



Date: June 30, 2020

To: California Paraprofessional Program Working Group

From: Hon. Erica Yew and Steven Fleischman

Subject: Consideration of General Civil a Practice Area to be included in a Paraprofessionals Program

Executive Summary

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program.

Discussion

At its first meeting on April 21, the CPPWG discussed potential practice areas for program inclusion. While there was agreement with regard to including certain practice areas for additional consideration and excluding others, several practice areas were deemed "wobblers," meaning that additional information was required before a decision could be made regarding their status. Members of the CPPWG volunteered to study each of the wobbler areas with the goal of generating recommendations regarding ongoing consideration from the program for review by the full body at its next meeting.

The present two-person team assessed the General Civil practice area. In generating our recommendations, outlined below, we considered the following data points:

- The California Courts Judicial Branch Statistical Information System (JBSIS) Manual;
- California courts data on self-represented litigants;

- California Attorney Practice Analysis; and
- Information from judges who hear civil cases.

JBSIS Manual

We reviewed the Judicial Branch Statistical Information System (JBSIS) manual to establish a definition that would encompass cases to be considered in the General Civil category. The following case types are included in the General Civil category in the JBSIS manual:

- Personal injury/property damage/wrongful death
- Tort
- Employment
- Contract
- Real Property
- Unlawful Detainer
- Judicial Review
- Complex litigation
- Small claims appeal
- Enforcement of Judgment¹
- Other Civil (including civil harassment and name change)

California Attorney Practice Analysis (CAPA)

The CAPA survey asked attorneys to rate the depth of knowledge required to complete tasks in specific legal areas, as well as the criticality of proficiency in the tasks and legal topics (i.e., the degree of harm that may be inflicted upon clients and/or the general public if an attorney is not proficient). The CAPA study created a composite score to measure both criticality and frequency (i.e., the importance of being proficient and the frequency in performing tasks in an area) for each practice area. The composite score for Civil Procedure is 20.7, the highest among all knowledge areas. Another relevant rating is regarding the depth of knowledge (DOK) required to perform the tasks with competence. On a 5-point scale, the DOK score for Civil Procedure is 3.7, near the high end of the metric.

Based on the CAPA study, the General Civil practice group concluded that the potential for problems created by allowing nonlawyers to practice law was potentially highest in traditional litigation pending in Superior Courts. Therefore, the General Civil practice group concluded that representation by nonlawyers should be carefully circumscribed to those areas in which there is a demonstrated need for representation that the existing bar is not meeting and where there are fewer procedural issues to be handled by potential paraprofessionals.

Although not addressed by the CAPA survey, one member of the General Civil group was concerned that allowing paraprofessionals to practice in areas where there is a well-established

¹ While our discussions referred to consumer debt, the JBSIS manual list Enforcement of Judgment in the definition of Civil case types.

and existing bar would exacerbate the problem of “runner and cappers,” which are prohibited by Business and Professions Code sections 6151, et seq.

California Courts Self-Represented Litigant Data

The Judicial Council collects data, through JBSIS, regarding the incidence of self-representation in the courts; detailed case type information is provided by some courts. Of the reporting courts, the data suggests that between 3 (Superior Court, County of Inyo) and 92 percent (Superior Court, County of San Joaquin) of plaintiffs and between 3 (Superior Court, County of Santa Clara) and 55 percent (Superior Court, County of Mariposa) of respondents are self-represented plaintiffs in matters categorized as civil.²

Judges Who Hear Civil Cases

We held a discussion with Judge Daniel Buckley from the Los Angeles Superior Court, Judge Michael Harper from the Trinity Superior Court and Judge Beth McGowen of the Santa Clara Superior Court, to learn about their experiences with civil cases and areas of need, and what type of advice and assistance might be appropriate for nonattorneys to provide. These judges were intentionally selected so that we could garner the perspectives from a large, medium, and small size court.

Recommendations

From the onset, we recognized the breadth and range of the General Civil practice area; given the working group’s focus on increasing access to legal services, we ruled out a number of areas within General Civil that do not present these types of access concerns. This resulted in a limited list of potential areas for inclusion: civil harassment, enforcement of judgments, and consumer protection.

- **Civil Harassment:** Our discussion regarding this particular area within General Civil was limited; generally, though, we support measures to ensure broad access to protective orders and agree that preparation of affirmative and responsive civil harassment pleadings is appropriate work for a trained nonlawyer professional.
- **Enforcement of Judgments:** Feedback garnered from our conversation with the three judges noted above confirmed that there is a need for additional representation resources in enforcement of judgment proceedings. Our discussion centered around the practical reality that in most judgment enforcement proceedings, creditors (e.g., financial institutions) are nearly universally represented by counsel and debtors are much less likely to be; as a result, our general position is that nonlawyer paraprofessionals should be authorized to only represent debtors, as opposed to creditors, in enforcement of judgment proceedings. Finally, we did not see any need to

² Unfortunately, data broken down by specific case type within the civil category is not available. It should also be noted that several of the courts with the highest number of filings, including Los Angeles, Sacramento, San Diego, and San Francisco, do not report information about self-represented litigants.

allow potential paraprofessionals to represent financial institutions and, thereby, decrease the cost of legal services for those entities. We did identify one needed exception to this recommended limitation, however, as related to wage and hour cases. These matters are often very low in total dollar value and as a result it is difficult for workers to collect on judgments; we accordingly recommend that nonattorney paraprofessional be authorized to represent “creditors” in wage and hour matters. Our recommendation in this area is to allow potential paraprofessionals to handle matters only in limited jurisdiction cases (under \$25,000).

- **Consumer Protection:** This is a broad area, and our discussion focused on whether small value consumer protection cases, such as lemon law, should be included. Based on our discussion with the judges, we agreed that this area should **not** be included, as cases are complex, and that legal representation is readily available. Our discussion did not extend to collection matters, as this area is being included under the broader topic of enforcement of judgments discussed above.

All of these recommendations are limited to allowing paraprofessionals to make appearances in superior courts.

A summary of our recommendations with respect to each JBSIS General Civil area is outlined in the table below.

JBSIS Case Definition	Recommendation	Rationale
Personal injury/property damage/wrongful death (e.g., auto, asbestos, product liability, medical malpractice)	Exclude	<ul style="list-style-type: none"> • Complex • Sufficient attorney representation available
Tort (e.g., business, civil rights, defamation, fraud, intellectual property, professional negligence)	Exclude	<ul style="list-style-type: none"> • Complex • Sufficient attorney representation available
Employment (e.g., wrongful termination)	N/A	Separately addressed by CPPWG
Contract (e.g., breach of contract/warranty, collections, insurance coverage)	Exclude	<ul style="list-style-type: none"> • Complex • Sufficient attorney representation available
Real Property (e.g., eminent domain/inverse condemnation, wrongful eviction)	Exclude ³	Complex
Unlawful Detainer	TBD	Separately addressed by CPPWG

³ Some aspects of real property cases are being considered under a separate recommendation.

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Judicial Review (e.g., writ of mandate, asset forfeiture)	Exclude	Complex
Complex litigation	Exclude	Complex
Small claims appeal	Exclude	Representation statutorily precluded
Enforcement of Judgment	Include	See discussion above
Other Civil – Civil Harassment	Include	See discussion above
Other Civil – Name and Gender Changes	N/A	Separately address by CPPWG