



The State Bar of California

CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

Date: June 30, 2020

To: California Paraprofessional Program Working Group

From: Julie D'Angelo Fellmeth and Ira Spiro

Subject: Consideration of Housing 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.

Sources of Data and Information

In generating our recommendation, we considered the following data points:

- Housing-related questions and responses included in the California Justice Gap Survey and the ensuing Justice Gap Report (November 2019)
- [Sargent Shriver Civil Counsel Act Evaluation, June 2020 Draft](#) (2020 Shriver Evaluation)
- [Evaluation of the Sargent Shriver Civil Counsel Act \(AB590\) Housing Pilot Projects](#) (2017 Shriver Evaluation)
- [Assembly Judiciary Committee staff, Background Paper for an Informational Hearing entitled “How Can California Improve Access to Justice for Unrepresented Litigants?”](#) (February 25, 2020)
- National Low Income Housing Coalition, [Out of Reach](#) (2019)
- Statistics compiled by Kyle Nelson, a PhD candidate and instructor in the Department of Sociology at the University of California, Los Angeles.

California Justice Gap Report

The California Justice Gap Survey included questions about both homeownership and rental housing, as follows:

“Homeownership: Questions asked about being the target of misleading or dishonest mortgage practices, being told by a lender that extra financial products needed to be purchased to get a mortgage, falling several payments behind on a mortgage or having a home going into foreclosure, and selling or buying property. These questions were asked of those who own their home.”

“Rental Housing: Questions asked about a dispute with a landlord about rules or property, difficulty getting a security deposit back, the denial of reasonable accommodations for a medical condition, trouble getting a written lease or rental contract, failure to receive basic services or repairs, a threat of eviction, denial or trouble with a housing voucher or subsidy, harassment for rent, denial of relocation assistance from an unsafe rental unit, and denial of a rental unit because of prior juvenile or criminal system involvement. These questions were asked of those who rent their home.” (CJGS Report at page 57.)

Housing issues are of clear concern to low-income Californians. The California Justice Gap Report includes findings from the State Bar’s 2018–2019 census of legal aid organizations (all emphasis added). The CJGS Report states (page 11, see also page 44): “In 2018, legal aid organizations provided services to Californians most often for problems related to housing, immigration, and health,” with housing problems—reported by 21 percent of legal aid clients, immigration by 13 percent, and health by 10 percent—at the top of the list. (The census defined “housing” as including rental housing and homeownership/foreclosure issues; CJGS at page 44.)

Similarly, at page 49, the Justice Gap Report states: “The 2019 California Justice Gap Survey of California residents showed that 39 percent of problems for which low-income Californians

received help were discussed with legal aid (see Figure 10). An analysis of those problems revealed that the top three served by legal aid were related to rental housing (15 percent), health (13 percent), and employment (11 percent). The top three problems for which low-income Californians received legal help according to the Intake Census were housing (12 percent), foreclosure (11 percent) and health (11 percent). See Figure 16. [¶] The top problems served by legal aid organizations, according to both the California Justice Gap survey and the Intake Census involved rental housing (“housing” represents rental housing in the Intake Census).” Again, housing — in particular, rental housing — topped these lists.

At page 27, the report states: “Californians at or below 125 percent of FPL were most likely to receive only nonlegal help for rental housing, income maintenance, and homeownership.”

At page 43, the report states: “Previous sections of this report explored the civil legal needs of Californians at all income levels. This section explores the assistance received by low-income Californians who actively sought assistance from a California State Bar-funded legal aid organization. Key findings include: Housing and immigration are the top two problems reported to legal aid.”

“Homeownership” issues surfaced as the second-highest area (50 percent, second only to children and custody at 54 percent) where legal help was sought and received by individuals with incomes less than 125 percent of the federal poverty line. (The California Justice Gap Report at page 34, Figure 9.) The questions posed to CJGS survey respondents included several “homeownership” issues, including problems in “selling or buying property” (the actual questions are quoted above). It is reasonable to assume that one problem in “selling or buying property” might be clouds on the title of that property. It is unclear whether the entire process of clearing title on real property constitutes the practice of law. Clearly, writing a petition to quiet title is the practice of law (this working group is authorized to recommend that competent and qualified paraprofessionals should be able to file such a petition without attorney supervision). However, it is unclear whether other steps leading up to the filing of a petition (for example, researching and securing the title report, negotiating with lienholders in an attempt to persuade them to remove their lien) constitute the practice of law. Inasmuch as “homeownership issues” landed as the second-highest problem causing survey respondents at 125 percent of the federal poverty line to seek and secure legal help (CJGS Report at page 34), yet “real property issues” are fairly low in terms of frequency and criticality (California Attorney Practice Analysis Study at page 14), we believe that activities relating to clearing title to real property should be further studied for inclusion in a paraprofessional program.

Rental housing issues were identified by 31 percent of survey respondents with incomes below 125 percent of the federal poverty line. (CJGS Report at page 34, Figure 9.) As noted above, rental housing issues top the list of legal problems most frequently plaguing low-income residents and brought to the attention of legal aid attorneys. It seems clear to us that both rental housing issues and homeownership issues should be studied in depth for inclusion in a paraprofessional program. Although the CJGS report found that rental housing issues did not

evidence the same frequency or severity levels as homeownership issues, that is difficult for us to credit; it may be related to how the CJGS survey questions were phrased. The questions on rental housing were summarized on page 57 of the CJGS Report, and are quoted above; though the questions asked about “threat of eviction,” they did not ask about actual eviction proceedings.

Sargent Shriver Civil Counsel Act Evaluation, June 2020 Draft

We note for the record that we were told that neither the Judicial Council nor the State Bar collects or has data on the number of unlawful detainer (UD) actions filed annually, the percentage of UD parties who are represented by counsel, the default rate by tenant defendants in cases where they are represented by counsel vs. cases in which they are not represented, and final outcomes in cases filed where parties are represented vs. cases filed in which either party lacks counsel. In fact, we are told that many counties do not report such data to the Judicial Council, and nothing requires them to.

As such, we are forced to rely on and extrapolate from data collected in pilot projects established under the Sargent Shriver Civil Counsel Act, Government Code section 68650 *et seq.* These pilot projects provide legal representation for self-represented low-income parties in civil matters involving critical livelihood issues such as housing, child custody, domestic violence, guardianship, and conservatorship. Under the Shriver Act, the Judicial Council in 2012 established housing-related pilot projects in six California counties.¹ The projects involve one or more legal services agencies working in collaboration with the local superior courts; the projects are funded by increases in various court filing fees, and they are intended to serve individuals with an income at or below 200 percent of the federal poverty level and facing an opposing party with legal representation. Because of the low-income requirement, more than 99 percent of litigants served were tenants (although some projects offer services to low-income landlords). (2020 Shriver Evaluation at page 13.)

The Shriver housing pilot projects were comprehensively evaluated in 2017, and a draft updated June 2020 comprehensive evaluation is now available. Although these evaluations are replete with detailed data and observations that support the involvement of legal counsel for usually-unrepresented tenant defendants facing eviction, they are limited to six counties. However, they provide data that are helpful to a discussion of whether there is a need for competent paraprofessional representation in UD proceedings. For example, the 2020 draft evaluation states that “[s]ince the Shriver Program’s inception in 2012, a total of 43,266 low-income litigants have received some type of civil legal service. ... Of the 43,000 litigants served, about 39,000 were involved in unlawful detainer (eviction) cases....” (2020 Shriver Evaluation at page 1.)

As noted elsewhere in this recommendation, the largest Shriver housing pilot project is based in Los Angeles where, in fiscal years 2013 and 2014, “an average of 16,364 unlawful detainer cases were filed annually, ... and the Los Angeles housing pilot project provided legal aid services to an

¹ In 2015, one housing project dropped out; in 2018, one new housing project was funded. (2020 Shriver Evaluation at page 3.) To avoid confusion, we will refer to six California counties.

average of 3,068 cases per year (18 percent).” (2017 Evaluation at page 48.) As such, the Shriver pilot projects may be reaching only the tip of the iceberg in terms of need. According to the Draft 2020 evaluation, “[A] recent report on eviction in Fresno County found that 73 percent of landlords were represented, versus only 1 percent of tenants. In addition, studies in two jurisdictions outside of California found that approximately 90 percent of landlords had attorneys and approximately 10 percent of tenants did.” (2020 Shriver Evaluation at page 9; footnote omitted.)

Further, according to a background paper prepared by Assembly Judiciary Committee staff for a February 25, 2020 hearing entitled “How Can California Improve Access to Justice for Unrepresented Litigants,” “nearly 90 percent of tenants who file an answer in their eviction proceedings appear [] without attorneys” (at page 2), and the number of Californians “who go to court without an attorney” is “4.3 million and growing” (at page 3). According to the 2017 evaluation of the Shriver program pilot projects, “among low-income populations, it is very common for unlawful detainer cases to involve landlords with legal representation and tenants without the resources to obtain counsel. By balancing the playing field, the Shriver Program sought to provide equal access to justice and to ensure that cases were decided on their merits and not as a result of one side having legal representation.” (2017 Shriver Evaluation at page II.)

Housing Crisis in California: The National Low Income Housing Coalition’s (NLIHC) 2019 *Out of Reach* report ranked California as the state with the second highest housing wage in the country. According to the NLIHC, housing wage is “an estimate of the hourly wage a full-time worker must earn to afford a rental home at HUD’s fair market rent without spending more than 30 percent of their income on housing costs. ... Data from the Shriver Act evaluation indicate that, across all six housing pilot projects in 2019, the majority of Shriver clients were rental cost burdened. ... Only 19 percent of clients had rents that were classified as manageable according to HUD standards.” (2020 Shriver Evaluation at page 6.)

Need for Legal Assistance in Unlawful Detainer Cases: “[E]viction is one of the most pressing civil justice issues for low-income individuals, as the loss of housing poses a wide range of short- and long-term risks and consequences for families. These risks can be particularly severe for vulnerable tenants, such as the elderly and people with disabilities. Among low-income populations, it is very common for unlawful detainer cases to involve landlords with legal representation and tenants without the resources to retain counsel.” (2020 Shriver Evaluation at page II.)

“The city [of Los Angeles] estimates there are about 30,000 eviction filings in court per year, and advocates figure about 85 percent of tenants have no legal representation. Many don’t know how to defend themselves and never show up in court, immediately forfeiting their case.” (*Los Angeles Times*, April 23, 2019.) As noted above, the Shriver Los Angeles housing pilot project processed an average of only 3,068 cases per year during 2013 and 2014. (2017 Shriver Evaluation at page 48.)

Two Categories of Services Provided by Shriver Housing Projects: “The housing pilot projects offered two levels of legal service: (a) full representation by a Shriver attorney, and (b) unbundled services (help with discrete legal tasks). Across the six projects, 56 percent of Shriver clients received full representation and 44 percent received unbundled services.” (2020 Shriver Evaluation at page 50.)

Landlords Nearly Always Are Represented by Counsel in Unlawful Detainer Cases: “Of those tenants who received full representation from a Shriver attorney, 95 percent were facing a landlord who was represented by counsel (1 percent were not and 4 percent were unknown).” (2020 Shriver Evaluation at page 50.) “Of those provided with unbundled services, 71 percent faced a represented landlord (14 percent did not and 10 percent were missing this information).” (2020 Shriver Evaluation at page 14.)

Shriver Projects, While Helpful, Do Not Come Near to Meeting the Full Need for Representation: As noted above, the Shriver Housing Projects are located in only six of California’s 58 counties. The Shriver projects in Los Angeles, San Diego and Sacramento are quite large. But many large counties are not included, such as Alameda, Santa Clara, San Mateo, San Bernardino, Riverside, and Orange. None of the largely rural counties are included, and many of those are low-income counties.

“Staff at several of the [Shriver housing projects] reported that they were unable to serve all of the litigants who did present for help because demand for service consistently outpaced their capacity to provide it. One staff member explained, “[W]ith the current funding and staffing levels, our program cannot assist everyone that shows up for help.” Capacity problems were exacerbated for legal services agencies in rural areas that struggled to stay fully staffed.” (2020 Shriver Evaluation at page 45.)

In the Shriver Housing Projects, nearly half the clients did not receive full representation: “10,855 clients (56 percent) were provided full representation by a Shriver attorney, while the remaining 8,605 clients (44 percent) received at least one unbundled service.” (2020 Shriver Evaluation at page 14.)

“In several areas, the Shriver pilot project was the only provider of free assistance to low-income tenants facing eviction. In some places, the demand for service exceeded the capacity of the project and litigants were turned away. In other areas, especially larger geographic regions, Shriver staff noted that accessing services was challenging for tenants with disabilities, unreliable transportation, or inflexible work schedules. It could take hours, by bus, to get to the courthouse or to legal aid offices, which can be a significant impediment to accessing help, even when it is free. Enabling Shriver staff to accommodate clients by going to their homes for the initial meeting might help surmount these barriers.” (2017 Shriver Evaluation at page 191.)

Additionally, project staff expressed concern for those tenants who did not qualify for Shriver services due to their income, but who could still not afford an attorney, and therefore tended to

slip through the cracks. Further, they felt that low-income landlords would benefit from legal assistance at a greater level than what was available in the current projects.” (2017 Shriver Evaluation at page 191.)

Defaults by Tenants Are Very Common; The Need for Assistance in Filing Answers: “Tenants’ access to justice depends on their ability to successfully file a written response to the unlawful detainer complaint within five days. Inability to do so results in a default, whereby tenants lose possession of the property without ever presenting their side of the case.” (2020 Shriver Evaluation at page III.)

“In unlawful detainer cases, defaults tend to be very common. In 2019, across four of the counties with Shriver housing pilot projects, the average default rate was approximately 40 percent. (2020 Shriver Evaluation at page III.)

Increased Representation of Tenants in Unlawful Detainers Does Not Result in More Trials More Work for the Courts; It Decreases the Courts’ Work: “Balancing the playing field did not appear to make unlawful detainer proceedings more combative or drawn-out. Instead, it increased the likelihood of settlement. Across all six pilot projects, 66 percent of tenants with Shriver representation settled their cases and 4 percent resolved their cases via trial (18 percent were dismissed, 4percentresolved another way, and 8percentwere unknown). Random assignment study found that the settlement rate with balanced representation is significantly higher (67 percent) and the trial rate lower (3 percent), than what occurs when the tenant is self-represented (34 percent and 14 percent, respectively).” (2020 Shriver Evaluation at page III.)

“Although providing representation to tenants did not shorten the time to resolve cases, it did reduce the level of involvement necessary by the court to bring cases to resolution. Shriver services enabled a majority of unlawful detainer cases to resolve by settlement, which requires comparably fewer court resources, and limited the number of cases that went to trial, which is a more resource-intensive activity for court staff and judges. These efficiencies can help alleviate court congestion by reducing the load on court clerks and judicial officers, and they also translate into cost savings over time. (2020 Shriver Evaluation at page V.)

Statistics Compiled By Kyle Nelson, a PhD candidate and instructor in the Department of Sociology at the University of California, Los Angeles.

- Los Angeles, CA (Blue Ribbon Citizens’ Committee on Slum Housing 1997): “4% of tenants, as opposed to the ‘vast majority of landlords’ were represented [in eviction proceedings].” (Quoted in Chester Hartman and David Robinson, *Evictions: The Hidden Housing Problem*, Housing Policy Debate 14(4):461, 477 (2003).)
- Los Angeles, CA (Blue Ribbon Citizens’ Committee on Slum Housing [1997-1998]: “Of 51 tenants who attempted to defend their eviction based on conditions, not a single tenant proceeding unrepresented was successful.” (Quoted in Russell Engler, *Connecting Self-*

Representation to Civil Gideon: What Existing Data Reveal About When Counsel Is Most Needed, Fordham Urban Law Journal 37(1):38, 50 (2010).)

- Los Angeles, CA (Blasi 2004): “Out of 151 tenants who had asserted facts constituting breaches of the implied warranty of habitability, the total number who prevailed at trial without a lawyer was zero. And when the pro se tenants settled, as most did, the terms were no better than what would have happened had they gone to trial and lost.” Gary Blasi, *How Much Access—How Much Justice*, Fordham Law Review 73:865, 869 (2004).

Recommendations

Many of the reports upon which we relied were published prior to the coronavirus pandemic and its resulting stay-at-home orders and economic shutdowns across California and the United States, which seem certain to exacerbate California’s housing woes. As of June 25, 2020, the U.S. unemployment rate was 13.3 percent; almost 20 million U.S. citizens are unemployed. At 15.5 percent, California’s unemployment rate is even worse. Although many jobless individuals are collecting unemployment benefits, many are unable to pay rent — leaving tenants open to eviction. In response to this crisis, state and local officials have issued orders temporarily protecting tenants from eviction for nonpayment of rent due to financial impacts related to the virus. On March 4, Governor Newsom declared a state of emergency as a result of the pandemic and, in early April, the Judicial Council issued an emergency rule suspending eviction actions; the rule will remain in place until 90 days after the Governor lifts the emergency order.

Despite these actions, some landlords are allegedly evicting nonpaying tenants without filing unlawful detainer actions by locking them out of their homes, turning off their utilities, and deploying other illegal methods (*Los Angeles Times*, June 18, 2020). Additionally, some local sheriff’s offices are resuming eviction proceedings in cases that were initiated prior to the Governor’s executive order (*San Diego Union-Tribune*, May 7, 2020). Suffice it to say that once the Governor lifts the executive order, and barring new legislation, eviction proceedings will skyrocket and overwhelm the courts, legal services organizations that sometimes represent tenants in UD actions, and even the cadre of attorneys who regularly represent landlords in those actions.

Our team concludes that the data support further consideration of the inclusion of several housing issues in a program allowing qualified paraprofessionals to practice law without attorney supervision. In particular, we recommend that rental housing issues related to eviction and unlawful detainer proceedings be included in such a program.² In addition, we recommend

² At first blush, this practice area seemed different from the rest because of the presence of the statutory Unlawful Detainer Assistant (UDA) category, paraprofessionals authorized by law to render “assistance or advice in the prosecution or defense of an unlawful detainer claim or action.” (Bus. and Prof. Code § 6400(a).) But the UDAs really don’t make this practice area different. The idea of the Paraprofessional Program being studied by this working group is to allow paraprofessionals to do work that presently they cannot do because it constitutes the practice of law and thus violates the laws against unauthorized practice. The work of UDAs is confined to activity

that the homeownership issue of clearing title should be further studied for inclusion in such a program; we do not recommend that paraprofessionals assist with buying or selling property or handle quiet title lawsuits.

that does not constitute the practice of law. (Bus. and Prof. Code § 6411.) Thus, in this respect UDAs are no different from any other nonlawyers and, like all nonlawyers, they are prohibited from practicing law, even in unlawful detainer proceedings.