



The State Bar of California

CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

Date: July 26, 2021

To: California Paraprofessional Program Working Group

From: Fariba Soroosh, Chair, Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, and Judge Monica F. Wiley

Subject: Family, Children, and Custody Subcommittee Recommendations for 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, and the specific tasks that will be allowed for licenses in each practice area.

BACKGROUND

At the meeting on June 10, 2021, the Family, Children, and Custody Subcommittee presented its recommendations regarding tasks for inclusion in the paraprofessional program. At that meeting, the CPPWG adopted recommendations regarding paraprofessional representation in family law, adoption, and violence prevention. The Subcommittee's recommendations regarding representation in conservatorship, guardianship, and child welfare cases were included in its memo to the CPPWG; due to time constraints, consideration of conservatorship and guardianship was deferred to the June 25 CPPWG meeting. Consideration of child welfare cases was deferred to allow the Subcommittee to consider concerns raised by written and oral public comment. This memo also includes recommendations regarding appointment of

paraprofessionals to represent children in child custody cases, and a clarification regarding representation in violence prevention cases.

DISCUSSION

Child Welfare

The June 10, 2021 memo from the Family, Children, and Custody Subcommittee (provided as Attachment 1) included the following recommendations:

- Paraprofessionals are authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition.
- Paraprofessionals are authorized to assist parties in juvenile dependency cases who are not entitled to court-appointed counsel in these cases.

In advance of its June 10 meeting, the CPPWG received written public comment from the Children's Law Center of California (CLC), which expressed concern about the above recommendations. CLC urged the Working Group to allow more time for analysis and discussion prior to adopting a recommendation, and suggested that dependency professionals be invited to offer their insights on this topic. Based on this recommendation, the CPPWG deferred consideration of representation in child welfare cases to allow the Subcommittee to seek this input.

The Subcommittee met on June 29, and invited input from subject matter experts in child welfare cases. Ms. Leslie Heimov, CLC Executive Director; and Ms. Amanda Kennedy, Supervising Attorney with Legal Advocates for Children and Youth at the Law Foundation of Silicon Valley, were invited to participate as panelists during this meeting. Public comment was also provided by a number of attorneys experienced in child welfare representation.

Ms. Heimov and Ms. Kennedy both expressed concern about allowing paraprofessionals to provide assistance in child welfare cases. They noted that this area is particularly complex, and requires a significant amount of training and experience in order to provide competent assistance. With regard to prefiling assistance, concerns were raised that incorrect guidance might lead to the filing of a dependency petition. They also noted that county social workers, who are often advised not to communicate with attorneys in the absence of county counsel, might be reluctant to work with paraprofessionals who are engaged to help parents during a prefiling investigation.

With regard to assisting parties in juvenile dependency cases who are not entitled to court-appointed counsel, Ms. Soroosh explained the Subcommittee's intent was to allow paraprofessionals to assist with filing a [JV-180 form](#), which may be used by siblings, grandparents, or other interested parties to request that the court recognize their relationship with a dependent child. She acknowledged that assistance with completing these forms is available at court Self-Help Centers. Ms. Heimov suggested that judges are accustomed to considering these requests, and that in-court assistance was not necessary.

Some members of the Subcommittee continue to believe that there is an unmet need, particularly with regard to prefiling assistance. However, based on the information provided by Ms. Heimov and Ms. Kennedy, as well as from public comment provided by several attorneys experienced in child welfare cases, the Subcommittee agreed that paraprofessionals should not be authorized to provide assistance in these cases.

Representation of Children in Child Custody Matters

At its June 10 meeting, the Subcommittee reviewed a memo provided by Mr. Hamilton, provided as Attachment 2. The Subcommittee agreed with Mr. Hamilton's recommendation that paraprofessionals should not be appointed to represent children in child custody matters. Subsequent to that meeting, sections of the Family Code that provide for appointment of counsel for both parents and children in family law cases were identified that were not included in Mr. Hamilton's memo. The Subcommittee recommends that paraprofessionals not be authorized to act as appointed counsel in case types that are within the purview of this subcommittee.

Violence Prevention

At its June 10 meeting, the CPPWG adopted the following resolution:

- **RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide representation in violence prevention matters, as delineated in Attachment B to the April 19, 2021 memo from the Family Law Subcommittee.

Subsequent to that meeting, it was noted that elder abuse was inadvertently omitted from Attachment B referenced in the resolution. The Subcommittee agreed that elder abuse should be included in this practice area.

PROPOSED RESOLUTIONS

RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals not be authorized to act as appointed counsel in case types that are within the purview of the Family, Children and Custody Subcommittee.

RESOLVED, that the California Paraprofessional Program Working Group recommends that the resolution regarding violence prevention adopted at the June 10, 2021 meeting be amended as follows:

RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide representation in violence prevention matters, ~~as delineated in Attachment B to the April 19, 2021 memo from the Family Law Subcommittee~~ including domestic violence, elder abuse, gun violence, civil harassment, and workplace violence.

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation, excluding jury trials, with the following exceptions:

- Domestic violence hearings involving children.
- If expert witness testimony will be introduced, paraprofessionals are prohibited from introducing or cross-examining expert witnesses.



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CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

Date: June 10, 2021

To: California Paraprofessional Program Working Group

From: Fariba Soroosh, Chair, Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, and Judge Monica F. Wiley

Subject: Family Law Subcommittee Recommendations for 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, and the specific tasks that will be allowed for licensees in each practice area.

DISCUSSION

The Family, Children, and Custody Subcommittee (Family Law Subcommittee) posted initial recommendations in advance of the February 26, 2021, and April 19, 2021, CPPWG meetings. Due to time constraints, those recommendations were not considered at these meeting. The Family Law Subcommittee's February 26 and April 19 memos are provided as Attachments A and B, respectively.

Subsequent to the April 19 meeting, the Subcommittee met and developed additional recommendations regarding subtopics and tasks. This memo provides a comprehensive discussion of the Subcommittee's deliberations and recommendations, including as related to in-court

representation, where the Subcommittee has determined that deviation from the CPPWG's default position is appropriate.¹

FAMILY LAW

The Subcommittee has received input from the Working Group, many stakeholders in the legal community, and specialists in several of the areas under discussion. Based on this input, and further discussion, the Subcommittee makes the following recommendations:

Family Law Tasks

Paraprofessionals are authorized to provide representation in family law matters, with the following exceptions:

- Nullity matters:
 - Petitions based on incest, unsound mind, fraud, force, physical incapacity
 - Putative spouse establishment
 - Division of quasi-marital property
- Petition to establish parental relationship involving Family Code § 7612(b) or (c)
- Child custody and visitation involving Hague Convention or UCCJEA
- Qualified Domestic Relations Order (QDRO)
- Discovery:
 - Depositions
 - Expert discovery
 - Related motions
- Pre-marital/post-marital agreements
- Marvin/palimony actions
- Contempt actions

Members of the Subcommittee did not reach a consensus recommendation regarding the following task:

- Spousal or domestic partner support in long term marriages

All but one of the Subcommittee members recommend that paraprofessionals be allowed to assist with these matters if they are included in a marital settlement agreement, but not if they are the subject of litigation. Mr. Hamilton recommends that paraprofessionals not be authorized to assist in these matters, whether or not they are contested.

In-Court Representation

Paraprofessionals are authorized to provide full in-court representation, excluding jury trials, with the following exception:

¹ Mr. Hamilton may provide further clarification regarding his recommendations in a separate memo, to be published in an addendum to this memo.

- Hearings on emergency custody or visitation requests when a judge has granted temporary emergency orders. At such hearings, paraprofessionals are authorized to sit at counsel table to support and advise their client, and may answer direct procedural questions from the judge.
 - The reason for this variation from the CPPWG's default recommendation is that the court's granting of the temporary emergency orders reflects a determination that the child is at risk. The Subcommittee believes that this situation will require training beyond that which will be required of paraprofessionals.

Limit on Income and/or Estate Value

The Subcommittee considered whether a cap on either income or estate value should be imposed for paraprofessional representation in family law cases. The Subcommittee agreed that income and estate value do not necessarily correlate with case complexity and therefore does not recommend such a limit.

VIOLENCE PREVENTION

While members of the Subcommittee are familiar with domestic violence restraining orders, they sought input from subject matter experts (SMEs) regarding the inclusion of other types of violence prevention restraining orders. Staff consulted with Judy Hitchcock, Senior Staff Attorney with Legal Assistance to the Elderly, regarding elder abuse restraining orders, and Ruth Silver-Taube, who teaches the Employment Law Clinic at Santa Clara University, regarding workplace violence restraining orders. Staff reported to the Subcommittee that the SMEs consulted agreed that paraprofessional assistance would be beneficial to clients pursuing and/or responding to all types of restraining orders. Based on this information the Subcommittee makes the following recommendations:

Violence Prevention Tasks

Paraprofessionals are authorized to provide representation in all violence prevention matters.

In-Court Representation

Paraprofessionals are authorized to provide full in-court representation, excluding jury trials, with the following exception:

- If expert witness testimony will be introduced, paraprofessionals are prohibited from introducing or cross-examining expert witnesses, unless the client provides informed consent.

Another potential exception relates to in-court representation in domestic violence hearings involving children. The Subcommittee did not reach consensus regarding this exception. Ms. Bashan, Mr. Hamilton, and Ms. Soroosh recommend that paraprofessionals not be allowed to provide representation in these hearings. Ms. McRae, Ms. Olvera, and Judge Wiley recommend that paraprofessionals be allowed to provide such representation.

ADOPTION

The Subcommittee reviewed information provided by Subcommittee member Elizabeth Olvera regarding the tasks involved in uncontested stepparent adoptions. The Subcommittee also considered information that staff obtained in a conversation with Robert Walmsley, a member of the Academy of California Adoption Lawyers, regarding training requirements for paraprofessionals authorized to provide representation in these cases. Based on this information the Subcommittee makes the following recommendations:

Adoption Tasks

Paraprofessionals are authorized to provide representation in uncontested adoptions, with the following exception:

- Adoptions arising from dependency petitions.

CHILD WELFARE

Prior to the February 26 meeting, the Subcommittee considered information provided by Subcommittee member Dana McRae, based on her conversation with Ruby Marquez, Chief Assistant County Counsel in the County Counsel's Office of Santa Cruz County. Ms. Marquez believed it would be beneficial for parents to have assistance in child welfare investigations prior to dependency filing, as well as after a dependency case has been terminated. Based on this information, the Subcommittee initially recommended inclusion of representation in dependency investigations pre-filing, as well as post-termination.

At its meeting on April 6, 2021, the Family Law Subcommittee was joined by Mary Feldman, a certified specialist in juvenile law, who represents parties in child welfare cases. In addition to pre-filing and post-termination assistance, Ms. Feldman presented information about assistance that could be provided by paraprofessionals to parties who are not entitled to court-appointed counsel in juvenile dependency cases. Examples included grandparents and siblings seeking visitation, and de facto parent requests. Ms. Feldman explained that much of this work is forms-based and opined that self-represented litigants would benefit by having educated, trained, and experienced paraprofessionals to assist with completing and filing forms as well as representing them in court. Based on the information provided by Ms. Feldman the Subcommittee agreed to the following recommendations:

Child Welfare Tasks

- Paraprofessionals are authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition.
- Paraprofessionals are authorized to assist parties in juvenile dependency cases who are not entitled to court-appointed counsel in these cases.

In-Court Representation

The Subcommittee did not reach a consensus on a recommendation regarding in-court representation in child welfare cases. Ms. Bashan and Mr. Hamilton recommend the following deviation from the CPPWG default position regarding in-court representation:

- Paraprofessionals are not authorized to represent parties in court in juvenile dependency cases.
- Paraprofessionals are authorized to sit at counsel table to support and advise their clients, and may answer direct procedural questions from the judge.

Ms. Bashan provides the following reasons for her recommendation: first, given the extremely serious nature of juvenile dependency proceedings where children's fates are at stake, in-court representation far exceeds the appropriate tasks for paraprofessionals; second, this Subcommittee heard from several subject matter experts who stated that even experienced attorneys who are not dependency attorneys are often ill-equipped to handle in-court dependency proceedings; lastly, the training and education needed to create competence would far exceed the current experiential training and education targets that the CPPWG has set out, in light of the need to require competence without creating onerous requirements for participation. Mr. Hamilton's recommendation is based on general concerns regarding paraprofessionals providing in-court representation, as well as those concerns articulated by Ms. Bashan.

CONSERVATORSHIP AND GUARDIANSHIP

The Subcommittee has considered conservatorship and guardianship subtopics and tasks for inclusion/exclusion in a paraprofessional program. Staff worked with the following subject matter experts to develop a task list for these topics: Ms. Ylianna Perez-Guerrero, Public Counsel; Ms. Bertha Sanchez Hayden, Bet Tzedek; Tamyra Rice, an attorney with the County Counsel's Office of Santa Cruz County; Mr. Jonathan Kahn, Santa Clara Superior Court; and, Ms. Johanna Thai Van Dat, Santa Clara Superior Court.

The Subcommittee also met with Ms. Carlena Tapella, who has extensive experience in conservatorships. Ms. Tapella described various types of conservatorships and explained that limited conservatorships are sought by parents of children with developmental disabilities, when their children reach majority age, and petitions for these types of conservatorships are generally not contested. Ms. Tapella opined that it would be beneficial to allow paraprofessionals to assist otherwise self-represented parties with uncontested limited conservatorships, including allowing them to provide representation at court hearings. Ms. Tapella explained that there was less of a need for paraprofessional assistance for general conservatorships because petitions are routinely granted for payment of attorneys' fees from the estate of the conservatee. Finally, the Subcommittee met with Mr. Robert Colyar, former probate attorney for the Santa Clara Superior Court, who suggested that representation by a paraprofessional with the appropriate education and training would be beneficial to parties in

uncontested guardianship and conservatorship proceedings. Based on this information, the Subcommittee makes the following representation:

Conservatorship and Guardianship

Paraprofessionals are authorized to assist parties in uncontested conservatorship and guardianship cases, with the following exception:

- Guardianships established in dependency court for parties entitled to court-appointed counsel.

In-Court Representation

The Subcommittee did not reach a consensus on a recommendation regarding in-court representation in conservatorship and guardianship cases.

Ms. Bashan, Mr. Hamilton, and Ms. Soroosh recommend the following deviation from the CPPWG default position regarding in-court representation:

- Paraprofessionals are authorized to sit at counsel table to support and advise their client, and may answer direct procedural questions from the judge.

Ms. Bashan, Mr. Hamilton, and Ms. Soroosh provided the following reasons for their recommendation:

- Litigation of these matters crosses over into work that should be reserved for attorneys; allowing paraprofessionals to litigate these matters might lead to the failure of the paraprofessional program.

PROPOSED RESOLUTIONS

FAMILY LAW

RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide representation in all family law matters, with the following exceptions:

- Nullity matters:
 - Petitions based on incest, unsound mind, fraud, force, physical incapacity
 - Putative spouse establishment
 - Division of quasi-marital property
- Petition to establish parental relationship involving FC § 7612(b) or (c)
- Child custody and visitation involving Hague Convention or UCCJEA
- Qualified Domestic Relations Order (QDRO)
- Spousal or domestic partner support in long term marriages, unless included in a marital settlement agreement*
- Discovery:
 - Depositions

- Expert discovery
 - Related motions
- Pre-marital/post-marital agreements
- Marvin/palimony actions
- Contempt actions

*Alternate resolution may exclude spousal or domestic partner support in long term marriages, including those in a marital settlement agreement.

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation, excluding jury trials, in family law matters, with the following exception:

- Hearings on emergency custody or visitation requests when a judge has granted temporary emergency orders. At such hearings, paraprofessionals are authorized to sit at counsel table to support and advise their client, and may answer direct procedural questions from the judge.

VIOLENCE PREVENTION

RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide representation in all violence prevention matters.

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation in violence prevention matters, excluding jury trials, with the following exception:

- If expert witness testimony will be introduced, paraprofessionals are prohibited from introducing or cross-examining expert witnesses, unless the client provides informed consent.

OR

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation, excluding jury trials, with the following exceptions:

- Domestic violence hearings involving children.
- If expert witness testimony will be introduced, paraprofessionals are prohibited from introducing or cross-examining expert witnesses, unless the client provides informed consent.

ADOPTION

RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide representation in uncontested adoptions, with the following exception:

- Adoptions arising from dependency petitions.

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation in uncontested adoption matters, except for those arising from dependency petitions.

CHILD WELFARE

RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition.

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist parties not entitled to court-appointed counsel in juvenile dependency cases.

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation for parties not entitled to court-appointed counsel in juvenile dependency cases.

OR

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals not be authorized to represent parties in court in juvenile dependency cases, but are authorized to sit at counsel table to support and advise their clients, and may answer direct procedural questions from the judge.

CONSERVATORSHIP AND GUARDIANSHIP

RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist parties in uncontested conservatorship and guardianship cases, with the following exception:

- Guardianships established in dependency court for parties entitled to court-appointed counsel.

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation for clients in uncontested conservatorship and guardianship cases.

OR

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist clients in uncontested conservatorship and guardianship cases by sitting at counsel table, and providing support and guidance, and responding to direct questions from the judge, but may not advocate on behalf of their clients.



The State Bar of California

CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

Date: February 26, 2021

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, Fariba Soroosh, and Judge Monica Wiley

Subject: Topics and Tasks for Family Law Practice Area

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, and the specific tasks that will be allowed for licensees in each practice area.

DISCUSSION

At its July 13 meeting, five members of the CPPWG volunteered to serve on a Family Law Subcommittee tasked with studying this practice area with the goal of generating recommendations regarding inclusion or exclusion of specific Family Law subtopics for consideration by the full body at its next meeting. The Family Law Subcommittee provided the CPPWG with updates on its deliberations at its August 25 meeting, and presented its preliminary recommendations at the December 17 meeting. At that meeting, members of the CPPWG provided feedback regarding the inclusion and exclusion of several tasks and as to whether there should be an income or estate value limit for paraprofessional representation. The CPPWG also asked the Subcommittee to make a recommendation regarding whether conservatorships and guardianships should be included in the paraprofessional program. Since

that time, the Subcommittee has met, and has developed recommendations regarding subtopics and tasks; the consideration of conservatorships and guardianships; and in-court support/representation.

Family Law Subtopics and Tasks

At the December 17, 2020, CPPWG meeting, the Subcommittee presented its preliminary recommendations regarding subtopics and tasks for inclusion/exclusion in a paraprofessional program. The Subcommittee solicited and received input from CPPWG members on several topics. Based on that input and further discussion, recommendations regarding subtopics and tasks for family law, as well as educational/training requirements for this area, are included in Attachment A.

Violence Prevention Subtopics and Tasks

While members of the Subcommittee are familiar with domestic violence restraining orders, they sought input from subject matter experts (SMEs) regarding the inclusion of other types of violence prevention restraining orders. Staff consulted with Judy Hitchcock, Senior Staff Attorney with Legal Assistance to the Elderly, regarding elder abuse restraining orders, and Ruth Silver-Taube, who teaches the Employment Law Clinic at Santa Clara University, regarding workplace violence restraining orders. Staff reported to the Subcommittee that the SMEs consulted agreed that paraprofessional assistance would be beneficial to clients pursuing and/or responding to all types of restraining orders; the SMEs also made recommendations regarding the training that should be required for such representation. The Subcommittee recommends the inclusion of civil harassment and gun violence restraining orders accordingly. The Subcommittee recommends inclusion of violence prevention, comprising civil harassment, domestic violence, elder abuse, gun violence, and workplace violence restraining orders, in the family law practice area. Recommendations regarding these subtopics and tasks, as well as educational/training requirements for this area, are included in Attachment A.

Adoption

The Subcommittee reviewed information provided by Subcommittee member Elizabeth Olvera regarding the tasks involved in uncontested stepparent adoption. They also considered information that staff obtained in a conversation with Robert Walmsley, a member of the Academy of California Adoption Lawyers, regarding training requirements for paraprofessionals authorized to provide representation in these cases. The Subcommittee recommends inclusion of uncontested stepparent adoptions for the paraprofessional program, as reflected in Attachment A.

Child Welfare

The Subcommittee considered information provided by Subcommittee member Dana McRae, based on her conversation with Ruby Marquez, who works for Santa Cruz County Counsel representing the county child welfare agency in juvenile dependency cases. Ms. Marquez believes it would be beneficial for parents to have assistance in child welfare investigations prior to dependency filing, as well as after a dependency case has been terminated. Based on

this information, the Subcommittee recommends inclusion of representation in dependency investigations pre-filing, as well as post-termination, as reflected in Attachment A.

Conservatorship and Guardianship

The Subcommittee has undertaken consideration of conservatorship and guardianship subtopics and tasks for inclusion/exclusion in a paraprofessional program. While the CPPWG does not include members with in-depth knowledge on this topic, the Subcommittee has begun discussions with SMEs, who have agreed to provide recommendations in this area. The Subcommittee intends to bring its recommendations to the CPPWG at the April 19 meeting.

In-Court Support/Representation

The Subcommittee is aware that the topic of in-court representation will be the subject of a facilitated discussion at the CPPWG meeting on February 26. Nonetheless, members of the Subcommittee believe that this topic is integral to the recommendations in family law and violence prevention matters included as attachments to this memo. The insights of Subcommittee members were especially helpful in our discussions.

Ms. Soroosh, who directs the Self-Help Center (SHC) at the Santa Clara Superior Court, noted that, while staff at the SHC are able to provide extensive guidance in completing and filing forms in family law cases, they are precluded from attending hearings with litigants to provide guidance and support. Even when litigants have had excellent assistance in completing and filing forms, the actual court appearance can be stressful and challenging. Litigants are often retraumatized by their experiences and are unfamiliar with the court setting. They may become intimidated or flustered in this unfamiliar setting, causing them to be disorganized and forget important information that they would like to convey to the court. Judge Wiley, who presides over family law cases, agreed. Judge Wiley suggested that it would be helpful to the court to have a trained support person who could provide guidance to self-represented litigants, and who could answer questions from the court at the hearing.

Stephen Hamilton, who is a certified family law specialist, agreed that a trained support person would be an asset in the courtroom. He strongly believes that, while a paraprofessional should be allowed to sit at counsel table to guide and prompt their client, they should be prohibited from speaking in court, even to answer direct questions from the bench. Mr. Hamilton asserted that answering questions as even those that might be perceived as procedural may involve advocacy. Mr. Hamilton believes it is essential to maintain a distinction between paraprofessionals and lawyers; in-court representation is key to this distinction. Sharon Bashan agreed with Mr. Hamilton that paraprofessionals should be allowed to sit at counsel table, but should be prohibited from speaking in court.

Ms. Elizabeth Olvera, who is a certified Legal Document Assistant, disagreed, asserting that a trained paraprofessional could competently assist their client by providing information to the court, particularly in response to direct questions from the bench. Ms. Olvera suggested that a distinction could be made between those with a JD degree and others, allowing

paraprofessionals with a JD to speak in court. Greg Fortescue, the Supreme Court's liaison to the CPPWG, noted that if paraprofessionals were to be precluded from answering questions directed to them from the bench, it would be necessary to impose a restriction on judges, precluding them from directing such questions to paraprofessionals.

There was a general agreement, but not unanimous consensus, from the Subcommittee that paraprofessionals should be allowed to provide in-court support, but not representation. In this role, paraprofessionals would be allowed to sit at counsel table, and advise and prompt clients, but not advocate for their clients or speak in court. There was a minority view that paraprofessionals should be allowed to respond to questions from the court.

Limit on Income and/or Estate Value

The Subcommittee considered whether a cap on either income or estate value should be imposed for paraprofessional representation in family law cases. The Subcommittee agreed that income and estate value do not necessarily correlate with case complexity and therefore does not recommend such a limit.

Family Law Subcommittee
Subtopic and Tasks Recommendations

ATTACHMENT A

Family Law

Task	Recommendation
Dissolution/Domestic Partnerships, including dissolution, legal separation, and nullity (annulment) <ol style="list-style-type: none"> 1. Marital status, including status-only judgmentsⁱ 2. Annulment based on bigamy, age of spouse/registrant, prior existing marriage/DPⁱⁱ 3. Annulment based on incest, unsound mind, fraud, force, physical incapacity 	<p>Included</p> <p>Included</p> <p>Excludedⁱⁱⁱ</p>
Paternity (including paternity issues within dissolution, legal separation, domestic partnerships, and DCSS child support matters) <ol style="list-style-type: none"> 1. Complaint to establish parental relationship not involving FC 7612(b) or (c) 2. Complaint to establish parental relationship involving FC 7612(b) or (c) 	<p>Included</p> <p>Excluded</p>
Summary Dissolutions	Included
Petitions for Custody and Support	Included
Child custody and visitation (including third-party joinder and intervention) except in any action where any of the following issues or claims are raised: <ol style="list-style-type: none"> 1. Hague Convention on International Child Abduction 2. International or interstate custody disputes under UCCJEA 3. Grandparent visitation (independent of family law action) 	<p>Included</p> <p>Excluded</p> <p>Excluded</p> <p>Included</p>
Child support ^{iv}	Included
Spousal or domestic partner support <ol style="list-style-type: none"> 1. Temporary 2. Permanent (litigated/contest)/FC 4320 3. Spousal support waivers, buyouts or nonmodifiable step downs <ol style="list-style-type: none"> a. Short term marriage [FC 4336(b)] b. Long term marriage 	<p>Included</p> <p>Included</p> <p>Included</p> <p>Excluded</p>
Separate property/community property/quasi community property ^v <ol style="list-style-type: none"> 1. Joinder of pension/retirement/employee benefit plans 2. Declaration of disclosures 3. Referrals to experts for appraisals and valuations 4. Post division transfer documents 5. QDRO (referrals only) 	<p>Included</p> <p>Included</p> <p>Included</p> <p>Included</p> <p>Excluded</p>
Discovery <ol style="list-style-type: none"> 1. Written discovery (form interrogatories v. other) 2. Depositions 3. Expert discovery 4. Subpoenas: deposition and hearing/trial 5. Motions to compel/motions to quash not related to depositions 6. Motions to compel/quash related to depositions 	<p>Included</p> <p>Excluded</p> <p>Excluded</p> <p>Included</p> <p>Included</p> <p>Excluded</p>
Quasi marital property (nullity)	Excluded

Task	Recommendation
Attorney fees, including expert and paraprofessional fees	Included
Restoration of former name	Included
Venue and jurisdiction disputes not otherwise addressed herein	Included
Marital settlement agreements [except for any issues which are within excluded areas of practice as set forth above] 1. MSA must state that it was prepared by a paraprofessional ^{vi}	Included
Post judgment/permanent order modifications [except UCCJEA/Hague]	Included
Registration of foreign judgments	Included
Premarital/Post-marital agreements (not including MSAs)	Excluded
Putative spouse claims arising from nullity action, including all issues within such a claim (e.g. quasi marital property, attorney fees, spousal support)	Excluded
Marvin/Palimony actions	Excluded
Enforcement of family law orders and judgments 1. Appointment of elisor 2. RFO/Motion for relief in issuing court to assist in enforcement 3. Contempt 4. Seek work orders support 5. Debtor's exam 6. Wage assignment 7. Writ of execution 8. Filing of lien/lis pendens 9. Response to DCSS enforcement action (e.g., license suspension, bank levy) All enforcement mechanisms not specifically identified above are excluded	Included Included Excluded Included Included Included Included Included Included
Alternative Dispute Resolution (except for areas excluded above) 1. Settlement discussions and negotiations 2. Day of court meet and confer	Included Included

-
- i. If instruction includes detailed, in depth education regarding FC 2337, FL-315, FL-347, FL-318-Info, joinder and pension issues
 - ii. If instruction includes education and instruction re: bigamy v. prior existing marriage/DP and FC 2200-2210 and 2310-2312
 - iii. Education includes issue spotting, clear definition of excluded item, specific education regarding excluded issues and referral process (necessity, regulation)
 - iv. Instruction to include training on support calculators, wage assignments and role of DCSS

-
- v. This scope of practice presumes detailed and substantive instruction on forms of discovery, responding to discovery, objections and law and motion procedure related to discovery
 - vi. Companion legislation to be developed, stating that an MSA prepared by a paraprofessional that exceeds the scope of their duties is not automatically void or voidable

Adoption

Task	Recommendation
Adoptions not arising from a dependency petition	Included
1. Uncontested stepparent adoption <ul style="list-style-type: none"> o Training on providing notice to other parent required; incorrect notice may trigger contest of adoption, or can negatively affect prospect of adoption 	

Child Welfare

Task	Recommendation
Child welfare and juvenile dependency cases	Included
1. Investigation prior to filing of dependency action	
2. JV-180: modification of dependency orders after case is closed	Included

Violence Prevention

Task	Recommendation
Domestic Violence, Civil Harassment, Gun Violence, Workplace Violence*	Included
Representation of petitioner	Included
1. Filing restraining order request – Temporary Restraining Order (TRO)	
2. Service of TRO on respondent and filing proof of service	
3. Support in mediation, where applicable	
4. Support in court	
5. Preparation of Restraining Order After Hearing (ROAH)	
6. Service of ROAH on respondent and filing proof of service	
7. Distribution of RO to law enforcement, if applicable	Included
Representation of respondent	Included
1. Filing response to TRO	
2. Service of response on petitioner and filing proof of service	
3. Support in court	Included

* Educational/training requirements for violence prevention:

- Experience in violence prevention clinic
- Familiarity with types of restraining orders and remedies available under each type
- Availability of resources (e.g., domestic violence assistance, Adult Protective Services, mediation, etc.)



The State Bar of California

CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

Date: April 19, 2021

To: California Paraprofessional Program Working Group

From: Fariba Soroosh, Chair, Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, and Judge Monica F. Wiley

Subject: Topics and Tasks for Family Law Practice Area

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, and the specific tasks that will be allowed for licensees in each practice area.

DISCUSSION

At its July 13 meeting, five members of the CPPWG volunteered to serve on a Family Law Subcommittee tasked with generating recommendations regarding inclusion or exclusion of specific Family Law subtopics for consideration by the full body at its next meeting. The Family Law Subcommittee provided the CPPWG with updates on its deliberations at its August 25 meeting, and presented its preliminary recommendations at the December 17 meeting. At that meeting, members of the CPPWG provided feedback regarding the inclusion and exclusion of several tasks and as to whether there should be an income or estate value limit for paraprofessional representation. The CPPWG also asked the Subcommittee to make a recommendation regarding whether conservatorships and guardianships should be included in the paraprofessional program.

The Family Law Subcommittee posted initial recommendations in advance of the March 26, 2021, CPPWG meeting. Due to time constraints, those recommendations were not considered at that meeting. Since that time, the Subcommittee has met, and has developed additional recommendations regarding subtopics and tasks, including revised recommendations regarding child welfare (juvenile dependency) cases. The Family Law Subcommittee's March 26 memo is provided as Attachment A.

FAMILY LAW SUBTOPICS AND TASKS

At the December 17, 2020, CPPWG meeting, the Subcommittee presented its preliminary recommendations regarding subtopics and tasks for inclusion/exclusion in a paraprofessional program. The Subcommittee also solicited and received input from CPPWG members on several topics. Based on that input and further discussion, the recommendations regarding subtopics and tasks for family law, as well as educational/training requirements for this area, are included in Attachment B.

VIOLENCE PREVENTION SUBTOPICS AND TASKS

While members of the Subcommittee are familiar with domestic violence restraining orders, they sought input from subject matter experts (SMEs) regarding the inclusion of other types of violence prevention restraining orders. Staff consulted with Judy Hitchcock, Senior Staff Attorney with Legal Assistance to the Elderly, regarding elder abuse restraining orders, and Ruth Silver-Taube, who teaches the Employment Law Clinic at Santa Clara University, regarding workplace violence restraining orders. Staff reported to the Subcommittee that the SMEs consulted agreed that paraprofessional assistance would be beneficial to clients pursuing and/or responding to all types of restraining orders; the SMEs also made recommendations regarding the training that should be required for such representation. The Subcommittee recommends the inclusion of civil harassment and gun violence restraining orders accordingly. The Subcommittee recommends inclusion of violence prevention, comprising civil harassment, domestic violence, elder abuse, gun violence, and workplace violence restraining orders, in the family law practice area. Recommendations regarding these subtopics and tasks, as well as educational/training requirements for this area, are included in Attachment B.

ADOPTION

The Subcommittee reviewed information provided by Subcommittee member Elizabeth Olvera regarding the tasks involved in uncontested stepparent adoptions. They also considered information that staff obtained in a conversation with Robert Walmsley, a member of the Academy of California Adoption Lawyers, regarding training requirements for paraprofessionals authorized to provide representation in these cases. The Subcommittee recommends inclusion of uncontested stepparent adoptions for the paraprofessional program, as reflected in Attachment B.

CHILD WELFARE

Prior to the February 26 meeting, the Subcommittee considered information provided by Subcommittee member Dana McRae, based on her conversation with Ruby Marquez, who works for Santa Cruz County Counsel representing the county child welfare agency in juvenile dependency cases. Ms. Marquez believed it would be beneficial for parents to have assistance in child welfare investigations prior to dependency filing, as well as after a dependency case has been terminated. Based on this information, the Subcommittee initially recommended inclusion of representation in dependency investigations pre-filing, as well as post-termination.

At its April 6, 2021, meeting, the Family Law Subcommittee was joined by Mary Feldman, a certified specialist in juvenile law, who represents parties in child welfare cases. In addition to pre-filing and post-termination assistance, Ms. Feldman presented information about assistance that could be provided by paraprofessionals to parties who are not entitled to court-appointed counsel in juvenile dependency cases. Examples included grandparents and siblings seeking visitation, and de facto parent requests. Ms. Feldman explained that much of this work is forms-based and opined that self-represented litigants would benefit by having educated, trained, and experienced paraprofessionals to assist with completing and filing forms as well as representing them in court. Based on the information provided by Ms. Feldman, a majority of members of the Subcommittee agreed to the following recommendations:

- Paraprofessionals are authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition, including but not limited to:
 - Requesting documents from social services agency
 - Providing legal advice and information regarding procedures and parents' rights at the pre-filing stage
 - Gathering documents to be presented to social services agency
 - Being present and participating in social worker interviews
- Paraprofessionals are authorized to assist parties not entitled to court-appointed counsel in child welfare cases, by advising clients regarding which forms to use, and completing and filing forms. Paraprofessionals are also authorized to provide in-court representation for parties not entitled to court-appointed counsel.

Two members of the Family Law Subcommittee did not agree that paraprofessionals should be allowed to represent parties in court. Ms. Bashan disagreed with this recommendation for the following reasons: first, given the extremely serious nature of juvenile dependency proceedings where children's fates are at stake, Ms. Bashan's opinion was that in-court representation far exceeds the appropriate tasks for paraprofessionals; second, this Subcommittee heard from several subject matter experts who stated that even experienced attorneys who are not dependency attorneys are often ill-equipped to handle in-court dependency proceedings; lastly, the training and education needed to create competence would far exceed the current experiential training and education targets that this working group has set out, given that we are balancing competence with not creating onerous requirements—as we have learned from Washington State's model. Mr. Hamilton also disagreed with this recommendation based on

general concerns regarding paraprofessionals providing in-court representation, as well as those concerns identified by Ms. Bashan.

CONSERVATORSHIP AND GUARDIANSHIP

The Subcommittee has undertaken consideration of conservatorship and guardianship subtopics and tasks for inclusion/exclusion in a paraprofessional program. Staff worked with the following subject matter experts to develop a task list for these topics: Ms. Ylianna Perez-Guerrero, Public Counsel; Ms. Bertha Sanchez Hayden, Bet Tzedek; Tamyra Rice, Santa Cruz County Counsel; Mr. Jonathan Kahn, Santa Clara Superior Court; and, Ms. Johanna Thai Van Dat, Santa Clara Superior Court.

The Subcommittee also met with Ms. Carlena Tapella, who has extensive experience in conservatorships. Ms. Tapella described various types of conservatorships and explained that limited conservatorships are sought by parents of children with developmental disabilities, when their children reach majority age, and petitions for these types of conservatorships are generally not contested. Ms. Tapella opined that it would be beneficial to allow paraprofessionals to assist otherwise self-represented parties with uncontested limited conservatorships, including allowing them to provide representation at court hearings. Ms. Tapella explained that there was less of a need for paraprofessional assistance for general conservatorships because petitions are routinely granted for payment of attorneys' fees from the estate of the conservatee.

Based on the information from Ms. Tapella, the Subcommittee recommended that paraprofessionals be allowed to represent parties in uncontested limited conservatorships cases, including representation at court hearings.

The subcommittee did not have the opportunity to discuss recommendations regarding guardianship cases; this recommendation will be provided at a future CPPWG meeting.

IN-COURT REPRESENTATION IN FAMILY LAW, VIOLENCE PREVENTION, AND ADOPTION CASES

In our February 26, 2021, memo to the CPPWG, the Family Law Subcommittee included a discussion of in-court representation and provided the various points of view of our members. At its March 26, 2021, meeting, the CPPWG adopted a default position allowing paraprofessionals to provide full in-court representation, except for jury trials, in the practice areas for which they are licensed. The CPPWG's resolution provided that each practice area subcommittee may generate an alternative in-court representation recommendation. The Subcommittee has not had the opportunity to discuss its position on this subject. If the Subcommittee determines that an alternative recommendation is warranted, a recommendation and a rationale will be provided at future CPPWG meeting.

LIMIT ON INCOME AND/OR ESTATE VALUE

The Subcommittee considered whether a cap on either income or estate value should be imposed for paraprofessional representation in family law cases. The Subcommittee agreed

that income and estate value do not necessarily correlate with case complexity and therefore does not recommend such a limit.

PROPOSED RESOLUTIONS

FAMILY LAW, VIOLENCE PREVENTION, AND ADOPTION

RESOLVED, that the California Paraprofessional Program Working Group recommends that Paraprofessionals may assist clients with the family law, violence prevention, and adoption tasks included in Attachment B.

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends adoption of the educational and training requirements for these topics included in Attachment B.

CHILD WELFARE

RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals are authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition, including but not limited to:

1. Requesting documents from social services agency
2. Providing legal advice and information regarding procedures and parents' rights at the pre-filing stage
3. Gathering documents to be presented to social services agency
4. Being present and participating in social worker interviews

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals are authorized to assist parties not entitled to court-appointed counsel in juvenile dependency cases, by advising them regarding which forms to use, and completing and filing forms.

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide in-court representation for parties not entitled to court-appointed counsel in juvenile dependency cases.

OR

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist clients not entitled to court-appointed counsel in juvenile dependency cases by sitting at counsel table, and providing support and guidance, and responding to direct questions from the judge, but may not advocate on behalf of their clients.

CONSERVATORSHIP

RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals are authorized to assist parties in limited conservatorship cases, by advising them regarding which forms to use, and completing and filing forms.

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide in-court representation for clients in limited conservatorship cases.

OR

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist clients in limited conservatorship cases by sitting at counsel table, and providing support and guidance, and responding to direct questions from the judge, but may not advocate on behalf of their clients.



The State Bar of California

CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

Date: February 26, 2021

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, Fariba Soroosh, and Judge Monica Wiley

Subject: Topics and Tasks for Family Law Practice Area

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, and the specific tasks that will be allowed for licensees in each practice area.

DISCUSSION

At its July 13 meeting, five members of the CPPWG volunteered to serve on a Family Law Subcommittee tasked with studying this practice area with the goal of generating recommendations regarding inclusion or exclusion of specific Family Law subtopics for consideration by the full body at its next meeting. The Family Law Subcommittee provided the CPPWG with updates on its deliberations at its August 25 meeting, and presented its preliminary recommendations at the December 17 meeting. At that meeting, members of the CPPWG provided feedback regarding the inclusion and exclusion of several tasks and as to whether there should be an income or estate value limit for paraprofessional representation. The CPPWG also asked the Subcommittee to make a recommendation regarding whether conservatorships and guardianships should be included in the paraprofessional program. Since

that time, the Subcommittee has met, and has developed recommendations regarding subtopics and tasks; the consideration of conservatorships and guardianships; and in-court support/representation.

Family Law Subtopics and Tasks

At the December 17, 2020, CPPWG meeting, the Subcommittee presented its preliminary recommendations regarding subtopics and tasks for inclusion/exclusion in a paraprofessional program. The Subcommittee solicited and received input from CPPWG members on several topics. Based on that input and further discussion, recommendations regarding subtopics and tasks for family law, as well as educational/training requirements for this area, are included in Attachment A.

Violence Prevention Subtopics and Tasks

While members of the Subcommittee are familiar with domestic violence restraining orders, they sought input from subject matter experts (SMEs) regarding the inclusion of other types of violence prevention restraining orders. Staff consulted with Judy Hitchcock, Senior Staff Attorney with Legal Assistance to the Elderly, regarding elder abuse restraining orders, and Ruth Silver-Taube, who teaches the Employment Law Clinic at Santa Clara University, regarding workplace violence restraining orders. Staff reported to the Subcommittee that the SMEs consulted agreed that paraprofessional assistance would be beneficial to clients pursuing and/or responding to all types of restraining orders; the SMEs also made recommendations regarding the training that should be required for such representation. The Subcommittee recommends the inclusion of civil harassment and gun violence restraining orders accordingly. The Subcommittee recommends inclusion of violence prevention, comprising civil harassment, domestic violence, elder abuse, gun violence, and workplace violence restraining orders, in the family law practice area. Recommendations regarding these subtopics and tasks, as well as educational/training requirements for this area, are included in Attachment A.

Adoption

The Subcommittee reviewed information provided by Subcommittee member Elizabeth Olvera regarding the tasks involved in uncontested stepparent adoption. They also considered information that staff obtained in a conversation with Robert Walmsley, a member of the Academy of California Adoption Lawyers, regarding training requirements for paraprofessionals authorized to provide representation in these cases. The Subcommittee recommends inclusion of uncontested stepparent adoptions for the paraprofessional program, as reflected in Attachment A.

Child Welfare

The Subcommittee considered information provided by Subcommittee member Dana McRae, based on her conversation with Ruby Marquez, who works for Santa Cruz County Counsel representing the county child welfare agency in juvenile dependency cases. Ms. Marquez believes it would be beneficial for parents to have assistance in child welfare investigations prior to dependency filing, as well as after a dependency case has been terminated. Based on

this information, the Subcommittee recommends inclusion of representation in dependency investigations pre-filing, as well as post-termination, as reflected in Attachment A.

Conservatorship and Guardianship

The Subcommittee has undertaken consideration of conservatorship and guardianship subtopics and tasks for inclusion/exclusion in a paraprofessional program. While the CPPWG does not include members with in-depth knowledge on this topic, the Subcommittee has begun discussions with SMEs, who have agreed to provide recommendations in this area. The Subcommittee intends to bring its recommendations to the CPPWG at the April 19 meeting.

In-Court Support/Representation

The Subcommittee is aware that the topic of in-court representation will be the subject of a facilitated discussion at the CPPWG meeting on February 26. Nonetheless, members of the Subcommittee believe that this topic is integral to the recommendations in family law and violence prevention matters included as attachments to this memo. The insights of Subcommittee members were especially helpful in our discussions.

Ms. Soroosh, who directs the Self-Help Center (SHC) at the Santa Clara Superior Court, noted that, while staff at the SHC are able to provide extensive guidance in completing and filing forms in family law cases, they are precluded from attending hearings with litigants to provide guidance and support. Even when litigants have had excellent assistance in completing and filing forms, the actual court appearance can be stressful and challenging. Litigants are often retraumatized by their experiences and are unfamiliar with the court setting. They may become intimidated or flustered in this unfamiliar setting, causing them to be disorganized and forget important information that they would like to convey to the court. Judge Wiley, who presides over family law cases, agreed. Judge Wiley suggested that it would be helpful to the court to have a trained support person who could provide guidance to self-represented litigants, and who could answer questions from the court at the hearing.

Stephen Hamilton, who is a certified family law specialist, agreed that a trained support person would be an asset in the courtroom. He strongly believes that, while a paraprofessional should be allowed to sit at counsel table to guide and prompt their client, they should be prohibited from speaking in court, even to answer direct questions from the bench. Mr. Hamilton asserted that answering questions as even those that might be perceived as procedural may involve advocacy. Mr. Hamilton believes it is essential to maintain a distinction between paraprofessionals and lawyers; in-court representation is key to this distinction. Sharon Bashan agreed with Mr. Hamilton that paraprofessionals should be allowed to sit at counsel table, but should be prohibited from speaking in court.

Ms. Elizabeth Olvera, who is a certified Legal Document Assistant, disagreed, asserting that a trained paraprofessional could competently assist their client by providing information to the court, particularly in response to direct questions from the bench. Ms. Olvera suggested that a distinction could be made between those with a JD degree and others, allowing

paraprofessionals with a JD to speak in court. Greg Fortescue, the Supreme Court's liaison to the CPPWG, noted that if paraprofessionals were to be precluded from answering questions directed to them from the bench, it would be necessary to impose a restriction on judges, precluding them from directing such questions to paraprofessionals.

There was a general agreement, but not unanimous consensus, from the Subcommittee that paraprofessionals should be allowed to provide in-court support, but not representation. In this role, paraprofessionals would be allowed to sit at counsel table, and advise and prompt clients, but not advocate for their clients or speak in court. There was a minority view that paraprofessionals should be allowed to respond to questions from the court.

Limit on Income and/or Estate Value

The Subcommittee considered whether a cap on either income or estate value should be imposed for paraprofessional representation in family law cases. The Subcommittee agreed that income and estate value do not necessarily correlate with case complexity and therefore does not recommend such a limit.

Family Law Subcommittee
Subtopic and Tasks Recommendations

ATTACHMENT A

Family Law

Task	Recommendation
Dissolution/Domestic Partnerships, including dissolution, legal separation, and nullity (annulment) <ol style="list-style-type: none"> 1. Marital status, including status-only judgmentsⁱ 2. Annulment based on bigamy, age of spouse/registrant, prior existing marriage/DPⁱⁱ 3. Annulment based on incest, unsound mind, fraud, force, physical incapacity 	<p>Included</p> <p>Included</p> <p>Excludedⁱⁱⁱ</p>
Paternity (including paternity issues within dissolution, legal separation, domestic partnerships, and DCSS child support matters) <ol style="list-style-type: none"> 1. Complaint to establish parental relationship not involving FC 7612(b) or (c) 2. Complaint to establish parental relationship involving FC 7612(b) or (c) 	<p>Included</p> <p>Excluded</p>
Summary Dissolutions	Included
Petitions for Custody and Support	Included
Child custody and visitation (including third-party joinder and intervention) except in any action where any of the following issues or claims are raised: <ol style="list-style-type: none"> 1. Hague Convention on International Child Abduction 2. International or interstate custody disputes under UCCJEA 3. Grandparent visitation (independent of family law action) 	<p>Included</p> <p>Excluded</p> <p>Excluded</p> <p>Included</p>
Child support ^{iv}	Included
Spousal or domestic partner support <ol style="list-style-type: none"> 1. Temporary 2. Permanent (litigated/contest)/FC 4320 3. Spousal support waivers, buyouts or nonmodifiable step downs <ol style="list-style-type: none"> a. Short term marriage [FC 4336(b)] b. Long term marriage 	<p>Included</p> <p>Included</p> <p>Included</p> <p>Excluded</p>
Separate property/community property/quasi community property ^v <ol style="list-style-type: none"> 1. Joinder of pension/retirement/employee benefit plans 2. Declaration of disclosures 3. Referrals to experts for appraisals and valuations 4. Post division transfer documents 5. QDRO (referrals only) 	<p>Included</p> <p>Included</p> <p>Included</p> <p>Included</p> <p>Excluded</p>
Discovery <ol style="list-style-type: none"> 1. Written discovery (form interrogatories v. other) 2. Depositions 3. Expert discovery 4. Subpoenas: deposition and hearing/trial 5. Motions to compel/motions to quash not related to depositions 6. Motions to compel/quash related to depositions 	<p>Included</p> <p>Excluded</p> <p>Excluded</p> <p>Included</p> <p>Included</p> <p>Excluded</p>
Quasi marital property (nullity)	Excluded

Task	Recommendation
Attorney fees, including expert and paraprofessional fees	Included
Restoration of former name	Included
Venue and jurisdiction disputes not otherwise addressed herein	Included
Marital settlement agreements [except for any issues which are within excluded areas of practice as set forth above] 1. MSA must state that it was prepared by a paraprofessional ^{vi}	Included
Post judgment/permanent order modifications [except UCCJEA/Hague]	Included
Registration of foreign judgments	Included
Premarital/Post-marital agreements (not including MSAs)	Excluded
Putative spouse claims arising from nullity action, including all issues within such a claim (e.g. quasi marital property, attorney fees, spousal support)	Excluded
Marvin/Palimony actions	Excluded
Enforcement of family law orders and judgments 1. Appointment of elisor 2. RFO/Motion for relief in issuing court to assist in enforcement 3. Contempt 4. Seek work orders support 5. Debtor's exam 6. Wage assignment 7. Writ of execution 8. Filing of lien/lis pendens 9. Response to DCSS enforcement action (e.g., license suspension, bank levy) All enforcement mechanisms not specifically identified above are excluded	Included Included Excluded Included Included Included Included Included Included
Alternative Dispute Resolution (except for areas excluded above) 1. Settlement discussions and negotiations 2. Day of court meet and confer	Included Included

-
- i. If instruction includes detailed, in depth education regarding FC 2337, FL-315, FL-347, FL-318-Info, joinder and pension issues
 - ii. If instruction includes education and instruction re: bigamy v. prior existing marriage/DP and FC 2200-2210 and 2310-2312
 - iii. Education includes issue spotting, clear definition of excluded item, specific education regarding excluded issues and referral process (necessity, regulation)
 - iv. Instruction to include training on support calculators, wage assignments and role of DCSS

-
- v. This scope of practice presumes detailed and substantive instruction on forms of discovery, responding to discovery, objections and law and motion procedure related to discovery
 - vi. Companion legislation to be developed, stating that an MSA prepared by a paraprofessional that exceeds the scope of their duties is not automatically void or voidable

Adoption

Task	Recommendation
Adoptions not arising from a dependency petition	Included
1. Uncontested stepparent adoption <ul style="list-style-type: none"> o Training on providing notice to other parent required; incorrect notice may trigger contest of adoption, or can negatively affect prospect of adoption 	

Child Welfare

Task	Recommendation
Child welfare and juvenile dependency cases	Included
1. Investigation prior to filing of dependency action	
2. JV-180: modification of dependency orders after case is closed	Included

Violence Prevention

Task	Recommendation
Domestic Violence, Civil Harassment, Gun Violence, Workplace Violence*	Included
Representation of petitioner	Included
1. Filing restraining order request – Temporary Restraining Order (TRO)	
2. Service of TRO on respondent and filing proof of service	
3. Support in mediation, where applicable	
4. Support in court	
5. Preparation of Restraining Order After Hearing (ROAH)	
6. Service of ROAH on respondent and filing proof of service	
7. Distribution of RO to law enforcement, if applicable	Included
Representation of respondent	Included
1. Filing response to TRO	
2. Service of response on petitioner and filing proof of service	
3. Support in court	Included

* Educational/training requirements for violence prevention:

- Experience in violence prevention clinic
- Familiarity with types of restraining orders and remedies available under each type
- Availability of resources (e.g., domestic violence assistance, Adult Protective Services, mediation, etc.)

**Family Law Subcommittee
Subtopic and Tasks Recommendations**

ATTACHMENT B

Family Law

Task	Recommendation
Dissolution/Domestic Partnerships, including dissolution, legal separation, and nullity (annulment) <ol style="list-style-type: none"> 1. Marital status, including status-only judgmentsⁱ 2. Annulment based on bigamy, age of spouse/registrant, prior existing marriage/DPⁱⁱ 3. Annulment based on incest, unsound mind, fraud, force, physical incapacity 	<p>Included</p> <p>Included</p> <p>Excludedⁱⁱⁱ</p>
Paternity (including paternity issues within dissolution, legal separation, domestic partnerships, and DCSS child support matters) <ol style="list-style-type: none"> 1. Complaint to establish parental relationship not involving FC 7612(b) or (c) 2. Complaint to establish parental relationship involving FC 7612(b) or (c) 	<p>Included</p> <p>Excluded</p>
Summary Dissolutions	Included
Petitions for Custody and Support	Included
Child custody and visitation (including third-party joinder and intervention) except in any action where any of the following issues or claims are raised: <ol style="list-style-type: none"> 1. Hague Convention on International Child Abduction 2. International or interstate custody disputes under UCCJEA 3. Grandparent visitation (independent of family law action) 	<p>Included</p> <p>Excluded</p> <p>Excluded</p> <p>Included</p>
Child support ^{iv}	Included
Spousal or domestic partner support <ol style="list-style-type: none"> 1. Temporary 2. Permanent (litigated/contest)/FC 4320 3. Spousal support waivers, buyouts or nonmodifiable step downs <ol style="list-style-type: none"> a. Short term marriage [FC 4336(b)] b. Long term marriage 	<p>Included</p> <p>Included</p> <p>Included</p> <p>Excluded</p>
Separate property/community property/quasi community property ^v <ol style="list-style-type: none"> 1. Joinder of pension/retirement/employee benefit plans 2. Declaration of disclosures 3. Referrals to experts for appraisals and valuations 4. Post division transfer documents 5. QDRO (referrals only) 	<p>Included</p> <p>Included</p> <p>Included</p> <p>Included</p> <p>Excluded</p>
Discovery <ol style="list-style-type: none"> 1. Written discovery (form interrogatories v. other) 2. Depositions 3. Expert discovery 4. Subpoenas: deposition and hearing/trial 5. Motions to compel/motions to quash not related to depositions 6. Motions to compel/quash related to depositions 	<p>Included</p> <p>Excluded</p> <p>Excluded</p> <p>Included</p> <p>Included</p> <p>Excluded</p>
Quasi marital property (nullity)	Excluded

Task	Recommendation
Attorney fees, including expert and paraprofessional fees	Included
Restoration of former name	Included
Venue and jurisdiction disputes not otherwise addressed herein	Included
Marital settlement agreements [except for any issues which are within excluded areas of practice as set forth above] 1. MSA must state that it was prepared by a paraprofessional ^{vi}	Included
Post judgment/permanent order modifications [except UCCJEA/Hague]	Included
Registration of foreign judgments	Included
Premarital/Post-marital agreements (not including MSAs)	Excluded
Putative spouse claims arising from nullity action, including all issues within such a claim (e.g. quasi marital property, attorney fees, spousal support)	Excluded
Marvin/Palimony actions	Excluded
Enforcement of family law orders and judgments 1. Appointment of elisor 2. RFO/Motion for relief in issuing court to assist in enforcement 3. Contempt 4. Seek work orders support 5. Debtor's exam 6. Wage assignment 7. Writ of execution 8. Filing of lien/lis pendens 9. Response to DCSS enforcement action (e.g., license suspension, bank levy) All enforcement mechanisms not specifically identified above are excluded	Included Included Excluded Included Included Included Included Included Included
Alternative Dispute Resolution (except for areas excluded above) 1. Settlement discussions and negotiations 2. Day of court meet and confer	Included Included

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- i. If instruction includes detailed, in depth education regarding FC 2337, FL-315, FL-347, FL-318-Info, joinder and pension issues
 - ii. If instruction includes education and instruction re: bigamy v. prior existing marriage/DP and FC 2200-2210 and 2310-2312
 - iii. Education includes issue spotting, clear definition of excluded item, specific education regarding excluded issues and referral process (necessity, regulation)
 - iv. Instruction to include training on support calculators, wage assignments and role of DCSS

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- v. This scope of practice presumes detailed and substantive instruction on forms of discovery, responding to discovery, objections and law and motion procedure related to discovery
 - ^{vi}vi Companion legislation to be developed, stating that an MSA prepared by a paraprofessional that exceeds the scope of their duties is not automatically void or voidable

Adoption

Task	Recommendation
Adoptions not arising from a dependency petition	Included
1. Uncontested stepparent adoption <ul style="list-style-type: none"> o Training on providing notice to other parent required; incorrect notice may trigger contest of adoption, or can negatively affect prospect of adoption 	

Child Welfare

Task	Recommendation
Paraprofessionals are authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition, including but not limited to: <ol style="list-style-type: none"> 1. Requesting documents from social services agency 2. Providing legal advice and information regarding procedures and parents' rights at the prefiling stage 3. Gathering documents to be presented to social services agency 4. Being present and participating in social worker interviews 	Included
Paraprofessionals are authorized to assist parties not entitled to court-appointed counsel in juvenile dependency cases, by advising them regarding which forms to use, and completing and filing forms.	Included
Paraprofessionals are authorized to provide in-court representation for parties not entitled to court-appointed counsel.	Split Rec.

Violence Prevention

Task	Recommendation
Domestic Violence, Civil Harassment, Gun Violence, Workplace Violence*	Included
Representation of petitioner	
5. Filing restraining order request—Temporary Restraining Order (TRO)	Included
6. Service of TRO on respondent and filing proof of service	Included
7. Support in mediation, where applicable	Included
8. Support in court	Included
9. Preparation of Restraining Order After Hearing (ROAH)	Included
10. Service of ROAH on respondent and filing proof of service	Included
11. Distribution of RO to law enforcement, if applicable	Included

Representation of respondent	
1. Filing response to TRO	Included
2. Service of response on petitioner and filing proof of service	Included

* Educational/training requirements for violence prevention:

- Experience in violence prevention clinic
- Familiarity with types of restraining orders and remedies available under each type
- Availability of resources (e.g., domestic violence assistance, Adult Protective Services, mediation, etc.)

Conservatorship

Task	Recommendation
Uncontested limited conservatorship cases	
1. Selection, completion, and filing of forms	Included
2. In-court representation	Split Rec.

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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