



The State Bar of California

CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

Date: June 30, 2020

To: California Paraprofessional Program Working Group

From: Ms. Sharon Bashan

Subject: Consideration of Collateral Criminal as a Practice Area to Be Included in a Paraprofessional 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, 2020, 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 for the program for review by the full body at its next meeting.

I assessed the Collateral Criminal practice area. In generating my recommendations I considered the following data points:

- OneJustice experience with, and data regarding, collateral criminal work;
- Conversations with subject matter experts providing collateral criminal legal services;

- Information from a supervising criminal judge; and the
- [Closing the Delivery Gap](#) report published by Code for America.

A Focus on Expungements and Reclassifications

California law affords those with criminal records significant recourse in the form of expungements (removal from a record) and reclassifications (of felonies to misdemeanors). The ability to timely and meaningfully take advantage of these provisions of state law is an important component of successful re-entry, participation in legal employment, and access to available housing resources, for this population. As such I chose to focus the Collateral Criminal practice area analysis on this subset of critical work.

Notes “From the Field:” Practitioners Doing the Work

OneJustice’s mission is to bring life-changing legal help to those in need by transforming the civil legal aid system. Our Pro Bono Justice program brings together the private sector and the nonprofit sector to expand legal services through pro bono collaborations, including numerous pro bono clinics around the state. In 2015, OneJustice’s Justice Bus Project successfully piloted its records clearance clinic model that it had developed to serve veterans to help others in need of assistance. Due to the enormous need, we have since expanded these records clearance clinics to rural and isolated communities. The clients we see are overwhelmingly relieved to confront their criminal pasts and move forward, and the services they receive at our clinics enable them to remove these barriers to employment and housing. The demand is so great that we often have very long waiting lists of people we cannot serve at the clinics.

In an attempt to gather additional information staff reached out to other organizations that provide expungement and reclassification services. As outlined below, other than with respect to hybrid criminal/immigration (“crimmigration”) matters, we heard starkly different points of view during the course of this outreach. Initially, staff met with Mr. Sean Kenney and Ms. Ellie Miller, both with the Collateral Consequences of Conviction Legal Clinic at Loyola Law School, and Ms. Rebecca Young with the San Francisco Public Defender’s Clean Slate program. The unanimous feedback received during these calls was that nonattorneys should not be licensed to provide expungement or reclassification services for reasons including complexity, power imbalances between nonattorney advocates and District Attorneys, the need to file briefs and appear in court, and the necessity of support and administrative staff not likely to be available to a paraprofessional.

Subsequently, staff and I met with Supervising Judge Eric Geffon of the Superior Court, County of Santa Clara, who hears criminal matters, Judge Yew, also a Santa Clara Superior Court judge hearing a criminal calendar (and working group member), Ms. Peggy Stevenson, who runs the Record Clearance Project at San Jose State University, and Ms. Nora Cregan, with The Access Project (TAP). In contrast to the feedback received from representatives of the Loyola and San Francisco programs, this judicial officer and subject matter expert feedback was unanimous in the view that, with the exception of “crimmigration” related matters, expungement and reclassification cases are neither too complex or challenging for nonattorneys to handle. In the

view of both the judicial officers and these practitioners, nonattorneys can be appropriately trained to properly interpret RAP sheets, file declarations and briefs, identify applicable laws and statutes, handle cases with multiple convictions, and successfully represent clients in court. In addition to believing that the nature of these types of cases lend themselves to nonattorney practitioners, this latter set of feedback emphasized the relative lack of consequence of the work being done incorrectly – other than for those with immigration issues; those seeking this type of post-conviction relief have more than one “bite at the apple”.

Although not a position universally shared, most of the input received suggested that clients with immigration issues would likely present a level of complexity, and potential harm, such that they should not be served, at least solely, by a paraprofessional.

The Need

In 2018 Code for America, which has developed an automated record clearance tool, issued a report, *Closing the Delivery Gap: making good on the promise of California’s record clearance laws to remove barriers to opportunity for 5 million Californians*. Key findings from that report include:

- Only 27 percent of Californians with criminal records indicated they had attempted to clear up their record;
- Most people pursue record clearance to reduce barriers to employment;
- At least one in seven Californians lives in a county that does not provide legal assistance with the record clearance process to low-income petitioners; and
- Low staffing levels in counties that do provide clean slate services hamper the ability of attorneys to get petitioners through the process efficiently.

These findings were echoed by the subject matter experts with whom we spoke. All agreed that existing resources are not sufficient to meet demand, let alone the hundreds of thousands of Californians who are eligible for relief.

Due in part to innovation and advocacy on the part of Code for America and others, soon to be implemented state laws will address some significant aspects of existing need:

- [Assembly Bill 1793](#), enacted in 2018, addresses the need for records expungements and adjustments for people convicted of marijuana-related offenses prior to legalization. This bill required the Department of Justice (DOJ) to notify the prosecutors in each county of all cases eligible for recall, dismissal of sentence, sealing, or conviction adjustment (collectively “adjustments”) by July 1, 2019. Prosecutors are required to review all such cases identified in their jurisdiction and determine whether to challenge any adjustments. By July 1, 2020, prosecutors must inform the court and Public Defender of any adjustments they will challenge, and must inform the court of adjustments they do not intend to challenge. The court must reduce or dismiss any

eligible convictions which the prosecutor does not challenge by July 1, 2020, and must notify the DOJ of the adjustment.

- [AB 1076](#), enacted in 2019, requires, effective January 1, 2021, and subject to a budgetary appropriation to cover the cost of such a program, the DOJ to review records and identify persons eligible to have their arrest and conviction records sealed, and to grant such relief without requiring a petition or motion. If funded and implemented, the automatic record clearance contemplated by this bill will extend well beyond the marijuana-specific expungements to be conducted pursuant to AB 1793.

Recommendations

I recommend that the Collateral Criminal practice area, more specifically expungements and reclassifications, be included for consideration in a California paraprofessional program; with respect to expungement/reclassification clients with immigration issues, I recommend that the working group further study how, and whether, paraprofessionals might serve this population.

Additionally, I recommend that the working group further research and consider supporting a portal that was recently created and launched by TAP. The portal was created to help guide pro bono service providers through each step required to file for expungements and sentence reductions/reclassifications. A brief demo of the portal shows that it is not only user-friendly and intuitive, but could also be used by nonattorneys to proficiently navigate through the same process.