



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: August 25, 2020

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, and Fariba Soroosh

Subject: Consideration of Family Law 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 Family Law, including Children and Custody (referred to herein as Family Law). At its July 13 meeting, five members of the CPPWG volunteered to serve on a Family Law subcommittee tasked with studying this practice area with the goal of generating recommendations regarding inclusion or exclusion of specific Family Law subtopics for consideration by the full body at its next meeting. This memo provides an update on the status of our recommendations.

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

- Family law examination specifications from the California Board of Legal Specialization and the National Board of Trial Advocacy;
- Information about the scope of allowed practice in family law for paraprofessionals in other states, including discussion with representatives of other state programs; and
- Discussion with Judicial Council of California Managing Attorney.

### **Family Law Legal Specialization Examination Specifications**

The California Board of Legal Specialization and the National Board of Trial Advocacy specify areas for which an attorney is required to demonstrate in-depth knowledge in order to be certified as a specialist in Family Law. This information served as a basis for the consideration of subtopics and tasks by our subcommittee.

### **Other State Paraprofessional Programs**

We reviewed information about the scope of practice for paraprofessionals providing assistance in family law cases in Arizona, Washington, and Utah, and met with representatives from the Arizona and Washington programs. The Washington Limited License Legal Technician (LLLT) program has been in operation since 2012; the Utah Licensed Paralegal Practitioner (LLP) program has been in operation since 2018. The Arizona Limited License Legal Practitioner (LLLP) program is expected to be approved by the Arizona Supreme Court this year.

### **Status Update**

Our initial task was to delineate all of the potential subtopics falling under the broad header of Family Law. We developed the following list, informed by both the California Justice Gap Study and the framework for the family law California Legal Specialization exam:

- Dissolution and parentage
- Division of assets and debt
- Custody and visitation
- Support (child and spousal)
- Violence prevention (domestic violence, elder abuse, civil harassment)\*
- Protection of the person (guardianship, conservatorship, adoptions not arising out of a dependency matter)\*
- Child Protective Services Investigations

Early on, the subcommittee decided that it would make more sense to begin with a focus on which tasks or activities a paraprofessional might be allowed to perform, as opposed to beginning our analysis by selecting particular subtopics within Family Law for exclusion or exclusion.

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\* With the exception of civil harassment, which was considered by the General Civil subcommittee, these topics have not yet been addressed.

The bulk of the subcommittee's discussion focused on the particular task of in-court representation.

There is a widely acknowledged recognition of the need for legal assistance in family law matters. Some members of our subcommittee believe that it is essential to allow paraprofessionals to represent clients in court, while others are adamant that in-court representation not be included in the scope of services to be provided by paraprofessionals, at least as part of the initial program. We considered information provided by representatives of the Washington and Arizona programs, and the Judicial Council of California, to inform our deliberations with respect to this issue.

Ms. Renata Garcia, Innovative Licensing Programs Manager at the Washington State Bar Association, and Mr. Steve Crossland, Chair of the Washington LLLT Board, confirmed that LLLTs in Washington are permitted to provide legal advice and to represent their clients in negotiations outside of court in a wide range of family law matters, but are excluded from representation in complex matters such as de facto parentage, property division, and other types of matters specified in the rules governing the program. LLLTs may accompany their clients to court proceedings, may confer with them during those proceedings, and may answer questions directed to them by a bench officer. However, their clients are considered pro se litigants.

Mr. Dave Byers, the Administrative Director of the Arizona Supreme Court, explained that the rules for the program expected to be implemented later this year will allow for LLLPs to represent clients in family law cases, with the exception of complex proceedings (QDROs, division of commercial or business entities, and appeals). Under the proposed rules, LLLPs will be allowed to provide full scope representation in these matters, including representation in court.

Ms. Bonnie Hough, Managing Attorney at the Judicial Council of California's Center for Families, Children and the Courts, who oversees Self-Help Centers at courts throughout the state, suggested that, in considering options for a paraprofessional program, the working group should evaluate the potential value added by having paraprofessionals assist consumers.

In addition to in-court representation, the sub-committee spent some time discussing the types of case specific factors that might preclude paraprofessional representation. Two of these, party income and asset levels, are outlined briefly below.

**Income limitation.** Some members of our subcommittee believe that dissolutions for higher income clients may involve issues that are too complex to be handled by nonattorneys, particularly if there is a significant disparity between the incomes of the parties to the dissolution. There may also be tax implications that are beyond the scope of a paraprofessional. Other members do not believe that it is necessary to prohibit paraprofessional representation based on the income of either clients or the opposing party in a dissolution.

**Asset limitation.** Similar to the issue of income, some members of our subcommittee believe that paraprofessionals should not be allowed to represent clients in dissolutions that involve the division of property and assets of significant value. There may also be tax implications that are beyond the scope of a paraprofessional. Other members believe that no such limit should be imposed. Instead, regulation of paraprofessionals should include a requirement that they refer clients to an attorney to handle the division of complex assets.

## Preliminary Recommendations

The subcommittee has generated preliminary recommendations with respect to some subtopic areas and tasks within Family Law as outlined in Tables 1 and 2 below:

**Table 1. Subtopics**

Subtopics	Included	Excluded	To be Determined
<b>Dissolution</b>	X		
<b>Parentage</b>	X		
<b>Division of Assets and Debt</b>	X		
<b>Custody and Visitation</b>	X		
<b>Child Protective Services Investigation</b>	X		
<b>Support</b>	X		
<b>Violence Prevention</b>			
Domestic Violence	X		
Elder Abuse			X
Civil Harassment	X		
<b>Protection of the Person</b>			
Guardianship	X		
Conservatorship			X
Adoption not arising from dependency	X		

**Table 2. Tasks**

Task Categories	Included	Excluded	Split Recommendation
<b>Legal Advice</b>	X		
<b>In-Court Representation</b>			X (see below)
<b>Preparation of Documents:</b>			
Pleadings	X		
Joinders	X		
Lis pendens	X		
Written discovery			Recommendation pending
Declarations	X		
Motions	X		

Task Categories	Included	Excluded	Split Recommendation
Briefs	X		
Exhibits	X		
Findings and Orders After Hearing	X		
Judgments	X		
Qualified Domestic Relations Orders (QDRO)		X	
<b>Tax Advice</b>		X	
<b>Trial Preparation</b>			X (see below)
<b>Trial Preparation Coaching for Self-Represented Litigants</b>	X		
<b>Oral Discovery</b>			Recommendation pending
<b>Mediation Preparation for Self-Represented Litigants</b>	X		
<b>Support Calculations</b>	X		
<b>Filing Appeals</b>		X	
<b>Appellate Advocacy</b>		X	

Following are the various recommendations regarding in-court representation (and trial preparation) generated by our subcommittee:

**Paraprofessionals in Court But May Not Address Court (Sharon Bashan, Stephen Hamilton and Fariba Soroosh):**

Paraprofessionals may sit at counsel table with their client to provide support, counsel and advice in family law proceedings. However, they may not directly address the court and may not be on the record of court proceedings.

**Paraprofessionals in Court and Can Responsively Address Court (Elizabeth Olvera):**

Paraprofessionals may sit at counsel table with their client to provide support, counsel and advice in family law proceedings, and may respond to direct inquiries from bench officers.

**Paraprofessionals May Represent Parties in Court in Some Proceedings (Dana McRae):**

Paraprofessionals may provide full representation in uncontested and noncomplex contested family law proceedings; the specific definition of noncomplex contested matters will be delineated by the CPPWG.

**Next Steps**

The subcommittee intends to continue with its work subsequent to the August 25 meeting, developing a full set of recommendations for all subtopics and tasks included in the Family Law practice area.