

MEMORANDUM

TO: Members of the Regulation Subcommittee of the California Paraprofessional Program Working Group

FROM: Steven S. Fleischman

DATE: June 8, 2021

RE: Proposed rule changes

I want to thank the subcommittee and staff for their work on revisions to the proposed Paraprofessional Rules of Professional Conduct. I offer these comments to the June 3, 2021 draft posted for discussion at the June 11 meeting.

1. Rule 1.0.1(b): should include a reference to the proposed Business & Professions Code as well. (My understanding is that legislation will be required to implement the program.)
2. Rule 1.4.2(a)(5): I remain opposed to referral fees and fee sharing.
3. Rule 1.5(c): Consider 25 percent instead of 33.33 percent for contingency fees. The program is, after all, supposed to provide lower cost legal services to consumers.
4. Rule 1.5.1(a): Although reluctant, I can live with this.
5. Rule 1.5.1(b): Although an improvement, I remain opposed to this proposal. No one has made the case, in my view, why paraprofessionals should be entitled to share fees when they work in a law firm when certified paralegals and law clerks (i.e., law school graduates) cannot. The limited additional services that paraprofessionals will be able to perform does not seem to justify fee sharing. Moreover, there is no way to be able to prove or disprove the amount of work the lawyer or paraprofessional devoted to any particular matter without review of time keeping records, which are presumptively privileged during litigation and for some unspecified amount of time afterwards. (*Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 298.)

More importantly, this provision would still allow a paraprofessional to share in fees generated for areas of the law where the paraprofessional is not licensed. For example, an immigration law firm could contract with a paraprofessional to provide services in connection with immigration cases supervised by attorneys in

the law firm. This provision would allow a division fees in that scenario even though the paraprofessional is not permitted to provide immigration services. This has the potential to create a huge loophole regarding the manner in which certified paralegals and law clerks are compensated.

6. Rule 1.5.2(a)(7): add proposed Business & Professions Code section.
7. Rule 1.5.2(a)(9): Typo re client.
8. I suggest adding 1.5.2(a)(11): an estimate of the fees and costs which will be incurred.
9. Rule 1.8.1: I continue to believe that this is a bad idea.
10. Rue 1.8.10(a)(2): Typo: “expressly.”
11. Rule 1.17: Should be “Sale of a Paraprofessional Practice.”
12. Rule 3.6: If paraprofessionals are going to conduct trials in family law, I don’t know why this Rule should not be included.
13. Rule 5.4(a)(6): Given that paraprofessionals cannot represent organizations, I don’t see how this rule would be applicable.
14. Rule 5.4(e): I remain opposed to this rule. As drafted, this rule still permits paraprofessionals to have an ownership interest in a law firm which practices in areas the paraprofessional cannot, e.g., criminal, immigration, personal injury, employment, etc. I think that if a paraprofessional chooses to practice with a law firm, the existing rules regarding compensation should continue to govern.
15. Rule 7.3(d) first sentence: add “or lawyer” after “for another licensed paraprofessional.”
16. Rule 7.3(d)(1): why not incorporate by reference the definition of a runner and capper in the Business & Professions Code?

Steve