



Date: April 19, 2021

To: California Paraprofessional Program Working Group

From: Carolin Shining, Chair, Julia Brynerson, Steven Fleischman, Stephen Hamilton, Amos Hartston, Nicole Robinson, Hon. Erica Yew

Subject: Recommendations for Consumer Debt and General Civil Practice Areas

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.

Subsequent to its April 21, 2020, meeting, the CPPWG established a number of practice area specific subcommittees including Consumer Debt and General Civil. These subcommittees met through August 2020. At the July 2020 CPPWG meeting there was a decision to merge the Consumer Debt & General Civil Subcommittees. This action was not actually implemented, however; only Consumer Debt issues were addressed between the Working Group's July and August meetings. At its August 2020 meeting the CPPWG decided to put practice area selection on hold and instead transition to the topics of paraprofessional licensing, regulation, and discipline. The final memos submitted by the Consumer Debt and General Civil Subcommittees to the CPPWG are provided as Attachments A and B.

This memorandum provides a brief discussion of the pre-hiatus work of the Consumer Debt and General Civil Subcommittees, followed by the joint Subcommittee's recommendations on all outstanding issues under its combined purview. A minority report, prepared by Subcommittee Chair Carolin Shining, follows the presentation of recommended resolutions.

BACKGROUND

CONSUMER DEBT RELATED TOPICS

The Consumer Debt Subcommittee was tasked with studying consumer debt related legal practice areas with the goal of generating recommendations regarding inclusion or exclusion of specific subtopics in the paraprofessional program.

The Consumer Debt Subcommittee's deliberations were grounded in the findings of the California Justice Gap Study (JGS). The JGS results for the Consumer Debt practice area identified the following specific Consumer Debt related needs:

- Identity theft;
- Unfair or deceptive lending practices;
- Credit repair services;
- Payday/short-term lenders;
- Fines and fees from criminal or juvenile cases;
- Creditor/collection agency harassment;
- Car repossession or defect/warranty issues;
- Bankruptcy;
- Wage garnishment; and
- Utility cutoff due to nonpayment or billing dispute

The Consumer Debt Subcommittee presented its initial recommendations to the CPPWG at its August 2020 meeting. Those recommendations reflected initial decisions to exclude several subtopics within the Consumer Debt practice area:

- Bankruptcy;
- Identity theft;
- Unfair or deceptive lending practices;
- Problems with credit repair services;
- Payday/short-term lenders;
- Fines and fees from criminal or juvenile cases; and
- Car repossession or defect/warranty issues.

The following Consumer Debt subtopics were identified for further study, with no final recommendations generated prior to the transition of the Working Group to the topics of licensing, regulation, and discipline subsequent to the August 2020 CPPWG meeting:

- Creditor/collection agency harassment;
- Wage garnishment; and
- Utility shutoff.

GENERAL CIVIL TOPICS

The General Civil Subcommittee was unable to use the JGS to develop a complete list of potential subtopics for inclusion in the paraprofessional program. Instead, the General Civil Subcommittee reviewed the Judicial Branch Statistical Information System (JBSIS) manual to establish a definition of cases considered to be in the General Civil category. The following case types are included in the General Civil category in the JBSIS manual:

- Personal injury/property damage/wrongful death
- Tort
- Employment
- Contract
- Real Property
- Unlawful Detainer
- Judicial Review
- Complex litigation
- Small claims appeal
- Enforcement of Judgment
- Other Civil (including civil harassment and name change)

Given the breadth and range of the General Civil practice area, the fact that other CPPWG subcommittees were addressing some of the JBSIS Civil case types, and the desire to focus on areas where access to legal services is limited, the General Civil Subcommittee ruled out a number of potential subtopics. At its June 2020 meeting, the Working Group resolved to continue consideration of the following General Civil subtopics:

- Legal advice regarding preparation of affirmative and responsive pleadings in civil harassment proceedings;
- Representation of debtors in enforcement of judgment proceedings and advice and representation related to debt collection;
- Enforcement of small claims court judgments; and
- Representation of creditors in wage and hour claims in limited jurisdiction cases.

Subsequent to that meeting, civil harassment proceedings were added to the scope of areas to be considered by the Family Law Subcommittee.

2021 RESUMPTION OF PRACTICE AREA SUBCOMMITTEES: GENERAL CIVIL AND CONSUMER DEBT

The combined Subcommittee met on March 2, 2021, and identified the following as outstanding areas for recommended inclusion or exclusion as follows:

- Representation of debtors in enforcement of judgment proceedings and advice and representation related to debt collection;
- Creditor harassment;

- Enforcement of small claims court judgments;
- Representation of creditors in wage and hour claims in limited jurisdiction cases;
- Wage garnishment; and
- Utility shut offs

The Subcommittee determined that the topic of representation of creditors in enforcement of wage and hour judgments should be addressed by the Employment and Income Maintenance Subcommittee, and the issue was forwarded to that group accordingly.

Recommendations for each of the remaining topics are outlined below.

CONSUMER DEBT, INCLUDING REPRESENTATION OF DEBTORS IN COLLECTIONS MATTERS AND CREDITOR HARASSMENT

The Subcommittee heard from a number of practitioners in the consumer debt space including Judge Noël Wise, Alameda County Superior Court, Mr. Abbas Kazerounian, Kazerouni Law Group, Ms. Leigh Ferrin, Public Law Center, and Mr. Hoon Chun, Los Angeles County District Attorney's Office. In addition to formal presenters, the Subcommittee received public comment from several practitioners in the consumer debt space.

The various presenters educated the Subcommittee about the interplay between what had been previously viewed as fairly distinct subtopics within the broad Consumer Debt practice area, explaining that affirmative creditor harassment cases often arise from debt collection matters. The Subcommittee heard from some presenters that the vast majority of collections matters proceed by default in the superior courts, and that debtors would benefit from legal representation. Presenters shared a view that there can be a myriad of state and federal statutes and regulations at play in consumer debt matters, and that potential counter claims, some state, some federal, can materially benefit a debtor and require a high degree of specialized knowledge to access. Because of the complexity and the potential availability of counter claims, some of which might trigger removal to federal court where a paraprofessional would not be authorized to represent clients, there were very different views on the appropriateness of paraprofessional representation in this area. Some presenters felt that it would be possible to develop a check list or intake tool that could parse out the more complex cases that should be sent to attorneys; the majority did not. Judge Wise shared that in her role handling virtually all consumer debt matters that do not go to trial, she rarely sees any of these cross-complaints being raised. Further, federal filings data reviewed by the Subcommittee reflect a relatively low volume of consumer debt related matters being filed in that venue.

With respect to creditor harassment, as noted above, there was also general consensus that the multiple federal and state statutes at play are very complicated and difficult to master, and that affirmative litigation is often required to access available remedies.

The Subcommittee learned however that there are relatively simple prelitigation and communication activities that can be employed to halt some of the more aggressive telephone-related debt collection practices and to attempt to settle underlying debt.

After considering all of the subject matter expert feedback and information received, the Subcommittee took a series of votes as follows:

Resolved, that legal paraprofessionals may represent individual debtors in limited jurisdiction Consumer Debt proceedings but for the following excluded activities:

- Responding to or preparing substantive motions including anti-SLAPP motions and motions for summary judgment;
- Participating in trial setting or pretrial conferences; and
- Representing clients in trials, both jury and bench trials.

(5 Ayes, 1 Nay)

Resolved, that the following Creditor Harassment activities be included and excluded from the paraprofessional program:

Included:

- Prelitigation cease and desist and prove-up letters; and
- Prelitigation negotiation of settlements, including payment plans

Excluded:

- All superior court litigation

(4 Ayes, 1 Nay)

ADDITIONAL NARRATIVE SUBMITTED BY SUBCOMMITTEE MEMBER STEVEN FLEISCHMAN:

Consumer Debt, Including Representation of Debtors in Collections Matters and Creditor Harassment

With respect to creditor harassment, such claims are governed by a myriad of federal statutes which create significant hurdles to allowing paraprofessionals to represent individuals in such cases. Because paraprofessionals will not be licensed to practice in federal courts, they will not be able to represent clients either in original filings in federal court (which experts testified is the norm for such claims) or if a federal claim is alleged in a state court complaint and then removed to federal court by the defendant. They would only be able to represent clients where such claims are asserted in a cross-complaint in state court. Per Judge Wise, in her experience it is extremely rare to see such cross-claims in limited jurisdiction cases.

Given the problems with federal jurisdiction and the complexity of the subject matter, the Subcommittee decided this was generally not an appropriate area for inclusion in the program. However, two types of common prelitigation letters were identified as appropriate for

paraprofessionals to prepare and send: (1) a cease and desist letter; and (2) a prove up letter asking that the creditor prove the validity of the alleged debt. The Subcommittee felt that representing clients in the preparation and sending of these letters was appropriate for inclusion in the program. To this we added pre-litigation settlement negotiations.

Consumer debt was the most difficult of the remaining areas to address. Many members of the Subcommittee felt that the statistical information available on the purported need in this area is sparse. Of the people who responded to the Justice Gap study, two-thirds of them (67 percent) made no attempt to find an attorney. (Justice Gap report at p. 25.) Of the remaining 33 percent of respondents, no attempt was made to determine if they tried to find an attorney to represent them (in a consumer debt matter or otherwise) and was not able to find an attorney to represent them. This was confirmed when the full Working Group heard from the statisticians who prepared the Justice Gap report. Thus, the Justice Gap report does not identify any individual who attempted to locate an attorney and could not, let alone in the area of consumer debt. This information is further borne out by the fact that the vast majority of consumer debt cases (estimated at over 95 percent) are resolved by a default being taken against the consumer/defendant.

One subject matter expert presenter testified that his law firm will represent a consumer in these cases anywhere in the state, from beginning through trial, for a modest flat fee. There is no reason to believe that this does not represent the market value for legal services in this area. Thus, if a consumer can hire competent legal counsel for a modest flat fee, it is questionable whether a consumer could hire a paraprofessional for less money and be better off.

On the other hand, there is no doubt that the vast majority of individual debtors in these cases are either self-represented or simply allow their default to be taken. So, the status quo is not acceptable either, at least in the view of some members of the subcommittee. Therefore, the Subcommittee agreed to include this area in the paraprofessional program with certain limitations: (1) limited to the representation of individual debtors in limited jurisdiction cases; (2) no representation in connection with substantive motions, including summary judgment motions and anti-SLAPP motions; (3) no trial setting or pretrial conferences (because judicial officers frequently want trial counsel to attend) and (4) no jury or bench trials.

WAGE GARNISHMENT

The Subcommittee was supported in its deliberations of this topic by Ms. Elizabeth Gonzalez, Public Law Center, who spoke to the Consumer Debt Subcommittee in 2020 and worked with State Bar staff in 2021 to delineate wage garnishment related tasks.

From the 2020 discussion the Subcommittee was aware of several potential complexities in wage garnishment work including:

- Service problems are common; even if the underlying judgment was not properly served, filing a Claim of Exemption (COE) and appearing at a hearing may waive the ability to bring a motion to quash and waive personal jurisdiction objections.
- Wage garnishment should not be effectuated if defendant income is below statutory income thresholds
 - If the employer is familiar with threshold rules, wage garnishment should not be initiated. If a garnishment is initiated nonetheless, and the debtor files a COE, a court may order a payment despite the income threshold law.

Subcommittee members raised several issues and concerns during the 2021 consideration of the wage garnishment practice area. First, the Subcommittee configuration has changed since the initial review of this topic last summer, resulting in varying levels of member familiarity with the wage garnishment topic. Second, while Subcommittee members generally felt that paraprofessionals could assist defendants in completing the requisite forms, there were concerns expressed by some Subcommittee members about paraprofessionals' ability to effectively advocate in court on behalf of individuals who are the subject of wage garnishments. The fact that the Family Law Subcommittee's April 19, 2021, recommendation to the CPPWG would include wage garnishment as an authorized activity was also discussed. With these considerations in mind, the Subcommittee passed the following resolution:

Resolved, that wage garnishment, except in the Family Law practice area, will be excluded from the paraprofessional program. (4 Ayes, 1 Nay)

The Subcommittee did agree to revisit the wage garnishment issue as needed to ensure the decision to exclude, other than in the area of Family Law, does not inadvertently conflict with the Subcommittee's recommendation on the judgment enforcement practice area, outlined below.

UTILITY SHUTOFF

During its deliberations in 2020, the Consumer Debt Subcommittee heard from Ms. Gabriela Sandoval with TURN. TURN (The Utility Reform Network) champions the cleanest energy and highest quality phone service at the lowest prices possible for residential customers, low-income households, and small businesses through legal advocacy, state and federal policy development, and community organizing throughout California. TURN provides services to consumers experiencing utility shutoffs in those parts of the state that are served by private (vs. municipal) utilities. TURN provides these services free of charge to all consumers served by private utilities, regardless of income. TURN does not advertise this particular aspect of its services because of capacity concerns; there is no counterpart to TURN in the municipal utility space.

Staff followed up with TURN to further explore the utility shutoff issue in March 2021. Staff presented the following to the Subcommittee pursuant to that discussion:

- Most utility shutoffs are for \$500 or less. Given the frequently low monetary value of unpaid bills in utility shutoff matters, the funds that a consumer might pay a paraprofessional to address the shutoff would likely be sufficient to restore utility service.
- There are other unmet utility related needs where the paraprofessionals could be useful including:
 - Utility equipment damaging homes (falling on homes);
 - Power surges damaging consumers' appliance;
 - Customers being required to use utility service for tree work around power lines and then being billed for that work at exorbitant rates; and
 - Impact of rolling shutoffs now being implemented for fire mitigation purposes.

At its April 8, 2021, meeting, the Subcommittee determined that utility shutoffs would generally not be a viable practice area for inclusion in the paraprofessional program due to the low dollar values involved in these matters. There was however a concern that a blanket exclusion would inadvertently limit paraprofessionals from addressing utility shutoff issues as they arise in landlord/tenant disputes. The following resolution reflects the Subcommittee's position on this topic:

Resolved, that utility shutoff for nonpayment of utility services, except in landlord-tenant disputes, will be excluded from the paraprofessional program. (4 Ayes, 1 Nay)

ENFORCEMENT OF JUDGMENTS

Over the course of its deliberations in 2020 and 2021, the Subcommittee learned about the difficulties that many individuals have in enforcing judgments. Other CPPWG subcommittees have explicitly addressed the need for legal services in this area. The Subcommittee recognized unmet legal needs in this area, but expressed concerns about an overly expansive authorization for paraprofessional practice being taken advantage of by large institutional creditors who would find a way to assign debt to individuals who could then hire paraprofessionals. With the understanding that unlimited jurisdiction matters had previously been determined to be outside the allowable scope of paraprofessional practice, the Subcommittee determined that the problem of debt assignment was most likely to arise in limited jurisdiction (as opposed to small claims) proceedings. With this background in mind, the Subcommittee adopted the following resolution:

Resolved, that legal paraprofessionals may represent natural persons in enforcement of small claims court judgments, and natural person debtors in limited jurisdiction post-judgment enforcement proceedings. (4 Ayes, 1 Nay)

Although Mr. Hartston voted to approve the resolution, his preferred approach would be to allow paraprofessionals to represent both individual debtors and individual creditors in enforcement of judgement proceedings related to limited jurisdiction civil judgments.

RECOMMEND RESOLUTIONS

RESOLVED, that legal paraprofessionals may represent individual debtors in limited jurisdiction Consumer Debt proceedings but for the following excluded activities:

- Responding to or preparing substantive motions including anti-SLAPP motions and motions for summary judgment;
- Participating in trial setting or pretrial conferences; and
- Representing clients in trials, both jury and bench trials.

RESOLVED, that the following Creditor Harassment activities be included and excluded from the paraprofessional program:

Included:

- Prelitigation cease and desist and prove-up letters; and
- Prelitigation negotiation of settlements, including payment plans.

Excluded:

- All superior court litigation

RESOLVED, that wage garnishment, except in the Family Law practice area, will be excluded from the paraprofessional program.

RESOLVED, that utility shutoff for non-payment of utility services, except in landlord-tenant disputes, will be excluded from the paraprofessional program.

RESOLVED, that legal paraprofessionals may represent natural persons in enforcement of small claims court judgments, and natural person debtors in limited jurisdiction post-judgment enforcement proceedings.

MINORITY REPORT SUBMITTED BY CAROLIN K. SHINING, CHAIR OF THE SUBCOMMITTEE

With regard to my votes which did not approve any of the recommended resolution, the following is a partial summary of my decision not to support the recommendations:

On March 26, 2021, a vote was taken with regard to the level of “in-court” representation by Paraprofessionals by the entire Working Group. The vote resulted in a “default” position of the entire Working Group that paraprofessionals can represent consumers using “full in-court representation” except for jury trials. Using this “default position”, each subject area

subcommittee was tasked to return and then reconsider the areas that should be “excluded” from the “default” position.

This new resolution calls into question the process of extensive, months-long subcommittee work. This work was referred to as “deep dives” into the appropriateness of areas in the program. The subcommittees were presented with extensive public comment and experts in specific areas. No “default” position was presented, and therefore, the discussions did not include any consideration of what “full in court representation” should entail.

Indeed, a report of the Subcommittee was prepared for the August 25, 2021, meeting. Would that report have resulted in different findings if the committee’s position on “full court representation” had been known? The committee was given only a few hours to consider this shift in the program’s direction. The discussion as to what “full court” or “partial in court” representation would or should include.

A common refrain during our deliberations has been “isn’t someone better than no one”? The concept is that having nonlawyer appear in court as counsel for a consumer would be “better than nothing.” If the now stated “full in-court representation” position was known in consumer debt and general civil issues, I believe that this committee’s work prior to March 26 would have been very different. It is unfortunate that the March 26, 2021 resolution’s timing came as numerous subcommittees had not finalized their months of work. As a result, I am unable to support the recommended resolutions and request that this work be reconsidered pending the definition of what “full court presentation” will entail under the licensing, regulation, disciplinary and pilot subcommittees.



The State Bar of California

ATTACHMENT A
CALIFORNIA PARAPROFESSIONAL
PROGRAM WORKING GROUP

Date: August 25, 2020

To: California Paraprofessional Program Working Group

From: Julia Brynelson, Steven Fleischman, Stephen Hamilton, Amos Hartston, Carolin Shining, Hon. Erica Yew

Subject: Consideration of Consumer Debt as a Practice Area to Be Included in a Paraprofessional Program

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.

Discussion

At its first meeting on April 21, the CPPWG discussed potential practice areas for program inclusion. One of these areas was Consumer Debt. At its July 13 meeting, six members of the CPPWG volunteered to serve on a Consumer Debt subcommittee tasked with studying this practice area with the goal of generating recommendations regarding inclusion or exclusion of specific subtopics in this practice area for consideration by the full body at its next meeting.

The Consumer Debt subcommittee, comprised of the authors of this memorandum, is considering the following in conducting our assessment of Consumer Debt Law as a potential practice area for inclusion in a paraprofessional program:

- Consumer debt-related questions and responses included in the California Justice Gap Study;
- Information gathered from representatives of other state paraprofessional programs where consumer debt-related matters are authorized; and

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- Information obtained from subject matter experts/practitioners in the field.

California Justice Gap Study

The California Justice Gap Study included questions about financial issues, including questions about problems getting credit because of identity theft, being the target of unfair lending practices or internet scams, problems with debt reduction or credit repair services, problems with terms for repayments of payday lenders, problems related to legal financial obligations, harassment by creditors, problems with pay for or repossession of a car, filing for bankruptcy, garnished wages, and disconnected utilities due to nonpayment or a billing dispute.

These issues, categorized as Consumer Debt, were the second-most common type of legal problem experienced by Californians at all income levels, with 21 percent of all households reporting at least one Consumer Debt -related problem.

The California Justice Gap Study results for the Consumer Debt practice area identified the following specific legal needs for this population:

- Identity theft
- Unfair or deceptive lending practices
- Credit repair services
- Payday/short-term lenders
- Fines and fees from criminal or juvenile cases
- Creditor/collection agency harassment
- Car repossession or defect/warranty issues
- Bankruptcy
- Wage garnishment
- Utility cutoff due to nonpayment or billing dispute

Of note, two additional or related topics that fall under Consumer Debt—representation of debtors in enforcement of judgment proceedings, and advice and representation related to debt collection—were previously addressed by the Working Group at its June 30 meeting pursuant to recommendations received regarding the General Civil practice area. The present subcommittee has not yet addressed these topics as they relate to the Consumer Debt areas under consideration. Pursuant to vote by the Working Group, the Consumer Debt and General Civil subcommittees have been combined to move forward on the related areas more efficiently.

Subject Matter Experts

We met with the following attorneys who practice in the consumer protection/finance area: Mr. Noah Zinner, Bay Area Legal Aid; Ms. Leigh Ferrin, Public Law Center; Ms. Elizabeth

Gonzalez, Public Law Center; Ms. Gabriela Sandoval, The Utility Reform Network (TURN); Mr. Timothy Blood; Mr. Robert Hyde; Mr. David Kaminski; and Mr. Abbas Kazerounian.

Feedback Received From Other States

Utah Supreme Court Justice Deno Himonas spoke with the subcommittee about the Utah Licensed Paralegal Practitioner (LPP) program. Consumer finance related matters, such as debt collection matters in which the dollar amount in issue does not exceed statutory limit for small claims (\$11,000), are authorized LPP activities in the State of Utah. Justice Himonas advised us that Utah currently has four licensed paraprofessionals and hopes to have another handful licensed in the near future.

Mr. Dave Byers, Administrative Director of the Courts in Arizona, spoke to the subcommittee about the Arizona Limited License Legal Practitioners (LLLP) program, which is currently being developed. He explained that the rules for the program, which are expected to be implemented later this year, will allow LLLPs to practice independently of lawyers and provide representation in any civil matter (including, but not limited to, debt cases) in limited jurisdiction cases. Neither Justice Himonas nor Mr. Byers indicated whether their states permit paraprofessionals to argue jury trials.

Status Update

The subcommittee made decisions to exclude several subtopics within the Consumer Debt practice area:

- Bankruptcy;
- Identity theft;
- Unfair or deceptive lending practices;
- Problems with credit repair services;
- Payday/short-term lenders;
- Fines and fees from criminal or juvenile cases; and
- Car repossession or defect/warranty issues.

These decisions were based on various considerations, in some cases including complexity, the consequences of error in the initial stages of the proceedings, and overlapping federal court jurisdiction.

The balance of our subcommittee deliberations focused on the following remaining issues:

- Creditor/collection agency harassment;
- Wage garnishment; and
- Utility cutoff.

Following is a summary of the subject matter expert feedback received regarding some of these remaining subtopics:

Creditor/Collection Agency Harassment

Justice Himonas indicated that the Utah LPP includes consumer debt as an authorized activity because of the great consumer need in this area. Justice Himonas explained that the Utah program is forms-driven; essentially, LPPs can offer advice in any area in which approved court forms exist. He indicated that he is not aware of whether forms have been adopted specifically addressing creditor/collection agency harassment; in his view, the fact that there are potential federal remedies available to some consumers experiencing these problems should not preclude paraprofessional representation. LPPs are bound by an ethical obligation that requires them to advise the client if a case should be heard in federal court, and Justice Himonas believes this requirement provides sufficient protection.

Mr. Byers echoed Justice Himonas' view, stating that a majority of these cases are not complex and that there is an overarching need to increase access to legal services that should inform this work generally.

Mr. Hyde, a consumer rights attorney, asserted that consumer law is not easy to teach or quickly learn, even with a law degree or legal background and experience. He stated that the biggest problem he has identified in this area is that consumers are generally unaware of their rights and possible remedies.

Mr. Kaminski, a civil litigation attorney with practice focused on the defense of banks, creditors, and collection agencies, agreed with Mr. Hyde's overall assertion and added that, even if some cases were simple enough to be handled by paraprofessionals, the majority are not; they are often filed in federal court and are very complex in nature.

Mr. Blood, a consumer protection attorney, stated that consumer law is a very complex area and expressed that, while there are areas where nonattorneys could assist, the scope of their practice would have to be very limited.

Ms. Ferrin, Director of Litigation and Pro Bono at the Public Law Center, expressed mixed feelings about having paraprofessionals practice in this area. She stated that some of the topics and tasks are very complicated and beyond the scope of paraprofessionals; however, narrowly defined tasks and limited activities may be appropriate for a paraprofessional to perform.

Wage Garnishment

Ms. Gonzalez and Mr. Kazerounian provided the subcommittee with a detailed overview of the wage garnishment process. They explained that while some steps in the process are form-driven and relatively simple and straightforward, there are critical timelines that must be adhered to, and a host of issues related to the underlying debt and consumer protections that sometimes are at issue. They asserted that an in-depth knowledge of the law in this area, as well as the interplay between various areas of consumer protection law, are needed in order to appropriately identify possible affirmative claims against the creditor in these matters beyond responding to the wage garnishment order. Their shared view was that the consumer debt area is not an appropriate area for paraprofessional licensure.

Utility Cutoff

Ms. Gabriela Sandoval, Director of Strategic Initiatives at The Utility Reform Network (TURN), explained that TURN, a consumer advocacy organization, provides trainings for community advocates around the state who help consumers with complaints against utility companies. Some topics covered in the trainings are: how to stop utility shutoffs, reestablishing service, and setting up payment plans. Ms. Sandoval stated that they regularly work with community advocates that are nonattorneys.

Next Steps

The subcommittee intends to continue with its work with regard to creditor/collection agency harassment, wage garnishment, and utility cutoff subsequent to the August 25 meeting, developing a full set of recommendations for the remaining subtopics and tasks included in the Consumer Debt practice area.



The State Bar of California

CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

Date: June 30, 2020

To: California Paraprofessional Program Working Group

From: Hon. Erica Yew and Steven Fleischman

Subject: Consideration of General Civil a Practice Area to be included in a Paraprofessionals Program

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.

Discussion

At its first meeting on April 21, the CPPWG discussed potential practice areas for program inclusion. While there was agreement with regard to including certain practice areas for additional consideration and excluding others, several practice areas were deemed "wobblers," meaning that additional information was required before a decision could be made regarding their status. Members of the CPPWG volunteered to study each of the wobbler areas with the goal of generating recommendations regarding ongoing consideration from the program for review by the full body at its next meeting.

The present two-person team assessed the General Civil practice area. In generating our recommendations, outlined below, we considered the following data points:

- The California Courts Judicial Branch Statistical Information System (JBSIS) Manual;
- California courts data on self-represented litigants;

- California Attorney Practice Analysis; and
- Information from judges who hear civil cases.

JBSIS Manual

We reviewed the Judicial Branch Statistical Information System (JBSIS) manual to establish a definition that would encompass cases to be considered in the General Civil category. The following case types are included in the General Civil category in the JBSIS manual:

- Personal injury/property damage/wrongful death
- Tort
- Employment
- Contract
- Real Property
- Unlawful Detainer
- Judicial Review
- Complex litigation
- Small claims appeal
- Enforcement of Judgment¹
- Other Civil (including civil harassment and name change)

California Attorney Practice Analysis (CAPA)

The CAPA survey asked attorneys to rate the depth of knowledge required to complete tasks in specific legal areas, as well as the criticality of proficiency in the tasks and legal topics (i.e., the degree of harm that may be inflicted upon clients and/or the general public if an attorney is not proficient). The CAPA study created a composite score to measure both criticality and frequency (i.e., the importance of being proficient and the frequency in performing tasks in an area) for each practice area. The composite score for Civil Procedure is 20.7, the highest among all knowledge areas. Another relevant rating is regarding the depth of knowledge (DOK) required to perform the tasks with competence. On a 5-point scale, the DOK score for Civil Procedure is 3.7, near the high end of the metric.

Based on the CAPA study, the General Civil practice group concluded that the potential for problems created by allowing nonlawyers to practice law was potentially highest in traditional litigation pending in Superior Courts. Therefore, the General Civil practice group concluded that representation by nonlawyers should be carefully circumscribed to those areas in which there is a demonstrated need for representation that the existing bar is not meeting and where there are fewer procedural issues to be handled by potential paraprofessionals.

Although not addressed by the CAPA survey, one member of the General Civil group was concerned that allowing paraprofessionals to practice in areas where there is a well-established

¹ While our discussions referred to consumer debt, the JBSIS manual list Enforcement of Judgment in the definition of Civil case types.

and existing bar would exacerbate the problem of “runner and cappers,” which are prohibited by Business and Professions Code sections 6151, et seq.

California Courts Self-Represented Litigant Data

The Judicial Council collects data, through JBSIS, regarding the incidence of self-representation in the courts; detailed case type information is provided by some courts. Of the reporting courts, the data suggests that between 3 (Superior Court, County of Inyo) and 92 percent (Superior Court, County of San Joaquin) of plaintiffs and between 3 (Superior Court, County of Santa Clara) and 55 percent (Superior Court, County of Mariposa) of respondents are self-represented plaintiffs in matters categorized as civil.²

Judges Who Hear Civil Cases

We held a discussion with Judge Daniel Buckley from the Los Angeles Superior Court, Judge Michael Harper from the Trinity Superior Court and Judge Beth McGowen of the Santa Clara Superior Court, to learn about their experiences with civil cases and areas of need, and what type of advice and assistance might be appropriate for nonattorneys to provide. These judges were intentionally selected so that we could garner the perspectives from a large, medium, and small size court.

Recommendations

From the onset, we recognized the breadth and range of the General Civil practice area; given the working group’s focus on increasing access to legal services, we ruled out a number of areas within General Civil that do not present these types of access concerns. This resulted in a limited list of potential areas for inclusion: civil harassment, enforcement of judgments, and consumer protection.

- **Civil Harassment:** Our discussion regarding this particular area within General Civil was limited; generally, though, we support measures to ensure broad access to protective orders and agree that preparation of affirmative and responsive civil harassment pleadings is appropriate work for a trained nonlawyer professional.
- **Enforcement of Judgments:** Feedback garnered from our conversation with the three judges noted above confirmed that there is a need for additional representation resources in enforcement of judgment proceedings. Our discussion centered around the practical reality that in most judgment enforcement proceedings, creditors (e.g., financial institutions) are nearly universally represented by counsel and debtors are much less likely to be; as a result, our general position is that nonlawyer paraprofessionals should be authorized to only represent debtors, as opposed to creditors, in enforcement of judgment proceedings. Finally, we did not see any need to

² Unfortunately, data broken down by specific case type within the civil category is not available. It should also be noted that several of the courts with the highest number of filings, including Los Angeles, Sacramento, San Diego, and San Francisco, do not report information about self-represented litigants.

allow potential paraprofessionals to represent financial institutions and, thereby, decrease the cost of legal services for those entities. We did identify one needed exception to this recommended limitation, however, as related to wage and hour cases. These matters are often very low in total dollar value and as a result it is difficult for workers to collect on judgments; we accordingly recommend that nonattorney paraprofessional be authorized to represent “creditors” in wage and hour matters. Our recommendation in this area is to allow potential paraprofessionals to handle matters only in limited jurisdiction cases (under \$25,000).

- **Consumer Protection:** This is a broad area, and our discussion focused on whether small value consumer protection cases, such as lemon law, should be included. Based on our discussion with the judges, we agreed that this area should **not** be included, as cases are complex, and that legal representation is readily available. Our discussion did not extend to collection matters, as this area is being included under the broader topic of enforcement of judgments discussed above.

All of these recommendations are limited to allowing paraprofessionals to make appearances in superior courts.

A summary of our recommendations with respect to each JBSIS General Civil area is outlined in the table below.

JBSIS Case Definition	Recommendation	Rationale
Personal injury/property damage/wrongful death (e.g., auto, asbestos, product liability, medical malpractice)	Exclude	<ul style="list-style-type: none"> • Complex • Sufficient attorney representation available
Tort (e.g., business, civil rights, defamation, fraud, intellectual property, professional negligence)	Exclude	<ul style="list-style-type: none"> • Complex • Sufficient attorney representation available
Employment (e.g., wrongful termination)	N/A	Separately addressed by CPPWG
Contract (e.g., breach of contract/warranty, collections, insurance coverage)	Exclude	<ul style="list-style-type: none"> • Complex • Sufficient attorney representation available
Real Property (e.g., eminent domain/inverse condemnation, wrongful eviction)	Exclude ³	Complex
Unlawful Detainer	TBD	Separately addressed by CPPWG

³ Some aspects of real property cases are being considered under a separate recommendation.

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Judicial Review (e.g., writ of mandate, asset forfeiture)	Exclude	Complex
Complex litigation	Exclude	Complex
Small claims appeal	Exclude	Representation statutorily precluded
Enforcement of Judgment	Include	See discussion above
Other Civil – Civil Harassment	Include	See discussion above
Other Civil – Name and Gender Changes	N/A	Separately address by CPPWG