



The State Bar *of California*

CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

Date: February 26, 2021

To: California Paraprofessional Program Working Group

From: Amos Hartston and Fariba Soroosh

Subject: Update and Recommendations for Regulatory Structure for Paraprofessional Program

Executive Summary

The California Paraprofessional Program Working Group (CPPWG or Working Group) 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 regulation.

The Regulation Subcommittee (Subcommittee) of the CPPWG has a broad charge including the development of recommendations in the areas of continuing education, financial responsibility, ethical rules governing paraprofessional conduct (including written agreement and disclosures, fee limitations, informed consent requirements, advertising limitations), and proactive/risk-based regulation. The Subcommittee presented preliminary recommendations on the Minimum Continuing Legal Education (MCLE) and financial responsibility at the CPPWG's January 2021 meeting. This memorandum includes final recommendations for MCLE and financial responsibility and provides updates on other issues being addressed by the Subcommittee.

Discussion

At its January 15, 2021, meeting, we provided the CPPWG with an overview of initial recommendations for MCLE and financial responsibility as well as draft language related to the areas of an informed consent requirement, written agreement and disclosures, and scope of practice and prohibited acts. We also preliminarily discussed the issue of fee limitations or other regulation of fees in light of one goal of the program being the creation of a lower-cost alternative to attorney services and one risk factor to regulate being the charging of excessive fees.

Table 1. Status of Recommendations

Topic	Status
Continuing legal education	Recommendations ready for consideration
Financial responsibility	Recommendations ready for consideration
Written agreement and mandatory disclosures	Draft language provided for incorporation into draft rules
Informed consent requirement	Draft language provided for incorporation into draft rules
Scope of practice and prohibited acts	Draft language provided for incorporation into draft rules
Advertising limitations	Draft language provided for incorporation into draft rules
Other ethical rules	Pending
Fee limitations	Pending
Proactive/risk-based regulation	Pending
Evaluation criteria/data collection	Recommend creation of new subcommittee
Determining appropriate name for licensees	Recommend creation of new subcommittee

Minimum Continuing Legal Education (MCLE)

The Regulation Subcommittee has updated its recommendations related to MCLE. The Subcommittee recommends adoption of the following continuing education requirements for licensed paraprofessionals:

- 36 hours every 3 years, as follows:
 - 28 hours in the paraprofessional's practice area
 - 4 hours on legal ethics
 - 1 hour on competence issues
 - 1 hour on recognition and elimination of bias in the legal profession and society
 - 1 hour of trauma-informed practice
 - 1 hour of practice management/running a business
- No more than 18 hours may be obtained through self-study
- Each practice area subcommittee may require that the above MCLE include specific topics relevant to the paraprofessional's practice area to be included in the final MCLE regulation proposal
- The paraprofessional licensing board will be authorized to require supplemental MCLE to maintain licenses due to changes in the law or other developments, as well as discretion to impose more specific educational requirements based on practice area, identified risk factors, or other considerations. This could include designation of some of the practice area MCLE, or, alternatively, an increase in the required number of hours of MCLE to address specified issues and topics.

These recommendations reflect consideration of discussion and comments at the January 2021 CPPWG meeting as well as additional information obtained when the Subcommittee considered proactive/risk-based regulation and best practices.

As a reminder, the proposed number of MCLE hours for paraprofessionals is higher than for California attorneys, who are required to complete 25 hours every 3 years (including 4 hours on legal ethics; 1 hour on competence issues; and 1 hour on recognition and elimination of bias in the legal profession and society). Arizona has implemented 15 hours every year for paraprofessionals; Ontario has implemented 12 hours every year for paraprofessionals; Washington had implemented 30 hours every three years. Continuing education is one of the primary ways to regulate competence and address risk issues beyond initial license requirements. The Subcommittee based its recommendation of 36 hours every 3 years in part on the MCLE requirements for California Attorney Certified Specialists. Certified Specialists in California are required to complete at least 36 hours of MCLE every 3 years in their respective specialty area.¹

We also adjusted the proposed self-study provision to half the required MCLE, consistent with the provision for attorneys. In addition, we included mandatory training in the areas of trauma-informed practice and practice management/running a business, both as a best practice and to address expected risk factors for paraprofessionals (discussed further below related to proactive regulation/risk-based regulation).

Financial Responsibility

The Regulation Subcommittee's recommendations for financial responsibility remain consistent with the presentation during the January 2021 CPPWG meeting. The Subcommittee recommends adoption of the following financial responsibility requirements for licensed paraprofessionals:

- A mandatory \$100,000 bond for licensed paraprofessionals;
- A Client Security Fund (CSF) similar to the attorney CSF;
- Malpractice insurance should be strongly encouraged but not mandated;
- Mandatory disclosures should clearly and conspicuously disclose whether or not the paraprofessional maintains malpractice insurance;
- The State Bar should take steps to encourage insurance companies to make insurance available to licensees; and
- In the event neither a mandatory \$100,000 bond nor malpractice insurance is required for licensed paraprofessionals, the State Bar should expand the CSF into a restitution fund that compensates clients both for intentional wrongdoing and negligence/malpractice.

¹ Certified specialists are required to complete 36 hours of MCLE in their respective specialty area; taken within the three-year reporting period:

- These specialty hours do count towards the 19-hour general hour requirement applicable to all attorneys, but not to the 6-hour MCLE subfield requirement (elimination of bias, ethics, etc.), unless otherwise stated on the certificate of attendance. As a result, specialists may have to complete as many as 42 hours of CLE: 36 hours of MCLE in their specialty area plus 6 hours of MCLE subfield courses.

The Regulation Subcommittee believes providing for financial responsibility is critical to ensuring consumer protection and must be part of the CPPWG's proposals. As previously presented, our discussions centered on three possible ways to provide financial responsibility: (1) a surety bond requirement; (2) malpractice insurance; and/or (3) a Client Security Fund/Restitution Fund. Further background is provided below.

Surety Bond

The Regulation Subcommittee recommends adoption of a mandatory \$100,000 bond for licensed paraprofessionals.

A surety bond is a common way to provide for financial responsibility of licensed professionals in California. It differs from insurance in important ways, and is substantially less expensive while providing important consumer protection. Essentially, it is a three-way contract where the bond company (the surety) financially guarantees the performance of obligations of a second party (the principal or licensee) to a third party (the obligee/entity requiring the bond, i.e., the State). Surety bonds in various amounts are required for many licensed professionals in California. The amount of the bond is the total amount the surety is liable for on the bond, not a per claim amount. Accordingly, large claims or multiple claims can reduce and use up the amount of the bond. The higher the bond amount, the greater the consumer protection afforded. Table 2 provides examples of selected bond requirements for several professions:

Table 2. Bond Requirements for Selected Licensed Professionals in California

Profession	Amount	Statutory Authority
Immigration Consultant	\$100,000	Business & Professions Code § 22443.1
Credit Services	\$100,000	Civil Code § 1789.18
Foreclosure Consultant	\$100,000	Civil Code § 2945.45(a)(2)
Telephonic Sales	\$100,000	Business & Professions Code § 17511.12
Legal Document Assistant	\$25,000	Business & Professions Code § 6405
Unlawful Detainer Assistant	\$25,000	Business & Professions Code § 6405
Notary Public	\$15,000	Government Code § 8212

A bond differs from insurance in several ways, including the following:

- The full premium is paid for the entire term of the bond; coverage does not lapse until the bond expires;
- It is significantly less expensive and burdensome to obtain;
- The bond amount covers all claims related to the period it is in effect (including claims first made after the bond expires);
- Licensees may be required to reimburse the bond issuer for any payments made;
- A client may apply directly to the bond issuer for claims; and
- In addition to negligence, bonds may cover fraud and intentional acts.

Premiums for surety bonds above \$25,000 may vary based on underwriting considerations, such as the applicant's credit score, but generally range from 1 to 3 percent of the bond amount. Bonds often are issued for multiple years.

The subcommittee explored whether requiring paraprofessionals to carry a bond would provide meaningful protection for their clients, an appropriate bond amount, and whether a bond requirement potentially would be a hardship for paraprofessionals or an unreasonable barrier to entry into the profession. **The Subcommittee concluded that a surety bond provides an important baseline consumer protection of financial responsibility** and recommends that the Working Group adopt a bond requirement for paraprofessionals. With respect to the amount of the bond, because paraprofessionals will be providing legal advice and assistance beyond what immigration consultants and Legal Document Assistants (LDAs) are permitted to do, and in order to provide meaningful consumer protection, we recommend adoption of a \$100,000 bond requirement similar to immigration consultants.

During our January 2021 discussion, we acknowledged that the Working Group may want to further consider the anticipated cost of a bond, and whether the proposed bond amount potentially could create an undue burden or a barrier to entry into the profession. The information considered by the subcommittee did not find a meaningful difference in this regard between a \$100,000 bond requirement and a \$75,000 bond requirement, which would provide less consumer protection. Based on our review, we believe a \$100,000 bond is appropriate, provides public protection consistent with other licensed professionals, and does not create an undue barrier to entry.

Malpractice Insurance

The Regulation Subcommittee does not recommend adoption of a mandatory malpractice insurance requirement at this time. Additional information is needed, and the CPPWG or the State Bar may want to further consider this topic. We recommend that malpractice insurance be strongly encouraged but not mandated, and mandatory disclosures should clearly and conspicuously disclose whether or not the paraprofessional maintains malpractice insurance. In addition, we recommend that the State Bar take steps to encourage insurance companies to make insurance available to licensees.

In making this recommendation, we considered a number of factors: malpractice insurance is not required for California attorneys; it is unclear if such insurance would be available to paraprofessional in California at the start of the program; and, a lack of information about potential cost. We were mindful to try to avoid creating unnecessary barriers to entry to the profession. Although malpractice insurance would provide additional protections to both clients and paraprofessionals, a \$100,000 bond requirement may be sufficient to meet the needs of ensuring financial responsibility, at least initially, in the program.

We note that malpractice insurance is required for and available to legal paraprofessionals in Washington State. Also, malpractice insurance is commonly required by Rules of Court or local

rules in California when courts appoint attorneys in cases such as family law, probate, and criminal cases. (See, e.g., Rules of Court 5.242(b)(2) (minor's counsel); Rules of Court 7.1101 (c)(3) (counsel appointed by probate court)). After consideration, the Regulation Subcommittee believes that maintaining malpractice insurance, if it is available, is certainly a best practice. Because mandatory malpractice insurance is not required for attorneys, may not be immediately available, and the cost is uncertain and may create a barrier to entry, we are not prepared to recommend mandating insurance at this time.

Client Security Fund/Restitution Fund

The Regulation Subcommittee recommends that licensed paraprofessionals be required participate in a Client Security Fund (CSF), similar to attorneys.

Attorneys in California participate in a CSF; currently, annual license fees for attorneys include \$40 toward the CSF. Payouts from the CSF are limited to situations where an attorney engaged in intentional wrongdoing such as theft. In most circumstances, final discipline or a criminal conviction is a required precondition to recovery from the CSF. Thus, claims to the CSF can take many years to be paid.

The CSF alone does not provide an effective or consumer friendly opportunity for financial responsibility, and is not available at all in cases of negligence. Therefore, we concluded that a CSF alone is not a sufficient solution for financial responsibility. The Subcommittee recommends a bond be required in addition to the CSF. However, we believe paraprofessionals should participate in a CSF similar to attorneys.

The Subcommittee recommends that final discipline not be a required condition precedent to payout from the CSF. Instead, either the existing CSF or the Paraprofessional Board or its designee will review facts and make a determination as to whether reimbursement is warranted.

Possible expansion of the CSF into a Restitution Fund

The Subcommittee believes financial responsibility is a critical part of consumer and public protection. In the event the CPPWG or State Bar does not mandate a \$100,000 bond or malpractice insurance for paraprofessionals, we recommend that the CSF for paraprofessionals be expanded to compensate clients both for intentional wrongdoing and negligence/malpractice. Because of the expected expense of administration and the difficulty in funding and maintaining a restitution fund that covers negligence claims, the Subcommittee believes that requiring a \$100,000 bond and/or malpractice insurance is a better alternative than expanding the CSF to cover negligence claims.

Regulation of Paraprofessionals and Rules of Professional Conduct

Fee Limitations

The Subcommittee posed the following questions to the CPPWG at its January 2021 meeting:

- Should contingent fees be prohibited?

- Should flat fees be encouraged?
- Given that the purpose of the program is to provide a lower-cost alternative to engaging a lawyer, should there be any limitations or restrictions on the amount of fees?
 - For example, a bright-line fee limit or schedule, or some other method allowing regulation of fees charged that would protect against excessive fees by paraprofessionals (either hourly or total fees)
- Should any other fee limitations be considered, for example limits on advance fees?

The CPPWG did not have ample time to discuss these questions at its January meeting; they are presented for the February meeting discussion accordingly. In addition, the Regulation Subcommittee plans to hear from additional presenters and open this issue for public comment.

In addition to addressing the issue of fee limitations, the Regulation Subcommittee has drafted proposed language for regulations for paraprofessionals in the following areas:

- An informed consent requirement;
- Written agreement and mandatory disclosures;
- Scope of practice and prohibited acts; and
- Advertising limitations.

The language is provided in Attachment A. The Subcommittee is working with a staff team that has been established to help draft a full set of rule proposals for the Regulation Subcommittee to consider. With the support of the staff team, the Regulation Subcommittee will propose final rules as well as make recommendations as to whether specific regulations should be codified in the California Rules of Court, State Bar Rules, or the Rules of Professional Conduct. Thus, the draft language in Attachment A identifies our Subcommittee's proposed regulation of paraprofessionals without yet determining where the regulations will live or the proposed final language of the regulations. The CPPWG will have another opportunity to weigh in on specific rule proposals at its April meeting.

Informed Consent

The Regulation Subcommittee recommends that paraprofessionals be required to obtain informed consent from clients prior to the performance of services for a fee. Draft language is attached at Attachment A, page 1.

Written Agreement and Mandatory Disclosures

The Regulation Subcommittee recommends the requirement of a written agreement with mandatory disclosures outlining what paraprofessionals can and cannot do, along with other important disclosures. Draft language, which is based in part of Washington's Admissions and Practice Rules 28(G), is attached at Attachment A, pages 2-3.

Scope of Practice and Prohibited Acts

The Regulation Subcommittee recommends providing regulations regarding the scope of practice authorized by the limited practice rule and prohibited acts. We believe it is important to provide general parameters for licensed paraprofessionals in addition to the work of the specific practice area subcommittees. Draft language, which is based in part on Washington's Admissions and Practice Rules 28(F) and(H); Utah's Rule 14.802(c)(1); and California Business and Professions Code sections 22441-22447 (immigrations consultants) is attached at Attachment A, pages 4-6.

Advertising Limitations

The Regulation Subcommittee recommends regulations prescribing the limits of paraprofessional advertising. We have initially proposed, at minimum, that advertising and solicitation include the paraprofessional's name and license number, include a clear and conspicuous statement that the paraprofessional is not a lawyer, and if the advertisement is in a language other than English, the required statements shall be in the same language as the advertisement. We have not yet finalized proposed language, and these recommendations will be further considered by the Subcommittee and State Bar staff.

In connection with discussions about advertising limitations, the Subcommittee raised concerns that the name of the license program itself could cause unnecessary confusion and lead to misleading statements and advertising about available services. This is an important consideration in protection of the public. We recommend creation of a subcommittee focused on the name of the licensure program and of licensees.

Proactive/Risk-Based Regulation

At its December 2020 meeting, the CPPWG engaged in a discussion regarding proactive regulation facilitated by Zachariah DeMeolo, Director of Legal Education and the Legal Profession at the Institute for the Advancement of American Legal Studies. The Regulation Subcommittee also heard from other subject matter experts on the topic, including Tom Clarke, Vice President, Research and Technology at the National Center for State Courts, and Tara Sklar, Professor of Health Law and Director of the Health Law and Policy Program at the University of Arizona College of Law. Mr. Clarke is involved with the development of proactive regulation in connection with the Utah sandbox. Professor Sklar is collaborating with the State Bar of California on recommendations for proactive regulation of attorneys in California.

The Subcommittee identified four key areas where proactive regulation may be helpful to mitigate risks:

- Competency concerns/failure to exercise rights or options;
- Excessive fees/client overpays;
- Outcomes should be the same or better than the next best alternative; and
- Fraud by nonlicensees.

The Subcommittee explored possible options related to proactive regulation to address these risks. Concerns were raised about data collection that would be burdensome on licensees without significant impact on mitigating risks. It was explained that proactive regulation used in the sandbox in Utah, for example, was in place of traditional regulation. Including both traditional regulation through license requirements, regulations, and discipline in addition to proactive regulation through burdensome data collection and audits could constitute over-regulation.

Another issue identified through these discussions is that there may be tensions in data collection between regulation and evaluation. The type of data collected is different and the two should not be confused. The Subcommittee believes an evaluation of the program is essential and recommends that a separate subcommittee consider data collection in connection with a program evaluation.

The Subcommittee is continuing to explore less burdensome tools that might be effective to mitigate the identified risks. These potentially include the following:

- Ethics hotline
- Checklists/toolkits
- MCLE programs targeted at identified or expected risk areas
- Paraprofessional Assistance Programs (similar to Lawyer Assistance Programs)
- Mentors
- Online paraprofessional rating system for consumer feedback
- Self-assessments

These tools can be optional and supportive rather than mandatory and burdensome, and may help improve the competency and performance of paraprofessionals. This discussion also led the Subcommittee to include targeted MCLE related to the risk area of practice management—an area of expected high risk for paraprofessionals without experience running a business.

The Regulation Subcommittee will further explore proactive regulation, with an eye toward avoiding overregulation and unnecessary burden, and will try to coordinate with expected discussions about data collection for a program evaluation.

Next Steps

The Regulation Subcommittee will continue its work on proposed regulations with support from the State Bar staff team in anticipation of having final proposals for paraprofessional regulations and proposed rules for CPPWG at its April meeting.

Draft INFORMED CONSENT language

(1) Prior to the performance of services for a fee, the [Paraprofessional] shall obtain the client's informed consent. This includes agreement based on receiving clear, understandable information in the client's preferred language about the risks and alternatives to the proposed services by a nonlawyer. The [Paraprofessional] must give the client as much information as the client needs to make an informed decision. Without limitation, the [Paraprofessional] must clearly and adequately explain:

- (a) that they are not a lawyer;
- (b) reasonable disclosure of available choices, including the availability of a lawyer as an alternative, the availability of a free consultation with a lawyer, the possible availability of limited-scope services from a lawyer, and the possibility that free legal services may be available if the client qualifies;
- (c) the risks of agreeing to a [Paraprofessional] in language that the client can understand;
- (d) the potential need to hire a lawyer if needed services go beyond the limited license of the [Paraprofessional];
- (e) the existence of any financial arrangements such as referral fees or fee sharing that the [paraprofessional] has with others; and
- (f) a reasonable estimate of the total costs of services.

(2) The [Paraprofessional] Board may provide additional information and guidance on the requirements of informed consent, including additional required disclosures related to services generally or specific to licensed practice areas, and a standard form that must be used to confirm informed consent in writing separate from the retainer agreement.

(3) If the [Paraprofessional] fails to obtain informed consent, this shall be considered as a basis for discipline and as a basis for a full refund cumulative to any other remedies.

Draft WRITTEN AGREEMENT AND MANDATORY DISCLOSURES language

(1) A [Paraprofessional] must personally perform the authorized services for the client and may not delegate these to a nonlicensed person or device. Nothing in this prohibition shall prevent a person who is not a licensed [Paraprofessional] from performing translation services;

(2) Prior to the performance of services for a fee, the [Paraprofessional] shall enter into a written contract with the client, signed by both the client and the [Paraprofessional], that provides the name, specialty area, and license number of the [Paraprofessional] and includes the following provisions:

- (a) A clear explanation of the services to be performed;
- (b) A clear and conspicuous disclosure that the [Paraprofessional] is not a lawyer, may only provide limited advice, may not represent the client in court, and will provide limited advice and assistance with preparation of court documents and related tasks. This statement shall be on the first page of the contract; in a type size, font, color, appearance, and location sufficiently noticeable for a client to read and comprehend them; in a print that contrasts with the background against which they appear; in larger type than the surrounding text; in a manner that clearly calls attention to the language. An example of an acceptable disclosure will be provided by the [Paraprofessional] Board;
- (c) [We recommend developing a mandatory disclosure attaching a description of what the [Paraprofessional] can and can't do, which must be made clear, as specifically authorized by the scope of practice regulations for the approved practice area in which the [Paraprofessional] is licensed, currently under development.];
- (d) Identification of all fees and costs to be charged to the client for the services to be performed;
- (e) A statement that upon the client's request, the [Paraprofessional] shall provide to the client any documents submitted by the client to the [Paraprofessional] and a copy of the client's file;
- (f) A statement describing the [Paraprofessional]'s duty to protect the confidentiality of information provided by the client and the [Paraprofessional]'s work product associated with the services sought or provided by the [Paraprofessional];

- (g) A statement that the client has the right to terminate the contract and services at any time, with or without cause, and receive a full refund of unearned fees. This statement shall be clearly and conspicuously set forth in the contract;
- (h) A statement confirming that the [Paraprofessional] has malpractice insurance and a surety bond as required by [Financial Responsibility Rule], and detailed and clear information about how to file a complaint about the [Paraprofessional]'s services; and
- (i) Any other disclosures, statements, or conditions required by the [Paraprofessional] Rules of Professional Conduct and the rules and regulations of the [Paraprofessional] Board.

(3) A [Paraprofessional] may not provide services that exceed the scope of practice authorized by this rule, and shall inform the client, in such instance, that the client should seek the services of a lawyer.

(4) A document prepared by a [Paraprofessional] shall include the [Paraprofessional]'s name, signature, and license number beneath the signature of the client. [Paraprofessional]s do not need to sign sworn statements or declarations of the client or a third party, and do not need to sign documents that do not require a signature by the client, such as information sheets.

Draft SCOPE OF PRACTICE AUTHORIZED BY LIMITED PRACTICE RULE language

(1) The [Paraprofessional] shall ascertain whether the issue is within the defined practice area for which the [Paraprofessional] is licensed. If it is not, the [Paraprofessional] shall not render any legal assistance on this issue and shall advise the client to seek the services of a lawyer. If the issue is within the defined practice area, the [Paraprofessional] may render the following limited legal assistance to a self-represented client:

- (a) Obtain relevant facts, help the client collect relevant information and documents, and explain the relevancy of such information to the client;
- (b) Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;
- (c) Assist with selecting and completing appropriate court forms that have been approved by the Judicial Council of California (i.e., Judicial Council forms), by the local court, by statute, by the [Paraprofessional] Board, or by a California lawyer; advise the client of the significance of the selected forms to the client's case;
- (d) Inform the client of and assist with applicable procedures for proper service of process and filing of legal documents;
- (e) Provide the client with California court-approved self-help resources and other self-help materials prepared by a California lawyer or approved by the [Paraprofessional] Board, which contain information about relevant legal requirements, case law basis for the client's claim, venue and jurisdiction requirements, and other information that may help empower the client to understand their rights, how to use court forms, how to represent themselves in court, and potentially how to resolve the dispute outside of court;
- (f) Review documents or exhibits that the client has collected or received and explain them to the client;
- (g) Perform legal research;
- (h) Draft documents to be filed with the court beyond what is permitted in paragraph (c), if the work is reviewed and approved by a California lawyer;
- (i) Advise the client as to other documents that may be necessary to the client's case, and explain how such additional documents or pleadings may affect the client's case;

- (j) Assist the client in obtaining necessary records, such as birth, death, or marriage certificates;
- (k) Communicate and negotiate with the opposing party or the party's representative regarding procedural matters, such as setting court hearings or other ministerial or civil procedure matters;
- (l) Negotiate the client's legal rights or responsibilities, provided that the client has expressly given written consent defining the parameters of the negotiation prior to the onset of the negotiation; and
- (m) Render other types of legal assistance when specifically authorized by the scope of practice regulations for the approved practice area in which the [Paraprofessional] is licensed.

(2) A [Paraprofessional] has an affirmative duty to inform clients when issues arise that are beyond the authorized scope of the [Paraprofessional]'s practice. In such circumstances, the [Paraprofessional] shall inform the client in writing that:

- (a) the issue may exist, describing in general terms the nature of the issue;
- (b) the [Paraprofessional] is not authorized to advise or assist on this issue;
- (c) the failure to obtain a lawyer's advice could be adverse to the client's interests; and
- (d) the client should consult with a lawyer to obtain appropriate advice and documents necessary to protect the client's interests.

Draft PROHIBITED ACTS language

(1) In the course of dealing with clients or prospective clients, a [Paraprofessional] shall not:

- (a) Make any false or misleading communication about the [Paraprofessional] or the [Paraprofessional]'s services;
- (b) Make any statement that the [Paraprofessional] can or will obtain special favors from or has special influence with any court or governmental agency, or that would lead a reasonable person to form an unjustified expectation that positive results will be obtained based on comparisons with achievements on behalf of other clients without reference to the specific factual and legal circumstances of each client's case;
- (c) Retain any fees or costs for services not performed;
- (d) Refuse to return documents supplied by, prepared by, or paid for by the client, upon the request of the client. These documents must be returned upon request even if there is a fee dispute between the [Paraprofessional] and the client;
- (e) Represent or advertise, in connection with the provision of services, other legal titles or credentials that could cause a client to believe that the [Paraprofessional] possesses professional legal skills beyond those authorized by the license held by the [Paraprofessional];
- (f) Represent a client in court proceedings unless specifically authorized by the scope of practice regulations for the approved practice area in which the [Paraprofessional] is licensed;
- (g) Provide services to a client in connection with a legal matter in another state, unless permitted by the laws of that state to perform such services for the client;
- (h) Represent or otherwise provide legal or law-related services to a client, except as permitted by law and the rules and regulations authorizing limited scope services by [Paraprofessionals];
- (i) Conduct or defend a deposition;
- (j) Initiate or respond to an appeal to an appellate court; and
- (k) Otherwise violate the [Paraprofessional] Rules of Professional Conduct.