



# The State Bar of California

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## Draft Minutes

### California Paraprofessional Program Working Group (CPPWG)

February 26, 2021

10:00 a.m.–4:00 p.m.

### Zoom Meeting

Time meeting commenced:	10:04 a.m.
Time meeting adjourned:	4:01 p.m.
Chair:	Hon. Ioana Petrou
Members present at roll call:	Sharon Bashan, Julia Brynelson, Julie Fellmeth, Steven Fleischman, Stephen Hamilton, Hon. Michael Harper, Amos Hartston, Kimberly Kirchmeyer, Dana McRae, Elizabeth Olvera, Nicole Robinson, Hon. David Rubin, Carolin Shining, Fariba Soroosh, Ira Spiro, Claudia Torres-Ambriz, Hon. Monica Wiley, Hon. Erica Yew
Members absent:	None
Also present:	Leah Wilson, Sara Cates Bové, Brady Dewar, Gregory Fortescue, Donna Hershkowitz, Elizabeth Hom, Hon. Jonathon Lack, Christopher McConkey, Doan Nguyen, Arayeh Rahimitabar
Committee Coordinator:	Linda Katz

### Call for Public Comment<sup>1</sup>

**Bridget Gramme**, University of San Diego School of Law's Center for Public Interest Law, addressed Item III.A.

**Julianna Lee**, Legal Aid Foundation of Los Angeles, addressed Item III.A.

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<sup>1</sup> The format of public comments reflects recently adopted protocols for State Bar meeting minutes. A recording of the meeting is available at <https://board.calbar.ca.gov/Video.aspx>.

**Stephanie Carroll**, Public Counsel Law Center, expressed overall concern with the CPPWG's process.

**Dana Fischel**, President of the California Alliance of Paralegal Associations (CAPA), spoke in support of the paraprofessional program.

**Leigh Ferrin**, Director of Litigation & Pro Bono at Public Law Center, addressed Item III.C.

**Minyong Lee**, Senior Attorney at Neighborhood Legal Services of Los Angeles, addressed Item III.B.

**Tom Gordon**, Executive Director of Responsive Law, spoke in opposition to regulation of fees.

**Dana Fischel**, President of the California Alliance of Paraprofessional Associations, offered CAPA's support and assistance in development of the paraprofessional program.

**Angela Grijalva**, Owner of Prepared Legal, addressed Item III.D.3.

## **I. MINUTES**

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

**RESOLVED**, that the California Paraprofessional Program Working Group approves the minutes of the January 15, 2021, meeting.

Moved by Hamilton, seconded by Yew.

**Ayes (17)**: Bashan, Brynson, Fellmeth, Fleischman, Hamilton, Harper, Hartston, Kirchmeyer, McRae, Olvera, Rubin, Shining, Soroosh, Spiro, Torres-Ambriz, Wiley, Yew.

**Abstentions (0)**: None.

**Absent (1)**: Robinson.

**Noes**: None.

*Motion carries.*

## **II. CHAIR'S REPORT**

Chair Justice Ioana Petrou welcomed panelists and attendees. She noted that the working group received several written comments and expressed appreciation for the great thought that members of the public have given to this work. Justice Petrou especially noted a joint letter from Bet Tzedek Legal Services and Public Counsel Law Center. Additionally, the chair reported that she and Ms. Wilson recently met with the Closing the Justice Gap Working Group, which will make recommendations about a legal regulatory "sandbox" for California.

Ms. Wilson presented the working group's plan for the next few months. In the spring, the working group will look at rules proposals and vote on subcommittee recommendations. In June, it will vote on the rules, proactive regulation, governance, a license name, and evaluation. In July, the working group will review and finalize draft recommendations, which will be issued for public comment. In August, recommendations will be finalized, with consideration given to comments received; at that time, the working group will also address outreach and evaluation. The working group's report to the Board of Trustees is due in September.

### **III. BUSINESS**

#### **A. In-Court Representation: Facilitated Discussion**

Judge Rubin reviewed data about California's civil justice gap. Ms. Wilson introduced the two guest speakers, Hon. Jonathon Lack, Superior Court of Washington Commissioner for King County, and Sarah Cates Bové, a Washington Limited License Legal Technician (LLLT).

Ms. Bové explained that Washington's program initially prohibited LLLTs from appearing in court. LLLTs were limited to explaining court processes and roles to clients, readying them to represent themselves. Washington later changed its rules to allow LLLTs to appear in court. She observed that this made a positive difference for clients, who could then ask their LLLT questions at counsel table. Additionally, the LLLT could later advise the client based on what the LLLT personally observed during the proceedings, rather than from the client's recollection or a transcript.

Commissioner Lack described how LLLTs regularly appeared in his courtroom. He noted that a large percentage of litigants in divorce proceedings represent themselves, which is often overwhelming for them. He observed that LLLT representation helps both the litigant and the bench navigate the facts of the case. LLLTs also provide valuable emotional support and preparation to clients who go to court. Working group members heard about how often judges in Washington ask LLLTs to speak on various topics in court.

Ms. Bové posited that a likely reason Washington sunset its LLLT program was that limiting it to a single practice area curtailed participation. Commissioner Lack added that the entry requirement of 3,000 practice hours probably deterred people from applying. Schools also delayed creating the program for students to get their LLLT license. All of these features likely contributed to the program failing to be fully financially self-sustaining, a fact that was ultimately cited as a reason for the program's termination.

After hearing from Ms. Bové and Commissioner Lack, working group members presented positions for four options for participation by legal paraprofessionals in court proceedings: (1) full in-court representation; (2) responsive representation, in which legal paraprofessionals may

respond to questions from the bench; (3) in-court support, in which legal paraprofessionals may appear with clients but not address the court; and, (4) a prohibition on in-court appearances.

Judge Yew presented the position that paraprofessionals be permitted to provide full in-court representation. Judge Yew pointed out that nonlawyers are already authorized to represent people in a number of proceedings and observed that, as with lawyers, there are good ones and bad ones. Judge Yew noted that cases with self-represented litigants present the greatest challenge for the bench, and that allowing paraprofessionals to represent parties would alleviate judicial concerns about imbalances between parties. Judge Yew added that, as many courts do not provide court reporters, having paraprofessionals available would also help to ensure greater accuracy of orders, leading to increased compliance.

Ms. Soroosh presented the position for responsive representation. Ms. Soroosh noted that appearing in court is always a traumatic experience for litigants; most self-represented litigants could do a good job with assistance from a well-trained paraprofessional, who could help them stay organized in court and ensure that they don't forget any of the requests they wish to make of the court. Particularly in domestic violence cases, having the assistance of a paraprofessional in court could help victims regain a sense of control over their situation. Ms. Soroosh asserted that it would be helpful to allow paraprofessionals to respond to direct questions from the bench, noting that the paraprofessional would be in a better position than a client to efficiently provide factual information. Ms. Soroosh asserted that both paraprofessionals and judges would comply with clear rules and boundaries regarding limits on paraprofessionals' in-court assistance.

Mr. Hamilton presented the position that paraprofessionals be admitted to sit at counsel table with their client, providing guidance and advice, but not be permitted to speak in court. He expressed concern that allowing paraprofessionals to speak in court would create political barriers to implementation of the program, due to opposition from stakeholders and constituents. He also asserted that the licensing requirements for paraprofessionals were not sufficient to allow them to speak in court on their clients' behalf.

Ms. Shining presented the position that paraprofessionals be prohibited from appearing in court. She expressed concern about the unauthorized practice of law, which is not well defined. She also opined that paraprofessionals would not be able to achieve the level of competency required to appear in court. Ms. Shining expressed concern that allowing nonlawyers to appear in court would threaten the public's trust and confidence in the courts.

## **B. Recommendations from Subcommittees**

### **1. Family Law**

Due to time constraints, the working group deferred consideration of the Family Law Subcommittee's recommendations to the April 19, 2021 meeting.

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

Mr. McConkey presented the Pilot Implementation Subcommittee's recommendations for implementation of a legal paraprofessional license in California. As detailed in the subcommittee's February 26 memo, the subcommittee recommended an initial program rollout in a limited number of practice areas and counties, comprised of the full complement of program features, including licensing, regulation, and discipline structures.

The practice areas recommended for the initial program rollout include family law, housing law, and collateral criminal law. Pending additional data, the geographic areas recommended for the initial program rollout include Alameda and Santa Clara Counties in Northern California; Fresno, Merced, and Tulare Counties in Central California; and Orange County in Southern California. The venue of the underlying case would determine its eligibility for paraprofessional assistance.

The subcommittee recommended against a limited term pilot, due to concerns that potential paraprofessionals and educational partners would likely be reluctant to invest the substantial time and resources required for a program with a set end date. The subcommittee recommended against an initial program that differed from the intended design of the full program (e.g., a requirement that paraprofessionals be supervised by attorneys during a pilot phase), since evaluation of such a pilot would not be informative in guiding decisions for the ongoing program development.

In assessing the Pilot Implementation Subcommittee's recommendations, the working group discussed the need to ensure enough time to collect data in the first phase of implementation.

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that the program be implemented in a phased-in manner, with a subset of practice areas and counties, and with the proposed final program features in place.

Moved by Soroosh, seconded by McRae.

**Ayes (16):** Bashan, Brynelson, Fellmeth, Fleischman, Hamilton, Harper, Hartston, Kirchmeyer, McRae, Olvera, Rubin, Shining, Soroosh, Spiro, Torres-Ambriz, Wiley.

**Abstentions (0):** None.

**Absent (2):** Robinson and Yew

**Noes (0):** None.

*Motion carries.*

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that the initial phase of the program will be limited to the following practice areas, as defined by the corresponding practice area subcommittees:

- Family Law
- Housing
- Collateral Criminal

Moved by Harper, seconded by Rubin.

**Ayes (16):** Bashan, Brynelson, Fellmeth, Fleischman, Hamilton, Harper, Hartston, Kirchmeyer, McRae, Olvera, Robinson, Rubin, Shining, Soroosh, Torres-Ambriz, Wiley.

**Abstentions (0):** None.

**Absent (1):** Yew.

**Noes (1):** Spiro.

*Motion carries.*

In discussing the recommended geographies, the working group considered whether to add an additional region in Northern California given that counties north of the Bay Area experience unique access-to-justice challenges. Judge Harper recommended including Sacramento as an anchor county, a function it currently serves for courts in northern counties.

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that the initial phase of the program will be limited to the following geographic areas, subject to modification as warranted by additional data:

- Northern California Counties:
  - Alameda
  - Santa Clara
  - Additional county/counties: Sacramento and north of Sacramento
- Central California Counties:
  - Fresno
  - Merced
  - Tulare
- Southern California:
  - Orange County

Moved by Brynelson, seconded by Torres-Ambriz.

**Ayes (17):** Bashan, Brynelson, Fellmeth, Fleischman, Hamilton, Harper, Hartston, Kirchmeyer, McRae, Olvera, Robinson, Rubin, Shining, Soroosh, Spiro, Torres-Ambriz, Wiley.

**Abstentions (0):** None.

**Absent (1):** Yew.

**Noes (0):** None.

*Motion carries.*

## **D. Recommendations from Subcommittees**

### **2. Licensing**

Mr. Hamilton presented the Licensing Subcommittee's recommendations, as detailed in the subcommittee's February 26 memo. Following is a summary of those recommendations:<sup>2</sup>

<b>Requirement</b>	<b>Recommendation</b>
Educational Prerequisites	JD or LLM degree from ABA or California Accredited or Registered law school; or Paralegal qualified under Business and Professions Code § 6450(c)
Educational Requirements <i>Coursework taken as part of a law school or paralegal program may satisfy the program's educational requirements.</i>	All practice areas: <ul style="list-style-type: none"><li>• 3 credit hours Ethics and Professional Responsibility, including practice management and recognition and elimination of bias in the legal profession</li><li>• 3 credit hours Pretrial Discovery and Evidence [practical and not theoretical]</li><li>• 3 credit hours Court Procedure</li><li>• 3 credit hours Court Advocacy</li><li>• 1 unit trauma-informed representation</li></ul> Subject matter specific credits to be required for each practice area, as identified by each practice area subcommittee
Practical Training (Experiential) <i>Experience working as a paralegal or in a law school clinic may satisfy the experience requirements.</i>	<ul style="list-style-type: none"><li>• 1,000 hours over a minimum of 6 months</li><li>• 500 hours must be in practice area in which paraprofessional will be licensed</li><li>• Must include trauma-informed training</li></ul> Each practice area subcommittee to identify specific requirements
Testing	<ul style="list-style-type: none"><li>• Subject matter specific testing<ul style="list-style-type: none"><li>○ Subject matter subcommittees to recommend specific elements and parameters of testing</li></ul></li><li>• Professional Responsibility Exam modeled after attorney exam</li></ul>
Moral Character & Background Check	<ul style="list-style-type: none"><li>• Fingerprinting &amp; background check equivalent attorney requirements</li><li>• Not disbarred or resigned with charges pending in any jurisdiction</li><li>• Moral character determination requirements to mirror attorney requirements</li></ul>

**RESOLVED**, that the California Paraprofessional Program Working Group adopts the recommendations regarding program eligibility prerequisites, educational requirements,

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<sup>2</sup> For full recommendations, please refer to the Licensing Subcommittee's February 26, 2021, memo, available at <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000027198.pdf>

experiential training requirements, testing requirements, moral character requirements, and supervision incentives provided in the February 26, 2021, memo from the Licensing Subcommittee, as modified by an amendment to the memorandum that a one unit paraprofessional ethics course cannot be waived.

Moved by Hamilton, seconded by Brynelson.

**Ayes (16):** Bashan, Brynelson, Fellmeth, Fleischman, Hamilton, Harper, Hartston, Kirchmeyer, McRae, Olvera, Robinson, Shining, Soroosh, Spiro, Torres-Ambriz, Wiley.

**Abstentions (0):** None.

**Absent (2):** Rubin and Yew.

**Noes (0):** None.

*Motion carries.*

### **Recommendations from Subcommittees**

#### **1. Discipline**

#### **2. Regulation**

Due to time constraints, the working group deferred consideration of recommendations from the Discipline and Regulation Subcommittees to a meeting to be scheduled in March.

### **E. Next Steps**

The chair announced that the working group will have two special meetings in March: one dedicated to in-person representation and the other to consider recommendations from the Regulation and Discipline Subcommittees. She thanked everyone for their time.

**ADJOURN**