



The State Bar of California

CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

Date: February 26, 2021

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, Fariba Soroosh, and Judge Monica Wiley

Subject: Topics and Tasks for Family Law Practice Area

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 selection of practice areas for inclusion in the program, and the specific tasks that will be allowed for licensees in each practice area.

DISCUSSION

At its July 13 meeting, five members of the CPPWG volunteered to serve on a Family Law Subcommittee tasked with studying this practice area with the goal of generating recommendations regarding inclusion or exclusion of specific Family Law subtopics for consideration by the full body at its next meeting. The Family Law Subcommittee provided the CPPWG with updates on its deliberations at its August 25 meeting, and presented its preliminary recommendations at the December 17 meeting. At that meeting, members of the CPPWG provided feedback regarding the inclusion and exclusion of several tasks and as to whether there should be an income or estate value limit for paraprofessional representation. The CPPWG also asked the Subcommittee to make a recommendation regarding whether conservatorships and guardianships should be included in the paraprofessional program. Since

that time, the Subcommittee has met, and has developed recommendations regarding subtopics and tasks; the consideration of conservatorships and guardianships; and in-court support/representation.

Family Law Subtopics and Tasks

At the December 17, 2020, CPPWG meeting, the Subcommittee presented its preliminary recommendations regarding subtopics and tasks for inclusion/exclusion in a paraprofessional program. The Subcommittee solicited and received input from CPPWG members on several topics. Based on that input and further discussion, recommendations regarding subtopics and tasks for family law, as well as educational/training requirements for this area, are included in Attachment A.

Violence Prevention Subtopics and Tasks

While members of the Subcommittee are familiar with domestic violence restraining orders, they sought input from subject matter experts (SMEs) regarding the inclusion of other types of violence prevention restraining orders. Staff consulted with Judy Hitchcock, Senior Staff Attorney with Legal Assistance to the Elderly, regarding elder abuse restraining orders, and Ruth Silver-Taube, who teaches the Employment Law Clinic at Santa Clara University, regarding workplace violence restraining orders. Staff reported to the Subcommittee that the SMEs consulted agreed that paraprofessional assistance would be beneficial to clients pursuing and/or responding to all types of restraining orders; the SMEs also made recommendations regarding the training that should be required for such representation. The Subcommittee recommends the inclusion of civil harassment and gun violence restraining orders accordingly. The Subcommittee recommends inclusion of violence prevention, comprising civil harassment, domestic violence, elder abuse, gun violence, and workplace violence restraining orders, in the family law practice area. Recommendations regarding these subtopics and tasks, as well as educational/training requirements for this area, are included in Attachment A.

Adoption

The Subcommittee reviewed information provided by Subcommittee member Elizabeth Olvera regarding the tasks involved in uncontested stepparent adoption. They also considered information that staff obtained in a conversation with Robert Walmsley, a member of the Academy of California Adoption Lawyers, regarding training requirements for paraprofessionals authorized to provide representation in these cases. The Subcommittee recommends inclusion of uncontested stepparent adoptions for the paraprofessional program, as reflected in Attachment A.

Child Welfare

The Subcommittee considered information provided by Subcommittee member Dana McRae, based on her conversation with Ruby Marquez, who works for Santa Cruz County Counsel representing the county child welfare agency in juvenile dependency cases. Ms. Marquez believes it would be beneficial for parents to have assistance in child welfare investigations prior to dependency filing, as well as after a dependency case has been terminated. Based on

this information, the Subcommittee recommends inclusion of representation in dependency investigations pre-filing, as well as post-termination, as reflected in Attachment A.

Conservatorship and Guardianship

The Subcommittee has undertaken consideration of conservatorship and guardianship subtopics and tasks for inclusion/exclusion in a paraprofessional program. While the CPPWG does not include members with in-depth knowledge on this topic, the Subcommittee has begun discussions with SMEs, who have agreed to provide recommendations in this area. The Subcommittee intends to bring its recommendations to the CPPWG at the April 19 meeting.

In-Court Support/Representation

The Subcommittee is aware that the topic of in-court representation will be the subject of a facilitated discussion at the CPPWG meeting on February 26. Nonetheless, members of the Subcommittee believe that this topic is integral to the recommendations in family law and violence prevention matters included as attachments to this memo. The insights of Subcommittee members were especially helpful in our discussions.

Ms. Soroosh, who directs the Self-Help Center (SHC) at the Santa Clara Superior Court, noted that, while staff at the SHC are able to provide extensive guidance in completing and filing forms in family law cases, they are precluded from attending hearings with litigants to provide guidance and support. Even when litigants have had excellent assistance in completing and filing forms, the actual court appearance can be stressful and challenging. Litigants are often retraumatized by their experiences and are unfamiliar with the court setting. They may become intimidated or flustered in this unfamiliar setting, causing them to be disorganized and forget important information that they would like to convey to the court. Judge Wiley, who presides over family law cases, agreed. Judge Wiley suggested that it would be helpful to the court to have a trained support person who could provide guidance to self-represented litigants, and who could answer questions from the court at the hearing.

Stephen Hamilton, who is a certified family law specialist, agreed that a trained support person would be an asset in the courtroom. He strongly believes that, while a paraprofessional should be allowed to sit at counsel table to guide and prompt their client, they should be prohibited from speaking in court, even to answer direct questions from the bench. Mr. Hamilton asserted that answering questions as even those that might be perceived as procedural may involve advocacy. Mr. Hamilton believes it is essential to maintain a distinction between paraprofessionals and lawyers; in-court representation is key to this distinction. Sharon Bashan agreed with Mr. Hamilton that paraprofessionals should be allowed to sit at counsel table, but should be prohibited from speaking in court.

Ms. Elizabeth Olvera, who is a certified Legal Document Assistant, disagreed, asserting that a trained paraprofessional could competently assist their client by providing information to the court, particularly in response to direct questions from the bench. Ms. Olvera suggested that a distinction could be made between those with a JD degree and others, allowing

paraprofessionals with a JD to speak in court. Greg Fortescue, the Supreme Court's liaison to the CPPWG, noted that if paraprofessionals were to be precluded from answering questions directed to them from the bench, it would be necessary to impose a restriction on judges, precluding them from directing such questions to paraprofessionals.

There was a general agreement, but not unanimous consensus, from the Subcommittee that paraprofessionals should be allowed to provide in-court support, but not representation. In this role, paraprofessionals would be allowed to sit at counsel table, and advise and prompt clients, but not advocate for their clients or speak in court. There was a minority view that paraprofessionals should be allowed to respond to questions from the court.

Limit on Income and/or Estate Value

The Subcommittee considered whether a cap on either income or estate value should be imposed for paraprofessional representation in family law cases. The Subcommittee agreed that income and estate value do not necessarily correlate with case complexity and therefore does not recommend such a limit.

Family Law Subcommittee
Subtopic and Tasks Recommendations

ATTACHMENT A

Family Law

Task	Recommendation
Dissolution/Domestic Partnerships, including dissolution, legal separation, and nullity (annulment) <ol style="list-style-type: none"> 1. Marital status, including status-only judgmentsⁱ 2. Annulment based on bigamy, age of spouse/registrant, prior existing marriage/DPⁱⁱ 3. Annulment based on incest, unsound mind, fraud, force, physical incapacity 	<p>Included</p> <p>Included</p> <p>Excludedⁱⁱⁱ</p>
Paternity (including paternity issues within dissolution, legal separation, domestic partnerships, and DCSS child support matters) <ol style="list-style-type: none"> 1. Complaint to establish parental relationship not involving FC 7612(b) or (c) 2. Complaint to establish parental relationship involving FC 7612(b) or (c) 	<p>Included</p> <p>Excluded</p>
Summary Dissolutions	Included
Petitions for Custody and Support	Included
Child custody and visitation (including third-party joinder and intervention) except in any action where any of the following issues or claims are raised: <ol style="list-style-type: none"> 1. Hague Convention on International Child Abduction 2. International or interstate custody disputes under UCCJEA 3. Grandparent visitation (independent of family law action) 	<p>Included</p> <p>Excluded</p> <p>Excluded</p> <p>Included</p>
Child support ^{iv}	Included
Spousal or domestic partner support <ol style="list-style-type: none"> 1. Temporary 2. Permanent (litigated/contest)/FC 4320 3. Spousal support waivers, buyouts or nonmodifiable step downs <ol style="list-style-type: none"> a. Short term marriage [FC 4336(b)] b. Long term marriage 	<p>Included</p> <p>Included</p> <p>Included</p> <p>Excluded</p>
Separate property/community property/quasi community property ^v <ol style="list-style-type: none"> 1. Joinder of pension/retirement/employee benefit plans 2. Declaration of disclosures 3. Referrals to experts for appraisals and valuations 4. Post division transfer documents 5. QDRO (referrals only) 	<p>Included</p> <p>Included</p> <p>Included</p> <p>Included</p> <p>Excluded</p>
Discovery <ol style="list-style-type: none"> 1. Written discovery (form interrogatories v. other) 2. Depositions 3. Expert discovery 4. Subpoenas: deposition and hearing/trial 5. Motions to compel/motions to quash not related to depositions 6. Motions to compel/quash related to depositions 	<p>Included</p> <p>Excluded</p> <p>Excluded</p> <p>Included</p> <p>Included</p> <p>Excluded</p>
Quasi marital property (nullity)	Excluded

Task	Recommendation
Attorney fees, including expert and paraprofessional fees	Included
Restoration of former name	Included
Venue and jurisdiction disputes not otherwise addressed herein	Included
Marital settlement agreements [except for any issues which are within excluded areas of practice as set forth above] 1. MSA must state that it was prepared by a paraprofessional ^{vi}	Included
Post judgment/permanent order modifications [except UCCJEA/Hague]	Included
Registration of foreign judgments	Included
Premarital/Post-marital agreements (not including MSAs)	Excluded
Putative spouse claims arising from nullity action, including all issues within such a claim (e.g. quasi marital property, attorney fees, spousal support)	Excluded
Marvin/Palimony actions	Excluded
Enforcement of family law orders and judgments 1. Appointment of elisor 2. RFO/Motion for relief in issuing court to assist in enforcement 3. Contempt 4. Seek work orders support 5. Debtor's exam 6. Wage assignment 7. Writ of execution 8. Filing of lien/lis pendens 9. Response to DCSS enforcement action (e.g., license suspension, bank levy) All enforcement mechanisms not specifically identified above are excluded	Included Included Excluded Included Included Included Included Included Included
Alternative Dispute Resolution (except for areas excluded above) 1. Settlement discussions and negotiations 2. Day of court meet and confer	Included Included

-
- i. If instruction includes detailed, in depth education regarding FC 2337, FL-315, FL-347, FL-318-Info, joinder and pension issues
 - ii. If instruction includes education and instruction re: bigamy v. prior existing marriage/DP and FC 2200-2210 and 2310-2312
 - iii. Education includes issue spotting, clear definition of excluded item, specific education regarding excluded issues and referral process (necessity, regulation)
 - iv. Instruction to include training on support calculators, wage assignments and role of DCSS

-
- v. This scope of practice presumes detailed and substantive instruction on forms of discovery, responding to discovery, objections and law and motion procedure related to discovery
 - vi. Companion legislation to be developed, stating that an MSA prepared by a paraprofessional that exceeds the scope of their duties is not automatically void or voidable

Adoption

Task	Recommendation
Adoptions not arising from a dependency petition	Included
1. Uncontested stepparent adoption <ul style="list-style-type: none"> o Training on providing notice to other parent required; incorrect notice may trigger contest of adoption, or can negatively affect prospect of adoption 	

Child Welfare

Task	Recommendation
Child welfare and juvenile dependency cases	Included
1. Investigation prior to filing of dependency action	
2. JV-180: modification of dependency orders after case is closed	Included

Violence Prevention

Task	Recommendation
Domestic Violence, Civil Harassment, Gun Violence, Workplace Violence*	Included
Representation of petitioner	Included
1. Filing restraining order request – Temporary Restraining Order (TRO)	
2. Service of TRO on respondent and filing proof of service	
3. Support in mediation, where applicable	
4. Support in court	
5. Preparation of Restraining Order After Hearing (ROAH)	
6. Service of ROAH on respondent and filing proof of service	
7. Distribution of RO to law enforcement, if applicable	Included
Representation of respondent	Included
1. Filing response to TRO	
2. Service of response on petitioner and filing proof of service	
3. Support in court	Included

* Educational/training requirements for violence prevention:

- Experience in violence prevention clinic
- Familiarity with types of restraining orders and remedies available under each type
- Availability of resources (e.g., domestic violence assistance, Adult Protective Services, mediation, etc.)