



The State Bar of California

Draft Minutes

California Paraprofessional Program Working Group (CPPWG)

June 10, 2021

1:00 p.m.–4:00 p.m.

Zoom Meeting

Time meeting commenced:	1:05 p.m.
Time meeting adjourned:	3:58 p.m.
Chair:	Hon. Ioana Petrou
Members present at roll call:	Julia Brynerson, Julie Fellmeth, Steven Fleischman, Stephen Hamilton, Hon. Michael Harper, Amos Hartston, Kimberly Kirchmeyer, Dana McRae, Elizabeth Olvera, Nicole Robinson, Carolin Shining, Fariba Soroosh, Ira Spiro, Claudia Torres-Ambriz, Hon. Monica Wiley, Hon. Erica Yew
Members absent:	Sharon Bashan, Hon. David Rubin
Also present:	Brady Dewar, Justin Ewert, Gregory Fortescue, Suzanne Grandt, Caroline Holmes, Christopher McConkey, Marc Shapp, Leah Wilson
Committee coordinator:	Linda Katz

I. CHAIR'S REPORT

A. Oral Report

The chair welcomed panelists and attendees, then called for public comment about the Family Law Subcommittee's recommendations. The working group will take comments about the Housing Law Subcommittee's recommendations later in the meeting.¹

Call for public comment

Angela Grijalva, owner of Prepared Legal Corp, addressed item II.A.1.

¹ The format of public comments reflects protocols adopted for State Bar meeting minutes. A recording of the meeting is available at <https://board.calbar.ca.gov/Video.aspx>.

II. BUSINESS

A. Recommendations from Subcommittees

1. Family, Children, and Custody

Ms. Soroosh thanked Family Law Subcommittee members for their work on the subcommittee's recommendations, as detailed in its June 10 memo.² She noted that the subcommittee's recommendations have been posted to several meeting agendas, and she would therefore refrain from presenting them in detail today.

Ms. Soroosh pointed out that the working group's vote against fee caps came after its discussion about in-court representation. She expressed concern that the absence of fee caps in family law might hinder the program's ability to expand access to civil justice. Since paraprofessional licensing requirements will be steep, for instance, family law paraprofessionals might have to charge close to the amount that attorneys charge. To address this, she proposed a motion to limit in-court representation in authorized family law matters to letting paraprofessionals sit at counsel table, advise clients, and respond to procedural questions from the bench. Ms. Soroosh clarified that this motion reflects her personal position rather than that of the full subcommittee. Judge Yew suggested that Ms. Soroosh's motion be considered after those motions proposed by the full subcommittee.

Ms. Soroosh presented the subcommittee's resolution to authorize representation in all family law matters, with exceptions for:

- Nullity cases;
- Petitions to establish parental relationship involving FC § 7612(b) or (c);
- Child custody and visitation cases involving the Hague Convention or Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA);
- Qualified domestic relations orders (QDRO);
- Spousal or domestic partner support in long-term marriages, unless included in a marital settlement agreement;
- Depositions, expert discovery, and related motions;
- Pre-marital/post-marital agreements;
- Marvin/palimony actions; and
- Contempt actions.

Mr. Fleischman asked whether the resolution would allow paraprofessionals to seek third-party subpoenas. Mr. Hamilton responded that it would, and

² For the full recommendations, please refer to the Family Law Subcommittee's memo, June 10, 2021, available at <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000027519.pdf>.

explained that paraprofessionals will need the ability to issue subpoenas, and that nonattorneys frequently draft subpoenas. He recommended amending “discovery: depositions” to read “deposition, excluding subpoenas duces tecum.” Ms. Brynerson suggested changing “depositions” to “oral depositions” instead. Mr. Hamilton agreed to that change.

Mr. Dewar, State Bar Assistant General Counsel, asked if an exclusion for oral depositions would include preparing and serving the notice. The subcommittee responded that it would. Ms. Brynerson proposed leaving the phrasing “oral deposition,” because an attorney should be involved with preparing the deposition if an attorney has to perform the deposition. Mr. Hamilton expressed agreement and noted that depositions in family law are relatively rare.

Ms. Shining noted that California community property is complicated even for attorneys. Legal paraprofessionals will have to learn concepts that law students learn in multiple courses in law school. She argued that this resolution sets up the need for a robust family law exam for paraprofessionals. She expressed support for the exclusions but also concern that it will be too much for paraprofessionals to learn.

Ms. Brynerson replied that family law curricula would teach to the resolution. Many of the candidates for this new license will be paralegals or have Juris Doctor degrees. This means that candidates will have some background in the law already.

Mr. Hamilton recommended against allowing paraprofessionals to work on nonmodifiable spousal support orders, as those can involve complex calculations. He proposed adding the phrase “that does not terminate or set nonmodifiable spousal support” after “spousal or domestic partner support in long-term marriages, unless included in a marital settlement agreement.” Ms. Olvera shared standard language used by legal document assistants (LDA) that specifies clients’ waiver of the right to receive spousal support or to have a court modify spousal support in the future.

RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide representation in family law matters, including but not limited to the tasks delineated in Attachment B to the April 19, 2021 memo from the Family Law Subcommittee, 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 that does not terminate or set nonmodifiable spousal support
- Discovery:
 - Oral depositions
 - Expert discovery
 - Related motions
- Pre-marital/post-marital agreements
- Marvin/palimony actions
- Contempt actions

Moved by Yew, seconded by Hamilton.

Ayes (14): Brynelson, Fellmeth, Fleischman, Hamilton, Harper, Hartston, Kirchmeyer, McRae, Robinson, Shining, Soroosh, Torres-Ambriz, Wiley, Yew.

Abstentions (0): None

Absent (2): Bashan, Rubin

Noes (2): Olvera, Spiro

Motion carries.

The chair noted that she had to leave the meeting early, and that Judge Yew had agreed to chair the rest of the meeting in her absence.

Ms. Soroosh presented a motion from the subcommittee recommending that paraprofessionals be able to provide full in-court representation except in jury trials and in hearings on emergency custody or visitation requests when a judge has granted temporary emergency orders. As an alternative, Ms. Soroosh renewed her proposal instead to limit in-court representation to sitting at counsel table, advising the client, and responding to procedural questions from the bench.

Mr. Fleischman asked how the outcome of family law cases might change due to an imbalance in the courtroom with a legal paraprofessional on one side and an attorney on the other side. The working group heard an opinion from one member of the bench that proceedings would likely become more efficient compared to cases that have one or two self-represented litigants.

Judge Yew moved to adopt the subcommittee's motion.

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.

Moved by Yew, seconded by Wiley.

Ayes (11): Brynelson, Fellmeth, Harper, Kirchmeyer, McRae, Olvera, Robinson, Spiro, Torres-Ambriz, Wiley, Yew

Abstentions (0): None

Absent (2): Bashan, Rubin

Noes (5): Fleischman, Hamilton, Hartston, Shining, Soroosh

Motion carries.

Ms. Soroosh presented a resolution recommending that paraprofessionals be able to represent clients in violence prevention matters.

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.

Moved by Soroosh, seconded by McRae.

Ayes (15): Brynelson, Fellmeth, Fleischman, Hamilton, Harper, Hartston, Kirchmeyer, McRae, Olvera, Robinson, Soroosh, Spiro, Torres-Ambriz, Wiley, Yew

Abstentions (0): None

Absent (2): Bashan, Rubin

Noes (1): Shining

Motion carries.

Ms. Soroosh then presented two options for a resolution that would accompany the one on which the working group just voted. Both options would recommend letting paraprofessionals provide in-court representation in violence prevention cases. One resolution recommends letting them represent clients in domestic violence hearings involving children provided that they are non-jury trials. The alternate resolution would exclude domestic violence hearings involving children. The subcommittee members explained why they split on this issue.

Both options would prevent paraprofessionals from introducing or cross-examining expert witnesses unless the client provides informed consent. Ms. Torres-Ambriz asked the subcommittee to explain what it means by “informed consent.” She noted that some clients might have difficulty evaluating whether to give consent in cases where there is trauma. Mr. Hamilton noted that he would be okay with removing “unless the client provides informed consent.”

Following the working group’s discussion of the two options, Judge Yew moved to adopt the one that would exclude domestic violence hearings involving children.

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.

Moved by Yew, seconded by Hamilton

Ayes (12): Brynson, Fellmeth, Fleischman, Hamilton, Harper, Hartston, Kirchmeyer, Olvera, Robinson, Soroosh, Spiro, Torres-Ambriz

Abstentions (0): None

Absent (2): Bashan, Rubin

Noes (4): McRae, Shining, Wiley, Yew

Motion carries.

Ms. Soroosh presented a motion that would recommend allowing paraprofessionals to provide representation in uncontested adoptions except for those arising from dependency petitions. Ms. Shining asked whether the subcommittee had consulted experts about adoptions. The subcommittee noted that it had heard from multiple subject matter experts about this topic.

Ms. Olvera proposed, and Ms. Soroosh agreed, that the resolution exclude cases where the child has been identified as being protected by the Indian Child Welfare Act. Ms. Soroosh also accepted a friendly amendment by Mr. Spiro to specify that the paraprofessional would be providing representation out of court.

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

- Adoptions arising from dependency petitions; and
- Adoptions where the child has been identified as protected by the Indian Child Welfare Act.

Moved by Soroosh, seconded by Yew

Ayes (14): Brynson, Fellmeth, Hamilton, Harper, Hartston, Kirchmeyer, McRae, Olvera, Robinson, Soroosh, Spiro, Torres-Ambriz, Wiley, Yew

Abstentions (1): Shining

Absent (3): Bashan, Fleischman, Rubin

Noes (0): None

Motion carries.

Ms. Soroosh presented an accompanying resolution that would allow paraprofessionals to provide full in-court representation in uncontested adoptions except for those arising from dependency petitions. Judge Yew moved for, and Judge Wiley seconded, the resolution.

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 as excluded above.

Moved by Yew, seconded by Wiley.

Ayes (14): Brynelson, Fellmeth, Fleischman, Harper, Hartston, Kirchmeyer, McRae, Olvera, Robinson, Soroosh, Spiro, Torres-Ambriz, Wiley, Yew.

Abstentions (0): None

Absent (2): Bashan, Rubin

Noes (2): Hamilton, Shining

Motion carries.

Ms. Soroosh presented a motion to recommend to allow paraprofessionals to assist parents and guardians in child welfare tasks prior to filing a juvenile dependency petition. The resolution would also permit paraprofessionals to assist parties not entitled to court-appointed counsel in juvenile dependency cases.

Mr. Hartston opposed the resolution because of the special training that would be necessary to work on these cases. He also noted a letter that the working group received from Children's Law Center of California (CLC) requesting more time to evaluate the recommendation.

Ms. Brynelson expressed concern that it might be difficult to recruit schools to provide this special instruction. Ms. McRae noted that the Welfare and Institutions Code requires eight hours of training for other professions that practitioners can perform online. Ms. Wilson commented that State Bar staff plan to propose refinements to the educational requirements. Those refinements could include specialized education for dependency cases.

Mr. Hartston said that he would prefer to vote after the working group could hear from the community about whether to include these matters. Judge Yew noted that the subcommittee did consult with an expert about this recommendation and presented the resolution for a vote.

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.

Moved by Yew, seconded by Soroosh.

Ayes (7): Fellmeth, Kirchmeyer, McRae, Olvera, Robinson, Soroosh, Wiley.

Abstentions (4): Brynson, Hamilton, Spiro, Torres-Ambriz

Absent (3): Bashan, Rubin, Shining

Noes (4): Fleischman, Harper, Hartston, Yew

Motion fails.

Ms. Wilson suggested that the Family Law subcommittee meet again to hear from (CLC) and others. Due to time constraints, Ms. Soroosh tabled the subcommittee's recommendations for conservatorships and guardianships until a future meeting.

2. Housing

With just a few minutes remaining, Judge Harper suggested voting on the Housing Law Subcommittee's recommendation regarding property liens, as detailed in the subcommittee's June 10 memo.³

RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals are not authorized to assist with homeownership issues or title clearing issues other than those related to clearing liens. Paraprofessionals are authorized to assist clients in clearing liens from titles outside of litigation, but are prohibited from assisting with or representing parties in quiet title actions or other matters related to home ownership or real estate title issues.

Moved by Yew, seconded by McRae

Ayes (15): Brynson, Fellmeth, Fleischman, Hamilton, Harper, Hartston, Kirchmeyer, McRae, Olvera, Robinson, Soroosh, Spiro, Torres-Ambriz, Wiley, Yew

Abstentions (0): None.

Absent (3): Bashan, Rubin, Shining

Noes (0): None

Motion carries.

³ For the full recommendations, please refer to the Housing Law Subcommittee's memo, June 10, 2021, available at <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000027520.pdf>.

Judge Yew thanked everyone for their hard work and congratulated Ms. Wilson on the announcement of her future role as State Bar of California Executive Director.

ADJOURN