



The State Bar of California

Draft Minutes

California Paraprofessional Program Working Group (CPPWG)

March 18, 2021

10:00 a.m.–1:00 p.m.

Zoom Meeting

Time meeting commenced:	10:04 a.m.
Time meeting adjourned:	12:59 p.m.
Chair:	Hon. Ioana Petrou
Members present at roll call:	Sharon Bashan, Julia Brynson, Julie Fellmeth, Steven Fleischman, Stephen Hamilton, Hon. Michael Harper, Amos Hartston, Kimberly Kirchmeyer, Dana McRae, Elizabeth Olvera, Carolin Shining, Ira Spiro, Hon. Monica Wiley, Hon. Erica Yew
Members absent:	Nicole Robinson, Hon. David Rubin, Fariba Soroosh, Claudia Torres-Ambriz
Also present:	Leah Wilson, Carissa Andresen, Gregory Fortescue, Christopher McConkey, Marc Shapp
Committee Coordinator:	Linda Katz

I. CHAIR'S REPORT

Chair Justice Ioana Petrou welcomed panelists and attendees. She noted that the working group would take public comment later in the meeting due to speakers' time constraints.

II. BUSINESS

A. Recommendations from Subcommittees

1. Discipline

Ms. Kirchmeyer presented the Discipline Subcommittee's recommendations, as detailed in the subcommittee's February 26 memo. The table on the following page summarizes the recommendations for adjudicating complaints, presenting two options for appeals:¹

¹ For the full recommendations, please refer to the Discipline Subcommittee's February 26, 2021, memo, available at <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000027228.pdf>.

Model Element	Recommended Approach
Complaint Intake and Investigation	To be handled by the Office of Chief Trial Counsel (OCTC)
Citation and Fine ²	To be administered by OCTC <ul style="list-style-type: none"> If fine and fee determination is disputed, that dispute will be adjudicated by the Hearing Panel
<ul style="list-style-type: none"> Initial Hearings Disputed Fine and Fee Determinations 	Three-person Hearing Panel
Settlement Conferences	<ul style="list-style-type: none"> To take place only if OCTC and paraprofessional mutually consent To be heard by staff adjudicator
Appeals and Stipulated Discipline	Three-person panel or the Paraprofessional Board
Final Discipline Decision	<ul style="list-style-type: none"> Suspensions and Revocations: final discipline decision to be made by the Supreme Court Appeals from the Appeals level to be heard by the Supreme Court All other discipline finalized at appropriate level within the State Bar's paraprofessional disciplinary structure, level as yet to be determined

Ms. Kirchmeyer presented the subcommittee's recommendations about alternatives to formal discipline, as follows: warning letters and mandatory fee arbitrations would be included; agreements in lieu of discipline, orders of abatement, private reprovals, and alternative discipline programs would be excluded.

The subcommittee presented its recommendations for the public availability and retention of discipline records, as summarized in the following table:

Intervention or Disciplinary Outcome	Private or Public?	If Public On Website or On Request	Finite or Indefinite Retention?
Warning Letter (not discipline)	Private		TBD
Citation & Fine (not discipline)	Public for 3 years from date of resolution	<ul style="list-style-type: none"> Website for 3 years unless withdrawn or dismissed After 3 years transition to Private 	Indefinite

² The term "Diversion" was also included in this box in the January 15, 2021, memo. The subcommittee has addressed in detail various diversion options in the following section of this memorandum and made distinct recommendations accordingly. As such that particular issue has been removed from this particular table.

Intervention or Disciplinary Outcome	Private or Public?	If Public On Website or On Request	Finite or Indefinite Retention?
Notice of Disciplinary Charges	Public unless w/drawn or dismissed	On website for duration that discipline itself on website	For duration of period that underlying discipline is public
Public Reprimand	Public	<ul style="list-style-type: none"> Website for 10 years After 10 years transitions to Public on request 	Indefinitely
Probation	Public	Website	Indefinite
Interim Suspension	Public	Website	Finite: duration of interim suspension
Suspension	Public	Website: Suspensions pursuant to discipline/probation	Indefinite
Disbarment	Public	Website	Indefinite
Criminal Convictions	TBD		

The chair asked the subcommittee whether it recommends that a three-person panel or paraprofessional licensing board hear appeals. Each subcommittee member voiced support for a licensing board. It was noted that the licensing board model has succeeded in other professions and promotes a breadth of perspectives upon review. Additionally, the Commission on Judicial Performance has adopted this approach.

The working group heard an amendment to delete from discipline records the names of legal paraprofessionals after ten years. The State Bar would leave the discipline case's facts available, however, so that others can learn from them. Mr. Fortescue clarified that, while existing law prohibits the State Bar from disclosing records about attorney investigations until after charges are filed, it would not be required to apply this requirement to paraprofessionals.

RESOLVED, that the California Paraprofessional Program Working Group adopts the discipline model as outlined on page 2 of the February 26, 2021, memo from the Discipline Subcommittee, with appeals to be heard by the Paraprofessional Licensing Board; and it is

FURTHER RESOLVED, that the California Paraprofessional Program Working Group adopts the alternatives to discipline model as outlined on page 5 of the February 26, 2021, memo from the Discipline Subcommittee; and it is

FURTHER RESOLVED, that the California Paraprofessional Program Working Group adopts the public records determinations as outlined on page 6 of the February 26, 2021, memo from the Discipline Subcommittee, except that Public Reprimand should be converted to an anonymous report after 10 years.

Moved by Yew, seconded by Bryn Nelson.

Ayes (12): Bashan, Bryn Nelson, Fellmeth, Fleischman, Hamilton, Hartston, Kirchmeyer, McRae, Olvera, Shining, Spiro, Yew.

Abstentions (0): None.

Absent (6): Harper, Robinson, Rubin, Soroosh, Torres-Ambriz, Wiley.

Noes (0): None.

Motion carries.

Call for Public Comment³

The chair called for public comments about the discipline recommendations.

Tom Gordon, Executive Director of Responsive Law, addressed Item II.A.2.

Johanna Baumann, Directing Attorney at Bet Tzedek, spoke about the need to protect consumers, without addressing a specific agenda item.

Jason Solomon, Executive Director of the Stanford Center on the Legal Profession, addressed item II.A.2.

2. Regulation

Mr. Hartston presented the Regulation Subcommittee's recommendations, as detailed in the subcommittee's February 26 memo. Following is the recommendation for mandatory continuing legal education (MCLE):⁴

- Require 36 hours of MCLE every 3 years:
 - 28 hours in the paraprofessional's practice areas;
 - 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; and
 - 1 hour of practice management/running a business.
- No more than 18 hours of MCLE 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.

³ 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>.

⁴ For the full recommendations, please refer to the Regulation Subcommittee's February 26, 2021, memo, available at <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000027229.pdf>.

- 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.

The subcommittee also recommended that legal paraprofessionals carry a \$100,000 bond and pay into a client security fund. Malpractice insurance would be encouraged. If neither a bond nor insurance were required, then the subcommittee recommended a restitution fund to compensate for both negligent and intentional acts by legal paraprofessionals.

Mr. Hartston presented the bond requirements for other professionals as a point of comparison. The subcommittee considered the bond amount that would balance the need to protect consumers with the cost to paraprofessionals. To that end, the subcommittee consulted with experts from the bond industry, who explained the potential cost to paraprofessionals and the amount that would be appropriate for different practice areas. The subcommittee found that the \$100,000 bond for immigration consultants was the most apt comparison.

Mr. Spiro proposed making the bond requirement \$50,000 in the first year and \$100,000 in subsequent years. The working group discussed the proposal and whether the requirements should be practice area specific. The working group further discussed what amount would be sufficient to protect consumers while remaining affordable for new professionals.

The chair proposed that the \$100,000 bond be the default, with practice area subcommittees able to recommend a different amount based on the activities within their assigned areas, recommending that someone who practices in multiple areas of law need not be required to maintain a separate bond for each practice area..

Call for Public Comment

The chair called for public comment about the regulation recommendations.

Angela Grijalva, Owner of Prepared Legal, addressed Item II.A.2.

2. Regulation (continued)

RESOLVED, that the California Paraprofessional Program Working Group recommends the following financial responsibility requirements for licensed paraprofessionals:

- Paraprofessionals must maintain a surety bond in an amount of \$100,000;

- Practice area subcommittees may recommend a lower amount be required;
 - The total amount of the required bond may not exceed \$100,000; and
- Paraprofessionals must contribute to a Client Security Fund (CSF), to be established with rules that mirror those of the attorney CSF.

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends the following measures to increase financial protection for clients of paraprofessionals:

- If neither a \$100,000 bond nor malpractice insurance is required, a restitution fund should be established that will compensate clients for both intentional and unintentional acts;
- Paraprofessionals should be strongly encouraged to maintain malpractice insurance; and
- The State Bar should take steps to encourage insurance companies to make insurance available to licensees.

Moved by Yew, seconded by Hartston.

Ayes (12): Bashan, Brynson, Fellmeth, Fleischman, Hamilton, Harper, Hartston, McRae, Olvera, Shining, Wiley, Yew.

Abstentions (1): Spiro.

Absent (5): Kirchmeyer, Robinson, Rubin, Soroosh, Torres-Ambriz.

Noes (0): None.

Motion carries.

RESOLVED, that the California Paraprofessional Program Working Group adopts the following recommendations for paraprofessional minimum continuing legal education (MCLE) requirements:

- 36 hours every 3 years, as follows:
 - 28 hours in the paraprofessional's practice areas
 - 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.

Moved by Hartston, seconded by McRae.

Ayes (12): Bashan, Brynson, Fellmeth, Fleischman, Hamilton, Harper, Hartston, McRae, Olvera, Spiro, Wiley, Yew.

Abstentions (0): None.

Absent (5): Kirchmeyer, Robinson, Rubin, Soroosh, Torres-Ambriz.

Noes (1): Shining.

Motion carries.

The Regulation Subcommittee reported that it is still considering requirements for risk-based regulations, fee limitations, fee sharing, referral fees, informed consent, written agreements, and disclosures.

Ms. Wilson suggested that the working group weigh in on fee caps for legal paraprofessionals. The working group discussed whether caps might be appropriate in particular areas of law, observing that such caps are not imposed on attorneys. The chair noted that the working group has already voted to recommend a process for mandatory fee arbitration similar to that for attorneys.

Mr. Fortescue explained California's approach to excessive attorney fees. Rather than follow ABA Model Rule 1.5, California prohibits "unconscionable" fees. Generally, this standard requires overreaching or unfair conduct. If an attorney spends too long on particular work, that normally goes to mandatory fee arbitration.

The Regulation Subcommittee thanked the working group for this discussion. The chair thanked everyone for their time.

ADJOURN