



# The State Bar of California

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## Draft Minutes

### California Paraprofessional Program Working Group (CPPWG)

March 26, 2021

9:00 a.m.–1:00 p.m.

### Zoom Meeting

Time meeting commenced:	9:04 a.m.
Time meeting adjourned:	12:58 p.m.
Chair:	Hon. Ioana Petrou
Members present at roll call:	Sharon Bashan, Julia Brynson, Julie Fellmeth, Steven Fleischman, Stephen Hamilton, Kimberly Kirchmeyer, Dana McRae, Elizabeth Olvera, Nicole Robinson, Hon. David Rubin, Carolin Shining, Fariba Soroosh, Ira Spiro, Hon. Monica Wiley, Hon. Erica Yew
Members absent:	Hon. Michael Harper, Amos Hartston, Claudia Torres-Ambriz
Also present:	Leah Wilson, Dave Byers, Cathy Corsetti, Hon. Janis Criger, Gregory Fortescue, Christopher McConkey, Kevin Mohr, Michelle Pineda, Marc Shapp, Dana Tieman, Christina (last name unavailable)
Committee Coordinator:	Linda Katz

## I. MINUTES

Approval of the February 26, 2021, minutes is deferred to a later meeting. This is to allow sufficient time for presentations and discussion about in-court representation.

## II. CHAIR'S REPORT

The chair welcomed panelists and attendees. She noted that the working group would take public comments later in the meeting due to speakers' time constraints.

## III. BUSINESS

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

Ms. Wilson introduced the guest speakers: Professor Kevin Mohr, legal ethics expert; Dave Byers, Administrative Director, Arizona Administrative Office of the Courts; Cathy Corsetti, licensed paralegal, Ontario, Canada; Deputy Judge Janis Criger, Ontario, Canada; Christina, a Washington LLLT client; and Dana Tiernan and Michelle Pineda, California LDA Clients.

Mr. Byers reported on the status of Arizona's legal paraprofessional program. Program rules went into effect January 1, 2021, and the first exam administration will occur in April. About 100 people have expressed interest in taking the test.

Mr. Byers explained that Arizona also has an existing document preparer program. Initially, document preparers were prohibited from appearing court. Arizona has since relaxed this restriction. If document preparers do go into court, they may respond to a judge's questions. Arizona has received very few complaints about document preparers.

Mr. Byers described the types of cases that Arizona's legal paraprofessionals will be able to take. These include family law, municipal, some criminal, and small claims matters. He also described the parameters for in-court representation. While legal paraprofessionals may take cases that lead to jury trials, for instance, they may not represent someone who faces jail time.

Deputy Judge Criger reported that she has seen a decline in self-representation since Ontario licensed legal paraprofessionals ("paralegals"). Paralegal representation is unrestricted in small claims court and paralegals do represent clients in court. Deputy Judge Criger noted how paralegals help to identify legal issues for the bench and provide emotional support for clients.

Cathy Corsetti, President of Corsetti Paralegal, described the history of Ontario's paralegal program. Ontario began licensing paralegals in 2008. About 3,000 people applied for licensure at the onset of the program. Ms. Corsetti also outlined Ontario's protections for consumers. Paralegals must carry insurance, abide by a code of conduct, and perform continuing education. They also must complete a two-year degree and pass a Law Society exam.

Ms. Corsetti argued that prohibiting legal paraprofessionals from advocating in court would fall short of providing access to justice. In Ontario, paralegals work in courts where most parties otherwise have to represent themselves.

Ms. Corsetti and Deputy Judge Criger described how Ontario might allow paralegals to practice in family law cases. This would include uncontested divorces and restraining order proceedings. If this happens, Ontario will likely require paralegals to complete a one-year course in family law.

The working group heard next from the client of a LLLT in Washington. The client, Christina, described her experience petitioning for custody of her niece. She first sought assistance from a court self-help center but needed more guidance. She also went to legal aid but realized that she made too much money to qualify for their services. Finally, she sought a private bar attorney but found that they were too expensive.

Christina explained that she eventually found an affordable LLLT. Although her LLLT was unable to speak for her in court, the advocate handled everything until her hearing and prepared her to speak for herself. She noted that she wished the LLLT could have spoken for her since the experience was intimidating.

The working group then heard from Dana Tieman, the client of an LDA in California. Ms. Tieman had a divorce attorney to whom she paid \$8,000. Later, when she needed to file a petition for paternity, she retained an LDA because she could no longer afford a lawyer. Ms. Tieman explained that the LDA helped her to understand the court process. She too described wishing that the LDA could speak for her in court since the experience of appearing was intimidating.

Another client of an LDA in California, Michelle Pineda, described her experience seeking a conservatorship for her brother. She was unable to find sufficient help through her court self-help center and local bar association. Eventually, Ms. Pineda found an LDA who helped her to file the necessary paperwork. Ms. Pineda explained that she took time off from work to observe court so that she would be prepared to self-represent.

Professor Kevin Mohr addressed the working group. Professor Mohr has served as chair and special advisor to the State Bar of California's Committee on Professional Responsibility and Conduct. He was also a member of the State Bar Task Force on Access Through Innovation of Legal Services and now sits on the Closing the Justice Gap Working Group.

Professor Mohr presented on California's bifurcated system for regulating the practice of law. Both the legislature and Supreme Court set regulatory requirements. He elaborated on the ban against the unauthorized practice of law, explaining California Business and Professions Code section 6125's requirement that "No person shall practice law in California unless the person is an active licensee of the State Bar." He also discussed Section 6002(b): "As used in this chapter or any other provision of law, 'member of the State Bar' shall be deemed to refer to a licensee of the State Bar."

Professor Mohr addressed whether legal paraprofessionals would fall under these provisions if the State Bar licensed them. He concluded that existing statutory language likely allows for State Bar licensure of legal paraprofessionals but that the State Bar should still consult with the

legislature. Extending the attorney-client privilege, by contrast, would require legislation. Additionally, statutes that place requirements on “attorneys”, such as California Business and Professions Code section 6068, would likely need updating to refer to legal paraprofessionals.

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

The chair called for public comment.

**Helen Bellamy**, legal document assistant, spoke about Californians’ need for additional affordable legal options.

**Genie Harrison**, Attorney at Genie Harrison Law Firm and President of the Consumer Attorneys Association of Los Angeles, addressed Item III.A.

**Ken Goldman**, Attorney at Ken Goldman Law, spoke about legal paraprofessional services in wage and hour cases.

**Jenna Miara**, Directing Attorney at Bet Tzedek Legal Services, addressed Item III.A.

**Andrea Fields**, California Employment Lawyers Association Wage and Hour Committee Member, spoke about legal paraprofessional services in wage and hour cases.

**Eric Kingsley**, Attorney at Kingsley & Kingsley, addressed Item III.A.

**Chris Dolan**, Chief Legal Counsel of the Dolan Law Firm, addressed Item III.A.

**Angela Grijalva**, Legal Document Assistant and Owner of Prepared Legal, addressed Item III.A.

**Cindy Pánuco**, Directing Attorney at Public Counsel, addressed Item III.A.

Ms. Wilson presented about several of the decisions that the working group has made to date and about some that it still needs to make.

The Working Group proceeded to discuss in-court representation. Ms. Wilson presented the four options being considered:

1. Allow legal paraprofessionals to perform full in-court advocacy;
2. Allow legal paraprofessionals to respond to the bench only if addressed;

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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>.

3. Allow legal paraprofessionals to appear with their clients in court but prohibit them from addressing the bench; or
4. Prohibit legal paraprofessionals from appearing in court.

Judge Rubin facilitated a discussion about how the working group should approach the deliberative process. Multiple members expressed concern that some subcommittees' recommendations might have been different if they had known that the working group might allow full in-court representation. The chair stated that the full working group would establish a default position on in-court representation from which the subcommittees could recommend exceptions.

The members discussed whether to limit advocacy in court by excluding bench trials, jury trials, summary judgment motions, and Anti-SLAPP motions. With respect to summary judgment motions, multiple members noted that it would be odd if legal paraprofessionals could draft, but not argue, these motions.

The chair then proposed a vote on whether to allow in-court advocacy in any form. If the outcome of that vote was to allow in-court advocacy in some form, then the working group would consider the extent of advocacy to allow.

**RESOLVED**, that the following is the default working group position regarding in-court representation by licensed paraprofessionals:

- Paraprofessionals may not provide representation in superior court of any kind.

Moved by Fleischman, seconded by Brynelson.

**Ayes (4):** Bashan, Fleischman, Hamilton, Shining,

**Abstentions (0):** None.

**Absent (2):** Hartston, Torres-Ambriz.

**Noes (12):** Brynelson, Fellmeth, Harper, Kirchmeyer, McRae, Olvera, Robinson, Rubin, Soroosh, Spiro, Wiley, Yew.

*Motion fails.*

Having established that a majority of working group members support at least some in-court representation by paraprofessionals, Mr. Fleischman proposed a resolution for the working group's default position: to allow full in-court representation in superior court, except in jury trials, subject to the limits of the practice area(s) for which the paraprofessional holds a license. Furthermore, the practice area subcommittees could recommend a departure from this default position.

**RESOLVED**, that the following is the default working group position regarding in-court representation in the superior courts by licensed paraprofessionals:

- Paraprofessionals may provide full in-court representation in the practice area(s) and for the tasks for which they are licensed, with the exception of jury trials.

**FURTHER RESOLVED**, that each practice area subcommittee may generate an alternative in-court representation recommendation. Such alternative recommendations will be accompanied by a corresponding rationale for that recommendation.

Moved by Fleischman, seconded by Yew.

**Ayes (12):** Brynolson, Fellmeth, Fleischman, Harper, Kirchmeyer, McRae, Olvera, Robinson, Rubin, Spiro, Wiley, Yew.

**Abstentions (0):** None.

**Absent (2):** Hartston, Torres-Ambriz.

**Noes (4):** Bashan, Hamilton, Shining, Soroosh.

*Motion carries.*

The chair acknowledged that this was a challenging decision and thanked everyone for their hard work.

**ADJOURN**