

MEMORANDUM



To: Family Law Subcommittee
California State Bar Paraprofessional Working Group

From: Stephen Hamilton *SH*

Date: June 24, 2021

Subject: Minor's Counsel

Dear Subcommittee Members:

Fariba and I were contacted by Andrew Cain, Directing Attorney of Legal Advocates for Children and Youth in the Bay Area. Fariba and I both know Andrew from the California State Bar/California Lawyers Association Family Law Executive Committee (FLEXCOM). To say Andrew is a rock star in his advocacy and representation of children would be a gross understatement.

Andrew asked us whether it was expected/anticipated whether paraprofessionals could represent minors in family Court. My initial thought was that they could not, since I assumed based on the Family Code and the Rules of Court only attorneys could do so. However a further review of the code and rules undermined my original thought.

The rules governing appointment of minor's counsel are set forth in Family Code Section 3150 and California Rules of Court 5.240-5.242. Nowhere in those sections is the term "attorney" used. Instead, they use the term "counsel." Rule 5.242 states that minor's counsel must be an active member of the State Bar. However since the State Bar will be licensing paraprofessionals there is an ambiguity as to whether paraprofessionals will be active members of the State Bar.

It is my position that paraprofessionals should not be appointed as minor's counsel. My position is based in part on the fact that this is not an access to justice issue. Most court's will appoint counsel at reduced rates (\$85 in San Luis Obispo County) and pay counsel from the Court's funds subject to reimbursement by the parents. Only in cases where the parents have the means can minor's counsel seek a higher rate of compensation.

At our next meeting, I am therefore proposing the following amendment to our previous adoption of the scope of services paraprofessionals may offer in family law matters:

Resolved, that paraprofessionals may not be appointed as minor's counsel as authorized by Family Code Section 3150 and California Rules of Court 5.240-5.242.

This resolution is consistent with the input Fariba and I received from Mr. Cain.

Regards,

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