

**Suggestions for Proposed Rules of Professional Conduct
for Paraprofessional Licensees
For Consideration at Working Group Meeting of August 16, 2021**

To Members of the California Paraprofessional Program Working Group
From Ira Spiro
August 13, 2021

RULE 1.5.1 Fee Divisions Among Licensed Paraprofessionals and With Lawyers

The Recommendations we'll be considering at the August 16 meeting requires, in subdivision (b)(2) of this rule, that in a fee division between a paraprofessional and a lawyer:

“the division is in proportion to the legal services performed by licensed paraprofessional and the lawyer”

Issue and Suggestion

Occurs to me that we might want to make division proportional to what the paraprofessional and the lawyer would charge if doing the work alone. Or that the proportioning take into account the differing rates that the paraprofessional and the lawyer normally charge, the lawyer usually being a higher rate, of course. If we don't do that, then the paraprofessional will be getting a share of what really are fees for the lawyer's work.

Or at least that might happen, because our term “in proportion” isn't very precise. Does it mean the number of hours? If so, then if the paraprofessional does, say twice as much work as the lawyer, and the lawyer's normal rate is say three times the paraprofessional's, then yes, the paraprofessional would be getting part of the fees that are really for the lawyer's work.

Maybe we think that's OK, but I don't remember us considering this possibility.

If we want to eliminate the possibility, I think the quoted phrase would be like this:

“the division is in proportion to number of hours worked by the paraprofessional multiplied by the paraprofessional's usual hourly rate for that type of work, compared to the number of hours worked by the lawyer multiplied by the lawyer's usual hourly rate for that type of work”

That provision really would mean that the paraprofessional and the lawyer might as well send the client separate bills, if the bills are hourly, but not if the bill is a flat fee or a percentage fee.

RULE 1.5.2 Written Agreement to Representation

Subdivision (c) requires that the agreement contain “(c) A reasonable estimate of the total fees, expenses... and other **standard** rates, fees, and charges applicable to the matter;

Why does it say “standard”? Shouldn’t it just be “and other rates, fees, and charges applicable to the matter”?

Subdivision (g) requires that the agreement contain “A statement confirming that the licensed paraprofessional is required by [add rule of court reference] to carry a surety bond in the amount of \$100,000, the name of the surety bond carrier, and information on how to file a claim against the surety bond if necessary”

Couldn’t this mislead the client into thinking that there will always be \$100K available, even though it could be depleted by other claims? I remember discussion of a possible requirement in the bond that if it’s depleted, the paraprofessional must restore it to \$100K, but I don’t think we know that for sure.

How about adding at the end of (g)” “and that over time the amount of the bond might become less than \$100,000.”

First paragraph of Rule: “in a separate writing,* provided in the prospective client’s preferred language”. Just a small thing, but how about striking “provided” to make it “in a separate writing,* in the prospective client’s preferred language.” When I first read this, I got off track thinking that “provided” was going to be some kind of condition to the requirement of a writing.

First paragraph of Rule says what contact info the paraprofessional must put into the agreement. How about adding the paraprofessional’s email address. That’s less intrusive for the paraprofessional than street address. Maybe email address is what’s meant by “internet address,” but actually I don’t know what that term means, could be URL for a website.

RULE 3.5 Conduct with Judges, Officials, and Employees

The Recommendations have this for (b)(4), which is one of the exceptions for the rule against communicating with a judge on the merits of a pending contested matter, an exception for communications in writing

“with a copy thereof furnished to **all other represented and unrepresented** parties in the matter”

The State Bar rule is the same, except it says copies go to “**all other counsel and unrepresented parties**”

Issue and Suggestion

We shouldn't suggest that the paraprofessional can send the copies to the other parties, as opposed to their counsel. Therefore, I think this should read:

“with a copy thereof furnished to **the attorneys or licensed paraprofessionals representing all other represented, and to all unrepresented parties** in the matter”

RULE 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Licensed Paraprofessionals

Subparagraph (a) (2), a definition, reads: “‘Licensee’ means a licensee of the State Bar of California”

At first I wasn't sure if that was meant to include paraprofessionals or not. Then I looked at the title and saw it does mean to include paraprofessionals. But how about saying so explicitly:

“(2) ‘Licensee’ means attorneys and paraprofessionals licensed by the State Bar of California”

Subdivision (b), The first paragraph of subdivision (b) reads:

“A licensed paraprofessional shall not employ, associate in practice with, or assist a person* the licensed paraprofessional knows* or reasonably should know* is an ineligible person to perform the following on behalf of the licensed paraprofessional's client:

- (1) Render legal consultation or advice to the client;
- (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;

This really confused me till I read it three times. The first two times I thought the first paragraph meant that the paraprofessional can't employ, associate in practice with, or assist the “person” **if the person is ineligible to perform the listed services.**

Then I realized the paragraph doesn't mean that, it means that the paraprofessional can't employ, associate in practice with, or assist the “person” **in performing** the listed services.

How about changing (b) to read:

“A licensed paraprofessional shall not employ, associate in practice with, or assist a person* to perform the following on behalf of the licensed paraprofessional's client, if the licensed paraprofessional knows* or reasonably should know* the person is an ineligible person:”