



The State Bar of California

Draft Minutes

California Paraprofessional Program Working Group (CPPWG)

May 17, 2021

1:00 p.m.–5:00 p.m.

Zoom Meeting

Time meeting commenced:	1:05 p.m.
Time meeting adjourned:	3:28 p.m.
Chair:	Hon. Ioana Petrou
Members present at roll call:	Sharon Bashan, Julia Brynerson, 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:	James Chang, Brady Dewar, Justin Ewert, Gregory Fortescue, Donna Hershkowitz, Caroline Holmes, Christopher McConkey, Leah Wilson
Committee Coordinator:	Linda Katz

I. MINUTES

A. Approval of the Meeting Minutes

The chair invited a motion to approve the minutes from February 26, 2021, March 18, 2021, and March 26, 2021.

RESOLVED, that the California Paraprofessional Program Working Group approves the minutes from the meetings on February 26, 2021, March 18, 2021, and March 26, 2021.

Moved by McRae, seconded by Olvera.

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

Abstentions (0): None

Absent (2): Rubin, Yew

Noes (0): None

Motion carries.

II. CHAIR'S REPORT

A. Oral Report

The chair welcomed panelists and attendees and called for public comment.¹

Call for public comment

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

Michael Barth, Staff Attorney at Public Counsel, addressed Item III.A., and whether legal paraprofessionals would help to close the civil justice gap.

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

Alexis Djivre, Law Office of Alexis Djivre, addressed Item III.A.

III. BUSINESS

A. Consideration of Caps on Fees Paraprofessionals Will Be Authorized to Charge

Ms. Wilson presented the main questions before the working group today as follows: (1) Should California cap legal paraprofessional fees; and (2) if so, how should it set those caps? If the working group recommends the imposition of fee caps, then it needs to assess whether there will be exceptions (e.g., for certain practice areas) and identify a process for setting the caps.

Ms. Wilson described various state and federal statutes that limit contingency and hourly fees, as discussed in the State Bar staff May 17 memo to the CPPWG.² Ms. Wilson pointed out several of the limits identified in the memo, including the following:

State statutes that limit attorneys' contingency fees include:

- Business and Professions Code section 6146;
- Government Code section 13973;
- Insurance Code section 1619;
- Labor Code section 4906; and

¹ 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>.

² The full memo is available at <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000027475.pdf>.

- Probate Code section 10810.

California's Revenue and Taxation Code contains examples of limits on attorneys' hourly fees. Examples of federal statutes that limit hourly fees include:

- 5 USC section 504;
- 26 USC section 7430; and
- 28 USC section 2412.

Ms. Wilson also described local court rules that set presumptively reasonable contingency fees in default actions on promissory notes or contracts. At least 50 courts have such rules, with fee schedules that vary by jurisdiction. The chair asked Ms. Wilson about where California sets a flat cap on attorneys' fees outside of contingency fee cases. Ms. Wilson noted that Probate Code section 10810 is one example. Additionally, 21 courts in California set flat fee caps in unlawful detainer proceedings.

Ms. Katz presented information about modest means panels that set hourly rates or flat fees for attorneys. The Contra Costa Bar Association had such a fee structure but has suspended it pending review. The Los Angeles, Orange, and San Diego County Bar Associations also have modest means panels. Ms. Wilson noted that in these examples the bar association or attorney considers the client's income to screen for modest mean pricing.

State Bar staff research did not identify fee caps for legal document assistants, immigration consultants, or unlawful detainer assistants. Additionally, other states and Ontario, Canada, have not set fee caps for legal paraprofessionals.

State Bar staff also surveyed fee cap methodologies. Caps for court-appointed counsel sometimes consider the practices of neighboring jurisdictions and market rates for services. Modest means panels sometime survey panel members and the local market. Ms. Katz introduced Justin Ewert, Principal Program Analyst at the State Bar of California, who elaborated on how some modest means panels set fees.

Ms. Wilson discussed the methodology for dependency counsel funding. Here, there is differentiation between regions, review of county counsel salaries, and allowance for additional costs such as benefits and overhead. Another method is to use a percentage of attorney hourly rates. This approach often uses Clio software data and surveys attorneys.

Ms. Wilson introduced James Chang, Assistant General Counsel at the State Bar of California, who presented information about whether capping fees for legal paraprofessionals would violate antitrust laws. Mr. Chang concluded that setting fees

complies with antitrust laws because government may regulate pricing. An issue might arise when a legislature or state supreme court delegates its authority to regulate. He opined that, even under such circumstances, the policy would need to be anticompetitive to run afoul of antitrust prohibitions. Fee caps are unlikely to be anticompetitive; unlike fee minimums, fee caps are proconsumer and therefore support competition.

The chair thanked Mr. Chang for his presentation and invited the working group to discuss whether it should recommend fee caps for legal paraprofessionals. The working group discussed how caps might protect consumers but could not be one size fits all. Additionally, caps would need to be high enough that legal paraprofessionals could afford to stay in business. The working group also discussed whether to establish a different standard for attorneys than for legal paraprofessionals.

The working group considered arguments in favor and against the imposition of fee caps. One argument against caps is that other legal professionals, such as legal document assistants, do not have to limit their fees. Instead, the market guides fees as it does for attorneys. This approach allows for dynamic variations in fees across services, areas of law, and regions.

Arguments supporting fee caps include how they can benefit consumers who have other significant expenses, such as medical bills. Multiple working group members noted that the market sometimes fails to protect consumers, suggesting that fee caps are a way to prevent vulnerable consumers from paying excessive or unreasonable fees. Additionally, any limit could adjust over time to account for inflation.

One working group member noted that in other contexts fee caps have been subject to legislative deliberation and subsequent appeal. Another member pointed out that the legislature could adjust or sunset fee caps if appropriate.

The chair asked whether any of the working group members thought that there should be capping in the context of contingency fees. The working group heard about how the Medical Injury Compensation Reform Act (MICRA) caps on contingency fees have been difficult to adjust since their creation.

The working group viewed its charter to confirm that recommending fee caps indeed falls under its focus on consumer protection. Ms. Wilson noted that if the working group were to look at regional rates to recommend caps, it should consider Los Angeles due to its size and representative cost of living.

The chair suggested a vote to identify whether a majority of members are in favor of capping legal paraprofessionals' fees in any situation. Judge Yew offered a motion to identify the working group's current position. The chair asked Judge Yew to clarify if her motion might handle contingency fees differently. Judge Rubin offered a friendly amendment that the motion exclude contingency fees since the working group has yet to discuss those. Judge Yew accepted the amendment.

RESOLVED, that the California Paraprofessional Program Working Group recommends that there be no limits on the fees that licensed paraprofessionals will be authorized to charge. The question of potential caps on contingency fees will be discussed at a later time.

Moved by Yew, seconded by Fellmeth

Ayes (10): Fellmeth, Harper, Kirchmeyer, McRae, Olvera, Rubin, Shining, Soroosh, Wiley, Yew

Abstentions (2): Hamilton, Robinson

Absent (0): None

Noes (6): Bashan, Brynelson, Fleischman, Hartston, Spiro, Torres-Ambriz

Motion carries.

Having established that a majority of members oppose fee caps in all situations outside of contingency fees, the chair proposed discussing other ways to address the concerns behind arguments in favor of caps. For instance, clients could negotiate "not-to-exceed" amounts when contracting for legal paraprofessional services. The working group could also recommend that paraprofessionals report their fees so regulators can assess whether they are excessive.

Ms. Wilson noted that the Regulation Subcommittee will discuss contingency fees and will make a recommendation to the working group at a later meeting. The chair remarked about the excellent quality of today's discussion and thanked everyone for their hard work.

ADJOURN