



# The State Bar of California

---

## Draft Minutes

### California Paraprofessional Program Working Group (CPPWG)

December 17, 2020

10:00 a.m.–4:00 p.m.

### Zoom Meeting

Time meeting commenced:	10:03 a.m.
Time meeting adjourned:	4:00 p.m.
Chair:	Hon. Ioana Petrou
Members present at roll call:	Sharon Bashan, Julia Brynson, Julianne Fellmeth, Steven Fleischman, Stephen Hamilton, Hon. Michael Harper, Amos Hartston, Kimberly Kirchmeyer, Dana McRae, Elizabeth Olvera, Nicole Robinson, Hon. David Rubin, Fariba Soroosh, Ira Spiro, Claudia Torres-Ambriz, Hon. Monica Wiley, Hon. Erica Yew
Members absent:	Carolyn Shining
Also present:	Leah Wilson, Andrea Fitantes, Christopher McConkey
Committee Coordinator:	Linda Katz

### Open Session

The Chair, Hon. Ioana Petrou announced that this meeting of the California Paraprofessional Program Working Group is her first and welcomed the other new members: Hon. Michael Harper, Dr. Nicole Robinson, Hon. David Rubin, and Hon. Monica Wiley, encouraging them to join one or more of the working group's subcommittees.

### Call for Public Comment

**Michael Schwartz:** Mr. Schwartz, Dean of the University of the Pacific's McGeorge School of Law, voiced support for the working group's endeavor and encouraged it to accept a Master of Laws (LLM) degree as meeting the education requirements for entry into a future legal paraprofessional program. He suggested that, if paralegal degrees would qualify an applicant, then so too should LLM degrees since they require rigorous and relevant coursework. Additionally, many ABA- and California-accredited law schools offer LLM degrees.

**George Leal:** Mr. Leal, Dean and Professor at the Irvine University College of Law, responded to a *Los Angeles Times* article that was circulated to the working group. Mr. Leal expressed concern that the article reflected a narrow view of attrition at unaccredited law schools, stating that aspect of attrition that the article omits is that California requires some attrition via the First-Year Law Students' Examination. Mr. Leal concluded by asking the working group to consider graduates of unaccredited law schools as eligible for the program, noting that many of them would fit well into a legal paraprofessional program.

**Leigh Ferrin:** Ms. Ferrin, Director of Litigation and Pro Bono at Public Law Center, encouraged the working group to work with additional substantive law experts. She also asked the members to pilot a legal paraprofessional program on a small scale and under attorney supervision. Ms. Ferrin asserted that a pilot would allow California to collect data about the efficacy and risks of a broader legal paraprofessional license.

**Jessica Park:** Ms. Park, Vice President and Dean at Abraham Lincoln University School of Law, expressed support for the working group's endeavor. Referring to earlier public comments, Ms. Park added that the *Los Angeles Times* article circulated to the working group omitted some information that unaccredited law schools provided to the reporters about the challenging standards and process for accreditation. She agreed that the working group should seek experts with substantial field experience to help guide its work.

**Pause in Public Comment** (Due to time constraints of invited speaker)

### **III. Business**

#### **B. Proactive Regulation and Program Evaluation**

Ms. Wilson welcomed Zachariah DeMeola from the University of Denver's Institute for the Advancement of the American Legal System. Mr. DeMeola introduced his workshop as a method to create metrics and identify data required to evaluate a legal paraprofessional program. He explained the need to identify regulatory objectives such as expanding access to civil justice without creating undue risks to consumers. He also described the concept of the "next best alternative" and its role in evaluating a new public policy.

Mr. DeMeola led the working group through several exercises to list key objectives and identify risks for regulating the future work of legal professionals. Objectives identified by the working group included meaningfully expanding access to civil justice, protecting legal services consumers, lowering the cost of legal services, educating the public about their options for legal help, and alleviating the burden on courts.

The working group discussed the need to evaluate a future legal paraprofessional program against California's existing civil legal infrastructure, which has perpetuated a sizable justice gap; the number of self-represented litigants continues to increase, notwithstanding the increasing availability of limited scope and unbundled legal services. The state's current handling of legal document preparation—as a profession—offers another point of comparison.

The working group proceeded to identify the risks of a legal paraprofessional program. Members noted the following risks to consumers: realizing a worse legal outcome than otherwise likely, missing an opportunity to exercise a legal right, overpaying for legal services, and paying for the wrong legal services. Mr. DeMeola guided the working group members through discussing how to measure such risks, such as by collecting data about case outcomes and collecting feedback from consumers and judges.

Mr. DeMeola concluded by recommending that California collect as much as data as it can to assess how well a legal paraprofessional program accomplishes its public policy objectives. Ms. Wilson noted that one tool for assessing the efficacy of this intervention in the state's justice gap is the State Bar of California's Justice Gap Study, which could be repeated at regular intervals.

#### **A. Paraprofessional Program Regulatory Structure and Board Composition**

Ms. Katz reviewed the proposed composition for a legal paraprofessional program governing body, as outlined in her memo to the working group. Having reviewed similar oversight bodies in other jurisdictions, staff recommended a 13-member board, consisting of 6 public members, 5 paraprofessionals, and 2 attorneys, with appointing authority vested in the California Supreme Court, the Governor, and the Legislature.

The working group discussed the proposal and suggested that the board should include some judicial officers, and that some of the members should be appointed by the State Bar Board of Trustees.

#### **Public Comment, continued**

**Angela Grijalva:** Ms. Grijalva, from Prepared Legal, commented that the working group should be wary of proposing that California set the fees that legal paraprofessionals can charge. The state avoids doing this for most other professions and, provided adequate competition, the market is capable of incentivizing price increases and decreases as appropriate.

#### **End of Public Comment**

### **I. Minutes**

#### **A. Approval of Meeting Minutes**

**RESOLVED**, that the California Paraprofessional Program Working Group approves the minutes from the June 30, 2020, July 13, 2020, and August 25, 2020, meetings.

Moved by Hamilton, seconded by McRae.

**Ayes (9):** Bashan, Brynson, Fellmeth, Hamilton, Hartston, McRae, Olvera, Soroosh, Yew.

**Abstentions (4):** Harper, Kirchmeyer, Robinson, Rubin.

**Absent (3):** Shining, Spiro, Torres-Ambriz.

**Noes:** None

*Motion carries.*

### **III. Business**

#### **C. Discussion of Initial Program Rollout: Pilot and Other Options**

The chair announced that the working group would form a new subcommittee to recommend a structure for a legal paraprofessional pilot project, and introduced State Bar Office of Access & Inclusion Director Andrea Fitanides. Ms. Fitanides commended the working group for exploring a pilot project to test a potential paraprofessional program's impact on the justice gap and consumers in California. She also noted that this morning's discussion with the Institute for the Advancement of the American Legal System laid a great foundation for framing a pilot approach.

Ms. Fitanides described the benefits of testing various aspects of a legal paraprofessional program in a contained setting, explaining that pilots, by their very nature, seek to limit risk. In addition to the risks that the working group considered during its conversation with Mr. DeMeola, Ms. Fitanides highlighted concerns about the viability of the program, both in a pilot phase and over the long term. These concerns include controlling the cost and complexity of launching a new profession, achieving enough participation among practitioners, and encouraging enough interest among potential clients.

Ms. Fitanides presented information about Minnesota's recently launched legal paraprofessional pilot, including practice areas, eligibility requirements, implementation body, and safeguards for consumers. That project tests the services of attorney-supervised legal paraprofessionals in select housing and family law cases. A standing committee certifies participants, investigates complaints, and evaluates progress towards the program's goals. To participate, legal paraprofessionals must meet certain education and experience requirements such as obtaining a degree in paralegal studies, a four-year degree with a paralegal certificate, or a law degree, among other avenues.

The working group also reviewed California's Sargent Shriver Civil Counsel Act pilot projects. Those projects use attorneys to render legal services in qualifying housing, family, and probate matters in selected jurisdictions. An advisory committee of judges, court administrators, legal services agencies, and other participating partners oversees each pilot. The working group discussed whether, in order to protect consumers, attorney supervision of legal paraprofessionals should be required during a pilot phase.

Working group members remarked about the medical field's success with expanding healthcare—another high-stakes service—through nurse practitioners and physician assistants. The working group agreed that it would help to examine lessons from the healthcare system and approach with respect to eligibility and supervision.

In creating the boundaries of a legal paraprofessionals pilot project, the working group reflected on the need to consider the following factors: unmet civil legal needs of modest-means Californians, availability of nonattorneys with experience in the relevant

practice areas, typical complexity of relevant legal matters, and the risk of harm due to inadequate representation.

The working group discussed the idea that, to incentivize participation in a pilot project, barriers to entry might need to be reduced. This might manifest as expedited approval for experienced paralegals, substituting relevant experience for education, and waiving licensing fees. The working group also considered the timeline for a pilot project and whether the program could start out with a relatively small number of approved practice areas, expanding over time based on pilot results.

The working group noted that requiring attorneys to supervise participants might reduce the barrier to launching a pilot. However, post-pilot attorney supervision of legal paraprofessionals might prove untenable for both lawyers and paraprofessionals as well as undermine the program's potential for increasing access to justice. There is a risk, therefore, that requiring attorneys to supervise during a pilot would miss the opportunity to test a fundamental premise of the program: that experienced legal paraprofessionals can safely and effectively provide select legal services without attorney supervisors.

#### **D. Updates and Recommendations from Subcommittees**

##### **1. Family Law**

The Family Law Subcommittee discussed public comment received in a letter from Public Counsel and Bet Tzedek Legal Services. The letter urged the Family Law Subcommittee to conduct an in-depth review of tasks involved in conservatorships and guardianship, akin to the review undertaken for family law. The Family Law Subcommittee agreed to revisit these topics at future meetings.

The working group provided an update on the status of its review of subtopics and tasks for the family law practice area, as detailed in the memo provided to the working group. The working group discussed the recommendations and provided feedback, which the Family Law Subcommittee agreed to consider at future meetings.

##### **2. Licensing**

The Licensing Subcommittee presented an update and preliminary recommendations for paraprofessional licensing requirements. The working group discussed the recommendations and provided feedback, which the Licensing Subcommittee agreed to consider at future meetings.

#### **E. Next Steps**

The chair proposed that a two-hour meeting be scheduled in January to consider the update and preliminary recommendations from the Licensing and Discipline subcommittees, since there was not time to do so during today's meeting. The next full day meeting would be scheduled for February.

**ADJOURN**

