



Date: June 25, 2021

To: California Paraprofessional Program Working Group

From: Carolin Shining, Chair, Julia Brynson, Steven Fleischman, Stephen Hamilton, Amos Hartston, Nicole Robinson, and Hon. Erica Yew

Subject: Consumer Debt & General Civil Subcommittee Recommendations for a Paraprofessional Program

## EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program.

## BACKGROUND

In its April 19, 2021 report, the Consumer Debt & General Civil Subcommittee presented the following five recommendations to the CPPWG:

Requirement	Recommendations
<b>Consumer Debt</b>	<b>Resolved</b> , that legal paraprofessionals may represent individual debtors in limited jurisdiction Consumer Debt proceedings but for the following excluded activities: <ul style="list-style-type: none"><li>• Responding to or preparing substantive motions including anti-SLAPP motions and motions for summary judgment;</li><li>• Participating in trial setting or pre-trial conferences; and</li></ul> Representing clients in trials, both jury and bench trials.

Requirement	Recommendations
<b>Creditor Harassment</b>	<b>Resolved</b> , that the following Creditor Harassment activities be included and excluded from the paraprofessional program: Included: <ul style="list-style-type: none"><li>• Pre-litigation cease and desist and prove-up letters; and</li><li>• Pre-litigation negotiation of settlements, including payment plans.</li></ul> Excluded: <ul style="list-style-type: none"><li>• All superior court litigation</li></ul>
<b>Wage Garnishment</b>	<b>Resolved</b> , that wage garnishment, except in the Family Law practice area, will be excluded from the paraprofessional program.
<b>Utility Shutoff</b>	<b>Resolved</b> , that utility shutoff for non-payment of utility services, except in landlord-tenant disputes, will be excluded from the paraprofessional program.
<b>Enforcement of Judgments</b>	<b>Resolved</b> , that legal paraprofessionals may represent natural persons in enforcement of small claims court judgments, and natural person debtors in limited jurisdiction post-judgment enforcement proceedings.

The Subcommittee noted that it might subsequently revise its recommendation to generally exclude wage garnishment from the scope of paraprofessional licensure if it was determined on further analysis that doing so would negatively impact the ability of paraprofessionals to meaningfully engage in judgment enforcement work.

In addition, during the April 19, 2021, CPPWG meeting, concern was raised regarding the proposed exclusion of utility shutoff issues from the scope of paraprofessional licensure. The Subcommittee agreed to consider this issue further as well.

At the April meeting, the CPPWG adopted the Subcommittee's recommendations regarding (1) consumer debt, and (2) creditor harassment, but deferred on the other three proposed resolutions. Given the possibility of future revised recommendations, the CPPWG expressed a preference for postponing consideration of the wage garnishment, utility shutoff, and enforcement of judgment recommendations, allowing the Subcommittee to further consider these issues and come back to the CPPWG with revised recommendations at a later date.

The Subcommittee met on June 8, 2021, to consider outstanding issues as identified at the April 19 CPPWG meeting.

## DISCUSSION

At its meeting on June 8, the Subcommittee heard from Mr. Richard Morrison, a nonattorney professional judgment enforcer. Mr. Morrison explained the importance of wage garnishment as a tool in judgment enforcement work, indicating that it is essential and integral; he equated judgment enforcement without wage garnishment to carpentry without a hammer. Mr.

Morrison also stated that, in his view, wage garnishment is not too complex for the paraprofessional program. Although the Subcommittee had previously heard contrary views, the Subcommittee was generally persuaded by Mr. Morrison's views. One member did remain opposed to these views based on the CPPWG's general inclusion of full representation in court.

In addition, the Subcommittee discussed the possibility of wage garnishment being implicated in not just distinct enforcement of judgment matters but also generally in consumer debt and creditor harassment cases. For example, a paraprofessional might be asked to assist with a wage garnishment issue as part of broader representation in a consumer debt matter. In light of wage garnishment's relevance not just to judgment enforcement work but also to other areas of the consumer debt and general civil practice area, the Subcommittee determined that the best course of action would be to not have a resolution explicitly addressing wage garnishment work, with an understanding that wage garnishment will be an included component of the consumer debt, creditor harassment, and enforcement of judgment practices. As a result, the Subcommittee withdraws its proposed resolution excluding wage garnishment.

The Subcommittee then turned to utility shutoffs. Some members expressed the view that the original rationale for recommending exclusion of utility shutoff work in other than very limited circumstances was no longer convincing in light of both the concerns expressed by the full CPPWG and the undeniable need in this area. After discussion, the Subcommittee decided to withdraw its proposed resolution excluding utility shutoff. Similar to wage garnishment, without an express exclusion, the understanding is that utility shutoff will be an included component part of the consumer debt and general civil practice, viewed as a type of consumer debt.

The Subcommittee's reconsideration of wage garnishments, enforcement of judgments, and utility shutoffs caused it to further review the previously adopted CPPWG consumer debt and creditor harassment resolutions. In light of this review, the Subcommittee proposes to modify the CPPWG's adopted creditor harassment resolution and submits a revised enforcement of judgments resolution for the CPPWG's consideration at its June 25, 2021, meeting.

With respect to the previously approved creditor harassment resolution, the Subcommittee became concerned that the term "creditor harassment" may unintentionally be too limiting, and the intent is to include prelitigation communication and negotiation in relation to various consumer debt issues that may not technically qualify as creditor harassment. Therefore, with one member opposed, the Subcommittee proposes to amend the creditor harassment resolution to include consumer debt issues more broadly. The proposed revised resolution also clarifies that these activities can be undertaken only on behalf of natural persons. If adopted, this resolution would replace that the creditor harassment resolution adopted by the CPPWG at its April 19 meeting.

With respect to the previously recommended enforcement of judgments resolution, the originally submitted resolution restricted representation in limited jurisdiction matters to debtors. After further consideration, again with one member opposing the resolution based on the full in-court provisions of the program, the Subcommittee recommends not including this limitation.

## **PROPOSED RESOLUTIONS**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that the following consumer debt and creditor harassment activities on behalf of natural persons 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

**RESOLVED**, that California Paraprofessional Program Working Group recommends that legal paraprofessionals may represent natural persons in enforcement of small claims court judgments, and natural persons in limited jurisdiction post-judgment enforcement proceedings.

## **MINORITY POSITION IN OPPOSITION TO THE RECOMMENDATIONS AS SUBMITTED BY CAROLIN SHINING, CHAIR**

On March 26, 2021, a vote was taken with regard to the level of “in-court” representation by Paraprofessionals by the entire Working Group. The vote resulted in a “default” position of the entire Working Group that paraprofessionals can represent consumers using “full in-court representation” except for jury trials. Using this “default position”, each subject area subcommittee was tasked to return and then reconsider the areas that should be “excluded” from the “default position.

This process called into question the extensive, months-long subcommittee work. This work was referred to as “deep dives” into the appropriateness of areas in the program. The subcommittees were presented with extensive public comment and experts in specific areas. No “default” position was presented, and therefore, the discussions did not include any consideration of what “full in court representation” should entail. Indeed, a report of the Subcommittee was prepared for the August 25, 2020, meeting. Would that report have resulted in different findings if the committee’s position on “full court representation” had been known? The committee was given only a few hours to consider this shift in the program’s direction. The discussion as to what “full court” or “partial in court” representation would or should include.

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A common refrain during our deliberations has been “isn’t someone better than no one”? The concept is that having nonlawyer appear in court as counsel for a consumer would be “better than nothing.” If the now stated “full in-court representation” position was known in consumer debt and general civil issues, I believe that this committee’s work prior to March 26 would have been very different. It is unfortunate that the March 26, 2021, resolution’s timing came as numerous subcommittees had not finalized their months of work. As a result, I am unable to support those recommendations that approve in-court representation. I request that this work be reconsidered pending the definition of what “full court representation” will entail including the work being performed under the parallel licensing, regulation, disciplinary and pilot subcommittees.