



# The State Bar *of California*

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

---

Date: August 25, 2020

To: California Paraprofessional Program Working Group

From: Sharon Bashan and Judge Erica Yew

Subject: Consideration of Authorized Paraprofessional Tasks within the Collateral Criminal Practice Area: Expungements, Reclassifications, and Infractions

---

### Executive Summary

At its June 30, 2020, meeting the Working Group heard recommendations regarding various practice areas being considered for inclusion in a paraprofessional program. One of those areas, Collateral Criminal, was advanced to a “deep dive” analysis phase, meaning that specific authorized tasks, as opposed to simply subtopics, would be identified. The present memorandum outlines recommendations for authorized tasks within the approved Collateral Criminal subtopics of reclassification, expungement, and infractions.

### Discussion

At its June 30, 2020, meeting, the full Working Group received recommendations regarding the Collateral Criminal practice area. Those recommendations were approved as follows:

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that, with the exception of clients with immigration issues, expungement and reclassification of convictions, and resolution of infractions, be included for ongoing consideration in a paraprofessional program, and that further study be conducted regarding how and whether paraprofessionals might serve clients with immigration issues.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends research and consider supporting a portal that was recently created and launched by TAP, which helps guide pro bono service providers through each step required to file for expungement and reclassification of convictions.

## Consideration of Authorized Paraprofessional Tasks: Expungements, Reclassifications, and Infractions

August 25, 2020

Page 2

The Collateral Criminal subcommittee, comprised of the authors of this memorandum, considered the following in developing recommendations for authorized tasks:

- Information from a Commissioner of the Superior Court, County of Santa Clara, regarding infractions; and
- Conversations with subject matter experts providing collateral criminal legal services

### **Overview of Subcommittee Charge**

The initial focus of the Collateral Criminal practice area were expungements and reclassifications; related recommendations were brought forward to the Working Group at its June 30, 2020 meeting. Those recommendations included a reference to the fact that there was an outstanding issue related to immigrant post-conviction relief (“crim/imm”) matters – expungements and reclassifications for clients who may face immigration consequences. At that meeting the Working Group decided to include infractions as an additional authorized paraprofessional subtopic within the broader area of Collateral Criminal. As a result we have focused our efforts since June 30 on better understanding infraction proceedings and on specifying the tasks and activities that paraprofessionals should be authorized to perform within that area as well as the areas of expungements and reclassifications. With respect to expungements and reclassifications, we were particularly interested in learning more about “crim/imm” matters in order to develop a related recommendation for the Working Group to consider.

### **Infractions**

Commissioner Copeland of the Superior Court, County of Santa Clara, provided detailed information about the resolution of infraction matters, specifically as related to infraction cases that are heard in traffic court. She explained that generally, once a ticket for an infraction has been issued, the person has two months from the date of the issuance to take one of the following steps:

- Plead guilty and pay the traffic fine;
- Pay to go to traffic school (as long as they are eligible);
- Provide proof of correction, if they got a traffic ticket for a “Correctable Violation”;
- Appear at court on the date that is on the ticket; or
- Plead “Not Guilty” and ask for a trial (either a court trial by a judicial officer or a trial by mail/written declaration).

Commissioner Copeland indicated that self-represented litigants comprise 10-15 percent of all litigants who appear before her either for arraignment or trial. Commissioner Copeland expressed that she is comfortable with paraprofessionals providing clients with procedural guidance with respect to all of the bulleted tasks/activities other than the in-court representation that is associated with those litigants who request court trials. She would, however, be inclined to reconsider her position regarding in-court representation provided by

paraprofessionals should robust certification/training requirements, along with provisions for ongoing quality control and frequent oversight, be established and instituted.

### **Expungements and Reclassifications**

Ms. Peggy Stevenson, who runs the Record Clearance Project (Project) at San Jose State University, provided in-depth information regarding the scope of work performed by her team of undergraduate students. She also shared helpful documents that her team uses and provided detailed information regarding the Project's client intake and initial case analysis processes. Ms. Stevenson noted that the Project does not refuse clients with potential immigration issues; Project team members are however trained to advise *all* clients regarding the potential of adverse immigration consequences and further advise that clients consult with an immigration attorney prior to starting the expungement process.

We also met with Ms. Nora Cregan, Founder and Executive Director of The Access Project (TAP), who presented an expanded demo of the TAP portal, and explained that it was created with the primary goal of creating a tool for pro bono attorneys to use to limit errors and create consistent work product. The next phase of development will be to build an interface with Judicial Council forms. The platform does not currently address infractions, but such a module could be developed. What makes the platform impressive and seemingly user-friendly is that it is not only programmed to efficiently guide the user through each step of the record clearance process, but it is also designed to check eligibility criteria under applicable statutes. The platform also provides users with a list of case-specific court documents/forms to be filed along with filing instructions (specific to each jurisdiction). Ms. Cregan also mentioned that they're hoping to make TAP available as a subscription.

Lastly, we met with Mr. Rose Cahn, Senior Staff Attorney at the Immigrant Legal Resource Center (ILRC). Ms. Cahn, who is a nationally recognized expert in the "crim/imm" field, oversees ILRC's pro bono Immigrant Post-Conviction Relief Project. The Project's primary goals are to educate and train immigrant communities to advocate for themselves and train and assist attorneys and legal advocates/paralegals to secure post-conviction relief for their clients. Ms. Cahn indicated that the widespread need and scarcity of legal advocates, which still prevails in this practice area, was the catalyst for this initiative. As part of that effort, a comprehensive toolkit was also created and is available through the training. The kit includes a robust client screening questionnaire and information regarding case-specific forms of relief/eligibility criteria. The purpose of the toolkit is to help legal service providers, including paralegals and paraprofessionals, to spot a defendant's possible immigration relief, especially in the more straight forward cases such as rehabilitative relief and reduction of sentence (Prop. 47). With respect to motions to vacate (expungements) matters, Ms. Cahn asserted that those should either be referred to an attorney or performed in partnership with one; otherwise, "crim/imm" practice area is well suited for paraprofessionals. Another resource available to legal advocates and attorneys is ILRC's Attorney of the Day (AOD) consultation service, which provides case-specific technical assistance to attorneys and legal advocates.

Based upon information gathered during all phases of the review of the Collateral Criminal practice area our subcommittee was in initial agreement that licensed paraprofessionals should be able to perform virtually all tasks within the areas of expungements, reclassifications, and infractions. As such, the bulk of our discussions centered around only a narrow set of potentially unallowable tasks/case types as described below:

*In-court representation.* There is a wide acknowledged recognition of the need for legal assistance in the areas of expungement, reclassification, and infractions, including in-court representation assistance. Although during the course of our review we heard from some who were opposed to paraprofessionals providing in-court representation, including Commissioner Copeland as noted above, upon consideration of the information provided by all of the subject matter experts that we spoke with we believe that paraprofessionals can be trained to handle these kinds of matters properly and, therefore, should be allowed to represent clients in court. Additionally, there is a relative lack of consequence associated with errors; those seeking these types of post-conviction relief have more than one "bite at the apple."

*Certificates of Rehabilitation.* Certificates of Rehabilitation are filed for individuals convicted of a felony who served time in state prison or were convicted of certain misdemeanor sex crimes as conviction expungements are not available to these types of offenders. There is a considerable need for representation of clients in these circumstances. However, given the nature of the underlying offenses there is typically strong opposition from District Attorneys in these matters; as such we do not believe they are appropriate for paraprofessionals to handle.

*Representation of Clients with Immigration Issues ("crim/imm").* "Crim/imm" matters are a hybrid between criminal and immigration, i.e., criminal conviction with immigration consequences. There is a wide acknowledged need for legal service providers in this practice area; however, we believe that additional information is needed to ascertain the exact level of complexity and consequences of errors during each phase of the process.

## **Recommendations**

With the above context in mind, our recommendations for authorized tasks for the three authorized subtopics are as follows:

	Tasks	Authorized Paraprofessional Task?
Record Clearance (Expungements and Prop. 47)	Client Intake	Yes
	Client retainer/engagement	Yes
	Run Live Scan OR assist client with obtaining court records	Yes
	Ensure client is no longer on probation	Yes
	Check on outstanding fines and fees	Yes
	Check applicable code sections to determine eligibility for expungement, reduction, or other clean slate remedy	Yes
	Prepare appropriate petitions and proposed orders by county and remedy (determine if petitions are mandatory or discretionary)	Yes
	Prepare the declaration	Yes
	Prepare the proposed order	Yes
	Determine if a record clearance is needed in addition to the expungement	Yes
	File the petition & get a court date	Yes
	Serve the DA	Yes
	Appear in court if necessary	Yes
	Obtain a copy of the order and send to the DOJ to get RAP changed	Yes
	Preparing Certificate of Rehabilitation	No
	Juvenile record sealing	TBD
	Representation of noncitizens ("crim/imm")	TBD
Infractions	Client Intake	Yes
	Client retainer agreement	Yes
	Obtain a copy of the citation	Yes
	Determine hearing date	Yes
	Meet with client and determine what happened and what the client wants to do	Yes
	Explain the outcome to the client and what the client needs to do to comply with court's decision	Yes
	Appear in court if necessary	Yes

## Next Steps

Consideration of Authorized Paraprofessional Tasks: Expungements, Reclassifications, and  
Infractions

August 25, 2020

Page 6

We have not yet generated recommendations regarding the following tasks:

- Juvenile record sealing; and
- Representation of clients with immigration issues/consequences (“crim/imm”)

We plan to finalize recommendations regarding these areas subsequent to the August meeting.