



# The State Bar of *California*

## **California Paraprofessional Program Working Group Report and Recommendations**

**September 23, 2021**

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## EXECUTIVE SUMMARY

In 2019, the State Bar completed a comprehensive study of California’s justice gap, which identified a significant gap between the need for and availability of civil legal services. As reported in [California Justice Gap Study: Measuring the Unmet Civil Legal Needs of Californians](#) (CJGS), while 55 percent of Californians experience at least one civil legal problem in their household each year, they received inadequate or no legal help for 85 percent of these problems. A lack of knowledge about what constitutes a legal issue, deciding to deal with the problem without help, and concerns about the cost of legal services were identified as primary factors that prevent many people from seeking legal assistance.

Since publication of the report on the CJGS, the State Bar has undertaken a number of efforts aimed at reducing the justice gap, including the formation of the [Task Force on Access Through Innovation of Legal Services](#) (ATILS) and the [Closing the Justice Gap Working Group](#). Looking to other jurisdictions’ responses to the problem of increased access to legal services, the State Bar concluded that, by expanding the pool of affordable legal service providers, a thoughtfully designed and appropriately regulated paraprofessional program is an important component of the solution in California. In March 2018, the Board of Trustees updated the State Bar’s 2017–2022 Strategic Plan, adding Objective f to Goal 4,<sup>1</sup> as follows: “Explore options to increase access to paraprofessionals, limited license legal technicians, and other paraprofessionals.”

In March 2020, the Board of Trustees appointed the California Paraprofessional Program Working Group (CPPWG, working group, or group), directing it to develop recommendations for creating a paraprofessional licensure/certification program. This working group was charged with balancing the dual goals of ensuring public protection and increasing access to legal services. As reflected in table 1, working group membership reflects the interests of a broad array of stakeholder groups, including legal consumers, legal services organizations, trial courts, law schools, and practicing attorneys, among others. Working group members served in their individual capacity, rather than as representatives of any organization or employer.

**Table 1. Working Group Roster and Nominating Authority**

Members	Nominating Authority
Hon. Justice Ioana Petrou, Chair <sup>2</sup>	Board of Trustees
Sharon Bashan [L]	Legal Services Community
Julia Brynelson [L]	Judicial Council of California
Julie D’Angelo Fellmeth [L]	Center for Public Interest Law
Steven Fleischman [L]	California Defense Counsel
Stephen Hamilton [L]	California Lawyers Association

<sup>1</sup> 2017–2022 Strategic Plan, Goal 4: Support access to justice for all California residents and improvements to the state’s justice system.

<sup>2</sup> As discussed in the Background and Purpose section of this report, the Board initially appointed Board member Chris Iglesias to chair the CPPWG. When he was unable to continue in his tenure, Justice Petrou was appointed as chair and given the authority to appoint up to five additional members to expand the experience and knowledge base of the working group’s membership.

Members	Nominating Authority
Hon. Michael Harper [J]	Board of Trustees
Amos Hartston [L]	California Commission on Access to Justice
Kimberly Kirchmeyer [P]	Department of Consumer Affairs
Dana McRae [L]	Assembly Judiciary Committee
Elizabeth Olvera [P]	California Association of Legal Document Assistants
Nicole Robinson [P]	Board of Trustees
Hon. David Rubin [J]	Board of Trustees
Carolin Shining [L]	Consumer Attorneys of California
Fariba Soroosh [L]	Judicial Council of California
Ira Spiro [L]	Committee of State Bar Accredited and Registered Schools
Claudia Torres-Ambriz [P]	Board of Trustees
Hon. Monica Wiley [J]	Board of Trustees
Hon. Erica Yew [J]	Judicial Council of California

[J] = Judge [L] = Lawyer [P] = Public Member

To facilitate its work, the CPPWG appointed subcommittees charged with developing recommendations for consideration by the full group. These subcommittees fall into three categories:

1. Practice area subcommittees, charged with recommending whether a particular practice area should be included in the Program, as well as the scope of services to be authorized for included practice areas;
2. Policy/structure subcommittees, charged with developing the program’s licensing requirements, regulatory measures, and disciplinary structure; and
3. Pilot Implementation Subcommittee, charged with developing recommendations for the initial program rollout.

A total of 17 subcommittees held 123 meetings and met as a full body an additional 20 times to consider the recommendations of each subcommittee, as detailed in table 2.

**Table 2. Subcommittee Rosters and Meeting Dates**

<b>Practice Area/Topic</b>	<b>Subcommittee Members</b>	<b>Meeting Dates</b>
Collateral Criminal	Sharon Bashan Hon. Erica Yew	June 9, 2020 June 25, 2020 July 29, 2020 August 7, 2020
Consumer Debt	Julia Brynelson Steven Fleischman Stephen Hamilton Amos Hartston Nicole Robinson Carolyn Shining Hon. Erica Yew	July 31, 2020 August 6, 2020 August 13, 2020 August 20, 2020
Consumer Debt & General Civil	Julia Brynelson Steven Fleischman Stephen Hamilton Amos Hartston Nicole Robinson Carolyn Shining Hon. Erica Yew	March 5, 2021 March 11, 2021 March 25, 2021 April 8, 2021 June 8, 2021
Employment	Steven Fleischman Carolyn Shining Ira Spiro Hon. Erica Yew	July 31, 2020 August 5, 2020 August 11, 2020 August 18, 2020
Employment & Income Maintenance	Steven Fleischman Carolyn Shining Ira Spiro Hon. Erica Yew	March 2, 2021 March 9, 2021 March 22, 2021
Estates and Trusts	Stephen Hamilton Elizabeth Olvera	April 28, 2020 June 11, 2020

<b>Practice Area/Topic</b>	<b>Subcommittee Members</b>	<b>Meeting Dates</b>
Family, Children, and Custody	Sharon Bashan Stephen Hamilton Dana McRae Elizabeth Olvera Fariba Soroosh Hon. Monica Wiley	July 28, 2020 August 3, 2020 August 10, 2020 August 18, 2020 November 17, 2020 December 1, 2020 December 4, 2020 December 14, 2020 January 7, 2021 January 15, 2021 January 25, 2021 February 1, 2021 February 11, 2021 April 6, 2021 May 14, 2021 June 29, 2021
General Civil	Steven Fleischman Hon. Erica Yew	April 30, 2020 May 22, 2020 June 3, 2020 June 12, 2020
Health	Dana McRae Nicole Robinson Carolyn Shining	May 8, 2020 May 22, 2020 June 18, 2020 March 5, 2021 March 26, 2021
Housing	Hon. Michael Harper Julianne Fellmeth Amos Hartston Fariba Soroosh Ira Spiro	April 30, 2020 June 5, 2020 June 15, 2020 March 1, 2021 March 8, 2021 April 5, 2021 June 28, 2021
Income Maintenance	Steven Fleischman Carolyn Shining Ira Spiro Hon. Erica Yew	June 23, 2020
Veterans	Julia Brynelson Amos Hartston	May 1, 2020 June 2, 2020 June 16, 2020

<b>Practice Area/Topic</b>	<b>Subcommittee Members</b>	<b>Meeting Dates</b>
Regulation	Amos Hartston Kimberly Kirchmeyer Fariba Soroosh	September 10, 2020 September 18, 2020 October 2, 2020 October 8, 2020 October 21, 2020 November 16, 2020 December 1, 2020 December 7, 2020 January 6, 2021 January 13, 2021 January 21, 2021 January 26, 2021 February 4, 2021 February 11, 2021 March 15, 2021 March 23, 2021 March 30, 2021 April 6, 2021 April 13, 2021 May 6, 2021 May 13, 2021 May 20, 2021 May 27, 2021 June 3, 2021 June 11, 2021 June 17, 2021 July 8, 2021 July 15, 2021 July 22, 2021 July 29, 2021 August 19, 2021
Licensing	Julia Brynelson Stephen Hamilton Hon. Michael Harper Claudia Torres-Ambriz	September 11, 2020 September 18, 2020 October 2, 2020 November 16, 2020 November 30, 2020 January 6, 2021 January 13, 2021 January 22, 2021 February 5, 2021 March 30, 2021 August 6, 2021



Practice Area/Topic		Subcommittee Members	Meeting Dates
Discipline		Sharon Bashan Julianne Fellmeth Kimberly Kirchmeyer Ira Spiro	September 10, 2020 September 17, 2020 September 25, 2020 October 2, 2020 October 8, 2020 October 15, 2020 November 23, 2020 December 1, 2020 December 7, 2020 January 8, 2021 January 14, 2021 January 27, 2021 February 3, 2021 February 12, 2021
Joint Meetings of Regulation and Discipline Subcommittees		Sharon Bashan Julianne Fellmeth Amos Hartston Kimberly Kirchmeyer Fariba Soroosh	May 5, 2021 August 12, 2021 August 20, 2021
Pilot Implementation		Sharon Bashan Julianne Fellmeth Stephen Hamilton Kimberly Kirchmeyer Hon. Ioana Petrou Fariba Soroosh Hon. Erica Yew	January 15, 2021 January 19, 2021 January 26, 2021 February 2, 2021 February 16, 2021 April 27, 2021
Full Working Group	April 21, 2020 June 30, 2020 July 13, 2020 August 25, 2020 September 29, 2020 October 19, 2020 October 29, 2020	December 17, 2020 January 15, 2021 February 26, 2021 March 18, 2021 March 26, 2021 April 19, 2021 May 17, 2021	June 10, 2021 June 25, 2021 July 26, 2021 August 16, 2021 August 31, 2021 September 10, 2021

This report details the research and analysis undertaken by CPPWG members and provides comprehensive recommendations for program design. A brief description of those recommendations is included in this executive summary.

## RECOMMENDATIONS

### Practice Areas and Scope of Services

In developing recommendations regarding the inclusion and exclusion of practice areas in the program, the CPPWG considered a number of factors, including the need for legal services, as identified by the CJGS and data from the Judicial Branch Statistical Information System; complexity of the level of training and experience required to competently provide the services;

availability of existing affordable services; and the relative risk to legal consumers of receiving poor services, compared to receiving no legal services. In addition to the analysis noted above, the CPPWG consulted with subject matter experts, including trial judges, legal services organizations, legal educators, and experienced practitioners. For each practice area recommended for program inclusion, the CPPWG adopted recommendations regarding the scope of service paraprofessionals will be authorized to perform as well as limits on the scope of their representation.

Table 3 lists all of the areas identified in the CJGS for which Californians reported having unaddressed civil legal problems, recommendations regarding inclusion or exclusion in the Program, and the scope of service for each practice area recommended for inclusion.

**Table 3. Practice Areas and Tasks**

Practice Area	Recommendations	Authorized Tasks
Criminal	Exclude, except for Collateral Criminal	<ul style="list-style-type: none"> <li>• Expungement and reclassification of convictions</li> <li>• Infractions</li> </ul>
Consumer Debt/ General Civil	Include	<ul style="list-style-type: none"> <li>• Consumer debt and creditor harassment:               <ul style="list-style-type: none"> <li>○ Prelitigation cease-and-desist and prove-up letters</li> <li>○ Prelitigation negotiation of settlements, including payment plans</li> <li>○ All superior court litigation excluded</li> </ul> </li> <li>• Enforcement of judgment               <ul style="list-style-type: none"> <li>○ Enforcement of small claims court judgments</li> <li>○ Limited jurisdiction post-judgment enforcement</li> </ul> </li> <li>• Name and gender change</li> </ul>
Estates and Trusts	Exclude	None
Employment/ Income Maintenance	Include	<ul style="list-style-type: none"> <li>• Wage and hour cases               <ul style="list-style-type: none"> <li>○ Division of Labor Standards Enforcement proceedings</li> <li>○ Wage and hour judgment enforcement – limited jurisdiction only</li> </ul> </li> <li>• Unemployment insurance proceedings (Employment Development Department)</li> <li>• All public benefit proceedings</li> </ul>
Family, Children, and Custody	Include	<ul style="list-style-type: none"> <li>• Family               <ul style="list-style-type: none"> <li>○ All matters except for the following:                   <ul style="list-style-type: none"> <li>– Nullity matters:                       <ul style="list-style-type: none"> <li>▪ Petitions based on incest, unsound mind, fraud, force, and/or physical incapacity</li> <li>▪ Putative spouse establishment</li> <li>▪ Division of quasi-marital property</li> </ul> </li> <li>– Petition to establish parental relationship involving FC § 7612(b) or (c)</li> <li>– Child custody and visitation involving Hague Convention or UCCJEA</li> </ul> </li> </ul> </li> </ul>

Practice Area	Recommendations	Authorized Tasks
		<ul style="list-style-type: none"> <li>- Qualified Domestic Relations Order (QDRO)</li> <li>- Spousal or domestic partner support in long-term marriages, as defined by FC § 4336, unless included in a marital settlement agreement that does not terminate or set nonmodifiable spousal support</li> <li>- Discovery: <ul style="list-style-type: none"> <li>▪ Oral depositions</li> <li>▪ Expert discovery</li> <li>▪ Related motions</li> </ul> </li> <li>- Premarital/postmarital agreements</li> <li>- Marvin actions (palimony)</li> <li>- Contempt actions</li> <li>o Exclusion from representation in hearings on emergency custody or visitation requests when a judge has granted temporary emergency orders <ul style="list-style-type: none"> <li>- At such hearings, paraprofessionals are authorized to sit at counsel table to support and advise their client, and may answer direct procedural questions from the judge</li> </ul> </li> <li>• Uncontested adoption, with the following exceptions: <ul style="list-style-type: none"> <li>o Adoptions arising from dependency petitions</li> <li>o Adoptions where the child has been identified as protected by the Indian Child Welfare Act</li> </ul> </li> <li>• Uncontested conservatorships and guardianships, with the following exception: <ul style="list-style-type: none"> <li>o Guardianships established in dependency court for parties entitled to court-appointed counsel</li> </ul> </li> <li>• Violence prevention, with the following exceptions: <ul style="list-style-type: none"> <li>o Representation in domestic violence hearings involving children</li> <li>o If expert witness testimony will be introduced, paraprofessionals are prohibited from introducing or cross-examining expert witnesses</li> </ul> </li> <li>• Not authorized to act as appointed counsel in any cases</li> </ul>
Health	Exclude	None
Housing	Include	<ul style="list-style-type: none"> <li>• Residential landlord-tenant, with the following exceptions: <ul style="list-style-type: none"> <li>o Landlords who own more than two units</li> <li>o Bench or jury trials <ul style="list-style-type: none"> <li>- During unlawful detainer trials, paraprofessionals may assist their clients by sitting at counsel table to provide advice and guidance, and may respond to direct questions from the judge</li> </ul> </li> </ul> </li> </ul>

Practice Area	Recommendations	Authorized Tasks
		<ul style="list-style-type: none"> <li>○ Representation in superior court matters, in or out of court, other than small claims or unlawful detainer cases</li> <li>• Lien clearing <ul style="list-style-type: none"> <li>○ Clearing liens from title, outside of litigation</li> </ul> </li> </ul>
Veterans	Exclude	None

### In-Court Representation

The question of whether paraprofessionals should be able to assist their clients in court was one of the most difficult issues addressed by the CPPWG. The positions voiced by its members and members of the public ranged from allowing paraprofessionals (within the scope of their licensed practice area(s)) to provide full in-court representation to prohibiting any participation in court proceedings. After extensive discussion and debate, encompassing two facilitated discussions, the CPPWG adopted a default position that paraprofessionals may provide full in-court representation, with a complete prohibition on jury trials. That default position could be modified in regard to a particular practice area based on a recommendation from the respective practice area subcommittee.

### Licensing Requirements

Paraprofessional licensing requirements include eligibility, educational, and experiential training requirements, as well as practice area-specific exams and a moral character determination process. After satisfying all licensing requirements, including passing relevant exams and receiving a positive moral character determination, candidates will be licensed by the State Bar to provide services in the practice area(s) for which they have been deemed qualified. In developing recommendations for these licensing requirements, the CPPWG balanced the need to encourage participation by enough potential paraprofessionals to ensure a viable program, with that of ensuring that participants will be adequately trained and screened to ensure legal consumers receive competent and ethical legal services. Recommendations regarding licensing requirements are provided in table 4.

**Table 4. Licensing Requirements**

Requirement	Recommendations
<b>ELIGIBILITY</b>	<ul style="list-style-type: none"> <li>• JD or LLM from American Bar Association (ABA) or California accredited or registered law school; or</li> <li>• Paralegal qualified pursuant to <a href="#">Business and Professions Code § 6450(c)</a>; or</li> <li>• Legal Document Assistant qualified per <a href="#">Business and Professions Code § 6402.1(b)</a><sup>3</sup></li> </ul>

<sup>3</sup> The CPPWG recommends that applicants admitted to the program pursuant to this criterion would not be eligible for a waiver of educational or experience requirements.

Requirement		Recommendations	
	Practice Area	Course	Units <sup>4</sup>
EDUCATION	All Practice Areas	Ethics and Professional Responsibility	3
		Pretrial Discovery and Evidence	3
		Court Procedure	3
		Court Advocacy	3
		Trauma-Informed Representation	1
		<b>Total</b>	<b>13</b>
	Collateral Criminal	Expungement, Reclassification, and Infractions	3
	Consumer Debt & General Civil	Debt Collection and Creditor Harassment	6
		Enforcement of Judgments (including wage and hour)	3
		Name and Gender Change	0.5
		<b>Total</b>	<b>9.5</b>
	Family, Children, and Custody	Family Law and Procedure	6
		Adoption	2
		Violence Prevention	2
		Conservatorship/Guardianship	3
		<b>Total</b>	<b>13</b>
	Employment & Income Maintenance	Administrative Agency Procedure	3
	Housing	Landlord-Tenant <ul style="list-style-type: none"> <li>• Leases/rental agreements</li> <li>• Security deposits</li> <li>• Types of tenancies</li> <li>• Tenant protections</li> <li>• Housing discrimination and landlord retaliation</li> <li>• Warranty of habitability</li> <li>• Rent control and eviction control</li> <li>• Ground and procedures for nonjudicial termination of tenancies</li> <li>• Unlawful detainer procedure</li> <li>• COVID-19 tenant protection laws and tenant assistance (until such laws expire)</li> <li>• Rental assistance programs</li> <li>• Benefits and risks of demanding a jury trial</li> <li>• Small claims court actions</li> <li>• Subsidized housing and mobilehomes</li> <li>• Benefits of demanding a jury trial in unlawful detainer cases</li> </ul>	12
		Lien clearing	1
		<b>Total</b>	<b>13</b>

<sup>4</sup> Pursuant to [California Code of Regulations, Title 5 § 55002.5](#), one unit of community college credit requires a minimum of 48 hours of student work for colleges operating on the semester system. This time includes classroom instruction and student work outside the classroom. A 3-unit course is equal to 144 hours of student engagement.

Requirement	Recommendations
	<i>With the exception of one unit of paraprofessional Ethics and Responsibility, coursework taken as part of a law school or paralegal program may satisfy the program's educational requirements.</i>
<b>PRACTICAL TRAINING</b>	<ul style="list-style-type: none"> <li>• 1,000 hours over a minimum of six months</li> <li>• 500 hours must be in practice area in which paraprofessional will be licensed</li> <li>• Must include trauma-informed training</li> </ul> <i>Experience working as a paralegal or in a law school clinic may satisfy the experience requirements, subject to certification by the supervising attorney or law clinic instructor that it meets the specified criteria.</i>
<b>TESTING</b>	<ul style="list-style-type: none"> <li>• Subject matter-specific testing</li> <li>• Professional Responsibility Exam modeled after attorney exam</li> </ul>
<b>MORAL CHARACTER</b>	<ul style="list-style-type: none"> <li>• Fingerprinting and background check equivalent to attorney requirements</li> <li>• Not disbarred or resigned with charges pending in any jurisdiction</li> <li>• Moral character determination requirements to mirror attorney requirements</li> </ul>

## Regulation

In developing recommendations for regulatory requirements, the CPPWG focused on the need to ensure public protection without imposing burdens so onerous that they impede the program's viability. Mechanisms to ensure competence, accountability, and ethical practice include financial responsibility, minimum continuing legal education, and Rules of Professional Conduct. Proactive regulation measures are intended to support paraprofessionals in their practice. Table 5 provides regulatory recommendations.

**Table 5. Regulatory Requirements**

Requirement	Recommendations
Financial Responsibility	<ul style="list-style-type: none"> <li>• \$100,000 Surety Bond</li> <li>• Client Security Fund (CSF)</li> </ul>
Minimum Continuing Legal Education  <i>No more than 18 hours may be obtained through self-study</i>	36 hours every 3 years, as follows: <ul style="list-style-type: none"> <li>• 28 hours in the paraprofessional's practice areas</li> <li>• 4 hours on legal ethics</li> <li>• 1 hour on competence issues</li> <li>• 1 hour on recognition and elimination of bias in the legal profession and society</li> <li>• 1 hour of trauma-informed practice</li> <li>• 1 hour of practice management/running a business</li> </ul>
Rules of Professional Conduct	Proposed Rules, based on the Rules of Professional Conduct (RPC) for attorneys, are provided as Appendix A.
Supportive Measures (Proactive Regulation)	<ul style="list-style-type: none"> <li>• Continuing Legal Education (CLE) programs and toolkits to support paraprofessional practice               <ul style="list-style-type: none"> <li>○ Sample client surveys</li> <li>○ Voluntary, interactive self-assessment</li> </ul> </li> <li>• Ethics hotline</li> <li>• Online resources</li> </ul>

Requirement	Recommendations
Annual Reporting Requirements	<ul style="list-style-type: none"> <li>Fees charged to clients</li> <li>Suggestions for additional trainings and resources to support competent legal services</li> </ul>

While it does not recommend requiring paraprofessionals to maintain malpractice insurance, the CPPWG recommends that they be strongly encouraged to do so. Further, the CPPWG recommends that the State Bar take steps to encourage insurance companies to make malpractice insurance available to licensees. The CPPWG recommends, if neither a \$100,000 bond nor malpractice insurance is required, that the State Bar establish a restitution fund to compensate clients for both intentional and unintentional acts.

### Discipline System

In developing recommendations for a paraprofessional discipline system, the CPPWG looked at a number of different models. These included the attorney discipline system and the discipline system for professional licensing boards under the jurisdiction of the California Department of Consumer Affairs (DCA). The recommendations provided in table 6 reflect a hybrid of these systems: resources would be provided to the Office of Chief Trial Counsel (OCTC) to investigate and prosecute cases; cases would be decided by a three-person hearing panel; and appeals would be heard by a subcommittee of the Paraprofessional Licensing and Oversight Committee.<sup>5</sup>

**Table 6. Discipline System Structure**

Model Element	Recommendations
Complaint Intake and Investigation	To be handled by OCTC
Citation and Fine	To be administered by OCTC <ul style="list-style-type: none"> <li>If fine and fee determination is disputed, that dispute will be adjudicated by the Hearing Panel</li> </ul>
<ul style="list-style-type: none"> <li>Initial Hearings</li> <li>Disputed Fine and Fee Determinations</li> </ul>	Three-person Hearing Panel
Settlement Conferences	<ul style="list-style-type: none"> <li>To take place only if OCTC and paraprofessional mutually consent</li> <li>To be heard by staff adjudicator</li> </ul>
Appeals and Stipulated Discipline	Paraprofessional Licensing and Oversight Committee
Final Discipline Decision	<ul style="list-style-type: none"> <li>Suspensions and revocations: final discipline decision to be made by the Supreme Court</li> <li>Appeals from the appeals level to be heard by the Supreme Court</li> <li>All other discipline finalized at appropriate level within the State Bar’s paraprofessional disciplinary structure, level as yet to be determined</li> </ul>

<sup>5</sup> The Paraprofessional Licensing and Oversight Committee is the governing board for the paraprofessional licensure and certification program, as discussed in the Oversight and Governance section.

The CPPWG considered alternatives to formal discipline, including warning letters, agreements in lieu of discipline, mandatory fee arbitration, and private reprovls, as well as the Alternative Discipline Program (ADP) that is part of the formal attorney discipline system. Recommendations regarding these alternatives were informed by the need to balance the effectiveness of offering alternatives in appropriate circumstances with a desire for transparency about disciplinary proceedings. A summary of the CPPWG recommendations regarding alternatives to formal discipline is provided in table 7.

**Table 7. Alternatives to Formal Discipline**

Alternative or Nontraditional Discipline Approach	Recommendation
Warning Letter	Include
Mandatory Fee Arbitration	Include
Agreements in Lieu of Discipline	Exclude
Private Reprovals	Exclude
Alternative Discipline Program	Exclude

The CPPWG’s recommendations regarding public versus private designation of paraprofessional disciplinary records were informed by the rules for attorney disciplinary records, as well as applicable statutes regarding Medical Board disciplinary records. Business and Professions Code sections 803.1 and 2027 address not only the public versus private nature of various record types, but also whether public records will be affirmatively posted on the licensing board’s website, and when and if records will be destroyed. Table 8 provides a summary of recommendations regarding public records.

**Table 8. Public Records**

Intervention or Disciplinary Outcome	Private or Public	On Website or on Request	Retention Duration
Warning Letter (Not discipline)	Private	N/A	
Citation and Fine (Not discipline)	Public for 3 years from date of resolution	<ul style="list-style-type: none"> <li>Website for 3 years unless withdrawn or dismissed</li> <li>After three years transition to private</li> </ul>	Indefinite
Notice of Disciplinary Charges	Public unless withdrawn or dismissed	<ul style="list-style-type: none"> <li>On website for duration that resulting discipline is on website</li> </ul>	For duration of period that underlying discipline is public
Public Repraval	Public	<ul style="list-style-type: none"> <li>Website for 10 years</li> <li>After 10 years transitions to anonymous report</li> </ul>	Indefinite



Intervention or Disciplinary Outcome	Private or Public	On Website or on Request	Retention Duration
Probation	Public	<ul style="list-style-type: none"> <li>Website</li> </ul>	Indefinite
Interim Suspension	Public	<ul style="list-style-type: none"> <li>Website</li> </ul>	Duration of interim suspension
Suspension pursuant to discipline	Public	<ul style="list-style-type: none"> <li>Website</li> </ul>	Indefinite
Disbarment	Public	<ul style="list-style-type: none"> <li>Website</li> </ul>	Indefinite
Felony Charges and Criminal Convictions	Mirror attorney requirements		

The CPPWG recommendations for disciplinary standards are based upon the Standards for Attorney Sanctions for Professional Conduct. Proposed Standards of Licensed Paraprofessional Sanctions for Professional Conduct are provided as Appendix C.

### Oversight and Governance

The program’s oversight should ultimately rest with the Supreme Court, which has the authority to license individuals to practice law. As with the licensure of attorneys, the Supreme Court would delegate responsibility for licensing, regulation, and discipline of paraprofessionals to the State Bar, limiting its direct involvement to matters requiring adjudication by the Supreme Court. Functional oversight would be provided by a newly created Paraprofessional Licensing and Oversight Committee (PLOC), the State Bar Board of Trustees, and the Legislature. The committee would be responsible for operational oversight of the program, and be directly responsible for hearing disciplinary appeals. Recommendations regarding the specific authority of the Supreme Court, the Legislature, and the Board are detailed in the body of this report.

The CPPWG recommends that a 13-member PLOC govern the program. In making this recommendation, the CPPWG considered the policy adopted by the Board to limit subentity committees to 7 or fewer members, absent a justification of the need for more members. The CPPWG believes that the recommendation provided in table 9 reflects the need to include members that bring a broad range of experience and perspective to program governance. The work the PLOC needs to undertake in its oversight of program operations (as discussed in the recommendations below regarding licensing, regulation, and discipline), also underscores the need for a larger oversight committee. The CPPWG recommends that the appointing authority structure for the PLOC mirror the Board’s, and that appointing authorities be encouraged to consider diversity of practice areas in their appointments.

**Table 9. Proposed Composition of a Paraprofessional Licensing and Oversight Committee**

Member Type	Appointing Authority
Judge	Supreme Court
2 Attorneys	Supreme Court

3 Paraprofessionals	Supreme Court
<ul style="list-style-type: none"> <li>• Northern California</li> <li>• Central</li> <li>• Southern California</li> </ul>	
2 Public (nonlicensee)	Senate
2 Public (nonlicensee)	Assembly
2 Public (nonlicensee)	Governor
Paraprofessional Educator	Governor

## Implementation

The CPPWG considered various options for initial program rollout, including full implementation, a pilot program with a sunset date, and a phased implementation approach. Full implementation on a statewide basis was determined to be overly ambitious, as it would require outreach and education to courts, consumers, and potential participants in all 58 counties, as well as the development of educational programs across the state. These efforts would likely take several years and a substantial investment of resources before achieving any meaningful provision of services. A limited period pilot program was also deemed nonviable; both educational institutions and program participants would be reluctant to invest the substantial resources necessary for participating in a program with an explicitly uncertain future.

The CPPWG’s recommendation provides for a phased implementation approach. Under this approach, the program rollout would be limited by practice and geographic areas. Practice areas for inclusion in the initial implementation phase include family, housing, and collateral criminal. Family and housing are included as they reflect areas of significant unmet legal need; collateral criminal is included due to its low level of complexity. Counties were selected for the initial implementation phase based on factors that included the size of the potential client and licensee populations, as well as the size of the local unmet legal services need. Recommendations for initial program implementation are provided in table 10.

**Table 10. Initial Implementation**

Implementation	Recommendation
Program Features	Full Program Features
Practice Areas	<ul style="list-style-type: none"> <li>• Family, Children, and Custody</li> <li>• Housing</li> <li>• Collateral Criminal</li> </ul>
Geography	<ul style="list-style-type: none"> <li>• Northern California Counties <ul style="list-style-type: none"> <li>○ Alameda</li> <li>○ El Dorado</li> <li>○ Placer</li> <li>○ Sacramento</li> <li>○ Santa Clara</li> <li>○ Yuba</li> </ul> </li> </ul>

Implementation	Recommendation
	<ul style="list-style-type: none"> <li>• Central California Counties <ul style="list-style-type: none"> <li>○ Fresno</li> <li>○ Merced</li> <li>○ Tulare</li> </ul> </li> <li>• Southern California County <ul style="list-style-type: none"> <li>○ Orange</li> </ul> </li> </ul>

### Licensee Name

In selecting an official name for this licensee, a number of factors must be considered, including: (1) clarity, to ensure that the name accurately reflects the specific licensure and minimizes consumer confusion; (2) potential translations into languages in predominant use in California; and (3) potentially confusing acronyms (e.g., LLP, LLC, etc.).

The CPPWG engaged in an extended process to develop a slate of potential licensee names for the Board’s consideration, including consulting with a brand consultant, conducting two surveys of its group members, and obtaining translations from professional translation firms.

Based on the foregoing process, staff recommends the options for consideration of a licensee name shown in table 11.

**Table 11. Licensee Names Recommended for Consideration**

English	Spanish
Limited License Legal Practitioner	Practicante Legal Con Licencia Limitada
Limited Legal Practitioner	Practicante Legal Limitado
Limited Legal Advisor	Asesor Legal Limitado

### Program Evaluation

A robust evaluation of the program will be required to determine whether it meets the goals for which it is created, to inform ongoing program improvement, and to allow for meaningful comparison with similar programs in other states. The CPPWG recommends that program evaluation be conducted between three and five years after program implementation; this evaluation should be conducted by an independent organization with experience in evaluating similar programs. The metrics in table 12 reflect minimum data and metrics to be included in program evaluation.

**Table 12. Program Evaluation Metrics**

Metric	Data Points	Data Source
Program Viability	Number of licensees/market coverage	Internal data
	Volume of use	Survey
	Stable and sufficient regulatory funding source	Internal data

Metric	Data Points	Data Source
	Sufficient income potential for licensees to stay in business	Survey
Equity and Access	Demographics of paraprofessionals and their clients	Survey
	Number of self-represented litigants (reduced?)	CMS and JBSIS <sup>6</sup>
	Justice Gap (reduced?)	Survey
Case Outcomes/ Client Satisfaction	Overall satisfaction	Survey
	Procedural satisfaction	Survey
Legitimacy/ Political Sustainability	Lawyer, judicial officer, and general public sentiment about the program	Survey
Affordability	Fee structure transparency: consumer understanding of service offerings and price points	Survey
	Hourly rates	
	Event and per-case rates	
	Number of hours to complete services	
Efficiency in Paraprofessional Training	Cost of education	Survey

The full CPPWG recommendations are provided in Appendix A.

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<sup>6</sup> Court Case Management System/Judicial Branch Statistical Information System.

## BACKGROUND AND PURPOSE OF THE WORKING GROUP

The State Bar has long been aware of a gap between Californians' need for civil legal services and the availability of those services. In an effort to address this justice gap, since the late 1980s and early 1990s, the State Bar Board has considered the idea of licensing nonlawyers to provide limited legal services to the public.<sup>7</sup>

- **1987:** Board appointed a Public Protection Committee and charged it with studying nonlawyer practice of law activities and developing proposed standards under which such activities might be authorized.
  - Although the Board did not approve the recommendations from that report, it created a Commission on Legal Technicians to conduct further study. In its resolution creating this commission, the Board identified an overwhelming unmet need for access to the legal process; legal technicians were identified as having the potential to help meet this need.
- **1991:** Board considered and rejected a proposed Rule of Court developed by a Board committee that reviewed the Report of the Commission on Legal Technicians, which would have authorized creation of a pilot program permitting nonlawyers to perform limited legal services in the area of landlord-tenant law.
- **2013:** Limited License Working Group, a subcommittee of the Board Committee on Regulation, Admissions, and Discipline Oversight, was assigned to research the feasibility of developing and implementing standards for creating a limited license to practice law, with a goal of enabling certified individuals to provide limited, discrete legal services to consumers in defined legal subject matter areas.
  - Based on the working group's recommendations, the Board adopted a resolution to direct staff to develop proposals to examine and address the causes, effects, and possible solutions to the access to justice challenges in California, including the concept of a limited legal license.
  - Civil Justice Strategies Task Force, appointed as a special committee of the Board, was charged with evaluating the role of the legal profession in addressing the access crisis, and assigned to study, create a solution, and recommend an action plan.
- **2015:** Board adopted the recommendations included in the report from the Civil Justice Strategies Task Force, which included referring the design and implementation of a paraprofessional licensing program to the Stakeholders and Access to Justice Committee for further study and exploration.
- **2018:** State Bar's 2017–2022 Strategic Plan amended to include the following objectives:
  - Explore options to increase access through licensing of paraprofessionals, limited license legal technicians, and other paraprofessionals; and

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<sup>7</sup> A review of records from the beginning of these efforts suggests that early considerations conflated the concept of licensed providers of law related legal services (known today as Legal Document Assistants/Unlawful Detainer Assistants, who are authorized pursuant to Business and Professions Code §§ 6400-6415) with true paraprofessional limited practice of law licensure.

- Complete a California Justice Gap Study.
- **2019**, the State Bar completed a California Justice Gap Study
  - The [California Justice Gap: Measuring the Unmet Civil Legal Needs of Californians](#) reported that the justice gap is widespread, pervasive, and multifaceted. While 55 percent of Californians at all income levels experienced at least one civil legal problem in their household during the year in which the study was conducted, they sought help for fewer than one in three of these problems, and received no help, or inadequate help, for 85 percent of these problems.

A detailed history of the State Bar’s consideration of licensing paraprofessionals, which was provided at the Board’s planning session on January 23, 2020, is provided as Appendix D.

At its meeting on March 12, 2020, the Board approved the charter for the CPPWG and appointed its chair, Board member Chris Iglesias, and members. The charter directs the CPPWG to develop recommendations regarding program eligibility, practice areas and tasks, financial responsibility, licensing requirements, and program evaluation. The CPPWG’s charter is provided as Appendix E.

Initial appointments to the CPPWG included members with a broad array of backgrounds and interests, reflecting nominations made by stakeholder groups, including legal consumers, legal services organizations, trial courts, law schools, and practicing attorneys, among others. In July 2020, the Board authorized the chair to fill additional vacant slots, with a focus on improving racial/ethnic diversity and providing a direct consumer voice.

Due to significant issues competing for his time, Mr. Iglesias did not seek reappointment to the Board when his term ended in September 2020, and he was unable to continue as CPPWG chair. At its meeting on November 19, 2020, the Board appointed Justice Ioana Petrou of the First District Court of Appeals as chair, and authorized her to fill up to five additional slots on the CPPWG. Pursuant to this authorization, three additional superior court judges, representing large, medium, and small courts and with a variety of subject matter expertise, and one additional public member, were appointed to the CPPWG to add breadth and diversity to the discussion; the current CPPWG roster is provided in table 1.

The CPPWG held its first meeting on April 21, 2020, during which subcommittees were appointed to develop recommendations regarding practice areas for program inclusion or exclusion. Additional subcommittees were later appointed to develop recommendations regarding licensing requirements, regulatory measures, discipline structure, and program implementation. A total of 17 subcommittees held 123 meetings, and met as a full body an additional 20 times, to consider the recommendations of each subcommittee. A list of meetings of the CPPWG and its subcommittees is provided in table 2. This report outlines the recommendations adopted by the CPPWG, and the process by which these recommendations were considered and adopted.

## PRACTICE AREAS AND SCOPE OF SERVICES

At its inaugural meeting on April 21, 2020, the CPPWG discussed practice areas that should be included in the Program. Information from the following data was consulted to inform the discussion.

### California Justice Gap Study (CJGS)

The CPPWG reviewed key findings from the CJGS regarding the types of civil legal problems Californians experienced and the reasons they did not seek legal help for those problems.

- Fifty-five percent of Californians experienced at least one civil legal issue during the year in which the CJGS survey was conducted.
- The main types of legal problem types faced by Californians included health, finance, employment, family, children and custody, veterans' issues, and income maintenance.
- Fewer than one in three Californians sought legal help for their problems, citing the following reasons:
  - Unsure if it is a legal issue.
  - Decided to deal with the problem without help.
  - Worried about the cost.
  - Did not know where to look for help.
  - Afraid to pursue legal action.
- These findings exist at all income levels.
  - Fewer than one in three Californians at any income level sought legal help to address their problem.
  - People living in households with income over 600 percent of the federal poverty level—equal to an annual household income of \$154,501 for a family of four—received no legal help, or inadequate legal help, for 78 percent of their civil legal problems.

### California Courts' Self-Help Data

The CPPWG reviewed data regarding the types of legal problems for which people seek assistance from court-based self-help centers, both in person and online. As shown in table 13, in fiscal year 2018–2019, self-help centers statewide reported that 80 percent of all encounters were with people seeking assistance with family law matters. The principal issues for which people sought help in family law were dissolution, child and spousal support, and custody and visitation. The judicial branch self-help website reflected the most traffic from people seeking information about divorce or separation, traffic and tickets, name changes, and payment of bail and fines.

**Table 13. Court Self-Help Assistance**

In Person <sup>8</sup>	Online <sup>9</sup>
<ul style="list-style-type: none"> <li>• 80% Family law                             <ul style="list-style-type: none"> <li>○ 34% Dissolution</li> <li>○ 31% Child and spousal support</li> <li>○ 28% Child custody and visitation</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• 53% Divorce or separation</li> <li>• 27% Traffic and tickets</li> <li>• 17% Name change</li> <li>• 3% Payment of bail and fines</li> </ul>

### Law-Related Services Providers

The CPPWG reviewed available services and the limits on those services through authorized law-related service providers in California.

### Legal Document Assistants (LDA)

LDAs provide self-help services for compensation to individuals who are representing themselves in a legal matter.

### Unlawful Detainer Assistants (UDA)

UDAs provides assistance or advice in the prosecution or defense of an unlawful detainer claim or action, including any bankruptcy petition that may affect the unlawful detainer claim or action.

LDA and UDA services include the following:<sup>10</sup>

- Completing legal documents in a ministerial manner, selected by a person who is representing themselves in a legal matter, by typing or otherwise completing the documents at the person’s specific direction;
- Providing general published factual information that has been written or approved by an attorney, pertaining to legal procedures, rights, or obligations to a person who is representing themselves in a legal matter, to assist the person in representing themselves. This service, in and of itself, does not require registration as a legal document assistant;
- Making published legal documents available to a person who is representing themselves in a legal matter; and
- Filing and serving legal forms and documents at the specific direction of a person who is representing themselves in a legal matter.

### Immigration Consultants

Immigration consultants give nonlegal assistance or advice on immigration matters.

Immigration assistance and advice includes the following:<sup>11</sup>

<sup>8</sup> Source: Judicial Council Self-Help Tracking and Reporting Survey Data, statewide fiscal year 2018–2019 data. The State Bar was asked not to share the raw data; aggregate information was shared with the CPPWG.

<sup>9</sup> Source: Judicial Council September 2019–February 2020 website analytics data. The State Bar was asked not to share the raw data; aggregate information was shared with the CPPWG.

<sup>10</sup> See [Business and Professions Code § 6400\(d\)](#).

<sup>11</sup> See [Business and Professions Code § 22441\(a\)](#).



- Completing a form provided by a federal or state agency but not advising a person as to their answers on those forms;
- Translating a person’s answers to questions posed in those forms;
- Securing for a person supporting documents, such as birth certificates, which may be necessary to complete those forms;
- Submitting completed forms on a person’s behalf and at their request to the United States Citizenship and Immigration Services; and
- Making referrals to persons who could undertake legal representation activities for a person in an immigration matter.

### Paralegals

A paralegal is a person who holds themselves out to be a paralegal; who is qualified by education, training, or work experience; and who either contracts with or is employed by an attorney, law firm, corporation, governmental agency or other entity; and who performs substantial legal work under the direction and supervision of an attorney. Following are examples of tasks that paralegals are permitted to perform:<sup>12</sup>

- Case planning, development, and management;
- Legal research;
- Interviewing clients;
- Fact gathering and retrieving information;
- Drafting and analyzing legal documents;
- Collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney; and
- Representing clients before a state or federal administrative agency if that representation is permitted by statute, court rule, or administrative rule or regulation.

### Other States’ Paraprofessional Program Practice Areas

The CPPWG reviewed practice areas included or under consideration in other states’ paraprofessional programs, as shown in table 14.

**Table 14. Paraprofessional Practice Areas in Other States**

State	Practice Areas
Arizona	<ul style="list-style-type: none"> <li>• Limited jurisdiction civil practice (less than \$10,000 in controversy)</li> <li>• Limited jurisdiction criminal matters</li> <li>• Administrative law</li> </ul>
Oregon <sup>13</sup>	<ul style="list-style-type: none"> <li>• Family law</li> </ul>

<sup>12</sup> See [Business and Professions Code § 6450\(a\)](#).

<sup>13</sup> On September 27, 2019, the Oregon State Bar’s Board of Directors voted to approve a program for paraprofessional licensure; this program has not yet been implemented.

State	Practice Areas
	<ul style="list-style-type: none"> <li>• Landlord-tenant</li> </ul>
Utah	<ul style="list-style-type: none"> <li>• Family law</li> <li>• Forcible entry and detainer</li> <li>• Debt collection</li> </ul>
Washington	<ul style="list-style-type: none"> <li>• Family law</li> </ul>

Other states currently considering licensing nonlawyers to provide limited scope legal services include Colorado, Florida, Minnesota, New Mexico, and New York.

### California Attorney Practice Analysis<sup>14</sup> (CAPA)

The CPPWG reviewed CAPA data that shows the depth of knowledge required for the performance of, and the level of complexity for, identified legal tasks and topics. CAPA was an in-depth practice analysis designed to gauge alignment between the content of the California Bar Exam and the practice of law in California. The working group specifically considered whether tasks and practice areas involving a high degree of complexity should be excluded from the scope of an initial paraprofessional program.

### Task Force on Access Through Innovation of Legal Services (ATILS)

The CPPWG also considered recommendations included in the report from [ATILS](#).<sup>15</sup> ATILS recommended that consideration of practice areas for inclusion in the program not be limited based on the data sources identified above, and urged the CPPWG to consider areas of law in high demand by low-income or otherwise vulnerable populations; for example, the ATILS report specifically pointed to the need for legal services to assist the transgender community with name and gender changes.

At its initial meeting, and after reviewing the myriad of inputs outlined above, the CPPWG established a process for selecting practice areas, and the specific tasks within each selected practice area, to recommend for inclusion in the program. This process involved a winnowing of the list of potential practice areas, resulting in a final list of included practice areas. A similar exercise was then conducted with respect to authorized subtopics and/or tasks within each practice area, ultimately resulting in a comprehensive list of authorized practice areas and tasks for program inclusion.

As a first step in this process, at its initial meeting, the working group assigned the broad array of practice areas that could potentially be included in a paraprofessional program to the following categories.

<sup>14</sup> [The Practice of Law in California: Findings from the California Attorney Practice Analysis and Implications for the California Bar Exam](#). State Bar of California (May 2020). [Data from this report was available for analysis prior to publication, and was presented to the CPPWG at its April 2020 meeting.]

<sup>15</sup> [State Bar of California Task Force on Access Through Innovation of Legal Services: Final Report and Recommendations](#) (March 2020).

### Excluded from Ongoing Consideration

Two potential practice areas were excluded from ongoing consideration at the working group’s first meeting: criminal and immigration. The bases for these exclusions, as well as others that the CPPWG ultimately determined were appropriate to exclude, are outlined in the Excluded Practice Areas section.

### Included for Ongoing Consideration

A number of practice areas were designated for ongoing consideration. Subcommittees were appointed to research each of these practice areas and make recommendations regarding the specific topics and tasks to be included in the program.

### Wobblers

The majority of practice areas were identified as “wobblers,” requiring additional research before a recommendation could be made regarding their inclusion or exclusion. Subcommittees were appointed to research each of these practice areas in order to make a recommendation as to whether they should be included for, or excluded from, ongoing consideration.

Table 15 provides a summary of initial decisions regarding practice areas, as well as the types of legal needs or problems encompassed by each practice area, based on data from the CJGS survey and court self-help centers.

**Table 15. Practice Areas Initial Decisions**

Exclude	Include	Wobblers
<ul style="list-style-type: none"> <li>• Criminal</li> <li>• Immigration</li> </ul>	<ul style="list-style-type: none"> <li>• Consumer Debt               <ul style="list-style-type: none"> <li>○ Creditor harassment</li> <li>○ Unfair or deceptive lending practices</li> <li>○ Utility shutoff due to nonpayment</li> </ul> </li> <li>• Employment               <ul style="list-style-type: none"> <li>○ Unfair termination</li> <li>○ Unsafe/unhealthy working conditions</li> <li>○ Workplace grievance</li> </ul> </li> <li>• Family, Children, and Custody               <ul style="list-style-type: none"> <li>○ Domestic violence</li> <li>○ Divorce or separation</li> <li>○ Elder abuse</li> <li>○ Child support</li> <li>○ Custody/visitation</li> <li>○ Child protective services investigation</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Collateral Criminal               <ul style="list-style-type: none"> <li>○ Expungements</li> <li>○ Reclassification of convictions</li> <li>○ Infractions</li> </ul> </li> <li>• Estates and Trusts               <ul style="list-style-type: none"> <li>○ Wills drafting or revision</li> <li>○ Living will or advance directive</li> <li>○ Trusts</li> <li>○ Conservatorships and Guardianships</li> <li>○ Power of attorney</li> </ul> </li> <li>• General Civil               <ul style="list-style-type: none"> <li>○ Civil harassment</li> <li>○ Enforcement of judgments</li> <li>○ Consumer protection</li> </ul> </li> <li>• Health               <ul style="list-style-type: none"> <li>○ Insurance that does not cover necessary services</li> <li>○ Medical billing issues</li> </ul> </li> </ul>

Exclude	Include	Wobblers
		<ul style="list-style-type: none"> <li>○ Not informed about financial assistance or free health care</li> <li>● Housing and Home Ownership <ul style="list-style-type: none"> <li>○ Landlord-tenant dispute (lease terms or rules, repairs)</li> <li>○ Unsafe rental conditions</li> <li>○ Problems with selling or buying property, including problems with deed or title</li> </ul> </li> <li>● Income Maintenance <ul style="list-style-type: none"> <li>○ Denial or termination of public benefits</li> <li>○ Repayment of overpaid SSI, SSDI, or Social Security survivor benefits</li> <li>○ Denial or termination of SSI</li> </ul> </li> <li>● Veterans Advocacy <ul style="list-style-type: none"> <li>○ Denial of Veterans Administration (VA) benefits</li> <li>○ Difficulty with reinstatement to job after discharge or return from deployment</li> <li>○ Discharge status issues</li> </ul> </li> </ul>

Subcommittees were appointed to study each of the included and wobbler practice areas. Subcommittee membership is provided in table 16.

**Table 16. Practice Area Subcommittees**

Practice Area	Subcommittee Members
Collateral Criminal	Sharon Bashan Hon. Erica Yew
Consumer Debt	Julia Brynelson Steven Fleischman Stephen Hamilton Amos Hartston Nicole Robinson <sup>16</sup> Carolyn Shining Hon. Erica Yew
Employment	Steven Fleischman Carolyn Shining Ira Spiro Hon. Erica Yew

<sup>16</sup> Ms. Robinson joined the Consumer Debt and Health Subcommittees in December 2020.

Practice Area	Subcommittee Members
Estates and Trusts	Stephen Hamilton Elizabeth Olvera
Family, Children, and Custody	Sharon Bashan Stephen Hamilton Dana McRae Elizabeth Olvera Fariba Soroosh Hon. Monica Wiley <sup>17</sup>
General Civil	Steven Fleischman Hon. Erica Yew
Health	Dana McRae Nicole Robinson <sup>16</sup> Carolyn Shining
Housing	Hon. Michael Harper <sup>18</sup> Julianne Fellmeth Amos Hartston <sup>18</sup> Fariba Soroosh <sup>18</sup> Ira Spiro
Income Maintenance	Steven Fleischman Carolyn Shining Ira Spiro Hon. Erica Yew
Veterans	Julia Brynelson Amos Hartston

## EXCLUDED PRACTICE AREAS

### Immigration

Although immigration was identified as an area of significant need in the CJGS, the CPPWG decided that it should not be included in the program, citing a lack of jurisdiction by the state to authorize representation in federal courts.

### Criminal

Defendants in criminal proceedings are entitled to court-appointed counsel, rendering paraprofessional assistance unnecessary.

- “Collateral criminal,” including expungement and reclassification of convictions, and representation in infraction proceedings, was considered for inclusion, as a right to counsel is not provided in these matters.

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<sup>17</sup> Judge Wiley joined the Family, Children, and Custody Subcommittee in January 2021.

<sup>18</sup> Judge Harper, Mr. Hartston, and Ms. Soroosh joined the Housing Subcommittee in March 2021.

## WOBLER PRACTICE AREAS

### Estates and Trusts

The Estates and Trusts Subcommittee reviewed data from the CJGS survey, which identified topics included in the estates and trusts practice area, as shown in table 15. The subcommittee also reviewed data from a survey of California Association of Legal Document Assistants members regarding the services Legal Document Assistants (LDAs) provide to clients. LDAs reported, under the category of probate and estate planning, that their services include assistance with conservatorships and guardianships.

The Estates and Trusts Subcommittee diverged in its recommendations regarding inclusion of this practice area. Estate planning was an area identified by one member of the subcommittee, as well as by some members of the public who provided comment, in which paraprofessionals could play an important role in ensuring that less affluent homeowners have access to affordable services to help preserve their family homes. The other member cited a lack of data showing the need for such services; the fact that this practice area is not included among any other state's practice areas; and the complexity of this area, among other factors, in recommending that the program exclude estates and trusts. At its meeting on June 30, 2020, the CPPWG adopted a recommendation to exclude estates and trusts from ongoing consideration, but recommended that guardianship and conservatorship be considered during discussions of the family, children, and custody practice area.

A detailed discussion regarding the basis for these recommendations is found in the Estates and Trusts Subcommittee memo submitted to the CPPWG on June 30, 2020, which is provided in Appendix F.

### Health

While the health practice area was initially included for ongoing consideration, the Health Subcommittee ultimately recommended that the program not include this practice area. In its research, the Health Subcommittee learned that Health Consumer Alliances (HCAs), which are funded by grants from the Department of Managed Healthcare and Covered California, among other sources, provide free assistance to consumers in the health-related legal needs areas identified in the CJGS, regardless of consumer income. At its April 19, 2021, meeting, the CPPWG adopted the Health Subcommittee's recommendation to exclude this practice area from the program, as well as recommendations that the State Bar assist in publicizing the availability of HCAs, the Department of Managed Health Care, and the Department of Insurance; and that the State Bar support the efforts of the HCAs to require that information about their availability is included on notices from medical insurers and health care providers.

A detailed discussion regarding the basis for these recommendations is found in Health Subcommittee memos submitted to the CPPWG on June 30, 2020, and April 19, 2021, which are provided in Appendix F.

## Veterans Advocacy

The two-person Veterans Subcommittee considered CJGS survey data, which indicated that survey respondents reported problems, including denial of service-related benefits and problems with getting a job back after discharge and with their discharge status. The Veterans Subcommittee's research found that, through Veterans Services Organizations (VSOs) available in each county, nonlawyers may be accredited, pursuant to existing VA rules and procedures, to assist veterans with these issues. The Veterans Subcommittee also received guidance from the State Bar Office of General Counsel, advising that California does not have the authority to authorize nonlawyers to provide legal services in federal proceedings.

At its meeting on June 30, 2021, CPPWG adopted the Veterans Subcommittee's recommendation to exclude this practice area from the program, based on its findings that there are nonlawyer service providers available to assist veterans and that the state lacks jurisdiction to authorize nonlawyers to provide services in federal proceedings. The CPPWG also adopted a recommendation that the State Bar convene VSOs, legal aid organizations, and pro bono attorneys who are currently providing legal services to veterans, to discuss ways in which the State Bar can: (1) increase awareness of available services; (2) increase the number of attorneys providing pro bono legal services to veterans; (3) provide additional resources and trainings; and (4) potentially recruit nonlawyer volunteers interested in veterans advocacy as authorized by the VA and the Department of Defense.

A detailed discussion regarding the basis for these recommendations is found in the Veterans Subcommittee memo submitted to the CPPWG on June 30, 2020, which is provided in Appendix F.

## INCLUDED PRACTICE AREAS

As discussed above, subcommittees were appointed to research each of the practice areas that were included for ongoing consideration, and to make recommendations regarding the topics and tasks to be authorized within each practice area. Following is a discussion of the recommendations from each practice area subcommittee.

### Collateral Criminal

Collateral criminal was among the wobbler practice areas requiring an initial recommendation regarding whether it should be included for ongoing consideration. Initial research on this practice area was undertaken by one CPPWG member rather than a subcommittee. This member consulted with subject matter experts, including criminal court judges, and staff at legal services organizations, law school legal clinics, and Public Defender's Offices that provide assistance with criminal record clearing. At its meeting on June 30, 2020, CPPWG adopted the member's recommendation to include this practice area for ongoing consideration.

After the June 30 meeting, a subcommittee was appointed, with a second member joining to assist in research and consideration of this topic. The Collateral Criminal Subcommittee learned that there is widespread need for assistance with criminal record expungement and

reclassification of convictions,<sup>19</sup> and a scarcity of legal advocates who provide this assistance.<sup>20</sup> The subcommittee also learned about an interactive tool developed by The Access Project (TAP) designed to limit errors in the preparation and filing of these cases. In the course of its research, the Collateral Criminal Subcommittee was advised that a significant portion of people charged with traffic-related and other infractions are unrepresented at both arraignment and trial, and might benefit from assistance that a trained paraprofessional could provide. The Collateral Criminal Subcommittee determined that this practice area was appropriate for licensed paraprofessionals. At its meeting on August 25, 2020, CPPWG adopted recommendations from the Collateral Criminal Subcommittee to include the topics and tasks shown in table 17.

**Table 17. Collateral Criminal Topics and Tasks**

Topic	Tasks
Record Clearance (Expungement and Reclassification of Convictions)	<ul style="list-style-type: none"> <li>• Client intake</li> <li>• Client retainer/engagement</li> <li>• Run Live Scan or assist client with obtaining court records</li> <li>• Ensure client is no longer on probation</li> <li>• Check on outstanding fines and fees</li> <li>• Check applicable code sections to determine eligibility for expungement, reduction, or other clean slate remedy</li> <li>• Prepare appropriate petitions and proposed orders by county and remedy (determine if petitions are mandatory or discretionary)</li> <li>• Prepare the declaration</li> <li>• Prepare the proposed order</li> <li>• Determine if a record clearance is needed in addition to the expungement</li> <li>• File the petition and get a court date</li> <li>• Serve the District Attorney</li> <li>• Appear in court if necessary</li> <li>• Obtain a copy of the order and send to the U.S. Department of Justice to get RAP changed</li> </ul>
Infractions	<ul style="list-style-type: none"> <li>• Client intake</li> <li>• Client retainer agreement</li> <li>• Obtain a copy of the citation</li> <li>• Determine hearing date</li> <li>• Meet with client to determine what happened and what the client wants to do</li> </ul>

<sup>19</sup> Proposition 47, approved by California voters in 2014, reclassified certain offenses from felonies to misdemeanors, and authorized people convicted of felony offenses that would have qualified as misdemeanors under the proposition to apply to have their convictions reclassified. The deadline to petition for relief is November 2021; if the deadline is extended beyond the time the paraprofessional program is implemented, this practice area is recommended for program inclusion

<sup>20</sup> Although Public Defender’s offices in some counties appear to be providing these services, there is no statewide consistency or uniformity in the availability of these services free of charge.



Topic	Tasks
	<ul style="list-style-type: none"> <li>• Explain the outcome to the client and steps the client needs to take to comply with court’s decision</li> <li>• Appear in court if necessary</li> </ul>

The CPPWG also adopted the Collateral Criminal Subcommittee’s recommendation that the State Bar research and consider supporting a portal that TAP recently created and launched, which helps guide pro bono service providers through each step required to file for expungement and reclassification of convictions.

Detailed discussions regarding the basis for these recommendations are found in the Collateral Criminal Subcommittee memos submitted to the CPPWG on June 30 and August 25, 2020, which are provided in Appendix F.

### General Civil

General civil was among the wobblers practice areas, requiring an initial recommendation regarding whether this area should be included for ongoing consideration. In its deliberations, the two-person General Civil Subcommittee considered data regarding self-represented litigants, CAPA (described above) and information from judges who hear civil cases. At its meeting on June 30, 2020, CPPWG adopted the General Civil Subcommittee’s recommendation to include a limited number of topics within the general civil practice area for ongoing consideration, as shown in table 18.

**Table 18. General Civil Topics for Ongoing Consideration**

General Civil Topics
<ul style="list-style-type: none"> <li>• Civil harassment</li> <li>• Enforcement of judgments</li> <li>• Debt collection</li> <li>• Wage and hour claims</li> </ul>

A detailed discussion regarding the basis for these recommendations is found in the General Civil Subcommittee memo submitted to the CPPWG on June 30, 2020, which is provided in Appendix F.

### Consumer Debt

Consumer debt was one of the practice areas identified for program inclusion at the CPPWG’s meeting on April 21, 2020. The six-person subcommittee appointed to research this topic reviewed CJS data regarding the legal needs identified within this practice area. The Consumer Debt Subcommittee consulted with subject matter experts, including representatives of legal services organizations, consumer advocacy organizations, and private practice attorneys who represent consumers.

The Consumer Debt Subcommittee also consulted with a justice from the Utah Supreme Court, who explained that Limited Licensed Legal Practitioners (LLLP) in Utah are authorized to provide representation in consumer finance matters, within the statutory limit for small claims court. Additionally, the Administrative Director of the Courts in Arizona reported that the Arizona LLLP program will allow LLLPs to provide representation in any civil matter, including consumer debt cases.

At its meeting on August 25, 2020, the CPPWG adopted initial recommendations from the Consumer Debt Subcommittee, which were based on factors including complexity, consequences of error, and overlapping federal court jurisdiction, that the program exclude consumer debt topics listed in table 19.

**Table 19. Consumer Debt Topics Excluded from Ongoing Consideration**

Excluded Consumer Debt Topics
<ul style="list-style-type: none"> <li>• Bankruptcy</li> <li>• Identity theft</li> <li>• Unfair or deceptive lending practices</li> <li>• Problems with credit repair services</li> <li>• Payday/short-term lenders</li> <li>• Fines and fees from criminal or juvenile cases</li> <li>• Car repossession or defect/warranty issues</li> </ul>

A detailed discussion regarding the basis for these recommendations is found in the Consumer Debt Subcommittee memo submitted to the CPPWG on August 25, 2020, which is provided in Appendix F.

### **Consumer Debt & General Civil**

Subsequent to the CPPWG’s meeting on October 29, 2020, the Consumer Debt and General Civil Subcommittees were combined into one subcommittee to consider the remaining topics within these practice areas:

- Representation of debtors in enforcement of judgment proceedings and advice and representation related to debt collection
- Wage and hour claims
- Civil harassment
- Creditor harassment
- Enforcement of small claims court judgments
- Representation of creditors in wage and hour claims in limited jurisdiction cases
- Wage garnishment
- Utility shutoffs due to nonpayment

At its initial meeting, the Consumer Debt & General Civil Subcommittee referred the topic of civil harassment to the Family, Children, and Custody Subcommittee, for consideration along

with the other violence prevention topics. Wage and hour claims were referred to the Employment & Income Maintenance Subcommittee for its consideration.

The Consumer Debt & General Civil Subcommittee consulted with subject matter experts, including a judge, representatives of a DA’s office, representatives of legal services organizations, and private practitioners who provide representation in consumer debt matters. They also considered information provided by a consumer advocacy organization that provides assistance to consumers experiencing utility shutoffs.

At its meeting on April 19, 2021, CPPWG adopted initial recommendations provided by the Consumer Debt & General Civil Subcommittee regarding the topics to be included in this practice area, as shown in table 20.

**Table 20. Consumer Debt & General Civil – April 19, 2021<sup>21</sup>**

Topic	Tasks
Consumer Debt	Representation of individual debtors in limited jurisdiction consumer debt proceedings, except for: <ul style="list-style-type: none"> <li>○ Responding to or preparing dispositive motions including anti-SLAPP (strategic lawsuit against public participation) motions and motions for summary judgment</li> <li>○ Participating in trial setting or pretrial conferences</li> <li>○ Representing clients in jury trials and bench trials</li> </ul>
Creditor Harassment	<ul style="list-style-type: none"> <li>● Included               <ul style="list-style-type: none"> <li>○ Prelitigation cease-and-desist and prove-up letters</li> <li>○ Prelitigation negotiation of settlements, including payment plans</li> </ul> </li> <li>● Excluded               <ul style="list-style-type: none"> <li>○ All superior court litigation</li> </ul> </li> </ul>

During the meeting on April 25, 2021, concerns were raised regarding some of the adopted recommendations. The Consumer Debt & General Civil Subcommittee conducted further research, and its revised recommendations, provided in table 21, were adopted by the CPPWG at its meeting on June 25, 2021.

**Table 21. Consumer Debt & General Civil – Final**

Topic	Tasks
Consumer Debt and Creditor Harassment	<ul style="list-style-type: none"> <li>● Included               <ul style="list-style-type: none"> <li>○ Prelitigation cease-and-desist and prove-up letters</li> <li>○ Prelitigation negotiation of settlements, including payment plans</li> </ul> </li> <li>● Excluded               <ul style="list-style-type: none"> <li>○ All superior court litigation</li> </ul> </li> </ul>

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<sup>21</sup> These recommendations were superseded by recommendations adopted by the CPPWG at its meeting on June 25, 2021, as shown in table 21.

Enforcement of Judgments	<ul style="list-style-type: none"> <li>• Included <ul style="list-style-type: none"> <li>○ Representation of natural persons in enforcement of small claims court judgments</li> <li>○ Representation of natural persons in limited jurisdiction post-judgment enforcement proceedings</li> </ul> </li> </ul>
Name and Gender Change	<ul style="list-style-type: none"> <li>• Full assistance</li> </ul>

Detailed discussions regarding the basis for these recommendations are found in the Consumer Debt & General Civil Subcommittee memos submitted to the CPPWPG on April 19 and June 25, 2021, which are provided in Appendix F.

**Income Maintenance**

Income maintenance was among the wobbler practice areas requiring an initial recommendation about whether this area should be included for ongoing consideration. The four-person Income Maintenance Subcommittee reviewed the types of problems identified in this category in the CJGS, which are listed under Income Maintenance in table 3. Subcommittee members consulted with subject matter experts, including the director of an unemployment law clinic and a judge from the Workers’ Compensation Appeals Board. They also reviewed the administrative process for filing and appealing for public benefits. At its meeting on June 30, 2020, the CPPWG adopted the Income Maintenance Subcommittee’s recommendations to include representation at public benefits administrative agency proceeding in the program.

A detailed discussion regarding the basis for these recommendations is in the Income Maintenance Subcommittee memo submitted to the CPPWG on June 30, 2020, which is provided in Appendix F.

**Employment**

Employment was one of the practice areas identified for inclusion at the meeting on April 21, 2020. In developing its recommendations, the four-person Employment Subcommittee reviewed the types of problems identified in this category in the CJGS, listed under Employment in table 3. The Employment Subcommittee consulted subject matter experts, including legal services providers who assist employees, private practitioners who represent employees, and private practitioners who represent employers. A number of employment topics were identified as involving complex legal issues, some with potential remedies in federal court, in which paraprofessionals would not be authorized to practice. Several of the subject matter experts recommended against allowing paraprofessionals to provide representation in any aspect of employment law absent attorney supervision. Initial recommendations from the Employment Subcommittee addressed only those areas that would be excluded from the Program; remaining topics were considered during subsequent meetings. At its meeting on August 25, 2020, the CPPWG adopted recommendations that the program exclude employment topics listed in table 22.

**Table 22. Employment Topics Excluded from Ongoing Consideration**

Excluded Employment Topics
<ul style="list-style-type: none"> <li>• Unfair termination</li> <li>• Unsafe working conditions</li> <li>• Sexual harassment</li> <li>• Workers’ compensation</li> <li>• Workplace grievances</li> <li>• Workplace accommodations</li> </ul>

A detailed discussion regarding the basis for these recommendations is found in the Employment Subcommittee memo submitted to the CPPWG on August 25, 2020, which is provided in Appendix F.

**Employment & Income Maintenance**

Subsequent to the meeting on October 29, 2020, the separate Employment and Income Maintenance Subcommittees, each of which had comprised the same CPPWG members, agreed to consider the remaining topics within both practice areas, including wage and hour claims before the Division of Labor Standards Enforcement (DLSE); unemployment insurance benefit hearings before the EDD; and other public benefits administrative hearings. In developing its recommendations, the Employment & Income Maintenance Subcommittee consulted with subject matter experts, including a superior court judge; private practitioners who represent employers and those who represent employees in wage and hour claims; directors of law school clinical programs in employment law; and a former State Labor Commissioner. At its meeting on April 19, 2021, CPPWG adopted the recommendations from the Employment & Income Maintenance Subcommittee to include the topics and tasks shown in table 23.

**Table 23. Employment & Income Maintenance Topics and Tasks**

Topic	Tasks
Administrative Agency Proceedings	<ul style="list-style-type: none"> <li>• DLSE               <ul style="list-style-type: none"> <li>○ Wage and hour proceedings</li> </ul> </li> <li>• EDD               <ul style="list-style-type: none"> <li>○ Unemployment insurance proceedings</li> </ul> </li> <li>• Public Benefit Proceedings</li> </ul>
Enforcement of Judgments	<ul style="list-style-type: none"> <li>• DLSE wage and hour judgments               <ul style="list-style-type: none"> <li>○ Limited jurisdiction superior court proceedings</li> </ul> </li> </ul>

A detailed discussion regarding the basis for these recommendations is found in the Employment & Income Maintenance Subcommittee memo submitted to the CPPWG on April 19, 2021, which is provided in Appendix F.

## Family, Children, and Custody

Family, Children, and Custody was one of the practice areas identified for inclusion at the meeting on April 21, 2020. The six-person Family, Children, and Custody Subcommittee included two members with significant familiarity with this practice area: the director of a court self-help center and a certified family law specialist. In considering the initial topics and tasks for this practice area, including dissolution, property division, child custody and visitation, child and spousal support, and violence prevention, the Family, Children, and Custody Subcommittee drew on these members' experience. The subcommittee also reviewed information about the topics included in family law specialization examinations and the scope of allowed practice in family law in other states' paraprofessional programs. While the Family, Children, and Custody Subcommittee initially undertook to develop an exhaustive list of tasks that would be allowed or excluded from the Program, it determined that providing a list of excluded tasks was preferred. Inadvertent omission of a task from the list could lead to ambiguity regarding whether a licensed paraprofessional was authorized to perform that task.

In considering additional topics that fell under their purview—including adoption, guardianship, conservatorship, child welfare, and elder abuse—the Family, Children, and Custody Subcommittee consulted with subject matter experts, including representatives of legal services organizations, a court probate examiner, a private practitioner who represents parties in conservatorships, and a representative of the Academy of California Adoption Lawyers. The Family, Children, and Custody Subcommittee's recommendations initially included allowing paraprofessionals to provide limited assistance in child welfare proceedings, including providing assistance with prefiling investigation by Child Protective Services; modifications after a case is closed; and assistance for parties not entitled to court-appointed counsel in dependency proceedings. After further research, this topic was not included in the Family Law Subcommittee's final recommendations.

At its meetings on June 10 and June 25, 2021, the CPPWG adopted the recommendations from the Family, Children, and Custody Subcommittee to include the topics and tasks shown in table 24.

**Table 24. Family, Children, and Custody Topics and Tasks**

Topic	Tasks
<p>Family</p> <ul style="list-style-type: none"> <li>• Dissolution/separation</li> <li>• Paternity</li> <li>• Child and spousal support</li> <li>• Custody and visitation</li> <li>• Property division</li> </ul>	<p><b>Excluded Tasks</b></p> <ul style="list-style-type: none"> <li>• Nullity matters               <ul style="list-style-type: none"> <li>○ Petitions based on incest, unsound mind, fraud, force, and/or physical incapacity</li> <li>○ Putative spouse establishment</li> <li>○ Division of quasi-marital property</li> </ul> </li> <li>• Petition to establish parental relationship involving FC § 7612(b) or (c)</li> <li>• Child custody and visitation involving Hague Convention or UCCJEA</li> <li>• QDRO</li> <li>• Spousal or domestic partner support in long-term marriages, as defined by FC § 4336, unless included in a marital settlement agreement that does not terminate or set nonmodifiable spousal support</li> </ul>

Topic	Tasks
	<ul style="list-style-type: none"> <li>• Discovery               <ul style="list-style-type: none"> <li>○ Oral depositions</li> <li>○ Expert discovery</li> <li>○ Related motions</li> </ul> </li> <li>• Premarital/postmarital agreements</li> <li>• Marvin actions (palimony)</li> <li>• Contempt actions</li> </ul>
Adoption <ul style="list-style-type: none"> <li>• Limited to uncontested cases</li> </ul>	<b>Excluded Tasks</b> <ul style="list-style-type: none"> <li>• Adoptions arising from dependency petitions</li> <li>• Adoptions where the child has been identified as protected by the Indian Child Welfare Act</li> </ul>
Conservatorship and Guardianship <ul style="list-style-type: none"> <li>• Limited to uncontested cases</li> </ul>	<b>Excluded Tasks</b> <ul style="list-style-type: none"> <li>• Guardianships established in dependency court for parties entitled to court-appointed counsel</li> </ul>
Violence Prevention <ul style="list-style-type: none"> <li>• Civil harassment</li> <li>• Domestic violence</li> <li>• Elder or dependent adult abuse</li> <li>• Gun violence</li> <li>• Workplace violence</li> </ul>	<b>Excluded Tasks</b> <ul style="list-style-type: none"> <li>• In-court representation for domestic violence hearings involving children</li> <li>• Introduction or cross-examination of expert witnesses</li> </ul>
Court-Appointed Counsel	<b>Excluded Activity, for All Cases</b>

Detailed discussion regarding the basis for these recommendations are found in the Family, Children, and Custody Subcommittee memos submitted to the CPPWG on the following dates, which are provided in Appendix F.

- August 25, 2020
- December 17, 2020
- February 26, 2021
- April 19, 2021
- June 10, 2021
- July 26, 2021

## Housing

Housing was among the wobbler practice areas, requiring an initial recommendation regarding whether it should be included for ongoing consideration. The two-person Housing Subcommittee appointed to make a recommendation in this regard reviewed the types of problems identified in this category in the CJGS, which are listed under the Housing category in table 3. The Housing Subcommittee also reviewed data from a number of reports on efforts to assist unrepresented parties in unlawful detainer cases. At its meeting on June 30, 2020, the CPPWG adopted the Housing Subcommittee’s recommendation to include the following topics for ongoing consideration: evictions and unlawful detainer proceedings; and homeownership issues related to clearing title, except for representation in quiet title actions.

Subsequent to the meeting on June 30, 2020, three additional CPPWG members joined the Housing Subcommittee, which considered the topics identified for ongoing consideration. In researching the topic of evictions and unlawful detainer proceedings, the Housing Subcommittee consulted with subject matter experts. These include representatives from legal services organizations that assist tenants in eviction cases; a representative of a right-to-counsel organization, which advocates for guaranteed counsel for parties in unlawful detainer cases; and a judge who presides over unlawful detainer cases. At its meetings on June 10 and July 26, 2021, the CPPWG adopted the recommendations from the Housing Subcommittee to include the topics and tasks shown in table 25, as well as additional recommendations included in table 26.

**Table 25. Housing Topics and Tasks**

Topic	Tasks
Landlord-Tenant and Unlawful Detainer (Representation limited to tenants, and landlords who own no more than two units)	<p><b>Included Tasks</b></p> <ul style="list-style-type: none"> <li>• Unlawful detainer</li> <li>• Landlord-tenant disputes               <ul style="list-style-type: none"> <li>○ Small claims assistance</li> </ul> </li> </ul> <p><b>Excluded Tasks</b></p> <ul style="list-style-type: none"> <li>• Unlawful detainer               <ul style="list-style-type: none"> <li>○ Bench or jury trial</li> </ul> </li> <li>• Landlord-tenant disputes               <ul style="list-style-type: none"> <li>○ Superior court litigation (in or out of court)</li> </ul> </li> </ul>
Lien Clearing	<p><b>Included Tasks</b></p> <ul style="list-style-type: none"> <li>• Clearing liens from title, outside of litigation</li> </ul> <p><b>Excluded Tasks</b></p> <ul style="list-style-type: none"> <li>• Representation in quiet title actions</li> <li>• Home ownership or real estate title issues</li> </ul>

**Table 26. Additional Housing Recommendations**

Topic	Recommendations
<b>Required Disclosures</b>	<ul style="list-style-type: none"> <li>• In addition to required disclosures about the availability of a free attorney through a local legal services program to those who qualify, paraprofessionals should be required to advise clients of the availability of a right-to-counsel program, or must certify that no such program exists in their county.</li> <li>• For landlord-tenant matters on behalf of tenants, disclosures should specifically include that paraprofessionals are not licensed to provide in-court representation at trial; and if the case goes to trial, having an attorney is strongly recommended.</li> </ul>



Topic	Recommendations
<b>Support of Right to Counsel Movement</b>	<ul style="list-style-type: none"> <li>• The State Bar should express strong support for establishing and funding a right to counsel in unlawful detainer proceedings, making it clear that paraprofessional licensing in this area is meant to supplement and not undermine establishment and funding of a right to counsel;               <ul style="list-style-type: none"> <li>○ A justice gap continues to exist; paraprofessionals will not be authorized to represent litigants at trial, and free attorneys may not be available due to income restrictions placed on right-to-counsel programs, legal services funding, and capacity issues, or because local jurisdictions have not yet implemented or fully funded a right to counsel in their jurisdiction.</li> <li>○ Paraprofessionals may participate with legal services programs to provide free or low-cost legal services.</li> </ul> </li> </ul>

Detailed discussion regarding the basis for these recommendations are found in the Housing Subcommittee memos submitted to the CPPWG on the following dates, which are provided in Appendix F.

- June 30, 2020
- April 19, 2021
- July 26, 2021

## IN-COURT REPRESENTATION

The question of whether paraprofessionals should be able to assist their clients in court was one of the most difficult issues addressed by the CPPWG. The positions voiced by the group’s members and members of the public ranged from allowing paraprofessionals (within the scope of their licensed practice area(s)) to provide full in-court representation to prohibiting any participation in court proceedings.

The CPPWG participated in two facilitated discussions on this topic, during which members considered the following options:

- Full in-court representation;
- Responsive representation – paraprofessionals are authorized to sit at counsel table to support and advise their clients, and may answer direct procedural questions from the judge;
- In-court support – paraprofessionals are authorized to sit at counsel table to support and advise their clients, but are prohibited from responding to questions from the judge; or
- Prohibition on in-court appearances – paraprofessionals not allowed to sit at counsel table.

The following arguments for each of the above positions were advanced by members of the CPPWG, guest speakers, and members of the public.

### **Full In-Court Representation**

- Prohibiting paraprofessionals from advocating in court would fall short of providing full access to justice, as the litigant cannot be expected to have the same command of the materials and familiarity with the forms; therefore, absent full representation, the litigant would be greatly disadvantaged.
- Litigants need their representative, the paraprofessional, to speak for them, as it can be very difficult for individuals to represent themselves in court, especially concerning very personal and highly emotional matters such as child custody or domestic violence restraining orders.
- Cases with self-represented litigants present the greatest challenge for the bench; allowing paraprofessionals to represent parties would result in better hearings and potentially fewer hearings.
- Court reporters are not consistently available for all court proceedings in all court systems throughout the state; having paraprofessionals available would help ensure greater accuracy of orders, leading to increased compliance.
- Nonlawyers are already authorized to represent people in a number of proceedings and, as with lawyers, there are good ones and bad ones. It should not be presumed that a paraprofessional will not represent a client as well as an attorney, as their representation is limited to specific areas in which the paraprofessionals are trained and licensed.

### **Responsive Representation**

While paraprofessionals should not be able to provide full in-court representation, they should be able to provide responsive representation because:

- Appearing in court is always a traumatic experience for litigants. They would benefit from assistance from a well-trained paraprofessional who could help them stay organized in court and ensure that they don't forget any of the requests they wish to make of the court.
  - Particularly in domestic violence cases, having the assistance of a paraprofessional in court could help victims be truly heard.
- It would be helpful to allow paraprofessionals to respond to direct questions from the bench, as a paraprofessional would be in a better position than a client to efficiently provide factual information. It would be an enormous waste of time for the judge to ask questions, the litigant to then confer with the paraprofessional, and then the litigant responds to the judge.
- Judges would be likely to pose direct questions to paraprofessionals sitting at counsel table; it would be awkward for paraprofessionals to be prohibited from providing a response.

## **In-Court Support**

The following arguments were advanced by those who believe that paraprofessionals should not have an active role in court appearances, but their presence could help support their clients in the courtroom:

- Allowing paraprofessionals to speak in court would create political barriers to program implementation due to opposition from stakeholders and constituents.
- Licensing requirements for paraprofessionals are not sufficient to ensure they are competent to speak in court on their clients' behalf.

## **Prohibition on In-Court Appearances**

- Paraprofessionals would not be able to achieve the level of competency required to appear in court.
- Allowing nonlawyers to appear in court would threaten the public's trust and confidence in the courts.
- Allowing paraprofessionals to make any court appearances would create political barriers to program implementation, due to opposition from stakeholders and constituents.
- It would not be clear to the public (and at times maybe to other parties) that the paraprofessional is not an attorney with no limitations on scope of practice areas.

## **Recommendation**

After extensive discussion and debate informed by background material and the ability to hear from a range of individuals involved with paraprofessional programs, the CPPWG voted to adopt a default position that paraprofessionals may provide full in-court representation, with a complete prohibition on jury trials. The CPPWG's default position could be modified in regard to a particular practice area based on a recommendation from that practice area subcommittee.

This resolution was adopted by the CPPWG on March 26, 2021, with the following votes:

Yes: 12

No: 4

Abstain: 0

Absent: 2

The CPPWG also agreed separately that all in-court representation shall be limited to trial court appearances and shall not include appearances or filing notices of appeal in any appellate court, including the appellate division of any superior court.

Practice area subcommittee recommendations to modify the default position regarding in-court representation, which were adopted by the CPPWG on April 19, and June 10, 2021, are provided in table 27.

**Table 27. Practice Area Modifications to Full In-Court Representation**

Practice Area	Modification
Consumer Debt & General Civil	Consumer Debt and Creditor Harassment <ul style="list-style-type: none"> <li>• All superior court litigation is excluded</li> </ul>
Family, Children, and Custody	Family <ul style="list-style-type: none"> <li>• Hearings on emergency custody or visitation requests when a judge has granted temporary emergency orders               <ul style="list-style-type: none"> <li>○ Paraprofessionals may not provide in-court representation, but are authorized to sit at counsel table to support and advise their client, and may answer direct procedural questions from the judge.</li> </ul> </li> </ul> Violence Prevention <ul style="list-style-type: none"> <li>• Domestic violence hearings involving children               <ul style="list-style-type: none"> <li>○ Paraprofessionals may not provide in-court representation, but are authorized to sit at counsel table to support and advise their client, and may answer direct procedural questions from the judge.</li> <li>○ If expert witness testimony will be introduced, paraprofessionals are prohibited from introducing or cross-examining expert witnesses.</li> </ul> </li> </ul>
Housing	Unlawful Detainer <ul style="list-style-type: none"> <li>• Paraprofessionals may not provide in-court representation in bench or jury trials               <ul style="list-style-type: none"> <li>○ Paraprofessionals may provide in-court representation for motion hearings and default prove-ups;</li> <li>○ During trials, paraprofessionals may assist their clients by sitting at counsel table, to provide advice and guidance, and may respond to direct questions from the judge.</li> </ul> </li> <li>• Aside from unlawful detainer matters and small claims assistance, paraprofessionals may not represent or assist clients in court or out of court in superior court litigation in landlord-tenant disputes.</li> </ul>

## LICENSING REQUIREMENTS

The CPPWG appointed a Licensing Subcommittee, as shown in table 28, which was charged with recommending licensing requirements for the program.

**Table 28. Licensing Subcommittee Members**

Licensing Subcommittee
Julia Brynelson
Stephen Hamilton
Hon. Michael Harper <sup>22</sup>
Claudia Torres-Ambriz <sup>23</sup>

Recommendations for licensing requirements include eligibility, education, practical/experiential training, practice-area specific testing, and a moral character determination process. After satisfying all licensing requirements, including passing relevant exams and receiving a positive moral character determination, candidates will be licensed by the State Bar to provide services in the practice area(s) for which they have been deemed qualified. The Licensing Subcommittee considered each of these requirements in light of the goal of encouraging broad program participation while ensuring public protection. In making its recommendations, the Licensing Subcommittee was informed by licensing requirements in other jurisdictions, education and training requirements for California paralegals and LDAs, and curricular requirements for paralegal education programs. The Licensing Subcommittee was particularly mindful of the experience of Washington’s LLLT program, which was sunset in part due to low numbers of candidates seeking LLLT licensure and the resulting high costs of LLLT program administration. Review of media coverage and discussions with those familiar with the Washington State program suggest that the extensive and expensive educational and experiential requirements may have impacted participation.

Unlike attorneys, who receive a general license to practice in any area of law, paraprofessionals would be licensed in specific practice areas, each of which have specific educational, experiential, and testing requirements. Recommendations for eligibility, education, practical training, testing, and moral character evaluation are designed to ensure competent practice without being so onerous as to discourage participation.

### ELIGIBILITY

The Licensing Subcommittee’s initial recommendation was to limit eligibility for program participation to (1) graduates with JD degrees from ABA approved or California accredited law schools; or (2) paralegals qualified pursuant to [Business and Professions Code section 6450\(c\)](#). These prerequisites were intended to ensure that program applicants had undergone significant relevant education prior to Program entry. The initial recommendation was subsequently expanded to include (1) law school graduates with LLM degrees; (2) graduates

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<sup>22</sup> Judge Harper joined the Licensing Subcommittee in January 2021.

<sup>23</sup> Claudia Torres-Ambriz joined the Licensing Subcommittee in December 2020.

from California registered law schools; and (3) LDAs qualified pursuant to [Business and Professions Code section 6402.1\(b\)](#).

The recommendation to include those with LLM degrees was informed by a review of curricular requirements for LLM and MSL degrees at a number of law schools. While the LLM degree was determined to provide an education that prepared graduates to sit for the bar exam and practice law, MSL programs provide a legal education for people who are interested in learning about the legal system but do not intend to practice law. As such, graduates with LLM degrees are recommended for inclusion, while graduates with MSL degrees are not.

The recommendation to expand eligibility to graduates of California registered law schools was informed by a review of bar exam pass rates; data presented by the State Bar Office of Research and Institutional Accountability showed that, while graduates from ABA-approved law schools pass the exam at substantially higher rates than do graduates from non-ABA schools, there is not a significant difference between pass rates for graduates from California accredited and California registered law schools. Based on this data, the Licensing Subcommittee found no basis to exclude graduates from California registered law schools from the program.

The recommendation to include specified LDAs was based on information provided by CPPWG member Elizabeth Olvera, who expressed a view that LDAs, who have been providing self-help services to their clients for many years, would be a valuable addition to the program. The Licensing Subcommittee reviewed the eligibility requirements for LDAs specified in Business and Professions Code section 6402.1. Subdivision (a) allows for participation by those whose education is limited to a high school or general equivalency diploma, which the Licensing Subcommittee did not believe was sufficient for participation in the program; LDAs qualified pursuant to subdivision (c) or (d) would already qualify for program participation by virtue of being a qualified paralegal. Subdivision (b) requires a bachelor's degree and one year of law-related experience under the supervision of an attorney. Based on this review of the various ways in which individuals can qualify to serve as LDAs, the CPPWG adopted the Licensing Subcommittee's recommendation to expand eligibility to include LDAs qualified pursuant to Business and Professions Code section 6402.1(b). At its meeting on June 25, 2021, the CPPWG adopted the Licensing Subcommittee's recommendations for program eligibility shown in table 29.

**Table 29. Program Eligibility Requirements**

Eligibility Requirements
<ul style="list-style-type: none"><li>• JD or LLM from ABA or California accredited or registered law school; or</li><li>• Paralegal qualified pursuant to <a href="#">Business and Professions Code § 6450(c)</a>; or</li><li>• Legal Document Assistant qualified per <a href="#">Business and Professions Code § 6402.1(b)</a><sup>24</sup></li></ul>

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<sup>24</sup> The CPPWG recommends that applicants admitted to the Program pursuant to this criterion would not be eligible for a waiver of educational or experience requirements.

## EDUCATION

In developing recommendations for educational requirements for the program, the Licensing Subcommittee was mindful of the need to strike a balance between consumer protection and program viability. The Licensing Subcommittee recommended adoption of universal educational requirements for all paraprofessionals, as well as subject matter-specific requirements for each licensed practice area. Universal requirements will provide the basic underpinnings of paraprofessional education, providing the knowledge required for all practitioners. Importantly, these universal requirements include one unit in trauma-informed representation. This recommendation acknowledges the reality that effectively dealing with clients who are experiencing traumatic situations, as well as dealing with one’s own professional trauma, is increasingly important to effective and competent practice.

Practice area requirements are designed to ensure that practitioners have the specific tools needed to provide competent services in their licensed practice area(s). The Family, Children, and Custody Subcommittee developed practice area educational requirements, based on the subject matter expertise of its members. Educational requirements for other practice areas were benchmarked to those for the family law practice area, as this area is generally acknowledged to be the most complex of the areas included in the Program. Input was sought from each of the practice area subcommittees in developing these recommendations.

Educational requirements adopted by the CPPWG reflect recommended minimum coursework required for licensure. As discussed in the Program Implementation section below, staff will work with educational partners and subject matter experts to develop the specific curriculum that will ultimately be recommended for adoption by the Oversight Committee.

The CPPWG recommends that most applicants be able to request a waiver of coursework requirements if they can demonstrate completion of the required coursework as part of their law school or paralegal program. This waiver provision does not apply LDAs certified for LDA practice pursuant to [Business and Professions Code section 6402.1 \(b\)](#), since they have not completed a law-related educational program at a law school or paralegal program. At its meeting on August 31, 2021, CPPWG adopted the Licensing Subcommittee’s recommendations regarding the program’s educational requirements, as shown in table 30.

**Table 30. Educational Requirements**

Practice Area	Course	Units <sup>25</sup>
All Practice Areas	Ethics and Professional Responsibility	3
	Pretrial Discovery and Evidence	3
	Court Procedure	3

<sup>25</sup> Pursuant to [California Code of Regulations, Title 5 § 55002.5](#), one unit of community college credit requires a minimum of 48 hours of student work for colleges operating on the semester system. This time includes classroom instruction and student work outside the classroom. A 3-unit course is equal to 144 hours of student engagement.

Practice Area	Course	Units <sup>25</sup>	
	Court Advocacy	3	
	Trauma-Informed Representation	1	
	<b>Total</b>	<b>13</b>	
Collateral Criminal	Expungement, Reclassification, and Infractions	3	
Consumer Debt & General Civil	Debt Collection and Creditor Harassment	6	
	Enforcement of Judgments [including wage and hour]	3	
	Name and Gender Change	0.5	
	<b>Total</b>	<b>9.5</b>	
Family, Children, and Custody	Family Law and Procedure	6	
	Adoption	2	
	Violence Prevention	2	
	Conservatorship and Guardianship	3	
	<b>Total</b>	<b>13</b>	
Employment & Income Maintenance	Administrative Agency Procedure	3	
Housing	Landlord-Tenant <ul style="list-style-type: none"> <li>• Leases and rental agreements</li> <li>• Security deposits</li> <li>• Types of tenancies</li> <li>• Tenant protections</li> <li>• Housing discrimination and landlord retaliation</li> <li>• Warranty of habitability</li> <li>• Rent control and eviction control</li> <li>• Ground and procedures for nonjudicial termination of tenancies</li> <li>• Unlawful detainer procedure</li> <li>• COVID-19 tenant protection laws and tenant assistance (until such laws expire)</li> <li>• Rental assistance programs</li> <li>• Benefits and risks of demanding a jury trial</li> <li>• Small claims court actions</li> <li>• Subsidized housing and Mobilehomes</li> <li>• Benefits of demanding a jury trial in unlawful detainer cases</li> </ul>	12	
	Lien Clearing	1	
	<b>Total</b>	<b>13</b>	
	<i>With the exception of one unit of paraprofessional Ethics and Responsibility, coursework taken as part of a law school or paralegal program may satisfy the program's educational requirements.</i>		

Detailed discussion regarding the basis for these recommendations are found in the Licensing Subcommittee memo submitted to the CPPWG on August 31, 2021, which is provided in Appendix F.

### PRACTICAL/EXPERIENTIAL TRAINING

Practical experiential training under the supervision of an experienced attorney will ensure that paraprofessionals are adequately prepared prior to providing independent services to clients. In



developing recommendations for this training, the Licensing Subcommittee was mindful of the need to require enough hours to ensure competence without imposing a burden that would preclude broad participation by a diverse pool of Program applicants. Recommendations specify that a significant portion of the experience be in the practice area in which the applicant will be licensed, and that trauma-informed training be required for all applicants. Recommendations regarding requirements for supervising attorneys are also provided.

Members of both the CPPWG and the public voiced concerns that applicants might be required to gain practical experience either for free or with pay insufficient to support themselves. Concerns were also raised that those in less populated areas of the state might face significant difficulties in obtaining the required experience. Both of these factors might negatively impact under-resourced communities. The CPPWG’s recommendations include incentives for attorneys in private practice and in legal services organizations to provide the necessary supervision, and would allow for attorneys to supervise up to five applicants simultaneously. The CPPWG also recommends that work as a paralegal or in a law school clinic prior to entering the program be allowed satisfy the experiential training requirement. At its meeting on February 26, 2021, CPPWG adopted the Licensing Subcommittee’s recommendations regarding practical/experiential training requirements, as shown in table 31, and incentives for supervising attorneys, as shown in table 32.

**Table 31. Practical/Experiential Training Requirements**

Requirements for Students	Requirements for Supervisors
<ul style="list-style-type: none"> <li>• 1,000 hours over a minimum of 6 months</li> <li>• 500 hours must be in practice area in which paraprofessional will be licensed</li> <li>• Must include trauma-informed training</li> </ul> <p><i>Experience working as a paralegal or in a law school clinic may satisfy the experience requirements set out above, subject to certification by the supervising attorney or law clinic instructor that it meets the specified criteria.</i></p>	<ul style="list-style-type: none"> <li>• Active licensee for ≥ 4 years</li> <li>• Provide training and counsel</li> <li>• Assume responsibility for applicant’s activities</li> <li>• Approve and sign documents prepared for clients</li> <li>• Submit written declaration certifying applicant’s experience and training</li> <li>• Supervise ≤ 5 applicants at a time</li> </ul>

**Table 32. Incentives for Supervising Attorneys**

Supervision Incentives
<ul style="list-style-type: none"> <li>• 1 hour CLE per 125 hours of supervision provided               <ul style="list-style-type: none"> <li>○ CLE credit allowed for each person supervised</li> </ul> </li> <li>• Online directory showing attorneys who have provided supervision to licensed</li> </ul>

Supervision Incentives
paraprofessionals <ul style="list-style-type: none"> <li>• Funding provided to legal services programs for paraprofessional internships</li> </ul>

**TESTING**

A paraprofessional licensing exam will require paraprofessionals to demonstrate their knowledge of court procedure and advocacy, discovery and evidence, and professional responsibility, as well as information specific to the area in which they intend to practice. A separate exam will be required for each practice area in which the paraprofessional seeks licensure. Applicants will also be required to pass a professional responsibility exam. At its meeting on February 26, 2021, the CPPWG adopted the Licensing Subcommittee’s recommendations regarding testing requirements, as shown in table 33.

**Table 33. Testing Requirements**

Testing Requirements
<ul style="list-style-type: none"> <li>• Subject matter-specific testing</li> <li>• Professional Responsibility Exam modeled after attorney exam</li> </ul>

**MORAL CHARACTER AND BACKGROUND CHECK**

It is essential that licensed paraprofessionals be held to the same high moral character standards as attorneys. The CPPWG recommends adoption of moral character requirements that mirror those for attorneys, including fingerprinting and background checks. The CPPWG also recommends that applicants who have been disbarred or have resigned with charges pending in any jurisdiction be barred from program participation. At its meeting on February 26, 2021, the CPPWG adopted the Licensing Subcommittee’s recommendations for moral character requirements, as shown in table 34.

**Table 34. Moral Character Requirements**

Moral Character Requirements
<ul style="list-style-type: none"> <li>• Fingerprinting and background check equivalent to attorney requirements</li> <li>• Not disbarred or resigned with charges pending in any jurisdiction</li> <li>• Moral character determination requirements to mirror attorney requirements</li> </ul>

Detailed discussion regarding the basis for each of these recommendations are found in the Licensing Subcommittee memos submitted to the CPPWG on the following dates, which are provided in Appendix F.

- October 29, 2020

- December 17, 2020
- February 26, 2021
- June 25, 2021
- August 31, 2021

## REGULATION

The CPPWG appointed a Regulation Subcommittee, as shown in table 35, which was charged with recommending the program’s regulatory requirements.

**Table 35. Regulation Subcommittee Members**

Regulation Subcommittee
Amos Hartston
Kimberly Kirchmeyer <sup>26</sup>
Fariba Soroosh

In developing its recommendations, the Regulation Subcommittee focused on the need to ensure public protection without imposing burdens so onerous as to jeopardize the program’s viability. The Regulation Subcommittee based its recommendations on a number of sources, including regulatory requirements for California attorneys, regulatory requirements for paraprofessionals in other jurisdictions, and regulatory requirements for other California licensed professionals. Mechanisms to ensure public protection include recommended requirements for financial responsibility, MCLE, proactive regulation, and paraprofessional RPC. Detailed discussions on each of these topics are found in Regulation Subcommittee memos submitted to the CPPWG on the following dates, which are provided in Appendix F:

- October 29, 2020
- December 17, 2020
- February 26, 2021
- August 31, 2021

## FINANCIAL RESPONSIBILITY

The Regulation Subcommittee determined that financial responsibility is an essential part of the Program, and considered several mechanisms for ensuring that persons who suffered financial loss, due to either intentional wrongdoing or unintentional error by a paraprofessional, would have avenues for redress, including a CSF, malpractice insurance, a surety bond, and a restitution fund.

### Client Security Fund

While recommending that paraprofessionals be required to participate in a Client Security Fund modeled on the attorney CSF, the Regulation Subcommittee determined that the CSF alone is not an efficient or sufficient solution for financial responsibility. The CSF does not provide a comprehensive or consumer-friendly opportunity for redress for wrongs suffered; the attorney CSF is not available at all in cases of attorney negligence or malpractice; and final discipline, which can take years to occur, is required before disbursing any CSF payment.

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<sup>26</sup> Ms. Kirchmeyer joined the Regulation Subcommittee in May 2021.

## Malpractice Insurance

While agreeing that malpractice insurance provides valuable protection for clients, there was not a consensus among members of the Regulation Subcommittee with regard to a requirement that paraprofessionals carry malpractice insurance. Malpractice insurance is not required for attorneys and, as a practical matter, may not be available initially for a newly created professional license. The cost is also currently unknown, and the requirement controversial. The Regulation Subcommittee agreed that paraprofessionals should be strongly encouraged to have malpractice insurance, and the State Bar should take steps to encourage insurance companies to make insurance available to licensees at a reasonable cost—such insurance is required for and available to licensed paraprofessional in some jurisdictions. Ultimately, the Regulation Subcommittee did not recommend that paraprofessionals be required to carry malpractice insurance as a condition of licensure.

## Surety Bond

The Regulation Subcommittee’s research found that surety bonds are statutorily required in California for many licensed professionals. Required bond amounts range from \$15,000 for Notary Publics<sup>27</sup> and \$25,000 for LDAs,<sup>28</sup> to \$100,000 for Immigration Consultants, Credit Services, Foreclosure Consultants, and Telephonic Sales.<sup>29</sup> The Regulation Subcommittee consulted with surety bonds experts, who explained that bonds differ from insurance, and the funds available for compensation are depleted as claims are paid. Bond premiums usually range from 1 to 3 percent of the value of the bond, with the cost dependent on the bondholder’s credit history. The CPPWG considered concerns that, to the extent credit history affects bond premiums and certain communities have a more difficult time establishing credit, bond pricing may create a barrier to entry in some circumstances. The Regulation Subcommittee further explored options of other bond amounts and expected differences in pricing. Ultimately, the Regulation Subcommittee determined that a surety bond in the amount of \$100,000, similar to the amount required for Immigration Consultants, would provide an important baseline consumer protection of financial responsibility without placing an undue burden on paraprofessionals.

## Restitution Fund

The Regulation Subcommittee identified limits of the attorney CSF in terms of consumer protection: (1) the CSF does not provide an effective or consumer-friendly opportunity for quick recovery; and (2) the CSF does not reimburse clients who are victims of negligence or malpractice. At its meeting on March 18, 2021, CPPWG adopted the Regulation Subcommittee’s recommendation that, if neither a \$100,000 bond nor malpractice insurance is required, a restitution fund be established that will compensate clients for both intentional and unintentional acts.

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<sup>27</sup> See [Government Code § 8212](#).

<sup>28</sup> See Business and Professions Code § 6405.

<sup>29</sup> See [Business and Professions Code §§ 22443.1, 17511.12; Civil Code §§ 1789.18, 2945.45\(a\)\(2\)](#).

Regulations addressing financial responsibility requirements are provided in table 36, with additional recommendations provided in table 37.

**Table 36. Financial Responsibility Requirements**

Regulation	Requirement
Financial Responsibility	<ul style="list-style-type: none"> <li>• \$100,000 surety bond</li> <li>• Client Security Fund</li> </ul>

**Table 37. Additional Financial Responsibility Recommendations**

Topic	Recommendations
Malpractice Insurance	<ul style="list-style-type: none"> <li>• Paraprofessionals should be strongly encouraged to maintain malpractice insurance</li> <li>• State Bar should encourage companies to make insurance available to paraprofessionals</li> </ul>
Restitution Fund	If neither a \$100,000 bond nor malpractice insurance is required, a restitution fund should be established

## MINIMUM CONTINUING LEGAL EDUCATION

Continuing legal education is essential to ensure that paraprofessionals remain current regarding the law, the obligations and standards of the paraprofessional profession, and the management of their practices. In developing recommendations for paraprofessional minimum continuing legal education (MCLE) requirements, the Regulation Subcommittee considered MCLE requirements for California attorneys, paralegals, and LDAs, as well as requirements for paraprofessionals in other jurisdictions. The Regulation Subcommittee determined that a hybrid model, based on MCLE requirements for all California attorneys and those for certified specialists was appropriate. All attorneys are required to complete 25 hours of CLE every three years, include 4 hours of legal ethics, one hour on competence, and one hour in the recognition and elimination of bias; certified specialists are required to complete 36 hours of CLE in their practice area every three years. Since paraprofessionals will be licensed in specific practice areas, requiring a majority of MCLE in specific areas of licensure is essential to ensuring continued competence. A 3-year compliance cycle was recommended to allow for integration of MCLE compliance tracking within the current system used for attorneys. At its meeting on March 18, 2021, the CPPWG adopted the MCLE requirements for paraprofessionals shown in table 38.

**Table 38. MCLE Requirements**

Total Hours	Specific Requirements
36 hours every 3 years	<ul style="list-style-type: none"> <li>• 28 hours in the paraprofessional’s practice areas</li> <li>• 4 hours legal ethics</li> </ul>
<i>No more than 18 hours may be obtained through self-study.</i>	<ul style="list-style-type: none"> <li>• 1 hour competence issues</li> <li>• 1 hour recognition and elimination of bias in the legal profession and society</li> </ul>

Total Hours	Specific Requirements
	<ul style="list-style-type: none"> <li>• 1 hour trauma-informed practice</li> <li>• 1 hour practice management and running a business</li> </ul>

The CPPWG also adopted the Regulation Subcommittee’s recommendation to authorize the Paraprofessional Licensing and Oversight Committee<sup>30</sup> to require supplemental MCLE to maintain licenses due to changes in the law or other developments, as well as discretion to impose more specific educational requirements based on practice area, identified risk factors, or other considerations, including an increase in the required number of hours of MCLE to address specified issues and topics.

### PROACTIVE REGULATION

Proactive, or risk-based, regulation is intended to identify potential risks of harm to consumers and take steps to prevent that harm. The CPPWG and the Regulation Subcommittee identified three main areas of risk where further regulation should be considered: (1) the risk of incompetent legal services; (2) the risk of consumers being charged excessive fees; and (3) the risk of increased unauthorized practice of law (UPL) by nonlicensees. As discussed above, with the exception of contingency fees, the CPPWG voted not to regulate fees, and UPL was separately considered by a joint effort of the Regulation and Discipline Subcommittees. Thus, the Regulation Subcommittee focused on proactive regulation that would reduce the risk of consumers receiving incompetent legal services without being overly burdensome to paraprofessionals or too costly for the State Bar to administer. In developing recommendations, the Regulation Subcommittee reviewed information from a number of subject matter experts, as well as information about proactive regulation in other jurisdictions. Ultimately, the Regulation Subcommittee recommended proactive regulation measures that will support paraprofessionals in providing competent services, as listed in table 39, and rejected measures such as mandatory self-assessment and case file review. Recommendations also included limited annual reporting requirements intended to assist the State Bar in supporting paraprofessionals in providing competent legal services, and to gather information about fees charged by paraprofessionals. It was noted that information gathering about fees is not technically proactive regulation and is not expected to protect consumers, but is important in light of the potential risk to consumers being charged excessive and unreasonable fees, given that fees themselves are not being regulated. Data collected about paraprofessional fees will help to inform decisions about whether limits on fees should be imposed in the future. At its meeting on August 31, 2021, CPPWG adopted the Regulation Subcommittee’s recommendations regarding proactive regulation, as shown in table 39.

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<sup>30</sup> The Paraprofessional Licensing and Oversight Committee is the program’s governing board, as discussed in the Oversight and Governance.

**Table 39. Proactive Regulation Requirements**

Regulation	Requirement
Supportive Measures	<ul style="list-style-type: none"> <li>• CLE programs and toolkits to support paraprofessional practice                             <ul style="list-style-type: none"> <li>○ Sample client surveys</li> <li>○ Voluntary, interactive self-assessment</li> </ul> </li> <li>• Ethics hotline</li> <li>• Online resources</li> </ul>
Annual Reporting Requirements	<ul style="list-style-type: none"> <li>• Fees charged to clients</li> <li>• Suggestions for additional trainings and resources to support competent legal services</li> </ul>

### **RULES OF PROFESSIONAL CONDUCT**

Rules of Professional Conduct are necessary to ensure that licensed paraprofessionals provide their services ethically and responsibly while being held to the same high standards as attorneys. Staff from the State Bar Office of Professional Competence and the California Supreme Court worked closely with the Regulation Subcommittee to draft proposed Paraprofessional Rules of Professional Conduct (RPC). The RPC adopted by the CPPWG at its meetings on July 26 and August 16, 2021, are provided in Appendix F.

Paraprofessional RPC were drafted based on the California attorney RPC. Staff and the Regulation Subcommittee reviewed each RPC rule to determine applicability to paraprofessionals, based on the regulatory recommendations that were developed and under consideration.

At the CPPWG meeting on July 26, 2021, the Regulation Subcommittee provided recommendations regarding 71 RPC rules. The RPC were presented showing a redline comparison that reflected changes from the attorney RPC. The Regulation Subcommittee recommended that 9 rules be considered for individual discussion and vote, as they were either different from the attorney rule or expected to generate significant discussion. While the remaining rules were recommended for an omnibus vote, CPPWG members were invited to identify any rules for individual discussion and vote. Members identified 3 additional rules for separate consideration. At its July meeting, the CPPWG voted to approve recommendations for 59 proposed rules in an omnibus vote, as follows:

Yes: 14

No: 1

Abstain: 0

Absent: 3

The CPPWG met on August 16, 2021, to consider rules that were excluded from the omnibus vote, summarized in table 40.



**Table 40. Rules Considered for Individual Vote**

<b>Rule</b>	<b>Topic</b>	<b>Summary of Proposed Rule</b>
1.4.1	Communication of Settlement Offers	Paraprofessionals will be required to promptly communicate amounts, terms, and conditions of any written settlement offers
1.4.2	Notice to Consumers Prior to Consultation with a Prospective Client	Paraprofessionals will be required to give notice they are not an attorney along with other required standardized disclosures prior to consultation
1.4.3	Informed Written Consent to Representation	Paraprofessionals will be required to obtain the prospective client’s informed written consent prior to representation, and specific mandatory disclosures
1.5	Fees for Legal Services	New factor added to determine if fees are unconscionable: (c)(1) and (2) replaced with a not-to-exceed limit on contingency fee; no ability to charge a “true” retainer fee
1.5.1	Fee Divisions Among Licensed Paraprofessionals and with Lawyers	Paraprofessionals will not be able to charge referral fees; limits fee sharing to splitting fees in proportion to services actually performed or with the assumption of joint responsibility in an area where the paraprofessional is licensed to practice
1.5.2	Written Agreement to Representation	Paraprofessionals will be required to enter into a written retainer agreement with specified disclosures
1.17	Sale of a Law Practice	Paraprofessional practice may be sold to another licensed paraprofessional, lawyer, or law firm, subject to specified conditions (same rule as for attorneys)
3.5	Contact with Judges, Officials, and Employees	Prohibits paraprofessionals from giving anything of value to a judge, official, or employee of a tribunal, and from communicating with a judge or judicial officer, except under specified circumstances
5.3.1	Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Licensed Paraprofessionals	Allows paraprofessionals to hire a paraprofessional or lawyer who has been disbarred, suspended, resigned, or is involuntarily inactive to perform certain limited research, drafting, or clerical activities with restrictions and notice requirements designed for consumer protection (Same as rule for attorneys)
5.4	Financial and Similar Arrangements with Lawyers and Nonlicensees	Allows paraprofessionals to have ownership interest in law firms, limited to a minority interest if attorneys are either owners or employees; limits on paraprofessionals’ activities when working in a law firm with a lawyer
7.2	Advertising	Provides advertising requirements similar to lawyers; requires paraprofessionals to include a statement that paraprofessional is not a lawyer, and include their license number in all advertising; website required to provide disclosures
7.3	Solicitation of Clients	Provides solicitation requirements similar to lawyers; requires paraprofessionals to include a statement that the paraprofessional is not a lawyer and their license number in all solicitations in the same language as the solicitation; prohibits running and capping

After a thorough discussion of each rule, the CPPWG voted nearly unanimously to approve recommendations for the following rules, with all but one or two of the members present voting in favor of approval:

- 1.4.1 Communication of Settlement Offers
- 1.4.2 Notice to Consumers Prior to Consultation with a Prospective Client
- 1.4.3 Informed Written Consent to Representation
- 1.5 Fees for Legal Services
- 1.5.2 Written Agreement to Representation
- 1.17 Sale of a Licensed Paraprofessional's Practice
- 3.5 Contact with Judges, Officials, and Employees (Judge Rubin abstained – absent from discussion)
- 7.2 Advertising
- 7.3 Solicitation of Clients

The three following rules resulted in a split vote after substantial discussion.

#### **1.5.1 Fee Divisions Among Licensed Paraprofessionals**

As originally proposed, this rule allowed for sharing fees among paraprofessionals and attorneys in different firms, with restrictions, as provided in the following language:

A licensed paraprofessional and a lawyer who are not in the same law firm shall not divide a fee for legal services unless:

1. The licensed paraprofessional and the lawyer enter into a written agreement to divide the fee;
2. The division is in proportion to the legal services performed by licensed paraprofessional and the lawyer;
3. The client has consented in writing, either at the time the licensed paraprofessional and the lawyer enter into the agreement to divide the fee or as soon thereafter as reasonably practicable, after a full written disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessional, the lawyer, or law firms that are parties to the division; and (iii) the terms of the division; and
4. The total fee charged by all licensed paraprofessionals and lawyers is not increased solely by reason of the agreement to divide fees.

Members of the Regulation Subcommittee explained that this rule was intended to encourage paraprofessionals to develop relationships with attorneys who could provide services beyond the paraprofessionals' expertise. This arrangement could provide clients with needed services in an efficient manner by encouraging paraprofessionals and lawyers to work together and jointly bill clients without requiring clients to enter into separate contracts with each practitioner.

Some members of the CPPWG expressed concern that fee sharing is vulnerable to abuse of both clients and practitioners among whom fees would be shared; the Girardi case was cited as an extreme example of this type of abuse. After further discussion, CPPWG declined to adopt the proposed rule, by the following vote:

Yes: 5

No: 7

Abstain: 0

Absent: 6

A motion was subsequently made and seconded, to consider the following revised language for this section of Rule 1.5.1:

A licensed paraprofessional and a lawyer who are not in the same law firm shall not divide a fee for legal services.

The revised version of Rule 1.5.1 was adopted by the following vote:

Yes: 12

No: 0

Abstain: 1

Absent: 5

### **5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Licensed Paraprofessionals**

This rule would allow a paraprofessional to employ a disbarred or otherwise ineligible lawyer. Regulation Subcommittee members explained that this rule would provide such lawyers the opportunity for rehabilitation, and that they might be able to offer expertise beyond that of the paraprofessional. Members of the CPPWG objected, asserting that disbarred lawyers would pose a supervision challenge in a paraprofessional firm, and would be likely to have more influence in a paraprofessional firm than in a law firm. After further discussion, the recommended rule, which is the same as the rule for attorneys, was adopted by the following vote:

Yes: 8

No: 3

Abstain: 3

Absent: 4

### **5.4 Financial and Similar Arrangements with Lawyers and Nonlicensees**

This rule includes provisions that would allow a paraprofessional to have a non-majority ownership interest in a law practice that has both lawyers and paraprofessionals.

Members of the Regulation Subcommittee explained that allowing for ownership by paraprofessionals would encourage the development of firms where paraprofessionals and lawyers are able to work together, which might expand the services that are available to consumers and reduce the costs of those services by coordinating handoffs between a paraprofessional and a lawyer when the limits of a paraprofessional’s scope of practice are reached. Members of the CPPWG expressed opposition, objecting to paraprofessionals’ sharing fees in areas in which they were not authorized to practice, and expressing concern that such partnerships would be vulnerable to abuse. If this rule is implemented, fee sharing between lawyers and paraprofessionals will be limited to those in the same firm; it would have no impact on Rule 1.5.1, which prohibits fee sharing between paraprofessionals and lawyers who are not in the same firm. After further discussion, the recommended rule was adopted by the following vote:

Yes: 9

No: 5

Abstain: 0

Absent: 4

### PROPOSED STATUTORY AND RULE AMENDMENTS

The CPPWG identified a number of statutory and State Bar rule amendments that would be required to implement the program. The proposed amendments are intended to align California statutes with the program’s rules and regulations.

Staff from the State Bar’s Office of General Counsel (OGC) reviewed statutes and rules that would need to be changed or adapted to effectuate the recommendations adopted by the CPPWG, identifying several that addressed policy questions requiring its input. OGC staff reviewed its recommendations with the Regulation Subcommittee prior to submitting them to the CPPWG.

The Regulation and Discipline Subcommittees made additional recommendations regarding statutory amendments needed to address the potential risk of an increase in UPL resulting from implementing the program, as discussed in detail later in this report.

At its meeting on August 31, 2021, CPPWG adopted recommendations regarding statutory and State Bar rule amendments reflecting the input of both staff and the Regulation and Discipline Subcommittees, as reflected in table 41.

**Table 41. Statutory and Rule Amendments**

Topic	Codes and Rules	Recommendations
IOLTA	<a href="#">Business and Professions Code §§ 6210-6228</a>	Mirror attorney requirements.

Topic	Codes and Rules	Recommendations
MCLE	<a href="#">State Bar Rules 2.81–2.82</a>	<ul style="list-style-type: none"> <li>• Allow CLE credit for teaching CLE courses</li> <li>• Do not allow CLE credit for paraprofessionals teaching law school courses</li> <li>• Do not allow CLE credit for unapproved courses<sup>31</sup></li> </ul>
Duties to Cooperate in Discipline Proceedings; Update License Records, and Self-Report Adverse Events	<a href="#">Business and Professions Code § 6068(i), § 6068(j), § 6068(o)</a>	Mirror attorney requirements
Attorney-Client Privilege	Evidence Code <a href="#">§ 912, §917, § 950-955</a>	Mirror attorney requirements
Attorney Work Product Doctrine	<a href="#">Code of Civil Procedure §§ 2018.010-2018.080</a>	Mirror attorney requirements
Statute of Limitations	<a href="#">Code of Civil Procedure § 340.6</a>	Mirror attorney requirements
Complaints Alleging Civil Conspiracy Between Attorneys and Clients	<a href="#">Civil Code § 1714.10</a>	No recommendation provided
Running and Capping	<a href="#">Business and Professions Code §§ 6151-6154</a>	Mirror attorney requirements
Voidability of Fee Agreements for Failure to Comply with RPC 1.5.2	<a href="#">Business and Professions Code § 6147</a>	Mirror attorney requirements
Unauthorized Practice of Law		<ul style="list-style-type: none"> <li>• Allow felony prosecution for UPL, even absent prior conviction</li> <li>• Additional funding and resources for law enforcement to investigate and prosecute UPL by nonlicensees</li> <li>• Extend statute of limitations for UPL prosecution</li> <li>• Creation of record keeping requirements for paraprofessionals</li> <li>• Additional recommendations included in report’s UPL section</li> </ul>

Detailed discussions regarding OGC’s review of proposed statutory amendments are in OGC staff memos submitted to the CPPWG on June 25 and August 31, 2021, which are provided in Appendix F.

<sup>31</sup> Attorneys who have practices requiring specialized training in nonlegal fields (such as medical billing or accounting) may request approval for CLE credit for this training. Because paraprofessionals will practice only in defined fields, a similar rule is not recommended for paraprofessionals

## FEE CAPS

The question of whether caps should be imposed on fees paraprofessionals may charge their clients was a topic of vigorous debate within the CPPWG. Policy considerations included: (1) a concern that vulnerable clients who would qualify for free or low-cost legal services might be charged excessive or unreasonable fees, (2) the importance of affordability to increase access to legal services, (3) the financial viability of a paraprofessional career, and (4) free market principles.

Arguments on both sides of this debate were advanced by members of the CPPWG and members of the public, including private practitioners, consumer advocates, legal services providers, legal scholars, and LDAs. In addition to this input, CPPWG reviewed the following information regarding regulation of attorneys' fees to facilitate its deliberations regarding paraprofessional fee caps:

- Statutory caps on contingency fees;
- Appointed counsel hourly rates;
- Local court rules on presumptively reasonable fees; and
- Bar Association Modest Means Panel rates.

Proponents of fee caps advanced the following arguments in favor of their position:

- Providing a more affordable alternative to attorneys is one of the purposes of the program and regulation of fees is an important component for ensuring that this purpose is achieved.
- The market does not always protect consumers from high prices; fee caps would prevent vulnerable consumers from paying excessive or unreasonable fees.
- Fee regulation already exists for lawyers in various circumstances, including medical malpractice (Medical Injury Compensation Reform Act or MICRA) and worker's compensation. Thus, while not the default, fee regulation is also not unusual.
- Fee caps would benefit consumers who have other significant expenses.
- Fee caps would protect particularly vulnerable consumers who may be at risk of being taken advantage of by paying for services that they do not need or paying too much for substandard legal services.
- Because contingency fees will be limited under the program, individuals hiring paraprofessionals will primarily be billed on an hourly basis (unless a flat fee is agreed to); most consumers are not familiar with reviewing legal bills and determining what are appropriate and inappropriate charges.
- There is a vast amount of data available, including Superior Court local rules, demonstrating market rates for legal services in various areas.

Opponents of fee caps advanced the following arguments in favor of their position:

- Market forces will keep prices affordable.
- It would be unfair to impose fee caps on paraprofessionals, but not on attorneys.
- Fee caps will discourage program applicants and may negatively impact the financial viability of the profession.

- Fee caps would be difficult to administer:
  - o Practice area and geographic considerations would have to be considered in the development of both hourly and per-event fees; and
  - o Regulation and monitoring of fee cap compliance would be challenging.

After an extensive debate on this topic, the adopted a recommendation against imposing caps on the fees that paraprofessionals could charge, except in the case of contingency fees. The CPPWG adopted a recommendation that contingency fees be allowed only in enforcement of judgment matters within the scope of a paraprofessional's licensure, and that those fees be capped at 33 1/3 percent.

### **Recommendation**

CPPWG recommends that there be no limits on the fees that licensed paraprofessionals will be authorized to charge, except as provided in Rule 1.5.1(c) of the Paraprofessional Rules of Professional Conduct, as follows:

- A licensed paraprofessional shall not make an agreement for, charge, or collect a contingent fee except in an enforcement of judgment matter within the scope of the licensed paraprofessional's licensure. Any contingent fee permitted under this paragraph shall not exceed thirty-three and one-third percent of the total value of the judgment subject to the enforcement action.

The resolution to recommend no fee caps, with the exception of contingency fees, was adopted by the CPPWG on May 17, 2021, with the following votes:

Yes: 10

No: 6

Abstain: 2

Absent: 0

The resolution to include limits on contingency fees in Rule 1.5.1(c) was adopted by the CPPWG on August 16, 2021, with the following votes:

Yes: 12

No: 1

Abstain: 0

Absent: 5

## DISCIPLINE SYSTEM

The CPPWG appointed a Discipline Subcommittee, as shown in table 42, which was charged with recommending a discipline system for the program.

**Table 42. Discipline Subcommittee Members**

Discipline Subcommittee
Sharon Bashan <sup>32</sup>
Julianne Fellmeth <sup>25</sup>
Kimberly Kirchmeyer
Ira Spiro

## DISCIPLINE SYSTEM STRUCTURE

An efficient, responsive discipline system is essential for the prompt investigation of complaints against paraprofessionals and imposition of appropriate discipline for RPC violations. In developing recommendations for a paraprofessional discipline system, the Discipline Subcommittee looked at a number of different models including the attorney discipline system, the discipline system for licensing boards under the jurisdiction of the California DCA, and the current and proposed discipline system for licensees of the Washington State Bar Association (WSBA).

The California attorney discipline system comprises the OCTC, the State Bar Court (SBC), and the California Supreme Court. Complaints against attorneys are reviewed in OCTC's Intake Unit, which may close the complaint or refer it to investigation. If the investigation finds potential misconduct, OCTC may pursue action against the attorney respondent, up to and including filing a notice of disciplinary charges (NDC). If an NDC is filed, an OCTC attorney prosecutes the case before a judge in the SBC Hearing Department. The SBC Hearing Judge's decision can be appealed to the SBC Review Department, either by the respondent or OCTC. SBC final rulings are filed as recommendations to the Supreme Court, which considers the case de novo and rules on discipline. Either party may request a rehearing before the Supreme Court, after which final discipline may be imposed.

In the discipline system for the California Medical Board, which is similar to that of other DCA licensing boards, complaints against licensees are reviewed in the Central Complaint Unit (CCU), which may close the complaint or refer it to a District Office (DO) for investigation. The DO may close the case or refer it to the Attorney General (AG), which determines whether to initiate disciplinary action. Both the CCU and the DO have the option to refer the matter to the Citation and Fine Program, if it is determined that a minor violation has occurred. Imposition of a citation, which may include a fine, does not constitute disciplinary action.

In cases where it determines that discipline is warranted, the AG drafts formal charges, which are filed by the Board's Executive Director. The AG prosecutes the licensee before an

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<sup>32</sup> Ms. Bashan and Ms. Fellmeth joined the Discipline Subcommittee in December 2020.



Administrative Law Judge, who writes a proposed decision. The proposed decision is reviewed by a panel of the Medical Board,<sup>33</sup> which may adopt the decision as proposed, reduce the penalty and adopt the decision, or increase the penalty and adopt the decision, after written and oral argument. Decisions may be appealed by the licensee to the Medical Board panel; final decisions may be appealed to the Superior Court, the District Court of Appeal, and the California Supreme Court.

The WSBA currently has separate discipline systems for each of its three types of licensees: attorneys, Limited Practice Officers (LPOs), Limited License Legal Technicians (LLTs), with a separate disciplinary committee for each licensee. Due to this system's inefficiency, a new system has been proposed whereby the Office of Disciplinary Counsel would review and investigate all complaints and could recommend dismissal, diversion, or a hearing. Cases referred for a hearing would go before an Office of the Regulatory Adjudicator (ORA) three-person authorization panel, consisting of a staff adjudicator and two volunteers, which would authorize a statement of charges. Cases would be heard by an ORA staff adjudicator, while appeals would be brought before an ORA appeal panel, a five-person panel consisting of a staff adjudicator and four volunteers.<sup>34</sup>

The Discipline Subcommittee considered potentially conflicting policy considerations in the development of a discipline system: economies of scale suggest incorporating paraprofessionals into the attorney discipline system to allow for an efficient use of an existing structure. A new system, on the other hand, could allow for the inclusion of nonlicensed public members in the discipline process, and has the potential for the creation of a system that could move cases more quickly from receipt of complaint to final resolution. Such an approach could also prove to be less expensive than the attorney discipline system, and would not burden the attorney discipline system, which already suffers from a high caseload and backlogs.

The paraprofessional discipline system recommended by the Discipline Subcommittee is a hybrid of these options. The system takes advantage of the existing structure in OCTC to conduct initial review and investigation but provides for adjudication and appeal in a venue other than the SBC, which is quite costly for the State Bar and would be quite costly for an appealing paraprofessional represented by an attorney in the SBC. The Discipline Subcommittee's recommendation provides for complaint review and investigation by OCTC, first-level adjudication by a three-person panel, and appellate-level adjudication by a committee of the Paraprofessional Licensing and Oversight Committee. This model also introduces the ability to impose citations and fines in lieu of discipline, an option not present in the attorney discipline system, to be used in cases of minor violations that do not require discipline but where some form of penalty is deemed appropriate. At its meeting on March 18, 2021, CPPWG adopted the Discipline Subcommittee's recommendations regarding the paraprofessional discipline system structure, as shown in table 43.

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<sup>33</sup> Membership on the California Medical Board includes both physicians and public members.

<sup>34</sup> The WSBA proposed rules were submitted to the Washington Supreme Court, after a public comment period that ended July 29, 2021; a decision by the Court is expected within the next few months.

**Table 43. Discipline System Structure**

Model Element	Recommendations
Complaint Intake and Investigation	To be handled by OCTC
Citation and Fine	To be administered by OCTC <ul style="list-style-type: none"> <li>If fine and fee determination is disputed, that dispute will be adjudicated by the Hearing Panel</li> </ul>
<ul style="list-style-type: none"> <li>Initial Hearings</li> <li>Disputed Fine and Fee Determinations</li> </ul>	Three-person Hearing Panel
Settlement Conferences	<ul style="list-style-type: none"> <li>To take place only if OCTC and paraprofessional mutually consent</li> <li>To be heard by staff adjudicator</li> </ul>
Appeals and Stipulated Discipline	Paraprofessional Licensing and Oversight Committee
Final Discipline Decision	<ul style="list-style-type: none"> <li>Suspensions and Revocations: final discipline decision to be made by the Supreme Court</li> <li>Appeals from the appeals level to be heard by the Court</li> <li>All other discipline finalized at appropriate level within the State Bar’s paraprofessional disciplinary structure, level as yet to be determined</li> </ul>

**ALTERNATIVES TO DISCIPLINE**

The CPPWG considered alternatives to formal discipline, including warning letters, agreements in lieu of discipline, mandatory fee arbitration, and private reprovos, as well as the ADP that is part of the formal attorney discipline system. Recommendations regarding these alternatives were informed by the need to balance the effectiveness of offering alternatives in appropriate circumstances with a desire for transparency about disciplinary proceedings. A summary of the CPPWG recommendations regarding alternatives to formal discipline is in table 44.

**Table 44. Alternatives to Formal Discipline**

Alternative or Nontraditional Discipline Approach	Recommendation
Warning Letter	Include
Mandatory Fee Arbitration	Include
Agreements in Lieu of Discipline	Exclude
Private Reprovals	Exclude
Alternative Discipline Program	Exclude

**PUBLIC DISCIPLINE RECORDS**

The CPPWG’s recommendations regarding public versus private designation of paraprofessional disciplinary records were informed by the rules for attorney disciplinary records as well as applicable statutes regarding Medical Board disciplinary records; Business and Professions Code sections 803.1 and 2027 address not only the public versus private nature of various record

types, but also whether public records will be affirmatively posted on the licensing board’s website, and when or if records will be destroyed. Table 45 provides a summary of recommendations regarding public discipline records.

**Table 45. Public Discipline Records**

Intervention or Disciplinary Outcome	Private or Public	On Website or On Request	Retention Duration
Warning Letter (not discipline)	Private	N/A	
Citation and Fine (not discipline)	Public for 3 years from date of resolution	<ul style="list-style-type: none"> <li>• Website for 3 years unless withdrawn or dismissed</li> <li>• After 3 years transition to Private</li> </ul>	Indefinite
Notice of Disciplinary Charges	Public unless withdrawn or dismissed	On website for duration that resulting discipline is on website	For duration of period that underlying discipline is public
Public Reproval	Public	<ul style="list-style-type: none"> <li>• Website for 10 years</li> <li>• After 10 years transitions to anonymous report</li> </ul>	Indefinite
Probation	Public	Website	Indefinite
Interim Suspension	Public	Website	Duration of interim suspension
Suspension pursuant to discipline	Public	Website	Indefinite
Disbarment	Public	Website	Indefinite
Felony Charges and Criminal Convictions	Mirror attorney requirements		

### DISCIPLINARY STANDARDS

Imposition of attorney discipline is guided by the Standards for Attorney Sanctions for Professional Misconduct, which set forth presumed sanctions for various types of misconduct as well as aggravating and mitigating circumstances that may be considered in determining the appropriate level of discipline in a particular case. The Regulation and Discipline Subcommittees provided a joint recommendation regarding disciplinary standards for paraprofessionals, which largely mirror the attorney standards.

The recommended standards for paraprofessional discipline deviate from the attorney standards only with regard to assessment of discipline costs. For attorneys, pursuant to [Business and Professions Code section 6086.10](#), disciplinary orders imposing public reproof or a greater level of discipline shall include a direction that the attorney shall pay costs. These

costs include the actual expenses incurred by the State Bar for transcripts and reporter services, expenses that would qualify as taxable costs recoverable in civil proceedings, and charges determined by the State Bar to be reasonable costs of investigation, hearing, and review. Subdivision (d) provides that an attorney exonerated of all charges following hearing is entitled to reimbursement for reasonable expenses.

As a deterrent to misconduct and to protect the public, the Regulation and Discipline Subcommittees recommended that costs be assessed against paraprofessionals who are subject to discipline. However, to avoid chilling the right of paraprofessionals to seek a hearing on disciplinary charges against them and to avoid potential due process issues, the Regulation and Discipline Subcommittees recommend that cost recovery be permitted for pre-hearing costs only. This approach is followed by many licensing boards<sup>35</sup> and is reflected in case law.<sup>36</sup>

At its meeting on August 31, 2021, CPPWG adopted recommended Standards of Licensed Paraprofessional Sanctions for Professional Misconduct, which are provided as Appendix C.

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<sup>35</sup> See [Business and Professions Code § 125.3\(c\)](#).

<sup>36</sup> See *Zuckerman v. State Board of Chiropractic Examiners*, 29 Cal. 4th 32, 38–41 (2002).

## OVERSIGHT AND GOVERNANCE

### LICENSING AND OVERSIGHT COMMITTEE

#### Committee Size and Appointing Authority

In developing recommendations for the PLOC, the CPPWG considered the size and composition of paraprofessional licensing boards in other states, as well as the licensing boards for nonlegal professions in California. The CPPWG also considered factors outlined in a 2018 report on the State Bar’s Board of Trustees, commissions, committees, and councils (collectively referred to as committees), *Opportunities for Improving Governance and Service Delivery*.<sup>37</sup>

At its meeting on September 13, 2018, and pursuant to the factors enumerated in the 2018 report, the Board adopted a policy to limit the size of State Bar committees to seven or fewer members, absent a justification of the need for more members based on workload or the need for additional expertise or perspectives to carry out the work. The CPPWG believes that a larger oversight committee is justified, based on both of these factors.

The PLOC composition should ensure that expertise is available that informs its work by including members who represent the consumers that paraprofessionals will serve, as well as those who can inform the specific topics of licensing, regulation, and discipline. A balance of judges, attorneys, licensed paraprofessionals, legal educators, and public members is recommended. As detailed in the discussion regarding governance functions, below, the PLOC will have significant responsibilities in overseeing program operations and direct involvement in disciplinary matters. Because of these factors, the CPPWG recommends that the PLOC comprise 13 members, reflecting the member type shown in table 46, and that the appointing authority for PLOC members mirrors that of the State Bar Board of Trustees. The CPPWG recommends that appointing authorities be encouraged to consider diversity of practice areas in their appointments.

**Table 46. Committee Composition and Appointing Authority**

Member Type	Appointing Authority
Judge	Supreme Court
2 Attorneys	Supreme Court
3 Paraprofessionals <ul style="list-style-type: none"><li>Northern California</li><li>Central</li><li>Southern California</li></ul>	Supreme Court
2 Public (nonlicensee)	Senate
2 Public (nonlicensee)	Assembly
2 Public (nonlicensee)	Governor
Paraprofessional Educator	Governor

<sup>37</sup> Schauffler, Richard. [\*Opportunities for Improving Governance and Service Delivery: A report and Recommendations Regarding the State Bar of California’s Boards, Commissions, Committees, and Councils\*](#) (September 13, 2018).

## GOVERNANCE FUNCTIONS

Program oversight should ultimately rest with the Supreme Court, which has the authority to license individuals to practice law. As with the licensure of attorneys, the Supreme Court would delegate responsibility for licensing, regulation, and discipline of paraprofessionals to the State Bar, limiting its direct involvement to matters requiring adjudication by the Court. Functional oversight would be provided by a newly created Paraprofessional Licensing and Oversight Committee, the State Bar Board of Trustees, and the Legislature. This committee would be responsible for operational oversight of the program, and be directly responsible for hearing disciplinary appeals.

Recommendations for the responsible entity for each specific governance function were informed by a review of State Bar operations, including existing attorney admissions and attorney regulation functions and relevant decision-making authority, as well as by recommendations regarding the paraprofessional discipline structure, as detailed in this report. At its meeting on August 31, 2021, the CPPWG adopted recommendations for governance functions as provided in table 47. The CPPWG recommends that functions related to exam development be identified by State Bar staff and the PLOC, consistent with best practices for licensure exam development.

**Table 47. Paraprofessional Program Governance Functions**

<b>POLICY</b>	<b>Committee</b>	<b>Board of Trustees</b>	<b>Supreme Court</b>	<b>Legislature</b>
Keep abreast of national and international developments in paraprofessional licensing	Implement	Receive updates	—	—
Program evaluation metrics and assessment	Approve	Receive updates	—	—
Consumer and prospective licensee outreach and education	Implement	Receive updates	—	—
<b>LICENSURE</b>	<b>Committee</b>	<b>Board of Trustees</b>	<b>Supreme Court</b>	<b>Legislature</b>
<b>Eligibility</b>				
Appeals of staff denial of eligibility	Approve	—	Discretionary review	—
<b>Education</b>				
Establish educational requirements	Recommend	Recommend	Approve	Provide input
Approve learning objectives	Approve		—	—
<b>Experiential Training</b>				
Establish experiential requirements	Recommend	Recommend	Approve	Provide input
Establish attorney supervision requirements	Approve		Approve	Provide input
Establish incentives for attorney supervision	Recommend	Approve	—	—
<b>Waivers</b>				
Appeal of staff denial of waiver of educational or experiential hours	Approve	—	—	—
<b>Moral Character</b>				
Reviews and informal conferences	Approve	—	—	—
Review appeal of staff decision	Approve	—	Discretionary review	

LICENSURE	Committee	Board of Trustees	Supreme Court	Legislature
Set Fees	Recommend	Approve	—	—
<b>Exam Development</b>				
Develop questions	TBD	—	—	—
Review of questions	TBD	—	—	—
Evaluate grading	TBD	—	—	—
Sampling plan	TBD	—	—	—
Challenges to exam questions	TBD	—	Discretionary review	—
Set exam fee	Recommend	Approve	—	—
<b>Testing Accommodations</b>				
Policy development	Approve	—	—	—
Review petitions	Approve	—	—	—
Review appeals	Approve	—	Discretionary review	—
<b>Eligibility and Enforcement of Exam Rules</b>				
Policy development	Approve	—	—	—
Enforcement	Approve	—	—	—
Appeals	Approve	—	Discretionary review	—
<b>Exam Analysis and Review</b>				
Design standard setting study	Recommend	Approve	—	—
Design content validation study	Recommend	Approve	—	—
Design job analysis	Recommend	Approve	—	—
<b>Paraprofessional Educational Institutions</b>				
Certification	Approve	—	—	—
REGULATION	Committee	Board of Trustees	Supreme Court	Legislature
<b>MCLE</b>				
MCLE Provider certification criteria	Approve	—	—	—
MCLE Requirements	Approve	—	Final decision	Provide input
<b>Financial Responsibility</b>				
Establish requirements	Approve	—	Final decision	Provide input
<b>Rules of Professional Conduct</b>				
Establish and modify	Recommend	Approve	Final Decision	—
<b>State Bar Rules<sup>38</sup></b>				
Establish and modify	Recommend	Approve	Final Decision	—
<b>State Bar Rules of Procedure</b>				
Establish and modify	Recommend	Approve	—	—
<b>California Rules of Court</b>				
Establish and modify	Recommend	Recommend	Final Decision	—
<b>Statutes (State Bar Act, other statutes)</b>				
Establish and modify	Recommend	Recommend	Provide input	Final Decision

<sup>38</sup> Some State Bar rules are statutorily subject to approval by the Supreme Court (e.g., Minimum Standards for Lawyer Referral Services).

DISCIPLINE	Committee	Board of Trustees	Supreme Court	Legislature
Compensation for hearing officers	Approve			
Hearing panel selection	Approve		—	—
Settlement	Approve	—	—	—
License Suspension/Revocation	Recommend	—	Final Decision	—
Other Discipline	Approve	—	—	—

Detailed discussions regarding recommendations for governance structure and functions are found in staff memos submitted to the CPPWG on the following dates, which are provided in Appendix F:

- December 17, 2020
- June 25, 2021
- August 31, 2021



## PROGRAM IMPLEMENTATION

Thoughtful implementation is key to ensuring that the program successfully achieves its goals of increasing access to legal services and public protection. Launching a program of this magnitude requires careful planning, with deliberate consideration of each component of implementation, to ensure long-term viability. The CPPWG has engaged in discussions regarding initial program rollout, including developing safeguards to protect against UPL; consideration of a pilot period; infrastructure development, including sources for startup funding; and curriculum development, including outreach to educational partners that will be instrumental in providing the educational courses required by the Program; and development and administration of licensing exams.

## UNAUTHORIZED PRACTICE OF LAW

The CPPWG's charter directs the working group to consider and propose any requisite changes to the rules and statutes governing UPL. The CPPWG identified the need to recommend enhanced enforcement for violations of statutes governing UPL, to counteract the potential risk of increased UPL that may arise from implementation of the paraprofessional program.

The Regulation and Discipline Subcommittees independently identified the need to address the potential risk of increased UPL that may arise from implementation of the Program, and held two joint meetings to consider this issue. In developing recommendations, the Regulation and Discipline Subcommittees considered concerns raised by law enforcement, State Bar staff, legal services providers, and other consumer advocates, that nonlicensed individuals may represent themselves as licensed under the new program, creating a new method to defraud the public. The following specific issues were identified in this regard:

- Lack of law enforcement resources to investigate and prosecute all cases;
- Lack of State Bar jurisdiction and resources to prosecute cases;
- Prosecution limited to misdemeanor in most cases;<sup>39</sup> and
- Potential client confusion regarding licensure of service providers.

At its meeting on August 31, 2021, the CPPWG adopted the Regulation and Discipline Subcommittees joint recommendations regarding measures to counteract the potential risk of increased UPL, as shown in table 48.

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<sup>39</sup> See [Business and Professions Code § 6126](#).

**Table 48. Measures to Counteract UPL**

Topic	Recommendations
Statutory Amendments	<ul style="list-style-type: none"> <li>• Harsher criminal penalties for UPL</li> <li>• Allow felony prosecution, even absent prior conviction</li> <li>• Expand State Bar authority to investigate and address UPL and fraud by nonlicensees               <ul style="list-style-type: none"> <li>○ Allow for State Bar imposition of citation and fines for UPL</li> </ul> </li> <li>• Extend statute of limitations for UPL prosecution</li> </ul>
Resources and Funding	<ul style="list-style-type: none"> <li>• Additional funding and resources for law enforcement to investigate and prosecute UPL and fraud by nonlicensees</li> <li>• Additional funding and resources for State Bar investigation and prosecution of UPL and fraud by nonlicensees</li> <li>• Creation of a victim fund for UPL victims</li> </ul>
Regulation	<ul style="list-style-type: none"> <li>• Creation of record keeping requirements for paraprofessionals</li> </ul>
Public Education	<ul style="list-style-type: none"> <li>• Allocation of resources for consumer education, to ensure that the public is aware of the scope of the paraprofessional license, as well as how to identify whether a service provider is appropriately licensed</li> </ul>

The resolutions adopted at the meeting on August 31, 2021, included a recommendation that State Bar staff be directed to propose appropriate changes in law and additional resources for law enforcement related to UPL, to be included in connection with the State Bar proposing legislation necessary and important in the initial implementation of the paraprofessional program. A detailed discussion regarding the basis for these recommendations is found in the Regulation and Discipline Subcommittees memo submitted to the CPPWG on August 31, 2021, which is provided in Appendix F.

**PHASED IMPLEMENTATION**

Early in its discussions, the CPPWG received public comment suggesting that the program begin with a limited duration pilot to determine its effectiveness before implementing a permanent paraprofessional licensure program. The CPPWG appointed a Pilot Implementation Subcommittee to consider a pilot and other options for initial program implementation. Subcommittee membership is reflected in table 49.

**Table 49. Pilot Implementation Subcommittee Members**

<b>Pilot Implementation Subcommittee</b>
Sharon Bashan
Julianne Fellmeth
Stephen Hamilton
Kimberly Kirchmeyer
Hon. Ioana Petrou
Fariba Soroosh
Hon. Erica Yew

The Pilot Implementation Subcommittee’s work was informed by public comment, feedback from the legal services community, lessons learned from the Judicial Council’s implementation of the Sargent Shriver Civil Counsel Act pilot projects, and education regarding the approach used by the California Office of Statewide Health Planning and Development, which is statutorily charged with piloting reforms in health-care service delivery models. In developing its recommendations, the Pilot Implementation Subcommittee considered several options, as discussed below.

#### **Pilot with Potential Sunset Date**

A pilot with a sunset date would involve piloting the program in a limited number of counties in several stages, with program evaluation conducted at the conclusion of each stage; subsequent implementation phases would be contingent on the outcome of each stage of the pilot. This concept was rejected as not viable; potential applicants would be unlikely to invest the substantial resources required for participating in the program if a sunset date existed. Educational institutions would similarly be reluctant to invest resources to develop the required program coursework, and the State Bar would face challenges in developing the infrastructure for a potentially time-limited program.

#### **Pilot with Limited Program Features**

A pilot with limited program features would include design elements that do not match the final program design to expedite pilot initiation and/or provide additional consumer safeguards. For example, a pilot might provide a pathway to licensure that would not require satisfying certain educational, experiential, or testing requirements; or require attorney supervision of paraprofessionals. This option was rejected because evaluation of a pilot that fundamentally differs from the full program would not provide meaningful data to inform an assessment of its impact or risks.

#### **Immediate Full Implementation**

Immediate full implementation would entail launching a statewide program with all program features in place. This option was rejected as unrealistic; the time and financial resources required to fully implement a statewide program would result in significant delays in implementation, jeopardizing program viability. Further, a more measured implementation

approach would allow for the level of oversight needed when introducing a new type of legal licensee into the market for the first time in the State Bar’s history.

### **Phased Implementation**

A phased implementation entails launching the program with full features in place, but in a limited number of counties and legal practice areas, adding geographic and practice areas to the program over time. This option would allow for a more immediate implementation, while providing the opportunity to conduct a meaningful evaluation that allows for program adjustments and improvements prior to expansion. The Pilot Implementation Subcommittee recommended adoption of this approach.

### **Initial Practice Areas**

In selection of initial practice areas, the Pilot Implementation Subcommittee considered the areas identified as those with the greatest need in California – housing and family. Collateral criminal was also recommended for inclusion in initial program implementation.

### **Family**

Court self-help data reflects the greatest demand in family law cases. As shown in table 13, 80 percent of all encounters at court self-help centers were with people seeking assistance with family law matters; 53 percent of website traffic was from people looking for information about divorce or separation. The Pilot Implementation Subcommittee’s research found that the family law practice area is included in virtually all paraprofessional programs that have been implemented or are under consideration.

### **Housing**

Housing, and particularly eviction defense, is acknowledged as an area of great need in California, as is evidenced by the right-to-counsel movement in many locations, as well as data from the Judicial Council’s report on the Sargent Shriver Civil Counsel Act, which provides funding in selected courts for legal representation to low-income parties on critical legal issues affecting basic human needs. The Judicial Council reported that over 90 percent of people assisted through the program were involved unlawful detainer cases.<sup>40</sup>

### **Collateral Criminal**

Collateral criminal, which includes expungement and reclassification of convictions, and representation in infractions, was recommended for inclusion in initial program implementation. This area poses fewer difficult-to-remedy risks than some of the other practice areas recommended for inclusion in the program.

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<sup>40</sup> Judicial Council of California, *Report to the Legislature: Sargent Shriver Civil Counsel Act* (June 30, 2020).

## Initial Geographic Areas

In developing recommendations for geographic areas for inclusion in initial program implementation, the Pilot Implementation Subcommittee considered (1) the size of the potential client population, based on census data; (2) the size of the potential licensee population, based on the number of law school graduates who failed the bar exam in the past 10 years; and (3) the size of the local justice gap, as indicated by the percent of pro per litigants in family law cases, and by attorney density (residents per active license attorneys).

Based on this data, the subcommittee recommended including the following counties in initial program implementation:

### Northern California Counties

Alameda  
Santa Clara

### Central California Counties

Fresno  
Merced  
Tulare

### Southern California County

Orange

During the CPPWG’s review of the Pilot Implementation Subcommittee’s recommendations regarding initial geographic areas, members suggested that additional counties in the far northern part of the state be considered for implementation, noting that courts in those locations have a significant number of self-represented litigants. The Pilot Implementation Subcommittee reviewed data for the far northern counties, and recommended the addition of a Sacramento-based cluster, to include El Dorado, Placer, Sacramento, and Yuba counties. At its meetings on February 26 and June 25, 2021, the CPPWG adopted recommendations from the Pilot Implementation Subcommittee regarding initial program implementation, as shown in table 50.

**Table 50. Initial Implementation**

Implementation	Recommendation
Program Features	Full Program Features
Practice Areas	<ul style="list-style-type: none"><li>• Family, Children, and Custody</li><li>• Housing</li><li>• Collateral Criminal</li></ul>
Geography	<ul style="list-style-type: none"><li>• Northern California Counties<ul style="list-style-type: none"><li>○ Alameda</li><li>○ El Dorado</li><li>○ Placer</li></ul></li></ul>

Implementation	Recommendation
	<ul style="list-style-type: none"> <li>○ Sacramento</li> <li>○ Santa Clara</li> <li>○ Yuba</li> <li>● Central California Counties <ul style="list-style-type: none"> <li>○ Fresno</li> <li>○ Merced</li> <li>○ Tulare</li> </ul> </li> <li>● Southern California County <ul style="list-style-type: none"> <li>○ Orange</li> </ul> </li> </ul>

Detailed discussions regarding the basis for these recommendations are found in the Pilot Implementation Subcommittee memos submitted to the CPPWG on February 26 and June 25, 2021, which are provided in Appendix F.

### INFRASTRUCTURE DEVELOPMENT

Upon receiving authorization to implement the program, the State Bar will need to begin development of the infrastructure that supports it. Required elements will include staff to review applicants for eligibility, approve licensure for those who meet program requirements; staff to administer regulatory requirements and support overall program governance; and disciplinary staff. Once established, the program is expected to be self-sustaining through licensing fees. At the outset, however, funding will need to be secured for program startup costs.

#### Startup Costs

Initial estimates of program participation are based on the number of law school graduates in the counties included in table 50, above, who failed to pass the bar exam on their most recent attempt during the period 2011–2020; and limited information about graduates of ABA-approved paralegal programs in those counties. Information about the number of LDAs who would be eligible for program participation was not available. Based on available data, staff conservatively estimates approximately 5,000 potential program participants. table 51 provides a preliminary estimate of initial program costs, based on this level of participation.

**Table 51. Program Costs (Annual, for First 5,000 Licensees)**

Component	Preliminary Cost Estimate
General Administration	\$170,000
Licensing	\$405,000
Regulation	\$150,000
Client Security Fund	\$85,000
OCTC Investigation and Prosecution	\$670,000
Hearing Panel Stipend	\$115,000
Advertising and Community Outreach	\$50,000
<b>Total</b>	<b>\$1,645,000</b>

Table 51 does not include costs related to curriculum development or program evaluation. The cost of these elements has yet to be determined. While curriculum development is a necessary startup cost, program evaluation will not take place until three to five years after program implementation.

### **Funding Sources**

Both the CPPWG and State Bar staff are cognizant of the need for program funding that does not rely on the State Bar's General Fund. Philanthropic grants and, potentially, a General Fund loan, are likely sources of startup funding.

### **Philanthropic Grants**

Staff has begun exploring philanthropic grants to fund program startup costs. Funders who support innovation in expanding access to justice have expressed interest in helping to fund the program.

### **General Fund Loan**

A loan from the General Fund, to be repaid once the program becomes self-sustaining, would require authorization from the Supreme Court and the Legislature. This method of funding new licensing programs has often been employed when new licensing boards are formed under the jurisdiction of the DCA.<sup>41</sup>

## **CURRICULUM DEVELOPMENT**

The educational requirements listed in table 30 reflect the minimum number of units for each practice area. Program staff will work with educational partners and subject matter experts in each practice area to develop detailed learning objectives for required coursework. A uniform curriculum will be developed for statewide use; program applicants will be required to complete the educational coursework at a school that uses the approved curriculum.

## **EXAM DEVELOPMENT**

Staff recommends engaging an outside testing agency to develop and administer the program's licensing exams. Exam development would be done in consultation with subject matter experts. While exam development would be included in initial startup costs, the cost of exam administration would be covered by exam fees.

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<sup>41</sup> Examples include a loan from the General Fund to start the Licensed Midwifery Program in 1993; a loan from the General Fund to start the Occupational Therapy Program in 2000; and a loan from the Bureau of Automotive Repair to start the Bureau of Naturopathic Medicine in 2004, which was not from the General Fund.

## PROGRAM EVALUATION

The CPPWG charter articulates the Board's intent in creating a paraprofessional program: to increase access to legal services in California. In creating the CPPWG, the Board charged it with balancing the goal of increased access with that of public protection. A robust evaluation of the program will be required to determine whether it meets these goals. Program evaluation metrics should include data that will enable assessment of the program's effectiveness, inform ongoing program improvement, and allow for comparison of California's paraprofessional program with similar programs implemented in other states.

Unlike each of the other topics under consideration by the CPPWG, no subcommittee was formed to develop recommendations for program evaluation. Instead, the CPPWG as a whole engaged in discussions regarding program evaluation with a number of subject matter experts and reviewed metrics that have been developed for evaluation of similar programs in other states.

The CPPWG participated in a workshop led by a representative of the University of Denver's Institute for the Advancement of the American Legal System, during which CPPWG members elaborated and expanded upon the dual goals of the program, as well as the data required to assess whether these goals are achieved. The CPPWG later met with scholars who were engaged to evaluate Utah's recently implemented paraprofessional program evaluation, as well as a researcher from the National Center for State Courts (NCSC), who provided information about the framework developed by NCSC to evaluate paraprofessional programs nationwide. The NCSC framework identifies both fundamental measures, which distinguish between a program that is succeeding and one that is failing to meet its goals, and supplemental measures, which provide additional useful information.<sup>42</sup>

At its meeting on August 31, 2021, the CPPWG adopted the following recommendations for program evaluation:

1. The metrics in table 52 reflect minimum data and metrics to be included in an evaluation of the program's effectiveness; this data must be collected as part of program evaluation.
2. Program evaluation should be conducted between three and five years after program implementation.
3. Program evaluation should be conducted by an independent organization with experience in evaluating similar programs.
4. Staff should review case outcome reporting requirements for State Bar-funded legal services programs, and consider similar reporting requirements for paraprofessionals.

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<sup>42</sup> [\*National Center for State Courts, An Evaluation Framework for Allied Legal Professional Programs: Assessing Improvements in Access to Justice\*](#) (May 2021).



**Table 52. Program Evaluation Metrics**

Metric	Data Points	Data Source
Program Viability	Number of licensees and market coverage	Internal data
	Volume of use	Survey
	Stable and sufficient regulatory funding source	Internal data
	Sufficient income potential for licensees to stay in business	Survey
Equity and Access	Demographics of paraprofessionals and their clients	Survey
	Number of self-represented litigants (reduced?)	CMS and JBSIS
	Justice Gap (reduced?)	Survey
Case Outcomes and Client Satisfaction	Overall satisfaction	Survey
	Procedural satisfaction	Survey
Legitimacy and Political Sustainability	Lawyer, judicial officer, and general public sentiment about the program	Survey
Affordability	Fee structure transparency: consumer understanding of service offerings and price points	Survey
	Hourly rates	
	Per-case or event rates	
	Number of hours to complete services	
Efficiency in Paraprofessional Training	Cost of education	Survey

Detailed discussions regarding the basis for these recommendations are found in the staff memos submitted to the CPPWG on December 17, 2020, and August 31, 2021, which are provided in Appendix F.

## **OUTREACH AND EDUCATION**

### **Outreach to Potential Program Participants**

Upon receiving authorization for program implementation, the State Bar will engage in outreach to potential candidates to publicize program eligibility and licensing requirements. Program publicity will be conducted through outreach to community colleges, independent paralegal programs, and law schools, along with direct outreach to JD and LLM degree holders who fail to pass the bar exam.

The State Bar will conduct outreach using multiple channels. These channels include social media, traditional media, and live events, both online and in person. Particular attention will be

paid to reaching diverse groups and underserved communities. Translation of promotional materials into multiple languages will be key to these efforts.

### **Outreach to Courts**

Outreach to superior court judges and staff will be key to successful program implementation. State Bar staff will work with the Judicial Council to develop trainings for judges and staff, including basic information about this new licensure program; the specific tasks and scope of services authorized for each practice area; how to verify licensing status; and how to inform the State Bar of suspected violations by either licensed or unlicensed practitioners. Specific training for court self-help centers will also be conducted.

### **Public Outreach and Education**

As the State Bar begins licensing the first cohort of paraprofessionals, it will have an important role in public outreach and education to help ensure the program's ongoing viability. Publicity efforts will include information about the newly created licensure, including the assistance that can be provided and the limits on that assistance. It will be essential to provide information that ensures consumers can distinguish between licensed and nonlicensed practitioners, and that they are aware of the limits on paraprofessional practice and know how to report suspected illegal activity.

The State Bar will conduct outreach using multiple channels, including social media, traditional media, and live events, both online and in person. Particular attention will be paid to reaching diverse groups and underserved communities, with targeted outreach to community-based organizations that serve these populations.

### **Licensee Name**

The term "paraprofessional" has served as a placeholder for a more formal, descriptive licensee name for the CPPWG's duration. In selecting an official name for this licensee, a number of factors must be considered, including: (1) clarity, to ensure that the name accurately reflects the specific licensure and minimizes consumer confusion; (2) potential translations into languages in predominant use in California; and (3) potentially confusing acronyms (e.g., LLP, LLC, etc.).

The CPPWG engaged in an extended process to develop a slate of potential licensee names for the Board's consideration. Staff and the working group chair engaged in a brainstorming session in which they discussed the purpose of the program with an expert in brand development and selection of names for services. A list of 32 names generated from this session were included in a survey sent to CPPWG members and staff. The survey asked respondents to select their top choices and offer alternatives not included in the list. Respondents were also asked to provide reasons for their selections, and to suggest terms to include or exclude from consideration.

The results of the initial survey were shared with the brand consultant, who assisted in the development of a follow-up survey based on those responses. This survey was sent to CPPWG members, asking them to select their top three choices from among a list of eight names. Detailed information about the survey questions and results are found in the staff memo submitted to the CPPWG on June 25, 2021, which is provided in Appendix F.

After further review and discussion with the CPPWG, a list of seven names was sent to two professional translation firms, with a request to provide translations and identify any potential problems they might pose; due to time limitations, the focus was on translations into Spanish. The translations were shared with the Regulation Subcommittee, which provided additional guidance.

Based on the foregoing process, staff recommends the options for consideration of a licensee name shown in Table 53.

**Table 53. Licensee Names Recommended for Consideration**

English	Spanish
Limited License Legal Practitioner <sup>43</sup>	Practicante Legal Con Licencia Limitada
Limited Legal Practitioner	Practicante Legal Limitado
Limited Legal Advisor	Asesor Legal Limitado

### Recommendations from Translation Agencies

The translation agencies emphasized the importance of identification of the official licensee name in each predominant California language. Outreach to communities publicizing the program should include the official name to avoid confusion and independent translation. After a final name is selected, translations will be provided in the following additional languages:

- Arabic
- Chinese, simplified
- Farsi
- Korean
- Punjabi
- Russian
- Tagalog
- Vietnamese

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<sup>43</sup> This licensee name was identified as a top choice in surveys as well as in discussions with the CPPWG and the Regulation Subcommittee.

## DISSENTING OPINIONS AND ALTERNATIVE RECOMMENDATIONS

### FLEISCHMAN

Dissenting opinion from Steven Fleischman, joined by Carolin Shining (except as to Section 5), Stephen D. Hamilton (except as to Section 5) and Sharon Basham

#### Introduction

No matter how well-intended, in my view there are serious flaws in the proposed paraprofessional program:

1. There is no statistical data on how many Californians have tried to find an attorney and could not or were unable to afford one. Thus, there is no statistical data demonstrating that adding the number of legal service providers, in this case paraprofessionals, will serve the unmet legal needs of Californians. Put differently, there is no evidence of an attorney shortage in California and, in any event, the California Supreme Court has already taken steps to increase the number of attorneys.
2. To the contrary, the available data shows that two-thirds of Californians with perceived legal needs took no steps to try to find help, whether from a lawyer, legal aid group, the internet, or otherwise. The State Bar's Justice Gap Report correctly refers to this as a Knowledge Gap, not a Justice Gap.
3. No studies have been done on the financial impact the paraprofessional program will have on the State Bar itself. After five years, and a cost of \$1.4 million, the Washington Supreme Court cancelled a comparable program in that state after less than 30 individuals signed up to become paraprofessionals. While the California program intends to be funded based on resources other than from the State Bar's general coffers, if that funding does not come through, I fear resources may be diverted from the State Bar's enforcement activities.

One prominent attorney has already commented on the lack of statistical data to support the paraprofessional program. (Harrison, *Paraprofessionals Won't Fix the Access to Justice Problem* (June 9, 2021) Bloomberg Law <<https://bit.ly/3DLBNFP>> [as of Sept. 3, 2021].)

Moreover, the proposed paraprofessional program would make fundamental changes in the practice of law by allowing nonlawyer ownership of law firms and appearances in courts even though neither change addresses the Knowledge Gap; instead, both changes will only make the legal market more complex and opaque for Californians. Nor does the program regulate the fees that paraprofessionals can charge, and experience in Washington suggests

that paraprofessionals will be unaffordable to most. Without data demonstrating how many Californians attempted to retain an attorney but were unable to afford one, it is guesswork to conclude that the State Bar should invest in a paraprofessional program rather than improving existing programs.

Without such data, the Working Group has proceeded on the assumption that creating a new class of legal service providers—paraprofessionals—will somehow increase access to justice. However, as one commentator has written:

Lawyers' exclusive right to practice law is certainly as valuable a protection to the community as allowing only doctors to perform surgery, licensed contractors to build or repair your home, licensed dentists to drill your teeth, licenses cosmetologists to cut your hair, licensed plumbers to fix your pipes. In none of these other situations is requiring that specialized services be performed only by qualified licentiates regarded as a factor unfairly reducing access to those services.

(Willenburg, *Legal innovation report: part promising, part unexceptionable* (Aug. 23, 2019) Daily Journal <<https://bit.ly/2WTXjYt>> [as of Sept. 7, 2021].)

There are other significant flaws in the proposed program:

- Court appearances: The program will allow, for the first time in California history, nonlawyers to make court appearances on behalf of clients. This is a dramatic step, even for a pilot program, and is not supported by the limited experience with paraprofessionals in other states. A better model, in my view, would be to follow a recent Court of Appeal opinion addressing the unauthorized practice of law and allow paraprofessionals to complete and file preapproved Judicial Council forms on behalf of clients. This would accomplish many goals of the paraprofessional program without such a dramatic change in California practice.
- Nonlawyer ownership of law firms: The majority proposal also allows paraprofessionals to own up to 49 percent of law firms and thus profit from cases in areas in which they are not allowed to practice, including criminal, immigration, personal injury, and employment cases. No justification has been provided for allowing paraprofessionals to profit from the many areas of the law that they cannot practice under a paraprofessional license.
- No restriction on fees: One of the purported goals of the paraprofessional program is consumer protection. If so, then the program should include reasonable limitations on the amount of fees that can be charged to consumers under the program. Many restrictions already exist on the amount of fees attorneys can charge for various types of cases. State Bar staff prepared a 69-page report complete with extensive information about hourly rates charged and limitations on fees imposed by various statutes and court rules. This is an area where there *is* ample data available. Given the routine nature of many of the legal services which paraprofessionals will provide, there should be some restrictions on the amount of fees

that can be charged. Otherwise, they will charge the same amount as lawyers and there is no benefit to consumers from the program, at least from a cost perspective.

I am also worried that implementation of the paraprofessional program will create a two-tiered justice system: one for those that can afford attorneys and another for those that cannot. Throughout the Working Group's meetings, we have repeatedly heard the argument that "something is better than nothing." I disagree. I would prefer that the State Bar and Legislature focus on expanding funding for legal aid organizations.

Finally, I am concerned about the financial impact of the program on the State Bar itself. The Washington State Bar implemented a similar program for Limited License Legal Technicians (LLLT's). After less than five years, and a cost of \$1.4 million, the Washington Supreme Court cancelled the program when fewer than 30 individuals took advantage of the program. (Moran, *Washington Supreme Court sunsets limited license program for nonlawyers* (June 8, 2020) ABA Journal <<https://bit.ly/38TTrZX>> [as of Sept. 7, 2021].) The proposed paraprofessional program has no analysis of how many people will be expected to become paraprofessionals and pay dues nor any indication of how much the program will cost to set up and administer. While it is hoped that the program can be funded through other sources, there is no guarantee of such funding. Absent guaranteed funding, I am concerned that the paraprofessional program will cause a drain on the State Bar's existing resources.

Recent, well-publicized events have shown the public need for the State Bar to focus on traditional enforcement activities. I am concerned that without analyzing the costs of the paraprofessional program and guarantees of funding sources, sorely needed funds may (now or later) be diverted from the State Bar's enforcement activities.

I ask that the State Bar Board of Trustees and members of the California Supreme Court and Legislature consider these concerns in deciding whether to adopt the paraprofessional program.

1. A justice gap or a knowledge gap? The need for further statistical data.

Much of the Working Group’s majority report is premised on The Justice Gap Study’s finding that 85 percent of responding parties had an *unmet* legal need. (The State Bar of California, The California Justice Gap: Measuring the Unmet Civil Legal Needs of Californians ([Nov. 2019](https://bit.ly/3BGxmKx)) p. 7 <<https://bit.ly/3BGxmKx>> [as of Sept. 7, 2021] (hereafter, Justice Gap Report).) From this, the Working Group has proceeded on the premise that adding more providers of legal services (paraprofessionals) will close this “Justice Gap.” However, a close examination of the Justice Gap Report confirms that this is not supported by the data in that study.

Of the people who responded to The Justice Gap study, two-thirds of them (67 percent) made no attempt to find an attorney. (Justice Gap Report, *supra*, at p. 25.) According to the report: “Some of the most common reasons given for not seeking legal help among Californians suggest *a lack of knowledge* about the civil legal system and the help that is available. For 31 percent of problems, Californians say they weren’t sure if it was a legal issue, and for 15 percent, they didn’t know how or where to look for legal help.” (Justice Gap Report, at p. 10, emphasis added.) Of the remaining 33 percent of respondents (those who made an attempt to seek legal help), no attempt was made to determine if they tried to find an attorney to represent them and could not do so. This was confirmed when the full Working Group heard from the statisticians who prepared the Justice Gap report. *Thus, the Justice Gap Report does not identify a single Californian who tried to locate an attorney and could not find one.*

Because two-thirds of Californians with claimed legal needs do not even try to find an attorney, there is no reason to believe that adding more providers of legal services (paraprofessionals) will do anything to close this self-identified “Justice Gap.” (Cf. *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 772 [expert testimony must be based on “professional studies or personal experience [with] the same level of intellectual rigor that characterizes the practice of an expert in the relevant field”].) Even the authors of the Justice Gap Report refer to this as a “Knowledge Gap,” rather than a “Justice Gap.” (The State Bar of California, California Justice Gap Study: The Knowledge Gap—Findings and Recommendations (Feb. 24, 2020) p. 2 <<https://bit.ly/3yU1EI9>> [as of Sept. 7, 2021].) This Knowledge Gap can only be addressed through public education, so that individuals are aware of the availability of legal remedies they can seek legal assistance; this in turn must be addressed by the Legislature, not the State Bar.

There is thus no statistical evidence to support the premise that adopting the proposed paraprofessional program will have any meaningful effect on the number of Californians seeking help for legal problems. This is all the more important because the California Supreme Court has already taken steps to increase the number of lawyers. Specifically, the Court recently lowered the score required to pass the California bar exam. (*California Supreme Court Issues Order Finalizing Lower Passing Score for Future Bar Exam Takers* (Aug. 10, 2020) Judicial Branch of California <<https://bit.ly/3h13osl>> [as of Sept. 7, 2021].) While the lower passage score has only been in effect for one bar examination, it appears that this may increase the

number of attorneys admitted by more than 800 per year. (*State Bar of California Releases Results of February 2021 Bar Exam* (May 7, 2021) The State Bar of California <<https://bit.ly/3z0akMO>> [as of Sept. 7, 2021] [noting increase of 417 individuals passing bar examination under lower standards for February 2021 bar examination].) Thus, the California Supreme Court has already tried to increase the number of fully licensed attorneys thereby decreasing the purported need for this program.

The majority report is also based, at least in part, on the premise that paraprofessionals will charge lower fees than lawyers and thus provide more Californians with access to attorneys. But again, the Justice Gap Report did not identify (or even ask) how many Californians contacted an attorney and decided they could not afford to hire that attorney. Indeed, only 15–22 percent of respondents (based on income ranges) even identified cost as a reason for not seeking legal assistance. (Justice Gap Report, *supra*, at p. 10.) Those 15–22 percent of respondents, however, also included individuals with legal problems related to personal injury, employment, and consumer protection issues where contingency counsel is already readily available to them at no out-of-pocket cost. Thus, had they made an effort to locate an attorney, presumably they could have found representation (assuming their case had minimal merit).

Moreover, the majority has decided (with one exception) not to regulate the amount of fees charged by paraprofessionals. (See Section 5, *post*.) That means paraprofessionals will be able to charge the same amount for legal services as attorneys. While in economic terms it is generally true that increasing the supply of legal providers should result in a decrease in cost, the Working Group has been presented no data to attempt to quantify that reduction, nor how many additional Californians could afford those services at lower prices. Indeed, one analysis of Washington’s LLLT program bluntly concluded: “The LLLT model is not designed to increase access to justice to low-income legal consumers, an objective of the model that has been anticipated by many of its initial stakeholders and observers.” (Donaldson, *Law by Non-Lawyers: The Limit to Limited License Legal Technicians Increasing Access to Justice* (2018) 42 Seattle U. L.Rev. 1, 71.) The same article notes that without fee regulation, LLLT’s efforts “will nonetheless skew towards those willing and able to pay higher prices for their services.” (*Id.* at p. 20.) This study was written *before* the Washington Supreme Court cancelled the program after fewer than 30 individuals became LLLT’s in that state. (Moran, *supra*, at <<https://bit.ly/38TTrZX>>.)

In short, the Justice Gap Report does not provide a sound statistical basis for the paraprofessional program. In my view, before embarking on such an ambitious program, the State Bar should have conducted an appropriate statistical study identifying basic data such as: (1) how many Californians with legal problems tried to find an attorney and could not find one; (2) how many Californians tried to hire an attorney in an area of law where contingency fees (where clients pay no costs out of pocket) are not typically available but could not afford that attorney; and (3) what was the difference between the amount quoted for legal services and what the potential client could have afforded.

## 2. The real issue: large numbers of self-represented parties in certain categories of cases



Despite my significant misgivings about the statistical foundation for the paraprofessional program, the Working Group did hear information about the large number of self-represented or pro se parties in California courts based on Judicial Council statistics and from judicial officers. Self-represented parties tend to be clustered in certain substantive areas, including family law, unlawful detainer cases (tenants), and consumer debt (debtor defendants).

The areas with high numbers of self-represented parties—family law, unlawful detainer (tenants), and consumer debt (defendants)—have certain characteristics in common: (1) representation on a contingent basis is generally unavailable; (2) no statutory awards of attorney fees are available to motivate attorneys to handle these cases on a contingency basis; and (3) defendants in unlawful detainer and consumer debt cases are often individuals of limited means and may be unable to afford to hire an attorney.

In stark contrast, the civil and employment subcommittees of the Working Group heard extensive evidence from dozens of attorneys about the ample availability of legal representation on contingency basis (i.e., no out-of-pocket costs to the clients) in various matters, including personal injury, and employment and wage and hour cases. The California Legislature has also already tried to close the purported Justice Gap by providing statutory fees in many cases, particularly those involving consumer protection and employment statutes, to incentivize attorneys to take these cases on behalf of individuals. There is, in my view, no “Justice Gap” in these areas, which have been properly excluded from the paraprofessional program.

Because of the high number of self-represented parties in certain areas (family, unlawful detainer, consumer debt), I would have grudgingly gone along with the recommendation for the paraprofessional program on a pilot basis had the program stayed within certain parameters, including no court appearances and no law firm ownership. However, a better approach from the beginning would have been to address the self-represented litigant problem on a holistic basis, including evaluation of an expansion of the incredibly helpful self-help centers (which are drastically underfunded) and increased funding for legal aid associations (many of which oppose the paraprofessional program).

Because I view the problem as centering on self-represented parties, it is not surprising that we repeatedly heard from legal aid groups, both in writing and through the public comment process, with very specific objections to the program, including strong concerns about increased consumer fraud and public protection—an issue that legal aid organizations tackle every day. When the State Bar, California Supreme Court, and Legislature consider this report, I hope they give weight to the legal aid organizations’ concerns about this program. I also hope they also consider increased legal funding for those groups, as well as loosening the income requirements for individuals to seek assistance from those groups. (See Donaldson, *supra*, 42 Seattle U. L.Rev. at p. 70 [noting that limitations in the Washington LLLT program

“bolster the argument for the continued public and private funding of legal aid in its many forms—non-profit organizations, law school clinics, and so on”].)

In sum, in my view, the “Justice Gap” is really more accurately characterized as a “Knowledge Gap” because most Californians with legal needs simply do not know to try to contact an attorney. To the extent that a “Justice Gap” exists, it is more properly analyzed as a problem of self-represented litigants in certain categories of cases which should be addressed on a comprehensive basis, including better funding for self-help centers and legal aid associations.

### 3. Court appearances—a better model

The proposed paraprofessional program permits limited court appearances in certain types of cases, including family law and unlawful detainer cases. This is a drastic change from centuries of common law tradition permitting only attorneys and self-represented litigants to make court appearances, and one broader than adopted in other states with comparable programs:

Washington: In Washington, LLLT’s are not allowed to make traditional court appearances but can sit at counsel table and answer direct factual questions from the trial judge. (Wash. Rev. Code Ann., Admiss. to Prac. Rules, appen. 28R [regulation B.2(h)].) Less than 30 LLLT’s were licensed before the Washington Supreme Court cancelled the program. (Moran, *supra*, at <<https://bit.ly/38TTrZX>>.) While the Working Group heard from one of the Washington LLLT’s, who we all agreed was an impressive individual, this does not present an adequate data set to evaluate whether to allow nonlawyer court appearances in California.

Arizona: In Arizona, paraprofessionals can only make appearances in family law, municipal, and justice courts. (Ariz. Rev. Stat. Ann., § 7-210, subd. (E)(2).) In Arizona, municipal courts handle criminal cases, which are excluded from the proposed paraprofessional program, and justice courts handle civil disputes where less than \$10,000 is in dispute. (*Limited Jurisdiction Courts* (2021) Arizona Judicial Branch <<https://bit.ly/38GwYPS>> [as of Sept. 7, 2021].) In California, civil disputes of less than \$10,000 are handled in small claims court where attorneys are generally not permitted. (Code Civ. Proc., §§ 116.221, 116.530, subd. (a).) In other words, California has already taken a different approach to civil disputes of less than \$10,000—the informal process of small claims court where attorneys are not allowed.

Utah: In Utah, licensed paralegal practitioners can only practice in family law, unlawful detainer, and debt collection matters in small claims court. (Utah Supreme Court Rules, rule 14-802(c).) On the face of that rule, court appearances are not permitted. The Working Group heard from a member of the Utah Supreme Court who participated in the creation of Utah’s program and he informed the group that Utah had just eight licensed paralegal practitioners.

In short, none of the experiments in other states permitting nonlawyers to make court appearances provides a sufficient basis for the dramatic departure from existing practice in California that the majority report recommends.

Instead, I think a better model is represented by the Court of Appeal’s recent opinion in *Altizer v. Highsmith* (2020) 52 Cal.App.5th 331 (*Altizer*). In *Altizer*, 17 plaintiffs sought to renew an existing judgment. The plaintiffs were no longer represented by counsel and one of them, who was not a lawyer, prepared a two-page Judicial Council form (EJ-190) on behalf of all 17 plaintiffs. (*Id.* at pp. 334–335.) The trial court granted the defendant’s motion to vacate the renewed judgment, finding that the plaintiff engaged in the unauthorized practice of law insofar as he purported to represent the other 16 plaintiffs in the preparation and filing of the Judicial Council form. (*Id.* at p. 337.)

The Court of Appeal reversed. In short, the court held that the act of preparing a “two-page standard Judicial Council form with straightforward factual information about the original judgment” did not constitute the practice of law but instead the plaintiff was merely acting in a “clerical” capacity or as a scrivener. (*Altizer, supra*, 52 Cal.App.5th at p. 341.) The court noted that the plaintiff’s act in calculating accrued interest “is hardly legal, and calculating it is a straightforward exercise in arithmetic.” (*Id.* at p. 342.)

In my view, *Altizer* represents a better model for the paraprofessional program to follow. Namely, clients can hire paraprofessionals to help them fill out and file Judicial Council forms in the relevant practice areas, most of which are largely form-driven practices anyway.<sup>44</sup> Paraprofessionals would also be able to assist clients in negotiating and documenting settlements. We heard from several subject matter experts that the main problem in unlawful detainer and consumer debt cases is the need for individual defendants to avoid having their default taken. This could be accomplished under an *Altizer* model with paraprofessionals completing and filing Judicial Council forms. Similarly, in family law cases, paraprofessionals would be permitted to assist in settlements and compliance with other requirements. At least for the pilot program, starting with court appearances by non-lawyers seems unwarranted.

#### 4. Rule 5.4: Non-lawyer ownership in law firms

I also dissent from the Working Group’s recommended Rule 5.4(e) which would permit paraprofessionals to own up to 49 percent of a law firm.

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<sup>44</sup> The Judicial Council has promulgated extensive forms to be used in many areas of practice. (See, e.g., [Judicial Council Forms, forms FL-100–196](https://www.courts.ca.gov/forms-by-category.htm?filter=DI) <<https://www.courts.ca.gov/forms-by-category.htm?filter=DI>> [as of Sept. 9, 2021] [family law dissolution]; [Judicial Council Forms, forms CP10, CP10.5, UD-100, UD-101, UD-104, UD-104\(a\), UD-105, UD-106, UD-110, UD-110S, UD-115, UD-116, UD-120, UD-150](https://www.courts.ca.gov/forms-by-category.htm?filter=UD) <<https://www.courts.ca.gov/forms-by-category.htm?filter=UD>> [as of Sept. 9, 2021] [unlawful detainer]; [Judicial Council Forms, form PLD-C-010](https://www.courts.ca.gov/documents/pldc010.pdf) <<https://www.courts.ca.gov/documents/pldc010.pdf>> [as of Sept. 9, 2021] [form answer for breach of contract case].)

As a threshold matter, our Working Group was not charged with amending the rules governing law firm ownership. The proposed paraprofessional rule is meaningless unless rule 5.4(b) of the State Bar Rules of Professional Conduct governing lawyers is also changed to accommodate this rule. (Rules Prof. Conduct, rule 5.4(b).) Currently, that rule prohibits lawyers from forming partnerships or other organizations with nonlawyers to provide legal services. (*Ibid.*) However, our Working Group was never given charge to make suggested changes to the State Bar Rules of Professional Conduct governing attorneys. (See *California Paraprofessional Working Group*, The State Bar of California <<https://bit.ly/3jKmWmQ>> [as of Sept. 7, 2021].) Instead, another working group, the Closing the Justice Gap Working Group, was given specific charge to address the attorney version of rule 5.4. (See *Closing the Justice Gap Working Group*, The State Bar of California <<https://bit.ly/2WRWHCx>> [as of Sept. 7, 2021].) Even then, the Closing the Justice Gap Working Group was only given charge to consider making amendments to “rule 5.4 regarding fee sharing.” (*Ibid.*, emphasis added.) Fee sharing is governed by subdivision (a) of rule 5.4, not subdivision (b), which is the provision prohibiting nonlawyer ownership in law firms. Thus, while fee sharing and nonlawyer ownership of law firms are admittedly related issues, it is questionable whether even the Closing the Justice Gap Working Group has jurisdiction to make recommendations regarding law firm ownership rules.

Putting jurisdictional concerns aside, I am opposed to this rule on the merits. There is no dispute that this proposed rule would permit paraprofessionals to own up to 49 percent of law firms and, thus, share up to 49 percent of profits with lawyers even for cases where paraprofessionals cannot practice, including immigration, employment, personal injury, and criminal. The Working Group spent hundreds of manhours in substantive law subcommittee meetings deciding what areas of law paraprofessionals can practice in and those that they cannot. No justification has been provided to justify why paraprofessionals should be able to share profits for cases where they cannot practice law other than a vague concern that we should encourage new business models. And because lawyers have an unlimited license, they can take any type of case they want, subject to self-imposed competency requirements. Thus, there is no way to limit this proposed rule’s application to situations where the paraprofessional only shares fees in, say, family law cases, because even a law firm primarily devoted towards family law can decide to take non-family law cases.

There are already programs that allow nonlawyers to practice in various areas of the law, such as certified paralegals (supervised by lawyers), legal document assistants, unlawful detainer assistants, and immigration consultants. None of these other categories of nonlawyers are permitted to share fees with lawyers and/or have any ownership interest in a law firm. To use immigration consultants as an example, if they cannot share fees with an immigration attorney, or own part of an immigration law firm, I’m at a loss to understand why a paraprofessional should be able to when they are prohibited from practicing immigration law. There is nothing inherent in the nature of the paraprofessional program that, in my view, justifies this radical change in the practice of law.

The paraprofessional program will be aimed at attracting two types of individuals to become licensed: (1) certified paralegals and (2) J.D. graduates who have not passed the California bar examination. Both categories of individuals can presently work in law firms but cannot share fees or have an ownership interest in a law firm. By becoming a paraprofessional, these individuals will only have their roles changed slightly in that they will be able to make limited court appearances in a very small number of substantive legal areas. To the extent that they can practice law “unsupervised” by a lawyer, that is very limited in nature because even under this rule they cannot have any supervisory authority over a lawyer in the law firm and cannot own a majority interest; thus, even under this rule they will still, effectively, be supervised by lawyers.

The rules against fee sharing and nonlawyer ownership of law firms are well-established and venerable. One court has written that “courts have consistently upheld the prohibition based on a number of legitimate concerns.” (*McIntosh v. Mills* (2004) 121 Cal.App.4th 333, 344–345 [collecting cases].) “Attorney ethics panels, both in and out of state, have been moved to embrace rules against fee sharing with [non-attorneys] out of concern for interference with the attorneys['] professional judgment, the creation of conflicts of interest, and the unwholesome spectre of attorneys soliciting professional liaisons with laypersons.” (*Id.* at p. 345 [collecting opinions]; see *Gassman v. State Bar* (1976) 18 Cal.3d 125, 132 [“Prohibited fee-splitting between lawyer and layman . . . poses the possibility of control by the lay person, interested in his own profit rather than the client's fate”].)

In sum, the Working Group has not presented a valid reason to permit paraprofessionals to share fees and profits from cases where they are not allowed to practice law. I therefore recommend that rule 5.4(e)(3) be changed to provide that paraprofessionals cannot have “any ownership interest” in a law firm, replacing the words “a majority interest.”

#### 5. Lack of restrictions on fees

If the paraprofessional program is supposed to be aimed at consumer protection, then there should be reasonable limitations imposed on the amount of fees paraprofessionals can charge clients. There are numerous restrictions already in place governing the amounts attorneys can charge in various cases. (See, e.g., Bus. & Prof. Code, § 6146 [limiting contingency fees in medical practice cases to between 15 and 40 percent of any amount recovered]; Prob. Code, § 10810 [limiting fees for attorney for personal representatives to 0.5 to 4 percent of estate]; Lab., Code, § 4906 [limiting attorney fees to 9–12 percent of recovery in workers compensation cases].)

State Bar staff compiled a comprehensive 69-page report complete with extensive information about hourly rates charged and limitations imposed by various statutes and court rules. (*California Paraprofessional Working Group: Notice and Agenda* (May 17, 2021) The State Bar of California <<https://bit.ly/3jE9bpT>> [as of Sept. 7, 2021].) Among the data in that report:

- The Los Angeles County Bar Association has a Modest Means panel where clients can obtain an uncontested divorce for \$800.
- The San Diego County Bar Association has a comparable program charging clients \$150 per hour for family law matters.
- Merced, Mendocino, Sacramento, and Santa Barbara Counties have appointed counsel rates for family law matters ranging from \$65 to \$125 per hour.
- A Sacramento County Superior Court Local Rule provides a presumed attorney fee recovery of \$750 for contested unlawful detainer trials where both parties are represented.
- Santa Clara and Santa Cruz Counties pay appointed counsel \$125 per hour in *death penalty* cases.

The Working Group also heard from a subject matter expert in consumer debt cases who charges clients (individual defendant debtors) a flat fee of \$800 to defend any such case anywhere in California *through trial*, which paraprofessionals will not be permitted to handle.

In short, there is a plethora of information available from which the Working Group could have proposed reasonable limitations on fees charged by paraprofessionals. For example, in my view, the following would be reasonable fee limitations to impose:

- A \$500 flat fee for name and gender changes, based on \$100/hour with an estimate of five hours per matter.
- \$750 for unlawful detainer and consumer debt cases based on the form nature of those cases, the Sacramento County Superior Court Local Rule of \$750 for contested unlawful detainer cases, and the \$800 flat fee charged by a subject matter expertise.
- A maximum hourly rate of \$125 per hour for family law matters based on comparable rates available to hire attorney under bar association modest means programs.

If the purpose of the paraprofessional program is to lower the cost of legal services, then reasonable limitations on fees should have been imposed. As noted, one study concluded that Washington's LLLT program, which also had no fee limitations, would not result in lower cost legal services for clients. (Donaldson, *supra*, 42 Seattle U. L.Rev. at p. 71.)

It is my hope that the Legislature considers imposing reasonable fee limitations on amounts paraprofessionals can charge if it decides to adopt the program.

#### 6. Lack of financial viability for the program and potential drain on enforcement resources

Finally, I am concerned about the financial viability (or lack thereof) of the paraprofessional program itself if adopted. The Washington LLLT program had a net loss (expenses less revenue) of \$1.4 million in just the five years the program was available before being cancelled by the Washington Supreme Court. (Moran, *supra*, at <<https://bit.ly/38TTrZX>>.)

Here, the State Bar has not, to my knowledge, conducted any studies to see how many individuals will be expected to take advantage of the proposed paraprofessional program if adopted. All we know is that there are “thousands” (four digits) of potential applicants. Thus, there is no estimate of the amount of revenue expected to be generated through dues. Nor have any estimates been provided to the Working Group about how much it will cost the State Bar to run and administer the proposed paraprofessional program. Several components of the program, including the creation of a Paraprofessional Licensing Board and a partially new disciplinary system, appear to require significant investment.

The State Bar’s financial problems have been well-documented elsewhere and will not be repeated here. I am concerned that we are proposing this program without any data or planning regarding the financial impact running the program will have on the State Bar and, thus, how many resources would be diverted from the Bar’s enforcement activities if separate funding for the program is not secured. At a minimum, in my view, this program should not be adopted without the State Bar providing a financial plan showing that the program can be financially self-sufficient within a designated period of time, say five years, and where funding will come from during the startup period. Otherwise, the program becomes a potential drain on State Bar resources that could be used for traditional enforcement purposes.

I hope the State Bar, California Supreme Court, and Legislature consider the financial impact of this program on the State Bar’s enforcement responsibilities.

## HARTSTON

### Fee Caps

A dissenting opinion regarding the following fee cap resolution was submitted:

- “RESOLVED, that the California Paraprofessional Program Working Group recommends that there be no limits on the fees that licensed paraprofessionals will be authorized to charge. . . .” (May 21, 2021 resolution)

A primary purpose of the proposed paraprofessional program is to provide a lower-cost alternative to engaging a lawyer, and one of the primary risks identified by the Working Group relates to paraprofessionals charging excessive, predatory fees — particularly for vulnerable populations that may qualify for free or low-cost legal services and in practice areas such as housing and debt collection where representation by an attorney is often available for a flat fee. There should be limitations or caps on the amount of fees paraprofessionals will be authorized to charge to protect against excessive and unreasonable fees.

Some argued that fee regulation is not necessary; the market will determine fees. However, regulations against foreseeable risks such as the charging of excessive fees is the point of the State Bar creating and regulating a new class of licensees. Public protection must be balanced against the free market through reasonable regulation. Some also took the position that fee regulation is too complicated, particularly with different geographic regions and different practice areas. But fee caps need not be complicated and is not beyond the capacity of the State Bar acting as a regulator, the Supreme Court overseeing the practice of law, or the legislature protecting the public.

We recommend that the State Bar Board of Trustees direct Bar staff and the Working Group to propose appropriate fee caps for consideration by the Board, and also that the Supreme Court and the legislature incorporate appropriate fee limitations in Rules of Court and supporting legislation.

This recommendation is submitted by the following members of the Working Group:

- Sharon Bashan
- Julia Brynelson
- Steven Fleischman
- Amos Hartston
- Nicole Robinson
- Ira Spiro



### Rule 1.4.3

A dissenting opinion was submitted regarding the following resolution on Rule of Professional Conduct 1.4.3(a)(2): Informed Written Consent to Representation - Disclosure of Other Available Choices:

- “The disclosures shall include, but not be limited to: . . . (2) Disclosure of other available choices for obtaining legal services, including the potential availability of a free consultation with a lawyer, limited-scope services from a lawyer, free services from a Self Help Center or Family Law Facilitator’s Office, and that free legal services may be available to low-income individuals from a legal aid program if the client qualifies; . . .” (Proposed Paraprofessional RPC 1.4.3(a)(2))

A goal of the program is to provide consumers with a choice for enhanced access to legal services, and it should be an informed choice. The Working Group’s recommendations include a pre-engagement informed consent requirement in Rule 1.4.3. However, the mandatory disclosures related to other alternative choices in 1.4.3(a)(2) falls short.

Paraprofessionals should be required to provide contact information for relevant free or low-cost legal services potentially available in their county for which a low-income prospective client may qualify. Providing only general information that legal services may be available or a link to a statewide list of legal services programs without more will not be useful, undermines the purpose of the informed consent requirement by allowing the withholding of information necessary to make an informed decision, and will harm vulnerable low-income clients that would seek available free or low-cost legal services from a lawyer if they were informed.

We recommend that proposed Rule 1.4.3(a)(2) be revised as follows: “(2) Disclosure of other available choices for obtaining legal services, including the potential availability of a free consultation with a lawyer, limited-scope services from a lawyer, free services from a Self Help Center or Family Law Facilitator’s Office, and that free **or low-cost** legal services may be available to low-income individuals from a legal aid program **or non-profit organization** if the client qualifies **with contact information for such organizations in the county;**”

This recommendation is submitted by the following members of the Working Group:

- Sharon Bashan
- Steven Hamilton
- Amos Hartston
- Carolin Shining
- Ira Spiro

## SHINING

**TO: THE STATE BAR OF CALIFORNIA PARAPROFESSIONAL WORKING GROUP AND STATE BAR OF CALIFORNIA BOARD OF TRUSTEES**

**FROM: CAROLIN K. SHINING, WORKING GROUP MEMBER**

**JOINED: STEVEN S. FLEISCHMAN (EXCEPT AS TO FEE CAP RELATED ISSUES)**

**DATE: SEPTEMBER 13, 2021**

**RE: CONSUMER PROTECTION PERSPECTIVE AND DISSENT TO THE FINAL REPORT OF THE STATE BAR OF CALIFORNIA PARAPROFESSIONAL WORKING GROUP BEING PRESENTED TO THE STATE BAR OF CALIFORNIA TRUSTEES**

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### **I. INTRODUCTION**

The Final Report of the State Bar of California's Paraprofessional Working Group (Working Group) as designed is fatally flawed. While the charter of the Working Group was created with good intentions, the final resolutions and recommendations go far beyond what will assist the public good. Instead, the resolutions will do the exact opposite: the program as presented will actually cause irreparable harm to consumers and damage public trust in the legal system.

The concept that "someone is better than no one" unfortunately drove many decisions in the Working Group. This is simply not a true statement. The proposed program ignores numerous true-life and heartbreaking stories of low-income consumers who may be irreparably damaged by the lack of full attorney representation. Merely adopting regulations and discipline mimicking lawyer protections cannot cure the fact that the proposed licensee will be inadequate to the task at hand in court and conflicted beyond measure with regard to any expected duties of loyalty and independent judgment.

When taken as a whole, the final report and recommendations amount to nothing more than the creation of a "Two-Tiered Justice System". This is precisely what the Working Group was supposed to avoid. This is precisely what the data does not support. This is precisely what our communities do not need – the creation of a type of "lawyer" who can only do half the job. Our communities do not need a licensee who is conflicted out of using all the powerful tools available to a trial lawyer. The State Bar Trustees should reject the program as currently proposed.

### **II. DEFAULT FULL IN-COURT REPRESENTATION WILL HARM THE PUBLIC**

Over the course of several meetings, the full Working Group considered four potential options as the "default" position covering every area of law under consideration. With a hotly contested 12-4 vote, the Group adopted the option of "full in-court representation" with the

exception of jury trials. No other adopted resolution embodies the principle of “second tier justices” as this one.

The following are real-life situations where legal aid lawyers were forced to correct the irreparable harms caused by non-lawyers who promised to help clients through the court system:<sup>45</sup>

*A monolingual client was waiting at the Shriver Legal Clinic to meet with its staff regarding a pending eviction. While waiting, he was approached by a legal document preparer/paralegal who regularly approached litigants in the courthouse. The client had a pending eviction and needed to file an answer. Rather than wait for his legal aid appointment, the client proceeded to hire the LDR/paralegal who said he would handle the matter and get it dismissed. Instead, a bankruptcy was filed in the client’s name, resulting in a stay to the eviction. Within a few months, the bankruptcy was dismissed for the client’s failure to proceed, the eviction stay was lifted and sanctions of \$6,000 were imposed on the client for bad faith filing. The client returned to our office with a Sheriff’s notice to vacate and disclosed that he had depleted his savings (nearly \$9,000) to pay the paralegal. Despite the paralegal’s assurances that the eviction case was dismissed, the client faced lockout of his longtime, rent controlled apartment.*

*A non-attorney advocate represented a family with a child suffering from severe mental illness prior to the attorney advocate’s involvement. Although the child had an Individualized Education Plan, she had several serious mental health episodes and was hospitalized in several facilities over time. Insurance refused to continue paying for her to be at residential placements. Although her parent had consistently requested a residential treatment center placement, the non-attorney advocate repeatedly requested a non-public school placement. This option was completely inappropriate as the student presented to be a danger to herself and others and required a higher level of care. The school district drafted a settlement agreement which offered a different non-public school than the advocate’s request. The settlement, unbeknownst to the Parent, waived the parent’s rights to compensatory education for the missed instruction the student had suffered as a result of the inappropriate services and initial placement in a public high school. Her parent never wanted placement into a non-public school and eventually found a legal aid office who immediately filed a complaint against the school district and was able*

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<sup>45</sup> The original versions of these stories have been edited to preserve the anonymity of the victims. They were provided by public service lawyers including Stephanie Correll, Leigh Ferrin, and Michael Barth, and I thank them for their insights.

*to reach a highly positive result as a result of the increased and specialized attention to the case.*

*A woman who was illegally locked out of her rental unit contacted a paralegal service. She sought advice from an attorney when the paralegal service advised her that it could file a complaint with the court to have her tenancy reinstated for a small fee of \$300. She grappled with whether to pay the paralegal or pay for other lodging with her limited funds. (She was supporting herself on public benefits.) Fortunately, she contacted a legal services organization, who advised her that local law enforcement could enforce her tenancy rights under the Penal Code and coordinate reinstatement of her tenancy.*

*Elderly and vulnerable homeowners sought contractors' services through a local government program encouraging environmentally friendly home renovations called Property Accessed Clean Energy (PACE). Yet contractors exploited PACE, performed shoddy and/or incomplete work, and created exorbitant property tax liens that threatened foreclosure. Homeowners sought legal representation to correct these problems, and reports suggest that many engaged non-attorneys to help. But the non-lawyers only hurt the homeowners. The non-attorney promised to file a lawsuit on the homeowners' behalf and demanded \$2,000 to \$3,500 in cash per homeowner before he performed any services. After extracting the fees, the non-attorney disappeared without performing a single task. These homeowners are now being put into contact with consumer fraud attorneys through Public Counsel and the National Law Consumer Center to correct the complex problems caused by the non-attorney's fraud.*

*A homeowner facing foreclosure in the recent debt crisis was contacted by a non-lawyer company claiming to be a "Housing Assistance Program" and/or "Foreclosure Consultant". The non-lawyer company claimed that it could pressure the homeowner's lender to negotiate a good deal. Instead, the non-lawyer demanded fees and made no effort to help the homeowner. Unaware of any other options, the homeowner sold his home prematurely to avoid financial ruin.*

In response these well-documented injustices, the recommendations of the report are that paraprofessional licensees will be held to the same high standards as lawyers. However, the paraprofessional under the program will immediately face real conflicts of interest that are not solved by the revisions to a lawyer's rules of ethical conduct. Paraprofessionals are immediately faced with conflicts because they must work diligently on cases until the point where they themselves recognize they have to give it to an attorney for free. When doing so, the paraprofessionals cannot earn a referral fee and might only be entitled to some payment if they can prove they did some work. The paraprofessional may know that the same problem can

be solved by self-help, legal aid or a governmental agency for free but owes no duty to provide that specific information. These are only a few of the conflicts implicit in the current proposals.

Yes, there are thousands of Californians with needs who are turned away each year from legal aid services as a result of a lack of funding and staff. The answer is not to scrap the entire legal aid system and create something else. The meager amount of money spent on self-help clinics and legal aid is illustrative: (<https://newsroom.courts.ca.gov/news/what-know-about-judicial-branch-budget-0>) Non-profit legal aid and public interest firms work year to year finding grants from numerous sources to continue their funding. The Working Group's program will be used to create a totally separate agency with totally separate disciplinary investigators and courts, totally separate testing, and totally separate certification of educational programs. Assuming that each paraprofessional pays an annual fee of \$500.00 (as do lawyers), will that money truly ever support the millions that will be spent on employing and training a completely new agency? The "in court" default position seems to completely ignore the fact that a completely wonderful, yet simply underfunded system, exists in California. Instead of making a decision that seems like a simple fix, the actual way in which to solve any "in-court" problem was and is to fully support the existing infrastructure which provides 100% free and full legal representation.

The adoption of "full-in court representation" has no supporting data or comparison with other systems of law. It is not necessary to engage in activities that will aid the public. It is the very essence of a second-tier legal system. Instead, the Working Group's report should have strongly identified how to increase spending in all areas of law to support and protect the rights of those in need.

### **III. AMENDING RULE 5.4 TO ALLOW NON-ATTORNEY OWNERSHIP PUTS PROFITS OVER PEOPLE**

The Proposed Revision to Rule 5.4 is indeed the most controversial change in the entire report. There is simply no reason why a paraprofessional should be allowed to own up to 49.9999% of a law firm. The reasons to reject this change are numerous and compelling; however, a simple illustration of the practical problems provided by my colleague Scot Berstein tell the tale:

The 51% limitation on non-lawyer ownership of law firms is useful primarily as a window to the practical impact of the program. Anyone familiar with corporate law knows that 49% ownership—or even a substantially smaller percentage than that—can amount to de facto control of an entity. The reason is that it is very unlikely that the other 51% will be controlled by a single person or interest group or otherwise voted so uniformly as to defeat a 49% owner.

Instead, the vastly more common scenario will be that the 51% will be split among a number of people. Indeed, the clever non-lawyer person or entity seeking to control a law firm will make certain that the 51% is split among a substantial number of attorneys. It will be easy enough for the

non-lawyer entity to seek out only those situations in which it can control the acquired entity.

And what is the consequence? A simple probability analysis provides the answer. If, for example, the non-lawyer entity owns 49% of the law firm and 17 attorneys own 3% each for a total of 51%, the non-lawyer entity will have an overwhelming probability of winning a contested vote on any issue and, therefore, will have de facto total control. After all, the non-lawyer shareholder will need to persuade only one of the seventeen to vote its way.

Suppose, for example, that the non-lawyer shareholder wants to engage in aggressive and unfair marketing tactics or other unethical conduct toward clients, and that the lawyers, by a large majority, oppose the proposed conduct on the ground that it is dishonest, unethical or unfair. Under those circumstances, even if each of the 17 three-percent shareholders independently has a 90% chance of voting against engaging in the proposed unethical conduct, the non-lawyer entity will have better than an 83% chance of prevailing on the contested vote because it needs to convince only 1 of the 17 to vote its way. Your smartphone's scientific calculator makes it easy to prove that this is so:  $0.9$  (i.e., 90%) to the 17th power is less than 16.7%. That small percentage is the probability that all 17 out of 17 lawyers will vote the same way and defeat the unethical proposal. The entity needs only one of the 17 to vote its way because  $49\% + 3\% = 52\%$ , a clear majority.

For this and other reasons relating to nearly unsolvable conflicts created by these scenarios, this revision to Rule 5.4 was rightly excluded from our charter and placed into the Close the Justice Gap "Sandbox" where corporate applicants were expected to justify the need to revise this rule to the benefit of the public. Indeed, one Sandbox group member is an economist who perhaps can speak to this issue.

California would not be the first state in the nation to allow non-attorney ownership of law firms. Recently Utah and Arizona have started to establish these "Alternative Legal Business Structures". The profit-seeking motive is clear. In Utah, over 20 corporate entities have been approved for non-lawyer ownership. In Arizona, a large publicly traded corporation has filed for the creation of an ALBS. Such massive corporate "disruption" is not what was hoped for or envisioned by the Working Group for many, many motions of its discussions. The impact of these entities – who have large internet presences – should be watched before California experiments this way.

This one change constitutes the first step in an erosion of significant client protections against conflict – i.e. making decisions based on profit rather than the client's best interests.

#### IV. OTHER ISSUES OF CONCERN

I understand that the recommendations of the Working Group were not intended to solve every problem with the new licensee program. There will be a need for considerable work to modify and create new statutes, design education programs, create and administer licensing tests, and raise awareness of the new licensee's existence.

Throughout the extensive debate that took place during the entire Working Group's activities and as referenced in the 1,400-page report, there were many other matters large and small that I opposed. My basis for this opposition is made in the record and sometimes memorialized in writing. This is particularly true as to my opposition to any consumer debt, employment law and other consumer-oriented activities. Some areas that were not addressed that should be considered by the State Bar Trustees before recommending that this program proceed include:

- the failure to include a sunset to the pilot program;
- the failure to require data collection which is similar to that required of legal aid entities to show if the program is solving the needs of low-income communities and not just middle class consumers;
- the lack of warning in fee agreements that the consumer may be waiving important rights under California's extensive consumer protection laws that may have to proceed to trial, which may not be included sufficiently in training;
- the lack of a requirement to inform consumers that they may be entitled to free legal aid or that self-help programs may be all that they need to solve their problems;
- the inability to vote on and further debate the name change from paraprofessional to another completely different name despite the State Bar's efforts to seek outside marketing assistance from three separate private entities;
- the inability to understand the financial costs of the decisions that are being made as a result of our recommendations so that we may compare them to legal aid expenditures as alternative options;
- the vagueness and uncertainty of the application of the new licensee Rules given the failure to address the inclusion of dozens of Comments to the attorney rules, existing statutory case law and hundreds of Formal Opinions created by professional ethics lawyers; and
- the failure to create systems that will create requirements for actually assisting low-income persons without charging them for services they cannot afford.

These issues are complex and again result in conflicts that cannot be addressed except perhaps through complete waivers by potential clients.

The State Bar Trustees will have only a few days to review a 1,400-page report containing dozens of Staff Memos, dozens of formal Resolutions and a completely new system of regulations, licensing requirements and a discipline system. As such, more time should be invested by the Board before approving this Report and sending it out for Public Comment.

## **CONCLUSION**

The Working Group has labored mightily and with the best of intentions to create a new licensee to help increase legal services to low- and middle-income consumers. The result is the one of largest and most expansive experiments in the legal world in decades. Such a program was not necessary to address the issues that our charter sought to address. Our legal system, while imperfect, is not so fundamentally flawed as to need a complete overhaul by creation of a non-lawyer with powers equal to that of a lawyer. I urge the State Bar to fully evaluate and consider the contested provisions of this program before approving and sending it for public comment.