



# The State Bar of California

---

## Draft Minutes

### California Paraprofessional Program Working Group (CPPWG)

October 29, 2020

10:00 a.m.–4:00 p.m.

#### Zoom Meeting

Time meeting commenced:	10:01 a.m.
Time meeting adjourned:	4:04 p.m.
Interim Chair:	Amos Hartston
Members Present at Roll Call:	Sharon Bashan, Julia Brynson, Julianne Fellmeth, Steven Fleischman, Stephen Hamilton, Kimberly Kirchmeyer, Dana McRae, Elizabeth Olvera, Carolin Shining, Fariba Soroosh, Ira Spiro, Claudia Torres-Ambriz, Hon. Erica Yew
Members Absent:	None
Also Present:	Leah Wilson
Committee Coordinator:	Linda Katz

### Open Session

Ms. Leah Wilson introduced Mr. Amos Hartston as the interim Chair, explaining that the previous Chair, Mr. Chris Iglesias's, term with the Board of Trustees had ended, and efforts were underway to recruit a new chair for the working group. Mr. Hartston proceeded by thanking the working group and each subcommittee for their hard work since the previous meeting. Mr. Hartston announced that extra time had been allotted on the agenda to allow for an extended public comment period and invited the public to indicate their interest in providing comments by clicking on the "raised hand" feature available on the Zoom platform. Prior to the commencement of public comments, Ms. Linda Katz introduced and welcomed Ms. Andrea Fitanides, Director of the State Bar Office of Access & Inclusion.

## I. Public Hearing

### A. Call for Public Comment

**Angela Grijalva:** Ms. Grijalva, of Prepared Legal in Sacramento, expressed that working on the front lines allows her to see the barriers to access and available resources firsthand. She further expressed a great need for low cost legal services in her community but indicated that there aren't enough providers who can meet those needs. Ms. Grijalva also indicated that, although Sacramento is proliferated with not-for-profit legal resources, actually gaining access

to those resources is often a lengthy and time consuming process due to the general structure of these programs, which require the consumer to go through a series of steps before actually getting help.

**Stephanie Carroll:** Ms. Carroll, of Public Counsel, expressed Public Counsel's overall opposition to the formation of a California paraprofessional program and its concern that doing so would create a for profit industry that would hurt low-income consumers. She also indicated that the proposed paraprofessional areas of practice and target consumers are already fully addressed by legal service providers. Ms. Carroll urged the working group to take what happened in Washington State's LLLT program to heart.

**Dean Michael Hunter Schwartz:** Mr. Schwartz commented on the proposed educational prerequisites for paraprofessionals and expressed that the working group should consider expanding those to include those with a Master of Studies Law or a Master of Science in Law degree.

**James Gorton:** Mr. Gorton, a certified specialist in Estate Planning and Probate law in Los Angeles, expressed concern regarding the absence of laws to regulate and hold Artificial Intelligence (AI) providers liable, specifically for incorrect AI output. Mr. Gorton also expressed concern regarding the use of AI solutions by independent paralegals with little education, training, and experience. Mr. Gorton asserted the importance of and need for robust laws and regulations governing AI providers. Mr. Gorton also asserted the need for ethical standards and Rules of Professional Conduct specific to AI providers to ensure that traditional client safeguards are also afforded to those receiving legal services through AI.

**Kathleen Rivas:** Ms. Rivas of Public Council expressed Public Counsel's opposition to the formation of a California paraprofessional program and indicated that Public Counsel believes that only licensed attorneys should be authorized to provide legal services, especially to those most vulnerable to fraud. She indicated that the rampant fraud seen with immigration consultants should serve as a warning to the State Bar regarding the kind of problems low-income clients could face in other areas of the law if represented by paraprofessionals.

**Leigh Ferrin:** Ms. Ferrin, Director of Litigation and Pro Bono at the Public Law Center in Orange County, thanked the working group for extending the public comment period and posting each subcommittee's report in advance of the meeting. Ms. Ferrin recommended that moving forward, each of the subcommittees be expanded in size to allow for additional participation and input, particularly from law enforcement and other regulatory enforcement agencies. Concerning the subcommittee's report and recommendations regarding paraprofessional discipline, Mr. Ferrin pointed out that one of the most significant pieces missing from the report is the costs associated with setting up and, thereafter, operating the program. She also suggested that all infractions, whether minor or significant, be disclosed on the paraprofessional's public online record/profile. Concerning the subcommittee's report and recommendations regarding licensure, Mr. Ferrin suggested that paraprofessionals should be required to complete their practical training hours under the supervision of an attorney and not another paraprofessional. Concerning regulation, Ms. Ferrin emphasized the importance of consumer protection and providing those victimized by unscrupulous providers with some

measure of relief; however, she agreed that it's not necessary to treat paraprofessionals the same as attorneys since their license will be limited and not the same as an attorney's. In conclusion, Ms. Ferrin reiterated that, even though the working group's proposal is difficult to grapple with, the Public Law Center recognizes that there is a justice gap and would appreciate the opportunity to brainstorm ideas on how to close that gap. She stated that they also recognize that there are competent legal document assistants and paralegals in the field, many of whom they work in collaboration with, but that there are also some bad actors from whom consumers, particularly vulnerable low-income individuals in California, immigrants, and people of color, should be protected from.

**Charlie Gillig:** Mr. Gillig, Vice-President of Neighborhood Legal Services of Los Angeles and an adjunct professor at Loyola Law School, applauded the State Bar's creative approach to solving problems related to access to justice but echoed the concerns voiced by previous speakers regarding the working group moving too fast concerning its consideration of the creation of a paraprofessional program. He asserted that additional research and deliberation are required before a solution is incorporated and implemented due to the complicated nature of this issue and encouraged the working group to conduct further studies as to the costs and benefits associated with a paraprofessional program, and consider other proven alternatives, before recommending it for implementation.

**Jessica Vapnek:** Ms. Vapnek, from UC Hastings, voiced her agreement with Dean Schwartz regarding the inclusion of non-JD law degrees among the prerequisites for the paraprofessional program. She explained that there are more than 750 non-JD programs that had received ABA acquiescence, and that by 2019 25 percent of all law schools have such programs. The MSL programs are intended to provide training and legal analysis and to democratize legal education. Many of the students have advanced degrees; they vary in age, nationality, experience, and interests. She reported that, at UC Hastings, a high proportion of students in this program are minorities, and she believes they can play a role in providing access to justice. Ms. Vapnek expressed strong support for the paraprofessional program and likened it to her experience as a lawyer with the United Nations, working in agriculture. She explained that legislation was proposed in that country to allow para-veterinarians to perform certain tasks, including vaccination of animals. This was essential, as there were very few veterinarians in the country, all of whom lived in the capital city, leaving no one to serve the rural populations. There was opposition from the veterinarians, but ultimately the legislation passed, which helped to reduce outbreaks of animal diseases. By licensing legal paraprofessionals, the State Bar can play a similar role in improving access to justice in California.

**Tom Gordon:** Mr. Gordon, Executive Director at Responsive Law, expressed his agreement with the California Justice Gap Study's findings, specifically the need for affordable legal help. Mr. Gordon also indicated that he was pleased that the subcommittee's recommendations regarding licensure requirements are closer to the Ontario model than the Washington State one since the Ontario model has proven to be more realistic, attainable, and all-around more successful. Mr. Gordon also expressed that he hopes for significant public representation on any paraprofessional governing board to ensure that the board is not controlled by members of a specific industry or by providers subject to being regulated by the State Bar.

**Christina Tusan:** Ms. Tusan, a consumer protection attorney, commended legal aid groups and the quality of the services provided by their qualified attorneys and suggested that the State Bar consider expanding on those services; funding those projects to provide expanded access to legal services and representation by skilled, licensed attorneys instead of creating an entirely new system. Ms. Tusan indicated that the educational and training requirements proposed by the subcommittee would not be adequate; their knowledge and experience would still be limited and potentially detrimental to their clients. She also indicated that she is concerned that, akin to immigration consultants, paraprofessionals would take advantage of the most vulnerable in the community and/or the elderly by charging exorbitant fees for their services.

**Marissa Hernandez:** Ms. Hernandez expressed that she is generally opposed to the creation of a paraprofessional program; however, if the program is to be created, she suggested that additional work be done by the working group to identify and limit the number of practice areas, clearly define the scope and allowable tasks within each practice area, and impose a cap on the amounts paraprofessionals can charge for services rendered. Ms. Hernandez also asked that the working group consider advocating for more funding and resources for legal aid organizations.

**James Sandman:** Mr. Sandman, President Emeritus of the Legal Services Corporation, expressed his strong support for a licensed, regulated paraprofessional providing legal assistance to consumers who would otherwise not have advocacy. He indicated that studies such as the California Justice Gap Study (JGS) demonstrate the need for additional legal service providers. Mr. Sandman suggested that the Working Group address concerns regarding a new licensure program through reasonably robust and appropriate regulation. Mr. Sandman stated that one way to effectively address both the knowledge and service gaps, as highlighted by the JGS, is to embed paraprofessionals in organizations and businesses that consumers already turn to when faced with problems (e.g., social service agencies, public libraries, health care centers, churches). Doing so would make the process less daunting and allow consumers an easier, more convenient way to access legal services. Mr. Sandman also asserted that it is critically important for the working group to provide a platform and meaningful opportunities for broad public input; consumers are perfectly capable of advocating for themselves and should be included in the discussion. Akin to the process that Utah and Arizona recently went through, it should not be just attorneys providing input regarding consumers' needs and wants.

**Jenna Miara:** Ms. Miara, Director of Impact Litigation and Policy at Bet Tzedek Legal Services, expressed that she agrees with almost everything that the previous commentator, Mr. Sandman, said, especially with regard to the urgency of the problem and the scope of unmet legal need, particularly among low-income communities. However, she indicated that she is having trouble connecting how the solution currently contemplated and proposed by the working group would solve the problem and fundamentally disagrees with creating a new for-profit category of paraprofessional licensees. Ms. Miara also expressed that she agrees with Ms. Ferrin's comment; each subcommittee should be expanded in size to allow for more input, perspective, and, if needed, a tiebreaker. In terms of paraprofessional discipline, Ms.

Miara indicated that it's essential for the public to have access to all complaints, even those considered minor, and a user-friendly, easily accessible complaint program. She stressed that the working group also considers the collateral impacts a new licensee program, such as this, may have on law enforcement agencies. In terms of licensing, Ms. Miara commented that, at a minimum, paraprofessionals should be required to complete their training hours under the supervision of an attorney and encouraged the working group to review a recently published report by Minnesota to that effect. Ms. Miara remarked on the importance of fee caps and proactive regulation and ensuring appropriate and timely contributions to the restitution fund; affirmative checking to ensure that paraprofessionals carry insurance and are properly bonded; and the need for audits of things such as advertising and client disclosures. She also remarked that there should also be disclosures regarding the availability of free legal services. In conclusion, Ms. Miara urged the working group not to recommend creating a California paraprofessional program. However, should the working group decide to continue with its work currently underway careful recommendations in the areas of licensing, regulation, and discipline, paired with very narrow areas of law and well-defined tasks within those areas, will be essential.

**Hellen Bellamy:** Ms. Bellamy appealed to the working group to open the legal profession up to allow nonattorney service providers. She expressed that not all consumers can afford to pay attorneys' fees yet have a constitutional right to legal advocacy and should have options to choose from and accessing the law and providing representation should not just be limited to attorneys. She indicated that the current structure is not consumer-friendly, especially for low-income consumers and people of color. Ms. Bellamy also advocated for consumer choice stating that all consumers, regardless of income, deserve to have choices.

**Julianna Lee:** Ms. Lee, of the Legal Aid Foundation of Los Angeles expressed that she agrees that there is an unmet need for legal services and acknowledged the need for additional service providers; however, she indicated that she is concerned about allowing paraprofessionals to provide legal services independent of an attorney, particularly in family law cases involving domestic violence. She explained that domestic violence cuts across vast swathes of law with profound substantive implications and, therefore, should be excluded from the program. She also indicated that although the subcommittees' status reports were helpful, they weren't detailed enough and didn't provide a clear insight into the reasoning behind some of the statements and decisions presented therein. She also echoed the comments made by Ms. Ferrin with respect to expanding subcommittees to allow for additional input, adding that having more people involved and having a diversity of views would inform the process a lot better.

**Bridget Gramme:** Ms. Gramme, the Administrative Director at the Center for Public Interest Law at the University of San Diego School of Law and former member of the Task Force on Access Through Innovation (ATILS), explained comments previously made are an inaccurate representation of ATILS's position regarding in-court representation provided by paraprofessionals. She clarified that, after extensive discussions, the task force determined that it would be best to have a different and separate working group consider the creation of a California paraprofessional program. Ms. Gramme further clarified that the task force's findings, presented in their final report, never intended to limit the scope of practice. Ms. Gramme also

indicate that it is inaccurate to compare immigration consultants to paraprofessionals, explaining that immigration consultants are not licensed or regulated. Although they must register with the Secretary of State, there is no governing board or oversight provided, which is very different from what's being contemplated by the working group for the paraprofessional program. Ms. Gramme expressed appreciation for Mr. Sandman's comments and asserted that it is a crisis when 85 percent of Californians cannot gain access to adequate legal services, which is not something that can be fixed by just increasing funding for legal aid services. She encouraged participants from the legal service community to keep an open mind about how their concerns may be addressed with an adequate regulatory system.

**Prescott Cole:** Mr. Cole, Senior Staff Attorney with California Advocates for Nursing Home Reform, urged caution, warning that a paraprofessional program might create new problems for consumers. The potential problems that he identified were incompetent paraprofessionals and predatory paraprofessionals. He warned that seniors are particularly vulnerable to elder financial abuse, and that these cases are not a priority for law enforcement. He added that there are few civil litigators that pursue these cases. Mr. Cole warned that there is no way to guarantee that a person who holds a limited license will not exceed the scope of their license, and venture into more complex areas of law. He also expressed concern about the ability of the State Bar's disciplinary system to investigate and prosecute violations.

## **End of Public Comment**

## **II. Business**

### **A. Status Update from Working Group Subcommittees**

#### **1. Licensing:**

Ms. Brynelson and Mr. Hamilton provided a status update regarding work done to date and presented their preliminary recommendations regarding licensing requirements for paraprofessionals. As detailed in their memo to the working group, Ms. Brynelson and Mr. Hamilton indicated that they had been mindful of the need to strike a balance between consumer protection and program viability, as well as Washington's experience in this area, when developing the framework for licensing.

Members of the working group reviewed and discussed the proposed licensing requirements. Some members suggested that the subcommittee consider for eligibility graduates from California unaccredited law schools, as well as those with LLM degrees. Others suggested that eligibility should be limited to graduates from ABA-approved law schools. There was also discussion regarding the educational and experiential training requirements, with some members opining that these requirements should be increased, while others expressed concern about the increased costs to potential licensees. Ms. Brynelson and Mr. Hamilton explained that input regarding specific educational and experiential training will be solicited from the practice area subcommittees and incorporated into their recommendations. They agreed to consider feedback provided by the working group at today's meeting in their review of licensing requirements prior to making further recommendations to the working group.

#### **2. Regulation:**

Mr. Hartston and Ms. Soroosh provided a status update regarding work done to date and an overview of topics for further exploration regarding a regulatory structure for paraprofessionals. As noted in their memo to the working group, the subcommittee sought input from the working group on the topics of continuing education financial responsibility, and fee caps.

The working group discussed the information provided by the subcommittee, focusing on the financial responsibility options. Some members expressed opposition to requiring malpractice insurance, suggesting that a bond requirement would be a better option. There was also discussion about the Rules of Professional Conduct that should be applied to paraprofessionals, including prohibitions on fee splitting, advertising limitations, and mandatory disclosures. Some members of the working group questioned why requirements such as malpractice insurance and fee caps should be imposed on paraprofessionals, when there are no such requirements for attorneys.

Mr. Hartston and Ms. Soroosh agreed to consider feedback provided by the working group at today's meeting in their review of regulatory requirements prior to making further recommendations to the working group.

### **3. Discipline:**

Ms. Kirchmeyer and Mr. Spiro provided a status update regarding work done to date and presented their preliminary recommendations regarding a discipline system for paraprofessionals. Ms. Kirchmeyer and Ms. Spiro gave an overview of the initial draft of the proposed paraprofessional discipline system, which would be a hybrid between the State Bar's existing attorney discipline system and a new process involving staff adjudicators and hearing panels.

Members of the working group suggested it would be helpful to have information to compare the cost of State Bar Court vs. having a separate system for adjudicating discipline cases. Ms. Wilson agreed to provide a cost analysis. There was also discussion about whether information about discipline at all levels, including for minor violations, would be publicly available.

### **B. Review/Update of Project Plan:**

The working group agreed that the Licensing, Regulation, and Discipline Subcommittees would reconvene to consider the feedback provided at today's meeting and would provide revised recommendations to the working group at its next meeting. It was also agreed that the Family Law Subcommittee would reconvene, and provide its recommendations, as well. Ms. Wilson added that she would work with staff in the Office of Professional Competence to begin drafting Rules, with input from the subcommittees.

Members were invited to join subcommittees of interest, and staff agreed to send an email inviting them to do so. In response to public comments, the working group agreed that all subcommittee meetings, regardless of size, would be subject to Bagley-Keene open meeting requirements.

**ADJOURN**