



Date: February 26, 2021

To: The California Paraprofessional Program Working Group

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Subject: Pilot Implementation Subcommittee Recommendations

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, an implementation strategy, including a recommendation as to whether to pilot the program.

At its meeting on December 17, 2020, the CPPWG heard a presentation about the potential benefits of piloting the program in California. Shortly after that meeting, CPPWG Chair, Justice Ioana Petrou, and CPPWG members Judge Erica Yew, Sharon Bashan, Julianne Fellmeth, Stephen Hamilton, Kimberly Kirchmeyer, and Fariba Soroosh, volunteered to serve on a Pilot Implementation Subcommittee; Judge Yew serves as subcommittee chair.

This memorandum contains the subcommittee's recommendations for structuring the launch of a legal paraprofessionals program. In developing these recommendations, the subcommittee considered several options including:

1. Piloting the program in a limited number of counties in several stages, conditioning subsequent implementation phases on the outcome of these pilots,
2. Launching the permanent program in a limited number of counties and/or subset of legal practice areas, phasing in additional geographies and practice areas over time,
3. Launching the program with design elements that do not match the final program design in order to expedite pilot initiation and/or provide additional consumer safeguards, and

4. Launching the permanent program in all counties and authorized practice areas without piloting or phasing in elements.

After fully considering these various approaches to program rollout, the subcommittee concluded that phased-in implementation, as opposed to any other pilot construction, is the most viable design approach. Piloting the program with a potential sunset date, and/or with features that are substantively different from those that will be reflected in the permanent program design, will likely fail to yield sufficient participants and evaluation data. The subcommittee thus recommends launching the program in at least two phases: Phase I will reflect limitations in both the number of authorized practice areas and participating geographic areas; Phase II may comprise either the wholesale rollout of the remaining authorized practice areas statewide or an expanded but not yet comprehensive set of practice areas and geographic locations.

The subcommittee specifically recommends that Phase I include the practice areas of family law, housing law (unlawful detainer and title clearing actions), and collateral criminal (expungements, infractions, and reclassifications) as defined in the final program. With respect to a limited geographic rollout, assuming this approach is viable from supply, market, and fiscal perspectives, the subcommittee tentatively recommends that the following counties be considered for Phase I implementation:

- **Northern California:** Alameda and Santa Clara Counties
- **Central California:** Fresno, Merced, and Tulare Counties
- **Southern California:** Orange County

Driving the subcommittee's recommendations are the mutually influencing priorities of protecting the public, encouraging participation in the program by both prospective paraprofessionals and consumers, and generating sufficient data to evaluate and inform program efficacy and design.

BACKGROUND

The subcommittee met for the first time on January 15, 2021, and then four additional times over the months of January and February. The subcommittee's charge was to assess whether California should pilot the paraprofessional program being developed by the working group prior to full implementation and, if so, to recommend pilot features such as a timeline, practice areas, and locations. The subcommittee's work was informed by public comment, feedback from the legal services community, lessons learned from the Judicial Council's implementation of the Sargent Shriver Civil Counsel Act Pilot Projects, and education regarding the approach utilized by the California Office of Statewide Health Planning and Development, which is statutorily charged with piloting reforms in health care service delivery models.

DISCUSSION

To Pilot or Not to Pilot

On January 22, staff with the State Bar’s Office of Access & Inclusion held a roundtable with the legal services community to solicit feedback regarding pilot program parameters. That feedback was presented to the subcommittee at its January 26 meeting. The legal services community generally expressed support for a limited and structured pilot with the following design elements:

- A small number of pilot locations
- Attorney supervision of legal paraprofessionals
- A process to screen for and remove from the pilot unscrupulous providers
- A process to investigate and respond quickly to client complaints
- A tool to avoid diverting very low-income Californians from legal aid
- A cap on legal paraprofessionals’ fees to prevent clients from overpaying
- A bar on in-court representation by legal paraprofessionals
- A high standard for pilot participants’ legal knowledge and experience
- A narrow range of authorized legal activities within each area of law
- Close collaboration with substantive legal experts in refining the boundaries of legal paraprofessional services

At the January 26 meeting, staff also presented a three-stage pilot illustration featuring evaluation “thresholds” that the program would need to meet to progress from one stage to the next, prior to full implementation. This illustration was informed in significant part by the feedback received from the legal services community.

Three-Year, Multiphase Pilot with Progression Thresholds

Stage 1: Testing Premises about Safety and Effectiveness	<p>Phase 1 concept: Test the potential for safety and efficacy with heightened safeguards. Phase 1 would resemble the ultimate program only in part since it would test assumptions about legal paraprofessional services rather than the licensure program apparatus.</p> <p>Location: 2–3 counties with sufficient participants, clients, court support, and alternative (e.g. self-help) services (e.g. Fresno, LA, and Sacramento)</p> <p>Practice areas: 1–2 areas, 3–5 matters within each (but matters must allow for sufficient testing)</p> <p>Activities: Defer to practice area subcommittee(s) working with practice area experts</p> <p>Entry requirements: (Consult Licensing Subcommittee)</p>
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	<ul style="list-style-type: none"> • Has a JD/LLM/paralegal certificate • Has 4+ years in relevant area of law or has an attorney supervisor during the pilot • Has a positive moral character determination <p>Other safeguards: (Consult Regulation and Discipline Subcommittees)</p> <ul style="list-style-type: none"> • Mandate disclosures and referrals to self-help centers and LRSs • Mandate rerouting tool for legal aid cases • Regulate prices • Require CLE • Pay—from fees that paraprofessionals pay to participate—for experts to audit work product • Expedite client complaint process and response/remedy <p>Timeline: 12 months</p> <p>Data collection: Rigorous focus on case outcomes and experiences of clients, judges, private bar, et al.</p> <p>Requirement to enter Phase 2: Positive case outcomes and client satisfaction are commensurate with cases featuring attorney or self-representation.</p>
Stage 2: Testing Program Features and Sustainability	<p>Phase 2 concept: Scale and test the licensure program features. Phase 2 will resemble the ultimate program on a small scale.</p> <p>Location: 4–5 counties with sufficient participants, clients, court support, and alternative (e.g. self-help) services</p> <p>Practice areas: 3–4 areas, 3–5 matters within each</p> <p>Activities: Defer to practice area subcommittees working with practice area experts</p> <p>Entry requirements: (Consult Licensing Subcommittee)</p> <ul style="list-style-type: none"> • Has a JD/LLM/paralegal certificate • Has 4+ years in relevant area of law, attorney supervisor during pilot, or passed the program’s formal training and exam requirements • Has a positive moral character determination <p>Other safeguards: Same as in Phase 1 but without randomized audits of work product and with the permanent program’s discipline process</p> <p>Timeline: 12 months</p>

	<p>Data collection: Rigorous focus on case outcomes and experiences of clients, judges, private bar, et al.; assess efficacy of coursework, exam, and other regulations; assess impact on local justice gap and courts; compare to self-representation; assess interest in program and costs</p> <p>Requirement to enter Phase 3: Positive case outcomes and client satisfaction are commensurate with cases featuring attorney or self-representation; positive impact on local justice gap and courts; sufficient interest to merit expanding</p>
Stage 3: Testing in all Counties	<p>Phase 3 concept: Continue to scale and refine.</p> <p>Location: All counties</p> <p>Practice areas: All CPPWG-approved areas</p> <p>Activities: All activities, deferring to practice area subcommittees working with practice area experts</p> <p>Entry requirements: Same as in Phase 2</p> <p>Other safeguards: Same as in Phase 2 but without regulating fees</p> <p>Timeline: 12 months</p> <p>Data collection: Same as in Phase 2</p> <p>Requirement to exit pilot: Same as in Phase 2 plus sufficient interest among participants and courts to justify regulatory infrastructure; program is financially sustainable</p>

Staff's model included several elements that would potentially vary significantly from the final program design including:

- A pathway to licensure that would avoid the need to satisfy program educational credit, experiential, or testing requirements with the goal of expediting the process for licensing paraprofessionals during a pilot period,
- Attorney supervision of legal paraprofessionals under some circumstances,
- Quality assurance audits of legal paraprofessional work product,
- An expedited process to investigate and resolve client complaints,
- Price regulation of legal paraprofessional services, and
- A rerouting tool for Californians who might qualify for free legal aid.

As it evaluated staff's three-phase model the subcommittee became concerned that any pilot differing from the final program in its licensing requirements, consumer safeguards, or authorized activity parameters would likely come up short in at least one fundamental respect: the pilot might operate so differently from the permanent program that it would be difficult to extrapolate accurately from the pilot to the permanent program. The subcommittee was also concerned that piloting the program with a sunset provision and/or requirement that it achieve certain benchmarks in order to remain operative would dissuade prospective licensees and educational institutions from making upfront investments of time or money to participate.

The subcommittee therefore determined that a phased-in implementation, as opposed to a traditional pilot approach, would be the most viable way in which to effectuate a controlled program rollout.

Recommendations for a Phased Implementation

There are two primary components of a phased-in approach: limited practice areas and/or limited geographic areas.

Limited Practice Areas

The subcommittee evaluated whether it would recommend authorizing all practice areas at once or starting with a small number of areas and phasing in others. Practical concerns about being able to concurrently develop the licensing infrastructure for all authorized practice areas, as well as a desire to keep implementation and initial evaluation manageable, led the subcommittee to recommend launching the program with just three practice areas in its first year: family, housing, and collateral criminal. In selecting these practice areas, the Subcommittee considered information suggesting that all three—especially family and housing—experience high demand among Californians. The subcommittee also observed that family and housing feature in the Minnesota legal paraprofessionals pilot project that is currently underway. Family law, for that matter, features in existing and proposed legal paraprofessional programs throughout the country. Additionally, collateral criminal matters pose fewer difficult-to-remedy risks than do some of the other areas of law that the CPPWG is examining.

Limited Geographic Areas

Based on the data currently available to it, the subcommittee provisionally recommends that the program launch in the following counties and phase in additional locations over time:

- **Northern California:** Alameda and Santa Clara Counties
- **Central California:** Fresno, Merced, and Tulare Counties
- **Southern California:** Orange County

Similar to limiting the number of practice areas upon launch, limiting the number of counties would help keep implementation and evaluation manageable. While it makes intuitive sense to launch the program on a limited geographic basis, the subcommittee grappled with significant

concerns about the viability of a small-scale program rollout. In considering whether or not to recommend a limited geographic versus statewide rollout, the subcommittee considered the following factors and data:

- **Size of the potential client population:** data source: population estimates from the U.S. Census Bureau;
- **Size of the potential licensee population:** data about the location of California Bar Exam test takers who have yet to score above a 1390 suggests the location of future legal paraprofessional participants. As of today, the Licensing Subcommittee proposes to limit participants to those who have a Juris Doctor degree or paralegal certificate. While staff await data about the location of certified paralegals in California, data about the location of those who hold a law degree and have yet to become an attorney is readily available. Data source: California Bar Exam passage data from the State Bar;
- **Size of the local justice gap:** data about the number of self-represented litigants in family law cases and number of attorneys in each county can serve as a helpful—albeit incomplete—proxy for the size of the civil justice gap. The subcommittee found this factor to be relevant since the program ultimately seeks to provide an affordable alternative to the often inaccessibly high costs of legal representation outside of finite legal aid, self-help, *pro bono*, and “low bono” offerings. Data sources: pro per litigant data for family law cases from the Judicial Council and attorney density data from the State Bar; and
- **Implementation costs:** data source: cost projections from the State Bar.

The following is an excerpt of data in each of these respective areas that staff presented to the subcommittee on February 16, 2021:

Potential Clients: The Most Populous Counties in California

	County	Population Estimate (2019)	Percent of State
1.	Los Angeles	10,039,107	25.4%
2.	San Diego	3,338,330	8.4%
3.	Orange	3,175,692	8.0%
4.	Riverside	2,470,546	6.3%
5.	San Bernardino	2,180,085	5.5%
6.	Santa Clara	1,927,852	4.9%
7.	Alameda	1,671,329	4.2%
8.	Sacramento	1,552,058	3.9%
9.	Contra Costa	1,153,526	2.9%
10.	Fresno	999,101	2.5%
11.	Kern	900,202	2.3%
12.	San Francisco	881,549	2.2%

Potential Participants: Bar Exam Scores Under 1390 on the Most Recent Attempt

	County	Scored <1390 on Last Attempt (2011-2020)	Percent of State
1.	Los Angeles	3,479	32.6%
2.	San Diego	1,093	10.3%
3.	Orange	1,069	10.0%
4.	Alameda	666	6.2%
5. (tie)	San Francisco	584	5.5%
5. (tie)	Santa Clara	584	5.5%
6.	Sacramento	436	4.1%
7.	Contra Costa	324	3.0%
8.	Riverside	321	3.0%
9.	San Bernardino	282	2.6%
10.	San Mateo	272	2.6%
11.	Ventura	209	2.0%
12.	Fresno	141	1.3%

Justice Gap: Pro Per Litigants in Family Law Cases (2017)

	County	Pro Per Litigants as Percent of Filings (Family Law 2017)
1.	Colusa**	171%
2.	San Joaquin**	120%
3.	Lassen**	114%
4.	Yuba**	104%
5.	Kings	94%
6.	Santa Cruz	92%
7.	Orange	91%
8.	Madera	90%
9.	El Dorado	83%
10. (tie)	Alameda	82%
10. (tie)	Siskiyou	82%
11.	Tehama	75%
12. (tie)	Trinity	74%
12. (tie)	Imperial	74%
12. (tie)	Tulare	74%

** Figure can exceed 100% because filings can have multiple pro per litigants.

Justice Gap: Attorney Density

Counties that have the **highest** disparity between residents and licensed attorneys

	County	Residents per Active Attorney (2021)
1.	Merced	1,791
2.	Glenn	1,775
3.	Kings	1,514
4.	Madera	1,457
5.	Lassen	1,390
6.	Imperial	1,294
7.	Modoc	1,263
8.	San Benito	1,256
9.	Tulare	1,211
10.	Tehama	1,205
11.	Mariposa	1,147
12.	Kern	1,052

Justice Gap: Attorney Density

Counties that have the **lowest** disparity between residents and licensed attorneys

	County	Residents per Active Attorney (2021)
1.	San Francisco	50
2.	Marin	123
3.	San Mateo	162
4.	Los Angeles	180
5. (tie)	Sacramento	186
5. (tie)	Orange	186
6.	Santa Clara	195
7.	San Diego	210
8.	Alameda	226
9.	Alpine	282
10.	Contra Costa	284
11.	Ventura	299

Cost Comparison of Limited Geographic versus Statewide Rollout

Cost Factor	Fixed or Variable Cost	Limited Geographic Rollout	Statewide Rollout
Governance Board Administration	Fixed	1 FTE	1 FTE
Licensing: Curriculum Requirements, Test Development & Administration	Variable	1 FTE + contract dollars	2+ FTE Increased contract dollars
Licensing: Other	Variable	.5 FTE	2+ FTE
Regulation	Variable	.5 FTE	1 FTE
Discipline	Fixed/Variable	1 FTE + Panel Member Stipends (Disciplinary Panels) OCTC staff complement <ul style="list-style-type: none"> .5 attorney 1 investigator .05 admin .05 supervision 	1 FTE + Panel Member Stipends (Disciplinary Panels) OCTC staff complement
Advertising	Fixed /Variable	TBD	TBD+
Evaluation	Variable	\$50,000–\$100,000	\$150,000–\$250,000

After reviewing this data in totality, and pending additional investigation as described below, the subcommittee provisionally recommends that the following counties be included in a limited geographic program rollout:

Counties	Selection Factors
Northern California: Alameda and Santa Clara Counties	<p>Future client population: They are among the top two most populous counties in Northern California (with a combined population of 3.6 million residents).</p> <p>Future paraprofessional population: They are in the top three Northern California counties for Bar Exam takers who might be interested in becoming legal paraprofessionals.</p> <p>Size of justice gap: Alameda County reports a relatively high rate of self-representation in family law (recommend excluding neighboring San Francisco County since it has the highest density of attorneys in the state).</p>
Central California: Fresno,	<p>Future client population: Fresno is the largest county in Central California (the three counties have a combined population of 1.7 million residents).</p>

Merced, and Tulare Counties	<p>Future paraprofessional population: Fresno County is the top county in Central California for Bar Exam takers who might be interested in becoming legal paraprofessionals.</p> <p>Size of justice gap: At least one county reports a relatively high rate of self-representation in family law; additionally, Merced and Tulare have two of the lowest attorney densities in the state (Merced has the lowest).</p>
Southern California: Orange County	<p>Future client population: It has the third highest population in the state at about 3.2 million residents (recommend excluding neighboring LA County since it has a population of over 10 million residents, which might overwhelm launch).</p> <p>Future paraprofessional population: It is in the top three Southern California counties for Bar Exam takers who might be interested in becoming legal paraprofessionals.</p> <p>Size of justice gap: It reports a relatively high rate of self-representation in family law.</p>
Meaning of County Designation	<p>Legal paraprofessionals could provide services in a participating county if that county court system has jurisdiction over the case. Neither the legal paraprofessional nor the client would need to reside in the county. This approach offers a familiar, venue-based analysis, and avoids unnecessary restrictions on where paraprofessionals or clients have to work or reside.</p>

The subcommittee also discussed evaluation of the phased-in implementation effort. The frequency, nature, and disposition of cases; the frequency, nature, and resolution of consumer complaints; and the price, length, and outcome of services, perhaps compared to matters where clients represented themselves or were represented by counsel, are all potential evaluation metrics. In addition to these consumer and paraprofessional focused data points, the subcommittee developed systemic evaluation metrics of interest:

- **Lopsided representation:** collect data to analyze whether licensing legal paraprofessionals disproportionately benefits one party in any type of case; this is a particular concern for unlawful detainer matters.
- **Practicality of geographic practice restrictions:** collect data to assess whether the limited geographic implementation unduly burdens legal paraprofessionals and/or clients or poses other unintended negative consequences.
- **Improved administration of justice:** collect data to evaluate whether legal paraprofessionals have improved court efficiency in participating counties.

In developing an evaluation plan the subcommittee recommends that the State Bar maintain a flexible and adaptive approach, meaning that, if, based on the analysis of data received, any significant concerns or opportunities for improvement arise, the State Bar makes modifications to program design or pilot structure as needed forthwith.

CONCLUSION AND NEXT STEPS

The subcommittee is grateful for the helpful advice that it received from the Judicial Council, Office of Statewide Health Planning and Development, legal services representatives, and members of the public. The subcommittee evaluated the intricacies of a pilot model, leading it to recommend a phased implementation of the program as the most efficacious way to predict its long-term performance and allow for adequate participation and iteration—both of which are critical to the success of this important access-to-justice initiative.

As a set of next steps, the subcommittee will continue seeking information about the location of certified paralegals in California; solicit feedback from legal services providers serving recommended counties; and reach out to each respective court system to invite feedback about implementation in their counties. This research will inform the subcommittee's final recommendation about geographic rollout.