



Date: December 17, 2020

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Julianne Fellmeth, Kim Kirchmeyer, and Ira Spiro

Subject: Update and Recommendations for Disciplinary Structure for 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 requirements for paraprofessional discipline.

DISCUSSION

At its August 25, 2020, meeting, the CPPWG determined that subcommittees should be created to develop requirements for paraprofessional licensing, regulation, and discipline. These subcommittees were appointed subsequent to that meeting, and each met several times to review and consider information about their assigned topics. At its October 29, 2020, meeting, the Working Group reviewed the status reports from each of these subcommittees and provided feedback on the subcommittees' preliminary recommendations and proposals.

At the October 29 meeting, the Discipline Subcommittee, which comprised at that time Kim Kirchmeyer and Ira Spiro, provided the CPPWG with an update on its initial design for a paraprofessional disciplinary structure as follows:

- The State Bar's Office of the Chief Trial Counsel (OCTC) to handle complaint review and investigation;

- First level adjudication to be conducted either by a single staff adjudicator (an attorney employed by the State Bar) or by a three-person panel a public member,¹ and a licensee;
- Appellate level adjudication to be conducted by a distinct staff adjudicator or a three-member hearing panel; and
- An outcome of citation and fine would be established, a remedy unavailable in the attorney discipline system.

Subsequent to that meeting Sharon Bashan and Julianne Fellmeth joined the subcommittee, which has continued to meet and finalize its disciplinary structure recommendations. This memo provides an update on the status of the subcommittee's work, along with preliminary recommendations for a legal paraprofessional disciplinary model.

Table 1. Proposed Disciplinary Model

Model Element	October 29 Proposal	Current Recommendation
Complaint Intake and Investigation	To be handled by OCTC	Same
Diversion Fines and Fees	To be administered by OCTC To be administered by OCTC	Same, with clarification that if an OCTC fine and fee determination is disputed that dispute will be adjudicated by the Hearing Panel
Initial Hearings and Disputed Fine and Fee Determinations	Three-person panel or staff adjudicator	Three-person Hearing Panel
Settlement Conferences	Undecided	To take place only if both OCTC and paraprofessional mutually consent. To be heard by staff adjudicator
Appeals and Stipulated Discipline	Three-person panel or staff adjudicator	Three-person panel or the Paraprofessional Board
Final Discipline Decision	Supreme Court	Suspensions and Revocations: final discipline decision to be made by the Supreme Court. Appeals from the Appeals level to be heard by the Supreme Court. All other discipline finalized at appropriate level within the State Bar's paraprofessional disciplinary structure, level as yet to be determined.

¹ Public members could not be current or former attorney or paraprofessional licensees.

A detailed infographic of the model is provided as Attachment A. Selected issues are addressed below.

THREE-PERSON PANELS VERSUS STAFF ADJUDICATOR

The subcommittee's October 29 update provided options, to be vetted by the Working Group, as to who would preside over the initial hearing and the first appeal, either a single staff adjudicator or a panel comprising a staff adjudicator, a public member, and a paraprofessional licensee. The identified benefits of a panel model included the ability to have broader participation in the disciplinary decision-making process, specifically enabling the participation of a paraprofessional. The Department of Consumer Affairs' disciplinary processes all allow for participation by relevant licensees. Alternatively, a staff adjudicator model would afford efficiency and cost containment benefits.

Subsequent to the October 29 meeting, the subcommittee determined that the benefits of the panel model at the Hearing level, where a majority of cases will be disposed, outweigh the potential downsides. The subcommittee continues to believe that it is important that these panel members be appropriately trained and compensated and will be generating recommendations in that regard for future CPPWG consideration.

With respect to the appellate level, the subcommittee has outlined two options for the CPPWG's consideration—a distinct three-member panel or the Paraprofessional Board.² Leveraging the licensing board, which will presumably be a volunteer in nature, at this stage would be a lower-cost option than utilizing a new three-member Appeals panel, and would still allow for participants with a mix of backgrounds and licensure statuses. Given that a relatively small number of matters are likely to be appealed, the subcommittee is less concerned about the lack of paid professional adjudicators at this level as compared to the initial hearing stage.

UNAUTHORIZED PRACTICE OF LAW

The subcommittee has begun to explore the interplay between licensed paraprofessionals and the existing framework for the investigation and prosecution of the unauthorized practice of law (UPL), in part to determine whether any or statutory changes that might need to be made to address the addition of paraprofessionals a new class of legal licensee. To this end the subcommittee heard from Steve Moawad, Special Assistant to the Chief Trial Counsel, Agustin Hernandez, Supervising Attorney, OCTC, and Ryann Gerber Jorban, Deputy District Attorney with the Consumer Protection Division of the Los Angeles County District Attorney's Office. OCTC has limited statutory remedies available; it can assume jurisdiction over an unlawful practice, pursue civil fines in the superior court, and refer matters to local District Attorneys' Offices (DA Offices). DA Offices can pursue

² As part of its deliberations, the Discipline Subcommittee acknowledged a lack of clarity regarding the structure and composition of the overarching paraprofessional board. The CPPWG's discussion of this topic at its December 17 meeting will be helpful; for the purposes of its deliberations, the subcommittee assumed that there would be a board comprised of a mix of attorney and nonattorney members that would be available to participate in the disciplinary process.

misdemeanor criminal charges³, though a lack of staffing and other resources appears to make this outcome a reality for only the most egregious matters in many jurisdictions. In fact, while the subcommittee now understands that the UPL statutes may not need to be changed to accommodate a new class of licensees, a pervasive lack of resources in OCTC and DA Offices is of concern and may need to be addressed by the CPPWG's recommendations. The addition of a new class of licensees is likely to increase the workload for both systems given the need to determine if the behaviors at issue are in fact authorized under the parameters of the licensed paraprofessional program. The subcommittee will continue to explore these issues and will determine if recommendations in this area are warranted for consideration by the CPPWG.

PUBLIC RECORDS

The subcommittee has also begun deliberations regarding which paraprofessional disciplinary records should be made public. In the attorney discipline system:

- Complaints are not public until charges are filed.
- If a case is settled through stipulation prior to charges being filed, it does not become public until final discipline is imposed.
- All final discipline is public, with the exception of private reproof.
- Private reproof is public only if charges were filed in the case.

The subcommittee has considered, but not reached a decision regarding, whether fines and diversion should be made public. Fines are unavailable in the attorney discipline system. Diversion is most akin to agreements in lieu of discipline⁴. While there is a consumer protection argument that all types of outcomes should be made public, there is a counter-view that paraprofessionals will be less likely to agree to remedies that may ultimately be more protective than an adjudicated hearing if those remedies are made public.

In addition to the types of situations that will be made public, the subcommittee is considering the question of how long disciplinary and other records should be publicly available.

NEXT STEPS

The Discipline Subcommittee will continue to meet, and will develop additional recommendations on topics including:

- Mandatory fee arbitration in the paraprofessional disciplinary system context;
- Compensation and training for panel members;
- Clarification of diversion, fines and fees, and alternatives in lieu of discipline;

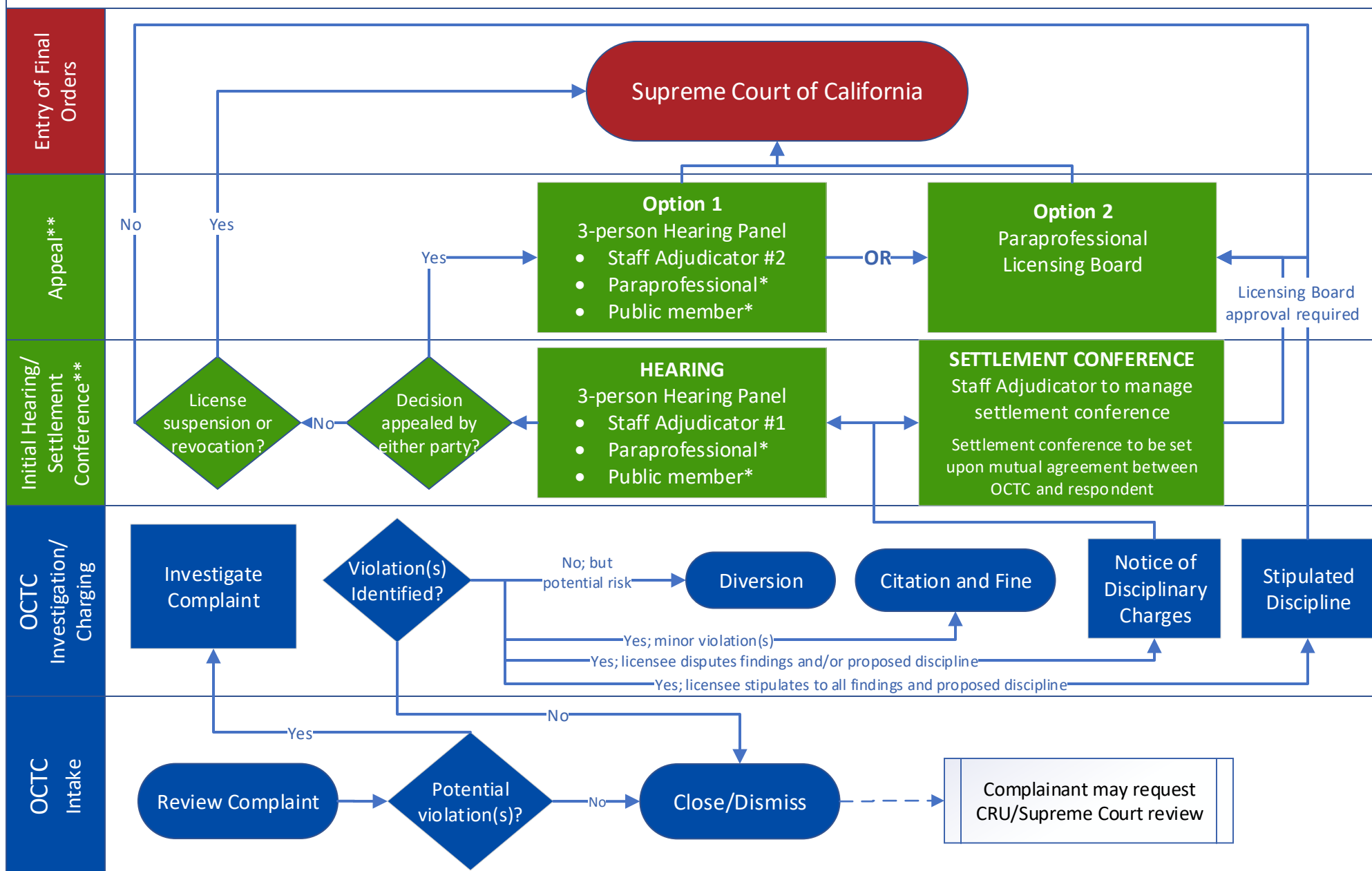
³ Ms. Jorban identified as problematic the fact that DA Offices are limited to misdemeanor charges even when dealing with repeat UPL offenders. She suggested that statutory changes are needed to authorize felony charges in certain circumstances.

⁴ The Discipline Subcommittee has not yet addressed agreements in lieu of discipline, a nondisciplinary outcome available in the attorney discipline system.

- Enhancements/improvements to the existing UPL enforcement structure;
- Public records; and
- Standards of discipline.

Proposed Structure of Paraprofessional Discipline System

ATTACHMENT A



*Panels will be appointed for a limited term, and will hear all cases during their term. Panel members will receive extensive training, and be paid for hearing cases.

**OCTC to prosecute cases at hearing and appeal.