



# The State Bar of California

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## Draft Minutes

### California Paraprofessional Program Working Group (CPPWG)

August 25, 2020

10:00 a.m.–4:00 p.m.

Zoom Meeting

Time meeting commenced:	10:11 a.m.
Time meeting adjourned:	4:04 p.m.
Chair:	Chris Iglesias
Members Present at Roll Call:	Sharon Bashan, Julia Brynson, Julianne Fellmeth, Steven Fleischman, Stephen Hamilton, Amos Hartston, Kimberly Kirchmeyer, Dana McRae, Elizabeth Olvera, Carolin Shining, Fariba Soroosh, Ira Spiro, Hon. Erica Yew
Members Absent:	None
Also Present:	Ms. Leah Wilson
Committee Coordinator:	Linda Katz

## Open Session

### I. Chair's Report

#### A. Introductory Comments

The chair welcomed and introduced the CPPWG's newest member, Ms. Kimberly Kirchmeyer, Director of the Department of Consumer Affairs and past Executive Director of the Medical Board of California, to the working group. The chair emphasized the importance of the formation of a California paraprofessional program to the Board of Trustees and thanked the CPPWG for all of their hard work to date in that regard. The chair informed the CPPWG that, at his request, the State Bar had launched a social media ad campaign, intending to garner interest and solicit active consumer participation in the CPPWG. At his request, staff presented a video of the ad campaign to the CPPWG.

#### B. Call for Public Comment

**Scot Bernstein:** Mr. Bernstein echoed comments from previous CPPWG meetings regarding the complexity of Employment Law. Mr. Bernstein also expressed strong concern regarding the concept of nonlawyer ownership of law firms and the business model, specifically the Legal Technician business model.

**Melissa Johnson:** Ms. Johnson, a member of the Board of Directors of the California Employment Lawyers Association (CELA), secretary of San Diego County Bar Association, and past chair of the San Diego County Bar Association Employment and Labor Section, asserted that employment law cases are complex because they are not only hard-fought and often litigated, but governed by federal, state, and local laws.

**Chris Dolan:** Mr. Dolan, an attorney who practices in San Francisco and Los Angeles, and past President of Consumer Attorneys of California (CAOC), expressed concern regarding the formation of a paraprofessional program and encouraged the CPPWG to adopt the Employment Subcommittee's recommendations.

**Stephanie Carroll:** Ms. Carroll, of Public Counsel, urged the CPPWG to exclude the Limited Civil practice area from the paraprofessional program. She asserted that allowing paraprofessionals to litigate in limited civil cases, where most debt collection actions are filed, would offend very principles of equal justice, creating an asymmetrical justice system where attorneys represent creditors while debtors, predominantly low-income people of color, would be represented by paraprofessionals. She further asserted that this would institutionalize and legitimize a two-tier system and urged the CPPWG to exclude paraprofessionals from working in the limited civil practice area.

**Genie Harrison:** Ms. Harrison, a plaintiff's employment law attorney and President-elect of Consumer Attorneys Association of Los Angeles (CAALA), expressed strong support for the Employment Subcommittee's recommendation and urged the CPPWG to support its recommendations.

**Jennifer Ostertag:** Ms. Ostertag expressed her approval of the Employment subcommittee's determination and recommendations, especially in light of Washington's LLLT program's marginal success, causing its sunset earlier this year.

**Joshua Furman:** Mr. Furman, a sole practitioner in Los Angeles a certified specialist in legal malpractice law concurred with Ms. Ostertag's comments and added that he believes it would be dangerous to disregard the financial reality of what happened with the LLLT program in Washington. He suggested that the CPPWG should, instead, consider a business model akin to the Citizens Advice Bureau seen in commonwealth countries.

**Leigh Ferrin:** Ms. Ferrin, Director of Litigation and Pro Bono at the Public Law Center in Orange County, indicated that the topic of consumer debt is too broad and not well defined. She suggested that it be renamed to debt collection and, thereafter, each associated task discussed and evaluated separately. Ms. Ferrin asserted that paraprofessionals should not be allowed to provide representation in court, but that allowing paraprofessionals to accompany their clients to court could enable the court to have oversight of the program. In conclusion, Ms. Ferrin encouraged the CPPWG to ensure that community education about legal issues, and assistance available through legal services organizations, are part of the solution.

**Olivier Taillieu:** Mr. Taillieu, a partner at the Dominguez Law Firm in Los Angeles, asserted that, due to the intricacy and complexity of consumer debt cases, attorney

representation is important in such cases. Mr. Taillieu also stated that attorney fees would not be allowable under current state and federal statutes without attorney representation.

**Ann Hull:** Ms. Hull, a member of San Bernardino Bar Association, San Fernando Valley Bar Association, CELA, and the Public Juvenile Defender Center, asserted that employment cases are very complex and that access to justice is best served by increased funding and awareness of existing programs.

**Jason Solomon:** Mr. Solomon, Executive Director of the Stanford Center on the Legal Profession, emphasized the importance of the CPPWG and its work. He expressed concern regarding previous comments, which he believed demonstrated a lack of understanding of the process. When considering inclusion or exclusion of practice areas and tasks in the paraprofessional program, he urged the CPPWG to consider paraprofessionals' capabilities independent of and not compared to that of attorneys. He added that the CPPWG should consider whether a trained paraprofessional could adequately represent an otherwise unrepresented claimant in these types of cases, and not whether they could when compared to an attorney. Mr. Solomon indicated that much research had been done in this regard and cited that nonlawyers do as good of a job or better than lawyers in most cases as long as they are not too complex.

**DeCarol Davis:** Ms. Davis, an attorney with Legal Aid at Work, conveyed her frustration and discontent for the way her comments had been represented in the subcommittee's memo and expressed that she wished to set the record straight. She explained that she sought to honor and respect the work that the paraprofessionals do but that the report gave undue weight to her statements compared to the very clear statement she had made against unsupervised paraprofessionals in the complex area of employment law. Ms. Davis further explained that she had intended to emphasize that addressing the justice gap was not credentialing of more paraprofessionals or anything to that effect; it was creating financially viable pathways to practice public interest law. Ms. Davis also expressed that the subcommittee had missed the point that legal service organizations are under-resourced, and her comments incorrectly reported that she believed it would be beneficial to have paraprofessionals.

**Dana Hadl:** Ms. Hadl, of Bet Tzedek Legal Services, expressed concerns regarding paraprofessionals being allowed to perform any tasks associated with the employment and consumer debt practice areas. She stated that advocates trained in very narrow areas of advocacy would not be able to adequately or confidently issue spot workers' complex legal issues, and asserted that the potential for irreparable harm with respect to waiving rights by bringing actions in small claims rather than unlimited jurisdiction is very real, and there is a very strong likelihood that the DFEH's purpose and jurisdiction would be frustrated and workers would be drawn away from that process.

**Ashley Laiken:** Ms. Laiken, a personal injury attorney in Long Beach, echoed the comments of Ms. Harrison and Ms. Ostertag. She indicated that there are already programs, where consumers can get low to no-cost legal representation. Ms. Laiken also expressed concern regarding the intended business model and how it could result in a

profit-driven business rather than a model designed to open up legal services to people who would otherwise not be able to afford them.

**Jenna Miara:** Ms. Miara, Director of Impact Litigation and Policy at Bet Tzedek Legal Services, stated that Bet Tzedek has grave concerns regarding many of the subcommittees' proposals and urged the CPPWG to slow down and heed the warnings received from practitioners in the field. She suggested that the CPPWG should focus on expanding access to legal aid attorneys and paraprofessionals supervised by those attorneys, educating consumers about the help they can receive from advocates, and how to access those advocates. Regarding the Employment Subcommittee's recommendations, she urged the CPPWG to accept those recommendations and not consider allowing paraprofessionals to represent employment litigants in court. Concerning the Consumer Debt practice area, Ms. Miara urged the subcommittee not to permit paraprofessionals to represent debtors in limited civil matters. She also expressed significant concern about paraprofessionals handling family law matters such as conservatorship, guardianship, elder abuser, and name and gender change.

## **End of Public Comment**

## **II. Business**

### **A. Questions and Answers: Limited License Legal Technician, Washington State**

Ms. Sarah Bové, a Licensed Legal Technician (LLLT) in Washington, provided an overview of Washington's LLLT program's requirements and her background and path to licensure. Ms. Bové confirmed that LLLTs in Washington are permitted to provide legal advice and represent their clients in negotiations outside of court in family law matters without an attorney's supervision, but are excluded from representation in complex matter, as specified in the rules governing the program. LLLTs may accompany their clients to court proceedings, confer with them during those proceedings, and answer questions directed to them by a bench officer. However, their clients are considered pro se litigants and, as such, LLLTs are not allowed to provide legal arguments or representation at hearings. Ms. Bové also explained that LLLTs have the same ethical obligations and confidentiality requirements as attorneys. LLLTs are required to carry malpractice insurance; ethical violations are reported to the Bar Association and may result in discipline, suspension, or loss of license.

### **B. Review of Data to Inform Working Group Deliberations:**

#### **1. Additional Analyses, California Justice Gap Study**

Ms. Leah Wilson provided a brief overview of the California Justice Gap Study (CJGS) data. She explained that the CJGS methodology was intentionally modeled on the Legal Services Corporation's 2017 Justice Gap Study to allow for a comparison of the data between these two studies. She acknowledged that this methodology was not ideal, because respondents were defined as receiving legal help if they spoke to a legal professional, looked up any legal information online, or searched for a lawyer online. Therefore, the data cannot be used to address the subcommittee's question regarding the number of people who sought but were unable to receive legal help. An excerpt from data collected

with respect to the area of consumer debt was presented to the CPPWG and further elaborated on by Ms. Linda Katz.

**2. Potential Impact of Lowered Bar Exam Cut Score on Access to Legal Services**

With respect to the subcommittee's question regarding the potential impact of lowered Bar Exam cut score on access to legal services, Ms. Wilson explained that the CJS reported that an additional 8,961 full-time attorneys would be needed to resolve all the civil legal problems experienced each year by low income Californians. However, the number of exam takers who would have passed the bar exam over the past five years, based on the reduced cut score is no more than 1,250.

**3. California Client Security Fund Data**

With respect to the subcommittee's question regarding the Client Security Fund (CSF) in California, Ms. Wilson explained that the fund reimburses individuals for pecuniary losses caused by dishonest lawyers arising from or connected with the practice of law. The fund does not, however, compensate individuals for losses sustained due to attorney malpractice. To be eligible for reimbursement, a client must file a complaint against the attorney alleging misconduct; claims are not approved until discipline is imposed, which can take many years. Ms. Wilson also provided an overview of the source of annual funding for the CSF, amounts disbursed annually, the fund's balance, and CSF requirements in other state paraprofessional programs.

**C. Discussion of Subtopics and Tasks for Practice Areas**

**1. Consumer Debt**

Ms. Bryn Nelson, Mr. Fleischman, Mr. Hamilton, Mr. Hartston, Ms. Olvera, Ms. Shining, and Judge Yew presented their recommendations regarding subtopics of the Consumer Debt practice area to be excluded from ongoing consideration in a paraprofessional program, as detailed in their memo to the working group.

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that the following topics under the Consumer Debt practice area be excluded from ongoing consideration in a paraprofessional program:

- 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
- Car repossession or defect/warranty issues

Moved by Fleischman, seconded by Hartston.

**Ayes (7)** – Bashan, Bryn Nelson, Fleischman, Hartston, Shining, and Soroosh

**Nays (6)** – Fellmeth, Kirchmeyer, McRae, Olvera, Spiro, and Yew

*Motion carries.*

**2. Family Law, including Children and Custody**

Ms. Bashan, Mr. Hamilton, Ms. McRae, Ms. Olvera, and Ms. Soroosh provided a status update regarding work done to date and presented their preliminary recommendations regarding some of the subtopics of the Family Law practice area to be either included or excluded from ongoing consideration in a paraprofessional program, as detailed in their memo to the working group. As noted in their memo, the subcommittee intends to continue with its work in the coming week to develop a full set of recommendations for all subtopics and tasks included in the Family Law practice area.

**3. Employment Law**

Mr. Fleishman, Ms. Shining, Mr. Spire, and Judge Yew presented their recommendations regarding subtopics of the Employment Law practice area to be excluded from ongoing consideration in a paraprofessional program, as detailed in their memo to the working group.

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that the following topics under the Employment Law practice area be excluded from ongoing consideration in a paraprofessional program:

- Unfair termination
- Unsafe working conditions
- Sexual harassment
- Workers' compensation
- Workplace grievances
- Workplace accommodations

Moved by Fleischman, seconded by Shining.

**Ayes (7)** – Bashan, Brynolson, Fellmeth, Fleischman, Hartston, Kirchmeyer, McRae, Olvera, Shining, and Soroosh

**Nays (6)** – Spiro

**Abstain (1)** – Hamilton

**Absent (1)** – Yew

*Motion carries.*

**4. Collateral Criminal Law**

Supervising Judge Eric Geffon of the Superior Court of California, County of Santa Clara, who hears criminal matters, graciously accepted the subcommittee's invitation to attend the CPPWG meeting to facilitate its discussion.

Judge Geffon echoed the subcommittee's findings with respect to the gap in service in the area of record clearance and reclassifications and expressed his support for the subcommittee's recommendations.

After the discussion conversation with Judge Geffon, Ms. Bashan and Judge Yew presented their recommendation regarding subtopics of the Collateral Criminal practice are to be included in a paraprofessional program, as detailed in their memo to the working group.

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that the following subtopics and tasks under the Collateral Criminal practice area be included in a paraprofessional program:

**Record Clearance Tasks**

- Client Intake
- Client retainer/engagement
- Run Live Scan OR assist client with obtaining court records
- Ensure client is no longer on probation
- Check on outstanding fines and fees
- Check applicable code sections to determine eligibility for expungement, reduction, or other clean slate remedy
- Prepare appropriate petitions and proposed orders by county and remedy (determine if petitions are mandatory or discretionary)
- Prepare the declaration
- Prepare the proposed order
- Determine if a record clearance is needed in addition to the expungement
- File the petition & get a court date
- Serve the DA
- Appear in court if necessary
- Obtain a copy of the order and send to the DOJ to get RAP changed

**Infraction Tasks**

- Client Intake
- Client retainer agreement
- Obtain a copy of the citation
- Determine hearing date
- Meet with client and determine what happened and what the client wants to do
- Explain the outcome to the client and what the client needs to do to comply with court's decision
- Appear in court if necessary

Moved by Fleischman, seconded by McRae.

**Ayes (7)** – Bashan, Brynolson, Fellmeth, Fleischman, Hartston, Kirchmeyer, McRae, Olvera, Shining, Soroosh, Spiro, and Yew

**Absent (1)** – Hamilton

*Motion carries.*

**D. Review/Update of Project Plan: Discuss Sequencing of Activities including Development of Licensing and Regulation Parameters and Discuss Next Steps**

Upon review of the current roadmap and consideration of its timeline, the members of the CPPWG expressed reservations regarding endorsing paraprofessional practice areas and tasks in the absence of an understanding of the requirements for licensing, regulation, and discipline for this newly created license. The Working Group decided to pivot to consideration of these topics, after which it would return to the subject of practice areas and tasks.

**RESOLVED**, that the California Paraprofessional Working Group pause and postpone its consideration and selection of practice areas and tasks and, instead, pivot to consideration and determination of requirements for licensing, regulation, and discipline.

Moved by Judge Yew, seconded by Fellmeth.

**Ayes (12)** – Bashan, Brynelson, Fellmeth, Fleischman, Hartston, Kirchmeyer, McRae, Olvera, Shining, Soroosh, Spiro, and Yew

**Abstain (1)** – Fleischman

*Motion carries.*

In closing, Ms. Wilson acknowledged the CPPWG's decision to suspend its consideration of practice areas and tasks and re-shift its focus to consideration and development of licensing, regulation, and discipline parameters. To allow for more flexibility in scheduling, the CPPWG decided that two-member subcommittees consider each topic. Staff was tasked with an itemization of tasks associated with each topic, the appointment of subcommittee members, compilation of pertinent data, and outreach to subject matter experts in the field, including other states' paraprofessional programs, and scheduling of subcommittee meetings. It was further resolved that the CPPWG would resume its consideration of practice areas and associated tasks after its determination of licensing, regulation, and discipline parameters.

**ADJOURN**