



# The State Bar of California

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**DATE:** May 20, 2022

**TO:** Members, Board of Trustees

**FROM:** Leah Wilson, Executive Director  
Kelsey Lyles, Principal Program Analyst  
Richard Schauffler, Consultant  
on behalf of the California Paraprofessional Working Group

**SUBJECT:** Proposed Amendments to Final Program Recommendations and Rules

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## EXECUTIVE SUMMARY

Attachment A to this item presents the California Paraprofessional Working Group's (CPPWG or working group) revisions to recommendations it generated last year regarding the design and scope of paraprofessional licensure in California. These revisions were made pursuant to a review of comments received on the recommendations, which were issued for public comment by the Board of Trustees at its September 23, 2021, meeting. Attachment B to this item contains revised dissenting opinions submitted by CPPWG members Steven Fleischman and Carolin Shining; these revised dissenting opinions update those previously authored by these members and included in the September 2021 final CPPWG report and recommendations.

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## RECOMMENDATIONS

The following resolution is proposed to the State Bar Board of Trustees:

**RESOLVED**, that the Board accepts the CPPWG proposed amendments and clarifications to the program recommendations and Rules of Professional Conduct for Licensed Paraprofessionals as reflected in Attachments A, A1, A2, and A3.

**FURTHER RESOLVED**, that the Board accepts the revised dissenting opinions authored by CPPWG members Steven Fleischman and Carolin Shining, as reflected in Attachment B.

## ATTACHMENT LIST

Attachment A: CPPWG Proposed Amendments to Final Program Recommendations and Rules  
Attachment A1: Proposed Revisions to Rule 5.4, Redline and Clean Versions  
Attachment A2: Proposed Revisions to Rule 1.4.3, Redline and Clean Versions

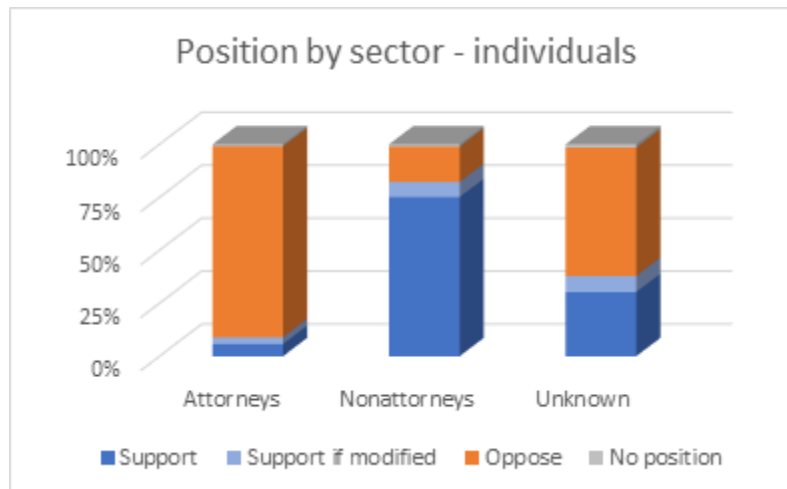
Attachment A3: CPPWG Adopted Resolution Vote Records from the March 4, 2022, and April 20, 2022, Meetings

Attachment B: Revised Dissenting Opinions from Working Group Members Steven Fleischman and Carolin Shining.

**California Paraprofessionals Program Working Group (CPPWG)  
Proposed Amendments to Final Program Recommendations and Rules**

### Summary of Comments Received

A total of 2,014 comments were submitted by 1,299 commenters<sup>1</sup>; 1,193 comments (92 percent) were submitted by individuals, and 106 (8 percent) were submitted on behalf of organizations. Seventy-one percent of individual commenters were categorized as attorneys, 23 percent as nonattorneys; 5 percent could not be identified either way.<sup>2</sup> Seventy-one percent of individuals indicated opposition, 24 percent indicated support, an additional 4 percent would support the recommendations with modifications, and 1 percent did not indicate a position. Attorneys were opposed to the recommendations at a rate of 90 percent, while nonattorneys supported the recommendations by 75 percent. Sixty-one percent of unknown individuals opposed the recommendations.

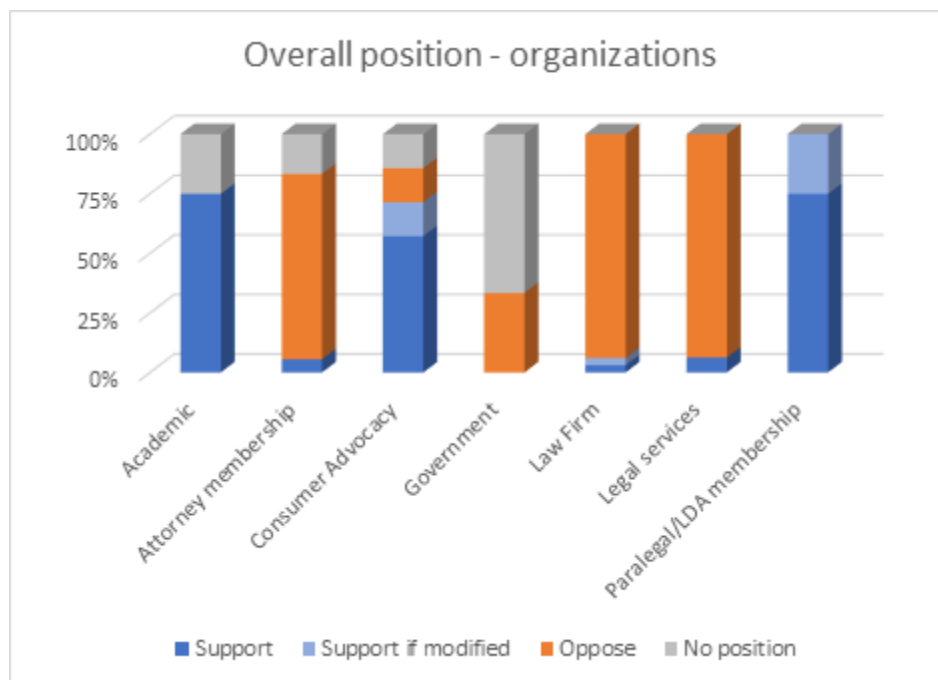


Comments were submitted on behalf of 106 organizations, 74 percent of which indicated opposition to the recommendations. The majority of this opposition reflects the position of law firms, attorney membership organizations, and legal services programs (together referenced as Attorney Organizations); these three sectors combined comprise 78 percent of organizational commenters. In contrast, academic institutions and consumer advocacy organizations (together referenced as Nonattorney Organizations), comprising only 10 percent of organizational commenters, indicated support for the recommendations: academic institutions indicated 75

<sup>1</sup> For the purpose of this analysis, each signatory to letters signed by multiple individuals or organizations was counted as an individual commenter.

<sup>2</sup> Public comments were sought using three different questionnaires which asked three different sets of questions. None of the questionnaires asked the responding party to self-identify as an attorney or otherwise. Therefore, individuals were identified by State Bar staff as attorneys based on (1) self-identification in comment narrative; or (2) through a search on the State Bar's public website, or other state bars' public websites. A number of commenters did not provide enough information (i.e., no full name or email address) to determine whether or not they were attorneys.

percent support and consumer advocacy organizations indicated 71 percent in support of current or modified recommendations. Government agencies, comprising 3 percent of commenters, were either opposed (33 percent) or took no position (67 percent). Paralegal/LDA membership organizations, comprising 4 percent of commenters, supported the recommendations at a rate of 75 percent.



### Process and Methodology for Comment Analysis

At its March 4 meeting the CPPWG conducted a preliminary review of comments, focusing on those addressing (1) specified Paraprofessional Rules of Professional Conduct; (2) in-court representation; (3) fee caps; and (4) suggestions for additional practice areas. The working group also established a methodology for reviewing remaining comments prioritizing for review: (1) those that present new information or argument not previously addressed by the working group; (2) those that address the cost of the paraprofessional program; (3) those that address disclosure requirements; and (4) those that address program evaluation. A memorandum summarizing comments based on these criteria along with corresponding staff recommendations was provided to the CPPWG for its April 20, 2022, meeting.

### Proposed Revised Program Recommendations Based on Comment Review

After review and discussion of public comment and staff recommendations, the CPPWG proposes the following amendments and clarifying revisions to the final report recommendations:

- Eliminate ability of paraprofessionals to own a law firm with attorneys. This recommendation is reflected as amendments to the Rules of Professional Conduct for Licensed Paraprofessionals, rule 5.4, Financial and Similar Arrangements with Lawyers and Nonlicensees, provided in redline and clean formats in Attachment A1;

- Require those seeking licensure in the Collateral Criminal practice area to be trained on potential immigration consequences for noncitizens;
- Add cases involving surrogate parentage to the list of excluded tasks in the Family, Children, and Custody practice area;
- Specify that conservatorship/guardianship of estate matters are excluded in the Family, Children, and Custody practice area;
- State that the final paraprofessional educational requirements must be developed in consultation with educational experts in relevant fields and that sufficient flexibility be granted during that process to ensure meaningful public protection and to promote alignment with best practices in education;
- Modify the composition requirements for the Paraprofessional Licensing and Oversight Committee to specify that at least one seat must be held by an attorney with experience in the legal services delivery system for low- or moderate-income Californians;
- Specify that disability-related bias be addressed as part of the elimination of bias Minimum Continuing Legal Education requirement;
- State that program evaluation metrics must be developed and finalized by an independent evaluator in advance of program implementation;
- Require the State Bar to develop an example disclosure form addressing the requirements of the Rules of Professional Conduct for Licensed Paraprofessionals, rule 1.4.2 (a)(2), Notice to Consumers Prior to Consultation with a Prospective Client, and make the form available at no cost on the State Bar website;
- Require paraprofessionals to provide contact information for other available choices for obtaining legal services. This recommendation is reflected as amendments to the Rules of Professional Conduct for Licensed Paraprofessionals, rule 1.4.3(a)(2), Informed Written Consent to Representation, provided in redline and clean formats in Attachment A2.
- Require the State Bar to develop a non-exhaustive referral list of free legal service providers and modest means panels available from legal aid programs and nonprofit organizations with contact information, by county and practice area, to support the disclosure requirements of rule 1.4.3(a)(2), Informed Written Consent to Representation, and that this information be accessible on the State Bar website;
- State that no funding for the implementation or maintenance of the paraprofessional program will come from funding that would otherwise be used to support the State Bar's discipline system;
- Require the State Bar to provide full public disclosure of all entities funding the paraprofessional program annually; and
- State that the CPPWG is submitting a proposed set of Rules of Professional Conduct for Licensed Paraprofessionals with the understanding that State Bar staff is recommending to the State Bar that remaining comments from the Committee on Professional Responsibility and Conduct and Los Angeles County Bar Association be addressed as part of the State Bar process to issue the final set of rules and accompanying comments for public comment.

The resolutions adopted at the March 4, 2022 and April 20, 2022 meetings and voting records on each are provided as Attachment A3.

**Rule 5.4 Financial and Similar Arrangements with Lawyers and Nonlicensees  
(Proposed Rule-Redline Version)**

(a) A licensed paraprofessional or law firm\* shall not share legal fees for the licensed paraprofessional's services directly or indirectly with a person\* who is not a lawyer or a licensed paraprofessional or with an organization that is not authorized to practice law, except that:

(1) an agreement by a licensed paraprofessional with the licensed paraprofessional's firm,\* partner,\* or associate may provide for the payment of money or other consideration over a reasonable\* period of time after the licensed paraprofessional's death, to the licensed paraprofessional's estate or to one or more specified persons;\*

(2) a licensed paraprofessional purchasing the practice of a deceased, disabled or disappeared licensed paraprofessional may pay the agreed-upon purchase price, pursuant to rule 1.17, to the licensed paraprofessional's estate or other representative;

(3) a licensed paraprofessional or law firm\* may include employees who are not lawyers or licensed paraprofessionals in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement, provided the plan does not otherwise violate these rules;

(4) a licensed paraprofessional or law firm\* may pay a prescribed registration, referral, or other fee to a licensed paraprofessional referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for Licensed paraprofessional Referral Services; or

(5) a licensed paraprofessional or law firm\* may share with or pay a court-awarded legal fee to a nonprofit organization that employed, retained or recommended employment of the licensed paraprofessional or law firm\* in the matter.

(6) a licensed paraprofessional or law firm\* may share with or pay a legal fee that is not court-awarded but arises from a settlement or other resolution of the matter with a nonprofit organization that employed, retained, recommended, or facilitated employment of the licensed paraprofessional or law firm\* in the matter provided:

- (i) the nonprofit organization qualifies under section 501(c)(3) of the Internal Revenue Code;
- (ii) the licensed paraprofessional or law firm\* enters into a written\* agreement to divide the fee with the nonprofit organization;
- (iii) the licensed paraprofessional or law firm\* obtains the client's consent in writing,\* either at the time the licensed paraprofessional or law firm\* enters into the agreement with the nonprofit organization to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of the fact that a division of fees will be made, the identity of the licensed paraprofessional or law firm\* and the nonprofit

- organization that are parties to the division, and the terms of the division, including the restriction imposed under paragraph (a)(6)(iv); and
- (iv) the total fee charged by the licensed paraprofessional or law firm\* is not increased solely by reason of the agreement to divide fees.

(b) A licensed paraprofessional shall not form a partnership or other organization with an individual who is not a ~~lawyer or~~ licensed paraprofessional if any of the activities of the partnership or other organization consist of the practice of law.

€ A licensed paraprofessional shall not permit a person\* who recommends, employs, or pays the licensed paraprofessional to render legal services for another to direct or regulate the licensed paraprofessional's independent professional judgment or interfere with the licensed paraprofessional-client relationship in rendering legal services.

(d) A licensed paraprofessional shall not practice with or in the form of a professional corporation or other organization authorized to practice law for a profit if:

- (f) a licensed paraprofessional and a lawyer own any interest in it, except that a fiduciary representative of a lawyer's or licensed paraprofessional's estate may hold the lawyer's or licensed paraprofessional's stock or other interest for a reasonable\* time during administration;

~~(12)~~ an individual who is not a lawyer or a licensed paraprofessional owns any interest in it, except that a fiduciary representative of a lawyer's or licensed paraprofessional's estate may hold the lawyer's or licensed paraprofessional's stock or other interest for a reasonable\* time during administration;

~~(23)~~ an individual who is not a lawyer or a licensed paraprofessional is a director or officer of the corporation or occupies a position of similar responsibility in any other form of organization; ~~or~~

~~(34)~~ an individual who is not a lawyer or a licensed paraprofessional has the right or authority to direct or control the licensed paraprofessional's independent professional judgment-; or

(5) a licensed paraprofessional has any supervisory authority over a lawyer, or has the right or authority to direct or control a lawyer's independent professional judgment.

~~€ A licensed paraprofessional shall not practice in a law firm\* with a lawyer if:~~

- ~~(1) any licensed paraprofessional directs or regulates any lawyer's professional judgment in rendering legal services;~~
- ~~(2) any licensed paraprofessional has supervisory authority over any lawyer; or~~
- ~~(3) licensed paraprofessionals possess a majority ownership interest or exercise controlling managerial authority in the firm;~~

(~~f~~e) The Board of Trustees of the State Bar shall formulate and adopt Minimum Standards for Licensed Paraprofessional Referral Services, which, as from time to time amended, shall be binding on licensed paraprofessionals. A licensed paraprofessional shall not accept a referral from, or otherwise participate in, licensed paraprofessional referral service unless it complies with such Minimum Standards for Lawyer Licensed Paraprofessional Referral Services.

(~~g~~f) A licensed paraprofessional shall not practice with or in the form of a nonprofit legal aid, mutual benefit or advocacy group if the nonprofit organization allows any third person\* to interfere with the licensed paraprofessional's independent professional judgment, or with the licensed paraprofessional-client relationship, or allows or aids any person\* to practice law in violation of these rules or applicable law.



**Rule 5.4 Financial and Similar Arrangements with Lawyers and Nonlicensees  
(Proposed Rule-Clean Version)**

(a) A licensed paraprofessional or law firm\* shall not share legal fees for the licensed paraprofessional's services directly or indirectly with a person\* who is not a lawyer or a licensed paraprofessional or with an organization that is not authorized to practice law, except that:

(1) an agreement by a licensed paraprofessional with the licensed paraprofessional's firm,\* partner,\* or associate may provide for the payment of money or other consideration over a reasonable\* period of time after the licensed paraprofessional's death, to the licensed paraprofessional's estate or to one or more specified persons;\*

(2) a licensed paraprofessional purchasing the practice of a deceased, disabled or disappeared licensed paraprofessional may pay the agreed-upon purchase price, pursuant to rule 1.17, to the licensed paraprofessional's estate or other representative;

(3) a licensed paraprofessional or law firm\* may include employees who are not lawyers or licensed paraprofessionals in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement, provided the plan does not otherwise violate these rules;

(4) a licensed paraprofessional or law firm\* may pay a prescribed registration, referral, or other fee to a licensed paraprofessional referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for Licensed paraprofessional Referral Services; or

(5) a licensed paraprofessional or law firm\* may share with or pay a court-awarded legal fee to a nonprofit organization that employed, retained or recommended employment of the licensed paraprofessional or law firm\* in the matter.

(6) a licensed paraprofessional or law firm\* may share with or pay a legal fee that is not court-awarded but arises from a settlement or other resolution of the matter with a nonprofit organization that employed, retained, recommended, or facilitated employment of the licensed paraprofessional or law firm\* in the matter provided:

- (i) the nonprofit organization qualifies under section 501(c)(3) of the Internal Revenue Code;
- (ii) the licensed paraprofessional or law firm\* enters into a written\* agreement to divide the fee with the nonprofit organization;
- (iii) the licensed paraprofessional or law firm\* obtains the client's consent in writing,\* either at the time the licensed paraprofessional or law firm\* enters into the agreement with the nonprofit organization to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of the fact that a division of fees will be made, the identity of the licensed paraprofessional or law firm\* and the nonprofit

- organization that are parties to the division, and the terms of the division, including the restriction imposed under paragraph (a)(6)(iv); and
- (iv) the total fee charged by the licensed paraprofessional or law firm\* is not increased solely by reason of the agreement to divide fees.

(b) A licensed paraprofessional shall not form a partnership or other organization with an individual who is not a licensed paraprofessional if any of the activities of the partnership or other organization consist of the practice of law.

€ A licensed paraprofessional shall not permit a person\* who recommends, employs, or pays the licensed paraprofessional to render legal services for another to direct or regulate the licensed paraprofessional's independent professional judgment or interfere with the licensed paraprofessional-client relationship in rendering legal services.

(d) A licensed paraprofessional shall not practice with or in the form of a professional corporation or other organization authorized to practice law for a profit if:

(f) a licensed paraprofessional and a lawyer own any interest in it, except that a fiduciary representative of a lawyer's or licensed paraprofessional's estate may hold the lawyer's or licensed paraprofessional's stock or other interest for a reasonable\* time during administration;

(2) an individual who is not a lawyer or a licensed paraprofessional owns any interest in it, except that a fiduciary representative of a lawyer's or licensed paraprofessional's estate may hold the lawyer's or licensed paraprofessional's stock or other interest for a reasonable\* time during administration;

(3) an individual who is not a lawyer or a licensed paraprofessional is a director or officer of the corporation or occupies a position of similar responsibility in any other form of organization;

(4) an individual who is not a lawyer or a licensed paraprofessional has the right or authority to direct or control the licensed paraprofessional's independent professional judgment; or

(5) a licensed paraprofessional has any supervisory authority over a lawyer, or has the right or authority to direct or control a lawyer's independent professional judgment.

€ The Board of Trustees of the State Bar shall formulate and adopt Minimum Standards for Licensed Paraprofessional Referral Services, which, as from time to time amended, shall be binding on licensed paraprofessionals. A licensed paraprofessional shall not accept a referral from, or otherwise participate in, licensed paraprofessional referral service unless it complies with such Minimum Standards for Lawyer Licensed Paraprofessional Referral Services.

(f) A licensed paraprofessional shall not practice with or in the form of a nonprofit legal aid, mutual benefit or advocacy group if the nonprofit organization allows any third person\* to

interfere with the licensed paraprofessional's independent professional judgment, or with the licensed paraprofessional-client relationship, or allows or aids any person\* to practice law in violation of these rules or applicable law.

**Rule 1.4.3 Informed Written Consent\* to Representation  
(Proposed Rule – Redline Version)**

(a) Prior to a prospective client's engagement of the licensed paraprofessional, the licensed paraprofessional shall obtain the prospective client's informed written consent\* to representation. This includes that the paraprofessional shall clearly communicate in the prospective client's preferred language available alternatives and material risks, including any actual and reasonably\* foreseeable adverse consequences of proceeding with a non-lawyer in this matter . The disclosures shall include, but not be limited to:

(1) A statement that the licensed paraprofessional is not a lawyer;

(2) Disclosure of other available choices for obtaining legal services, including the potential availability of a free consultation with a lawyer, limited-scope services from a lawyer, free services from a Self Help Center or Family Law Facilitator's Office, and that free or low-cost legal services may be available to low-income individuals from a legal aid program or non-profit organization if the client qualifies with contact information for such organizations in the county;

(3) The potential need to hire a lawyer if needed services go beyond the limited scope of legal practice under the paraprofessional's license;

(4) A statement that identifies the area of law in which the individual is licensed to practice, any prohibitions within that specific area of practice for the paraprofessional, and how these prohibitions may adversely affect the licensed paraprofessional's representation of the client in the matter; and

(5) the existence of any financial arrangements related to the representation that the licensed paraprofessional has with others, such as fee sharing.

(b) The informed written consent\* to representation required under paragraph (a) shall be in a separate writing\* from the written\* agreement to representation required under rule 1.5.2.

**Rule 1.4.3 Informed Written Consent\* to Representation**  
**(Proposed Rule – Clean Version)**

- (a) Prior to a prospective client's engagement of the licensed paraprofessional, the licensed paraprofessional shall obtain the prospective client's informed written consent\* to representation. This includes that the paraprofessional shall clearly communicate in the prospective client's preferred language available alternatives and material risks, including any actual and reasonably\* foreseeable adverse consequences of proceeding with a non-lawyer in this matter . The disclosures shall include, but not be limited to:
- (1) A statement that the licensed paraprofessional is not a lawyer;
  - (2) Disclosure of other available choices for obtaining legal services, including the potential availability of a free consultation with a lawyer, limited-scope services from a lawyer, free services from a Self Help Center or Family Law Facilitator's Office, and that free or low-cost legal services may be available to low-income individuals from a legal aid program or non-profit organization if the client qualifies with contact information for such organizations in the county;
  - (3) The potential need to hire a lawyer if needed services go beyond the limited scope of legal practice under the paraprofessional's license;
  - (4) A statement that identifies the area of law in which the individual is licensed to practice, any prohibitions within that specific area of practice for the paraprofessional, and how these prohibitions may adversely affect the licensed paraprofessional's representation of the client in the matter; and
  - (5) the existence of any financial arrangements related to the representation that the licensed paraprofessional has with others, such as fee sharing.
- (b) The informed written consent\* to representation required under paragraph (a) shall be in a separate writing\* from the written\* agreement to representation required under rule 1.5.2

**California Paraprofessionals Working Group  
Adopted Resolution Vote Records from March 4, 2022, Meeting**

**RESOLVED**, 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.

**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.<sup>3</sup>

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.

**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.

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<sup>3</sup> Subsequent to the meeting, staff clarified that rule 1.5.1 already barred paraprofessionals and lawyers in different firms from sharing fees; as such, an amendment to the rule was not needed.

**California Paraprofessionals Working Group (CPPWG)**  
**Adopted Resolution Vote Records from April 20, 2022, Meeting**

**RESOLVED**, that the CPPWG adopts the proposed language for Rule 5.4 as reflected in Attachment A to eliminate the ability of paraprofessionals to own a law firm with attorneys.

Moved by Fleischman, seconded by Wiley.

**Ayes (11):** Brynelson, Fleischman, Hartston, Kirchmeyer, McRae, Olvera, Robinson, Shining, Soroosh, Wiley, Yew.

**Abstentions (0):** none

**Absent (6):** Bashan, Fellmeth, Hamilton, Harper, Rubin, Torres-Ambriz.

**Noes (1):** Spiro

**FURTHER RESOLVED**, that the CPPWG recommends amending the Collateral Criminal practice area to specifically require paraprofessionals to be trained on potential immigration consequences for noncitizens.

Moved by Hartston, seconded by Yew.

**Ayes (8):** Hartston, Kirchmeyer, McRae, Olvera, Robinson, Spiro, Wiley, Yew.

**Abstentions (0):** none

**Absent (6):** Bashan, Fellmeth, Hamilton, Harper, Rubin, Torres-Ambriz.

**Noes (4):** Brynelson, Fleischman, Shining, Soroosh.

**FURTHER RESOLVED**, that the CPPWG recommends amending the list of excluded tasks/matters in the Family, Children, and Custody practice area to include cases involving surrogate parentage.

Moved by Wiley, seconded by Soroosh.

**Ayes (11):** Brynelson, Fleischman, Hartston, Kirchmeyer, McRae, Olvera, Robinson, Shining, Soroosh, Spiro, Wiley.

**Abstentions (0):** none

**Absent (7):** Bashan, Fellmeth, Hamilton, Harper, Rubin, Torres-Ambriz, Yew.

**Noes (0):** none

**FURTHER RESOLVED**, that the CPPWG recommends amending the tasks in the Family, Children, and Custody practice area to specify that conservatorship/guardianship of the estate matters are excluded.

Moved by Soroosh, seconded by Hartston.

**Ayes (10):** Brynelson, Fleischman, Hartston, Kirchmeyer, McRae, Robinson, Shining, Soroosh, Spiro, Wiley.

**Abstentions (1):** Olvera

**Absent (7):** Bashan, Fellmeth, Hamilton, Harper, Rubin, Torres-Ambriz, Yew.

**Noes (0):** none

**FURTHER RESOLVED**, that the CPPWG recommends that the final paraprofessional educational requirements be developed in consultation with educational experts in relevant fields and that sufficient flexibility be granted during that process to ensure meaningful public protection and to promote alignment with best practices in education.

Moved by Spiro, seconded by Brynelson.

**Ayes (11):** Brynelson, Fleischman, Hartston, Kirchmeyer, McRae, Olvera, Robinson, Shining, Soroosh, Spiro, Wiley.

**Abstentions (0):** none

**Absent (7):** Bashan, Fellmeth, Hamilton, Harper, Rubin, Torres-Ambriz, Yew.

**Noes (0):** none

**FURTHER RESOLVED**, that the CPPWG recommends amending the composition requirements for the Paraprofessional Licensing and Oversight Committee to specify that at least one seat must be held by an attorney with experience in the legal services delivery system for low- or moderate-income Californians.

Moved by Fleischman, seconded by Wiley.

**Ayes (11):** Brynelson, Fleischman, Hartston, Kirchmeyer, McRae, Olvera, Robinson, Shining, Soroosh, Spiro, Wiley.

**Abstentions (0):** none

**Absent (7):** Bashan, Fellmeth, Hamilton, Harper, Rubin, Torres-Ambriz, Yew.

**Noes (0):** none

**FURTHER RESOLVED**, that the CPPWG recommends amending the elimination of bias MCLE requirement to specify that disability-related bias be addressed as part of the elimination of bias requirement.

Moved by McRae, seconded by Soroosh.

**Ayes (10):** Fleischman, Hartston, Kirchmeyer, McRae, Olvera, Robinson, Shining, Soroosh, Spiro, Wiley.

**Abstentions (1):** Brynelson

**Absent (7):** Bashan, Fellmeth, Hamilton, Harper, Rubin, Torres-Ambriz, Yew.

**Noes (0):** none

**FURTHER RESOLVED**, that the CPPWG recommends that the program evaluation recommendations be clarified to specify that evaluation metrics must be developed and finalized by an independent evaluator in advance of program implementation.

Moved by Hartston, seconded by Spiro.



**Ayes (10):** Brynelson, Fleischman, Hartston, Kirchmeyer, McRae, Olvera, Robinson, Soroosh, Spiro, Wiley.

**Abstentions (2):** Shining and Yew

**Absent (6):** Bashan, Fellmeth, Hamilton, Harper, Rubin, Torres-Ambriz.

**Noes (0):** none

**FURTHER RESOLVED**, that the CPPWG recommends the State Bar develop an example disclosure form addressing the requirements of Rule 1.4.2 (a)(2), and that this form be made available at no cost on the State Bar website.

Moved by Kirchmeyer, seconded by Fleischman.

**Ayes (13):** Brynelson, Fleischman, Hartston, Kirchmeyer, McRae, Olvera, Robinson, Rubin, Shining, Soroosh, Spiro, Wiley, Yew.

**Abstentions (0):** none

**Absent (5):** Bashan, Fellmeth, Hamilton, Harper, Torres-Ambriz.

**Noes (0):** none

**FURTHER RESOLVED**, that disclosure of other available choices for obtaining legal services, including the potential availability of a free consultation with a lawyer, limited-scope services from a lawyer, free services from a Self Help Center or Family Law Facilitator's Office, and that free or low-cost legal services may be available to low-income individuals from a legal aid program or nonprofit organization if the client qualifies with contact information for such organizations available to persons in the county.<sup>4</sup>

Moved by Hartston, seconded by Spiro.

**Ayes (7):** Fleischman, Hartston, Rubin, Shining, Spiro, Wiley, Yew.

**Abstentions (2):** Brynelson and Robinson.

**Absent (5):** Bashan, Fellmeth, Hamilton, Harper, Torres-Ambriz.

**Noes (4):** Kirchmeyer, McRae, Olvera, Soroosh.

**FURTHER RESOLVED**, that the CPPWG recommends the State Bar develop a non-exhaustive referral list of free legal service providers and modest means panels available from legal aid programs and nonprofit organizations with contact information, by county and practice area, to support the disclosure requirements of rule 1.4.3(a)(2), and that this information is accessible on the State Bar website.

Moved by Hartston, seconded by Fleischman.

**Ayes (8):** Brynelson, Fleischman, Hartston, McRae, Robinson, Rubin, Spiro, Yew.

**Abstentions (3):** Kirchmeyer, Olvera, and Soroosh.

**Absent (5):** Bashan, Fellmeth, Hamilton, Harper, Torres-Ambriz.

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<sup>4</sup> Although the resolution voted on by the CPPWG did not expressly reference amendments to Paraprofessional Rules of Professional Conduct rule 1.4.3(a)(2), that rule was on screen during the discussion of this resolution and was edited to reflect the direction of the CPPWG.

**Noes (2):** Shining and Wiley.

**FURTHER RESOLVED**, that no funding for the implementation or maintenance of the paraprofessional program will come from funding that would otherwise be used to support the State Bar's discipline system.

Moved by Fleischman, seconded by Bryn Nelson.

**Ayes (10):** Bryn Nelson, Fleischman, Hartston, Kirchmeyer, Olvera, Robinson, Shining, Soroosh, Spiro, Wiley.

**Abstentions (0):** none

**Absent (7):** Bashan, Fellmeth, Hamilton, Harper, Rubin, Torres-Ambriz, Yew.

**Noes (1):** McRae.

**FURTHER RESOLVED**, that the State Bar shall annually provide full public disclosure of all entities funding the paraprofessional program.

Moved by Spiro, seconded by Bryn Nelson.

**Ayes (10):** Bryn Nelson, Fleischman, Hartston, Kirchmeyer, McRae, Olvera, Robinson, Shining, Soroosh, Spiro.

**Abstentions (0):** none

**Absent (8):** Bashan, Fellmeth, Hamilton, Harper, Rubin, Torres-Ambriz, Wiley, Yew.

**Noes (0):** none

**FURTHER RESOLVED**, that the CPPWG is submitting a proposed set of Paraprofessional Rules of Professional Conduct with the understanding that State Bar staff is recommending to the State Bar that remaining COPRAC and LACBA comments be addressed as part of the State Bar process to issue the final set of rules and accompanying comments for public comment.

Moved by Fleischman, seconded by Kirchmeyer.

**Ayes (11):** Bryn Nelson, Fleischman, Hartston, Kirchmeyer, McRae, Robinson, Rubin, Shining, Soroosh, Spiro, Wiley.

**Abstentions (0):** none

**Absent (6):** Bashan, Fellmeth, Hamilton, Harper, Torres-Ambriz, Yew.

**Noes (0):** none

**RESOLVED**, that the CPPWG approves the summary of public comment and outline of the process for comment analysis as provided in Attachment A for inclusion in its final report to the Board of Trustees.

Moved by Wiley, seconded by Bryn Nelson.

**Ayes (8):** Bryn Nelson, Hartston, Kirchmeyer, McRae, Olvera, Robinson, Soroosh, Wiley.

**Abstentions (1):** Spiro

**Absent (7):** Bashan, Fellmeth, Hamilton, Harper, Rubin, Torres-Ambriz, Yew.

**Noes (2):** Fleischman and Shining.

Addendum to Fleischman dissenting opinion

Below is the dissent I authored, which was originally attached to the Working Group's September 23, 2021, Report and Recommendation. Now that the Report has gone out for public comment and the Working Group has made various revisions to the proposed paraprofessional recommendation, I wish to update my dissent:

1. Nonlawyer ownership of law firms: After receiving extensive public comment opposing this proposal, the Working Group has voted to eliminate this from the program. Having dissented from the original proposal on this point, I obviously agree with this change.
2. Cost: The estimate to implement the paraprofessional program has been increased from \$1.65 million to \$2 million. The Working Group voted to suggest that funding for the paraprofessional program not come at the expense of the State Bar's disciplinary system, which I wholeheartedly endorse.

However, there is no secured source of funding for the \$2 million in startup costs for the paraprofessional program. The State Bar's ATILS report recommends obtaining this funding from private philanthropy, including the Gates Foundation, Google.org, and the Chan Zuckerberg Initiative. (Task Force On Access Through Innovation Of Legal Services, The State Bar of California, Final Report and Recommendation (March 6, 2000) pp. 28–29 <<https://bit.ly/3vq9DxU>> [as of Apr. 28, 2022].) Given the current controversy over allowing technology companies to practice law through the State Bar's "sandbox" initiative (*Closing the Justice Gap Working Group* (2022) The State Bar of California <<https://bit.ly/3KqclYy>> [as of Apr. 28, 2022]), I am troubled that the State Bar would seek funding from technology-related entities. The Working Group voted against a proposal that would have recommended that funding for the paraprofessional program not come from grants from technology-related entities. I dissent from that vote. I believe that funding for the paraprofessional program should only come through funds specifically allocated by the California Legislature for that purpose.

3. Public comment process and results: Unfortunately, in my opinion, the public comment process was not a model of clarity. State Bar staff used three different online questionnaires to solicit responses, all of which asked different questions and none of which asked the responding party to self-identify as an attorney, consumer, paralegal, academic, etc. One of the questionnaires was designed to solicit support from consumers but was preceded by (in my opinion) a one-sided presentation of the proposed paraprofessional program that lacked any description of the many concerns about the program. (See *Tell Us What You Think* (2021–2022) The State Bar of California <<https://bit.ly/3MGvszd>> [as of Apr. 28, 2022].) The State Bar's online "Frequently Asked Questions" about the proposed program also did not appear to be neutral or balanced in describing the proposed program. (See *Frequently Asked Questions: California Paraprofessional Program* (2022) The State Bar of California <<https://bit.ly/3OF3SUR>> [as of Apr. 28, 2022].)

Everyone agrees that the public responses were overwhelmingly against the proposed paraprofessional program. State Bar staff, however, attempted to characterize the responses as an attorney versus consumer issue and published a tweet on Twitter to that effect. (State Bar of California (@StateBarCA) (Feb. 8, 2022, 1:47 PM) Twitter <<https://bit.ly/3knIma8>> [as of Apr. 28, 2022].) Following that tweet, I exchanged numerous emails with State Bar staff expressing my concerns regarding the questionnaire methodology, particularly that three different questionnaires were used and that responders were not asked to self-identify as an attorney, consumer, etc. In response to these concerns, State Bar staff attempted to research the email addresses of respondents to reverse engineer their identities as either attorneys or nonattorneys. But if these distinctions were important, they should have been made part of the questionnaire and disclosed in advance rather than attempting to identify them after the fact.

Because of problems with how the public comment process was handled, the Working Group concluded that there was no way to fairly prepare an analysis including all of the actual public comments received. In my view, however, there are two public comments worth noting:

1. A January 12, 2022, letter from Rob Bonta, Attorney General for the State of California. As California's chief law enforcement officer, Mr. Bonta's letter raised the following issues of concern: (a) the paraprofessional program should include reasonable limits on fees charged by paraprofessionals; (b) paraprofessionals should work under the supervision of an attorney and should not be permitted to represent clients in court; (c) paraprofessionals should not be permitted to have an ownership interest in a law firm; (d) the State Bar should be required to provide further details regarding the financial viability of the proposed program; and (e) any attempt to implement the paraprofessional program should be coupled with increased funding for legal aid services.

2. A January 7, 2012, letter from 24 legal aid organizations, including Public Counsel, Legal Aid Association of California, Bet Tzedek, and the Western Center on Law & Poverty, explaining their opposition to the program as a whole.

Copies of these two letters are attached as an Exhibit to this dissent. I hope the Board of Trustees, the California Supreme Court, and the California Legislature take these letters into account in deciding whether and how to implement the paraprofessional program.

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Dissenting opinion from Steven Fleischman, joined by Carolin Shining (except as to Section 5), Stephen D. Hamilton (except as to Section 5) and Sharon Basham

### Introduction

No matter how well-intended, in my view there are serious flaws in the proposed paraprofessional program:

1. There is no statistical data on how many Californians have tried to find an attorney and could not or were unable to afford one. Thus, there is no

statistical data demonstrating that adding the number of legal service providers, in this case paraprofessionals, will serve the unmet legal needs of Californians. Put differently, there is no evidence of an attorney shortage in California and, in any event, the California Supreme Court has already taken steps to increase the number of attorneys.

2. To the contrary, the available data shows that two-thirds of Californians with perceived legal needs took no steps to try to find help, whether from a lawyer, legal aid group, the internet, or otherwise. The State Bar's Justice Gap Report correctly refers to this as a Knowledge Gap, not a Justice Gap.
3. No studies have been done on the financial impact the paraprofessional program will have on the State Bar itself. After five years, and a cost of \$1.4 million, the Washington Supreme Court cancelled a comparable program in that state after less than 30 individuals signed up to become paraprofessionals. While the California program intends to be funded based on resources other than from the State Bar's general coffers, if that funding does not come through, I fear resources may be diverted from the State Bar's enforcement activities.

One prominent attorney has already commented on the lack of statistical data to support the paraprofessional program. (Harrison, *Paraprofessionals Won't Fix the Access to Justice Problem* (June 9, 2021) Bloomberg Law <<https://bit.ly/3DLBNFP>> [as of Sept. 3, 2021].)

Moreover, the proposed paraprofessional program would make fundamental changes in the practice of law by allowing nonlawyer ownership of law firms and appearances in courts even though neither change addresses the Knowledge Gap; instead, both changes will only make the legal market more complex and opaque for Californians. Nor does the program regulate the fees that paraprofessionals can charge, and experience in Washington suggests that paraprofessionals will be unaffordable to most. Without data demonstrating how many Californians attempted to retain an attorney but were unable to afford one, it is guesswork to conclude that the State Bar should invest in a paraprofessional program rather than improving existing programs.

Without such data, the Working Group has proceeded on the assumption that creating a new class of legal service providers—paraprofessionals—will somehow increase access to justice. However, as one commentator has written:

Lawyers' exclusive right to practice law is certainly as valuable a protection to the community as allowing only doctors to perform surgery, licensed contractors to build or repair your home, licensed dentists to drill your teeth, licenses cosmetologists to cut your hair, licensed plumbers to fix your pipes. In none of these other situations is requiring that specialized services be performed only by qualified licentiates regarded as a factor unfairly reducing access to those services.

(Willenburg, *Legal innovation report: part promising, part unexceptionable* (Aug. 23, 2019) Daily Journal <<https://bit.ly/2WTXjYt>> [as of Sept. 7, 2021].)

There are other significant flaws in the proposed program:

- Court appearances: The program will allow, for the first time in California history, nonlawyers to make court appearances on behalf of clients. This is a dramatic step, even for a pilot program, and is not supported by the limited experience with paraprofessionals in other states. A better model, in my view, would be to follow a recent Court of Appeal opinion addressing the unauthorized practice of law and allow paraprofessionals to complete and file preapproved Judicial Council forms on behalf of clients. This would accomplish many goals of the paraprofessional program without such a dramatic change in California practice.
- Nonlawyer ownership of law firms: The majority proposal also allows paraprofessionals to own up to 49 percent of law firms and thus profit from cases in areas in which they are not allowed to practice, including criminal, immigration, personal injury, and employment cases. No justification has been provided for allowing paraprofessionals to profit from the many areas of the law that they cannot practice under a paraprofessional license.
- No restriction on fees: One of the purported goals of the paraprofessional program is consumer protection. If so, then the program should include reasonable limitations on the amount of fees that can be charged to consumers under the program. Many restrictions already exist on the amount of fees attorneys can charge for various types of cases. State Bar staff prepared a 69-page report complete with extensive information about hourly rates charged and limitations on fees imposed by various statutes and court rules. This is an area where there *is* ample data available. Given the routine nature of many of the legal services which paraprofessionals will provide, there should be some restrictions on the amount of fees that can be charged. Otherwise, they will charge the same amount as lawyers and there is no benefit to consumers from the program, at least from a cost perspective.

I am also worried that implementation the paraprofessional program will create a two-tiered justice system: one for those that can afford attorneys and another for those that cannot. Throughout the Working Group's meetings, we have repeatedly heard the argument that "something is better than nothing." I disagree. I would prefer that the State Bar and Legislature focus on expanding funding for legal aid organizations.

Finally, I am concerned about the financial impact of the program on the State Bar itself. The Washington State Bar implemented a similar program for Limited License Legal Technicians (LLLT's). After less than five years, and a cost of \$1.4 million, the Washington Supreme Court cancelled the program when fewer than 30 individuals took advantage of the program. (Moran, *Washington Supreme Court sunsets limited license program for nonlawyers* (June 8, 2020) ABA Journal <<https://bit.ly/38TTrZX>> [as of Sept. 7, 2021].) The proposed paraprofessional program has no analysis of how many people will be expected to become paraprofessionals and pay dues nor any indication of how much the program will cost to set up and administer. While it is hoped that the program can be funded through other sources, there

is no guarantee of such funding. Absent guaranteed funding, I am concerned that the paraprofessional program will cause a drain on the State Bar's existing resources.

Recent, well-publicized events have shown the public need for the State Bar to focus on traditional enforcement activities. I am concerned that without analyzing the costs of the paraprofessional program and guarantees of funding sources, sorely needed funds may (now or later) be diverted from the State Bar's enforcement activities.

I ask that the State Bar Board of Trustees and members of the California Supreme Court and Legislature consider these concerns in deciding whether to adopt the paraprofessional program.

1. A justice gap or a knowledge gap? The need for further statistical data.

Much of the Working Group's majority report is premised on The Justice Gap Study's finding that 85 percent of responding parties had an *unmet* legal need. (The State Bar of California, The California Justice Gap: Measuring the Unmet Civil Legal Needs of Californians ([Nov. 2019](https://bit.ly/3BGxmKx)) p. 7 <<https://bit.ly/3BGxmKx>> [as of Sept. 7, 2021] (hereafter, Justice Gap Report).) From this, the Working Group has proceeded on the premise that adding more providers of legal services (paraprofessionals) will close this "Justice Gap." However, a close examination of the Justice Gap Report confirms that this is not supported by the data in that study.

Of the people who responded to The Justice Gap study, two-thirds of them (67 percent) made no attempt to find an attorney. (Justice Gap Report, *supra*, at p. 25.) According to the report: "Some of the most common reasons given for not seeking legal help among Californians suggest *a lack of knowledge* about the civil legal system and the help that is available. For 31 percent of problems, Californians say they weren't sure if it was a legal issue, and for 15 percent, they didn't know how or where to look for legal help." (Justice Gap Report, at p. 10, emphasis added.) Of the remaining 33 percent of respondents (those who made an attempt to seek legal help), no attempt was made to determine if they tried to find an attorney to represent them and could not do so. This was confirmed when the full Working Group heard from the statisticians who prepared the Justice Gap report. *Thus, the Justice Gap Report does not identify a single Californian who tried to locate an attorney and could not find one.*

Because two-thirds of Californians with claimed legal needs do not even try to find an attorney, there is no reason to believe that adding more providers of legal services (paraprofessionals) will do anything to close this self-identified "Justice Gap." (Cf. *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 772 [expert testimony must be based on "professional studies or personal experience [with] the same level of intellectual rigor that characterizes the practice of an expert in the relevant field"].) Even the authors of the Justice Gap Report refer to this as a "Knowledge Gap," rather than a "Justice Gap." (The State Bar of California, California Justice Gap Study: The Knowledge Gap—Findings and Recommendations (Feb. 24, 2020) p. 2 <<https://bit.ly/3yU1EI9>> [as of Sept. 7, 2021].) This Knowledge Gap can only be addressed through public education, so that individuals are aware of the availability of legal remedies they can seek legal assistance; this in turn must be addressed by the Legislature, not the State Bar.

There is thus no statistical evidence to support the premise that adopting the proposed paraprofessional program will have any meaningful effect on the number of Californians seeking help for legal problems. This is all the more important because the California Supreme Court has already taken steps to increase the number of lawyers. Specifically, the Court recently lowered the score required to pass the California bar exam. (*California Supreme Court Issues Order Finalizing Lower Passing Score for Future Bar Exam Takers* (Aug. 10, 2020) Judicial Branch of California <<https://bit.ly/3h13osl>> [as of Sept. 7, 2021].) While the lower passage score has only been in effect for one bar examination, it appears that this may increase the number of attorneys admitted by more than 800 per year. (*State Bar of California Releases Results of February 2021 Bar Exam* (May 7, 2021) The State Bar of California



<<https://bit.ly/3z0akMO>> [as of Sept. 7, 2021] [noting increase of 417 individuals passing bar examination under lower standards for February 2021 bar examination].) Thus, the California Supreme Court has already tried to increase the number of fully licensed attorneys thereby decreasing the purported need for this program.

The majority report is also based, at least in part, on the premise that paraprofessionals will charge lower fees than lawyers and thus provide more Californians with access to attorneys. But again, the Justice Gap Report did not identify (or even ask) how many Californians contacted an attorney and decided they could not afford to hire that attorney. Indeed, only 15–22 percent of respondents (based on income ranges) even identified cost as a reason for not seeking legal assistance. (Justice Gap Report, *supra*, at p. 10.) Those 15–22 percent of respondents, however, also included individuals with legal problems related to personal injury, employment, and consumer protection issues where contingency counsel is already readily available to them at no out-of-pocket cost. Thus, had they made an effort to locate an attorney, presumably they could have found representation (assuming their case had minimal merit).

Moreover, the majority has decided (with one exception) not to regulate the amount of fees charged by paraprofessionals. (See Section 5, *post*.) That means paraprofessionals will be able to charge the same amount for legal services as attorneys. While in economic terms it is generally true that increasing the supply of legal providers should result in a decrease in cost, the Working Group has been presented no data to attempt to quantify that reduction, nor how many additional Californians could afford those services at lower prices. Indeed, one analysis of Washington’s LLLT program bluntly concluded: “The LLLT model is not designed to increase access to justice to low-income legal consumers, an objective of the model that has been anticipated by many of its initial stakeholders and observers.” (Donaldson, *Law by Non-Lawyers: The Limit to Limited License Legal Technicians Increasing Access to Justice* (2018) 42 Seattle U. L.Rev. 1, 71.) The same article notes that without fee regulation, LLLT’s efforts “will nonetheless skew towards those willing and able to pay higher prices for their services.” (*Id.* at p. 20.) This study was written *before* the Washington Supreme Court cancelled the program after fewer than 30 individuals became LLLT’s in that state. (Moran, *supra*, at <<https://bit.ly/38TTrZX>>.)

In short, the Justice Gap Report does not provide a sound statistical basis for the paraprofessional program. In my view, before embarking on such an ambitious program, the State Bar should have conducted an appropriate statistical study identifying basic data such as: (1) how many Californians with legal problems tried to find an attorney and could not find one; (2) how many Californians tried to hire an attorney in an area of law where contingency fees (where clients pay no costs out of pocket) are not typically available but could not afford that attorney; and (3) what was the difference between the amount quoted for legal services and what the potential client could have afforded.

## 2. The real issue: large numbers of self-represented parties in certain categories of cases

Despite my significant misgivings about the statistical foundation for the paraprofessional program, the Working Group did hear information about the large number of self-represented or pro se parties in California courts based on Judicial Council statistics and

from judicial officers. Self-represented parties tend to be clustered in certain substantive areas, including family law, unlawful detainer cases (tenants), and consumer debt (debtor defendants).

The areas with high numbers of self-represented parties—family law, unlawful detainer (tenants), and consumer debt (defendants)—have certain characteristics in common: (1) representation on a contingent basis is generally unavailable; (2) no statutory awards of attorney fees are available to motivate attorneys to handle these cases on a contingency basis; and (3) defendants in unlawful detainer and consumer debt cases are often individuals of limited means and may be unable to afford to hire an attorney.

In stark contrast, the civil and employment subcommittees of the Working Group heard extensive evidence from dozens of attorneys about the ample availability of legal representation on contingency basis (i.e., no out-of-pocket costs to the clients) in various matters, including personal injury, and employment and wage and hour cases. The California Legislature has also already tried to close the purported Justice Gap by providing statutory fees in many cases, particularly those involving consumer protection and employment statutes, to incentivize attorneys to take these cases on behalf of individuals. There is, in my view, no “Justice Gap” in these areas, which have been properly excluded from the paraprofessional program.

Because of the high number of self-represented parties in certain areas (family, unlawful detainer, consumer debt), I would have grudgingly gone along with the recommendation for the paraprofessional program on a pilot basis had the program stayed within certain parameters, including no court appearances and no law firm ownership. However, a better approach from the beginning would have been to address the self-represented litigant problem on a holistic basis, including evaluation of an expansion of the incredibly helpful self-help centers (which are drastically underfunded) and increased funding for legal aid associations (many of which oppose the paraprofessional program).

Because I view the problem as centering on self-represented parties, it is not surprising that we repeatedly heard from legal aid groups, both in writing and through the public comment process, with very specific objections to the program, including strong concerns about increased consumer fraud and public protection—an issue that legal aid organizations tackle every day. When the State Bar, California Supreme Court, and Legislature consider this report, I hope they give weight to the legal aid organizations’ concerns about this program. I also hope they also consider increased legal funding for those groups, as well as loosening the income requirements for individuals to seek assistance from those groups. (See Donaldson, *supra*, 42 Seattle U. L.Rev. at p. 70 [noting that limitations in the Washington LLLT program “bolster the argument for the continued public and private funding of legal aid in its many forms—non-profit organizations, law school clinics, and so on”].)

In sum, in my view, the “Justice Gap” is really more accurately characterized as a “Knowledge Gap” because most Californians with legal needs simply do not know to try to contact an attorney. To the extent that a “Justice Gap” exists, it is more properly analyzed as a problem of self-represented litigants in certain categories of cases which should be addressed

on a comprehensive basis, including better funding for self-help centers and legal aid associations.

### 3. Court appearances—a better model

The proposed paraprofessional program permits limited court appearances in certain types of cases, including family law and unlawful detainer cases. This is a drastic change from centuries of common law tradition permitting only attorneys and self-represented litigants to make court appearances, and one broader than adopted in other states with comparable programs:

Washington: In Washington, LLLT's are not allowed to make traditional court appearances but can sit at counsel table and answer direct factual questions from the trial judge. (Wash. Rev. Code Ann., Admiss. to Prac. Rules, appen. 28R [regulation B.2(h)].) Less than 30 LLLT's were licensed before the Washington Supreme Court cancelled the program. (Moran, *supra*, at <<https://bit.ly/38TTrZX>>.) While the Working Group heard from one of the Washington LLLT's, who we all agreed was an impressive individual, this does not present an adequate data set to evaluate whether to allow nonlawyer court appearances in California.

Arizona: In Arizona, paraprofessionals can only make appearances in family law, municipal, and justice courts. (Ariz. Rev. Stat. Ann., § 7-210, subd. (E)(2).) In Arizona, municipal courts handle criminal cases, which are excluded from the proposed paraprofessional program, and justice courts handle civil disputes where less than \$10,000 is in dispute. (*Limited Jurisdiction Courts* (2021) Arizona Judicial Branch <<https://bit.ly/38GwYPS>> [as of Sept. 7, 2021].) In California, civil disputes of less than \$10,000 are handled in small claims court where attorneys are generally not permitted. (Code Civ. Proc., §§ 116.221, 116.530, subd. (a).) In other words, California has already taken a different approach to civil disputes of less than \$10,000—the informal process of small claims court where attorneys are not allowed.

Utah: In Utah, licensed paralegal practitioners can only practice in family law, unlawful detainer, and debt collection matters in small claims court. (Utah Supreme Court Rules, rule 14-802(c).) On the face of that rule, court appearances are not permitted. The Working Group heard from a member of the Utah Supreme Court who participated in the creation of Utah's program and he informed the group that Utah had just eight licensed paralegal practitioners.

In short, none of the experiments in other states permitting nonlawyers to make court appearances provides a sufficient basis for the dramatic departure from existing practice in California that the majority report recommends.

Instead, I think a better model is represented by the Court of Appeal's recent opinion in *Altizer v. Highsmith* (2020) 52 Cal.App.5th 331 (*Altizer*). In *Altizer*, 17 plaintiffs sought to renew an existing judgment. The plaintiffs were no longer represented by counsel and one of them, who was not a lawyer, prepared a two-page Judicial Council form (EJ-190) on behalf of all 17 plaintiffs. (*Id.* at pp. 334–335.) The trial court granted the defendant's motion to vacate the renewed judgment, finding that the plaintiff engaged in the unauthorized practice of law

insofar as he purported to represent the other 16 plaintiffs in the preparation and filing of the Judicial Council form. (*Id.* at p. 337.)

The Court of Appeal reversed. In short, the court held that the act of preparing a “two-page standard Judicial Council form with straightforward factual information about the original judgment” did not constitute the practice of law but instead the plaintiff was merely acting in a “clerical” capacity or as a scrivener. (*Altizer, supra*, 52 Cal.App.5th at p. 341.) The court noted that the plaintiff’s act in calculating accrued interest “is hardly legal, and calculating it is a straightforward exercise in arithmetic.” (*Id.* at p. 342.)

In my view, *Altizer* represents a better model for the paraprofessional program to follow. Namely, clients can hire paraprofessionals to help them fill out and file Judicial Council forms in the relevant practice areas, most of which are largely form-driven practices anyway.<sup>5</sup> Paraprofessionals would also be able to assist clients in negotiating and documenting settlements. We heard from several subject matter experts that the main problem in unlawful detainer and consumer debt cases is the need for individual defendants to avoid having their default taken. This could be accomplished under an *Altizer* model with paraprofessionals completing and filing Judicial Council forms. Similarly, in family law cases, paraprofessionals would be permitted to assist in settlements and compliance with other requirements. At least for the pilot program, starting with court appearances by non-lawyers seems unwarranted.

#### 4. Rule 5.4: Non-lawyer ownership in law firms

I also dissent from the Working Group’s recommended Rule 5.4(e) which would permit paraprofessionals to own up to 49 percent of a law firm.

As a threshold matter, our Working Group was not charged with amending the rules governing law firm ownership. The proposed paraprofessional rule is meaningless unless rule 5.4(b) of the State Bar Rules of Professional Conduct governing lawyers is also changed to accommodate this rule. (Rules Prof. Conduct, rule 5.4(b).) Currently, that rule prohibits lawyers from forming partnerships or other organizations with nonlawyers to provide legal services. (*Ibid.*) However, our Working Group was never given charge to make suggested changes to the State Bar Rules of Professional Conduct governing attorneys. (See *California Paraprofessional Working Group*, The State Bar of California <<https://bit.ly/3jKmWmQ>> [as of Sept. 7, 2021].) Instead, another working group, the Closing the Justice Gap Working Group, was given specific charge to address the attorney version of rule 5.4. (See *Closing the Justice Gap Working Group*, The State Bar of California <<https://bit.ly/2WRWHCx>> [as of Sept. 7, 2021].) Even then, the Closing the Justice Gap Working Group was only given charge to consider making amendments to “rule 5.4 *regarding fee sharing.*” (*Ibid.*, emphasis added.) Fee

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<sup>5</sup> The Judicial Council has promulgated extensive forms to be used in many areas of practice. (See, e.g., [Judicial Council Forms, forms FL-100–196](https://www.courts.ca.gov/forms-by-category.htm?filter=DI) <<https://www.courts.ca.gov/forms-by-category.htm?filter=DI>> [as of Sept. 9, 2021] [family law dissolution]; [Judicial Council Forms, forms CP10, CP10.5, UD-100, UD-101, UD-104, UD-104\(a\), UD-105, UD-106, UD-110, UD-110S, UD-115, UD-116, UD-120, UD-150](https://www.courts.ca.gov/forms-by-category.htm?filter=UD) <<https://www.courts.ca.gov/forms-by-category.htm?filter=UD>> [as of Sept. 9, 2021] [unlawful detainer]; [Judicial Council Forms, form PLD-C-010](https://www.courts.ca.gov/documents/pldc010.pdf) <<https://www.courts.ca.gov/documents/pldc010.pdf>> [as of Sept. 9, 2021] [form answer for breach of contract case].)

sharing is governed by subdivision (a) of rule 5.4, not subdivision (b), which is the provision prohibiting nonlawyer ownership in law firms. Thus, while fee sharing and nonlawyer ownership of law firms are admittedly related issues, it is questionable whether even the Closing the Justice Gap Working Group has jurisdiction to make recommendations regarding law firm ownership rules.

Putting jurisdictional concerns aside, I am opposed to this rule on the merits. There is no dispute that this proposed rule would permit paraprofessionals to own up to 49 percent of law firms and, thus, share up to 49 percent of profits with lawyers even for cases where paraprofessionals cannot practice, including immigration, employment, personal injury, and criminal. The Working Group spent hundreds of manhours in substantive law subcommittees meetings deciding what areas of law paraprofessionals can practice in and those that they cannot. No justification has been provided to justify why paraprofessionals should be able to share profits for cases where they cannot practice law other than a vague concern that we should encourage new business models. And because lawyers have an unlimited license, they can take any type of case they want, subject to self-imposed competency requirements. Thus, there is no way to limit this proposed rule's application to situations where the paraprofessional only shares fees in, say, family law cases, because even a law firm primarily devoted towards family law can decide to take non-family law cases.

There are already programs that allow nonlawyers to practice in various areas of the law, such as certified paralegals (supervised by lawyers), legal document assistants, unlawful detainer assistants, and immigration consultants. None of these other categories of nonlawyers are permitted to share fees with lawyers and/or have any ownership interest in a law firm. To use immigration consultants as an example, if they cannot share fees with an immigration attorney, or own part of an immigration law firm, I'm at a loss to understand why a paraprofessional should be able to when they are prohibited from practicing immigration law. There is nothing inherent in the nature of the paraprofessional program that, in my view, justifies this radical change in the practice of law.

The paraprofessional program will be aimed at attracting two types of individuals to become licensed: (1) certified paralegals and (2) J.D. graduates who have not passed the California bar examination. Both categories of individuals can presently work in law firms but cannot share fees or have an ownership interest in a law firm. By becoming a paraprofessional, these individuals will only have their roles changed slightly in that they will be able to make limited court appearances in a very small number of substantive legal areas. To the extent that they can practice law "unsupervised" by a lawyer, that is very limited in nature because even under this rule they cannot have any supervisory authority over a lawyer in the law firm and cannot own a majority interest; thus, even under this rule they will still, effectively, be supervised by lawyers.

The rules against fee sharing and nonlawyer ownership of law firms are well-established and venerable. One court has written that "courts have consistently upheld the prohibition based on a number of legitimate concerns." (*McIntosh v. Mills* (2004) 121 Cal.App.4th 333, 344–345 [collecting cases].) "Attorney ethics panels, both in and out of state, have been moved to embrace rules against fee sharing with [non-attorneys] out of concern for interference with

the attorneys['] professional judgment, the creation of conflicts of interest, and the unwholesome spectre of attorneys soliciting professional liaisons with laypersons.” (*Id.* at p. 345 [collecting opinions]; see *Gassman v. State Bar* (1976) 18 Cal.3d 125, 132 [“Prohibited fee-splitting between lawyer and layman . . . poses the possibility of control by the lay person, interested in his own profit rather than the client's fate”].)

In sum, the Working Group has not presented a valid reason to permit paraprofessionals to share fees and profits from cases where they are not allowed to practice law. I therefore recommend that rule 5.4(e)(3) be changed to provide that paraprofessionals cannot have “any ownership interest” in a law firm, replacing the words “a majority interest.”

## 5. Lack of restrictions on fees

If the paraprofessional program is supposed to be aimed at consumer protection, then there should be reasonable limitations imposed on the amount of fees paraprofessionals can charge clients. There are numerous restrictions already in place governing the amounts attorneys can charge in various cases. (See, e.g., Bus. & Prof. Code, § 6146 [limiting contingency fees in medical practice cases to between 15 and 40 percent of any amount recovered]; Prob. Code, § 10810 [limiting fees for attorney for personal representatives to 0.5 to 4 percent of estate]; Lab., Code, § 4906 [limiting attorney fees to 9–12 percent of recovery in workers compensation cases].)

State Bar staff compiled a comprehensive 69-page report complete with extensive information about hourly rates charged and limitations imposed by various statutes and court rules. (*California Paraprofessional Working Group: Notice and Agenda* (May 17, 2021) The State Bar of California <<https://bit.ly/3jE9bpT>> [as of Sept. 7, 2021].) Among the data in that report:

- The Los Angeles County Bar Association has a Modest Means panel where clients can obtain an uncontested divorce for \$800.
- The San Diego County Bar Association has a comparable program charging clients \$150 per hour for family law matters.
- Merced, Mendocino, Sacramento, and Santa Barbara Counties have appointed counsel rates for family law matters ranging from \$65 to \$125 per hour.
- A Sacramento County Superior Court Local Rule provides a presumed attorney fee recovery of \$750 for contested unlawful detainer trials where both parties are represented.
- Santa Clara and Santa Cruz Counties pay appointed counsel \$125 per hour in *death penalty* cases.

The Working Group also heard from a subject matter expert in consumer debt cases who charges clients (individual defendant debtors) a flat fee of \$800 to defend any such case anywhere in California *through trial*, which paraprofessionals will not be permitted to handle.

In short, there is a plethora of information available from which the Working Group could have proposed reasonable limitations on fees charged by paraprofessionals. For example, in my view, the following would be reasonable fee limitations to impose:

- A \$500 flat fee for name and gender changes, based on \$100/hour with an estimate of five hours per matter.
- \$750 for unlawful detainer and consumer debt cases based on the form nature of those cases, the Sacramento County Superior Court Local Rule of \$750 for contested unlawful detainer cases, and the \$800 flat fee charged by a subject matter expertise.
- A maximum hourly rate of \$125 per hour for family law matters based on comparable rates available to hire attorney under bar association modest means programs.

If the purpose of the paraprofessional program is to lower the cost of legal services, then reasonable limitations on fees should have been imposed. As noted, one study concluded that Washington's LLLT program, which also had no fee limitations, would not result in lower cost legal services for clients. (Donaldson, *supra*, 42 Seattle U. L.Rev. at p. 71.)

It is my hope that the Legislature considers imposing reasonable fee limitations on amounts paraprofessionals can charge if it decides to adopt the program.

6. Lack of financial viability for the program and potential drain on enforcement resources

Finally, I am concerned about the financial viability (or lack thereof) of the paraprofessional program itself if adopted. The Washington LLLT program had a net loss (expenses less revenue) of \$1.4 million in just the five years the program was available before being cancelled by the Washington Supreme Court. (Moran, *supra*, at <<https://bit.ly/38TTTrZX>>.)

Here, the State Bar has not, to my knowledge, conducted any studies to see how many individuals will be expected to take advantage of the proposed paraprofessional program if adopted. All we know is that there are "thousands" (four digits) of potential applicants. Thus, there is no estimate of the amount of revenue expected to be generated through dues. Nor have any estimates been provided to the Working Group about how much it will cost the State Bar to run and administer the proposed paraprofessional program. Several components of the program, including the creation of a Paraprofessional Licensing Board and a partially new disciplinary system, appear to require significant investment.

The State Bar's financial problems have been well-documented elsewhere and will not be repeated here. I am concerned that we are proposing this program without any data or planning regarding the financial impact running the program will have on the State Bar and, thus, how many resources would be diverted from the Bar's enforcement activities if separate funding for the program is not secured. At a minimum, in my view, this program should not be adopted without the State Bar providing a financial plan showing that the program can be financially self-sufficient within a designated period of time, say five years, and where funding

will come from during the startup period. Otherwise, the program becomes a potential drain on State Bar resources that could be used for traditional enforcement purposes.

I hope the State Bar, California Supreme Court, and Legislature consider the financial impact of this program on the State Bar's enforcement responsibilities.





State of California  
Office of the Attorney General

**ROB BONTA**  
ATTORNEY GENERAL

January 12, 2022

**Via Online Public Comment Form**

Board of Trustees  
State Bar of California  
180 Howard St.  
San Francisco, CA 94105

To the Board of Trustees of the State Bar of California:

I appreciate the opportunity to provide public comment to the State Bar of California's Board of Trustees regarding the Final Report and Final Recommendations of the California Paraprofessional Program Working Group. I commend the State Bar's interest in taking steps to address the justice gap in California, which is a critical issue for low-income Californians who otherwise may lack access to affordable legal services. However, I share concerns raised by legal-aid organizations and dissenting working group members about the potential for consumer fraud and the need for additional guardrails for this paraprofessional licensure program. I therefore urge the State Bar to consider, at a minimum, the several modifications identified below to help ensure that the proposed pilot program has adequate consumer-protection safeguards and will not negatively affect Californians in need of low-cost legal services. I also strongly recommend that any attempt by the State Bar to address the justice gap should also include increased funding for legal services and an increased focus on pro bono representation by lawyers.

To be clear, consumer-protection guardrails are needed for this paraprofessional licensure program because any pilot program that would relax the standards for legal work in California runs a risk of increased fraud—particularly towards low-income, elderly, and immigrant Californians—and a decrease in the quality of legal services. California currently benefits from a bright-line rule in which, under both California law and State Bar rules, only licensed attorneys may provide legal advice. Attorneys in California are required to meet strict educational, training, and ethical requirements. My office, and our counterparts in the district and city attorney community, have a long history of investigating and prosecuting bad actors—both attorneys and non-attorneys alike—who commit fraud in connection with offering legal services, and we have worked cooperatively with the State Bar in its actions to discipline attorneys and to shut down the operations of people practicing law without a license. These investigations and

prosecutions are facilitated by California's bright-line rule that only licensed attorneys may practice law.

As California's chief law officer, charged both with the enforcement of consumer-protection laws and the prosecution of administrative actions against professionals and paraprofessionals licensed by a host of state agencies, I am concerned that any pilot program that blurs this bright-line rule may introduce a substantial risk of fraud, will create the opportunity for even well-intentioned paraprofessionals to offer legal services beyond their ability and licensure, and will make it harder to protect the most vulnerable Californians. For example, paraprofessionals might use the legitimacy conferred by their State Bar licensure to—either intentionally or unintentionally—mislead consumers about their qualifications and the scope of work they are allowed to perform. Past attempts by the California Legislature to allow non-attorneys to perform ministerial tasks, such as with respect to immigration consultants, provide evidence that regulations allowing non-attorneys to operate in the legal field typically subject vulnerable Californians to increased fraud and incompetence. Creating a system in which a non-attorney can plausibly set up what looks like a law practice also makes prosecution more difficult. To curb the abuses in the immigration consultant field, the Legislature has repeatedly tightened the regulations, but the problem persists. My office has prosecuted numerous immigration consultants for exceeding their limited scope of practice and engaging in the unlicensed practice of law. While we have been able to bring some of these bad actors to justice, their incompetent legal services caused irreversible harm to individuals seeking to adjust their immigration status. The unlicensed practice of law by immigration consultants is so widespread that the Los Angeles County District Attorney created a unit dedicated to prosecuting these cases, and the Los Angeles City Attorney has convened a task force to address the problem. Blurring this bright-line rule also introduces risks that inferior or incomplete legal advice would be provided. While identifying discrete areas of law amenable to paraprofessional work may seem feasible in the abstract, in practice it frequently takes the advice of an attorney in the first instance to identify salient legal issues regarding any particular legal problem. To be sure, a low-income Californian's legal problems are not necessarily less complex than those of more affluent Californians, and reliance on paraprofessionals, who will not be required to practice under the supervision of an attorney, may in some cases have irreversible legal consequences for vulnerable Californians.

In light of these many concerns, I write to focus on several modifications to the proposed paraprofessional licensure program to help mitigate potential harm to communities in need of low-cost legal services.

First, I recommend that the State Bar include reasonable limits on fees that paraprofessionals may charge under this pilot program. It is my understanding that a primary purpose of the paraprofessionals program is to address the justice gap by providing lower-cost legal services. Accordingly, fee caps would be a sensible feature of this program, particularly given that a substantial risk of any such program is that paraprofessionals may charge excessive or predatory fees. We have seen this in our immigration consultant prosecutions, where predatory immigration consultants have at times charged fees that exceed those that would have

been charged by an attorney. Moreover, many vulnerable populations who may use these services may also qualify for free or low-cost legal services and could instead find themselves paying more for legal advice from a paraprofessional than they would pay for the advice of a lawyer. While it is understandable that differences in geography or practice areas may complicate the analysis of reasonable limits on fees, the determination of reasonable fees for paraprofessional services is not beyond the abilities of the State Bar, the Supreme Court, or the Legislature. Failure to impose reasonable limits on fees threatens to undermine a primary purpose of this or any other paraprofessional licensure program.

Second, I recommend that this pilot program require that paraprofessionals work under the supervision of an attorney. This pilot program proposes for the first time permitting non-attorneys to practice law in California. It is unclear why this drastic step is being made in a pilot program without paraprofessionals having the backstop of attorney supervision. An attorney supervisory relationship for a paraprofessional would provide numerous advantages, particularly in situations where a client may raise legal issues outside the permitted scope of work for such a paraprofessional, which could give rise to a host of ethical issues. Many legal-aid organizations have suggested that paraprofessionals should work under the supervision of an attorney in much the same way that a physician assistant would work under the direction of a doctor in the medical field, yet the current proposal takes the opposite approach, allowing paraprofessionals a full range of practice, untethered to any attorney supervision. I urge the State Bar to reconsider this approach.

Relatedly, I recommend that the State Bar remove the aspect of the proposal that permits paraprofessionals to represent clients in court. This default rule authorizing in-court representation by paraprofessionals represents a substantial departure from California's current system, in which only attorneys or individuals supervised by an attorney may represent a client in court. This significant change to California law is not warranted based on the limited experience with paraprofessionals in other states. Further, numerous exceptions to this default rule run the risk of creating confusion for paraprofessionals, clients, and even the court system. These risks are exacerbated by the lack of a requirement for attorney supervision of a paraprofessional's work. Indeed, California's existing rules for practice by Registered Military Spouse Attorneys and Registered Legal Aid Attorneys who are fully licensed by a sister jurisdiction include just such a supervision requirement. Any pilot program should follow these examples.

Third, I recommend that the State Bar remove the aspect of the proposal that would allow paraprofessionals to have an ownership interest in a law firm. Under longstanding California law and State Bar rules, non-attorneys cannot have an ownership interest in a law firm. Under the current proposal, State Bar rules would be amended to allow a paraprofessional to own just under 50% of a law firm, even of law firms that practice in areas outside the subject-matter limitations of the paraprofessionals program, such as criminal, personal injury, employment, or immigration law. The practical result of the current proposal is that a paraprofessional not only could have de facto control over a law firm, but even a law firm that does work for which the paraprofessional is not licensed. This change also would provide a vehicle for non-attorney individuals to

essentially become investors in law firms, which would raise many ethical concerns that the current State Bar rules are designed to address. These rule changes are not related to the licensure of paraprofessionals, nor were these rule changes a part of any previous program in California that allows for non-attorneys to work in the legal field, such as legal document assistants, unlawful detainer assistants, immigration consultants, or certified paralegals. California law-firm ownership rules are in place for important ethical reasons, and there is no apparent reason to include such drastic modifications as part of this pilot program.

Fourth, I recommend that the State Bar provide further details regarding the financial viability of the proposed pilot program, sources of funding, and any potential impact the licensure program may have on the State Bar's other enforcement activities. Any paraprofessional licensure program must be adequately resourced in order to be effective. I applaud the efforts that the State Bar is undertaking, through the ongoing work of the Ad Hoc Commission on the Discipline System, to more effectively perform its existing functions of attorney licensure, the investigation of misconduct, and the imposition of professional discipline, and to obtain additional resources to support those efforts. Any expansion of the State Bar's mission to include the licensure of paraprofessionals must include a similar commitment of resources.

Finally, I recommend that any attempt by the State Bar to address the justice gap through a paraprofessional licensure pilot program should be coupled with increased funding for legal services and increased focus on pro bono representation by lawyers. I appreciate the State Bar's interest in looking for creative solutions to the complicated issue of the justice gap, but such creative solutions should not come at the expense of using existing infrastructure to provide proven low-cost or no-cost services to Californians in need. Moreover, it has been noted that the justice gap in California is not simply a services gap but also a knowledge gap – i.e., a lack of understanding of what constitutes a legal issue or where to go for legal help. I therefore urge the State Bar to focus, not only on bolstering the provision of such existing legal services, but also on further educating the public about when and how to obtain such existing low-cost and no-cost legal services.

I appreciate the opportunity to provide this public comment. I also appreciate the State Bar's interest in receiving comments from other stakeholders, and I encourage the State Bar to give particular weight to comments from legal-aid organizations and other public-interest groups that are close to the populations that this pilot program seeks to benefit. These groups are likely to have insights regarding additional consumer-protection guardrails that may be needed, such as related to disclosures, training, or mechanisms for compensating victims of fraud.

Board of Trustees

January 12, 2022

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Thank you for your time and attention. The justice gap in California is real, and I appreciate the State Bar's interest in working to make legal services more accessible to low-income Californians.

Sincerely,

A handwritten signature in blue ink that reads "Rob Bonta". The signature is fluid and cursive, with the first name "Rob" and last name "Bonta" clearly distinguishable.

ROB BONTA  
California Attorney General

January 7, 2022

Board of Trustees  
State Bar of California  
*Submitted via the online public comment form*

**RE: California Paraprofessional Program Working Group Report and Recommendations  
– GENERAL COMMENT**

Dear Trustees of the State Bar of California:

We appreciate the opportunity to provide public comment on the State Bar's proposal to create a new class of licensee, currently being called a paraprofessional. We are a group of 24 legal services organizations, located across California, all tasked with providing free legal services to low-income individuals, including the Legal Aid Association of California, representing their membership of over 100 legal services nonprofits.

Many of us have followed the proposal, from the time of the Access Through Innovation of Legal Services (ATILS) and throughout the California Paraprofessional Working Group (CPPWG). In addition, the undersigned have explored potential alternatives, talked to individuals in jurisdictions that have either now or in the past, implemented a similar program, and have engaged with a number of stakeholders, including law enforcement agencies, the private bar, and non-legal community-based organizations.

We acknowledge that there are not enough legal services available to low and moderate-income Californians, but we have seen first hand the devastating harm that comes from programs similar to the one being proposed by the CPPWG. We believe that there is an opportunity to conduct further research and evaluation to determine the solutions that best address the legal services needs of low- and moderate-income Californians while also protecting vulnerable communities from harm. We believe that the proposal as set forth will lead to substantial consumer harm, and that this for-profit program is being pushed as a solution to the justice gap, without any real evidence that it will have the intended impact. Accordingly, and for all the reasons detailed below, the undersigned representatives oppose adoption of this proposal.

As the CPPWG identified and discussed issues throughout their meetings, it was clear that only a few of the members were familiar with the provision of legal services to low- and moderate-income individuals. That meant that the challenges and opportunities that arise in serving these clients were often not raised, or if they were raised by committee members or in public comment, were disregarded. For instance, legal services organizations see potential clients who would say they cannot afford an attorney in a survey response, but who also have rejected an offer of free legal assistance from a legal services organization for a variety of reasons. This is not to say that this person does not deserve help, but that the issue is much more complicated than just ensuring there are more people in the phone book or on the internet who can practice law.

There is also a lack of specific substantive expertise, both in some of the legal topics, but also about aspects of the program. The CPPWG has not consulted with enforcement partners, like State Bar enforcement, local District Attorneys, City Attorneys, or County Consumer enforcement agencies, and seems to be unclear on what the cost and feasibility of regulation and enforcement of such a program would be.

Additionally, it is unclear how much the CPPWG truly considered the risks inherent with the program they were proposing. While we understand the CPPWG felt compelled to put forth a proposal, we believe it is also best practice to identify any major risks associated with the program, rather than turn a blind eye to them. It could be that some risks could be mitigated or eliminated, but it appears that the CPPWG spent very little time undertaking those considerations.

For instance, the other working group currently meeting, the State Bar's Closing the Justice Gap Working Group, put out a presentation in Spring 2021. In that presentation, there was a slide identifying the riskiest proposals when looking at ways in which to lessen the justice gap.<sup>1</sup> The two riskiest proposals were (1) nonlawyer providers without lawyer involvement, and (2) software providers without lawyer involvement. For purposes of this comment, because the CPPWG refused to really even consider attorney oversight of the proposed new licensee, its current proposal is one of the two riskiest possibilities that exist in terms of addressing the justice gap. This raises the question: Why not consider any other alternatives, including the ones set forth below, and why not recognize that attorney involvement does not discredit the proposal, but rather bolsters it and could even convince some of the opposition to consider the proposal more seriously?

### **Justice Gap Study**

The entire proposal is based on the justice gap study, specifically the California Justice Gap Study commissioned by the State Bar that was completed in 2019. The study found that 55% of Californians experience at least one legal problem in their household each year and received no or inadequate legal help for 85% of those problems. The Justice Gap Study concluded that the main reason that Californians do not seek or do not receive legal help is that they do not know when a problem is a legal problem. There were other issues identified as well, including the public's concern about the cost of getting legal help, and that there is a lack of trust in the justice system overall. However, those issues were secondary to the overall lack of knowledge of when they had a problem that was legal and where they could seek help for that problem.

Based on our experience serving the population surveyed, we believe there are some areas of the study that are ripe for further study to better understand the outcomes and better tailor the solutions. First and foremost, while the CPPWG has repeatedly stated that there is evidence that the legal issues facing moderate-income Californians are substantially the same as those facing low-income Californians, our experience in serving a mixture of populations is that is not always

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<sup>1</sup> Innovation Office Manual, Utah Supreme Court's Office of Legal Services Innovation, p.7, *available at* <https://utahinnovationoffice.org/wp-content/uploads/2021/08/IO-Manual-Published-Aug.-25-2021.pdf>.

true. Many of our organizations represent primarily low-income Californians, but also provide services to higher income individuals, whether through self-help models at courthouses or other locations, or with representation through various funding sources with different income limitations. There are important differences in the populations, in terms of education, assets, and available resources.

Additionally, in 2021, after the Justice Gap Study was completed, Senator Umberg authored, and Governor Newsom signed, a bill that increases the eligibility for legal services, to 200% of the Federal Poverty Level. As discussed above, in some cases, depending on the funding source, the eligibility for legal services can go up to 400% of Federal Poverty Level, or even have no income limits whatsoever. This impacts the initial findings of the Justice Gap Study, as well as what proposals come out of those findings, and is another reason to consider further study before moving forward with the paraprofessional proposal.

### **For-profit Model**

The CPPWG has vacillated between saying this proposal is intended to serve folks who earn too much money to qualify for legal aid to saying that this proposal will serve individuals who are eligible for free legal services.

Creating a for-profit model, as we saw in Washington State, will cause the rates of the new licensees to rise. For our clients, it is not that they cannot afford to pay the fees of an attorney, but that they cannot afford to pay at all. Instead, our low-income clients will either still not have access to services, or pay for something they cannot afford, possibly without knowing there is a free or lower-cost alternative.

The clients served by legal services are specifically those who are most at risk of harm, including vulnerable groups such as seniors, non-native English speakers, low-income individuals, and people of color, including people who are Black, Asian, Hispanic, Latinx, Indigenous, and other races and ethnicities.

### **Input from Legal Services**

Throughout the time that the CPPWG met, efforts of legal services providers to speak and offer feedback were rebuffed and/or discounted. This failure to adequately consider the perspective of service providers throughout the state led to a lack of reliable information for the CPPWG. For instance, the family law sub-group did not even speak to legal services providers in the dependency system until May 2021, approximately a year after the formation of that sub-committee, even though decisions were being made about the licensee's ability to practice in dependency courts.

We recognize that the CPPWG held a substantial number of meetings, but we believe that there is a substantial amount of information that was missed, particularly in the substantive subgroups. Legal services organizations offered their expertise numerous times, including from individuals who practiced in the specific areas being discussed, and who worked in the self-help programs at



the courts, but were very rarely given much time to share their perspective or really dig in to the details that would better inform the decision making of the subgroup.

Legal services attorneys' perspectives are unique in that they are not relying on recruiting more clients to pay their bills or make ends meet. Their perspective comes from finding ways to reduce the harm to the client population, as well as the number of people who need more extensive services because they are trying to fix problems created by the new licensees. Legal Services attorneys also have access to accurate information regarding the services offered and actually provided by, as well as eligibility guidelines for, legal services throughout California.

### **Possible Alternatives**

While this particular working group was tasked by ATILS with setting out a scheme for a new, non-attorney licensee in California, we believe that alternative solutions were not adequately considered. We do not believe it is a sound public policy process to move forward simply because a certain number of hours were spent or a certain number of meetings were held when no alternatives to the proposal were ever considered. We believe that there are a number of other options that would be less costly, safer for consumers, and would have a more direct and immediate impact on access to justice.

#### Court Navigators (New York)

In 2014, New York City created a "court navigator" program. Navigators are non-attorneys who are tasked with working one-on-one with self-represented litigants in landlord-tenant and consumer debt cases in New York City courts. The navigators are supervised by an attorney and receive special training. They provide moral support, help the litigants find and complete court forms, explain the process and what the litigant can expect in court, and help the litigants find resources (like interpreters). In some courts, the navigators are able to answer factual questions from the judges.

New York City worked with the American Bar Foundation, the National Center for State Courts, and the Public Welfare Foundation to conduct an evaluation approximately two years after the program was introduced. The program consists of volunteer navigators, as well as nonprofit (non-lawyer) staff who serve as navigators.

The evaluation noted two important things: one, the program showed a positive impact, even in the often chaotic New York City court system; and two, the courts had already implemented efforts to improve the experience of self-represented litigants, which likely helped the program succeed. One of the key recommendations for improving the program was to ensure adequate training and supervision of the non-attorney navigators.

#### Community Navigators (Legal Link, Oakland, California)

An organization in Oakland, California was founded on the premise that low-income families have difficulty (1) recognizing when they have a problem that a lawyer can help with, and (2) identifying an appropriate resource to assist with that legal problem. To remedy that, they came up with a system that trains client-facing case workers to identify legal issues and connect their clients to appropriate assistance. Legal Link has partnered with over 50 community-based

organizations in the Bay Area that are embedded in, and trusted by, the communities in which they work.

Legal services are well aware of the benefits of working closely with community-based organizations. One of the primary reasons that medical-legal partnerships work so well is that the legal services usually are provided in or near the medical services. Patients of the medical provider are able to access more comprehensive, holistic services, all in one location. And doctors, nurses, and other medical staff receive training and often engage in regular collaborative meetings with legal services partners to improve their ability to spot legal issues in their patients.

These types of collaborations address one of the primary findings of the Justice Gap Study, which is that low-income Californians do not always recognize when they have a legal issue, and when they do need to seek legal help, they do not always know where to go. Expanding the education of staff at community-based organizations that provide fundamental needs, like medical providers, food banks, and family resource centers demystifies the legal process for the staff at the organizations and allows them to convey accurate, reliable guidance, as well as referrals and assistance, depending on staffing.

Programs like Legal Link and Medical-Legal Partnerships are typically funded by private funds, including foundations, but some are funded by local or state government funding, and do not generally require the case worker to undergo extensive training and education. However, training and education are often a component of both of those programs; not so that the case workers can provide legal assistance, but so they can better understand the legal needs of their community and connect them with a resource that is most likely to be able to help.

Expansion of Provisionally Licensed Lawyer program and/or Support for Low Bono Services  
Over the last couple of years, the State Bar has provided some additional opportunities for law school graduates to be licensed. The easiest one is to lower the passing score for the bar exam, as the Supreme Court did in July 2020. However, the State Bar also identified a path to licensure called “Provisionally Licensed Lawyers” or PLLs. This program allows law school graduates to work under the supervision of a lawyer for a set number of hours, and, with a satisfactory evaluation by their supervising attorney, be licensed as an alternative to passing the bar exam.

Legal services organizations have worked with PLLs, in some cases funded by the State Bar and in some cases not, with some success. Some legal services organizations have hired PLLs who worked with them on a volunteer basis, and a number of PLLs have become volunteers with the legal services organization, increasing pro bono capacity at those organizations, once they have completed their hours. Considering the expansion of the PLL program, along with additional safeguards, funding, and evaluation to ensure viability, is another possible option to consider.

Finally, and particularly relevant for this comment, one other way to support legal services is to encourage the creation of low bono organizations. There are a number in existence already,<sup>2</sup> but

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<sup>2</sup> A list of some low bono organizations across the country is *available at* [https://www.americanbar.org/groups/delivery\\_legal\\_services/reinventing\\_the\\_practice\\_of\\_law/topics/non-profit\\_co-pay\\_clinics/](https://www.americanbar.org/groups/delivery_legal_services/reinventing_the_practice_of_law/topics/non-profit_co-pay_clinics/). One addition not listed is the Elder Law and Disability Rights Center in Orange

an expansion would provide low and moderate-income individuals the opportunity to receive high quality legal services from lawyers while paying something they can actually afford. The State Bar could implement a program that would incentivize attorneys to offer services at a variety of fee levels. Many low bono organizations offer services on a sliding scale. There could be a separate funding source that specifically focuses on low bono organizations. Attorneys who agree to accept reduced fees through their County Bar Association's modest means panel could receive a discounted licensing fee, or could get access to free Continuing Legal Education, as examples. An expansion of these programs would be incredibly valuable, because it would be attorneys who already practice in the substantive areas (and their staff) providing the services, and it would allow legal services to focus on the individuals who truly cannot afford to pay anything.

#### Funding/Support for Legal Services

Identifying additional funding for legal services should be the starting point for any discussion about increasing access to justice. Fully funding existing programs with a proven track record and a strong system of existing oversight (through the State Bar and other funders) makes much more sense than creating a new system from scratch. Increased monetary support directed towards the 100 State Bar funded IOLTA programs in California, particularly when it is structured with efficient and effective reporting, evaluation and oversight requirements, would be the most straightforward way to decrease the Justice Gap – something the Legislature has already recognized with the increased funding it provided to legal services programs recently. Other support can also be helpful, in terms of encouraging pro bono support, offering stipends or other incentives to new graduates interested in public interest work, and offering resources such as access to legal research tools.

#### New Licensee with Attorney Supervision

At a bare minimum, if the State Bar is intent on implementing a new paraprofessional licensee program, the Board of Trustees should consider requiring attorney supervision. Accredited Representatives, who provide immigration legal services through the U.S. Department of Justice, must have formed a relationship with an immigration attorney who has agreed to supervise the services provided by the Accredited Representative. A requirement such as this is not overly burdensome, and would actually encourage lawyers and law firms to collaborate with the new class of licensee.

If a new class of licensee is created, the ideal scenario is allowing these individuals to function as members of legal services organizations, law firms, or as partners with solo or small firm attorneys. In these cases, the majority of work on a case could be done by the new licensee, at a reduced cost to the client, but an attorney would be available for supervision and to step in when the case exceeded the allowed scope of services by the new licensee.

During the period of time that the CPPWG was meeting, Minnesota implemented a non-lawyer assistance program. The two major differences from California's proposal are that (1) the only substantive area allowed is family law, and (2) the new licensees are required to be supervised by

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County, California. Their sliding scale fee structure is available on their website, *available at* <https://eldrcenter.org/get-help-now>.

an attorney.<sup>3</sup> There are many different ways to structure attorney supervision – from direct supervision that comes from an employment relationship to contractual options where an attorney could possibly supervise a cohort of licensees, in the same way incubator programs work. Much like the low bono or reduced cost panels discussed above, there are ways to incentivize attorney supervision so that those who need supervision are able to find it.

### **Race Equity**

One common talking point from the CPPWG is that this proposal will increase equity. One argument is that it will provide additional career opportunities to traditionally marginalized communities. While that could be possible, the program still requires substantial education and experience requirements, and could be similar to the barriers faced by low-income and marginalized populations who are seeking a law degree and bar passage.

From the client’s perspective, the proposal would institutionalize and legitimize a two-tier justice system, which will have a greater impact on the most vulnerable communities, including people of color, people with disabilities, and people who primarily speak languages other than English.

Again, ultimately, there are alternatives to addressing race equity issues in the practice of law, which do not appear to have been considered. For instance, many law school graduates are benefitting from the provisional licensing program that has been in place. Legal services organizations have supervised a number of provisionally licensed lawyers (PLLs), which has led in some cases to career opportunities for the PLLs. Additionally, lowering the bar passage rate has been shown to increase diversity in the legal profession.

### **Program Evaluation**

As currently set out in the proposal, the program evaluation will do nothing more than offer a report of how the licensees themselves feel the program is going. In order to evaluate a program as ambitious as this one, a comprehensive evaluation system needs to be in place, conducted by an independent evaluator.

At a minimum, the State Bar should know whether the substantial investment being made is causing more harm or good to the clients being served. Legal services organizations spent countless hours evaluating their programs. Many mid-size programs are submitting at least one grant application and one grant report a month, if not more frequently. Different funders provide different criteria for program evaluation, but the goal is always the same: determine if the organization is using the funds it receives in the most effective and efficient way. Considering the likely size of this investment, we recommend that the State Bar develop a more comprehensive evaluation of the program, including an understanding of the demographics of the clients accessing the new licensees, what substantive areas of law are most requested, and the results achieved for clients. Ideally, the evaluation should undertake a comparison of the results

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<sup>3</sup> Minnesota Judicial Branch, Legal Paraprofessional Pilot Project, *available at* <https://mncourts.gov/Help-Topics/Legal-Paraprofessionals-Pilot-Project.aspx>.

in similar cases when the client was represented by a lawyer, as well as when the client was not represented at all.

Legal Services organizations collect this type of data and report it to the State Bar annually, so there is already a system in place for data collection. Adjustments would have to be made in the existing reporting system to make it applicable to paraprofessional reporting to include space for specific case studies, and client feedback.

### **In-Court Representation**

One of the more contentious decisions by the CPPWG is to allow for a mixture of in-court representation. Legal Services organizations oppose any in-court representation by paraprofessionals.

But assuming in-court representation continues to be part of the proposal, the proposal as it stands now is so incredibly confusing, it is destined to fail. The CPPWG has decided to come up with a piecemeal approach, where a paraprofessional could potentially appear in 60% of a case, but the client would have to hire an attorney for the other 40%. While this technically could be possible, particularly through employment relationships, but also possibly through appearance attorneys, the patchwork approach means that information is likely going to be lost, and clients are going to be at a disadvantage. More likely, people who hire a paraprofessional may find themselves entirely without representation at the most critical stage of their case.

Furthermore, one of the considerations when determining whether to pursue a case or settle is the cost of attorney fees. Litigating a case is expensive, and if the case is lost, whatever partial representation the party received will more than likely lead to a heftier costs bill from the adverse party.

### **Enforcement**

As previously discussed, the CPPWG failed to take into account the substantial enforcement needs that come with a new class of licensee. To be clear, this comment should not be taken to mean that there are going to be more or fewer instances of misconduct than with attorneys, for instance. However, the number of times that legal services attorneys have had to correct poor lawyering by licensed attorneys, while watching that attorney experience no consequences whatsoever, indicates that increasing the number of people that the State Bar Enforcement team and local District Attorneys and City Attorneys are responsible for overseeing is not a sound idea. Even if the percentage of misconduct by the new licensees is the same as in attorneys, the additional enforcement would be a burden on a system that is already stretched thin.

Additionally, because the CPPWG determined that paraprofessionals would not be required to carry malpractice insurance or have a bond, they seem to think that a victim compensation fund will be adequate. For a number of reasons, and with a number of different examples, a compensation fund is simply not effective. The biggest challenge with a compensation fund is access: some funds require that the client who was harmed obtain a judgment against the bad actor; others do not always have adequate funds to pay out claims or have limits on the amount

of claims that can be brought; still others have very specific requirements for which harmed clients can access the fund. Legal services organizations have represented clients harmed by attorneys who are still waiting, six years later, to be compensated through the State Bar compensation fund. We have had to counsel clients to accept less than their actual damages in order to submit a claim with a government agency, or to enforce a small claims court judgment. All in all, a compensation fund will not allow harmed consumers to be financially made whole. The best way to ensure consumers have the chance to be fully compensated is to require that paraprofessionals carry malpractice insurance, rather than just “strongly encourage” it.

An example is the National Family Solutions action recently taken by the State Bar’s enforcement team.<sup>4</sup> Apparently the State Bar knew of the unauthorized practice of law by the organization at least three years prior to the shut down. The program involved multiple people engaging in the unauthorized practice of law. National Family Solutions focused exclusively on family law, which means there are now hundreds of people who may have lost custody of their kids and who have no ability to get them returned.

Even if the State Bar and law enforcement agencies like District Attorneys are able to handle the increase, what remedies will be available for the harmed clients, especially those for whom financial compensation is meaningless.. How do you undo an unlawful detainer that has left a family homeless? How do you correct an adverse custody decision that leaves a parent without access to their kids until they can identify a change in circumstances substantial enough to convince a judge?

## **Other Considerations**

### Waiver of Federal Law Claims

These new licensees will be unable to practice in Federal Court. In many areas of law, including housing, consumer, and employment, both State and Federal law claims frequently exist. If a client approaches one of these new licensees and has both types of claims, they will have to make decisions that could have a substantial impact on their case: (1) move forward with State law claims only, in State Court, thereby waiving any right to bring Federal Law claims based on the same set of facts, or (2) file in State Court and include both State and Federal Law claims, but run the risk of removal to Federal Court, at which point the litigant would be forced to go unrepresented since the new licensee would be unable to practice in the new court.

These decisions are not simple, and clients are often unaware there is even a choice to be made; even when presented with the choice(s), clients are not always best suited to make these decisions. A client may not understand the ramifications of choosing to waive claims or choosing a particular venue. The new licensee, since they are not able to practice in federal court, may be unaware of, or unable to articulate the benefits of being in federal court or raising federal claims. Additionally, the new licensee will have a financial incentive to encourage the client to file in

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<sup>4</sup> State Bar Seizes Unauthorized Santa Clara Law Practice, *available at* <https://www.independent.com/2021/12/03/state-bar-seizes-unauthorized-santa-barbara-law-practice/>.

State Court and waive the Federal Law claims so that the licensee can continue collecting fees. Therefore, they may not provide a full picture to the client, and the client may ultimately make an uninformed decision that they are not in the best position to make or understand at the time.

#### Governance of the program

The CPPWG proposed the creation of a Paraprofessional Licensing and Oversight Committee, to oversee program operations, which would be made up of seven individuals, with specific categories/roles assigned. It is unclear who will fill these roles, particularly as the program gets started. A substantial time commitment will be required, and there will likely be a considerable learning curve. We recommend reexamining the suggestion to create an entirely new oversight Committee, and instead identify existing resources that could be expanded (or subcommittees created) as the program grows.

#### Fee Caps

The CPPWG voted to not regulate fees in any way. As discussed above in the “For-Profit Proposal” section, this is very concerning. First, many low-income Californians not only cannot afford to pay a lawyer, but actually cannot afford a fee at all. For that reason alone, a for-profit model is concerning if the actual goal is to address the justice gap. Second, without any sort of fee regulation, there is nothing stopping a licensee from charging essentially the same as what a lawyer would charge, either for their own work or for the work of a paralegal housed at a law firm. This is particularly true in jurisdictions where the cost of living is higher - meaning commercial rent will be higher and the licensee will have to charge a higher rate to make a profit. In order for the program to truly impact the justice gap, there needs to be some kind of expectation of what can be afforded by low- and moderate-income Californians, and then a program set up where those fees will be sufficient to support the new licensees.

This is yet another reason why attorney oversight in such a program would be beneficial. It would remove the incentive for the new licensees to continuously raise their rates and would allow attorneys to offer assistance in a hybrid fashion, with the majority being provided at the lower rate of the new licensee and some, when required, being provided at the higher rate of the attorney.

#### Name of program

The CPPWG proposed three names to the Board of Trustees. These names are the result of surveys done of the CPPWG, as well as work with consultants who provided translated versions of the names from English to Spanish. While we agree that Spanish is the most important language to evaluate, we believe that it is also important to consider Vietnamese, Korean, Tagalog, Mandarin and Cantonese, among others. Legal services staff have extensive experience providing services, and drafting materials for, individuals who primarily speak languages other than English, and have found many challenges with translation. To reduce the likelihood of confusion, we strongly recommend that there be a more substantial evaluation of the possible names, especially considering translations that may cause confusion.

If this proposal is intended to be a long-term program, it would be worth it to conduct a survey of the general public who are not involved in the details of the program to gather their impressions and ideas about what someone with this license would be able to do. It was concerning that the

CPPWG was willing to just survey the group and pick one, when the name could really have such an impact on the viability of the program.

#### Practice Area Educational Requirements

As a result of the substantive subcommittees' extensive discussions, the CPPWG determined that paraprofessionals seeking to practice in each substantive area will need to complete additional educational requirements specifically for those substantive areas. These additional requirements are vitally important and will likely prevent harm that would otherwise occur. However, as we know as lawyers, no amount of education can prepare you for the actual practice of law, and therefore educational requirements should not be used instead of consumer protections like bonds, victim recovery accounts and robust regulations, but in addition to those provisions.

#### Amending California Law

There are several places in California law that specifically refer to an attorney in order to provide relief for a litigant. For instance, in Cal. Code. Civ. Pro 473(b), a litigant can claim mistake or neglect by an attorney in order to get relief from a judgment. In at least one case observed by legal services attorneys, a judge interpreted that code section strictly, and refused to grant relief when the mistake or neglect was by a non-attorney. These types of statutes exist throughout the law, and could prevent individuals who are harmed from actually being able to recover.

A prerequisite to any legislation in this area is a thorough analysis of California law to identify existing statutory language that limits relief or other rights to Californians based on assistance by an attorney. There is only a small section that specifically refers to "licensees" of the State Bar. Similar analysis of regulations and Rules of Court will also be required.

#### **Substantive Issues**

We have concerns about all of the areas of law – those included in the pilot project and those not included. We articulate a few specific concerns below, but also want to mention that there are additional concerns being addressed by various subject matter experts in collateral criminal, family law, and employment law, which is why those areas are either not addressed or not addressed in depth here.

#### Consumer Law

In terms of consumer debt, while we applaud the exclusion of Paraprofessionals from all superior court litigation, paraprofessionals would be allowed to work on prelitigation matters, including negotiation of settlements and payment plans. We have a number of concerns. Almost by definition, consumer debtors facing collection do not have the ability to pay a paraprofessional \$75, \$100, \$150 per hour – or indeed *any* amount – to assist them with their debt matters. We frequently see low-income clients persuaded into debt settlement plans they can ill afford, or paying for services they could perform themselves without any cost if they had a little guidance, such as from a legal navigator. In other cases, we see people paying money to debt collectors in payment plans that push them deeper into poverty when their income and assets are exempt from collection under California law. There are no guardrails in place to prevent a paraprofessional from charging to provide these ill-advised services. Nothing in the proposed evaluation piece would highlight the prevalence of these problematic cases and practices.



On the post-judgment enforcement proposal, there are already specialist companies that collect on judgments, and take a fee only if they are able to collect. It does not appear that there is anything to prevent Paraprofessionals taking fees upfront when working on enforcing judgments. In addition, it does not appear that there would be any educational requirement specifically in relation to paraprofessionals themselves acting as debt collectors, which may leave them open to liability under complex state and federal debt collection statutes.

### Family Law

The CPPWG's subcommittee on family law considered a wide variety of cases in the beginning, including cases in family courts, but also dependency and probate cases as well. It was not until almost a year after they first met that the subcommittee first met with the Children's Law Center of Los Angeles, the largest children's legal services organization in the country. After that meeting, the subcommittee did agree to remove dependency from the list of approved practices.

The subcommittee continued to include conservatorship and guardianship cases in the list of approved practices, which are primarily in probate court, with some limited exceptions. We are concerned about the inclusion of probate cases in the "family law" category, particularly because they do involve different courts in many counties. We also believe, particularly in conservatorships, that there is a higher risk of abuse, even in limited conservatorships, and that the challenges of undoing that harm argues against the inclusion of conservatorship.

Within the family law practice, there are a number of areas where the paraprofessionals would be allowed to provide in-court representation, but there are also some very specific, important exceptions. In-court representation is not allowed in domestic violence hearings involving children, if expert witness testimony will be introduced, and if there is a hearing on emergency custody or visitation requests when a judge has granted temporary emergency orders. In the latter category, the paraprofessionals would be allowed to sit at counsel table and may answer direct questions from the judge. These varying rules are extremely confusing, both for paraprofessionals and for potential clients, and could lead to substantial damage to clients who may have to hire multiple representatives. This issue weighs heavily in favor of attorney supervision, where a smaller or mid-size firm could utilize paraprofessionals for many of the tasks in family law cases, but have an attorney familiar with the case who could step in when the paraprofessional could not.

### Housing Law

The Housing subcommittee has briefly discussed the Shriver project and the potential concerns with undermining the Right to Counsel movement, but did not independently seek out experts, as far as we know, to comment on the possible impact. Ultimately the subcommittee moved forward with its recommendations to allow paraprofessionals to provide assistance in unlawful detainer proceedings. It seems this was largely because the Right to Counsel movement and the pilot project counties did not overlap much, if at all (for instance, Los Angeles County is not identified as a pilot project county). In June/July 2021, after the group received a letter from a housing attorney at the Public Law Center, they revised their recommendations for areas of practice to be slightly more restrictive. While we appreciate the change, we remain concerned about the patchwork approach to allowed services and how that will impact both potential clients and paraprofessionals.

We believe the proposal submitted to the Board of Trustees raises serious concerns, not just about the broader concept of paraprofessionals, but particularly about this specific proposal. We appreciate the opportunity to comment, and we welcome further discussion and evaluation, should the Board of Trustees feel compelled to move forward with any version of a program that creates a new licensee.

Sincerely,

Legal Aid Association of California  
Asian Americans Advancing Justice – Asian Law Caucus  
Bet Tzedek Legal Services  
Centro Legal de la Raza  
Coalition of California Welfare Rights Organizations  
Community Legal Aid SoCal  
East Bay Community Law Center  
Elder Law and Disability Rights Center  
Eviction Defense Collaborative  
Family Violence Appellate Project  
Harriett Buhai Center for Family Law  
Legal Aid at Work  
Legal Aid Foundation of Los Angeles  
Legal Aid Society of San Bernardino  
Legal Services of Northern California, Inc.  
LevittQuinn Family Law Center  
Los Angeles Center for Law and Justice  
Neighborhood Legal Services of Los Angeles County  
Public Counsel  
Public Law Center  
Senior Advocacy Network-Senior Law Project  
Sojourn Services for Adult and Child Victims of Domestic Violence  
The Public Interest Law Project  
Western Center on Law & Poverty

### Addendum to Dissenting Opinion of Carolin K. Shining

After consideration of the revisions to the Paraprofessional Program made on April 20, 2022, I must continue to maintain my opposition to the program as currently set forth. Here is a summary of the additional and restated grounds for which my dissent remains in full:

1. Rejection of paraprofessional ownership of law firms under Rules of Professional Conduct Section 5.4: I applaud the group's rejection of these changes. However, I remain extremely concerned that the lengthy discussion and prior adoption of these concepts will be misused and misunderstood in the future. I cannot emphasize enough the mistake that would be made regarding public safety by including or discussing this in further detail. It was made clear at the April 20, 2022 meeting that the Working Group's recommendations are not in fact what will be the final product as the State Bar proceeds on its path towards the adoption of some kind of program. The uncertainty set forth at the April 20 meeting gives me concern and therefore I must continue to espouse my rejection in full of the program's report.

2. Conflicts of Interest Through Funding of the Program through Private Grants: Again, it was suggested at the April 20, 2022 meeting that going forward the recommendations of the ATILS group regarding funding through outside entities will be used to "stand up" the program. This again raises concerns about potential conflicts of interest. The State Bar's agreement that it will be transparent as to who is providing this money is insufficient. The consideration of this program as a "private-public" endeavor was not the subject of robust discussion by the Working Group. This alone is enough to reinforce my objection to the end product that will be presented to the State Bar Trustees.

3. Failure to Fully Address Significant Public Comments: While there was some discussion and movement as to the consideration of prominent stakeholders, the time into which the discussion was squeezed for one six-hour day did not lend itself to meaningful consideration of their concerns. These included the public comments of the Judicial Council, a consolidated group of public interest law firms, and the long-standing California Access to Justice Commission, among others. Again, I supported many of the resolutions that were made at the April 20, 2022 meeting – many of them were in line with my positions throughout the program and made in my dissent. However, all of the suggestions of these experienced stakeholders were not addressed. I hope that in-depth conversations with these groups continue after the Working Group's efforts end.

4. Uncertainty of the Final Program's Presentation to the Legislature and Supreme Court of California: It was suggested that the program that would ultimately be presented to the State Bar this year might change in focus and scope. Seemingly trivial but undecided was the actual name of the professional that will be created. Hopefully, such changes will be identified with explanations as to why the Working Group was not given an opportunity to consider these changes. Should the State Bar Trustees wish to return the program for re-consideration, I stand ready to continue the work.

5. Joining with Fleischman Addendum: Finally, I join in the Addendum to Fleischman dissenting opinion written by Working Group member Steven S. Fleischman to update his dissent.

Thank you for the opportunity to present these additional grounds for my continuing dissent to the final report and recommendations.

Carolyn K. Shining

Member, California State Bar Working Group on Paraprofessionals