



# The State Bar of California

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## Draft Minutes

### California Paraprofessional Program Working Group (CPPWG)

April 19, 2021

10:00 a.m.–4:00 p.m.

#### Zoom Meeting

Time meeting commenced:	10:03 a.m.
Time meeting adjourned:	4:15 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, Nicole Robinson, Hon. David Rubin, Carolin Shining, Fariba Soroosh, Ira Spiro, Hon. Monica Wiley, Hon. Erica Yew
Members absent:	Claudia Torres-Ambriz
Also present:	Brady Dewar, Randall Difuntorum, Gregory Fortescue, Donna Hershkowitz, Ken Holloway, Caroline Holmes, Christopher McConkey, Kevin Mohr, Andrew Tuft, Mark Tuft, Leah Wilson
Committee Coordinator:	Linda Katz

## I. MINUTES

### A. Approval of Meeting Minutes

Approval of the minutes from February 26, 2021, and March 18, 2021, is deferred to a later meeting.

## II. CHAIR'S REPORT

### A. Discussion of California Paraprofessional Program Working Group Project Plan and Timeline

The chair welcomed everyone and announced that there will be a survey to gather input about the name of the new license. She added that the working group will discuss rules of professional conduct for paraprofessionals today but vote on them at a later meeting.

Ms. Wilson presented the working group's timeline, and noted that it is preliminary and subject to change.

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

The chair called for public comment.

**Jason Solomon**, Executive Director of the Stanford Center on the Legal Profession, addressed Item III.B. and paraprofessional representation in court.

**Peter Weinberger** addressed Item III.B, nonattorney ownership of law firms, and small claims court jurisdiction.

**Kelly McVey**, Employment Rights Project Attorney at Bet Tzedek, addressed Item III.B.

**Linda Spiegel**, President of the Beverly Hills Bar Foundation, addressed Item III.B., and paraprofessional representation in court.

**Erin Joyce** addressed Item III.A. and Item III.B.

**Peter Kunstler** addressed access to civil justice and the State Bar's disciplinary backlog.

**Genie Harrison**, President of the Consumer Attorneys Association of Los Angeles, addressed Item III.B

**George Straggas** addressed the need to involve the legal community in the working group's deliberations.

**James Gorton**, an estate planning attorney in Pasadena, CA, addressed the working group's pace of work, and artificial intelligence-driven legal services.

**Christopher Engels** addressed Item III.B, and small claims court caps.

**Matt Price**, a personal injury attorney in Orange County, CA, addressed Item III.B, and bar exam reciprocity.

### **III. BUSINESS**

#### **A. Rules and Statutes Governing Paraprofessional Program, Including an Overview of Related Work of the Task Force on Access Through Innovation of Legal Services and the Closing the Justice Gap Working Group**

Ms. Wilson introduced Brady Dewar, from the State Bar Office of General Counsel (OGC), to discuss potential statutory and regulatory changes that would be necessary or helpful to create a legal paraprofessional license in California.

Mr. Dewar explained that OGC will identify statutes and regulations that need to change to create a paraprofessional license to practice law. Authorities that OGC is reviewing include, among others, the following:

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

- California Rules of Professional Conduct;
- State Bar Act (Business and Professions Code section 6000 et seq.);
- Evidence Code (e.g., provisions governing the attorney-client privilege); and
- Code of Civil Procedure.

OGC is also reviewing the working group's functional areas (governance, licensing, regulation, and discipline), and is researching legal practice areas that are most likely to be included in initial program implementation (family, housing, and collateral criminal law). OGC will participate in discussions with the Regulation Subcommittee regarding recommendations for rules of professional conduct for legal paraprofessionals.

Ms. Wilson introduced Mark Tuft and Kevin Mohr, former members of the Task Force on Access Through Innovation of Legal Services (ATILS), and legal ethics experts. Mr. Tuft explained that ATILS was charged with identifying possible regulatory changes to enhance the delivery of, and access to, legal services through the use of technology, including artificial intelligence and online legal service delivery models. ATILS looked at unauthorized practice of law rules, technology-based delivery of legal services, and restrictions on fee sharing and nonattorney ownership of law offices. Mr. Tuft noted some the recommendations that emerged from the ATILS analyses.

Ms. Wilson asked if Prof. Mohr or others would like to address the topic of overlap between this working group and the Closing the Justice Gap Working Group (CTJG). Prof. Mohr, a CTJG member and expert in legal ethics, stated that he has observed little overlap. ATILS made seven recommendations, only one of which addressed legal paraprofessionals. CTJG will be considering several other recommendations from ATILS.

The working group asked Mr. Tuft and Prof. Mohr about the topics researched by ATILS and CTJG. Mr. Tuft and Prof. Mohr described research into rules regarding advertising, technology, and competence. Some working group members expressed concern that its recommendations might overlap or conflict with recommendations from CTJG on fee sharing and ownership of law firms. The representatives from ATILS and CTJG did not share this concern, and the CPPWG was assured that it is within its charter to make a recommendation on these subjects.

Mr. Hartston presented the Regulation Subcommittee's recommendations, as detailed in the subcommittee's April 19 memo and addendum to that memo.<sup>2</sup> Table 1 on the following page summarizes the subcommittee's recommendations:

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<sup>2</sup> For the full recommendations, please refer to the Regulation Subcommittee's April 19, 2021, memo, available at <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000027364.pdf>, and addendum, available at <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000027380.pdf>.

**Table 1. Regulation Subcommittee Recommendations**

Topic	Recommendation
Can paraprofessionals represent organizations?	No
Can paraprofessionals provide limited scope representation?	Yes
Can paraprofessionals charge advanced fees?	Yes
Can paraprofessionals charge contingency fees?	Yes, for enforcement of judgment matters only, and subject to a cap of 33.33% (or other cap to be determined)
Are paraprofessionals required to deposit unearned fees in a trust account?	Yes
Can paraprofessionals act as runners and cappers for attorneys or other paraprofessionals, or have runners and cappers working for them?	No
Must paraprofessionals work under direct supervision of a lawyer?	No
Can paraprofessionals co-own firms and share fees with other paraprofessionals within the same firm?	Yes
Can paraprofessionals in different firms split fees (true referral fees)?	Yes, with restrictions similar to attorneys
Can paraprofessionals and attorneys co-own firms and share fees between attorneys and paraprofessionals within the same firm?	Yes, with the restriction that paraprofessionals must have minority ownership
Can paraprofessionals share fees with attorneys who do not practice in the same law firm?	Yes, under the same restrictions that allow fee sharing among lawyers under rule 1.5.1
Can paraprofessionals sell interest in a firm to another paraprofessional or attorney?	Yes
Can paraprofessionals enter business transactions or obtain interests adverse to clients?	Undecided
Can paraprofessionals loan money to clients?	Undecided

Ms. Soroosh noted that, in evaluating rules that would be more restrictive than those for attorneys, the subcommittee balanced the need to increase access to justice, protect consumers, and encourage participation in the new profession. Mr. Fortescue noted that all standards of professional conduct applicable to attorneys that are relevant to legal paraprofessionals will apply to legal paraprofessionals as well, but the working group may choose to recommend higher standards for paraprofessionals.

The working group discussed whether regulations would be appropriate with respect to billing and informed consent. Mr. Hartston presented drafts of various rules under consideration by the Regulation Subcommittee. In response to Ms. Shining's inquiry regarding ongoing discussion and voting on proposed rules, Ms. Wilson clarified that the working group will vote on proposed rules in June. Mr. Hartston invited other working group members to attend the Regulation Subcommittee's meetings to provide input.

The working group discussed proposed rules regarding paraprofessional representation of organizations; financial relationships with lawyers and others; referral fees; and fee sharing. The Regulation Subcommittee solicited input from working group members

regarding whether contingency fees should be allowed and, if so, whether they should be subject to a cap.

## **B. Recommendations from Subcommittees**

### **Health**

Ms. McRae presented the Health Law Subcommittee's recommendations, as detailed in the subcommittee's April 19 memo.<sup>3</sup> The subcommittee recommends that health law be excluded from the authorized practice areas. Ms. Fellmeth noted that there are two state agencies, the California Department of Managed Health Care and the California Department of Insurance, which fund organizations that provide free services in this area.

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that the health practice area be excluded from the paraprofessional program; and it is

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that the CPPWG report to the Board of Trustees includes a recommendation that the State Bar assist in publicizing the availability of Health Consumer Alliances (HCAs), the Department of Managed Health Care, and the Department of Insurance. We further recommend that the State Bar support the efforts of the HCAs to require that information about their availability is included on notices from medical insurers and healthcare providers.

Moved by McRae, seconded by Bashan

**Ayes (15):** Bashan, Brynson, Fellmeth, Fleischman, Hamilton, Harper, Hartston, McRae, Olvera, Robinson, Rubin, Shining, Soroosh, Spiro, Yew

**Abstentions (0):** None

**Absent (3):** Kirchmeyer, Torres-Ambriz, Wiley

**Noes (0):** None

*Motion carries.*

### **Consumer Debt and General Civil**

Mr. Fleischman presented the Consumer Debt & General Civil Subcommittee's recommendations, as detailed in the subcommittee's April 19 memo.<sup>4</sup> The subcommittee considered creditor harassment cases and recommends excluding litigation activities. Prelitigation activities, such as cease and desist letters, would be allowed.

Ms. Shining explained why she disagrees with including this area of law. When the working group voted to recommend in-court representation, her position on

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<sup>3</sup> For the full recommendations, please refer to the Health Law Subcommittee's April 19, 2021, memo, available at <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000027368.pdf>.

<sup>4</sup> For the full recommendations, please refer to the Consumer Debt and General Civil Subcommittee's April 19, 2021, memo, available at <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000027366.pdf>.

including this substantive area changed. Mr. Fleischman voiced his agreement with some of Ms. Shining's concerns about allowing in-court representation. Judge Yew noted that she would have included bench trials. Judge Rubin noted that a paraprofessional could expedite these cases in court.

Ms. Fleischman presented recommendations about wage garnishments, utility shutoffs, and enforcement of judgments.

Mr. Fleischman presented a resolution and accepted a friendly amendment from the chair changing "substantive motion" to "dispositive motion." Judge Harper, Justice Petrou, Judge Rubin, and Judge Yew commented that they would know what "dispositive motion" means in this context. Some working group members expressed concern about having too little time to evaluate the proposals before voting.

**RESOLVED**, that legal paraprofessionals may represent individual debtors in limited jurisdiction consumer debt proceedings, except for:

- Responding to or preparing dispositive 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.

Moved by Fleischman, seconded by McRae

**Ayes (13):** Brynolson, Fellmeth, Fleischman, Hamilton, Harper, Hartston, McRae, Olvera, Robinson, Rubin, Soroosh, Spiro, Yew

**Abstentions (0):** None

**Absent (3):** Kirchmeyer, Torres-Ambriz, Wiley

**Noes (2):** Bashan, Shining

*Motion carries.*

Mr. Fleischman presented a second resolution to capture the subcommittee's recommendations about creditor harassment cases.

**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.

Moved by Fleischman, seconded by McRae

**Ayes (12):** Brynolson, Fellmeth, Fleischman, Hamilton, Harper, Hartston, McRae, Olvera, Robinson, Rubin, Soroosh, Yew

**Abstentions (1):** Spiro

**Absent (3):** Kirchmeyer, Torres-Ambriz, Wiley

**Noes (2):** Bashan, Shining

*Motion carries.*

After further discussion, the Consumer Debt & General Civil Subcommittee agreed to postpone consideration of recommendations regarding wage garnishment, representing only natural persons, and utility shutoffs until the subcommittee meets to further consider these topics.

### **Employment and Income Maintenance**

Judge Yew presented the Employment and Income Maintenance Subcommittee's recommendations, as detailed in the subcommittee's April 19 memo.<sup>5</sup> Following is a summary of the subcommittee's recommendations:

- Paraprofessionals should be authorized to represent claimants in Division of Labor Standards Enforcement (DLSE) proceedings.
- Paraprofessionals should be authorized to represent claimants in the enforcement of DLSE wage and hour judgments in limited jurisdiction superior court proceedings.
- Paraprofessionals should not be authorized to represent parties in the enforcement of DLSE wage and hour judgments in unlimited jurisdiction superior court proceedings.
- Paraprofessionals should not be authorized to represent parties in wage and hour proceedings in limited jurisdiction superior court claims.

The subcommittee proposed two resolutions in its memo. Mr. Fleischman moved each resolution in turn

**RESOLVED**, that the California Paraprofessional Program Working Group amends the resolution regarding Income Maintenance adopted at its meeting on June 30, 2020, to read as follows:

The California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full scope representation at the state administrative agency level in the following proceedings:

- Wage and hour proceedings, Division of Labor Standards Enforcement;
- Unemployment insurance proceedings, Employment Development Department; and
- All proceedings relating to public benefits.

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<sup>5</sup> For the full recommendations, please refer to the Employment and Income Maintenance Subcommittee's April 19, 2021, memo, available at <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000027367.pdf>.

Moved by Fleischman, seconded by McRae

**Ayes (13):** Bashan, Fellmeth, Fleischman, Hamilton, Harper, Hartston, Kirchmeyer, McRae, Olvera, Robinson, Rubin, Soroosh, Spiro

**Abstentions (0):** None

**Absent (4):** Brynelson, Torres-Ambriz, Wiley, Yew

**Noes (1):** Shining

*Motion carries.*

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that legal paraprofessionals be authorized to represent claimants in the enforcement of Division of Labor Standards Enforcement wage and hour judgments in limited jurisdiction superior court proceedings.

Moved by Fleischman, seconded by Harper

**Ayes (12):** Bashan, Fellmeth, Fleischman, Harper, Hartston, Kirchmeyer, McRae, Olvera, Robinson, Rubin, Soroosh, Spiro

**Abstentions (1):** Hamilton

**Absent (4):** Brynelson, Torres-Ambriz, Wiley, Yew

**Noes (1):** Shining

*Motion carries.*

Mr. Spiro moved an alternative to the above resolutions:

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that legal paraprofessionals will be authorized to represent claimants in wage and hour claims in limited jurisdiction Superior Court cases but not in Private Attorneys General Act (PAGA) cases, class actions, or representative actions, and only after advising the client to attempt to find a lawyer through the California Employment Lawyers Association website and receiving from the client a statement that the client did so but was unable to find a lawyer to represent them for the action.

Moved by Spiro, seconded by Olvera

**Ayes (1):** Spiro

**Abstentions (2):** Olvera, Robinson

**Absent (5):** Bashan, Brynelson, Torres-Ambriz, Wiley, Yew

**Noes (10):** Fellmeth, Fleischman, Hamilton, Harper, Hartston, Kirchmeyer, McRae, Rubin, Soroosh, Shining

*Motion fails.*

#### **Call for Additional Public Comment**

The chair called for additional public comment.



**Clemente Franco**, addressed Item III.B.

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

**Melissa Grant**, Partner at Capstone Law, addressed Item III.B.

### **Family, Children, and Custody**

Ms. Soroosh presented the Family Law Subcommittee's recommendations, as detailed in the subcommittee's April 19 memo.<sup>6</sup> Working group members expressed some confusion regarding the attachments to the memo, which was intended to detail the recommendations for topics and tasks for inclusion and exclusion from this practice area. After further discussion, the Family Law Subcommittee agreed to meet again and provide revised, clarified recommendations to the working group.

### **Housing**

Judge Harper presented the Housing Subcommittee's recommendations, as detailed in the subcommittee's April 19 memo.<sup>7</sup> Following is a summary of the recommendations:

- Paraprofessionals are authorized to assist clients in landlord-tenant matters, including unlawful detainer actions, except that paraprofessionals may not provide representation in bench or jury trials.
- In addition to required disclosures about the availability of a free attorney through a local legal services program for those who qualify, paraprofessionals are required to advise clients of availability of a right-to-counsel program, or must certify that no such program exists, in their county.
- The resolutions by the working group and report to the Board of Trustees should include strong support for establishing a right to counsel in unlawful detainer proceedings, as well as a clear explanation that paraprofessional licensing in this area is meant to supplement and not undermine establishment and funding of a right to counsel.
- Proposed changes to California Rules of Court should require a settlement conference in each unlawful detainer case, if requested by any party.

Mr. Fleischman proposed limiting representation for landlords to those with very few units. He also proposed limiting any resolution to residential matters. The working group discussed whether to limit services for landlords to those with two or fewer units.

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<sup>6</sup> For the full recommendations, please refer to the Family Law Subcommittee's April 19, 2021, memo, available at <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000027365.pdf>.

<sup>7</sup> For the full recommendations, please refer to the Housing Subcommittee's April 19, memo, available at <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000027369.pdf>.

Ms. Shining asked if habitability came up in the subcommittee's conversations. Judge Harper noted that the subcommittee discussed those cases and today's resolution contemplates them.

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals are authorized to assist clients in residential landlord-tenant matters, including unlawful detainer actions.

- Representation is limited to tenants, and landlords who own no more than two units;
- Paraprofessionals may provide in-court representation for motion hearings and default prove-ups;
- Paraprofessionals may not provide in-court representation in bench trials or jury trials;
- During trials, paraprofessionals may assist their clients by sitting at counsel table to provide advice and guidance, and may respond to direct questions from the judge.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that, in addition to required disclosures about the availability of a free attorney through a local legal services program to those who qualify, paraprofessionals are required to advise clients of availability of a right to counsel program, or must certify that no such program exists, in their county.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that the working group and the State Bar Board of Trustees express strong support for establishing and funding a right to counsel in unlawful detainer proceedings. Moreover, it should be clear that paraprofessional licensing in this area is meant to supplement and not undermine establishment and funding of a right to counsel. In particular, a justice gap continues to exist: paraprofessionals will not be authorized to represent litigants at trial; and free attorneys may not be available due to income restrictions placed on right-to-counsel programs, legal services funding and capacity issues, or because local jurisdictions have not yet implemented or fully funded a right to counsel in their jurisdiction. Paraprofessionals also may participate with legal services programs to provide free or low-cost legal services.

Moved by Fleischman, seconded by Spiro

**Ayes (11):** Bashan, Fellmeth, Fleischman, Harper, Hartston, Kirchmeyer, McRae, Olvera, Robinson, Soroosh, Spiro

**Abstentions (1):** Shining

**Absent (6):** Brynelson, Hamilton, Rubin, Torres-Ambriz, Wiley, Yew

**Noes (0):** None

*Motion carries.*

The chair thanked everyone for their hard work and staying late.

**ADJOURN**

DRAFT