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To: California Paraprofessional Program Working Group

From: Julia Brynelson, Steven Fleischman, Stephen Hamilton, Amos Hartston, Carolin Shining, Hon. Erica Yew

Subject: Consideration of Consumer Debt as a Practice Area to Be Included in a Paraprofessional Program

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### 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. One of these areas was Consumer Debt. At its July 13 meeting, six members of the CPPWG volunteered to serve on a Consumer Debt subcommittee tasked with studying this practice area with the goal of generating recommendations regarding inclusion or exclusion of specific subtopics in this practice area for consideration by the full body at its next meeting.

The Consumer Debt subcommittee, comprised of the authors of this memorandum, is considering the following in conducting our assessment of Consumer Debt Law as a potential practice area for inclusion in a paraprofessional program:

- Consumer debt-related questions and responses included in the California Justice Gap Study;
- Information gathered from representatives of other state paraprofessional programs where consumer debt-related matters are authorized; and

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- Information obtained from subject matter experts/practitioners in the field.

### **California Justice Gap Study**

The California Justice Gap Study included questions about financial issues, including questions about problems getting credit because of identity theft, being the target of unfair lending practices or internet scams, problems with debt reduction or credit repair services, problems with terms for repayments of payday lenders, problems related to legal financial obligations, harassment by creditors, problems with pay for or repossession of a car, filing for bankruptcy, garnished wages, and disconnected utilities due to nonpayment or a billing dispute.

These issues, categorized as Consumer Debt, were the second-most common type of legal problem experienced by Californians at all income levels, with 21 percent of all households reporting at least one Consumer Debt -related problem.

The California Justice Gap Study results for the Consumer Debt practice area identified the following specific legal needs for this population:

- Identity theft
- Unfair or deceptive lending practices
- Credit repair services
- Payday/short-term lenders
- Fines and fees from criminal or juvenile cases
- Creditor/collection agency harassment
- Car repossession or defect/warranty issues
- Bankruptcy
- Wage garnishment
- Utility cutoff due to nonpayment or billing dispute

Of note, two additional or related topics that fall under Consumer Debt—representation of debtors in enforcement of judgment proceedings, and advice and representation related to debt collection—were previously addressed by the Working Group at its June 30 meeting pursuant to recommendations received regarding the General Civil practice area. The present subcommittee has not yet addressed these topics as they relate to the Consumer Debt areas under consideration. Pursuant to vote by the Working Group, the Consumer Debt and General Civil subcommittees have been combined to move forward on the related areas more efficiently.

### **Subject Matter Experts**

We met with the following attorneys who practice in the consumer protection/finance area: Mr. Noah Zinner, Bay Area Legal Aid; Ms. Leigh Ferrin, Public Law Center; Ms. Elizabeth

Gonzalez, Public Law Center; Ms. Gabriela Sandoval, The Utility Reform Network (TURN); Mr. Timothy Blood; Mr. Robert Hyde; Mr. David Kaminski; and Mr. Abbas Kazerounian.

### **Feedback Received From Other States**

Utah Supreme Court Justice Deno Himonas spoke with the subcommittee about the Utah Licensed Paralegal Practitioner (LPP) program. Consumer finance related matters, such as debt collection matters in which the dollar amount in issue does not exceed statutory limit for small claims (\$11,000), are authorized LPP activities in the State of Utah. Justice Himonas advised us that Utah currently has four licensed paraprofessionals and hopes to have another handful licensed in the near future.

Mr. Dave Byers, Administrative Director of the Courts in Arizona, spoke to the subcommittee about the Arizona Limited License Legal Practitioners (LLLP) program, which is currently being developed. He explained that the rules for the program, which are expected to be implemented later this year, will allow LLLPs to practice independently of lawyers and provide representation in any civil matter (including, but not limited to, debt cases) in limited jurisdiction cases. Neither Justice Himonas nor Mr. Byers indicated whether their states permit paraprofessionals to argue jury trials.

### **Status Update**

The subcommittee made decisions to exclude several subtopics within the Consumer Debt practice area:

- Bankruptcy;
- Identity theft;
- Unfair or deceptive lending practices;
- Problems with credit repair services;
- Payday/short-term lenders;
- Fines and fees from criminal or juvenile cases; and
- Car repossession or defect/warranty issues.

These decisions were based on various considerations, in some cases including complexity, the consequences of error in the initial stages of the proceedings, and overlapping federal court jurisdiction.

The balance of our subcommittee deliberations focused on the following remaining issues:

- Creditor/collection agency harassment;
- Wage garnishment; and
- Utility cutoff.

Following is a summary of the subject matter expert feedback received regarding some of these remaining subtopics:

**Creditor/Collection Agency Harassment**

Justice Himonas indicated that the Utah LPP includes consumer debt as an authorized activity because of the great consumer need in this area. Justice Himonas explained that the Utah program is forms-driven; essentially, LPPs can offer advice in any area in which approved court forms exist. He indicated that he is not aware of whether forms have been adopted specifically addressing creditor/collection agency harassment; in his view, the fact that there are potential federal remedies available to some consumers experiencing these problems should not preclude paraprofessional representation. LPPs are bound by an ethical obligation that requires them to advise the client if a case should be heard in federal court, and Justice Himonas believes this requirement provides sufficient protection.

Mr. Byers echoed Justice Himonas' view, stating that a majority of these cases are not complex and that there is an overarching need to increase access to legal services that should inform this work generally.

Mr. Hyde, a consumer rights attorney, asserted that consumer law is not easy to teach or quickly learn, even with a law degree or legal background and experience. He stated that the biggest problem he has identified in this area is that consumers are generally unaware of their rights and possible remedies.

Mr. Kaminski, a civil litigation attorney with practice focused on the defense of banks, creditors, and collection agencies, agreed with Mr. Hyde's overall assertion and added that, even if some cases were simple enough to be handled by paraprofessionals, the majority are not; they are often filed in federal court and are very complex in nature.

Mr. Blood, a consumer protection attorney, stated that consumer law is a very complex area and expressed that, while there are areas where nonattorneys could assist, the scope of their practice would have to be very limited.

Ms. Ferrin, Director of Litigation and Pro Bono at the Public Law Center, expressed mixed feelings about having paraprofessionals practice in this area. She stated that some of the topics and tasks are very complicated and beyond the scope of paraprofessionals; however, narrowly defined tasks and limited activities may be appropriate for a paraprofessional to perform.

### **Wage Garnishment**

Ms. Gonzalez and Mr. Kazerounian provided the subcommittee with a detailed overview of the wage garnishment process. They explained that while some steps in the process are form-driven and relatively simple and straightforward, there are critical timelines that must be adhered to, and a host of issues related to the underlying debt and consumer protections that sometimes are at issue. They asserted that an in-depth knowledge of the law in this area, as well as the interplay between various areas of consumer protection law, are needed in order to appropriately identify possible affirmative claims against the creditor in these matters beyond responding to the wage garnishment order. Their shared view was that the consumer debt area is not an appropriate area for paraprofessional licensure.

### **Utility Cutoff**

Ms. Gabriela Sandoval, Director of Strategic Initiatives at The Utility Reform Network (TURN), explained that TURN, a consumer advocacy organization, provides trainings for community advocates around the state who help consumers with complaints against utility companies. Some topics covered in the trainings are: how to stop utility shutoffs, reestablishing service, and setting up payment plans. Ms. Sandoval stated that they regularly work with community advocates that are nonattorneys.

### **Next Steps**

The subcommittee intends to continue with its work with regard to creditor/collection agency harassment, wage garnishment, and utility cutoff subsequent to the August 25 meeting, developing a full set of recommendations for the remaining subtopics and tasks included in the Consumer Debt practice area.