answer is timely filed, the Adjudicator may proceed to the entry of an appropriate judgment based upon review of the record. If an answer is timely filed that asserts a defense pursuant to BR 3.5(c)(1), (2), or (3), the Adjudicator, in his or her discretion, based upon a review of the petition, answer, and any supporting documents filed by either the Bar or the attorney [or LP](#), may either determine on the basis of the record whether the attorney [or LP](#) should be disciplined in Oregon for misconduct in another jurisdiction and if so, in what manner, or may determine that testimony will be taken solely on the issues set forth in the answer pertaining to BR 3.5(c)(1), (2), and (3). The Adjudicator shall enter an appropriate order. The Disciplinary Board Clerk shall send copies of the order to the parties. The Adjudicator's decision shall be subject to review by the Supreme Court, as authorized in Title 10 of these rules. On review by the court, the sanction imposed in the other jurisdiction may be a factor for consideration but does not operate as a rebuttable presumption.

(e) Burden of Proof. The attorney [or LP](#) has the burden of proving in any hearing held pursuant to BR 3.5(f) that due process of law was not afforded the attorney [or LP](#) in the other jurisdiction.

(f) Hearing by Trial Panel; Review by Supreme Court. If the Adjudicator decides to take testimony pursuant to BR 3.5(e), the Adjudicator shall request the regional chairperson to appoint an attorney member and a public member to serve on the trial panel. Upon receiving notice from the Disciplinary Board Clerk of a regional chairperson's appointment of an attorney member and a public member pursuant to BR 2.4(f)(1), and upon determining that either no timely challenge pursuant to BR 2.4(g) was filed or that a timely filed challenge pursuant to BR 2.4(g) has either been denied or resulted in the appointment of a substitute member or members, the Adjudicator shall promptly establish the date and place of the evidentiary hearing no less than 21 days and no more than 42 days thereafter. BR 5.1 and BR 5.3 apply to the evidentiary hearing. The trial panel shall make a decision concerning the issues submitted to it. The Disciplinary Board Clerk shall send copies of the order to the parties. The trial panel's decision shall be subject to review by the Supreme Court as authorized in Title 10 of these rules. On review by the court, the sanction imposed in the other jurisdiction may be a factor for consideration but does not operate as a rebuttable presumption.

(g) Application of Other Rules. Except as specifically provided herein, Title 4, Title 5, and Title 6 of the Rules of Procedure do not apply to proceedings brought pursuant to BR 3.5.

(h) Suspension or Disbarment. An attorney [or LP](#) suspended or disbarred under this rule shall comply with the requirements of BR 6.3(a), (b), and (c).

(i) Reinstatement Rules Apply. The rules on reinstatement apply to attorneys [or LPs](#) suspended or disbarred pursuant to the procedure set forth in BR 3.5(d), (e), and (f).

(j) Independent Charges. Nothing in this rule precludes the Bar from filing a formal complaint against an attorney [or LP](#) for misconduct in any jurisdiction.

(Rule 3.5 amended by Order dated July 16, 1984, effective August 1, 1984.)

(Rule 3.5(h) amended by Order dated March 13, 1989, effective April 1, 1989.)

(Rule 3.5(e) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)

(Former Rule 3.5(d) deleted; former Rule 3.5(e), 3.5(f), and 3.5(g) redesignated 3.5(d), 3.5(e), and 3.5(f); Rule 3.5(c)(3) and 3.5(g) added; Rule 3.5(a), 3.5(b), 3.5(c), 3.5(c)(1), 3.5(c)(2), 3.5(d), 3.5(e), 3.5(f), 3.5(h), 3.5(i), and 3.5(j) amended by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 3.5(e) amended by Order dated May 22, 2019, effective September 1, 2019.)

Rule 3.6 Discipline By Consent.

(a) Application. Any allegation of misconduct that is neither dismissed nor disposed of pursuant to BR 2.10 may be disposed of by a no contest plea, or by a stipulation for discipline, entered into at any time after the SPRB finds probable cause that misconduct has occurred.

(b) No Contest Plea. A plea of no contest to all causes or any cause of a formal complaint, or to allegations of misconduct if a formal complaint has not been filed, shall be verified by the respondent and shall include:

- (1) A statement that the respondent freely and voluntarily make the plea;
- (2) A statement that the respondent does not desire to defend against the formal complaint or any designated cause thereof, or against an allegation of misconduct not yet pled;
- (3) A statement that the respondent agrees to accept a designated form of discipline in exchange for the no contest plea; and
- (4) A statement of the respondent's prior record of reprimand, suspension or disbarment, or absence of such record.

(c) Stipulation for Discipline. A stipulation for discipline shall be verified by the respondent and shall include:

- (1) A statement that the respondent has freely and voluntarily entered into the stipulation;
- (2) A statement that explains the particular facts and violations to which the Bar and the respondent are stipulating;
- (3) A statement that the respondent agrees to accept a designated form of discipline in exchange for the stipulation; and
- (4) A statement of the respondent's prior record of reprimand, suspension or disbarment, or absence of such record.

(d) Approval of SPRB. Pleas of no contest and stipulations shall be approved as to form by Disciplinary Counsel and approved in substance by the chairperson of the SPRB or a member of the SPRB designated by the chairperson. If the plea or stipulation is acceptable to the respondent and the SPRB chairperson or designated member, and if the full term of the discipline agreed upon does not exceed a 6-month suspension, Disciplinary Counsel shall submit it to the Disciplinary Board Clerk for review by the Adjudicator, acting on behalf of the Disciplinary Board. Otherwise, Disciplinary Counsel shall file the stipulation with the State Court Administrator for review by the Supreme Court.

(e) Review by Adjudicator or Supreme Court. The Adjudicator or the court, as the case may be, shall review the plea or stipulation. If the Adjudicator approves the plea or stipulation, an order shall be issued so stating and filed with the Disciplinary Board Clerk, and the Clerk shall provide copies to Disciplinary Counsel and the respondent. If the court approves the plea or stipulation, an order shall be issued so stating. If the plea or stipulation is rejected by the Adjudicator or the court, it may not be used as evidence of misconduct against the respondent in the pending or in any subsequent disciplinary proceeding.

(f) Costs. In matters submitted under this rule that are resolved by a decision of the Disciplinary Board, the Bar may file a cost bill with the Disciplinary Board Clerk within 21 days of the filing of the decision of the Disciplinary Board. The Bar must serve a copy of the cost bill on the respondent pursuant to BR 1.8. To contest the Bar's statement of costs, the respondent must file an objection supported by a declaration under penalty of perjury with the Disciplinary Board Clerk within 7 days from the date of service. The respondent shall mail a copy of the objection to Disciplinary Counsel and file proof of mailing with the Disciplinary Board Clerk. If the matter is resolved by a decision of the court, the Bar's cost bill and the respondent's objections must be filed with the court within the same time period, accompanied by proof of service on the other party. The Adjudicator or the court, as the case may be, may fix the amount of the Bar's actual and necessary costs and disbursements incurred in the proceeding to be paid by the respondent.

(g) Supplementing Record. If the Adjudicator or the court concludes that facts are not set forth in sufficient detail to enable forming an opinion as to the propriety of the discipline agreed upon, the Adjudicator or the court may request that additional stipulated facts be submitted or may disapprove the plea or stipulation.

(h) Confidentiality. A plea or stipulation prepared for the Adjudicator or the court's consideration shall not be subject to public disclosure:

- (1) prior to Adjudicator or court approval of the plea or stipulation; or
- (2) if rejected by the Adjudicator or court.

(Rule 3.6(d) and (e) amended by Order dated February 23, 1988.)

(Rule 3.6(d) amended by Order dated December 13, 1993. Amended by Order dated June 5, 1997, effective July 1, 1997.)

(Rule 3.6(a), (b), (d) and (e) amended by Order dated February 5, 2001.)

(Rule 3.6(d), (e) and (f) amended by Order dated June 17, 2003, effective July 1, 2003.)

(Former Rule 3.6(b)(i), 3.6(b)(ii), 3.6(b)(iii), 3.6(b)(iv), 3.6(c)(i), 3.6(c)(ii), 3.6(c)(iii), 3.6(c)(iv), and 3.6(h) redesignated as Rule 3.6(b)(1), 3.6(b)(2), 3.6(b)(3), 3.6(b)(4), 3.6(c)(1), 3.6(c)(2), 3.6(c)(3), 3.6(c)(4), 3.6(h)(1), and 3.6(h)(2); Rule 3.6(a), 3.6(b), 3.6(b)(1), 3.6(b)(2), 3.6(b)(3), 3.6(b)(4), 3.6(c), 3.6(c)(1), 3.6(c)(2), 3.6(c)(3), 3.6(c)(4), 3.6(d), 3.6(e), 3.6(f), 3.6(g), 3.6(h), 3.6(h)(1), and 3.6(h)(2) amended by Order dated May 3, 2017, effective January 1, 2018.)

Title 4 — Prehearing Procedure

Rule 4.1 Formal Complaint.

(a) Designation of Counsel and Region. If the SPRB determines that probable cause exists to believe an attorney [or LP](#) has engaged in misconduct and that formal proceedings are warranted, it shall refer the matter to Disciplinary Counsel with instructions to file a formal complaint against the attorney [or LP](#), who then becomes the respondent. Disciplinary Counsel, being so advised, may appoint Bar Counsel.

(b) Filing. Disciplinary Counsel shall prepare and file with the Disciplinary Board Clerk a formal complaint against the respondent on behalf of the Bar. The formal complaint shall be in substantially the form set forth in BR 13.1.

(c) Substance of Formal Complaint. A formal complaint shall be signed by Disciplinary Counsel, or his or her designee, and shall set forth succinctly the acts or omissions of the respondent, including the specific statutes or rules of professional conduct violated, so as to enable the respondent to know the nature of the charge or charges against the respondent. When more than one act or transaction is relied upon, the allegations shall be separately stated and numbered. The formal complaint need not be verified.

(d) Amendment of Formal Complaint. Disciplinary Counsel may amend the formal complaint on behalf of the Bar subject to the requirements of BR 4.4(b) as to any grievance the SPRB has instructed Disciplinary Counsel to file a formal complaint pursuant to BR 4.1(a) and BR 4.1(e).

(e) Consolidation of Charges and Proceedings. The Bar, at the SPRB's direction, may consolidate in a formal complaint two or more causes of complaint against the same attorney [or LP](#) or attorneys [or LPs](#), but shall file a separate formal complaint against each respondent. The findings and conclusions thereon may be either joint or separate, as the trial panel, in its discretion, may determine. The Bar, at the discretion of the SPRB, may also consolidate formal complaints against two or more attorneys [or LPs](#) for hearing before one trial panel.

(f) Appointment of Trial Panel. Within 30 days following respondent's timely filing of an answer pursuant to BR 4.3, Disciplinary Counsel shall file a request with the Disciplinary Board Clerk that the regional chairperson appoint an attorney and a public member to serve on the trial panel with the Adjudicator.

(Rule 4.1(a) amended by Order dated January 5, 1988. Amended by Order dated June 5, 1997, effective July 1, 1997.)

(Rule 4.1(b) amended by Order dated February 23, 1988.)

(Rule 4.1(a) and (c) amended by Order dated February 5, 2001.)

(Rule 4.1(b) amended by Order dated June 17, 2003, effective July 1, 2003.)

(Former Rule 4.1(d) redesignated as Rule 4.1(e); Rule 4.1(a), 4.1(b), 4.1(c) and 4.1(e) amended; Rule 4.1(d) and 4.1(f) added by Order dated May 3, 2017, effective January 1, 2018.)

Rule 4.2 Service Of Formal Complaint.

(a) Manner of Service of Formal Complaint. A copy of the formal complaint, accompanied by a notice to file an answer within 14 days, may be personally served on the respondent or as otherwise permitted by BR 1.12. The notice to answer shall be in substantially the form set forth in BR 13.2.

(b) Alternative Service of Formal Complaint. The Bar may request the Adjudicator to authorize the service of a formal complaint and notice to answer on the respondent pursuant to ORCP 7 D(6).

(c) Proof of Service of Complaint. Proof of personal service shall be made in the same manner as in a case pending in a circuit court.

(d) Service of Amended Formal Complaint. An amended formal complaint may be served by mail, provided the original formal complaint was served on the respondent in the manner provided by BR 4.2(a) or (b).

(e) Disregard of Error. Failure to comply with any provision of this rule or BR 1.12 shall not affect the validity of service if the respondent received actual notice of the substance and pendency of the disciplinary proceedings.

(Rule 4.2 amended by Order dated June 30, 1987.)

(Rule 4.2(d) added by Order dated February 5, 2001.)

(Rule 4.2(a) amended by Order dated April 26, 2007.)

(Rule 4.2(a), 4.2(b), 4.2(d), and 4.2(e) amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 4.3 Answer.

(a) Time to Answer. The respondent shall answer the formal complaint within 14 days of service of the formal complaint.

(b) Extensions. The respondent may, in writing, request an extension of time to file his or her answer from the Adjudicator. The request for extension must be received by the Adjudicator within the time the respondent is required to file an answer. The Adjudicator shall respond to the request in writing and shall file a copy of the response with the Disciplinary Board Clerk.

(c) Form of Answer. The respondent's answer shall be responsive to the formal complaint filed. General denials are not allowed. The answer shall be substantially in the form set forth in BR 13.3 and shall be supported by a declaration under penalty of perjury by the respondent. The original shall be filed with the Disciplinary Board Clerk with proof of service on Disciplinary Counsel.

(Rule 4.3(b) and (c) amended by Order dated February 5, 2001.)

(Rule 4.3(b) and (d) amended by Order dated June 17, 2003, effective July 1, 2003.)

(Former Rule 4.3(c) deleted; former Rule 4.3(d) redesignated as Rule 4.3(c); Rule 4.3(a), 4.3(b), and 4.3(c) amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 4.4 Pleadings And Amendments.

(a) Pleadings. The only permissible pleadings shall be a formal complaint and an answer, and amendments thereto, except for a motion to require a formal complaint to comply with BR 4.1(c) and an answer to comply with BR 4.3(c).

(b) Amendments.

(1) Disciplinary Counsel may amend a formal complaint at any time after filing, subject to any limitation that may be imposed by the Adjudicator as to timing or content in any prehearing order entered pursuant to BR 4.7, in amplification of the original charges, to add new charges, or to withdraw charges. If an amendment is made, the respondent shall file an answer to the amended formal complaint within 14 days of service. Upon request by respondent for good cause shown, the Adjudicator may give the respondent a reasonable time to procure evidence and to prepare to meet the matters raised by the amended formal complaint.

(2) The respondent may amend an answer at any time after filing, subject to any limitations that may be imposed by the Adjudicator as to timing or content in any prehearing order entered pursuant to BR 4.7. If an answer is amended, the Bar shall be given a reasonable time, set by the Adjudicator, to procure evidence and to prepare to meet the matters raised by the amended answer.

(c) Adjudicator Authority. Upon application of either the Bar or the respondent, the Adjudicator may extend the time for filing any pleading or for filing any document required or permitted to be submitted to the trial panel, except as otherwise provided in these rules.

(Rule 4.4(b) amended by Order dated February 5, 2001.)

(Rule 4.4(b)(1) and 4.4(b)(2) amended; Rule 4.4(c) added by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 4.4(a) and 4.4(b)(1) amended by Order dated May 22, 2019, effective September 1, 2019.)

Rule 4.5 Discovery.

(a) General. Discovery in disciplinary proceedings is intended to promote identification of issues and a prompt and fair hearing on the charges. Discovery shall be conducted expeditiously by the parties, and shall be completed within 14 days prior to the date of hearing, unless the Adjudicator extends the time for good cause shown.

(b) Permitted Discovery.

(1) Requests for admission, requests for production of documents, and depositions may be utilized in disciplinary proceedings.

(2) The manner of taking depositions shall conform as nearly as practicable to the procedure set forth in the Oregon Rules of Civil Procedure. Subpoenas may be issued when necessary by the Adjudicator, Bar Counsel, Disciplinary Counsel, the respondent or his or her attorney of record. Depositions may be taken any time after service of the formal complaint.

(3) Transcripts of depositions in disciplinary proceedings shall comply with the Oregon Rules of Appellate Procedure as to form. A person who is deposed may request at the time of deposition to examine the person's transcribed testimony. In such case, the procedure set forth in the Oregon Rules of Civil Procedure shall be followed as practicable.

(4) The manner of making requests for the production of documents shall conform as nearly as practicable to the procedure set forth in the Oregon Rules of Civil Procedure. Requests for production may be served any time after service of the formal complaint with responses due within 21 days.

(5) The manner of making requests for admission shall conform as nearly as practicable to the procedure set forth in the Oregon Rules of Civil Procedure. Requests for admission may be served any time after service of the formal complaint with responses due within 21 days.

(c) Discovery Procedure. The Adjudicator shall resolve all discovery questions. Discovery motions, including motions for limitation of discovery, shall be in writing. All such motions, and any responses, shall be filed with the Disciplinary Board Clerk with proof of service on the other party. The Bar or the respondent has 7 days from the filing of a motion in which to file a response, unless the Adjudicator shortens the time for good cause shown. Upon expiration of the time for response, the Adjudicator shall promptly rule on the motion, with or without argument at the Adjudicator's discretion. Argument on any motion may be heard by conference telephone call. The Adjudicator shall file rulings on discovery motions with the Disciplinary Board Clerk, and the Clerk shall mail copies to the parties.

(d) Limitations on Discovery. In the exercise of his or her discretion, the Adjudicator shall impose such terms or limitations on the exercise of discovery as may appear necessary to prevent undue delay or expense in bringing the matter to hearing and to promote the interests of justice.

(e) Discovery Sanctions. For failure to provide discovery as required under BR 4.5, the Adjudicator may make such rulings as are just, including, but not limited to, the following:

(1) A ruling that the matters regarding which the ruling was made or any other designated fact are taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the ruling; or

(2) A ruling refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party from introducing designated matters in evidence.

Any witness who testifies falsely, fails to appear when subpoenaed, or fails to produce any documents pursuant to subpoena is subject to the same orders and penalties to which a witness before a circuit court is subject. Subpoenas issued pursuant to this rule may be enforced by application of the Bar or the respondent to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.

(f) Rulings Interlocutory. Discovery rulings are interlocutory.

(Rule 4.5(c) amended by Order dated February 23, 1988. Rule 4.5(b) amended by Order April 4, 1991, effective April 15, 1991.)

(Rule 4.5(a) and (c) amended by Order dated February 5, 2001.)

(Rule 4.5(c) amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 4.5(a), 4.5(b)(2), 4.5(b)(3), 4.5(c), 4.5(d), 4.5(e), 4.5(e)(1), and 4.5(e)(2) amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 4.6 Prehearing Issue Narrowing and Settlement Conference; Order.

(a) Within 28 days of written notice that the Adjudicator has set the date and place of the trial panel hearing pursuant to BR 2.4(e)(8), either party may file with the Disciplinary Board Clerk a request for a single prehearing issue narrowing and settlement conference pursuant to this rule. Upon notification from the Disciplinary Board Clerk that a timely request for a BR 4.6 conference has been filed, the Adjudicator shall appoint a member of the Disciplinary Board to serve as the presiding member and conduct the BR 4.6 conference. A conference shall be held no later than 21 days before the scheduled hearing date and shall not exceed one business day in length. The respondent, counsel for the respondent, if any, and Disciplinary Counsel must attend. The purpose of the conference is to narrow factual and legal issues in dispute for trial and to facilitate discussion regarding discipline by consent under BR 3.6, if appropriate. Except for those facts admitted and denied in the prehearing order, under BR 4.7, no oral or written statements or admissions made at or in connection with the prehearing conference shall be admitted as evidence in this or any subsequent Bar disciplinary proceeding. No member of the trial panel appointed in the proceeding shall conduct or participate in the prehearing conference.

(b) At the conclusion of the BR 4.6 conference, the presiding member shall enter an order setting forth agreed and disputed facts and elements of the violations alleged. In the absence of any agreement, the presiding member shall enter an order indicating that the BR 4.6 conference was held and that no agreements resulted. The presiding member shall file the order with the Disciplinary Board Clerk, with copies sent by the Disciplinary Board Clerk to the parties. Agreed facts shall be deemed admitted and need not be proven at the hearing before the trial panel.

(Rule 4.6 added by Order dated December 13, 1993.)

(Rule 4.6 amended by Order dated November 6, 1995. amended by Order dated June 17, 2003, effective July 1, 2003.)

(Former Rule 4.6 redesignated Rule 4.6(a); Rule 4.6(a) amended; and Rule 4.6(b) added by Order dated May 3, 2017, effective January 1, 2018.)

Rule 4.7 Pre-hearing Orders.

(a) At any time after the Adjudicator has set the time and place of the trial panel hearing pursuant to BR 2.4(e)(8) the Adjudicator may schedule and convene a prehearing conference that may be conducted by telephone or in person and shall be attended by the respondent, respondent's counsel, if any, and Disciplinary Counsel, upon notice sent by the Disciplinary Board Clerk not less than 14 days prior to the scheduled date and time. Such prehearing conference is intended to facilitate the efficient conduct of the proceeding and may include discussing the parties' respective estimates of time necessary to present evidence, the availability and scheduling of witnesses, and the preparation of trial exhibits; and the scheduling of pleading amendment and discovery deadlines.

(b) At the conclusion of a prehearing conference, the Adjudicator shall enter an order setting forth all matters discussed and addressed, including any deadlines imposed. The Adjudicator shall file the order with the Disciplinary Board Clerk, and the Disciplinary Board Clerk shall send copies to the parties.

(Rule 4.7 added by Order dated December 13, 1993.)

(Rule 4.7 amended by Order dated November 6, 1995. Amended by Order dated June 17, 2003, effective July 1, 2003.)

(Former Rule 4.7 redesignated as Rule 4.7(b); Rule 4.7(a) added; and Rule 4.7(b) amended by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 4.7(a) amended by Order dated May 22, 2019, effective September 1, 2019.)

Rule 4.8 Briefs.

Briefs, if any, shall be filed with the Disciplinary Board Clerk with copies served on the trial panel no later than 7 days prior to the hearing. Where new or additional issues have arisen, the Adjudicator may grant 7 days additional time for the filing of briefs on those issues.

(Rule 4.8 [former Rule 2.4(i)(2)] amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 4.8 amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 4.9 Mediation

(a) Mediation. The parties may employ the services of a mediator, other than a member of the Disciplinary Board, to determine the potential for, and to assist the parties in negotiating a settlement of issues in dispute. Mediation is voluntary; both parties must agree to participate in the mediation. The SPRB shall decide for the Bar whether to mediate.

(b) Time of Mediation. Mediation may occur at any time after the filing of the formal complaint, provided that the mediation shall not delay a hearing before a trial panel scheduled in accordance with BR 5.4. After a trial panel issues a written opinion in the proceeding pursuant to BR 2.4(i)(2), mediation may occur only if authorized by the Adjudicator.

(c) Discipline by Consent. A stipulation for discipline or no contest plea negotiated through mediation is subject to approval by the SPRB, and the Disciplinary Board or the Supreme Court, as the case may be, as set forth in BR 3.6, before it is effective.

(d) Costs. The expense of mediation shall be shared equally by the parties unless the parties agree otherwise.

(e) Confidentiality. Mediation communications, as defined in ORS 36.110, are confidential and may not be disclosed or admitted as evidence in subsequent adjudicatory proceedings, except as provided by ORS 36.226.

(Rule 4.9 added by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 4.9(a) and (e) amended by Order dated April 26, 2007.)

(Rule 4.9(a), 4.9(b) and 4.9(d) amended by Order dated May 3, 2017, effective January 1, 2018.)

Title 5 — Disciplinary Hearing Procedure

Rule 5.1 Evidence And Procedure.

(a) Rules of Evidence. Trial panels may admit and give effect to evidence that possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Incompetent, irrelevant, immaterial, and unduly repetitious evidence should be excluded at any hearing conducted pursuant to these rules.

(b) Harmless Error. No error in procedure, in admitting or excluding evidence, or in ruling on evidentiary or discovery questions shall invalidate a finding or decision unless upon a review of the record as a whole, a determination is made that a denial of a fair hearing to either the Bar or the respondent has occurred.

(Rule 5.1(a) amended by Order dated February 23, 1988.)

(Rule 5.1(a) and 5.1(b) amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 5.2 Burden Of Proof.

The Bar has the burden of establishing misconduct by clear and convincing evidence.

(Rule 5.2 amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 5.3 Location Of Hearing; Subpoenas; Testimony.

(a) Location. The trial panel hearing of any Disciplinary Proceeding in which the respondent maintains an office or residence in Oregon shall be held either in the county in which the respondent maintains his or her office for the practice of law or other business, in which he or she resides, or in which the misconduct is alleged to have occurred, at the Adjudicator's discretion. With the respondent's consent, the hearing may be held elsewhere. For any proceeding brought pursuant to these rules other than Title 4 in which the attorney or LP the subject of the proceeding maintains an office or residence in Oregon, and for any proceeding brought pursuant to these rules in which the attorney or LP the subject of the proceeding does not maintain an office or residence in Oregon, the Adjudicator shall designate a location for the hearing.

(b) Subpoenas. The Chief Executive Officer, the Adjudicator, or regional chairpersons of the Disciplinary Board, Bar Counsel, Disciplinary Counsel and the attorney for the respondent, or the respondent, if appearing without an attorney, shall have the authority to issue subpoenas. Subpoenas shall be issued and served in accordance with the Oregon Rules of Civil Procedure in the same manner as in a case pending in a circuit court. Any witness who testifies falsely, fails to appear when subpoenaed, or fails to produce any documents pursuant to subpoena, is subject to the same orders and penalties to which a witness before a circuit court is subject. Subpoenas issued pursuant this rule may be enforced by application of either party to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.

(c) Board Members as Witnesses. Current members of the Board of Governors shall not testify as witnesses in any Bar admission, discipline or reinstatement proceeding except pursuant to subpoena.

(d) Testimony. Witnesses shall testify under oath or affirmation administered by any member of the Disciplinary Board or by any person authorized by law to administer an oath.

(e) Transcript of Proceedings; Correction of Errors; Settlement Order. Every disciplinary hearing shall be transcribed and shall comply with the Oregon Rules of Appellate Procedure as to form. The transcription shall be certified by the person preparing it. The reporter shall give written notice to Disciplinary Counsel, Bar Counsel, and the respondent of the filing of the transcripts with the Disciplinary Board Clerk, who shall provide copies to the Adjudicator. Within 14 days after the transcript is filed, the Bar or the respondent may move the Adjudicator for an order to correct any errors appearing in the transcript, by filing a motion with the Disciplinary Board Clerk and serving the other party. Within 7 days the Bar or the respondent, as the case may be, may file a response to the motion with the Disciplinary Board Clerk, serving a copy on the other party. The Adjudicator shall thereafter either deny the motion or direct the making of such corrections as may be appropriate. Upon the denial of the motion or the making of such corrections, the Adjudicator shall file with the Disciplinary Board Clerk an order settling the transcript and the Disciplinary Board clerk shall send copies to the parties.

(Rule 5.3(b) amended by Order dated April 4, 1991, effective April 15, 1991.)

(Rule 5.3(a) amended by Order dated July 22, 1991.)

(Rule 5.3 (c), (d), and (e) amended by Order dated June 5, 1997, effective July 1, 1997.)

(Rule 5.3(a) and (e) amended by Order dated February 5, 2001.)

(Rule 5.3(e) amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 5.3(a) amended by Order dated April 26, 2007.)

(Rule 5.3(a), 5.3(b), and 5.3(e) amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 5.4 Hearing Date; Continuances.

Except in matters of default pursuant to BR 5.8, the Adjudicator shall establish the hearing date, which shall not be less than 91 days nor more than 182 days following the date the Adjudicator notifies the parties of the date and time for hearing pursuant to BR 2.4(e)(8). The Adjudicator may grant continuances of the hearing date at any time prior to the hearing or upon a showing of compelling necessity therefor, the trial panel may grant continuances at the time of the hearing. In no event shall continuances exceed 56 days in the aggregate.

(Rule 5.4 amended by Order dated October 10, 1994.)

(Rule 5.4 amended by Order dated February 5, 2001.)

(Rule 5.4 amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 5.5 Prior Record.

(a) Defined. "Prior record" means any contested admission, disciplinary or reinstatement decision of the Disciplinary Board or the Supreme Court that has become final.

(b) Restrictions on Admissibility. At the fact-finding hearing in a disciplinary proceeding, a respondent's prior record or lack thereof shall not be admissible to prove the character of a respondent or to impeach his or her credibility.

(Rule 5.5(a-b) amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 5.6 Evidence Of Prior Acts Of Misconduct.

Evidence of prior acts of misconduct on the part of a respondent is admissible in a disciplinary proceeding for such purposes as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(Rule 5.6 amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 5.7 Consideration Of Sanctions.

Trial panels may receive evidence relating to the imposition of a sanction during a hearing, but are not to consider that evidence until after a determination is made that the respondent is in violation of a rule of professional conduct or statute. Only when the Adjudicator considers it appropriate because of the complexity of the case or the seriousness of the charge or charges, the trial panel may be reconvened to consider evidence in aggravation or mitigation of the misconduct found to have occurred.

(Rule 5.7 amended by Order dated February 23, 1988.)

(Rule 5.7 amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 5.8 Default.

(a) Failure to Answer or Appear. If a respondent fails to resign or file an answer to a formal complaint within the time allowed by these rules, or if a respondent fails to appear at a hearing set pursuant to BR 2.4(e)(8), the Adjudicator may file with the Disciplinary Board Clerk an order finding the respondent in default under this rule and, if so, shall request the regional chairperson to appoint an attorney member and a public member to serve on the trial panel. The Disciplinary Board Clerk shall send copies of the order of default to the parties. The trial panel shall thereafter deem the allegations in the formal complaint to be true and either issue its

written opinion based on the formal complaint, or, in its sole discretion, after considering evidence or legal authority limited to the issue of sanction. Following entry of an order of default, the respondent is not entitled to further notice in the disciplinary proceeding under consideration, except as may be required by these rules or by statute. The trial panel shall not, absent good cause, continue or delay proceedings due to a respondent's failure to answer or appear.

(b) **Setting Aside Default.** At any time prior to a trial panel's issuing its written opinion, the trial panel may set aside an order of default upon a showing by the respondent that the respondent's failure to resign, answer, or appear timely was the result of mistake, inadvertence, surprise, or excusable neglect. If a trial panel has issued its opinion, a respondent must file any motion to set aside an order of default with the Supreme Court.

(Rule 5.8 amended by Order dated June 29, 1993.)

(Rule 5.8(a) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 5.8(a) amended by Order dated October 19, 2009.)

(Rule 5.8(a) and 5.8(b) amended by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 5.8(a) amended by Order dated May 22, 2019, effective September 1, 2019.)

Rule 5.9 Attorney Assistance Evidence.

(a) **Definition.** For the purposes of this rule, an "attorney assistance program" is any treatment, counseling, training or remedial service, created under ORS 9.568 or otherwise, designed to provide assistance to attorneys or LPs who are suffering from impairment or other circumstances which may adversely affect their professional competence or conduct, or to provide advice and training to attorneys or LPs in practice management.

(b) **Use of Evidence by Respondent.** Subject to the provisions of BR 5.1(a) and this rule, the respondent may offer evidence at a disciplinary hearing concerning the respondent's participation in or communication with an attorney assistance program. If the respondent fails to provide timely notice to Disciplinary Counsel as required under BR 5.9(c), the respondent may not offer evidence of the respondent's participation in or communication with an attorney assistance program at the hearing.

(c) **Prior Notice.** If the respondent intends to offer evidence at a hearing concerning the respondent's participation in or communication with an attorney assistance program, the respondent shall file with the Disciplinary Board Clerk, with proof of service on Disciplinary Counsel, written notice of such intent, not less than 63 days prior to the date the hearing is scheduled to commence. For good cause shown, the Adjudicator may permit the respondent to give the notice within a shorter period of time. The notice shall specify the identity of the attorney assistance program, the nature of the evidence that will be offered, the names of the service providers with whom the respondent dealt, and the names and addresses of witnesses the respondent intends to call to present the evidence. The notice shall also include the consent or waiver required by BR 5.9(d). The respondent shall provide a copy of the notice to the attorney assistance program.

(d) **Discovery.** In the event the respondent provides a notice to Disciplinary Counsel under BR 5.9(c), Disciplinary Counsel may conduct discovery concerning the respondent's participation in or communication with the attorney assistance program. The respondent shall provide any consent or waiver necessary to permit Disciplinary Counsel to obtain discovery from the attorney assistance program or its service providers at the time the respondent provides the notice required by BR 5.9(c). Questions regarding the permissible scope of discovery under this rule shall be resolved by the Adjudicator on motion pursuant to BR 4.5(c).

(e) **Discovery not Public.** Records and information obtained by Disciplinary Counsel through discovery under this rule are not be subject to public disclosure pursuant to BR 1.7(b), consistent with ORS 9.568(3), and may be disclosed by the parties only in the disciplinary proceeding.

(f) **Use of Evidence by Bar.** The Bar shall have the right to introduce evidence obtained through discovery under this rule only if the respondent introduces evidence of participation in or communication with an attorney assistance program.

(g) Enforcement. The Adjudicator may issue a protective order and impose sanctions to enforce this rule pursuant to BR 4.5(d) and (e).

(Rule 5.9 added by Order dated November 30, 1999.)

(Rule 5.9(a) amended by Order dated February 5, 2001.)

(Rule 5.9(c) amended by Order dated June 17, 2000, effective July 1, 2003.)

(Rule 5.9(b), 5.9(c), 5.9(d), 5.9(e), 5.9(f), and 5.9(g) amended by Order dated May 3, 2017, effective January 1, 2018.)

Title 6 — Sanctions And Other Remedies

Rule 6.1 Sanctions.

(a) Disciplinary Proceedings. The dispositions or sanctions in disciplinary proceedings or matters brought pursuant to BR 3.4 or 3.5 are

- (1) dismissal of any charge or all charges;
- (2) public reprimand;
- (3) suspension for periods from 30 days to five years;
- (4) a suspension for any period designated in BR 6.1(a)(3) which may be stayed in whole or in part on the condition that designated probationary terms are met; or
- (5) disbarment.

In conjunction with a disposition or sanction referred to in this rule, a respondent may be required to make restitution of some or all of the money, property, or fees received by the respondent in the representation of a client, or reimbursement to the Client Security Fund.

(b) Contested Reinstatement Proceedings. In contested reinstatement cases a determination shall be made whether the applicant shall be

- (1) denied reinstatement;
- (2) reinstated conditionally, subject to probationary terms; or
- (3) reinstated unconditionally.

(c) Time Period Before Application and Reapplication. The Supreme Court may require an applicant whose admission or reinstatement has been denied to wait a period of time designated by the court before reapplying for admission or reinstatement.

(d) Effect of Disbarment. An attorney disbarred as a result of a disciplinary proceeding commenced by formal complaint before January 1, 1996, may not apply for reinstatement until five years have elapsed from the effective date of his or her disbarment. An attorney [or LP](#) disbarred as a result of a disciplinary proceeding commenced by formal complaint after December 31, 1995, shall never be eligible to apply and shall not be considered for admission under ORS 9.220 or reinstatement under Title 8 of these rules.

(Rule 6.1(a) amended by Order dated May 31, 1984, effective July 1, 1984. Rule 6.1(d) amended by Order dated November 29, 1985, effective December 1, 1985. Rule 6.1(a) amended by Order dated December 14, 1995. Rule 6.1(d) amended by Order dated December 14, 1995. Rule 6.1(e) added by Order dated December 14, 1995. Rule 6.1(a) amended by Order dated June 5, 1997, effective July 1, 1997.)

(Rule 6.1(a) amended by Order dated February 5, 2001.)

(Rule 6.1(a)(iii) – 6.1(a)(v) and 6.1(b) – 6.1(d) amended by Order dated October 19, 2009.)

(Former Rule 6.1(a)(i), 6.1(a)(ii), 6.1(a)(iii), 6.1(a)(iv), 6.1(a)(v), 6.1(b)(i), 6.1(b)(ii), and 6.1(b)(iii) redesignated Rule 6.1(a)(1), 6.1(a)(2), 6.1(a)(3), 6.1(a)(4), 6.1(a)(5), 6.1(b)(1), 6.1(b)(2), and 6.1(b)(3); Rule 6.1(a), 6.1(a)(4), 6.1(c), and 6.1(d) amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 6.2 Probation.

(a) Authority in Disciplinary Proceedings. Upon determining that a respondent should be suspended, the trial panel may decide to stay execution of the suspension, in whole or in part, and place the respondent on probation for a period no longer than three years. The imposition of a probationary term shall not affect the criteria established by statute and these rules for Supreme Court review of trial panel decisions. Probation, if ordered, may be under such conditions as the trial panel or the court considers appropriate. Such conditions may include, but are not limited to, requiring alcohol or drug treatment; requiring medical care; requiring psychological or psychiatric care; requiring professional office practice or management counseling; and requiring periodic audits or reports. In any case where an attorney [or LP](#) is placed on probation pursuant to this rule, the Adjudicator or the court may appoint a suitable person or persons to supervise the probation. Cooperation with any person so appointed shall be a condition of the probation.

(b) Authority in Contested Reinstatement Proceedings. Upon determining that an applicant should be readmitted to membership in the Oregon State Bar, the trial panel may decide to place the applicant on probation for a period no longer than three years. The probationary terms may include, but are not limited to, those provided in BR 6.2(a). The court may adopt, in whole or in part, the trial panel's decision regarding probation and enter an appropriate order upon a review of the proceeding. The court may appoint a suitable person or persons to supervise the probation. Cooperation with any person so appointed shall be a condition of the probation. An attorney [or LP](#) placed on probation pursuant to this rule may have his or her probation revoked for a violation of any probationary term by petition of Disciplinary Counsel in accordance with the procedures set forth in BR 6.2(d). An attorney [or LP](#) whose probation is revoked shall be suspended from the practice of law until further order of the court.

(c) Disciplinary Board. In all cases where the trial panel determines that the respondent should be suspended and the determination is not reviewed by the court, thereby resulting in such determination becoming final, the decision that the respondent be placed on probation under the conditions specified in the trial panel's opinion shall be deemed adopted and made a part of the determination.

(d) Revocation Petition; Service; Trial Panel; Setting Hearing. Disciplinary Counsel may petition the Adjudicator or the court, as the case may be, to revoke the probation of any attorney [or LP](#) for violation of any probationary term imposed by a trial panel or the court, serving the attorney [or LP](#) with a copy of the petition pursuant to BR 1.8. The Adjudicator or the court, as the case may be, may order the attorney [or LP](#) to appear and show cause why probation should not be revoked and the original sanction imposed; the court also may refer the matter to the Disciplinary Board for hearing. When revocation of a trial panel probation is sought or the court has referred the matter to the Disciplinary Board for hearing, the Adjudicator shall appoint trial panel members pursuant to BR 2.4(e)(7) to serve with the Adjudicator on a trial panel that will conduct the show cause hearing and, where applicable, report back to the court. The Disciplinary Board Clerk shall notify the attorney [or LP](#) and Disciplinary Counsel in writing of the members to serve on the trial panel. BR 2.4(g) applies. After any timely filed challenges have been ruled upon and any substitute members have been appointed, the Adjudicator shall promptly enter an order that the attorney [or LP](#) appear and show cause why probation should not be revoked and the original sanction imposed, and that establishes the date, place, and time of the show cause hearing, which must be held not less than 21 days later. The Disciplinary Board Clerk shall send the parties a copy of the show cause order. At the hearing, Disciplinary Counsel has the burden of proving by clear and convincing evidence that the attorney [or LP](#) has violated a material term of probation. If the attorney [or LP](#), after being served with a copy of the petition and sent a copy of the show cause order, fails to appear at the hearing, the trial panel shall deem the allegations in the petition to be true and proceed to issue its written opinion based on the petition. If the revocation matter is within the jurisdiction of the Disciplinary Board, the trial panel's decision shall be filed with the Disciplinary Board Clerk, and the Disciplinary Board Clerk shall send copies to the parties. If the revocation matter is within the court's jurisdiction, the trial panel appointed to conduct the show cause hearing shall report back to the court, and the court shall thereafter rule on the petition. A petition for revocation of an attorney's [or LP's](#) probation shall not preclude the Bar from filing independent disciplinary charges based on the same conduct as alleged in the petition.

(e) Application of Other Rules. Except as specifically provided herein, Title 4 and Title 5 of the Rules of Procedure do not apply to proceedings brought pursuant to BR 6.2(d).

(Rule 6.2(b) amended by Order dated July 22, 1991.)

(Rule 6.2(d) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 6.2(a), 6.2(b), 6.2(c), and 6.2(d) amended and Rule 6.2(e) added by Order dated May 3, 2017, effective January 1, 2018.)

Rule 6.3 Duties Upon Disbarment Or Suspension.

(a) Attorney [or LP](#) to Discontinue Practice. A disbarred or suspended attorney [or LP](#) shall not practice law after the effective date of disbarment or suspension. This rule shall not preclude a disbarred or suspended attorney [or LP](#) from providing information on the facts of a case and its status to a succeeding attorney [or LP](#), and such information shall be provided on request.

(b) Responsibilities. It shall be the duty of a disbarred or suspended attorney [or LP](#) to immediately take all reasonable steps to avoid foreseeable prejudice to any client and to comply with all applicable laws and disciplinary rules.

(c) Notice; Return of Client Property. When, as a result of the disbarment or suspension, any active client matter will be left for which no other active member of the Bar, with the consent of the client, has agreed to resume responsibility, the disbarred or suspended attorney [or LP](#) shall give written notice of the cessation of practice to the affected clients, opposing parties, courts, agencies, and any other person or entity having reason to be informed of the cessation of practice. Such notice shall be given no later than 14 days after the effective date of the disbarment or suspension. In the case of a disbarment or a suspension of more than 60 days, client property pertaining to any active client matter shall be delivered to the client or an active member of the Bar designated by the client as substitute counsel.

(d) Contempt. Disciplinary Counsel may petition the Supreme Court to hold a disbarred or suspended attorney [or LP](#) in contempt for failing to comply with the provisions of BR 6.3(a), (b), or (c). The court may order the attorney [or LP](#) to appear and show cause, if any, why the attorney [or LP](#) should not be held in contempt of court and sanctioned accordingly.

(Rule 6.3 amended by Order dated March 13, 1989, effective April 1, 1989.)

(Former Rule 6.3(c) redesignated as Rule 6.3(d); Rule 6.3(c) added; and Rule 6.3(d) amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 6.4 Ethics School.

(a) An attorney [or LP](#) sanctioned under BR 6.1(a)(2), (a)(3) or (a)(i4) shall successfully complete a one-day course of study developed and offered by the Bar on the subjects of legal ethics, professional responsibility and law office management. Successful completion requires that the attorney [or LP](#) attend in person the course offered by the Bar and pay the attendance fee established by the Bar.

(b) An attorney [or LP](#) reprimanded under BR 6.1(a)(2) who does not successfully complete the course of study when the course is next offered by the Bar following the effective date of the reprimand may be suspended from the practice of law upon order of the Adjudicator, until the attorney [or LP](#) successfully completes the course.

(c) An attorney [or LP](#) suspended under BR 6.1(a)(iii) or (a)(iv) shall not be reinstated until the attorney [or LP](#) successfully completes the course of study, unless the course is not offered before the attorney's [or LP's](#) term of suspension expires, in which case the attorney [or LP](#) may be reinstated if otherwise eligible under applicable provisions of Title 8 of these Rules until the course is next offered by the Bar. If the attorney [or LP](#) does not successfully complete the course when it is next offered, the attorney [or LP](#) may be suspended from the practice of law upon order of the Adjudicator, until the attorney [or LP](#) successfully completes the course.

(d) Notwithstanding the provisions of BR 6.4(b) and (c), an extension of time in which to complete the ethics school requirement may be granted by the Bar or the Adjudicator, as the case may be, for good cause shown.

(Rule 6.4 added by Order dated December 10, 2010, effective June 1, 2011.)

(Rule 6.4(a), 6.4(b), 6.4(c), and 6.4(d) amended by Order dated May 3, 2017, effective January 1, 2018.)

Title 7 — Suspension for Failure to Respond in a Disciplinary Investigation

Rule 7.1 Suspension for Failure to Respond to a Subpoena.

(a) Petition for Suspension. When an attorney [or LP](#) fails without good cause to timely respond to a request from Disciplinary Counsel for information or records, or fails to respond to a subpoena issued pursuant to BR 2.2(b)(2), Disciplinary Counsel may petition the Disciplinary Board for an order immediately suspending the attorney [or LP](#) until such time as the attorney [or LP](#) responds to the request or complies with the subpoena. A petition under this rule shall allege that the attorney [or LP](#) has not responded to requests for information or records or has not complied with a subpoena, and has not asserted a good-faith objection to responding or complying. The petition shall be supported by a declaration setting forth the efforts undertaken by Disciplinary Counsel to obtain the attorney's [or LP's](#) response or compliance.

(b) Procedure. Disciplinary Counsel shall file a petition under this rule with the Disciplinary Board Clerk. The Adjudicator shall have the authority to act on the matter for the Disciplinary Board. A copy of the petition and declaration shall be served on the attorney [or LP](#) as set forth in BR 1.8(a).

(c) Response. Within 7 business days after service of the petition, the attorney [or LP](#) may file a response with the Disciplinary Board Clerk, setting forth facts showing that the attorney [or LP](#) has responded to the requests or complied with the subpoena, or the reasons why the attorney [or LP](#) has not responded or complied. The attorney [or LP](#) shall serve a copy of the response upon Disciplinary Counsel pursuant to BR 1.8(b). Disciplinary Counsel may file a reply to any response with the Disciplinary Board Clerk within 2 business days after being served with a copy of the attorney's [or LP's](#) response and shall serve a copy of the reply on the attorney [or LP](#).

(d) Review by the Disciplinary Board. Upon review, the Adjudicator shall issue an order that either denies the petition or immediately suspends the attorney [or LP](#) from the practice of law for an indefinite period. The Adjudicator shall file the order with the Disciplinary Board Clerk, who shall promptly send copies to Disciplinary Counsel and the attorney [or LP](#).

(e) Duties upon Suspension. An attorney [or LP](#) suspended from practice under this rule shall comply with the requirements of BR 6.3(a) and (b).

(f) Independent Charges. Suspension of an attorney [or LP](#) under this rule is not discipline. Suspension or reinstatement under this rule shall not prevent the SPRB from directing Disciplinary Counsel to file a formal complaint against an attorney [or LP](#) alleging a violation of RPC 8.1(a)(2), arising from the failure to respond or comply as alleged in the petition for suspension filed under this rule.

(g) Reinstatement. Subject to BR 8.1(a)(8) and BR 8.2(a)(5), any attorney [or LP](#) who has been a member of the Bar [or licensed as an LP](#) but suspended under BR 7.1 solely for failure to respond to requests for information or records or to respond to a subpoena shall be reinstated by the Chief Executive Officer to the membership status from which the person was suspended upon the filing of a Compliance Declaration with Disciplinary Counsel as set forth in BR 13.10.

(Rule 7.1 amended by Order dated November 1, 1984, effective December 1, 1984. Amended by Order dated September 24, 1987, effective October 1, 1987. Rule 7.1 amended by Order dated October 1, 1990. Title 7 amended by Order dated July 22, 1991.)

(Rule 7.1 deleted by Order dated October 19, 2009.)

(Rule 7.1 added by Order dated August 12, 2013, effective November 1, 2013.)

(Rule 7.1(a), 7.1(b), 7.1(c), 7.1(d), 7.1(f), and 7.1(g) amended by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 7.1(a) and 7.1(g) amended by Order dated May 22, 2019, effective September 1, 2019.)

Title 8 — Reinstatement

Rule 8.1 Reinstatement — Formal Application Required.

(a) Applicants. Any person who has been a member of the Bar, but who has

- (1) resigned under Form A of these rules prior to December 1, 2019, more than five years prior to the date of application for reinstatement and who has not been a member of the Bar during such period; or
- (2) resigned under Form B of these rules prior to January 1, 1996; or
- (3) been disbarred as a result of a disciplinary proceeding commenced by formal complaint before January 1, 1996; or
- (4) been suspended for misconduct for a period of more than 6 months; or
- (5) been suspended for misconduct for a period of 6 months or less but has remained in a suspended status for a period of more than 6 months prior to the date of application for reinstatement; or
- (6) been enrolled voluntarily as an inactive or retired member for more than 5 years; or
- (7) been involuntarily transferred to an inactive membership status; or
- (8) been suspended for any reason and has remained in that status more than 5 years; or
- (9) been in any status other than active, including active pro bono, inactive, resigned, retired, administratively suspended, suspended, or disbarred, for a combined total of more than 5 years prior to the date of application for reinstatement;

and who desires to be reinstated as an active member or to resume the practice of law in Oregon shall be reinstated as an active member of the Bar only upon formal application and compliance with the Rules of Procedure in effect at the time of such application. Applicants for reinstatement under this rule must file a completed application with the Bar on a form prepared by the Bar for that purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's inactive or retired status, suspension, disbarment, or resignation. A reinstatement to inactive status is not allowed under this rule. An applicant who has been suspended for a period exceeding 6 months may not apply for reinstatement any earlier than 3 months before the earliest possible expiration of the period specified in the opinion or order imposing suspension.

(b) Required Showing; Effect of Noncooperation.

- (1) Each applicant under this rule must show that the applicant has good moral character and general fitness to practice law; that the applicant has reformed since engaging in earlier misconduct, if any; and that the resumption of the practice of law in Oregon by the applicant will not be detrimental to the administration of justice or the public interest. Reformation may be established by evidence, such as: (i) character evidence from people who know and have had the opportunity to observe the applicant; (ii) evidence of the applicant's participation in activities for the public good; (iii) evidence of the applicant's forthrightness in acknowledging earlier wrongdoing; (iv) evidence of the applicant's adequate resolution of any previous substance abuse problem; and (v) evidence of the applicant's willingness to pay restitution to those people harmed by the applicant's earlier conduct. In determining whether the evidence is sufficient to establish reformation, the Supreme Court must be satisfied that the applicant has reformed in light of the earlier misconduct.
- (2) Each applicant has a duty to cooperate and comply with requests from the Bar in its efforts to assess the applicant's good moral character and general fitness to practice law, including responding to a lawful demand for information; the execution of releases necessary to obtain information and records from third

parties whose records reasonably bear upon character and fitness; and reporting promptly any changes, additions or corrections to information provided in the application.

(3) The Chief Executive Officer may refer to the Board any applicant who, during the pendency of a reinstatement application, engages in conduct that would violate RPC 8.1(a) if done by an attorney [or LP](#), with a recommendation that the Board determine that the applicant has not made the showing required by BR 8.1(b) and recommend to the Supreme Court that the application be denied. No applicant shall resume the practice of law in Oregon or active membership status unless all the requirements of this rule are met.

(c) Learning and Ability. In addition to the showing required in BR 8.1(b), each applicant under this rule who has remained in a suspended or resigned status for more than 3 years or has been enrolled voluntarily or involuntarily as an inactive or retired member for more than 5 years must show that the applicant has the requisite learning and ability to practice law in Oregon. The Bar may recommend and the Supreme Court may require as a condition precedent to reinstatement that the applicant take and pass the bar examination administered by the BBX, or successfully complete a prescribed course of continuing legal education. Factors to be considered in determining an applicant's learning and ability include, but are not limited to: the length of time since the applicant was an active member of the Bar; whether and when the applicant has practiced law in Oregon; whether the applicant practiced law in any jurisdiction during the period of the applicant's suspension, resignation, inactive, or retired status in Oregon; and whether the applicant has participated in continuing legal education activities during the period of suspension, inactive, or retired status in Oregon.

(d) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay an application fee of \$500 at the time the application for reinstatement is filed.

(e) Review by Chief Executive Officer; Referral of Application to Board. Notice of and requests for comment on applications filed under BR 8.1 shall be published on the Bar's website for a period of 30 days. If, after review of an application filed under BR 8.1 and any information gathered in the investigation of the application, the Chief Executive Officer determines that the applicant has made the showing required by BR 8.1(b), the Chief Executive Officer shall recommend to the Supreme Court, as provided in BR 8.7, that the application be granted, conditionally or unconditionally. If the Chief Executive Officer is unable to determine from a review of an application and any information gathered in the investigation of the application that the applicant has made the showing required by BR 8.1(b), the Chief Executive Officer shall refer the application to the Board for consideration, with notice to the applicant.

(f) Board Consideration of Application. If, after a referral from the Chief Executive Officer, the Board determines from its review of the application and any information gathered in the investigation of the application that the applicant has made the showing required by BR 8.1(b), the Board shall recommend to the Supreme Court, as provided in BR 8.7, that the application be granted, conditionally or unconditionally. If the Board determines that the applicant has not made the showing required by BR 8.1(b), the Board shall recommend to the court that the application be denied.

(g) If either the Chief Executive Officer or the Board recommend to the Supreme Court, under paragraph (e) or (f) of this rule, that the application be granted conditionally or unconditionally, then the court must determine whether the applicant has satisfied the burden of proof set out in BR 8.12. If the court determines that the applicant has not satisfied the burden of proof, the court may deny the application or it may remand to the Chief Executive Officer or the Board, or take any other action that it deems appropriate.

(Rule 8.1(c) and (f) amended by Order dated May 31, 1984, effective July 1, 1984.)

(Rule 8.1(c) amended by Order dated July 27, 1984 nun pro tunc May 31, 1984.)

(Rule 8.1 amended by Order dated March 13, 1989, effective April 1, 1989, corrected June 1, 1989.)

(Rule 8.1(a) and (c) amended by Order dated March 20, 1990, effective April 2, 1990.)

(Rule 8.1(a), (c), and (d) amended by Order dated December 14, 1995.)

(Rule 8.1(a) amended by Order dated February 5, 2001.)

(Rule 8.1(d) amended by Order dated October 19, 2009.)

(Rule 8.1(c) amended and Rule 8.1(e) and (f) added by Order dated April 5, 2013.)

(Rule 8.1(a)(i), 8.1(a)(ii), 8.1(a)(iii), 8.1(a)(iv), 8.1(a)(v), 8.1(a)(vi), 8.1(a)(vii), and 8.1(a)(viii) redesignated as Rule 8.1(a)(1), 8.1(a)(2), 8.1(a)(3), 8.1(a)(4), 8.1(a)(5), 8.1(a)(6), 8.1(a)(7), and 8.1(a)(8); Rule 8.1(a), 8.1(a)(4), 8.1(a)(5), 8.1(a)(6), 8.1(a)(7), 8.1(a)(8), 8.1(b), 8.1(c), 8.1(d), 8.1(e), and 8.1(f) amended by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 8.1(a)(1) amended by Order dated May 22, 2019, effective September 1, 2019.)

(Rule 8.1(b) amended and redesignated BR 8.1(b)(1), 8.1(b)(2), and 8.1(b)(3) and Rule 8.1(g) added by Order dated October 27, 2019, effective December 1, 2019.)

(Rule 8.1(a)(9) added by Order dated October 15, 2020, effective November 14, 2020.)

(Rule 8.1(a) amended by Order dated December 8, 2020.)

Rule 8.2 Reinstatement — Informal Application Required.

(a) Applicants. Any person who has been a member of the Bar, but who has

(1) resigned under Form A of these rules prior to December 1, 2019, and 5 years or less prior to the date of application for reinstatement, and who has not been a member of the Bar during such period; or

(2) been enrolled voluntarily as an inactive or retired member for 5 years or less prior to the date of application for reinstatement; or

(3) been suspended for failure to pay the Professional Liability Fund assessment, Client Security Fund assessment, or membership fees or penalties and has remained in that status more than 6 months but not in excess of 5 years prior to the date of application for reinstatement; or

(4) been suspended for failure to file with the Bar a certificate disclosing lawyer trust accounts and has remained in that status more than 6 months but not in excess of 5 years prior to the date of application for reinstatement; or

(5) been suspended under BR 7.1 and has remained in that status more than 6 months but not in excess of 5 years prior to the date of application for reinstatement; or

(6) has been suspended solely for failure to pay the Professional Liability Fund assessment, Client Security Fund assessment, or membership fees or penalties and has remained in that status more than 6 months prior to the date of application for reinstatement and seeks reinstatement to inactive or retired status; or

(7) has been suspended solely for failure to file with the Bar a certificate disclosing lawyer trust accounts and has remained in that status more than 6 months prior to the date of application for reinstatement and seeks reinstatement to inactive or retired status; and

(8) has only been enrolled in any status other than active, including active pro bono, inactive, resigned, retired, administratively suspended, suspended, or disbarred, for a combined total of 5 years or less prior to the date of application for reinstatement;

may be reinstated by the Chief Executive Officer by filing an informal application for reinstatement with the Bar and compliance with the Rules of Procedure in effect at the time of such application. The informal application for reinstatement shall be on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's inactive or retired status, suspension, or resignation. No applicant shall resume the practice of law in Oregon, or active, inactive, or retired membership status, unless all the requirements of this rule are met.

(b) Required Showing. Each applicant under this rule must show that the applicant has good moral character and general fitness to practice law, and that the applicant's resumption of the practice of law in Oregon will not be detrimental to the administration of justice or the public interest. Each applicant has a duty to cooperate and comply with requests from the Bar in its efforts to assess the applicant's good moral character and general fitness to practice law, including responding to a lawful demand for information; the execution of

releases necessary to obtain information and records from third parties whose records reasonably bear upon character and fitness; and reporting promptly any changes, additions or corrections to information provided in the application. The Chief Executive Officer may refer to the Board any applicant who, during the pendency of a reinstatement application, engages in conduct that would violate RPC 8.1(a) if done by an attorney, with a recommendation that the Board determine that the applicant has not made the showing required by BR 8.1(b) and recommend to the Supreme Court that the application be denied. No applicant shall resume the practice of law in Oregon or active membership status unless all the requirements of this rule are met.

(c) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay an application fee of \$250 at the time the application for reinstatement is filed.

(d) Exceptions. Any applicant otherwise qualified to file for reinstatement under this rule but who

(1) during the period of the member's suspension, resignation, active pro bono, inactive, or retired status has been convicted in any jurisdiction of an offense that is a misdemeanor involving moral turpitude or a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States; or

(2) during the period of the member's suspension, resignation, active pro bono, inactive, or retired status, has been suspended for professional misconduct for more than six months or has been disbarred by any court other than the Supreme Court; or

(3) has engaged in conduct that raises issues of possible violation of the Bar Act, former Code of Professional Responsibility, or Rules of Professional Conduct;

shall be required to seek reinstatement under BR 8.1. Any applicant required to apply for reinstatement under BR 8.1 because of this rule shall pay all fees, assessments and penalties due and delinquent at the time of the applicant's resignation, suspension or transfer to inactive status, and an application fee of \$500 to the Bar at the time the application for reinstatement is filed, together with any payments due under BR 8.6.

(e) Referral of Application to Board. If the Chief Executive Officer is unable to determine from a review of an informal application and any information gathered in the investigation of the application that the applicant for reinstatement has made the showing required by BR 8.2(b), the Chief Executive Officer shall refer the application to the Board for consideration, with notice to the applicant.

(f) Board Consideration of Application. If, after a referral from the Chief Executive Officer, the Board determines from its review of the informal application and any information gathered in the investigation of the application that the applicant for reinstatement has made the showing required by BR 8.2(b), the Board shall reinstate the applicant. If the Board determines that the applicant has not made the showing required by BR 8.2(b), the Board shall deny the application for reinstatement. The Board also may determine that an application filed under BR 8.2 be granted conditionally. The Board shall file an adverse recommendation or a recommendation of conditional reinstatement with the Supreme Court under BR 8.7.

(g) Suspension of Application. If the Chief Executive Officer or the Board, as the case may be, determines that additional information is required from an applicant regarding conduct during the period of suspension, resignation, inactive, or retired status, the Chief Executive Officer or the Board, as the case may be, may require additional information concerning the applicant's conduct and defer consideration of the application for reinstatement until the required information is obtained.

(Rule 8.2(b) amended by Order dated May 31, 1984, effective July 1, 1984.)

(Rule 8.2 amended by Order dated March 13, 1989, effective April 1, 1989.)

(Rule 8.2 (a) and (b) amended by Order dated March 20, 1990, effective April 2, 1990.)

(Rule 8.2(a) amended by Order dated December 28, 1993.)

(Rule 8.2(a) amended by Order dated December 14, 1995.)

(Rule 8.2 amended by Order dated December 9, 2004, effective January 1, 2005.)

(Rule 8.2(d)(iii) amended by Order dated April 26, 2007.)

(Rule 8.2(c) and 8.2(d) amended by Order dated October 19, 2009.)

(Rule 8.2(a)(iv) added by Order dated June 6, 2012.)

(Rule 8.2(a)(v) added by Order dated August 12, 2013, effective November 1, 2013.)

(Rule 8.2(a)(i), 8.2(a)(ii), 8.2(a)(iii), 8.2(a)(iv), 8.2(a)(v), 8.2(d)(i), 8.2(d)(ii), and 8.2(d)(iii) redesignated as Rule 8.2(a)(1), 8.2(a)(2), 8.2(a)(3), 8.2(a)(4), 8.2(a)(5), 8.2(d)(1), 8.2(d)(2), and 8.2(d)(3); Rule 8.2(a), 8.2(a)(1), 8.2(a)(2), 8.2(a)(3), 8.2(a)(4), 8.2(a)(5), 8.2(b), 8.2(c), 8.2(d)(1), 8.2(d)(2), 8.2(d)(3), 8.2(e), 8.2(f), and 8.2(g) amended by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 8.2(a), 8.2(a)(1), and 8.2(d)(1) amended and Rule 8.2(a)(6) and 8.2(a)(7) added by Order dated May 22, 2019, effective September 1, 2019.)

(Rule 8.2(a)(8) added and Rule 8.2(d)(1) and 8.2(d)(2) amended by Order dated October 15, 2020, effective November 14, 2020.)

(Rule 8.2(g) amended by Order dated December 8, 2020.)

Rule 8.3 Reinstatement — Compliance Affidavit.

(a) Applicants. Subject to the provisions of BR 8.1(a)(5), any person who has been a member of the Bar but who has been suspended for misconduct for a period of six months or less shall be reinstated upon the filing of a Compliance Declaration with Disciplinary Counsel as set forth in BR 13.9, unless the court or Disciplinary Board in any suspension order or decision shall have directed otherwise.

(b) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay an application fee of \$250 at the time the application for reinstatement is filed.

(Rule 8.3 established by Order dated March 13, 1989, effective April 1, 1989.)

(Rule 8.3(a) amended by Order dated December 28, 1993.)

(Rule 8.3(b) amended by Order dated October 19, 2009.)

(Rule 8.3(a) and 8.3(b) amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 8.4 Reinstatement — Financial or Trust Account Certification Matters.

(a) Applicants. Any person who has been a member of the Bar but suspended solely for failure to pay the Professional Liability Fund assessment, Client Security Fund assessment or annual membership fees or penalties, or suspended solely for failure to file a certificate disclosing lawyer trust accounts, may be reinstated by the Chief Executive Officer to the membership status from which the person was suspended within six months from the date of the applicant's suspension, upon:

- (1) payment to the Bar of all applicable assessments, fees and penalties owed by the member to the Bar, and
- (2) in the case of a suspension for failure to pay membership fees or penalties or the Client Security Fund assessment, payment of a reinstatement fee of \$100; or
- (3) in the case of a suspension for failure to pay the Professional Liability Fund assessment, payment of a reinstatement fee of \$100; or
- (4) in the case of suspensions for failure to pay both membership fees or penalties or the Client Security Fund assessment, and the Professional Liability Fund assessment, payment of a reinstatement fee of \$200; or
- (5) in the case of suspension for failure to file a lawyer trust account certificate, filing such a certificate with the Bar and payment of a reinstatement fee of \$100.

An applicant under this rule must, in conjunction with the payment of all required sums, submit a written statement to the Chief Executive Officer indicating compliance with this rule before reinstatement will be authorized. The written statement shall be on a form prepared by the Bar for that purpose. The applicant shall attest such the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's suspension.

(b) Exceptions. Any applicant otherwise qualified to file for reinstatement under this rule but who, during the period of the member's suspension, has been suspended for misconduct for more than six months or been disbarred by any court other than the Supreme Court, must seek reinstatement under BR 8.1. Any applicant required to apply for reinstatement under BR 8.1 pursuant to this rule shall pay all fees, assessments and penalties due and delinquent at the time of the applicant's suspension and an application fee of \$500 to the Bar at the time the application for reinstatement is filed, together with any payments due under BR 8.6.

(Rule 8.4 (former BR 8.3) amended by Order dated March 13, 1989, effective April 1, 1989.)

(Rule 8.4(a)(ii) – 8.4(a)(iv) and 8.4(b) amended by Order dated October 19, 2009.)

(Rule 8.4(a) amended by Order dated June 6, 2012.)

(Rule 8.4(a)(i), 8.4(a)(ii), 8.4(a)(iii), 8.4(a)(iv), and 8.4(a)(v) redesignated as Rule 8.4(a)(1), 8.4(a)(2), 8.4(a)(3), 8.4(a)(4), and 8.4(a)(5); Rule 8.4(a) and 8.4(b) amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 8.5 Reinstatement — Noncompliance With Minimum Continuing Legal Education, New Lawyer Mentoring Program or Ethics School Requirements.

(a) Applicants. Subject to the provisions of BR 8.1(a)(viii), any person who has been a member of the Bar but suspended solely for failure to comply with the requirements of the Minimum Continuing Legal Education Rules, the New Lawyer Mentoring Program, or the Ethics School established by BR 6.4 may seek reinstatement at any time subsequent to the date of the applicant's suspension by meeting the following conditions:

- (1) Completing the requirements that led to the suspension;
- (2) Filing a written statement with the Chief Executive Officer, on a form prepared by the Bar for that purpose, which indicates compliance with this rule and the applicable MCLE, NLMP or Ethics School Rule. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's suspension; and
- (3) Submitting a reinstatement fee of \$100 at the time of filing the written statement.

(b) Referral to Supreme Court. Upon compliance with the requirements of this rule, the Chief Executive Officer shall submit a recommendation to the court with a copy to the applicant. No reinstatement is effective until approved by the court.

(c) Exception. Reinstatement under this rule shall have no effect upon any member's status under any other proceeding under these Rules of Procedure.

(Rule 8.4 established by Order dated November 24, 1987, effective January 1, 1988.)

(Rule 8.5 (former BR 8.4) amended by Order dated March 13, 1989, effective April 1, 1989.)

(Rule 8.5(a) amended by Order dated December 14, 1995.)

(Rule 8.5(a) amended by Order dated October 19, 2009.)

(Rule 8.5(a) amended by Order dated June 6, 2012.)

(Rule 8.5(a)(i), 8.5(a)(ii), and 8.5(a)(iii) redesignated as Rule 8.5(a)(1), 8.5(a)(2), and 8.5(3); Rule 8.5(a), 8.5(a)(2), 8.5(a)(3), and 8.5(b) amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 8.6 Other Obligations Upon Application.

(a) Financial Obligations. Each applicant under BR 8.1 through 8.5 shall pay to the Bar, at the time the application for reinstatement is filed, all past due assessments, fees, and penalties owed to the Bar for prior years, and the membership fee and Client Security Fund assessment for the year in which the application for reinstatement is filed, less any active or inactive membership fees or Client Security Fund assessment paid by the applicant previously for the year of application. Each applicant under BR 8.1(a)(1) and BR 8.1(a)(8), shall also pay to the Bar, at the time of application, an amount equal to \$100 for each year the applicant remained suspended or resigned, and for which no membership fee has been paid. Each applicant under BR 8.2(a)(1), BR 8.2(a)(3), or (4) shall also pay to the Bar, at the time of application, an amount equal to \$100 for each year

the applicant remained suspended or resigned and for which no membership fee has been paid. Each applicant shall also pay, upon reinstatement, any applicable assessment to the Professional Liability Fund.

(b) Judgment for Costs; Client Security Fund Claim. Each applicant shall also pay to the Bar, at the time of application:

- (1) any unpaid judgment for costs and disbursements assessed in a disciplinary or contested reinstatement proceeding; and
- (2) an amount equal to any claim paid by the Client Security Fund due to the applicant's conduct, plus accrued interest thereon.

(c) Refunds. In the event an application for reinstatement is denied, the Bar shall refund to the applicant the membership fees and assessments paid for the year the application was filed, less the membership fees and assessments that applied during any temporary reinstatement under BR 8.7.

(d) Adjustments. In the event an application for reinstatement is filed in one year and not acted upon until the following year, the applicant shall pay to the Bar, prior to reinstatement, any increase in membership fees or assessments since the date of application. If a decrease in membership fees and assessments has occurred, the Bar shall refund the decrease to the applicant.

(Rule 8.6(a) and (b) amended by Order dated December 14, 1995.)

(Rule 8.6(a), (b) and (c) amended by Order dated February 5, 2001.)

(Rule 8.6(a) amended by Order dated June 6, 2012.)

(Rule 8.6(a) amended by Order dated August 10, 2015.)

(Rule 8.6(b)(i) and 8.6(a)(ii) redesignated as Rule 8.6(b)(1) and 8.6(b)(2); Rule 8.6(a) amended by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 8.6(a) amended by Order dated May 22, 2019, effective September 1, 2019.)

Rule 8.7 Board Investigation And Recommendation.

(a) Investigation and Recommendation. On the filing of an application for reinstatement under BR 8.1 and BR 8.2 in which the applicant seeks reinstatement for reasons other than previously imposed discipline, Regulatory Counsel shall conduct such investigation as it deems proper and report to the Chief Executive Officer or the Board, as the case may be. For all applications filed pursuant to BR 8.1 or BR 8.2(d) in which applicants seek reinstatement as a result of imposed discipline or as otherwise provided in BR 8.2(d), Disciplinary Counsel shall conduct such investigations as it deems proper and report to the Chief Executive Officer or the Board, as necessary. For applications filed under BR 8.1, the Chief Executive Officer or the Board, as the case may be, shall recommend to the Supreme Court that the application be granted, conditionally or unconditionally, or denied, and shall mail a copy of its recommendation to the applicant. For applications denied by the Board or recommended for conditional reinstatement under BR 8.2(f), the Board shall file its recommendation with the court and mail a copy of the recommendation to the applicant.

(b) Temporary Reinstatements. Except as provided herein, upon making a determination that the applicant is of good moral character and generally fit to practice law, the Chief Executive Officer or the Board may temporarily reinstate an applicant pending receipt of all investigatory materials. A temporary reinstatement shall not exceed a period of four months unless authorized by the court. An applicant who seeks reinstatement following a suspension or disbarment for professional misconduct, or an involuntary transfer to inactive status, shall not be temporarily reinstated pursuant to this rule.

(Rule 8.7 amended by Order dated December 28, 1993.)

(Rule 8.7(a) amended by Order dated December 9, 2004, effective January 1, 2005.)

(Rule 8.7(a) and (b) amended by Order dated April 5, 2013.)

(Rule 8.7(a) and 8.7(b) amended by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 8.7(a) amended by Order dated December 8, 2020.)

Rule 8.8 Petition To Review Adverse Recommendation.

(a) Not later than 28 days after the Bar files an adverse recommendation regarding the applicant with the Supreme Court, an applicant who desires to contest the Bar's recommendation shall file with the State Court Administrator a petition stating in substance that the applicant desires to have the case reviewed by the court, serving a copy on Disciplinary Counsel. The State Court Administrator shall give written notice of such a referral to the Disciplinary Board Clerk, Disciplinary Counsel, and the applicant. The applicant's resignation, disbarment, suspension, inactive, or retired membership status shall remain in effect until the court's final disposition of the petition.

(b) If the court considers it appropriate, it may refer the petition to the Disciplinary Board to inquire into the applicant's moral character and general fitness to practice law. If the court determines that the applicant has not satisfied the burden of proof set out in BR 8.12, the court may deny the application or it may remand to the Board, or take any other action that it deems appropriate.

(Rule 8.8 amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 8.8 amended by Order dated April 5, 2013.)

(Rule 8.8 amended by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 8.8 amended and redesignated as Rule 8.8(a) and 8.8(b) by Order dated October 27, 2019, effective December 1, 2019.)

Rule 8.9 Procedure On Referral By Supreme Court.

On receipt of notice of a referral to the Disciplinary Board under BR 8.8, Disciplinary Counsel may appoint Bar Counsel to represent the Bar. Disciplinary Counsel or Bar Counsel shall prepare and file with the Disciplinary Board Clerk, with proof of service on the applicant, a statement of objections. The statement of objections shall be substantially in the form set forth in BR 13.5.

(Rule 8.9 amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 8.9 amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 8.10 Answer To Statement Of Objections.

The applicant shall answer the statement of objections within 14 days after service of the statement and notice to answer upon the applicant. The answer shall be responsive to the objections filed. General denials are not allowed. The answer shall be substantially in the form set forth in BR 13.3 and shall be filed with the Disciplinary Board Clerk, with proof of service on Disciplinary Counsel. After the answer is filed or upon the expiration of the time allowed in the event the applicant fails to answer, the matter shall proceed to hearing.

(Rule 8.10 amended by Order dated July 17, 2003, effective July 1, 2003.)

(Rule 8.10 amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 8.11 Hearing Procedure.

Titles 4, 5, and 10 apply as far as practicable to reinstatement proceedings referred by the Supreme Court to the Disciplinary Board for hearing.

(Rule 8.11 amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 8.12 Burden Of Proof.

An applicant has the burden of proving the elements of the applicable standard by clear and convincing evidence.

(Rule 8.12 amended by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 8.12 amended by Order dated October 27, 2019, effective December 1, 2019.)

Rule 8.13 Burden Of Producing Evidence.

While an applicant for reinstatement has the ultimate burden of proof to establish good moral character and general fitness to practice law, the Bar shall initially have the burden of producing evidence in support of its position that the applicant should not be readmitted to the practice of law.

Rule 8.14 Reinstatement and Transfer--Active Pro Bono.

(a) Reinstatement from Inactive Status. An applicant who has been enrolled voluntarily as an inactive member and who has not engaged in any of the conduct described in BR 8.2(d) may be reinstated by the Chief Executive Officer to Active Pro Bono status. The Chief Executive Officer may deny the application of such an applicant for reinstatement for the reasons set forth in BR 8.2(d), in which case the applicant may be reinstated only upon successful compliance with all of the provisions of BR 8.2. The application for reinstatement to Active Pro Bono status shall be on a form prepared by the Bar for such purpose. No fee is required.

(b) Transfer to Regular Active Status. An applicant who has been on Active Pro Bono status for a period of 5 years or less and who desires to be eligible to practice law without restriction may be transferred to regular active status in the manner provided in and subject to the requirements of BR 8.1 and BR 8.2.

(Rules 8.5 - 8.11 amended by Order dated November 24, 1987, effective January 1, 1988.)

(Rules 8.6 - 8.13 amended by Order dated March 13, 1989, effective April 1, 1989.)

(Rule 8.14 added by Order dated September 6, 2001, effective September 6, 2001.)

(Rule 8.14(a) and (b) amended by Order dated October 19, 2009.)

(Rule 8.14(a) and 8.14(b) amended by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 8.14(b) amended by Order dated October 15, 2020, effective November 14, 2020.)

Title 9 — Resignation**Rule 9.1 Resignation.**

An attorney [or LP](#) may resign membership in the Bar by filing a resignation that shall be effective only on acceptance by the Supreme Court. If no inquiries or grievances involving the attorney [or LP](#) are under investigation by the Bar, no disciplinary proceedings are pending against the attorney [or LP](#), the attorney [or LP](#) is not suspended, disbarred, or on probation pursuant to BR 6.1 or BR 6.2, and the attorney [or LP](#) is not charged in any jurisdiction with an offense that is a misdemeanor that may involve moral turpitude, a felony under the laws of this state, or a crime punishable by death or imprisonment under the laws of the United States, the resignation must be on the form set forth in BR 13.6 and shall be filed with Regulatory Counsel. In all other circumstances, the resignation must be on the form set forth in BR 13.7 and shall be filed with Disciplinary Counsel.

(Rule 9.1 amended by Order dated February 5, 2001.)

(Rule 9.1 amended by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 9.1 amended by Order dated May 22, 2019, effective September 1, 2019.)

(Rule 9.1 amended by Order dated December 8, 2020.)

Rule 9.2 Acceptance Of Resignation.

Disciplinary or Regulatory Counsel, as the case may be, shall promptly forward the resignation to the State Court Administrator for submission to the Supreme Court. Upon acceptance of the resignation by the court, the name of the resigning attorney [or LP](#) shall be stricken from the roll of attorneys [or LPs](#); and he or she shall no longer be entitled to the rights or privileges of an attorney [or LP](#), but shall remain subject to the jurisdiction of the court with respect to matters occurring while he or she was an attorney [or LP](#). Unless otherwise ordered by the court, any pending investigation of charges, allegations, or instances of alleged misconduct by

the resigning attorney [or LP](#) shall, on the acceptance by the court of his or her resignation, be closed, as shall any pending disciplinary proceeding against the attorney [or LP](#).

(Rule 9.2 amended by Order dated February 5, 2001.)

(Rule 9.2 amended by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 9.2 amended by Order dated December 8, 2020.)

Rule 9.3 Duties Upon Resignation.

(a) Attorney [or LP](#) to Discontinue Practice. An attorney [or LP](#) who has resigned membership in the Oregon State Bar shall not practice law after the effective date of the resignation. This rule shall not preclude an attorney [or LP](#) who has resigned from providing information on the facts of a case and its status to a succeeding attorney [or LP](#), and such information shall be provided on request.

(b) Responsibilities. It shall be the duty of an attorney [or LP](#) who has resigned to immediately take all reasonable steps to avoid foreseeable prejudice to any client and to comply with all applicable laws and disciplinary rules.

(c) Notice. When, as a result of an attorney's [or LP's](#) resignation, an active client matter will be left for which no other active member of the Bar, with the consent of the client, has agreed to resume responsibility, the resigned attorney [or LP](#) shall give written notice of the cessation of practice to the affected clients, opposing parties, courts, agencies, and any other person or entity having reason to be informed of the cessation of practice. Such notice shall be given no later than 14 days after the effective date of the resignation. Client property pertaining to any active client matter shall be delivered to the client or an active member of the Bar designated by the client as substitute counsel no later than 21 days after the effective date of the resignation.

(d) Contempt. Disciplinary Counsel may petition the Supreme Court to hold an attorney [or LP](#) who has resigned in contempt for failing to comply with the provisions of BR 9.3(a), (b), or (c). The court may order the attorney [or LP](#) to appear and show cause, if any, why the attorney [or LP](#) should not be held in contempt of court and sanctioned accordingly.

(Rule 9.3 amended by Order dated March 13, 1989, effective April 1, 1989.)

(Former Rule 9.3(c) redesignated as Rule 9.3(d); Rule 9.3(c) added; and Rule 9.3(d) amended by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 9.3(d) amended by Order dated May 22, 2019, effective September 1, 2019.)

Rule 9.4 Effect of Form B Resignation.

An attorney [or LP](#) who has resigned membership in the Bar under Form B of these rules after December 31, 1995, shall never be eligible to apply for reinstatement under Title 8 of these rules and shall not be considered for admission under OR 9.220 or on any basis under the Rules for Admission of Attorneys.

(Rule 9.4 added by Order dated December 14, 1995.)

(Rule 9.4 amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 9.5 Effect of Form A Resignation after November 30, 2019.

An attorney [or LP](#) who has resigned membership in the Bar under Form A of these rules after November 30, 2019, shall never be eligible to apply for reinstatement under Title 8 of these rules, but may be considered for admission under ORS 9.220 or any basis under the Rules for Admission of Attorneys [or Rules for Admission of Licensed Paralegals](#).

(Rule 9.5 repealed by Order dated January 17, 2008.)

(Rule 9.5 added by Order dated May 22, 2019, effective September 1, 2019.)

Title 10 — Review By Supreme Court

Rule 10.1 Disciplinary Proceedings.

Upon the conclusion of a disciplinary hearing, the Adjudicator, pursuant to BR 1.8, shall file the trial panel's written opinion with the Disciplinary Board Clerk, and the Disciplinary Board Clerk shall send copies to Disciplinary Counsel, Bar Counsel, and the respondent. The Bar or the respondent may seek review of the matter by the Supreme Court; otherwise, the decision of the trial panel shall be final on the 31st day following the notice of receipt of the trial panel opinion by the Disciplinary Board Clerk, pursuant to BR 2.4(h)(4).

(Rule 10.1 amended by Order dated July 8, 1988.)

(Rule 10.1 amended by Order dated August 2, 1991.)

(Rule 10.1 amended by Order dated August 19, 1997, effective October 4, 1997.)

(Rule 10.1 amended by Order dated February 5, 2001.)

(Rule 10.1 amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 10.1 amended by Order dated June 17, 2003, effective January 1, 2004.)

(Rule 10.1 amended by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 10.1 amended by Order dated May 22, 2019, effective September 1, 2019.)

Rule 10.2 Request for Review.

Within 30 days after the Disciplinary Board Clerk has acknowledged, as required by BR 2.4(h)(4), receipt of a trial panel opinion, the Bar or the respondent may file with the Disciplinary Board Clerk and the State Court Administrator a request for review as set forth in BR 13.8. A copy of the request for review shall be served on the opposing party.

(Rule 10.2 amended by Order dated July 22, 1991.)

(Rule 10.2 amended by Order dated February 5, 2001.)

(Rule 10.2 amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 10.2 amended by Order dated October 19, 2009.)

(Rule 10.2 amended by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 10.2 amended by Order dated May 22, 2019, effective September 1, 2019.)

Rule 10.3 Contested Reinstatement Proceeding.

Upon the conclusion of a contested reinstatement hearing, the trial panel shall file its written opinion with the Disciplinary Board Clerk and the State Court Administrator, and serve copies on Disciplinary Counsel and the applicant. Each such reinstatement matter shall be reviewed by the Supreme Court.

(Rule 10.3 amended by Order dated July 8, 1988.)

(Rule 10.3 amended by Order dated August 19, 1997, effective October 4, 1997.)

(Rule 10.3 amended by Order dated February 5, 2001.)

(Rule 10.3 corrected by Order dated June 28, 2001.)

(Rule 10.3 amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 10.3 amended by Order dated June 17, 2003, effective January 1, 2004.)

(Rule 10.3 amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 10.4 Filing In Supreme Court.

(a) Record. Disciplinary Counsel shall file the record of a proceeding with the State Court Administrator upon the receipt by Disciplinary Counsel of:

- (1) a request for review timely filed pursuant to BR 10.2; or
- (2) a trial panel opinion in any contested reinstatement proceeding.

The record shall include a copy of the trial panel's opinion. Upon receipt of the record, the matter shall be reviewed by the court as provided in BR 10.5.

(Rule 10.4(a)(i) amended by Order dated July 22, 1991.)

(Rule 10.4 amended by Order dated June 29, 1993.)

(Rule 10.4(a)(ii) and (b) amended by Order dated August 19, 1997, effective October 4, 1997.)

(Rule 10.4 amended by Order dated June 17, 2003, effective January 1, 2004.)

(Former Rule 10.4(a)(i) and 10.4(a)(ii) redesignated as Rule 10.4(a)(1) and 10.4(a)(2); Rule 10.4(a), 10.4(a)(1), and 10.4(a)(2) amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 10.5 Procedure In Supreme Court.

(a) Briefs. No later than 28 days after the Supreme Court's written notice to Disciplinary Counsel and the respondent or applicant of receipt of the record, the party who requested review or the applicant, as the case may be, must file an opening brief. The brief must include a request for relief asking the court to adopt, modify, or reject, in whole or in part, the decision of the trial panel. Otherwise, the format of the opening brief and the timing and format of any answering or reply briefs shall be governed by the applicable Oregon Rules of Appellate Procedure. The failure of the Bar or a respondent or applicant to file a brief does not prevent the opposing litigant from filing a brief. Answering briefs are not limited to issues addressed in petitions or opening briefs, and may urge the adoption, modification, or rejection in whole or in part of any decision of the trial panel.

(b) Oral Argument. The Oregon Rules of Appellate Procedure relating to oral argument apply in disciplinary and contested reinstatement proceedings.

(Rule 10.5(b) and (c) amended by Order dated July 22, 1991.)

(Rule 10.5(b), 10.5(c), and 10.5(d) amended by Order dated October 19, 2009.)

(Former Rule 10.5(a) and 10.5(b) deleted; former Rule 10.5(c) and 10.5(d) redesignated as Rule 10.5(a) and 10.5(b); Rule 10.5(a) and 10.5(b) amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 10.6 Nature Of Review.

The Supreme Court shall consider each matter de novo upon the record and may adopt, modify, or reject the decision of the trial panel in whole or in part and thereupon enter an appropriate order. If the court's order adopts the decision of the trial panel without opinion, the opinion of the trial panel shall stand as a statement of the decision of the court in the matter but not as the opinion of the court.

(Rule 10.6 amended by Order dated July 22, 1991.)

(Rule 10.6 amended by Order dated October 19, 2009.)

(Rule 10.6 amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 10.7 Costs And Disbursements.

(a) Costs and Disbursements. "Costs and disbursements" are actual and necessary (1) service, filing and witness fees; (2) expenses of reproducing any document used as evidence at a hearing, including perpetuation depositions or other depositions admitted into evidence; (3) expenses of the hearing transcript, including the cost of a copy of the transcript if a copy has been provided by the Bar to a respondent or an applicant without charge; and (4) the expense of preparation of an appellate brief in accordance with ORAP 13.05. Lawyer fees are not recoverable costs and disbursements, either at the hearing or on review. Prevailing party fees are not recoverable by any party.

(b) Allowance of Costs and Disbursements. In any discipline or contested reinstatement proceeding, costs and disbursements as permitted in BR 10.7(a) may be allowed to the prevailing party by the Disciplinary Board or the Supreme Court. A respondent or applicant prevails when the charges against the respondent are dismissed in their entirety or the applicant is unconditionally reinstated to the practice of law in Oregon. The Bar shall be considered to have prevailed in all other cases.

(c) **Recovery After Offer of Settlement.** A respondent may, at any time up to 14 days prior to hearing, serve upon Disciplinary Counsel an offer to enter into a stipulation for discipline or no contest plea under BR 3.6. In the event the SPRB rejects such an offer, and the matter proceeds to hearing and results in a final decision of the Disciplinary Board or the court imposing a sanction no greater than that to which the respondent was willing to plead no contest or stipulate based on the charges the respondent was willing to concede or admit, the Bar shall not recover, and the respondent shall recover, actual and necessary costs and disbursements as permitted in BR 10.7(a) incurred after the date the SPRB rejected the respondent's offer.

(d) **Procedure for Recovery and Collection.** The procedure set forth in the Oregon Rules of Appellate Procedure regarding the filing of cost bills and objections thereto shall apply, except that, in matters involving final decisions of the Disciplinary Board, cost bills and objections thereto shall be resolved by the Adjudicator. The cost bill and objections thereto shall be filed with the Disciplinary Board Clerk, with proof of service on the other party, and shall not be due until 21 days after the date a trial panel's decision is deemed final under BR 10.1. The procedure for entry of judgments for costs and disbursements as judgment liens shall be as provided in ORS 9.536.

(Rule 10.7 amended by Order dated June 25, 1985, effective July 15, 1985; amended by further Orders dated July 8, 1985 and July 22, 1985; amended by Order dated March 13, 1989, effective April 1, 1989. Rule 10.7 (a) amended by Order dated October 1, 1990; amended by Order dated June 28, 2001.)

(Rule 10.7(d) amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 10.7(a) and (d) amended by Order dated April 26, 2007.)

(Rule 10.7(b) amended by Order dated October 19, 2009.)

(Rule 10.7(a), 10.7(b), 10.7(c), and 10.7(d) amended by Order dated May 3, 2017, effective January 1, 2018.)

Title 11 — Time Requirements

Rule 11.1 Failure To Meet Time Requirements.

The failure of any person or body to meet any time limitation or requirement in these rules shall not be grounds for the dismissal of any charge or objection, unless a showing is made that the delay substantially prejudiced the ability of the respondent or applicant to receive a fair hearing.

(Rule 11.1 amended by Order dated May 3, 2017, effective January 1, 2018.)

Title 12 — Unlawful Practice of Law Committee

Rule 12.1 Appointment.

The Supreme Court may appoint as many members as it deems necessary to carry out the Unlawful Practice of Law Committee's functions. At least two members of the Unlawful Practice of Law Committee must be members of the general public, and no more than one-quarter of the Unlawful Practice of Law Committee members may be lawyers engaged in the private practice of law.

Rule 12.2 Investigative Authority.

Pursuant to ORS 9.164, the Unlawful Practice of Law Committee shall investigate on behalf of the Bar complaints of the unlawful practice of law. For purposes of this rule, "unlawful practice of law" means (1) the practice of law in Oregon, as defined by the Supreme Court, by a person who is not an active member of the Bar and is not otherwise authorized by law to practice law in Oregon; or (2) holding oneself out, in any manner, as authorized to practice law in Oregon when not authorized to practice law in Oregon.

Rule 12.3 Public Outreach and Education.

(a) The Unlawful Practice of Law Committee may engage in public outreach to educate the public about the potential harm caused by the unlawful practice of law. The Unlawful Practice of Law Committee may cooperate in its education efforts with federal, state, and local agencies tasked with preventing consumer fraud.

(b) The Unlawful Practice of Law Committee may write informal opinions on questions relating to what activities may constitute the practice of law. Opinions must be approved by the Board before publication. The published opinions are not binding, but are intended only to provide general guidance to lawyers and members of the public about activities that Supreme Court precedent and Oregon law indicate may constitute the unlawful practice of law.

Rule 12.4 Enforcement.

The Bar may petition the Supreme Court to hold a disbarred attorney [or LP](#) or an attorney [or LP](#) whose resignation pursuant to BR 9.1 has been accepted by the court in contempt for engaging in the unlawful practice of law. The court may order the disbarred or resigned attorney [or LP](#) to appear and show cause, if any, why the disbarred or resigned attorney [or LP](#) should not be held in contempt of court and sanctioned accordingly.

(Former Title 12 redesignated as Title 13; Title 12, Rule 12.1, 12.2, 12.3, and 12.4 added by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 12.4 amended by Order dated May 22, 2019, effective September 1, 2019.)

Title 13 — Forms**Rule 13.1 Formal Complaint.**

A formal complaint in a disciplinary proceeding shall be in substantially the following form:

**IN THE SUPREME COURT
OF THE STATE OF OREGON**

In Re: _____)	No. _____
_____)	
Complaint as to the conduct of _____)	FORMAL
_____, Respondent)	COMPLAINT

For its first cause of complaint, the Oregon State Bar alleges:

1.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9, relating to discipline of attorneys.

2.

The Respondent, _____, is, and at all times mentioned herein was, an attorney at law ([or a Licensed Paralegal](#)), duly admitted by the Supreme Court of the State of Oregon to practice law in Oregon and a member of the Oregon State Bar, having his [her] office and place of business in the County of _____, State of _____.

3. et seq.

(State with certainty and particularity the actions of the Respondent alleged to be in violation of the disciplinary rules or statutes, including time, place and transaction, if necessary.)

4. (or next number)

The aforesaid conduct of the Respondent violated the following standard[s] of professional conduct established by law and by the Oregon State Bar: (insert applicable disciplinary rules and statutes).

AND, for its second cause of complaint against said Respondent, the Oregon State Bar alleges:

5. (or next number)

Incorporates by reference as fully set forth herein Paragraphs ____, ____, ____, and ____ of its first cause of complaint.

6. (or next number)

(State with certainty and particularity the actions of the Respondent alleged to be in violation of the disciplinary rules or statutes, including time, place and transaction, if necessary.)

7. (or next number)

The aforesaid conduct of the Respondent violated the following standard[s] of professional conduct established by law and by the Oregon State Bar: (insert applicable disciplinary rules and statutes).

AND, for its third cause of complaint against said Respondent, the Oregon State Bar alleges:

8. (or next number)

Incorporates by reference as fully set forth herein Paragraphs ____, ____, ____, ____, and ____ of its first cause of complaint and Paragraphs ____, ____, ____, and ____ of its second cause of complaint.

9. (or next number)

(State with certainty and particularity the actions of the Respondent alleged to be in violation of the disciplinary rules or statutes, including time, place and transaction, if necessary.)

10. (or next number)

The aforesaid conduct of the Respondent violated the following standard[s] of professional conduct established by law and by the Oregon State Bar: (insert applicable disciplinary rules and statutes).

WHEREFORE, the Oregon State Bar demands that the Respondent make answer to this complaint; that a hearing be set concerning the charges made herein; that the matters alleged herein be fully, properly and legally determined; and pursuant thereto, such action be taken as may be just and proper under the circumstances.

DATED this ____ day of ____, 20__.

OREGON STATE BAR

By:

Disciplinary Counsel

(Rule 12.1 amended by Order dated February 5, 2001.)

(Former Rule 12.1 redesignated as Rule 13.1; Rule 13.1 amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 13.2 Notice to Answer.

A copy of the formal complaint (statement of objections), accompanied by a notice to answer it within a designated time, shall be served on the respondent (applicant). Such notice shall be in substantially the following form:

(Heading as in complaint/statement of objections)

NOTICE TO ANSWER

You are hereby notified that a formal complaint against you (statement of objections to your reinstatement) has been filed by the Oregon State Bar, a copy of which formal complaint (statement of objections) is attached hereto and served upon you herewith. You are further notified that you may file with the Disciplinary Board Clerk, with a service copy to Disciplinary Counsel, your verified answer within fourteen (14) days from the date of service of this notice upon you. In case of your default in so answering, the formal complaint (statement of objections) shall be heard and such further proceedings had as the law and the facts shall warrant.

(The following paragraph shall be used in a disciplinary proceeding only:)

You are further notified that an attorney or LP accused of misconduct may, in lieu of filing an answer, elect to file with Disciplinary Counsel of the Oregon State Bar, a written resignation from membership in the Oregon State Bar. Such a resignation must comply with BR 9.1 and be in the form set forth in BR 12.7. You should consult an attorney of your choice for further information about resignation.

The address of the Oregon State Bar is 16037 S.W. Upper Boones Ferry Road, Tigard, Oregon 97224, or by mail at P. O. Box 231935, Tigard, Oregon 97281-1935.

DATED this ____ day of ____, 20__.

OREGON STATE BAR

By:

Disciplinary Counsel

(Rule 12.2 amended by Order dated February 5, 2001.)

(Rule 12.2 amended by Order dated April 26, 2007.)

(Rule 12.2 amended by Order dated March 20, 2008.)

(Rule 12.2 amended by Order dated October 19, 2009.)

(Former Rule 12.2 redesignated as Rule 13.2; Rule 13.2 amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 13.3 Answer.

The answer of the respondent (applicant) shall be in substantially the following form:

(Heading as in complaint/statement of objections)

ANSWER

_____, (name of respondent (applicant)), whose residence address is _____, in the County of _____, State of Oregon, and who maintains his [her] principal office for the practice of law or other business at _____, in the County of _____, State of Oregon, answers the formal complaint (statement of objections) in the above-entitled matter as follows:

1.

Admits the following matters charged in the formal complaint (statement of objections) as follows:

2.

Denies the following matters charged in the formal complaint (statement of objections) as follows:

3.

Explains or justifies the following matters charged in the formal complaint (statement of objections).

4.

Sets forth new matter and other defenses not previously stated, as follows:

5.

WHEREFORE, the accused (applicant) prays that the formal complaint (statement of objections) be dismissed.

DATED this ____ day of ___, 20__.

RESPONDENT (APPLICANT)
Attorney for Respondent (Applicant)

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in the trial panel hearing and is subject to penalty for perjury.

RESPONDENT (APPLICANT)

(Former Rule 12.3 redesignated as Rule 13.3; Rule 13.3 amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 13.4 [Reserved for expansion]

(Rule 12.4 repealed by Order dated July 22, 1991.)

(Former Rule 12.4 redesignated as Rule 13.4 by Order dated May 3, 2017, effective January 1, 2018.)

Rule 13.5 Statement Of Objections To Reinstatement.

In a contested reinstatement proceeding, the statement of objections shall be in substantially the following form:

**IN THE SUPREME COURT
OF THE STATE OF OREGON**

In The Matter Of The)	
Application of)	STATEMENT
_____)	OF
For Reinstatement as)	OBJECTIONS
an Active Member)	TO
of the Oregon State Bar)	REINSTATEMENT

The Oregon State Bar objects to the qualifications of the Applicant for reinstatement on the ground and for the reason that the Applicant has not shown, to the satisfaction of the Board of Governors, that he [she] has the good moral character or general fitness required for readmission to practice law in Oregon, that his [her] readmission to practice law in Oregon will be neither detrimental to the integrity and standing of the Bar or the administration of justice, nor subversive to the public interest, or that he [she] is, in all respects, able and

qualified, by good moral character and otherwise, to accept the obligations and faithfully perform the duties of an attorney in Oregon, in one or more of the following particulars:

1.

The Applicant does not possess good moral character or general fitness to practice law, in that the Applicant, _____ (state the facts of the matter)

2.

(Same)

3.

(Same)

WHEREFORE, the Oregon State Bar requests that the recommendation of the Board of Governors to the Supreme Court of the State of Oregon in this matter be approved and adopted by the Court and that the application of the Applicant for reinstatement as an active member of the Oregon State Bar be denied.

DATED this ____ day of ____, 20__.

OREGON STATE BAR

By:

Disciplinary Counsel

(Rule 12.5 amended by Order dated February 5, 2001.)

(Rule 12.5 amended by Order dated October 19, 2009.)

(Former Rule 12.5 redesignated as Rule 13.5 by Order dated May 3, 2017, effective January 1, 2018.)

Rule 13.6 Form A Resignation.

IN THE SUPREME COURT OF THE STATE OF OREGON

In Re: _____) FORM A
(Name) _____) RESIGNATION

I, _____, declare that my residence address is _____ (No. and Street), _____ (City), _____ (State), _____ (Zip Code), and that I hereby tender my resignation from membership in the Oregon State Bar and respectfully request and consent to my removal from the roster of those admitted to practice before the courts of this state and from membership in the Oregon State Bar.

I hereby certify that I am not charged in any jurisdiction with an offense that is a misdemeanor that may involve moral turpitude, a felony under the laws of this state, or a crime punishable by death or imprisonment under the laws of the United States.

I hereby certify that all client files and client records in my possession pertaining to active or current clients have been or will be placed promptly in the custody of _____, a resident Oregon attorney, whose principal office address is _____, who has agreed to serve as custodian to take possession of the files and take such further action as necessary to protect the interests of the clients, and that all such clients have been or will be promptly notified accordingly, and that the following arrangements have been made with regard to client files and records pertaining to inactive or former clients, if any:

OR

I hereby certify that all client files and client records pertaining to active or current clients have been or will be placed promptly in the custody of the Professional Liability Fund, which has agreed to take possession of the files and take such further action as necessary to protect the interests of the clients, and that such clients have been or will be promptly notified accordingly, and that the following arrangements have been made with regard to client files and records pertaining to inactive or former clients, if any:

OR

I hereby certify that I have no client files or client records pertaining to active or current clients and that the following arrangements have been made with regard to client files and records pertaining to inactive or former clients, if any:

I agree to perform the duties of a resigned attorney set forth in BR 9.3 and that I may be held in contempt of court if I do not.

DATED at __, this __ day of __, 20__.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

(Signature of Member)

I, _____, Chief Executive Officer of the Oregon State Bar, do hereby certify that there are no inquiries or grievances involving the above-name attorney under investigation by the Bar, no disciplinary proceedings are pending against the attorney, and the attorney is not suspended, disbarred, or on probation pursuant to BR 6.1 and BR 6.2.

DATED this ____ day of _____, 20__.

OREGON STATE BAR

By: _____
Chief Executive Officer

*(Former Rule 12.6 redesignated as Rule 13.6; Rule 13.6 amended by Order dated May 3, 2017, effective January 1, 2018.)
(Rule 13.6 amended by Order dated May 22, 2019, effective September 1, 2019.)*

Rule 13.7 Form B Resignation.

**IN THE SUPREME COURT
OF THE STATE OF OREGON**

In Re: _____) FORM B
(Name) _____) RESIGNATION

State of _____)
County of _____) ss

I, _____, being duly sworn on oath, depose and say that my principal office for the practice of law or other business is located at _____ (Building No. and Name, if

any, or Box No.), _____ (Street address, if any),
 _____ (City), _____
 (State), _____ (Zip Code); that my residence address is _____
 (No. and Street), _____ (City), _____ (State), _____ (Zip Code), and that I
 hereby tender my resignation from membership in the Oregon State Bar and request and consent to my
 removal from the roster of those admitted to practice before the courts of this state and from membership in
 the Oregon State Bar.

I am aware that there is pending against me a formal complaint concerning alleged misconduct and/or that
 complaints, allegations or instances of alleged misconduct by me are under investigation by the Oregon State
 Bar and that such complaints, allegations and/or instances include:

(List of formal complaints, proceedings or investigations pending.)

I do not desire to contest or defend against the above-described complaints, allegations or instances of
 alleged misconduct. I am aware of the rules of the Supreme Court and of the bylaws and rules of procedure of
 the Oregon State Bar with respect to admission, discipline, resignation and reinstatement of members of the
 Oregon State Bar. I understand that any future application by me for reinstatement as a member of the
 Oregon State Bar is currently barred by BR 9.4, but that should such an application ever be permitted in the
 future, it will be treated as an application by one who has been disbarred for misconduct, and that, on such
 application, I shall not be entitled to a reconsideration or reexamination of the facts, complaints, allegations or
 instances of alleged misconduct upon which this resignation is predicated. I understand that, on its filing in
 this court, this resignation and any supporting documents, including those containing the complaints,
 allegations or instances of alleged misconduct, will become public records of this court, open for inspection by
 anyone requesting to see them.

This resignation is freely and voluntarily made; and I am not being, and have not been, subjected to coercion
 or duress. I am fully aware of all the foregoing and any other implications of my resignation.

I hereby certify that all client files and client records in my possession pertaining to active or current clients
 have been or will be placed promptly in the custody of _____, a resident Oregon
 attorney, whose principal office address is _____, who
 has agreed to serve as custodian to take possession of the files and take such further action as necessary to
 protect the interests of the clients, and that all such clients have been or will be promptly notified accordingly,
 and that the following arrangements have been made with regard to client files and records pertaining to
 inactive or former clients, if any:

OR

I hereby certify that all client files and client records pertaining to active or current clients have been or will be
 placed promptly in the custody of the Professional Liability Fund, which has agreed to take possession of the
 files and take such further action as necessary to protect the interests of the clients, and that such clients have
 been or will be promptly notified accordingly, and that the following arrangements have been made with
 regard to client files and records pertaining to inactive or former clients, if any:

OR

I hereby certify that I have no client files or client records pertaining to active or current clients and that the
 following arrangements have been made with regard to client files and records pertaining to inactive or
 former clients, if any:

I agree to perform the duties of a resigned attorney set forth in BR 9.3 and that I may be held in contempt of court if I do not.

DATED at __, this __ day of __, 20__.

(Signature of Attorney)

Subscribed and sworn to before me this __ day of __, 20__.

Notary Public for Oregon
My Commission Expires:

(Rule 12.7 amended by Order dated June 5, 1997, effective July 1, 1997).

(Rule 12.7 amended by Order dated February 5, 2001.)

(Former Rule 12.7 redesignated as Rule 13.7 by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 13.7 amended by Order dated May 22, 2019, effective September 1, 2019.)

Rule 13.8 Request For Review.

A request for review pursuant to BR 10.3 shall be in substantially the following form.

IN THE SUPREME COURT OF THE STATE OF OREGON

In Re:)	
)	No. _____
Complaint as to the)	
Conduct of _____)	REQUEST FOR
Respondent)	REVIEW

[The Respondent/The Oregon State Bar] hereby requests the Supreme Court to review the decision of the Disciplinary Board trial panel rendered on [date] in the above matter.

DATED this __ day of __, 20__.

[signature of respondent or counsel]

(Former Rule 12.8 redesignated as Rule 13.8; Rule 13.8 amended by Order dated May 3, 2017, effective January 1, 2018.)

Rule 13.9 Compliance Declaration.

A compliance declaration filed under BR 8.3 shall be in substantially the following form:

COMPLIANCE DECLARATION

In re: Application of

(Name of attorney) (Bar number)

For reinstatement as an active/inactive (circle one) member of the OSB.

1. Full name _____ Date of Birth _____

2. Residence address _____ Telephone _____

3. I hereby attest that during my period of suspension from the practice of law from _____ to _____, (insert dates) I did not at any time engage in the practice of law except where authorized to do so.

4. I also hereby attest that I complied as directed with the following terms of probation: (circle applicable items)

- a. abstinence from consumption of alcohol and mind-altering chemicals/drugs, except as prescribed by a physician
- b. attendance at Alcoholics Anonymous meetings
- c. cooperation with Chemical Dependency Program
- d. cooperation with State Lawyers Assistance Committee
- e. psychiatric/psychological counseling
- f. passed Multi-State Professional Responsibility exam
- g. attended law office management counseling and/or programs
- h. other - (please specify) _____
- i. none required

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

(Name)

(Rule 12.9 established by Order dated March 13, 1989, effective April 1, 1989.)

(Rule 12.9 amended by Order dated February 5, 2001.)

(Former Rule 12.9 redesignated as Rule 13.9; Rule 13.9 amended by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 13.9 amended by Order dated May 22, 2019, effective September 1, 2019.)

Rule 13.10 Compliance Declaration.

A compliance declaration filed under BR 7.1(g) shall be in substantially the following form:

COMPLIANCE DECLARATION

In re: Reinstatement of

(Name of attorney)

(Bar number)

For reinstatement as an active/inactive (circle one) member of the OSB.

1. Full name _____ Date of Birth _____

2. Residence address _____ Telephone _____

3. I hereby attest that during my period of suspension from the practice of law from _____ to _____, (insert dates)

☐ I did not at any time engage in the practice of law except where authorized to do so.

OR

☐ I engaged in the practice of law under the circumstances described on the attached [attach an explanation of activities relating to the practice of law during suspension].

4. I also hereby attest that I responded to the requests for information or records by Disciplinary Counsel and have complied with any subpoenas issued by Disciplinary Counsel, or provided good cause for not complying to the request.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

(Name)

(Rule 12.10 established by Order dated August 12, 2013, effective November 1, 2013.)

(Former Rule 12.10 redesignated as Rule 13.10; Rule 13.10 amended by Order dated May 3, 2017, effective January 1, 2018.)

(Rule 13.10 amended by Order dated May 22, 2019, effective September 1, 2019.)



16037 SW Upper Boones Ferry Road
PO Box 231935
Tigard, Oregon 97281-1935
(503) 620-0222 or (800) 452-8260
www.osbar.org

Multnomah County Circuit
Court, Presiding Judge Order
re: Custody and Parenting Time
(Mar. 27, 2020)

In the Matter of:)	Order No. 20DR00000
)	
CUSTODY AND PARENTING)	PRESIDING JUDGE ORDER RE:
TIME DURING COVID-19)	CUSTODY AND PARENTING TIME
PANDEMIC)	
)	
)	
)	

Whereas the purpose this order during the COVID-19 pandemic is to encourage the parties to follow their parenting plan as closely as possible, as doing so will ensure a level of consistency and stability that is in the children's best interests. This order recognizes Oregon's policy of: assuring minor children frequent and continuing contact with parents who have shown the ability to act in the children's best interests; encouraging such parents to share in the rights and responsibilities of raising their children; encouraging parents to develop their own parenting plan and grant them discretion in developing such a plan; and considering the best interests of the children and safety of the parties in developing a parenting plan.

Unless the parties agree otherwise:

1. Definition of Spring Break, Summer Break/Vacation or Holidays: While the schools are closed, parenting time shall continue as if the children are still attending school in accordance with the school calendar of the relevant district. 'Spring break,' 'summer break/vacation' or other designated holidays, means the regularly calendared breaks/vacations or holidays in the school district where the children are attending school (or would attend school if they were school aged). The closure of the school for public health purposes will not be considered an extension of any break/vacation/holiday period or weekend.

2. Denial of Parenting Time: COVID-19 is not a reason to deny parenting time. Unless otherwise ordered by the court, parents are considered fit to care for their children and make decisions regarding the day-to-day aspects of parenting while the children are in their care. This day-to-day care includes following the Oregon Health Authority and your County Public Health directives regarding social distancing and sanitation-related measures (such as frequent handwashing).
3. Parenting Time in Public Places: Governor Brown has forbidden all nonessential gatherings, regardless of size. If the parenting plan states that parenting time will occur in a public place, parenting time shall continue at locations that are permitted under the health and safety guidelines for the state, such as a large park or nature hike. Public places where people routinely touch common contact surfaces (such as parks and play equipment) should be avoided. However, activities where parents and children can maintain social distancing and avoid such surfaces are encouraged. If that is not possible, then the parenting time shall be conducted virtually via videoconferencing or by telephone.
4. Supervised Parenting Time: If parenting time is ordered to be supervised, and the supervisor is unavailable due to COVID-19-related issues or government orders, the parties shall work collaboratively to ensure parenting time continues to occur in a manner that promotes their children's safety and wellbeing, such as finding an alternative supervisor. If that is not possible, then the parenting time shall be conducted virtually via videoconferencing or by telephone.
5. Governor's Executive Orders regarding Travel: The Governor has issued executive orders that restrict travel except for essential activities, which generally include caring for minors, dependents and/or family members. Therefore, unless otherwise directed by the Governor or other executive order, the parties shall continue to follow the parenting plan as written while such orders are in effect.
6. Exchanges: During the exchange of the children, all parties shall follow the CDC guidelines for limiting the spread of the virus, which may mean choosing an alternate location for the exchanges that has less people congregating and less touching of public items (changing from the restaurant to the grocery store parking lot for example).
7. Safety-Related Issues: Our first responders must remain available for true emergencies and for support related to the COVID-19 outbreak. Parents shall not call them for parenting-related disputes but rather only in the circumstances of real, immediate, and significant safety-related reasons.
8. Transparency: Unless the parties are restrained from communicating, parents shall communicate about precautions they are taking to slow the spread of COVID-19. A parent shall not deny parenting time based upon the other parent's unwillingness to

discuss their precautionary measures taken, or belief that the other parent's precautions are insufficient.

9. Makeup Parenting Time: If parenting time is missed due to COVID-19-related issues or government orders, parents shall work collaboratively to schedule makeup parenting time that promotes their children's safety and wellbeing.

3/27/2020

\s\ Stephen Bushong

Judge Stephen K. Bushong, Presiding Judge

3/27/2020

Susan M. Svetkey

Judge Susan M. Svetkey, Presiding Family Law Judge

Oregon Statewide Family Law
Advisory Committee
Recommendations for Oregon
Courts: Information for Parents
sharing Custody or Parenting
Time of Children During the
COVID-19 Pandemic (Mar. 26,
2020)

Oregon Statewide Family Law Advisory Committee (SFLAC) Recommendations for Oregon Courts: Information for Parents sharing Custody or Parenting Time of Children During the COVID-19 Pandemic

Due to the COVID-19 Pandemic, all schools in Oregon are closed for an extended period to reduce the transmission of the virus. The American Academy of Matrimonial Lawyers (AAML) and the Association of Family and Conciliation Courts (AFCC) have published important guidelines for parents during the pandemic (<https://www.thecenterforfamilylaw.com/afcc-aaml/>).

The goal of these recommendations is to encourage the parties to follow their parenting plan as closely as possible, as doing so will ensure a level of consistency and stability that is in the children's best interests. These recommendations recognize Oregon's policy of: assuring minor children frequent and continuing contact with parents who have shown the ability to act in the children's best interests; encouraging such parents to share in the rights and responsibilities of raising their children; encouraging parents to develop their own parenting plan and grant them discretion in developing such a plan; and considering the best interests of the children and safety of the parties in developing a parenting plan. ORS 107.101.

RECOMMENDED COURT CLARIFICATION:

Unless the parties agree otherwise:

1. Definition of Spring Break, Summer Break/Vacation or Holidays: While the schools are closed, parenting time shall continue as if the children are still attending school in accordance with the school calendar of the relevant district. 'Spring break,' 'summer break/vacation' or other designated holidays, means the regularly calendared breaks/vacations or holidays in the school district where the children are attending school (or would attend school if they were school aged). The closure of the school for public health purposes will not be considered an extension of any break/vacation/holiday period or weekend.
2. Denial of Parenting Time: COVID-19 is not a reason to deny parenting time. Unless otherwise ordered by the court, parents are considered fit to care for their children and make decisions regarding the day-to-day aspects of parenting while the children are in their care. This day-to-day care includes following the Oregon Health Authority and your County Public Health directives regarding social distancing and sanitation-related measures (such as frequent handwashing).
3. Parenting Time in Public Places: Governor Brown has forbidden all nonessential gatherings, regardless of size. If the parenting plan states that parenting time will occur in a public place, parenting time should continue at locations that are permitted under the health and safety guidelines for the state, such as a large park or nature hike. Public places where people routinely touch common contact surfaces (such as parks and play equipment) should be avoided. However, activities where parents and children can

maintain social distancing and avoid such surfaces are encouraged. If that is not possible, then the parenting time should be conducted virtually via videoconferencing or by telephone.

4. Supervised Parenting Time: If parenting time is ordered to be supervised, and the supervisor is unavailable due to COVID-19-related issues or government orders, the parties should work collaboratively to ensure parenting time continues to occur in a manner that promotes their children's safety and wellbeing, such as finding an alternative supervisor. If that is not possible, then the parenting time should be conducted virtually via videoconferencing or by telephone.
5. Governor's Executive Orders regarding Travel: The Governor has issued executive orders that restrict travel except for essential activities, which generally include caring for minors, dependents and/or family members. Therefore, unless otherwise directed by the Governor or other executive order, the parties should continue to follow the parenting plan as written while such orders are in effect.
6. Exchanges: During the exchange of the children, all parties should follow the CDC guidelines for limiting the spread of the virus, which may mean choosing an alternate location for the exchanges that has less people congregating and less touching of public items (changing from the restaurant to the grocery store parking lot for example).
7. Safety-Related Issues: Our first responders must remain available for true emergencies and for support related to the COVID-19 outbreak. Please do not call them for parenting-related disputes but rather only in the circumstances of real, immediate, and significant safety-related reasons.
8. Transparency: Unless the parties are restrained from communicating, parents are encouraged to communicate about precautions they are taking to slow the spread of COVID-19. A parent is not permitted to deny parenting time based upon the other parent's unwillingness to discuss their precautionary measures taken, or belief that the other parent's precautions are insufficient.
9. Makeup Parenting Time: If parenting time is missed due to COVID-19-related issues or government orders, parents are encouraged to work collaboratively to schedule makeup parenting time that promotes their children's safety and wellbeing. Local courts are strongly encouraged to order makeup parenting time, when appropriate.

Dept. of Human Services v.
S.M., 355 Or 241 (2014)

Argued and submitted November 5, 2013, at Franklin High School, Portland,
Oregon, decision of Court of Appeals and judgments of circuit court affirmed
April 24, 2014

In the Matter of M. M., L. M., O. M., L. M.,
J. M., P. M., N. M., and J. M.,
Children.

DEPARTMENT OF HUMAN SERVICES,
Respondent on Review,

v.

S. M.
and R. M.,
Petitioners on Review.

(CC J110590, J110591, J110592, J110593,
J110594, J110595, J110596, J110597;
CA A151376 (Control), A151377, A151378, A151379,
A151380, A151381, A151386, A151388;
SC S061386 (Control), S061387)

323 P3d 947

Petitioners appealed the juvenile court's review judgments allowing their children to be immunized against common childhood diseases based on medical advice. The Department of Human Services (DHS) had been appointed as legal custodian and legal guardian of petitioners' children. Under ORS 419B.376, a legal guardian has authority that includes but is not limited to "authoriz[ing] surgery" and "mak[ing] other decisions *** of substantial legal significance." Petitioners argued that DHS lacked the statutory authority to approve immunizations against basic childhood diseases. The Court of Appeals affirmed the juvenile court's review judgments. *Held*: (1) Under ORS 419B.372 and ORS 419B.376, DHS had statutory authority as the children's legal guardian to approve immunizations as recommended by the children's doctors; (2) petitioners failed to adequately identify an ambiguity in the statutes or a constitutional problem that would permit the court to interpret the statutes to avoid a due process problem.

The decision of the Court of Appeals and the judgments of the circuit court are affirmed.

On review from the Court of Appeals.*

Kimberlee Petrie Volm, Deputy Public Defender, Salem,
argued the cause and filed the brief for petitioners on review.

* On appeal from Marion County Circuit Court, Julia A. Philbrook, Judge.
256 Or App 15, 300 P3d 1254 (2013).

With her on the brief were Peter Gartlan, Chief Defender, and Sarah Peterson, Deputy Public Defender.

Michael A. Casper, Deputy Solicitor General, Salem, argued the cause and filed the brief for respondent on review. With him on the brief were Ellen F. Rosenblum, Attorney General, and Anna Joyce, Solicitor General.

Before Balmer, Chief Justice, and Kistler, Walters, Linder, Landau, and Baldwin, Justices.**

KISTLER, J.

The decision of the Court of Appeals and the judgments of the circuit court are affirmed.

** Brewer, J., did not participate in the consideration or decision of this case.

KISTLER, J.

The juvenile court took jurisdiction over parents' children and appointed the Department of Human Services (DHS) as the children's legal custodian and guardian while the children were wards of the court. The question that this case presents is whether the legislature gave DHS, in its capacity as either the children's custodian or their guardian, authority to have the children immunized against common childhood diseases. Both the trial court and the Court of Appeals held that the legislature gave DHS that authority. *See Dept. of Human Services v. S. M.*, 256 Or App 15, 300 P3d 1254 (2013). We allowed parents' petition for review and now affirm the Court of Appeals decision and the trial court's judgments.

Mother and father are the parents of eight children, who ranged in age from one to 10 years old when this case began. After a neighbor notified DHS about the conditions in parents' home, a DHS caseworker checked on those conditions, spoke with parents, and also spoke with the children. Among other problems, the caseworker found the house bestrewn with garbage and food, the children dirty, and the children's educational needs barely addressed by mother's home-schooling curriculum. DHS filed a petition with the juvenile court, alleging that the children were within the court's jurisdiction because the "condition or circumstances [of the children were] such as to endanger [the children's] welfare or others['] welfare]." ORS 419B.100(1)(c). In particular, DHS alleged that father had acted violently towards mother, that mother and father had failed to provide the children with adequate shelter and necessities, and that mother and father had failed to attend to the children's educational needs. DHS also alleged that mother and father had failed to attend to the children's ordinary hygiene and healthcare needs. The court issued a shelter order placing the children in the temporary care of DHS and recommending that the children remain in parents' custody.

Over the next several weeks, DHS worked with mother to improve the family's living conditions. By then, father had moved to Utah for work. Despite some improvement in the family's living conditions, the court ordered that

the children be placed in foster care, and, in January 2012, parents and DHS reached an agreement. As part of that agreement, parents admitted all the allegations in DHS's jurisdictional petition, except the allegations of medical neglect. They also stipulated that the admitted facts supported a finding that the juvenile court had jurisdiction over the children. Accordingly, the juvenile court took jurisdiction over the children and issued a dispositional judgment for each child. It also appointed DHS as each child's legal custodian and legal guardian.

Four months later, DHS requested a review hearing. During a discussion of the children's status, the children's attorney and DHS notified the court that the children needed to be immunized against common childhood diseases both for their own safety and also for the safety of other children at their school. Parents objected, in part, because the juvenile court had never determined that they were unfit to make medical decisions for the children.¹ Mother also raised religious objections. Asked to explain those objections in more detail, she told the court, "[P]art of [her] beliefs in regards to [immunization] is (inaudible) and there is a stem cell line that the actual product isn't (inaudible) but it is based on [an] inadvertent [*sic*] fetus from 1970 and stem cells were reproduced over and over and over again. (Inaudible)."

The juvenile court commended mother's interest in medical research about immunizations: "You've done your research and I appreciate that." It also noted that mother had made medical decisions about her children in the past, including a decision to immunize some of the older children. But the court ultimately concluded that, because "the children are in the care and custody of the [s]tate at this point," it would allow "the children [to] be immunized as per the decision of the medical provider when the foster parents take them in for evaluation ***."

After that hearing, the juvenile court entered a "review judgment" for each child, which provided that "[each] child may be immunized over the parents' objection based

¹ Mother and her lawyer were present at the hearing. Father appeared through his lawyer.

on medical advice.” Parents moved to stay any immunization pending appeal, and the juvenile court stayed that part of its judgments. Parents then filed a consolidated appeal of the eight review judgments, assigning error to the juvenile court’s determination that DHS could approve the immunization of the children based on medical advice. On appeal, parents argued that DHS lacked statutory authority to make medical decisions because medical neglect was not one of the factual allegations on which the juvenile court had based jurisdiction. Alternatively, they relied on *Troxel v. Granville*, 530 US 57, 120 S Ct 2054, 147 L Ed 2d 49 (2000), for the proposition that, even if DHS had the requisite statutory authority, DHS could not exercise that authority unless it established that parents were unfit to make decisions about immunizations and that immunizations were necessary for the children’s short-term health. The Court of Appeals disagreed with both arguments. *See Dept. of Human Services v. S. M.*, 256 Or App at 31. We allowed parents’ petition for review.

On review, parents renew their argument that DHS lacked statutory authority to immunize the children. They recognize that ORS 419B.376, read in isolation, might appear to give DHS that authority. They argue, however, that, when ORS 419B.376 is read in light of later-enacted statutes creating long-term guardianships, it becomes apparent that DHS’s authority as the children’s legal guardian is limited to making decisions regarding the issues that brought the children within the juvenile court’s jurisdiction in the first place. Before turning to parents’ argument, it is helpful to describe briefly the statutes that govern wardship, legal custody, and legal guardianship.²

When a child’s “condition or circumstances are such as to endanger [the child’s] welfare,” a juvenile court may exercise jurisdiction over the child and his or her family. ORS 419B.100. The juvenile court takes jurisdiction to protect the child’s safety and to work with the child’s family to

² The statutes that govern this area are complex. In describing how those statutes work, we discuss only the statutes that are relevant to this case and to parents’ arguments. We have not sought to be comprehensive. Our goal is not to write a treatise but to provide a sufficient overview to put parents’ statutory arguments in context.

correct the problems that gave rise to the court's exercise of jurisdiction. ORS 419B.090(2). When a juvenile court finds a child to be within its jurisdiction, the child becomes a ward of the court. ORS 419B.328(1).

Once a child is a ward of the court, the juvenile court may direct that the ward remain in the legal custody of the ward's parents, or it may direct that the ward be placed in the legal custody of a relative, a foster home, or DHS. ORS 419B.331; ORS 419B.337. The ward's legal custodian has "physical custody and control of the ward." ORS 419B.373(1). The legal custodian has a duty to supply the ward with food, clothing, shelter, and other incidental necessities. ORS 419B.373(2). The custodian also may "authorize ordinary medical, dental, psychiatric, psychological, hygienic or other remedial care." ORS 419B.373(4). Finally, "in an emergency where the ward's safety appears urgently to require it," the legal custodian may authorize "surgery or other extraordinary care." *Id.*

When a juvenile court appoints DHS as a ward's legal custodian, ORS chapter 419B contemplates that DHS will develop a case plan to ameliorate the problems that brought the ward within the court's jurisdiction, ORS 419B.343; that DHS will "make reasonable efforts to make it possible for the ward to safely return home" unless certain aggravating circumstances exist, ORS 419B.340(5); and that DHS will file periodic reports with the juvenile court concerning the care DHS has provided and the progress that the family has made towards reunification, ORS 419B.443. The juvenile court may hold hearings after receiving those periodic reports and is required to do so when certain parties request a hearing. ORS 419B.449. Finally, the juvenile court may dismiss commitment of a ward to DHS's legal custody if, among other reasons, the court determines that the ward has been safely reunited with the parents. ORS 419B.337(7).

In addition to the authority that a legal custodian has to make decisions for the ward, ORS chapter 419B also provides that either the juvenile court or its designee will serve as the ward's legal guardian and gives that guardian greater decision-making authority. Specifically, ORS 419B.372 provides that, when a child becomes a ward of

the court, “the court as an incident of its wardship has the duties and authority of the guardian as provided in ORS 419B.376[.]” ORS 419B.372(3). ORS 419B.376, in turn, provides that a legal guardian can consent to the ward’s marriage, authorize the ward to enlist in the armed forces, “authorize surgery for the ward,” and “make other decisions concerning the ward of substantial legal significance.” ORS 419B.372 and ORS 419B.376 thus make the juvenile court, as an incident of its wardship, the ward’s guardian and give the juvenile court the authority to make more significant decisions for the ward than the legal custodian may.

Although the juvenile court may act as the ward’s legal guardian as an incident of its wardship, the court also may transfer its authority as a guardian to the ward’s legal custodian. ORS 419B.372(1), (2). Specifically, ORS 419B.372(1) provides that, if the juvenile court grants legal custody of a ward to DHS, it “may also grant guardianship of the ward to the department, to remain in effect solely while the ward remains in the legal custody of [DHS].”

ORS chapter 419B contemplates that, as a general matter, a guardianship that arises as an incident of wardship will not be long-term. Rather, ORS chapter 419B provides that, if a ward has not been reunited with his or her family within 12 months after the ward came into the juvenile court’s jurisdiction, the juvenile court will hold a “permanency hearing” to determine an appropriate long-term path for the ward. ORS 419B.476. At the permanency hearing, the juvenile court will determine whether it is appropriate for DHS to: (1) continue working towards reunification with the family; (2) place the child for adoption and petition for termination of parental rights; (3) refer the ward “for establishment of legal guardianship”; or (4) place the ward “in another planned permanent living arrangement.” ORS 419B.476(5)(b).

ORS chapter 419B identifies at least two long-term legal guardianships that may be appropriate in lieu of terminating parental rights. First, the juvenile court may establish a permanent guardianship if it finds by clear and convincing evidence that a ground for terminating parental

rights exists, that it is in the ward's best interest that the ward's parents should never have physical custody of the ward, but that other parental rights and duties should not be terminated. ORS 419B.365. Second, the court may establish what is sometimes referred to as a "durable" guardianship if the court finds by a preponderance of the evidence that the ward cannot safely be returned home within a reasonable time, that adoption is not an appropriate plan for the ward, that the proposed guardian is suitable, and that a durable guardianship is in the ward's best interests. ORS 419B.366(2), (5).³

With that statutory background in mind, we turn to the issue that divides the parties—whether DHS, as either the children's legal custodian or their guardian, has statutory authority to have the children immunized against common childhood diseases over their parents' objection. On that issue, DHS identifies two sources of statutory authority to approve immunization. DHS notes initially that, as the children's legal custodian, it may "authorize ordinary medical, dental *** or other remedial care and treatment." ORS 419B.373. Reasoning that immunizations are a routine or ordinary medical procedure, DHS contends that its status as the children's legal custodian, standing alone, gives it the necessary authority. Additionally, DHS notes that, as the children's legal guardian, its "duties and authority" include but are not limited to "authoriz[ing] surgery for the ward." ORS 419B.376. DHS reasons that, if it may "authorize surgery for the ward," it necessarily follows that it may authorize a less invasive and more routine medical procedure, such as immunization against common childhood diseases.

We need not decide whether DHS's first argument is correct; that is, we need not decide whether immunizations constitute "ordinary medical care" that DHS may authorize as the children's legal custodian. The juvenile court appointed DHS as the children's legal guardian as

³ A durable guardianship differs from a permanent guardianship in that the criteria for establishing a durable guardianship are less stringent than those for a permanent guardianship. *Compare* ORS 419B.366(5) (durable guardianship), *with* ORS 419B.365(2), (3) (permanent guardianship). Moreover, a parent may move to vacate a durable guardianship but not a permanent guardianship. See ORS 419B.368(1), (7).

well as their legal custodian. As DHS notes, its authority as the children's legal guardian includes but is not limited to authorizing "surgery for the ward" and making "other decisions concerning the ward of substantial legal significance." ORS 419B.376.⁴ We agree with DHS that the power to "make other decisions *** of substantial legal significance" includes the power to immunize the wards in its care against common childhood diseases. Indeed, immunization is less invasive and more routine than surgery, which DHS specifically may authorize as the wards' legal guardian. *Cf. Baker v. City of Lakeside*, 343 Or 70, 76, 164 P3d 259 (2007) (explaining that "[w]e ordinarily assume that a non-specific term in a series *** shares the same qualities as the specific terms that precede it").

Under ORS 419B.372 and ORS 419B.376, DHS had statutory authority as the children's legal guardian to approve their immunization. Consistently with its own rules, however, DHS did not make that decision unilaterally. Rather, it notified the juvenile court and sought the court's concurrence, thereby giving the children's parents the opportunity to voice any objection they might have to the proposed procedure and also giving the court the opportunity to pass on the issue. *See* OAR 413-020-0170(4) (providing that DHS may "notify the juvenile court, and/or seek the court's concurrence" for actions taken as a ward's legal guardian).⁵

⁴ As noted, ORS 419B.372(3) provides that, when a child becomes a ward of the court, "the court as an incident of its wardship has the duties and authority of the guardian as provided in ORS 419B.376 and 419B.379." ORS 419B.372(1) provides that, when the court grants legal custody to DHS, it "may also grant guardianship of the ward to the department." DHS thus obtained "the duties and authority of the guardian as provided in ORS 419B.376" that the court held as an incident of its wardship. *Accord* ORS 419B.376 (similarly providing). Those duties and authority "includ[e] but [are] not limit[ed] to the following: *** To authorize surgery for the ward." ORS 419B.376.

⁵ DHS's decision was not unilateral in another sense. As the trial court's order recognizes, a doctor still has to conclude that immunization against common childhood diseases is medically appropriate. Medical approval appears to be a foregone conclusion, however. *See, e.g.,* Advisory Committee on Immunization Practices, "General Recommendations on Immunization," 60 *Centers for Disease Control Morbidity and Mortality Weekly Report*, No. RR-02, p.3 (Jan 28, 2011), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr6002a1.htm> (last accessed Apr 1, 2014); American Academy of Family Physicians Advisory Committee on Immunization Practices, "2014 Recommended Childhood, Adolescent, and Catch-up Immunization Schedules," available at <http://www.aafp.org/patient-care/immunizations/schedules.html> (last accessed Apr 1, 2014).

Parents acknowledge that, if ORS 419B.372 and ORS 419B.376 were the only statutes that applied, it would be difficult to argue that DHS lacked statutory authority to have the children immunized. They contend, however, that statutory changes that the legislature made after it enacted ORS 419B.372 and ORS 419B.376 reveal that DHS's authority as the children's legal guardian is more limited than might otherwise appear.

Parents' argument faces a difficult but not insurmountable hurdle. Ordinarily, a later legislature's understanding of a previously enacted statute has no bearing on what that statute means. *See DeFazio v. WPPSS*, 296 Or 550, 561, 679 P2d 1316 (1984) (explaining that "[t]he views legislators have of existing law may shed light on a new enactment, but it is of no weight in interpreting a law enacted by their predecessors"). However, this court has recognized a limited exception to that general rule. Later amendments that materially change the text or context of an earlier statute can change the meaning of the earlier statute when the changed meaning is either "expressly declared or necessarily implied." *State v. Ofodrinwa*, 353 Or 507, 529-30, 300 P3d 154 (2013) (holding that, even if the phrase "does not consent" initially referred only to a lack of actual consent, the later addition of a defense that assumed that the phrase included the lack of capacity to consent necessarily altered the phrase's meaning); *State v. Swanson*, 351 Or 286, 292, 266 P3d 45 (2011) (holding that the later-enacted definition of crime in the 1971 substantive criminal code necessarily narrowed the meaning of that term in the earlier-enacted procedural code).

As we understand parents' argument, they contend that, in authorizing durable and permanent guardianships, the legislature either expressly declared or necessarily implied that guardianships that arise as an incident of wardship carry with them less authority than ORS 419B.372 and ORS 419B.376 provide. Parents' argument runs as follows: In 1993, the legislature provided for guardianships arising as an incident of wardship and specified the authority that that guardianship conferred. *See* Or Laws 1993, ch 33, §§ 114, 116 (enacting what is now codified as ORS 419B.372

and ORS 419B.376).⁶ In 1995 and 2003, the legislature authorized juvenile courts to establish permanent and durable guardianships. *See* Or Laws 1995, ch 767, § 2 (permanent guardianships); Or Laws 2003, ch 229, § 2 (durable guardianships). Parents also note that a greater quantum of proof is required before a juvenile court may establish either a permanent or a durable guardianship. *See* ORS 419B.365 (permanent guardianships); ORS 419B.366(5) (durable guardianships).

Because each of the three guardianships (a guardianship that arises as an incident of wardship, a durable guardianship, and a permanent guardianship) requires a different amount of proof, parents infer that each guardianship carries with it a different level of decision-making authority. The greater the proof, the greater the level of authority, or so parents' argument runs. It follows, in parents' view, that the legislature intended to limit the authority of a guardianship that arises as an incident of wardship to something less than the authority set out in ORS 419B.376. It also follows, in parents' view, that a guardianship that arises as an incident of wardship confers authority over only those issues that caused the children to come within the juvenile court's jurisdiction in the first place.

Parents' statutory argument is difficult to square with the text of ORS 419B.372 and ORS 419B.376. As noted, ORS 419B.372 states that a guardianship that arises as an incident of wardship carries with it "the duties and authority of the guardian as provided in ORS 419B.376[.]" Parents, however, argue that as a result of later changes to ORS chapter 419B a guardianship incident to wardship confers less authority than ORS 419B.376 says. We can, however, read the chapter differently, in a way that gives effect to all the applicable statutory provisions. For example, even if

⁶ ORS 419B.376 essentially tracks *former* ORS 419.521 (1991), which was enacted in 1959. *See* Or Laws 1959, ch 432, § 24. The 1959 statute did not include a proposed amendment that would have limited the juvenile court's statutory authority to approve a medical procedure over a parent's religious objection. *See* House Judiciary Committee, HB 153, Ex 1(o) (Letter from the Committee Chair to Geoffrey Hazard, Apr 8, 1959, explaining the committee's resolution of the issues before it); *id.*, Ex 1(d) (Letter from the Christian Science Committee on Publication to the Committee Chair, Mar 5, 1959, requesting such an amendment).

the 1995 and 2003 amendments could be read to suggest that each of the three types of guardianships confers graduated levels of decision-making authority, as parents argue, parents never explain why ORS 419B.376 does not identify the level of authority that a guardianship incident to wardship confers, with the other two guardianships conferring greater authority.

Alternatively, the fact that greater proof is required to establish durable and permanent guardianships does not necessarily imply that those guardianships confer greater decision-making authority. Rather, the greater proof requirement can be understood as a function of the fact that durable and permanent guardianships are long-term alternatives to termination, as opposed to a guardianship that arises as an incident of a wardship and that usually lasts only until the long-term alternative determined at the permanency hearing is implemented. If the 1995 and 2003 amendments are understood that way, then ORS 419B.376 identifies the level of decision-making authority that all guardianships confer. That interpretation gives effect to all the statutory provisions and does not do violence to the plain language of ORS 419B.372 and ORS 419B.376, as parents' interpretation does. *See* ORS 174.010 (when a statute contains multiple provisions, we should read those provisions, if possible, in a way that gives effect to all of them). At a minimum, that interpretation makes clear that the change in the meaning of ORS 419B.372 and ORS 419B.376 that parents see as flowing from the 1995 and 2003 amendments is neither expressly declared nor necessarily implied.

Were there any doubt about the matter, we note that parents' argument is difficult to reconcile with the legislative history of the 2003 amendments. The 2003 amendments authorized juvenile courts to establish durable guardianships and also provided for judicial oversight of a guardian's exercise of his or her responsibilities. Or Laws 2003, ch 229, §§ 2-4. Those amendments were the result of a bill that the Oregon Law Commission proposed in 2002. Minutes, Senate Committee on the Judiciary, SB 70, Feb 5, 2003 (statement of Lisa Kay); *Id.*, Ex D (Oregon Law Commission Report). Lisa Kay chaired the Law Commission subcommittee that drafted the proposed bill. *See id.*, Ex D

(Oregon Law Commission Report). She also appeared before the Senate Committee on the Judiciary to explain how the bill, if enacted, would work. In distinguishing the different types of guardianships (permanent, durable, and incident to wardship), Kay clarified existing law. She explained that, when the juvenile court takes jurisdiction of a ward, a guardianship incident to wardship arises and that the juvenile court can designate the ward's legal custodian as the ward's guardian. Testimony, Senate Committee on the Judiciary, SB 70, Feb 5, 2003, Tape 18, Side A. She also explained, in response to a question from the committee chair, that "[t]here are some of the legal duties and authorities of a guardian that you want somebody with legal custody to be able to do such as authorize surgery and whatnot for the child." *Id.*

Kay thus made clear that a guardianship that arises as an incident of wardship permits the guardian to "authorize surgery *** for the child." That is, Kay made clear that a guardianship that arises as an incident of wardship carries with it the authority that ORS 419B.376 provides, precisely as ORS 419B.372 states. Kay's explanation of the effect of creating a durable guardianship negates the premise on which parents' argument rests—that, in creating durable guardianships, the 2003 legislature intended to limit the authority that ORS 419B.372 and ORS 419B.376 expressly confer on guardianships that arise as an incident of wardship. Having considered the text, context, and legislative history of the 1995 and 2003 amendments to ORS chapter 419B, we conclude that those amendments neither expressly declare nor necessarily imply a legislative intent to alter the plain text of ORS 419B.372 and ORS 419B.376. Parents' statutory argument fails.

Two other issues remain. First, parents argue that we should interpret ORS 419B.372 and ORS 419B.376 consistently with due process. *See* ORS 419B.090(4) ("[T]he provisions of this chapter shall be construed and applied in compliance with federal constitutional limitations."). The principle of statutory interpretation that parents invoke is a familiar one. *See Dept. of Human Services v. J. R. F.*, 351 Or 570, 578-79, 273 P3d 87 (2012) (applying that principle). Parents, however, have not argued on review that giving

effect to the plain language of ORS 419B.372 and ORS 419B.376 violates due process or any other constitutional provision.⁷ Nor have they adequately identified a due process problem that we should interpret ORS 419B.372 and ORS 419B.376 to avoid. Finally, parents have not explained how the principle of statutory construction they invoke applies if, as we conclude, ORS 419B.372 and ORS 419B.376 are not ambiguous. *See State v. Kitzman*, 323 Or 589, 602, 920 P2d 134 (1996) (concluding that where “one plausible construction of a statute is constitutional and another plausible construction of a statute is unconstitutional, courts will assume that the legislature intended the constitutional meaning”). Without an ambiguity and without an identified constitutional problem, the principle of construction on which parents rely does not advance their statutory argument.

The second issue is related to the first. Although parents have not raised, on review, an independent constitutional challenge to DHS’s decision to have the children immunized against common childhood diseases, we recognize that a legal custodian or guardian could make other decisions on a child’s behalf that potentially could implicate the child’s or the parent’s constitutional rights. DHS has been sensitive to those concerns and, as a result, has promulgated administrative rules to guide the exercise of its authority as the child’s legal guardian. For example, OAR 413-020-0170(3)(a) and (4) direct DHS, as the legal guardian, to “[c]onsider the impact of the proposed action upon the welfare of the child, the child’s family and the community prior to deciding whether to consent to or authorize the proposed action.” If a child is not in DHS’s “permanent custody,” OAR 413-020-0170(3)(c) requires DHS to “make reasonable efforts to consult the child’s legal parent(s) or guardian(s) about the action proposed and consider the parent(s) or guardian’s preference” about a proposed action. Finally,

⁷ Parents cite *Santosky v. Kramer*, 455 US 745, 753, 102 S Ct 1388, 71 L Ed 2d 599 (1982), for the proposition that the “fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they *** have lost temporary custody of their child to the State.” The fact, however, that parents retain a protected liberty interest does not mean that DHS has violated it, and parents have not advanced a cogent argument that DHS’s decision in this case impermissibly interfered with the liberty interest they retained.

OAR 413-020-0170(4) provides that DHS may “notify the juvenile court, and/or seek the court’s concurrence” concerning a proposed action described in ORS 419B.376.

We recognize that those rules provide procedural rather than substantive limits on DHS’s exercise of its authority as a ward’s legal guardian. However, those procedural rules provide assurance that DHS’s decisions as a ward’s legal guardian will take into account the parents’ concerns and that DHS, having presented the issue to the juvenile court, will abide by its ruling. DHS’s rules also provide an avenue for a parent to raise a statutory or constitutional challenge to DHS’s proposed action if the parent believes that DHS has exceeded either its statutory authority or constitutional bounds. In this case, parents have argued that DHS lacks statutory authority to immunize the children against common childhood diseases. On that issue, we agree with the trial court and the Court of Appeals that DHS has that authority.

The decision of Court of Appeals and the judgments of the circuit court are affirmed.

Debra Kamin, “You Want Your Child Vaccinated, but Your Ex Says No,” The New York Times (Apr. 4, 2022), *last accessed* May 12, 2022

You Want Your Child Vaccinated, but Your Ex Says No

For some parents who share custody, the Covid vaccine has created a minefield of issues that initial divorce decrees could not have anticipated.

By Debra Kamin

April 4, 2022

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In late 2021, Adele Grote, a divorced mother of two in Minneapolis, took her children to a vaccination clinic at the Mall of America. But when her 13-year-old daughter called her father to let him know they were getting the shot, Ms. Grote knew they would have to leave without it.

Just over a quarter of children between ages 5 and 11 in the United States are fully vaccinated, according to a New York Times database; among older kids, ages 12 to 17, the rate is 59 percent. For parents who have yet to vaccinate their children, the reasons for hesitation vary. In an October 2021 survey from the Kaiser Foundation, many cited concerns about long-term side effects, including how vaccines might later affect their child's fertility (though there is no evidence indicating that the vaccines impact fertility). And after a widely shared study about the risk of myocarditis and the Covid-19 vaccine, the C.D.C. affirmed that the vaccine is safe and cases of heart inflammation after vaccination are rare.

In most cases, whether they have decided to vaccinate now, later or never, doctors say the parents they counsel have agreed with each other. But when they do not, the battle is part of a new pandemic front in divorce custody battles, one that is poised to expand with the imminent approval of vaccines for children under 5. Last month, Moderna announced plans to seek emergency authorization of their coronavirus vaccine for babies and toddlers after seeing promising results in a clinical study.

Ms. Grote, who wants to vaccinate her children, while her ex-spouse does not, has been divorced since 2019. She and her ex share custody of their daughter and 11-year-old son. As a nurse in an intensive care unit, Ms. Grote has cared for many critically ill Covid-19 patients, but her children remain unvaccinated, a status, she said, that is a result of how her custody proceedings continue to unfold in family court.

"I'm a single mom. I don't have a ton of money," she said. "But the money I've spent battling this, I could have taken my kids to Disney World, twice."

Her custodial agreement with her ex-husband, drawn up before the pandemic, stipulates that when it comes to medical decisions for the children, both parents follow the recommendations of their pediatrician. If either disagrees with what the doctor says, they need to see a court-appointed mediator, who can write up contracts that are enforceable in court. The process is slow, Ms. Grote said, and often spirals into demands put forth by one parent and thrown out by the other. So when the vaccine became available for children under 12, she tried just taking them to the clinic, an approach that didn't work out.

"So we still exist in this limbo. I'm fully vaccinated, and I pray to God that they don't get sick," Ms. Grote said. The court's stance, which requires processes to stall when one parent contests the medical decisions of another, she said, has given her ex-husband de facto veto power on getting vaccinated. "He's making all of the decisions, because anytime the doctors try to do anything for our kids, he says no," she said.

Her ex-husband, Jamey Groethe, sees it differently. "I want what's best for our children no matter what," said Mr. Groethe, who stressed that while he is opposed to his children receiving the Covid-19 vaccine because he is worried about how safe it is, he is not anti-vaccine in general.

Joshua Rogers, a small-business owner in Los Angeles, is the father of two boys. He and his ex-girlfriend had only recently begun custody proceedings for the boys last year when a vaccine was cleared for children ages 5 and up, making their older son eligible. But while he was anxious to get him inoculated, his ex was not.

As soon as the shot was made available, Mr. Rogers filed an application for a family court hearing and marked it *ex parte*, or urgent. The judge didn't agree on the urgency.

"It was rubber-stamp denied, quite literally, with a stamp on it that said 'no exigent circumstances,'" Mr. Rogers said. "And I was like, of course there are exigent circumstances. We have a global pandemic, we have to get these kids vaccinated ASAP?"

When contacted, Mr. Rogers' ex-girlfriend declined to comment.

But at a court hearing in mid-February, the judge granted Mr. Rogers decision-making power over issues of vaccination, and the boy is now vaccinated. “It’s really whatever the judge says. Whatever this one man thinks, that’s what goes,” Mr. Rogers said, pointing out that he still doesn’t fully understand why he was able to move forward.

That sort of clarification is necessary, said Tim Miranda, founding partner of Antonyan Miranda, a family law firm in San Diego. “If the court doesn’t make a specific order about things like medical care, then both parents can individually take whatever action they would like in that realm.” Parents who are currently navigating the custody process should be clear with their legal teams if they disagree with the vaccination stance of their ex, said Mr. Miranda, and be prepared to argue as to why they, and not the other parent, should be vested with medical decision-making powers for their child. They should also be sure that their pediatrician or therapist has views that align with their own.

“The courts give a lot of credence to the treating therapist or doctor, because they’re the ones dealing within the realm of the patient,” Mr. Miranda said. “The standard is to decide what is in the best interest of the child.” If parents can’t come to a mutual agreement over what “best interest” means, however, courts generally opt to grant one parent power to make the decision, as they did with Mr. Rogers.

Laws vary slightly from state to state, Mr. Miranda said, but in general, “it’s a pretty high bar with something like a vaccination. If you’re going to oppose it, you’d have to have a pretty good reason, like a religious conviction or a medical condition.”

The American Academy of Pediatrics does not have an official stance on vaccinating children in situations of custodial disputes, said Dr. Tiffany Kimbrough, an A.A.P. member and medical director of the mother-infant unit of the medical center at Virginia Commonwealth University. (They do, however, state, “It is prudent for the physician to inquire about marital status and custody issues when relevant” in this 2017 report.)

“This has become such a hot-button issue,” she said. “We’re seeing a lot more difference of opinion than with traditional medical therapies and preventative care.”

In New York, the courts will almost always favor vaccination, said Naomi Schanfield, a New York City lawyer specializing in family and marriage law.

“Our office has been inundated with calls from parents saying, ‘I’m boosted and triple vaxxed, but I’m opposed to the vaccine for my child. What can you do to help me?’” The answer, at least in New York State, is not much, said Ms. Schanfield. “If the pediatrician recommends the vaccine, that’s what the court will rule.”

In situations where custody agreements are not yet clear-cut, however, the process to wrest power over vaccine decisions can feel frustratingly slow for an anxious parent. Those who opt to bypass court regulations and — as Ms. Grote tried to do — take their child to be vaccinated without the consent of their ex-partner run the risk of being held in contempt of court. But the likelihood of losing custody over such an action is slim, Mr. Miranda said.

“They’d have to determine that the parent was acting detrimentally to the health, safety or welfare of the child,” said Mr. Miranda, who added that it would be a tough sell in court.

A version of this article appears in print on , Section D, Page 7 of the New York edition with the headline: Custody Issues May Snarl Vaccination Process