



The State Bar of California

Meeting Minutes

California Paraprofessional Program Working Group (CPPWG)

Friday, March 4, 2022

10:00 a.m.–4:00 p.m.

Zoom Meeting

Time Meeting Commenced:	10:05 a.m.
Time Meeting Adjourned:	1:45 p.m.
Chair:	Hon. Ioana Petrou
Members Present at Roll Call:	Sharon Bashan, Julia Brynelson, Julianne Fellmeth, Steven Fleischman, Stephen Hamilton, Hon. Michael Harper, Amos Hartston, Kimberly Kirchmeyer, Dana McRae, Elizabeth Olvera, Nicole Robinson, Carolin Shining, Fariba Soroosh, Ira Spiro, Hon. Monica Wiley, Hon. Erica Yew
Members Absent:	Hon. David Rubin, Claudia Torres-Ambriz
Also Present:	Leah Wilson, Gregory Fortescue, Bridget Gramme, Donna Hershkowitz, Kelsey Lyles, Christopher McConkey, Richard Schauffler
Committee Coordinator:	Linda Katz

I. CHAIR'S REPORT

A. Oral Report

The chair welcomed attendees and recognized Principal Program Analyst Linda Katz, who will retire soon. Richard Schauffler, Principal Consultant at Justice Solutions, and Kelsey Lyles, Principal Program Analyst at the State Bar, introduced themselves and spoke about their work with the State Bar. They will support the working group given Linda Katz's retirement.

The chair then called for public comment.¹

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

Call for public comment

Jason Solomon, Executive Director of the Stanford Center on the Legal Profession, addressed Item II.A.1: Mr. Solomon provided comments in support of a robust version of the proposal, but opposed recommended changes including disallowing in-court representation by paraprofessionals.

Janet Drobinske, Senior Legal Assistant at the Institute for the Advancement of the American Legal System, addressed Item II.A.1: Ms. Drobinske provided comments in support of authorizing full in-court representation by paraprofessionals.

Leigh Ferrin, Director of Litigation and Pro Bono at the Public Law Center, addressed Item II.A.1: Ms. Ferrin provided comments raising concerns to the classification of public comments, in-court representation consistency challenges, and fee cap determination.

Tom Gordon, Executive Director Tom co-founded Responsive Law, addressed Item II.A.1: Mr. Gordon provided comments in support of initial proposal, but takes issue with some proposed changes. He agrees with first two public commenters in relation to in-court representation, and fee caps seem unrealistic.

II. BUSINESS

A. Review of Public Comment Regarding Report and Staff Recommendations

1. Staff-Recommended Modifications to Working Group Recommendations

Ms. Wilson outlined a proposed approach to addressing public comments received² and explained that any revised recommendations need to go to the Board of Trustees by May or July 2022.

Ms. Wilson presented staff's recommendation to modify proposed rules to eliminate the ability of paraprofessionals to own law firms with lawyers or to share fees with lawyers.

Ms. Wilson proposed that the working group vote on the positions—rather than exact language—today. The rule/s would be edited to reflect the policy vote prior to the next meeting of the working group.

² Please refer to staff's March 4, 2022, memo available at <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000028721.pdf>.

After discussion, the chair invited motions to adopt the policy positions.

RESOLVED, that the California Paraprofessional Program Working Group adopts the staff recommendation regarding Rule 5.4, to eliminate the ability of paraprofessionals to have an ownership interest in a law firm that includes lawyers.

Moved by Fleischman, seconded by Wiley

Ayes (11): Bashan, Brynelson, Fleischman, Hamilton, Harper, Hartston, McRae, Robinson, Shining, Soroosh, Wiley

Abstentions (0): None

Absent (3): Rubin, Torres-Ambriz, Yew

Noes (4): Fellmeth, Kirchmeyer, Olvera, Spiro

Motion passes

Mr. Fleischman moved to adopt the following:

RESOLVED, that the California Paraprofessional Program Working Group adopts the staff recommendation regarding Rule 1.5.1, to eliminate the ability of paraprofessionals to share fees with lawyers working at different firms.

Moved by Fleischman, seconded by Bashan

Ayes (11): Bashan, Brynelson, Fleischman, Hamilton, Harper, Hartston, McRae, Robinson, Shining, Soroosh, Wiley

Abstentions (0): None

Absent (3): Rubin, Torres-Ambriz, Yew

Noes (4): Fellmeth, Kirchmeyer, Olvera, Spiro

Motion passes

Ms. Wilson then introduced the topic of fee caps. Ms. Wilson observed that the lack of fee caps poses a political obstacle to launching a paraprofessional license. She recommended that the working group propose caps but not set them, leaving that to the legislature.

Mr. Hartston offered an alternative motion to staff's recommendation which stated that fee caps or regulations should be part of the paraprofessional program to ensure that paraprofessional services cost less than those of attorneys.

RESOLVED, that the California Paraprofessional Program Working Group recommends that fee caps or fee regulations should be part of a paraprofessional

program to ensure that paraprofessional services are at a lower cost than those of attorneys.

Moved by Hartston, seconded by Fleischman

Ayes (5): Bashan, Brynelson, Fleischman, Hartston, Spiro

Abstentions (4): Hamilton, Robinson, Shining, Soroosh

Absent (3): Rubin, Torres-Ambriz, Yew

Noes (6): Fellmeth, Harper, Kirchmeyer, McRae, Olvera, Wiley

Motion fails

The working group next turned to in-court representation by paraprofessionals. Ms. Wilson presented staff's recommendation that only responsive representation—responding to questions from the bench—be permissible in court.

Following discussion, Mr. Hamilton moved to prohibit all forms of in-court representation by legal paraprofessionals.

RESOLVED, that the California Paraprofessional Program Working Group modifies its recommendation regarding in-court representation, as follows:
paraprofessionals are not permitted to participate in court proceedings or to sit at counsel table with clients.

Moved by Hamilton, seconded by Fleischman

Ayes (3): Fleischman, Hamilton, Shining

Abstentions (0): None

Absent (4): Robinson, Rubin, Torres-Ambriz, Yew

Noes (11): Bashan, Brynelson, Fellmeth, Harper, Hartston, Kirchmeyer, McRae, Olvera, Soroosh, Spiro, Wiley

Motion fails

Mr. Hartston then moved to adopt staff's recommendation in favor of responsive representation. Ms. McRae recommended removing from the alternative motion the word "procedural"—vis-à-vis the types of questions to which paraprofessionals could respond. That way paraprofessionals could respond to all questions from the judge, rather than just procedural ones.

After all members other than the chair had voted on Mr. Hartston's recommendation, there was a tie. The chair confirmed with Mr. Dewar, from the

Office of General Counsel, that she could vote to break a tie. Mr. Dewar confirmed that the chair could do so.

RESOLVED, that the California Paraprofessional Program Working Group modifies its recommendation regarding in-court representation, as follows: In-court representation by paraprofessionals is limited to responsive representation, defined as follows: paraprofessionals are authorized to sit at counsel table to support and advise their clients, and may answer direct questions from the judge.

Moved by Hartston, seconded by Bashan

Ayes (7): Bashan, Brynolson, Fleischman, Hamilton, Hartston, Kirchmeyer, Soroosh

Abstentions (1): Shining

Absent (3): Robinson, Rubin, Torres-Ambriz

Noes (8): Fellmeth, Harper, McRae, Olvera, Petrou, Spiro, Wiley, Yew

Motion fails

2. Staff-Recommended Exclusions from Working Group Consideration

Ms. Wilson presented staff's recommendation to exclude the following types of comment from further consideration:

- New practice areas
- Justice gap and whether or not it exists
- Need for or validity of a licensed paraprofessional

Prior to discussion of this recommendation, there was a call for additional public comment.

Call for public comment

Dawn Anderson, California access specialist who works closely with attorneys across the state in an area called accessibility construction related regulation addressed Item II.A.2.: Ms. Anderson provided comments regarding this is a subject area that is deserving of the working group's consideration.

Angela Grijalva, owner of Prepared Legal, addressed Item II.A.: Ms. Grijalva provided comments expressing concern about the negative publicity and naysayer public comments received about the paraprofessional program.

Following the additional public comments, Mr. Spiro observed that the resolution as written seemed to preclude consideration of comments about the practice areas altogether. He proposed alternate language. Staff revised the text of the proposed

resolution to focus on the addition of practice areas. Ms. Soroosh moved to adopt staff's updated recommendation.

RESOVLED, that the California Paraprofessional Program Working Group recommends that no additional practice areas beyond those included in its September 2021 recommendations be added to the initial implementation of the program.

Moved by Soroosh, seconded by McRae

Ayes (15): Bashan, Brynelson, Fellmeth, Fleischman, Hamilton, Harper, Hartston, Kirchmeyer, McRae, Olvera, Robinson, Shining, Soroosh, Spiro, Yew

Abstentions (0): None

Absent (3): Rubin, Torres-Ambriz, Wiley

Noes (0): None

Motion passes

Ms. Wilson noted that the working group received numerous comments about whether a justice gap exists, and whether a paraprofessional license is necessary. The chair observed that these questions might be outside the working group's scope.

Mr. Fleischman expressed concerns about the organization of public comments for this meeting. He noted, for instance, that a joint letter from 24 legal aid providers is counted as a single comment. Additionally, a letter from the Attorney General of California is characterized as not taking a position when it seems to express opposition to various recommendations.

Ms. Kirchmeyer moved, and Ms. Brynelson seconded, that the working group refrain from taking up questions about the existence of a justice gap in California and whether a paraprofessional license would help to close that gap. Ms. Shining voiced concern that such a resolution seems to discourage speech on the working group. Mr. Hartston suggested, and the chair and Ms. Shining agreed, that passing this motion is likely unnecessary. Ms. Kirchmeyer and Ms. Brynelson withdrew their motion.

3. Staff-Recommended Process for Remaining Comment Review

For the remaining public comments, Ms. Wilson recommended that the working group prioritize those that raise new facts or arguments. This would require staff to continue filtering and categorizing comment received. She invited the working

group's opinion about that approach. She also invited Mr. Fleischman to share his concerns about how public comments are currently categorized.

Mr. Hartston noted that he would like the group to revisit two topics in particular that received a number of comments that could not necessarily be categorized as presenting new facts or arguments: program evaluation and the cost of the program.

Mr. Fleischman asked staff to explain why the State Bar used multiple public comment forms to collect feedback. Staff explained that the initial form was similar to those that the State Bar uses for proposed changes to State Bar rules. As time went on, however, the State Bar received feedback that the form needed to be simpler, especially for member of the public who are non-attorneys.

Mr. Fleischman shared his concern that public comments across all versions of the form were grouped together, rather than analyzed by form. Staff acknowledged this concern.

Following Mr. Fleischman's remarks, Mr. Hartston proposed that the working group also consider comments about disclosures.

The chair noted that at its next meeting, the working group will consider text changes to the rules. Staff will survey the CPPWG for their availability.

ADJOURN