



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: July 26, 2021

To: California Paraprofessional Program Working Group

From: Julianne Fellmeth, Judge Michael Harper, Amos Hartston, Fariba Soroosh, and Ira Spiro

Subject: Revised Housing Subcommittee Recommendations for Paraprofessional Program

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### 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 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.

### BACKGROUND

At its meeting on April 19, 2021, the CPPWG adopted the Housing Subcommittee's recommendations regarding paraprofessional representation in landlord-tenant cases. Subsequent to that meeting, concerns were raised about the scope of practice included in the resolution adopted by the Subcommittee. The Subcommittee agreed to meet to consider revising its recommendation regarding landlord-tenant matters, as well as the disclosures that paraprofessionals would be required to provide to potential clients for this practice area.

### DISCUSSION

At its April 19, 2021, meeting, the CPPWG adopted the following resolution:

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

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

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

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

Subsequent to that meeting, concerns were raised in public comment from legal services organizations that the resolution allowing paraprofessionals to “assist parties in residential landlord tenant matters” may unintentionally be overbroad. Specific concerns addressed the potential overbreadth of the scope of practice for landlord-tenant matters beyond unlawful detainer cases, and raised questions about whether the subcommittee intended to include affirmative litigation by tenants without limiting representation to unlawful detainer cases. The Subcommittee met on June 28, 2021, to discuss these concerns, and also to consider specifying the required disclosures relevant to this practice area.

During the June 28 meeting, the Subcommittee discussed written comments provided by the Public Law Center (PLC), which asserted that affirmative lawsuits in landlord-tenant matters include potentially complex issues that might involve federal and state law, and be beyond the scope of a paraprofessional’s training and experience. PLC’s letter also addressed concerns about representation of mobile home owners, tenants in public housing, and tenants in rent-controlled units. Mr. Richard Walker, PLC Senior Staff Attorney and the author of the written

comments, also addressed the Subcommittee during the meeting, and elaborated on the information included in the letter.

The Subcommittee discussed the concerns raised by PLC, and agreed that its recommendations regarding representation in landlord-tenant matters, as well as required disclosures to clients, should be revised to limit the scope of practice in this area.

## PROPOSED RESOLUTIONS

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that the resolution regarding representation in residential landlord-tenant matters adopted by the California Paraprofessional Program Working Group on April 19, 2021, be amended as follows:

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

- Representation is limited to tenants, and landlords who own no more than two units;
- In unlawful detainer matters, paraprofessionals may provide in-court representation for motion hearings and default prove-ups;
- Paraprofessionals may not provide in-court representation in bench trials or jury trials;
- During unlawful detainer trials, paraprofessionals may assist their clients by sitting at counsel table, to provide advice and guidance, and may respond to direct questions from the judge;
- Aside from unlawful detainer matters and small claims assistance, paraprofessionals may not represent or assist clients in court or out of court in superior court litigation in landlord-tenant disputes.

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

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

their jurisdiction. Paraprofessionals also may participate with legal services programs to provide free or low-cost legal services.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that for landlord tenant matters on behalf of tenants involving rent control, subsidized housing, or mobile homes, paraprofessionals are required to advise clients about the specific risks and complexity of these cases and provide specific information about the availability of free or low-cost representation by an attorney in their county, including contact information. The disclosure of risks must include that the tenant may lose their subsidized housing, their mobile home, or the benefits of rent control.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that for landlord tenant matters on behalf of tenants, disclosures specifically include that Paraprofessionals are not licensed to provide in-court representation at trial and if the case goes to trial, having an attorney is strongly recommended.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that the Paraprofessional Licensing and Oversight Committee ensure that paraprofessional education programs include specific information and required trainings regarding the benefits of demanding a jury trial in unlawful detainer cases and regarding rent control, subsidized housing, and mobile homes issues.