



# The State Bar of California

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## **OPEN SESSION AGENDA ITEM 701 SEPTEMBER 2021**

**DATE:** September 23, 2021

**TO:** Members, Board of Trustees

**FROM:** Linda Katz, Principal Program Analyst, Mission Advancement & Accountability Division

**SUBJECT:** Final Report and Recommendations of the California Paraprofessional Program Working Group

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### **EXECUTIVE SUMMARY**

At its meeting on March 12, 2020, the Board of Trustees established the California Paraprofessional Program (CPPWG) Working Group, charging it with developing recommendations for the creation of a paraprofessional licensure/certification program. This item requests that the Board (1) receive the CPPWG Report and Recommendations; and (2) issue the Report and Recommendations, including the accompanying proposed Rules of Professional Conduct and Proposed Standards of Licensed Paraprofessional Sanctions for Professional Misconduct, for a 60-day public comment period.

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### **BACKGROUND**

At its meeting on March 12, 2020, the Board of Trustees established the California Paraprofessional Program (CPPWG) Working Group and charged it with developing recommendations for the creation of a paraprofessional licensure program. The CPPWG was directed to balance the dual goals of ensuring public protection and increasing access to legal services. The working group was directed to develop specific recommendations for each of the following:

1. Eligibility requirements to apply for the program, including required competencies and potential pathways for licensure based on academic and experiential qualifications;
2. Selection of practice areas for inclusion in the program;
3. Types of tasks, by practice area, that will be permitted, and requisite changes to rules

- and statutes to permit the performance of these tasks;
4. Business requirements, including financial responsibility requirements;
  5. Licensing and regulatory model, including rules of professional conduct;
  6. Metrics and data collection methods to enable assessment of the program's effectiveness, and proactive risk-based regulation; and
  7. Increasing awareness about how to seek legal help.

The attached California Paraprofessional Program Working Group Report and Recommendations, with its accompanying appendices, represents the fulfillment of the working group's charter.

## **DISCUSSION**

The State Bar has long been aware of a gap between Californians' need for civil legal services and the availability of those services. In 2018, the Board updated the State Bar's 2017–2022 Strategic Plan, adding to Goal 4 objective e, requiring the completion of a California Justice Gap Study, and objective f, requiring the exploration of options to increase access to nonlawyer legal professionals.

As discussed in the attached report, these objectives are the culmination of decades of consideration of these topics. Since the late 1980s the State Bar Board has considered the idea of licensing nonlawyers to provide limited legal services to the public. Following is a brief summary of those activities, which are discussed in more detail in the report.

- 1987:** The Board appointed a Public Protection Committee (PPC) and charged it with studying nonlawyer practice of law activities and developing proposed standards under which such activities might be authorized. The Board rejected the PPC's recommendations but created a Commission on Legal Technicians (CLT) to conduct further study.
- 1991:** The Board Committee that reviewed the CLT report proposed a rule of court, which would have authorized creation of a pilot program permitting nonlawyers to perform limited legal services in the area of landlord-tenant law. The Board considered but rejected the proposed rule.
- 2013:** The Limited License Working Group, a subcommittee of the Board Committee on Regulation, Admissions, and Discipline Oversight, researched the feasibility of developing and implementing standards for creating a limited license to practice law, resulting in the creation of the Civil Justice Strategies Task Force.
- 2015:** Civil Justice Strategies Task Force recommendations were adopted by the Board; the design and implementation of a paraprofessional licensing program was referred to the Stakeholders and Access to Justice Committee for further study and exploration.
- 2018:** State Bar's 2017–2022 Strategic Plan was amended to include the following objectives:
- Explore options to increase access through licensing of paraprofessionals, limited license legal technicians, and other nonlawyer legal service providers; and
  - Complete a California Justice Gap Study.

The California Justice Gap Study (CJGS), which was completed in 2019, reported that the justice gap is widespread, pervasive, and multifaceted.<sup>1</sup> While 55 percent of Californians at all income levels experienced at least one civil legal problem in their household during the year in which the study was conducted, they sought help for fewer than one in three of these problems, and received no help, or inadequate help, for 85 percent of these problems. People cited the following reasons for not seeking help for their problems:

- They were unsure if the problem was in fact a legal issue;
- They decided to deal with the problem without help;
- They were worried about the cost;
- They did not know where to look for help; and
- They were afraid to pursue legal action.

Shortly after the publication of the CJGS Report, in March 2020, the Board appointed the California Paraprofessional Program Working Group and charged it with developing recommendations for the creation of a paraprofessional licensure program.

The CPPWG was created in the context of a growing nationwide movement to license nonlawyers to provide meaningful assistance in areas of law that include high numbers of self-represented litigants, as reflected in table 1.

**Table 1. Paraprofessional Practice Areas in Other States**

State	Practice Areas
<b>Arizona</b>	<ul style="list-style-type: none"> <li>• Limited jurisdiction civil practice (less than \$10,000 in controversy)</li> <li>• Limited jurisdiction criminal matters</li> <li>• Administrative law</li> </ul>
<b>Oregon<sup>2</sup></b>	<ul style="list-style-type: none"> <li>• Family law</li> <li>• Landlord-tenant</li> </ul>
<b>Utah</b>	<ul style="list-style-type: none"> <li>• Family law</li> <li>• Forcible entry and detainer</li> <li>• Debt collection</li> </ul>
<b>Washington</b>	<ul style="list-style-type: none"> <li>• Family law</li> </ul>

Other states currently considering licensing nonlawyers to provide limited scope legal services include Colorado, Florida, Minnesota, New Mexico, and New York.

### **ARIZONA**

The Arizona Code of Judicial Administration was amended, effective January 2021, to provide for the licensing of Legal Paraprofessionals (LP).<sup>3</sup> Pursuant to this code, LPs are authorized to

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<sup>1</sup> [California Justice Gap Study: Measuring the Unmet Civil Legal Needs of Californians](#) (November 2019).

<sup>2</sup> On September 27, 2019, the Oregon State Bar’s Board of Directors voted to approve a program for paraprofessional licensure; this program has not yet been implemented.

<sup>3</sup> See Arizona Code of Judicial Administration, [section 7-210](#).

provide the following legal services without the supervision of an attorney, in the practice areas listed in table 1:

- Prepare and sign legal documents;
- Provide specific advice, opinions, or recommendations about possible legal rights, remedies, defenses, options, or strategies;
- Draft and file documents, including initiating and responding to actions, related motions, discovery, interim and final orders, and modification of orders, and arrange for service of legal documents;
- Appear before a court or tribunal on behalf of a party, including mediation, arbitration, and settlement conferences where not prohibited by the rules and procedures of the forum; and
- Negotiate legal rights or responsibilities for a specific person or entity.

## **UTAH**

In November 2018, the Utah Supreme Court amended Rule 14-802,<sup>4</sup> to permit Limited Licensed Legal Practitioners (LLLP) to represent the interests of a natural person by:

- Establishing a contractual relationship with the client;
- Interviewing the client to understand the client’s objectives and obtaining facts relevant to achieving that objective;
- Completing forms approved by the Judicial Council;
- Informing, counseling, advising, and assisting in determining which form to use and giving advice on how to complete the form;
- Signing, filing, and completing service of the form;
- Obtaining, explaining, and filing any document needed to support the form;
- Reviewing documents of another party and explaining them;
- Informing, counseling, assisting, and advocating for a client in mediated negotiations;
- Filling in, signing, filing, and completing service of a written settlement agreement form in conformity with the negotiated agreement;
- Communicating with another party or the party’s representative regarding the relevant form and matters reasonably related thereto; and
- Explaining a court order that affects the client’s rights and obligations.

## **WASHINGTON**

In developing program recommendations, the working group was cognizant of the challenges faced by Washington’s Limited License Legal Technician (LLLT) Program. Implemented in 2012, this program licenses LLLTs to assist people with family law matters. In a letter dated June 5, 2020, the Washington Supreme Court notified the Washington State Bar Association (WSBA) of its decision to sunset the program, citing a small number of participants and high costs of sustaining the program. LLLTs who were already licensed were permitted to continue to provide services, and those on track to complete licensing requirements by July 2021 were permitted to do so. The Supreme Court subsequently authorized a reduction in the experience hours required of candidates from 3,000 to 1,500 hours, and extended by one year the deadline

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<sup>4</sup> See [Rule 14-1802](#) of the Judicial Council Code of Judicial Administration.

to complete the experience hours, as long as they completed all other licensure requirements by the original deadline.<sup>5</sup>

As indicated in a letter also sent to the WSBA on June 5, 2020, one member of the court dissented with the decision of the majority, citing a lack of transparency in the court's decision to sunset the program. A white paper issued by the Stanford Center on the Legal Profession bolsters this dissent. The paper asserts that the fundamental issues faced by the Washington LLLT program were political and structural, stating that the Supreme Court's reasons for sunseting the program ring hollow. The paper notes that, at the time of sunseting over 200 students were in the LLLT pipeline, and the National Center for State Courts (NCSC) was in the middle of a full-scale evaluation of the LLLT program. Although NCSC's preliminary report, published in 2017, found that the LLLT program was promising, the sunset of the program prevented completion of the full evaluation.<sup>6</sup>

In light of the developments with the Washington LLLT program, the CPPWG took pains to recommend licensing requirements that would ensure competence without deterring broad participation. In doing so, the CPPWG focused on its charge to balance the dual goals of ensuring public protection and increasing access to legal services.

## **REPORT AND RECOMMENDATIONS**

During its course, the CPPWG established 17 subcommittees to conduct research and provide recommendations. The CPPWG and its subcommittees convened 143 times between April 2020 and September 2021, and developed detailed recommendations in each of the areas outlined in the charter. The report includes programmatic recommendations as well as a complete set of Proposed Rules of Paraprofessional Conduct and Proposed Standards of Licensed Paraprofessional Sanctions for Professional Misconduct. In addition, the report includes policy recommendations regarding other rules and statutes required for program implementation. Programmatic and policy recommendations are provided in Appendix A; fully drafted Proposed Paraprofessional Rules of Professional Conduct are provided in Appendix B; and fully drafted Proposed Standards of Licensed Paraprofessional Sanctions for Professional Misconduct are provided in Appendix C.

As noted in the report, the CPPWG did not reach consensus on all recommendations. A number of working group members submitted dissenting opinions and alternative recommendations, which are included in the report.

This agenda item requests that the Board issue for a 60-day public comment period the following documents:

1. Report and Recommendations;
2. Proposed Paraprofessional Rules of Professional Conduct (Appendix B); and
3. Proposed Standards of Licensed Paraprofessional Sanctions for Professional Misconduct (Appendix C).

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<sup>5</sup> Communication between the WSBA and the Washington Supreme Court is available on the [WSBA website](#).

<sup>6</sup> Jason Solomon and Noelle Smith, [The Surprising Success of Washington State's Limited License Legal Technician Program](#). (2021, Stanford Center on the Legal Profession), p.3.

## **FISCAL/PERSONNEL IMPACT**

There is no fiscal impact for the requested action. If the paraprofessional program is implemented, startup costs are estimated at approximately \$1.65 million, as discussed in the report.

## **AMENDMENTS TO RULES**

None

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

## **STRATEGIC PLAN GOALS & OBJECTIVES**

Goal: 4. Support access to legal services for low- and moderate-income Californians and promote policies and programs to eliminate bias and promote an inclusive environment in the legal system and for the public it serves, and strive to achieve a statewide attorney population that reflects the rich demographics of the state's population.

Objective: f. No later than July 31, 2021, explore options to increase access through licensing of paraprofessionals, limited license legal technicians, and other paraprofessionals

## **RECOMMENDATIONS**

**Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:**

**RESOLVED**, that the Board of Trustees receives the California Paraprofessional Program Report and Recommendations; and it is

**FURTHER RESOLVED**, that the Board of Trustees issues the Report and Recommendations, including the accompanying proposed Paraprofessional Rules of Professional Conduct and Proposed Standards of Licensed Paraprofessional Sanctions for Professional Misconduct, for a 60-day public comment period.

## **ATTACHMENT LIST**

- A.** California Paraprofessional Program Working Group Report and Recommendations



# The State Bar of California

## **California Paraprofessional Program Working Group Report and Recommendations**

**September 23, 2021**

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## EXECUTIVE SUMMARY

In 2019, the State Bar completed a comprehensive study of California’s justice gap, which identified a significant gap between the need for and availability of civil legal services. As reported in [California Justice Gap Study: Measuring the Unmet Civil Legal Needs of Californians](#) (CJGS), while 55 percent of Californians experience at least one civil legal problem in their household each year, they received inadequate or no legal help for 85 percent of these problems. A lack of knowledge about what constitutes a legal issue, deciding to deal with the problem without help, and concerns about the cost of legal services were identified as primary factors that prevent many people from seeking legal assistance.

Since publication of the report on the CJGS, the State Bar has undertaken a number of efforts aimed at reducing the justice gap, including the formation of the [Task Force on Access Through Innovation of Legal Services](#) (ATILS) and the [Closing the Justice Gap Working Group](#). Looking to other jurisdictions’ responses to the problem of increased access to legal services, the State Bar concluded that, by expanding the pool of affordable legal service providers, a thoughtfully designed and appropriately regulated paraprofessional program is an important component of the solution in California. In March 2018, the Board of Trustees updated the State Bar’s 2017–2022 Strategic Plan, adding Objective f to Goal 4,<sup>1</sup> as follows: “Explore options to increase access to paraprofessionals, limited license legal technicians, and other paraprofessionals.”

In March 2020, the Board of Trustees appointed the California Paraprofessional Program Working Group (CPPWG, working group, or group), directing it to develop recommendations for creating a paraprofessional licensure/certification program. This working group was charged with balancing the dual goals of ensuring public protection and increasing access to legal services. As reflected in table 1, working group membership reflects the interests of a broad array of stakeholder groups, including legal consumers, legal services organizations, trial courts, law schools, and practicing attorneys, among others. Working group members served in their individual capacity, rather than as representatives of any organization or employer.

**Table 1. Working Group Roster and Nominating Authority**

Members	Nominating Authority
Hon. Justice Ioana Petrou, Chair <sup>2</sup>	Board of Trustees
Sharon Bashan [L]	Legal Services Community
Julia Brynelson [L]	Judicial Council of California
Julie D’Angelo Fellmeth [L]	Center for Public Interest Law
Steven Fleischman [L]	California Defense Counsel
Stephen Hamilton [L]	California Lawyers Association

<sup>1</sup> 2017–2022 Strategic Plan, Goal 4: Support access to justice for all California residents and improvements to the state’s justice system.

<sup>2</sup> As discussed in the Background and Purpose section of this report, the Board initially appointed Board member Chris Iglesias to chair the CPPWG. When he was unable to continue in his tenure, Justice Petrou was appointed as chair and given the authority to appoint up to five additional members to expand the experience and knowledge base of the working group’s membership.

Members	Nominating Authority
Hon. Michael Harper [J]	Board of Trustees
Amos Hartston [L]	California Commission on Access to Justice
Kimberly Kirchmeyer [P]	Department of Consumer Affairs
Dana McRae [L]	Assembly Judiciary Committee
Elizabeth Olvera [P]	California Association of Legal Document Assistants
Nicole Robinson [P]	Board of Trustees
Hon. David Rubin [J]	Board of Trustees
Carolin Shining [L]	Consumer Attorneys of California
Fariba Soroosh [L]	Judicial Council of California
Ira Spiro [L]	Committee of State Bar Accredited and Registered Schools
Claudia Torres-Ambriz [P]	Board of Trustees
Hon. Monica Wiley [J]	Board of Trustees
Hon. Erica Yew [J]	Judicial Council of California

[J] = Judge [L] = Lawyer [P] = Public Member

To facilitate its work, the CPPWG appointed subcommittees charged with developing recommendations for consideration by the full group. These subcommittees fall into three categories:

1. Practice area subcommittees, charged with recommending whether a particular practice area should be included in the program, as well as the scope of services to be authorized for included practice areas;
2. Policy/structure subcommittees, charged with developing the program’s licensing requirements, regulatory measures, and disciplinary structure; and
3. Pilot Implementation Subcommittee, charged with developing recommendations for the initial program rollout.

A total of 17 subcommittees held 123 meetings and met as a full body an additional 20 times to consider the recommendations of each subcommittee, as detailed in table 2.

**Table 2. Subcommittee Rosters and Meeting Dates**

<b>Practice Area/Topic</b>	<b>Subcommittee Members</b>	<b>Meeting Dates</b>
Collateral Criminal	Sharon Bashan Hon. Erica Yew	June 9, 2020 June 25, 2020 July 29, 2020 August 7, 2020
Consumer Debt	Julia Brynelson Steven Fleischman Stephen Hamilton Amos Hartston Nicole Robinson Carolyn Shining Hon. Erica Yew	July 31, 2020 August 6, 2020 August 13, 2020 August 20, 2020
Consumer Debt & General Civil	Julia Brynelson Steven Fleischman Stephen Hamilton Amos Hartston Nicole Robinson Carolyn Shining Hon. Erica Yew	March 5, 2021 March 11, 2021 March 25, 2021 April 8, 2021 June 8, 2021
Employment	Steven Fleischman Carolyn Shining Ira Spiro Hon. Erica Yew	July 31, 2020 August 5, 2020 August 11, 2020 August 18, 2020
Employment & Income Maintenance	Steven Fleischman Carolyn Shining Ira Spiro Hon. Erica Yew	March 2, 2021 March 9, 2021 March 22, 2021
Estates and Trusts	Stephen Hamilton Elizabeth Olvera	April 28, 2020 June 11, 2020

<b>Practice Area/Topic</b>	<b>Subcommittee Members</b>	<b>Meeting Dates</b>
Family, Children, and Custody	Sharon Bashan Stephen Hamilton Dana McRae Elizabeth Olvera Fariba Soroosh Hon. Monica Wiley	July 28, 2020 August 3, 2020 August 10, 2020 August 18, 2020 November 17, 2020 December 1, 2020 December 4, 2020 December 14, 2020 January 7, 2021 January 15, 2021 January 25, 2021 February 1, 2021 February 11, 2021 April 6, 2021 May 14, 2021 June 29, 2021
General Civil	Steven Fleischman Hon. Erica Yew	April 30, 2020 May 22, 2020 June 3, 2020 June 12, 2020
Health	Dana McRae Nicole Robinson Carolyn Shining	May 8, 2020 May 22, 2020 June 18, 2020 March 5, 2021 March 26, 2021
Housing	Hon. Michael Harper Julianne Fellmeth Amos Hartston Fariba Soroosh Ira Spiro	April 30, 2020 June 5, 2020 June 15, 2020 March 1, 2021 March 8, 2021 April 5, 2021 June 28, 2021
Income Maintenance	Steven Fleischman Carolyn Shining Ira Spiro Hon. Erica Yew	June 23, 2020
Veterans	Julia Brynelson Amos Hartston	May 1, 2020 June 2, 2020 June 16, 2020

<b>Practice Area/Topic</b>	<b>Subcommittee Members</b>	<b>Meeting Dates</b>
Regulation	Amos Hartston Kimberly Kirchmeyer Fariba Soroosh	September 10, 2020 September 18, 2020 October 2, 2020 October 8, 2020 October 21, 2020 November 16, 2020 December 1, 2020 December 7, 2020 January 6, 2021 January 13, 2021 January 21, 2021 January 26, 2021 February 4, 2021 February 11, 2021 March 15, 2021 March 23, 2021 March 30, 2021 April 6, 2021 April 13, 2021 May 6, 2021 May 13, 2021 May 20, 2021 May 27, 2021 June 3, 2021 June 11, 2021 June 17, 2021 July 8, 2021 July 15, 2021 July 22, 2021 July 29, 2021 August 19, 2021
Licensing	Julia Brynelson Stephen Hamilton Hon. Michael Harper Claudia Torres-Ambriz	September 11, 2020 September 18, 2020 October 2, 2020 November 16, 2020 November 30, 2020 January 6, 2021 January 13, 2021 January 22, 2021 February 5, 2021 March 30, 2021 August 6, 2021

Practice Area/Topic		Subcommittee Members	Meeting Dates
Discipline		Sharon Bashan Julianne Fellmeth Kimberly Kirchmeyer Ira Spiro	September 10, 2020 September 17, 2020 September 25, 2020 October 2, 2020 October 8, 2020 October 15, 2020 November 23, 2020 December 1, 2020 December 7, 2020 January 8, 2021 January 14, 2021 January 27, 2021 February 3, 2021 February 12, 2021
Joint Meetings of Regulation and Discipline Subcommittees		Sharon Bashan Julianne Fellmeth Amos Hartston Kimberly Kirchmeyer Fariba Soroosh	May 5, 2021 August 12, 2021 August 20, 2021
Pilot Implementation		Sharon Bashan Julianne Fellmeth Stephen Hamilton Kimberly Kirchmeyer Hon. Ioana Petrou Fariba Soroosh Hon. Erica Yew	January 15, 2021 January 19, 2021 January 26, 2021 February 2, 2021 February 16, 2021 April 27, 2021
Full Working Group	April 21, 2020 June 30, 2020 July 13, 2020 August 25, 2020 September 29, 2020 October 19, 2020 October 29, 2020	December 17, 2020 January 15, 2021 February 26, 2021 March 18, 2021 March 26, 2021 April 19, 2021 May 17, 2021	June 10, 2021 June 25, 2021 July 26, 2021 August 16, 2021 August 31, 2021 September 10, 2021

This report details the research and analysis undertaken by CPPWG members and provides comprehensive recommendations for program design. A brief description of those recommendations is included in this executive summary.

## RECOMMENDATIONS

### Practice Areas and Scope of Services

In developing recommendations regarding the inclusion and exclusion of practice areas in the program, the CPPWG considered a number of factors, including the need for legal services, as identified by the CJGS and data from the Judicial Branch Statistical Information System; complexity of the level of training and experience required to competently provide the services;

availability of existing affordable services; and the relative risk to legal consumers of receiving poor services, compared to receiving no legal services. In addition to the analysis noted above, the CPPWG consulted with subject matter experts, including trial judges, legal services organizations, legal educators, and experienced practitioners. For each practice area recommended for program inclusion, the CPPWG adopted recommendations regarding the scope of service paraprofessionals will be authorized to perform as well as limits on the scope of their representation.

Table 3 lists all of the areas identified in the CJGS for which Californians reported having unaddressed civil legal problems, recommendations regarding inclusion or exclusion in the Program, and the scope of service for each practice area recommended for inclusion.

**Table 3. Practice Areas and Tasks**

Practice Area	Recommendations	Authorized Tasks
Criminal	Exclude, except for Collateral Criminal	<ul style="list-style-type: none"> <li>• Expungement and reclassification of convictions</li> <li>• Infractions</li> </ul>
Consumer Debt/ General Civil	Include	<ul style="list-style-type: none"> <li>• Consumer debt and creditor harassment:               <ul style="list-style-type: none"> <li>○ Prelitigation cease-and-desist and prove-up letters</li> <li>○ Prelitigation negotiation of settlements, including payment plans</li> <li>○ All superior court litigation excluded</li> </ul> </li> <li>• Enforcement of judgment               <ul style="list-style-type: none"> <li>○ Enforcement of small claims court judgments</li> <li>○ Limited jurisdiction post-judgment enforcement</li> </ul> </li> <li>• Name and gender change</li> </ul>
Estates and Trusts	Exclude	None
Employment/ Income Maintenance	Include	<ul style="list-style-type: none"> <li>• Wage and hour cases               <ul style="list-style-type: none"> <li>○ Division of Labor Standards Enforcement proceedings</li> <li>○ Wage and hour judgment enforcement – limited jurisdiction only</li> </ul> </li> <li>• Unemployment insurance proceedings (Employment Development Department)</li> <li>• All public benefit proceedings</li> </ul>
Family, Children, and Custody	Include	<ul style="list-style-type: none"> <li>• Family               <ul style="list-style-type: none"> <li>○ All matters except for the following:                   <ul style="list-style-type: none"> <li>– Nullity matters:                       <ul style="list-style-type: none"> <li>▪ Petitions based on incest, unsound mind, fraud, force, and/or physical incapacity</li> <li>▪ Putative spouse establishment</li> <li>▪ Division of quasi-marital property</li> </ul> </li> <li>– Petition to establish parental relationship involving FC § 7612(b) or (c)</li> <li>– Child custody and visitation involving Hague Convention or UCCJEA</li> </ul> </li> </ul> </li> </ul>

Practice Area	Recommendations	Authorized Tasks
		<ul style="list-style-type: none"> <li>- Qualified Domestic Relations Order (QDRO)</li> <li>- Spousal or domestic partner support in long-term marriages, as defined by FC § 4336, unless included in a marital settlement agreement that does not terminate or set nonmodifiable spousal support</li> <li>- Discovery: <ul style="list-style-type: none"> <li>▪ Oral depositions</li> <li>▪ Expert discovery</li> <li>▪ Related motions</li> </ul> </li> <li>- Premarital/postmarital agreements</li> <li>- Marvin actions (palimony)</li> <li>- Contempt actions</li> <li>o Exclusion from representation in hearings on emergency custody or visitation requests when a judge has granted temporary emergency orders <ul style="list-style-type: none"> <li>- At such hearings, paraprofessionals are authorized to sit at counsel table to support and advise their client, and may answer direct procedural questions from the judge</li> </ul> </li> <li>• Uncontested adoption, with the following exceptions: <ul style="list-style-type: none"> <li>o Adoptions arising from dependency petitions</li> <li>o Adoptions where the child has been identified as protected by the Indian Child Welfare Act</li> </ul> </li> <li>• Uncontested conservatorships and guardianships, with the following exception: <ul style="list-style-type: none"> <li>o Guardianships established in dependency court for parties entitled to court-appointed counsel</li> </ul> </li> <li>• Violence prevention, with the following exceptions: <ul style="list-style-type: none"> <li>o Representation in domestic violence hearings involving children</li> <li>o If expert witness testimony will be introduced, paraprofessionals are prohibited from introducing or cross-examining expert witnesses</li> </ul> </li> <li>• Not authorized to act as appointed counsel in any cases</li> </ul>
Health	Exclude	None
Housing	Include	<ul style="list-style-type: none"> <li>• Residential landlord-tenant, with the following exceptions: <ul style="list-style-type: none"> <li>o Landlords who own more than two units</li> <li>o Bench or jury trials <ul style="list-style-type: none"> <li>- During unlawful detainer trials, paraprofessionals may assist their clients by sitting at counsel table to provide advice and guidance, and may respond to direct questions from the judge</li> </ul> </li> </ul> </li> </ul>

Practice Area	Recommendations	Authorized Tasks
		<ul style="list-style-type: none"> <li>○ Representation in superior court matters, in or out of court, other than small claims or unlawful detainer cases</li> <li>• Lien clearing <ul style="list-style-type: none"> <li>○ Clearing liens from title, outside of litigation</li> </ul> </li> </ul>
Veterans	Exclude	None

### In-Court Representation

The question of whether paraprofessionals should be able to assist their clients in court was one of the most difficult issues addressed by the CPPWG. The positions voiced by its members and members of the public ranged from allowing paraprofessionals (within the scope of their licensed practice area(s)) to provide full in-court representation to prohibiting any participation in court proceedings. After extensive discussion and debate, encompassing two facilitated discussions, the CPPWG adopted a default position that paraprofessionals may provide full in-court representation, with a complete prohibition on jury trials. That default position could be modified in regard to a particular practice area based on a recommendation from the respective practice area subcommittee.

### Licensing Requirements

Paraprofessional licensing requirements include eligibility, educational, and experiential training requirements, as well as practice area-specific exams and a moral character determination process. After satisfying all licensing requirements, including passing relevant exams and receiving a positive moral character determination, candidates will be licensed by the State Bar to provide services in the practice area(s) for which they have been deemed qualified. In developing recommendations for these licensing requirements, the CPPWG balanced the need to encourage participation by enough potential paraprofessionals to ensure a viable program, with that of ensuring that participants will be adequately trained and screened to ensure legal consumers receive competent and ethical legal services. Recommendations regarding licensing requirements are provided in table 4.

**Table 4. Licensing Requirements**

Requirement	Recommendations
<b>ELIGIBILITY</b>	<ul style="list-style-type: none"> <li>• JD or LLM from American Bar Association (ABA) or California accredited or registered law school; or</li> <li>• Paralegal qualified pursuant to <a href="#">Business and Professions Code § 6450(c)</a>; or</li> <li>• Legal Document Assistant qualified per <a href="#">Business and Professions Code § 6402.1(b)</a><sup>3</sup></li> </ul>

<sup>3</sup> The CPPWG recommends that applicants admitted to the program pursuant to this criterion would not be eligible for a waiver of educational or experience requirements.

Requirement		Recommendations	
	Practice Area	Course	Units <sup>4</sup>
EDUCATION	All Practice Areas	Ethics and Professional Responsibility	3
		Pretrial Discovery and Evidence	3
		Court Procedure	3
		Court Advocacy	3
		Trauma-Informed Representation	1
		<b>Total</b>	<b>13</b>
	Collateral Criminal	Expungement, Reclassification, and Infractions	3
	Consumer Debt & General Civil	Debt Collection and Creditor Harassment	6
		Enforcement of Judgments (including wage and hour)	3
		Name and Gender Change	0.5
		<b>Total</b>	<b>9.5</b>
	Family, Children, and Custody	Family Law and Procedure	6
		Adoption	2
		Violence Prevention	2
		Conservatorship/Guardianship	3
		<b>Total</b>	<b>13</b>
	Employment & Income Maintenance	Administrative Agency Procedure	3
	Housing	Landlord-Tenant <ul style="list-style-type: none"> <li>• Leases/rental agreements</li> <li>• Security deposits</li> <li>• Types of tenancies</li> <li>• Tenant protections</li> <li>• Housing discrimination and landlord retaliation</li> <li>• Warranty of habitability</li> <li>• Rent control and eviction control</li> <li>• Ground and procedures for nonjudicial termination of tenancies</li> <li>• Unlawful detainer procedure</li> <li>• COVID-19 tenant protection laws and tenant assistance (until such laws expire)</li> <li>• Rental assistance programs</li> <li>• Benefits and risks of demanding a jury trial</li> <li>• Small claims court actions</li> <li>• Subsidized housing and mobilehomes</li> <li>• Benefits of demanding a jury trial in unlawful detainer cases</li> </ul>	12
		Lien clearing	1
		<b>Total</b>	<b>13</b>

<sup>4</sup> Pursuant to [California Code of Regulations, Title 5 § 55002.5](#), one unit of community college credit requires a minimum of 48 hours of student work for colleges operating on the semester system. This time includes classroom instruction and student work outside the classroom. A 3-unit course is equal to 144 hours of student engagement.

Requirement	Recommendations
	<i>With the exception of one unit of paraprofessional Ethics and Responsibility, coursework taken as part of a law school or paralegal program may satisfy the program's educational requirements.</i>
<b>PRACTICAL TRAINING</b>	<ul style="list-style-type: none"> <li>• 1,000 hours over a minimum of six months</li> <li>• 500 hours must be in practice area in which paraprofessional will be licensed</li> <li>• Must include trauma-informed training</li> </ul> <i>Experience working as a paralegal or in a law school clinic may satisfy the experience requirements, subject to certification by the supervising attorney or law clinic instructor that it meets the specified criteria.</i>
<b>TESTING</b>	<ul style="list-style-type: none"> <li>• Subject matter-specific testing</li> <li>• Professional Responsibility Exam modeled after attorney exam</li> </ul>
<b>MORAL CHARACTER</b>	<ul style="list-style-type: none"> <li>• Fingerprinting and background check equivalent to attorney requirements</li> <li>• Not disbarred or resigned with charges pending in any jurisdiction</li> <li>• Moral character determination requirements to mirror attorney requirements</li> </ul>

## Regulation

In developing recommendations for regulatory requirements, the CPPWG focused on the need to ensure public protection without imposing burdens so onerous that they impede the program's viability. Mechanisms to ensure competence, accountability, and ethical practice include financial responsibility, minimum continuing legal education, and Rules of Professional Conduct. Proactive regulation measures are intended to support paraprofessionals in their practice. Table 5 provides regulatory recommendations.

**Table 5. Regulatory Requirements**

Requirement	Recommendations
Financial Responsibility	<ul style="list-style-type: none"> <li>• \$100,000 Surety Bond</li> <li>• Client Security Fund (CSF)</li> </ul>
Minimum Continuing Legal Education  <i>No more than 18 hours may be obtained through self-study</i>	36 hours every 3 years, as follows: <ul style="list-style-type: none"> <li>• 28 hours in the paraprofessional's practice areas</li> <li>• 4 hours on legal ethics</li> <li>• 1 hour on competence issues</li> <li>• 1 hour on recognition and elimination of bias in the legal profession and society</li> <li>• 1 hour of trauma-informed practice</li> <li>• 1 hour of practice management/running a business</li> </ul>
Rules of Professional Conduct	Proposed Rules, based on the Rules of Professional Conduct (RPC) for attorneys, are provided as Appendix A.
Supportive Measures (Proactive Regulation)	<ul style="list-style-type: none"> <li>• Continuing Legal Education (CLE) programs and toolkits to support paraprofessional practice               <ul style="list-style-type: none"> <li>○ Sample client surveys</li> <li>○ Voluntary, interactive self-assessment</li> </ul> </li> <li>• Ethics hotline</li> <li>• Online resources</li> </ul>

Requirement	Recommendations
Annual Reporting Requirements	<ul style="list-style-type: none"> <li>Fees charged to clients</li> <li>Suggestions for additional trainings and resources to support competent legal services</li> </ul>

While it does not recommend requiring paraprofessionals to maintain malpractice insurance, the CPPWG recommends that they be strongly encouraged to do so. Further, the CPPWG recommends that the State Bar take steps to encourage insurance companies to make malpractice insurance available to licensees. The CPPWG recommends, if neither a \$100,000 bond nor malpractice insurance is required, that the State Bar establish a restitution fund to compensate clients for both intentional and unintentional acts.

### Discipline System

In developing recommendations for a paraprofessional discipline system, the CPPWG looked at a number of different models. These included the attorney discipline system and the discipline system for professional licensing boards under the jurisdiction of the California Department of Consumer Affairs (DCA). The recommendations provided in table 6 reflect a hybrid of these systems: resources would be provided to the Office of Chief Trial Counsel (OCTC) to investigate and prosecute cases; cases would be decided by a three-person hearing panel; and appeals would be heard by a subcommittee of the Paraprofessional Licensing and Oversight Committee.<sup>5</sup>

**Table 6. Discipline System Structure**

Model Element	Recommendations
Complaint Intake and Investigation	To be handled by OCTC
Citation and Fine	To be administered by OCTC <ul style="list-style-type: none"> <li>If fine and fee determination is disputed, that dispute will be adjudicated by the Hearing Panel</li> </ul>
<ul style="list-style-type: none"> <li>Initial Hearings</li> <li>Disputed Fine and Fee Determinations</li> </ul>	Three-person Hearing Panel
Settlement Conferences	<ul style="list-style-type: none"> <li>To take place only if OCTC and paraprofessional mutually consent</li> <li>To be heard by staff adjudicator</li> </ul>
Appeals and Stipulated Discipline	Paraprofessional Licensing and Oversight Committee
Final Discipline Decision	<ul style="list-style-type: none"> <li>Suspensions and revocations: final discipline decision to be made by the Supreme Court</li> <li>Appeals from the appeals level to be heard by the Supreme Court</li> <li>All other discipline finalized at appropriate level within the State Bar’s paraprofessional disciplinary structure, level as yet to be determined</li> </ul>

<sup>5</sup> The Paraprofessional Licensing and Oversight Committee is the governing board for the paraprofessional licensure and certification program, as discussed in the Oversight and Governance section.

The CPPWG considered alternatives to formal discipline, including warning letters, agreements in lieu of discipline, mandatory fee arbitration, and private reprovls, as well as the Alternative Discipline Program (ADP) that is part of the formal attorney discipline system. Recommendations regarding these alternatives were informed by the need to balance the effectiveness of offering alternatives in appropriate circumstances with a desire for transparency about disciplinary proceedings. A summary of the CPPWG recommendations regarding alternatives to formal discipline is provided in table 7.

**Table 7. Alternatives to Formal Discipline**

Alternative or Nontraditional Discipline Approach	Recommendation
Warning Letter	Include
Mandatory Fee Arbitration	Include
Agreements in Lieu of Discipline	Exclude
Private Reprovals	Exclude
Alternative Discipline Program	Exclude

The CPPWG’s recommendations regarding public versus private designation of paraprofessional disciplinary records were informed by the rules for attorney disciplinary records, as well as applicable statutes regarding Medical Board disciplinary records. Business and Professions Code sections 803.1 and 2027 address not only the public versus private nature of various record types, but also whether public records will be affirmatively posted on the licensing board’s website, and when and if records will be destroyed. Table 8 provides a summary of recommendations regarding public records.

**Table 8. Public Records**

Intervention or Disciplinary Outcome	Private or Public	On Website or on Request	Retention Duration
Warning Letter (Not discipline)	Private	N/A	
Citation and Fine (Not discipline)	Public for 3 years from date of resolution	<ul style="list-style-type: none"> <li>Website for 3 years unless withdrawn or dismissed</li> <li>After three years transition to private</li> </ul>	Indefinite
Notice of Disciplinary Charges	Public unless withdrawn or dismissed	<ul style="list-style-type: none"> <li>On website for duration that resulting discipline is on website</li> </ul>	For duration of period that underlying discipline is public
Public Reproval	Public	<ul style="list-style-type: none"> <li>Website for 10 years</li> <li>After 10 years transitions to anonymous report</li> </ul>	Indefinite

Intervention or Disciplinary Outcome	Private or Public	On Website or on Request	Retention Duration
Probation	Public	<ul style="list-style-type: none"> <li>Website</li> </ul>	Indefinite
Interim Suspension	Public	<ul style="list-style-type: none"> <li>Website</li> </ul>	Duration of interim suspension
Suspension pursuant to discipline	Public	<ul style="list-style-type: none"> <li>Website</li> </ul>	Indefinite
Disbarment	Public	<ul style="list-style-type: none"> <li>Website</li> </ul>	Indefinite
Felony Charges and Criminal Convictions	Mirror attorney requirements		

The CPPWG recommendations for disciplinary standards are based upon the Standards for Attorney Sanctions for Professional Conduct. Proposed Standards of Licensed Paraprofessional Sanctions for Professional Conduct are provided as Appendix C.

### Oversight and Governance

The program’s oversight should ultimately rest with the Supreme Court, which has the authority to license individuals to practice law. As with the licensure of attorneys, the Supreme Court would delegate responsibility for licensing, regulation, and discipline of paraprofessionals to the State Bar, limiting its direct involvement to matters requiring adjudication by the Supreme Court. Functional oversight would be provided by a newly created Paraprofessional Licensing and Oversight Committee (PLOC), the State Bar Board of Trustees, and the Legislature. The committee would be responsible for operational oversight of the program, and be directly responsible for hearing disciplinary appeals. Recommendations regarding the specific authority of the Supreme Court, the Legislature, and the Board are detailed in the body of this report.

The CPPWG recommends that a 13-member PLOC govern the program. In making this recommendation, the CPPWG considered the policy adopted by the Board to limit subentity committees to 7 or fewer members, absent a justification of the need for more members. The CPPWG believes that the recommendation provided in table 9 reflects the need to include members that bring a broad range of experience and perspective to program governance. The work the PLOC needs to undertake in its oversight of program operations (as discussed in the recommendations below regarding licensing, regulation, and discipline), also underscores the need for a larger oversight committee. The CPPWG recommends that the appointing authority structure for the PLOC mirror the Board’s, and that appointing authorities be encouraged to consider diversity of practice areas in their appointments.

**Table 9. Proposed Composition of a Paraprofessional Licensing and Oversight Committee**

Member Type	Appointing Authority
Judge	Supreme Court
2 Attorneys	Supreme Court

3 Paraprofessionals	Supreme Court
<ul style="list-style-type: none"> <li>• Northern California</li> <li>• Central</li> <li>• Southern California</li> </ul>	
2 Public (nonlicensee)	Senate
2 Public (nonlicensee)	Assembly
2 Public (nonlicensee)	Governor
Paraprofessional Educator	Governor

## Implementation

The CPPWG considered various options for initial program rollout, including full implementation, a pilot program with a sunset date, and a phased implementation approach. Full implementation on a statewide basis was determined to be overly ambitious, as it would require outreach and education to courts, consumers, and potential participants in all 58 counties, as well as the development of educational programs across the state. These efforts would likely take several years and a substantial investment of resources before achieving any meaningful provision of services. A limited period pilot program was also deemed nonviable; both educational institutions and program participants would be reluctant to invest the substantial resources necessary for participating in a program with an explicitly uncertain future.

The CPPWG’s recommendation provides for a phased implementation approach. Under this approach, the program rollout would be limited by practice and geographic areas. Practice areas for inclusion in the initial implementation phase include family, housing, and collateral criminal. Family and housing are included as they reflect areas of significant unmet legal need; collateral criminal is included due to its low level of complexity. Counties were selected for the initial implementation phase based on factors that included the size of the potential client and licensee populations, as well as the size of the local unmet legal services need. Recommendations for initial program implementation are provided in table 10.

**Table 10. Initial Implementation**

Implementation	Recommendation
Program Features	Full Program Features
Practice Areas	<ul style="list-style-type: none"> <li>• Family, Children, and Custody</li> <li>• Housing</li> <li>• Collateral Criminal</li> </ul>
Geography	<ul style="list-style-type: none"> <li>• Northern California Counties <ul style="list-style-type: none"> <li>○ Alameda</li> <li>○ El Dorado</li> <li>○ Placer</li> <li>○ Sacramento</li> <li>○ Santa Clara</li> <li>○ Yuba</li> </ul> </li> </ul>

Implementation	Recommendation
	<ul style="list-style-type: none"> <li>• Central California Counties <ul style="list-style-type: none"> <li>○ Fresno</li> <li>○ Merced</li> <li>○ Tulare</li> </ul> </li> <li>• Southern California County <ul style="list-style-type: none"> <li>○ Orange</li> </ul> </li> </ul>

### Licensee Name

In selecting an official name for this licensee, a number of factors must be considered, including: (1) clarity, to ensure that the name accurately reflects the specific licensure and minimizes consumer confusion; (2) potential translations into languages in predominant use in California; and (3) potentially confusing acronyms (e.g., LLP, LLC, etc.).

The CPPWG engaged in an extended process to develop a slate of potential licensee names for the Board’s consideration, including consulting with a brand consultant, conducting two surveys of its group members, and obtaining translations from professional translation firms.

Based on the foregoing process, staff recommends the options for consideration of a licensee name shown in table 11.

**Table 11. Licensee Names Recommended for Consideration**

English	Spanish
Limited License Legal Practitioner	Practicante Legal Con Licencia Limitada
Limited Legal Practitioner	Practicante Legal Limitado
Limited Legal Advisor	Asesor Legal Limitado

### Program Evaluation

A robust evaluation of the program will be required to determine whether it meets the goals for which it is created, to inform ongoing program improvement, and to allow for meaningful comparison with similar programs in other states. The CPPWG recommends that program evaluation be conducted between three and five years after program implementation; this evaluation should be conducted by an independent organization with experience in evaluating similar programs. The metrics in table 12 reflect minimum data and metrics to be included in program evaluation.

**Table 12. Program Evaluation Metrics**

Metric	Data Points	Data Source
Program Viability	Number of licensees/market coverage	Internal data
	Volume of use	Survey
	Stable and sufficient regulatory funding source	Internal data

Metric	Data Points	Data Source
	Sufficient income potential for licensees to stay in business	Survey
Equity and Access	Demographics of paraprofessionals and their clients	Survey
	Number of self-represented litigants (reduced?)	CMS and JBSIS <sup>6</sup>
	Justice Gap (reduced?)	Survey
Case Outcomes/ Client Satisfaction	Overall satisfaction	Survey
	Procedural satisfaction	Survey
Legitimacy/ Political Sustainability	Lawyer, judicial officer, and general public sentiment about the program	Survey
Affordability	Fee structure transparency: consumer understanding of service offerings and price points	Survey
	Hourly rates	
	Event and per-case rates	
	Number of hours to complete services	
Efficiency in Paraprofessional Training	Cost of education	Survey

The full CPPWG recommendations are provided in Appendix A.

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<sup>6</sup> Court Case Management System/Judicial Branch Statistical Information System.

## BACKGROUND AND PURPOSE OF THE WORKING GROUP

The State Bar has long been aware of a gap between Californians' need for civil legal services and the availability of those services. In an effort to address this justice gap, since the late 1980s and early 1990s, the State Bar Board has considered the idea of licensing nonlawyers to provide limited legal services to the public.<sup>7</sup>

- **1987:** Board appointed a Public Protection Committee and charged it with studying nonlawyer practice of law activities and developing proposed standards under which such activities might be authorized.
  - Although the Board did not approve the recommendations from that report, it created a Commission on Legal Technicians to conduct further study. In its resolution creating this commission, the Board identified an overwhelming unmet need for access to the legal process; legal technicians were identified as having the potential to help meet this need.
- **1991:** Board considered and rejected a proposed Rule of Court developed by a Board committee that reviewed the Report of the Commission on Legal Technicians, which would have authorized creation of a pilot program permitting nonlawyers to perform limited legal services in the area of landlord-tenant law.
- **2013:** Limited License Working Group, a subcommittee of the Board Committee on Regulation, Admissions, and Discipline Oversight, was assigned to research the feasibility of developing and implementing standards for creating a limited license to practice law, with a goal of enabling certified individuals to provide limited, discrete legal services to consumers in defined legal subject matter areas.
  - Based on the working group's recommendations, the Board adopted a resolution to direct staff to develop proposals to examine and address the causes, effects, and possible solutions to the access to justice challenges in California, including the concept of a limited legal license.
  - Civil Justice Strategies Task Force, appointed as a special committee of the Board, was charged with evaluating the role of the legal profession in addressing the access crisis, and assigned to study, create a solution, and recommend an action plan.
- **2015:** Board adopted the recommendations included in the report from the Civil Justice Strategies Task Force, which included referring the design and implementation of a paraprofessional licensing program to the Stakeholders and Access to Justice Committee for further study and exploration.
- **2018:** State Bar's 2017–2022 Strategic Plan amended to include the following objectives:
  - Explore options to increase access through licensing of paraprofessionals, limited license legal technicians, and other paraprofessionals; and

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<sup>7</sup> A review of records from the beginning of these efforts suggests that early considerations conflated the concept of licensed providers of law related legal services (known today as Legal Document Assistants/Unlawful Detainer Assistants, who are authorized pursuant to Business and Professions Code §§ 6400-6415) with true paraprofessional limited practice of law licensure.

- Complete a California Justice Gap Study.
- **2019**, the State Bar completed a California Justice Gap Study
  - The [California Justice Gap: Measuring the Unmet Civil Legal Needs of Californians](#) reported that the justice gap is widespread, pervasive, and multifaceted. While 55 percent of Californians at all income levels experienced at least one civil legal problem in their household during the year in which the study was conducted, they sought help for fewer than one in three of these problems, and received no help, or inadequate help, for 85 percent of these problems.

A detailed history of the State Bar’s consideration of licensing paraprofessionals, which was provided at the Board’s planning session on January 23, 2020, is provided as Appendix D.

At its meeting on March 12, 2020, the Board approved the charter for the CPPWG and appointed its chair, Board member Chris Iglesias, and members. The charter directs the CPPWG to develop recommendations regarding program eligibility, practice areas and tasks, financial responsibility, licensing requirements, and program evaluation. The CPPWG’s charter is provided as Appendix E.

Initial appointments to the CPPWG included members with a broad array of backgrounds and interests, reflecting nominations made by stakeholder groups, including legal consumers, legal services organizations, trial courts, law schools, and practicing attorneys, among others. In July 2020, the Board authorized the chair to fill additional vacant slots, with a focus on improving racial/ethnic diversity and providing a direct consumer voice.

Due to significant issues competing for his time, Mr. Iglesias did not seek reappointment to the Board when his term ended in September 2020, and he was unable to continue as CPPWG chair. At its meeting on November 19, 2020, the Board appointed Justice Ioana Petrou of the First District Court of Appeals as chair, and authorized her to fill up to five additional slots on the CPPWG. Pursuant to this authorization, three additional superior court judges, representing large, medium, and small courts and with a variety of subject matter expertise, and one additional public member, were appointed to the CPPWG to add breadth and diversity to the discussion; the current CPPWG roster is provided in table 1.

The CPPWG held its first meeting on April 21, 2020, during which subcommittees were appointed to develop recommendations regarding practice areas for program inclusion or exclusion. Additional subcommittees were later appointed to develop recommendations regarding licensing requirements, regulatory measures, discipline structure, and program implementation. A total of 17 subcommittees held 123 meetings, and met as a full body an additional 20 times, to consider the recommendations of each subcommittee. A list of meetings of the CPPWG and its subcommittees is provided in table 2. This report outlines the recommendations adopted by the CPPWG, and the process by which these recommendations were considered and adopted.

## PRACTICE AREAS AND SCOPE OF SERVICES

At its inaugural meeting on April 21, 2020, the CPPWG discussed practice areas that should be included in the Program. Information from the following data was consulted to inform the discussion.

### California Justice Gap Study (CJGS)

The CPPWG reviewed key findings from the CJGS regarding the types of civil legal problems Californians experienced and the reasons they did not seek legal help for those problems.

- Fifty-five percent of Californians experienced at least one civil legal issue during the year in which the CJGS survey was conducted.
- The main types of legal problem types faced by Californians included health, finance, employment, family, children and custody, veterans' issues, and income maintenance.
- Fewer than one in three Californians sought legal help for their problems, citing the following reasons:
  - Unsure if it is a legal issue.
  - Decided to deal with the problem without help.
  - Worried about the cost.
  - Did not know where to look for help.
  - Afraid to pursue legal action.
- These findings exist at all income levels.
  - Fewer than one in three Californians at any income level sought legal help to address their problem.
  - People living in households with income over 600 percent of the federal poverty level—equal to an annual household income of \$154,501 for a family of four—received no legal help, or inadequate legal help, for 78 percent of their civil legal problems.

### California Courts' Self-Help Data

The CPPWG reviewed data regarding the types of legal problems for which people seek assistance from court-based self-help centers, both in person and online. As shown in table 13, in fiscal year 2018–2019, self-help centers statewide reported that 80 percent of all encounters were with people seeking assistance with family law matters. The principal issues for which people sought help in family law were dissolution, child and spousal support, and custody and visitation. The judicial branch self-help website reflected the most traffic from people seeking information about divorce or separation, traffic and tickets, name changes, and payment of bail and fines.

**Table 13. Court Self-Help Assistance**

In Person <sup>8</sup>	Online <sup>9</sup>
<ul style="list-style-type: none"><li>• 80% Family law<ul style="list-style-type: none"><li>○ 34% Dissolution</li><li>○ 31% Child and spousal support</li><li>○ 28% Child custody and visitation</li></ul></li></ul>	<ul style="list-style-type: none"><li>• 53% Divorce or separation</li><li>• 27% Traffic and tickets</li><li>• 17% Name change</li><li>• 3% Payment of bail and fines</li></ul>

### Law-Related Services Providers

The CPPWG reviewed available services and the limits on those services through authorized law-related service providers in California.

### Legal Document Assistants (LDA)

LDAs provide self-help services for compensation to individuals who are representing themselves in a legal matter.

### Unlawful Detainer Assistants (UDA)

UDAs provides assistance or advice in the prosecution or defense of an unlawful detainer claim or action, including any bankruptcy petition that may affect the unlawful detainer claim or action.

LDA and UDA services include the following:<sup>10</sup>

- Completing legal documents in a ministerial manner, selected by a person who is representing themselves in a legal matter, by typing or otherwise completing the documents at the person’s specific direction;
- Providing general published factual information that has been written or approved by an attorney, pertaining to legal procedures, rights, or obligations to a person who is representing themselves in a legal matter, to assist the person in representing themselves. This service, in and of itself, does not require registration as a legal document assistant;
- Making published legal documents available to a person who is representing themselves in a legal matter; and
- Filing and serving legal forms and documents at the specific direction of a person who is representing themselves in a legal matter.

### Immigration Consultants

Immigration consultants give nonlegal assistance or advice on immigration matters.

Immigration assistance and advice includes the following:<sup>11</sup>

<sup>8</sup> Source: Judicial Council Self-Help Tracking and Reporting Survey Data, statewide fiscal year 2018–2019 data. The State Bar was asked not to share the raw data; aggregate information was shared with the CPPWG.

<sup>9</sup> Source: Judicial Council September 2019–February 2020 website analytics data. The State Bar was asked not to share the raw data; aggregate information was shared with the CPPWG.

<sup>10</sup> See [Business and Professions Code § 6400\(d\)](#).

<sup>11</sup> See [Business and Professions Code § 22441\(a\)](#).

- Completing a form provided by a federal or state agency but not advising a person as to their answers on those forms;
- Translating a person’s answers to questions posed in those forms;
- Securing for a person supporting documents, such as birth certificates, which may be necessary to complete those forms;
- Submitting completed forms on a person’s behalf and at their request to the United States Citizenship and Immigration Services; and
- Making referrals to persons who could undertake legal representation activities for a person in an immigration matter.

### Paralegals

A paralegal is a person who holds themselves out to be a paralegal; who is qualified by education, training, or work experience; and who either contracts with or is employed by an attorney, law firm, corporation, governmental agency or other entity; and who performs substantial legal work under the direction and supervision of an attorney. Following are examples of tasks that paralegals are permitted to perform:<sup>12</sup>

- Case planning, development, and management;
- Legal research;
- Interviewing clients;
- Fact gathering and retrieving information;
- Drafting and analyzing legal documents;
- Collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney; and
- Representing clients before a state or federal administrative agency if that representation is permitted by statute, court rule, or administrative rule or regulation.

### Other States’ Paraprofessional Program Practice Areas

The CPPWG reviewed practice areas included or under consideration in other states’ paraprofessional programs, as shown in table 14.

**Table 14. Paraprofessional Practice Areas in Other States**

State	Practice Areas
Arizona	<ul style="list-style-type: none"> <li>• Limited jurisdiction civil practice (less than \$10,000 in controversy)</li> <li>• Limited jurisdiction criminal matters</li> <li>• Administrative law</li> </ul>
Oregon <sup>13</sup>	<ul style="list-style-type: none"> <li>• Family law</li> </ul>

<sup>12</sup> See [Business and Professions Code § 6450\(a\)](#).

<sup>13</sup> On September 27, 2019, the Oregon State Bar’s Board of Directors voted to approve a program for paraprofessional licensure; this program has not yet been implemented.

State	Practice Areas
	<ul style="list-style-type: none"> <li>• Landlord-tenant</li> </ul>
Utah	<ul style="list-style-type: none"> <li>• Family law</li> <li>• Forcible entry and detainer</li> <li>• Debt collection</li> </ul>
Washington	<ul style="list-style-type: none"> <li>• Family law</li> </ul>

Other states currently considering licensing nonlawyers to provide limited scope legal services include Colorado, Florida, Minnesota, New Mexico, and New York.

### California Attorney Practice Analysis<sup>14</sup> (CAPA)

The CPPWG reviewed CAPA data that shows the depth of knowledge required for the performance of, and the level of complexity for, identified legal tasks and topics. CAPA was an in-depth practice analysis designed to gauge alignment between the content of the California Bar Exam and the practice of law in California. The working group specifically considered whether tasks and practice areas involving a high degree of complexity should be excluded from the scope of an initial paraprofessional program.

### Task Force on Access Through Innovation of Legal Services (ATILS)

The CPPWG also considered recommendations included in the report from [ATILS](#).<sup>15</sup> ATILS recommended that consideration of practice areas for inclusion in the program not be limited based on the data sources identified above, and urged the CPPWG to consider areas of law in high demand by low-income or otherwise vulnerable populations; for example, the ATILS report specifically pointed to the need for legal services to assist the transgender community with name and gender changes.

At its initial meeting, and after reviewing the myriad of inputs outlined above, the CPPWG established a process for selecting practice areas, and the specific tasks within each selected practice area, to recommend for inclusion in the program. This process involved a winnowing of the list of potential practice areas, resulting in a final list of included practice areas. A similar exercise was then conducted with respect to authorized subtopics and/or tasks within each practice area, ultimately resulting in a comprehensive list of authorized practice areas and tasks for program inclusion.

As a first step in this process, at its initial meeting, the working group assigned the broad array of practice areas that could potentially be included in a paraprofessional program to the following categories.

<sup>14</sup> [The Practice of Law in California: Findings from the California Attorney Practice Analysis and Implications for the California Bar Exam](#). State Bar of California (May 2020). [Data from this report was available for analysis prior to publication, and was presented to the CPPWG at its April 2020 meeting.]

<sup>15</sup> [State Bar of California Task Force on Access Through Innovation of Legal Services: Final Report and Recommendations](#) (March 2020).

### Excluded from Ongoing Consideration

Two potential practice areas were excluded from ongoing consideration at the working group’s first meeting: criminal and immigration. The bases for these exclusions, as well as others that the CPPWG ultimately determined were appropriate to exclude, are outlined in the Excluded Practice Areas section.

### Included for Ongoing Consideration

A number of practice areas were designated for ongoing consideration. Subcommittees were appointed to research each of these practice areas and make recommendations regarding the specific topics and tasks to be included in the program.

### Wobblers

The majority of practice areas were identified as “wobblers,” requiring additional research before a recommendation could be made regarding their inclusion or exclusion. Subcommittees were appointed to research each of these practice areas in order to make a recommendation as to whether they should be included for, or excluded from, ongoing consideration.

Table 15 provides a summary of initial decisions regarding practice areas, as well as the types of legal needs or problems encompassed by each practice area, based on data from the CJGS survey and court self-help centers.

**Table 15. Practice Areas Initial Decisions**

Exclude	Include	Wobblers
<ul style="list-style-type: none"> <li>• Criminal</li> <li>• Immigration</li> </ul>	<ul style="list-style-type: none"> <li>• Consumer Debt               <ul style="list-style-type: none"> <li>○ Creditor harassment</li> <li>○ Unfair or deceptive lending practices</li> <li>○ Utility shutoff due to nonpayment</li> </ul> </li> <li>• Employment               <ul style="list-style-type: none"> <li>○ Unfair termination</li> <li>○ Unsafe/unhealthy working conditions</li> <li>○ Workplace grievance</li> </ul> </li> <li>• Family, Children, and Custody               <ul style="list-style-type: none"> <li>○ Domestic violence</li> <li>○ Divorce or separation</li> <li>○ Elder abuse</li> <li>○ Child support</li> <li>○ Custody/visitation</li> <li>○ Child protective services investigation</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Collateral Criminal               <ul style="list-style-type: none"> <li>○ Expungements</li> <li>○ Reclassification of convictions</li> <li>○ Infractions</li> </ul> </li> <li>• Estates and Trusts               <ul style="list-style-type: none"> <li>○ Wills drafting or revision</li> <li>○ Living will or advance directive</li> <li>○ Trusts</li> <li>○ Conservatorships and Guardianships</li> <li>○ Power of attorney</li> </ul> </li> <li>• General Civil               <ul style="list-style-type: none"> <li>○ Civil harassment</li> <li>○ Enforcement of judgments</li> <li>○ Consumer protection</li> </ul> </li> <li>• Health               <ul style="list-style-type: none"> <li>○ Insurance that does not cover necessary services</li> <li>○ Medical billing issues</li> </ul> </li> </ul>

Exclude	Include	Wobblers
		<ul style="list-style-type: none"> <li>○ Not informed about financial assistance or free health care</li> <li>● Housing and Home Ownership <ul style="list-style-type: none"> <li>○ Landlord-tenant dispute (lease terms or rules, repairs)</li> <li>○ Unsafe rental conditions</li> <li>○ Problems with selling or buying property, including problems with deed or title</li> </ul> </li> <li>● Income Maintenance <ul style="list-style-type: none"> <li>○ Denial or termination of public benefits</li> <li>○ Repayment of overpaid SSI, SSDI, or Social Security survivor benefits</li> <li>○ Denial or termination of SSI</li> </ul> </li> <li>● Veterans Advocacy <ul style="list-style-type: none"> <li>○ Denial of Veterans Administration (VA) benefits</li> <li>○ Difficulty with reinstatement to job after discharge or return from deployment</li> <li>○ Discharge status issues</li> </ul> </li> </ul>

Subcommittees were appointed to study each of the included and wobbler practice areas. Subcommittee membership is provided in table 16.

**Table 16. Practice Area Subcommittees**

Practice Area	Subcommittee Members
Collateral Criminal	Sharon Bashan Hon. Erica Yew
Consumer Debt	Julia Brynelson Steven Fleischman Stephen Hamilton Amos Hartston Nicole Robinson <sup>16</sup> Carolyn Shining Hon. Erica Yew
Employment	Steven Fleischman Carolyn Shining Ira Spiro Hon. Erica Yew

<sup>16</sup> Ms. Robinson joined the Consumer Debt and Health Subcommittees in December 2020.

Practice Area	Subcommittee Members
Estates and Trusts	Stephen Hamilton Elizabeth Olvera
Family, Children, and Custody	Sharon Bashan Stephen Hamilton Dana McRae Elizabeth Olvera Fariba Soroosh Hon. Monica Wiley <sup>17</sup>
General Civil	Steven Fleischman Hon. Erica Yew
Health	Dana McRae Nicole Robinson <sup>16</sup> Carolyn Shining
Housing	Hon. Michael Harper <sup>18</sup> Julianne Fellmeth Amos Hartston <sup>18</sup> Fariba Soroosh <sup>18</sup> Ira Spiro
Income Maintenance	Steven Fleischman Carolyn Shining Ira Spiro Hon. Erica Yew
Veterans	Julia Brynelson Amos Hartston

## EXCLUDED PRACTICE AREAS

### Immigration

Although immigration was identified as an area of significant need in the CJGS, the CPPWG decided that it should not be included in the program, citing a lack of jurisdiction by the state to authorize representation in federal courts.

### Criminal

Defendants in criminal proceedings are entitled to court-appointed counsel, rendering paraprofessional assistance unnecessary.

- “Collateral criminal,” including expungement and reclassification of convictions, and representation in infraction proceedings, was considered for inclusion, as a right to counsel is not provided in these matters.

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<sup>17</sup> Judge Wiley joined the Family, Children, and Custody Subcommittee in January 2021.

<sup>18</sup> Judge Harper, Mr. Hartston, and Ms. Soroosh joined the Housing Subcommittee in March 2021.

## WOBLER PRACTICE AREAS

### Estates and Trusts

The Estates and Trusts Subcommittee reviewed data from the CJGS survey, which identified topics included in the estates and trusts practice area, as shown in table 15. The subcommittee also reviewed data from a survey of California Association of Legal Document Assistants members regarding the services Legal Document Assistants (LDAs) provide to clients. LDAs reported, under the category of probate and estate planning, that their services include assistance with conservatorships and guardianships.

The Estates and Trusts Subcommittee diverged in its recommendations regarding inclusion of this practice area. Estate planning was an area identified by one member of the subcommittee, as well as by some members of the public who provided comment, in which paraprofessionals could play an important role in ensuring that less affluent homeowners have access to affordable services to help preserve their family homes. The other member cited a lack of data showing the need for such services; the fact that this practice area is not included among any other state's practice areas; and the complexity of this area, among other factors, in recommending that the program exclude estates and trusts. At its meeting on June 30, 2020, the CPPWG adopted a recommendation to exclude estates and trusts from ongoing consideration, but recommended that guardianship and conservatorship be considered during discussions of the family, children, and custody practice area.

A detailed discussion regarding the basis for these recommendations is found in the Estates and Trusts Subcommittee memo submitted to the CPPWG on June 30, 2020, which is provided in Appendix F.

### Health

While the health practice area was initially included for ongoing consideration, the Health Subcommittee ultimately recommended that the program not include this practice area. In its research, the Health Subcommittee learned that Health Consumer Alliances (HCAs), which are funded by grants from the Department of Managed Healthcare and Covered California, among other sources, provide free assistance to consumers in the health-related legal needs areas identified in the CJGS, regardless of consumer income. At its April 19, 2021, meeting, the CPPWG adopted the Health Subcommittee's recommendation to exclude this practice area from the program, as well as recommendations that the State Bar assist in publicizing the availability of HCAs, the Department of Managed Health Care, and the Department of Insurance; and that the State Bar support the efforts of the HCAs to require that information about their availability is included on notices from medical insurers and health care providers.

A detailed discussion regarding the basis for these recommendations is found in Health Subcommittee memos submitted to the CPPWG on June 30, 2020, and April 19, 2021, which are provided in Appendix F.

## **Veterans Advocacy**

The two-person Veterans Subcommittee considered CJGS survey data, which indicated that survey respondents reported problems, including denial of service-related benefits and problems with getting a job back after discharge and with their discharge status. The Veterans Subcommittee's research found that, through Veterans Services Organizations (VSOs) available in each county, nonlawyers may be accredited, pursuant to existing VA rules and procedures, to assist veterans with these issues. The Veterans Subcommittee also received guidance from the State Bar Office of General Counsel, advising that California does not have the authority to authorize nonlawyers to provide legal services in federal proceedings.

At its meeting on June 30, 2021, CPPWG adopted the Veterans Subcommittee's recommendation to exclude this practice area from the program, based on its findings that there are nonlawyer service providers available to assist veterans and that the state lacks jurisdiction to authorize nonlawyers to provide services in federal proceedings. The CPPWG also adopted a recommendation that the State Bar convene VSOs, legal aid organizations, and pro bono attorneys who are currently providing legal services to veterans, to discuss ways in which the State Bar can: (1) increase awareness of available services; (2) increase the number of attorneys providing pro bono legal services to veterans; (3) provide additional resources and trainings; and (4) potentially recruit nonlawyer volunteers interested in veterans advocacy as authorized by the VA and the Department of Defense.

A detailed discussion regarding the basis for these recommendations is found in the Veterans Subcommittee memo submitted to the CPPWG on June 30, 2020, which is provided in Appendix F.

## **INCLUDED PRACTICE AREAS**

As discussed above, subcommittees were appointed to research each of the practice areas that were included for ongoing consideration, and to make recommendations regarding the topics and tasks to be authorized within each practice area. Following is a discussion of the recommendations from each practice area subcommittee.

### **Collateral Criminal**

Collateral criminal was among the wobbler practice areas requiring an initial recommendation regarding whether it should be included for ongoing consideration. Initial research on this practice area was undertaken by one CPPWG member rather than a subcommittee. This member consulted with subject matter experts, including criminal court judges, and staff at legal services organizations, law school legal clinics, and Public Defender's Offices that provide assistance with criminal record clearing. At its meeting on June 30, 2020, CPPWG adopted the member's recommendation to include this practice area for ongoing consideration.

After the June 30 meeting, a subcommittee was appointed, with a second member joining to assist in research and consideration of this topic. The Collateral Criminal Subcommittee learned that there is widespread need for assistance with criminal record expungement and

reclassification of convictions,<sup>19</sup> and a scarcity of legal advocates who provide this assistance.<sup>20</sup> The subcommittee also learned about an interactive tool developed by The Access Project (TAP) designed to limit errors in the preparation and filing of these cases. In the course of its research, the Collateral Criminal Subcommittee was advised that a significant portion of people charged with traffic-related and other infractions are unrepresented at both arraignment and trial, and might benefit from assistance that a trained paraprofessional could provide. The Collateral Criminal Subcommittee determined that this practice area was appropriate for licensed paraprofessionals. At its meeting on August 25, 2020, CPPWG adopted recommendations from the Collateral Criminal Subcommittee to include the topics and tasks shown in table 17.

**Table 17. Collateral Criminal Topics and Tasks**

Topic	Tasks
Record Clearance (Expungement and Reclassification of Convictions)	<ul style="list-style-type: none"> <li>• Client intake</li> <li>• Client retainer/engagement</li> <li>• Run Live Scan or assist client with obtaining court records</li> <li>• Ensure client is no longer on probation</li> <li>• Check on outstanding fines and fees</li> <li>• Check applicable code sections to determine eligibility for expungement, reduction, or other clean slate remedy</li> <li>• Prepare appropriate petitions and proposed orders by county and remedy (determine if petitions are mandatory or discretionary)</li> <li>• Prepare the declaration</li> <li>• Prepare the proposed order</li> <li>• Determine if a record clearance is needed in addition to the expungement</li> <li>• File the petition and get a court date</li> <li>• Serve the District Attorney</li> <li>• Appear in court if necessary</li> <li>• Obtain a copy of the order and send to the U.S. Department of Justice to get RAP changed</li> </ul>
Infractions	<ul style="list-style-type: none"> <li>• Client intake</li> <li>• Client retainer agreement</li> <li>• Obtain a copy of the citation</li> <li>• Determine hearing date</li> <li>• Meet with client to determine what happened and what the client wants to do</li> </ul>

<sup>19</sup> Proposition 47, approved by California voters in 2014, reclassified certain offenses from felonies to misdemeanors, and authorized people convicted of felony offenses that would have qualified as misdemeanors under the proposition to apply to have their convictions reclassified. The deadline to petition for relief is November 2021; if the deadline is extended beyond the time the paraprofessional program is implemented, this practice area is recommended for program inclusion

<sup>20</sup> Although Public Defender’s offices in some counties appear to be providing these services, there is no statewide consistency or uniformity in the availability of these services free of charge.

Topic	Tasks
	<ul style="list-style-type: none"> <li>• Explain the outcome to the client and steps the client needs to take to comply with court's decision</li> <li>• Appear in court if necessary</li> </ul>

The CPPWG also adopted the Collateral Criminal Subcommittee's recommendation that the State Bar research and consider supporting a portal that TAP recently created and launched, which helps guide pro bono service providers through each step required to file for expungement and reclassification of convictions.

Detailed discussions regarding the basis for these recommendations are found in the Collateral Criminal Subcommittee memos submitted to the CPPWG on June 30 and August 25, 2020, which are provided in Appendix F.

### General Civil

General civil was among the wobbler practice areas, requiring an initial recommendation regarding whether this area should be included for ongoing consideration. In its deliberations, the two-person General Civil Subcommittee considered data regarding self-represented litigants, CAPA (described above) and information from judges who hear civil cases. At its meeting on June 30, 2020, CPPWG adopted the General Civil Subcommittee's recommendation to include a limited number of topics within the general civil practice area for ongoing consideration, as shown in table 18.

**Table 18. General Civil Topics for Ongoing Consideration**

General Civil Topics
<ul style="list-style-type: none"> <li>• Civil harassment</li> <li>• Enforcement of judgments</li> <li>• Debt collection</li> <li>• Wage and hour claims</li> </ul>

A detailed discussion regarding the basis for these recommendations is found in the General Civil Subcommittee memo submitted to the CPPWG on June 30, 2020, which is provided in Appendix F.

### Consumer Debt

Consumer debt was one of the practice areas identified for program inclusion at the CPPWG's meeting on April 21, 2020. The six-person subcommittee appointed to research this topic reviewed CJS data regarding the legal needs identified within this practice area. The Consumer Debt Subcommittee consulted with subject matter experts, including representatives of legal services organizations, consumer advocacy organizations, and private practice attorneys who represent consumers.

The Consumer Debt Subcommittee also consulted with a justice from the Utah Supreme Court, who explained that Limited Licensed Legal Practitioners (LLLP) in Utah are authorized to provide representation in consumer finance matters, within the statutory limit for small claims court. Additionally, the Administrative Director of the Courts in Arizona reported that the Arizona LLLP program will allow LLLPs to provide representation in any civil matter, including consumer debt cases.

At its meeting on August 25, 2020, the CPPWG adopted initial recommendations from the Consumer Debt Subcommittee, which were based on factors including complexity, consequences of error, and overlapping federal court jurisdiction, that the program exclude consumer debt topics listed in table 19.

**Table 19. Consumer Debt Topics Excluded from Ongoing Consideration**

Excluded Consumer Debt Topics
<ul style="list-style-type: none"><li>• Bankruptcy</li><li>• Identity theft</li><li>• Unfair or deceptive lending practices</li><li>• Problems with credit repair services</li><li>• Payday/short-term lenders</li><li>• Fines and fees from criminal or juvenile cases</li><li>• Car repossession or defect/warranty issues</li></ul>

A detailed discussion regarding the basis for these recommendations is found in the Consumer Debt Subcommittee memo submitted to the CPPWG on August 25, 2020, which is provided in Appendix F.

### **Consumer Debt & General Civil**

Subsequent to the CPPWG’s meeting on October 29, 2020, the Consumer Debt and General Civil Subcommittees were combined into one subcommittee to consider the remaining topics within these practice areas:

- Representation of debtors in enforcement of judgment proceedings and advice and representation related to debt collection
- Wage and hour claims
- Civil harassment
- Creditor harassment
- Enforcement of small claims court judgments
- Representation of creditors in wage and hour claims in limited jurisdiction cases
- Wage garnishment
- Utility shutoffs due to nonpayment

At its initial meeting, the Consumer Debt & General Civil Subcommittee referred the topic of civil harassment to the Family, Children, and Custody Subcommittee, for consideration along

with the other violence prevention topics. Wage and hour claims were referred to the Employment & Income Maintenance Subcommittee for its consideration.

The Consumer Debt & General Civil Subcommittee consulted with subject matter experts, including a judge, representatives of a DA’s office, representatives of legal services organizations, and private practitioners who provide representation in consumer debt matters. They also considered information provided by a consumer advocacy organization that provides assistance to consumers experiencing utility shutoffs.

At its meeting on April 19, 2021, CPPWG adopted initial recommendations provided by the Consumer Debt & General Civil Subcommittee regarding the topics to be included in this practice area, as shown in table 20.

**Table 20. Consumer Debt & General Civil – April 19, 2021<sup>21</sup>**

Topic	Tasks
Consumer Debt	Representation of individual debtors in limited jurisdiction consumer debt proceedings, except for: <ul style="list-style-type: none"> <li>○ Responding to or preparing dispositive motions including anti-SLAPP (strategic lawsuit against public participation) motions and motions for summary judgment</li> <li>○ Participating in trial setting or pretrial conferences</li> <li>○ Representing clients in jury trials and bench trials</li> </ul>
Creditor Harassment	<ul style="list-style-type: none"> <li>● Included               <ul style="list-style-type: none"> <li>○ Prelitigation cease-and-desist and prove-up letters</li> <li>○ Prelitigation negotiation of settlements, including payment plans</li> </ul> </li> <li>● Excluded               <ul style="list-style-type: none"> <li>○ All superior court litigation</li> </ul> </li> </ul>

During the meeting on April 25, 2021, concerns were raised regarding some of the adopted recommendations. The Consumer Debt & General Civil Subcommittee conducted further research, and its revised recommendations, provided in table 21, were adopted by the CPPWG at its meeting on June 25, 2021.

**Table 21. Consumer Debt & General Civil – Final**

Topic	Tasks
Consumer Debt and Creditor Harassment	<ul style="list-style-type: none"> <li>● Included               <ul style="list-style-type: none"> <li>○ Prelitigation cease-and-desist and prove-up letters</li> <li>○ Prelitigation negotiation of settlements, including payment plans</li> </ul> </li> <li>● Excluded               <ul style="list-style-type: none"> <li>○ All superior court litigation</li> </ul> </li> </ul>

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<sup>21</sup> These recommendations were superseded by recommendations adopted by the CPPWG at its meeting on June 25, 2021, as shown in table 21.

Enforcement of Judgments	<ul style="list-style-type: none"> <li>• Included <ul style="list-style-type: none"> <li>○ Representation of natural persons in enforcement of small claims court judgments</li> <li>○ Representation of natural persons in limited jurisdiction post-judgment enforcement proceedings</li> </ul> </li> </ul>
Name and Gender Change	<ul style="list-style-type: none"> <li>• Full assistance</li> </ul>

Detailed discussions regarding the basis for these recommendations are found in the Consumer Debt & General Civil Subcommittee memos submitted to the CPPWPG on April 19 and June 25, 2021, which are provided in Appendix F.

**Income Maintenance**

Income maintenance was among the wobbler practice areas requiring an initial recommendation about whether this area should be included for ongoing consideration. The four-person Income Maintenance Subcommittee reviewed the types of problems identified in this category in the CJGS, which are listed under Income Maintenance in table 3. Subcommittee members consulted with subject matter experts, including the director of an unemployment law clinic and a judge from the Workers’ Compensation Appeals Board. They also reviewed the administrative process for filing and appealing for public benefits. At its meeting on June 30, 2020, the CPPWG adopted the Income Maintenance Subcommittee’s recommendations to include representation at public benefits administrative agency proceeding in the program.

A detailed discussion regarding the basis for these recommendations is in the Income Maintenance Subcommittee memo submitted to the CPPWG on June 30, 2020, which is provided in Appendix F.

**Employment**

Employment was one of the practice areas identified for inclusion at the meeting on April 21, 2020. In developing its recommendations, the four-person Employment Subcommittee reviewed the types of problems identified in this category in the CJGS, listed under Employment in table 3. The Employment Subcommittee consulted subject matter experts, including legal services providers who assist employees, private practitioners who represent employees, and private practitioners who represent employers. A number of employment topics were identified as involving complex legal issues, some with potential remedies in federal court, in which paraprofessionals would not be authorized to practice. Several of the subject matter experts recommended against allowing paraprofessionals to provide representation in any aspect of employment law absent attorney supervision. Initial recommendations from the Employment Subcommittee addressed only those areas that would be excluded from the Program; remaining topics were considered during subsequent meetings. At its meeting on August 25, 2020, the CPPWG adopted recommendations that the program exclude employment topics listed in table 22.

**Table 22. Employment Topics Excluded from Ongoing Consideration**

Excluded Employment Topics
<ul style="list-style-type: none"> <li>• Unfair termination</li> <li>• Unsafe working conditions</li> <li>• Sexual harassment</li> <li>• Workers’ compensation</li> <li>• Workplace grievances</li> <li>• Workplace accommodations</li> </ul>

A detailed discussion regarding the basis for these recommendations is found in the Employment Subcommittee memo submitted to the CPPWG on August 25, 2020, which is provided in Appendix F.

**Employment & Income Maintenance**

Subsequent to the meeting on October 29, 2020, the separate Employment and Income Maintenance Subcommittees, each of which had comprised the same CPPWG members, agreed to consider the remaining topics within both practice areas, including wage and hour claims before the Division of Labor Standards Enforcement (DLSE); unemployment insurance benefit hearings before the EDD; and other public benefits administrative hearings. In developing its recommendations, the Employment & Income Maintenance Subcommittee consulted with subject matter experts, including a superior court judge; private practitioners who represent employers and those who represent employees in wage and hour claims; directors of law school clinical programs in employment law; and a former State Labor Commissioner. At its meeting on April 19, 2021, CPPWG adopted the recommendations from the Employment & Income Maintenance Subcommittee to include the topics and tasks shown in table 23.

**Table 23. Employment & Income Maintenance Topics and Tasks**

Topic	Tasks
Administrative Agency Proceedings	<ul style="list-style-type: none"> <li>• DLSE                             <ul style="list-style-type: none"> <li>○ Wage and hour proceedings</li> </ul> </li> <li>• EDD                             <ul style="list-style-type: none"> <li>○ Unemployment insurance proceedings</li> </ul> </li> <li>• Public Benefit Proceedings</li> </ul>
Enforcement of Judgments	<ul style="list-style-type: none"> <li>• DLSE wage and hour judgments                             <ul style="list-style-type: none"> <li>○ Limited jurisdiction superior court proceedings</li> </ul> </li> </ul>

A detailed discussion regarding the basis for these recommendations is found in the Employment & Income Maintenance Subcommittee memo submitted to the CPPWG on April 19, 2021, which is provided in Appendix F.

## Family, Children, and Custody

Family, Children, and Custody was one of the practice areas identified for inclusion at the meeting on April 21, 2020. The six-person Family, Children, and Custody Subcommittee included two members with significant familiarity with this practice area: the director of a court self-help center and a certified family law specialist. In considering the initial topics and tasks for this practice area, including dissolution, property division, child custody and visitation, child and spousal support, and violence prevention, the Family, Children, and Custody Subcommittee drew on these members' experience. The subcommittee also reviewed information about the topics included in family law specialization examinations and the scope of allowed practice in family law in other states' paraprofessional programs. While the Family, Children, and Custody Subcommittee initially undertook to develop an exhaustive list of tasks that would be allowed or excluded from the Program, it determined that providing a list of excluded tasks was preferred. Inadvertent omission of a task from the list could lead to ambiguity regarding whether a licensed paraprofessional was authorized to perform that task.

In considering additional topics that fell under their purview—including adoption, guardianship, conservatorship, child welfare, and elder abuse—the Family, Children, and Custody Subcommittee consulted with subject matter experts, including representatives of legal services organizations, a court probate examiner, a private practitioner who represents parties in conservatorships, and a representative of the Academy of California Adoption Lawyers. The Family, Children, and Custody Subcommittee's recommendations initially included allowing paraprofessionals to provide limited assistance in child welfare proceedings, including providing assistance with prefiling investigation by Child Protective Services; modifications after a case is closed; and assistance for parties not entitled to court-appointed counsel in dependency proceedings. After further research, this topic was not included in the Family Law Subcommittee's final recommendations.

At its meetings on June 10 and June 25, 2021, the CPPWG adopted the recommendations from the Family, Children, and Custody Subcommittee to include the topics and tasks shown in table 24.

**Table 24. Family, Children, and Custody Topics and Tasks**

Topic	Tasks
<p>Family</p> <ul style="list-style-type: none"> <li>• Dissolution/separation</li> <li>• Paternity</li> <li>• Child and spousal support</li> <li>• Custody and visitation</li> <li>• Property division</li> </ul>	<p><b>Excluded Tasks</b></p> <ul style="list-style-type: none"> <li>• Nullity matters               <ul style="list-style-type: none"> <li>○ Petitions based on incest, unsound mind, fraud, force, and/or physical incapacity</li> <li>○ Putative spouse establishment</li> <li>○ Division of quasi-marital property</li> </ul> </li> <li>• Petition to establish parental relationship involving FC § 7612(b) or (c)</li> <li>• Child custody and visitation involving Hague Convention or UCCJEA</li> <li>• QDRO</li> <li>• Spousal or domestic partner support in long-term marriages, as defined by FC § 4336, unless included in a marital settlement agreement that does not terminate or set nonmodifiable spousal support</li> </ul>

Topic	Tasks
	<ul style="list-style-type: none"> <li>• Discovery               <ul style="list-style-type: none"> <li>○ Oral depositions</li> <li>○ Expert discovery</li> <li>○ Related motions</li> </ul> </li> <li>• Premarital/postmarital agreements</li> <li>• Marvin actions (palimony)</li> <li>• Contempt actions</li> </ul>
Adoption <ul style="list-style-type: none"> <li>• Limited to uncontested cases</li> </ul>	<b>Excluded Tasks</b> <ul style="list-style-type: none"> <li>• Adoptions arising from dependency petitions</li> <li>• Adoptions where the child has been identified as protected by the Indian Child Welfare Act</li> </ul>
Conservatorship and Guardianship <ul style="list-style-type: none"> <li>• Limited to uncontested cases</li> </ul>	<b>Excluded Tasks</b> <ul style="list-style-type: none"> <li>• Guardianships established in dependency court for parties entitled to court-appointed counsel</li> </ul>
Violence Prevention <ul style="list-style-type: none"> <li>• Civil harassment</li> <li>• Domestic violence</li> <li>• Elder or dependent adult abuse</li> <li>• Gun violence</li> <li>• Workplace violence</li> </ul>	<b>Excluded Tasks</b> <ul style="list-style-type: none"> <li>• In-court representation for domestic violence hearings involving children</li> <li>• Introduction or cross-examination of expert witnesses</li> </ul>
Court-Appointed Counsel	<b>Excluded Activity, for All Cases</b>

Detailed discussion regarding the basis for these recommendations are found in the Family, Children, and Custody Subcommittee memos submitted to the CPPWG on the following dates, which are provided in Appendix F.

- August 25, 2020
- December 17, 2020
- February 26, 2021
- April 19, 2021
- June 10, 2021
- July 26, 2021

## Housing

Housing was among the wobbler practice areas, requiring an initial recommendation regarding whether it should be included for ongoing consideration. The two-person Housing Subcommittee appointed to make a recommendation in this regard reviewed the types of problems identified in this category in the CJGS, which are listed under the Housing category in table 3. The Housing Subcommittee also reviewed data from a number of reports on efforts to assist unrepresented parties in unlawful detainer cases. At its meeting on June 30, 2020, the CPPWG adopted the Housing Subcommittee’s recommendation to include the following topics for ongoing consideration: evictions and unlawful detainer proceedings; and homeownership issues related to clearing title, except for representation in quiet title actions.

Subsequent to the meeting on June 30, 2020, three additional CPPWG members joined the Housing Subcommittee, which considered the topics identified for ongoing consideration. In researching the topic of evictions and unlawful detainer proceedings, the Housing Subcommittee consulted with subject matter experts. These include representatives from legal services organizations that assist tenants in eviction cases; a representative of a right-to-counsel organization, which advocates for guaranteed counsel for parties in unlawful detainer cases; and a judge who presides over unlawful detainer cases. At its meetings on June 10 and July 26, 2021, the CPPWG adopted the recommendations from the Housing Subcommittee to include the topics and tasks shown in table 25, as well as additional recommendations included in table 26.

**Table 25. Housing Topics and Tasks**

Topic	Tasks
Landlord-Tenant and Unlawful Detainer (Representation limited to tenants, and landlords who own no more than two units)	<p><b>Included Tasks</b></p> <ul style="list-style-type: none"> <li>• Unlawful detainer</li> <li>• Landlord-tenant disputes               <ul style="list-style-type: none"> <li>○ Small claims assistance</li> </ul> </li> </ul> <p><b>Excluded Tasks</b></p> <ul style="list-style-type: none"> <li>• Unlawful detainer               <ul style="list-style-type: none"> <li>○ Bench or jury trial</li> </ul> </li> <li>• Landlord-tenant disputes               <ul style="list-style-type: none"> <li>○ Superior court litigation (in or out of court)</li> </ul> </li> </ul>
Lien Clearing	<p><b>Included Tasks</b></p> <ul style="list-style-type: none"> <li>• Clearing liens from title, outside of litigation</li> </ul> <p><b>Excluded Tasks</b></p> <ul style="list-style-type: none"> <li>• Representation in quiet title actions</li> <li>• Home ownership or real estate title issues</li> </ul>

**Table 26. Additional Housing Recommendations**

Topic	Recommendations
<b>Required Disclosures</b>	<ul style="list-style-type: none"> <li>• In addition to required disclosures about the availability of a free attorney through a local legal services program to those who qualify, paraprofessionals should be required to advise clients of the availability of a right-to-counsel program, or must certify that no such program exists in their county.</li> <li>• For landlord-tenant matters on behalf of tenants, disclosures should specifically include that paraprofessionals are not licensed to provide in-court representation at trial; and if the case goes to trial, having an attorney is strongly recommended.</li> </ul>

Topic	Recommendations
<b>Support of Right to Counsel Movement</b>	<ul style="list-style-type: none"> <li>• The State Bar should express strong support for establishing and funding a right to counsel in unlawful detainer proceedings, making it clear that paraprofessional licensing in this area is meant to supplement and not undermine establishment and funding of a right to counsel; <ul style="list-style-type: none"> <li>○ A justice gap continues to exist; paraprofessionals will not be authorized to represent litigants at trial, and free attorneys may not be available due to income restrictions placed on right-to-counsel programs, legal services funding, and capacity issues, or because local jurisdictions have not yet implemented or fully funded a right to counsel in their jurisdiction.</li> <li>○ Paraprofessionals may participate with legal services programs to provide free or low-cost legal services.</li> </ul> </li> </ul>

Detailed discussion regarding the basis for these recommendations are found in the Housing Subcommittee memos submitted to the CPPWG on the following dates, which are provided in Appendix F.

- June 30, 2020
- April 19, 2021
- July 26, 2021

## IN-COURT REPRESENTATION

The question of whether paraprofessionals should be able to assist their clients in court was one of the most difficult issues addressed by the CPPWG. The positions voiced by the group’s members and members of the public ranged from allowing paraprofessionals (within the scope of their licensed practice area(s)) to provide full in-court representation to prohibiting any participation in court proceedings.

The CPPWG participated in two facilitated discussions on this topic, during which members considered the following options:

- Full in-court representation;
- Responsive representation – paraprofessionals are authorized to sit at counsel table to support and advise their clients, and may answer direct procedural questions from the judge;
- In-court support – paraprofessionals are authorized to sit at counsel table to support and advise their clients, but are prohibited from responding to questions from the judge; or
- Prohibition on in-court appearances – paraprofessionals not allowed to sit at counsel table.

The following arguments for each of the above positions were advanced by members of the CPPWG, guest speakers, and members of the public.

### **Full In-Court Representation**

- Prohibiting paraprofessionals from advocating in court would fall short of providing full access to justice, as the litigant cannot be expected to have the same command of the materials and familiarity with the forms; therefore, absent full representation, the litigant would be greatly disadvantaged.
- Litigants need their representative, the paraprofessional, to speak for them, as it can be very difficult for individuals to represent themselves in court, especially concerning very personal and highly emotional matters such as child custody or domestic violence restraining orders.
- Cases with self-represented litigants present the greatest challenge for the bench; allowing paraprofessionals to represent parties would result in better hearings and potentially fewer hearings.
- Court reporters are not consistently available for all court proceedings in all court systems throughout the state; having paraprofessionals available would help ensure greater accuracy of orders, leading to increased compliance.
- Nonlawyers are already authorized to represent people in a number of proceedings and, as with lawyers, there are good ones and bad ones. It should not be presumed that a paraprofessional will not represent a client as well as an attorney, as their representation is limited to specific areas in which the paraprofessionals are trained and licensed.

### **Responsive Representation**

While paraprofessionals should not be able to provide full in-court representation, they should be able to provide responsive representation because:

- Appearing in court is always a traumatic experience for litigants. They would benefit from assistance from a well-trained paraprofessional who could help them stay organized in court and ensure that they don't forget any of the requests they wish to make of the court.
  - Particularly in domestic violence cases, having the assistance of a paraprofessional in court could help victims be truly heard.
- It would be helpful to allow paraprofessionals to respond to direct questions from the bench, as a paraprofessional would be in a better position than a client to efficiently provide factual information. It would be an enormous waste of time for the judge to ask questions, the litigant to then confer with the paraprofessional, and then the litigant responds to the judge.
- Judges would be likely to pose direct questions to paraprofessionals sitting at counsel table; it would be awkward for paraprofessionals to be prohibited from providing a response.

## **In-Court Support**

The following arguments were advanced by those who believe that paraprofessionals should not have an active role in court appearances, but their presence could help support their clients in the courtroom:

- Allowing paraprofessionals to speak in court would create political barriers to program implementation due to opposition from stakeholders and constituents.
- Licensing requirements for paraprofessionals are not sufficient to ensure they are competent to speak in court on their clients' behalf.

## **Prohibition on In-Court Appearances**

- Paraprofessionals would not be able to achieve the level of competency required to appear in court.
- Allowing nonlawyers to appear in court would threaten the public's trust and confidence in the courts.
- Allowing paraprofessionals to make any court appearances would create political barriers to program implementation, due to opposition from stakeholders and constituents.
- It would not be clear to the public (and at times maybe to other parties) that the paraprofessional is not an attorney with no limitations on scope of practice areas.

## **Recommendation**

After extensive discussion and debate informed by background material and the ability to hear from a range of individuals involved with paraprofessional programs, the CPPWG voted to adopt a default position that paraprofessionals may provide full in-court representation, with a complete prohibition on jury trials. The CPPWG's default position could be modified in regard to a particular practice area based on a recommendation from that practice area subcommittee.

This resolution was adopted by the CPPWG on March 26, 2021, with the following votes:

Yes: 12

No: 4

Abstain: 0

Absent: 2

The CPPWG also agreed separately that all in-court representation shall be limited to trial court appearances and shall not include appearances or filing notices of appeal in any appellate court, including the appellate division of any superior court.

Practice area subcommittee recommendations to modify the default position regarding in-court representation, which were adopted by the CPPWG on April 19, and June 10, 2021, are provided in table 27.

**Table 27. Practice Area Modifications to Full In-Court Representation**

Practice Area	Modification
Consumer Debt & General Civil	Consumer Debt and Creditor Harassment <ul style="list-style-type: none"> <li>• All superior court litigation is excluded</li> </ul>
Family, Children, and Custody	Family <ul style="list-style-type: none"> <li>• Hearings on emergency custody or visitation requests when a judge has granted temporary emergency orders               <ul style="list-style-type: none"> <li>○ Paraprofessionals may not provide in-court representation, but are authorized to sit at counsel table to support and advise their client, and may answer direct procedural questions from the judge.</li> </ul> </li> </ul> Violence Prevention <ul style="list-style-type: none"> <li>• Domestic violence hearings involving children               <ul style="list-style-type: none"> <li>○ Paraprofessionals may not provide in-court representation, but are authorized to sit at counsel table to support and advise their client, and may answer direct procedural questions from the judge.</li> <li>○ If expert witness testimony will be introduced, paraprofessionals are prohibited from introducing or cross-examining expert witnesses.</li> </ul> </li> </ul>
Housing	Unlawful Detainer <ul style="list-style-type: none"> <li>• Paraprofessionals may not provide in-court representation in bench or jury trials               <ul style="list-style-type: none"> <li>○ Paraprofessionals may provide in-court representation for motion hearings and default prove-ups;</li> <li>○ During trials, paraprofessionals may assist their clients by sitting at counsel table, to provide advice and guidance, and may respond to direct questions from the judge.</li> </ul> </li> <li>• Aside from unlawful detainer matters and small claims assistance, paraprofessionals may not represent or assist clients in court or out of court in superior court litigation in landlord-tenant disputes.</li> </ul>

## LICENSING REQUIREMENTS

The CPPWG appointed a Licensing Subcommittee, as shown in table 28, which was charged with recommending licensing requirements for the program.

**Table 28. Licensing Subcommittee Members**

Licensing Subcommittee
Julia Brynelson
Stephen Hamilton
Hon. Michael Harper <sup>22</sup>
Claudia Torres-Ambriz <sup>23</sup>

Recommendations for licensing requirements include eligibility, education, practical/experiential training, practice-area specific testing, and a moral character determination process. After satisfying all licensing requirements, including passing relevant exams and receiving a positive moral character determination, candidates will be licensed by the State Bar to provide services in the practice area(s) for which they have been deemed qualified. The Licensing Subcommittee considered each of these requirements in light of the goal of encouraging broad program participation while ensuring public protection. In making its recommendations, the Licensing Subcommittee was informed by licensing requirements in other jurisdictions, education and training requirements for California paralegals and LDAs, and curricular requirements for paralegal education programs. The Licensing Subcommittee was particularly mindful of the experience of Washington’s LLLT program, which was sunset in part due to low numbers of candidates seeking LLLT licensure and the resulting high costs of LLLT program administration. Review of media coverage and discussions with those familiar with the Washington State program suggest that the extensive and expensive educational and experiential requirements may have impacted participation.

Unlike attorneys, who receive a general license to practice in any area of law, paraprofessionals would be licensed in specific practice areas, each of which have specific educational, experiential, and testing requirements. Recommendations for eligibility, education, practical training, testing, and moral character evaluation are designed to ensure competent practice without being so onerous as to discourage participation.

### ELIGIBILITY

The Licensing Subcommittee’s initial recommendation was to limit eligibility for program participation to (1) graduates with JD degrees from ABA approved or California accredited law schools; or (2) paralegals qualified pursuant to [Business and Professions Code section 6450\(c\)](#). These prerequisites were intended to ensure that program applicants had undergone significant relevant education prior to Program entry. The initial recommendation was subsequently expanded to include (1) law school graduates with LLM degrees; (2) graduates

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<sup>22</sup> Judge Harper joined the Licensing Subcommittee in January 2021.

<sup>23</sup> Claudia Torres-Ambriz joined the Licensing Subcommittee in December 2020.

from California registered law schools; and (3) LDAs qualified pursuant to [Business and Professions Code section 6402.1\(b\)](#).

The recommendation to include those with LLM degrees was informed by a review of curricular requirements for LLM and MSL degrees at a number of law schools. While the LLM degree was determined to provide an education that prepared graduates to sit for the bar exam and practice law, MSL programs provide a legal education for people who are interested in learning about the legal system but do not intend to practice law. As such, graduates with LLM degrees are recommended for inclusion, while graduates with MSL degrees are not.

The recommendation to expand eligibility to graduates of California registered law schools was informed by a review of bar exam pass rates; data presented by the State Bar Office of Research and Institutional Accountability showed that, while graduates from ABA-approved law schools pass the exam at substantially higher rates than do graduates from non-ABA schools, there is not a significant difference between pass rates for graduates from California accredited and California registered law schools. Based on this data, the Licensing Subcommittee found no basis to exclude graduates from California registered law schools from the program.

The recommendation to include specified LDAs was based on information provided by CPPWG member Elizabeth Olvera, who expressed a view that LDAs, who have been providing self-help services to their clients for many years, would be a valuable addition to the program. The Licensing Subcommittee reviewed the eligibility requirements for LDAs specified in Business and Professions Code section 6402.1. Subdivision (a) allows for participation by those whose education is limited to a high school or general equivalency diploma, which the Licensing Subcommittee did not believe was sufficient for participation in the program; LDAs qualified pursuant to subdivision (c) or (d) would already qualify for program participation by virtue of being a qualified paralegal. Subdivision (b) requires a bachelor's degree and one year of law-related experience under the supervision of an attorney. Based on this review of the various ways in which individuals can qualify to serve as LDAs, the CPPWG adopted the Licensing Subcommittee's recommendation to expand eligibility to include LDAs qualified pursuant to Business and Professions Code section 6402.1(b). At its meeting on June 25, 2021, the CPPWG adopted the Licensing Subcommittee's recommendations for program eligibility shown in table 29.

**Table 29. Program Eligibility Requirements**

Eligibility Requirements
<ul style="list-style-type: none"><li>• JD or LLM from ABA or California accredited or registered law school; or</li><li>• Paralegal qualified pursuant to <a href="#">Business and Professions Code § 6450(c)</a>; or</li><li>• Legal Document Assistant qualified per <a href="#">Business and Professions Code § 6402.1(b)</a><sup>24</sup></li></ul>

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<sup>24</sup> The CPPWG recommends that applicants admitted to the Program pursuant to this criterion would not be eligible for a waiver of educational or experience requirements.

## EDUCATION

In developing recommendations for educational requirements for the program, the Licensing Subcommittee was mindful of the need to strike a balance between consumer protection and program viability. The Licensing Subcommittee recommended adoption of universal educational requirements for all paraprofessionals, as well as subject matter-specific requirements for each licensed practice area. Universal requirements will provide the basic underpinnings of paraprofessional education, providing the knowledge required for all practitioners. Importantly, these universal requirements include one unit in trauma-informed representation. This recommendation acknowledges the reality that effectively dealing with clients who are experiencing traumatic situations, as well as dealing with one’s own professional trauma, is increasingly important to effective and competent practice.

Practice area requirements are designed to ensure that practitioners have the specific tools needed to provide competent services in their licensed practice area(s). The Family, Children, and Custody Subcommittee developed practice area educational requirements, based on the subject matter expertise of its members. Educational requirements for other practice areas were benchmarked to those for the family law practice area, as this area is generally acknowledged to be the most complex of the areas included in the Program. Input was sought from each of the practice area subcommittees in developing these recommendations.

Educational requirements adopted by the CPPWG reflect recommended minimum coursework required for licensure. As discussed in the Program Implementation section below, staff will work with educational partners and subject matter experts to develop the specific curriculum that will ultimately be recommended for adoption by the Oversight Committee.

The CPPWG recommends that most applicants be able to request a waiver of coursework requirements if they can demonstrate completion of the required coursework as part of their law school or paralegal program. This waiver provision does not apply LDAs certified for LDA practice pursuant to [Business and Professions Code section 6402.1 \(b\)](#), since they have not completed a law-related educational program at a law school or paralegal program. At its meeting on August 31, 2021, CPPWG adopted the Licensing Subcommittee’s recommendations regarding the program’s educational requirements, as shown in table 30.

**Table 30. Educational Requirements**

Practice Area	Course	Units <sup>25</sup>
All Practice Areas	Ethics and Professional Responsibility	3
	Pretrial Discovery and Evidence	3
	Court Procedure	3

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<sup>25</sup> Pursuant to [California Code of Regulations, Title 5 § 55002.5](#), one unit of community college credit requires a minimum of 48 hours of student work for colleges operating on the semester system. This time includes classroom instruction and student work outside the classroom. A 3-unit course is equal to 144 hours of student engagement.

Practice Area	Course	Units <sup>25</sup>	
	Court Advocacy	3	
	Trauma-Informed Representation	1	
	<b>Total</b>	<b>13</b>	
Collateral Criminal	Expungement, Reclassification, and Infractions	3	
Consumer Debt & General Civil	Debt Collection and Creditor Harassment	6	
	Enforcement of Judgments [including wage and hour]	3	
	Name and Gender Change	0.5	
	<b>Total</b>	<b>9.5</b>	
Family, Children, and Custody	Family Law and Procedure	6	
	Adoption	2	
	Violence Prevention	2	
	Conservatorship and Guardianship	3	
	<b>Total</b>	<b>13</b>	
Employment & Income Maintenance	Administrative Agency Procedure	3	
Housing	Landlord-Tenant <ul style="list-style-type: none"> <li>• Leases and rental agreements</li> <li>• Security deposits</li> <li>• Types of tenancies</li> <li>• Tenant protections</li> <li>• Housing discrimination and landlord retaliation</li> <li>• Warranty of habitability</li> <li>• Rent control and eviction control</li> <li>• Ground and procedures for nonjudicial termination of tenancies</li> <li>• Unlawful detainer procedure</li> <li>• COVID-19 tenant protection laws and tenant assistance (until such laws expire)</li> <li>• Rental assistance programs</li> <li>• Benefits and risks of demanding a jury trial</li> <li>• Small claims court actions</li> <li>• Subsidized housing and Mobilehomes</li> <li>• Benefits of demanding a jury trial in unlawful detainer cases</li> </ul>	12	
	Lien Clearing	1	
	<b>Total</b>	<b>13</b>	
	<i>With the exception of one unit of paraprofessional Ethics and Responsibility, coursework taken as part of a law school or paralegal program may satisfy the program's educational requirements.</i>		

Detailed discussion regarding the basis for these recommendations are found in the Licensing Subcommittee memo submitted to the CPPWG on August 31, 2021, which is provided in Appendix F.

### PRACTICAL/EXPERIENTIAL TRAINING

Practical experiential training under the supervision of an experienced attorney will ensure that paraprofessionals are adequately prepared prior to providing independent services to clients. In

developing recommendations for this training, the Licensing Subcommittee was mindful of the need to require enough hours to ensure competence without imposing a burden that would preclude broad participation by a diverse pool of Program applicants. Recommendations specify that a significant portion of the experience be in the practice area in which the applicant will be licensed, and that trauma-informed training be required for all applicants. Recommendations regarding requirements for supervising attorneys are also provided.

Members of both the CPPWG and the public voiced concerns that applicants might be required to gain practical experience either for free or with pay insufficient to support themselves. Concerns were also raised that those in less populated areas of the state might face significant difficulties in obtaining the required experience. Both of these factors might negatively impact under-resourced communities. The CPPWG’s recommendations include incentives for attorneys in private practice and in legal services organizations to provide the necessary supervision, and would allow for attorneys to supervise up to five applicants simultaneously. The CPPWG also recommends that work as a paralegal or in a law school clinic prior to entering the program be allowed satisfy the experiential training requirement. At its meeting on February 26, 2021, CPPWG adopted the Licensing Subcommittee’s recommendations regarding practical/experiential training requirements, as shown in table 31, and incentives for supervising attorneys, as shown in table 32.

**Table 31. Practical/Experiential Training Requirements**

Requirements for Students	Requirements for Supervisors
<ul style="list-style-type: none"> <li>• 1,000 hours over a minimum of 6 months</li> <li>• 500 hours must be in practice area in which paraprofessional will be licensed</li> <li>• Must include trauma-informed training</li> </ul> <p><i>Experience working as a paralegal or in a law school clinic may satisfy the experience requirements set out above, subject to certification by the supervising attorney or law clinic instructor that it meets the specified criteria.</i></p>	<ul style="list-style-type: none"> <li>• Active licensee for ≥ 4 years</li> <li>• Provide training and counsel</li> <li>• Assume responsibility for applicant’s activities</li> <li>• Approve and sign documents prepared for clients</li> <li>• Submit written declaration certifying applicant’s experience and training</li> <li>• Supervise ≤ 5 applicants at a time</li> </ul>

**Table 32. Incentives for Supervising Attorneys**

Supervision Incentives
<ul style="list-style-type: none"> <li>• 1 hour CLE per 125 hours of supervision provided               <ul style="list-style-type: none"> <li>○ CLE credit allowed for each person supervised</li> </ul> </li> <li>• Online directory showing attorneys who have provided supervision to licensed</li> </ul>

Supervision Incentives
paraprofessionals <ul style="list-style-type: none"> <li>• Funding provided to legal services programs for paraprofessional internships</li> </ul>

**TESTING**

A paraprofessional licensing exam will require paraprofessionals to demonstrate their knowledge of court procedure and advocacy, discovery and evidence, and professional responsibility, as well as information specific to the area in which they intend to practice. A separate exam will be required for each practice area in which the paraprofessional seeks licensure. Applicants will also be required to pass a professional responsibility exam. At its meeting on February 26, 2021, the CPPWG adopted the Licensing Subcommittee’s recommendations regarding testing requirements, as shown in table 33.

**Table 33. Testing Requirements**

Testing Requirements
<ul style="list-style-type: none"> <li>• Subject matter-specific testing</li> <li>• Professional Responsibility Exam modeled after attorney exam</li> </ul>

**MORAL CHARACTER AND BACKGROUND CHECK**

It is essential that licensed paraprofessionals be held to the same high moral character standards as attorneys. The CPPWG recommends adoption of moral character requirements that mirror those for attorneys, including fingerprinting and background checks. The CPPWG also recommends that applicants who have been disbarred or have resigned with charges pending in any jurisdiction be barred from program participation. At its meeting on February 26, 2021, the CPPWG adopted the Licensing Subcommittee’s recommendations for moral character requirements, as shown in table 34.

**Table 34. Moral Character Requirements**

Moral Character Requirements
<ul style="list-style-type: none"> <li>• Fingerprinting and background check equivalent to attorney requirements</li> <li>• Not disbarred or resigned with charges pending in any jurisdiction</li> <li>• Moral character determination requirements to mirror attorney requirements</li> </ul>

Detailed discussion regarding the basis for each of these recommendations are found in the Licensing Subcommittee memos submitted to the CPPWG on the following dates, which are provided in Appendix F.

- October 29, 2020

- December 17, 2020
- February 26, 2021
- June 25, 2021
- August 31, 2021

## REGULATION

The CPPWG appointed a Regulation Subcommittee, as shown in table 35, which was charged with recommending the program’s regulatory requirements.

**Table 35. Regulation Subcommittee Members**

Regulation Subcommittee
Amos Hartston
Kimberly Kirchmeyer <sup>26</sup>
Fariba Soroosh

In developing its recommendations, the Regulation Subcommittee focused on the need to ensure public protection without imposing burdens so onerous as to jeopardize the program’s viability. The Regulation Subcommittee based its recommendations on a number of sources, including regulatory requirements for California attorneys, regulatory requirements for paraprofessionals in other jurisdictions, and regulatory requirements for other California licensed professionals. Mechanisms to ensure public protection include recommended requirements for financial responsibility, MCLE, proactive regulation, and paraprofessional RPC. Detailed discussions on each of these topics are found in Regulation Subcommittee memos submitted to the CPPWG on the following dates, which are provided in Appendix F:

- October 29, 2020
- December 17, 2020
- February 26, 2021
- August 31, 2021

## FINANCIAL RESPONSIBILITY

The Regulation Subcommittee determined that financial responsibility is an essential part of the Program, and considered several mechanisms for ensuring that persons who suffered financial loss, due to either intentional wrongdoing or unintentional error by a paraprofessional, would have avenues for redress, including a CSF, malpractice insurance, a surety bond, and a restitution fund.

### Client Security Fund

While recommending that paraprofessionals be required to participate in a Client Security Fund modeled on the attorney CSF, the Regulation Subcommittee determined that the CSF alone is not an efficient or sufficient solution for financial responsibility. The CSF does not provide a comprehensive or consumer-friendly opportunity for redress for wrongs suffered; the attorney CSF is not available at all in cases of attorney negligence or malpractice; and final discipline, which can take years to occur, is required before disbursing any CSF payment.

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<sup>26</sup> Ms. Kirchmeyer joined the Regulation Subcommittee in May 2021.

## Malpractice Insurance

While agreeing that malpractice insurance provides valuable protection for clients, there was not a consensus among members of the Regulation Subcommittee with regard to a requirement that paraprofessionals carry malpractice insurance. Malpractice insurance is not required for attorneys and, as a practical matter, may not be available initially for a newly created professional license. The cost is also currently unknown, and the requirement controversial. The Regulation Subcommittee agreed that paraprofessionals should be strongly encouraged to have malpractice insurance, and the State Bar should take steps to encourage insurance companies to make insurance available to licensees at a reasonable cost—such insurance is required for and available to licensed paraprofessional in some jurisdictions. Ultimately, the Regulation Subcommittee did not recommend that paraprofessionals be required to carry malpractice insurance as a condition of licensure.

## Surety Bond

The Regulation Subcommittee’s research found that surety bonds are statutorily required in California for many licensed professionals. Required bond amounts range from \$15,000 for Notary Publics<sup>27</sup> and \$25,000 for LDAs,<sup>28</sup> to \$100,000 for Immigration Consultants, Credit Services, Foreclosure Consultants, and Telephonic Sales.<sup>29</sup> The Regulation Subcommittee consulted with surety bonds experts, who explained that bonds differ from insurance, and the funds available for compensation are depleted as claims are paid. Bond premiums usually range from 1 to 3 percent of the value of the bond, with the cost dependent on the bondholder’s credit history. The CPPWG considered concerns that, to the extent credit history affects bond premiums and certain communities have a more difficult time establishing credit, bond pricing may create a barrier to entry in some circumstances. The Regulation Subcommittee further explored options of other bond amounts and expected differences in pricing. Ultimately, the Regulation Subcommittee determined that a surety bond in the amount of \$100,000, similar to the amount required for Immigration Consultants, would provide an important baseline consumer protection of financial responsibility without placing an undue burden on paraprofessionals.

## Restitution Fund

The Regulation Subcommittee identified limits of the attorney CSF in terms of consumer protection: (1) the CSF does not provide an effective or consumer-friendly opportunity for quick recovery; and (2) the CSF does not reimburse clients who are victims of negligence or malpractice. At its meeting on March 18, 2021, CPPWG adopted the Regulation Subcommittee’s recommendation that, if neither a \$100,000 bond nor malpractice insurance is required, a restitution fund be established that will compensate clients for both intentional and unintentional acts.

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<sup>27</sup> See [Government Code § 8212](#).

<sup>28</sup> See Business and Professions Code § 6405.

<sup>29</sup> See [Business and Professions Code §§ 22443.1, 17511.12; Civil Code §§ 1789.18, 2945.45\(a\)\(2\)](#).

Regulations addressing financial responsibility requirements are provided in table 36, with additional recommendations provided in table 37.

**Table 36. Financial Responsibility Requirements**

Regulation	Requirement
Financial Responsibility	<ul style="list-style-type: none"> <li>• \$100,000 surety bond</li> <li>• Client Security Fund</li> </ul>

**Table 37. Additional Financial Responsibility Recommendations**

Topic	Recommendations
Malpractice Insurance	<ul style="list-style-type: none"> <li>• Paraprofessionals should be strongly encouraged to maintain malpractice insurance</li> <li>• State Bar should encourage companies to make insurance available to paraprofessionals</li> </ul>
Restitution Fund	If neither a \$100,000 bond nor malpractice insurance is required, a restitution fund should be established

## MINIMUM CONTINUING LEGAL EDUCATION

Continuing legal education is essential to ensure that paraprofessionals remain current regarding the law, the obligations and standards of the paraprofessional profession, and the management of their practices. In developing recommendations for paraprofessional minimum continuing legal education (MCLE) requirements, the Regulation Subcommittee considered MCLE requirements for California attorneys, paralegals, and LDAs, as well as requirements for paraprofessionals in other jurisdictions. The Regulation Subcommittee determined that a hybrid model, based on MCLE requirements for all California attorneys and those for certified specialists was appropriate. All attorneys are required to complete 25 hours of CLE every three years, include 4 hours of legal ethics, one hour on competence, and one hour in the recognition and elimination of bias; certified specialists are required to complete 36 hours of CLE in their practice area every three years. Since paraprofessionals will be licensed in specific practice areas, requiring a majority of MCLE in specific areas of licensure is essential to ensuring continued competence. A 3-year compliance cycle was recommended to allow for integration of MCLE compliance tracking within the current system used for attorneys. At its meeting on March 18, 2021, the CPPWG adopted the MCLE requirements for paraprofessionals shown in table 38.

**Table 38. MCLE Requirements**

Total Hours	Specific Requirements
36 hours every 3 years	<ul style="list-style-type: none"> <li>• 28 hours in the paraprofessional’s practice areas</li> <li>• 4 hours legal ethics</li> </ul>
<i>No more than 18 hours may be obtained through self-study.</i>	<ul style="list-style-type: none"> <li>• 1 hour competence issues</li> <li>• 1 hour recognition and elimination of bias in the legal profession and society</li> </ul>

Total Hours	Specific Requirements
	<ul style="list-style-type: none"> <li data-bbox="656 239 1094 268">• 1 hour trauma-informed practice</li> <li data-bbox="656 275 1218 336">• 1 hour practice management and running a business</li> </ul>

The CPPWG also adopted the Regulation Subcommittee’s recommendation to authorize the Paraprofessional Licensing and Oversight Committee<sup>30</sup> to require supplemental MCLE to maintain licenses due to changes in the law or other developments, as well as discretion to impose more specific educational requirements based on practice area, identified risk factors, or other considerations, including an increase in the required number of hours of MCLE to address specified issues and topics.

### PROACTIVE REGULATION

Proactive, or risk-based, regulation is intended to identify potential risks of harm to consumers and take steps to prevent that harm. The CPPWG and the Regulation Subcommittee identified three main areas of risk where further regulation should be considered: (1) the risk of incompetent legal services; (2) the risk of consumers being charged excessive fees; and (3) the risk of increased unauthorized practice of law (UPL) by nonlicensees. As discussed above, with the exception of contingency fees, the CPPWG voted not to regulate fees, and UPL was separately considered by a joint effort of the Regulation and Discipline Subcommittees. Thus, the Regulation Subcommittee focused on proactive regulation that would reduce the risk of consumers receiving incompetent legal services without being overly burdensome to paraprofessionals or too costly for the State Bar to administer. In developing recommendations, the Regulation Subcommittee reviewed information from a number of subject matter experts, as well as information about proactive regulation in other jurisdictions. Ultimately, the Regulation Subcommittee recommended proactive regulation measures that will support paraprofessionals in providing competent services, as listed in table 39, and rejected measures such as mandatory self-assessment and case file review. Recommendations also included limited annual reporting requirements intended to assist the State Bar in supporting paraprofessionals in providing competent legal services, and to gather information about fees charged by paraprofessionals. It was noted that information gathering about fees is not technically proactive regulation and is not expected to protect consumers, but is important in light of the potential risk to consumers being charged excessive and unreasonable fees, given that fees themselves are not being regulated. Data collected about paraprofessional fees will help to inform decisions about whether limits on fees should be imposed in the future. At its meeting on August 31, 2021, CPPWG adopted the Regulation Subcommittee’s recommendations regarding proactive regulation, as shown in table 39.

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<sup>30</sup> The Paraprofessional Licensing and Oversight Committee is the program’s governing board, as discussed in the Oversight and Governance.

**Table 39. Proactive Regulation Requirements**

Regulation	Requirement
Supportive Measures	<ul style="list-style-type: none"> <li>• CLE programs and toolkits to support paraprofessional practice                             <ul style="list-style-type: none"> <li>○ Sample client surveys</li> <li>○ Voluntary, interactive self-assessment</li> </ul> </li> <li>• Ethics hotline</li> <li>• Online resources</li> </ul>
Annual Reporting Requirements	<ul style="list-style-type: none"> <li>• Fees charged to clients</li> <li>• Suggestions for additional trainings and resources to support competent legal services</li> </ul>

### **RULES OF PROFESSIONAL CONDUCT**

Rules of Professional Conduct are necessary to ensure that licensed paraprofessionals provide their services ethically and responsibly while being held to the same high standards as attorneys. Staff from the State Bar Office of Professional Competence and the California Supreme Court worked closely with the Regulation Subcommittee to draft proposed Paraprofessional Rules of Professional Conduct (RPC). The RPC adopted by the CPPWG at its meetings on July 26 and August 16, 2021, are provided in Appendix F.

Paraprofessional RPC were drafted based on the California attorney RPC. Staff and the Regulation Subcommittee reviewed each RPC rule to determine applicability to paraprofessionals, based on the regulatory recommendations that were developed and under consideration.

At the CPPWG meeting on July 26, 2021, the Regulation Subcommittee provided recommendations regarding 71 RPC rules. The RPC were presented showing a redline comparison that reflected changes from the attorney RPC. The Regulation Subcommittee recommended that 9 rules be considered for individual discussion and vote, as they were either different from the attorney rule or expected to generate significant discussion. While the remaining rules were recommended for an omnibus vote, CPPWG members were invited to identify any rules for individual discussion and vote. Members identified 3 additional rules for separate consideration. At its July meeting, the CPPWG voted to approve recommendations for 59 proposed rules in an omnibus vote, as follows:

- Yes: 14
- No: 1
- Abstain: 0
- Absent: 3

The CPPWG met on August 16, 2021, to consider rules that were excluded from the omnibus vote, summarized in table 40.

**Table 40. Rules Considered for Individual Vote**

<b>Rule</b>	<b>Topic</b>	<b>Summary of Proposed Rule</b>
1.4.1	Communication of Settlement Offers	Paraprofessionals will be required to promptly communicate amounts, terms, and conditions of any written settlement offers
1.4.2	Notice to Consumers Prior to Consultation with a Prospective Client	Paraprofessionals will be required to give notice they are not an attorney along with other required standardized disclosures prior to consultation
1.4.3	Informed Written Consent to Representation	Paraprofessionals will be required to obtain the prospective client’s informed written consent prior to representation, and specific mandatory disclosures
1.5	Fees for Legal Services	New factor added to determine if fees are unconscionable: (c)(1) and (2) replaced with a not-to-exceed limit on contingency fee; no ability to charge a “true” retainer fee
1.5.1	Fee Divisions Among Licensed Paraprofessionals and with Lawyers	Paraprofessionals will not be able to charge referral fees; limits fee sharing to splitting fees in proportion to services actually performed or with the assumption of joint responsibility in an area where the paraprofessional is licensed to practice
1.5.2	Written Agreement to Representation	Paraprofessionals will be required to enter into a written retainer agreement with specified disclosures
1.17	Sale of a Law Practice	Paraprofessional practice may be sold to another licensed paraprofessional, lawyer, or law firm, subject to specified conditions (same rule as for attorneys)
3.5	Contact with Judges, Officials, and Employees	Prohibits paraprofessionals from giving anything of value to a judge, official, or employee of a tribunal, and from communicating with a judge or judicial officer, except under specified circumstances
5.3.1	Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Licensed Paraprofessionals	Allows paraprofessionals to hire a paraprofessional or lawyer who has been disbarred, suspended, resigned, or is involuntarily inactive to perform certain limited research, drafting, or clerical activities with restrictions and notice requirements designed for consumer protection (Same as rule for attorneys)
5.4	Financial and Similar Arrangements with Lawyers and Nonlicensees	Allows paraprofessionals to have ownership interest in law firms, limited to a minority interest if attorneys are either owners or employees; limits on paraprofessionals’ activities when working in a law firm with a lawyer
7.2	Advertising	Provides advertising requirements similar to lawyers; requires paraprofessionals to include a statement that paraprofessional is not a lawyer, and include their license number in all advertising; website required to provide disclosures
7.3	Solicitation of Clients	Provides solicitation requirements similar to lawyers; requires paraprofessionals to include a statement that the paraprofessional is not a lawyer and their license number in all solicitations in the same language as the solicitation; prohibits running and capping

After a thorough discussion of each rule, the CPPWG voted nearly unanimously to approve recommendations for the following rules, with all but one or two of the members present voting in favor of approval:

- 1.4.1 Communication of Settlement Offers
- 1.4.2 Notice to Consumers Prior to Consultation with a Prospective Client
- 1.4.3 Informed Written Consent to Representation
- 1.5 Fees for Legal Services
- 1.5.2 Written Agreement to Representation
- 1.17 Sale of a Licensed Paraprofessional's Practice
- 3.5 Contact with Judges, Officials, and Employees (Judge Rubin abstained – absent from discussion)
- 7.2 Advertising
- 7.3 Solicitation of Clients

The three following rules resulted in a split vote after substantial discussion.

#### **1.5.1 Fee Divisions Among Licensed Paraprofessionals**

As originally proposed, this rule allowed for sharing fees among paraprofessionals and attorneys in different firms, with restrictions, as provided in the following language:

A licensed paraprofessional and a lawyer who are not in the same law firm shall not divide a fee for legal services unless:

1. The licensed paraprofessional and the lawyer enter into a written agreement to divide the fee;
2. The division is in proportion to the legal services performed by licensed paraprofessional and the lawyer;
3. The client has consented in writing, either at the time the licensed paraprofessional and the lawyer enter into the agreement to divide the fee or as soon thereafter as reasonably practicable, after a full written disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessional, the lawyer, or law firms that are parties to the division; and (iii) the terms of the division; and
4. The total fee charged by all licensed paraprofessionals and lawyers is not increased solely by reason of the agreement to divide fees.

Members of the Regulation Subcommittee explained that this rule was intended to encourage paraprofessionals to develop relationships with attorneys who could provide services beyond the paraprofessionals' expertise. This arrangement could provide clients with needed services in an efficient manner by encouraging paraprofessionals and lawyers to work together and jointly bill clients without requiring clients to enter into separate contracts with each practitioner.

Some members of the CPPWG expressed concern that fee sharing is vulnerable to abuse of both clients and practitioners among whom fees would be shared; the Girardi case was cited as an extreme example of this type of abuse. After further discussion, CPPWG declined to adopt the proposed rule, by the following vote:

Yes: 5

No: 7

Abstain: 0

Absent: 6

A motion was subsequently made and seconded, to consider the following revised language for this section of Rule 1.5.1:

A licensed paraprofessional and a lawyer who are not in the same law firm shall not divide a fee for legal services.

The revised version of Rule 1.5.1 was adopted by the following vote:

Yes: 12

No: 0

Abstain: 1

Absent: 5

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

This rule would allow a paraprofessional to employ a disbarred or otherwise ineligible lawyer. Regulation Subcommittee members explained that this rule would provide such lawyers the opportunity for rehabilitation, and that they might be able to offer expertise beyond that of the paraprofessional. Members of the CPPWG objected, asserting that disbarred lawyers would pose a supervision challenge in a paraprofessional firm, and would be likely to have more influence in a paraprofessional firm than in a law firm. After further discussion, the recommended rule, which is the same as the rule for attorneys, was adopted by the following vote:

Yes: 8

No: 3

Abstain: 3

Absent: 4

### **5.4 Financial and Similar Arrangements with Lawyers and Nonlicensees**

This rule includes provisions that would allow a paraprofessional to have a nonmajority ownership interest in a law practice that has both lawyers and paraprofessionals.

Members of the Regulation Subcommittee explained that allowing for ownership by paraprofessionals would encourage the development of firms where paraprofessionals and lawyers are able to work together, which might expand the services that are available to consumers and reduce the costs of those services by coordinating handoffs between a paraprofessional and a lawyer when the limits of a paraprofessional’s scope of practice are reached. Members of the CPPWG expressed opposition, objecting to paraprofessionals’ sharing fees in areas in which they were not authorized to practice, and expressing concern that such partnerships would be vulnerable to abuse. If this rule is implemented, fee sharing between lawyers and paraprofessionals will be limited to those in the same firm; it would have no impact on Rule 1.5.1, which prohibits fee sharing between paraprofessionals and lawyers who are not in the same firm. After further discussion, the recommended rule was adopted by the following vote:

Yes: 9

No: 5

Abstain: 0

Absent: 4

### PROPOSED STATUTORY AND RULE AMENDMENTS

The CPPWG identified a number of statutory and State Bar rule amendments that would be required to implement the program. The proposed amendments are intended to align California statutes with the program’s rules and regulations.

Staff from the State Bar’s Office of General Counsel (OGC) reviewed statutes and rules that would need to be changed or adapted to effectuate the recommendations adopted by the CPPWG, identifying several that addressed policy questions requiring its input. OGC staff reviewed its recommendations with the Regulation Subcommittee prior to submitting them to the CPPWG.

The Regulation and Discipline Subcommittees made additional recommendations regarding statutory amendments needed to address the potential risk of an increase in UPL resulting from implementing the program, as discussed in detail later in this report.

At its meeting on August 31, 2021, CPPWG adopted recommendations regarding statutory and State Bar rule amendments reflecting the input of both staff and the Regulation and Discipline Subcommittees, as reflected in table 41.

**Table 41. Statutory and Rule Amendments**

Topic	Codes and Rules	Recommendations
IOLTA	<a href="#">Business and Professions Code §§ 6210-6228</a>	Mirror attorney requirements.

Topic	Codes and Rules	Recommendations
MCLE	<a href="#">State Bar Rules 2.81–2.82</a>	<ul style="list-style-type: none"> <li>• Allow CLE credit for teaching CLE courses</li> <li>• Do not allow CLE credit for paraprofessionals teaching law school courses</li> <li>• Do not allow CLE credit for unapproved courses<sup>31</sup></li> </ul>
Duties to Cooperate in Discipline Proceedings; Update License Records, and Self-Report Adverse Events	<a href="#">Business and Professions Code § 6068(i), § 6068(j), § 6068(o)</a>	Mirror attorney requirements
Attorney-Client Privilege	Evidence Code <a href="#">§ 912, §917, § 950-955</a>	Mirror attorney requirements
Attorney Work Product Doctrine	<a href="#">Code of Civil Procedure §§ 2018.010-2018.080</a>	Mirror attorney requirements
Statute of Limitations	<a href="#">Code of Civil Procedure § 340.6</a>	Mirror attorney requirements
Complaints Alleging Civil Conspiracy Between Attorneys and Clients	<a href="#">Civil Code § 1714.10</a>	No recommendation provided
Running and Capping	<a href="#">Business and Professions Code §§ 6151-6154</a>	Mirror attorney requirements
Voidability of Fee Agreements for Failure to Comply with RPC 1.5.2	<a href="#">Business and Professions Code § 6147</a>	Mirror attorney requirements
Unauthorized Practice of Law		<ul style="list-style-type: none"> <li>• Allow felony prosecution for UPL, even absent prior conviction</li> <li>• Additional funding and resources for law enforcement to investigate and prosecute UPL by nonlicensees</li> <li>• Extend statute of limitations for UPL prosecution</li> <li>• Creation of record keeping requirements for paraprofessionals</li> <li>• Additional recommendations included in report’s UPL section</li> </ul>

Detailed discussions regarding OGC’s review of proposed statutory amendments are in OGC staff memos submitted to the CPPWG on June 25 and August 31, 2021, which are provided in Appendix F.

<sup>31</sup> Attorneys who have practices requiring specialized training in nonlegal fields (such as medical billing or accounting) may request approval for CLE credit for this training. Because paraprofessionals will practice only in defined fields, a similar rule is not recommended for paraprofessionals

## FEE CAPS

The question of whether caps should be imposed on fees paraprofessionals may charge their clients was a topic of vigorous debate within the CPPWG. Policy considerations included: (1) a concern that vulnerable clients who would qualify for free or low-cost legal services might be charged excessive or unreasonable fees, (2) the importance of affordability to increase access to legal services, (3) the financial viability of a paraprofessional career, and (4) free market principles.

Arguments on both sides of this debate were advanced by members of the CPPWG and members of the public, including private practitioners, consumer advocates, legal services providers, legal scholars, and LDAs. In addition to this input, CPPWG reviewed the following information regarding regulation of attorneys' fees to facilitate its deliberations regarding paraprofessional fee caps:

- Statutory caps on contingency fees;
- Appointed counsel hourly rates;
- Local court rules on presumptively reasonable fees; and
- Bar Association Modest Means Panel rates.

Proponents of fee caps advanced the following arguments in favor of their position:

- Providing a more affordable alternative to attorneys is one of the purposes of the program and regulation of fees is an important component for ensuring that this purpose is achieved.
- The market does not always protect consumers from high prices; fee caps would prevent vulnerable consumers from paying excessive or unreasonable fees.
- Fee regulation already exists for lawyers in various circumstances, including medical malpractice (Medical Injury Compensation Reform Act or MICRA) and worker's compensation. Thus, while not the default, fee regulation is also not unusual.
- Fee caps would benefit consumers who have other significant expenses.
- Fee caps would protect particularly vulnerable consumers who may be at risk of being taken advantage of by paying for services that they do not need or paying too much for substandard legal services.
- Because contingency fees will be limited under the program, individuals hiring paraprofessionals will primarily be billed on an hourly basis (unless a flat fee is agreed to); most consumers are not familiar with reviewing legal bills and determining what are appropriate and inappropriate charges.
- There is a vast amount of data available, including Superior Court local rules, demonstrating market rates for legal services in various areas.

Opponents of fee caps advanced the following arguments in favor of their position:

- Market forces will keep prices affordable.
- It would be unfair to impose fee caps on paraprofessionals, but not on attorneys.
- Fee caps will discourage program applicants and may negatively impact the financial viability of the profession.

- Fee caps would be difficult to administer:
  - o Practice area and geographic considerations would have to be considered in the development of both hourly and per-event fees; and
  - o Regulation and monitoring of fee cap compliance would be challenging.

After an extensive debate on this topic, the adopted a recommendation against imposing caps on the fees that paraprofessionals could charge, except in the case of contingency fees. The CPPWG adopted a recommendation that contingency fees be allowed only in enforcement of judgment matters within the scope of a paraprofessional’s licensure, and that those fees be capped at 33 1/3 percent.

### **Recommendation**

CPPWG recommends that there be no limits on the fees that licensed paraprofessionals will be authorized to charge, except as provided in Rule 1.5.1(c) of the Paraprofessional Rules of Professional Conduct, as follows:

- A licensed paraprofessional shall not make an agreement for, charge, or collect a contingent fee except in an enforcement of judgment matter within the scope of the licensed paraprofessional’s licensure. Any contingent fee permitted under this paragraph shall not exceed thirty-three and one-third percent of the total value of the judgment subject to the enforcement action.

The resolution to recommend no fee caps, with the exception of contingency fees, was adopted by the CPPWG on May 17, 2021, with the following votes:

Yes: 10

No: 6

Abstain: 2

Absent: 0

The resolution to include limits on contingency fees in Rule 1.5.1(c) was adopted by the CPPWG on August 16, 2021, with the following votes:

Yes: 12

No: 1

Abstain: 0

Absent: 5

## DISCIPLINE SYSTEM

The CPPWG appointed a Discipline Subcommittee, as shown in table 42, which was charged with recommending a discipline system for the program.

**Table 42. Discipline Subcommittee Members**

Discipline Subcommittee
Sharon Bashan <sup>32</sup>
Julianne Fellmeth <sup>25</sup>
Kimberly Kirchmeyer
Ira Spiro

## DISCIPLINE SYSTEM STRUCTURE

An efficient, responsive discipline system is essential for the prompt investigation of complaints against paraprofessionals and imposition of appropriate discipline for RPC violations. In developing recommendations for a paraprofessional discipline system, the Discipline Subcommittee looked at a number of different models including the attorney discipline system, the discipline system for licensing boards under the jurisdiction of the California DCA, and the current and proposed discipline system for licensees of the Washington State Bar Association (WSBA).

The California attorney discipline system comprises the OCTC, the State Bar Court (SBC), and the California Supreme Court. Complaints against attorneys are reviewed in OCTC's Intake Unit, which may close the complaint or refer it to investigation. If the investigation finds potential misconduct, OCTC may pursue action against the attorney respondent, up to and including filing a notice of disciplinary charges (NDC). If an NDC is filed, an OCTC attorney prosecutes the case before a judge in the SBC Hearing Department. The SBC Hearing Judge's decision can be appealed to the SBC Review Department, either by the respondent or OCTC. SBC final rulings are filed as recommendations to the Supreme Court, which considers the case de novo and rules on discipline. Either party may request a rehearing before the Supreme Court, after which final discipline may be imposed.

In the discipline system for the California Medical Board, which is similar to that of other DCA licensing boards, complaints against licensees are reviewed in the Central Complaint Unit (CCU), which may close the complaint or refer it to a District Office (DO) for investigation. The DO may close the case or refer it to the Attorney General (AG), which determines whether to initiate disciplinary action. Both the CCU and the DO have the option to refer the matter to the Citation and Fine Program, if it is determined that a minor violation has occurred. Imposition of a citation, which may include a fine, does not constitute disciplinary action.

In cases where it determines that discipline is warranted, the AG drafts formal charges, which are filed by the Board's Executive Director. The AG prosecutes the licensee before an

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<sup>32</sup> Ms. Bashan and Ms. Fellmeth joined the Discipline Subcommittee in December 2020.

Administrative Law Judge, who writes a proposed decision. The proposed decision is reviewed by a panel of the Medical Board,<sup>33</sup> which may adopt the decision as proposed, reduce the penalty and adopt the decision, or increase the penalty and adopt the decision, after written and oral argument. Decisions may be appealed by the licensee to the Medical Board panel; final decisions may be appealed to the Superior Court, the District Court of Appeal, and the California Supreme Court.

The WSBA currently has separate discipline systems for each of its three types of licensees: attorneys, Limited Practice Officers (LPOs), Limited License Legal Technicians (LLTs), with a separate disciplinary committee for each licensee. Due to this system's inefficiency, a new system has been proposed whereby the Office of Disciplinary Counsel would review and investigate all complaints and could recommend dismissal, diversion, or a hearing. Cases referred for a hearing would go before an Office of the Regulatory Adjudicator (ORA) three-person authorization panel, consisting of a staff adjudicator and two volunteers, which would authorize a statement of charges. Cases would be heard by an ORA staff adjudicator, while appeals would be brought before an ORA appeal panel, a five-person panel consisting of a staff adjudicator and four volunteers.<sup>34</sup>

The Discipline Subcommittee considered potentially conflicting policy considerations in the development of a discipline system: economies of scale suggest incorporating paraprofessionals into the attorney discipline system to allow for an efficient use of an existing structure. A new system, on the other hand, could allow for the inclusion of nonlicensed public members in the discipline process, and has the potential for the creation of a system that could move cases more quickly from receipt of complaint to final resolution. Such an approach could also prove to be less expensive than the attorney discipline system, and would not burden the attorney discipline system, which already suffers from a high caseload and backlogs.

The paraprofessional discipline system recommended by the Discipline Subcommittee is a hybrid of these options. The system takes advantage of the existing structure in OCTC to conduct initial review and investigation but provides for adjudication and appeal in a venue other than the SBC, which is quite costly for the State Bar and would be quite costly for an appealing paraprofessional represented by an attorney in the SBC. The Discipline Subcommittee's recommendation provides for complaint review and investigation by OCTC, first-level adjudication by a three-person panel, and appellate-level adjudication by a committee of the Paraprofessional Licensing and Oversight Committee. This model also introduces the ability to impose citations and fines in lieu of discipline, an option not present in the attorney discipline system, to be used in cases of minor violations that do not require discipline but where some form of penalty is deemed appropriate. At its meeting on March 18, 2021, CPPWG adopted the Discipline Subcommittee's recommendations regarding the paraprofessional discipline system structure, as shown in table 43.

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<sup>33</sup> Membership on the California Medical Board includes both physicians and public members.

<sup>34</sup> The WSBA proposed rules were submitted to the Washington Supreme Court, after a public comment period that ended July 29, 2021; a decision by the Court is expected within the next few months.

**Table 43. Discipline System Structure**

Model Element	Recommendations
Complaint Intake and Investigation	To be handled by OCTC
Citation and Fine	To be administered by OCTC <ul style="list-style-type: none"> <li>If fine and fee determination is disputed, that dispute will be adjudicated by the Hearing Panel</li> </ul>
<ul style="list-style-type: none"> <li>Initial Hearings</li> <li>Disputed Fine and Fee Determinations</li> </ul>	Three-person Hearing Panel
Settlement Conferences	<ul style="list-style-type: none"> <li>To take place only if OCTC and paraprofessional mutually consent</li> <li>To be heard by staff adjudicator</li> </ul>
Appeals and Stipulated Discipline	Paraprofessional Licensing and Oversight Committee
Final Discipline Decision	<ul style="list-style-type: none"> <li>Suspensions and Revocations: final discipline decision to be made by the Supreme Court</li> <li>Appeals from the appeals level to be heard by the Court</li> <li>All other discipline finalized at appropriate level within the State Bar’s paraprofessional disciplinary structure, level as yet to be determined</li> </ul>

**ALTERNATIVES TO DISCIPLINE**

The CPPWG considered alternatives to formal discipline, including warning letters, agreements in lieu of discipline, mandatory fee arbitration, and private reprovations, as well as the ADP that is part of the formal attorney discipline system. Recommendations regarding these alternatives were informed by the need to balance the effectiveness of offering alternatives in appropriate circumstances with a desire for transparency about disciplinary proceedings. A summary of the CPPWG recommendations regarding alternatives to formal discipline is in table 44.

**Table 44. Alternatives to Formal Discipline**

Alternative or Nontraditional Discipline Approach	Recommendation
Warning Letter	Include
Mandatory Fee Arbitration	Include
Agreements in Lieu of Discipline	Exclude
Private Reprovations	Exclude
Alternative Discipline Program	Exclude

**PUBLIC DISCIPLINE RECORDS**

The CPPWG’s recommendations regarding public versus private designation of paraprofessional disciplinary records were informed by the rules for attorney disciplinary records as well as applicable statutes regarding Medical Board disciplinary records; Business and Professions Code sections 803.1 and 2027 address not only the public versus private nature of various record

types, but also whether public records will be affirmatively posted on the licensing board’s website, and when or if records will be destroyed. Table 45 provides a summary of recommendations regarding public discipline records.

**Table 45. Public Discipline Records**

Intervention or Disciplinary Outcome	Private or Public	On Website or On Request	Retention Duration
Warning Letter (not discipline)	Private	N/A	
Citation and Fine (not discipline)	Public for 3 years from date of resolution	<ul style="list-style-type: none"> <li>• Website for 3 years unless withdrawn or dismissed</li> <li>• After 3 years transition to Private</li> </ul>	Indefinite
Notice of Disciplinary Charges	Public unless withdrawn or dismissed	On website for duration that resulting discipline is on website	For duration of period that underlying discipline is public
Public Reproval	Public	<ul style="list-style-type: none"> <li>• Website for 10 years</li> <li>• After 10 years transitions to anonymous report</li> </ul>	Indefinite
Probation	Public	Website	Indefinite
Interim Suspension	Public	Website	Duration of interim suspension
Suspension pursuant to discipline	Public	Website	Indefinite
Disbarment	Public	Website	Indefinite
Felony Charges and Criminal Convictions	Mirror attorney requirements		

**DISCIPLINARY STANDARDS**

Imposition of attorney discipline is guided by the Standards for Attorney Sanctions for Professional Misconduct, which set forth presumed sanctions for various types of misconduct as well as aggravating and mitigating circumstances that may be considered in determining the appropriate level of discipline in a particular case. The Regulation and Discipline Subcommittees provided a joint recommendation regarding disciplinary standards for paraprofessionals, which largely mirror the attorney standards.

The recommended standards for paraprofessional discipline deviate from the attorney standards only with regard to assessment of discipline costs. For attorneys, pursuant to [Business and Professions Code section 6086.10](#), disciplinary orders imposing public reproval or a greater level of discipline shall include a direction that the attorney shall pay costs. These

costs include the actual expenses incurred by the State Bar for transcripts and reporter services, expenses that would qualify as taxable costs recoverable in civil proceedings, and charges determined by the State Bar to be reasonable costs of investigation, hearing, and review. Subdivision (d) provides that an attorney exonerated of all charges following hearing is entitled to reimbursement for reasonable expenses.

As a deterrent to misconduct and to protect the public, the Regulation and Discipline Subcommittees recommended that costs be assessed against paraprofessionals who are subject to discipline. However, to avoid chilling the right of paraprofessionals to seek a hearing on disciplinary charges against them and to avoid potential due process issues, the Regulation and Discipline Subcommittees recommend that cost recovery be permitted for pre-hearing costs only. This approach is followed by many licensing boards<sup>35</sup> and is reflected in case law.<sup>36</sup>

At its meeting on August 31, 2021, CPPWG adopted recommended Standards of Licensed Paraprofessional Sanctions for Professional Misconduct, which are provided as Appendix C.

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<sup>35</sup> See [Business and Professions Code § 125.3\(c\)](#).

<sup>36</sup> See *Zuckerman v. State Board of Chiropractic Examiners*, 29 Cal. 4th 32, 38–41 (2002).

## OVERSIGHT AND GOVERNANCE

### LICENSING AND OVERSIGHT COMMITTEE

#### Committee Size and Appointing Authority

In developing recommendations for the PLOC, the CPPWG considered the size and composition of paraprofessional licensing boards in other states, as well as the licensing boards for nonlegal professions in California. The CPPWG also considered factors outlined in a 2018 report on the State Bar’s Board of Trustees, commissions, committees, and councils (collectively referred to as committees), *Opportunities for Improving Governance and Service Delivery*.<sup>37</sup>

At its meeting on September 13, 2018, and pursuant to the factors enumerated in the 2018 report, the Board adopted a policy to limit the size of State Bar committees to seven or fewer members, absent a justification of the need for more members based on workload or the need for additional expertise or perspectives to carry out the work. The CPPWG believes that a larger oversight committee is justified, based on both of these factors.

The PLOC composition should ensure that expertise is available that informs its work by including members who represent the consumers that paraprofessionals will serve, as well as those who can inform the specific topics of licensing, regulation, and discipline. A balance of judges, attorneys, licensed paraprofessionals, legal educators, and public members is recommended. As detailed in the discussion regarding governance functions, below, the PLOC will have significant responsibilities in overseeing program operations and direct involvement in disciplinary matters. Because of these factors, the CPPWG recommends that the PLOC comprise 13 members, reflecting the member type shown in table 46, and that the appointing authority for PLOC members mirrors that of the State Bar Board of Trustees. The CPPWG recommends that appointing authorities be encouraged to consider diversity of practice areas in their appointments.

**Table 46. Committee Composition and Appointing Authority**

Member Type	Appointing Authority
Judge	Supreme Court
2 Attorneys	Supreme Court
3 Paraprofessionals <ul style="list-style-type: none"><li>Northern California</li><li>Central</li><li>Southern California</li></ul>	Supreme Court
2 Public (nonlicensee)	Senate
2 Public (nonlicensee)	Assembly
2 Public (nonlicensee)	Governor
Paraprofessional Educator	Governor

<sup>37</sup> Schauffler, Richard. [\*Opportunities for Improving Governance and Service Delivery: A report and Recommendations Regarding the State Bar of California’s Boards, Commissions, Committees, and Councils\*](#) (September 13, 2018).

## GOVERNANCE FUNCTIONS

Program oversight should ultimately rest with the Supreme Court, which has the authority to license individuals to practice law. As with the licensure of attorneys, the Supreme Court would delegate responsibility for licensing, regulation, and discipline of paraprofessionals to the State Bar, limiting its direct involvement to matters requiring adjudication by the Court. Functional oversight would be provided by a newly created Paraprofessional Licensing and Oversight Committee, the State Bar Board of Trustees, and the Legislature. This committee would be responsible for operational oversight of the program, and be directly responsible for hearing disciplinary appeals.

Recommendations for the responsible entity for each specific governance function were informed by a review of State Bar operations, including existing attorney admissions and attorney regulation functions and relevant decision-making authority, as well as by recommendations regarding the paraprofessional discipline structure, as detailed in this report. At its meeting on August 31, 2021, the CPPWG adopted recommendations for governance functions as provided in table 47. The CPPWG recommends that functions related to exam development be identified by State Bar staff and the PLOC, consistent with best practices for licensure exam development.

**Table 47. Paraprofessional Program Governance Functions**

<b>POLICY</b>	<b>Committee</b>	<b>Board of Trustees</b>	<b>Supreme Court</b>	<b>Legislature</b>
Keep abreast of national and international developments in paraprofessional licensing	Implement	Receive updates	—	—
Program evaluation metrics and assessment	Approve	Receive updates	—	—
Consumer and prospective licensee outreach and education	Implement	Receive updates	—	—
<b>LICENSURE</b>	<b>Committee</b>	<b>Board of Trustees</b>	<b>Supreme Court</b>	<b>Legislature</b>
<b>Eligibility</b>				
Appeals of staff denial of eligibility	Approve	—	Discretionary review	—
<b>Education</b>				
Establish educational requirements	Recommend	Recommend	Approve	Provide input
Approve learning objectives	Approve		—	—
<b>Experiential Training</b>				
Establish experiential requirements	Recommend	Recommend	Approve	Provide input
Establish attorney supervision requirements	Approve		Approve	Provide input
Establish incentives for attorney supervision	Recommend	Approve	—	—
<b>Waivers</b>				
Appeal of staff denial of waiver of educational or experiential hours	Approve	—	—	—
<b>Moral Character</b>				
Reviews and informal conferences	Approve	—	—	—
Review appeal of staff decision	Approve	—	Discretionary review	

LICENSURE	Committee	Board of Trustees	Supreme Court	Legislature
Set Fees	Recommend	Approve	—	—
<b>Exam Development</b>				
Develop questions	TBD	—	—	—
Review of questions	TBD	—	—	—
Evaluate grading	TBD	—	—	—
Sampling plan	TBD	—	—	—
Challenges to exam questions	TBD	—	Discretionary review	—
Set exam fee	Recommend	Approve	—	—
<b>Testing Accommodations</b>				
Policy development	Approve	—	—	—
Review petitions	Approve	—	—	—
Review appeals	Approve	—	Discretionary review	—
<b>Eligibility and Enforcement of Exam Rules</b>				
Policy development	Approve	—	—	—
Enforcement	Approve	—	—	—
Appeals	Approve	—	Discretionary review	—
<b>Exam Analysis and Review</b>				
Design standard setting study	Recommend	Approve	—	—
Design content validation study	Recommend	Approve	—	—
Design job analysis	Recommend	Approve	—	—
<b>Paraprofessional Educational Institutions</b>				
Certification	Approve	—	—	—
REGULATION	Committee	Board of Trustees	Supreme Court	Legislature
<b>MCLE</b>				
MCLE Provider certification criteria	Approve	—	—	—
MCLE Requirements	Approve	—	Final decision	Provide input
<b>Financial Responsibility</b>				
Establish requirements	Approve	—	Final decision	Provide input
<b>Rules of Professional Conduct</b>				
Establish and modify	Recommend	Approve	Final Decision	—
<b>State Bar Rules<sup>38</sup></b>				
Establish and modify	Recommend	Approve	Final Decision	—
<b>State Bar Rules of Procedure</b>				
Establish and modify	Recommend	Approve	—	—
<b>California Rules of Court</b>				
Establish and modify	Recommend	Recommend	Final Decision	—
<b>Statutes (State Bar Act, other statutes)</b>				
Establish and modify	Recommend	Recommend	Provide input	Final Decision

<sup>38</sup> Some State Bar rules are statutorily subject to approval by the Supreme Court (e.g., Minimum Standards for Lawyer Referral Services).

DISCIPLINE	Committee	Board of Trustees	Supreme Court	Legislature
Compensation for hearing officers	Approve			
Hearing panel selection	Approve		—	—
Settlement	Approve	—	—	—
License Suspension/Revocation	Recommend	—	Final Decision	—
Other Discipline	Approve	—	—	—

Detailed discussions regarding recommendations for governance structure and functions are found in staff memos submitted to the CPPWG on the following dates, which are provided in Appendix F:

- December 17, 2020
- June 25, 2021
- August 31, 2021

## PROGRAM IMPLEMENTATION

Thoughtful implementation is key to ensuring that the program successfully achieves its goals of increasing access to legal services and public protection. Launching a program of this magnitude requires careful planning, with deliberate consideration of each component of implementation, to ensure long-term viability. The CPPWG has engaged in discussions regarding initial program rollout, including developing safeguards to protect against UPL; consideration of a pilot period; infrastructure development, including sources for startup funding; and curriculum development, including outreach to educational partners that will be instrumental in providing the educational courses required by the Program; and development and administration of licensing exams.

## UNAUTHORIZED PRACTICE OF LAW

The CPPWG's charter directs the working group to consider and propose any requisite changes to the rules and statutes governing UPL. The CPPWG identified the need to recommend enhanced enforcement for violations of statutes governing UPL, to counteract the potential risk of increased UPL that may arise from implementation of the paraprofessional program.

The Regulation and Discipline Subcommittees independently identified the need to address the potential risk of increased UPL that may arise from implementation of the Program, and held two joint meetings to consider this issue. In developing recommendations, the Regulation and Discipline Subcommittees considered concerns raised by law enforcement, State Bar staff, legal services providers, and other consumer advocates, that nonlicensed individuals may represent themselves as licensed under the new program, creating a new method to defraud the public. The following specific issues were identified in this regard:

- Lack of law enforcement resources to investigate and prosecute all cases;
- Lack of State Bar jurisdiction and resources to prosecute cases;
- Prosecution limited to misdemeanor in most cases;<sup>39</sup> and
- Potential client confusion regarding licensure of service providers.

At its meeting on August 31, 2021, the CPPWG adopted the Regulation and Discipline Subcommittees joint recommendations regarding measures to counteract the potential risk of increased UPL, as shown in table 48.

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<sup>39</sup> See [Business and Professions Code § 6126](#).

**Table 48. Measures to Counteract UPL**

Topic	Recommendations
Statutory Amendments	<ul style="list-style-type: none"> <li>• Harsher criminal penalties for UPL</li> <li>• Allow felony prosecution, even absent prior conviction</li> <li>• Expand State Bar authority to investigate and address UPL and fraud by nonlicensees               <ul style="list-style-type: none"> <li>○ Allow for State Bar imposition of citation and fines for UPL</li> </ul> </li> <li>• Extend statute of limitations for UPL prosecution</li> </ul>
Resources and Funding	<ul style="list-style-type: none"> <li>• Additional funding and resources for law enforcement to investigate and prosecute UPL and fraud by nonlicensees</li> <li>• Additional funding and resources for State Bar investigation and prosecution of UPL and fraud by nonlicensees</li> <li>• Creation of a victim fund for UPL victims</li> </ul>
Regulation	<ul style="list-style-type: none"> <li>• Creation of record keeping requirements for paraprofessionals</li> </ul>
Public Education	<ul style="list-style-type: none"> <li>• Allocation of resources for consumer education, to ensure that the public is aware of the scope of the paraprofessional license, as well as how to identify whether a service provider is appropriately licensed</li> </ul>

The resolutions adopted at the meeting on August 31, 2021, included a recommendation that State Bar staff be directed to propose appropriate changes in law and additional resources for law enforcement related to UPL, to be included in connection with the State Bar proposing legislation necessary and important in the initial implementation of the paraprofessional program. A detailed discussion regarding the basis for these recommendations is found in the Regulation and Discipline Subcommittees memo submitted to the CPPWG on August 31, 2021, which is provided in Appendix F.

**PHASED IMPLEMENTATION**

Early in its discussions, the CPPWG received public comment suggesting that the program begin with a limited duration pilot to determine its effectiveness before implementing a permanent paraprofessional licensure program. The CPPWG appointed a Pilot Implementation Subcommittee to consider a pilot and other options for initial program implementation. Subcommittee membership is reflected in table 49.

**Table 49. Pilot Implementation Subcommittee Members**

<b>Pilot Implementation Subcommittee</b>
Sharon Bashan
Julianne Fellmeth
Stephen Hamilton
Kimberly Kirchmeyer
Hon. Ioana Petrou
Fariba Soroosh
Hon. Erica Yew

The Pilot Implementation Subcommittee’s work was informed by public comment, feedback from the legal services community, lessons learned from the Judicial Council’s implementation of the Sargent Shriver Civil Counsel Act pilot projects, and education regarding the approach used by the California Office of Statewide Health Planning and Development, which is statutorily charged with piloting reforms in health-care service delivery models. In developing its recommendations, the Pilot Implementation Subcommittee considered several options, as discussed below.

**Pilot with Potential Sunset Date**

A pilot with a sunset date would involve piloting the program in a limited number of counties in several stages, with program evaluation conducted at the conclusion of each stage; subsequent implementation phases would be contingent on the outcome of each stage of the pilot. This concept was rejected as not viable; potential applicants would be unlikely to invest the substantial resources required for participating in the program if a sunset date existed. Educational institutions would similarly be reluctant to invest resources to develop the required program coursework, and the State Bar would face challenges in developing the infrastructure for a potentially time-limited program.

**Pilot with Limited Program Features**

A pilot with limited program features would include design elements that do not match the final program design to expedite pilot initiation and/or provide additional consumer safeguards. For example, a pilot might provide a pathway to licensure that would not require satisfying certain educational, experiential, or testing requirements; or require attorney supervision of paraprofessionals. This option was rejected because evaluation of a pilot that fundamentally differs from the full program would not provide meaningful data to inform an assessment of its impact or risks.

**Immediate Full Implementation**

Immediate full implementation would entail launching a statewide program with all program features in place. This option was rejected as unrealistic; the time and financial resources required to fully implement a statewide program would result in significant delays in implementation, jeopardizing program viability. Further, a more measured implementation

approach would allow for the level of oversight needed when introducing a new type of legal licensee into the market for the first time in the State Bar’s history.

### **Phased Implementation**

A phased implementation entails launching the program with full features in place, but in a limited number of counties and legal practice areas, adding geographic and practice areas to the program over time. This option would allow for a more immediate implementation, while providing the opportunity to conduct a meaningful evaluation that allows for program adjustments and improvements prior to expansion. The Pilot Implementation Subcommittee recommended adoption of this approach.

### **Initial Practice Areas**

In selection of initial practice areas, the Pilot Implementation Subcommittee considered the areas identified as those with the greatest need in California – housing and family. Collateral criminal was also recommended for inclusion in initial program implementation.

### **Family**

Court self-help data reflects the greatest demand in family law cases. As shown in table 13, 80 percent of all encounters at court self-help centers were with people seeking assistance with family law matters; 53 percent of website traffic was from people looking for information about divorce or separation. The Pilot Implementation Subcommittee’s research found that the family law practice area is included in virtually all paraprofessional programs that have been implemented or are under consideration.

### **Housing**

Housing, and particularly eviction defense, is acknowledged as an area of great need in California, as is evidenced by the right-to-counsel movement in many locations, as well as data from the Judicial Council’s report on the Sargent Shriver Civil Counsel Act, which provides funding in selected courts for legal representation to low-income parties on critical legal issues affecting basic human needs. The Judicial Council reported that over 90 percent of people assisted through the program were involved unlawful detainer cases.<sup>40</sup>

### **Collateral Criminal**

Collateral criminal, which includes expungement and reclassification of convictions, and representation in infractions, was recommended for inclusion in initial program implementation. This area poses fewer difficult-to-remedy risks than some of the other practice areas recommended for inclusion in the program.

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<sup>40</sup> Judicial Council of California, *Report to the Legislature: Sargent Shriver Civil Counsel Act* (June 30, 2020).

## Initial Geographic Areas

In developing recommendations for geographic areas for inclusion in initial program implementation, the Pilot Implementation Subcommittee considered (1) the size of the potential client population, based on census data; (2) the size of the potential licensee population, based on the number of law school graduates who failed the bar exam in the past 10 years; and (3) the size of the local justice gap, as indicated by the percent of pro per litigants in family law cases, and by attorney density (residents per active license attorneys).

Based on this data, the subcommittee recommended including the following counties in initial program implementation:

### Northern California Counties

Alameda  
Santa Clara

### Central California Counties

Fresno  
Merced  
Tulare

### Southern California County

Orange

During the CPPWG’s review of the Pilot Implementation Subcommittee’s recommendations regarding initial geographic areas, members suggested that additional counties in the far northern part of the state be considered for implementation, noting that courts in those locations have a significant number of self-represented litigants. The Pilot Implementation Subcommittee reviewed data for the far northern counties, and recommended the addition of a Sacramento-based cluster, to include El Dorado, Placer, Sacramento, and Yuba counties. At its meetings on February 26 and June 25, 2021, the CPPWG adopted recommendations from the Pilot Implementation Subcommittee regarding initial program implementation, as shown in table 50.

**Table 50. Initial Implementation**

Implementation	Recommendation
Program Features	Full Program Features
Practice Areas	<ul style="list-style-type: none"><li>• Family, Children, and Custody</li><li>• Housing</li><li>• Collateral Criminal</li></ul>
Geography	<ul style="list-style-type: none"><li>• Northern California Counties<ul style="list-style-type: none"><li>○ Alameda</li><li>○ El Dorado</li><li>○ Placer</li></ul></li></ul>

Implementation	Recommendation
	<ul style="list-style-type: none"> <li>○ Sacramento</li> <li>○ Santa Clara</li> <li>○ Yuba</li> <li>● Central California Counties <ul style="list-style-type: none"> <li>○ Fresno</li> <li>○ Merced</li> <li>○ Tulare</li> </ul> </li> <li>● Southern California County <ul style="list-style-type: none"> <li>○ Orange</li> </ul> </li> </ul>

Detailed discussions regarding the basis for these recommendations are found in the Pilot Implementation Subcommittee memos submitted to the CPPWG on February 26 and June 25, 2021, which are provided in Appendix F.

### INFRASTRUCTURE DEVELOPMENT

Upon receiving authorization to implement the program, the State Bar will need to begin development of the infrastructure that supports it. Required elements will include staff to review applicants for eligibility, approve licensure for those who meet program requirements; staff to administer regulatory requirements and support overall program governance; and disciplinary staff. Once established, the program is expected to be self-sustaining through licensing fees. At the outset, however, funding will need to be secured for program startup costs.

#### Startup Costs

Initial estimates of program participation are based on the number of law school graduates in the counties included in table 50, above, who failed to pass the bar exam on their most recent attempt during the period 2011–2020; and limited information about graduates of ABA-approved paralegal programs in those counties. Information about the number of LDAs who would be eligible for program participation was not available. Based on available data, staff conservatively estimates approximately 5,000 potential program participants. table 51 provides a preliminary estimate of initial program costs, based on this level of participation.

**Table 51. Program Costs (Annual, for First 5,000 Licensees)**

Component	Preliminary Cost Estimate
General Administration	\$170,000
Licensing	\$405,000
Regulation	\$150,000
Client Security Fund	\$85,000
OCTC Investigation and Prosecution	\$670,000
Hearing Panel Stipend	\$115,000
Advertising and Community Outreach	\$50,000
<b>Total</b>	<b>\$1,645,000</b>

Table 51 does not include costs related to curriculum development or program evaluation. The cost of these elements has yet to be determined. While curriculum development is a necessary startup cost, program evaluation will not take place until three to five years after program implementation.

### **Funding Sources**

Both the CPPWG and State Bar staff are cognizant of the need for program funding that does not rely on the State Bar's General Fund. Philanthropic grants and, potentially, a General Fund loan, are likely sources of startup funding.

### **Philanthropic Grants**

Staff has begun exploring philanthropic grants to fund program startup costs. Funders who support innovation in expanding access to justice have expressed interest in helping to fund the program.

### **General Fund Loan**

A loan from the General Fund, to be repaid once the program becomes self-sustaining, would require authorization from the Supreme Court and the Legislature. This method of funding new licensing programs has often been employed when new licensing boards are formed under the jurisdiction of the DCA.<sup>41</sup>

## **CURRICULUM DEVELOPMENT**

The educational requirements listed in table 30 reflect the minimum number of units for each practice area. Program staff will work with educational partners and subject matter experts in each practice area to develop detailed learning objectives for required coursework. A uniform curriculum will be developed for statewide use; program applicants will be required to complete the educational coursework at a school that uses the approved curriculum.

## **EXAM DEVELOPMENT**

Staff recommends engaging an outside testing agency to develop and administer the program's licensing exams. Exam development would be done in consultation with subject matter experts. While exam development would be included in initial startup costs, the cost of exam administration would be covered by exam fees.

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<sup>41</sup> Examples include a loan from the General Fund to start the Licensed Midwifery Program in 1993; a loan from the General Fund to start the Occupational Therapy Program in 2000; and a loan from the Bureau of Automotive Repair to start the Bureau of Naturopathic Medicine in 2004, which was not from the General Fund.

## PROGRAM EVALUATION

The CPPWG charter articulates the Board's intent in creating a paraprofessional program: to increase access to legal services in California. In creating the CPPWG, the Board charged it with balancing the goal of increased access with that of public protection. A robust evaluation of the program will be required to determine whether it meets these goals. Program evaluation metrics should include data that will enable assessment of the program's effectiveness, inform ongoing program improvement, and allow for comparison of California's paraprofessional program with similar programs implemented in other states.

Unlike each of the other topics under consideration by the CPPWG, no subcommittee was formed to develop recommendations for program evaluation. Instead, the CPPWG as a whole engaged in discussions regarding program evaluation with a number of subject matter experts and reviewed metrics that have been developed for evaluation of similar programs in other states.

The CPPWG participated in a workshop led by a representative of the University of Denver's Institute for the Advancement of the American Legal System, during which CPPWG members elaborated and expanded upon the dual goals of the program, as well as the data required to assess whether these goals are achieved. The CPPWG later met with scholars who were engaged to evaluate Utah's recently implemented paraprofessional program evaluation, as well as a researcher from the National Center for State Courts (NCSC), who provided information about the framework developed by NCSC to evaluate paraprofessional programs nationwide. The NCSC framework identifies both fundamental measures, which distinguish between a program that is succeeding and one that is failing to meet its goals, and supplemental measures, which provide additional useful information.<sup>42</sup>

At its meeting on August 31, 2021, the CPPWG adopted the following recommendations for program evaluation:

1. The metrics in table 52 reflect minimum data and metrics to be included in an evaluation of the program's effectiveness; this data must be collected as part of program evaluation.
2. Program evaluation should be conducted between three and five years after program implementation.
3. Program evaluation should be conducted by an independent organization with experience in evaluating similar programs.
4. Staff should review case outcome reporting requirements for State Bar-funded legal services programs, and consider similar reporting requirements for paraprofessionals.

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<sup>42</sup> [National Center for State Courts, \*An Evaluation Framework for Allied Legal Professional Programs: Assessing Improvements in Access to Justice\*](#) (May 2021).

**Table 52. Program Evaluation Metrics**

Metric	Data Points	Data Source
Program Viability	Number of licensees and market coverage	Internal data
	Volume of use	Survey
	Stable and sufficient regulatory funding source	Internal data
	Sufficient income potential for licensees to stay in business	Survey
Equity and Access	Demographics of paraprofessionals and their clients	Survey
	Number of self-represented litigants (reduced?)	CMS and JBSIS
	Justice Gap (reduced?)	Survey
Case Outcomes and Client Satisfaction	Overall satisfaction	Survey
	Procedural satisfaction	Survey
Legitimacy and Political Sustainability	Lawyer, judicial officer, and general public sentiment about the program	Survey
Affordability	Fee structure transparency: consumer understanding of service offerings and price points	Survey
	Hourly rates	
	Per-case or event rates	
	Number of hours to complete services	
Efficiency in Paraprofessional Training	Cost of education	Survey

Detailed discussions regarding the basis for these recommendations are found in the staff memos submitted to the CPPWG on December 17, 2020, and August 31, 2021, which are provided in Appendix F.

## **OUTREACH AND EDUCATION**

### **Outreach to Potential Program Participants**

Upon receiving authorization for program implementation, the State Bar will engage in outreach to potential candidates to publicize program eligibility and licensing requirements. Program publicity will be conducted through outreach to community colleges, independent paralegal programs, and law schools, along with direct outreach to JD and LLM degree holders who fail to pass the bar exam.

The State Bar will conduct outreach using multiple channels. These channels include social media, traditional media, and live events, both online and in person. Particular attention will be

paid to reaching diverse groups and underserved communities. Translation of promotional materials into multiple languages will be key to these efforts.

### **Outreach to Courts**

Outreach to superior court judges and staff will be key to successful program implementation. State Bar staff will work with the Judicial Council to develop trainings for judges and staff, including basic information about this new licensure program; the specific tasks and scope of services authorized for each practice area; how to verify licensing status; and how to inform the State Bar of suspected violations by either licensed or unlicensed practitioners. Specific training for court self-help centers will also be conducted.

### **Public Outreach and Education**

As the State Bar begins licensing the first cohort of paraprofessionals, it will have an important role in public outreach and education to help ensure the program's ongoing viability. Publicity efforts will include information about the newly created licensure, including the assistance that can be provided and the limits on that assistance. It will be essential to provide information that ensures consumers can distinguish between licensed and nonlicensed practitioners, and that they are aware of the limits on paraprofessional practice and know how to report suspected illegal activity.

The State Bar will conduct outreach using multiple channels, including social media, traditional media, and live events, both online and in person. Particular attention will be paid to reaching diverse groups and underserved communities, with targeted outreach to community-based organizations that serve these populations.

### **Licensee Name**

The term "paraprofessional" has served as a placeholder for a more formal, descriptive licensee name for the CPPWG's duration. In selecting an official name for this licensee, a number of factors must be considered, including: (1) clarity, to ensure that the name accurately reflects the specific licensure and minimizes consumer confusion; (2) potential translations into languages in predominant use in California; and (3) potentially confusing acronyms (e.g., LLP, LLC, etc.).

The CPPWG engaged in an extended process to develop a slate of potential licensee names for the Board's consideration. Staff and the working group chair engaged in a brainstorming session in which they discussed the purpose of the program with an expert in brand development and selection of names for services. A list of 32 names generated from this session were included in a survey sent to CPPWG members and staff. The survey asked respondents to select their top choices and offer alternatives not included in the list. Respondents were also asked to provide reasons for their selections, and to suggest terms to include or exclude from consideration.

The results of the initial survey were shared with the brand consultant, who assisted in the development of a follow-up survey based on those responses. This survey was sent to CPPWG members, asking them to select their top three choices from among a list of eight names. Detailed information about the survey questions and results are found in the staff memo submitted to the CPPWG on June 25, 2021, which is provided in Appendix F.

After further review and discussion with the CPPWG, a list of seven names was sent to two professional translation firms, with a request to provide translations and identify any potential problems they might pose; due to time limitations, the focus was on translations into Spanish. The translations were shared with the Regulation Subcommittee, which provided additional guidance.

Based on the foregoing process, staff recommends the options for consideration of a licensee name shown in Table 53.

**Table 53. Licensee Names Recommended for Consideration**

English	Spanish
Limited License Legal Practitioner <sup>43</sup>	Practicante Legal Con Licencia Limitada
Limited Legal Practitioner	Practicante Legal Limitado
Limited Legal Advisor	Asesor Legal Limitado

### Recommendations from Translation Agencies

The translation agencies emphasized the importance of identification of the official licensee name in each predominant California language. Outreach to communities publicizing the program should include the official name to avoid confusion and independent translation. After a final name is selected, translations will be provided in the following additional languages:

- Arabic
- Chinese, simplified
- Farsi
- Korean
- Punjabi
- Russian
- Tagalog
- Vietnamese

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<sup>43</sup> This licensee name was identified as a top choice in surveys as well as in discussions with the CPPWG and the Regulation Subcommittee.

## DISSENTING OPINIONS AND ALTERNATIVE RECOMMENDATIONS

### FLEISCHMAN

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 of 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) 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>44</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.

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<sup>44</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].)

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 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 subcommittee 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/38TTrZX>>.)

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.

## HARTSTON

### Fee Caps

A dissenting opinion regarding the following fee cap resolution was submitted:

- “RESOLVED, that the California Paraprofessional Program Working Group recommends that there be no limits on the fees that licensed paraprofessionals will be authorized to charge. . . .” (May 21, 2021 resolution)

A primary purpose of the proposed paraprofessional program is to provide a lower-cost alternative to engaging a lawyer, and one of the primary risks identified by the Working Group relates to paraprofessionals charging excessive, predatory fees — particularly for vulnerable populations that may qualify for free or low-cost legal services and in practice areas such as housing and debt collection where representation by an attorney is often available for a flat fee. There should be limitations or caps on the amount of fees paraprofessionals will be authorized to charge to protect against excessive and unreasonable fees.

Some argued that fee regulation is not necessary; the market will determine fees. However, regulations against foreseeable risks such as the charging of excessive fees is the point of the State Bar creating and regulating a new class of licensees. Public protection must be balanced against the free market through reasonable regulation. Some also took the position that fee regulation is too complicated, particularly with different geographic regions and different practice areas. But fee caps need not be complicated and is not beyond the capacity of the State Bar acting as a regulator, the Supreme Court overseeing the practice of law, or the legislature protecting the public.

We recommend that the State Bar Board of Trustees direct Bar staff and the Working Group to propose appropriate fee caps for consideration by the Board, and also that the Supreme Court and the legislature incorporate appropriate fee limitations in Rules of Court and supporting legislation.

This recommendation is submitted by the following members of the Working Group:

- Sharon Bashan
- Julia Brynelson
- Steven Fleischman
- Amos Hartston
- Nicole Robinson
- Ira Spiro

### Rule 1.4.3

A dissenting opinion was submitted regarding the following resolution on Rule of Professional Conduct 1.4.3(a)(2): Informed Written Consent to Representation - Disclosure of Other Available Choices:

- “The disclosures shall include, but not be limited to: . . . (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 legal services may be available to low-income individuals from a legal aid program if the client qualifies; . . .” (Proposed Paraprofessional RPC 1.4.3(a)(2))

A goal of the program is to provide consumers with a choice for enhanced access to legal services, and it should be an informed choice. The Working Group’s recommendations include a pre-engagement informed consent requirement in Rule 1.4.3. However, the mandatory disclosures related to other alternative choices in 1.4.3(a)(2) falls short.

Paraprofessionals should be required to provide contact information for relevant free or low-cost legal services potentially available in their county for which a low-income prospective client may qualify. Providing only general information that legal services may be available or a link to a statewide list of legal services programs without more will not be useful, undermines the purpose of the informed consent requirement by allowing the withholding of information necessary to make an informed decision, and will harm vulnerable low-income clients that would seek available free or low-cost legal services from a lawyer if they were informed.

We recommend that proposed Rule 1.4.3(a)(2) be revised as follows: “(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;**”

This recommendation is submitted by the following members of the Working Group:

- Sharon Bashan
- Steven Hamilton
- Amos Hartston
- Carolin Shining
- Ira Spiro

## SHINING

**TO: THE STATE BAR OF CALIFORNIA PARAPROFESSIONAL WORKING GROUP AND STATE BAR OF CALIFORNIA BOARD OF TRUSTEES**

**FROM: CAROLIN K. SHINING, WORKING GROUP MEMBER**

**JOINED: STEVEN S. FLEISCHMAN (EXCEPT AS TO FEE CAP RELATED ISSUES)**

**DATE: SEPTEMBER 13, 2021**

**RE: CONSUMER PROTECTION PERSPECTIVE AND DISSENT TO THE FINAL REPORT OF THE STATE BAR OF CALIFORNIA PARAPROFESSIONAL WORKING GROUP BEING PRESENTED TO THE STATE BAR OF CALIFORNIA TRUSTEES**

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### **I. INTRODUCTION**

The Final Report of the State Bar of California's Paraprofessional Working Group (Working Group) as designed is fatally flawed. While the charter of the Working Group was created with good intentions, the final resolutions and recommendations go far beyond what will assist the public good. Instead, the resolutions will do the exact opposite: the program as presented will actually cause irreparable harm to consumers and damage public trust in the legal system.

The concept that "someone is better than no one" unfortunately drove many decisions in the Working Group. This is simply not a true statement. The proposed program ignores numerous true-life and heartbreaking stories of low-income consumers who may be irreparably damaged by the lack of full attorney representation. Merely adopting regulations and discipline mimicking lawyer protections cannot cure the fact that the proposed licensee will be inadequate to the task at hand in court and conflicted beyond measure with regard to any expected duties of loyalty and independent judgment.

When taken as a whole, the final report and recommendations amount to nothing more than the creation of a "Two-Tiered Justice System". This is precisely what the Working Group was supposed to avoid. This is precisely what the data does not support. This is precisely what our communities do not need – the creation of a type of "lawyer" who can only do half the job. Our communities do not need a licensee who is conflicted out of using all the powerful tools available to a trial lawyer. The State Bar Trustees should reject the program as currently proposed.

### **II. DEFAULT FULL IN-COURT REPRESENTATION WILL HARM THE PUBLIC**

Over the course of several meetings, the full Working Group considered four potential options as the "default" position covering every area of law under consideration. With a hotly contested 12-4 vote, the Group adopted the option of "full in-court representation" with the

exception of jury trials. No other adopted resolution embodies the principle of “second tier justices” as this one.

The following are real-life situations where legal aid lawyers were forced to correct the irreparable harms caused by non-lawyers who promised to help clients through the court system:<sup>45</sup>

*A monolingual client was waiting at the Shriver Legal Clinic to meet with its staff regarding a pending eviction. While waiting, he was approached by a legal document preparer/paralegal who regularly approached litigants in the courthouse. The client had a pending eviction and needed to file an answer. Rather than wait for his legal aid appointment, the client proceeded to hire the LDR/paralegal who said he would handle the matter and get it dismissed. Instead, a bankruptcy was filed in the client’s name, resulting in a stay to the eviction. Within a few months, the bankruptcy was dismissed for the client’s failure to proceed, the eviction stay was lifted and sanctions of \$6,000 were imposed on the client for bad faith filing. The client returned to our office with a Sheriff’s notice to vacate and disclosed that he had depleted his savings (nearly \$9,000) to pay the paralegal. Despite the paralegal’s assurances that the eviction case was dismissed, the client faced lockout of his longtime, rent controlled apartment.*

*A non-attorney advocate represented a family with a child suffering from severe mental illness prior to the attorney advocate’s involvement. Although the child had an Individualized Education Plan, she had several serious mental health episodes and was hospitalized in several facilities over time. Insurance refused to continue paying for her to be at residential placements. Although her parent had consistently requested a residential treatment center placement, the non-attorney advocate repeatedly requested a non-public school placement. This option was completely inappropriate as the student presented to be a danger to herself and others and required a higher level of care. The school district drafted a settlement agreement which offered a different non-public school than the advocate’s request. The settlement, unbeknownst to the Parent, waived the parent’s rights to compensatory education for the missed instruction the student had suffered as a result of the inappropriate services and initial placement in a public high school. Her parent never wanted placement into a non-public school and eventually found a legal aid office who immediately filed a complaint against the school district and was able*

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<sup>45</sup> The original versions of these stories have been edited to preserve the anonymity of the victims. They were provided by public service lawyers including Stephanie Correll, Leigh Ferrin, and Michael Barth, and I thank them for their insights.

*to reach a highly positive result as a result of the increased and specialized attention to the case.*

*A woman who was illegally locked out of her rental unit contacted a paralegal service. She sought advice from an attorney when the paralegal service advised her that it could file a complaint with the court to have her tenancy reinstated for a small fee of \$300. She grappled with whether to pay the paralegal or pay for other lodging with her limited funds. (She was supporting herself on public benefits.) Fortunately, she contacted a legal services organization, who advised her that local law enforcement could enforce her tenancy rights under the Penal Code and coordinate reinstatement of her tenancy.*

*Elderly and vulnerable homeowners sought contractors' services through a local government program encouraging environmentally friendly home renovations called Property Accessed Clean Energy (PACE). Yet contractors exploited PACE, performed shoddy and/or incomplete work, and created exorbitant property tax liens that threatened foreclosure. Homeowners sought legal representation to correct these problems, and reports suggest that many engaged non-attorneys to help. But the non-lawyers only hurt the homeowners. The non-attorney promised to file a lawsuit on the homeowners' behalf and demanded \$2,000 to \$3,500 in cash per homeowner before he performed any services. After extracting the fees, the non-attorney disappeared without performing a single task. These homeowners are now being put into contact with consumer fraud attorneys through Public Counsel and the National Law Consumer Center to correct the complex problems caused by the non-attorney's fraud.*

*A homeowner facing foreclosure in the recent debt crisis was contacted by a non-lawyer company claiming to be a "Housing Assistance Program" and/or "Foreclosure Consultant". The non-lawyer company claimed that it could pressure the homeowner's lender to negotiate a good deal. Instead, the non-lawyer demanded fees and made no effort to help the homeowner. Unaware of any other options, the homeowner sold his home prematurely to avoid financial ruin.*

In response these well-documented injustices, the recommendations of the report are that paraprofessional licensees will be held to the same high standards as lawyers. However, the paraprofessional under the program will immediately face real conflicts of interest that are not solved by the revisions to a lawyer's rules of ethical conduct. Paraprofessionals are immediately faced with conflicts because they must work diligently on cases until the point where they themselves recognize they have to give it to an attorney for free. When doing so, the paraprofessionals cannot earn a referral fee and might only be entitled to some payment if they can prove they did some work. The paraprofessional may know that the same problem can

be solved by self-help, legal aid or a governmental agency for free but owes no duty to provide that specific information. These are only a few of the conflicts implicit in the current proposals.

Yes, there are thousands of Californians with needs who are turned away each year from legal aid services as a result of a lack of funding and staff. The answer is not to scrap the entire legal aid system and create something else. The meager amount of money spent on self-help clinics and legal aid is illustrative: (<https://newsroom.courts.ca.gov/news/what-know-about-judicial-branch-budget-0>) Non-profit legal aid and public interest firms work year to year finding grants from numerous sources to continue their funding. The Working Group's program will be used to create a totally separate agency with totally separate disciplinary investigators and courts, totally separate testing, and totally separate certification of educational programs. Assuming that each paraprofessional pays an annual fee of \$500.00 (as do lawyers), will that money truly ever support the millions that will be spent on employing and training a completely new agency? The "in court" default position seems to completely ignore the fact that a completely wonderful, yet simply underfunded system, exists in California. Instead of making a decision that seems like a simple fix, the actual way in which to solve any "in-court" problem was and is to fully support the existing infrastructure which provides 100% free and full legal representation.

The adoption of "full-in court representation" has no supporting data or comparison with other systems of law. It is not necessary to engage in activities that will aid the public. It is the very essence of a second-tier legal system. Instead, the Working Group's report should have strongly identified how to increase spending in all areas of law to support and protect the rights of those in need.

### **III. AMENDING RULE 5.4 TO ALLOW NON-ATTORNEY OWNERSHIP PUTS PROFITS OVER PEOPLE**

The Proposed Revision to Rule 5.4 is indeed the most controversial change in the entire report. There is simply no reason why a paraprofessional should be allowed to own up to 49.9999% of a law firm. The reasons to reject this change are numerous and compelling; however, a simple illustration of the practical problems provided by my colleague Scot Berstein tell the tale:

The 51% limitation on non-lawyer ownership of law firms is useful primarily as a window to the practical impact of the program. Anyone familiar with corporate law knows that 49% ownership—or even a substantially smaller percentage than that—can amount to de facto control of an entity. The reason is that it is very unlikely that the other 51% will be controlled by a single person or interest group or otherwise voted so uniformly as to defeat a 49% owner.

Instead, the vastly more common scenario will be that the 51% will be split among a number of people. Indeed, the clever non-lawyer person or entity seeking to control a law firm will make certain that the 51% is split among a substantial number of attorneys. It will be easy enough for the

non-lawyer entity to seek out only those situations in which it can control the acquired entity.

And what is the consequence? A simple probability analysis provides the answer. If, for example, the non-lawyer entity owns 49% of the law firm and 17 attorneys own 3% each for a total of 51%, the non-lawyer entity will have an overwhelming probability of winning a contested vote on any issue and, therefore, will have de facto total control. After all, the non-lawyer shareholder will need to persuade only one of the seventeen to vote its way.

Suppose, for example, that the non-lawyer shareholder wants to engage in aggressive and unfair marketing tactics or other unethical conduct toward clients, and that the lawyers, by a large majority, oppose the proposed conduct on the ground that it is dishonest, unethical or unfair. Under those circumstances, even if each of the 17 three-percent shareholders independently has a 90% chance of voting against engaging in the proposed unethical conduct, the non-lawyer entity will have better than an 83% chance of prevailing on the contested vote because it needs to convince only 1 of the 17 to vote its way. Your smartphone's scientific calculator makes it easy to prove that this is so:  $0.9$  (i.e., 90%) to the 17th power is less than 16.7%. That small percentage is the probability that all 17 out of 17 lawyers will vote the same way and defeat the unethical proposal. The entity needs only one of the 17 to vote its way because  $49\% + 3\% = 52\%$ , a clear majority.

For this and other reasons relating to nearly unsolvable conflicts created by these scenarios, this revision to Rule 5.4 was rightly excluded from our charter and placed into the Close the Justice Gap "Sandbox" where corporate applicants were expected to justify the need to revise this rule to the benefit of the public. Indeed, one Sandbox group member is an economist who perhaps can speak to this issue.

California would not be the first state in the nation to allow non-attorney ownership of law firms. Recently Utah and Arizona have started to establish these "Alternative Legal Business Structures". The profit-seeking motive is clear. In Utah, over 20 corporate entities have been approved for non-lawyer ownership. In Arizona, a large publicly traded corporation has filed for the creation of an ALBS. Such massive corporate "disruption" is not what was hoped for or envisioned by the Working Group for many, many motions of its discussions. The impact of these entities – who have large internet presences – should be watched before California experiments this way.

This one change constitutes the first step in an erosion of significant client protections against conflict – i.e. making decisions based on profit rather than the client's best interests.

#### IV. OTHER ISSUES OF CONCERN

I understand that the recommendations of the Working Group were not intended to solve every problem with the new licensee program. There will be a need for considerable work to modify and create new statutes, design education programs, create and administer licensing tests, and raise awareness of the new licensee's existence.

Throughout the extensive debate that took place during the entire Working Group's activities and as referenced in the 1,400-page report, there were many other matters large and small that I opposed. My basis for this opposition is made in the record and sometimes memorialized in writing. This is particularly true as to my opposition to any consumer debt, employment law and other consumer-oriented activities. Some areas that were not addressed that should be considered by the State Bar Trustees before recommending that this program proceed include:

- the failure to include a sunset to the pilot program;
- the failure to require data collection which is similar to that required of legal aid entities to show if the program is solving the needs of low-income communities and not just middle class consumers;
- the lack of warning in fee agreements that the consumer may be waiving important rights under California's extensive consumer protection laws that may have to proceed to trial, which may not be included sufficiently in training;
- the lack of a requirement to inform consumers that they may be entitled to free legal aid or that self-help programs may be all that they need to solve their problems;
- the inability to vote on and further debate the name change from paraprofessional to another completely different name despite the State Bar's efforts to seek outside marketing assistance from three separate private entities;
- the inability to understand the financial costs of the decisions that are being made as a result of our recommendations so that we may compare them to legal aid expenditures as alternative options;
- the vagueness and uncertainty of the application of the new licensee Rules given the failure to address the inclusion of dozens of Comments to the attorney rules, existing statutory case law and hundreds of Formal Opinions created by professional ethics lawyers; and
- the failure to create systems that will create requirements for actually assisting low-income persons without charging them for services they cannot afford.

These issues are complex and again result in conflicts that cannot be addressed except perhaps through complete waivers by potential clients.

The State Bar Trustees will have only a few days to review a 1,400-page report containing dozens of Staff Memos, dozens of formal Resolutions and a completely new system of regulations, licensing requirements and a discipline system. As such, more time should be invested by the Board before approving this Report and sending it out for Public Comment.

## **CONCLUSION**

The Working Group has labored mightily and with the best of intentions to create a new licensee to help increase legal services to low- and middle-income consumers. The result is the one of largest and most expansive experiments in the legal world in decades. Such a program was not necessary to address the issues that our charter sought to address. Our legal system, while imperfect, is not so fundamentally flawed as to need a complete overhaul by creation of a non-lawyer with powers equal to that of a lawyer. I urge the State Bar to fully evaluate and consider the contested provisions of this program before approving and sending it for public comment.

California Paraprofessional Program Working Group Recommendations

**PRACTICE AREAS AND TASKS**

**Table 1. Practice Areas and Tasks**

Practice Area	Recommendations	Tasks
Criminal	Exclude, except for Collateral Criminal	<ul style="list-style-type: none"> <li>• Expungement and reclassification of convictions</li> <li>• Infractions</li> </ul>
Consumer Debt/ General Civil	Include	<ul style="list-style-type: none"> <li>• Consumer Debt and Creditor Harassment:               <ul style="list-style-type: none"> <li>○ Prelitigation cease and desist and prove-up letters</li> <li>○ Prelitigation negotiation of settlements, including payment plans</li> <li>○ All superior court litigation excluded</li> </ul> </li> <li>• Enforcement of Judgment               <ul style="list-style-type: none"> <li>○ Enforcement of small claims court judgments</li> <li>○ Limited jurisdiction post-judgment enforcement</li> </ul> </li> <li>• Name and gender change</li> </ul>
Estates & Trusts	Exclude	None
Employment/ Income Maintenance	Include	<ul style="list-style-type: none"> <li>• Wage and hour cases               <ul style="list-style-type: none"> <li>○ Division of Labor Standards Enforcement proceedings</li> <li>○ Wage and hour judgment enforcement – limited jurisdiction only</li> </ul> </li> <li>• Unemployment insurance proceedings (EDD)</li> <li>• All public benefit proceedings</li> </ul>
Family, Children, and Custody	Include	<ul style="list-style-type: none"> <li>• Family               <ul style="list-style-type: none"> <li>○ All matters except for the following:                   <ul style="list-style-type: none"> <li>– Nullity matters:                       <ul style="list-style-type: none"> <li>▪ Petitions based on incest, unsound mind, fraud, force, physical incapacity</li> <li>▪ Putative spouse establishment</li> <li>▪ Division of quasi-marital property</li> </ul> </li> <li>– Petition to establish parental relationship involving FC § 7612(b) or (c)</li> <li>– Child custody and visitation involving Hague Convention or UCCJEA</li> <li>– Qualified Domestic Relations Order (QDRO)</li> <li>– Spousal or domestic partner support in long term marriages, as defined by FC § 4336, unless included in a marital settlement agreement that does not terminate or set nonmodifiable spousal support</li> <li>– Discovery:                       <ul style="list-style-type: none"> <li>▪ Oral depositions</li> <li>▪ Expert discovery</li> <li>▪ Related motions</li> </ul> </li> <li>– Pre-marital/post-marital agreements</li> <li>– Marvin/palimony actions</li> <li>– Contempt actions</li> </ul> </li> <li>○ Exclusion from representation in hearings on emergency custody or visitation requests when a judge has granted temporary emergency orders</li> </ul> </li> </ul>

Practice Area	Recommendations	Tasks
		<ul style="list-style-type: none"> <li>– At such hearings, paraprofessionals are authorized to sit at counsel table to support and advise their client, and may answer direct procedural questions from the judge</li> <li>• Uncontested adoption, with the following exceptions:               <ul style="list-style-type: none"> <li>○ Adoptions arising from dependency petitions</li> <li>○ Adoptions where the child has been identified as protected by the Indian Child Welfare Act</li> </ul> </li> <li>• Uncontested conservatorships and guardianships, with the following exception:               <ul style="list-style-type: none"> <li>○ Guardianships established in dependency court for parties entitled to court-appointed counsel</li> </ul> </li> <li>• Violence Prevention, with the following exceptions:               <ul style="list-style-type: none"> <li>○ Representation in domestic violence hearings involving children</li> <li>○ If expert witness testimony will be introduced, paraprofessionals are prohibited from introducing or cross-examining expert witnesses</li> </ul> </li> <li>• Not authorized to act as appointed counsel in any cases</li> </ul>
Health	Exclude	None
Housing	Include	<ul style="list-style-type: none"> <li>• Residential landlord-tenant, with the following exceptions:               <ul style="list-style-type: none"> <li>○ Landlords who own more than two units</li> <li>○ Bench or jury trials                   <ul style="list-style-type: none"> <li>– In-court representation is limited to motion hearings and default prove-ups</li> <li>– During unlawful detainer trials, paraprofessionals may assist their clients by sitting at counsel table, to provide advice and guidance, and may respond to direct questions from the judge</li> </ul> </li> <li>○ Representation in superior court matters, in or out of court, other than small claims or unlawful detainer cases</li> </ul> </li> <li>• Lien Clearing               <ul style="list-style-type: none"> <li>○ Clearing liens from title, outside of litigation</li> </ul> </li> </ul>
Veterans	Exclude	None

## IN-COURT REPRESENTATION

Paraprofessionals may provide full in-court representation, except in jury trials, except as modified as shown in Table 2.

**Table 2. Practice Area Modifications to Full In-Court Representation**

Practice Area	Modification
Consumer Debt & General Civil	<p>Consumer Debt and Creditor Harassment</p> <ul style="list-style-type: none"> <li>• All superior court litigation is excluded</li> </ul>
Family, Children, and Custody	<p>Family</p> <ul style="list-style-type: none"> <li>• Hearings on emergency custody or visitation requests when a judge has granted temporary emergency orders <ul style="list-style-type: none"> <li>○ Paraprofessionals may not provide in-court representation, but are authorized to sit at counsel table to support and advise their client, and may answer direct procedural questions from the judge.</li> </ul> </li> </ul> <p>Violence Prevention</p> <ul style="list-style-type: none"> <li>• Domestic violence hearings involving children <ul style="list-style-type: none"> <li>○ Paraprofessionals may not provide in-court representation, but are authorized to sit at counsel table to support and advise their client, and may answer direct procedural questions from the judge.</li> <li>○ If expert witness testimony will be introduced, paraprofessionals are prohibited from introducing or cross-examining expert witnesses.</li> </ul> </li> </ul>
Housing	<p>Unlawful Detainer</p> <ul style="list-style-type: none"> <li>• Paraprofessionals may not provide in-court representation in bench or jury trials <ul style="list-style-type: none"> <li>○ Paraprofessionals may provide in-court representation for motion hearings and default prove-ups;</li> <li>○ During trials, paraprofessionals may assist their clients by sitting at counsel table, to provide advice and guidance, and may respond to direct questions from the judge.</li> </ul> </li> <li>• Aside from unlawful detainer matters and small claims assistance, paraprofessionals may not represent or assist clients in court in superior court litigation in landlord-tenant disputes.</li> </ul>

## LICENSING

**Table 3. Licensing Requirements**

Requirement	Recommendations		
<b>ELIGIBILITY</b>	<ul style="list-style-type: none"> <li>• JD or LLM from ABA or California accredited or registered law school; or</li> <li>• Paralegal qualified pursuant to <a href="#">Business and Professions Code § 6450(c)</a>; or</li> <li>• Legal Document Assistant qualified per <a href="#">Business and Professions Code § 6402.1(b)</a><sup>1</sup></li> </ul>		
<b>EDUCATION</b>	<b>Practice Area</b>	<b>Course</b>	<b>Units<sup>2</sup></b>
	All Practice Areas	Ethics and Professional Responsibility	3
		Pretrial Discovery and Evidence	3
		Court Procedure	3
		Court Advocacy	3
		Trauma-informed representation	1
		<b>Total</b>	<b>13</b>
	Collateral Criminal	Expungement, Reclassification, and Infractions	3
	Consumer Debt & General Civil	Debt collection and creditor harassment	6
		Enforcement of Judgments [including wage and hour]	3
		Name and Gender Change	0.5
		<b>Total</b>	<b>9.5</b>
	Family, Children, and Custody	Family Law and Procedure	6
		Adoption	2
		Violence Prevention	2
		Conservatorship/Guardianship	3
		<b>Total</b>	<b>13</b>
	Employment & Income Maintenance	Administrative Agency Procedure	3
	Housing	Landlord-Tenant <ul style="list-style-type: none"> <li>• Leases/rental agreements</li> <li>• Security deposits</li> <li>• Types of tenancies</li> <li>• Tenant Protections</li> <li>• Housing discrimination and landlord retaliation</li> <li>• Warranty of habitability</li> <li>• Rent control and eviction control</li> <li>• Ground and procedures for nonjudicial termination of tenancies</li> <li>• Unlawful detainer procedure</li> <li>• COVID-19 tenant protection laws and tenant assistance (until such laws expire)</li> <li>• Rental assistance programs</li> <li>• Benefits and risks of demanding a jury trial</li> <li>• Small claims court actions</li> <li>• Subsidized Housing and Mobilehomes</li> </ul>	12

<sup>1</sup> The CPPWG recommends that applicants admitted to the Program pursuant to this criterion would not be eligible for a waiver of educational or experience requirements.

<sup>2</sup> Pursuant to [California Code of Regulations, Title 5 § 55002.5](#), one unit of community college credit requires a minimum of 48 hours of student work for colleges operating on the semester system. This time includes classroom instruction and student work outside the classroom. A 3-unit course is equal to 144 hours of student engagement.

Requirement	Recommendations		
		<ul style="list-style-type: none"> <li>• Benefits of demanding a jury trial in unlawful detainer cases</li> </ul>	
		Lien clearing	1
		<b>Total</b>	<b>13</b>
<p><i>With the exception of one unit of paraprofessional Ethics and Responsibility, coursework taken as part of a law school or paralegal program may satisfy the Program's educational requirements.</i></p>			
<b>PRACTICAL TRAINING</b>	<ul style="list-style-type: none"> <li>• 1,000 hours over a minimum of 6 months</li> <li>• 500 hours must be in practice area in which paraprofessional will be licensed</li> <li>• Must include trauma-informed training</li> </ul> <p><i>Experience working as a paralegal or in a law school clinic may satisfy the experience requirements, subject to certification by the supervising attorney or law clinic instructor that it meets the specified criteria.</i></p>		
<b>TESTING</b>	<ul style="list-style-type: none"> <li>• Subject matter specific testing</li> <li>• Professional Responsibility Exam modeled after attorney exam</li> </ul>		
<b>MORAL CHARACTER</b>	<ul style="list-style-type: none"> <li>• Fingerprinting &amp; background check equivalent attorney requirements</li> <li>• Not disbarred or resigned with charges pending in any jurisdiction</li> <li>• Moral character determination requirements to mirror attorney requirements</li> </ul>		

## REGULATION

**Table 4. Regulation Requirements**

Requirement	Recommendations
Financial Responsibility	<ul style="list-style-type: none"> <li>• \$100,000 Surety Bond</li> <li>• Client Security Fund</li> </ul>
Minimum Continuing Legal Education  <i>No more than 18 hours may be obtained through self-study</i>	36 hours every 3 years, as follows: <ul style="list-style-type: none"> <li>• 28 hours in the paraprofessional’s practice areas</li> <li>• 4 hours on legal ethics</li> <li>• 1 hour on competence issues</li> <li>• 1 hour on recognition and elimination of bias in the legal profession and society</li> <li>• 1 hour of trauma-informed practice</li> <li>• 1 hour of practice management/running a business</li> </ul>
Rules of Professional Conduct	Proposed Rules, based on the Rules of Professional Conduct for attorneys, are provided as Appendix A.
Supportive Measures (Proactive Regulation)	<ul style="list-style-type: none"> <li>• CLE programs and toolkits to support paraprofessional practice               <ul style="list-style-type: none"> <li>○ Sample client surveys</li> <li>○ Voluntary, interactive self-assessment</li> </ul> </li> <li>• Ethics hotline</li> <li>• Online Resources</li> </ul>
Annual Reporting Requirements	<ul style="list-style-type: none"> <li>• Fees charged to clients</li> <li>• Suggestions for additional trainings and resources to support competent legal services</li> </ul>

**Table 5. Additional Regulation Recommendations**

Topic	Recommendations
Financial Responsibility	<ul style="list-style-type: none"> <li>• If neither a \$100,000 bond nor malpractice insurance is required, a restitution fund should be established that will compensate clients or both intentional and unintentional acts</li> <li>• Paraprofessionals should be strongly encouraged to maintain malpractice insurance.</li> <li>• The State Bar should take steps to encourage insurance companies to make insurance available to licensees.</li> </ul>
Minimum Continuing Legal Education	<ul style="list-style-type: none"> <li>• The Paraprofessional Licensing and Oversight Committee will be authorized to require supplemental MCLE to maintain licenses due to changes in the law or other developments, as well as discretion to impose more specific educational requirements based on practice area, identified risk factors, or other considerations, including designation of some of the practice area MCLE or an increase in the required number of hours of MCLE to address specified issues and topics.</li> </ul>
Required Disclosures in Housing Practice Area	<ul style="list-style-type: none"> <li>• In addition to required disclosures about the availability of a free attorney through a local legal services program to those who qualify, paraprofessionals should be required to advise clients of availability of a right to counsel program, or must certify that no such program exists, in their county.</li> <li>• For landlord tenant matters on behalf of tenants, disclosures should specifically include that Paraprofessionals are not licensed to provide in-court representation at trial and if the case goes to trial, having an attorney is strongly recommended.</li> </ul>

**Table 6. Statutory and Rule Amendments**

Topic	Codes/Rules	Recommendations
IOLTA	<a href="#">Business &amp; Professions Code §§ 6210-6228</a>	Mirror attorney requirements.
MCLE	<a href="#">State Bar Rules 2.81-2.82</a>	<ul style="list-style-type: none"> <li>• Allow CLE credit for teaching CLE courses</li> <li>• Do not allow CLE credit for paraprofessionals teaching law school courses</li> <li>• Do not allow CLE credit for unapproved courses<sup>3</sup></li> </ul>
Duties to Cooperate in Discipline Proceedings; Update License Records, and Self-Report Adverse Events	<a href="#">Business &amp; Professions Code § 6068(i), § 6068(j), § 6068(o)</a>	Mirror attorney requirements
Attorney-Client Privilege	Evidence Code <a href="#">§ 912</a> , <a href="#">§917</a> , <a href="#">§ 950-955</a>	Mirror attorney requirements
Attorney Work Product Doctrine	<a href="#">Code of Civil Procedure §§ 2018.010-2018.080</a>	Mirror attorney requirements
Statute of Limitations	<a href="#">Code of Civil Procedure § 340.6</a>	Mirror attorney requirements
Complaints Alleging Civil Conspiracy Between Attorneys and Clients	<a href="#">Civil Code § 1714.10</a>	No recommendation provided
Running and Capping	<a href="#">Business &amp; Professions Code §§ 6151-6154</a>	Mirror attorney requirements
Voidability of Fee Agreements for Failure to Comply with RPC 1.5.2	<a href="#">Business &amp; Professions Code § 6147</a>	Mirror attorney requirements
Unauthorized Practice of Law		<ul style="list-style-type: none"> <li>• Allow felony prosecution for UPL, even absent prior conviction</li> <li>• Additional funding and resources for law enforcement to investigate and prosecute UPL by non-licensees</li> <li>• Extend statute of limitations for UPL prosecution</li> <li>• Creation of record keeping requirements for paraprofessionals</li> <li>• Additional recommendations included in the UPL section of the report</li> </ul>

<sup>3</sup> Attorneys who have practices requiring specialized training in nonlegal fields (such as medical billing or accounting) may request approval for CLE credit for this training. Because paraprofessionals will practice only in defined fields, a similar rule is not recommended for paraprofessionals

## DISCIPLINE

**Table 7. Discipline System Structure**

Model Element	Recommendations
Complaint Intake and Investigation	To be handled by the Office of Chief Trial Counsel (OCTC)
Citation and Fine	To be administered by OCTC <ul style="list-style-type: none"> <li>If fine and fee determination is disputed, that dispute will be adjudicated by the Hearing Panel</li> </ul>
<ul style="list-style-type: none"> <li>Initial Hearings</li> <li>Disputed Fine and Fee Determinations</li> </ul>	Three-person Hearing Panel
Settlement Conferences	<ul style="list-style-type: none"> <li>To take place only if OCTC and paraprofessional mutually consent</li> <li>To be heard by staff adjudicator</li> </ul>
Appeals and Stipulated Discipline	Paraprofessional Licensing and Oversight Committee
Final Discipline Decision	<ul style="list-style-type: none"> <li>Suspensions and Revocations: final discipline decision to be made by the Supreme Court</li> <li>Appeals from the Appeals level to be heard by the Supreme Court</li> <li>All other discipline finalized at appropriate level within the State Bar's paraprofessional disciplinary structure, level as yet to be determined</li> </ul>

**Table 8. Alternatives to Formal Discipline**

Alternative or Nontraditional Discipline Approach	Recommendation
Warning Letter	Include
Mandatory Fee Arbitration	Include
Agreements in Lieu of Discipline	Exclude
Private Reprovals	Exclude
Alternative Discipline Program	Exclude

**Table 9. Public Records**

Intervention or Disciplinary Outcome	Private or Public	On Website or On Request	Retention Duration
Warning Letter (not discipline)	Private	N/A	
Citation & Fine (not discipline)	Public for 3 years from date of resolution	<ul style="list-style-type: none"> <li>Website for 3 years unless withdrawn or dismissed</li> <li>After 3 years transition to Private</li> </ul>	Indefinite
Notice of Disciplinary Charges	Public unless withdrawn or dismissed	On website for duration that resulting discipline is on website	For duration of period that underlying discipline is public
Public Repeval	Public	<ul style="list-style-type: none"> <li>Website for 10 years</li> <li>After 10 years transitions to anonymous report</li> </ul>	Indefinite
Probation	Public	Website	Indefinite

<b>Intervention or Disciplinary Outcome</b>	<b>Private or Public</b>	<b>On Website or On Request</b>	<b>Retention Duration</b>
Interim Suspension	Public	Website	Duration of interim suspension
Suspension pursuant to discipline	Public	Website	Indefinite
Disbarment	Public	Website	Indefinite
Felony Charges and Criminal Convictions	Mirror attorney requirements		

## OVERSIGHT AND GOVERNANCE

**Table 10. Paraprofessional Licensing and Oversight Committee**

Member Type	Appointing Authority
Judge	Supreme Court
2 Attorneys	Supreme Court
3 Paraprofessionals <ul style="list-style-type: none"> <li>• Northern California</li> <li>• Central</li> <li>• Southern California</li> </ul>	Supreme Court
2 Public (non-licensee)	Senate
2 Public (non-licensee)	Assembly
2 Public (non-licensee)	Governor
Paraprofessional Educator	Governor

**Table 11. Paraprofessional Program Governance Functions**

POLICY	Committee	Board of Trustees	Supreme Court	Legislature
Keep abreast of national and international developments in paraprofessional licensing	Implement	Receive updates	—	—
Program evaluation metrics and assessment	Approve	Receive updates	—	—
Consumer and prospective licensee outreach and education	Implement	Receive updates	—	—
LICENSURE	Committee	Board of Trustees	Supreme Court	Legislature
Eligibility				
Appeals of staff denial of eligibility	Approve	—	Discretionary Review	—
Education				
Establish educational requirements	Recommend	Recommend	Approve	Provide input
Approve learning objectives	Approve		—	—
Experiential Training				
Establish experiential requirements	Recommend	Recommend	Approve	Provide input
Establish attorney supervision requirements	Approve		Approve	Provide input
Establish incentives for attorney supervision	Recommend	Approve	—	—
Waivers				
Appeal of staff denial of waiver of educational or experiential hours	Approve	—	—	—
Moral Character				
Reviews & Informal Conferences	Approve	—	—	—
Review appeal of staff decision	Approve	—	Discretionary Review	
Set Fees	Recommend	Approve	—	—
Exam Development				
Develop questions	TBD	—	—	—
Review of questions	TBD	—	—	—
Evaluate grading	TBD	—	—	—
Sampling plan	TBD	—	—	—
Challenges to exam questions	TBD	—	Discretionary Review	—

<b>LICENSURE</b>	<b>Committee</b>	<b>Board of Trustees</b>	<b>Supreme Court</b>	<b>Legislature</b>
Set exam fee	Recommend	Approve	—	—
<b>Testing Accommodations</b>				
Policy development	Approve	—	—	—
Review petitions	Approve	—	—	—
Review appeals	Approve	—	Discretionary Review	—
<b>Eligibility &amp; Enforcement of Exam Rules</b>				
Policy development	Approve	—	—	—
Enforcement	Approve	—	—	—
Appeals	Approve	—	Discretionary Review	—
<b>Exam Analysis &amp; Review</b>				
Design standard setting study	Recommend	Approve	—	—
Design content validation study	Recommend	Approve	—	—
Design job analysis	Recommend	Approve	—	—
<b>Paraprofessional Educational Institutions</b>				
Certification	Approve	—	—	—
<b>REGULATION</b>	<b>Committee</b>	<b>Board of Trustees</b>	<b>Supreme Court</b>	<b>Legislature</b>
<b>MCLE</b>				
MCLE Provider certification criteria	Approve	—	—	—
MCLE Requirements	Approve	—	Final Decision	Provide Input
<b>Financial Responsibility</b>				
Establish requirements	Approve	—	Final Decision	Provide Input
<b>Rules of Professional Conduct</b>				
Establish and modify	Recommend	Approve	Final Decision	—
<b>State Bar Rules<sup>4</sup></b>				
Establish and modify	Recommend	Approve	Final Decision	—
<b>State Bar Rules of Procedure</b>				
Establish and modify	Recommend	Approve	—	—
<b>California Rules of Court</b>				
Establish and modify	Recommend	Recommend	Final Decision	—
<b>Statutes (State Bar Act, other statutes)</b>				
Establish and modify	Recommend	Recommend	Provide input	Final Decision
<b>DISCIPLINE</b>	<b>Committee</b>	<b>Board of Trustees</b>	<b>Supreme Court</b>	<b>Legislature</b>
Compensation for hearing officers	Approve	—	—	—
Hearing panel selection	Approve	—	—	—
Settlement	Approve	—	—	—
License Suspension/Revocation	Recommend	—	Final Decision	—
Other Discipline	Approve	—	—	—

<sup>4</sup> Some State Bar Rules are statutorily subject to approval by the Supreme Court (e.g., Minimum Standards for Lawyer Referral Services).

## IMPLEMENTATION

**Table 12. Phased Implementation**

Implementation	Recommendation
Program Features	Full Program Features
Practice Areas	<ul style="list-style-type: none"> <li>• Family, Children, and Custody</li> <li>• Housing</li> <li>• Collateral Criminal</li> </ul>
Geography	<ul style="list-style-type: none"> <li>• Northern California Counties               <ul style="list-style-type: none"> <li>○ Alameda</li> <li>○ El Dorado</li> <li>○ Placer</li> <li>○ Sacramento</li> <li>○ Santa Clara</li> <li>○ Yuba</li> </ul> </li> <li>• Central California Counties               <ul style="list-style-type: none"> <li>○ Fresno</li> <li>○ Merced</li> <li>○ Tulare</li> </ul> </li> <li>• Southern California County               <ul style="list-style-type: none"> <li>○ Orange</li> </ul> </li> </ul>

**Table 13. Increased UPL Enforcement**

Topic	Recommendations
Statutory Amendments	<ul style="list-style-type: none"> <li>• Harsher criminal penalties for UPL</li> <li>• Allow felony prosecution, even absent prior conviction</li> <li>• Expand State Bar authority to investigate and address UPL and fraud by nonlicensees               <ul style="list-style-type: none"> <li>○ Allow for State Bar imposition of citation and fines for UPL</li> </ul> </li> <li>• Extend statute of limitations for UPL prosecution</li> </ul>
Resources and Funding	<ul style="list-style-type: none"> <li>• Additional funding and resources for law enforcement to investigate and prosecute UPL and fraud by nonlicensees</li> <li>• Additional funding and resources for State Bar investigation and prosecution of UPL and fraud by nonlicensees</li> <li>• Creation of a victim fund for UPL victims</li> </ul>
Regulation	<ul style="list-style-type: none"> <li>• Creation of record keeping requirements for paraprofessionals</li> </ul>
Public Education	<ul style="list-style-type: none"> <li>• Allocation of resources for consumer education, to ensure that the public is aware of the scope of the paraprofessional license, as well as how to identify whether a service provider is appropriately licensed</li> </ul>

**Table 14. Potential Licensee Names**

English	Spanish
Limited License Legal Practitioner <sup>5</sup>	Practicante Legal Con Licencia Limitada
Limited Legal Practitioner	Practicante Legal Limitado
Limited Legal Advisor	Asesor Legal Limitado

<sup>5</sup> This licensee name was identified as a top choice in surveys as well as in discussions with the Working Group and the Regulation Subcommittee.

## PROGRAM EVALUATION

**Table 15. Evaluation Metrics**

Metric	Data Points	Data Source
Program Viability	Number of licensees/market coverage	Internal data
	Volume of use	Survey
	Stable and sufficient regulatory funding source	Internal data
	Sufficient income potential for licensees to stay in business	Survey
Equity and Access	Demographics of paraprofessionals and their clients	Survey
	Number of self-represented litigants (reduced?)	CMS/JBSIS <sup>6</sup>
	Justice Gap (reduced?)	Survey
Case Outcomes/ Client Satisfaction	Overall satisfaction	Survey
	Procedural satisfaction	Survey
Legitimacy/ Political Sustainability	Lawyer, judicial officer, and general public sentiment about the program	Survey
Affordability	Fee structure transparency: consumer understanding of service offerings and price points	Survey
	Hourly rates	
	Per case/event rates	
	Number of hours to complete services	
Efficiency in Paraprofessional Training	Cost of education	Survey

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<sup>6</sup> Court Case Management System/Judicial Branch Statistical Information System.

## ADDITIONAL RECOMMENDATIONS

**Table 16. Additional Recommendations**

Topic	Recommendations
Health Care	<ul style="list-style-type: none"> <li>• The State Bar should assist in publicizing the availability of Health Consumer Alliances (HCAs), the Department of Managed Health Care, and the Department of Insurance.</li> <li>• The State Bar should support the efforts of the HCAs to require that information about their availability is included on notices from medical insurers and health care providers</li> </ul>
Housing	<ul style="list-style-type: none"> <li>• The State Bar should express strong support for establishing and funding a right to counsel in unlawful detainer proceedings, making it clear that paraprofessional licensing in this area is meant to supplement and not undermine establishment and funding of a right to counsel;               <ul style="list-style-type: none"> <li>○ A justice gap continues to exist; paraprofessionals will not be authorized to represent litigants at trial and free attorneys may not be available due to income-restrictions placed on right-to-counsel programs, legal services funding, and capacity issues, or because local jurisdictions have not yet implemented or fully funded a right to counsel in their jurisdiction.</li> <li>○ Paraprofessionals may participate with legal services programs to provide free or low-cost legal services.</li> </ul> </li> </ul>
Collateral Criminal	<p>The State Bar should research and consider supporting a portal that was recently created and launched by <a href="#">The Access Project</a>, which helps guide pro bono service providers through each step required to file for expungement and reclassification of convictions.</p>
Veterans	<ul style="list-style-type: none"> <li>• The State Bar should convene Veterans Services Organizations, legal aid organizations, and pro bono attorneys that are currently providing legal services to veterans for the following purposes:               <ul style="list-style-type: none"> <li>○ Increase awareness of services available to veterans;</li> <li>○ Increase the number of attorneys providing pro bono legal services to veterans;</li> <li>○ Provide additional resources and trainings; and</li> <li>○ Recruit nonattorney volunteers interested in veterans advocacy as authorized by the Veterans Administration and the Department of Defense.</li> </ul> </li> </ul>
Representation by Nonattorneys in Regulatory Agency Proceedings	<p>The State Bar should consider recommending standards for consideration by the legislature regarding conduct by nonattorneys in regulatory agency proceedings.</p>

## RULES OF PROFESSIONAL CONDUCT FOR LICENSED PARAPROFESSIONALS

### Rule 1.0 Purpose and Function of the Rules of Professional Conduct for Licensed Paraprofessionals (Proposed Rule – Clean Version)

(a) Purpose.

The following rules are intended to regulate professional conduct of licensed paraprofessionals through discipline. They have been adopted by the Board of Trustees of the State Bar of California and approved by the Supreme Court of California to protect the public, the courts, and the legal profession; protect the integrity of the legal system; and promote the administration of justice and confidence in the legal profession. These rules together with any standards adopted by the Board of Trustees pursuant to these rules shall be binding upon all licensed paraprofessionals.

(b) Function.

- (1) A willful violation of any of these rules is a basis for discipline.
- (2) The prohibition of certain conduct in these rules is not exclusive. Licensed paraprofessionals are also bound by applicable law including relevant statutes, the California Rules of Court, and opinions of California courts.
- (3) A violation of a rule does not itself give rise to a cause of action for damages caused by failure to comply with the rule. Nothing in these rules or the Comments to the rules is intended to enlarge or to restrict the law regarding the liability of licensed paraprofessionals to others.

(c) Purpose of Comments.

The comments are not a basis for imposing discipline but are intended only to provide guidance for interpreting and practicing in compliance with the rules.

(d) These rules may be cited and referred to as the “California Rules of Professional Conduct for Licensed Paraprofessionals.”

**Comment**

[Reserved]

### Rule 1.0 Purpose and Function of the Rules of Professional Conduct for Licensed Paraprofessionals (Proposed Rule – Redline Version)

(a) Purpose.

The following rules are intended to regulate professional conduct of lawyerlicensed paraprofessionals through discipline. They have been adopted by the Board of Trustees of the State Bar of California and approved by the Supreme Court of California ~~pursuant to Business and Professions Code sections 6076 and 6077~~ to protect the public, the courts, and the legal profession; protect the integrity of the legal system; and promote the administration of justice and confidence in the legal profession. These rules together with any standards adopted by the Board of Trustees pursuant to these rules shall be binding upon all lawyerlicensed paraprofessionals.

(b) Function.

- (1) A willful violation of any of these rules is a basis for discipline.

(2) The prohibition of certain conduct in these rules is not exclusive. ~~Lawyer~~Licensed paraprofessionals are also bound by applicable law including relevant statutes, the California Rules of Court, and the State Bar Act (Bus. & Prof. Code, § 6000 et seq.) and opinions of California courts.

(3) A violation of a rule does not itself give rise to a cause of action for damages caused by failure to comply with the rule. Nothing in these rules or the Comments to the rules is intended to enlarge or to restrict the law regarding the liability of ~~lawyers-~~licensed paraprofessionals to others.

(c) Purpose of Comments.

The comments are not a basis for imposing discipline but are intended only to provide guidance for interpreting and practicing in compliance with the rules.

(d) These rules may be cited and referred to as the “California Rules of Professional Conduct for Licensed Paraprofessionals.”

#### Comment

[Reserved]

### Rule 1.0.1 Terminology (Proposed Rule – Clean Version)

(a) “Belief” or “believes” means that the person\* involved actually supposes the fact in question to be true. A person’s\* belief may be inferred from circumstances.

(b) “Licensed Paraprofessional” means a person\* licensed to engage in the limited practice of law pursuant to [ADD reference to CRC rule(s) and/or State Bar Act provisions defining licensing process and scope of permissible practice].

(c) “Firm” or “law firm” means a licensed paraprofessional, licensed paraprofessionals, a lawyer, or lawyers in a law partnership; a professional law corporation; a licensed paraprofessional acting as a sole proprietorship; an association authorized to practice law; or licensed paraprofessional licensed paraprofessional employed in a legal services organization or in the legal department, division or office of a corporation, of a government organization, or of another organization.

(d) “Fraud” or “fraudulent” means conduct that is fraudulent under the law of the applicable jurisdiction and has a purpose to deceive.

(e) “Informed consent” means a person’s\* agreement to a proposed course of conduct after the licensed paraprofessional has communicated and explained (i) the relevant circumstances and (ii) the material risks, including any actual and reasonably\* foreseeable adverse consequences of the proposed course of conduct.

(e-1) “Informed written consent” means that the disclosures and the consent required by paragraph (e) must be in writing.\*

(f) “Knowingly,” “known,” or “knows” means actual knowledge of the fact in question. A person’s\* knowledge may be inferred from circumstances.

(g) “Partner” means a member of a partnership, a shareholder in a law firm\* organized as a professional corporation, or a member of an association authorized to practice law.

(g-1) “Person” has the meaning stated in Evidence Code section 175.

(h) “Reasonable” or “reasonably” when used in relation to conduct by a licensed paraprofessional means the conduct of a reasonably prudent and competent licensed paraprofessional.

- (i) “Reasonable belief” or “reasonably believes” when used in reference to a licensed paraprofessional means that the licensed paraprofessional believes the matter in question and that the circumstances are such that the belief is reasonable.
- (j) “Reasonably should know” when used in reference to a licensed paraprofessional means that a licensed paraprofessional of reasonable prudence and competence would ascertain the matter in question.
- (k) “Screened” means the isolation of a licensed paraprofessional from any participation in a matter, including the timely imposition of procedures within a law firm\* that are adequate under the circumstances (i) to protect information that the isolated licensed paraprofessional is obligated to protect under these rules or other law; and (ii) to protect against other law firm\* lawyers, licensed paraprofessionals and nonlawyers, and non-licensed paraprofessional personnel communicating with the licensed paraprofessional with respect to the matter.
- (l) “Substantial” when used in reference to degree or extent means a material matter of clear and weighty importance.
- (m) “Tribunal” means: (i) a court, an arbitrator, an administrative law judge, or an administrative body acting in an adjudicative capacity and authorized to make a decision that can be binding on the parties involved; or (ii) a special master or other person\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.
- (n) “Writing” or “written” has the meaning stated in Evidence Code section 250. A “signed” writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed, inserted, or adopted by or at the direction of a person\* with the intent to sign the writing.
- (o) “Lawyer RPC” denotes the California Rules of Professional Conduct for Lawyers.

**Comment**

[Reserved]

**Rule 1.0.1 Terminology  
(Proposed Rule – Redline Version)**

- (a) “Belief” or “believes” means that the person\* involved actually supposes the fact in question to be true. A person’s\* belief may be inferred from circumstances.
- (b) “Licensed Paraprofessional” means a person\* licensed to engage in the limited practice of law pursuant to [ADD reference to CRC rule(s) and/or State Bar Act provisions defining licensing process and scope of permissible practice].
- (c) “Firm” or “law firm” means a licensed paraprofessional, licensed paraprofessionals, a lawyer, or lawyers in a law partnership; a professional law corporation; a ~~lawyer~~-licensed paraprofessional acting as a sole proprietorship; an association authorized to practice law; or ~~lawyer~~licensed paraprofessionals- licensed paraprofessional employed in a legal services organization or in the legal department, division or office of a corporation, of a government organization, or of another organization.
- (d) “Fraud” or “fraudulent” means conduct that is fraudulent under the law of the applicable jurisdiction and has a purpose to deceive.
- (e) “Informed consent” means a person’s\* agreement to a proposed course of conduct after the lawyerlicensed paraprofessional- has communicated and explained (i) the relevant circumstances and (ii) the material risks, including any actual and reasonably\* foreseeable adverse consequences of the proposed course of conduct.
- (e-1) “Informed written consent” means that the disclosures and the consent required by paragraph (e) must be in writing.\*

(f) “Knowingly,” “known,” or “knows” means actual knowledge of the fact in question. A person’s\* knowledge may be inferred from circumstances.

(g) “Partner” means a member of a partnership, a shareholder in a law firm\* organized as a professional corporation, or a member of an association authorized to practice law.

(g-1) “Person” has the meaning stated in Evidence Code section 175.

(h) “Reasonable” or “reasonably” when used in relation to conduct by a lawyerlicensed paraprofessional means the conduct of a reasonably prudent and competent lawyerlicensed paraprofessional.

(i) “Reasonable belief” or “reasonably believes” when used in reference to a lawyerlicensed paraprofessional means that the lawyerlicensed paraprofessional believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) “Reasonably should know” when used in reference to a lawyerlicensed paraprofessional means that a lawyerlicensed paraprofessional of reasonable prudence and competence would ascertain the matter in question.

(k) “Screened” means the isolation of a lawyerlicensed paraprofessional from any participation in a matter, including the timely imposition of procedures within a law firm\* that are adequate under the circumstances (i) to protect information that the isolated lawyerlicensed paraprofessional is obligated to protect under these rules or other law; and (ii) to protect against other law firm\* lawyers, licensed paraprofessionals and nonlawyers, and nonlicensed paraprofessional personnel communicating with the lawyerlicensed paraprofessional with respect to the matter.

(l) “Substantial” when used in reference to degree or extent means a material matter of clear and weighty importance.

(m) “Tribunal” means: (i) a court, an arbitrator, an administrative law judge, or an administrative body acting in an adjudicative capacity and authorized to make a decision that can be binding on the parties involved; or (ii) a special master or other person\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

(n) “Writing” or “written” has the meaning stated in Evidence Code section 250. A “signed” writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed, inserted, or adopted by or at the direction of a person\* with the intent to sign the writing.

(o) “Lawyer RPC” denotes the California Rules of Professional Conduct for Lawyers.

#### **Comment**

[Reserved]

**CHAPTER 1.**  
**LAWYERLICENSED PARAPROFESSIONAL-CLIENT RELATIONSHIP**

**Rule 1.1 Competence**  
**(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- (b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably\* necessary for the performance of such service.
- (c) If a licensed paraprofessional does not have sufficient learning and skill when the legal services within the scope of the licensure are undertaken, the licensed paraprofessional nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another licensed paraprofessional or a lawyer whom the licensed paraprofessional reasonably believes\* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another licensed paraprofessional or lawyer whom the licensed paraprofessional reasonably believes\* to be competent.

**Comment**

[Reserved]

**Rule 1.1 Competence**  
**(Proposed Rule – Redline Version)**

- (a) A lawyerlicensed paraprofessional shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- (b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably\* necessary for the performance of such service.
- (c) If a lawyerlicensed paraprofessional does not have sufficient learning and skill when the legal services within the scope of the licensure are undertaken, the lawyerlicensed paraprofessional nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyerlicensed paraprofessional or a lawyer whom the lawyerlicensed paraprofessional reasonably believes\* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyerlicensed paraprofessional or lawyer whom the lawyerlicensed paraprofessional reasonably believes\* to be competent.
- ~~(d) In an emergency a lawyerlicensed paraprofessional may give advice or assistance in a matter in which the lawyerlicensed paraprofessional does not have the skill ordinarily required if referral to, or association or consultation with, another lawyerlicensed paraprofessional or lawyer would be impractical. Assistance in an emergency must be limited to that reasonably\* necessary in the circumstances.~~

**Comment**

[Reserved]

**Rule 1.2 Scope of Representation and Allocation of Authority**  
**(Proposed Rule – Clean Version)**

(a) Subject to rule 1.2.1, a licensed paraprofessional shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably\* consult with the client as to the means by which they are to be pursued. Subject to rule 1.6, a licensed paraprofessional may take such action on behalf of the client as is impliedly authorized to carry out the representation. A licensed paraprofessional shall abide by a client's decision whether to settle a matter. .

(b) A licensed paraprofessional may limit the scope of the representation if the limitation is reasonable\* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent\* **Comment**

[Reserved]

### **Rule 1.2 Scope of Representation and Allocation of Authority (Proposed Rule – Redline Version)**

(a) Subject to rule 1.2.1, a ~~lawyer-licensed paraprofessional~~ shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably\* consult with the client as to the means by which they are to be pursued. Subject to ~~Business and Professions Code section 6068, subdivision (e)(1) and~~ rule 1.6, a licensed paraprofessional ~~lawyer~~ may take such action on behalf of the client as is impliedly authorized to carry out the representation. A licensed paraprofessional ~~lawyer~~ shall abide by a client's decision whether to settle a matter. ~~Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.~~

(b) A lawyer-licensed paraprofessional may limit the scope of the representation if the limitation is reasonable\* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.\*

#### **Comment**

[Reserved]

### **Rule 1.2.1 Advising or Assisting the Violation of Law (Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not counsel a client to engage, or assist a client in conduct that the licensed paraprofessional knows\* is criminal, fraudulent,\* or a violation of any law, rule, or ruling of a tribunal.\*

(b) Notwithstanding paragraph (a), a licensed paraprofessional may:

(1) discuss the legal consequences of any proposed course of conduct with a client; and

(2) counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of a law, rule, or ruling of a tribunal.\*

#### **Comment**

[Reserved]

**Rule 1.2.1 Advising or Assisting the Violation of Law  
(Proposed Rule – Redline Version)**

- (a) A ~~licensed paraprofessional lawyer~~ shall not counsel a client to engage, or assist a client in conduct that the ~~lawyer~~licensed paraprofessional knows\* is criminal, fraudulent,\* or a violation of any law, rule, or ruling of a tribunal.\*
- (b) Notwithstanding paragraph (a), a ~~licensed paraprofessional lawyer~~ may:
- (1) discuss the legal consequences of any proposed course of conduct with a client; and
  - (2) counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of a law, rule, or ruling of a tribunal.\*

**Comment**

[Reserved]

**Rule 1.3 Diligence  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.
- (b) For purposes of this rule, “reasonable diligence” shall mean that a licensed paraprofessional acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the licensed paraprofessional.

**Comment**

[Reserved]

**Rule 1.3 Diligence  
(Proposed Rule – Redline Version)**

- (a) A ~~licensed paraprofessional lawyer~~ shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.
- (b) For purposes of this rule, “reasonable diligence” shall mean that a ~~lawyer~~licensed paraprofessional acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the ~~lawyer~~licensed paraprofessional.

**Comment**

[Reserved]

**Rule 1.4 Communication with Clients  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall:
- (1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client’s informed consent\* is required by these rules or applicable law;

- (2) reasonably\* consult with the client about the means by which to accomplish the client’s objectives in the representation;
  - (3) keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed; and
  - (4) advise the client about any relevant limitation on the licensed paraprofessional’s conduct when the licensed paraprofessional knows\* that the client expects assistance not permitted by these rules or other law.
- (b) A licensed paraprofessional shall explain a matter to the extent reasonably\* necessary to permit the client to make informed decisions regarding the representation.
- (c) A licensed paraprofessional may delay transmission of information to a client if the licensed paraprofessional reasonably believes\* that the client would be likely to react in a way that may cause imminent harm to the client or others.
- (d) A licensed paraprofessional’s obligation under this rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or limitation under statutory or decisional law.

**Comment**

[Reserved]

**Rule 1.4 Communication with Clients  
(Proposed Rule – Redline Version)**

- (a) A ~~licensed paraprofessional~~ lawyer shall:
- (1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client’s informed consent\* is required by these rules or ~~the State Bar Act~~ applicable law;
  - (2) reasonably\* consult with the client about the means by which to accomplish the client’s objectives in the representation;
  - (3) keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed; and
  - (4) advise the client about any relevant limitation on the ~~licensed paraprofessional~~ lawyer licensed paraprofessional’s conduct when the ~~licensed paraprofessional~~ lawyer licensed paraprofessional knows\* that the client expects assistance not permitted by ~~these rules~~ Rules of Professional Conduct or other law.
- (b) A ~~licensed paraprofessional~~ lawyer licensed paraprofessional shall explain a matter to the extent reasonably\* necessary to permit the client to make informed decisions regarding the representation.
- (c) A ~~licensed paraprofessional~~ lawyer licensed paraprofessional may delay transmission of information to a client if the ~~licensed paraprofessional~~ lawyer licensed paraprofessional reasonably believes\* that the client would be likely to react in a way that may cause imminent harm to the client or others.
- (d) A ~~licensed paraprofessional~~ lawyer licensed paraprofessional’s obligation under this rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or limitation under statutory or decisional law.

**Comment**

[Reserved]

**Rule 1.4.1 Communication of Settlement Offers  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall promptly communicate to the licensed paraprofessional’s client all amounts, terms, and conditions of any written\* offer of settlement made to the client.
- (b) As used in this rule, “client” includes a person\* who possesses the authority to accept an offer of settlement.

**Comment**

[Reserved]

**Rule 1.4.1 Communication of Settlement Offers  
(Proposed Rule – Redline Version)**

- (a) A ~~licensed paraprofessional lawyer~~ shall promptly communicate to the ~~lawyer~~ licensed paraprofessional’s client ~~;~~
  - ~~(1) all terms and conditions of a proposed plea bargain or other dispositive offer made to the client in a criminal matter;~~
  - ~~and~~
  - ~~(2) all amounts, terms, and conditions of any written\* offer of settlement made to the client in all other matters.~~
- (b) As used in this rule, “client” includes a person\* who possesses the authority to accept an offer of settlement ~~or plea,~~ ~~or, in a class action, all the named representatives of the class.~~

**Comment**

[Reserved]

**Rule 1.4.2 Notice to Consumers Prior to Consultation with a Prospective Client  
(Proposed Rule – Clean Version)**

- (a) Prior to a prospective client’s consultation with a licensed paraprofessional for the purpose of retaining the licensed paraprofessional or securing legal services or advice from the licensed paraprofessional in the licensed paraprofessional’s professional capacity, the licensed paraprofessional shall disclose orally and provide, at the time of the consultation or as soon thereafter as reasonably\* practicable the written\* disclosures to the prospective client in the prospective client’s preferred language that:
  - (1) the licensed paraprofessional is not a lawyer;
  - (2) the licensed paraprofessional has a license to provide limited legal services, the area of practice in which the licensed paraprofessional is licensed, and that the licensed paraprofessional cannot provide all services that a lawyer can provide in this area of practice;
  - (3) the prospective client may need to hire a lawyer if the legal services that the prospective client seeks are beyond the limited scope of the licensed paraprofessional’s license;
  - (4) there may be other alternative choices available for the prospective client to consider, including, but not limited to, 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, or potentially free legal services from a local legal aid organization if the prospective client qualifies;

(5) a general description of the licensed paraprofessional's fee structure and billing methods; and

(6) whether the licensed paraprofessional does or does not have professional liability insurance based on the licensed paraprofessional's reasonable knowledge\* at the time of the disclosure,

(b) If the licensed paraprofessional provides notice to the prospective client prior to consultation that the licensed paraprofessional does have professional liability insurance pursuant to paragraph (a)(6) and a licensed paraprofessional-client relationship is formed, the licensed paraprofessional shall inform the client in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional no longer has professional liability insurance during the representation of the client.

[Reserved]

**Rule 1.4.2 Notice to Consumers Prior to Consultation with a Prospective Client~~Disclosure of Professional Liability Insurance~~  
(Proposed Rule – Redline Version)**

(a) Prior to a prospective client's consultation with a licensed paraprofessional for the purpose of retaining the licensed paraprofessional or securing legal services or advice from the licensed paraprofessional in the licensed paraprofessional's professional capacity, the licensed paraprofessional shall disclose orally and provide, at the time of the consultation or as soon thereafter as reasonably\* practicable the written\* disclosures to the prospective client in the prospective client's preferred language that:

(1) the licensed paraprofessional is not a lawyer;

(2) the licensed paraprofessional has a license to provide limited legal services, the area of practice in which the licensed paraprofessional is licensed, and that the licensed paraprofessional cannot provide all services that a lawyer can provide in this area of practice;

(3) the prospective client may need to hire a lawyer if the legal services that the prospective client seeks are beyond the limited scope of the licensed paraprofessional's license;

(4) there may be other alternative choices available for the prospective client to consider, including, but not limited to, 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, or potentially free legal services from a local legal aid organization if the prospective client qualifies;

(5) a general description of the licensed paraprofessional's fee structure and billing methods; and

(6) whether the licensed paraprofessional does or does not have professional liability insurance based on the licensed paraprofessional's reasonable knowledge\* at the time of the disclosure,

~~(a) A licensed paraprofessional who knows\* or reasonably should know\* that the licensed paraprofessional does not have professional liability insurance shall inform a client in writing,\* at the time of the client's engagement of the licensed paraprofessional, that the licensed paraprofessional does not have professional liability insurance.~~

(b) If the licensed paraprofessional provides notice to the prospective client prior to consultation that the licensed paraprofessional does have professional liability insurance pursuant to paragraph (a)(6) and a licensed paraprofessional-client relationship is formed, the licensed paraprofessional shall inform the client in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional no longer has

~~professional liability insurance during the representation of the client. If notice under paragraph (a) has not been provided at the time of a client's engagement of the licensed paraprofessional, the licensed paraprofessional shall inform the client in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional no longer has professional liability insurance during the representation of the client.~~

~~(c) This rule does not apply to:~~

~~(1) a licensed paraprofessional who knows\* or reasonably should know\* at the time of the client's engagement of the licensed paraprofessional that the licensed paraprofessional's legal representation of the client in the matter will not exceed four hours; provided that if the representation subsequently exceeds four hours, the licensed paraprofessional must comply with paragraphs (a) and (b);~~

~~(2) a licensed paraprofessional who is employed as a government licensed paraprofessional or in-house counsel when that licensed paraprofessional is representing or providing legal advice to a client in that capacity;~~

~~(3) a licensed paraprofessional who is rendering legal services in an emergency to avoid foreseeable prejudice to the rights or interests of the client;~~

~~(4) a licensed paraprofessional who has previously advised the client in writing\* under paragraph (a) or (b) that the licensed paraprofessional does not have professional liability insurance.~~

[Reserved]

### **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 legal services may be available to low-income individuals from a legal aid program if the client qualifies;

(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.

(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.

#### **Comments**

[Reserved]

**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 legal services may be available to low-income individuals from a legal aid program if the client qualifies;

(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.

**Comments**

[Reserved]

**Rule 1.5 Fees for Legal Services**  
**(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not make an agreement for, charge, or collect an unconscionable or illegal fee.

(b) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. The factors to be considered in determining the unconscionability of a fee include without limitation the following:

(1) whether the licensed paraprofessional engaged in fraud\* or overreaching in negotiating or setting the fee;

(2) whether the licensed paraprofessional has failed to disclose material facts;

(3) the amount of the fee in proportion to the value of the services performed;

(4) the relative sophistication of the licensed paraprofessional and the client;

(5) the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

- (6) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the licensed paraprofessional;
- (7) the amount involved and the results obtained;
- (8) the time limitations imposed by the client or by the circumstances;
- (9) the nature and length of the professional relationship with the client;
- (10) the experience, reputation, and ability of the licensed paraprofessional performing the services;
- (11) whether the fee is fixed or contingent;
- (12) the time and labor required; and
- (13) whether the client gave informed consent\* to the fee.
- (14) the fee customarily charged by licensed paraprofessionals and lawyers in the locality for similar legal services.

(c) A licensed paraprofessional shall not make an agreement for, charge, or collect a contingent fee except in an enforcement of judgment matter within the scope of the licensed paraprofessional’s licensure. Any contingent fee permitted under this paragraph shall not exceed thirty-three and one-third percent of the total value of the judgment subject to the enforcement action.

(d) A licensed paraprofessional shall not make an agreement for, charge, or collect a fee that is denominated as “earned on receipt” or “non-refundable,” or in similar terms.

(e) A licensed paraprofessional may make an agreement for, charge, or collect a flat fee for specified legal services. A flat fee is a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the licensed paraprofessional providing those services.

**Comment**

[Reserved]

**Rule 1.5 Fees for Legal Services  
(Proposed Rule – Redline Version)**

- (a) A ~~lawyer~~licensed paraprofessional shall not make an agreement for, charge, or collect an unconscionable or illegal ~~fee~~.
- (b) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. The factors to be considered in determining the unconscionability of a fee include without limitation the following:
  - (1) whether the ~~lawyer~~licensed paraprofessional engaged in fraud\* or overreaching in negotiating or setting the fee;
  - (2) whether the ~~lawyer~~licensed paraprofessional has failed to disclose material facts;
  - (3) the amount of the fee in proportion to the value of the services performed;
  - (4) the relative sophistication of the licensed paraprofessional~~lawyer~~ and the client;
  - (5) the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

- (6) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the ~~licensed paraprofessional~~lawyer;
- (7) the amount involved and the results obtained;
- (8) the time limitations imposed by the client or by the circumstances;
- (9) the nature and length of the professional relationship with the client;
- (10) the experience, reputation, and ability of the ~~licensed paraprofessional~~lawyer or lawyers performing the services;
- (11) whether the fee is fixed or contingent;
- (12) the time and labor required;
- (13) whether the client gave informed consent\* to the fee; and

(14) the fee customarily charged by licensed paraprofessionals and lawyers in the locality for similar legal services.

(c) A ~~licensed paraprofessional~~lawyer shall not make an agreement for, charge, or collect:

~~(1) any fee in a family law matter, the payment or amount of which is contingent upon the securing of a dissolution or declaration of nullity of a marriage or upon the amount of spousal or child support, or property settlement in lieu thereof; a contingent fee except in an enforcement of judgment matter within the scope of the licensed paraprofessional's licensure. Any contingent fee permitted under this paragraph shall not exceed thirty-three and one-third percent of the total value of the judgment subject to the enforcement action. or~~

~~(2) a contingent fee for representing a defendant in a criminal case.~~

(d) A ~~licensed paraprofessional lawyer may~~shall not make an agreement for, charge, or collect a fee that is denominated as "earned on receipt" or "non-refundable," or in similar terms, ~~only if the fee is a true retainer and the client agrees in writing\* after disclosure that the client will not be entitled to a refund of all or part of the fee charged. A true retainer is a fee that a client pays to a lawyer to ensure the lawyer's availability to the client during a specified period or on a specified matter, but not to any extent as compensation for legal services performed or to be performed. ]~~

(e) A ~~lawyer~~licensed paraprofessional may make an agreement for, charge, or collect a flat fee for specified legal services. A flat fee is a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the ~~lawyer~~licensed paraprofessional providing those services.

**Comment**

[Reserved]

**Rule 1.5.1 Fee Divisions Among Licensed Paraprofessionals  
(Proposed Rule – Clean Version)**

(a) ~~Lawyer~~Licensed paraprofessionals who are not in the same law firm\* shall not divide a fee for legal services unless:

(1) the ~~lawyer~~licensed paraprofessionals enter into a written\* agreement to divide the fee;

(2) the division is in proportion to the legal services performed by each licensed paraprofessional or each licensed paraprofessional assumes joint responsibility for the representation.

(23) the client has consented in writing,\* either at the time the lawyer licensed paraprofessionals enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the lawyer licensed paraprofessionals or law firms\* that are parties to the division; and (iii) the terms of the division; and

(34) the total fee charged by all lawyer licensed paraprofessionals is not increased solely by reason of the agreement to divide fees.

(b) A licensed paraprofessional and a lawyer who are not in the same law firm\* shall not divide a fee for legal services.

~~(b)~~ This rule does not apply to a division of fees pursuant to court order.

**Comment**

[Reserved]

**Rule 1.5.1 Fee Divisions Among Lawyer Licensed Paraprofessionals  
(Proposed Rule – Redline Version)**

(a) Lawyer licensed paraprofessionals who are not in the same law firm\* shall not divide a fee for legal services unless:

(1) the lawyer licensed paraprofessionals enter into a written\* agreement to divide the fee;

(2) the division is in proportion to the legal services performed by each licensed paraprofessional or each licensed paraprofessional assumes joint responsibility for the representation.

(23) the client has consented in writing,\* either at the time the lawyer licensed paraprofessionals enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the lawyer licensed paraprofessionals or law firms\* that are parties to the division; and (iii) the terms of the division; and

(34) the total fee charged by all lawyer licensed paraprofessionals is not increased solely by reason of the agreement to divide fees.

(b) A licensed paraprofessional and a lawyer who are not in the same law firm\* shall not divide a fee for legal services unless:

(1) the licensed paraprofessional and the lawyer enter into a written\* agreement to divide the fee;

(2) the division is in proportion to the legal services performed by each licensed paraprofessional and the lawyer;

(3) the client has consented in writing,\* either at the time the licensed paraprofessional and the lawyer enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessional, the lawyer, or law firms\* that are parties to the division; and (iii) the terms of the division; and

(4) the total fee charged by all licensed paraprofessionals and lawyers is not increased solely by reason of the agreement to divide fees.

~~(b)~~ This rule does not apply to a division of fees pursuant to court order.

**Comment**

[Reserved]

**Rule 1.5.2 Written Agreement to Representation  
(Proposed Rule – Clean Version)**

Prior to the performance of legal services for a fee, the licensed paraprofessional shall enter into a written\* agreement with the client in a separate writing,\* provided in the prospective client’s preferred language, and signed by both the client and the licensed paraprofessional, that provides the licensed paraprofessional’s name, specialty area, mailing address, street address, telephone numbers, facsimile numbers, internet address, and license number of the licensed paraprofessional, and includes the following provisions:

- (a) A clear and conspicuous disclosure that the licensed paraprofessional is not a lawyer and may only provide limited legal advice and services within the scope of the licensed paraprofessional’s licensure. This statement shall be on the first page of the contract; in a type size, font, color, appearance, and location sufficiently noticeable for a client to read and comprehend them; in a print that contrasts with the background against which they appear; in larger type than the surrounding text; in a manner that clearly calls attention to the language;
- (b) An explanation of the general nature of the legal services to be provided to the client;
- (c) A reasonable estimate of the total fees, expenses, and costs of services provided by the licensed paraprofessional, and the basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the matter;
- (d) A statement that, pursuant to rule 1.4, the licensed paraprofessional must keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed;
- (e) A statement describing the licensed paraprofessional’s duty to protect the confidentiality of information related to the representation under rule 1.6, including information provided in confidence by the client and the licensed paraprofessional’s work product associated with the legal services sought or provided by the licensed paraprofessional;
- (f) A statement that, pursuant to rule 1.16(a)(4), the client has the right to terminate the contract and services at any time, with or without cause, and receive a full refund of unearned fees pursuant to rule 1.16(e)(2);
- (g) A statement confirming that the licensed paraprofessional is required by [add rule of court reference] to carry a surety bond in the amount of \$100,000, the name of the surety bond carrier, and information on how to file a claim against the surety bond if necessary;
- (h) A statement confirming if the licensed paraprofessional has or does not have professional liability insurance. If the licensed paraprofessional has professional liability insurance, the name of the carrier, the amount of coverage, and how to file a claim if necessary;
- (i) A statement describing how to file a complaint with the State Bar of California;
- (j) A statement regarding the respective responsibilities of the licensed paraprofessional and the client as to the performance of the agreement; and
- (k) Any other disclosures, statements, or conditions required by the [Paraprofessional] Rules of Professional Conduct and the rules and regulations of the [Paraprofessional] Board.

**Comment**

**Rule 1.5.2 Written Agreement to Representation  
(Proposed Rule – Redline Version)**

Prior to the performance of legal services for a fee, the licensed paraprofessional shall enter into a written\* agreement with the client in a separate writing,\* provided in the prospective client's preferred language, and signed by both the client and the licensed paraprofessional, that provides the licensed paraprofessional's name, specialty area, mailing address, street address, telephone numbers, facsimile numbers, internet address, and license number of the licensed paraprofessional, and includes the following provisions:

(a) A clear and conspicuous disclosure that the licensed paraprofessional is not a lawyer and may only provide limited legal advice and services within the scope of the licensed paraprofessional's licensure. This statement shall be on the first page of the contract; in a type size, font, color, appearance, and location sufficiently noticeable for a client to read and comprehend them; in a print that contrasts with the background against which they appear; in larger type than the surrounding text; in a manner that clearly calls attention to the language;

(b) An explanation of the general nature of the legal services to be provided to the client;

(c) A reasonable estimate of the total fees, expenses, and costs of services provided by the licensed paraprofessional, and the basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the matter;

(d) A statement that, pursuant to rule 1.4, the licensed paraprofessional must keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed-pursuant to rule 1.16;

(e) A statement describing the licensed paraprofessional's duty to protect the confidentiality of information related to the representation under rule 1.6, including information provided in confidence by the client and the licensed paraprofessional's work product associated with the legal services sought or provided by the licensed paraprofessional;

(f) A statement that, pursuant to rule 1.16(a)(4), the client has the right to terminate the contract and services at any time, with or without cause, and receive a full refund of unearned fees pursuant to rule 1.16(e)(2);

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

(h) A statement confirming if the licensed paraprofessional has or does not have professional liability insurance. If the licensed paraprofessional has professional liability insurance, the name of the carrier, the amount of coverage, and how to file a claim if necessary;

(i) A statement describing how to file a complaint with the State Bar of California;

(j) A statement regarding the respective responsibilities of the licensed paraprofessional and the client as to the performance of the agreement; and

(k) Any other disclosures, statements, or conditions required by the [Paraprofessional] Rules of Professional Conduct and the rules and regulations of the [Paraprofessional] Board.

**Comment**

**Rule 1.6 Confidential Information of a Client  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall not reveal confidential information relating to the representation of a client unless the client gives informed consent,\* or the disclosure is permitted by paragraph (b) of this rule.
- (b) A licensed paraprofessional may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the licensed paraprofessional reasonably believes\* the disclosure is necessary to prevent a criminal act that the licensed paraprofessional reasonably believes\* is likely to result in death of, or substantial\* bodily harm to, an individual, as provided in paragraph (c).
- (c) Before revealing confidential information relating to the representation of a client to prevent a criminal act as provided in paragraph (b), a licensed paraprofessional shall, if reasonable\* under the circumstances:
- (1) make a good faith effort to persuade the client: (i) not to commit or to continue the criminal act; or (ii) to pursue a course of conduct that will prevent the threatened death or substantial\* bodily harm; or do both (i) and (ii); and
  - (2) inform the client, at an appropriate time, of the licensed paraprofessional's ability or decision to reveal information relating to the representation of a client as provided in paragraph (b).
- (d) In revealing confidential information relating to representation of a client as provided in paragraph (b), the licensed paraprofessional's disclosure must be no more than is necessary to prevent the criminal act, given the confidential information known\* to the licensed paraprofessional at the time of the disclosure.
- (e) A licensed paraprofessional who does not reveal confidential information permitted by paragraph (b) does not violate this rule.

**Comment**

[Reserved]

**Rule 1.6 Confidential Information of a Client  
(Proposed Rule – Redline Version)**

- (a) A ~~lawyer~~licensed paraprofessional shall not reveal confidential information ~~protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ unless the client gives informed consent,\* or the disclosure is permitted by paragraph (b) of this rule.
- (b) A ~~lawyer~~licensed paraprofessional may, but is not required to, reveal confidential information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ to the extent that the ~~lawyer~~licensed paraprofessional reasonably believes\* the disclosure is necessary to prevent a criminal act that the ~~lawyer~~licensed paraprofessional reasonably believes\* is likely to result in death of, or substantial\* bodily harm to, an individual, as provided in paragraph (c).
- (c) Before revealing confidential information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ to prevent a criminal act as provided in paragraph (b), a ~~lawyer~~licensed paraprofessional shall, if reasonable\* under the circumstances:
- (1) make a good faith effort to persuade the client: (i) not to commit or to continue the criminal act; or (ii) to pursue a course of conduct that will prevent the threatened death or substantial\* bodily harm; or do both (i) and (ii); and

- (2) inform the client, at an appropriate time, of the lawyer licensed paraprofessional's ability or decision to reveal information ~~protected by Business and Professions Code section 6068, subdivision (e)(1)~~ relating to the representation of a client as provided in paragraph (b).
- (d) In revealing confidential information ~~protected by Business and Professions Code section 6068, subdivision (e)(1)~~ relating to representation of a client as provided in paragraph (b), the lawyer licensed paraprofessional's disclosure must be no more than is necessary to prevent the criminal act, given the confidential information known\* to the lawyer licensed paraprofessional at the time of the disclosure.
- (e) A lawyer licensed paraprofessional who does not reveal confidential information permitted by paragraph (b) does not violate this rule.

**Comment**

[Reserved]

**Rule 1.7 Conflict of Interest: Current Clients  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall not, without informed written consent\* from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.
- (b) A licensed paraprofessional shall not, without informed written consent\* from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the licensed paraprofessional's representation of the client will be materially limited by the licensed paraprofessional's responsibilities to or relationships with another client, a former client or a third person,\* or by the licensed paraprofessional's own interests.
- (c) Even when a significant risk requiring a licensed paraprofessional to comply with paragraph (b) is not present, a licensed paraprofessional shall not represent a client without written\* disclosure of the relationship to the client and compliance with paragraph (d) where:
- (1) the licensed paraprofessional has, or knows\* that another lawyer or licensed paraprofessional in the licensed paraprofessional's firm\* has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter; or
  - (2) the licensed paraprofessional knows\* or reasonably should know\* that another party's lawyer or licensed paraprofessional is a spouse, parent, child, or sibling of the licensed paraprofessional, lives with the licensed paraprofessional, is a client of the licensed paraprofessional or another lawyer or licensed paraprofessional in the licensed paraprofessional's firm,\* or has an intimate personal relationship with the licensed paraprofessional.
- (d) Representation is permitted under this rule only if the licensed paraprofessional complies with paragraphs (a), (b), and (c), and:
- (1) the licensed paraprofessional reasonably believes\* that the licensed paraprofessional will be able to provide competent and diligent representation to each affected client;
  - (2) the representation is not prohibited by law; and
  - (3) the representation does not involve the assertion of a claim by one client against another client represented by the licensed paraprofessional in the same litigation or other proceeding before a tribunal.
- (e) For purposes of this rule, "matter" includes any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons,\* or a discrete and identifiable class of persons.\*

**Comment**

[Reserved]

**Rule 1.7 Conflict of Interest: Current Clients  
(Proposed Rule – Redline Version)**

(a) A ~~lawyer~~licensed paraprofessional shall not, without informed written consent\* from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.

(b) A ~~lawyer~~licensed paraprofessional shall not, without informed written consent\* from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the ~~lawyer~~licensed paraprofessional's representation of the client will be materially limited by the ~~lawyer~~licensed paraprofessional's responsibilities to or relationships with another client, a former client or a third person,\* or by the ~~lawyer~~licensed paraprofessional's own interests.

(c) Even when a significant risk requiring a ~~lawyer~~licensed paraprofessional to comply with paragraph (b) is not present, a ~~lawyer~~licensed paraprofessional shall not represent a client without written\* disclosure of the relationship to the client and compliance with paragraph (d) where:

(1) the ~~lawyer~~licensed paraprofessional has, or knows\* that another lawyer or licensed paraprofessional in the ~~lawyer~~licensed paraprofessional's firm\* has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter; or

(2) the ~~lawyer~~licensed paraprofessional knows\* or reasonably should know\* that another party's lawyer or licensed paraprofessional is a spouse, parent, child, or sibling of the ~~lawyer~~licensed paraprofessional, lives with the ~~lawyer~~licensed paraprofessional, is a client of the ~~lawyer~~licensed paraprofessional or another lawyer or licensed paraprofessional in the ~~lawyer~~licensed paraprofessional's firm,\* or has an intimate personal relationship with the ~~lawyer~~licensed paraprofessional.

(d) Representation is permitted under this rule only if the ~~lawyer~~licensed paraprofessional complies with paragraphs (a), (b), and (c), and:

(1) the ~~lawyer~~licensed paraprofessional reasonably believes\* that the ~~lawyer~~licensed paraprofessional will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law; and

(3) the representation does not involve the assertion of a claim by one client against another client represented by the ~~lawyer~~licensed paraprofessional in the same litigation or other proceeding before a tribunal.

(e) For purposes of this rule, "matter" includes any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons,\* or a discrete and identifiable class of persons.\*

**Comment**

[Reserved]

**Rule 1.8.1 Business Transactions with a Client and Pecuniary Interests Adverse to a Client  
(Proposed Rule – Clean Version)**

A licensed paraprofessional shall not enter into a business transaction with a client, or knowingly\* acquire an ownership, possessory, security or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

- (a) the transaction or acquisition and its terms are fair and reasonable\* to the client and the terms and the licensed paraprofessional’s role in the transaction or acquisition are fully disclosed and transmitted in writing\* to the client in a manner that should reasonably\* have been understood by the client;
- (b) the client either is represented in the transaction or acquisition by an independent lawyer of the client’s choice or the client is advised in writing\* to seek the advice of an independent lawyer of the client’s choice and is given a reasonable\* opportunity to seek that advice; and
- (c) the client thereafter provides informed written consent\* to the terms of the transaction or acquisition, and to the licensed paraprofessional’s role in it.

**Comment**

[Reserved]

**Rule 1.8.1 Business Transactions with a Client and Pecuniary Interests Adverse to a Client  
(Proposed Rule – Redline Version)**

A ~~lawyer~~licensed paraprofessional shall not enter into a business transaction with a client, or knowingly\* acquire an ownership, possessory, security or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

- (a) the transaction or acquisition and its terms are fair and reasonable\* to the client and the terms and the ~~lawyer~~licensed paraprofessional’s role in the transaction or acquisition are fully disclosed and transmitted in writing\* to the client in a manner that should reasonably\* have been understood by the client;
- (b) the client either is represented in the transaction or acquisition by an independent lawyer of the client’s choice or the client is advised in writing\* to seek the advice of an independent lawyer of the client’s choice and is given a reasonable\* opportunity to seek that advice; and
- (c) the client thereafter provides informed written consent\* to the terms of the transaction or acquisition, and to the ~~lawyer~~licensed paraprofessional’s role in it.

**Comment**

[Reserved]

**Rule 1.8.2 Use of Current Client’s Information  
(Proposed Rule – Clean Version)**

A licensed paraprofessional shall not use a client’s information protected by rule 1.6 to the disadvantage of the client unless the client gives informed consent,\* except as permitted by these rules or applicable law.

**Comment**

[Reserved]

**Rule 1.8.2 Use of Current Client’s Information  
(Proposed Rule – Redline Version)**

A ~~lawyer~~licensed paraprofessional shall not use a client’s information protected by ~~Business and Professions Code section 6068, subdivision (e)(1)~~rule 1.6 to the disadvantage of the client unless the client gives informed consent,\* except as permitted by these rules or ~~the State Bar Act~~applicable law.

**Comment**

[Reserved]

**Rule 1.8.3 Gifts from Client  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not solicit a client to make a substantial\* gift, including a testamentary gift, to the licensed paraprofessional or a person\* related to the licensed paraprofessional, unless the licensed paraprofessional or other recipient of the gift is related to the client, or

(b) For purposes of this rule, related persons\* include a person\* who is “related by blood or affinity” as that term is defined in California Probate Code section 21374, subdivision (a).

**Comment**

[Reserved]

**Rule 1.8.3 Gifts from Client  
(Proposed Rule – Redline Version)**

(a) A ~~lawyer~~licensed paraprofessional shall not:

~~(1) solicit a client to make a substantial\* gift, including a testamentary gift, to the lawyer~~licensed paraprofessional or a person\* related to the ~~lawyer~~licensed paraprofessional, unless the ~~lawyer~~licensed paraprofessional or other recipient of the gift is related to the client, or

~~(2) prepare on behalf of a client an instrument giving the lawyer or a person\* related to the lawyer any substantial\* gift, unless (i) the lawyer or other recipient of the gift is related to the client, or (ii) the client has been advised by an independent lawyer who has provided a certificate of independent review that complies with the requirements of Probate Code section 21384.~~

(b) For purposes of this rule, related persons\* include a person\* who is “related by blood or affinity” as that term is defined in California Probate Code section 21374, subdivision (a).

**Comment**

[Reserved]

**Rule 1.8.4 [Reserved]**

**Rule 1.8.5 Payment of Personal or Business Expenses Incurred by or for a Client  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall not directly or indirectly pay or agree to pay, guarantee, or represent that the licensed paraprofessional or licensed paraprofessional's law firm\* will pay the personal or business expenses of a prospective or existing client.
- (b) Notwithstanding paragraph (a), a licensed paraprofessional may:
  - (1) pay or agree to pay such expenses to third persons,\* from funds collected or to be collected for the client as a result of the representation, with the consent of the client;
  - (2) after the licensed paraprofessional is retained by the client, agree to lend money to the client based on the client's written\* promise to repay the loan, provided the licensed paraprofessional complies with rules 1.7(b), 1.7(c), and 1.8.1 before making the loan or agreeing to do so;
  - (3) advance the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the client's interests, the repayment of which may be contingent on the outcome of the matter; and
  - (4) pay the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the interests of an indigent person\* in a matter in which the licensed paraprofessional represents the client.
- (c) "Costs" within the meaning of paragraphs (b)(3) and (b)(4) are not limited to those costs that are taxable or recoverable under any applicable statute or rule of court but may include any reasonable\* expenses of litigation, including court costs, and reasonable\* expenses in preparing for litigation or in providing other legal services to the client.
- (d) Nothing in this rule shall be deemed to limit the application of rule 1.8.9.

**Rule 1.8.5 Payment of Personal or Business Expenses Incurred by or for a Client  
(Proposed Rule – Redline Version)**

- (a) A ~~lawyer~~licensed paraprofessional shall not directly or indirectly pay or agree to pay, guarantee, or represent that the ~~lawyer~~licensed paraprofessional or ~~lawyer~~licensed paraprofessional's law firm\* will pay the personal or business expenses of a prospective or existing client.
- (b) Notwithstanding paragraph (a), a ~~lawyer~~licensed paraprofessional may:
  - (1) pay or agree to pay such expenses to third persons,\* from funds collected or to be collected for the client as a result of the representation, with the consent of the client;
  - (2) after the ~~lawyer~~licensed paraprofessional is retained by the client, agree to lend money to the client based on the client's written\* promise to repay the loan, provided the ~~lawyer~~licensed paraprofessional complies with rules 1.7(b), 1.7(c), and 1.8.1 before making the loan or agreeing to do so;
  - (3) advance the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the client's interests, the repayment of which may be contingent on the outcome of the matter; and
  - (4) pay the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the interests of an indigent person\* in a matter in which the ~~lawyer~~licensed paraprofessional represents the client.
- (c) "Costs" within the meaning of paragraphs (b)(3) and (b)(4) are not limited to those costs that are taxable or recoverable under any applicable statute or rule of court but may include any reasonable\* expenses of litigation, including court costs, and reasonable\* expenses in preparing for litigation or in providing other legal services to the client.
- (d) Nothing in this rule shall be deemed to limit the application of rule 1.8.9.

**Rule 1.8.6 Compensation from One Other than Client  
(Proposed Rule – Clean Version)**

A licensed paraprofessional shall not enter into an agreement for, charge, or accept compensation for representing a client from one other than the client unless:

- (a) there is no interference with the licensed paraprofessional’s independent professional judgment or with the licensed paraprofessional-client relationship;
- (b) information is protected as required by Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6; and
- (c) the licensed paraprofessional obtains the client’s informed written consent\* at or before the time the licensed paraprofessional has entered into the agreement for, charged, or accepted the compensation, or as soon thereafter as reasonably\* practicable, provided that no disclosure or consent is required if:
  - (1) nondisclosure or the compensation is otherwise authorized by law or a court order; or
  - (2) the licensed paraprofessional is rendering legal services on behalf of any public agency or nonprofit organization that provides legal services to other public agencies or the public.

**Comment**

[Reserved]

**Rule 1.8.6 Compensation from One Other than Client  
(Proposed Rule – Redline Version)**

A ~~lawyer~~licensed paraprofessional shall not enter into an agreement for, charge, or accept compensation for representing a client from one other than the client unless:

- (a) there is no interference with the ~~lawyer~~licensed paraprofessional’s independent professional judgment or with the ~~lawyer~~licensed paraprofessional-client relationship;
- (b) information is protected as required by Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6; and
- (c) the ~~lawyer~~licensed paraprofessional obtains the client’s informed written consent\* at or before the time the ~~lawyer~~licensed paraprofessional has entered into the agreement for, charged, or accepted the compensation, or as soon thereafter as reasonably\* practicable, provided that no disclosure or consent is required if:
  - (1) nondisclosure or the compensation is otherwise authorized by law or a court order; or
  - (2) the ~~lawyer~~licensed paraprofessional is rendering legal services on behalf of any public agency or nonprofit organization that provides legal services to other public agencies or the public.

**Comment**

[Reserved]

**Rule 1.8.7 Aggregate Settlements  
(Proposed Rule – Clean Version)**

A licensed paraprofessional who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients unless each client gives informed written consent.\* The licensed paraprofessional's disclosure shall include the existence and nature of all the claims involved and of the participation of each person\* in the settlement.

**Rule 1.8.7 Aggregate Settlements  
(Proposed Rule – Redline Version)**

~~(a) A lawyer licensed paraprofessional who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregate agreement as to guilty or nolo contendere pleas, unless each client gives informed written consent.\* The lawyer licensed paraprofessional's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person\* in the settlement.~~

~~(b) This rule does not apply to class action settlements subject to court approval.~~

**Rule 1.8.8 Limiting Liability to Client  
(Proposed Rule – Clean Version)**

A licensed paraprofessional shall not:

- (a) Contract with a client prospectively limiting the licensed paraprofessional's liability to the client for the licensed paraprofessional's professional malpractice; or
- (b) Settle a claim or potential claim for the licensed paraprofessional's liability to a client or former client for the licensed paraprofessional's professional malpractice, unless the client or former client is either:
  - (1) represented by an independent lawyer concerning the settlement; or
  - (2) advised in writing\* by the licensed paraprofessional to seek the advice of an independent lawyer of the client's choice regarding the settlement and given a reasonable\* opportunity to seek that advice.

**Comment**

[Reserved]

**Rule 1.8.8 Limiting Liability to Client  
(Proposed Rule – Redline Version)**

A lawyer licensed paraprofessional shall not:

- (a) Contract with a client prospectively limiting the lawyer licensed paraprofessional's liability to the client for the lawyer licensed paraprofessional's professional malpractice; or
- (b) Settle a claim or potential claim for the lawyer licensed paraprofessional's liability to a client or former client for the lawyer licensed paraprofessional's professional malpractice, unless the client or former client is either:
  - (1) represented by an independent lawyer concerning the settlement; or
  - (2) advised in writing\* by the lawyer licensed paraprofessional to seek the advice of an independent lawyer of the client's choice regarding the settlement and given a reasonable\* opportunity to seek that advice.

**Comment**

[Reserved]

**Rule 1.8.9 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not directly or indirectly purchase property at a probate, foreclosure, receiver's, trustee's, or judicial sale in an action or proceeding in which such licensed paraprofessional or any lawyer or licensed paraprofessional affiliated by reason of personal, business, or professional relationship with that licensed paraprofessional or with that licensed paraprofessional's law firm\* is acting as a lawyer for a party or as executor, receiver, trustee, administrator, guardian, or conservator.

(b) This rule does not prohibit a licensed paraprofessional's participation in transactions that are specifically authorized by and comply with Probate Code sections 9880 through 9885, but such transactions remain subject to the provisions of rules 1.8.1 and 1.7.

**Comment**

[Reserved]

**Rule 1.8.9 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review  
(Proposed Rule – Redline Version)**

(a) A ~~lawyer~~licensed paraprofessional shall not directly or indirectly purchase property at a probate, foreclosure, receiver's, trustee's, or judicial sale in an action or proceeding in which such ~~lawyer~~licensed paraprofessional or any lawyer or licensed paraprofessional affiliated by reason of personal, business, or professional relationship with that ~~lawyer~~licensed paraprofessional or with that ~~lawyer~~licensed paraprofessional's law firm\* is acting as a lawyer for a party or as executor, receiver, trustee, administrator, guardian, or conservator.

~~(b) A lawyer shall not represent the seller at a probate, foreclosure, receiver, trustee, or judicial sale in an action or proceeding in which the purchaser is a spouse or relative of the lawyer or of another lawyer in the lawyer's law firm\* or is an employee of the lawyer or the lawyer's law firm.\*~~

~~(eb)~~ This rule does not prohibit a licensed paraprofessional's participation in transactions that are specifically authorized by and comply with Probate Code sections 9880 through 9885, but such transactions remain subject to the provisions of rules 1.8.1 and 1.7.

**Comment**

[Reserved]

**Rule 1.8.10 Sexual Relations with Current Client  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not engage:

(1) in sexual relations with a current client who is not the licensed paraprofessional's spouse or registered domestic partner, unless a consensual sexual relationship existed between them when the licensed paraprofessional-client relationship commenced;

(2) expressly or impliedly condition the performance of legal services for a current or prospective client upon the client's willingness to engage in sexual relations with the licensed paraprofessional; or

(3) employ coercion, intimidation, or undue influence in seeking to enter into sexual relations with a client.

(b) For purposes of this rule, “sexual relations” means sexual intercourse or the touching of an intimate part of another person\* for the purpose of sexual arousal, gratification, or abuse.

(c) If a person\* other than the client alleges a violation of this rule, no Notice of Disciplinary Charges may be filed by the State Bar against a licensed paraprofessional under this rule until the State Bar has attempted to obtain the client’s statement regarding, and has considered, whether the client would be unduly burdened by further investigation or a charge.

**Comment**

[Reserved]

**Rule 1.8.10 Sexual Relations with Current Client  
(Proposed Rule – Redline Version)**

(a) A ~~lawyer~~licensed paraprofessional shall not engage:

(1) in sexual relations with a current client who is not the ~~lawyer~~licensed paraprofessional’s spouse or registered domestic partner, unless a consensual sexual relationship existed between them when the ~~lawyer~~licensed paraprofessional-client relationship commenced;

(2) expressly or impliedly condition the performance of legal services for a current or prospective client upon the client’s willingness to engage in sexual relations with the licensed paraprofessional; or

(3) employ coercion, intimidation, or undue influence in ~~entering~~seeking to enter into sexual relations with a client.

(b) For purposes of this rule, “sexual relations” means sexual intercourse or the touching of an intimate part of another person\* for the purpose of sexual arousal, gratification, or abuse.

(c) If a person\* other than the client alleges a violation of this rule, no Notice of Disciplinary Charges may be filed by the State Bar against a ~~lawyer~~licensed paraprofessional under this rule until the State Bar has attempted to obtain the client’s statement regarding, and has considered, whether the client would be unduly burdened by further investigation or a charge.

**Comment**

[Reserved]

**Rule 1.8.11 Imputation of Prohibitions Under Rules 1.8.1 to 1.8.9  
(Proposed Rule – Clean Version)**

While licensed paraprofessionals are associated in a law firm\* with other paraprofessionals or lawyers, a prohibition in rules 1.8.1 through 1.8.9 or in the Lawyer RPC, rules 1.8.1 through 1.8.9 that applies to any one of them shall apply to all of them.

**Comment**

[Reserved]

**Rule 1.8.11 Imputation of Prohibitions Under Rules 1.8.1 to 1.8.9  
(Proposed Rule – Redline Version)**

While ~~licensed paraprofessionals lawyers~~ are associated in a law firm,\* ~~with other paraprofessionals or lawyers~~, a prohibition in rules 1.8.1 through 1.8.9 ~~or in the Lawyer RPC, rules 1.8.1 through 1.8.9~~ that applies to any one of them shall apply to all of them.

**Comment**

[Reserved]

**Rule 1.9 Duties to Former Clients  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional who has formerly represented a client in a matter shall not thereafter represent another person\* in the same or a substantially related matter in which that person's\* interests are materially adverse to the interests of the former client unless the former client gives informed written consent.\*

(b) A licensed paraprofessional shall not knowingly\* represent a person\* in the same or a substantially related matter in which a firm\* with which the licensed paraprofessional formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person;\* and

(2) about whom the licensed paraprofessional had acquired information protected by rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed written consent.\*

(c) A licensed paraprofessional who has formerly represented a client in a matter or whose present or former firm\* has formerly represented a client in a matter shall not thereafter:

(1) use information protected by rule 1.6 acquired by virtue of the representation of the former client to the disadvantage of the former client except as these rules would permit with respect to a current client, or when the information has become generally known;\* or

(2) reveal information protected by rule 1.6 acquired by virtue of the representation of the former client except as these rules permit with respect to a current client.

**Comment**

[Reserved]

**Rule 1.9 Duties to Former Clients  
(Proposed Rule – Redline Version)**

(a) A ~~lawyer~~~~licensed paraprofessional~~ who has formerly represented a client in a matter shall not thereafter represent another person\* in the same or a substantially related matter in which that person's\* interests are materially adverse to the interests of the former client unless the former client gives informed written consent.\*

(b) A ~~lawyer~~~~licensed paraprofessional~~ shall not knowingly\* represent a person\* in the same or a substantially related matter in which a firm\* with which the ~~lawyer~~~~licensed paraprofessional~~ formerly was associated had previously represented a client

- (1) whose interests are materially adverse to that person;\* and
  - (2) about whom the ~~lawyer~~licensed paraprofessional had acquired information protected by ~~Business and Professions Code section 6068, subdivision (e) and~~ rules 1.6 and 1.9(c) that is material to the matter;
- unless the former client gives informed written consent.\*
- (c) A ~~lawyer~~licensed paraprofessional who has formerly represented a client in a matter or whose present or former firm\* has formerly represented a client in a matter shall not thereafter:
    - (1) use information protected by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6 acquired by virtue of the representation of the former client to the disadvantage of the former client except as these rules ~~or the State Bar Act~~would permit with respect to a current client, or when the information has become generally known;\* or
    - (2) reveal information protected by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6 acquired by virtue of the representation of the former client except as these rules ~~or the State Bar Act~~permit with respect to a current client.

**Comment**

[Reserved]

**Rule 1.10 Imputation of Conflicts of Interest: General Rule  
(Proposed Rule – Clean Version)**

- (a) While licensed paraprofessionals are associated in a firm with other licensed paraprofessionals or lawyers,\* none of them shall knowingly\* represent a client when any one of them practicing alone would be prohibited from doing so by rules 1.7 or 1.9 or by the Lawyer Rules, rules 1.7 or 1.9 unless
  - (1) the prohibition is based on a personal interest of the prohibited licensed paraprofessional or lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining licensed paraprofessionals in the firm;\* or
  - (2) the prohibition is based upon rule 1.9(a) or (b) or the Lawyer RPC, rule 1.9(a) or (b), and arises out of the prohibited licensed paraprofessional’s or lawyer’s association with a prior firm,\* and
    - (i) the prohibited licensed paraprofessional or lawyer did not substantially participate in the same or a substantially related matter;
    - (ii) the prohibited licensed paraprofessional or lawyer is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and
    - (iii) written\* notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this rule, which shall include a description of the screening\* procedures employed; and an agreement by the firm\* to respond promptly to any written\* inquiries or objections by the former client about the screening\* procedures.
- (b) When a licensed paraprofessional has terminated an association with a firm,\* the firm\* is not prohibited from thereafter representing a person\* with interests materially adverse to those of a client represented by the formerly associated licensed paraprofessional and not currently represented by the firm,\* unless:
  - (1) the matter is the same or substantially related to that in which the formerly associated licensed paraprofessional represented the client; and

(2) any licensed paraprofessional or lawyer remaining in the firm\* has information protected by rule 1.6 or 1.9(c), or by Business and Professions Code section 6068, subdivision (e) and the Lawyer RPC, rules 1.6 and 1.9(c), that is material to the matter.

(c) A prohibition under this rule may be waived by each affected client under the conditions stated in rule 1.7.

(d) The imputation of a conflict of interest to a licensed paraprofessional associated in a firm\* with former or current government lawyer or former or current government licensed paraprofessional is governed by rule 1.11.

#### Comment

[Reserved]

### Rule 1.10 Imputation of Conflicts of Interest: General Rule (Proposed Rule – Redline Version)

(a) While ~~lawyers~~ licensed paraprofessionals are associated in a firm with other licensed paraprofessionals or lawyers,\* none of them shall knowingly\* represent a client when any one of them practicing alone would be prohibited from doing so by rules 1.7 or 1.9 or by the Lawyer Rules, rules 1.7 or 1.9 unless

(1) the prohibition is based on a personal interest of the prohibited ~~lawyer~~licensed paraprofessional or lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining licensed paraprofessionals or lawyers in the firm;\* or

(2) the prohibition is based upon rule 1.9(a) or (b) or the Lawyer RPC, rule 1.9(a) or (b), and arises out of the prohibited ~~lawyer~~licensed paraprofessional's or lawyer's association with a prior firm,\* and

(i) the prohibited ~~lawyer~~licensed paraprofessional or lawyer did not substantially participate in the same or a substantially related matter;

(ii) the prohibited ~~lawyer~~licensed paraprofessional or lawyer is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(iii) written\* notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this rule, which shall include a description of the screening\* procedures employed; and an agreement by the firm\* to respond promptly to any written\* inquiries or objections by the former client about the screening\* procedures.

(b) When a ~~lawyer~~licensed paraprofessional has terminated an association with a firm,\* the firm\* is not prohibited from thereafter representing a person\* with interests materially adverse to those of a client represented by the formerly associated ~~lawyer~~licensed paraprofessional and not currently represented by the firm,\* unless:

(1) the matter is the same or substantially related to that in which the formerly associated ~~lawyer~~licensed paraprofessional represented the client; and

(2) any ~~lawyer~~licensed paraprofessional or lawyer remaining in the firm\* has information protected by rule 1.6 or 1.9(c), or by Business and Professions Code section 6068, subdivision (e) and the Lawyer RPC, rules 1.6 and 1.9(c), that is material to the matter.

(c) A prohibition under this rule may be waived by each affected client under the conditions stated in rule 1.7.

(d) The imputation of a conflict of interest to a licensed paraprofessional~~lawyers~~ associated in a firm\* with former or current government lawyer or former or current government licensed paraprofessionals is governed by rule 1.11.

**Comment**

[Reserved]

**Rule 1.11 Special Conflicts of Interest for Former and Current Government Officials and Employees  
(Proposed Rule – Clean Version)**

(a) Except as law may otherwise expressly permit, a licensed paraprofessional who has formerly served as a public official or employee of the government:

(1) is subject to rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the licensed paraprofessional participated personally and substantially as a public official or employee, unless the appropriate government agency gives its informed written consent\* to the representation. This paragraph shall not apply to matters governed by rule 1.12(a).

(b) When a licensed paraprofessional is prohibited from representation under paragraph (a), no licensed paraprofessional or lawyer in a firm\* with which that licensed paraprofessional is associated may knowingly\* undertake or continue representation in such a matter unless:

(1) the personally prohibited licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written\* notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule

(c) Except as law may otherwise expressly permit, a licensed paraprofessional who was a public official or employee and, during that employment, acquired information that the licensed paraprofessional knows\* is confidential government information about a person,\* may not represent a private client whose interests are adverse to that person\* in a matter in which the information could be used to the material disadvantage of that person.\* As used in this rule, the term “confidential government information” means information that has been obtained under governmental authority, that, at the time this rule is applied, the government is prohibited by law from disclosing to the public, or has a legal privilege not to disclose, and that is not otherwise available to the public. A firm\* with which that licensed paraprofessional is associated may undertake or continue representation in the matter only if the personally prohibited licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a licensed paraprofessional currently serving as a public official or employee:

(1) is subject to rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the licensed paraprofessional participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed written consent;\* or

(ii) negotiate for private employment with any person\* who is involved as a party, or as a lawyer or licensed paraprofessional for a party, or with a law firm\* for a party, in a matter in which the licensed paraprofessional is participating personally and substantially.

**Comment**

[Reserved]

**Rule 1.11 Special Conflicts of Interest for Former and Current Government Officials and Employees  
(Proposed Rule – Redline Version)**

(a) Except as law may otherwise expressly permit, a lawyer licensed paraprofessional who has formerly served as a public official or employee of the government:

(1) is subject to rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer licensed paraprofessional participated personally and substantially as a public official or employee, unless the appropriate government agency gives its informed written consent\* to the representation. This paragraph shall not apply to matters governed by rule 1.12(a).

(b) When a lawyer licensed paraprofessional is prohibited from representation under paragraph (a), no lawyer licensed paraprofessional or lawyer in a firm\* with which that lawyer licensed paraprofessional is associated may knowingly\* undertake or continue representation in such a matter unless:

(1) the personally prohibited lawyer licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written\* notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule

(c) Except as law may otherwise expressly permit, a lawyer licensed paraprofessional who was a public official or employee and, during that employment, acquired information that the lawyer licensed paraprofessional knows\* is confidential government information about a person,\* may not represent a private client whose interests are adverse to that person\* in a matter in which the information could be used to the material disadvantage of that person.\* As used in this rule, the term “confidential government information” means information that has been obtained under governmental authority, that, at the time this rule is applied, the government is prohibited by law from disclosing to the public, or has a legal privilege not to disclose, and that is not otherwise available to the public. A firm\* with which that lawyer licensed paraprofessional is associated may undertake or continue representation in the matter only if the personally prohibited lawyer licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer licensed paraprofessional currently serving as a public official or employee:

(1) is subject to rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer licensed paraprofessional participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed written consent;\* or

(ii) negotiate for private employment with any person\* who is involved as a party, or as a lawyer or licensed paraprofessional for a party, or with a law firm\* for a party, in a matter in which the lawyer licensed paraprofessional is participating personally and substantially, ~~except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by rule 1.12(b) and subject to the conditions stated in rule 1.12(b).~~

**Comment**

[Reserved]

**Rule 1.12 Former Arbitrator, Mediator, or Other Third-Party Neutral  
(Proposed Rule – Clean Version)**

- (a) Except as stated in paragraph (d), a licensed paraprofessional shall not represent anyone in connection with a matter in which the licensed paraprofessional participated personally and substantially as an adjudicative officer or a judicial staff member to such a person,\* or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give informed written consent.\*
- (b) A licensed paraprofessional shall not seek employment from any person\* who is involved as a party or as lawyer or licensed paraprofessional for a party, or with a law firm\* for a party, in a matter in which the licensed paraprofessional is participating personally and substantially as an adjudicative officer, arbitrator, mediator, or other third party neutral. A licensed paraprofessional serving as a judicial staff member to a judge or other adjudicative officer may seek employment from a party, or with a lawyer, licensed paraprofessional, or a law firm\* for a party, in a matter in which the staff member is participating personally and substantially, but only with the approval of the court.
- (c) If a licensed paraprofessional is prohibited from representation by paragraph (a), other licensed paraprofessional or lawyers in a firm\* with which that licensed paraprofessional is associated may knowingly\* undertake or continue representation in the matter only if:
- (1) the prohibition does not arise from the licensed paraprofessional’s service as a mediator;
  - (2) the prohibited licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and
  - (3) written\* notice is promptly given to the parties and any appropriate tribunal\* to enable them to ascertain compliance with the provisions of this rule.
- (d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

**Comment**

[Reserved]

**Rule 1.12 Former ~~Judge~~ Arbitrator, Mediator, or Other Third-Party Neutral  
(Proposed Rule – Redline Version)**

- (a) Except as stated in paragraph (d), a lawyer-licensed paraprofessional shall not represent anyone in connection with a matter in which the lawyer-licensed paraprofessional participated personally and substantially as an ~~judge or other~~ adjudicative officer, ~~or a~~ judicial staff ~~attorney member or law clerk~~ to such a person,\* or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give informed written consent.\*
- (b) A lawyer-licensed paraprofessional shall not seek employment from any person\* who is involved as a party or as lawyer or licensed paraprofessional for a party, or with a law firm\* for a party, in a matter in which the lawyer-licensed paraprofessional is participating personally and substantially as a ~~judge or other an~~ adjudicative officer ~~or as an~~ arbitrator, mediator, or other third party neutral. A lawyer-licensed paraprofessional serving as a judicial staff ~~attorney member or law clerk~~ to a judge or other adjudicative officer may seek employment from a party, or with a lawyer, licensed

paraprofessional, or a law firm\* for a party, in a matter in which the staff ~~attorney member or clerk~~ is participating personally and substantially, but only with the approval of the court.

(c) If a lawyer licensed paraprofessional is prohibited from representation by paragraph (a), other licensed paraprofessional or lawyers in a firm\* with which that lawyer licensed paraprofessional is associated may knowingly\* undertake or continue representation in the matter only if:

(1) the prohibition does not arise from the lawyer licensed paraprofessional's service as a mediator ~~or settlement judge~~;

(2) the prohibited lawyer licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(3) written\* notice is promptly given to the parties and any appropriate tribunal\* to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

#### Comment

[Reserved]

### Rule 1.13 [Reserved] (Proposed Rule – Clean Version)

### Rule 1.13 ~~[Reserved]~~ Organization as Client (Proposed Rule – Redline Version)

~~(a) A lawyer employed or retained by an organization shall conform his or her representation to the concept that the client is the organization itself, acting through its duly authorized directors, officers, employees, members, shareholders, or other constituents overseeing the particular engagement.~~

~~(b) If a lawyer representing an organization knows\* that a constituent is acting, intends to act or refuses to act in a matter related to the representation in a manner that the lawyer knows\* or reasonably should know\* is (i) a violation of a legal obligation to the organization or a violation of law reasonably\* imputable to the organization, and (ii) likely to result in substantial\* injury to the organization, the lawyer shall proceed as is reasonably\* necessary in the best lawful interest of the organization. Unless the lawyer reasonably believes\* that it is not necessary in the best lawful interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.~~

~~(c) In taking any action pursuant to paragraph (b), the lawyer shall not reveal information protected by Business and Professions Code section 6068, subdivision (e).~~

~~(d) If, despite the lawyer's actions in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or fails to act, in a manner that is a violation of a legal obligation to the organization or a violation of law reasonably\* imputable to the organization, and is likely to result in substantial\* injury to the organization, the lawyer shall continue to proceed as is reasonably\* necessary in the best lawful interests of the organization. The lawyer's response may include the lawyer's right and, where appropriate, duty to resign or withdraw in accordance with rule 1.16.~~

~~(e) A lawyer who reasonably believes\* that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b), or who resigns or withdraws under circumstances described in paragraph (d), shall proceed as the lawyer~~

~~reasonably believes\* necessary to assure that the organization's highest authority is informed of the lawyer's discharge, resignation, or withdrawal.~~

~~(f) In dealing with an organization's constituents, a lawyer representing the organization shall explain the identity of the lawyer's client whenever the lawyer knows\* or reasonably should know\* that the organization's interests are adverse to those of the constituent(s) with whom the lawyer is dealing.~~

~~(g) A lawyer representing an organization may also represent any of its constituents, subject to the provisions of rules 1.7, 1.8.2, 1.8.6, and 1.8.7. If the organization's consent to the dual representation is required by any of these rules, the consent shall be given by an appropriate official, constituent, or body of the organization other than the individual who is to be represented, or by the shareholders.~~

**Comment**

~~{Reserved}~~

**Rule 1.14 [Reserved]**

**Rule 1.15 Safekeeping Funds and Property of Clients and Other Persons\*  
(Proposed Rule – Clean Version)**

- (a) All funds received or held by a licensed paraprofessional or a licensed paraprofessional's law firm\* for the benefit of a client, or other person\* to whom the licensed paraprofessional owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled "Trust Account" or words of similar import, maintained in the State of California, or, with written\* consent of the client, in any other jurisdiction where there is a substantial\* relationship between the client or the client's business and the other jurisdiction.
- (b) Funds belonging to the licensed paraprofessional or the licensed paraprofessional's law firm\* shall not be deposited or otherwise commingled with funds held in a trust account except:
- (1) funds reasonably\* sufficient to pay bank charges; and
  - (2) funds belonging in part to a client or other person\* and in part presently or potentially to the licensed paraprofessional or the licensed paraprofessional's law firm,\* in which case the portion belonging to the licensed paraprofessional or the paraprofessional's law firm\* must be withdrawn at the earliest reasonable\* time after the licensed paraprofessional or the licensed paraprofessional law firm's interest in that portion becomes fixed. However, if a client or other person\* disputes the licensed paraprofessional or the licensed paraprofessional's law firm's right to receive a portion of trust funds, the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (c) A licensed paraprofessional shall:
- (1) promptly notify a client or other person\* of the receipt of funds, securities, or other property in which the licensed paraprofessional knows\* or reasonably should know\* the client or other person\* has an interest;
  - (2) identify and label securities and properties of a client or other person\* promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
  - (3) maintain complete records of all funds, securities, and other property of a client or other person\* coming into the possession of the licensed paraprofessional or the licensed paraprofessional's law firm;\*

- (4) promptly account in writing\* to the client or other person\* for whom the licensed paraprofessional or the licensed paraprofessional's law firm\* holds funds or property;
- (5) preserve records of all funds and property held by a licensed paraprofessional or the licensed paraprofessional's law firm\* under this rule for a period of no less than five years after final appropriate distribution of such funds or property;
- (6) comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar; and
- (7) promptly distribute, as requested by the client or other person,\* any undisputed funds or property in the possession of the licensed paraprofessional or the licensed paraprofessional's law firm\* that the client or other person\* is entitled to receive.

(d) The Board of Trustees of the State Bar shall have the authority to formulate and adopt standards as to what "records" shall be maintained by licensed paraprofessionals and law firms\* in accordance with paragraph (d)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all licensed paraprofessionals.

*Standards:*

Pursuant to this rule, the Board of Trustees of the State Bar adopted the following standards, effective \_\_\_\_\_, as to what "records" shall be maintained by licensed paraprofessionals and licensed paraprofessionals' law firms\* in accordance with paragraph (d)(3).

- (1) A licensed paraprofessional shall, from the date of receipt of funds of the client or other person\* through the period ending five years from the date of appropriate disbursement of such funds, maintain:
  - (a) a written\* ledger for each client or other person\* on whose behalf funds are held that sets forth:
    - (i) the name of such client or other person\*;
    - (ii) the date, amount and source of all funds received on behalf of such client or other person\*;
    - (iii) the date, amount, payee and purpose of each disbursement made on behalf of such client or other person\* and
    - (iv) the current balance for such client or other person\*;
  - (b) a written\* journal for each bank account that sets forth:
    - (i) the name of such account;
    - (ii) the date, amount and client or other person\* affected by each debit and credit; and
    - (iii) the current balance in such account;
  - (c) all bank statements and cancelled checks for each bank account; and
  - (d) each monthly reconciliation (balancing) of (a), (b), and (c).
- (2) A licensed paraprofessional shall, from the date of receipt of all securities and other properties held for the benefit of client or other person\* through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a written\* journal that specifies:

- (a) each item of security and property held;
- (b) the person\* on whose behalf the security or property is held;
- (c) the date of receipt of the security or property;
- (d) the date of distribution of the security or property; and
- (e) person\* to whom the security or property was distributed.

**Comment**

[Reserved]

**Rule 1.15 Safekeeping Funds and Property of Clients and Other Persons\*  
(Proposed Rule – Redline Version)**

(a) All funds received or held by a ~~lawyer-licensed paraprofessional~~ or a ~~licensed paraprofessional's~~ law firm\* for the benefit of a client, or other person\* to whom the ~~lawyer-licensed paraprofessional~~ owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled "Trust Account" or words of similar import, maintained in the State of California, or, with written\* consent of the client, in any other jurisdiction where there is a substantial\* relationship between the client or the client's business and the other jurisdiction.

~~(b) Notwithstanding paragraph (a), a flat fee paid in advance for legal services may be deposited in a paraprofessional's lawyer's or paraprofessional law firm's operating account, provided:~~

~~(e)~~ Funds belonging to the ~~lawyer-licensed paraprofessional~~ or the ~~licensed paraprofessional's~~ law firm\* shall not be deposited or otherwise commingled with funds held in a trust account except:

- (1) funds reasonably\* sufficient to pay bank charges; and
- (2) funds belonging in part to a client or other person\* and in part presently or potentially to the ~~lawyer-licensed paraprofessional~~ or the ~~licensed paraprofessional's~~ law firm,\* in which case the portion belonging to the ~~lawyer-licensed paraprofessional~~ or ~~the paraprofessional's~~ law firm\* must be withdrawn at the earliest reasonable\* time after the ~~lawyer-licensed paraprofessional~~ or ~~the licensed paraprofessional~~ law firm's interest in that portion becomes fixed. However, if a client or other person\* disputes the ~~lawyer-licensed paraprofessional~~ or ~~the licensed paraprofessional's~~ law firm's right to receive a portion of trust funds, the disputed portion shall not be withdrawn until the dispute is finally resolved.

~~(d)~~ A ~~lawyer-licensed paraprofessional~~ shall:

- (1) promptly notify a client or other person\* of the receipt of funds, securities, or other property in which the ~~lawyer-licensed paraprofessional~~ knows\* or reasonably should know\* the client or other person\* has an interest;
- (2) identify and label securities and properties of a client or other person\* promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
- (3) maintain complete records of all funds, securities, and other property of a client or other person\* coming into the possession of the ~~lawyer-licensed paraprofessional~~ or ~~the licensed paraprofessional's~~ law firm;\*
- (4) promptly account in writing\* to the client or other person\* for whom the ~~lawyer-licensed paraprofessional or the licensed paraprofessional's law firm\*~~ holds funds or property;

(5) preserve records of all funds and property held by a lawyerlicensed paraprofessional or the licensed paraprofessional's law firm\* under this rule for a period of no less than five years after final appropriate distribution of such funds or property;

(6) comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar; and

(7) promptly distribute, as requested by the client or other person,\* any undisputed funds or property in the possession of the lawyerlicensed paraprofessional or the licensed paraprofessional's law firm\* that the client or other person\* is entitled to receive.

(ed) The Board of Trustees of the State Bar shall have the authority to formulate and adopt standards as to what "records" shall be maintained by lawyerlicensed paraprofessionals and law firms\* in accordance with paragraph (d)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyerlicensed paraprofessionals.

*Standards:*

Pursuant to this rule, the Board of Trustees of the State Bar adopted the following standards, effective November 1, 2018, as to what "records" shall be maintained by lawyerlicensed paraprofessionals and licensed paraprofessionals' law firms\* in accordance with paragraph (d)(3).

(1) A lawyerlicensed paraprofessional shall, from the date of receipt of funds of the client or other person\* through the period ending five years from the date of appropriate disbursement of such funds, maintain:

- (a) a written\* ledger for each client or other person\* on whose behalf funds are held that sets forth:
  - (i) the name of such client or other person;\*
  - (ii) the date, amount and source of all funds received on behalf of such client or other person;\*
  - (iii) the date, amount, payee and purpose of each disbursement made on behalf of such client or other person;\* and
  - (iv) the current balance for such client or other person;\*
- (b) a written\* journal for each bank account that sets forth:
  - (i) the name of such account;
  - (ii) the date, amount and client or other person\* affected by each debit and credit; and
  - (iii) the current balance in such account;
- (c) all bank statements and cancelled checks for each bank account; and
- (d) each monthly reconciliation (balancing) of (a), (b), and (c).

(2) A lawyerlicensed paraprofessional shall, from the date of receipt of all securities and other properties held for the benefit of client or other person\* through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a written\* journal that specifies:

- (a) each item of security and property held;
- (b) the person\* on whose behalf the security or property is held;

- (c) the date of receipt of the security or property;
- (d) the date of distribution of the security or property; and
- (e) person\* to whom the security or property was distributed.

**Comment**

[Reserved]

**Rule 1.16 Declining or Terminating Representation  
(Proposed Rule – Clean Version)**

(a) Except as stated in paragraph (c), a licensed paraprofessional shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the licensed paraprofessional knows\* or reasonably should know\* that the client is bringing an action, conducting a defense or asserting a position in litigation, without probable cause and for the purpose of harassing or maliciously injuring any person;\*
- (2) the licensed paraprofessional knows\* or reasonably should know\* that the representation will result in violation of these rules or other law;
- (3) the licensed paraprofessional's mental or physical condition renders it unreasonably difficult to carry out the representation effectively; or
- (4) the client discharges the licensed paraprofessional; or
- (5) the licensed paraprofessional knows or reasonably should know that the subject of the representation is beyond the scope of the defined practice area for which the licensed paraprofessional is licensed as set forth in [add CRC rule reference setting forth permissible scope of practice]. If the subject of the representation is beyond the scope of the licensed paraprofessional's defined practice area, the licensed paraprofessional shall not render any legal assistance and shall advise the client in writing to seek the services of a lawyer or licensed paraprofessional authorized to provide legal services on the subject of the representation.

(b) Except as stated in paragraph (c), a licensed paraprofessional may withdraw from representing a client if:

- (1) the client insists upon presenting a claim or defense in litigation, or asserting a position or making a demand in a non-litigation matter, that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;
- (2) the client either seeks to pursue a criminal or fraudulent\* course of conduct or has used the licensed paraprofessional's services to advance a course of conduct that the licensed paraprofessional reasonably believes\* was a crime or fraud;\*
- (3) the client insists that the licensed paraprofessional pursue a course of conduct that is criminal or fraudulent;\*
- (4) the client by other conduct renders it unreasonably difficult for the licensed paraprofessional to carry out the representation effectively;
- (5) the client breaches a material term of an agreement with, or obligation, to the licensed paraprofessional relating to the representation, and the licensed paraprofessional has given the client a reasonable\* warning after the breach that the licensed paraprofessional will withdraw unless the client fulfills the agreement or performs the obligation;

- (6) the client knowingly\* and freely assents to termination of the representation;
  - (7) the inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;
  - (8) the licensed paraprofessional's mental or physical condition renders it difficult for the licensed paraprofessional to carry out the representation effectively; or
  - (9) a continuation of the representation is likely to result in a violation of these rules or applicable law; or
  - (10) the licensed paraprofessional believes\* in good faith, in a proceeding pending before a tribunal,\* that the tribunal\* will find the existence of other good cause for withdrawal.
- (c) If permission for termination of a representation is required by the rules of a tribunal,\* a licensed paraprofessional shall not terminate a representation before that tribunal\* without its permission.
- (d) A licensed paraprofessional shall not terminate a representation until the licensed paraprofessional has taken reasonable\* steps to avoid reasonably\* foreseeable prejudice to the rights of the client, such as giving the client sufficient notice to permit the client to retain other representation, and complying with paragraph (e).
- (e) Upon the termination of a representation for any reason:
- (1) subject to any applicable protective order, non-disclosure agreement, statute or regulation, the licensed paraprofessional promptly shall release to the client, at the request of the client, all client materials and property. "Client materials and property" includes correspondence, pleadings, deposition transcripts, experts' reports and other writings,\* exhibits, and physical evidence, whether in tangible, electronic or other form, and other items reasonably\* necessary to the client's representation, whether the client has paid for them or not; and
  - (2) the licensed paraprofessional promptly shall refund any part of a fee or expense paid in advance that the licensed paraprofessional has not earned or incurred.

**Comment**

[Reserved]

**Rule 1.16 Declining or Terminating Representation  
(Proposed Rule – Redline Version)**

- (a) Except as stated in paragraph (c), a ~~lawyer~~licensed paraprofessional shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
- (1) the ~~lawyer~~licensed paraprofessional knows\* or reasonably should know\* that the client is bringing an action, conducting a defense, ~~or~~ asserting a position in litigation, ~~or taking an appeal,~~ without probable cause and for the purpose of harassing or maliciously injuring any person;\*
  - (2) the ~~lawyer~~licensed paraprofessional knows\* or reasonably should know\* that the representation will result in violation of these rules or ~~of the State Bar Act~~applicable other law;
  - (3) the ~~lawyer~~licensed paraprofessional's mental or physical condition renders it unreasonably difficult to carry out the representation effectively; or
  - (4) the client discharges the ~~lawyer~~licensed paraprofessional; or

(5) the licensed paraprofessional knows or reasonably should know that the subject of the representation is beyond the scope of the defined practice area for which the licensed paraprofessional is licensed as set forth in [add CRC rule reference setting forth permissible scope of practice]. If the subject of the representation is beyond the scope of the licensed paraprofessional's defined practice area, the licensed paraprofessional shall not render any legal assistance and shall advise the client in writing to seek the services of a lawyer or licensed paraprofessional authorized to provide legal services on the subject of the representation.

- (b) Except as stated in paragraph (c), a lawyerlicensed paraprofessional may withdraw from representing a client if:
- (1) the client insists upon presenting a claim or defense in litigation, or asserting a position or making a demand in a non-litigation matter, that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;
  - (2) the client either seeks to pursue a criminal or fraudulent\* course of conduct or has used the lawyerlicensed paraprofessional's services to advance a course of conduct that the lawyerlicensed paraprofessional reasonably believes\* was a crime or fraud;\*
  - (3) the client insists that the lawyerlicensed paraprofessional pursue a course of conduct that is criminal or fraudulent;\*
  - (4) the client by other conduct renders it unreasonably difficult for the lawyerlicensed paraprofessional to carry out the representation effectively;
  - (5) the client breaches a material term of an agreement with, or obligation, to the lawyerlicensed paraprofessional relating to the representation, and the lawyerlicensed paraprofessional has given the client a reasonable\* warning after the breach that the lawyerlicensed paraprofessional will withdraw unless the client fulfills the agreement or performs the obligation;
  - (6) the client knowingly\* and freely assents to termination of the representation;
  - (7) the inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;
  - (8) the lawyerlicensed paraprofessional's mental or physical condition renders it difficult for the lawyerlicensed paraprofessional to carry out the representation effectively; or
  - (9) a continuation of the representation is likely to result in a violation of these rules or the State Bar Act applicable law; or
  - (10) the lawyerlicensed paraprofessional believes\* in good faith, in a proceeding pending before a tribunal,\* that the tribunal\* will find the existence of other good cause for withdrawal.
- (c) If permission for termination of a representation is required by the rules of a tribunal,\* a lawyerlicensed paraprofessional shall not terminate a representation before that tribunal\* without its permission.
- (d) A lawyerlicensed paraprofessional shall not terminate a representation until the lawyerlicensed paraprofessional has taken reasonable\* steps to avoid reasonably\* foreseeable prejudice to the rights of the client, such as giving the client sufficient notice to permit the client to retain other counselrepresentation, and complying with paragraph (e).
- (e) Upon the termination of a representation for any reason:
- (1) subject to any applicable protective order, non-disclosure agreement, statute or regulation, the lawyerlicensed paraprofessional promptly shall release to the client, at the request of the client, all client materials and property. "Client materials and property" includes correspondence, pleadings, deposition transcripts, experts'

reports and other writings,\* exhibits, and physical evidence, whether in tangible, electronic or other form, and other items reasonably\* necessary to the client’s representation, whether the client has paid for them or not; and

(2) the lawyerlicensed paraprofessional promptly shall refund any part of a fee or expense paid in advance that the lawyerlicensed paraprofessional has not earned or incurred. ~~This provision is not applicable to a true retainer fee paid solely for the purpose of ensuring the availability of the lawyer for the matter.~~

**Comment**

[Reserved]

**Rule 1.17 Sale of a Licensed Paraprofessional’s Practice  
(Proposed Rule – Clean Version)**

All or substantially\* all of the law practice of a licensed paraprofessional, living or deceased, including goodwill, may be sold to another licensed paraprofessional, a lawyer or law firm\* subject to all the following conditions:

- (a) Fees charged to clients shall not be increased solely by reason of the sale.
- (b) If the sale contemplates the transfer of responsibility for work not yet completed or responsibility for client files or information protected by rule 1.6(a), then;
  - (1) if the seller is deceased, or has a conservator or other person\* acting in a representative capacity, and no lawyer has been appointed to act for the seller, then prior to the transfer;
    - (i) the purchaser shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client’s rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
    - (ii) the purchaser shall obtain the written\* consent of the client. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(1)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.
  - (2) in all other circumstances, not less than 90 days prior to the transfer;
    - (i) the seller, or the lawyer appointed to act for the seller, shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client’s rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
    - (ii) the seller, or the lawyer appointed to act for the seller, shall obtain the written\* consent of the client prior to the transfer. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(2)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.
- (c) If substitution is required by the rules of a tribunal\* in which a matter is pending, all steps necessary to substitute a lawyer shall be taken.
- (d) The purchaser shall comply with the applicable requirements of rules 1.7 and 1.9.

- (e) Confidential information shall not be disclosed to a nonlawyer in connection with a sale under this rule.
- (f) This rule does not apply to the admission to or retirement from a law firm,\* retirement plans and similar arrangements, or sale of tangible assets of a law practice.

**Comment**

[Reserved]

**Rule 1.17 Sale of a ~~Law~~Licensed Paraprofessional's Practice  
(Proposed Rule – Redline Version)**

All or substantially\* all of the law practice of a ~~lawyer~~licensed paraprofessional, living or deceased, including goodwill, may be sold to another ~~licensed paraprofessional, a~~ lawyer or law firm\* subject to all the following conditions:

- (a) Fees charged to clients shall not be increased solely by reason of the sale.
- (b) If the sale contemplates the transfer of responsibility for work not yet completed or responsibility for client files or information protected by ~~Business and Professions Code section 6068, subdivision (e)(1), rule 1.6(a)~~, then;
  - (1) if the seller is deceased, or has a conservator or other person\* acting in a representative capacity, and no lawyer has been appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, then prior to the transfer;
    - (i) the purchaser shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client's rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
    - (ii) the purchaser shall obtain the written\* consent of the client. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(1)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.
  - (2) in all other circumstances, not less than 90 days prior to the transfer;
    - (i) the seller, or the lawyer appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client's rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
    - (ii) the seller, or the lawyer appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, shall obtain the written\* consent of the client prior to the transfer. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(2)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.
- (c) If substitution is required by the rules of a tribunal\* in which a matter is pending, all steps necessary to substitute a lawyer shall be taken.
- (d) The purchaser shall comply with the applicable requirements of rules 1.7 and 1.9.

- (e) Confidential information shall not be disclosed to a nonlawyer in connection with a sale under this rule.
- (f) This rule does not apply to the admission to or retirement from a law firm,\* retirement plans and similar arrangements, or sale of tangible assets of a law practice.

**Comment**

[Reserved]

**Rule 1.18 Duties to Prospective Client  
(Proposed Rule – Clean Version)**

- (a) A person\* who, directly or through an authorized representative, consults a licensed paraprofessional for the purpose of retaining the licensed paraprofessional or securing legal service or advice from the licensed paraprofessional in the licensed paraprofessional's professional capacity, is a prospective client.
- (b) Even when no licensed paraprofessional-client relationship ensues, a licensed paraprofessional who has communicated with a prospective client shall not use or reveal information protected by rule 1.6(a) that the licensed paraprofessional learned as a result of the consultation, except as rule 1.9 would permit with respect to information of a former client.
- (c) A licensed paraprofessional subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the licensed paraprofessional received from the prospective client information protected by rule 1.6(a) that is material to the matter, except as provided in paragraph (d).
- (d) If a licensed paraprofessional is prohibited from representation under this paragraph or a lawyer is prohibited from representation under Lawyer RPC rule 1.18(c), no licensed paraprofessional in a firm\* with which that licensed paraprofessional is associated may knowingly\* undertake or continue representation in such a matter, except as provided in paragraph (d).
- (d) When the lawyer or licensed paraprofessional has received information that prohibits representation as provided in paragraph (c), representation of the affected client is permissible if:
  - (1) both the affected client and the prospective client have given informed written consent,\* or
  - (2) the lawyer or licensed paraprofessional who received the information took reasonable\* measures to avoid exposure to more information than was reasonably\* necessary to determine whether to represent the prospective client; and
    - (i) the prohibited lawyer or licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and
    - (ii) written\* notice is promptly given to the prospective client to enable the prospective client to ascertain compliance with the provisions of this rule.

**Comment**

[Reserved]

**Rule 1.18 Duties to Prospective Client  
(Proposed Rule – Redline Version)**

(a) A person\* who, directly or through an authorized representative, consults a lawyerlicensed paraprofessional for the purpose of retaining the lawyerlicensed paraprofessional or securing legal service or advice from the lawyerlicensed paraprofessional in the lawyerlicensed paraprofessional's professional capacity, is a prospective client.

(b) Even when no lawyerlicensed paraprofessional-client relationship ensues, a lawyerlicensed paraprofessional who has communicated with a prospective client shall not use or reveal information protected by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6(a) that the lawyerlicensed paraprofessional learned as a result of the consultation, except as rule 1.9 would permit with respect to information of a former client.

(c) A lawyerlicensed paraprofessional subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyerlicensed paraprofessional received from the prospective client information protected by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6(a) that is material to the matter, except as provided in paragraph (d). If a lawyerlicensed paraprofessional is prohibited from representation under this paragraph or a lawyer is prohibited from representation under Lawyer RPC rule 1.18(c), no lawyerlicensed paraprofessional in a firm\* with which that lawyerlicensed paraprofessional is associated may knowingly\* undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer or licensed paraprofessional has received information that prohibits representation as provided in paragraph (c), representation of the affected client is permissible if:

- (1) both the affected client and the prospective client have given informed written consent,\* or
- (2) the lawyer or licensed paraprofessional who received the information took reasonable\* measures to avoid exposure to more information than was reasonably\* necessary to determine whether to represent the prospective client; and
  - (i) the prohibited lawyer or licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and
  - (ii) written\* notice is promptly given to the prospective client to enable the prospective client to ascertain compliance with the provisions of this rule.

**Comment**

[Reserved]

**CHAPTER 2. COUNSELOR**

**Rule 2.1 Advisor  
(Proposed Rule – Clean Version)**

In representing a client, a licensed paraprofessional shall exercise independent professional judgment and render candid advice.

**Comment**

[Reserved]

**Rule 2.1 Advisor  
(Proposed Rule – Redline Version)**

In representing a client, a lawyer licensed paraprofessional shall exercise independent professional judgment and render candid advice.

**Comment**

[Reserved]

**Rule 2.2 [Reserved]**

**Rule 2.3 [Reserved]**

**Rule 2.4 Licensed Paraprofessional as Third-Party Neutral  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional serves as a third-party neutral when the licensed paraprofessional assists two or more persons\* who are not clients of the licensed paraprofessional to reach a resolution of a dispute, or other matter, that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the licensed paraprofessional to assist the parties to resolve the matter.

(b) A licensed paraprofessional serving as a third-party neutral shall inform unrepresented parties that the licensed paraprofessional is not representing them. When the licensed paraprofessional knows\* or reasonably should know\* that a party does not understand the licensed paraprofessional's role in the matter, the licensed paraprofessional shall explain the difference between the licensed paraprofessional's role as a third-party neutral and a licensed paraprofessional's role as one who represents a client.

**Comment**

[Reserved]

**Rule 2.4 Lawyer Licensed Paraprofessional as Third-Party Neutral  
(Proposed Rule – Redline Version)**

(a) A lawyer licensed paraprofessional serves as a third-party neutral when the lawyer licensed paraprofessional assists two or more persons\* who are not clients of the lawyer licensed paraprofessional to reach a resolution of a dispute, or other matter, that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer licensed paraprofessional to assist the parties to resolve the matter.

(b) A lawyer licensed paraprofessional serving as a third-party neutral shall inform unrepresented parties that the lawyer licensed paraprofessional is not representing them. When the lawyer licensed paraprofessional knows\* or reasonably should know\* that a party does not understand the lawyer licensed paraprofessional's role in the matter, the lawyer licensed paraprofessional shall explain the difference between the lawyer licensed paraprofessional's role as a third-party neutral and a lawyer licensed paraprofessional's role as one who represents a client.

**Comment**

[Reserved]

**Rule 2.4.1 [Reserved]  
(Proposed Rule – Clean Version)**

**Rule 2.4.1 ~~[Reserved] Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator~~**  
**(Proposed Rule – Redline Version)**

~~A lawyer who is serving as a temporary judge, referee, or court-appointed arbitrator, and is subject to canon 6D of the California Code of Judicial Ethics, shall comply with the terms of that canon.~~

**CHAPTER 3. ADVOCATE**

**Rule 3.1 Meritorious Claims and Contentions**  
**(Proposed Rule – Clean Version)**

A licensed paraprofessional shall not:

- (a) assist with bringing or continuing an action, conducting a defense, or asserting a position in litigation, without probable cause and for the purpose of harassing or maliciously injuring any person;\* or
- (b) assist with presenting a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of the existing law.

**Rule 3.1 Meritorious Claims and Contentions**  
**(Proposed Rule – Redline Version)**

~~(a) — A lawyer licensed paraprofessional shall not:~~

~~(a1) assist with bringing or continue continuing an action, conducting a defense, or asserting a position in litigation, or take an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person;\* or~~

~~(b2) assist with presenting a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of the existing law.~~

~~(b) — A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, or involuntary commitment or confinement, may nevertheless defend the proceeding by requiring that every element of the case be established.~~

**Rule 3.2 Delay of Litigation**  
**(Proposed Rule – Clean Version)**

In representing a client, a licensed paraprofessional shall not use means that have no substantial\* purpose other than to delay or prolong the proceeding or to cause needless expense.

**Comment**

[Reserved]

**Rule 3.2 Delay of Litigation**  
**(Proposed Rule – Redline Version)**

In representing a client, a lawyer licensed paraprofessional shall not use means that have no substantial\* purpose other than to delay or prolong the proceeding or to cause needless expense.

**Comment**

[Reserved]

**Rule 3.3 Candor Toward the Tribunal\*  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall not:
- (1) knowingly\* make a false statement of fact or law to a tribunal\* or fail to correct a false statement of material fact or law previously made to the tribunal\* by the licensed paraprofessional;
  - (2) fail to disclose to the tribunal\* legal authority in the controlling jurisdiction known\* to the licensed paraprofessional to be directly adverse to the position of the client and not disclosed by opposing party, or knowingly\* misquote to a tribunal\* the language of a book, statute, decision or other authority; or
  - (3) offer evidence that the licensed paraprofessional knows\* to be false. If a licensed paraprofessional or the licensed paraprofessional's client, has offered material evidence, and the licensed paraprofessional comes to know\* of its falsity, the licensed paraprofessional shall take reasonable\* remedial measures, including, if necessary, disclosure to the tribunal,\* unless disclosure is prohibited by rule 1.6. A licensed paraprofessional may refuse to offer evidence that the licensed paraprofessional reasonably believes\* is false.
- (b) A licensed paraprofessional who represents a client in a proceeding before a tribunal\* and who knows\* that a person\* intends to engage, is engaging or has engaged in criminal or fraudulent\* conduct related to the proceeding shall take reasonable\* remedial measures to the extent permitted by rule 1.6.
- (c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding.
- (d) In an ex parte proceeding where notice to the opposing party in the proceeding is not required or given and the opposing party is not present, a licensed paraprofessional shall inform the tribunal\* of all material facts known\* to the licensed paraprofessional that will enable the tribunal\* to make an informed decision, whether or not the facts are adverse to the position of the client.

**Comment**

[Reserved]

**Rule 3.3 Candor Toward the Tribunal\*  
(Proposed Rule – Redline Version)**

- (a) A ~~lawyer~~licensed paraprofessional shall not:
- (1) knowingly\* make a false statement of fact or law to a tribunal\* or fail to correct a false statement of material fact or law previously made to the tribunal\* by the ~~lawyer~~licensed paraprofessional;
  - (2) fail to disclose to the tribunal\* legal authority in the controlling jurisdiction known\* to the ~~lawyer~~licensed paraprofessional to be directly adverse to the position of the client and not disclosed by opposing ~~counsel~~party, or knowingly\* misquote to a tribunal\* the language of a book, statute, decision or other authority; or
  - (3) offer evidence that the ~~lawyer~~licensed paraprofessional knows\* to be false. If a ~~lawyer~~licensed paraprofessional or the ~~lawyer~~licensed paraprofessional's client, ~~or a witness called by the lawyer~~, has offered material evidence, and the ~~lawyer~~licensed paraprofessional comes to know\* of its falsity, the ~~lawyer~~licensed paraprofessional shall take reasonable\* remedial measures, including, if necessary, disclosure to the tribunal,\*

unless disclosure is prohibited by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6. A lawyer licensed paraprofessional may refuse to offer evidence, ~~other than the testimony of a defendant in a criminal matter,~~ that the lawyer licensed paraprofessional reasonably believes\* is false.

(b) A lawyer licensed paraprofessional who represents a client in a proceeding before a tribunal\* and who knows\* that a person\* intends to engage, is engaging or has engaged in criminal or fraudulent\* conduct related to the proceeding shall take reasonable\* remedial measures to the extent permitted by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding.

(d) In an ex parte proceeding where notice to the opposing party in the proceeding is not required or given and the opposing party is not present, a lawyer licensed paraprofessional shall inform the tribunal\* of all material facts known\* to the licensed paraprofessional lawyer that will enable the tribunal\* to make an informed decision, whether or not the facts are adverse to the position of the client.

#### Comment

[Reserved]

### Rule 3.4 Fairness to Opposing Party and Counsel (Proposed Rule – Clean Version)

A licensed paraprofessional shall not:

- (a) unlawfully obstruct another party's access to evidence, including a witness, or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A licensed paraprofessional shall not counsel or assist another person\* to do any such act;
- (b) suppress any evidence that the licensed paraprofessional or the licensed paraprofessional's client has a legal obligation to reveal or to produce;
- (c) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (d) directly or indirectly pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case. Except where prohibited by law, a licensed paraprofessional may advance, guarantee, or acquiesce in the payment of:
  - (1) expenses reasonably\* incurred by a witness in attending or testifying;
  - (2) reasonable\* compensation to a witness for loss of time in attending or testifying; or
  - (3) a reasonable\* fee for the professional services of an expert witness;
- (e) advise or directly or indirectly cause a person\* to secrete himself or herself or to leave the jurisdiction of a tribunal\* for the purpose of making that person\* unavailable as a witness therein; or
- (f) knowingly\* disobey an obligation under the rules of a tribunal\* except for an open refusal based on an assertion that no valid obligation exists.
- (g) in trial, assert personal knowledge of facts in issue except when testifying as a witness.

#### Comment

[Reserved]

### Rule 3.4 Fairness to Opposing Party and Counsel (Proposed Rule – Redline Version)

A ~~lawyer~~licensed paraprofessional shall not:

- (a) unlawfully obstruct another party's access to evidence, including a witness, or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A ~~lawyer~~licensed paraprofessional shall not counsel or assist another person\* to do any such act;
- (b) suppress any evidence that the ~~lawyer~~licensed paraprofessional or the ~~lawyer~~licensed paraprofessional's client has a legal obligation to reveal or to produce;
- (c) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (d) directly or indirectly pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case. Except where prohibited by law, a ~~lawyer~~licensed paraprofessional may advance, guarantee, or acquiesce in the payment of:
  - (1) expenses reasonably\* incurred by a witness in attending or testifying;
  - (2) reasonable\* compensation to a witness for loss of time in attending or testifying; or
  - (3) a reasonable\* fee for the professional services of an expert witness;
- (e) advise or directly or indirectly cause a person\* to secrete himself or herself or to leave the jurisdiction of a tribunal\* for the purpose of making that person\* unavailable as a witness therein; ~~or~~
- (f) knowingly\* disobey an obligation under the rules of a tribunal\* except for an open refusal based on an assertion that no valid obligation exists; ~~or~~
- (g) in trial, assert personal knowledge of facts in issue except when testifying as a witness; ~~or state a personal opinion as to the guilt or innocence of an accused.~~

#### Comment

[Reserved]

### Rule 3.5 Contact with Judges, Officials, and Employees (Proposed Rule – Clean Version)

- (a) Except as permitted by statute, an applicable code of judicial ethics or code of judicial conduct, or standards governing employees of a tribunal,\* a licensed paraprofessional shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal.\* This rule does not prohibit a licensed paraprofessional from contributing to the campaign fund of a judge or judicial officer running for election or confirmation pursuant to applicable law pertaining to such contributions.
- (b) Unless permitted to do so by law, an applicable code of judicial ethics or code of judicial conduct, a rule or ruling of a tribunal,\* or a court order, a licensed paraprofessional shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before the judge or judicial officer, except:

- (1) in open court;
- (2) with the consent of all other counsel and any unrepresented parties in the matter;
- (3) in the presence of all other counsel and any unrepresented parties in the matter;
- (4) in writing\* with a copy thereof furnished to all other counsel, licensed paraprofessionals, and any unrepresented parties in the matter; or
- (5) in ex parte matters.

(c) As used in this rule, “judge” and “judicial officer” shall also include: (i) administrative law judges; (ii) neutral arbitrators; (iii) State Bar Court judges; (iv) members of an administrative body acting in an adjudicative capacity; and (v) law clerks, research attorneys, or other court personnel who participate in the decision-making process, including referees, special masters, or other persons\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

#### Comment

[Reserved]

### Rule 3.5 Contact with Judges, Officials, ~~and Employees, and Jurors~~ (Proposed Rule – Redline Version)

(a) Except as permitted by statute, an applicable code of judicial ethics or code of judicial conduct, or standards governing employees of a tribunal,\* a ~~lawyer~~licensed paraprofessional shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal.\* This rule does not prohibit a ~~lawyer~~licensed paraprofessional from contributing to the campaign fund of a judge or judicial officer running for election or confirmation pursuant to applicable law pertaining to such contributions.

(b) Unless permitted to do so by law, an applicable code of judicial ethics or code of judicial conduct, a rule or ruling of a tribunal,\* or a court order, a ~~lawyer~~licensed paraprofessional shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before the judge or judicial officer, except:

- ~~(1)~~ in open court;
- (2) with the consent of all other counsel and any unrepresented parties in the matter;
- ~~(3)~~ in the presence of all other counsel and any unrepresented parties in the matter;
- (4) in writing\* with a copy thereof furnished to all other counsel, ~~licensed paraprofessionals,~~ and any unrepresented parties in the matter; or
- (5) in ex parte matters.

(c) As used in this rule, “judge” and “judicial officer” shall also include: (i) administrative law judges; (ii) neutral arbitrators; (iii) State Bar Court judges; (iv) members of an administrative body acting in an adjudicative capacity; and (v) law clerks, research attorneys, or other court personnel who participate in the decision-making process, including referees, special masters, or other persons\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

~~(d) A lawyer connected with a case shall not communicate directly or indirectly with anyone the lawyer knows\* to be a member of the venire from which the jury will be selected for trial of that case.~~

~~(e) — During trial, a lawyer connected with the case shall not communicate directly or indirectly with any juror.~~

~~(f) — During trial, a lawyer who is not connected with the case shall not communicate directly or indirectly concerning the case with anyone the lawyer knows\* is a juror in the case.~~

~~(g) — After discharge of the jury from further consideration of a case a lawyer shall not communicate directly or indirectly with a juror if:~~

~~(1) — the communication is prohibited by law or court order;~~

~~(2) — the juror has made known\* to the lawyer a desire not to communicate; or~~

~~(3) — the communication involves misrepresentation, coercion, or duress, or is intended to harass or embarrass the juror or to influence the juror's actions in future jury service.~~

~~(h) — A lawyer shall not directly or indirectly conduct an out of court investigation of a person\* who is either a member of a venire or a juror in a manner likely to influence the state of mind of such person\* in connection with present or future jury service.~~

~~(i) — All restrictions imposed by this rule also apply to communications with, or investigations of, members of the family of a person\* who is either a member of a venire or a juror.~~

~~(j) — A lawyer shall reveal promptly to the court improper conduct by a person\* who is either a member of a venire or a juror, or by another toward a person\* who is either a member of a venire or a juror or a member of his or her family, of which the lawyer has knowledge.~~

~~(k) — This rule does not prohibit a lawyer from communicating with persons\* who are members of a venire or jurors as a part of the official proceedings.~~

~~(l) — For purposes of this rule, “juror” means any empaneled, discharged, or excused juror.~~

#### **Comment**

[Reserved]

### **Rule 3.6 Trial Publicity (Proposed Rule – Clean Version)**

(a) A licensed paraprofessional who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows\* or reasonably should know\* will (i) be disseminated by means of public communication and (ii) have a substantial\* likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), but only to the extent permitted by rule 1.6, licensed paraprofessional may state:

(1) the claim or defense involved and, except when prohibited by law, the identity of the persons\* involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto; and

(6) a warning of danger concerning the behavior of a person\* involved, when there is reason to believe\* that there exists the likelihood of substantial\* harm to an individual or to the public but only to the extent that dissemination by public communication is reasonably\* necessary to protect the individual or the public.

(c) Notwithstanding paragraph (a), a licensed paraprofessional may make a statement that a reasonable\* licensed paraprofessional would believe\* is required to protect a client from the substantial\* undue prejudicial effect of recent publicity not initiated by the licensed paraprofessional or the licensed paraprofessional's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No licensed paraprofessional associated in a law firm\* with a licensed paraprofessional subject to paragraph (a) or a lawyer subject to Lawyer RPC rule 3.6(a) shall make a statement prohibited by paragraph (a).

#### Comment

### Rule 3.6 Trial Publicity (Proposed Rule – Redline Version)

(a) A ~~lawyer-licensed paraprofessional~~ who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows\* or reasonably should know\* will (i) be disseminated by means of public communication and (ii) have a substantial\* likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), but only to the extent permitted by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6, ~~licensed paraprofessional lawyer~~ may state:

(1) the claim, ~~offense~~ or defense involved and, except when prohibited by law, the identity of the persons\* involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto; ~~and~~

(6) a warning of danger concerning the behavior of a person\* involved, when there is reason to believe\* that there exists the likelihood of substantial\* harm to an individual or to the public but only to the extent that dissemination by public communication is reasonably\* necessary to protect the individual or the public; ~~and~~

~~(7) in a criminal case, in addition to paragraphs (1) through (6):~~

~~(i) the identity, general area of residence, and occupation of the accused;~~

~~(ii) if the accused has not been apprehended, the information necessary to aid in apprehension of that person;\*~~

~~(iii) the fact, time, and place of arrest; and (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.~~

(c) Notwithstanding paragraph (a), a ~~licensed paraprofessional lawyer~~ may make a statement that a reasonable\* ~~licensed paraprofessional lawyer~~ would believe\* is required to protect a client from the substantial\* undue prejudicial effect of recent publicity not initiated by the ~~licensed paraprofessional lawyer~~ or the ~~licensed paraprofessional's lawyer's~~ client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No licensed paraprofessional lawyer associated in a law firm\* ~~or government agency~~ with a licensed paraprofessional lawyer subject to paragraph (a) or a lawyer subject to Lawyer RPC rule 3.6(a) shall make a statement prohibited by paragraph (a).

**Comment**

**Rule 3.7 Licensed Paraprofessional as Witness  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not act as an advocate in a trial in which the licensed paraprofessional is likely to be a witness unless:

- (1) the licensed paraprofessional’s testimony relates to an uncontested issue or matter;
- (2) the licensed paraprofessional’s testimony relates to the nature and value of legal services rendered in the case; or
- (3) the licensed paraprofessional has obtained informed written consent\* from the client.

(b) A licensed paraprofessional may act as advocate in a trial in which another licensed paraprofessional or lawyer in the lawyer’s firm\* is likely to be called as a witness unless precluded from doing so by rule 1.7 or rule 1.9.

**Rule 3.7 ~~Lawyer-Licensed Paraprofessional~~ as Witness  
(Proposed Rule – Redline Version)**

(a) A ~~lawyer-licensed paraprofessional~~ shall not act as an advocate in a trial in which the ~~lawyer-licensed paraprofessional~~ is likely to be a witness unless:

- (1) the ~~licensed paraprofessional’s lawyer’s~~ testimony relates to an uncontested issue or matter;
- (2) the ~~licensed paraprofessional lawyer’s~~ testimony relates to the nature and value of legal services rendered in the case; or
- (3) the ~~licensed paraprofessional lawyer~~ has obtained informed written consent\* from the client. ~~If the lawyer represents the People or a governmental entity, the consent shall be obtained from the head of the office or a designee of the head of the office by which the lawyer is employed.~~

(b) A ~~licensed paraprofessional lawyer~~ may act as advocate in a trial in which another ~~licensed paraprofessional or~~ lawyer in the lawyer’s firm\* is likely to be called as a witness unless precluded from doing so by rule 1.7 or rule 1.9.

**Rule 3.8 [RESERVED]  
(Proposed Rule – Clean Version)**

**Rule 3.8 [RESERVED] ~~Special Responsibilities of a Prosecutor~~  
(Proposed Rule – Redline Version)**

~~The prosecutor in a criminal case shall:~~

~~(a) not institute or continue to prosecute a charge that the prosecutor knows\* is not supported by probable cause;~~

~~(b) make reasonable\* efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable\* opportunity to obtain counsel;~~

~~(c) — not seek to obtain from an unrepresented accused a waiver of important pretrial rights unless the tribunal\* has approved the appearance of the accused in propria persona;~~

~~(d) — make timely disclosure to the defense of all evidence or information known\* to the prosecutor that the prosecutor knows\* or reasonably should know\* tends to negate the guilt of the accused, mitigate the offense, or mitigate the sentence, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;\*~~

~~(e) — exercise reasonable\* care to prevent persons\* under the supervision or direction of the prosecutor, including investigators, law enforcement personnel, employees or other persons\* assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 3.6.~~

~~(f) — When a prosecutor knows\* of new, credible and material evidence creating a reasonable\* likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:~~

~~(1) promptly disclose that evidence to an appropriate court or authority, and~~

~~(2) if the conviction was obtained in the prosecutor's jurisdiction,~~

~~(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and~~

~~(ii) undertake further investigation, or make reasonable\* efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.~~

~~(g) — When a prosecutor knows\* of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.~~

#### **Comment**

**[RESERVED]**

### **Rule 3.9 Advocate in Nonadjudicative Proceedings (Proposed Rule – Clean Version)**

A licensed paraprofessional representing a client before a legislative body or administrative agency in connection with a pending nonadjudicative matter or proceeding shall disclose that the appearance is in a representative capacity, except when the licensed paraprofessional seeks information from an agency that is available to the public.

### **Rule 3.9 Advocate in Nonadjudicative Proceedings (Proposed Rule – Redline Version)**

A ~~licensed paraprofessional lawyer~~ representing a client before a legislative body or administrative agency in connection with a pending nonadjudicative matter or proceeding shall disclose that the appearance is in a representative capacity, except when the ~~licensed paraprofessional lawyer~~ seeks information from an agency that is available to the public.

### **Rule 3.10 Threatening Criminal, Administrative, or Disciplinary Charges (Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.

(b) As used in paragraph (a) of this rule, the term “administrative charges” means the filing or lodging of a complaint with any governmental organization that may order or recommend the loss or suspension of a license, or may impose or recommend the imposition of a fine, pecuniary sanction, or other sanction of a quasi-criminal nature but does not include filing charges with an administrative entity required by law as a condition precedent to maintaining a civil action.

(c) As used in this rule, the term “civil dispute” means a controversy or potential controversy over the rights and duties of two or more persons\* under civil law, whether or not an action has been commenced, and includes an administrative proceeding of a quasi-civil nature pending before a federal, state, or local governmental entity.

**Comment**

[Reserved]

**Rule 3.10 Threatening Criminal, Administrative, or Disciplinary Charges  
(Proposed Rule – Redline Version)**

(a) A ~~lawyer~~licensed paraprofessional shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.

(b) As used in paragraph (a) of this rule, the term “administrative charges” means the filing or lodging of a complaint with any governmental organization that may order or recommend the loss or suspension of a license, or may impose or recommend the imposition of a fine, pecuniary sanction, or other sanction of a quasi-criminal nature but does not include filing charges with an administrative entity required by law as a condition precedent to maintaining a civil action.

(c) As used in this rule, the term “civil dispute” means a controversy or potential controversy over the rights and duties of two or more persons\* under civil law, whether or not an action has been commenced, and includes an administrative proceeding of a quasi-civil nature pending before a federal, state, or local governmental entity.

**Comment**

[Reserved]

**CHAPTER 4.  
TRANSACTIONS WITH PERSONS\*  
OTHER THAN CLIENTS**

**Rule 4.1 Truthfulness in Statements to Others  
(Proposed Rule – Clean Version)**

In the course of representing a client a licensed paraprofessional shall not knowingly:\*

(a) make a false statement of material fact or law to a third person;\* or

(b) fail to disclose a material fact to a third person\* when disclosure is necessary to avoid assisting a criminal or fraudulent\* act by a client, unless disclosure is prohibited by rule 1.6.

**Comment**

[Reserved]

**Rule 4.1 Truthfulness in Statements to Others  
(Proposed Rule – Redline Version)**

In the course of representing a client a ~~lawyer~~licensed paraprofessional shall not knowingly:\*

- (a) make a false statement of material fact or law to a third person;\* or
- (b) fail to disclose a material fact to a third person\* when disclosure is necessary to avoid assisting a criminal or fraudulent\* act by a client, unless disclosure is prohibited by ~~Business and Professions Code section 6068, subdivision (e)(1) or~~ rule 1.6.

**Comment**

[Reserved]

**Rule 4.2 Communication with a Represented Person\*  
(Proposed Rule – Clean Version)**

- (a) In representing a client, a licensed paraprofessional shall not communicate directly or indirectly about the subject of the representation with a person\* the licensed paraprofessional knows\* to be represented by a lawyer or another licensed paraprofessional in the matter, unless the licensed paraprofessional has the consent of the other lawyer or licensed paraprofessional.
- (b) In the case of a represented corporation, partnership, association, or other private or governmental organization, this rule prohibits communications with:
  - (1) A current officer, director, partner,\* or managing agent of the organization; or
  - (2) A current employee, member, agent, or other constituent of the organization, if the subject of the communication is any act or omission of such person\* in connection with the matter which may be binding upon or imputed to the organization for purposes of civil or criminal liability.
- (c) This rule shall not prohibit:
  - (1) communications with a public official, board, committee, or body; or
  - (2) communications otherwise authorized by law or a court order.
- (d) For purposes of this rule:
  - (1) “Managing agent” means an employee, member, agent, or other constituent of an organization with substantial\* discretionary authority over decisions that determine organizational policy.
  - (2) “Public official” means a public officer of the United States government, or of a state, county, city, town, political subdivision, or other governmental organization, with the comparable decision-making authority and responsibilities as the organizational constituents described in paragraph (b)(1).

**Comment**

[Reserved]

**Rule 4.2 Communication with a Represented Person\*  
(Proposed Rule – Redline Version)**

(a) In representing a client, a ~~lawyer~~licensed paraprofessional shall not communicate directly or indirectly about the subject of the representation with a person\* the ~~lawyer~~licensed paraprofessional knows\* to be represented by ~~another lawyer or another licensed paraprofessional~~ in the matter, unless the ~~lawyer~~licensed paraprofessional has the consent of the other lawyer or licensed paraprofessional.

(b) In the case of a represented corporation, partnership, association, or other private or governmental organization, this rule prohibits communications with:

(1) A current officer, director, partner,\*or managing agent of the organization; or

(2) A current employee, member, agent, or other constituent of the organization, if the subject of the communication is any act or omission of such person\* in connection with the matter which may be binding upon or imputed to the organization for purposes of civil or criminal liability.

(c) This rule shall not prohibit:

(1) communications with a public official, board, committee, or body; or

(2) communications otherwise authorized by law or a court order.

(d) For purposes of this rule:

(1) “Managing agent” means an employee, member, agent, or other constituent of an organization with substantial\* discretionary authority over decisions that determine organizational policy.

(2) “Public official” means a public officer of the United States government, or of a state, county, city, town, political subdivision, or other governmental organization, with the comparable decision-making authority and responsibilities as the organizational constituents described in paragraph (b)(1).

#### **Comment**

[Reserved]

### **Rule 4.3 Communicating with an Unrepresented Person\* (Proposed Rule – Clean Version)**

(a) In communicating on behalf of a client with a person\* who is not represented by a lawyer or licensed paraprofessional, a licensed paraprofessional shall not state or imply that the licensed paraprofessional is disinterested. When the licensed paraprofessional knows\* or reasonably should know\* that the unrepresented person\* incorrectly believes\* the licensed paraprofessional is disinterested in the matter, the licensed paraprofessional shall make reasonable\* efforts to correct the misunderstanding. If the licensed paraprofessional knows\* or reasonably should know\* that the interests of the unrepresented person\* are in conflict with the interests of the client, the licensed paraprofessional shall not give legal advice to that person,\* except that the licensed paraprofessional may, but is not required to, advise the person\* to secure legal representation.

(b) In communicating on behalf of a client with a person\* who is not represented by a lawyer or licensed paraprofessional, a licensed paraprofessional shall not seek to obtain privileged or other confidential information the licensed paraprofessional knows\* or reasonably should know\* the person\* may not reveal without violating a duty to another or which the licensed paraprofessional is not otherwise entitled to receive.

#### **Comment**

[Reserved]

**Rule 4.3 Communicating with an Unrepresented Person\***  
**(Proposed Rule – Redline Version)**

(a) In communicating on behalf of a client with a person\* who is not represented by a lawyer or licensed paraprofessional ~~counsel~~, a lawyer~~licensed paraprofessional~~ shall not state or imply that the lawyer~~licensed paraprofessional~~ is disinterested. When the lawyer~~licensed paraprofessional~~ knows\* or reasonably should know\* that the unrepresented person\* incorrectly believes\* the lawyer~~licensed paraprofessional~~ is disinterested in the matter, the lawyer~~licensed paraprofessional~~ shall make reasonable\* efforts to correct the misunderstanding. If the lawyer~~licensed paraprofessional~~ knows\* or reasonably should know\* that the interests of the unrepresented person\* are in conflict with the interests of the client, the lawyer~~licensed paraprofessional~~ shall not give legal advice to that person,\* except that the lawyer~~licensed paraprofessional~~ may, but is not required to, advise the person\* to secure counsel~~legal representation~~.

(b) In communicating on behalf of a client with a person\* who is not represented by ~~counsel~~ a lawyer or licensed paraprofessional, a lawyer~~licensed paraprofessional~~ shall not seek to obtain privileged or other confidential information the lawyer~~licensed paraprofessional~~ knows\* or reasonably should know\* the person\* may not reveal without violating a duty to another or which the lawyer~~licensed paraprofessional~~ is not otherwise entitled to receive.

**Comment**

[Reserved]

**Rule 4.4 Duties Concerning Inadvertently Transmitted Writings\***  
**(Proposed Rule – Clean Version)**

Where it is reasonably\* apparent to a licensed paraprofessional who receives a writing\* relating to a licensed paraprofessional's representation of a client that the writing\* was inadvertently sent or produced, and the licensed paraprofessional knows\* or reasonably should know\* that the writing\* is privileged or subject to the work product doctrine, the licensed paraprofessional shall:

- (a) refrain from examining the writing\* any more than is necessary to determine that it is privileged or subject to the work product doctrine, and
- (b) promptly notify the sender.

**Comment**

[Reserved]

**Rule 4.4 Duties Concerning Inadvertently Transmitted Writings\***  
**(Proposed Rule – Redline Version)**

Where it is reasonably\* apparent to a lawyer~~licensed paraprofessional~~ who receives a writing\* relating to a lawyer~~licensed paraprofessional~~'s representation of a client that the writing\* was inadvertently sent or produced, and the lawyer~~licensed paraprofessional~~ knows\* or reasonably should know\* that the writing\* is privileged or subject to the work product doctrine, the lawyer~~licensed paraprofessional~~ shall:

- (a) refrain from examining the writing\* any more than is necessary to determine that it is privileged or subject to the work product doctrine, and
- (b) promptly notify the sender.

**Comment**

[Reserved]

**CHAPTER 5.  
LAW FIRMS\* AND ASSOCIATIONS**

**Rule 5.1 Responsibilities of Managerial and Supervisory Licensed Paraprofessionals  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional who individually or together with other licensed paraprofessionals or lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that all licensed paraprofessionals in the firm\* comply with these rules and the State Bar Act.
- (b) A licensed paraprofessional having direct supervisory authority over another licensed paraprofessional, whether or not a member or employee of the same law firm,\* shall make reasonable\* efforts to ensure that the other licensed paraprofessional complies with these rules and applicable law.
- (c) A licensed paraprofessional shall be responsible for another licensed paraprofessional’s violation of these rules and applicable law if:
- (1) the licensed paraprofessional orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or
  - (2) the licensed paraprofessional, individually or together with other licensed paraprofessionals or lawyers, possesses managerial authority in the law firm\* in which the other licensed paraprofessional practices, or has direct supervisory authority over the other licensed paraprofessional, whether or not a member or employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

**Comment**

[Reserved]

**Rule 5.1 Responsibilities of Managerial and Supervisory ~~Lawyer~~Licensed Paraprofessionals  
(Proposed Rule – Redline Version)**

- (a) A ~~lawyer~~licensed paraprofessional who individually or together with other ~~licensed paraprofessionals~~ or lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that all ~~lawyer~~licensed paraprofessionals in the firm\* comply with these rules and the State Bar Act.
- (b) A ~~lawyer~~licensed paraprofessional having direct supervisory authority over another ~~lawyer~~licensed paraprofessional, whether or not a member or employee of the same law firm,\* shall make reasonable\* efforts to ensure that the other ~~lawyer~~licensed paraprofessional complies with these rules and ~~the State Bar Act~~ applicable law.
- (c) A ~~lawyer~~licensed paraprofessional shall be responsible for another ~~lawyer~~licensed paraprofessional’s violation of these rules and ~~the State Bar Act~~ applicable law if:
- (3) the ~~lawyer~~licensed paraprofessional orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or

(4) the lawyer licensed paraprofessional, individually or together with other licensed paraprofessionals or lawyers, possesses managerial authority in the law firm\* in which the other lawyer licensed paraprofessional practices, or has direct supervisory authority over the other lawyer licensed paraprofessional, whether or not a member or employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

**Comment**

[Reserved]

**Rule 5.2 Responsibilities of a Subordinate Licensed Paraprofessional  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall comply with these rules and notwithstanding that the licensed paraprofessional acts at the direction of a lawyer, another a licensed paraprofessional, or other person.\*

(b) A subordinate licensed paraprofessional does not violate these rules if that licensed paraprofessional acts in accordance with a supervisory lawyer's or supervisory licensed paraprofessional's reasonable\* resolution of an arguable question of professional duty.

**Comment**

[Reserved]

**Rule 5.2 Responsibilities of a Subordinate Lawyer Licensed Paraprofessional  
(Proposed Rule – Redline Version)**

(a) A lawyer licensed paraprofessional shall comply with these rules and ~~the State Bar Act~~ notwithstanding that the lawyer licensed paraprofessional acts at the direction of a lawyer, another ~~lawyer~~ a licensed paraprofessional, or other person.\*

(b) A subordinate lawyer licensed paraprofessional does not violate these rules ~~or the State Bar Act~~ if that lawyer licensed paraprofessional acts in accordance with a supervisory lawyer's or supervisory licensed paraprofessional's reasonable\* resolution of an arguable question of professional duty.

**Comment**

[Reserved]

**Rule 5.3 Responsibilities Regarding Non-Licensed Assistants  
(Proposed Rule – Clean Version)**

With respect to an individual not licensed to practice law who is employed or retained by or associated with a licensed paraprofessional:

(a) a licensed paraprofessional who individually or together with other licensed paraprofessionals or lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that the nonlicensee's conduct is compatible with the professional obligations of the licensed paraprofessional;

(b) a licensed paraprofessional having direct supervisory authority over the nonlicensee, whether or not an employee of the same law firm,\* shall make reasonable\* efforts to ensure that the person's\* conduct is compatible with the professional obligations of the licensed paraprofessional; and

(c) a licensed paraprofessional shall be responsible for conduct of such a person\* that would be a violation of these rules if engaged in by a licensed paraprofessional if:

(1) the licensed paraprofessional orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or

(2) the licensed paraprofessional, individually or together with other licensed paraprofessionals or lawyers, possesses managerial authority in the law firm\* in which the person\* is employed, or has direct supervisory authority over the person,\* whether or not an employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

**Comment**

[Reserved]

**Rule 5.3 Responsibilities Regarding Non-~~Licensed lawyer~~ Assistants  
(Proposed Rule – Redline Version)**

With respect to an ~~individual not licensed to practice law who is nonlawyer~~ employed or retained by or associated with a ~~lawyer~~licensed paraprofessional:

(a) a ~~lawyer~~licensed paraprofessional who individually or together with other licensed paraprofessionals or lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that the ~~nonlawyer's nonlicensee's~~ conduct is compatible with the professional obligations of the ~~lawyer~~licensed paraprofessional;

(b) a ~~lawyer~~licensed paraprofessional having direct supervisory authority over the non~~lawyer~~licensee, whether or not an employee of the same law firm,\* shall make reasonable\* efforts to ensure that the person's\* conduct is compatible with the professional obligations of the ~~lawyer~~licensed paraprofessional; and

(c) a ~~lawyer~~licensed paraprofessional shall be responsible for conduct of such a person\* that would be a violation of these rules ~~or the State Bar Act~~ if engaged in by a ~~lawyer~~licensed paraprofessional if:

(1) the ~~lawyer~~licensed paraprofessional orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or

(2) the ~~lawyer~~licensed paraprofessional, individually or together with other licensed paraprofessionals or lawyers, possesses managerial authority in the law firm\* in which the person\* is employed, or has direct supervisory authority over the person,\* whether or not an employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

**Comment**

[Reserved]

**Rule 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Licensed Paraprofessionals  
(Proposed Rule – Clean Version)**

(a) For purposes of this rule:

- (1) “Employ” means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;
- (2) “Licensee” means a licensee of the State Bar of California;
- (3) “Involuntarily inactive licensee” means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203, subdivision (d)(1), or California Rules of Court, rule 9.31(d);
- (4) “Resigned licensee” means a licensee who has resigned from the State Bar while disciplinary charges are pending; and
- (5) “Ineligible person” means a licensee whose current status with the State Bar of California is disbarred, suspended, resigned, or involuntarily inactive.

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

- (1) Render legal consultation or advice to the client;
- (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
- (3) Appear as a representative of the client at a deposition or other discovery matter;
- (4) Negotiate or transact any matter for or on behalf of the client with third parties;
- (5) Receive, disburse or otherwise handle the client’s funds; or
- (6) Engage in activities that constitute the practice of law.

(c) A licensed paraprofessional may employ, associate in practice with, or assist an ineligible person to perform research, drafting or clerical activities, including but not limited to:

- (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
- (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or
- (3) Accompanying an active licensed paraprofessional in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active licensed paraprofessional who will appear as the representative of the client.

(d) Prior to or at the time of employing, associating in practice with, or assisting a person\* the licensed paraprofessional knows\* or reasonably should know\* is an ineligible person, the licensed paraprofessional shall serve upon the State Bar written\* notice of the employment, including a full description of such person’s current licensee status. The written\* notice shall also list the activities prohibited in paragraph (b) and state that the ineligible person will not perform such activities. The licensed paraprofessional shall serve similar written\* notice upon each client on whose specific matter such person\* will work, prior to or at the time of employing, associating with, or assisting such person\* to work on the client’s specific matter. The licensed paraprofessional shall obtain proof of service of the client’s written\* notice and shall

retain such proof and a true and correct copy of the client's written\* notice for two years following termination of the licensed paraprofessional's employment by the client.

(e) A licensed paraprofessional may, without client or State Bar notification, employ, associate in practice with, or assist an ineligible person whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.

(f) When the licensed paraprofessional no longer employs, associates in practice with, or assists the ineligible person, the licensed paraprofessional shall promptly serve upon the State Bar written\* notice of the termination.

**Comment**

[Reserved]

**Rule 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Licensed Paraprofessionals  
(Proposed Rule – Redline Version)**

(a) For purposes of this rule:

(1) "Employ" means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;

(2) "MemberLicensee" means a member-licensee of the State Bar of California;

(3) "Involuntarily inactive memberlicensee" means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203, subdivision (d)(1), or California Rules of Court, rule 9.31(d);

(4) "Resigned memberlicensee" means a member-licensee who has resigned from the State Bar while disciplinary charges are pending; and

(5) "Ineligible person" means a member-licensee whose current status with the State Bar of California is disbarred, suspended, resigned, or involuntarily inactive.

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

(1) Render legal consultation or advice to the client;

(2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;

(3) Appear as a representative of the client at a deposition or other discovery matter;

(4) Negotiate or transact any matter for or on behalf of the client with third parties;

(5) Receive, disburse or otherwise handle the client's funds; or

(6) Engage in activities that constitute the practice of law.

(c) A lawyerlicensed paraprofessional may employ, associate in practice with, or assist an ineligible person to perform research, drafting or clerical activities, including but not limited to:

- (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
  - (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or
  - (3) Accompanying an active lawyer licensed paraprofessional in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active lawyer licensed paraprofessional who will appear as the representative of the client.
- (d) Prior to or at the time of employing, associating in practice with, or assisting a person\* the licensed paraprofessional ~~lawyer~~ knows\* or reasonably should know\* is an ineligible person, the lawyer licensed paraprofessional shall serve upon the State Bar written\* notice of the employment, including a full description of such person's current ~~bar~~ licensee status. The written\* notice shall also list the activities prohibited in paragraph (b) and state that the ineligible person will not perform such activities. The licensed paraprofessional ~~lawyer~~ shall serve similar written\* notice upon each client on whose specific matter such person\* will work, prior to or at the time of employing, associating with, or assisting such person\* to work on the client's specific matter. The lawyer licensed paraprofessional shall obtain proof of service of the client's written\* notice and shall retain such proof and a true and correct copy of the client's written\* notice for two years following termination of the lawyer licensed paraprofessional's employment by the client.
- (e) A lawyer licensed paraprofessional may, without client or State Bar notification, employ, associate in practice with, or assist an ineligible person whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.
- (f) When the lawyer licensed paraprofessional no longer employs, associates in practice with, or assists the ineligible person, the lawyer licensed paraprofessional shall promptly serve upon the State Bar written\* notice of the termination.

**Comment**

[Reserved]

**Rule 5.4 Financial and Similar Arrangements between Licensed Paraprofessionals, Lawyers, and Nonlicensees  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional or law firm\* shall not share legal fees directly or indirectly with an individual 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 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 a 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.

(c) 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:

(1) 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;

(2) 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

(3) 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.

(e) 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) 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, a licensed paraprofessional referral service unless it complies with such Minimum Standards for Licensed Paraprofessional Referral Services.

(g) 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.

#### Comment

[Reserved]

### Rule 5.4 Financial and Similar Arrangements between Licensed Paraprofessionals, Lawyers, and Nonlawyerlicensees (Proposed Rule – Redline Version)

(a) A lawyerlicensed paraprofessional or law firm\* shall not share legal fees directly or indirectly with a nonlawyerperson\* individual 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 lawyerlicensed paraprofessional with the lawyerlicensed paraprofessional's firm,\* partner,\* or associate may provide for the payment of money or other consideration over a reasonable\* period of time after the lawyerlicensed paraprofessional's death, to the lawyerlicensed paraprofessional's estate or to one or more specified persons;\*

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

(3) a lawyerlicensed paraprofessional or law firm\* may include ~~nonlawyer~~ 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 ~~or the State Bar Act~~;

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

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

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

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

(1) an individual who is not a lawyer or a licensed paraprofessional~~nonlawyer~~ 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;

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

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

(e) A licensed paraprofessional shall not practice in a law firm\* with a lawyer if:

(1) any licensed paraprofessionals directs or regulates any lawyer's professional judgment in rendering legal services;

(2) any licensed paraprofessionals have direct supervisory authority over any lawyer; or

(3) licensed paraprofessionals possess a majority ownership interest or exercise controlling managerial authority in the firm;

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

(g) A lawyerlicensed 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 lawyerlicensed paraprofessional's independent professional judgment, or with the lawyerlicensed paraprofessional-client relationship, or allows or aids any person\* to practice law in violation of these rules or the State Bar Act applicable law.

#### Comment

[Reserved]

**Rule 5.5 Unauthorized Practice of Law  
(Proposed Rule – Clean Version)**

Licensed paraprofessionals admitted to practice law in California shall not:

- (a) practice law in California beyond the permissible scope of their license;
- (b) hold out or otherwise represent to the public that the licensed paraprofessional is permitted to practice law beyond the permissible scope of their license;
- (c) practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction;  
or
- (d) knowingly\* assist a person\* in the unauthorized practice of law in California or any other jurisdiction.

**Comment**

[Reserved]

**Rule 5.5 Unauthorized Practice of Law; ~~Multijurisdictional Practice of Law~~  
(Proposed Rule – Redline Version)**

~~(a)~~ ~~A lawyer~~ Licensed paraprofessionals admitted to practice law in California shall not:

~~(a)~~ practice law in California beyond the permissible scope of their a;

~~(b)~~ hold out or otherwise represent to the public that the licensed paraprofessional is permitted to practice law beyond the permissible scope of their license;

~~(c)~~ practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction;  
or

~~(d)~~ knowingly\* assist a person\* in the unauthorized practice of law in that jurisdiction California or any other jurisdiction.

~~(b)~~ ~~A paraprofessional lawyer who is not admitted to practice law in California shall not:~~

~~(1) — except as authorized by these rules or other law, establish or maintain a resident office or other systematic or continuous presence in California for the practice of law; or~~

~~(2) — hold out to the public or otherwise represent that the paraprofessional lawyer is admitted to practice law in California.~~

**Comment**

[Reserved]

**Rule 5.6 Restrictions on a Licensed Paraprofessional’s Right to Practice  
(Proposed Rule – Clean Version)**

- (a) Unless authorized by law, a licensed paraprofessional shall not participate in offering or making:
  - (1) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a licensed paraprofessional to practice after termination of the relationship, except an agreement that concerns benefits upon retirement; or
  - (2) an agreement that imposes a restriction on a licensed paraprofessional’s right to practice in connection with a settlement of a client controversy, or otherwise.
- (b) A licensed paraprofessional shall not participate in offering or making an agreement which precludes the reporting of a violation of these rules.

**Comment**

[Reserved]

**Rule 5.6 Restrictions on a ~~Lawyer~~Licensed Paraprofessional’s Right to Practice  
(Proposed Rule – Redline Version)**

- (a) Unless authorized by law, a ~~lawyer~~licensed paraprofessional shall not participate in offering or making:
  - (1) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a ~~lawyer~~licensed paraprofessional to practice after termination of the relationship, except an agreement that concerns benefits upon retirement; or
  - (2) an agreement that imposes a restriction on a ~~lawyer~~licensed paraprofessional’s right to practice in connection with a settlement of a client controversy, or otherwise.
- (b) A ~~lawyer~~licensed paraprofessional shall not participate in offering or making an agreement which precludes the reporting of a violation of these rules.

~~(c) This rule does not prohibit an agreement that is authorized by Business and Professions Code sections 6092.5, subdivision (i) or 6093.~~

**Comment**

[Reserved]

**Rule 5.7 [Reserved]**

**CHAPTER 6. PUBLIC SERVICE**

**Rule 6.1 [Reserved]**

**Rule 6.2 [Reserved]**

**Rule 6.3 Membership in Legal Services Organization  
(Proposed Rule – Clean Version)**

A licensed paraprofessional may serve as a director, officer or member of a legal services organization, apart from the law firm\* in which the licensed paraprofessional practices, notwithstanding that the organization serves persons\* having interests adverse to a client of the licensed paraprofessional. The licensed paraprofessional shall not knowingly\* participate in a decision or action of the organization:

- (a) if participating in the decision or action would be incompatible with the licensed paraprofessional’s obligations to a client under rules 1.6(a), 1.7, 1.9, or 1.18; or
- (b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the licensed paraprofessional.

**Comment**

[Reserved]

**Rule 6.3 Membership in Legal Services Organization  
(Proposed Rule – Redline Version)**

A ~~lawyer~~licensed paraprofessional may serve as a director, officer or member of a legal services organization, apart from the law firm\* in which the ~~lawyer~~licensed paraprofessional practices, notwithstanding that the organization serves persons\* having interests adverse to a client of the ~~lawyer~~licensed paraprofessional. The ~~lawyer~~licensed paraprofessional shall not knowingly\* participate in a decision or action of the organization:

- (a) if participating in the decision or action would be incompatible with the ~~lawyer~~licensed paraprofessional’s obligations to a client under ~~Business and Professions Code section 6068, subdivision (e)(1) or~~ rules 1.6(a), 1.7, 1.9, or 1.18; or
- (b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the ~~lawyer~~licensed paraprofessional.

**Comment**

[Reserved]

**Rule 6.4 [Reserved]**

**Rule 6.5 Limited Legal Services Programs  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional who, under the auspices of a program sponsored by a court, government agency, bar association, law school, or nonprofit organization, provides short-term limited legal services to a client without expectation by either the licensed paraprofessional or the client that the licensed paraprofessional will provide continuing representation in the matter:

- (1) is subject to rules 1.7 and 1.9(a) only if the licensed paraprofessional knows\* that the representation of the client involves a conflict of interest; and
- (2) is subject to rule 1.10 only if the licensed paraprofessional knows\* that another licensed paraprofessional or a lawyer associated with the licensed paraprofessional in a law firm\* is prohibited from representation by rule 1.7 or 1.9(a) or Lawyer RPC rule 1.7 or 1.9(a) with respect to the matter.

- (b) Except as provided in paragraph (a)(2), rule 1.10 is inapplicable to a representation governed by this rule.
- (c) The personal disqualification of a licensed paraprofessional participating in the program will not be imputed to other licensed paraprofessional or lawyers participating in the program.

**Comment**

[Reserved]

**Rule 6.5 Limited Legal Services Programs  
(Proposed Rule – Redline Version)**

(a) A ~~lawyer~~licensed paraprofessional who, under the auspices of a program sponsored by a court, government agency, bar association, law school, or nonprofit organization, provides short-term limited legal services to a client without expectation by either the ~~lawyer~~licensed paraprofessional or the client that the ~~lawyer~~licensed paraprofessional will provide continuing representation in the matter:

(1) is subject to rules 1.7 and 1.9(a) only if the ~~lawyer~~licensed paraprofessional knows\* that the representation of the client involves a conflict of interest; and

(2) is subject to rule 1.10 only if the ~~lawyer~~licensed paraprofessional knows\* that another ~~lawyer~~licensed paraprofessional or a lawyer associated with the ~~lawyer~~licensed paraprofessional in a law firm\* is prohibited from representation by rule 1.7 or 1.9(a) or Lawyer RPC rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), rule 1.10 is inapplicable to a representation governed by this rule.

(c) The personal disqualification of a ~~lawyer~~licensed paraprofessional participating in the program will not be imputed to other ~~paraprofessionals~~ licensed paraprofessional or lawyers participating in the program.

**Comment**

[Reserved]

**CHAPTER 7.  
INFORMATION ABOUT LEGAL SERVICES**

**Rule 7.1 Communications Concerning a Licensed Paraprofessional's Services  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not make a false or misleading communication about the licensed paraprofessional or the licensed paraprofessional's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the communication considered as a whole not materially misleading.

(b) The Board of Trustees of the State Bar may formulate and adopt standards as to communications that will be presumed to violate rule 7.1, 7.2, 7.3, or 7.5. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these rules. "Presumption affecting the burden of proof" means that presumption defined in Evidence Code sections 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all licensed paraprofessional.

**Comment**

[Reserved]

**Rule 7.1 Communications Concerning a ~~Lawyer~~Licensed Paraprofessional's Services  
(Proposed Rule – Redline Version)**

(a) A ~~lawyer~~licensed paraprofessional shall not make a false or misleading communication about the ~~lawyer~~licensed paraprofessional or the ~~lawyer~~licensed paraprofessional's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the communication considered as a whole not materially misleading.

(b) The Board of Trustees of the State Bar may formulate and adopt standards as to communications that will be presumed to violate rule 7.1, 7.2, 7.3, ~~7.4~~ or 7.5. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these rules. "Presumption affecting the burden of proof" means that presumption defined in Evidence Code sections 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all ~~lawyer~~licensed paraprofessionals.

**Comment**

[Reserved]

**Rule 7.2 Advertising  
(Proposed Rule – Clean Version)**

(a) Subject to the requirements of rules 7.1 and 7.3, a licensed paraprofessional may advertise services through any written,\* recorded or electronic means of communication, including public media.

(b) A licensed paraprofessional shall not compensate, promise or give anything of value to a person\* for the purpose of recommending or securing the services of the licensed paraprofessional or the licensed paraprofessional's law firm,\* except that a licensed paraprofessional may:

- (1) pay the reasonable\* costs of advertisements or communications permitted by this rule;
- (2) pay the usual charges of a legal services plan or a qualified licensed paraprofessional referral service. A qualified licensed paraprofessional referral service is a licensed paraprofessional referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a Licensed Paraprofessional Referral Service in California;
- (3) pay for a law practice in accordance with rule 1.17;
- (4) refer clients to another licensed paraprofessional, a lawyer or a nonlawyer professional pursuant to an arrangement not otherwise prohibited under these rules that provides for the other person\* to refer clients or customers to the licensed paraprofessional, if:
  - (i) the reciprocal referral arrangement is not exclusive; and
  - (ii) the client is informed of the existence and nature of the arrangement;
- (5) offer or give a gift or gratuity to a person\* having made a recommendation resulting in the employment of the licensed paraprofessional or the licensed paraprofessional's law firm,\* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.

(c) Any communication made pursuant to this rule shall include: (1) the name and contact information of at least one lawyer, licensed paraprofessional or law firm\* responsible for its content, (2) include in the communication at least one licensed paraprofessional's license number; and (3) include in the communication a clear and conspicuous statement that the licensed paraprofessional is not a lawyer. (d) If a licensed paraprofessional's law firm maintains a website advertising the licensed paraprofessional's services, the website must include a page that contains all the mandatory disclosures required under rule 1.4.2(a).

(d) If a licensed paraprofessional's law firm maintains a website advertising the licensed paraprofessional's services, the website must include a page that contains all the mandatory disclosures required under rule 1.4.2(a).

#### Comment

[Reserved]

### Rule 7.2 Advertising (Proposed Rule – Redline Version)

(a) Subject to the requirements of rules 7.1 and 7.3, a ~~lawyer~~licensed paraprofessional may advertise services through any written,\* recorded or electronic means of communication, including public media.

(b) A ~~lawyer~~licensed paraprofessional shall not compensate, promise or give anything of value to a person\* for the purpose of recommending or securing the services of the ~~lawyer~~licensed paraprofessional or the ~~lawyer~~licensed paraprofessional's law firm,\* except that a ~~lawyer~~licensed paraprofessional may:

(1) pay the reasonable\* costs of advertisements or communications permitted by this rule;

(2) pay the usual charges of a legal services plan or a qualified ~~lawyer~~licensed paraprofessional referral service. A qualified ~~lawyer~~licensed paraprofessional referral service is a ~~lawyer~~licensed paraprofessional referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a ~~Lawyer~~Licensed paraprofessional Referral Service in California;

(3) pay for a law practice in accordance with rule 1.17;

(4) refer clients to another ~~lawyer~~licensed paraprofessional, a lawyer or a nonlawyer professional pursuant to an arrangement not otherwise prohibited under these ~~Rules-rules or the State Bar Act~~ that provides for the other person\* to refer clients or customers to the ~~lawyer~~licensed paraprofessional, if:

(i) the reciprocal referral arrangement is not exclusive; and

(ii) the client is informed of the existence and nature of the arrangement;

(5) offer or give a gift or gratuity to a person\* having made a recommendation resulting in the employment of the ~~lawyer~~licensed paraprofessional or the ~~lawyer~~licensed paraprofessional's law firm,\* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.

(c) Any communication made pursuant to this rule shall include: (1) the name and ~~address-contact information~~ of at least one lawyer, ~~licensed paraprofessional~~ or law firm\* responsible for its content, (2) include in the communication at least one licensed paraprofessional's license number; and (3) include in the communication a clear and conspicuous statement that the licensed paraprofessional is not a lawyer.

(d) If a licensed paraprofessional's law firm maintains a website advertising the licensed paraprofessional's services, the website must include a page that contains all the mandatory disclosures required under rule 1.4.2(a).

**Comment**

[Reserved]

**Rule 7.3 Solicitation of Clients  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the licensed paraprofessional's pecuniary gain, unless the person\* contacted:

- (1) is a lawyer or a licensed paraprofessional; or
- (2) has a family, close personal, or prior professional relationship with the licensed paraprofessional.

(b) A licensed paraprofessional shall not solicit professional employment by written,\* recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the person\* being solicited has made known\* to the licensed paraprofessional a desire not to be solicited by the licensed paraprofessional; or
- (2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress or harassment.

(c) Every written,\* recorded or electronic communication from a licensed paraprofessional soliciting professional employment from any person\* known\* to be in need of legal services in a particular matter shall include:

- (1) the word "Advertisement" or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person\* specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.
- (2) include the name, contact information, and license number of the licensed paraprofessional responsible for the content of the communication;
- (3) include a clear and conspicuous statement that the paraprofessional is not a lawyer; and
- (4) if an advertisement subject to this subdivision is in a language other than English, the statements required by this subdivision shall be in the same language as the advertisement.

(d) A licensed paraprofessional shall not act as a runner or capper for another licensed paraprofessional, attorney, or law firm, nor solicit another person to act as a runner or capper for any licensed paraprofessional, attorney, or law firm.

- (1) For purposes of paragraph (d), a "runner or capper" is any person, firm, association, or corporation acting for consideration in any manner or in any capacity as an agent for an attorney, a paraprofessional, or a law firm, in the solicitation or procurement of business for the licensed paraprofessional except as otherwise authorized by these rules or the Lawyer RPC.
- (2) Nothing in paragraph (d) shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by these rules.

(e) Notwithstanding the prohibitions in paragraph (a), a licensed paraprofessional may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the licensed paraprofessional that uses in-person, live telephone or real-time electronic contact to solicit memberships or subscriptions for the plan from persons\* who are not known\* to need legal services in a particular matter covered by the plan.

(f) As used in this rule, the terms “solicitation” and “solicit” refer to an oral or written\* targeted communication initiated by or on behalf of the licensed paraprofessional that is directed to a specific person\* and that offers to provide, or can reasonably\* be understood as offering to provide, legal services.

**Comment**

[Reserved]

**Rule 7.3 Solicitation of Clients  
(Proposed Rule – Redline Version)**

(a) A ~~lawyer~~licensed paraprofessional shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the ~~lawyer~~licensed paraprofessional's pecuniary gain, unless the person\* contacted:

- (1) is a lawyer ~~or a licensed paraprofessional~~; or
- (2) has a family, close personal, or prior professional relationship with the ~~lawyer~~licensed paraprofessional.

(b) A ~~lawyer~~licensed paraprofessional shall not solicit professional employment by written,\* recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the person\* being solicited has made known\* to the ~~lawyer~~licensed paraprofessional a desire not to be solicited by the ~~lawyer~~licensed paraprofessional; or
- (2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress or harassment.

(c) Every written,\* recorded or electronic communication from a ~~lawyer~~licensed paraprofessional soliciting professional employment from any person\* known\* to be in need of legal services in a particular matter shall include:

- (1) the word “Advertisement” or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person\* specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.
- (2) include the name, contact information, and license number of the licensed paraprofessional responsible for the content of the communication;
- (3) include a clear and conspicuous statement that the paraprofessional is not a lawyer; and
- (4) if an advertisement subject to this subdivision is in a language other than English, the statements required by this subdivision shall be in the same language as the advertisement.

(d) A licensed paraprofessional shall not act as a runner or capper for another licensed paraprofessional, nor solicit another person to act as a runner or capper for the licensed paraprofessional.

- (1) For purposes of paragraph (d), a “runner or capper” is any person, firm, association, or corporation acting for consideration in any manner or in any capacity as an agent for an attorney, a paraprofessional, or a law firm, in the solicitation or procurement of business for the licensed paraprofessional except as otherwise authorized by these rules.
- (2) Nothing in paragraph (d) shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by these rules.

(e) Notwithstanding the prohibitions in paragraph (a), a lawyer licensed paraprofessional may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer licensed paraprofessional that uses in-person, live telephone or real-time electronic contact to solicit memberships or subscriptions for the plan from persons\* who are not known\* to need legal services in a particular matter covered by the plan.

(ef) As used in this rule, the terms “solicitation” and “solicit” refer to an oral or written\* targeted communication initiated by or on behalf of the lawyer licensed paraprofessional that is directed to a specific person\* and that offers to provide, or can reasonably\* be understood as offering to provide, legal services.

**Comment**

[Reserved]

**Rule 7.4 [RESERVED]  
(Proposed Rule – Clean Version)**

**Rule 7.4 [RESERVED] ~~Communication of Licensed Fields of Practice and Authorized Legal Services and Specialization~~  
(Proposed Rule – Redline Version)**

~~(a) A lawyer shall not state that the lawyer is a certified specialist licensed to practice in a particular field of law, unless:~~

~~(1) the lawyer is currently certified currently licensed as a specialist by the Board of Legal Specialization, or any other entity accredited by the State Bar to practice in that particular field of law to designate specialists pursuant to standards adopted by the Board of Trustees; and~~

~~(2) the name of the certifying organization is clearly identified in the communication.~~

~~(b) Notwithstanding paragraph (a), a lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may also communicate that his or her practice specializes in, is limited to, or is concentrated in a particular field of law, subject to the requirements of rule 7.1.~~

**Rule 7.5 Firm\* Names and Trade Names  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not use a firm\* name, trade name or other professional designation that violates rule 7.1.

(b) A licensed paraprofessional in private practice shall not use a firm\* name, trade name or other professional designation that states or implies a relationship with a government agency or with a public or charitable legal services organization, or otherwise violates rule 7.1.

(c) A licensed paraprofessional shall not state or imply that the licensed paraprofessional practices in or has a professional relationship with a law firm\* or other organization unless that is the fact.

**Comment**

[Reserved]

**Rule 7.5 Firm\* Names and Trade Names  
(Proposed Rule – Redline Version)**

- (a) A ~~lawyer~~licensed paraprofessional shall not use a firm\* name, trade name or other professional designation that violates rule 7.1.
- (b) A ~~lawyer~~licensed paraprofessional in private practice shall not use a firm\* name, trade name or other professional designation that states or implies a relationship with a government agency or with a public or charitable legal services organization, or otherwise violates rule 7.1.
- (c) A ~~lawyer~~licensed paraprofessional shall not state or imply that the ~~lawyer~~licensed paraprofessional practices in or has a professional relationship with a law firm\* or other organization unless that is the fact.

**Comment**

[Reserved]

**Rule 7.6 [Reserved]**

**CHAPTER 8.  
MAINTAINING THE INTEGRITY  
OF THE PROFESSION**

**Rule 8.1 False Statement Regarding Application for Admission to Practice Law  
(Proposed Rule – Clean Version)**

- (a) An applicant for admission to practice law as a licensed paraprofessional shall not, in connection with that person's\* own application for admission, make a statement of material fact that the licensed paraprofessional knows\* to be false, or make such a statement with reckless disregard as to its truth or falsity.
- (b) A licensed paraprofessional shall not, in connection with another person's\* application for admission to practice law as a lawyer or licensed paraprofessional, make a statement of material fact that the licensed paraprofessional knows\* to be false.
- (c) An applicant for admission to practice law as a licensed paraprofessional, or a licensed paraprofessional in connection with an application for admission, shall not fail to disclose a fact necessary to correct a statement known\* by the applicant or the licensed paraprofessional to have created a material misapprehension in the matter, except that this rule does not authorize disclosure of information protected by rule 1.6.
- (d) As used in this rule, "admission to practice law" includes admission or readmission to licensure in the State Bar; reinstatement to active licensure in the State Bar; and any similar process relating to admission or certification to practice law in California or elsewhere.

**Comment**

[Reserved]

**Rule 8.1 False Statement Regarding Application for Admission to Practice Law  
(Proposed Rule – Redline Version)**

- (a) An applicant for admission to practice law ~~as a licensed paraprofessional~~ shall not, in connection with that person's\* own application for admission, make a statement of material fact that the ~~lawyer~~licensed paraprofessional knows\* to be false, or make such a statement with reckless disregard as to its truth or falsity.

(b) A ~~lawyer~~licensed paraprofessional shall not, in connection with another person's\* application for admission to practice law as a lawyer or licensed paraprofessional, make a statement of material fact that the ~~lawyer~~licensed paraprofessional knows\* to be false.

(c) An applicant for admission to practice law as a licensed paraprofessional, or a ~~lawyer~~licensed paraprofessional in connection with an application for admission, shall not fail to disclose a fact necessary to correct a statement known\* by the applicant or the ~~lawyer~~licensed paraprofessional to have created a material misapprehension in the matter, except that this rule does not authorize disclosure of information protected by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6.

(d) As used in this rule, "admission to practice law" includes admission or readmission to ~~membership licensure~~ in the State Bar; reinstatement to active ~~membership licensure~~ in the State Bar; and any similar process relating to admission or certification to practice law in California or elsewhere.

**Comment**

[Reserved]

**Rule 8.1.1 Compliance with Conditions of Discipline  
(Proposed Rule – Clean Version)**

A licensed paraprofessional shall comply with the terms and conditions attached to any public reproof, or to other discipline administered by the State Bar pursuant to.

**Comment**

[Reserved]

**Rule 8.1.1 Compliance with Conditions of Discipline ~~and Agreements in Lieu of Discipline~~  
(Proposed Rule – Redline Version)**

A ~~lawyer~~licensed paraprofessional shall comply with the terms and conditions attached to ~~any agreement in lieu of discipline,~~ any public ~~or private~~ reproof, or to other discipline administered by the State Bar pursuant to ~~Business and Professions Code sections 6077 and 6078 and California Rules of Court, rule 9.19.~~

**Comment**

[Reserved]

**Rule 8.2 Judicial Officials  
(Proposed Rule – Clean Version)**

A licensed paraprofessional shall not make a statement of fact that the licensed paraprofessional knows\* to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or judicial officer, or of a candidate for election or appointment to judicial office.

**Comment**

[Reserved]

**Rule 8.2 Judicial Officials  
(Proposed Rule – Redline Version)**

~~(a) — A lawyer licensed paraprofessional shall not make a statement of fact that the lawyer licensed paraprofessional knows\* to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or judicial officer, or of a candidate for election or appointment to judicial office.~~

~~(b) — A lawyer who is a candidate for judicial office in California shall comply with canon 5 of the California Code of Judicial Ethics. For purposes of this rule, “candidate for judicial office” means a lawyer seeking judicial office by election. The determination of when a lawyer is a candidate for judicial office by election is defined in the terminology section of the California Code of Judicial Ethics. A lawyer’s duty to comply with this rule shall end when the lawyer announces withdrawal of the lawyer’s candidacy or when the results of the election are final, whichever occurs first.~~

~~(c) — A lawyer who seeks appointment to judicial office shall comply with canon 5B(1) of the California Code of Judicial Ethics. A lawyer becomes an applicant seeking judicial office by appointment at the time of first submission of an application or personal data questionnaire to the appointing authority. A lawyer’s duty to comply with this rule shall end when the lawyer advises the appointing authority of the withdrawal of the lawyer’s application.~~

**Comment**

[Reserved]

**Rule 8.3 [Reserved]**

**Rule 8.4 Misconduct  
(Proposed Rule – Clean Version)**

It is professional misconduct for a licensed paraprofessional to:

- (a) violate these rules, knowingly\* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the licensed paraprofessional’s honesty, trustworthiness, or fitness as a licensed paraprofessional in other respects;
- (c) engage in conduct involving dishonesty, fraud,\* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, or other law; or
- (f) knowingly\* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, “judge” and “judicial officer” have the same meaning as in rule 3.5(c).
- (g) report suspected immigration status or threaten to report suspected immigration status of a witness or party to a civil or administrative action or his or her family member to a federal, state, or local agency because the witness or party exercises or has exercised a right related to his or her employment, broadly interpreted.
- (h) advocate the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means.

**Comment**

[Reserved]

**Rule 8.4 Misconduct  
(Proposed Rule – Redline Version)**

It is professional misconduct for a ~~lawyer~~licensed paraprofessional to:

- (a) violate these rules ~~or the State Bar Act~~, knowingly\* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the ~~lawyer~~licensed paraprofessional's honesty, trustworthiness, or fitness as a ~~lawyer~~licensed paraprofessional in other respects;
- (c) engage in conduct involving dishonesty, fraud,\* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, ~~the State Bar Act~~, or other law; or
- (f) knowingly\* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).
- (g) report suspected immigration status or threaten to report suspected immigration status of a witness or party to a civil or administrative action or his or her family member to a federal, state, or local agency because the witness or party exercises or has exercised a right related to his or her employment, broadly interpreted.
- (h) advocate the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means.

**Comment**

[Reserved]

**Rule 8.4.1 Prohibited Discrimination, Harassment and Retaliation  
(Proposed Rule – Clean Version)**

- (a) In representing a client, or in terminating or refusing to accept the representation of any client, a licensed paraprofessional shall not:
  - (1) unlawfully harass or unlawfully discriminate against persons\* on the basis of any protected characteristic; or
  - (2) unlawfully retaliate against persons.\*
- (b) In relation to a law firm's operations, a licensed paraprofessional shall not:
  - (1) on the basis of any protected characteristic,
    - (i) unlawfully discriminate or knowingly\* permit unlawful discrimination;

(ii) unlawfully harass or knowingly\* permit the unlawful harassment of an employee, an applicant, an unpaid intern or volunteer, or a person\* providing services pursuant to a contract; or

(iii) unlawfully refuse to hire or employ a person\*, or refuse to select a person\* for a training program leading to employment, or bar or discharge a person\* from employment or from a training program leading to employment, or discriminate against a person\* in compensation or in terms, conditions, or privileges of employment; or

(2) unlawfully retaliate against persons.\*

(c) For purposes of this rule:

(1) “protected characteristic” means race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, military and veteran status, or other category of discrimination prohibited by applicable law, whether the category is actual or perceived;

(2) “knowingly permit” means to fail to advocate corrective action where the licensed paraprofessional knows\* of a discriminatory policy or practice that results in the unlawful discrimination or harassment prohibited by paragraph (b);

(3) “unlawfully” and “unlawful” shall be determined by reference to applicable state and federal statutes and decisions making unlawful discrimination or harassment in employment and in offering goods and services to the public; and

(4) “retaliate” means to take adverse action against a person\* because that person\* has (i) opposed, or (ii) pursued, participated in, or assisted any action alleging, any conduct prohibited by paragraphs (a)(1) or (b)(1) of this rule.

(d) A licensed paraprofessional who is the subject of a State Bar investigation or State Bar disciplinary proceeding alleging a violation of this rule shall promptly notify the State Bar of any criminal, civil, or administrative action premised, whether in whole or part, on the same conduct that is the subject of the State Bar investigation or State Bar disciplinary proceeding.

(e) Upon being issued a notice of a disciplinary charge under this rule, a licensed paraprofessional shall:

(1) if the notice is of a disciplinary charge under paragraph (a) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Department of Justice, Coordination and Review Section; or

(2) if the notice is of a disciplinary charge under paragraph (b) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Equal Employment Opportunity Commission.

(f) This rule shall not preclude a licensed paraprofessional from:

(1) declining or withdrawing from a representation as required or permitted by rule 1.16; or

(2) providing advice and engaging in advocacy as otherwise required or permitted by these rules and applicable law.

#### **Comment**

[Reserved]

**Rule 8.4.1 Prohibited Discrimination, Harassment and Retaliation  
(Proposed Rule – Redline Version)**

- (a) In representing a client, or in terminating or refusing to accept the representation of any client, a ~~lawyer~~licensed paraprofessional shall not:
- (1) unlawfully harass or unlawfully discriminate against persons\* on the basis of any protected characteristic; or
  - (2) unlawfully retaliate against persons.\*
- (b) In relation to a law firm’s operations, a ~~lawyer~~licensed paraprofessional shall not:
- (1) on the basis of any protected characteristic,
    - (i) unlawfully discriminate or knowingly\* permit unlawful discrimination;
    - (ii) unlawfully harass or knowingly\* permit the unlawful harassment of an employee, an applicant, an unpaid intern or volunteer, or a person\* providing services pursuant to a contract; or
    - (iii) unlawfully refuse to hire or employ a person\*, or refuse to select a person\* for a training program leading to employment, or bar or discharge a person\* from employment or from a training program leading to employment, or discriminate against a person\* in compensation or in terms, conditions, or privileges of employment; or
  - (2) unlawfully retaliate against persons.\*
- (c) For purposes of this rule:
- (1) “protected characteristic” means race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, military and veteran status, or other category of discrimination prohibited by applicable law, whether the category is actual or perceived;
  - (2) “knowingly permit” means to fail to advocate corrective action where the ~~lawyer~~licensed paraprofessional knows\* of a discriminatory policy or practice that results in the unlawful discrimination or harassment prohibited by paragraph (b);
  - (3) “unlawfully” and “unlawful” shall be determined by reference to applicable state and federal statutes and decisions making unlawful discrimination or harassment in employment and in offering goods and services to the public; and
  - (4) “retaliate” means to take adverse action against a person\* because that person\* has (i) opposed, or (ii) pursued, participated in, or assisted any action alleging, any conduct prohibited by paragraphs (a)(1) or (b)(1) of this rule.
- (d) A ~~lawyer~~licensed paraprofessional who is the subject of a State Bar investigation or State Bar ~~Court disciplinary~~ proceeding alleging a violation of this rule shall promptly notify the State Bar of any criminal, civil, or administrative action premised, whether in whole or part, on the same conduct that is the subject of the State Bar investigation or State Bar ~~Court disciplinary~~ proceeding.
- (e) Upon being issued a notice of a disciplinary charge under this rule, a ~~lawyer~~licensed paraprofessional shall:
- (1) if the notice is of a disciplinary charge under paragraph (a) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Department of Justice, Coordination and Review Section; or

(2) if the notice is of a disciplinary charge under paragraph (b) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Equal Employment Opportunity Commission.

(f) This rule shall not preclude a lawyer licensed paraprofessional from:

~~(1) representing a client alleged to have engaged in unlawful discrimination, harassment, or retaliation;~~

~~(2) declining or withdrawing from a representation as required or permitted by rule 1.16; or~~

~~(3) providing advice and engaging in advocacy as otherwise required or permitted by these rules and applicable law and the State Bar Act.~~

#### Comment

[Reserved]

### Rule 8.5 Disciplinary Authority; Choice of Law (Proposed Rule – Clean Version)

(a) Disciplinary Authority.

A licensed paraprofessional admitted to practice in California is subject to the disciplinary authority of California, regardless of where the licensed paraprofessional's conduct occurs. . A licensed paraprofessional may be subject to the disciplinary authority of both California and another jurisdiction for the same conduct.

(b) Choice of Law.

In any exercise of the disciplinary authority of California, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal,\* the rules of the jurisdiction in which the tribunal\* sits, unless the rules of the tribunal\* provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the licensed paraprofessional's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A licensed paraprofessional shall not be subject to discipline if the licensed paraprofessional's conduct conforms to the rules of a jurisdiction in which the licensed paraprofessional reasonably believes\* the predominant effect of the licensed paraprofessional's conduct will occur.

#### Comment

[Reserved]

### Rule 8.5 Disciplinary Authority; Choice of Law (Proposed Rule – Redline Version)

(a) Disciplinary Authority.

A lawyer licensed paraprofessional admitted to practice in California is subject to the disciplinary authority of California, regardless of where the lawyer licensed paraprofessional's conduct occurs. ~~A lawyer not admitted in California is also subject to the disciplinary authority of California if the lawyer provides or offers to provide any legal services in California.~~ A lawyer licensed paraprofessional may be subject to the disciplinary authority of both California and another jurisdiction for the same conduct.

(b) Choice of Law.

In any exercise of the disciplinary authority of California, the rules of professional conduct to be applied shall be as follows:

- (1) for conduct in connection with a matter pending before a tribunal,\* the rules of the jurisdiction in which the tribunal\* sits, unless the rules of the tribunal\* provide otherwise; and
- (2) for any other conduct, the rules of the jurisdiction in which the lawyerlicensed paraprofessional's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyerlicensed paraprofessional shall not be subject to discipline if the lawyerlicensed paraprofessional's conduct conforms to the rules of a jurisdiction in which the lawyerlicensed paraprofessional reasonably believes\* the predominant effect of the lawyerlicensed paraprofessional's conduct will occur.

**Comment**

[Reserved]

## PROPOSED STANDARDS FOR LICENSED PARAPROFESSIONAL SANCTIONS FOR PROFESSIONAL MISCONDUCT

### PART A. STANDARDS IN GENERAL

#### 1.1 PURPOSES AND SCOPE OF STANDARDS

The Standards For Licensed Paraprofessional Sanctions For Professional Misconduct (the “Standards”) are adopted by the Board of Trustees to set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances. The Standards help fulfill the primary purposes of discipline, which include:

- (a) protection of the public, the courts and the legal profession;
- (b) maintenance of the highest professional standards; and
- (c) preservation of public confidence in the legal profession.

Rehabilitation can also be an objective in determining the appropriate sanction in a particular case, so long as it is consistent with the primary purposes of discipline.

The Standards are modeled from the Standards for Attorney Sanctions for Professional Misconduct and based on attorney disciplinary decisional law including the published opinions of the Review Department of the State Bar Court, and the longstanding decisions of the California Supreme Court, which maintains inherent and plenary authority over the practice of law in California. Although not binding, the Standards are afforded great weight by the Supreme Court and should be followed whenever possible. The Supreme Court will accept a disciplinary recommendation that is consistent with the Standards unless it has grave doubts about the propriety of the recommended sanction. If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.

The Standards do not apply to: non-disciplinary dispositions such as citations and fines; resignations; involuntary inactive enrollments; interim suspensions after conviction of a crime; or suspensions for nonpayment of State Bar fees, failure to comply with child support orders, or tax delinquencies.

#### 1.2 DEFINITIONS

- (a) “Licensed paraprofessional” means a person licensed to engage in the limited practice of law pursuant to *[rule or statute]* and includes any agent of the licensed paraprofessional.
- (b) “License Revocation” is termination from the practice of law and from holding oneself out as entitled to practice law. The license issued by the Supreme Court or State Bar ceases and the licensee’s name is stricken from the roll of licensed paraprofessionals.

- (c) “Suspension” can include a period of actual suspension, stayed suspension, or both:
  - (1) “Actual suspension” is a disqualification from the limited practice of law and from holding oneself out as a licensed paraprofessional, subject to probation and attached conditions. Actual suspension is generally for a period of thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, three years, or until specific conditions are met. Actual suspension for two years or more requires proof, satisfactory to the Licensing Board, of rehabilitation, fitness to practice, and present learning and ability in the general law before a licensed paraprofessional may be relieved of the actual suspension. The Licensing Board can require this showing in other appropriate cases as well.
  - (2) “Stayed suspension” is a stay of all or part of a suspension. Stayed suspension is generally for a period of at least one year. A suspension can be stayed only if it is consistent with the primary purposes of discipline.
- (d) “Public Reproval” is a public censure or reprimand. A public reproval may include conditions.
- (e) “Interim Remedies” are temporary restrictions imposed by the Hearing Panel or Licensing Board on a licensed paraprofessional’s ability to practice law. They are imposed in order to protect the public, the courts, and the legal profession until such time as the issues can be resolved through formal proceedings.
- (f) “Prior record of discipline” is a previous imposition or recommendation of discipline. It includes all charges, stipulations, findings and decisions (final or not) reflecting or recommending discipline, including from another jurisdiction. It can be discipline imposed for a violation of a term of probation or a violation of a Supreme Court order requiring compliance with rule 9.20 of the California Rules of Court.
- (g) “Aggravating circumstances” are factors surrounding a licensed paraprofessional’s misconduct that demonstrate that the primary purposes of discipline warrant a greater sanction than what is otherwise specified in a given Standard.
- (h) “Mitigating circumstances” are factors surrounding a licensed paraprofessional’s misconduct that demonstrate that the primary purposes of discipline warrant a more lenient sanction than what is otherwise specified in a given Standard.
- (i) “Probation” is a period of time under which a licensed paraprofessional is subject to State Bar supervision. Probation may include conditions that further the primary purposes of discipline.
- (j) “Conditions” are terms with which a licensed paraprofessional must comply as part of a

disciplinary sanction. They relate to a licensed paraprofessional's misconduct and the facts and circumstances surrounding the misconduct and serve the primary purposes of discipline.

- (k) "Tribunal" means: (i) a court, an arbitrator, an administrative law judge, or an administrative body acting in an adjudicative capacity and authorized to make a decision that can be binding on the parties involved; or (ii) a special master or other person to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.
- (l) "Rules of Professional Conduct" refers to the California Rules of Professional Conduct for Licensed Paraprofessionals.

### **1.3 DEGREES OF SANCTIONS**

Subject to these Standards and the laws and rules governing the conduct of disciplinary proceedings, the following sanctions may be imposed upon a finding of misconduct:

- (a) license revocation;
- (b) actual suspension;
- (c) stayed suspension;
- (d) public reproof; or
- (e) any interim remedies or other final discipline authorized by statute.

### **1.4 CONDITIONS ATTACHED TO SANCTIONS**

Conditions attached to a reproof or probation may require a licensed paraprofessional to:

- (a) make specific restitution or file a satisfaction of judgment;
- (b) take and pass a professional responsibility examination;
- (c) undergo treatment, at the licensed paraprofessional's expense, for medical, psychological, or psychiatric conditions or for problems related to alcohol or substance abuse;
- (d) complete, at the licensed paraprofessional's expense, educational or rehabilitative work regarding substantive law, ethics, or law office management;
- (e) complete probation, subject to reporting requirements;

- (f) give notice to affected parties, including clients, opposing counsel, courts or other tribunals; or
- (g) comply with any other conditions consistent with the primary purposes of discipline.

### **1.5 AGGRAVATING CIRCUMSTANCES**

The State Bar must establish aggravating circumstances by clear and convincing evidence. Aggravating circumstances may include:

- (a) a prior record of discipline;
- (b) multiple acts of wrongdoing;
- (c) a pattern of misconduct;
- (d) intentional misconduct, bad faith or dishonesty;
- (e) misrepresentation;
- (f) concealment;
- (g) overreaching;
- (h) uncharged violations of the California Rules of Professional Conduct for Licensed Paraprofessionals;
- (i) refusal or inability to account for entrusted funds or property;
- (j) significant harm to the client, the public, or the administration of justice;
- (k) indifference toward rectification or atonement for the consequences of the misconduct;
- (l) lack of candor and cooperation to the victims of the misconduct or to the State Bar during disciplinary investigations or proceedings;
- (m) failure to make restitution; or
- (n) high level of vulnerability of the victim.

### **1.6 MITIGATING CIRCUMSTANCES**

A licensed paraprofessional must establish mitigating circumstances by clear and convincing

evidence. Mitigating circumstances may include:

- (a) absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not likely to recur;
- (b) good faith belief that is honestly held and objectively reasonable;
- (c) lack of harm to the client, the public, or the administration of justice;
- (d) extreme emotional difficulties or physical or mental disabilities suffered by the licensed paraprofessional at the time of the misconduct and established by expert testimony as directly responsible for the misconduct, provided that such difficulties or disabilities were not the product of any illegal conduct by the licensed paraprofessional, such as illegal drug or substance abuse, and the licensed paraprofessional established by clear and convincing evidence that the difficulties or disabilities no longer pose a risk that the licensed paraprofessional will commit misconduct;
- (e) spontaneous candor and cooperation displayed to the victims of the misconduct or to the State Bar;
- (f) extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct;
- (g) prompt objective steps, demonstrating spontaneous remorse and recognition of the wrongdoing and timely atonement;
- (h) remoteness in time of the misconduct and subsequent rehabilitation;
- (i) excessive delay by the State Bar in conducting disciplinary proceedings causing prejudice to the licensed paraprofessional; or
- (j) restitution was made without the threat or force of administrative, disciplinary, civil or criminal proceedings.

#### **1.7 DETERMINATION OF APPROPRIATE SANCTIONS**

- (a) If a licensed paraprofessional commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.
- (b) If aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given Standard.

On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record demonstrates that the licensed paraprofessional is unwilling or unable to conform to ethical responsibilities.

- (c) If mitigating circumstances are found, they should be considered alone and in balance with any aggravating circumstances, and if the net effect demonstrates that a lesser sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a lesser sanction than what is otherwise specified in a given Standard. On balance, a lesser sanction is appropriate in cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession and where the record demonstrates that the licensed paraprofessional is willing and has the ability to conform to ethical responsibilities in the future.

### **1.8 EFFECT OF PRIOR DISCIPLINE**

- (a) If a licensed paraprofessional has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.
- (b) If a licensed paraprofessional has two or more prior records of discipline, license revocation is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct:
  - 1. Actual suspension was ordered in any one of the prior disciplinary matters;
  - 2. The prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; or
  - 3. The prior disciplinary matters coupled with the current record demonstrate the licensed paraprofessional's unwillingness or inability to conform to ethical responsibilities.
- (c) Sanctions may be imposed, including license revocation, even if a licensed paraprofessional has no prior record of discipline.

### **PART B. SANCTIONS FOR SPECIFIC MISCONDUCT**

The presumed sanction for any specific act of misconduct is a starting point for the imposition of discipline, but can be adjusted up or down depending on the application of mitigating and aggravating circumstances set forth in Standards 1.5 and 1.6, and the balancing of these

circumstances as described in Standard 1.7(b) and (c). For any specific act of misconduct not listed in Part B, please refer to Standards 2.18 and 2.19.

### **2.1. MISAPPROPRIATION**

- (a) License revocation is the presumed sanction for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate.
- (b) Actual suspension is the presumed sanction for misappropriation involving gross negligence.
- (c) Suspension or reproof is the presumed sanction for misappropriation that does not involve intentional misconduct or gross negligence.

### **2.2 COMMINGLING AND OTHER TRUST ACCOUNT VIOLATIONS**

- (a) Actual suspension of three months is the presumed sanction for (1) commingling, (2) failure to deposit funds received for a client or other person to whom the licensed paraprofessional owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, in a client trust account when that conduct does not involve misappropriation, or (3) failure to promptly pay out entrusted funds.
- (b) Suspension or reproof is the presumed sanction for any other violation of rule 1.15 of the Rules of Professional Conduct including, but not limited to violations of 1.15(c).

### **2.3 ILLEGAL OR UNCONSCIONABLE FEE**

- (a) Actual suspension of at least six months is the presumed sanction for entering into an agreement for, charging, or collecting an unconscionable fee for legal services.
- (b) Suspension or reproof is the presumed sanction for entering into an agreement for, charging, or collecting an illegal fee for legal services, or other violations of rule 1.5 (c) – (e) of the Rules of Professional Conduct.

### **2.4 BUSINESS TRANSACTIONS, PECUNIARY INTERESTS ADVERSE TO A CLIENT**

Suspension is the presumed sanction for improperly entering into a business transaction with a client or knowingly acquiring a pecuniary interest adverse to a client, unless the extent of the misconduct and any harm it caused to the client are minimal, in which case reproof is appropriate. If the transaction or acquisition and its terms are unfair or unreasonable to the client, then license revocation or actual suspension is appropriate.

## **2.5 REPRESENTATION OF ADVERSE INTERESTS AND CONFLICTS OF INTEREST**

- (a) Actual suspension is the presumed sanction when a licensed paraprofessional violates rule 1.7, subparagraphs (a), (b), and (d) of the Rules of Professional Conduct, or other law prohibiting a licensed paraprofessional from simultaneously representing conflicting interests and causes significant harm to any of the clients.
- (b) Actual suspension is the presumed sanction when a licensed paraprofessional either violates rule 1.9(a) or 1.9(b) of the Rules of Professional Conduct and causes significant harm to the former client.
- (c) Suspension or reproof is the presumed sanction for all other conflicts of interest violations or breaches of the duty of loyalty not covered by other subparagraphs of this Standard, depending on the magnitude of the violation and the harm to the client or clients. This includes, but is not limited to rules 1.7(c), 1.8.2, 1.8.6, 1.10, 1.11, 1.12, and 1.18(c) and (d) of the Rules of Professional Conduct. Actual suspension is the presumed sanction if there is harm.

## **2.6 BREACH OF CONFIDENTIALITY OR MISUSE OF CONFIDENTIAL INFORMATION**

- (a) Suspension is the presumed sanction when a licensed paraprofessional intentionally reveals information protected by rule 1.6 of the Rules of Professional Conduct , or uses a current, former, or prospective client's information to the disadvantage of the client, depending on the harm to the current, former, or prospective client or clients.
- (b) Reproof is the presumed sanction when a licensed paraprofessional recklessly or through gross negligence reveals information relating to the representation of a client, or uses a current, former, or prospective client's information to the disadvantage of the client, depending on the harm to the current, former, or prospective client or clients
- (c) Suspension or reproof is the presumed sanction when a licensed paraprofessional violates rule 4.4 of the Rules of Professional Conduct regarding a licensed paraprofessional's duties concerning inadvertently transmitted writings depending on the harm to the party whose information is inadvertently disclosed.

## **2.7 PERFORMANCE, COMMUNICATION OR WITHDRAWAL VIOLATIONS**

- (a) License revocation is the presumed sanction for performance, communication, or withdrawal violations demonstrating habitual disregard of client interests.
- (b) Actual suspension is the presumed sanction for performance, communication, or withdrawal violations in multiple client matters, not demonstrating habitual disregard of client interests.

- (c) Suspension or reproof is the presumed sanction for performance, communication, or withdrawal violations, which are limited in scope or time. The degree of sanction depends on the extent of the misconduct and the degree of harm to the client or clients.
- (d) Performance in this Standard includes, but is not limited to, any of the following: the duties of diligence; competence; supervision; duties regarding disbarred, suspended, resigned or involuntary inactive licensees of the State Bar or those whose licenses have been revoked; and duties of subordinate licensed paraprofessionals. This includes, but is not limited to rules 1.1, 1.3, 5.1, 5.2, 5.3, and 5.3.1 of the Rules of Professional Conduct. Communication in this Standard includes, but is not limited to of any of the following: communications with clients, communications of settlement offers, disclosure of professional liability insurance, communications with prospective clients, communications with unrepresented persons, and communications with represented persons. This includes, but is not limited to rules 1.2, 1.4, 1.4.1, 1.4.2, 1.4.3, 2.1, 4.2, and 4.3 of the Rules of Professional Conduct.

## **2.8 PARTNERSHIP OR FEE-SHARING WITH PERSONS WHO ARE NOT LAWYERS OR LICENSED PARAPROFESSIONALS**

Actual suspension is the presumed sanction when a licensed paraprofessional enters into a partnership or other organization that practices law with a person who is not a lawyer or licensed paraprofessional, allows a person who is not a lawyer or licensed paraprofessional to own, direct, or control a professional corporation or other organization that practices law, shares legal fees with a person who is not a lawyer or licensed paraprofessional, or any other violation of rule 5.4 of the Rules of Professional Conduct. The degree of sanction depends upon the extent to which the misconduct interfered with a licensed paraprofessional-client relationship and the extent to which the licensed paraprofessional failed to perform legal services for which he or she was employed.

## **2.9 FRIVOLOUS LITIGATION**

- (a) Actual suspension is the presumed sanction when a licensed paraprofessional counsels or assists with bringing or continuing a frivolous claim or action for an improper purpose or uses means that have no substantial purpose other than to delay or prolong the proceeding or cause needless expense, resulting in significant harm to an individual or the administration of justice. License revocation is appropriate if the misconduct demonstrates a pattern.
- (b) Suspension or reproof is the presumed sanction when a licensed paraprofessional counsels or assists with bringing or continuing a frivolous claim or action for an improper purpose or uses means that have no substantial purpose other than to delay or prolong the proceeding or cause needless expense resulting in harm to an individual or the administration of justice.

## **2.10 UNAUTHORIZED PRACTICE OF LAW**

- (a) License revocation or actual suspension is the presumed sanction when a licensed paraprofessional engages in the practice of law beyond the scope permitted by the licensed paraprofessional's license, and the paraprofessional knew or should have known that he or she was practicing beyond the scope permitted by his or her license.
- (b) License revocation or actual suspension is the presumed sanction when a licensed paraprofessional engages in the unauthorized practice of law or unlawfully holds himself or herself out as entitled to practice law while he or she is on actual suspension for disciplinary reasons in the jurisdiction where the licensed paraprofessional practices or holds himself or herself out as entitled to practice law [or is on involuntary inactive enrollment under Business and Professions Code section 6007 or other law in the relevant jurisdiction.] The degree of sanction depends on whether the licensed paraprofessional knew he or she was not entitled to practice law.
- (c) Suspension or reproof is the presumed sanction when a licensed paraprofessional engages in the unauthorized practice of law or unlawfully holds himself or herself out as entitled to practice law while he or she is not licensed to practice law in that jurisdiction, is on voluntary inactive status, or on suspension for non-disciplinary reasons (including, but not limited to non-payment of fees or non-compliance with legal education requirements) in the jurisdiction where the licensed paraprofessional practices or holds himself or herself out as entitled to practice law. The degree of sanction depends on whether the licensed paraprofessional knew he or she was not entitled to practice law.

## **2.11 DISHONESTY, FRAUD, CORRUPTION, OR CONCEALMENT**

License revocation or actual suspension is the presumed sanction for an act of dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the practice of law.

## **2.12 SEXUAL RELATIONS WITH CLIENTS**

- (a) License revocation is the presumed sanction when a licensed paraprofessional expressly or impliedly conditions the performance of legal services for a current or prospective client upon the client's willingness to engage in sexual relations with the licensed paraprofessional or employs coercion, intimidation, or undue influence in entering into sexual relations with a client.
- (b) Suspension or reproof is the presumed sanction for any other violation of rule 1.8.10 of the Rules of Professional Conduct.

### **2.13 VIOLATION OF CONDITIONS ATTACHED TO DISCIPLINE**

Actual suspension is the presumed sanction for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the licensed paraprofessional's unwillingness or inability to comply with disciplinary orders.

### **2.14 CRIMINAL CONVICTIONS INVOLVING MORAL TURPITUDE**

License revocation or actual suspension is the presumed sanction for final conviction of a felony or misdemeanor involving moral turpitude.

### **2.15 CRIMINAL CONVICTIONS NOT INVOLVING MORAL TURPITUDE**

- (a) Actual suspension is the presumed sanction for final conviction of a felony not involving moral turpitude, but involving other misconduct warranting discipline.
- (b) Suspension or reproof is the presumed sanction for final conviction of a misdemeanor not involving moral turpitude but involving other misconduct warranting discipline.

### **2.16 VIOLATION OF RULES IN GENERAL**

Suspension not to exceed three years or reproof is the presumed sanction for a violation of a provision of the Rules of Professional Conduct not specified in these Standards.

### **2.17 VIOLATION OF A CRIMINAL ACT THAT REFLECTS ADVERSELY ON THE LICENSED PARAPROFESSIONAL'S HONESTY OR FITNESS AS A LICENSED PARAPROFESSIONAL IN OTHER RESPECTS**

- (a) License revocation or actual suspension is the presumed sanction for a criminal act that reflects on the licensed paraprofessional's honesty if Standards 2.15, 2.16, or 2.17 do not apply.
- (b) Suspension or reproof is the presumed sanction for a criminal act that does not reflect on the licensed paraprofessional's honesty, but reflects on the licensed paraprofessional's fitness as a licensed paraprofessional, if Standards 2.15, 2.16, or 2.17 do not apply.

### **2.18 CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE**

License revocation or actual suspension is the presumed sanction for conduct that is prejudicial to the administration of justice in violation of rule 8.4(d) of the Rules of Professional Conduct. The degree of sanction depends on the magnitude of the misconduct, the extent to which the

misconduct harmed the victim or the administration of justice, and the extent to which the misconduct related to the licensed paraprofessional's practice of law.



# The State Bar of California

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**DATE:** January 23, 2020

**TO:** Members, Board of Trustees

**FROM:** Randall Difuntorum, Office of Professional Competence

**SUBJECT:** History of the State Bar's Consideration of a Regulatory Program to License Nonlawyer Paraprofessionals to Provide Legal Services

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## EXECUTIVE SUMMARY

Over the years, the Board of Trustees (Board) has explored the development of a program similar to the [Washington State](#) Limited Licensed Legal Technician (LLLT) program. This memorandum summarizes the history of that consideration. Provided as Attachment A is a draft Rule of Court to establish a LLLT pilot program that was considered by the Board in 1991.

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## DISCUSSION

### 1) Current Status of State Bar Consideration

The Board is actively considering the licensing of individual paraprofessional providers to aid in increasing access to legal services. The State Bar's 2017-2022 Strategic Plan (updated November 2019)<sup>1</sup> includes Goal 4, Objective f which provides that:

#### Goal 4

Support access to legal services for low- and moderate-income Californians and promote policies and programs to eliminate bias and promote an inclusive environment in the legal system and for the public it serves, and strive to achieve a statewide attorney population that reflects the rich demographics of the state's population.

#### Objective f

No later than December 31, 2020, explore options to increase access through licensing of paraprofessionals, limited license legal technicians, and other paraprofessionals.

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<sup>1</sup> The Board's strategic plan is posted at:

<https://www.calbar.ca.gov/Portals/0/documents/bog/Updated-2017-2022-Strategic-Plan.pdf>

In addition, the State Bar's Task Force on Access Through Innovation of Legal Services ([ATILS](#)) is considering a recommendation for an exception to unauthorized practice of law (UPL) restrictions for regulated nonlawyer paraprofessionals.

## **2) 2015 Board Action on the Report and Recommendation of the Civil Justice Strategies Task Force**

The [Civil Justice Strategies Task Force](#) was appointed in November 2013 as a special committee of the Board. In part, it was charged with evaluating the role of the legal profession in addressing the access crisis. It was specifically assigned to study creative solutions and to recommend an action plan. In its final report to the Board, the concept of a LLLT proposal was endorsed:

The State Bar should study the design of a pilot program, in one subject matter area, and, with input from the Supreme Court, address how the governance, oversight, and "licensing" would be handled. It is important to allow the time for the Court to have input at the early stages, rather than after design is complete. (Board Agenda Item 165 JULY 2015, at pp. 6 – 7.)

Specifically, the Civil Justice Strategies Task Force presented the following recommendation for Board adoption:

Recommendation: Refer to the Stakeholders and Access to Justice Committee for further study and exploration, including consultation with the Supreme Court.

At the Board's July 24, 2015 meeting, the following resolution was adopted:

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees accept the report prepared by the Civil Justice Strategies Task Force and adopt the implementation recommendations contained in the memorandum, and create a working group to implement the law school debt recommendations. (July 24, 2015, Board Minutes at p. 9.)

## **3) 2013 Limited Licensing Working Group**

The [Limited License Working Group](#) was created on March 6, 2013 as a subcommittee of the Board Committee on Regulation, Admissions and Discipline Oversight (RAD). The working group was assigned to research and report back to RAD regarding the feasibility of developing and implementing standards for creating a limited license to practice law and/or the licensing of legal technicians, for those not fully admitted to the State Bar as attorneys. The goal was to enable certified individuals to provide limited, discrete legal services to consumers in defined legal subject matter areas.

In its July 18, 2013 report to RAD, the Limited License Working Group recommended further exploration of a limited license program and observed that the licensing of legal technicians has been a subject of State Bar discussion for over 20 years.

At the Board's July 19, 2013 meeting, the Board responded to recommendations of the State Bar's Limited License Working Group by adopting the following resolution:

WHEREAS, the availability of low cost legal services has continued to decline and the numbers of unrepresented persons appearing in California's courts and justice system has continued to

grow, particularly in the areas of family law, elder law, creditor and debtor law, landlord and tenant law, and immigration law, resulting in a broadening of the “justice gap;” and

WHEREAS, there appears to be no viable alternatives from the past and existing efforts in California that have adequately addressed the justice gap;

WHEREAS, the Regulation, Admissions & Discipline Oversight Committee has approved the recommendations of its Limited License Working Group which supports the concept of a limited license program in California as part of an overall solution to address the Justice Gap;

RESOLVED, that upon the recommendation of the Regulation, Admissions & Discipline Oversight Committee, the Board of Trustees hereby directs staff to work with the Chair and the President and, if appropriate, any task force to develop proposals, in consultation with relevant stakeholders, to examine and address the causes, effects and possible solutions to the various access to justice challenges in California, including but not limited to the concept of the Limited License, and collaborate with the Access to Justice Commission and other branch partners in connection with its research. (July 19, 2013, Board Minutes at p. 2.)

#### **4) Consideration in the Late 1980's and Early 1990's**

The early consideration by the Board in the 1980's and 1990's included the following.

- **Public Protection Committee (1987)**

In 1987 the Board appointed a Public Protection Committee and charged it with studying nonlawyer practice of law activities and developing proposed standards under which such activities might be authorized. The areas of bankruptcy, family law, immigration and landlord-tenant law were identified as priority areas for consideration.

Following a study that included surveys of consumers and other state bars, the Public Protection Committee recommended, in part, that the State Bar actively support legislation that requires the registration of legal technicians, requires such registrants to disclose that they are not lawyers, and creates legal technician liability, both civilly and criminally, for malfeasance and nonfeasance.

The Board considered the report and recommendations of the Public Protection Committee in October 1988. Although the Board did not approve the content of the report or the recommendations, it issued them for public comment. Following consideration of the public comment received, the Board formed a Commission on Legal Technicians to conduct further study. (See: Report of the State Bar of California Commission on Legal Technicians, July 1990, at pp. 7 – 8.)

- **Commission on Legal Technicians (1990)**

In creating the Commission on Legal Technicians in 1990, the Board adopted a resolution finding that “there is an overwhelming unmet need of California residents for better access to the legal process, and that ‘legal technicians’ may provide greater access so long as their activities do not pose an unreasonable risk of harm to the public.”

In August 1990, the Board received the report and recommendations of the Commission on Legal Technicians that included a recommendation that: “The State Bar Board of Governors propose that the Supreme Court adopt a Rule of Court authorizing non-attorney individuals to engage in the practice of law in specified areas (initially in the areas of bankruptcy, family law and landlord-tenant law).”

In April 1991 and in consideration of the Commission on Legal Technician’s report and recommendations, the Board’s Committee on Admissions and Competence determined to prepare a draft Rule of Court regarding a pilot program for legal technicians.

In August 1991, the Board considered the proposal for a Rule of Court regarding a pilot program but the proposal was defeated. The pilot program would have authorized performance of non-courtroom legal services for landlord/tenant matters. The recommendation contemplated regulation by the Department of Consumer Affairs and formation of an oversight committee composed of attorneys, paralegals and public members. At the Board’s meeting, over fifteen legal technicians and consumer advocates appeared and asserted that the pilot program would in effect reduce access to affordable legal services. After attempts to modify the proposal, the pilot program was rejected by a Board vote of 16 to 4. (See: October, 1991, California Lawyer Magazine, State Bar Report at p. 85.)

- Board Task Force on Legal Technicians (1993)

In March 1993, Assemblymember Gwen Moore introduced Assembly Bill No. 1287 which sought to create a new Department of Consumer Affairs registration program for “Legal Technicians” with that term defined as “any non-attorney who holds himself or herself out to the public as a legal technician, or any non-attorney who offers to provide or provides legal information and assistance services directly to consumers for compensation.” To assist the Board in considering this proposal a Task Force on Legal Technicians was appointed.

In August 1993, the Task Force submitted a final report to the Board, in part, recommending that the Board: (1) oppose AB 1287 unless amended to include consumer protection safeguards; and (2) work with the Judicial Council in conducting (i) a survey of pro per clients to determine the quality of legal technicians’ work, scope of services, fees charged and (ii) a survey of legal technicians to determine their geographical location, education, experience and training backgrounds and subject areas and scope of services and fees charged. (See: California Regulatory Law Reporter, Vol. 14, No. 1 (Winter 1994), at pp. 176 – 177.) Subsequently, the Board approved “in concept” the proposals recommended by the Task Force for increasing affordable legal services. (October 7, 1993, Board Minutes at pp. 5 - 6.)

## **5) 1979 Revocation of UPL “Treaties” among the State Bar and other Professional Service Providers**

Although not directly related to the consideration of legal technicians, in November 1979, the Board revoked the so-called “treaties” with other associations of service providers in California. These agreements were entered into by the State Bar with various lay groups in order to “provide guidelines and enforcement in gray areas that exist between the practice of law and the activities of certain lay industries that perform services closely akin to the practice of law.” (See: State Bar of California, October 1980, Report and Recommendation of the Office of General Counsel on Proposed Rule and Legislation on the Regulation of the Unauthorized Practice of Law, at p. 36.) Treaties were entered into with: Automobile Associations; the California Bankers Association; the California Conference Committee on

Adjusters; the California State Association of Life Underwriters; and the California Land Title Association. (The full text of these agreements is published in 41 Journal of the State Bar of California 140 (March-April, 1966.) Notwithstanding the termination of the treaties, these service providers continued their respective law-related business activities without a threat of UPL prosecution. (See: January, 1991, California Lawyer Magazine, State Bar Report, "President's Message" at p. 63.) The former treaties' longstanding impact on the concept of UPL in California can render it difficult to articulate a simple list of acts constituting the practice of law when the actor is a nonlawyer and this creates challenges in defining the acts permitted under a LLLT program. In doing so, specifying the context of permitted conduct will be important.

## **ATTACHMENT(S) LIST**

- A. 1991 Draft Rule of Court to Establish a LLLT Pilot Program**

## AGENDA ITEM

**AUGUST 141**

Proposed Rule of Court  
Regarding Legal Technicians

**DATE:** August 1, 1991

**TO:** Members of the Board of Governors

**FROM:** Members of the Board Committee on Admissions and Competence

**SUBJECT:** Proposed Rule of Court Regarding Legal Technicians

**ENCLOSURE 1:** Proposed Rule of Court

**ENCLOSURE 2:** Memorandum of the Board Committee on Admissions and Competence from Legal Technicians Subcommittee dated June 27, 1991

### BACKGROUND

The Board Committee on Admission and Competence ("Board Committee") has been examining the issue of whether non-lawyers should be permitted to perform legal services. In an effort to help focus the discussion, Mr. Talcott, Chair of the Board Committee, appointed a Legal Technicians Subcommittee of the Board Committee consisting of Ed Kallgren, Catherine Sprinkles, and Dorothy Tucker ("Subcommittee").

After consideration of the history of this matter, the comments received on the Report of the Commission on Legal Technicians ("Commission"), and the views expressed by various members of the Board, the Subcommittee determined that simply presenting the Report of the Commission for a vote would not be particularly useful. (Copies of the Report of the Commission are available from the Office of Professional Competence, Planning and Development at (415) 241-2112.)

As the Commission stopped short of drafting a rule of court or other specific guidelines, the Subcommittee felt that something more concrete was needed to focus the debate on the numerous complex issues presented by the Report. The Subcommittee submitted a report

ATTACHMENT A  
1991 Draft Rule of Court to Establish a LLLT Pilot Program

(Enclosure 2) to the Board Committee that included a draft rule of court that would authorize creation of a pilot program permitting non-lawyers to perform limited legal services in the area of landlord-tenant law.

The Board Committee considered the report and draft rule of court at its regular July meeting and at a special meeting. After hearing from several interested persons and discussing the matter extensively, the Board Committee determined to recommend that the Board approve an amended version of the rule of court (see Enclosure 1 for the rule of court as recommended) and forward it to the Supreme Court for adoption.

**FISCAL AND PERSONNEL IMPACT**

No additional funds or personnel are needed to submit the rule of court to the Supreme Court. As the proposed rule of court provides for the pilot program to be administered by the Department of Consumer Affairs, no additional funds or personnel are needed to administer the pilot program. However, the rule of court does include a provision requiring the State Bar to pay the expenses of the eight members of the Board of Legal Technicians to be appointed by the Board of Governors. No reasonable estimate is available as to how much this will cost and when the cost will be incurred.

**PROPOSED RESOLUTION**

The Board Committee determined to recommend that the Board approve the rule of court and forward it to the Supreme Court for adoption. Should the Board concur, it would be appropriate to adopt the following resolution:

**RESOLVED** that the Board hereby approves the proposed California Rule of Court regarding a pilot program to license legal technicians, in the form attached to these minutes and made a part hereof, and directs that it be forwarded to the Supreme Court of California with a request that the Court adopt the same.

enclosures

ATTACHMENT A  
1991 Draft Rule of Court to Establish a LLLT Pilot Program

PROPOSED CALIFORNIA RULE OF COURT  
REGARDING LEGAL TECHNICIANS

Rule \_\_\_\_\_. Pilot program to license legal technicians

- a. **[Purpose]** The purpose of this rule is to authorize the establishment of a pilot regulatory program to permit certain persons not licensed to practice law in California to provide limited legal services in the area of landlord/tenant law directly to the public.
- b. **[Authority to license legal technicians]** A pilot program licensing Legal Technicians is authorized, contingent upon enactment of legislation requiring the Director of the Department of Consumer Affairs, through a career executive level administrator, to administer the pilot program.
- c. **[Definition]** A Legal Technician is a person who has been issued a current license by the Supreme Court to provide limited legal services in the area of landlord/tenant law directly to the public and who is not supervised by an active member of the State Bar of California.
- d. **[Board of Legal Technicians]** A fifteen (15) member Board of Legal Technicians shall be established in the Department of Consumer Affairs as follows:
  - (1) eight active members of the State Bar appointed by the State Bar Board of Governors;
  - (2) three Legal Technicians appointed by the Director of the Department of Consumer Affairs (provided, that the initial appointees shall be from among potential applicants for licensure who appear to have the requisite qualifications for licensure);
  - (3) two public members appointed by the Governor;
  - (4) one public member appointed by the President of the Senate; and
  - (5) one public member appointed by the Speaker of the Assembly.

Members of the Board of Legal Technicians shall serve terms of three years, provided the initial appointees shall divide themselves by lot, as evenly as practicable among the several types of appointees, into three classes which shall serve for one, two and three years, respectively. No member of the Board of Legal Technicians shall receive any other compensation than his or her necessary expenses connected with the performance of his or her duties as a member of the Board. Such expenses shall be paid by the authority appointing the member in accordance with procedure or policy adopted by that authority.

ATTACHMENT A  
1991 Draft Rule of Court to Establish a LLLT Pilot Program

**e. [Activities of the Board of Legal Technicians]**

- (1) The Board of Legal Technicians shall recommend to the Supreme Court the admission or rejection of each applicant for licensure as a Legal Technician.
- (2) Prior to recommending to the Supreme Court the admission or rejection of any applicant, the Board of Legal Technicians shall establish standards necessary for implementation of the pilot program, including the following:
  - i. comprehensive list of the specific legal tasks Legal Technicians are authorized to perform;
  - ii. standards for admission as a Legal Technician, including minimum levels of education and/or experience and passage of a written examination;
  - iii. Code of Professional Conduct for Legal Technicians;
  - iv. standards for the professional discipline of Legal Technicians;
  - v. continuing education requirements;
  - vi. Client Security Fund to provide compensation to victims of Legal Technicians theft;
  - vii. mechanism for monitoring the effectiveness of the pilot program, including development of standards by which the success or failure of the pilot program will be assessed and a mechanism for accomplishing this assessment;
  - viii. fee schedule, including penalties; and
  - ix. such other standards consistent with the foregoing as may be reasonably necessary to implement the pilot program.
- (3) The Board of Legal Technicians shall monitor the effectiveness of the pilot program utilizing the standards established pursuant to section (e)(vii).
- (4) The Board of Legal Technicians shall submit a final report to the Legislature, the Judicial Council and the State Bar not less than one year prior to the end of the pilot program. The final report shall contain an assessment of the effectiveness of the pilot program based on standards established pursuant to section (e)(vii) and a recommendation regarding the continuation or termination of the Legal Technician program.

ATTACHMENT A  
1991 Draft Rule of Court to Establish a LLLT Pilot Program

- f. **[Effect of licensure]** Only Legal Technicians shall be entitled to perform the services designated by the Board of Legal Technicians, except that nothing in this rule shall affect the provisions of the Rules Regulating Admission to Practice Law in California or the ability of active members of the State Bar to practice law in the subject matter area addressed by this rule.
  
- g. **[Expiration of authority for pilot program]**
  - (1) If no license has been issued pursuant to this rule by (insert date, three years after operative date of this rule of court), the authority for the pilot program shall expire.
  
  - (2) The pilot program and the authority for Legal Technicians to perform the services designated by the Board of Legal Technicians shall end five years after the date the first license is issued pursuant to this rule.

## Proposed Paraprofessional Program Working Group Charter Adopted March 12, 2020

The State Bar's recently published [California Justice Gap Study: Measuring the Unmet Civil Legal Needs of Californians](#), found that while 55 percent of Californians experience at least one civil legal problem in their household each year, Californians received inadequate or no legal help for 85 percent of these problems. A lack of knowledge about what constitutes a legal issue and concerns about legal costs lead many Californians to deal with problems on their own rather than seek legal help. A thoughtfully designed and appropriately regulated paraprofessional program is an important component of the solution to the access to legal services crisis in California by expanding the pool of available and affordable legal service providers.

The California Paraprofessional Program Working Group is hereby established and charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. In carrying out this charge, the Working Group will balance the dual goals of ensuring public protection and increasing access to legal services.

The Working Group will develop specific recommendations regarding the following:

1. The eligibility requirements to apply for the program, including the competencies required of licensed/certified paraprofessionals and the ways in which candidates can demonstrate those competencies. In developing these recommendations the Working Group will consider different pathways for licensure/certification for applicants based on their general academic and experiential qualifications, including but not limited to, candidates who might fall in one of the following categories: immigration consultants, Legal Document Assistants, Unlawful Detainer Assistants, paralegals, law school graduates, law students, and/or participants in or who have completed the State Bar's law office study program.
2. Selection of practice areas that will be included in the program. Practice type decisions should be informed by data sources, including but not limited to the California Justice Gap Study, California Attorney Practice Analysis Study, and court self-help center utilization data.
3. The types of tasks, by practice area, that paraprofessionals will be permitted to perform. The Working Group should consider and propose any requisite changes to the rules and statutes governing the unauthorized practice of law, and any other requisite changes to the rules of professional conduct that may be needed, to permit the performance of these types of tasks.

4. Business requirements, including financial responsibility requirements such as insurance or contribution to a client security fund.
5. A licensing/certification and regulatory model including consideration of rules of conduct for the new paraprofessional licensees.
6. Metrics and data collection methods to enable assessment of the program's effectiveness and to facilitate possible auditing and other proactive risk-based regulation.
7. Increasing awareness about how to seek legal help.



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: June 30, 2020

To: California Paraprofessional Program Working Group

From: Ms. Sharon Bashan

Subject: Consideration of Collateral Criminal as a Practice Area to Be Included in a Paraprofessional Program

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### Executive Summary

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program.

### Discussion

At its first meeting on April 21, 2020, the CPPWG discussed potential practice areas for program inclusion. While there was agreement with regard to including certain practice areas for additional consideration and excluding others, several practice areas were deemed "wobblers," meaning that additional information was required before a decision could be made regarding their status. Members of the CPPWG volunteered to study each of the wobbler areas with the goal of generating recommendations regarding ongoing consideration for the program for review by the full body at its next meeting.

I assessed the Collateral Criminal practice area. In generating my recommendations I considered the following data points:

- OneJustice experience with, and data regarding, collateral criminal work;
- Conversations with subject matter experts providing collateral criminal legal services;

- Information from a supervising criminal judge; and the
- [Closing the Delivery Gap](#) report published by Code for America.

### **A Focus on Expungements and Reclassifications**

California law affords those with criminal records significant recourse in the form of expungements (removal from a record) and reclassifications (of felonies to misdemeanors). The ability to timely and meaningfully take advantage of these provisions of state law is an important component of successful re-entry, participation in legal employment, and access to available housing resources, for this population. As such I chose to focus the Collateral Criminal practice area analysis on this subset of critical work.

### **Notes “From the Field:” Practitioners Doing the Work**

OneJustice’s mission is to bring life-changing legal help to those in need by transforming the civil legal aid system. Our Pro Bono Justice program brings together the private sector and the nonprofit sector to expand legal services through pro bono collaborations, including numerous pro bono clinics around the state. In 2015, OneJustice’s Justice Bus Project successfully piloted its records clearance clinic model that it had developed to serve veterans to help others in need of assistance. Due to the enormous need, we have since expanded these records clearance clinics to rural and isolated communities. The clients we see are overwhelmingly relieved to confront their criminal pasts and move forward, and the services they receive at our clinics enable them to remove these barriers to employment and housing. The demand is so great that we often have very long waiting lists of people we cannot serve at the clinics.

In an attempt to gather additional information staff reached out to other organizations that provide expungement and reclassification services. As outlined below, other than with respect to hybrid criminal/immigration (“crimmigration”) matters, we heard starkly different points of view during the course of this outreach. Initially, staff met with Mr. Sean Kenney and Ms. Ellie Miller, both with the Collateral Consequences of Conviction Legal Clinic at Loyola Law School, and Ms. Rebecca Young with the San Francisco Public Defender’s Clean Slate program. The unanimous feedback received during these calls was that nonattorneys should not be licensed to provide expungement or reclassification services for reasons including complexity, power imbalances between nonattorney advocates and District Attorneys, the need to file briefs and appear in court, and the necessity of support and administrative staff not likely to be available to a paraprofessional.

Subsequently, staff and I met with Supervising Judge Eric Geffon of the Superior Court, County of Santa Clara, who hears criminal matters, Judge Yew, also a Santa Clara Superior Court judge hearing a criminal calendar (and working group member), Ms. Peggy Stevenson, who runs the Record Clearance Project at San Jose State University, and Ms. Nora Cregan, with The Access Project (TAP). In contrast to the feedback received from representatives of the Loyola and San Francisco programs, this judicial officer and subject matter expert feedback was unanimous in the view that, with the exception of “crimmigration” related matters, expungement and reclassification cases are neither too complex or challenging for nonattorneys to handle. In the

view of both the judicial officers and these practitioners, nonattorneys can be appropriately trained to properly interpret RAP sheets, file declarations and briefs, identify applicable laws and statutes, handle cases with multiple convictions, and successfully represent clients in court. In addition to believing that the nature of these types of cases lend themselves to nonattorney practitioners, this latter set of feedback emphasized the relative lack of consequence of the work being done incorrectly – other than for those with immigration issues; those seeking this type of post-conviction relief have more than one “bite at the apple”.

Although not a position universally shared, most of the input received suggested that clients with immigration issues would likely present a level of complexity, and potential harm, such that they should not be served, at least solely, by a paraprofessional.

### **The Need**

In 2018 Code for America, which has developed an automated record clearance tool, issued a report, *Closing the Delivery Gap: making good on the promise of California’s record clearance laws to remove barriers to opportunity for 5 million Californians*. Key findings from that report include:

- Only 27 percent of Californians with criminal records indicated they had attempted to clear up their record;
- Most people pursue record clearance to reduce barriers to employment;
- At least one in seven Californians lives in a county that does not provide legal assistance with the record clearance process to low-income petitioners; and
- Low staffing levels in counties that do provide clean slate services hamper the ability of attorneys to get petitioners through the process efficiently.

These findings were echoed by the subject matter experts with whom we spoke. All agreed that existing resources are not sufficient to meet demand, let alone the hundreds of thousands of Californians who are eligible for relief.

Due in part to innovation and advocacy on the part of Code for America and others, soon to be implemented state laws will address some significant aspects of existing need:

- [Assembly Bill 1793](#), enacted in 2018, addresses the need for records expungements and adjustments for people convicted of marijuana-related offenses prior to legalization. This bill required the Department of Justice (DOJ) to notify the prosecutors in each county of all cases eligible for recall, dismissal of sentence, sealing, or conviction adjustment (collectively “adjustments”) by July 1, 2019. Prosecutors are required to review all such cases identified in their jurisdiction and determine whether to challenge any adjustments. By July 1, 2020, prosecutors must inform the court and Public Defender of any adjustments they will challenge, and must inform the court of adjustments they do not intend to challenge. The court must reduce or dismiss any

eligible convictions which the prosecutor does not challenge by July 1, 2020, and must notify the DOJ of the adjustment.

- [AB 1076](#), enacted in 2019, requires, effective January 1, 2021, and subject to a budgetary appropriation to cover the cost of such a program, the DOJ to review records and identify persons eligible to have their arrest and conviction records sealed, and to grant such relief without requiring a petition or motion. If funded and implemented, the automatic record clearance contemplated by this bill will extend well beyond the marijuana-specific expungements to be conducted pursuant to AB 1793.

## **Recommendations**

I recommend that the Collateral Criminal practice area, more specifically expungements and reclassifications, be included for consideration in a California paraprofessional program; with respect to expungement/reclassification clients with immigration issues, I recommend that the working group further study how, and whether, paraprofessionals might serve this population.

Additionally, I recommend that the working group further research and consider supporting a portal that was recently created and launched by TAP. The portal was created to help guide pro bono service providers through each step required to file for expungements and sentence reductions/reclassifications. A brief demo of the portal shows that it is not only user-friendly and intuitive, but could also be used by nonattorneys to proficiently navigate through the same process.



Date: June 30, 2020

To: California Paraprofessional Program Working Group

From: Elizabeth Olvera and Stephen Hamilton

Subject: Consideration of Estates and Trusts as a Practice Area to Be Included in a Paraprofessional Program

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### Executive Summary

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program.

### Discussion

At its first meeting on April 21, 2020, the CPPWG discussed potential practice areas for program inclusion. While there was agreement with regard to including certain practice areas for additional consideration and excluding others, several practice areas were deemed “wobblers,” meaning that additional information was required before a decision could be made regarding their status. Members of the CPPWG volunteered to study each of the wobbler areas with the goal of generating recommendations regarding ongoing consideration for the program for review by the full body at its next meeting.

The present two-person team assessed the Estates and Trusts practice area. In generating our recommendations, outlined below, we considered the following data points:

- Estates and Trusts-related questions and responses included in the California Justice Gap Study;

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- Survey and experiential data provided by the California Association of Legal Document Assistants (CALDA); and
- California Courts Data on Self-Represented Litigants.

## California Justice Gap Study

The California Justice Gap Study (CJGS) included questions regarding Estates and Trusts as follows:

- **Estates (Wills):** Questions asked about needing help making or changing a will, living will or advance directive, or setting up a trust or power of attorney.
- **Probate:** Questions asked about needing help with probate or administering an estate, trust or will.

CJGS results were generally categorized as follows:

Top 3 legal needs, all Californians	Top 3 legal needs, Californians at or below 125% of FPL	Top 3 legal needs, Californians above 125% of FPL
Top 3 areas for which legal help sought and received, all Californians	Top 3 legal needs for which legal help sought and received, Californians at or below 125% of FPL	Top 3 legal needs for which legal help sought and received, Californians above 125% of FPL
Top 3 legal needs with severe impact, all Californians	Top 3 legal needs with severe impact, Californians at or below 125% of FPL	Top 3 legal needs with severe, Californians above 125% of FPL

Estates and Trusts responses aligned with two of these categories: top 3 legal needs for which legal help sought and received, all Californians, and top 3 legal needs for which legal help sought and received, Californians above 125 percent of FPL. Specific California Justice Gap Study data points include:

- 216 of the survey respondents stated they “needed help making or changing a will, living will or advance directive, or setting up a trust or power of attorney.”
- 145 of the survey respondents stated they “needed help with probate or administering an estate, trust, or will.”
- Wills/Estate problems were 15 percent less likely to be rated as severe compared to other problem types. The wills/estate problems of those below 125 percent FPL were 16 percent less likely to be rated as severe compared to other types of problems. The wills/estate problems of those above 125 percent FPL were 14 percent less likely to be rated as severe compared to other types of problems.
- At all income levels, respondents were 37 percent more likely to seek and receive legal help for wills/trusts issues compared to other problem types. But those below 125

percent FPL were 40 percent less likely than those above 125 percent FPL to seek and receive legal help for wills/trusts issues. At all income levels, respondents who did not seek legal help for a will/trust issue were 21 percent less likely to cite not knowing whether it's a legal issue/where to look as a reason for not seeking legal help compared to other types of problems that they do not seek legal help for.

- Of all the wills/estate problems reported, 36 percent related to probate. This problem was more prevalent among those below 125 percent FPL, making up 47 percent of the wills/estate problems of those below 125 percent FPL and 34 percent of the wills/estates problems of those above 125 percent FPL. Those below 125 percent FPL were 17 percent more likely to seek and receive legal help for probate issues compared to other wills/trust issues they faced. However, those below 125 percent FPL are 38 percent less likely to seek and receive legal help for probate issues compared with those above 125 percent FPL.

#### **CALDA Survey Data**

The California Association of Legal Document Assistants (CALDA) is a nonprofit organization of California Legal Document Assistants, Bankruptcy Petition Preparers, Social Security Disability Advocates, and SSI Advocate that works to promote the growth, development, and recognition of the Legal Document Assistants' (LDA) profession as an integral partner in the delivery of legal services. The organization issued a survey on February 26 in an attempt to get additional information about the work of specific LDAs to support the CPPWG's deliberation process. Of 78 survey respondents, 50 respondents stated they provided "Probate & Estate Planning" services (64 percent). These services included conservatorships, guardianships, drafting of wills, adoptions (adult and stepparent), "settling estates" and trust administration.

#### **California Courts Self-Represented Litigant Data**

The Judicial Council, through its Judicial Branch Statistical Information System (JBSIS), collects data regarding the incidence of self-representation in the courts; detailed case type information is provided by some courts. However, not all courts report this data for the probate case type or all parties in probate proceedings, and the Judicial Council does not provide statistics by subtype, (i.e. estates, guardianships, and conservatorships) are included within the probate statistics. It is therefore unclear what percentage of unrepresented parties would benefit from the inclusion of probate and estate administration services within the scope of services which paraprofessionals could provide.

## Recommendations

Our recommendations, which diverge, are provided below.

### **Elizabeth Olvera:**

I recommend that probate, which includes, in most courts, decedent estates, conservatorships, and guardianships, be included in a paraprofessional program. The broader area of estate planning should be considered once the program has been in place for 2-3 years.

Californians below 125 percent of FPL don't earn very much income, but they still frequently are homeowners and may have assets, such as a house that serves not only as their home, but as a home for other family members as well. After the homeowner dies, predominantly in low income neighborhoods, many families don't know where to look for help because they are unfamiliar with probate issues. In addition, the court access center may turn Californians away because their assets exceed the threshold to be considered for free assistance. By using the traditional system of attorney assistance, these families are at great risk for losing their homes for no other reason than the need to pay "ordinary" attorney's fees at the end of probate. While it is true that Californians sought and received legal help for wills and estates issues, the California Justice Gap Study shows that those at or under 125 percent of FPL were less likely to seek and receive legal help for these problems. While limited, JBSIS data tells us that between 2 (Superior Court, County of Ventura) and 83 percent (Superior Court, County of Riverside) of plaintiffs are self-represented plaintiffs in probate matters – presumably many of these plaintiffs are low-income. Some low income litigants live in inherited paid off homes; just because most low-income people don't own property, doesn't mean that wills and estates services are not needed. The consequences of not helping these people can be detrimental. Often the family home is the sole family asset and source of wealth. Losing these homes results in displacement and gentrification.

### **Case Studies Illustrate this Point**

#### *"Darrell" Gets to Carry Out His Mother's Wishes*

- "Mom" was a low-income homeowner. She bought her house in a lower-income West Oakland neighborhood in the 1960s. By the time she died, it was worth \$800,000.
- Mom had no savings and lived on Social Security. She didn't have the money for an estate plan, so she wrote a Will with a Nolo Press Book.
- Mom gave the house to Darrell because she knew he'd continue to take care of his sister and his disabled brother.
- **Darrell would have had to sell the house if he had been forced to pay \$19,000 in attorney fees.**
- He paid \$4,500 to a Legal Document Assistant, which he could afford. Darrell got to carry out his mother's wishes.
- Everyone still has their home.

*“Agnes” and Her Family Became Homeless*

- Agnes’s husband was a low-income homeowner. He inherited their home from his mother. They and their five adult children lived together in the house.
- Because of their lower levels of education, income, and difficulty with English, they didn’t know to do estate planning. If they had known, it is unlikely they would have been able to afford it.
- Agnes was 60ish and worked at The Gap. Her kids were adults and working in other service occupations. The mortgage was entirely affordable to them together though.
- **They had to sell the house for no reason other than to pay the \$16,000 in attorney fees.**
- During the probate, after the house sold, they lived in motels.
- The kids collectively received 2/3 of the net estate, or about \$8,000 each. All of them together don’t have the down payment, income, and credit score to replace their home.

While LDAs do serve as a resource for these types of homeowners/families, the assistance they are able to provide is limited: LDAs help with form preparation, but without being able to select the forms, which causes a low level of entrants into the profession and a great deal of public mistrust that they are getting a service worth paying for.

- LDAs can file pleadings and other documents with the court, but they have:
  - No ability to interface with the court, especially Probate Examiners.
  - No ability to answer questions at hearings, which would be hugely useful to users of the system.
  - Under current rules, LDAs are normally unwilling to facilitate communication amongst the family because they would be perceived as representing the Personal Representative, which makes confusion and discord amongst the family more likely.

These limitations limit both professional and consumer “buy-in” to the LDA as a widespread solution.

**Paraprofessionals Can Perform the Tasks Related to Probate**

Unlike estate planning, probate is closely akin to family law because the process lends itself to forms, tasks, and judicial oversight, and thus can be performed by a paraprofessional. The Judicial Council has propagated and created mandatory probate forms and procedures for the process, and judges maintain a dedicated eye on probate estates making sure the process is done correctly. It really lends itself well to licensing a nonlawyer, and for those reasons, we recommend that the Probate, Trusts and Estates practice area be included in the pilot program where paraprofessionals can give legal advice.

In contrast to what LDAs are currently authorized to do, a licensed legal paraprofessional would be able to:

- Provide more direct guidance to the client.

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- Interface with court (communicate with Examiners directly and answer the Court's questions at uncontested hearings).
- Provide greater public protection because of the licensing and background check requirements.
- Provide direct and helpful communication with the family and others.

Greater buy-in from the public which would ensue from a State Bar licensed program would significantly expand the use of the service. The public would pay much less in fees and less housing loss would occur, which would mitigate one cause of displacement and gentrification.

Registered and bonded LDAs would be a natural fit in any new licensed paraprofessional program. Given their existing background, the educational gap and learning curve would be lessened. Another advantage of using LDAs, would be to shorten the time for when the paraprofessional program can transition beyond its initial pilot study thereby allowing increased access to justice for the Californians who need it the most.

### **Stephen Hamilton:**

It is the recommendation of the working group member Stephen D. Hamilton that the categories defined as wills, trusts, and probate should not be included in a paraprofessional program.

### **Summary of Basis for the Recommendation**

This recommendation is based on the following factors:

- No other state has incorporated wills, trusts, and probate within the scope of their paraprofessional programs.
- The actual need for assistance in the area of wills, trusts, and probate is questionable based on the California Justice Gap Study and statistical information available to our working group.
- Creation of a paraprofessional program for wills, trusts, and probate would result in an increase in the cost of services for those who already cannot afford to pay for the nonlegal services available in these areas.
- There are no statistics available which differentiate the probate filings within the State of California, (i.e., no breakdown between contested estates, guardianships, and conservatorships). The statistics that are available support the conclusion that wills, trusts, and probate do not present an access to justice issue.
- Wills, trusts, and probate are complex and multidiscipline areas of law drawing upon many areas of competency that licensed attorneys spend years learning.
- Guardianship, conservatorship, trust, and estate administration involves a fiduciary administering assets for the benefit of third parties. Failure of a fiduciary to obtain and heed sound legal advice from an attorney often harms the persons whom the law is intended to protect.

- The anecdotal information supplied in support of inclusion of wills, trusts, and probate do not address a fact acknowledged during a subgroup meeting: in all instances, the use of estate planning would have avoided the probate fees incurred and at a substantially lower costs. This issue is therefore one of education about currently available services, not an issue of access to justice.

### **California Would Be the First State to Include Wills, Trusts, and Probate**

While being on the forefront of a new strategy or solution is nothing new to Californians, it would be unwise not to consider anecdotal and program information from other states regarding the use of paraprofessionals to assist consumers in the area of wills, trusts, and probate. Unfortunately, there is no such anecdotal information from other states as California would be the first state to include wills, trusts, or probate within the scope of a paraprofessional program.

The following summary of the scope of paraprofessional services evidences this point, and was derived from the [“Overview of Existing Legal Paraprofessional Programs in Selected States”](#) provided for the April 21, 2020, meeting of the Paraprofessional Program Working Group:

#### **Washington State Limited License Legal Technician:**

On June 4, 2020, the Washington Supreme Court voted to sunset the Limited License Legal Technicians (LLLT) Program. As established prior to the sunset, LLLTs were permitted to render legal services in the following approved practice areas:

- Divorce and dissolution;
  - Parenting and support;
  - Parentage or paternity;
  - Child support modification;
  - Parenting plan modification;
  - Domestic violence protection orders;
  - Committed intimate relationships, only as they pertain to parenting and support issues;
  - Legal separation;
  - Non-parental and third party custody;
  - Other protection or restraining orders arising from a domestic relations case; and
  - Relocation.
- 
- An LLLT may seek admission in an additional practice area.
  - The Board of the Washington State Bar was considering Consumer Money and Debt Law as an approved LLT practice area.

### **Utah Licensed Paralegal Practitioner (LPP)**

LPPs may render legal services in the following approved practice areas:

- Temporary separation, divorce, parentage, cohabitant abuse, civil stalking, and custody and support;
- Forcible entry and detainer; and
- Debt collection matters in which the dollar amount in issue does not exceed the statutory limit for small claims.

RGLPP 14-802(c).

### **Other States**

Our working group has been provided with an [Excel spreadsheet](#) which summarizes the paraprofessional practice areas for all states, including those which have trial or pilot paraprofessional programs or recommendations for creation of a paraprofessional program. These states include Arizona, Colorado, Minnesota, Montana, New Mexico, and Oregon. Each of those states, following Washington and Utah, have not included wills, trusts, or probate within the scope of services to be provided by paraprofessionals<sup>1</sup>.

While the fact that other states have chosen not to include wills, trusts, or probate in their paraprofessional programs is not in and of itself a barrier to inclusion in the California Paraprofessional Program, it does mean:

- We will not have curriculum information to draw from related to wills, trusts, or probate;
- We will not have examination materials to review when developing our paraprofessional testing protocols; and,
- We will not have anecdotal information to draw upon as to the benefits or detriments of allowing paraprofessionals to provide wills, trusts, or probate services.

The lack of such data and information should not be minimized. It is the position of this working group member that anecdotal information will be extremely helpful in crafting not only a successful paraprofessional program in California, but one that best serves the dual needs of providing access to justice *and* consumer protection.

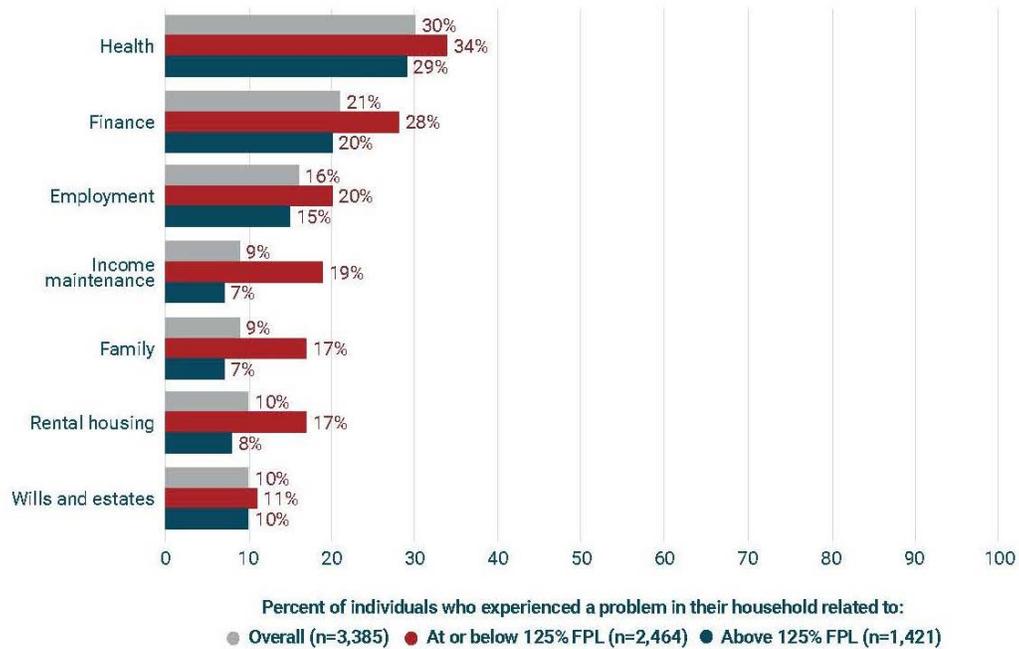
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<sup>1</sup> Arizona's recommendations were quite broad but restricted to "all limited jurisdiction civil practice matters." The actual report does not specifically identify estates, trusts, or probate as approved practice areas.

### The California Justice Gap Report Establishes a Lack of Need for Inclusion of Wills, Trusts, and Probate

Wills and estates are reported to be the area for which the least amount of problems were reported in the California Justice Gap Report. Overall, only 10 percent of those surveyed reported having a problem involving Wills and Estates:

Health, finance, and employment were the most common types of problems reported by Californians.



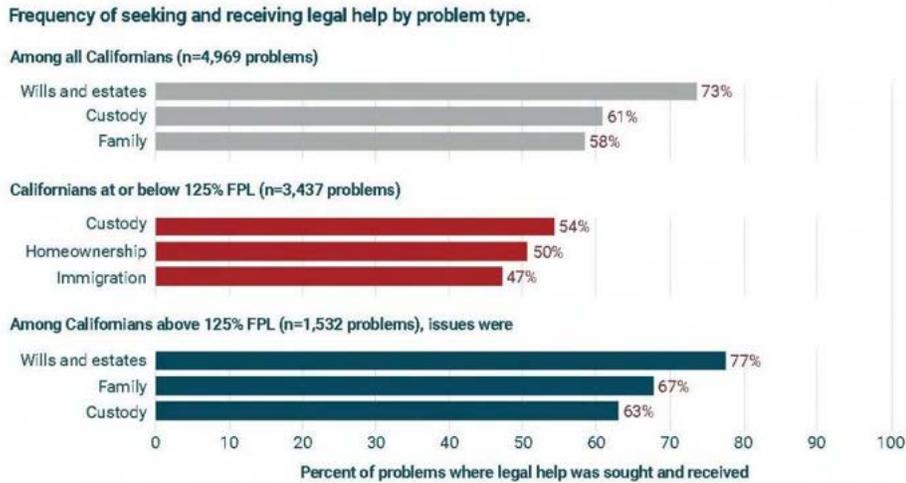
Wills and trusts were also the area of law identified in the California Justice Gap study for which Californians were most likely to *seek* and *receive* legal help:

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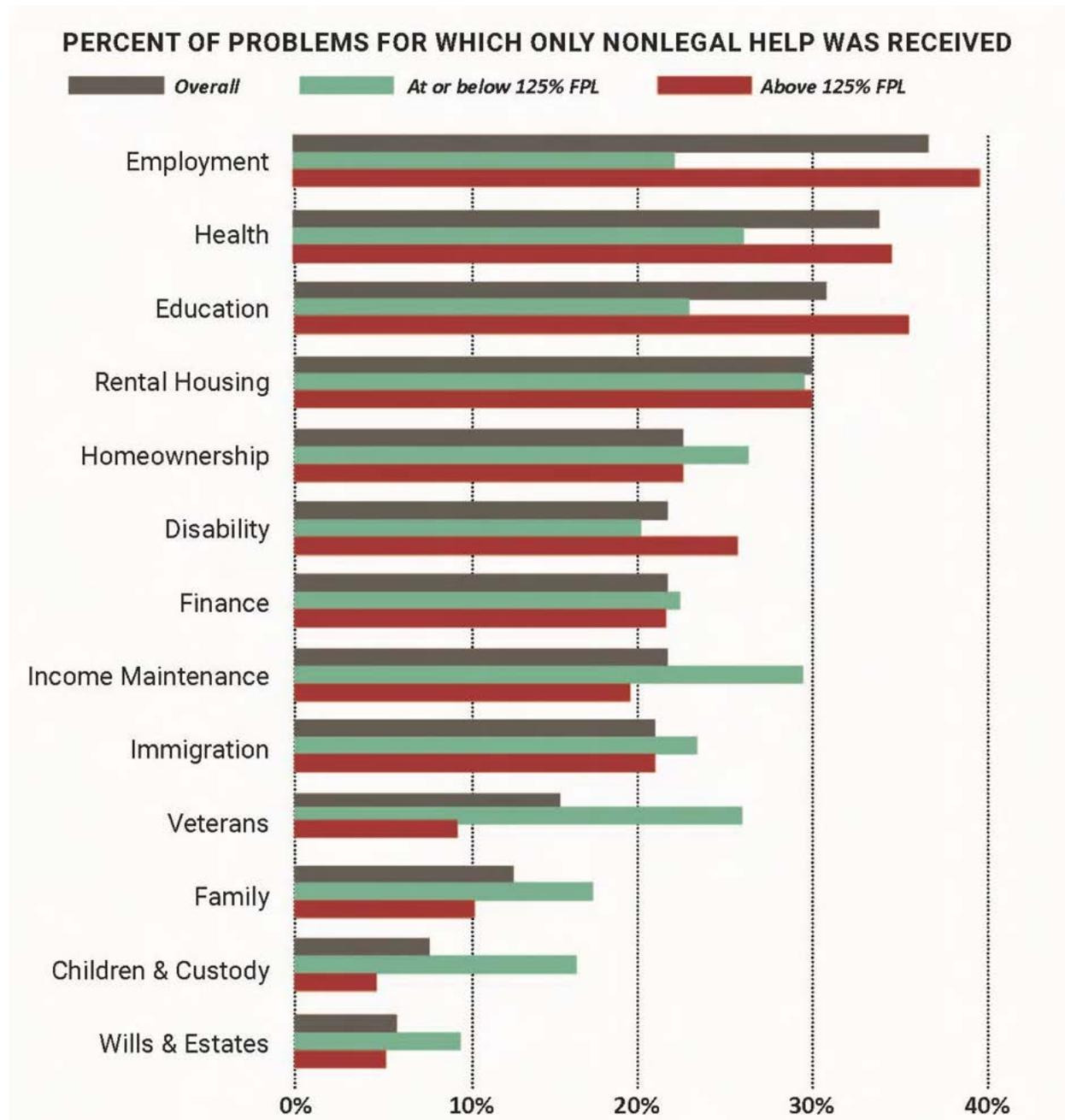
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**Californians were most likely to seek and receive legal help for issues related to wills and estates, custody, and family. This held for Californians with incomes above 125% FPL as well.** Californians at or below 125% FPL, however, were most likely to seek and receive legal help for custody, homeownership, and immigration issues.<sup>7</sup>



Although Californians at or below 125 percent of the FPL did not report receiving help in the area of Wills and Trusts, it is important to remember that only 11 percent of those surveyed reported having a problem in the area of Wills and Trusts.

Finally, a chart included within the California Justice Gap Study Executive Report highlights that “Wills and Estates” is the area of law for which consumers are least likely to rely on nonlegal help:



This data from the survey clearly establishes that less than 10 percent of all persons surveyed relied on nonlegal help to address “Wills and Estates” problems *regardless of financial resources*.

**Creation of a Paraprofessional Program for Wills, Trusts, and Probate Would Not Benefit Those Who Currently Rely on Nonlegal Help**

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As discussed above, there is no demonstrated need for including wills, trusts, and probate in the Paraprofessional Program. Moreover, there is no indication that the small percent of Californians who did not seek and receive legal help in this area of practice would benefit in any way from creation of a new paraprofessional. The California Justice Gap Study notes that lack of knowledge, concern about legal costs, or a fear of pursuing legal action leads many Californians to deal with problems on their own rather than seek legal help for their otherwise actionable civil legal issues. There is no statistical data to support the hypothesis that creation of a paraprofessional program for wills, trusts, and probate would assist in resolving any of these issues.

According to the LDA survey, of 79 survey respondents, 59 respondents stated they provided “Probate & Estate Planning” services (754.6 percent). These services included conservatorships, guardianships, drafting of wills, adoptions (adult and stepparent), “settling estates,” and trust administration. Those who are concerned about costs today presumably could not afford or chose not to pay the current cost of these services provided by the LDAs. A new paraprofessional program beyond LDAs would include more expansive training, licensing, and regulatory requirements and would presumably increase potential liability based on the new services provided. All of this would add to the cost of doing business and result in an *increase* in the cost of services, with no benefit to those who already cannot afford to pay for these services.

### **Probate Statistics are not Differentiated in California**

Analyzing the need for nonattorney legal assistance in wills, trusts, and probate based on California court statistics is problematic. The issue is that the subject “probate” includes the adjudication of estates, conservatorships, guardianships, and the termination of parental rights related to stepparent adoptions. Thus, a review of the statistics as to “self-represented” parties gives no meaningful data to assist this working group.

However, the California Superior Court statistics establish that “Probate” does not present the access to justice issues which exist in other subject areas. The working group was provided with an Excel spreadsheet with case filings in California by subject matter. The following filing statistics are available for 2017:

Total cases filed all counties, all subject type	5,935,517
Total probate filings, all counties	51,478
Total “Pro Per” Defendants/Respondents	931
Total “Pro Per” Plaintiffs/Petitioners	10,979

In other words, less than 1 percent (.00867) of all filings in California were in the “Probate” category. Only 1.8 percent of the respondents were self-represented and 21.3 percent of the petitioners were self-represented. Moreover, as noted above, this figure appears to include adjudication of estates, conservatorships, guardianships and the termination of parental rights

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related to stepparent adoptions. A caveat needs to be made regarding this assessment (and that below), however. Not all counties report self-represented statistics or do so inconsistently. The percentages reported therefore are deflated as it is impossible to get an accurate determination of the self-represented statistics on a statewide basis.

Compare this to family law, a “nonwobbler” practice area:

Total family filings, all counties	355,644
Total “Pro Per” Defendants/Respondents	64,626
Total “Pro Per” Plaintiffs/Petitioners	146,322

Compared to the low number of self-represented litigants in probate matters, 18.17 percent of all family law respondents were self-represented and a staggering 41.14 percent of all family law petitioners were self-represented.

It is the position of this Committee Member that these statistics illustrate the difference between an area of law where paraprofessionals are needed (Family Law) and where they are not (Wills, Trusts, and Probate). This statistical information because even more distinguishing when committee members consider that the probate statistics include areas of law which do not lend themselves to paraprofessional services (i.e. conservatorships, guardianships and, in some cases, adoptions).

### **The Complexity of Wills, Trusts, and Probate Matters Does Not Lend Itself To Inclusion in the Paraprofessional Program**

Wills, trusts, and probate are an area of law made complex by the nature of the areas of law a competent attorney must understand. It is not an area of law where a one or two-year training program could sufficiently or adequately train a nonlawyer to perform services in that area.

Specifically, a competent trusts and estate attorney must be knowledgeable with and understand:

- The Probate Code.
- The Civil Code.
- The Code of Civil Procedure.
- The Corporations Code.
- The Evidence Code.
- The Family Code.
- The Financial Code.
- The Health and Safety Code.
- The Insurance Code.
- The Revenue and Taxation Code.
- The Federal Internal Revenue Code.

It is the opinion of this working group member that inclusion of wills, trusts, and probate in the Paraprofessional Program would increase the risk of consumer harm if the program were to allow others who had not had the significant training, experience and education required of current practitioners who provide services in the area of wills, trusts, and probate.

### **The Persons Whom the Law is Intended to Protect Are Harmed When the Fiduciary Does Not Obtain Sound Legal Advice from an Attorney**

Fiduciaries have important duties to the beneficiaries, and paraprofessionals are often not well-equipped to advise regarding those duties. Failure of a fiduciary to obtain and heed sound legal advice from an attorney often harms the very persons whom the law is intended to protect (i.e., the minor ward, conservatee, heirs and beneficiaries). These persons have no role in choosing the advisors who are representing the fiduciary; however, they benefit from the fiduciary's receiving legal advice from an attorney, and they stand to lose financially from missteps that a fiduciary might make in the absence of sound legal advice.

As discussed above, post-death administration of assets requires knowledge of diverse areas of the law, and is much more complicated than simply filling out Judicial Council forms. Failure of a paraprofessional to have a deep understanding of the law in general—and not just the “routine” procedural elements—can have severe adverse effects on the beneficiaries. Meritorious defenses to claims against an estate can be overlooked, important property tax exclusions that allow for family property to remain affordable can be lost, and avoidable income tax can be incurred (particularly in the area of retirement accounts, which is fraught with complicated issues). The training and experience of attorneys is necessary in order to protect not only the consumers themselves who might otherwise rely on paraprofessional advice, but also for the minor ward, conservatee, heirs and beneficiaries who also benefit from the attorney's legal advice.

### **The Anecdotal Information Provided by CALDA Does Not Support Inclusion of Wills, Trusts, and Probate**

During a subgroup meeting held on May 18, 2020, a presentation was made by Ian Duncan, past president of CALDA. Mr. Duncan presented two case studies to support his position that probate and contested estates should be included in the paraprofessional program. However, the following statements made by Mr. Duncan are both troubling and indicate the true nature of the problem which CALDA has presented in its case studies.

- "High probate attorney fees magnify the state's current housing crisis." No statistical information was provided to support this assertion.

- Currently, some LDA's are using a "workaround" to avoid the statutory attorney fees incurred during probate. However, Mr. Duncan stated this "workaround" could not be replicated to the point it would be helpful.
- "If probate system were just and fair, there would not be a whole industry devoted to avoid it." There are many reasons to avoid probate that have nothing to do with a "fair and just" system, including the time and money it can take to complete the court process and the fact that probate is a public process. Avoiding probate is often preferable by, for example, creating a living trust.

These statements should give committee members pause as to the assertions made in support of the request to include wills, trusts, and probate in the Paraprofessional Program.

Equally concerning is the fact that the "workaround" is still more expensive than the best solution to the problems and case studies presented by Mr. Duncan. Specifically, I engaged in the following exchange with Mr. Duncan:

*Q: Wouldn't the best solution for both cases be an estate plan?*

*A: Yes.*

In other words, the cost of estate planning in advance of death would yield better results and lower costs (even lower than the existing "workaround.")

No evidence or statistics were provided during the subgroup meetings to establish why estate planning is not currently being used. It is suggested by this working group member that the solution lies through education, not creation of a new licensed paraprofessional to address post-death estate division.

## **Conclusion**

It is respectfully submitted that the areas of wills, trusts, and probate should not be included within the proposed California Paraprofessional Program. Inclusion would minimally affect access to justice issues based on the findings of the California Justice Gap Study and the court filing statistics cited above.

Further, California could encounter significant consumer protection issues if we are the first state to include wills, trusts, or probate in a paraprofessional program in light of the complexities of those areas of law. This is not an access to justice issue—this is an access to information issue. The "case studies" presented would be more effectively addressed by informing the public about the benefits of estate planning.



Date: June 30, 2020

To: California Paraprofessional Program Working Group

From: Hon. Erica Yew and Steven Fleischman

Subject: Consideration of General Civil a Practice Area to be included in a Paraprofessionals Program

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### Executive Summary

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program.

### Discussion

At its first meeting on April 21, the CPPWG discussed potential practice areas for program inclusion. While there was agreement with regard to including certain practice areas for additional consideration and excluding others, several practice areas were deemed "wobblers," meaning that additional information was required before a decision could be made regarding their status. Members of the CPPWG volunteered to study each of the wobbler areas with the goal of generating recommendations regarding ongoing consideration from the program for review by the full body at its next meeting.

The present two-person team assessed the General Civil practice area. In generating our recommendations, outlined below, we considered the following data points:

- The California Courts Judicial Branch Statistical Information System (JBSIS) Manual;
- California courts data on self-represented litigants;

- California Attorney Practice Analysis; and
- Information from judges who hear civil cases.

### **JBSIS Manual**

We reviewed the Judicial Branch Statistical Information System (JBSIS) manual to establish a definition that would encompass cases to be considered in the General Civil category. The following case types are included in the General Civil category in the JBSIS manual:

- Personal injury/property damage/wrongful death
- Tort
- Employment
- Contract
- Real Property
- Unlawful Detainer
- Judicial Review
- Complex litigation
- Small claims appeal
- Enforcement of Judgment<sup>1</sup>
- Other Civil (including civil harassment and name change)

### **California Attorney Practice Analysis (CAPA)**

The CAPA survey asked attorneys to rate the depth of knowledge required to complete tasks in specific legal areas, as well as the criticality of proficiency in the tasks and legal topics (i.e., the degree of harm that may be inflicted upon clients and/or the general public if an attorney is not proficient). The CAPA study created a composite score to measure both criticality and frequency (i.e., the importance of being proficient and the frequency in performing tasks in an area) for each practice area. The composite score for Civil Procedure is 20.7, the highest among all knowledge areas. Another relevant rating is regarding the depth of knowledge (DOK) required to perform the tasks with competence. On a 5-point scale, the DOK score for Civil Procedure is 3.7, near the high end of the metric.

Based on the CAPA study, the General Civil practice group concluded that the potential for problems created by allowing nonlawyers to practice law was potentially highest in traditional litigation pending in Superior Courts. Therefore, the General Civil practice group concluded that representation by nonlawyers should be carefully circumscribed to those areas in which there is a demonstrated need for representation that the existing bar is not meeting and where there are fewer procedural issues to be handled by potential paraprofessionals.

Although not addressed by the CAPA survey, one member of the General Civil group was concerned that allowing paraprofessionals to practice in areas where there is a well-established

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<sup>1</sup> While our discussions referred to consumer debt, the JBSIS manual list Enforcement of Judgment in the definition of Civil case types.

and existing bar would exacerbate the problem of “runner and cappers,” which are prohibited by Business and Professions Code sections 6151, et seq.

### **California Courts Self-Represented Litigant Data**

The Judicial Council collects data, through JBSIS, regarding the incidence of self-representation in the courts; detailed case type information is provided by some courts. Of the reporting courts, the data suggests that between 3 (Superior Court, County of Inyo) and 92 percent (Superior Court, County of San Joaquin) of plaintiffs and between 3 (Superior Court, County of Santa Clara) and 55 percent (Superior Court, County of Mariposa) of respondents are self-represented plaintiffs in matters categorized as civil.<sup>2</sup>

### **Judges Who Hear Civil Cases**

We held a discussion with Judge Daniel Buckley from the Los Angeles Superior Court, Judge Michael Harper from the Trinity Superior Court and Judge Beth McGowen of the Santa Clara Superior Court, to learn about their experiences with civil cases and areas of need, and what type of advice and assistance might be appropriate for nonattorneys to provide. These judges were intentionally selected so that we could garner the perspectives from a large, medium, and small size court.

### **Recommendations**

From the onset, we recognized the breadth and range of the General Civil practice area; given the working group’s focus on increasing access to legal services, we ruled out a number of areas within General Civil that do not present these types of access concerns. This resulted in a limited list of potential areas for inclusion: civil harassment, enforcement of judgments, and consumer protection.

- **Civil Harassment:** Our discussion regarding this particular area within General Civil was limited; generally, though, we support measures to ensure broad access to protective orders and agree that preparation of affirmative and responsive civil harassment pleadings is appropriate work for a trained nonlawyer professional.
- **Enforcement of Judgments:** Feedback garnered from our conversation with the three judges noted above confirmed that there is a need for additional representation resources in enforcement of judgment proceedings. Our discussion centered around the practical reality that in most judgment enforcement proceedings, creditors (e.g., financial institutions) are nearly universally represented by counsel and debtors are much less likely to be; as a result, our general position is that nonlawyer paraprofessionals should be authorized to only represent debtors, as opposed to creditors, in enforcement of judgment proceedings. Finally, we did not see any need to

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<sup>2</sup> Unfortunately, data broken down by specific case type within the civil category is not available. It should also be noted that several of the courts with the highest number of filings, including Los Angeles, Sacramento, San Diego, and San Francisco, do not report information about self-represented litigants.

allow potential paraprofessionals to represent financial institutions and, thereby, decrease the cost of legal services for those entities. We did identify one needed exception to this recommended limitation, however, as related to wage and hour cases. These matters are often very low in total dollar value and as a result it is difficult for workers to collect on judgments; we accordingly recommend that nonattorney paraprofessional be authorized to represent “creditors” in wage and hour matters. Our recommendation in this area is to allow potential paraprofessionals to handle matters only in limited jurisdiction cases (under \$25,000).

- **Consumer Protection:** This is a broad area, and our discussion focused on whether small value consumer protection cases, such as lemon law, should be included. Based on our discussion with the judges, we agreed that this area should **not** be included, as cases are complex, and that legal representation is readily available. Our discussion did not extend to collection matters, as this area is being included under the broader topic of enforcement of judgments discussed above.

All of these recommendations are limited to allowing paraprofessionals to make appearances in superior courts.

A summary of our recommendations with respect to each JBSIS General Civil area is outlined in the table below.

JBSIS Case Definition	Recommendation	Rationale
Personal injury/property damage/wrongful death (e.g., auto, asbestos, product liability, medical malpractice)	Exclude	<ul style="list-style-type: none"> <li>• Complex</li> <li>• Sufficient attorney representation available</li> </ul>
Tort (e.g., business, civil rights, defamation, fraud, intellectual property, professional negligence)	Exclude	<ul style="list-style-type: none"> <li>• Complex</li> <li>• Sufficient attorney representation available</li> </ul>
Employment (e.g., wrongful termination)	N/A	Separately addressed by CPPWG
Contract (e.g., breach of contract/warranty, collections, insurance coverage)	Exclude	<ul style="list-style-type: none"> <li>• Complex</li> <li>• Sufficient attorney representation available</li> </ul>
Real Property (e.g., eminent domain/inverse condemnation, wrongful eviction)	Exclude <sup>3</sup>	Complex
Unlawful Detainer	TBD	Separately addressed by CPPWG

<sup>3</sup> Some aspects of real property cases are being considered under a separate recommendation.

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Judicial Review (e.g., writ of mandate, asset forfeiture)	Exclude	Complex
Complex litigation	Exclude	Complex
Small claims appeal	Exclude	Representation statutorily precluded
Enforcement of Judgment	Include	See discussion above
Other Civil – Civil Harassment	Include	See discussion above
Other Civil – Name and Gender Changes	N/A	Separately address by CPPWG



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: June 30, 2020

To: California Paraprofessional Program Working Group

From: Dana McRae and Carolin Shining

Subject: Consideration of Health as a Practice Area to Be Included in a Paraprofessionals Program

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### Executive Summary

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program.

### Discussion

At its first meeting on April 21, 2020, the CPPWG discussed potential practice areas for program inclusion. No final determination as to the areas to be recommended was made. Several practice areas were determined to warrant further preliminary discussion as to the basis for their inclusion or exclusion. These areas were called "wobblers" meaning that additional information would be beneficial before a decision could be made regarding their status. Members of the CPPWG volunteered to study each of the wobbler areas with the goal of generating recommendations regarding ongoing consideration for the program for review by the full body at its next meeting.

The present two-person team assessed the Health practice area. In generating our recommendations, outlined below, we considered the following:

- Health care-related questions and responses included in the California Justice Gap Study; and
- Information obtained from subject matter experts.

### **California Justice Gap Study**

The California Justice Gap Study included questions about health care-related issues, including questions asked about billing, the inability to access or other problems getting health care insurance, the denial of an interpreter in a medical setting, issues with debt collection or financial assistance relating to health care insurance coverage, and payment for needed equipment, procedures, or other services, as detailed below.

Health care-related issues were the most common type of legal problem experienced by Californians at all income levels, with 30 percent of all households reporting at least one health care-related problem. Health care ranked second highest for the percentage of problems for which only nonlegal help was received by Californians overall, and third highest for those with income above 125 percent of the federal poverty level.

The California Justice Gap Study results for the Health practice area identified the following specific legal needs for this population:

- Being billed incorrectly for medical services, including copays and deductibles.
- Having health care insurance that would not cover medically needed procedures, services, medical equipment, prescriptions, transportation services, or mental health services.
- Not being informed about financial assistance for health care or that free care might be available from a hospital or at home.

### **Subject Matter Experts<sup>1</sup>**

We had meetings with representatives of several organizations that provide assistance to or serve people with health care-related legal problems. Initially, we met with representatives from Santa Cruz County, including Ms. Siobhan Kelley, from the County Counsel's Office, Ms. Ellen Timberlake, from the Human Services Department, and Ms. Leslie Conner, from the Santa Cruz Community Health Center. We subsequently met with Ms. Stacey Hawver, Executive Director of the Legal Aid Society of San Mateo County and Mr. Gerson Sorto, of Neighborhood Legal Services of Los Angeles, to discuss the medical legal partnerships (MLPs) that are part of these organizations. MLPs assist patients by addressing needs that impact their health, such as access to housing, food, and other benefits. From our discussions with the two MLPs we learned that while these types of programs do provide health-specific legal services, those types of services are not their primary focus. It was suggested that we contact the statewide Health Consumer

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<sup>1</sup> The summary of the conversations with subject matter experts is based on notes from staff, and have not been reviewed by the experts who were consulted.

Alliance (HCA), a network of 10 health consumer centers (HCCs) operated by community-based legal services organizations throughout the state, to get information about the type of health-specific legal needs outlined in the California Justice Gap Study.

To that end, we contacted Mr. Jack Dailey, coordinator of the statewide HCA and Director of the Health Consumer Center (HCC) housed within the Legal Aid Society of San Diego.

HCCs provided by legal aid programs serve the entire state; they assist people with the types of health-related problems identified in the California Justice Gap Study, including issues with billing, access to specialists, and denial of medical equipment. The HCA has identified a diverse array of funds, from the California Department of Managed Health Care, Covered California, and the California Endowment, that allows HCCs to serve people regardless of income; however, 90 percent of those served by these HCCs have a household income of less than 200 percent of the Federal Poverty Level (FPL) and another 5 percent are between 200 and 400 percent of FPL. The remaining 5 percent are above 400 percent of FPL. While services are available for free to all Californians regardless of income, the low utilization rate by Californians above 200 percent of FPL may be due to a lack of awareness about available services or an assumption of income ineligibility due to the fact that HCCs are housed within legal services programs, which generally serve low income populations. Mr. Dailey indicated that, while broader outreach may be necessary and would increase awareness, the HCCs do not currently have the capacity to serve all in need.

The legal work performed by the HCCs was described as being potentially suitable for nonattorneys to perform. In fact, there is currently a full array of nonattorney professionals assisting both HCC attorneys, and independently as part of a private market, in health-related advocacy. However, given the potential complexities involved, and the importance of relationships in solving many problems that arise, a rigorous and well-designed paraprofessional program would be required; Mr. Dailey expressed reservations about the ability of this work being performed in the absence of attorney oversight. Mr. Dailey explained that, while these areas require specialized knowledge, access to the appeals process is designed to be consumer friendly; the assistance of a licensed paraprofessionals with extensive training might be beneficial to those in need. Mr. Dailey also identified benefits planning and asset protection as areas where a trained, licensed paraprofessional might benefit consumers. One potential downside of the State Bar establishing a paraprofessional license in this area would be the possibility that those with limited means would inadvertently be diverted from the free services provided through the HCC's; careful marketing and information materials published by the State Bar would need to address this concern.

### **Medi-Cal Administrative Appeals**

The administrative processes for Medi-Cal appeals is similar to the process for public benefits, workers' compensation insurance and unemployment insurance, as detailed in the recommendation memo regarding the Income Maintenance practice area: if an initial application or claim is denied, an appeal is filed with California Department of Social Services. A

second level of appeal is available through the Department of Healthcare Service's Office of Administrative Hearings and Appeals, before an administrative law judge. The final remedy is superior court review, via an administrative writ.

The administrative processes allow for nonattorneys to represent the claimant in the proceedings themselves and no training or certification is required for nonattorneys. However, the statutes and regulations that allow for this representation appear to be silent about the scope of allowable representation outside of the parameters of the hearings themselves.

## **Recommendation**

We recommend that the Health practice area be included for ongoing consideration in a paraprofessional program, with a focus on the following subtopics identified by the California Justice Gap Study as areas of significant need:

- Billing for medical services, including copays and deductibles.
- Denial of access to services or equipment.
- Denial of access to insurance.
- Failure to inform of free services or available financial assistance.

Consideration of representation by licensed paraprofessionals in Medi-Cal appeals raises issues addressed by the discussion of representation in appeals regarding public benefits, workers' compensation and unemployment matters in the recommendation memo regarding the Income Maintenance practice area. Discussion of Medi-Cal appeals should be included during the discussion of that topic.

Paraprofessional licensing in the area of health care assistance would require rigorous licensing, training and testing, with continuing education in the field required for ongoing certification.



Date: June 30, 2020

To: California Paraprofessional Program Working Group

From: Julie D'Angelo Fellmeth and Ira Spiro

Subject: Consideration of Housing as a Practice Area to Be Included in a Paraprofessional Program

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### Executive Summary

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program.

### Discussion

At its first meeting on April 21, 2020, the CPPWG discussed potential practice areas for program inclusion. While there was agreement with regard to including certain practice areas for additional consideration and excluding others, several practice areas were deemed "wobblers," meaning that additional information was required before a decision could be made regarding their status. Members of the CPPWG volunteered to study each of the wobbler areas with the goal of generating recommendations regarding ongoing consideration for the program for review by the full body at its next meeting.

### Sources of Data and Information

In generating our recommendation, we considered the following data points:

- Housing-related questions and responses included in the California Justice Gap Survey and the ensuing Justice Gap Report (November 2019)
- [Sargent Shriver Civil Counsel Act Evaluation, June 2020 Draft](#) (2020 Shriver Evaluation)
- [Evaluation of the Sargent Shriver Civil Counsel Act \(AB590\) Housing Pilot Projects](#) (2017 Shriver Evaluation)
- [Assembly Judiciary Committee staff, Background Paper for an Informational Hearing entitled “How Can California Improve Access to Justice for Unrepresented Litigants?”](#) (February 25, 2020)
- National Low Income Housing Coalition, [Out of Reach](#) (2019)
- Statistics compiled by Kyle Nelson, a PhD candidate and instructor in the Department of Sociology at the University of California, Los Angeles.

### California Justice Gap Report

The California Justice Gap Survey included questions about both homeownership and rental housing, as follows:

**“Homeownership:** Questions asked about being the target of misleading or dishonest mortgage practices, being told by a lender that extra financial products needed to be purchased to get a mortgage, falling several payments behind on a mortgage or having a home going into foreclosure, and selling or buying property. These questions were asked of those who own their home.”

**“Rental Housing:** Questions asked about a dispute with a landlord about rules or property, difficulty getting a security deposit back, the denial of reasonable accommodations for a medical condition, trouble getting a written lease or rental contract, failure to receive basic services or repairs, a threat of eviction, denial or trouble with a housing voucher or subsidy, harassment for rent, denial of relocation assistance from an unsafe rental unit, and denial of a rental unit because of prior juvenile or criminal system involvement. These questions were asked of those who rent their home.” (CJGS Report at page 57.)

Housing issues are of clear concern to low-income Californians. The California Justice Gap Report includes findings from the State Bar’s 2018–2019 census of legal aid organizations (all emphasis added). The CJGS Report states (page 11, see also page 44): “In 2018, legal aid organizations provided services to Californians most often for problems related to housing, immigration, and health,” with housing problems—reported by 21 percent of legal aid clients, immigration by 13 percent, and health by 10 percent—at the top of the list. (The census defined “housing” as including rental housing and homeownership/foreclosure issues; CJGS at page 44.)

Similarly, at page 49, the Justice Gap Report states: “The 2019 California Justice Gap Survey of California residents showed that 39 percent of problems for which low-income Californians

received help were discussed with legal aid (see Figure 10). An analysis of those problems revealed that the top three served by legal aid were related to rental housing (15 percent), health (13 percent), and employment (11 percent). The top three problems for which low-income Californians received legal help according to the Intake Census were housing (12 percent), foreclosure (11 percent) and health (11 percent). See Figure 16. [¶] The top problems served by legal aid organizations, according to both the California Justice Gap survey and the Intake Census involved rental housing (“housing” represents rental housing in the Intake Census).” Again, housing — in particular, rental housing — topped these lists.

At page 27, the report states: “Californians at or below 125 percent of FPL were most likely to receive only nonlegal help for rental housing, income maintenance, and homeownership.”

At page 43, the report states: “Previous sections of this report explored the civil legal needs of Californians at all income levels. This section explores the assistance received by low-income Californians who actively sought assistance from a California State Bar-funded legal aid organization. Key findings include: Housing and immigration are the top two problems reported to legal aid.”

“Homeownership” issues surfaced as the second-highest area (50 percent, second only to children and custody at 54 percent) where legal help was sought and received by individuals with incomes less than 125 percent of the federal poverty line. (The California Justice Gap Report at page 34, Figure 9.) The questions posed to CJGS survey respondents included several “homeownership” issues, including problems in “selling or buying property” (the actual questions are quoted above). It is reasonable to assume that one problem in “selling or buying property” might be clouds on the title of that property. It is unclear whether the entire process of clearing title on real property constitutes the practice of law. Clearly, writing a petition to quiet title is the practice of law (this working group is authorized to recommend that competent and qualified paraprofessionals should be able to file such a petition without attorney supervision). However, it is unclear whether other steps leading up to the filing of a petition (for example, researching and securing the title report, negotiating with lienholders in an attempt to persuade them to remove their lien) constitute the practice of law. Inasmuch as “homeownership issues” landed as the second-highest problem causing survey respondents at 125 percent of the federal poverty line to seek and secure legal help (CJGS Report at page 34), yet “real property issues” are fairly low in terms of frequency and criticality (California Attorney Practice Analysis Study at page 14), we believe that activities relating to clearing title to real property should be further studied for inclusion in a paraprofessional program.

Rental housing issues were identified by 31 percent of survey respondents with incomes below 125 percent of the federal poverty line. (CJGS Report at page 34, Figure 9.) As noted above, rental housing issues top the list of legal problems most frequently plaguing low-income residents and brought to the attention of legal aid attorneys. It seems clear to us that both rental housing issues and homeownership issues should be studied in depth for inclusion in a paraprofessional program. Although the CJGS report found that rental housing issues did not

evidence the same frequency or severity levels as homeownership issues, that is difficult for us to credit; it may be related to how the CJGS survey questions were phrased. The questions on rental housing were summarized on page 57 of the CJGS Report, and are quoted above; though the questions asked about “threat of eviction,” they did not ask about actual eviction proceedings.

### **Sargent Shriver Civil Counsel Act Evaluation, June 2020 Draft**

We note for the record that we were told that neither the Judicial Council nor the State Bar collects or has data on the number of unlawful detainer (UD) actions filed annually, the percentage of UD parties who are represented by counsel, the default rate by tenant defendants in cases where they are represented by counsel vs. cases in which they are not represented, and final outcomes in cases filed where parties are represented vs. cases filed in which either party lacks counsel. In fact, we are told that many counties do not report such data to the Judicial Council, and nothing requires them to.

As such, we are forced to rely on and extrapolate from data collected in pilot projects established under the Sargent Shriver Civil Counsel Act, Government Code section 68650 *et seq.* These pilot projects provide legal representation for self-represented low-income parties in civil matters involving critical livelihood issues such as housing, child custody, domestic violence, guardianship, and conservatorship. Under the Shriver Act, the Judicial Council in 2012 established housing-related pilot projects in six California counties.<sup>1</sup> The projects involve one or more legal services agencies working in collaboration with the local superior courts; the projects are funded by increases in various court filing fees, and they are intended to serve individuals with an income at or below 200 percent of the federal poverty level and facing an opposing party with legal representation. Because of the low-income requirement, more than 99 percent of litigants served were tenants (although some projects offer services to low-income landlords). (2020 Shriver Evaluation at page 13.)

The Shriver housing pilot projects were comprehensively evaluated in 2017, and a draft updated June 2020 comprehensive evaluation is now available. Although these evaluations are replete with detailed data and observations that support the involvement of legal counsel for usually-unrepresented tenant defendants facing eviction, they are limited to six counties. However, they provide data that are helpful to a discussion of whether there is a need for competent paraprofessional representation in UD proceedings. For example, the 2020 draft evaluation states that “[s]ince the Shriver Program’s inception in 2012, a total of 43,266 low-income litigants have received some type of civil legal service. ... Of the 43,000 litigants served, about 39,000 were involved in unlawful detainer (eviction) cases....” (2020 Shriver Evaluation at page I.)

As noted elsewhere in this recommendation, the largest Shriver housing pilot project is based in Los Angeles where, in fiscal years 2013 and 2014, “an average of 16,364 unlawful detainer cases were filed annually, ... and the Los Angeles housing pilot project provided legal aid services to an

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<sup>1</sup> In 2015, one housing project dropped out; in 2018, one new housing project was funded. (2020 Shriver Evaluation at page 3.) To avoid confusion, we will refer to six California counties.

average of 3,068 cases per year (18 percent).” (2017 Evaluation at page 48.) As such, the Shriver pilot projects may be reaching only the tip of the iceberg in terms of need. According to the Draft 2020 evaluation, “[A] recent report on eviction in Fresno County found that 73 percent of landlords were represented, versus only 1 percent of tenants. In addition, studies in two jurisdictions outside of California found that approximately 90 percent of landlords had attorneys and approximately 10 percent of tenants did.” (2020 Shriver Evaluation at page 9; footnote omitted.)

Further, according to a background paper prepared by Assembly Judiciary Committee staff for a February 25, 2020 hearing entitled “How Can California Improve Access to Justice for Unrepresented Litigants,” “nearly 90 percent of tenants who file an answer in their eviction proceedings appear [] without attorneys” (at page 2), and the number of Californians “who go to court without an attorney” is “4.3 million and growing” (at page 3). According to the 2017 evaluation of the Shriver program pilot projects, “among low-income populations, it is very common for unlawful detainer cases to involve landlords with legal representation and tenants without the resources to obtain counsel. By balancing the playing field, the Shriver Program sought to provide equal access to justice and to ensure that cases were decided on their merits and not as a result of one side having legal representation.” (2017 Shriver Evaluation at page II.)

**Housing Crisis in California:** The National Low Income Housing Coalition’s (NLIHC) 2019 *Out of Reach* report ranked California as the state with the second highest housing wage in the country. According to the NLIHC, housing wage is “an estimate of the hourly wage a full-time worker must earn to afford a rental home at HUD’s fair market rent without spending more than 30 percent of their income on housing costs. ... Data from the Shriver Act evaluation indicate that, across all six housing pilot projects in 2019, the majority of Shriver clients were rental cost burdened. ... Only 19 percent of clients had rents that were classified as manageable according to HUD standards.” (2020 Shriver Evaluation at page 6.)

**Need for Legal Assistance in Unlawful Detainer Cases:** “[E]viction is one of the most pressing civil justice issues for low-income individuals, as the loss of housing poses a wide range of short- and long-term risks and consequences for families. These risks can be particularly severe for vulnerable tenants, such as the elderly and people with disabilities. Among low-income populations, it is very common for unlawful detainer cases to involve landlords with legal representation and tenants without the resources to retain counsel.” (2020 Shriver Evaluation at page II.)

“The city [of Los Angeles] estimates there are about 30,000 eviction filings in court per year, and advocates figure about 85 percent of tenants have no legal representation. Many don’t know how to defend themselves and never show up in court, immediately forfeiting their case.” (*Los Angeles Times*, April 23, 2019.) As noted above, the Shriver Los Angeles housing pilot project processed an average of only 3,068 cases per year during 2013 and 2014. (2017 Shriver Evaluation at page 48.)

**Two Categories of Services Provided by Shriver Housing Projects:** “The housing pilot projects offered two levels of legal service: (a) full representation by a Shriver attorney, and (b) unbundled services (help with discrete legal tasks). Across the six projects, 56 percent of Shriver clients received full representation and 44 percent received unbundled services.” (2020 Shriver Evaluation at page 50.)

**Landlords Nearly Always Are Represented by Counsel in Unlawful Detainer Cases:** “Of those tenants who received full representation from a Shriver attorney, 95 percent were facing a landlord who was represented by counsel (1 percent were not and 4 percent were unknown).” (2020 Shriver Evaluation at page 50.) “Of those provided with unbundled services, 71 percent faced a represented landlord (14 percent did not and 10 percent were missing this information).” (2020 Shriver Evaluation at page 14.)

**Shriver Projects, While Helpful, Do Not Come Near to Meeting the Full Need for Representation:** As noted above, the Shriver Housing Projects are located in only six of California’s 58 counties. The Shriver projects in Los Angeles, San Diego and Sacramento are quite large. But many large counties are not included, such as Alameda, Santa Clara, San Mateo, San Bernardino, Riverside, and Orange. None of the largely rural counties are included, and many of those are low-income counties.

“Staff at several of the [Shriver housing projects] reported that they were unable to serve all of the litigants who did present for help because demand for service consistently outpaced their capacity to provide it. One staff member explained, “[W]ith the current funding and staffing levels, our program cannot assist everyone that shows up for help.” Capacity problems were exacerbated for legal services agencies in rural areas that struggled to stay fully staffed.” (2020 Shriver Evaluation at page 45.)

In the Shriver Housing Projects, nearly half the clients did not receive full representation: “10,855 clients (56 percent) were provided full representation by a Shriver attorney, while the remaining 8,605 clients (44 percent) received at least one unbundled service.” (2020 Shriver Evaluation at page 14.)

“In several areas, the Shriver pilot project was the only provider of free assistance to low-income tenants facing eviction. In some places, the demand for service exceeded the capacity of the project and litigants were turned away. In other areas, especially larger geographic regions, Shriver staff noted that accessing services was challenging for tenants with disabilities, unreliable transportation, or inflexible work schedules. It could take hours, by bus, to get to the courthouse or to legal aid offices, which can be a significant impediment to accessing help, even when it is free. Enabling Shriver staff to accommodate clients by going to their homes for the initial meeting might help surmount these barriers.” (2017 Shriver Evaluation at page 191.)

Additionally, project staff expressed concern for those tenants who did not qualify for Shriver services due to their income, but who could still not afford an attorney, and therefore tended to

slip through the cracks. Further, they felt that low-income landlords would benefit from legal assistance at a greater level than what was available in the current projects.” (2017 Shriver Evaluation at page 191.)

**Defaults by Tenants Are Very Common; The Need for Assistance in Filing Answers:** “Tenants’ access to justice depends on their ability to successfully file a written response to the unlawful detainer complaint within five days. Inability to do so results in a default, whereby tenants lose possession of the property without ever presenting their side of the case.” (2020 Shriver Evaluation at page III.)

“In unlawful detainer cases, defaults tend to be very common. In 2019, across four of the counties with Shriver housing pilot projects, the average default rate was approximately 40 percent. (2020 Shriver Evaluation at page III.)

**Increased Representation of Tenants in Unlawful Detainers Does Not Result in More Trials More Work for the Courts; It Decreases the Courts’ Work:** “Balancing the playing field did not appear to make unlawful detainer proceedings more combative or drawn-out. Instead, it increased the likelihood of settlement. Across all six pilot projects, 66 percent of tenants with Shriver representation settled their cases and 4 percent resolved their cases via trial (18 percent were dismissed, 4percentresolved another way, and 8percentwere unknown). Random assignment study found that the settlement rate with balanced representation is significantly higher (67 percent) and the trial rate lower (3 percent), than what occurs when the tenant is self-represented (34 percent and 14 percent, respectively).” (2020 Shriver Evaluation at page III.)

“Although providing representation to tenants did not shorten the time to resolve cases, it did reduce the level of involvement necessary by the court to bring cases to resolution. Shriver services enabled a majority of unlawful detainer cases to resolve by settlement, which requires comparably fewer court resources, and limited the number of cases that went to trial, which is a more resource-intensive activity for court staff and judges. These efficiencies can help alleviate court congestion by reducing the load on court clerks and judicial officers, and they also translate into cost savings over time. (2020 Shriver Evaluation at page V.)

**Statistics Compiled By Kyle Nelson, a PhD candidate and instructor in the Department of Sociology at the University of California, Los Angeles.**

- Los Angeles, CA (Blue Ribbon Citizens’ Committee on Slum Housing 1997): “4% of tenants, as opposed to the ‘vast majority of landlords’ were represented [in eviction proceedings].” (Quoted in Chester Hartman and David Robinson, *Evictions: The Hidden Housing Problem*, Housing Policy Debate 14(4):461, 477 (2003).)
- Los Angeles, CA (Blue Ribbon Citizens’ Committee on Slum Housing [1997-1998]: “Of 51 tenants who attempted to defend their eviction based on conditions, not a single tenant proceeding unrepresented was successful.” (Quoted in Russell Engler, *Connecting Self-*

*Representation to Civil Gideon: What Existing Data Reveal About When Counsel Is Most Needed*, Fordham Urban Law Journal 37(1):38, 50 (2010).)

- Los Angeles, CA (Blasi 2004): “Out of 151 tenants who had asserted facts constituting breaches of the implied warranty of habitability, the total number who prevailed at trial without a lawyer was zero. And when the pro se tenants settled, as most did, the terms were no better than what would have happened had they gone to trial and lost.” Gary Blasi, *How Much Access—How Much Justice*, Fordham Law Review 73:865, 869 (2004).

## Recommendations

Many of the reports upon which we relied were published prior to the coronavirus pandemic and its resulting stay-at-home orders and economic shutdowns across California and the United States, which seem certain to exacerbate California’s housing woes. As of June 25, 2020, the U.S. unemployment rate was 13.3 percent; almost 20 million U.S. citizens are unemployed. At 15.5 percent, California’s unemployment rate is even worse. Although many jobless individuals are collecting unemployment benefits, many are unable to pay rent — leaving tenants open to eviction. In response to this crisis, state and local officials have issued orders temporarily protecting tenants from eviction for nonpayment of rent due to financial impacts related to the virus. On March 4, Governor Newsom declared a state of emergency as a result of the pandemic and, in early April, the Judicial Council issued an emergency rule suspending eviction actions; the rule will remain in place until 90 days after the Governor lifts the emergency order.

Despite these actions, some landlords are allegedly evicting nonpaying tenants without filing unlawful detainer actions by locking them out of their homes, turning off their utilities, and deploying other illegal methods (*Los Angeles Times*, June 18, 2020). Additionally, some local sheriff’s offices are resuming eviction proceedings in cases that were initiated prior to the Governor’s executive order (*San Diego Union-Tribune*, May 7, 2020). Suffice it to say that once the Governor lifts the executive order, and barring new legislation, eviction proceedings will skyrocket and overwhelm the courts, legal services organizations that sometimes represent tenants in UD actions, and even the cadre of attorneys who regularly represent landlords in those actions.

Our team concludes that the data support further consideration of the inclusion of several housing issues in a program allowing qualified paraprofessionals to practice law without attorney supervision. In particular, we recommend that rental housing issues related to eviction and unlawful detainer proceedings be included in such a program.<sup>2</sup> In addition, we recommend

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<sup>2</sup> At first blush, this practice area seemed different from the rest because of the presence of the statutory Unlawful Detainer Assistant (UDA) category, paraprofessionals authorized by law to render “assistance or advice in the prosecution or defense of an unlawful detainer claim or action.” (Bus. and Prof. Code § 6400(a).) But the UDAs really don’t make this practice area different. The idea of the Paraprofessional Program being studied by this working group is to allow paraprofessionals to do work that presently they cannot do because it constitutes the practice of law and thus violates the laws against unauthorized practice. The work of UDAs is confined to activity

that the homeownership issue of clearing title should be further studied for inclusion in such a program; we do not recommend that paraprofessionals assist with buying or selling property or handle quiet title lawsuits.

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that does not constitute the practice of law. (Bus. and Prof. Code § 6411.) Thus, in this respect UDAs are no different from any other nonlawyers and, like all nonlawyers, they are prohibited from practicing law, even in unlawful detainer proceedings.



Date: June 30, 2020

To: California Paraprofessional Program Working Group

From: Steven Fleischman, Carolin Shining, Ira Spiro, and Judge Erica Yew

Subject: Consideration of Income Maintenance Practice Area to be included in a Paraprofessionals Program

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### Executive Summary

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program.

### Discussion

At its first meeting on April 21, 2020, the CPPWG discussed potential practice areas for program inclusion. While there was agreement with regard to including certain practice areas for additional consideration and excluding others, several practice areas were deemed "wobblers," meaning that additional information was required before a decision could be made regarding their status. Members of the CPPWG volunteered to study each of the wobbler areas with the goal of generating recommendations regarding ongoing consideration for the program for review by the full body at its next meeting.

The present team assessed the Income Maintenance practice area. In generating our recommendations, outlined below, we considered the following:

- Income maintenance-related questions and responses included in the California Justice Gap Study;

## Consideration of Income Maintenance as a Practice Area to be included in a Paraprofessional Program

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- Information obtained from subject matter experts in the field of unemployment insurance;
- Information from an administrative law judge who hears workers' compensation cases;
- Review of administrative processes for public benefits, unemployment insurance, and workers' compensation; and
- An opinion issued by the State Bar's Office of General Counsel.

### California Justice Gap Study

The California Justice Gap Study included questions about income maintenance-related issues including questions asked about trouble receiving the earned income tax credit; the reduction or termination of state government income, food, disability or housing benefits; and the denial or termination of federal Supplemental Security Income, Social Security Disability income, or Social Security Survivors benefits. Certain problems in the California Justice Gap Study in the broad category of employment were considered by some of the members to be appropriate to include in the income maintenance category for the purpose of consideration by the CPPWG, specifically related to problems with workers' compensation and unemployment insurance claims.

CJGS results were generally categorized as follows:

<b>Top 3 legal needs, all Californians</b>	<b>Top 3 legal needs, Californians at or below 125% of FPL</b>	<b>Top 3 legal needs, Californians above 125% of FPL</b>
Top 3 areas for which legal help sought and received, all Californians	Top 3 legal needs for which legal help sought and received, Californians at or below 125% of FPL	Top 3 legal needs for which legal help sought and received, Californians above 125% of FPL
Top 3 legal needs with severe impact, all Californians	Top 3 legal needs with severe impact, Californians at or below 125% of FPL	Top 3 legal needs with severe impact, Californians above 125% of FPL

Income maintenance legal needs aligned with one of these categories: top 3 legal needs with severe impact, Californians at or below 125 percent of FPL. Employment issues were among the most commonly reported types of problems for Californians at or below 125 percent of FPL.

California Justice Gap Study results for the Income Maintenance practice area identified the following specific legal needs for this population:

- Being denied or terminated from federal Supplemental Security Income;
- Being told to pay back an overpayment for SSI, SSDI or Social Security Survivors benefits;
- Not being approved for or having income, food, disability, housing, or other state government assistance reduced or terminated;
- Being denied payments or medical, mental health, or vocational help for a job-related injury (workers' compensation); and

- Being denied unemployment benefits or unemployment benefits were stopped before they were supposed to.

### **Defining the Scope of Income Maintenance Practice Area**

As noted above, we have defined the broad category of Income Maintenance to include:

- SSI and SSDI: denial of eligibility or being told to pay back overpayments
- Public Benefits, including denial or termination
- Workers' compensation insurance
- Unemployment benefits

### **Subject Matter Expert**

Staff and Judge Yew met with Ms. Ruth Silver-Taube, who teaches the employment law clinic at Santa Clara University, which handles unemployment claims and wage and hour cases. She explained that nonlawyers can assist people with filing unemployment claims, as well as with representation at administrative appeals before the Unemployment Insurance Appeals Board. Free representation is generally available through legal aid programs, although not all those who apply for unemployment insurance qualify for legal aid services

### **Workers' Compensation Judge**

Judge Yew and Mr. Fleischman met with Judge Dora Padilla, who hears cases filed with the Workers' Compensation Appeals Board (WCAB). She explained that injured workers can readily find attorney representation, as statutory provisions provide for attorneys to be compensated based on a percentage of the claimant's settlement. Current procedures allow for paralegals, who work under an attorney's supervision, to communicate directly with the court and even represent clients in court proceedings, if acknowledgment of such representation is provided by the client. The Los Angeles workers' compensation court also allows for paralegals to represent injured workers in depositions. Lien claimants (e.g., hospitals, medical offices, medical equipment providers, etc.) may be represented by either attorneys or nonattorneys, for initial claims, reconsideration, and enforcement of judgments.

Judge Padilla was asked whether she would be in favor of paraprofessionals representing injured workers in administrative proceedings without an attorney's supervision. Judge Padilla expressed her view that she would **not** be comfortable with that change and that she prefers having the ability to be able to call in an attorney on a particular case if she was not comfortable with the paralegal's representation.

### **Review of Administrative Processes**

The administrative processes for public benefits, workers' compensation, and unemployment insurance are very similar: if an initial application or claim is denied, an appeal is filed with the administrative agency that manages the benefit or insurance. A second level of appeal is available through the agency's hearing body, before an administrative law judge. The final remedy is superior court review, via an administrative writ.

Before the superior court review stage all of these administrative processes currently allow for nonattorneys to represent the claimant in the proceedings themselves and, with the exception of representation in Social Security Administration proceedings, no training or certification is required for nonattorneys. However, the statutes and regulations that allow for this representation appear to be silent about the scope of allowable representation outside of the parameters of the hearings themselves.

### **Office of General Counsel Opinion**

The State Bar's Office of General Counsel (OGC) researched the question of what entity has authority to determine whether nonattorneys can represent parties to state administrative hearings, and found that, generally, the Legislature or the administrative agencies themselves (acting under the authority granted them by the Legislature) determine who may appear in administrative hearings. However, the scope of legal services nonattorney representatives can provide incident to the mere representation of parties before administrative tribunals is not clear. Potentially, the judiciary could have some role in regulation with respect to paraprofessionals providing services related to administrative hearings, including by providing clarity in this area. The Court could delineate activities that paraprofessionals could perform incident to appearing before administrative agencies without committing the unauthorized practice of law, where such representation is authorized by statute or regulation.

Staff inquired with the State Bar's Chief Trial Counsel (CTC) as to how nonattorneys who represent parties in admin hearings are viewed from an unauthorized practice of law perspective. The CTC's response mirrored that of the OGC, noting that there are several administrative hearing offices where a person is permitted to have a nonattorney represent them at the hearing, but that the regulations governing those hearings do not typically specify whether the nonattorney can or cannot provide any other services prior to or outside of the hearing. Where there is no clear guidance provided by the rule, where the nonattorney provides other services prior to or outside the hearing, the nonattorney may effectively be engaging in the unauthorized practice of law. If the goal of the CPPWG is to expand the areas of practice where nonattorneys can provide services to members of the public, the CTC recommends that the rules be clearly written to define exactly what services the nonattorney is permitted to provide. If the intent is to allow nonattorneys to provide services outside of the hearing itself, the rule should state that the nonattorney is allowed to provide advice or guidance prior to the hearing, decide what causes of action to raise, and what evidence and witnesses to present

### **Recommendation**

Our research found that nonlawyers are currently permitted to represent parties in administrative hearings for all categories included in the Income Maintenance practice area, and that it is beyond the purview of the working group to consider changes to this construct

given the jurisdiction of the Legislature and/or the administrative agencies themselves to so authorize. Our discussion therefore focused on whether we should recommend providing explicit authority to allow nonattorneys to engage in legal activities incident to that hearing representation. While we believe that there is an important public protection rationale for clarifying the scope of authorized services provided by nonattorneys in various administrative proceedings, there was not agreement regarding what that scope should be. The recommendations of each member of our group are provided below:

**A. Representation in Administrative Proceedings:**

**Steven Fleischman:**

Except for unemployment and worker's compensation matters, paraprofessionals are authorized to provide full scope representation in support of advocacy at the administrative agency level where nonattorneys are authorized to represent parties in administrative proceedings by state law. Paraprofessionals would specifically be allowed to provide legal advice in preparation for, or in reaction to, the actual administrative hearing itself. With respect to unemployment and worker's compensation matters, nonattorney advocacy would be limited to that authorized by the respective administrative agencies responsible for these proceedings.

**Ira Spiro:**

Except in workers' compensation, paraprofessionals are authorized to provide full scope representation at the administrative agency level where nonattorneys are authorized to represent parties in administrative proceedings by state law, including representation at the administrative hearing. In workers' compensation, paraprofessionals are limited to working under the direction of an attorney, as paralegals are by statute.

**Judge Yew:**

Paraprofessionals are authorized to provide full scope representation at the administrative agency level where nonattorneys are authorized to represent parties in administrative proceedings by state or federal law. Paraprofessionals would specifically be allowed to provide legal advice in preparation for, or in reaction to, the actual administrative hearing itself.

**Carolin Shining:**

Paraprofessionals are authorized to assist in Public Benefits proceedings. The scope and details of such representation should be the subject of further debate so that the terminology proposed is clarified. (It is premature to determine how that scope will be defined and shaped in this memo at this time.)

Paraprofessionals should not be involved in unemployment or workers' compensation proceedings (see discussion below).

**B. Representation in Superior Court:**

**Steven Fleischman and Ira Spiro:**

Paraprofessionals are not authorized to provide legal advice, prepare documents or provide representation in superior court related to the appeal of a decision of an administrative review board.

**Carolyn Shining:**

Paraprofessionals are not authorized to provide legal advice, prepare documents or provide representation in superior court.

**Judge Yew:**

Paraprofessionals are authorized to provide legal advice, prepare and file an administrative writ for judicial review, and provide representation in superior court to appeal the decision of an administrative review board.

While the need for clarity around authorized activities beyond those delineated in regulation exists for federal, as well as state, administrative proceedings, federal preemption could complicate any attempt to delineate authorized activities with respect to federal administrative agency proceedings. As such, we do not recommend including federal administrative proceedings that fall under the Income Maintenance practice area in a paraprofessional program.

At least one member is in favor of the working group recommending a strengthening of the Unemployment Insurance Code that would make inadmissible in evidence, in any action or special proceeding, other than a proceeding arising out of the provisions of that Code, all statements by any party, witness, administrative law judges or other person in connection with any claim or proceeding under the Code, and all documents exchanged, created, submitted or received in connection with any claim or proceeding under that Code.

A prime reason is to minimize the adverse effects of such statements on litigation of other claims between the employee and employer, in which the stakes are usually much greater than in the unemployment proceedings, and thus to minimize the adverse effects, in such litigation, of the work of paraprofessionals. Because unemployment proceedings normally take place before the employee and employer have considered potential litigation on other subjects, and because the stakes in such litigation are usually much higher than in unemployment proceedings, the parties normally and understandably do not study the law and the facts as much, or spend as much time and effort to be as unambiguous and accurate, as they would in the higher stakes litigation.

Another member adds that, notably, it is because of this complexity of these issues (as well as other complex legal issues which are specific to these two specialty areas) that the working

## Consideration of Income Maintenance as a Practice Area to be included in a Paraprofessional Program

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group should eschew further discussion of these areas as it would tax the resources of the group at this time.

Another member expressed strong opposition to such an amendment, for the reason parties in such litigation should be allowed to impeach each other and witnesses with statements in unemployment proceedings, and that unemployment claimants should not be able to make statements to obtain unemployment benefits and then make inconsistent statements in subsequently civil litigation. This member believes that it is far outside the jurisdiction of this working group to propose changes to the Discovery Act and Evidence Code regarding the admissibility of relevant evidence in a civil trial. Moreover, the opposing member feels strongly that this working group should be concerned with addressing issues within its charge and should not be used in a manner to overtly favor one group of private litigants (plaintiffs in employment cases) over another group of private litigants (defendants in employment cases), which would be the effect of this type of amendment.

With respect to representation of clients in superior court, at least one member was concerned about the results of the California Attorney Practice Analysis (CAPA) as it relates to allowing paraprofessionals to practice in superior court. The CAPA survey asked attorneys to rate the depth of knowledge required to complete tasks in specific legal areas, as well as the criticality of proficiency in the tasks and legal topics (i.e., the degree of harm that may be inflicted upon clients and/or the general public if an attorney is not proficient). The CAPA study created a composite score to measure both criticality and frequency (i.e., the importance of being proficient and the frequency in performing tasks in an area) for each practice area. The composite score for Civil Procedure is 20.7, the highest among all knowledge areas. Another relevant rating is regarding the depth of knowledge (DOK) required to perform the tasks with competence. On a 5-point scale, the DOK score for Civil Procedure is 3.7, near the high end of the metric.

Based on the CAPA study, at least one member of the Income Maintenance Group felt that the potential for problems created by allowing nonattorneys to practice law was potentially highest in litigation pending in superior courts. This member felt that this was a heightened concern with respect to petitions for writs of administrative mandate, which are highly complex procedurally and which are usually handled by a specialized bar. Therefore, this member concluded that paraprofessionals should not be permitted to represent clients in connection with petitions for writs of administrative mandate in superior courts.

One member believed that it was important to afford litigants the opportunity to have the paraprofessional who represented them follow the matter through to the superior court for review of their administrative decision. That paraprofessional would be most familiar with the facts of the matter and forcing the litigant to represent themselves in superior court may present insurmountable challenges for the litigant. In addition, forcing the litigant to hire an attorney who is not familiar with the case in order to access appellate review in the superior

## Consideration of Income Maintenance as a Practice Area to be included in a Paraprofessional Program

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court may cause the litigant to incur prohibitive costs or even discourage the litigant from seeking review or defending against a request for review. If the litigant preferred an attorney, the litigant could retain one and dismiss the paraprofessional. If the paraprofessional did not feel competent to appear in superior court, one would expect that any rules of professional conduct for the paraprofessional that would be enacted would require the paraprofessional to make such a disclosure. In addition, in many circumstances, the superior court proceedings would be more efficient with the litigant being represented by a paraprofessional or an attorney instead of appearing without any representation.

An additional recommendation generated by our group is broadly applicable to all practice areas being considered for inclusion in a paraprofessional program: new licensing requirements for the program should not disrupt existing *attorney-supervised* nonattorney advocacy and representation that is already taking place. We anticipate that the full working group will be able to consider the most appropriate approach to actualizing this recommendation during the licensing and certification phase of its work.



Date: June 30, 2020

To: California Paraprofessional Program Working Group

From: Julia Brynelson and Amos Hartston

Subject: Consideration of Veterans Advocacy as a Practice Area to Be Included in a Paraprofessionals Program

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### Executive Summary

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program.

### Discussion

At its first meeting on April 21, 2020, the CPPWG discussed potential practice areas for program inclusion. While there was agreement with regard to including certain practice areas for additional consideration and excluding others, several practice areas were deemed “wobblers,” meaning that additional information was required before a decision could be made regarding their status. Members of the CPPWG volunteered to study each of the wobbler areas with the goal of generating recommendations regarding ongoing consideration of the practice area for review by the full body at its next meeting.

The present two-person team assessed the Veterans Advocacy practice area. In generating our recommendations, outlined below, we considered the following:

- Veterans-related questions and responses included in the California Justice Gap Study;

Consideration of Veterans Advocacy as a Practice Area to Be Included in a Paraprofessionals Program

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- Information regarding programs, resources, and recourses available to veterans on both the U.S. Department of Veterans Affairs' (VA) and the U.S. Department of Defense's (DoD) websites;
- The State Bar's report on [Veterans Legal Services in California](#);
- Survey data from the VA's [Project CHALENG](#);
- Information obtained from subject matter experts in the field; and
- An opinion issued by the State Bar's Office of General Counsel.

**California Justice Gap Study**

The California Justice Gap Study (CJGS) included questions about issues with discharge status, denial of Veterans Administration benefits, denial of access to service-related medical care, and problems in getting an old job back after discharge.

CJGS results were generally categorized as follows:

<b>Top 3 legal needs, all Californians</b>	<b>Top 3 legal needs, Californians at or below 125% of FPL</b>	<b>Top 3 legal needs, Californians above 125% of FPL</b>
Top 3 areas for which legal help sought and received, all Californians	Top 3 legal needs for which legal help sought and received, Californians at or below 125% of FPL	Top 3 legal needs for which legal help sought and received, Californians above 125% of FPL
Top 3 legal needs with severe impact, all Californians	Top 3 legal needs with severe impact, Californians at or below 125% of FPL	Top 3 legal needs with severe impact, Californians above 125% of FPL

Veteran legal needs aligned with two of these categories: top 3 legal needs with severe impact, Californians at or below 125 percent of FPL, and top 3 legal needs with severe impact, Californians above 125 percent of FPL.

The California Justice Gap Study results for the Veterans practice area identified the following specific legal needs for this population:

- **Denial of VA benefits:** Being denied Veterans Administration (VA) disability, housing, educational, job training, or other service-related benefits.
- **Employment:** Having problems with getting an old job back after discharge or returning from deployment, and other employment-related problems.
- **Service discharge upgrades:** Experiencing problems with discharge status or the stated reason for separation from the military, including the impact of discharge status on access to VA medical care.

### **Additional Research**

We were initially inclined to recommend inclusion of veterans advocacy as a practice area in a paraprofessional program, given the significant identified need and the desire to assist this particular impacted population. However, additional information regarding the current systems for addressing Veterans Administration (VA) service-related benefits and discharge status matters was needed before a final decision could be made. State Bar staff assisted in gathering this information through a combination of staff research and discussions with Mr. Robert Muth, Director of the University of San Diego Veterans Legal Clinic, and Ms. Olivia Cole, Deputy Director of Legal Services at Swords for Plowshares, in San Francisco.

With respect to VA service-related benefits advocacy, both attorneys and nonattorneys already may be accredited to assist veterans under existing VA rules and procedures. There is a well-articulated, easily navigable process for attorneys and nonattorneys to become accredited and act on behalf of veterans in the preparation and presentation of claims for VA benefits and appealing a denial of benefits. Each county has a Veterans Services Organization (VSO) through which accredited, nonattorney claims agents are available to assist veterans in applying for VA benefits and/or appealing a denial of benefits. Initial applications are usually filed with the VA by veterans on their own or with the assistance of a VSO claims agent. If benefits are denied, an accredited attorney, nonattorney, or VSO can assist with filing an appeal with the Board of Veterans Appeals, an administrative process. In addition to county VSOs, private nonprofit VSOs, some legal service organizations, and pro bono attorneys provide assistance with both the filing of the initial claims application and, if needed, with appeals. In addition, under current law, fees may not be charged in connection with the initial filing of a claim for VA benefits. There is a statutory prohibition on charging fees for assistance with filing initial claims.

With respect to discharge status advocacy, both attorneys and nonattorneys already may assist veterans under existing rules and procedures. Each branch of the armed forces has its own process, rules, and regulations. Initial requests are filed with a Discharge Review Board, and appeals are filed with a Board for Correction of Military Records. Veterans can elect to either self-represent or seek the assistance of an attorney or nonattorney advocate in both of these proceedings. The DoD has not established an accreditation process for representation.

Thus, nonattorney advocates are already allowed to provide VA service-related benefits advocacy and discharge status advocacy, with the only differentiation being that, prior to being allowed to represent veterans before the VA, attorney and nonattorney advocates must go through and successfully complete the VA's accreditation process.

A more detailed overview of the results of staff research is provided as Attachment A.

As part of the overall research, we also explored veterans' employment-related issues raised by the CJGS and found that assistance and/or advocacy for employment-related issues is not provided by the VSOs. Instead, veterans are referred to seek the assistance of an employment law attorney or legal aid center that handles employment law matters. Based on this research, it

was concluded early on that it would be better for the working group to explore and address veterans' employment-related issues under the Employment practice area, at a later date.

Additionally, we also explored veterans' housing-related issues raised by the CJGS and concluded early on that it would be better for the working group to explore and address veterans' housing-related issues under the Housing practice area, at a later date.

### **Office of General Counsel Opinion**

The State Bar's Office of General Counsel (OGC) researched the question of California's jurisdiction to authorize nonattorneys to provide representation in federal proceedings and found that California does not have the authority to authorize nonattorneys to provide legal services in such proceedings, whether administrative or in court. Rather, federal agencies and federal courts set their own rules, which typically allow attorneys licensed in any state to appear before them. Additionally, various federal agencies already allow nonattorneys to represent parties under limited circumstances prescribed by federal law or regulation. The state has no authority to modify these federal provisions. A copy of the opinion is provided as Attachment B.

### **Recommendations**

Although Veterans' legal needs are significant and were identified in the California Justice Gap Survey as being one of the top 3 legal needs with severe impact on Californians both above and below 125 percent of FPL, we do not recommend inclusion of this practice area in a California paraprofessional program at this time. First, with respect to both VA service-related benefits and discharge status matters, nonattorneys are already allowed to advocate on behalf of veterans. Further, the prohibition on charging fees associated with filing of an initial application for VA benefits renders the market for nonvolunteer paraprofessionals nonviable. Finally, as outlined in the OGC opinion, the State Bar does not have the authority to regulate who may or may not advocate in federal proceedings.

Given the significance of the need, however, we do recommend that the working group include in its report that the State Bar convene Veterans Services Organizations, legal aid organizations, and pro bono attorneys that are currently providing legal services to veterans to discuss ways in which the State Bar can increase awareness of: (1) available services; (2) increase the number of attorneys providing pro bono legal services to veterans; (3) provide additional resources and trainings; and (4) to potentially recruit nonattorney volunteers interested in veterans advocacy as authorized by the VA and the DoD.

## Veterans Advocacy Summary Chart

## Attachment A

	Administrative Agency – Initial Filings	Administrative Agency - Appeals	Is nonattorney advocacy allowed?	Nonattorney advocacy provided by?	Are nonattorneys required to go through a certification/accreditation process?	Are there any associated fees to be paid by veterans	Would it be helpful to have certified paraprofessionals?
<b>Benefits Advocacy</b>	Department of Veterans' Affairs (VA)	Board of Veteran Appeals	<b>Yes</b>	Accredited representatives/claims agents, either working for private nonprofit veteran service organizations (VSOs) or state/county VSOs	<b>Yes</b> <ul style="list-style-type: none"> <li>Initial accreditation process for nonattorneys includes an extensive background investigation and an examination; ongoing education courses must be completed within the first year</li> <li>Accredited nonattorneys are required to complete CLE requirements every 3 years</li> </ul>	<ul style="list-style-type: none"> <li><b>No</b> - Collection of fees for initial filing is not allowed</li> <li><b>Yes</b> - Fees can only be collected if/when a notice of denial is issued and the case is appealed to the Board of Veteran Appeals</li> </ul>	<b>No</b> <ul style="list-style-type: none"> <li>Nonattorneys are already allowed to advocate on behalf of veterans</li> <li>The State Bar does not have the authority to regulate who may or may not advocate in federal proceedings</li> </ul>
<b>Discharge Status Advocacy</b>	Department of Defense (DoD) - Discharge Review Board (DRB) <ul style="list-style-type: none"> <li>Each branch of the armed forces has its own DRB</li> </ul>	Boards for Correction of Military Records (BCMR) <ul style="list-style-type: none"> <li>Each branch of the armed forces has its own BCMR</li> </ul>	<b>Yes</b>	Not explicitly stated	<b>No</b>	<b>Yes</b> Fee is usually agreed upon up front and the entire amount is due to the service provider, regardless of the outcome of the case	<b>No</b> <ul style="list-style-type: none"> <li>Nonattorneys are already allowed to advocate on behalf of veterans</li> <li>The State Bar does not have the authority to regulate who may or may not advocate in federal proceedings</li> </ul>



# The State Bar *of California*

OFFICE OF GENERAL COUNSEL

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Date: May 12, 2020

To: Leah T. Wilson, State Bar Consultant

From: Brady Dewar, Assistant General Counsel, Office of General Counsel

Subject: State Authority to Regulate Provision of Legal Services by Nonattorneys in Federal Proceedings

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## I. Question Presented

To what extent does California have the authority to authorize nonattorneys to provide legal services in federal proceedings such as proceedings regarding Social Security benefits, bankruptcy, veterans' benefits, and military discharge status?

## II. Short Answer

California does not have any authority to authorize nonattorneys to provide legal services in federal proceedings. Federal agencies and federal courts set their own rules regarding who may practice before them. Various federal agencies already allow nonattorneys to represent claimants before them under circumstances prescribed by federal law and/or regulation. The state has no authority to modify these federal provisions.

## III. Analysis

1. California Does Not Have Any Authority to Authorize Nonattorneys to Provide Legal Services in Federal Proceedings; Federal Agencies and Courts Control Who May Practice Before Them

States such as California cannot authorize nonattorneys to provide legal services in federal proceedings, whether before federal administrative agencies or in the federal courts. Rather,

federal courts and federal agencies have the right to control who practices before them. In *Benninghoff v. Superior Court*, 136 Cal. App. 4th 61 (2006), the Court of Appeal relied on these principles in ruling that the state superior court could not take jurisdiction over the federal administrative practice of a California attorney who resigned from the State Bar with charges pending:

**[S]tate law cannot restrict the right of federal courts and agencies to control who practices before them.** In *Sperry v. State of Florida* (1963) 373 U.S. 379, the United States Supreme Court vacated a state court injunction prohibiting a layperson from representing parties in the U.S. Patent Office. The court conceded that patent prosecution constitutes the practice of law, and that Florida law validly prohibited laypeople from practicing law in the state. But federal regulations allowing nonlawyers to prosecute patents preempted state laws barring the unlicensed practice of law. The court concluded that a state “may not deny to those failing to meet its own qualifications the right to perform the functions within the scope of the federal authority.”

*Benninghoff*, 136 Cal. App. 4th at 74 (emphasis added) (internal citations omitted); *see also* *People v. Salcido*, 42 Cal. App. 5th 529, 543 (2019) (“We accept that a state cannot penalize a nonlawyer who represents a client before a federal agency for the unauthorized practice of law, when the representation is authorized by federal law.”)

## 2. Various Federal Agencies Already Permit Nonattorneys to Represent Claimants

While states have no authority to control who may practice in federal proceedings, federal agencies and courts typically allow members of state bars to practice before them. *See, e.g.*, 42 U.S.C. § 406(a)(1) (“An attorney in good standing who is admitted to practice before the highest court of the State... of his residence ... shall be entitled to represent claimants before the Commissioner of Social Security.”); *See, e.g.*, L.R. 83-2.1.2 (United States District Court for the Central District of California) (local rule regarding appearance of attorneys before the federal district court).

And, as discussed in the examples below, various federal agencies already permit nonattorneys to practice before them under specified circumstances. Federal courts, on the other hand, generally permit only attorneys licensed by a state bar to practice before them, with limited

exceptions (such as for certain law students practicing under the supervision of an attorney; *see, e.g.*, L.R. 83-4 (United States District Court for the Central District of California) (local rule regarding appearance of law students meeting certain criteria and under the supervision of an attorney)). As set forth above, California does not have the authority to modify these federal provisions regarding who may practice before federal agencies and courts.

*a. Social Security*

Claims under titles II, XVI, or XVIII of the Social Security Act (concerning retirement and disability benefits, supplemental security income, and Medicare coverage) are pursued first through federal administrative hearings.<sup>1</sup> Federal statute permits the Social Security Administration (which hears claims relating to retirement and disability benefits and supplemental security income) to regulate the provision of services by nonattorneys in such administrative proceedings:

The Commissioner of Social Security may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys as hereinafter provided, representing claimants before the Commissioner of Social Security, and may require of such agents or other persons, before being recognized as representatives of claimants that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State... of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Commissioner of Social Security.

42 U.S.C. § 406(a)(1).

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<sup>1</sup> If the agency denies a claim, that claim may be appealed to federal court. The rules for who may provide representation in court are set by local rule, and generally limit representation to attorneys, subject to limited exceptions, such as for certain law students under attorney supervision. *See, e.g.*, L.R. 83-2.1.2 (United States District Court for the Central District of California) (local rule regarding appearance of attorneys before the federal district court; L.R. 83-4 (United States District Court for the Central District of California) (local rule regarding appearance of law students meeting certain criteria and under the supervision of an attorney).

Federal regulations, in turn, permit representation by attorneys and nonattorneys who meet certain qualifications, including moral character requirements. See, e.g., 20 C.F.R. §§ 404.1705, 416.1505 (setting qualifications for who may serve as representatives). Federal rules also include rules of conduct for representatives and provisions regarding when fees may be charged and at what rate. See 20 C.F.R. §§ 404.1740, 416.1540.; see generally SSA's Fee Authorization Processes (Social Security Administration 2020), <https://www.ssa.gov/representation/overview.htm> (overview of rules and procedures regarding fees). Federal law also sets additional qualifications that nonattorney representatives must meet in order to qualify to receive their fees directly from the Social Security Administration. See 42 U.S.C.406 §(e).

Nonattorney representatives who qualify under the rules may communicate with the Social Security Administration on behalf of claimants, may appear with them at hearings and interviews, and may perform other tasks similar to those a lawyer would perform. See generally “Your Right to Representation,” Social Security Administration Publication No. 05-10075 (June 2017), available at <https://www.ssa.gov/pubs/EN-05-10075.pdf>.

Of note, neither federal law nor federal regulation appear to prohibit a nonattorney who does not meet the Social Security Administration’s requirements for qualification as a nonattorney representative from merely providing advice to a Social Security claimant without actually representing the claimant before the agency. Thus, California may be able to authorize such advice-giving by a nonattorney without conflicting with federal law or regulation, so long as California does not purport to authorize or restrict practice before the Social Security Administration. However, the utility of such a limited exception to the prohibition unauthorized practice of law is not clear given that the Social Security Administration already permits qualified nonattorneys to actually represent claimants.

#### *b. Bankruptcy*

The requirements for appearing in bankruptcy court are set by local court rule. Appearances are generally limited to attorneys or certain law students under an attorney’s supervision. See, e.g., L.B.R. 2091-1 (United States Bankruptcy Court for the Central District of California) (local rule limiting appearance in bankruptcy court to attorneys admitted to the district court and certified law students who meet certain qualifications and are supervised by an attorney).

Federal law does permit nonattorneys called “bankruptcy petition preparers” to type documents for filing in bankruptcy proceedings, but these bankruptcy petition preparers are

specifically prohibited from providing any legal advice. *See* 11 U.S.C. § 110. The fees that such bankruptcy petition preparers may charge are limited by the court. In the Central District of California, such fees are typically limited to \$200. *See* Bankruptcy Petitioner Preparer Guidelines (United States Trustee, Central District of California 2004), *available at* [https://www.justice.gov/sites/default/files/ust-regions/legacy/2014/03/10/bpp\\_guidelines.pdf](https://www.justice.gov/sites/default/files/ust-regions/legacy/2014/03/10/bpp_guidelines.pdf).

There does not appear to be any federal prohibition on nonattorneys (other than bankruptcy petition preparers) providing *advice* regarding bankruptcy without appearing in court or preparing documents. Thus, California may be able to authorize such advice-giving by a nonattorney without conflicting with federal law or regulation, as long as such nonattorney is not also a bankruptcy petition preparer. However, California cannot authorize nonattorneys to prepare bankruptcy petitions or other filings or to appear in bankruptcy proceedings.

#### *c. Veterans' Benefits*

Veterans may be entitled to a number of benefits, including pensions, education benefits, healthcare benefits, and disability benefits. Claims for benefits are processed by the Department of Veteran Affairs, which also has an administrative hearing process for challenges to benefits determinations. Pursuant to federal regulation, both attorneys and qualified nonattorneys may represent veterans in pursuing claims, provided they meet certain requirements including meeting certain continuing education requirements and are then certified by the Department of Veterans Affairs; nonattorneys who are certified to represent claimants before the Department are referred to as “claims agents.”

Federal regulations expressly prohibit individuals who have not been certified by the Department as attorneys or claims agents from even assisting with the preparation of claims for benefits. *See* 38 C.F.R. § 14.629(b)(1) (“No individual may assist claimants in the preparation, presentation, and prosecution of claims for VA benefits as an agent or attorney unless he or she has first been accredited by VA for such purpose.”) Thus, in practice, California could not even authorize nonattorneys to provide mere advice to potential claimants for veterans’ benefits, as individuals who did so without obtaining accreditation from the Department of Veterans Affairs would likely be in violation of federal regulations.

#### *d. Military Discharge Status*

Challenges by service members to their discharge status (which may affect eligibility for veterans’ benefits) are heard by discharge review boards and boards for correction of military

records, which are authorized by federal statute. *See* 10 U.S.C. §§ 1552 (establishing boards for correction of military records in each service branch), 1553 (establishing military discharge review boards in each service branch). Each service branch has its own boards and promulgates its own regulations for practice before the boards. Army regulations, to cite one example, appear to permit representation of service members before the Army Discharge Review Board (ADRB) by attorneys and a broad array of nonattorneys, by defining “counsel or representative” as:

An individual or agency designated by the applicant who agrees to represent the applicant in a case before the ADRB. It includes, but is not limited to: a lawyer admitted to the bar of a Federal court or of the highest court of a state; an accredited representative designated by an organization recognized by the Secretary of Veterans Affairs; a representative from a State agency concerned with veterans affairs; and representatives of a private organization or local government agency.

*See* Army Regulation 15-180 (Sept. 25, 2019), *available at* [https://armypubs.army.mil/epubs/DR\\_pubs/DR\\_a/pdf/web/ARN7383\\_AR15-180\\_Web\\_FINAL.pdf](https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/ARN7383_AR15-180_Web_FINAL.pdf). This broad definition of who may represent service members before branch discharge review boards appears to be mandated for all service branches by Department of Defense instruction. *See* Instruction No. 1332.28 ¶ E2.1.3 (Dept. of Defense April 4, 2004), *available at* <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/133228p.pdf>.

#### **IV. Conclusion**

As set forth above, California does not have any authority to authorize nonattorneys to provide legal services in federal proceedings. Federal agencies and federal courts set their own rules regarding who may practice before them, which typically allow attorneys licensed by state bars to practice. Additionally, various federal agencies already allow nonattorneys to practice before them under limited circumstances prescribed by federal law and/or regulation. The state has no authority to modify these federal provisions.



Date: August 25, 2020

To: California Paraprofessional Program Working Group

From: Sharon Bashan and Judge Erica Yew

Subject: Consideration of Authorized Paraprofessional Tasks within the Collateral Criminal Practice Area: Expungements, Reclassifications, and Infractions

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### Executive Summary

At its June 30, 2020, meeting the Working Group heard recommendations regarding various practice areas being considered for inclusion in a paraprofessional program. One of those areas, Collateral Criminal, was advanced to a “deep dive” analysis phase, meaning that specific authorized tasks, as opposed to simply subtopics, would be identified. The present memorandum outlines recommendations for authorized tasks within the approved Collateral Criminal subtopics of reclassification, expungement, and infractions.

### Discussion

At its June 30, 2020, meeting, the full Working Group received recommendations regarding the Collateral Criminal practice area. Those recommendations were approved as follows:

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that, with the exception of clients with immigration issues, expungement and reclassification of convictions, and resolution of infractions, be included for ongoing consideration in a paraprofessional program, and that further study be conducted regarding how and whether paraprofessionals might serve clients with immigration issues.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends research and consider supporting a portal that was recently created and launched by TAP, which helps guide pro bono service providers through each step required to file for expungement and reclassification of convictions.

## Consideration of Authorized Paraprofessional Tasks: Expungements, Reclassifications, and Infractions

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The Collateral Criminal subcommittee, comprised of the authors of this memorandum, considered the following in developing recommendations for authorized tasks:

- Information from a Commissioner of the Superior Court, County of Santa Clara, regarding infractions; and
- Conversations with subject matter experts providing collateral criminal legal services

### **Overview of Subcommittee Charge**

The initial focus of the Collateral Criminal practice area were expungements and reclassifications; related recommendations were brought forward to the Working Group at its June 30, 2020 meeting. Those recommendations included a reference to the fact that there was an outstanding issue related to immigrant post-conviction relief (“crim/imm”) matters – expungements and reclassifications for clients who may face immigration consequences. At that meeting the Working Group decided to include infractions as an additional authorized paraprofessional subtopic within the broader area of Collateral Criminal. As a result we have focused our efforts since June 30 on better understanding infraction proceedings and on specifying the tasks and activities that paraprofessionals should be authorized to perform within that area as well as the areas of expungements and reclassifications. With respect to expungements and reclassifications, we were particularly interested in learning more about “crim/imm” matters in order to develop a related recommendation for the Working Group to consider.

### **Infractions**

Commissioner Copeland of the Superior Court, County of Santa Clara, provided detailed information about the resolution of infraction matters, specifically as related to infraction cases that are heard in traffic court. She explained that generally, once a ticket for an infraction has been issued, the person has two months from the date of the issuance to take one of the following steps:

- Plead guilty and pay the traffic fine;
- Pay to go to traffic school (as long as they are eligible);
- Provide proof of correction, if they got a traffic ticket for a “Correctable Violation”;
- Appear at court on the date that is on the ticket; or
- Plead “Not Guilty” and ask for a trial (either a court trial by a judicial officer or a trial by mail/written declaration).

Commissioner Copeland indicated that self-represented litigants comprise 10-15 percent of all litigants who appear before her either for arraignment or trial. Commissioner Copeland expressed that she is comfortable with paraprofessionals providing clients with procedural guidance with respect to all of the bulleted tasks/activities other than the in-court representation that is associated with those litigants who request court trials. She would, however, be inclined to reconsider her position regarding in-court representation provided by

paraprofessionals should robust certification/training requirements, along with provisions for ongoing quality control and frequent oversight, be established and instituted.

### **Expungements and Reclassifications**

Ms. Peggy Stevenson, who runs the Record Clearance Project (Project) at San Jose State University, provided in-depth information regarding the scope of work performed by her team of undergraduate students. She also shared helpful documents that her team uses and provided detailed information regarding the Project's client intake and initial case analysis processes. Ms. Stevenson noted that the Project does not refuse clients with potential immigration issues; Project team members are however trained to advise *all* clients regarding the potential of adverse immigration consequences and further advise that clients consult with an immigration attorney prior to starting the expungement process.

We also met with Ms. Nora Cregan, Founder and Executive Director of The Access Project (TAP), who presented an expanded demo of the TAP portal, and explained that it was created with the primary goal of creating a tool for pro bono attorneys to use to limit errors and create consistent work product. The next phase of development will be to build an interface with Judicial Council forms. The platform does not currently address infractions, but such a module could be developed. What makes the platform impressive and seemingly user-friendly is that it is not only programmed to efficiently guide the user through each step of the record clearance process, but it is also designed to check eligibility criteria under applicable statutes. The platform also provides users with a list of case-specific court documents/forms to be filed along with filing instructions (specific to each jurisdiction). Ms. Cregan also mentioned that they're hoping to make TAP available as a subscription.

Lastly, we met with Mr. Rose Cahn, Senior Staff Attorney at the Immigrant Legal Resource Center (ILRC). Ms. Cahn, who is a nationally recognized expert in the "crim/imm" field, oversees ILRC's pro bono Immigrant Post-Conviction Relief Project. The Project's primary goals are to educate and train immigrant communities to advocate for themselves and train and assist attorneys and legal advocates/paralegals to secure post-conviction relief for their clients. Ms. Cahn indicated that the widespread need and scarcity of legal advocates, which still prevails in this practice area, was the catalyst for this initiative. As part of that effort, a comprehensive toolkit was also created and is available through the training. The kit includes a robust client screening questionnaire and information regarding case-specific forms of relief/eligibility criteria. The purpose of the toolkit is to help legal service providers, including paralegals and paraprofessionals, to spot a defendant's possible immigration relief, especially in the more straight forward cases such as rehabilitative relief and reduction of sentence (Prop. 47). With respect to motions to vacate (expungements) matters, Ms. Cahn asserted that those should either be referred to an attorney or performed in partnership with one; otherwise, "crim/imm" practice area is well suited for paraprofessionals. Another resource available to legal advocates and attorneys is ILRC's Attorney of the Day (AOD) consultation service, which provides case-specific technical assistance to attorneys and legal advocates.

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Based upon information gathered during all phases of the review of the Collateral Criminal practice area our subcommittee was in initial agreement that licensed paraprofessionals should be able to perform virtually all tasks within the areas of expungements, reclassifications, and infractions. As such, the bulk of our discussions centered around only a narrow set of potentially unallowable tasks/case types as described below:

*In-court representation.* There is a wide acknowledged recognition of the need for legal assistance in the areas of expungement, reclassification, and infractions, including in-court representation assistance. Although during the course of our review we heard from some who were opposed to paraprofessionals providing in-court representation, including Commissioner Copeland as noted above, upon consideration of the information provided by all of the subject matter experts that we spoke with we believe that paraprofessionals can be trained to handle these kinds of matters properly and, therefore, should be allowed to represent clients in court. Additionally, there is a relative lack of consequence associated with errors; those seeking these types of post-conviction relief have more than one "bite at the apple."

*Certificates of Rehabilitation.* Certificates of Rehabilitation are filed for individuals convicted of a felony who served time in state prison or were convicted of certain misdemeanor sex crimes as conviction expungements are not available to these types of offenders. There is a considerable need for representation of clients in these circumstances. However, given the nature of the underlying offenses there is typically strong opposition from District Attorneys in these matters; as such we do not believe they are appropriate for paraprofessionals to handle.

*Representation of Clients with Immigration Issues ("crim/imm").* "Crim/imm" matters are a hybrid between criminal and immigration, i.e., criminal conviction with immigration consequences. There is a wide acknowledged need for legal service providers in this practice area; however, we believe that additional information is needed to ascertain the exact level of complexity and consequences of errors during each phase of the process.

## Recommendations

Consideration of Authorized Paraprofessional Tasks: Expungements, Reclassifications, and Infractions

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With the above context in mind, our recommendations for authorized tasks for the three authorized subtopics are as follows:

	Tasks	Authorized Paraprofessional Task?	
Record Clearance (Expungements and Prop. 47)	Client Intake	Yes	
	Client retainer/engagement	Yes	
	Run Live Scan OR assist client with obtaining court records	Yes	
	Ensure client is no longer on probation	Yes	
	Check on outstanding fines and fees	Yes	
	Check applicable code sections to determine eligibility for expungement, reduction, or other clean slate remedy	Yes	
	Prepare appropriate petitions and proposed orders by county and remedy (determine if petitions are mandatory or discretionary)	Yes	
	Prepare the declaration	Yes	
	Prepare the proposed order	Yes	
	Determine if a record clearance is needed in addition to the expungement	Yes	
	File the petition & get a court date	Yes	
	Serve the DA	Yes	
	Appear in court if necessary	Yes	
	Obtain a copy of the order and send to the DOJ to get RAP changed	Yes	
	Preparing Certificate of Rehabilitation	<b>No</b>	
	Juvenile record sealing	<b>TBD</b>	
	Representation of noncitizens (“crim/imm”)	<b>TBD</b>	
	Infractions	Client Intake	Yes
		Client retainer agreement	Yes
		Obtain a copy of the citation	Yes
Determine hearing date		Yes	
Meet with client and determine what happened and what the client wants to do		Yes	
Explain the outcome to the client and what the client needs to do to comply with court’s decision		Yes	
	Appear in court if necessary	Yes	

**Next Steps**

Consideration of Authorized Paraprofessional Tasks: Expungements, Reclassifications, and  
Infractions

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We have not yet generated recommendations regarding the following tasks:

- Juvenile record sealing; and
- Representation of clients with immigration issues/consequences (“crim/imm”)

We plan to finalize recommendations regarding these areas subsequent to the August meeting.



Date: August 25, 2020

To: California Paraprofessional Program Working Group

From: Julia Brynelson, Steven Fleischman, Stephen Hamilton, Amos Hartston, Carolin Shining, Hon. Erica Yew

Subject: Consideration of Consumer Debt as a Practice Area to Be Included in a Paraprofessional Program

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### Executive Summary

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program.

### Discussion

At its first meeting on April 21, the CPPWG discussed potential practice areas for program inclusion. One of these areas was Consumer Debt. At its July 13 meeting, six members of the CPPWG volunteered to serve on a Consumer Debt subcommittee tasked with studying this practice area with the goal of generating recommendations regarding inclusion or exclusion of specific subtopics in this practice area for consideration by the full body at its next meeting.

The Consumer Debt subcommittee, comprised of the authors of this memorandum, is considering the following in conducting our assessment of Consumer Debt Law as a potential practice area for inclusion in a paraprofessional program:

- Consumer debt-related questions and responses included in the California Justice Gap Study;
- Information gathered from representatives of other state paraprofessional programs where consumer debt-related matters are authorized; and

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- Information obtained from subject matter experts/practitioners in the field.

### **California Justice Gap Study**

The California Justice Gap Study included questions about financial issues, including questions about problems getting credit because of identity theft, being the target of unfair lending practices or internet scams, problems with debt reduction or credit repair services, problems with terms for repayments of payday lenders, problems related to legal financial obligations, harassment by creditors, problems with pay for or repossession of a car, filing for bankruptcy, garnished wages, and disconnected utilities due to nonpayment or a billing dispute.

These issues, categorized as Consumer Debt, were the second-most common type of legal problem experienced by Californians at all income levels, with 21 percent of all households reporting at least one Consumer Debt -related problem.

The California Justice Gap Study results for the Consumer Debt practice area identified the following specific legal needs for this population:

- Identity theft
- Unfair or deceptive lending practices
- Credit repair services
- Payday/short-term lenders
- Fines and fees from criminal or juvenile cases
- Creditor/collection agency harassment
- Car repossession or defect/warranty issues
- Bankruptcy
- Wage garnishment
- Utility cutoff due to nonpayment or billing dispute

Of note, two additional or related topics that fall under Consumer Debt—representation of debtors in enforcement of judgment proceedings, and advice and representation related to debt collection—were previously addressed by the Working Group at its June 30 meeting pursuant to recommendations received regarding the General Civil practice area. The present subcommittee has not yet addressed these topics as they relate to the Consumer Debt areas under consideration. Pursuant to vote by the Working Group, the Consumer Debt and General Civil subcommittees have been combined to move forward on the related areas more efficiently.

### **Subject Matter Experts**

We met with the following attorneys who practice in the consumer protection/finance area: Mr. Noah Zinner, Bay Area Legal Aid; Ms. Leigh Ferrin, Public Law Center; Ms. Elizabeth

## Consideration of Consumer Debt as a Practice Area to Be Included in a Paraprofessional Program

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Gonzalez, Public Law Center; Ms. Gabriela Sandoval, The Utility Reform Network (TURN); Mr. Timothy Blood; Mr. Robert Hyde; Mr. David Kaminski; and Mr. Abbas Kazerounian.

### **Feedback Received From Other States**

Utah Supreme Court Justice Deno Himonas spoke with the subcommittee about the Utah Licensed Paralegal Practitioner (LPP) program. Consumer finance related matters, such as debt collection matters in which the dollar amount in issue does not exceed statutory limit for small claims (\$11,000), are authorized LPP activities in the State of Utah. Justice Himonas advised us that Utah currently has four licensed paraprofessionals and hopes to have another handful licensed in the near future.

Mr. Dave Byers, Administrative Director of the Courts in Arizona, spoke to the subcommittee about the Arizona Limited License Legal Practitioners (LLLP) program, which is currently being developed. He explained that the rules for the program, which are expected to be implemented later this year, will allow LLLPs to practice independently of lawyers and provide representation in any civil matter (including, but not limited to, debt cases) in limited jurisdiction cases. Neither Justice Himonas nor Mr. Byers indicated whether their states permit paraprofessionals to argue jury trials.

### **Status Update**

The subcommittee made decisions to exclude several subtopics within the Consumer Debt practice area:

- Bankruptcy;
- Identity theft;
- Unfair or deceptive lending practices;
- Problems with credit repair services;
- Payday/short-term lenders;
- Fines and fees from criminal or juvenile cases; and
- Car repossession or defect/warranty issues.

These decisions were based on various considerations, in some cases including complexity, the consequences of error in the initial stages of the proceedings, and overlapping federal court jurisdiction.

The balance of our subcommittee deliberations focused on the following remaining issues:

- Creditor/collection agency harassment;
- Wage garnishment; and
- Utility cutoff.

Following is a summary of the subject matter expert feedback received regarding some of these remaining subtopics:

**Creditor/Collection Agency Harassment**

Justice Himonas indicated that the Utah LPP includes consumer debt as an authorized activity because of the great consumer need in this area. Justice Himonas explained that the Utah program is forms-driven; essentially, LPPs can offer advice in any area in which approved court forms exist. He indicated that he is not aware of whether forms have been adopted specifically addressing creditor/collection agency harassment; in his view, the fact that there are potential federal remedies available to some consumers experiencing these problems should not preclude paraprofessional representation. LPPs are bound by an ethical obligation that requires them to advise the client if a case should be heard in federal court, and Justice Himonas believes this requirement provides sufficient protection.

Mr. Byers echoed Justice Himonas' view, stating that a majority of these cases are not complex and that there is an overarching need to increase access to legal services that should inform this work generally.

Mr. Hyde, a consumer rights attorney, asserted that consumer law is not easy to teach or quickly learn, even with a law degree or legal background and experience. He stated that the biggest problem he has identified in this area is that consumers are generally unaware of their rights and possible remedies.

Mr. Kaminski, a civil litigation attorney with practice focused on the defense of banks, creditors, and collection agencies, agreed with Mr. Hyde's overall assertion and added that, even if some cases were simple enough to be handled by paraprofessionals, the majority are not; they are often filed in federal court and are very complex in nature.

Mr. Blood, a consumer protection attorney, stated that consumer law is a very complex area and expressed that, while there are areas where nonattorneys could assist, the scope of their practice would have to be very limited.

Ms. Ferrin, Director of Litigation and Pro Bono at the Public Law Center, expressed mixed feelings about having paraprofessionals practice in this area. She stated that some of the topics and tasks are very complicated and beyond the scope of paraprofessionals; however, narrowly defined tasks and limited activities may be appropriate for a paraprofessional to perform.

### **Wage Garnishment**

Ms. Gonzalez and Mr. Kazerounian provided the subcommittee with a detailed overview of the wage garnishment process. They explained that while some steps in the process are form-driven and relatively simple and straightforward, there are critical timelines that must be adhered to, and a host of issues related to the underlying debt and consumer protections that sometimes are at issue. They asserted that an in-depth knowledge of the law in this area, as well as the interplay between various areas of consumer protection law, are needed in order to appropriately identify possible affirmative claims against the creditor in these matters beyond responding to the wage garnishment order. Their shared view was that the consumer debt area is not an appropriate area for paraprofessional licensure.

### **Utility Cutoff**

Ms. Gabriela Sandoval, Director of Strategic Initiatives at The Utility Reform Network (TURN), explained that TURN, a consumer advocacy organization, provides trainings for community advocates around the state who help consumers with complaints against utility companies. Some topics covered in the trainings are: how to stop utility shutoffs, reestablishing service, and setting up payment plans. Ms. Sandoval stated that they regularly work with community advocates that are nonattorneys.

### **Next Steps**

The subcommittee intends to continue with its work with regard to creditor/collection agency harassment, wage garnishment, and utility cutoff subsequent to the August 25 meeting, developing a full set of recommendations for the remaining subtopics and tasks included in the Consumer Debt practice area.



Date: August 25, 2020

To: California Paraprofessional Program Working Group

From: Steven Fleischman, Carolin Shining, Ira Spiro, and Judge Erica Yew

Subject: Consideration of Employment Law as a Practice Area to Be Included in a Paraprofessional Program

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### Executive Summary

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program.

### Discussion

At its first meeting on April 21, the CPPWG discussed potential practice areas for program inclusion. One of these areas was Employment Law. At its July 13 meeting, four members of the CPPWG volunteered to serve on the Employment Law subcommittee, tasked with studying this practice area with the goal of generating recommendations regarding inclusion or exclusion of specific subtopics in this practice area for consideration by the full body at its next meeting.

The Employment Law subcommittee, comprised of the authors of this memorandum, considered the following in conducting our assessment of Employment Law as a potential practice area or inclusion in a paraprofessional program:

- Employment-related questions and responses included in the California Justice Gap Study; and

- Information obtained from subject matter experts.

### **California Justice Gap Study**

The California Justice Gap Study included questions about employment-related issues, including questions about an employer who did not pay wages or other earned benefits, denial of worker's compensation, unsafe working conditions, unfair termination, denial of accommodation for disability or a medical condition, denial of unemployment benefits, inadequate treatment of a workplace grievance, and sexual harassment by a supervisor or coworker, as detailed below.

Employment-related issues were the third most common type of legal problem experienced by Californians at all income levels, with 16 percent of all households reporting at least one employment-related problem. Employment ranked highest for the percentage of problems for which only nonlegal help was received by Californians overall and for those with income above 125 percent of the federal poverty level.

The California Justice Gap Study results for the Employment practice area identified the following specific legal needs for this population:

- Unfair termination
- Unsafe working conditions
- Workplace grievances that were not adequately addressed
- Sexual harassment or unfair treatment or intimidation
- Wage and hour claims
- Unemployment benefits
- Denial of disability accommodations
- Workers' compensation

### **Subject Matter Experts**

We met with the following attorneys who provide assistance with employment-related problems through nonprofit legal aid programs: Ms. DeCarol Davis, from Legal Aid at Work; Ms. Dana Hadl, from Bet Tzedek Legal Services; and Mr. Chris Knauf, from the Disability Rights Legal Center. We also met with the following attorneys in private practice, Mr. Noah Lebowitz and Ms. Abigail Zelenski, who represent employees; and Ms. Laura Reatherford and Mr. Eric Schwettmann, who represent employers. These experts shared information about the work involved in handling employment cases, as well as their opinions about the scope of work that should be permitted for paralegals in this practice area.

The subcommittee also heard from an extensive number of attorneys practicing in this area who spoke during the public comment period during our meetings. Virtually every speaker

## Consideration of Employment Law as a Practice Area to Be Included in a Paraprofessional Program

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during the public comment period opposed inclusion of these areas in any paraprofessional program.

### **Subtopics for Inclusion and Exclusion**

The three members who were present at the first meeting of our subcommittee agreed to eliminate the subtopics of unfair termination, unsafe working conditions, and sexual harassment/unfair treatment, based on the fact that they involve issues that are quite complex, the consequences of error in the initial stages of these types of proceedings can be significant, and the related actions may involve proceedings in federal court. Ira Spiro, who was not present at this meeting, provides his dissenting opinion below.

Two of the subtopics that fall under Employment, wage and hour claims and unemployment benefits, were addressed at least in part by previous action by the working group at its June 30 meeting pursuant to recommendations received regarding the General Civil and Income Maintenance practice areas. The present subcommittee did not revisit those subtopics during the deliberation process that took place between the June and August meetings.

Following is a summary of the subject matter expert feedback received regarding the remaining two subtopics within the Employment Law practice area under consideration:

### ***Workplace Grievances and Disability Accommodations***

Ms. DeCarol Davis, of Legal Aid at Work, suggested that with appropriate training, paraprofessionals could provide direct assistance to clients in the pre-litigation stage of their cases, including preparation, guidance, advice and assistance with the employee grievance process to ensure that proper procedures were followed, provided such assistance was under the supervision of an attorney. She noted that there is a significant power differential between employers and employees, and that lay representation has been shown to be very empowering.

Ms. Davis added that it would be beneficial to her organization to have trained paraprofessionals who could provide assistance to their clients. She explained that Legal Aid at Work relies on law students, which requires them to train to each new class of students. While paraprofessionals might require ongoing supervision by attorneys, the continuity of staffing would be beneficial. Ms. Davis agreed with the subcommittee's ultimate conclusion that paraprofessionals should not provide legal services in this area unsupervised by an attorney.

Ms. Hadl, of Bet Tzedek Legal Services, stated that clients, especially undocumented workers, must be advised of the potential consequences of pursuing workplace rights. Both Ms. Hadl and Ms. Davis explained that the nonattorneys assisting clients through their clinics work under the direct supervision of attorneys.

Ms. Reatherford, who represents employers in these matters, explained that her goal in advising her clients was to avoid litigation, and that it was preferable to have the employer and

## Consideration of Employment Law as a Practice Area to Be Included in a Paraprofessional Program

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employee work directly with one another. She also asserted that employees are able to find attorney representation if necessary.

Mr. Knauf, of Disability Rights Access, asserted that, without adequate training and testing, paraprofessionals might give advice in the pre-litigation stage of an employment dispute that could prove harmful if the case were later to be litigated. He stated that, even with education and training, paraprofessionals should only be permitted to give legal advice while working under the supervision of an attorney.

Mr. Lebowitz, who represents employees in workplace discrimination and disability accommodations cases, agreed that attorney supervision should be required for paraprofessionals. He explained that this is a complex area of law that is subject to significant change over time. He added that most cases are resolved pre-litigation, but that decisions made during the early stage of a case may impact any litigation that follows.

Mr. Schwettmann, who represents employers in these matters, agreed that there were risks to having nonattorneys advising and representing employees in the pre-litigation stage of workplace grievances and requests for accommodations.

Ms. Zelenski, who represents employees in these matters, also asserted that these matters are very complex, with frequent changes to the law. She stated that representation is provided to employees on a contingency fee basis, and that employees are readily able to find representation.

Robust public comment was also taken at the beginning or middle of the first three sessions. The majority of the speakers during public comment were against the inclusion of these subject matter areas in the Paraprofessional program at this time. Also, some did not permit presentations by several invited subject matter experts but it was suggested that they be invited to engage in the "deep dive" process as appropriate.

The majority of the subcommittee (three of the four members) was convinced by the testimony of the subject matter experts, as well as the overwhelming number of public comments opposing this proposal, that these remaining areas also involve complex issues, and that procedural errors during the early stages of case may have dire consequences if litigation is pursued. They were also persuaded that the interactive process, which is initiated when an employee reports a grievance or requests an accommodation, involves direct communication between employee the employer and employee, and that introducing an employee advocate might be detrimental to the process.

At least one member of the subcommittee (Steven Fleischman) was concerned that permitting paraprofessionals to advise clients on these pre-litigation areas would have the potential to turn paraprofessionals into "runners and cappers" by referring their clients to particular

attorneys if the interactive process failed and litigation was required. Mr. Fleischman was also influenced by the strong opposition to this proposal made by public interest law groups.

## Recommendations

Following are the subcommittee's recommendations for the Employment Law practice area:

Subtopics	Excluded (unanimous recommendation)	Excluded (with one dissent)
Unfair Termination		X (see below)
Unsafe Working Conditions		X (see below)
Sexual Harassment		X (see below)
Workers' Compensation	X	
Workplace Grievances		X (see below)
Workplace Accommodations		X (see below)

As noted above, our group did not unanimously agree on whether the subtopics of unfair termination, unsafe working conditions, sexual harassment, workplace grievances, and workplace accommodations should be recommended for ongoing consideration for inclusion in a paraprofessional program. Following is the dissenting recommendation from Ira Spiro:

I disagree with the rest of the Working Group not only on Workplace Grievances and Workplace Accommodations. I also disagree that Unfair Termination, Unsafe Working Conditions and Sexual Harassment should be entirely eliminated.

I will explain my disagreement, but first I strongly believe that there should be far more Working Group members who are non-lawyers, the very people whose interests this California Paraprofessional Program is supposed to be serving. I am not impugning any of the lawyers in the Working Group – I am saying that their years and decades as lawyers are bound to influence their outlooks in ways different from non-lawyers. In the full Working Group, out of 13 members there are only 2 non-lawyers, although it appears that 5 or 6 of the lawyers are not substantially engaged in the practice of law. All members of this Employment Subcommittee are lawyers, although one is a Superior Court Judge, and thus her experience varies from most lawyers. The other three are practicing lawyers and have been for decades, although presently I practice very little. Two of the members were selected by private bar associations, i.e. associations of lawyers. Many non-lawyers know a good deal about the law, the business of law and the practice of law. For example, the hundreds or thousands of paralegals, investigators and other legal workers in California, and the non-lawyer staff and retired staff of the California courts and the State Bar.

## Consideration of Employment Law as a Practice Area to Be Included in a Paraprofessional Program

August 25, 2020

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With respect to Workplace Grievances and Workplace Accommodations , I am in favor of training and licensing paraprofessionals to advise employees in dealing with employers -- without being supervised by lawyers -- in such things as disagreements about scheduling; duties to employers and insubordination; rights to vacation, leaves, and breaks; workplace health and safety; and obtaining accommodations for disabilities. Possibly there should be separate licensing for each of these areas, depending on sufficient training in each. I am in favor of paraprofessionals advising employees on these and other subjects when there is no lawsuit or imminent threat of one; I recognize the line might be hard to draw, but the Employment Panel's votes thus far would eliminate even the possibility of drawing a line.

I also favor training and licensing paraprofessionals to represent employees in Small Claims Court lawsuits against employers, where the jurisdiction is limited to amount of \$10,000 or less, and possibly in Limited Civil cases, where the jurisdiction is \$25,000. Those cases could include unfair termination, unsafe working conditions and sexual harassment. I believe judges can screen the cases to assure that they are truly within the jurisdictional amounts before allowing paraprofessionals to represent employees in the cases. Similar screening is already authorized for Limited Jurisdiction cases under Code of Civil Procedure 403.040(a).

On the other hand, I believe non-lawyers should not employ more than a small number of paraprofessionals, possibly 5 or 6, possibly fewer, and non-lawyers should not own or control any organization that employs more than that maximum number. The Paraprofessional Program should not be a means for big business to make further inroads into the legal system and the law business. And I believe it should remain the law that law firms cannot be owned or controlled by non-lawyers.

### **Next Steps**

The group will return to the review of unemployment benefits and wage and hour claims, to determine specific authorized tasks.



Date: August 25, 2020

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, and Fariba Soroosh

Subject: Consideration of Family Law as a Practice Area to Be Included in a Paraprofessional Program

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### Executive Summary

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program.

### Discussion

At its first meeting on April 21, the CPPWG discussed potential practice areas for program inclusion. One of these areas was Family Law, including Children and Custody (referred to herein as Family Law). At its July 13 meeting, five members of the CPPWG volunteered to serve on a Family Law subcommittee tasked with studying this practice area with the goal of generating recommendations regarding inclusion or exclusion of specific Family Law subtopics for consideration by the full body at its next meeting. This memo provides an update on the status of our recommendations.

The Family Law subcommittee, comprised of the authors of this memorandum, considered the following in conducting our assessment of Family Law as a potential practice area for inclusion in a paraprofessional program:

- Family law examination specifications from the California Board of Legal Specialization and the National Board of Trial Advocacy;
- Information about the scope of allowed practice in family law for paraprofessionals in other states, including discussion with representatives of other state programs; and
- Discussion with Judicial Council of California Managing Attorney.

### **Family Law Legal Specialization Examination Specifications**

The California Board of Legal Specialization and the National Board of Trial Advocacy specify areas for which an attorney is required to demonstrate in-depth knowledge in order to be certified as a specialist in Family Law. This information served as a basis for the consideration of subtopics and tasks by our subcommittee.

### **Other State Paraprofessional Programs**

We reviewed information about the scope of practice for paraprofessionals providing assistance in family law cases in Arizona, Washington, and Utah, and met with representatives from the Arizona and Washington programs. The Washington Limited License Legal Technician (LLLT) program has been in operation since 2012; the Utah Licensed Paralegal Practitioner (LLP) program has been in operation since 2018. The Arizona Limited License Legal Practitioner (LLLP) program is expected to be approved by the Arizona Supreme Court this year.

### **Status Update**

Our initial task was to delineate all of the potential subtopics falling under the broad header of Family Law. We developed the following list, informed by both the California Justice Gap Study and the framework for the family law California Legal Specialization exam:

- Dissolution and parentage
- Division of assets and debt
- Custody and visitation
- Support (child and spousal)
- Violence prevention (domestic violence, elder abuse, civil harassment)\*
- Protection of the person (guardianship, conservatorship, adoptions not arising out of a dependency matter)\*
- Child Protective Services Investigations

Early on, the subcommittee decided that it would make more sense to begin with a focus on which tasks or activities a paraprofessional might be allowed to perform, as opposed to beginning our analysis by selecting particular subtopics within Family Law for exclusion or exclusion.

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\* With the exception of civil harassment, which was considered by the General Civil subcommittee, these topics have not yet been addressed.

The bulk of the subcommittee's discussion focused on the particular task of in-court representation.

There is a widely acknowledged recognition of the need for legal assistance in family law matters. Some members of our subcommittee believe that it is essential to allow paraprofessionals to represent clients in court, while others are adamant that in-court representation not be included in the scope of services to be provided by paraprofessionals, at least as part of the initial program. We considered information provided by representatives of the Washington and Arizona programs, and the Judicial Council of California, to inform our deliberations with respect to this issue.

Ms. Renata Garcia, Innovative Licensing Programs Manager at the Washington State Bar Association, and Mr. Steve Crossland, Chair of the Washington LLLT Board, confirmed that LLLTs in Washington are permitted to provide legal advice and to represent their clients in negotiations outside of court in a wide range of family law matters, but are excluded from representation in complex matters such as de facto parentage, property division, and other types of matters specified in the rules governing the program. LLLTs may accompany their clients to court proceedings, may confer with them during those proceedings, and may answer questions directed to them by a bench officer. However, their clients are considered pro se litigants.

Mr. Dave Byers, the Administrative Director of the Arizona Supreme Court, explained that the rules for the program expected to be implemented later this year will allow for LLLPs to represent clients in family law cases, with the exception of complex proceedings (QDROs, division of commercial or business entities, and appeals). Under the proposed rules, LLLPs will be allowed to provide full scope representation in these matters, including representation in court.

Ms. Bonnie Hough, Managing Attorney at the Judicial Council of California's Center for Families, Children and the Courts, who oversees Self-Help Centers at courts throughout the state, suggested that, in considering options for a paraprofessional program, the working group should evaluate the potential value added by having paraprofessionals assist consumers.

In addition to in-court representation, the sub-committee spent some time discussing the types of case specific factors that might preclude paraprofessional representation. Two of these, party income and asset levels, are outlined briefly below.

**Income limitation.** Some members of our subcommittee believe that dissolutions for higher income clients may involve issues that are too complex to be handled by nonattorneys, particularly if there is a significant disparity between the incomes of the parties to the dissolution. There may also be tax implications that are beyond the scope of a paraprofessional. Other members do not believe that it is necessary to prohibit paraprofessional representation based on the income of either clients or the opposing party in a dissolution.

**Asset limitation.** Similar to the issue of income, some members of our subcommittee believe that paraprofessionals should not be allowed to represent clients in dissolutions that involve the division of property and assets of significant value. There may also be tax implications that are beyond the scope of a paraprofessional. Other members believe that no such limit should be imposed. Instead, regulation of paraprofessionals should include a requirement that they refer clients to an attorney to handle the division of complex assets.

## Preliminary Recommendations

The subcommittee has generated preliminary recommendations with respect to some subtopic areas and tasks within Family Law as outlined in Tables 1 and 2 below:

**Table 1. Subtopics**

Subtopics	Included	Excluded	To be Determined
<b>Dissolution</b>	X		
<b>Parentage</b>	X		
<b>Division of Assets and Debt</b>	X		
<b>Custody and Visitation</b>	X		
<b>Child Protective Services Investigation</b>	X		
<b>Support</b>	X		
<b>Violence Prevention</b>			
Domestic Violence	X		
Elder Abuse			X
Civil Harassment	X		
<b>Protection of the Person</b>			
Guardianship	X		
Conservatorship			X
Adoption not arising from dependency	X		

**Table 2. Tasks**

Task Categories	Included	Excluded	Split Recommendation
<b>Legal Advice</b>	X		
<b>In-Court Representation</b>			X (see below)
<b>Preparation of Documents:</b>			
Pleadings	X		
Joinders	X		
Lis pendens	X		
Written discovery			Recommendation pending
Declarations	X		
Motions	X		

Task Categories	Included	Excluded	Split Recommendation
Briefs	X		
Exhibits	X		
Findings and Orders After Hearing	X		
Judgments	X		
Qualified Domestic Relations Orders (QDRO)		X	
<b>Tax Advice</b>		X	
<b>Trial Preparation</b>			X (see below)
<b>Trial Preparation Coaching for Self-Represented Litigants</b>	X		
<b>Oral Discovery</b>			Recommendation pending
<b>Mediation Preparation for Self-Represented Litigants</b>	X		
<b>Support Calculations</b>	X		
<b>Filing Appeals</b>		X	
<b>Appellate Advocacy</b>		X	

Following are the various recommendations regarding in-court representation (and trial preparation) generated by our subcommittee:

**Paraprofessionals in Court But May Not Address Court (Sharon Bashan, Stephen Hamilton and Fariba Soroosh):**

Paraprofessionals may sit at counsel table with their client to provide support, counsel and advice in family law proceedings. However, they may not directly address the court and may not be on the record of court proceedings.

**Paraprofessionals in Court and Can Responsively Address Court (Elizabeth Olvera):**

Paraprofessionals may sit at counsel table with their client to provide support, counsel and advice in family law proceedings, and may respond to direct inquiries from bench officers.

**Paraprofessionals May Represent Parties in Court in Some Proceedings (Dana McRae):**

Paraprofessionals may provide full representation in uncontested and noncomplex contested family law proceedings; the specific definition of noncomplex contested matters will be delineated by the CPPWG.

**Next Steps**

The subcommittee intends to continue with its work subsequent to the August 25 meeting, developing a full set of recommendations for all subtopics and tasks included in the Family Law practice area.



Date: October 29, 2020

To: California Paraprofessional Program Working Group

From: Kimberly Kirchmeyer and Ira Spiro

Subject: Status Report on Discipline System for a Paraprofessional Program

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## Executive Summary

The California Paraprofessional Program Working Group (CPPWG or Working Group) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the discipline system for paraprofessionals.

## Discussion

The initial project plan for the CPPWG provided for the selection of practice areas and tasks that would be authorized for licensed paraprofessionals, to be followed by development of recommendations for the licensing requirements, regulatory structure, and disciplinary system for the program.

At its August 25, 2020, meeting, however, members of the CPPWG expressed reservations with regard to endorsing paraprofessional practice areas and tasks in the absence of an understanding of the requirements for licensing, regulation, and discipline for this newly created license. The Working Group decided to pivot to consideration of these topics, after which it would return to the subject of practice areas and tasks. Three subcommittees were formed subsequent to the August meeting in response to this pivot: Licensing, Discipline, and Regulation.

The Discipline Subcommittee, which comprises the authors of this memorandum, was tasked with the development of a recommended paraprofessional discipline system. In doing so, they considered the following information:

- California's attorney discipline system;
- Discipline system for licensing boards under the jurisdiction of the California Department of Consumer Affairs (DCA); and
- Current and proposed discipline system for licensees of the Washington State Bar Association (WSBA).

This memo provides a report on the status of the subcommittee's discussions, and preliminary recommendations regarding a discipline system for paraprofessionals.

### **California Attorney Discipline System**

The subcommittee reviewed the discipline system for California attorneys, which comprises the Office of Chief Trial Counsel (OCTC), the State Bar Court (SBC) and the California Supreme Court. Complaints against attorneys are reviewed in OCTC's Intake Unit, which may close the complaint or refer it to investigation. If the investigation finds potential misconduct, OCTC may pursue action against the attorney respondent, up to and including filing a notice of disciplinary charges (NDC). If an NDC is filed, an OCTC attorney prosecutes the case before a judge in the SBC Hearing Department. The SBC Hearing Judge's decision can be appealed to the SBC Review Department, either by the respondent or OCTC. SBC final rulings are filed as recommendations to the Supreme Court, which considers the case de novo and rules on discipline. Either party may request a rehearing before the Supreme Court, after which final discipline may be imposed. A detailed description of the California attorney discipline system is provided as Attachment A.

### **Discipline System for DCA Licensing Boards**

The subcommittee reviewed the discipline system for the California Medical Board, which is similar to that of other DCA licensing boards. Complaints against licensees are reviewed in the Central Complaint Unit (CCU), which may close the complaint or refer it to a District Office (DO) for investigation. The DO may close the case or refer it to the Attorney General (AG), which determines whether to initiate disciplinary action. Both the CCU and the DO have the option to refer the matter to the Citation and Fine Program, if it is determined that a minor violation has occurred. Imposition of a citation, which may include a fine, does not constitute disciplinary action.

In cases where it determines that discipline is warranted, the AG drafts formal charges, which are filed by the Board's Executive Director. The AG prosecutes the licensee before an Administrative Law Judge (ALJ), who writes a proposed decision. The proposed decision is reviewed by a panel of the Medical Board, which may adopt the decision as proposed, reduce the penalty and adopt the decision, or increase the penalty and adopt the decision, after written and oral argument. Decisions may be appealed by the licensee to the Medical Board panel; final decisions may be appealed to the Superior Court, the District Court of Appeal, and the Supreme Court. A detailed description of the Medical Board's enforcement process is provided as Attachment B.

### **Current and Proposed Discipline System for Washington Licensees**

The subcommittee met with Mr. Bobby Henry, Associate Director of Regulatory Services with the WSBA. Mr. Henry explained that, when the Limited License Legal Technician (LLLT) program was

implemented in Washington, a new discipline system was developed for LLLTs, which resulted in three separate disciplinary systems for WSBA licensees: (1) one for attorneys, (2) one for Limited Practice Officers (LPOs),<sup>1</sup> and (3) one for LLLTs. Complaints against attorneys are reviewed in the Office of Disciplinary Counsel (ODC), while complaints against LLLTs and LPOs are reviewed in the Regulatory Services Department, which may dismiss a complaint or refer it for investigation by ODC. Complaints warranting prosecution are heard before either a Disciplinary Board Committee, a LLLT Disciplinary Committee, or an LPO Discipline Committee. Appeals from committee decisions are heard by the licensing board of each licensee designation.

Mr. Henry reported that this system has proven inefficient, and that a new system has been proposed to streamline this process. In the newly proposed structure, which is currently out for public comment, all complaints would be reviewed and investigated by ODC, which could recommend dismissal, diversion, or a hearing. Cases referred for a hearing would go before an Office of the Regulatory Adjudicator (ORA) Authorization Panel, a three-person panel consisting of a staff adjudicator and two volunteers, which would authorize a statement of charges. Cases would be heard by an ORA staff adjudicator, while appeals would be brought before an ORA Appeal Panel, a five-person panel consisting of a staff adjudicator and four volunteers. Flow charts showing the current and proposed WSBA discipline systems are provided as Attachment C.

### **Preliminary Recommendations**

In the subcommittee's discussion of a disciplinary system for a paraprofessional program, they have been mindful of potentially conflicting policy considerations. Considerations of economies of scale suggest incorporating paraprofessionals into the attorney discipline system to allow for an efficient use of an existing structure. A new system, on the other hand, could allow for the inclusion of nonlicensed public members in the discipline process, and has the potential for the creation of a system that could move cases more quickly from receipt of complaint to final resolution. Such a system could also prove to be less expensive than the attorney discipline system.

The paraprofessional discipline system the subcommittee recommends is a hybrid of these options; it takes advantage of the existing structure in OCTC to conduct initial review and investigation, but provides for adjudication and appeal in a venue other than the State Bar Court, which is quite costly for the State Bar and would be quite costly for an appealing paraprofessional represented by an attorney in the State Bar Court. Initial disciplinary decisions would require adoption by the paraprofessional licensing board.<sup>2</sup> This model also introduces the ability to impose citations and fines in lieu of discipline, to be used in cases of minor violations that do not require discipline but where some form of penalty is deemed appropriate.

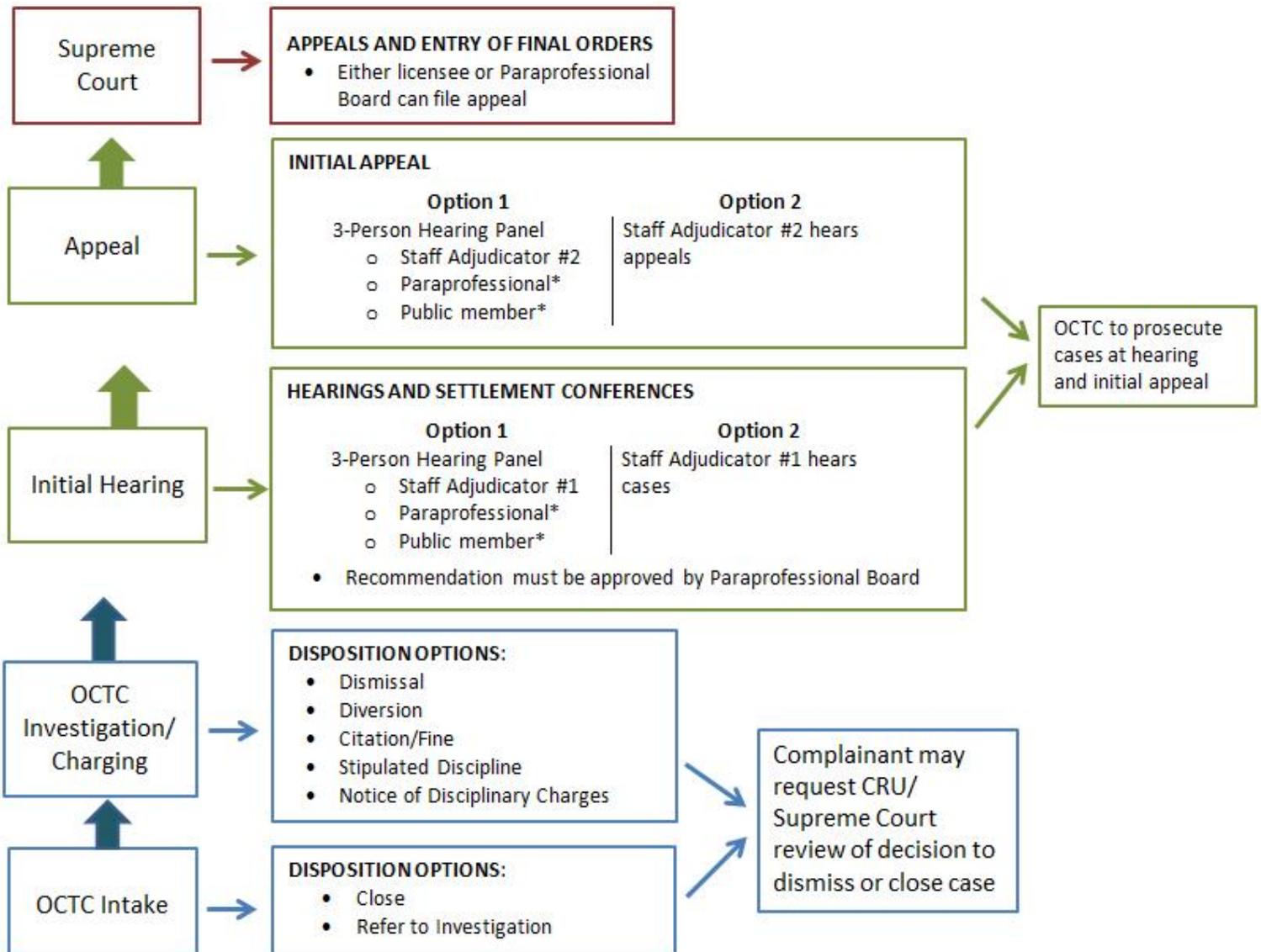
The chart on the following page presents two options for the paraprofessional hearing and appeals processes for consideration by the CPPWG. In the first option, the initial hearing and the appeal

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<sup>1</sup> LPOs are authorized to select, prepare and complete legal documents incident to the closing of real estate and personal property transactions, pursuant to Rule 12 of the Washington Supreme Court's Admission and Practice Rules.

<sup>2</sup> The Working Group has not yet discussed the overarching regulatory structure for the paraprofessional program, but our model contemplates that the structure would include a board distinct from the State Bar Board of Trustees.

would be heard by a three-person panel, comprising a staff adjudicator (an attorney employed by the State Bar), a public member,<sup>3</sup> and a licensee. The panel members would be appointed for a limited term, and would be paid for participating in hearings. This option would provide broader participation in disciplinary decisions compared with a single adjudicator. In the second option, hearings and appeals would be heard solely by a staff adjudicator, which would provide for a more efficient process.



\*Panels will be appointed for a limited term, and will hear all cases during their term. The panel members will receive extensive training, and be paid on a per diem basis for hearing cases.

### Next Steps

<sup>3</sup> Public members could not be current or former attorney or paraprofessional licensees.

After deciding which of the disciplinary model options to implement, the Working Group will need to draft disciplinary rules that outline the disciplinary consequences for specific violations, including options for citations and fines that would not be considered discipline, as well as diversion. These rules will be developed during a subsequent phase of the Working Group.

## California's Attorney Discipline System

In California, an attorney is licensed when admitted to the State Bar; only attorneys with active status may practice law. The State Bar is a constitutional agency established in the judicial branch. In administering the requirements for admission and discipline of California lawyers, the State Bar is an administrative arm of the California Supreme Court. Under its inherent judicial power to regulate admission and discipline, it is the Supreme Court that admits, disbars, or suspends a lawyer from the practice of law.

In California's attorney discipline system, communication and information concerning alleged misconduct of California lawyers is handled by the State Bar's Office of Chief Trial Counsel (OCTC). OCTC investigates those complaints involving allegations of professional misconduct and may initiate and prosecute disciplinary proceedings in State Bar Court (Court). The Hearing Department of the Court conducts evidentiary hearings and renders a decision with findings and recommendations of discipline that are reviewable by the Court's Review Department. In each case, the Court's final decision and accompanying record are then transmitted to the Supreme Court. In cases where the Court recommends the suspension or disbarment of a lawyer, the Supreme Court undertakes an independent determination of the discipline to be imposed. Discipline occurs with a final decision and order of the Supreme Court.<sup>1</sup> Following is a more detailed description of the attorney discipline process.

### INQUIRY

The disciplinary process typically begins with receipt of a written complaint in OCTC. Staff in OCTC receive and review complaints that allege ethical misconduct by an attorney or the unauthorized practice of law by a nonattorney. OCTC conducts the initial review of a complaint to determine whether to close it or forward it for investigation. If a complaint sufficiently alleges misconduct, OCTC assigns it for investigation. If it does not, OCTC closes the complaint.

Some complaints lack sufficient detail to allow OCTC to make an informed decision at the outset as to whether or not to assign a case for investigation. In these cases, OCTC will seek additional information to determine the next steps. This information gathering may involve contacting the complainant, reviewing court records, searching the internet, or conducting legal research. For example, in evaluating an allegation of failing to perform competently, if it is unclear whether an attorney-client relationship exists, OCTC will contact the complainant to try to secure a fee agreement or other evidence of such a relationship. If a complaint involves a violation of a court order, OCTC will attempt to obtain a copy of the order if it is not included with the complaint. If a complaint alleges failure to return an unearned fee, OCTC may request billing statements or an accounting to determine if there is a plausible claim of misconduct, and may assist the complainant in recovering fees from the respondent.

### INVESTIGATION

Investigations are carried out by investigators in OCTC, under the guidance and supervision of OCTC attorneys. Investigators may interview witnesses and respondents, subpoena and analyze bank records, obtain court documents, and otherwise evaluate and analyze the case to

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<sup>1</sup> Public and private reprovings are also considered formal discipline; issuance of a reproof by the Court does not require Supreme Court action.

determine whether there is clear and convincing evidence of attorney misconduct that would allow OCTC to bring disciplinary proceedings in Court. After a determination to proceed with disciplinary proceedings, the complaint advances to the pre-filing stage.

When multiple complaints are made against the same attorney, OCTC may focus its resources and prosecutorial efforts on those complaints most likely to result in disbarment. In such an event, the investigation of the other complaints may be suspended or “held.” If the Supreme Court orders the attorney's disbarment, prosecution of the suspended cases will no longer be necessary and the remaining complaints will not be investigated further.<sup>2</sup> If the attorney is not disbarred, however, OCTC may re-activate any suspended investigations. If an attorney is the subject of a criminal prosecution or party to civil action for the same misconduct, OCTC may suspend its investigation until the criminal or civil proceedings have concluded.

### **PRE-FILING**

Before finalizing formal charges, OCTC evaluates the evidence gathered during the investigation and any subsequent information received from the respondent or other source. Where OCTC has determined there is sufficient evidence to file a Notice of Disciplinary Charges, OCTC will notify the respondent in writing of the intent to file such charges and the attorney's right to request a confidential Early Neutral Evaluation (ENE) conference. Either party may request an ENE before a State Bar Court judge who will orally evaluate the facts, charges, and potential for discipline. Prior to the ENE, OCTC must provide the ENE judge with a draft or summary of the charges and OCTC's settlement position. Regardless of whether either party requests an ENE, OCTC also provides the respondent an opportunity to request informal discovery and to discuss potential settlement. If the parties are unable to reach a resolution or the respondent does not respond to OCTC's written notice, OCTC will proceed to file charges.

After the filing of formal charges, the parties may explore the appropriateness of participation in the Alternative Discipline Program (Program) for respondents with substance abuse and/or mental health concerns. Participation is contingent upon the following: (1) the Court's approval of a stipulation of facts and conclusions of law signed by the parties; (2) evidence that the respondent's substance abuse or mental health issue causally contributed to the misconduct; and (3) respondent's acceptance into the State Bar's Lawyer Assistance Program (LAP). The extent and severity of the respondent's stipulated misconduct, including the degree of harm suffered by their clients, if any, are factors in determining eligibility for the Program. The stipulation includes the level of discipline that will be imposed if the program is completed successfully, and a higher level of discipline that will be imposed if the attorney does not complete the program. If the respondent successfully completes the Program, the disposition may be dismissal of the charges or proceeding or some other level of discipline less than disbarment; if the respondent does not complete the Program, the higher level of discipline will be imposed.

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<sup>2</sup> Complainants in cases dismissed under these circumstances are eligible for reimbursement through the Client Security Fund.

## **HEARING AND REVIEW**

After the filing of disciplinary charges, OCTC prosecutes the case in the Hearing Department, which is the trial level of the Court. Five full-time judges hear and decide cases, and make recommendations to the Supreme Court in cases where proposed discipline includes suspension or disbarment. If the discipline is limited to reproof, it is imposed by the Court without review by the Supreme Court.

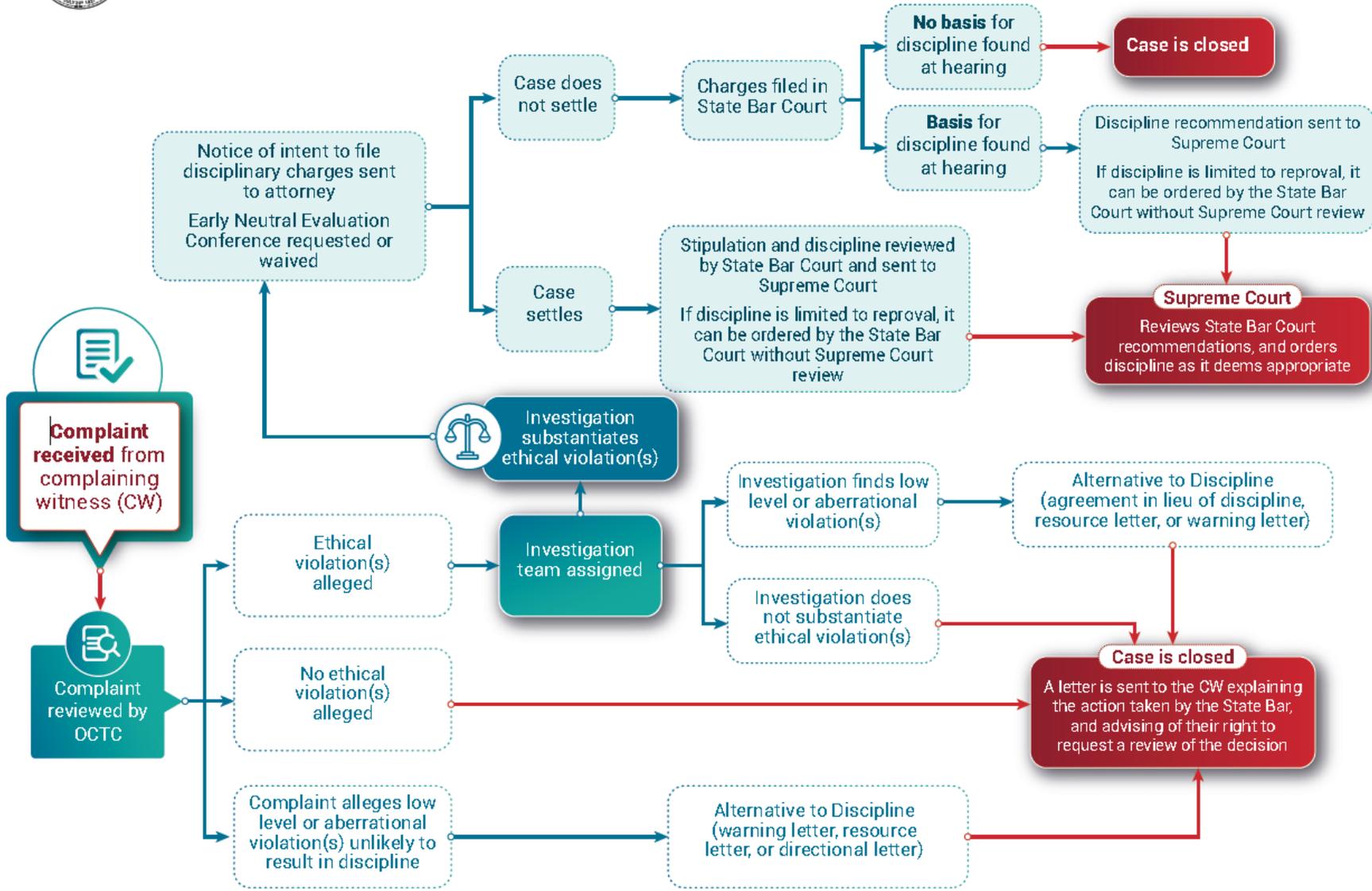
The Review Department is the appellate level of the State Bar Court, consisting of the presiding judge and two other review judges. The three-judge panel acts on a statewide basis to conduct de novo reviews of Hearing Department decisions and orders in cases in which at least one of the parties has sought review. Review judges review and decide cases, and make recommendations to the Supreme Court in cases in which one or both of the parties have sought review of a Hearing judge's decision, exercise temporary suspension and other powers delegated to it by the Supreme Court according to rule 9.10, California Rules of Court; and conduct discretionary interlocutory review on issues materially affecting the outcome of the Hearing Department cases.

## **SUPREME COURT**

Upon the filing of the Court's decision and the record, the Supreme Court conducts its own independent determination and action. Discipline is not imposed until the Supreme Court issues its final order or decision.

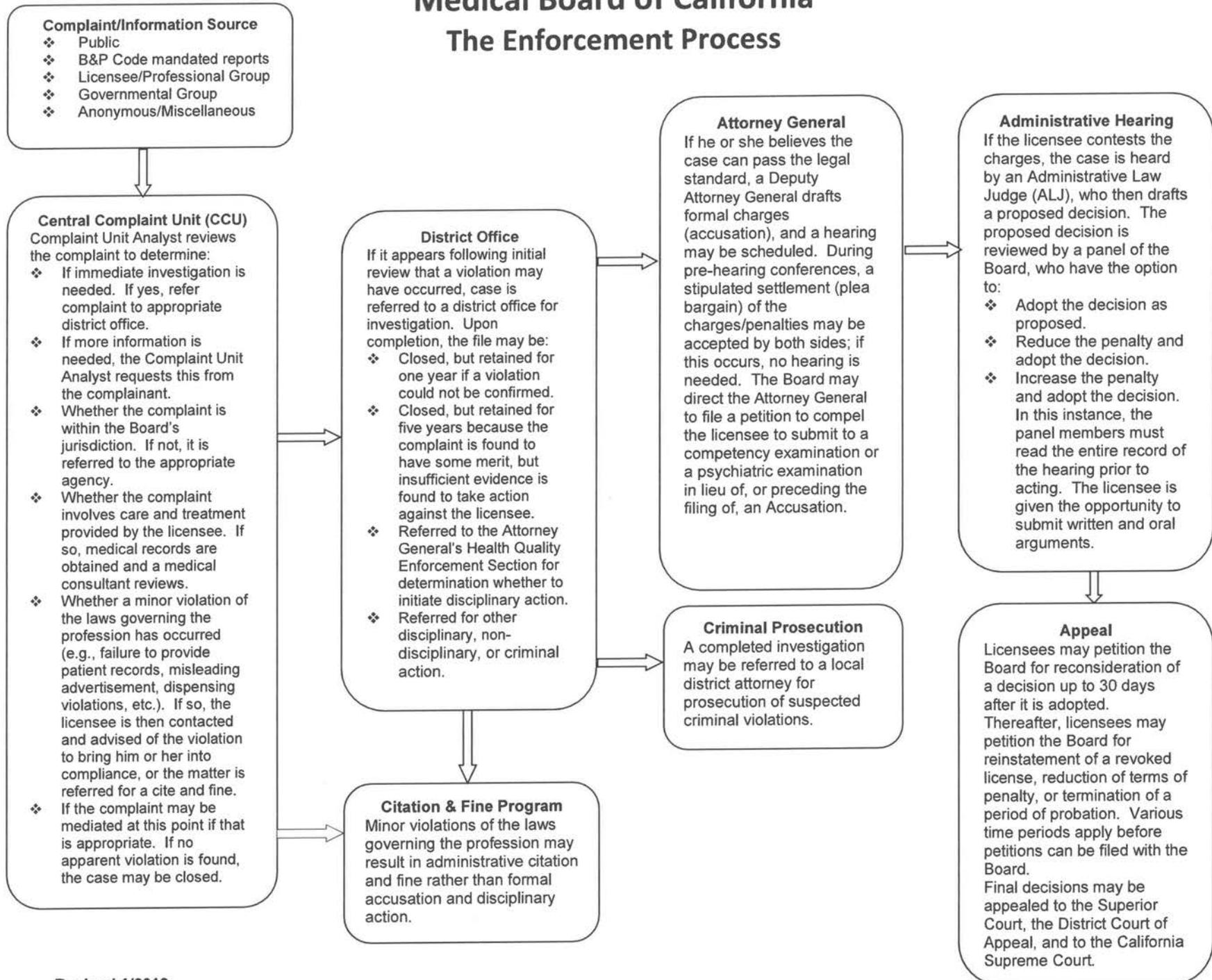


# Client Complaint Process

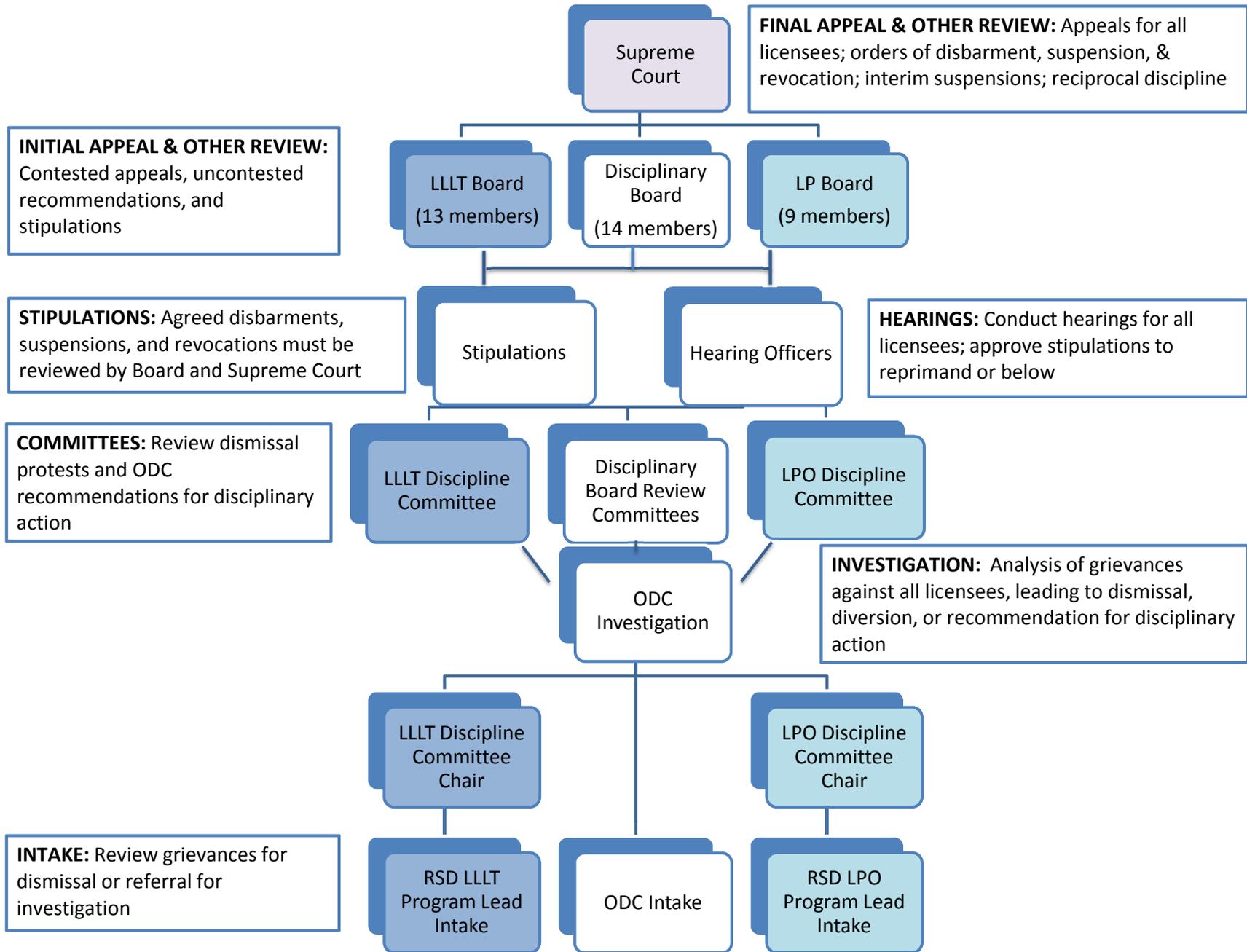


# Medical Board of California

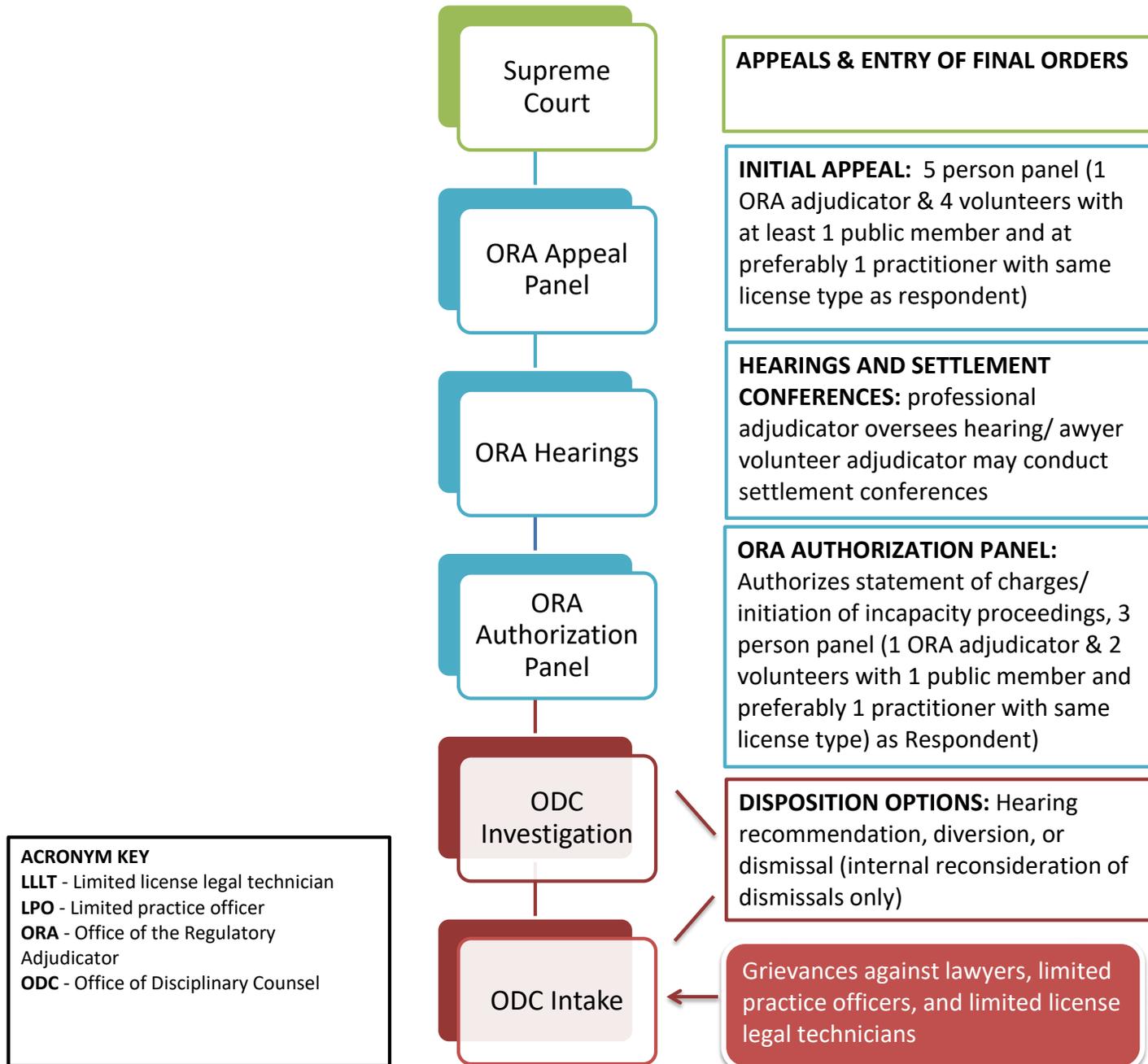
## The Enforcement Process



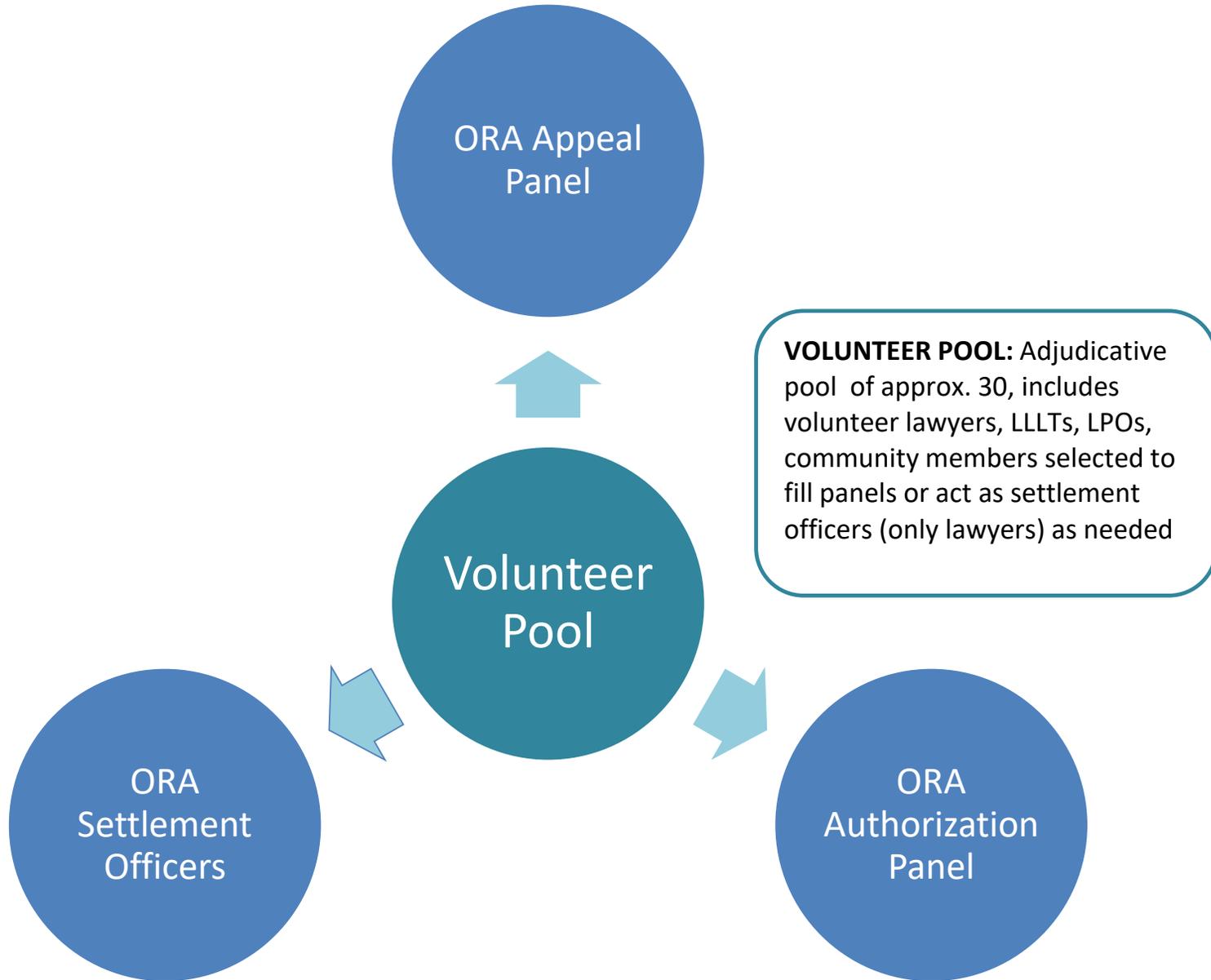
# CURRENT STRUCTURE OF THE THREE DISCIPLINE SYSTEMS



## PROPOSED STRUCTURE OF DISCIPLINE AND INCAPACITY SYSTEM



## VOLUNTEER POOL FOR SPECIFIC ADJUDICATIVE PROCEEDINGS





Date: October 29, 2020

To: California Paraprofessional Program Working Group

From: Julia Brynelson and Stephen Hamilton

Subject: Status Report on Licensing Requirements for a Paraprofessional Program

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## Executive Summary

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the requirements for paraprofessional licensing.

## Discussion

The initial project plan for the CPPWG provided for the selection of practice areas and tasks that would be authorized for licensed paraprofessionals, to be followed by development of recommendations for the licensing requirements, regulatory structure, and disciplinary system for the program.

At its August 25, 2020 meeting, however, members of the CPPWG expressed reservations with regard to endorsing paraprofessional practice areas and tasks in the absence of an understanding of the requirements for licensing, regulation, and discipline for this newly created license. The working group decided, therefore, to pivot to consideration of these topics, after which it would return to the subject of practice areas and tasks. Three subcommittees were formed subsequent to the August meeting in response to this pivot: Licensing, Discipline, and Regulation.

The Licensing Subcommittee, comprised of Julia Brynelson and Stephen Hamilton, was tasked with the development of recommended paraprofessional licensing requirements. In doing so, we considered the following information:

- Licensing requirements in other jurisdictions with paraprofessional programs;

- Education and training requirements for California paralegals and Legal Document Assistants; and
- Curricular requirements for paralegal education programs.

This memo provides a report on the status of our discussions, and preliminary recommendations regarding licensing requirements for paraprofessionals.

### **Licensing Requirements in Other Jurisdictions**

We reviewed the licensing requirements in the following states and Canadian province, which have implemented, or are in the process of implementing, a legal paraprofessional program:

- Arizona
- Utah
- Washington
- Ontario

Licensing requirements in each of these jurisdictions include the following elements:

- Education
- Examination
- Experiential hours
- Moral character assessment
- Background check<sup>1</sup>

Our review found that all programs require a significant amount of education; some states require specific coursework in the subject matters in which the paraprofessional seeks to practice, while others allow for experiential training in practice areas but do not require such coursework. Experiential training requirements range from 120 hours (Ontario) to 1 year, without a specified number of hours (Arizona). Attachment A includes a summary of the requirements in each of these jurisdictions.

### **Requirements for California Paralegal and Legal Document Assistants (LDAs)**

We reviewed Business and Professions Code sections 6450 and 6402.1, which specify education and training requirements for paralegals and LDAs in California. Both paralegals and LDAs have minimum educational requirements. While LDAs are not required to demonstrate experience before offering their services, paralegals who have not completed a paralegal certification program are required to do so. Paralegals are required to work under the direct supervision of an attorney; LDAs may work independently, but are prohibited from providing legal advice or representation. Attachment A includes a summary of the requirements for California paralegals and LDAs.

### **Curricular Requirements for Paralegal Programs**

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<sup>1</sup> Ontario does not conduct a background check for applicants to their paraprofessional program. However, applicants are required to disclose information about any criminal history.

The American Bar Association (ABA) has a program that provides approval to paralegal programs that meet its guidelines. These guidelines require at least 60 semester hours that include general education and legal specialty courses; they do not provide specific curricular requirements.

We reviewed the curricular requirements for the paralegal studies program at American River College, which is an ABA-approved program. The program offers a one-year certification program for those who already possess an AA degree, and a two-year program for those who do not. Both programs require classes in legal research, evidence, civil procedure, and legal writing, as well as in certain practice areas. The requirements for the American River College paralegal studies program are provided as Attachment B.

### Preliminary Recommendations

In our discussion of licensing requirements for a paraprofessional program, we have been mindful of the need to strike a balance between consumer protection and program viability. We have been particularly mindful of Washington’s experience. The program sunset due to low numbers of licensed paraprofessionals and the resulting impact on the cost of program administration. Review of media coverage and discussions with those familiar with the program suggest that the requirements for licensure, as well as the limited practice areas allowed under the program, contributed to these low participation rates. We believe that it is possible to develop licensing requirements that ensure competence without being so onerous as to discourage participation. With these considerations in mind, we offer the following framework for licensing. Table 1 provides detailed requirements for California paraprofessionals. Table 2 provides a comparison of these requirements with those in other jurisdictions.

**Table 1: Proposed Licensing Requirements**

Requirement	Recommendations
<b>Educational Prerequisites</b>	Graduate of ABA or California Accredited law school; or Paralegal qualified under Business and Professions Code §6450(c)
<b>Educational Requirements</b> <b>[In addition to prerequisites set forth above]</b>	<p>All practice areas</p> <ul style="list-style-type: none"> <li>○ 3 credit hours Professional Responsibility (can be tested out of by law school graduates who pass the Professional Responsibility Exam)</li> <li>○ 3 credit hours Evidence [practical and not theoretical]</li> <li>○ 3 credit hours Court Procedure</li> <li>○ 3 credit hours Court Advocacy</li> </ul> <p>Subject matter specific credits, including theoretical and practical</p> <ul style="list-style-type: none"> <li>● Family Law: 6 credit hours                             <ul style="list-style-type: none"> <li>○ 3 credit hours Family Law and Procedure                                     <ul style="list-style-type: none"> <li>▪ These credits may be satisfied by passing a test that covers the subject matters addressed in this course.</li> </ul> </li> <li>○ 3 credit hours Advanced Family Law and Procedure, with a focus on helping self-represented parties for hearings and trial</li> <li>○ Credit units to be set based on number of course hours projected to achieve competency [1 credit = 17 hours]</li> </ul> </li> </ul>

Requirement	Recommendations
	Credit hours to be set based on the number of course hours projected to achieve competency in specific practice areas <sup>2</sup>
<b>Practical Training (Experiential)</b>	480 hours, over a minimum of 10 weeks Completed within two years before or 1 year after completion of exam
<b>Testing</b>	Subject matter specific testing <ul style="list-style-type: none"> <li>• Subject matter subcommittees to recommend specific elements and parameters of testing</li> </ul> Professional Responsibility Exam modeled after attorney exam
<b>Moral Character &amp; Background Check</b>	<ul style="list-style-type: none"> <li>• Fingerprinting &amp; background check equivalent attorney requirements</li> <li>• Not disbarred or resigned with charges pending in any jurisdiction</li> <li>• Not denied admission to State Bar of California due to moral character or background check</li> </ul>

**Table 2: Comparison of Licensing Requirements**

	Arizona	Utah	Washington	Ontario	California (Proposed)
<b>Degree/Certificate</b>	<ul style="list-style-type: none"> <li>• Paralegal</li> <li>• B A</li> <li>• Paraprofessional</li> <li>• Master of Legal Studies</li> <li>• JD</li> </ul>	<ul style="list-style-type: none"> <li>• JD</li> <li>• Paralegal</li> </ul>	AA	Paralegal	<ul style="list-style-type: none"> <li>• JD</li> <li>• Paralegal</li> </ul>
<b>Educational Credits</b>	24credits (included in degree/certification)	Credits not specified	60 credits (in addition to degree)	710 instructional hours (included in degree/certification)	18 credits (in addition to degree)
<b>Experiential Hours</b>	120 hours (included in degree/Certification) 1 year for those who do not meet specified educational requirements	1,500 hours	1,500 hours	120 hours	480 hours

<sup>2</sup>The Western Association of Schools and Colleges requires accredited schools to comply with the definition of credit hours provided by the Code of Federal Regulations, 34 CFR 600.2 and 34 CFR 602.24, as follows: “One hour of classroom or direct faculty instruction and a minimum of two hours of out of class student work each week for approximately fifteen weeks for one semester or trimester hour of credit, or ten to twelve weeks for one quarter hour of credit.”

### **Next Steps**

This Subcommittee should reconvene subsequent to final decisions regarding authorized practice areas and tasks in order to develop requirements for subject matter specific training for each authorized area as well as to flesh out curricular and testing requirements. This work should be done in consultation with subject matter and exam development experts.

Paraprofessional Program Licensing Requirements

	Moral Character Requirement	Education	Exam	Experiential Hours	Certifications	Waivers	Background Check
<b>Arizona</b>	<p>Yes.</p> <p>Must not have been disbarred in any state, or denied admission to practice in Arizona</p>	<p>One of the following:</p> <p>A. Degree or certificate in paralegal studies approved by ABA or institutionally accredited with a minimum of 24 semester units in legal specialization units.</p> <p>For all endorsements:</p> <ul style="list-style-type: none"> <li>• 3 credit hours in professional responsibility</li> </ul> <p>For Family Law and Civil Endorsement</p> <ul style="list-style-type: none"> <li>• 3 credit hours in family law</li> <li>• 6 credit hours in civil procedure</li> <li>• 3 credit hours in evidence</li> <li>• 3 credit hours in legal research and writing</li> <li>• 120 hours of experiential learning under the supervision of a lawyer that includes content on advocacy</li> </ul> <p>For Criminal law endorsement:</p> <ul style="list-style-type: none"> <li>• 3 credit hours in criminal law</li> <li>• 3 credit hours in evidence</li> <li>• 3 credit hours in legal research and writing</li> <li>• 120 hours of experiential learning under the supervision of a lawyer that includes content on advocacy</li> </ul> <p>For Administrative Law endorsement:</p> <ul style="list-style-type: none"> <li>• 3 credit hours in administrative law</li> <li>• 3 credit hours in evidence</li> <li>• 3 credit hours in legal research and writing</li> <li>• 120 hours of experiential learning under the supervision of a lawyer that includes content on advocacy</li> </ul> <p>OR</p> <p>B. Bachelor of Arts degree in law from an accredited college or university and approved by the court that includes the coursework listed under A for each of the practice area endorsements</p> <p>OR</p> <p>C. Completion of certification program for Legal Paraprofessionals approved by the Arizona Judicial Council that provides the subject matter courses listed under A for each of the practice area endorsements</p> <p>D. Master of Legal Studies from ABA accredited law school that includes the coursework listed under A for each of the practice area endorsements</p> <p>OR</p>	<p>Limited license legal practitioner examination</p>	<p>For those who meet educational requirements listed in A in the Education column: 1 year substantive law-related experience under the supervision of a lawyer in the area of practice of each endorsement sought.</p>		<p>Educational requirements are waived for applicants who have completed 7 years of full-time substantive law-related experience within the 10 years preceding the application, including experience in the practice area in which the applicant licensure as follows:</p> <ul style="list-style-type: none"> <li>• Family law, limited jurisdiction civil or criminal: 500 hours</li> <li>• Landlord-tenant, debt collection, administrative law: 250 hours</li> </ul>	<p>Fingerprinting required</p>

Paraprofessional Program Licensing Requirements

Moral Character Requirement	Education	Exam	Experiential Hours	Certifications	Waivers	Background Check
	<p>E. Juris Doctor degree from an ABA Accredited law school</p> <p>F. Foreign-trained lawyers with a Master of Laws (LLM) from an ABA accredited law school that includes the coursework listed under A for each of the practice area endorsements</p> <p>All newly licensed LPs must complete the state bar course on professionalism within one year after being licensed.</p>					
<p><b>Utah</b></p> <p>Yes.</p> <p>Must not have been disbarred or suspended in any jurisdiction</p>	<p>A. First Professional Degree in law from an Approved Law School; OR</p> <p>B. Associate Degree in paralegal studies from an Accredited School or Accredited Program; OR</p> <p>C. Bachelor’s Degree in paralegal studies from an Accredited School or Accredited Program; OR</p> <p>D. Bachelor’s Degree in any field from an Accredited School, plus a Paralegal Certificate or 15 credit hours of paralegal studies from an Accredited Program</p>	<ul style="list-style-type: none"> <li>• Professional ethics exam</li> <li>• LPP exam for each practice area</li> </ul>	<p>1,500 hours of substantive law-related experience within the 3 years prior to the application. These hours must include:</p> <ul style="list-style-type: none"> <li>• 500 hours of substantive law-related experience in family law if this is the practice area; OR</li> <li>• 100 hours of substantive law related experience in debt collection or forcible entry and detainer if this is the practice area</li> </ul>	<ul style="list-style-type: none"> <li>• Certified Paralegal or Certified Legal Assistant by the National Association of Legal Assistants; OR</li> <li>• Professional Paralegal Certification from the National Association of Legal Professionals; OR</li> <li>• CORE Registered Paralegal designation from the National Federation of Paralegal Associations</li> </ul>	<p>Bar allowed to waive some of the minimum education requirements for the limited time of 3 years from the date the Bar initially begins to accept LPP licensure applications. These waivers may be granted if an applicant demonstrates that he or she has completed seven years of full-time substantive law-related experience as a paralegal within the previous ten years.</p>	<p>Fingerprinting required</p>
<p><b>Washington</b></p> <p>Yes</p>	<ul style="list-style-type: none"> <li>• Associate's degree or higher, in any subject; AND</li> <li>• LLLT Core Curriculum: 45 credits of legal studies courses from ABA- or LLLT Board-approved paralegal program or ABA-approved law school <ul style="list-style-type: none"> <li>• Civil Procedure, minimum 8 credits</li> <li>• Contracts, minimum 3 credits</li> <li>• Interviewing and Investigation Techniques, minimum 3 credits</li> <li>• Introduction to Law and Legal Process, minimum 3 credits</li> <li>• Law Office Procedures and Technology, minimum 3 credits</li> <li>• Legal Research, Writing, and Analysis, minimum 8 credits</li> <li>• Professional Responsibility, minimum 3 credit</li> </ul> </li> <li>• Practice Area Curriculum: <ul style="list-style-type: none"> <li>• 15 credits in practice area (family law)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Paralegal Core Competency Exam</li> <li>• LLLT Practice Area Exam</li> <li>• LLLT Professional Responsibility Exam</li> </ul>	<p>1,500 hours of substantive law-related work experience as a paralegal or legal assistant supervised by a lawyer, acquired no more than three years prior to, or 40 months after, passing the LLLT Practice Area exam.</p>		<p>Paralegals with 10 years or more of experience, who qualify for a limited-time waiver, do not need to have an Associate's degree or the LLLT Core Curriculum education. If waiver is approved, they may enroll directly into the Practice Area curriculum.</p>	<p>Fingerprinting required</p>

## Paraprofessional Program Licensing Requirements

	Moral Character Requirement	Education	Exam	Experiential Hours	Certifications	Waivers	Background Check
<b>Ontario</b>	Yes	Graduation from accredited paralegal education program <ul style="list-style-type: none"> <li>• 590 instructional hours in compulsory legal courses</li> <li>• 120 hours of field placement/practicum work experience</li> <li>• 120 instructional hours in additional courses that relate to a paralegal's permitted scope of practice or support becoming a well-rounded paralegal graduate.</li> </ul>	Paralegal licensing examination	Paralegal education program requires 120 hours of field placement			No
<b>California Paralegal</b>	No	<ul style="list-style-type: none"> <li>• Certificate of completion from ABA-approved paralegal program; OR</li> <li>• Certificate of completion from paralegal program or degree from an accredited institution that requires 24 units in law-related courses; OR</li> <li>• Baccalaureate or advanced degree in any subject; and                             <ul style="list-style-type: none"> <li>• 1 year of law-related experience under the supervision of an attorney</li> <li>• written declaration from supervising attorney of qualification as a paralegal</li> </ul> </li> </ul>	No	See details under Education	See details under Education	None	No
<b>California Legal Document Assistant</b>	Can be denied registration based on criminal or civil judgments	<ul style="list-style-type: none"> <li>• Certificate of completion from ABA-approved paralegal program; OR</li> <li>• Certificate of completion from paralegal program or degree from an accredited institution that requires 24 units in legal specialization courses</li> </ul>	No		See details under Education	None	No, but can be denied registration based on criminal or civil judgments



# Paralegal Studies A.A. degree

**FULL TIME**

This program roadmap represents one possible pathway to complete the program. **Please see a counselor** to create an education plan that is customized to meet your needs. This roadmap is not a guarantee of course availability or financial aid applicability.

**Catalog:** 2020-21  
**GE pattern:** local AA/AS  
**Total Units:** 60 Units  
**Start Term:** Fall

## FIRST YEAR

### Semester 1 (FALL):

**14 units**

CAT.	COURSE	TITLE	UNIT	GE AREA
GE	ENGWR 300/480 <sup>H</sup>	College Composition <sup>ABA</sup>	3	Ila, WC
GE	STAT 300/480 <sup>H</sup>	Introduction to Probability and Statistics	4	MC
GE	SPEECH 325	Intercultural Communication <sup>ABA</sup>	3	VI
GE	POLS 301/481 <sup>H</sup>	Introduction to Government: United States <sup>ABA</sup>	3	Va
GE		any PE activity course	1	IIa

### Semester 2 (SPRING):

**16 units**

CAT.	COURSE	TITLE	UNIT	GE AREA
Req	LA 300	Introduction to Law and the American Legal System	3	
Req	LA 320	Legal Research	3	
GE	ENGWR 303	Argumentative Writing and Critical Thinking Through Literature <sup>ABA</sup>	4	IIb
GE	PHIL 310	Introduction to Ethics <sup>ABA</sup>	3	I
GE	ADMJ 302	Community Relations: Multicultural Issues	3	Vb

<sup>H</sup> Honors Courses<sup>ABA</sup> Courses that meet the ABA Breadth requirements for this degree.

## CAREER PATH

### Career Options:

Paralegals find employment in both state and federal government as well as private practice and corporate settings.

### Scheduling Notes:

- LA 300, 310, 320, and 321 are offered online.
- LA 300 is offered in the fall, spring, and summer.
- LA 310, 312, 314, and 350 are offered in the fall and spring.
- LA 320 is offered in the fall regularly, and in the spring and summer occasionally.
- LA 321 is offered in the spring regularly, and in the fall and summer occasionally.
- LA 330, 332, 336, and 342 are offered in the fall.
- LA 334, 360, 362, and 365 are offered in the spring.
- This program can be started in spring and summer as well. See a counselor to adjust the coursework.

### Other Notes:

- The American Bar Association (ABA) has specific requirements for 18 units of additional non-legal-assisting coursework (ABA Breadth). See the Legal Assisting website for more information.

## EXPLANATION OF CATEGORIES

<b>Req</b>	Required Core	A course that is required for this degree
<b>GE</b>	General Education	A course that fulfills a specific general education requirement for this degree, which can be replaced with another course that meets the same requirement
<b>RE</b>	Restricted Elective	A course selected from a list of elective courses specified for this degree in the course list in the catalog, which can be replaced with another course from the same list
<b>Elec</b>	Elective	A degree-applicable course that is part of a degree roadmap to ensure that there is a total of at least 60 units, which is a requirement for an associate degree

### Graduation Requirement

A course that fulfills a specific graduation requirement which can be replaced by another course that meets the same graduation requirement.

MC = Math Competency

WC = Writing Competency



## SECOND YEAR

### Semester 3 (FALL):

**15 units**

CAT.	COURSE	TITLE	UNIT	GE AREA
<b>Req</b>	LA 312	Torts and Personal Injury	3	
<b>Req</b>	LA 321	Legal Writing	3	
<b>RE</b>	LA 342	Evidence	3	
<b>Req</b>	LA 350	Law Office Management	3	
<b>GE</b>	ANTH 300/480 <sup>H</sup>	Biological Anthropology <sup>ABA</sup>	3	IV

### Semester 4 (SPRING):

**15 units**

CAT.	COURSE	TITLE	UNIT	GE AREA
<b>Req</b>	LA 310	Civil Procedures and Litigation	3	
<b>Req</b>	LA 314	Contract Law	3	
<b>RE</b>	LA 334	Criminal Law and Procedure	3	
<b>RE</b>	LA 362	Estate Planning and Probate Procedure	3	
<b>GE</b>	BUS 312	Workplace Behavior and Ethics	3	IIIb

<sup>H</sup> Honors Courses

<sup>ABA</sup> Courses that meet the ABA Breadth requirements for this degree.

### EXPLANATION OF CATEGORIES

<b>Req</b>	Required Core	A course that is required for this degree
<b>GE</b>	General Education	A course that fulfills a specific general education requirement for this degree, which can be replaced with another course that meets the same requirement
<b>RE</b>	Restricted Elective	A course selected from a list of elective courses specified for this degree in the course list in the catalog, which can be replaced with another course from the same list
<b>Elec</b>	Elective	A degree-applicable course that is part of a degree roadmap to ensure that there is a total of at least 60 units, which is a requirement for an associate degree

#### Graduation Requirement

A course that fulfills a specific graduation requirement which can be replaced by another course that meets the same graduation requirement.

MC = Math Competency

WC = Writing Competency



# Paralegal Studies A.A. degree

PART TIME

This program roadmap represents one possible pathway to complete the program. **Please see a counselor** to create an education plan that is customized to meet your needs. This roadmap is not a guarantee of course availability or financial aid applicability.

**Catalog:** 2020-21  
**GE pattern:** local AA/AS  
**Total Units:** 60 Units  
**Start Term:** Fall

## FIRST YEAR

**Semester 1 (FALL):** 8 units

CAT.	COURSE	TITLE	UNIT	GE AREA
GE	ENGWR 300/480 <sup>H</sup>	College Composition <sup>ABA</sup>	3	Ila, WC
GE	STAT 300/480 <sup>H</sup>	Introduction to Probability and Statistics	4	MC
GE		any PE activity course	1	IIla

**Semester 2 (SPRING):** 10 units

CAT.	COURSE	TITLE	UNIT	GE AREA
Req	LA 300	Introduction to Law and the American Legal System	3	
GE	POLS 301/481 <sup>H</sup>	Introduction to Government: United States <sup>ABA</sup>	3	Va
GE	ENGWR 303	Argumentative Writing and Critical Thinking Through Literature <sup>ABA</sup>	4	IIb

## SECOND YEAR

**Semester 3 (FALL):** 9 units

CAT.	COURSE	TITLE	UNIT	GE AREA
Req	LA 320	Legal Research	3	
Req	LA 350	Law Office Management	3	
GE	SPEECH 325	Intercultural Communication <sup>ABA</sup>	3	VI

<sup>H</sup> Honors Courses

<sup>ABA</sup> Courses that meet the ABA Breadth requirements for this degree

### EXPLANATION OF CATEGORIES

<b>Req</b>	Required Core	A course that is required for this degree
<b>GE</b>	General Education	A course that fulfills a specific general education requirement for this degree, which can be replaced with another course that meets the same requirement
<b>RE</b>	Restricted Elective	A course selected from a list of elective courses specified for this degree in the course list in the catalog, which can be replaced with another course from the same list
<b>Elec</b>	Elective	A degree-applicable course that is part of a degree roadmap to ensure that there is a total of at least 60 units, which is a requirement for an associate degree

### Graduation Requirement

A course that fulfills a specific graduation requirement which can be replaced by another course that meets the same graduation requirement.

MC = Math Competency

WC = Writing Competency

## CAREER PATH

### Career Options:

Paralegals find employment in both state and federal government as well as private practice and corporate settings.

### Scheduling Notes:

- LA 300, 310, 320, and 321 are offered online.
- LA 300 is offered in the fall, spring, and summer.
- LA 310, 312, 314, and 350 are offered in the fall and spring.
- LA 320 is offered in the fall regularly, and in the spring and summer occasionally.
- LA 321 is offered in the spring regularly, and in the fall and summer occasionally.
- LA 330, 332, 336, and 342 are offered in the fall.
- LA 334, 360, 362, and 365 are offered in the spring.
- This program can be started in spring and summer as well. See a counselor to adjust the coursework.

### Other Notes:

- The American Bar Association (ABA) has specific requirements for 18 units of additional non-legal-assisting coursework (ABA Breadth). See the Legal Assisting website for more information.



**Semester 4 (SPRING):****9 units**

CAT.	COURSE	TITLE	UNIT	GE AREA
Req	LA 310	Civil Procedures and Litigation	3	
Req	LA 321	Legal Writing	3	
GE	PHIL 310	Introduction to Ethics <sup>ABA</sup>	3	I

**THIRD YEAR****Semester 5 (FALL):****6 units**

CAT.	COURSE	TITLE	UNIT	GE AREA
Req	LA 312	Torts and Personal Injury	3	
GE	ANTH 300/480 <sup>H</sup>	Biological Anthropology <sup>ABA</sup>	3	IV

**Semester 6 (SPRING):****6 units**

CAT.	COURSE	TITLE	UNIT	GE AREA
Req	LA 314	Contract Law	3	
RE	LA 334	Criminal Law and Procedure	3	

**FOURTH YEAR****Semester 7 (FALL):****6 units**

CAT.	COURSE	TITLE	UNIT	GE AREA
GE	ADMJ 302	Community Relations: Multicultural Issues	3	Vb
RE	LA 342	Evidence	3	

**Semester 8 (SPRING):****6 units**

CAT.	COURSE	TITLE	UNIT	GE AREA
GE	BUS 312	Workplace Behavior and Ethics	3	IIIb
RE	LA 362	Estate Planning and Probate Procedure	3	

<sup>H</sup> Honors Courses<sup>ABA</sup> Courses that meet the ABA Breadth requirements for this degree**EXPLANATION OF CATEGORIES**

<b>Req</b>	Required Core	A course that is required for this degree
<b>GE</b>	General Education	A course that fulfills a specific general education requirement for this degree, which can be replaced with another course that meets the same requirement
<b>RE</b>	Restricted Elective	A course selected from a list of elective courses specified for this degree in the course list in the catalog, which can be replaced with another course from the same list
<b>Elec</b>	Elective	A degree-applicable course that is part of a degree roadmap to ensure that there is a total of at least 60 units, which is a requirement for an associate degree

**Graduation Requirement**

A course that fulfills a specific graduation requirement which can be replaced by another course that meets the same graduation requirement.

**MC** = Math Competency

**WC** = Writing Competency



# Paralegal Studies certificate

**FULL  
TIME**

This program roadmap represents one possible pathway to complete the program. **Please see a counselor** to create an education plan that is customized to meet your needs. This roadmap is not a guarantee of course availability or financial aid applicability.

**Catalog:** 2020-21  
**Total Units:** 30 Units  
**Start Term:** Summer

## FIRST YEAR

### Semester 1 (SUMMER): 3 units

CAT.	COURSE	TITLE	UNIT	NOTES
Req	LA 300	Introduction to Law and the American Legal System	3	

### Semester 2 (FALL): 12 units

CAT.	COURSE	TITLE	UNIT	NOTES
Req	LA 312	Torts and Personal Injury	3	
Req	LA 320	Legal Research	3	
RE	LA 342	Evidence	3	
Req	LA 350	Law Office Management	3	

### Semester 3 (SPRING): 15 units

CAT.	COURSE	TITLE	UNIT	NOTES
Req	LA 310	Civil Procedures and Litigation	3	
Req	LA 314	Contract Law	3	
Req	LA 321	Legal Writing	3	
RE	LA 360	Corporations Law	3	
RE	LA 362	Estate Planning and Probate Procedure	3	

**Note:** Students must possess an A.A. degree or higher from a regionally accredited institution to be eligible for this certificate.

## CAREER PATH

### Career Options:

Paralegals find employment in both state and federal government as well as private practice and corporate settings.

### Scheduling Notes:

- LA 300, 310, 320, and 321 are offered online.
- LA 300 is offered in the fall, spring, and summer.
- LA 310, 312, 314, and 350 are offered in the fall and spring.
- LA 320 is offered in the fall regularly, and in the spring and summer occasionally.
- LA 321 is offered in the spring regularly, and in the fall and summer occasionally.
- LA 330, 332, 336, and 342 are offered in the fall.
- LA 334, 360, 362, and 365 are offered in the spring.
- This program can be started in spring and fall as well. See a counselor to adjust the coursework.

## EXPLANATION OF CATEGORIES

<b>Req</b>	Required Core	A course that is required for this certificate
<b>RE</b>	Restricted Elective	A course selected from a list of elective courses specified for this certificate in the course list in the catalog, which can be replaced with another course from the same list
<b>Elec</b>	Elective	A course that is not part of this certificate but is included on its roadmap



Date: October 29, 2020

To: California Paraprofessional Program Working Group

From: Amos Hartston and Fariba Soroosh

Subject: Status Report on Regulatory Structure for a Paraprofessional Program

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## Executive Summary

The California Paraprofessional Program Working Group (CPPWG or Working Group) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services \(ATILS\)](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the regulatory structure for paraprofessionals.

## Discussion

The initial project plan for the CPPWG provided for the selection of practice areas and tasks that would be authorized for licensed paraprofessionals, to be followed by development of recommendations for the licensing requirements, regulatory structure, and disciplinary system for the program.

At its August 25, 2020 meeting, however, members of the CPPWG expressed reservations with regard to endorsing paraprofessional practice areas and tasks in the absence of an understanding of the requirements for licensing, regulation, and discipline for this newly created license. The working group decided, therefore, to pivot to consideration of these topics, after which it would return to the subject of practice areas and tasks. Three subcommittees were formed subsequent to the August meeting in response to this pivot: Licensing, Discipline, and Regulation.

The Regulation Subcommittee, which comprises the authors of this memorandum, was tasked with the development of a recommended paraprofessional regulatory structure. In doing so, we considered the following information:

- Recommendations from the [March 2020 Report from the Task Force on Access Through Innovation of Legal Services](#);

- Regulatory requirements in other jurisdictions with paraprofessional programs; and
- Recommendations from the [May 2020 Report from the Governance in the Public Interest Task Force](#).

This memo provides a report on the status of our discussions, and topics for further exploration regarding a regulatory structure for paraprofessionals.

**ATILS Report**

The report issued by the ATILS Task Force in March 2020 included key principles identified by ATILS regarding to the development of a paraprofessional licensing program, as well as recommendations for the CPPWG to consider. We determined that some of those topics fall within the purview of our subcommittee, while others do not. Table 1 provides a summary of topics from the ATILS Report, as well as other potential regulatory topics we identified, with an indication of whether we believe they properly fall under the purview of the Regulation Subcommittee:

**Table 1. Topics Included and Excluded from Regulation Subcommittee Purview**

Included	Not Included
Financial responsibility	Leveraging population of existing providers
Continuing education	Consumer outreach
Mandatory disclosures	Selection of areas of law and specific tasks
Fee limitations	Discipline
Proactive/risk-based regulation	Startup Costs / Costs of regulation
Informed consent requirement	Determining an appropriate name for the licensees
Advertising limitations	Protections similar to attorney-client relationship
Ethical Standards	Drafting Rules of Professional Conduct and proposed statutes (subcommittee may provide input) <ul style="list-style-type: none"> <li>• Fees (trusts, fee sharing, limitations)</li> <li>• Communications</li> <li>• Advertising</li> <li>• Conflicts of interest</li> <li>• Organization as client?</li> <li>• Limited scope representation</li> <li>• Diligence</li> <li>• Confidentiality/privilege</li> <li>• Ethical standards</li> <li>• Paraprofessional as third party neutral</li> </ul>

Recommendations from the ATILS Report regarding a paraprofessional licensing program are provided as Attachment A.

### **Regulatory Requirements in Other Jurisdictions**

We reviewed the regulatory requirements for California attorneys, paralegals, and legal document assistants (LDAs), as well as those in the following states and Canadian province, which have implemented, or are in the process of implementing, a legal paraprofessional program:

- Arizona
- Utah
- Washington
- Ontario

Our review found that significant variances in regulatory requirements by jurisdiction. Attachment B provides a summary of these requirements.

We reviewed the regulatory requirements with regard to the following topics:

- Mandatory continuing legal education (MCLE);
- Financial responsibility, including professional liability insurance, bonds, and client security funds;
- Proactive regulation, including audits and data reporting;
- Contract requirements, including mandatory disclosures; and
- Restrictions on fees that may be charged by paraprofessionals.

### **Regulatory Requirements Discussions**

Our subcommittee met six times since the last full meeting of the Working Group. Our discussions were informed by policy considerations, including whether regulatory requirements for paraprofessionals should mirror those for attorneys, as well as the cost of establishing a separate regulatory structure for paraprofessionals. While we were not able to address all of the topics identified above, we made significant progress regarding MCLE and financial responsibility.

### **Mandatory Continuing Legal Education (MCLE)**

We reviewed the MCLE requirements for California attorneys, paralegals, and LDAs, as well as those for paraprofessionals in other jurisdictions. There is significant variance in these regulations, from as few as 8 hours every 2 years (California paralegals) to as many as 15 hours per year (Arizona paraprofessionals). We also reviewed the MCLE requirements for certified specialists in California, who are required to complete 36 hours of MCLE in their specialty area every 3 years; these hours can be applied toward the general MCLE required of all California attorneys. Since paraprofessionals will be licensed for specific practice areas, we have modeled the recommended minimum MCLE requirements on a hybrid of the requirements for all California attorneys and for certified specialists, as follows:

- 36 hours every 3 years, as follows:
  - 30 hours in the paraprofessional's practice area
  - 4 hours of legal ethics
  - 1 hour on competence issues
  - 1 hour on recognition and elimination of bias in the legal profession and society

We recommend a 3-year cycle to allow for integration of MCLE compliance tracking within the current system.

### **Financial Responsibility**

Our subcommittee did not agree on the financial responsibility requirements for paraprofessionals. Our discussions centered on three possible ways to provide financial responsibility: (1) malpractice insurance; (2) surety bond requirement; and/or (3) Client Security Fund/Restitution Fund.

Generally, Ms. Soroosh believes that regulation of licensees should track the regulation of attorneys; therefore, no insurance or bond should be required and the Client Security Fund should be limited to intentional acts after discipline. Mr. Hartston disagrees and believes that if we are going to create a new licensed professional it is essential that consumer protections be part of the regulations to ensure public protection. This includes financial responsibility as suggested by ATILS, as required by our goal of ensuring public protection, and as informed by California's experience with immigration consultants, LDAs, and other licensed professionals.

#### **1. Malpractice Insurance**

There was no agreement with regard to a requirement that paraprofessionals carry errors and omissions (malpractice) insurance. It is not required for attorneys, and as a practical matter may not be available initially for new licensed professionals. We also do not know the likely cost.<sup>1</sup> There was agreement that malpractice insurance should be encouraged and the State Bar could take steps to try to encourage insurance companies to make insurance available to licensees. It is required and available in some other jurisdictions. Mr. Hartston believes the Working Group should seriously consider requiring malpractice insurance if it can be available—especially if other systems are not in place for financial responsibility of paraprofessionals, such as a bond or restitution fund.

#### **2. Surety Bond**

A bond requirement is another option for financial responsibility, which also was suggested for our consideration by ATILS. Bonds are required for many different licensed professionals in California. This includes a \$100,000 bond requirement for immigration consultants; a \$25,000 bond requirement for LDAs; a \$25,000 bond requirement for unlawful detainer assistants; and a \$15,000 bond requirement for notaries, as examples. The subcommittee is interested in exploring whether requiring paraprofessionals to carry a bond would provide meaningful protection for their clients and, if so, an appropriate bond amount.

#### **3. Client Security Fund/Restitution Fund**

Attorneys in California participate in a Client Security Fund (CSF); payouts from the CSF are limited to situations where an attorney engaged in intentional wrongdoing such as theft. In most circumstances, discipline or a criminal conviction is a required precondition to recovery from the CSF. Thus, claims to the CSF can take many years to be paid.

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<sup>1</sup> ALPS, the insurance carrier that provides insurance to Washington paraprofessionals, has indicated that they would work with the State Bar to develop an insurance product to provide coverage to licensed paraprofessionals.

We recommend that paraprofessionals also have a CSF. The subcommittee is considering a recommendation of whether the CSF should be combined with the attorney fund or established as a separate fund, based on a number of considerations. The CSF, however, does not provide a consumer friendly or quick recovery, and is not available at all in cases of negligence. Therefore, it may not be a sufficient solution for paraprofessional financial responsibility.

Ms. Soroosh believes that financial responsibility requirements for paraprofessionals should mirror those of attorneys, including with respect to a CSF. Paraprofessional licensure will establish educational, experiential, and testing requirements for licensees; financial responsibility requirements should reflect the assumption that licensees will carry out their responsibilities with the same standards of ethics and competency that is expected of attorneys. Further, establishing a separate restitution fund for paraprofessionals will place an undue financial burden on the program, which might put its survival in jeopardy. Ms. Soroosh believes that paraprofessionals should participate in the CSF on the same basis as attorneys.

As noted, Mr. Hartston believes financial responsibility, through insurance, bond, and/or a restitution fund is a critical part of consumer and public protection. He recommends the creation of a restitution fund for paraprofessionals that would compensate clients for both intentional wrongdoing and negligence/malpractice, especially if malpractice insurance is not required. Also, to avoid long wait times, we should consider not requiring a finding of discipline or a criminal conviction required as a precondition to recovery from the fund (although a complaint to the program could be). This eligibility approach may help obviate the client’s need to retain an attorney to pursue a malpractice (unintentional negligence) claim.

Table 2 provides a summary of the elements of a CSF/restitution fund being considered by the subcommittee.

**Table 2. Paraprofessional Restitution Fund Design**

Issue	Options
<b>Type of Claims Covered</b>	<ul style="list-style-type: none"> <li>• Deliberate Acts                             <ul style="list-style-type: none"> <li>○ Theft, or an act equivalent to theft</li> <li>○ Funds received and wrongfully retained</li> </ul> </li> <li>• Unintentional errors and omissions (malpractice)</li> </ul>
<b>Eligibility Requirements</b>	<ul style="list-style-type: none"> <li>• Determination of eligibility to be made by paraprofessional board                             <ul style="list-style-type: none"> <li>○ Final determination of discipline not required</li> <li>○ Malpractice judgment not required</li> </ul> </li> </ul>
<b>Losses Reimbursed</b>	<ul style="list-style-type: none"> <li>• Monetary                             <ul style="list-style-type: none"> <li>○ Actual losses resulting from intentional acts</li> <li>○ Potential losses resulting from malpractice</li> </ul> </li> </ul>
<b>Cap on Restitution Amount</b>	\$25,000 <ul style="list-style-type: none"> <li>○ Based on limited jurisdiction amount</li> </ul>
<b>Reimbursement to Fund</b>	Paraprofessional would be required to reimburse Restitution Fund for claims paid due to their actions

Issue	Options
	<ul style="list-style-type: none"><li>○ Rules to provide due process (for example, reimbursement only after discipline finding)</li></ul>
<b>Funding Source</b>	Annual assessment on paraprofessionals <ul style="list-style-type: none"><li>○ Startup funding may be required</li></ul>

### Remaining Topics

As discussed above, there are a number of topics that have not yet been addressed by our subcommittee. Following is a brief summary of these topics:

#### Proactive regulation

Both the ATILS report cited above and the 2020 Governance in the Public Interest Task Force Report include recommendations for the implementation of proactive, risk-based regulation. Such regulation entails collecting and analyzing data to identify areas of potential harm, and conducting interventions to prevent such harm. An example can be found in Ontario, which requires both attorneys and paraprofessionals to submit annual reports regarding the services they provide, and to submit to audits of their work.

#### Mandatory Disclosures

Paraprofessional programs generally require licensees to prominently disclose, in their advertisements and contracts, that they are not attorneys, to specify the practice areas in which they are licensed, and to identify the limits of their practice.

#### Informed Consent

ATILS suggested that the Working Group also consider an informed consent requirement. An affirmative indication of consent could provide additional assurance that clients are aware of the limits of service that paraprofessionals can provide.

#### Fee Restrictions

Mr. Hartston believes there should be fee caps, reflecting the purpose of the program to provide a low-cost alternative to attorneys and to further support our goals of consumer and public protection. Ms. Soroosh believes there should not be fee caps because attorneys do not have fee caps. Several paraprofessional programs place limits on the types of fees that paraprofessionals may charge, including prohibitions on contingency fees. The Working Group should consider this topic during the meeting on October 29. The subcommittee did not reach agreement on fee caps or restrictions.

#### Next Steps

At the October 29 meeting, the subcommittee seeks input from the Working Group on the topics of MCLE, financial responsibility, and fee caps. After receiving this input, the subcommittee should reconvene to further refine its recommendations in that area, and to discuss the remaining topics identified above.

As it develops its recommendations, the subcommittee has and will identify regulatory requirements to be included in statutes and rules of professional conduct. We seek input from the Working Group on an approach to developing rule and statutory changes that will be necessary for the implementation of a paraprofessional program.

Recommendation 3.3 received a total of approximately 98 written public comments, 89 in opposition, five in support, and four with no stated position. Public comment themes, along with the Task Force's responses to each, are outlined below.

1. The need for this new Rule of Professional Conduct is unclear because the provision of law related services, including dual profession services, in the context of an attorney-client representation is already addressed in California case law and ethics opinions, and these authorities appear to offer better client protection than the terms of Model Rule 5.7.

**Task Force Response:** Case law and ethics opinions are not as accessible as the rules. As discussed above, a new rule offers the appeal of greater clarity in a lawyer's duties and could facilitate innovative delivery of law related services.

2. Adding this new rule would encourage the provision of law related services and give law firms options to lower costs or provide added value.

**Task Force Response:** The Task Force agrees and has prepared a proposed rule that is recommended for public comment distribution by the Board.

**Conclusion and Next Steps:** Should the Board agree with this proposal, it is anticipated that the proposed new rule 5.7 would be issued for a 60-day public comment period. If ultimately adopted by the Board, the proposed amendment would need to be submitted to the California Supreme Court for approval (see Bus. & Prof. Code, §§ 6076 & 6077).

#### **Recommendation No. 4**

**Commend to the Anticipated State Bar Paraprofessional Working Group the Key Principles Identified by ATILS in Studying the Concept of a Licensing Program that Authorizes Eligible Nonlawyers to Provide Limited Legal Services**

**Summary of the Recommendation:** With limited exceptions, existing California law restricts the practice of law to lawyers who are active licensees of the State Bar. Practice of law by nonlawyers is subject to prosecution for UPL. Other jurisdictions have implemented, or are studying, programs that authorize limited practice of law by nonlawyer paraprofessionals. The goal of these programs is to provide consumers with enhanced access to legal services. In studying innovative legal services delivery systems, ATILS received presentations from experts that included an observation that a paraprofessional program could serve as a component of a broader unauthorized practice of law reform that would serve the public interest. In discussing the regulatory issues presented by a paraprofessional program, ATILS has identified key principles and recommends that these principles be referred for consideration by the anticipated State Bar paraprofessional working group.

**Discussion:** At its meeting on January 24, 2020, the Board adopted the following resolution regarding consideration of a paraprofessional program similar to existing Limited Licensed Legal Technician (LLLT) programs in other jurisdictions.

**RESOLVED**, that the Board of Trustees directs staff, in consultation with the Board's Access Liaisons, to take the following steps to form a working group to develop recommendations to the Board by the end of 2020 for a paraprofessional program (e.g., LLLT) in California:

- Develop a draft charter
- Identify the appropriate size and composition of the working group
- Solicit interest in participation in the working group

It is anticipated that the Board will adopt a working group charter and appoint members at its March meeting.

Based on the Task Force's discussions about a new UPL exception for a regulated nonlawyer provider, including consideration of public input and information learned from stakeholder outreach meetings, there are several key principles that the Task Force believes warrant further study by the new working group in developing an implementation plan. Included in these key principles are regulatory considerations that should have a significant positive impact on public protection. The key principles are listed below but they should not be regarded as a comprehensive list of all possible implementation issues and regulatory considerations.

#### **1. Leveraging the Population of Existing Providers and Other Persons Who Have Relevant Education as Applicants for a Paraprofessional License**

Existing providers include: paralegals; legal document assistants; unlawful detainer assistants; and immigration consultants. A comparison table showing the components of the respective licensing programs for these professionals is provided as Appendix 11. Other persons who have relevant education include: applicants possessing a juris doctorate degree or other law degree (but not yet admitted in any jurisdiction); law students at an ABA or State Bar-accredited law school who did not graduate and were not admitted in any jurisdiction; and law students who completed one year of law school at a State Bar-unaccredited registered law school or who attempted to learn the law through the Law Office Study Program, but did not complete their studies and did not become admitted, but in that process did successfully pass the First Year Law Student's Examination.<sup>16</sup>

Each of these categories of persons should be considered as potential applicants who could demonstrate knowledge and experience that might serve as a basis for modifying or waiving otherwise applicable eligibility criteria that would be developed for the

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<sup>16</sup> The Task Force discussed the issue of whether former lawyers (e.g., disbarred lawyers or lawyers who have resigned with disciplinary charges pending or have been placed on involuntary inactive status) should be eligible to apply to participate in the new program. This is an issue for the new paraprofessional working group to consider with input from the Office of the Chief Trial Counsel. ATILS does not take a position but offers the observation that the Rules of Professional Conduct (rule 5.3.1) and case law (e.g., *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61 [38 Cal.Rptr.3d 759]) impose special restrictions on former lawyers.

application process. The general principle here is that there should be flexibility in determining applicant eligibility and in assessing how an applicant satisfies education, experience, and other application requirements. For example, an applicant who holds a juris doctorate degree, has completed a professional responsibility course, and has passed the multistate professional responsibility examination, might be deemed as satisfying an otherwise applicable requirement to complete a course or training on legal ethics. In contrast, an applicant who is an experienced Legal Document Assistant but who has never had education or training in legal ethics would not be exempted from that application requirement.

## **2. Consumer Understanding and Outreach**

Consumer understanding and outreach includes determining an appropriate name for the new providers, consideration of mandatory disclosures or a possible informed consent requirement, and the regulator's responsibility to educate the public regarding the availability and authority of the new class of licensees.

## **3. Protections Similar to those Afforded in an Attorney-Client Relationship**

These protections would include concepts of confidentiality and privilege. An evidentiary privilege similar to the statutory privilege for communications with a Certified Lawyer Referral Service may also be considered. In addition, these protections should include compliance with anti-bias and anti-discrimination standards.

## **4. Selection of Areas of Law and Specific Legal Services/Tasks**

Data from the Justice Gap Study and the California Attorney Practice Analysis (CAPA) study<sup>17</sup> should be used to identify permissible practice areas and suitable tasks.<sup>18</sup> In addition, another source would be the California Court's online Self-Help Center. This online information offers extensive user-friendly self-help information and guidance on use of approved forms by pro per litigants, such as a pro per litigant seeking a change in child support. The most frequently accessed pages at the Self-Help Center might help identify those areas of greatest need that could be appropriate for the contemplated paraprofessional program.

The paraprofessional working group should consider the possibility that areas of law not identified by any of the resources outlined above might also be areas of law in high

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<sup>17</sup> The CAPA study includes data on: the kinds of tasks performed and the depth of knowledge required for the proper performance of those tasks; the level of complexity of any given task; and the levels of criticality for the kinds of tasks performed by attorneys, as determined by the degree of potential harm to the client if the task is performed incorrectly. The CAPA fact sheet is posted online at: [http://www.calbar.ca.gov/Portals/0/documents/Practice\\_Analysis\\_Fact\\_Sheet.pdf](http://www.calbar.ca.gov/Portals/0/documents/Practice_Analysis_Fact_Sheet.pdf). See also CAPA EMS Survey Results posted at: <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000024865.pdf>.

<sup>18</sup> In addition, the application process might require each applicant to specify the areas of law and/or specific tasks that they are seeking to be licensed to render to consumers.

demand by low income or otherwise vulnerable populations and are encouraged not to create an exclusive list. There are potentially areas not typically identified as critical access to justice issues which might – nevertheless – serve serious needs. For example, the transgender community suffers significant risk of harassment, violence, and even murder when government issued identification documents do not accurately reflect name and gender identity. Therefore, legal services that support streamlined and accurate name and gender changes are critically important for this community. However, given the relatively small population of the transgender community, a traditional approach to the identification of subject areas appropriate for inclusion in the paraprofessional program might overlook this type of service.

## **5. Background Check**

Because the Task Force received public comment about nonlawyer fraud in connection with immigration services provided by nonlawyers (a.k.a., notario fraud), a background check that could involve a fingerprinting requirement for all applicants should be considered.

## **6. Financial Responsibility**

Program participants might be required to carry professional liability insurance, maintain a bond, or otherwise comply with a financial responsibility requirement. Although attorneys generally are not required to carry professional liability insurance, they are required to contribute to a Client Security Fund. A similar requirement for program participants is also an option that could be studied.

## **7. Continuing Education**

Program participants should be required to meet continuing legal education requirements, which might include a minimum number of legal ethics credits. Traditional paralegals who work under the supervision of a lawyer must complete continuing education (including legal ethics units). A similar requirement for paraprofessionals not under the direct supervision of a lawyer should also be a part of the regulatory framework.

## **8. Revisions to the California Rules of Professional Conduct**

Clarification regarding fee sharing between lawyers and the new nonlawyer providers are among some of the Rule of Professional Conduct issues that would need to be considered.<sup>19</sup> Additional revisions to the Rules of Professional Conduct and other

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<sup>19</sup> For example, the [Utah Rules of Professional Conduct](#) (as revised effective May 1, 2019) include a terminology rule clarifying that a “Legal Professional” in Utah includes nonlawyers who are authorized providers of legal services. See Utah rule 1.0 that in part provides:

(h) “Legal Professional” includes a lawyer and a licensed paralegal practitioner.

ancillary rules governing the provision of legal services beyond those delineated here should be considered by the paraprofessional working group.

## **9. Ethical Standards for Program Participants**

Other jurisdictions that have allowed nonlawyers to provide legal services (e.g., Utah’s Licensed Paralegal Practitioner program) require compliance with specially designed ethical conduct standards. For example, the issue of prohibiting “running” and “capping” can be addressed in these new conduct standards developed for the program. Provisions for safekeeping of funds and property entrusted by clients and others should also be developed.

## **10. Risk-Based Proactive Regulation**

Auditing and other mandatory reporting should be explored as a means to reduce the cost of regulation and to ensure that the regulator’s compliance activities are tailored to specific program risks and potential harms.

## **11. Compliance Enforcement**

Although a new risk-based proactive system can be used to identify situations that would prompt the regulator to act to ensure compliance, ATILS believes that a traditional complaint driven system should also be implemented as an option for consumers. Both a risk-based system and a complaint driven system can lead to potential consequences such as license suspension/revocation, fines, civil liability, and criminal prosecution.

## **12. Cost of Regulation**

It is very important that any regulatory framework have appropriate resources to enable the auditing/enforcement mechanisms that typically serve as key public protections. The Task Force recommends that the paraprofessional working group identify sources of program funding including application fees, continuing education fees, and potentially, grant funding.

## **13. Startup Costs of Establishing the Program**

Additionally, the Task Force is aware that startup costs for establishing this paraprofessional program may be substantial. The Task Force discussed the possibility of exploring grant funding as one method for meeting startup costs. The following sources of grant funding have not been contacted by the Task Force but are listed below as examples of the types of grants that could be explored.

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(i) “Licensed Paralegal Practitioner” denotes a person authorized by the Utah Supreme Court to provide legal representation under Rule 15-701 of the Supreme Court Rules of Professional Practice.

- National Center for State Courts – NCSC is contributing staff time to the creation of a regulatory body in Utah and may be willing to provide similar services to California.
- State Justice Institute – SJI is also a funding source for the creation of the Utah regulatory body.
- Public Welfare Foundation – PWF funded (in partnership with NCSC) a Justice for All initiative which demonstrates the foundation’s interest in creative ways to increase access to justice.
- Pew Charitable Trusts – recently launched a Civil Legal System Modernization project.
- Gates Foundation, Google.org, Chan Zuckerberg Initiative – While these organizations do not have civil justice specific grant making goals it is recommended that the paraprofessional working group explore potential funding opportunities with them.

#### **14. Outreach**

The Task Force recommends that the paraprofessional working group reach out to and engage with several existing educational resources and trade associations and secure input from these organizations as part of the development of this new program including:

- Educational resources – paralegal certification programs (at traditional colleges and universities, law schools, and community colleges).
- Trade Associations – California Alliance of Paralegal Associations, California Association of Legal Document Assistants, National Association of Immigration Consultants, and others as identified.

**Relationship to the ATILS Charter:** This recommendation responds to the charter as it is a proposal for a new exception to existing UPL restrictions. The purpose of the new exception is to increase effective and meaningful access to the justice system through greatly expanded resources. By expanding the pool of available legal expertise and at a cost presumably less than a fully licensed attorney, many more Californians in need of legal advice and assistance may be in a better position to secure that assistance.

In part, the progress and acceptance of limited scope legal services by attorneys has motivated the Task Force’s consideration of this concept. Under Rule of Professional Conduct 1.2(b), attorneys are able to unbundle any client case or matter provided it is reasonable under the circumstances, not otherwise prohibited by law, and the client gives informed consent.<sup>20</sup> The

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<sup>20</sup> Another existing practice that informs this recommendation, in particular the key consideration of ethical standards for the licensees, is the provision of law related services by [court-connected family law facilitators](#). The

	<b>Continuing Legal Education</b>	<b>Insurance</b>	<b>Client Security Fund</b>	<b>Audits</b>	<b>Data Reporting</b>	<b>Contract Requirements</b>	<b>Restrictions on Fees</b>
<b>California Attorneys</b>	25 hours every 3 years - half must be "participatory." - no more than half can be self-study - 4 hours legal ethics - 1 hour competence - 1 hour elimination of bias	Insurance not required; disclosure of lack of insurance required	\$40 annual assessment	None	None	Written fee agreement required for fees >\$1,000.	Prohibition against unconscionable fees
<b>California Paralegals</b>	8 hours every 2 years - 4 hours legal ethics - 4 hours general or specialized law	No requirements	No	None	None	N/A	Prohibited from contracting with anyone other than an attorney
<b>California Legal Document Assistants</b>	15 hours every 2 years	\$25,000 bond	No	None	None	Written contract required.	
<b>Arizona</b>	15 hours every year - 3 hours professional responsibility	Same as for lawyers (disclosure of lack of insurance required)	Yes	None	None specified	Arizona Rules of Professional Conduct have not yet been updated to reflect LLLPs.	Arizona Rules of Professional Conduct have not yet been updated to reflect LLLPs.
<b>Utah</b>	12 hours every 2 years - 3 hours ethics or professional responsibility 1 hour professionalism and civility	No mention in rules	Yes	None	None specified	Written contract required.	Prohibition against unreasonable fees Contingency fees prohibited
<b>Washington</b>	30 credits every 3 years - 15 credits law and legal procedure - 6 credits ethics	Required to have insurance unless employed by government	Yes	None	None specified	Written contract required	Prohibition against unreasonable fees Contingency fees prohibited
<b>Ontario</b>	12 hours per year - 3 hours on professional responsibility, ethics and/or practice management (must include 1 hour on equity, diversity and inclusion) - 9 hours substantive practice area	Insurance required	Yes	Law Society of Ontario conducts Practice Audits of licensed paralegals	Annual report required - Professional business - Other activities related the practice of law or provision of legal services	No written contract required	Prohibition against unreasonable fees Contingency fees permitted



Date: December 17, 2020

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Julianne Fellmeth, Kim Kirchmeyer, and Ira Spiro

Subject: Update and Recommendations for Disciplinary Structure for Paraprofessional Program

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## EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the requirements for paraprofessional discipline.

## DISCUSSION

At its August 25, 2020, meeting, the CPPWG determined that subcommittees should be created to develop requirements for paraprofessional licensing, regulation, and discipline. These subcommittees were appointed subsequent to that meeting, and each met several times to review and consider information about their assigned topics. At its October 29, 2020, meeting, the Working Group reviewed the status reports from each of these subcommittees and provided feedback on the subcommittees' preliminary recommendations and proposals.

At the October 29 meeting, the Discipline Subcommittee, which comprised at that time Kim Kirchmeyer and Ira Spiro, provided the CPPWG with an update on its initial design for a paraprofessional disciplinary structure as follows:

- The State Bar's Office of the Chief Trial Counsel (OCTC) to handle complaint review and investigation;

- First level adjudication to be conducted either by a single staff adjudicator (an attorney employed by the State Bar) or by a three-person panel a public member,<sup>1</sup> and a licensee;
- Appellate level adjudication to be conducted by a distinct staff adjudicator or a three-member hearing panel; and
- An outcome of citation and fine would be established, a remedy unavailable in the attorney discipline system.

Subsequent to that meeting Sharon Bashan and Julianne Fellmeth joined the subcommittee, which has continued to meet and finalize its disciplinary structure recommendations. This memo provides an update on the status of the subcommittee’s work, along with preliminary recommendations for a legal paraprofessional disciplinary model.

**Table 1. Proposed Disciplinary Model**

Model Element	October 29 Proposal	Current Recommendation
Complaint Intake and Investigation	To be handled by OCTC	Same
Diversion Fines and Fees	To be administered by OCTC To be administered by OCTC	Same, with clarification that if an OCTC fine and fee determination is disputed that dispute will be adjudicated by the Hearing Panel
Initial Hearings and Disputed Fine and Fee Determinations	Three-person panel or staff adjudicator	Three-person Hearing Panel
Settlement Conferences	Undecided	To take place only if both OCTC and paraprofessional mutually consent.  To be heard by staff adjudicator
Appeals and Stipulated Discipline	Three-person panel or staff adjudicator	Three-person panel or the Paraprofessional Board
Final Discipline Decision	Supreme Court	Suspensions and Revocations: final discipline decision to be made by the Supreme Court.  Appeals from the Appeals level to be heard by the Supreme Court.  All other discipline finalized at appropriate level within the State Bar’s paraprofessional disciplinary structure, level as yet to be determined.

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<sup>1</sup> Public members could not be current or former attorney or paraprofessional licensees.

A detailed infographic of the model is provided as Attachment A. Selected issues are addressed below.

### **THREE-PERSON PANELS VERSUS STAFF ADJUDICATOR**

The subcommittee's October 29 update provided options, to be vetted by the Working Group, as to who would preside over the initial hearing and the first appeal, either a single staff adjudicator or a panel comprising a staff adjudicator, a public member, and a paraprofessional licensee. The identified benefits of a panel model included the ability to have broader participation in the disciplinary decision-making process, specifically enabling the participation of a paraprofessional. The Department of Consumer Affairs' disciplinary processes all allow for participation by relevant licensees. Alternatively, a staff adjudicator model would afford efficiency and cost containment benefits.

Subsequent to the October 29 meeting, the subcommittee determined that the benefits of the panel model at the Hearing level, where a majority of cases will be disposed, outweigh the potential downsides. The subcommittee continues to believe that it is important that these panel members be appropriately trained and compensated and will be generating recommendations in that regard for future CPPWG consideration.

With respect to the appellate level, the subcommittee has outlined two options for the CPPWG's consideration—a distinct three-member panel or the Paraprofessional Board.<sup>2</sup> Leveraging the licensing board, which will presumably be a volunteer in nature, at this stage would be a lower-cost option than utilizing a new three-member Appeals panel, and would still allow for participants with a mix of backgrounds and licensure statuses. Given that a relatively small number of matters are likely to be appealed, the subcommittee is less concerned about the lack of paid professional adjudicators at this level as compared to the initial hearing stage.

### **UNAUTHORIZED PRACTICE OF LAW**

The subcommittee has begun to explore the interplay between licensed paraprofessionals and the existing framework for the investigation and prosecution of the unauthorized practice of law (UPL), in part to determine whether any or statutory changes that might need to be made to address the addition of paraprofessionals a new class of legal licensee. To this end the subcommittee heard from Steve Moawad, Special Assistant to the Chief Trial Counsel, Agustin Hernandez, Supervising Attorney, OCTC, and Ryann Gerber Jorban, Deputy District Attorney with the Consumer Protection Division of the Los Angeles County District Attorney's Office. OCTC has limited statutory remedies available; it can assume jurisdiction over an unlawful practice, pursue civil fines in the superior court, and refer matters to local District Attorneys' Offices (DA Offices). DA Offices can pursue

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<sup>2</sup> As part of its deliberations, the Discipline Subcommittee acknowledged a lack of clarity regarding the structure and composition of the overarching paraprofessional board. The CPPWG's discussion of this topic at its December 17 meeting will be helpful; for the purposes of its deliberations, the subcommittee assumed that there would be a board comprised of a mix of attorney and nonattorney members that would be available to participate in the disciplinary process.

misdemeanor criminal charges<sup>3</sup>, though a lack of staffing and other resources appears to make this outcome a reality for only the most egregious matters in many jurisdictions. In fact, while the subcommittee now understands that the UPL statutes may not need to be changed to accommodate a new class of licensees, a pervasive lack of resources in OCTC and DA Offices is of concern and may need to be addressed by the CPPWG's recommendations. The addition of a new class of licensees is likely to increase the workload for both systems given the need to determine if the behaviors at issue are in fact authorized under the parameters of the licensed paraprofessional program. The subcommittee will continue to explore these issues and will determine if recommendations in this area are warranted for consideration by the CPPWG.

### **PUBLIC RECORDS**

The subcommittee has also begun deliberations regarding which paraprofessional disciplinary records should be made public. In the attorney discipline system:

- Complaints are not public until charges are filed.
- If a case is settled through stipulation prior to charges being filed, it does not become public until final discipline is imposed.
- All final discipline is public, with the exception of private reproof.
- Private reproof is public only if charges were filed in the case.

The subcommittee has considered, but not reached a decision regarding, whether fines and diversion should be made public. Fines are unavailable in the attorney discipline system. Diversion is most akin to agreements in lieu of discipline<sup>4</sup>. While there is a consumer protection argument that all types of outcomes should be made public, there is a counter-view that paraprofessionals will be less likely to agree to remedies that may ultimately be more protective than an adjudicated hearing if those remedies are made public.

In addition to the types of situations that will be made public, the subcommittee is considering the question of how long disciplinary and other records should be publicly available.

### **NEXT STEPS**

The Discipline Subcommittee will continue to meet, and will develop additional recommendations on topics including:

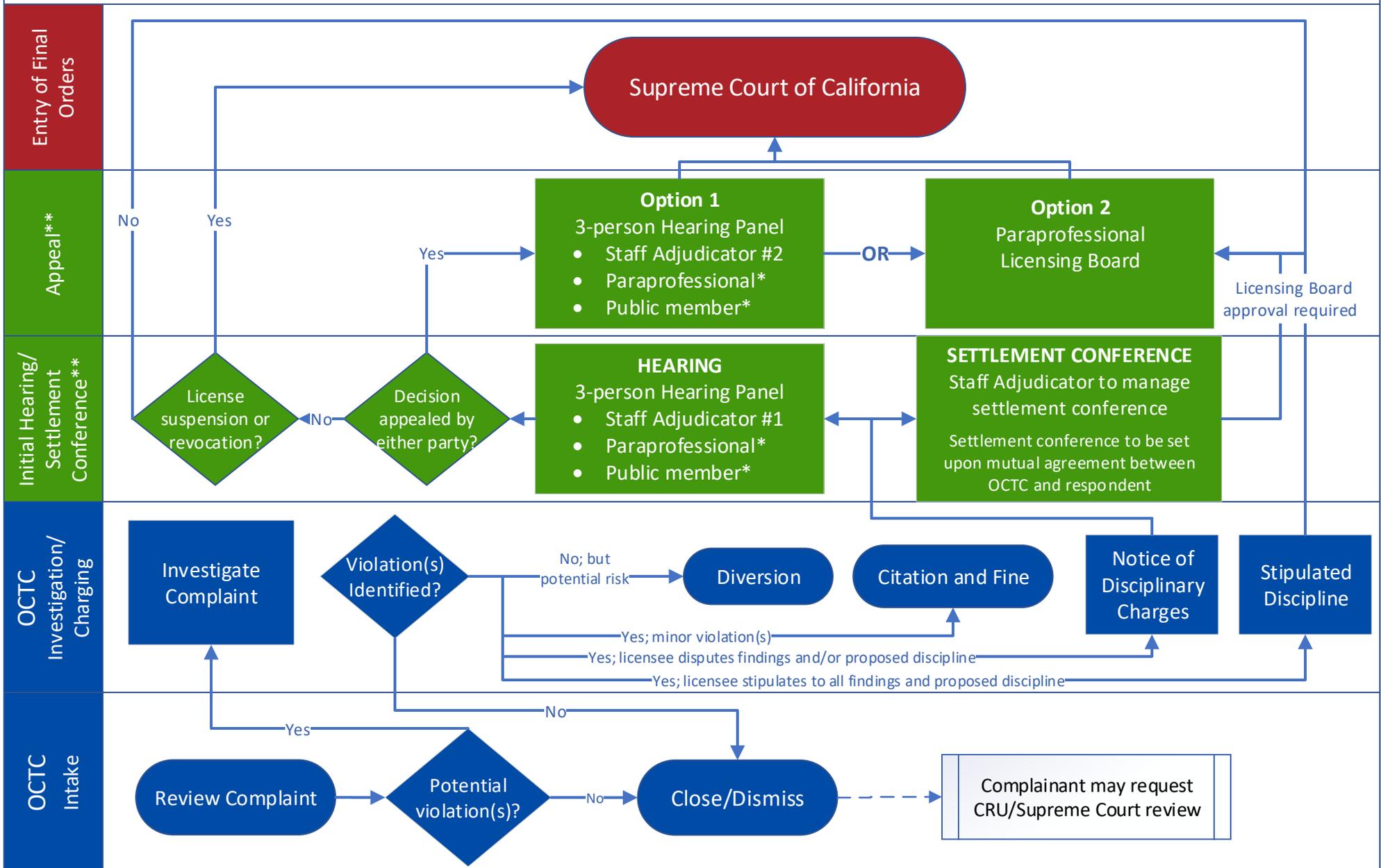
- Mandatory fee arbitration in the paraprofessional disciplinary system context;
- Compensation and training for panel members;
- Clarification of diversion, fines and fees, and alternatives in lieu of discipline;

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<sup>3</sup> Ms. Jorban identified as problematic the fact that DA Offices are limited to misdemeanor charges even when dealing with repeat UPL offenders. She suggested that statutory changes are needed to authorize felony charges in certain circumstances.

<sup>4</sup> The Discipline Subcommittee has not yet addressed agreements in lieu of discipline, a nondisciplinary outcome available in the attorney discipline system.

- Enhancements/improvements to the existing UPL enforcement structure;
- Public records; and
- Standards of discipline.



\*Panels will be appointed for a limited term, and will hear all cases during their term. Panel members will receive extensive training, and be paid for hearing cases.

\*\*OCTC to prosecute cases at hearing and appeal.



Date: December 17, 2020

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, and Fariba Soroosh

Subject: Consideration of Topics and Tasks, Family Law Practice Area

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## EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program, and the specific tasks that will be allowed for licensees in each practice area.

## DISCUSSION

At its first meeting on April 21, the CPPWG discussed potential practice areas for program inclusion. One of these areas was Family Law, including Children and Custody (referred to herein as Family Law). At its July 13 meeting, five members of the CPPWG volunteered to serve on a Family Law Subcommittee tasked with studying this practice area with the goal of generating recommendations regarding inclusion or exclusion of specific Family Law subtopics for consideration by the full body at its next meeting. The Family Law Subcommittee provided the CPPWG with an update at its August 25 meeting. At that meeting, the CPPWG decided to modify the scheduled approach for Working Group deliberations, advancing the development of recommendations in the areas of paraprofessional licensing, regulation, and discipline; the Family Law Subcommittee was paused as a result. The subcommittee did not meet between the August 25 and October 29 CPPWG meetings. The subcommittee resumed its work following the October 29 meeting, starting from the point where it had left off several months prior.

That starting point, reflected in the subcommittee’s August 2020 update to the CPPWG, is summarized in Tables 1 and 2 below.

**Table 1. Subtopic Recommendations, August 2020**

Subtopics	Included	Excluded	To be Determined
<b>Dissolution</b>	X		
<b>Parentage</b>	X		
<b>Division of Assets and Debt</b>	X		
<b>Custody and Visitation</b>	X		
<b>Child Protective Services Investigation</b>	X		
<b>Support</b>	X		
<b>Violence Prevention</b>			
Domestic Violence	X		
Elder Abuse			X
Civil Harassment	X		
<b>Protection of the Person</b>			
Guardianship	X		
Conservatorship			X
Adoption not arising from dependency	X		

**Table 2. Task Recommendations, August 2020**

Task Categories	Included	Excluded	Split Recommendation
<b>Legal Advice</b>	X		
<b>In-Court Representation</b>			X <sup>1</sup>
<b>Preparation of Documents:</b>			
Pleadings	X		
Joinders	X		
Lis pendens	X		
Written discovery			Recommendation pending
Declarations	X		
Motions	X		
Briefs	X		
Exhibits	X		
Findings and Orders After Hearing	X		
Judgments	X		
Qualified Domestic Relations Orders (QDRO)		X	
<b>Tax Advice</b>		X	

<sup>1</sup> Further explanation of split recommendations can be found in the Family Law Subcommittee agenda item posted for the August 25, 2020, CPPWG meeting.

<b>Task Categories</b>	<b>Included</b>	<b>Excluded</b>	<b>Split Recommendation</b>
<b>Trial Preparation</b>			X
<b>Trial Preparation Coaching for Self-Represented Litigants</b>	X		
<b>Oral Discovery</b>			Recommendation pending
<b>Mediation Preparation for Self-Represented Litigants</b>	X		
<b>Support Calculations</b>	X		
<b>Filing Appeals</b>		X	
<b>Appellate Advocacy</b>		X	

## CURRENT STATUS OF DELIBERATIONS

Following the October 29 CPPWG meeting, the subcommittee determined that the most effective course of action would be to turn back to the subtopic list, with a goal of fully delineating all possible subtopics within the area of Family Law and making recommendations for inclusion/exclusion. The current status of these efforts is provided as Attachment A. The subcommittee has not yet revisited the question of authorized tasks other than to the extent that they overlap with a subtopic (for example QDRO preparation and support calculations). In addition to seeking CPPWG feedback regarding recommended included and excluded subtopics, the subcommittee invites discussion regarding “hot topic” tasks still under consideration, including in-court representation, written and oral discovery, and whether paraprofessional representation should be precluded for parties whose income or estates exceeds specified levels, at the Working Group’s December 17 meeting.

The subcommittee continues to vet the subtopics of guardianship, conservatorship, and elder abuse. At its December 1 meeting the subcommittee heard from Ms. Johanna Thai Van Dat and Ms. Linda Vu, from the Santa Clara Superior Court Self-Help Center, and Ms. Bertha Hayden and Ms. Dani Kaiserman from Bet Tzedek Legal Services, on issues related to elder abuse and the various types of conservatorship. The subcommittee plans to explore these issues further, as well as to better understand the nature of guardianship proceedings, as part of its upcoming work.

The subcommittee has identified substantive education courses and experiential training requirements for the Family Law practice area and has provided its recommendations to the Licensing Subcommittee in that vein. These recommendations include mandatory courses in trauma-informed legal assistance and experiential hours in a violence prevention clinic setting. Similar recommendations regarding MCLE have been provided to the Regulation Subcommittee.

### Family Law Subtopic Recommendations

<p>Dissolution/Domestic Partnerships, including dissolution, legal separation and nullity (annulment)</p> <ol style="list-style-type: none"> <li>1. Marital status, including status-only judgments<sup>i</sup></li> <li>2. Annulment based on bigamy, age of spouse/registrant, prior existing marriage/DP<sup>ii</sup></li> <li>3. Annulment based on incest, unsound mind, fraud, force, physical incapacity</li> </ol>	<p>Included</p> <p>Included</p> <p>Excluded<sup>iii</sup></p>
<p>Paternity (including paternity issues within dissolution, legal separation or domestic partnerships)</p> <ol style="list-style-type: none"> <li>1. Complaint to establish parental relationship not involving FC 7612(b) or (c)</li> <li>2. Complaint to establish parental relationship involving FC 7612(b) or (c)</li> </ol>	<p>Included</p> <p>Excluded</p>
<p>Summary Dissolutions</p>	<p>Included</p>
<p>Petitions for Custody and Support</p>	<p>Included</p>
<p>Violence Prevention: Domestic Abuse/Domestic Violence Restraining Order, Civil Harassment, Gun Violence, Workplace Violence subject to following conditions:</p> <ol style="list-style-type: none"> <li>1. Domestic abuse/violence education mandatory</li> <li>2. Specific annual CLE of no less than 3 hours required, in addition to base CLE</li> </ol>	<p>Included</p>
<p>Child custody and visitation except in any action where any of the following issues or claims are raised:</p> <ol style="list-style-type: none"> <li>1. Hague Convention on International Child Abduction</li> <li>2. International or interstate custody disputes under UCCJEA</li> </ol>	<p>Included</p> <p>Excluded</p> <p>Excluded</p>
<p>Child support<sup>iv</sup></p>	<p>Included</p>
<p>Spousal or domestic partner support</p> <ol style="list-style-type: none"> <li>1. Temporary</li> <li>2. Permanent (litigated/contest)/FC 4320</li> <li>3. Spousal support waivers, buyouts or nonmodifiable step downs             <ol style="list-style-type: none"> <li>a. Short term marriage [FC 4336(b)]</li> <li>b. Long term marriage</li> </ol> </li> </ol>	<p>Included</p> <p>Excluded</p> <p>Included</p> <p>Excluded</p>

<p>Separate property/community property/quasi community property (nullity)<sup>v</sup></p> <ol style="list-style-type: none"> <li>1. Declaration of disclosures</li> <li>2. Referrals to experts for appraisals and valuations</li> <li>3. Written discovery (form interrogatories v. other)</li> <li>4. Depositions</li> <li>5. Expert discovery</li> <li>6. Subpoenas: deposition and hearing/trial</li> <li>7. Motions to compel/motions to quash not related to depositions</li> <li>8. Motions to compel/quash related to depositions</li> <li>9. Post division transfer documents</li> <li>10. QDRO (referrals only)</li> </ol>	<p>Included Included  Excluded  Included  Excluded Included Excluded</p>
Quasi marital property (nullity)	Excluded
Attorney fees, including expert and paraprofessional fees	Included
Restoration of former name	Included
Venue and jurisdiction disputes not otherwise addressed herein	
Marital settlement agreements [except for any issues which are within excluded areas of practice as set forth above]	Included
Post judgment/permanent order modifications [except UCCJEA/Hague]	Included
Registration of foreign judgments	Included
Premarital/Post-marital agreements (not including MSAs)	Excluded
Putative spouse claims arising from nullity action, including all issues within such a claim (e.g. quasi marital property, attorney fees, spousal support)	Excluded
Marvin/Palimony actions	Excluded
<p>Enforcement of family law orders and judgments</p> <ol style="list-style-type: none"> <li>1. Appointment of elisor</li> <li>2. RFO/Motion for relief in issuing court to assist in enforcement</li> <li>3. Contempt</li> <li>4. Seek work orders support</li> <li>5. Debtor's exam</li> <li>6. Wage assignment</li> <li>7. Writ of execution</li> <li>8. Filing of lien</li> </ol> <p>All enforcement mechanisms not specifically identified above are excluded</p>	<p>Included Included Excluded Included Included Included Included Included</p>

## ENDNOTES

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- i. If instruction includes detailed, in depth education regarding FC 2337, FL-315, FL-347, FL-318-Info, joinder and pension issues
  - ii. If instruction includes education and instruction re: bigamy v. prior existing marriage/DP and FC 2200-2210 and 2310-2312
  - iii. Education includes issue spotting, clear definition of excluded item, specific education regarding excluded issues and referral process (necessity, regulation)
  - iv. Instruction to include training on support calculators, wage assignments and role of DCSS
  - v. This scope of practice presumes detailed and substantive instruction on forms of discovery, responding to discovery, objections and law and motion procedure related to discovery



Date: December 17, 2020

To: California Paraprofessional Program Working Group

From: Julia Brynelson, Stephen Hamilton, and Claudia Torres-Ambriz

Subject: Update and Recommendations for Licensing Requirements for Paraprofessional Program

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## EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the requirements for paraprofessional licensing.

## DISCUSSION

At its August 25, 2020, meeting, the CPPWG determined that subcommittees should be created to develop requirements for paraprofessional licensing, regulation, and discipline. These subcommittees were appointed subsequent to that meeting, and each met several times to review and consider information about their assigned topics. At its October 29, 2020, meeting, the Working Group reviewed the status reports from each of these subcommittees, and provided feedback on the subcommittees' preliminary recommendations and proposals.

At the October 29 meeting, the then members of the Licensing Subcommittee, Julia Brynelson and Stephen Hamilton, presented preliminary recommendations for paraprofessional licensing requirements, including prerequisites for entry into the program; educational standards for paraprofessional training programs; practical/experiential training requirements; and testing. Written and oral public comment was provided in response to these preliminary recommendations, which were posted to the agenda in advance of the meeting.<sup>1</sup> The CPPWG also provided feedback and suggestions.

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<sup>1</sup> There was an error in the October 29, 2020, report from the Licensing Subcommittee regarding the paralegal course requirements at American River College. While an Evidence course is offered, it is not required.

Claudia Torres-Ambriz joined the Licensing Subcommittee subsequent to the October 29 meeting. The subcommittee met several times to review additional information, including California Bar Exam (CBX) pass rates; law degree program curricula; and experiential training and supervision requirements for the Law Office Study (LOS) and Practical Training of Law Students (PTLS) programs.

### **BAR EXAM PASS RATE FOR LAW SCHOOLS BY ACCREDITATION TYPE**

The subcommittee's preliminary recommendation included a prerequisite that entrants to the program have graduated from an ABA or California accredited law school, or else be a paralegal qualified under Business and Professions Code section 6450(c). During the October 29 meeting, the subcommittee heard feedback suggesting that graduates from California registered (unaccredited) law schools be eligible to participate in the program. It was pointed out that registered law schools are a lower cost option than accredited law schools, providing greater access to members of communities that are underrepresented in the legal profession.

To determine if there was evidence to support the exclusion of registered law school graduates from the paraprofessional program, the subcommittee reviewed CBX pass rates for each category of law school. As Attachment A reflects, while graduates from ABA-approved law schools pass the CBX at substantially higher rates than do graduates from non-ABA schools, there is not a significant difference between pass rates for graduates from California accredited and California registered law schools. Considering this data, the subcommittee has revised its recommendation to allow graduates from California registered law schools to be eligible for the paraprofessional program.

### **LAW DEGREE CURRICULA**

The subcommittee's preliminary recommendation included a prerequisite that entrants to the program, other than qualified paralegals, have a JD degree. Written comment provided in advance of the October 29 meeting, as well as oral comments during that meeting, suggested that graduates with LLM and MSL degrees (masters level law degrees) be admitted to the program. To determine whether to revise the recommendation in this vein, the subcommittee reviewed information about the curricular requirements for these degrees at several law schools.

#### **LLM Degree**

LLM programs generally require students to have a first degree in law. Students in LLM programs fall into two categories: American students who possess a JD and are pursuing specialized study in a particular practice area, and foreign students who have a first degree in law from their home country and want to take the California Bar Exam. Since those with a JD would qualify for entry into the paraprofessional program, inclusion of graduates with an LLM degree would benefit only those with a foreign legal education.

#### **MSL Degree**

MSL programs provide a legal education for people interested in learning about the legal system but who do not intend to practice law. These programs provide this information for professionals working in fields such as government, healthcare, and human resources, among others. The subcommittee's research found that, while the curricular requirements for LLM programs are intended to enhance the education of those with a first degree in law, with a goal of preparing

participating students to pass the CBX and practice law, MSL programs are not constructed in that fashion. A summary of curricular requirements for several law schools' LLM and MSL degree programs is provided as Attachment B. Based on this research, the subcommittee has revised its recommendation to allow participation in the paraprofessional program by applicants with an LLM degree, but not those with an MSL degree.

### **EXPERIENTIAL TRAINING REQUIREMENTS**

The subcommittee's preliminary recommendation included a practical training (experiential) requirement of 480 hours, to be completed over a minimum of 10 weeks. This amount of time is significantly lower than that required by programs in other states; it was intended to allow applicants to complete the program in approximately one year. The preliminary recommendation did not specify the type of experience required, nor the requisite qualifications of or expectations for the supervising attorney. In reconsidering this recommendation further, the subcommittee reviewed the requirements for students and supervisors in the LOS and PTLs programs, as well as the newly implemented Provisional Licensure Program. The subcommittee also considered recommendations from the Family, Children, and Custody Practice Area Subcommittees regarding requirements for both classroom and experiential training that should be required for paraprofessionals who wish to practice in the Family Law area. The requirements for students and supervisors in the LOS and PTLs , and for Provisionally Licensed Lawyers, are provided as Attachment C.

Based on a review of this information, the subcommittee has revised the experiential training requirements, as follows:

- Increase in number of hours required
- Specification of type of experience, based on practice area
- Delineation of requirements for supervising attorneys

The subcommittee also discussed how the State Bar could encourage individual attorneys and legal services programs to provide supervision to paraprofessional program applicants. The subcommittee considered the following incentives:

- Providing MCLE credit to supervisors for the time spent supervising paraprofessional applicants
- Provide funding for legal services programs to hire paraprofessional applicants and provide them with required experience
- Include in the online attorney directory information about attorneys who have provided or are available to provide supervision to paraprofessionals

The subcommittee seeks input from the CPPWG for other ideas to incentivize supervision of paraprofessionals seeking to complete their experiential training.

## PROPOSED LICENSING REQUIREMENTS

Requirement	Recommendations Presented October 29, 2020	Revised Recommendations
<b>Educational Prerequisites</b>	JD from ABA or California Accredited law school; or Paralegal qualified under Business and Professions Code § 6450(c)	JD or LLM degree from ABA or California Accredited or Registered law school; or Paralegal qualified under Business and Professions Code § 6450(c)
<b>Educational Requirements</b>  [In addition to prerequisites set forth above]	All practice areas <ul style="list-style-type: none"> <li>○ 3 credit hours Professional Responsibility (can be tested out of by law school graduates who pass the Professional Responsibility Exam)</li> <li>○ 3 credit hours Evidence [practical and not theoretical]</li> <li>○ 3 credit hours Court Procedure</li> <li>○ 3 credit hours Court Advocacy</li> </ul> Subject matter specific credits, including theoretical and practical <ul style="list-style-type: none"> <li>● Family Law: 6 credit hours                             <ul style="list-style-type: none"> <li>○ 3 credit hours Family Law and Procedure                                     <ul style="list-style-type: none"> <li>▪ These credits may be satisfied by passing a test that covers the subject matters addressed in this course.</li> </ul> </li> <li>○ 3 credit hours Advanced Family Law and Procedure, with a focus on helping self-represented parties for hearings and trial</li> </ul> </li> <li>● Credit hours to be set based on the number of course hours projected to achieve competency in specific practice areas<sup>2</sup></li> </ul>	All practice areas <ul style="list-style-type: none"> <li>○ 3 credit hours Ethics and Professional Responsibility, including recognition and elimination of bias in the legal profession (can be tested out of by law school graduates who pass the Professional Responsibility Exam)</li> <li>○ 3 credit hours Evidence [practical and not theoretical]</li> <li>○ 3 credit hours Court Procedure</li> <li>○ 3 credit hours Court Advocacy</li> </ul> Subject matter specific credits, including theoretical and practical <ul style="list-style-type: none"> <li>● Family Law: 9 credit hours                             <ul style="list-style-type: none"> <li>○ 3 credit hours Family Law and Procedure                                     <ul style="list-style-type: none"> <li>▪ These credits may be satisfied by passing a test that covers the subject matters addressed in this course.</li> </ul> </li> <li>○ 3 credit hours Advanced Family Law and Procedure, with a focus on helping self-represented parties for hearings and trial</li> <li>○ 3 credit hours in trauma-informed legal assistance</li> </ul> </li> <li>● Credit hours to be set based on the number of course hours projected to achieve competency in specific practice areas</li> </ul>

<sup>2</sup>The Western Association of Schools and Colleges requires accredited schools to comply with the definition of credit hours provided by the Code of Federal Regulations, 34 CFR 600.2 and 34 CFR 602.24, as follows: “One hour of classroom or direct faculty instruction and a minimum of two hours of out of class student work each week for approximately fifteen weeks for one semester or trimester hour of credit, or ten to twelve weeks for one quarter hour of credit.”

Requirement	Recommendations Presented October 29, 2020	Revised Recommendations	
<b>Practical Training (Experiential)</b>	480 hours, over a minimum of 10 weeks Completed within two years before or 1 year after completion of exam	<b>Requirements for Students</b> <ul style="list-style-type: none"> <li>• 1,000 hours over a minimum of 6 months</li> <li>• Must be in practice area in which paraprofessional will be licensed                             <ul style="list-style-type: none"> <li>○ For Family Law practice area, must include work in a violence prevention clinic</li> <li>○ Each Practice Area Subcommittee to identify specific requirements</li> </ul> </li> </ul>	<b>Requirements for Supervisors</b> <ul style="list-style-type: none"> <li>• Active licensee for ≥ 4 years</li> <li>• Provide training and counsel</li> <li>• Assume responsibility for applicant’s activities</li> <li>• Approve and sign documents prepared for clients</li> <li>• Submit written declaration certifying applicant’s experience and training</li> <li>• Supervision ≤ 5 applicants at a time</li> </ul>
<b>Testing</b>	<ul style="list-style-type: none"> <li>• Subject matter specific testing                             <ul style="list-style-type: none"> <li>○ Subject matter subcommittees to recommend specific elements and parameters of testing</li> </ul> </li> <li>• Professional Responsibility Exam modeled after attorney exam</li> </ul>	<ul style="list-style-type: none"> <li>• Subject matter specific testing                             <ul style="list-style-type: none"> <li>○ Subject matter subcommittees to recommend specific elements and parameters of testing</li> </ul> </li> <li>• Professional Responsibility Exam modeled after attorney exam</li> </ul>	
<b>Moral Character &amp; Background Check</b>	<ul style="list-style-type: none"> <li>• Fingerprinting &amp; background check equivalent attorney requirements</li> <li>• Not disbarred or resigned with charges pending in any jurisdiction</li> <li>• Not denied admission to State Bar of California due to moral character or background check</li> </ul>	<ul style="list-style-type: none"> <li>• Fingerprinting &amp; background check equivalent attorney requirements</li> <li>• Not disbarred or resigned with charges pending in any jurisdiction</li> <li>• Not denied admission to State Bar of California due to moral character</li> </ul>	

## **NEXT STEPS**

This subcommittee will continue to meet, and will develop additional recommendations in the following areas:

- Curriculum requirements
  - Curriculum requirements for practice areas to be specified by each subcommittee
  - Substantive content of required courses
  - Outreach to academic institutions to discuss partnership in development of educational program
- Experiential training requirements
  - Experiential/practical training requirements for practice areas to be specified by each subcommittee
  - Required content for supervisor declaration
- Incentives for Supervising Attorneys

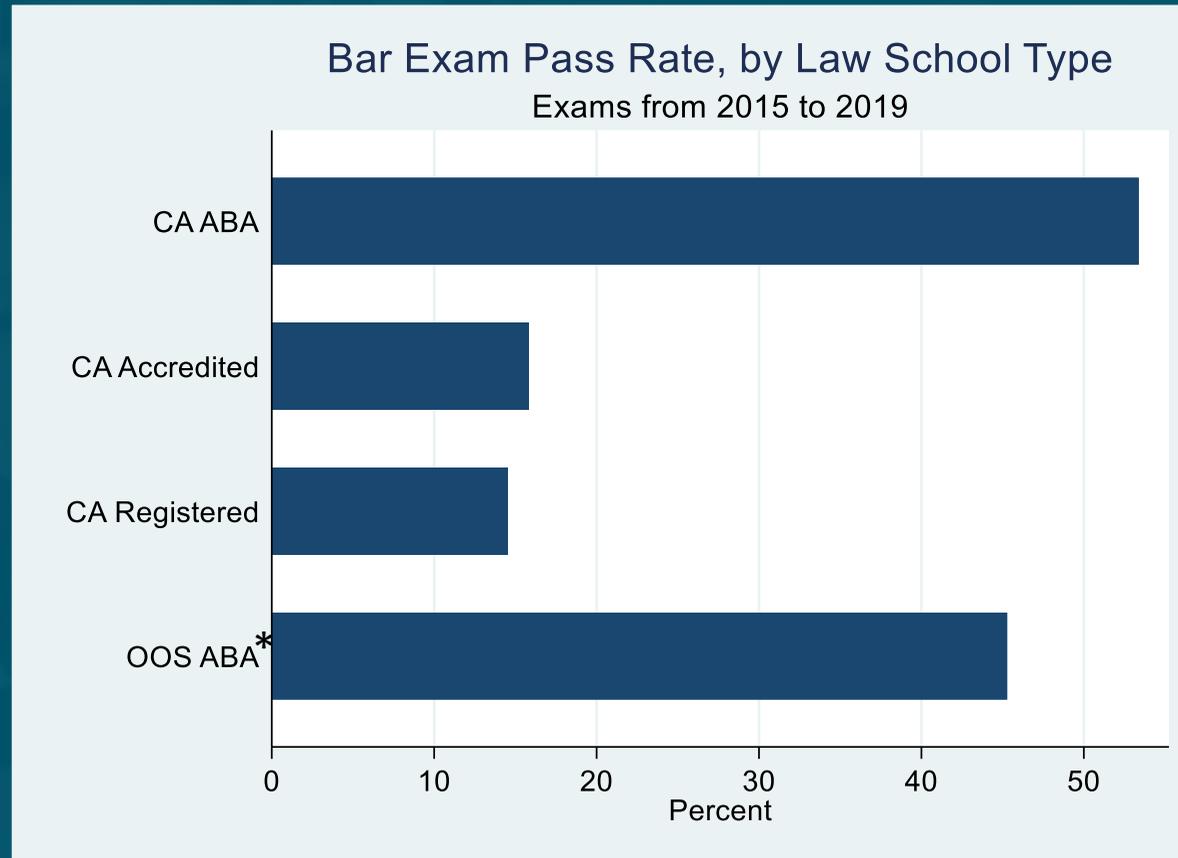
# Comparison of Bar Exam Performance by Law School Type

# Analyses of Bar Exam Performance

## Ten Exams from 2015 to 2019

Law School Type	Number of Applicants	Number of Law Schools	Pass Rate (%)	Median Total Scaled Score
CA ABA	30,219	21	53.4	1,448
CA Accredited	7,284	19	15.8	1,328
CA Registered	2,865	18	14.5	1,319
Out-of-State ABA	10,892	181	45.3	1,411

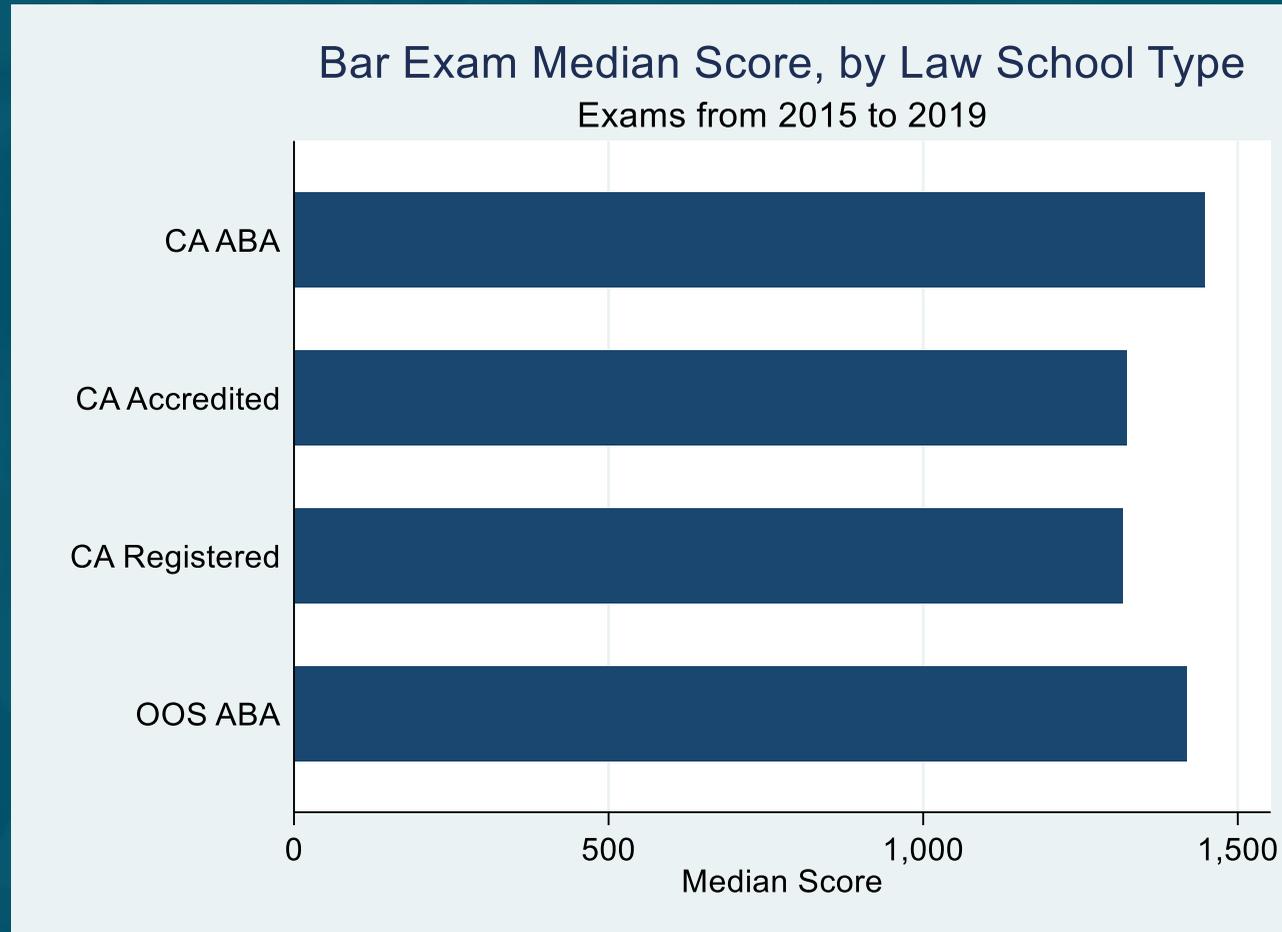
# Analyses of Bar Exam Performance



In aggregate, bar exam pass rate is clearly different by school type, with small but statistically significant difference between applicants from CA Accredited and Registered schools.

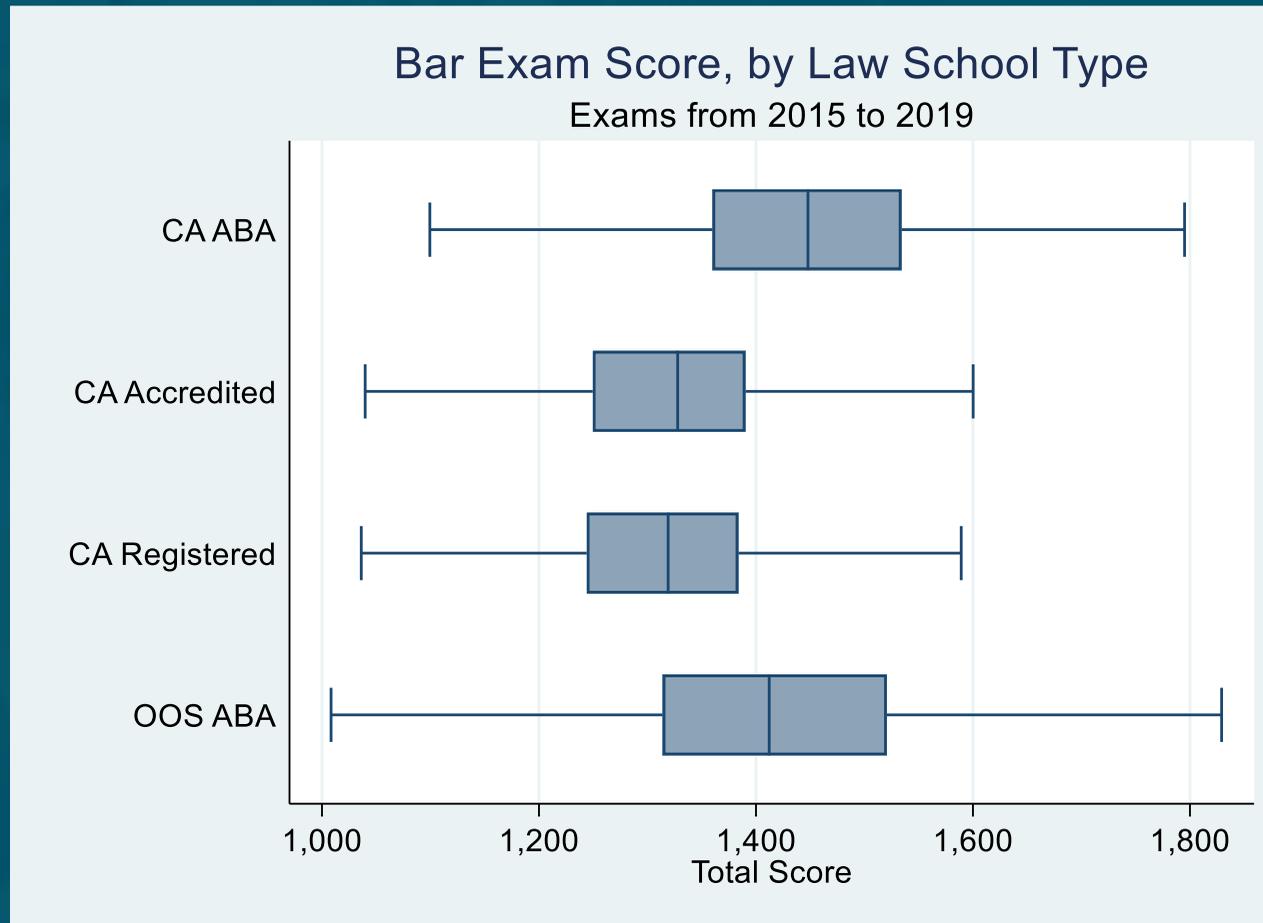
\*Out-of-State ABA-Approved

# Analyses of Bar Exam Performance



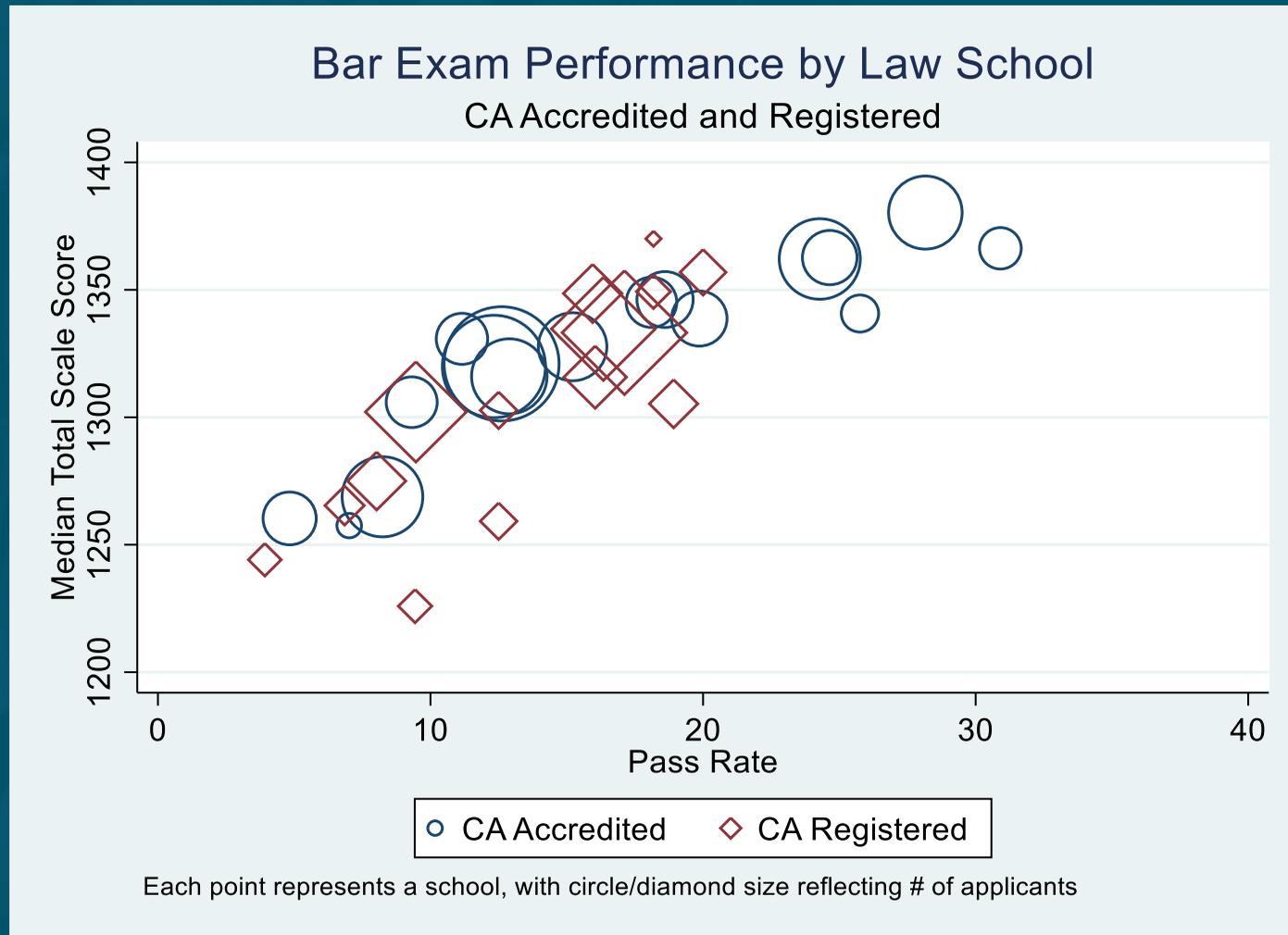
Similar differences are observed when bar exam score, instead of pass rate, is compared.

# Analyses of Bar Exam Performance



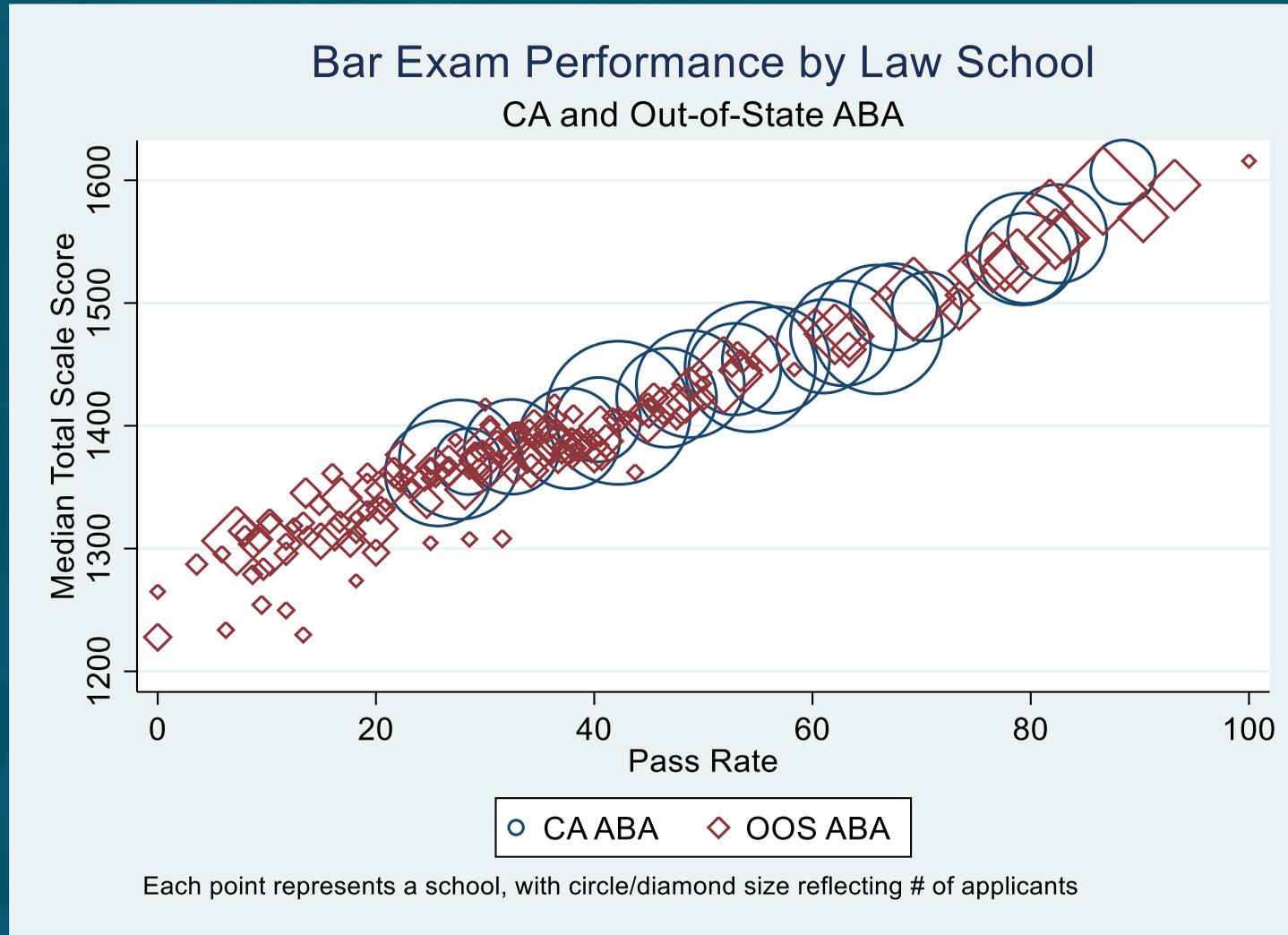
An analysis of the distribution of bar exam score across school type, as shown in this “box-whisker” plot, indicates significant overlap between CA and out-of-state ABAs, and CA Accredited and Registered law schools.

# Analyses of Bar Exam Performance



Here is a different view of the overlap in bar exam performance across individual schools between CA Accredited and Registered schools.

# Analyses of Bar Exam Performance



Similarly between CA and out-of-state ABA schools.

# Analyses of Bar Exam Performance

## First Year Law Students' Exam Performance

Ten Exams from 2015 to 2019

Law School Type	Number of Applicants	Number of Law Schools	Pass Rate (%)
CA ABA	91	2	22.0
CA Accredited	235	10	6.4
CA Registered	3,091	17	21.5
Out-of-State ABA	234	5	25.7

FYLSX is required as follows:

- Students enrolled in registered law schools
- Students engaged in study in law office or judge's chamber
- Students who have not completed two years of undergraduate studies
- Students conditionally approved for admission at ABA or CA accredited law school

# LLM Requirements

	McGeorge	UC Hastings	USC	Pepperdine
<b>Total Credits</b>	24 units	24 credit hours	21 units	26 units
<b>Required Courses</b>	<ul style="list-style-type: none"> <li>• LLM Legal Research, writing and analysis</li> <li>• Legal English</li> <li>• At least one of the following:               <ul style="list-style-type: none"> <li>○ Civil procedure</li> <li>○ Constitutional law</li> <li>○ Contracts</li> <li>○ Criminal law</li> <li>○ Property</li> <li>○ Torts</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Introduction to Law</li> <li>• Legal Research and Writing for Masters Students</li> <li>• At least one of the following:               <ul style="list-style-type: none"> <li>○ Civil procedure</li> <li>○ Constitutional law</li> <li>○ Contracts</li> <li>○ Criminal law</li> <li>○ Property</li> <li>○ Torts</li> </ul> </li> </ul>	Varies, depending on whether student intends to sit for California Bar exam	<ul style="list-style-type: none"> <li>• Introduction to US Laws</li> <li>• US Legal Research, writing and analysis</li> </ul>
<b>Prepares Students for CA Bar Exam</b>	Yes	Yes	Yes, if student elects this course of studies	Yes

# MSL Requirements\*

	McGeorge	UC Hastings	USC
<b>Total Credits</b>	26 units	24 credit hours	21 units
<b>Required Courses</b>	<p><b>Concentration in Health or Human Resources:</b></p> <ul style="list-style-type: none"> <li>• Introduction to Legal Analysis</li> <li>• Contracts</li> </ul> <p><b>Concentration in Government Law &amp; Policy</b></p> <ul style="list-style-type: none"> <li>• Introduction to Legal Analysis</li> <li>• Contracts</li> <li>• Legislatures &amp; Lawmaking</li> <li>• The Executive Branch &amp; The Administrative State</li> <li>• Government Law &amp; Policymaking</li> </ul>	<ul style="list-style-type: none"> <li>• Legal Writing for Masters Students (2 units)</li> <li>• Introduction to Law (3 units)</li> <li>• Online Legal Research (1 unit)</li> <li>• A foundational course in area of interest or a first-year law class (3-4 units)</li> <li>• A substantial research paper in connection with a seminar or an independent study aligning with the student's interests (2 – 3 units)</li> </ul>	<p>Introduction to the US Legal System</p> <p>Remaining courses are electives, based on area of interest</p>
<b>Prepares Students for CA Bar Exam</b>	No	No	No

\*UC Hastings and USC offer a Master of Studies in Law; McGeorge offers a Master of Science in Law.

	Study in Law Office or Judge’s Chamber	Practical Training of Law Students	Provisional Licensure
<b>Governing Rules</b>	State Bar Rules Title 4 Div. 1 Ch. 3 Rule 4.29	CA Rule of Court Rule 9.42 State Bar Rules Title 3 Div. 1 Ch. 1	CA Rule of Court Rule 9.49
<b>Requirements for Participants</b>	<ul style="list-style-type: none"> <li>Study in office or chambers during regular business hours ≥18 hours/week for ≥48 weeks = 1 year of study</li> <li>Passage of First Year Law Students’ Exam (FYLSX)</li> </ul>	<ul style="list-style-type: none"> <li>Completion of 1 full year at ABA or CA accredited school OR passage of FYLSX</li> <li>Enrolled in 2nd, 3rd or 4th year of law school</li> <li>Completed or enrolled in evidence and civil procedure courses</li> </ul>	<ul style="list-style-type: none"> <li>2020 Law School graduate eligible to sit for Bar Exam between 12/1/2019 and 12/31/2020</li> <li>Be employed or volunteering at a California law firm</li> </ul>
<b>Requirements for Supervising Attorney or Judge</b>	<ul style="list-style-type: none"> <li>Admitted to active practice and in good standing for ≥ 5 years</li> <li>Provide to the CBE an outline of proposed course of instruction</li> <li>Personally supervise the applicant ≥ 5 hours/week</li> <li>Examine the applicant ≥ once per month on study completed the previous month</li> <li>Report to the CBE every 6 months Hours applicant studied each week Hours devoted to supervision Specific information on books and materials studied</li> </ul>	<ul style="list-style-type: none"> <li>Active licensee who has practiced or taught law ≥ 2 years</li> <li>Assume responsibility for students’ activities</li> <li>Provide training and counsel</li> <li>Approve and sign documents prepared for clients</li> </ul>	<ul style="list-style-type: none"> <li>Actively practiced in U.S. ≥ 4 years; in California ≥ 2 years</li> <li>Work at the same firm as Provisionally Licensed Lawyer</li> <li>Assume professional responsibility for work of Provisionally Licensed Lawyer</li> </ul>
<b>Number of Students Allowed Under Supervision</b>	2 students	<ul style="list-style-type: none"> <li>5 students</li> <li>25 students if employed full-time to supervise law students in a law school or government training program</li> </ul>	No limit specified in Rule



Date: December 17, 2020

To: California Paraprofessional Program Working Group

From: Amos Hartston and Fariba Soroosh

Subject: Update and Recommendations for Regulatory Structure for Paraprofessional Program

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the requirements for paraprofessional regulation.

The Regulation Subcommittee recommends that the CPPWG approve its recommendations regarding continuing education and financial responsibility. The Subcommittee also seeks the CPPWG's input regarding other proposed regulations under consideration, including an informed consent requirement, written agreement and mandatory disclosure requirements, scope of practice language, possible fee limitations, and other regulations, as discussed below.

### DISCUSSION

At its August 25, 2020, meeting, the CPPWG determined that subcommittees should be created to develop requirements for paraprofessional licensing, regulation, and discipline. These subcommittees were appointed subsequent to that meeting, and each met several times to review and consider information about their assigned topics. At its October 29, 2020, meeting, the Working Group reviewed the status reports from each of these subcommittees and provided feedback on the subcommittees' preliminary recommendations and proposals.

At the October 29 meeting, the Regulation Subcommittee, which comprises the authors of this memo, identified several topics that fall within the purview of our subcommittee and presented a report on the status of our research into these topics. The Regulation Subcommittee also identified

several important issues that the subcommittee was *not* addressing at this time, including determining an appropriate name for licensees; creation of protections similar to attorney-client relationship (privilege and work product); and start-up costs and costs of regulation. These issues need to be taken up separately by the Working Group or assigned to the Regulation Subcommittee. This memo provides an update on the status of our work, along with preliminary recommendations for some of these topics, as summarized in Table 1. Detailed information about the status of each of the topics is provided below the table.

**Table 1. Status of Recommendations**

Topic	Status
Financial responsibility	Proposed recommendations ready for consideration
Continuing legal education	Proposed recommendations ready for consideration
Written agreement and mandatory disclosures	Draft language provided for discussion
Fee limitations	Pending; ready for discussion
Informed consent requirement	Draft language provided for discussion
Advertising limitations	Pending
Ethical Standards	Pending
Proactive/risk-based regulation	Pending

**MANDATORY CONTINUING LEGAL EDUCATION (MCLE)**

The Regulation Subcommittee recommends adoption of the following continuing education requirements for licensed paraprofessionals:

- 36 hours every 3 years, as follows:
  - 30 hours in the paraprofessional’s practice area
  - 4 hours on legal ethics
  - 1 hour on competence issues
  - 1 hour on recognition and elimination of bias in the legal profession and society
- No more than 12.5 hours may be obtained through self-study
- Each practice area subcommittee may require that the above MCLE include specific topics relevant to the paraprofessional’s practice area
  - For example, the Family Law Subcommittee recommends trauma-informed legal assistance training be included as part of the 30-hour practice as a requirement
  - Recommendations to be sought from other practice area subcommittees as well
- The paraprofessional licensing board will be authorized to require supplemental MCLE to maintain licenses due to changes in the law or other developments, as well as discretion to impose more specific educational requirements based on practice area or other considerations.

## FINANCIAL RESPONSIBILITY

Our subcommittee continued to discuss financial responsibility requirements for paraprofessionals. After further research, discussion, and consideration, and hearing from several stakeholders and experts, the Regulation Subcommittee believes providing for financial responsibility is critical to ensuring consumer protection and should be part of the CPPWG's proposals. Our discussions centered on three possible ways to provide financial responsibility: (1) a surety bond requirement; (2) malpractice insurance; and/or (3) a Client Security Fund/Restitution Fund.

### Surety Bond

The Regulation Subcommittee recommends adoption of a mandatory \$100,000 bond for licensed paraprofessionals.

A surety bond is a common way to provide for financial responsibility of licensed professionals in California. A surety bond is a three-way contract where the bond company (the surety) financially guarantees the performance of obligations of a second party (the principal or licensee) to a third party (the obligee/entity requiring the bond i.e., the State). Surety bonds are required for many different licensed professionals in California in various amounts. The amount of the bond is the total amount the surety is liable for on the bond, not a per claim amount. Accordingly, large claims or multiple claims can reduce and use up the amount of the bond. The higher the bond amount, the greater the consumer protection afforded. Table 2 provides example selected bond requirements for several professions:

Table 2. Bond Requirements for Selected Licensed Professionals in California

Profession	Amount	Statutory Authority
Immigration Consultant	\$100,000	<a href="#">Business &amp; Professions Code § 22443.1</a>
Legal Document Assistant	\$25,000	<a href="#">Business &amp; Professions Code § 6405</a>
Unlawful Detainer Assistant	\$25,000	<a href="#">Business &amp; Professions Code § 6405</a>
Notary Public	\$15,000	<a href="#">Government Code § 8212</a>

A bond differs from insurance in several ways, including:

- The full premium is paid for the entire term of the bond; coverage does not lapse until the bond expires;
- Bonds are significantly less expensive and burdensome to obtain;
- The bond amount covers all claims related to the period it is in effect (including claims first made after the bond expires);
- Licensees are required to reimburse the bond issuer for any payments made;
- A client may apply directly to the bond issuer for claims; and
- In addition to negligence, bonds may cover fraud and intentional acts.

Premiums for surety bonds above \$25,000 may vary based on underwriting considerations, such as the applicant's credit score, but generally range from 1 to 3 percent of the bond amount. Bonds often are issued for multiple years.

The subcommittee explored whether requiring paraprofessionals to carry a bond would provide meaningful protection for their clients, an appropriate bond amount, and whether a bond requirement potentially would be a hardship for paraprofessionals or an unreasonable barrier to entry into the profession. The Regulation Subcommittee concluded that a surety bond provides an important baseline consumer protection of financial responsibility and recommends that the Working Group adopt a bond requirement for paraprofessionals. With respect to the amount of the bond, because paraprofessionals will be providing legal advice and assistance beyond what immigration consultants and LDAs are permitted to do, and in order to provide meaningful consumer protection, we recommend adoption of a \$100,000 bond requirement similar to immigration consultants.

We acknowledge that the Working Group may want to further consider the anticipated cost of a bond, and whether the proposed bond amount potentially could create an undue burden or a barrier to entry into the profession. The information considered by the subcommittee did not find a meaningful difference in this regard between a \$100,000 bond requirement and a \$75,000 bond requirement, for example, which would provide less consumer protection. We welcome the Working Group's and the public's input with respect to the bond amount.

### **Malpractice Insurance**

The subcommittee continued to explore whether errors and omissions (malpractice) insurance should be encouraged or required for paraprofessionals. While not generally required for California attorneys, malpractice insurance is commonly required by California Rules of Court or local rules when courts appoint attorneys in cases such as family law, probate, and criminal cases. (see, e.g., Rules of Court 5.242(b)(2) (minor's counsel); Rules of Court 7.1101 (c)(3) (counsel appointed by probate court), and via lawyer referral service programs. Malpractice insurance is required for and available to legal paraprofessionals in Washington; an average policy costs a Washington paraprofessional \$900 annually. Following research, discussion, and hearing from presenters, there is agreement that malpractice insurance should, at minimum, be strongly encouraged for California licensed paraprofessionals; mandatory disclosures should clearly and conspicuously disclose whether or not the paraprofessional maintains malpractice insurance; and the State Bar should take steps to encourage insurance companies to make insurance available to licensees.

Malpractice insurance would provide protections beyond that afforded by a bond policy. For example, the minimum coverage level contemplated for a malpractice policy would provide coverage for \$100,000 *per claim* with an aggregate \$300,000 limit. Insurance would also provide protection to paraprofessionals through a duty to defend, and paraprofessionals would not be required to reimburse the insurance company for amounts paid. Malpractice insurance, however, does not cover fraud or other intentional acts.

The Regulation Subcommittee believes that maintaining malpractice insurance, if it is available, is certainly a best practice and invites the full Working Group to consider whether it should be required. Mr. Hartston believes that the full Working Group should seriously consider *requiring* paraprofessionals to maintain malpractice insurance. Ms. Soroosh would like to know the rationale

for requiring this of paraprofessionals but not of attorneys. Because mandatory malpractice insurance is not required for attorneys, may not be immediately available, and the cost is uncertain and may create a barrier to entry, the subcommittee agreed more information may be necessary before recommending mandatory malpractice insurance. This should be discussed and considered by the full Working Group.

#### **Client Security Fund/Possible expansion into Restitution Fund**

The Regulation Subcommittee recommends that licensed paraprofessionals be required to participate in a Client Security Fund (CSF), similar to attorneys.

The subcommittee believes financial responsibility is a critical part of consumer and public protection. Attorneys in California participate in a CSF; currently, annual license fees for attorneys include \$40 toward the CSF. Payouts from the CSF are limited to situations where an attorney engaged in intentional wrongdoing such as theft. In most circumstances, final discipline or a criminal conviction is a required precondition to recovery from the CSF. Thus, claims to the CSF can take many years to be paid.

Our subcommittee has identified limitations to the CSF in terms of consumer protection: (1) the CSF does not provide an effective or consumer friendly opportunity for quick recovery; and (2) the CSF does not reimburse clients who are victims of unintentional acts of negligence. Therefore, we concluded that it is not in and of itself sufficient to ensure financial responsibility.

With respect to the first concern, the subcommittee recommends that final discipline not be a condition precedent to payout from the CSF. Instead, State Bar staff, Board of Trustees, a commission, or committee<sup>1</sup> will review the facts and make a determination as to whether or not reimbursement is warranted.

With respect to the second issue, that the CSF does not cover negligence or malpractice, the subcommittee believes that financial responsibility with respect to these issues is a critical part of consumer and public protection. In the event the proposed regulations do not mandate a \$100,000 bond or malpractice insurance for paraprofessionals, the subcommittee recommends that the CSF for paraprofessionals be expanded to compensate clients for both intentional wrongdoing and negligence/malpractice. Because of the expected expense of administration and the difficulty in funding and maintaining a restitution fund that covers negligence claims, the subcommittee believes that requiring a \$100,000 bond and/or malpractice insurance is a better alternative than expanding the CSF to cover negligence claims.

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<sup>1</sup> Options for decision-making authority include the existing CSF Commission and the paraprofessional board. The subcommittee will develop a recommendation on this issue at a later date.

Table **3** on the following page provides a summary of our recommendations regarding proposed financial responsibility requirements.

Table 3. Proposed Financial Responsibility Requirements

Topic	Description	Issues/Options
<b>Bond</b>	Provides for an important baseline consumer protection of financial responsibility common for licensed professionals	<ul style="list-style-type: none"> <li>• Recommended amount \$100,000, similar to immigration consultants</li> <li>• Covers both intentional and unintentional acts</li> <li>• Significantly less expensive than malpractice insurance</li> <li>• Protection is limited to the amount of the bond (not a per claim amount)</li> <li>• Must balance consumer protection with potential barrier to entry into the profession in determining the bond amount</li> </ul>
<b>Errors and Omissions (Malpractice) Insurance</b>	Provides protection for the licensed professional as well as important increased consumer protections	<ul style="list-style-type: none"> <li>• Insurance is not required for attorneys</li> <li>• Malpractice insurance does not cover intentional acts</li> <li>• Cost and availability not clear</li> <li>• May create burden and barrier to entry into the profession</li> </ul>
<b>Client Security Fund/ Restitution Fund</b>	The existing attorney Client Security Fund reimburses clients for losses due to intentional actions of licensees (normally excluded from insurance) <ul style="list-style-type: none"> <li>○ Theft or equivalent acts</li> <li>○ Funds received and wrongfully retained</li> </ul>	<ul style="list-style-type: none"> <li>• Recommend CSF for paraprofessionals similar to CSF for attorneys</li> <li>• Funded by annual assessment</li> <li>• In the event Working Group does not mandate a \$100,000 bond or malpractice insurance, CSF for paraprofessionals could be expanded to include negligence/malpractice claims as an alternative way to provide for financial responsibility</li> <li>• Administration and funding would be significantly higher if unintentional acts are included</li> </ul>

**REGULATION OF PARAPROFESSIONALS AND RULES OF PROFESSIONAL CONDUCT**

The Regulation Subcommittee is considering various proposed regulations for paraprofessionals. We have prepared draft language for the Working Group’s consideration, provided in Attachment A, for review and discussion on several topics including:

- An informed consent requirement;
- Written agreement and mandatory disclosures; and
- Scope of practice and prohibited acts.

The prepared language is for discussion purposes only. We have not yet determined whether these regulations should be part of the California Rules of Court or part of the Rules of Professional Conduct. This may depend on the proposed remedy for violations. The draft language identifies our subcommittee's proposed regulation without yet determining where the regulations will live or the proposed final language of the regulations.

The Regulation Subcommittee further recommends that the Working Group develop Rules of Professional Conduct for paraprofessionals based on the attorney Rules of Professional Conduct (RPC). The Regulation Subcommittee anticipates that many of the rules will be directly applicable, while some will require policy discussion and decision for application to paraprofessionals prior to finalization. This review is in process.

Staff from the State Bar's Office of Professional Competence and the Supreme Court have undertaken a review of the RPC and the California Rules of Court (CRC) and will make recommendations to the CPPWG regarding proposed additions and changes to the RPC, CRC, and, where necessary, statutes (the RPC, CRC, and statutes collectively referred to as Rules). This staff will continue to seek input from the CPPWG and its subcommittees as part of its review.

#### **Informed Consent**

The Regulation Subcommittee recommends the requirement of informed consent and has drafted language requiring paraprofessionals to obtain informed consent from clients prior to the performance of services for a fee.

#### **Written Agreement and Mandatory Disclosures**

The Regulation Subcommittee recommends the requirement of a written agreement with mandatory disclosures, and has drafted proposed language. We believe it is important that it be clear what the paraprofessional can and cannot do, along with other important disclosures. The proposed language is based in large part on Washington's Admission and Practice Rules 28(G).

#### **Scope of Practice and Prohibited Acts**

The Regulation Subcommittee recommends providing regulations regarding the scope of practice authorized by the limited practice rule and prohibited acts, and has drafted proposed language. We believe it is important to provide general parameters for licensed paraprofessionals in addition to the work of the specific practice area subcommittees. The proposed language is based in large part on Washington's APR 28(F) and (H); Utah Rule 14-802(c)(1); and Business & Professions Code §§ 22441-22447 (immigration consultants).

#### **Fee Limitations**

The Regulation Subcommittee has not yet prepared proposed regulations related to fee limitations. We believe discussion and consideration by the full Working Group would be helpful. In particular:

- Should contingent fees be prohibited:
- Should flat fees be encouraged?

- Given the purpose of the program is to provide a lower-cost alternative to engaging a lawyer, should there be any limitations or restrictions on the amount of fees?
  - For example, bright-line fee limit or schedule, or some other method allowing regulation of fees charged that would protect against excessive fees by paraprofessionals (either hourly or total fees)
- Any other fee limitations that should be considered, for example limits on advance fees

## **NEXT STEPS**

The Regulation Subcommittee will continue to meet and will develop additional recommendations based on the Working Group's feedback.

## Draft INFORMED CONSENT language

(1) Prior to the performance of services for a fee, the [Paraprofessional] shall obtain the client's informed consent. This includes agreement based on receiving clear, understandable information in the client's preferred language about the risks and alternatives to the proposed services by a non-lawyer. The [Paraprofessional] must give the client as much information as the client needs to make an informed decision. Without limitation, the [Paraprofessional] must clearly and adequately explain:

- (a) that they are not a lawyer;
- (b) reasonable disclosure of available choices, including the availability of a lawyer as an alternative, the availability of a free consultation with a lawyer, the possible availability of limited-scope services from a lawyer, and the possibility that free legal services may be available if the client qualifies;
- (c) the risks of agreeing to a [Paraprofessional] in language that the client can understand;
- (d) the potential need to hire a lawyer if needed services go beyond the limited license of the [Paraprofessional];
- (e) the existence of any financial arrangements such as referral fees or fee sharing that the [paraprofessional] has with others; and
- (f) a reasonable estimate of the total costs of services.

(2) The [Paraprofessional] Board may provide additional information and guidance on the requirements of informed consent, including additional required disclosures related to services generally or specific to licensed practice areas, and a standard form that must be used to confirm informed consent in writing separate from the retainer agreement.

(3) If the [Paraprofessional] fails to obtain informed consent, this shall be considered as a basis for discipline and as a basis for a full refund cumulative to any other remedies.

Draft WRITTEN AGREEMENT AND MANDATORY DISCLOSURES language

(1) A [Paraprofessional] must personally perform the authorized services for the client and may not delegate these to a nonlicensed person or device. Nothing in this prohibition shall prevent a person who is not a licensed [Paraprofessional] from performing translation services;

(2) Prior to the performance of services for a fee, the [Paraprofessional] shall enter into a written contract with the client, signed by both the client and the [Paraprofessional], that provides the name, specialty area, and license number of the [Paraprofessional] and includes the following provisions:

- (a) A clear explanation of the services to be performed;
- (b) A clear and conspicuous disclosure that the [Paraprofessional] is not a lawyer, may only provide limited advice, may not represent the client in court, and will provide limited advice and assistance with preparation of court documents and related tasks. This statement shall be on the first page of the contract; in a type size, font, color, appearance, and location sufficiently noticeable for a client to read and comprehend them; in a print that contrasts with the background against which they appear; in larger type than the surrounding text; in a manner that clearly calls attention to the language. An example of an acceptable disclosure will be provided by the [Paraprofessional] Board;
- (c) [We recommend developing a mandatory disclosure attaching a description of what the [Paraprofessional] can and can't do, which must be made clear, as specifically authorized by the scope of practice regulations for the approved practice area in which the [Paraprofessional] is licensed, currently under development.];
- (d) Identification of all fees and costs to be charged to the client for the services to be performed;
- (e) A statement that upon the client's request, the [Paraprofessional] shall provide to the client any documents submitted by the client to the [Paraprofessional] and a copy of the client's file;
- (f) A statement describing the [Paraprofessional]'s duty to protect the confidentiality of information provided by the client and the [Paraprofessional]'s work product associated with the services sought or provided by the [Paraprofessional];

- (g) A statement that the client has the right to terminate the contract and services at any time, with or without cause, and receive a full refund of unearned fees. This statement shall be clearly and conspicuously set forth in the contract;
- (h) A statement confirming that the [Paraprofessional] has malpractice insurance and a surety bond as required by [Financial Responsibility Rule], and detailed and clear information about how to file a complaint about the [Paraprofessional]'s services; and
- (i) Any other disclosures, statements, or conditions required by the [Paraprofessional] Rules of Professional Conduct and the rules and regulations of the [Paraprofessional] Board.

(3) A [Paraprofessional] may not provide services that exceed the scope of practice authorized by this rule, and shall inform the client, in such instance, that the client should seek the services of a lawyer.

(4) A document prepared by a [Paraprofessional] shall include the [Paraprofessional]'s name, signature, and license number beneath the signature of the client. [Paraprofessional]s do not need to sign sworn statements or declarations of the client or a third party, and do not need to sign documents that do not require a signature by the client, such as information sheets.

Draft SCOPE OF PRACTICE AUTHORIZED BY LIMITED PRACTICE RULE language

(1) The [Paraprofessional] shall ascertain whether the issue is within the defined practice area for which the [Paraprofessional] is licensed. If it is not, the [Paraprofessional] shall not render any legal assistance on this issue and shall advise the client to seek the services of a lawyer. If the issue is within the defined practice area, the [Paraprofessional] may render the following limited legal assistance to a self-represented client:

- (a) Obtain relevant facts, help the client collect relevant information and documents, and explain the relevancy of such information to the client;
- (b) Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;
- (c) Assist with selecting and completing appropriate court forms that have been approved by the Judicial Council of California (i.e., Judicial Council forms), by the local court, by statute, by the [Paraprofessional] Board, or by a California lawyer; advise the client of the significance of the selected forms to the client's case;
- (d) Inform the client of and assist with applicable procedures for proper service of process and filing of legal documents;
- (e) Provide the client with California court-approved self-help resources and other self-help materials prepared by a California lawyer or approved by the [Paraprofessional] Board, which contain information about relevant legal requirements, case law basis for the client's claim, venue and jurisdiction requirements, and other information that may help empower the client to understand their rights, how to use court forms, how to represent themselves in court, and potentially how to resolve the dispute outside of court;
- (f) Review documents or exhibits that the client has collected or received and explain them to the client;
- (g) Perform legal research;
- (h) Draft documents to be filed with the court beyond what is permitted in paragraph (c), if the work is reviewed and approved by a California lawyer;
- (i) Advise the client as to other documents that may be necessary to the client's case, and explain how such additional documents or pleadings may affect the client's case;

- (j) Assist the client in obtaining necessary records, such as birth, death, or marriage certificates;
- (k) Communicate and negotiate with the opposing party or the party's representative regarding procedural matters, such as setting court hearings or other ministerial or civil procedure matters;
- (l) Negotiate the client's legal rights or responsibilities, provided that the client has expressly given written consent defining the parameters of the negotiation prior to the onset of the negotiation; and
- (m) Render other types of legal assistance when specifically authorized by the scope of practice regulations for the approved practice area in which the [Paraprofessional] is licensed.

(2) A [Paraprofessional] has an affirmative duty to inform clients when issues arise that are beyond the authorized scope of the [Paraprofessional]'s practice. In such circumstances, the [Paraprofessional] shall inform the client in writing that:

- (a) the issue may exist, describing in general terms the nature of the issue;
- (b) the [Paraprofessional] is not authorized to advise or assist on this issue;
- (c) the failure to obtain a lawyer's advice could be adverse to the client's interests; and
- (d) the client should consult with a lawyer to obtain appropriate advice and documents necessary to protect the client's interests.

Draft PROHIBITED ACTS language

- (1) In the course of dealing with clients or prospective clients, a [Paraprofessional] shall not:
- (a) Make any false or misleading communication about the [Paraprofessional] or the [Paraprofessional]'s services;
  - (b) Make any statement that the [Paraprofessional] can or will obtain special favors from or has special influence with any court or governmental agency, or that would lead a reasonable person to form an unjustified expectation that positive results will be obtained based on comparisons with achievements on behalf of other clients without reference to the specific factual and legal circumstances of each client's case;
  - (c) Retain any fees or costs for services not performed;
  - (d) Refuse to return documents supplied by, prepared by, or paid for by the client, upon the request of the client. These documents must be returned upon request even if there is a fee dispute between the [Paraprofessional] and the client;
  - (e) Represent or advertise, in connection with the provision of services, other legal titles or credentials that could cause a client to believe that the [Paraprofessional] possesses professional legal skills beyond those authorized by the license held by the [Paraprofessional];
  - (f) Represent a client in court proceedings unless specifically authorized by the scope of practice regulations for the approved practice area in which the [Paraprofessional] is licensed;
  - (g) Provide services to a client in connection with a legal matter in another state, unless permitted by the laws of that state to perform such services for the client;
  - (h) Represent or otherwise provide legal or law-related services to a client, except as permitted by law and the rules and regulations authorizing limited scope services by [Paraprofessionals];
  - (i) Conduct or defend a deposition;
  - (j) Initiate or respond to an appeal to an appellate court; and
  - (k) Otherwise violate the [Paraprofessional] Rules of Professional Conduct.



Date: December 17, 2020

To: California Paraprofessional Program Working Group

From: Leah Wilson, Consultant

Subject: Metrics and Data Collection to Support Program Evaluation and Proactive Regulation

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## EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services.

The CPPWG's recommendations to the Board will include metrics and data collection methods to assess the program's effectiveness and facilitate possible auditing and other proactive risk-based regulation. Both program evaluation metrics and proactive regulation will require identifying relevant data points and a data collection methodology. At its December 17, 2020, meeting, Mr. Zacharia DeMeola, Director of Legal Education and the Legal Profession at the Institute for the Advancement of American Legal Studies (IAALS), will facilitate a discussion with the CPPWG about the metrics that will be used to evaluate the success of the licensed paraprofessional program as well as options for the CPPWG to consider in developing a proactive regulatory model to complement a traditional complaint-driven disciplinary process.

## DISCUSSION

### PROGRAM EVALUATION

As reflected in the CPPWG's charge, the State Bar Board of Trustees directed the establishment of a licensed paraprofessional program to address the significant gap between the need for civil legal services and the availability of those services:

*The State Bar's recently published [California Justice Gap Study: Measuring the Unmet Civil Legal Needs of Californians](#) found that 55 percent of Californians experience at least one civil legal problem in their household each year, and Californians received no or inadequate legal help for 85 percent of these problems. A lack of knowledge about what constitutes a legal issue and concerns*

*about legal costs leads many Californians to deal with problems on their own rather than seek legal help. A thoughtfully designed and appropriately regulated paraprofessionals program is an important component of the solution to the access to legal services crisis in California by expanding the pool of available and affordable legal service providers.*

As such, one clear measure of the program's success will be its impact on the justice, or access, gap, which, as noted in the excerpt above, was recently measured in the 2019 California Justice Gap Study (JGS). The CPPWG may thus consider recommending that the Justice Gap Study be repeated on a regular cycle as one component of the evaluation of the licensed paraprofessional program's impact.

During the course of the CPPWG's deliberations, several concerns have been raised about the JGS methodology, however. Particularly challenging has been the inability to use study results to answer the question: *What is the variance between the number of Californians who want a lawyer and those who actually hire/secure a lawyer?* Because the JGS methodology counted anyone who had received some form of legal support, be it via an internet search, a phone call to a legal services office or law firm, or a trip to a court self-help center, as having secured legal services (and thus not falling in the category of unmet legal need), study results cannot be used to determine the variance in question. It would be useful for the CPPWG to identify additional questions or data points that could be added to future iterations of the JGS to address this design limitation as well as other study shortcomings that have been highlighted by Working Group members and stakeholders during the pendency of the program development process.

Other potential evaluation metrics include the number of number/types of complaints; the number/types of issues identified through proactive regulation; cost/affordability; number and geographic distribution of licensees; and licensees by practice certification area.

### **RISK-BASED PROACTIVE REGULATION**

Risk-based regulation involves collecting and analyzing data on a regulated population to identify trends and patterns of concern to the regulator. This data is then used to develop interventions to prevent harm before it occurs or reduce it when it does.

Many of the ideas behind risk-based regulation emerged from efforts in the 1990s to "reinvent government" in the United States and the United Kingdom. Even where the particulars of the initiatives in the two countries diverged, they shared the broad goals of making government more efficient, transparent, and accountable.<sup>1</sup>

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<sup>1</sup> This section draws upon the 2020 report of the State Bar's Governance in the Public Interest Task Force: <http://www.calbar.ca.gov/Portals/0/documents/reports/2020-Governance-in-the-Public-Interest-Task-Force-Report.pdf>.

David Osborne and Ted Gaebler's 1992 book, *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector*, became a touchstone for the Clinton administration's National Performance Review (NPR) led by then Vice-President Gore. This federal initiative, and many state and local initiatives that followed, focused on:

- Clarifying the goals of regulation and establishing targets based on these outcomes;
- Using performance metrics to gauge the effectiveness of regulation;
- Encouraging government agencies to operate more entrepreneurially;
- Reducing the regulatory burden on business; and
- Treating citizens as customers.

More specifically, in the legal regulatory context, risk-based regulation may be distinguished by the following features:

- Using **data** to inform regulatory decision-making;
- Focusing on **caseloads** in addition to cases; and
- **Prioritizing** regulation and enforcement based on risk.

Proactive regulation in the legal services area is in an incipient stage in the United States. A 2017 publication of the National Organization of Bar Counsel, which provides answers to frequently asked questions about the topic and outlines some related efforts underway in this country, is provided as Attachment A. Internationally, the Ontario Legal Services Board (Canada) and the Victoria Legal Services Board (Australia), are examples of existing legal licensing agencies that have institutionalized proactive regulation as part of their core operating models.<sup>2</sup>

In an effort to advance the proactive regulation conversation in the U.S. legal context, IAALS held a convening on the topic in 2019. A policy outline, *Independent Regulator of Legal Services*, was developed for use at that convening and is provided as Attachment B. The paper provides a concrete example of how a risk-analysis can shape a proactive legal regulatory model's development. Note that the proposed hypothetical system described in the policy outline envisions a nonprofit, independent regulator of legal services implementing the outlined approach. This particular model is not contemplated for the California licensed legal paraprofessional program at this time. However, the depiction of how a risk analysis can and should inform regulatory design is directly applicable to the deliberations the CPPPWG will be undertaking. To that end, a tool, entitled the Identifying and Assessing Risks Worksheet, has been provided as Attachment C. This worksheet outlines a recommended approach to translating risk-identification into data collection and reporting requirements. The CPPWG will go through a similar exercise at its December 17 meeting.

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<sup>2</sup> See <https://lso.ca/paralegals/about-your-licence/paralegal-practice-audits/frequently-asked-questions-practice-audit> and [https://lsbc.vic.gov.au/sites/default/files/2020-02/Policy-Risk\\_Based\\_Regulation\\_Trust\\_Accounts-2017.pdf](https://lsbc.vic.gov.au/sites/default/files/2020-02/Policy-Risk_Based_Regulation_Trust_Accounts-2017.pdf) for examples of the Ontario and Victoria programs.

## **Proactive Regulation** **Frequently Asked Questions**

### **1. What is proactive regulation?**

“Proactive regulation” is a term used to describe approaches and programs that try to **prevent** lawyer regulatory and service problems from occurring, rather than dealing with alleged misconduct t after complaints are filed. Proactive regulation is based on the premise that sometimes “an ounce of prevention is worth a pound of cure.”

### **2. If a jurisdiction uses proactive regulation, does that mean that it cannot discipline lawyers?**

No. While proactive regulation tries to prevent problems from occurring in the first place, it does not preclude a jurisdiction from disciplining a lawyer. A jurisdiction can have both a proactive regulation system and a lawyer discipline system.

### **3. Are there various forms of proactive regulation?**

Yes. Most U.S. jurisdiction use some kinds of proactive regulation. For example, most U.S. jurisdictions have mandatory Continuing Legal Education (CLE) requirements. CLE requirements have been adopted with the goal of having lawyers keep up-to-date and thus avoid problems. Other examples of proactive regulation include the following:

- Ethics hotlines;
- Law practice management assistance;
- Assistance for impaired lawyers:
- Bridge the gap, mentoring, professionalism or other programs for newly admitted attorneys;
- Practice standards for specific subject matter or practice areas;
- Monitoring discipline data to determine topics for future proactive regulation;
- Using registration data or discipline data to determine type of outreach for particular kinds of lawyers;
- Emailed newsletters that contain proactive tips; and
- Emails to lawyers who switch registration status to solo or small firms given the higher rate of client complaints against solo and small firm lawyers.

Appendix B to this Proactive Regulation FAQ identifies jurisdictions that use each of these methods.<sup>1</sup>

<sup>1</sup> Please let us know if we haven't listed your jurisdiction and we should. If you have additional measures that aren't included that you think should be included, please let us know. You can reach the NOBC Proactive Regulation Committee by contacting its Chair, Jim Coyle, at [j.coyle@csc.state.co.us](mailto:j.coyle@csc.state.co.us).

Jurisdictions may adopt a few, many, or all of these proactive measures, and perhaps others as well. They may also vary in the extent to which they rely on, and commit resources to, proactive as opposed to the traditional, “reactive” tools -- disciplinary enforcement and malpractice liability. Some, such as the jurisdictions described later, have committed to consider, regularly and systemically, what proactive measures they might use when approaching a given issue.

#### **4. Have some jurisdictions made a systemic commitment to use a proactive regulatory approach?**

While most, if not all, jurisdictions use at least some proactive regulation tools, there is growing interest in jurisdictions around the world in approaching proactive regulation in a more comprehensive and systemic manner. For example, the regulator for the legal profession in Nova Scotia, Canada uses a “Triple P” regulatory approach – that is, its approach to regulation will be *proactive*, principled, and proportionate. See Nova Scotia Barristers’ Society, Framework Chart, <https://perma.cc/74AX-BTNT>. Several other Canadian provinces are considering whether to make a commitment to have a systemic and comprehensive approach to proactive lawyer regulation.<sup>2</sup>

In 2016, the Colorado Supreme Court adopted a preamble to its *Rules Governing the Practice of Law*. The new preamble sets forth regulatory objectives and includes proactive regulation among these objectives. See <https://perma.cc/H5HB-VYNW>. On January 25, 2017, Illinois issued a [press release](#) announcing that it was “the first state in the nation to adopt a Proactive Management Based Regulation (PMBR).” Among other things, Illinois adopted a rule that requires a lawyer to conduct a self-assessment of the operation of his or her law practice every two years if that lawyer does not have malpractice insurance.<sup>3</sup> The press release noted that the changes were based upon a multi-year study of PMBR initiatives in other countries and in the United States, and after consultation with key Illinois stakeholders, including many bar association and lawyer groups. Other U.S. jurisdictions, such as New Mexico, are considering the adoption of statements that express their commitment to a systemic approach to proactive regulation.

#### **5. What are the benefits of adopting a systemic commitment to proactive regulation?**

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<sup>2</sup> For a summary of the Canadian developments, see Laurel S. Terry, *The Power of Lawyer Regulators to Increase Client & Public Protection Through Adoption of a Proactive Regulation System*, 20 LEWIS & CLARK L. REV. 717 (2016). To find more recent developments, you can consult the Canadian portals, which are linked from the webpage of the Colorado Proactive Management Based Regulation subcommittee. See <https://perma.cc/RW6K-PTZQ>. As the Proactive Regulation law review article and the documents on these portals reveal, several Canadian provinces are combining their efforts to develop a more proactive regulatory system with efforts to develop or implement a system of entity regulation. This combination is often referred to as PMBR (Proactive Management Based Regulation). For additional information on PMBR and the combination of proactive and entity-based regulation, see the NOBC’s Entity Regulation FAQ document available at <http://www.nobc.org/index.php/jurisdiction-info/global-resources/entity-regulation>. For links to the Canadian web

<sup>3</sup> See Illinois Supreme Court Rules, Rule 756 on Registration and Fees, at Rule 768(e), available at [http://www.illinoiscourts.gov/SupremeCourt/Rules/Art\\_VII/artVII.htm#Rule756](http://www.illinoiscourts.gov/SupremeCourt/Rules/Art_VII/artVII.htm#Rule756).

Some have argued that there is a benefit to having a jurisdiction make a systemic commitment to proactive regulation, rather than adopting, on an ad hoc basis, proactive regulation tools. For example, in her *Proactive Regulation* law review article, Professor Laurel Terry from Penn State's Dickinson Law argued that a jurisdiction that has a comprehensive and systemic commitment to proactive regulation might find cost effective ways to prevent problems from occurring rather than responding after they occur. She offered the example of Colorado, which sends an email to all lawyers who move from a government legal position or large firm practice to a solo or small firm practice. The email summarizes the many resources that the Colorado regulator has available, including personal consultations. The email costs Colorado very little money up front, but in the long run, it should help avoid problems and save the state – and more importantly, clients – both money and aggravation. While a jurisdiction could certainly use an email tool like this without having adopted a comprehensive and systemic approach to proactive lawyer regulation, having such a commitment makes it more likely that a regulator will regularly take a moment to stop and reflect and consider whether it could be doing something additional, on a proactive basis, that would prevent problems, rather than simply responding to problems after they occur.

Darrel Pink, the Executive Director of the Nova Scotia Barristers' Society, has explained as follows the usefulness of having made a systemic commitment to proactive regulation: 'Our goal is to change the nature of the conversation between the Society, as regulator, and the profession. We will do this by actively engaging with lawyers and law firms about matters that we know, from experience, raise substantial risk of complaints, claims against our insurance program or other regulatory interventions, such as from trust account oversight. This engagement is a clear example of proactive regulation aimed at addressing issues before they escalate to the level where coercive action is required'. The Nova Scotia Barristers' Society has begun to use its proactive approach across the board, including, for example, when it approaches professional responsibility and credentialing issues.<sup>4</sup>

Arguably, proactive approaches protect the public more than reactive systems. In her article, *Promoting Public Protection through an "Attorney Integrity" System*, Professor Susan Fortney of Texas A&M University School of Law explains that an attorney regulation system that relies heavily on a complaint-driven process of prosecuting alleged misconduct after it occurs provides little direct relief to the client or other persons who have been injured by the lawyer's misconduct.<sup>5</sup> Rather than waiting for misconduct to occur, she asserts that a proactive system of "attorney" integrity, rather than "attorney discipline," helps improve ethical conduct and the quality of legal services, while reducing the number of complaints.<sup>6</sup> In the long run, she suggests that such a move can save regulators money and enable regulators to focus more on those complaints that are filed, while enhancing both client and lawyer satisfaction.<sup>7</sup>

## **6. Do jurisdictions that have entity regulation necessarily use proactive regulation?**

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<sup>4</sup> See Terry, *supra* note 2, at 89.

<sup>5</sup> Susan Saab Fortney, *Promoting Public Protection through an Attorney Integrity" System: Lessons from the Australian Experience with Proactive Regulation of Lawyers*, 23 PROFESSIONAL LAWYER, 16 (2015), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2906525](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2906525).

<sup>6</sup> *Id.* at 7.

<sup>7</sup> *Id.* at 7-8.

No. It is possible for a jurisdiction to regulate entities, but not to have adopted a proactive regulation approach. For example, regulators in both New York and New Jersey have the authority to discipline law firms, as well as individual lawyers. But neither New York nor New Jersey has, as yet, adopted a comprehensive proactive regulation system. Both states have proactive programs and measures, but neither uses a systematic approach, such as Triple P regulation being developed in Nova Scotia.

**7. Do jurisdictions need to adopt entity regulation in order to make a commitment to proactive regulation?**

No. Even if a jurisdiction has not adopted entity regulation, it is possible for that jurisdiction to decide that it wants to regulate proactively, in order to prevent problems before they occur. For example, a U.S. jurisdiction that has not adopted entity regulation could decide to use a Triple P approach to regulation – that is, to regulate in a manner that is proactive, principled, and proportionate.<sup>8</sup> It is common for U.S. regulators to have goals (or principles) such as client protection and public protection that they are trying to advance. It is also common for U.S. regulators to try to regulate in a manner that is appropriate and fair (i.e., proportionate). A jurisdiction could decide that even in the absence of entity regulation, proactive regulation would advance its regulatory goals (or principles) and that it would be appropriate to do so.

**8. If a jurisdiction wants to use proactive regulation, what tools are available?**

A jurisdiction that wants to regulate proactively has a number of tools available to it. It could adopt one or more of the tools found in the bulleted list in Question 3 above. It could send an email to lawyers who switch job settings, as Colorado has done. It could subscribe to the free *Legal Services Regulation Update e-newsletter*<sup>9</sup> circulated by the Nova Scotia Barristers' Society to see what new steps Nova Scotia is taking with respect to proactive regulation. It could also talk to other jurisdictions interested in proactive regulation to find out what tools they are using. (See one of the next FAQ for ways in which jurisdictions interested in this topic can connect with each other).

One tool that has received significant attention in recent years is a self-assessment form. The first jurisdiction to use this tool was New South Wales, Australia, which required that a representative from an Incorporated Legal Practice (ILP) complete the self-assessment form.

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<sup>8</sup> Although the terms “principled” and “proportionate” are not commonly used in U.S. lawyer regulatory circles, the ideas they represent are common in the United States. For example, when the U.S. Supreme Court evaluates the constitutionality of restrictions on lawyers’ commercial speech that is not false or misleading, it uses the 3-part Central Hudson test. For speech that is not false or misleading, the test asks: 1) whether the asserted governmental interest is substantial; 2) whether the regulation directly advances the governmental interest asserted; and 3) whether the restriction is more extensive than is necessary to serve that interest. *See Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980). In *Michigan v. Environmental Protection Agency*, \_\_\_ U.S. \_\_\_, 135 S. Ct. 702 (2015), the Supreme Court struck down a regulation because the agency in question failed to do a cost-benefit analysis which was required in order to decide whether the regulation was “appropriate and necessary,” as required by the statute. Both of these cases reflect ideas that are similar to a “proportionality” requirement.

<sup>9</sup> This newsletter can be found at <http://nsbs.org/legal-services-regulation-update>. Anyone may sign up to receive a copy.

The self-assessment form, which was developed by the New South Wales Office of the Legal Services Commissioner in consultation with stakeholders, asked firms to evaluate whether they had systems in place designed to prevent ten of the most common problems. The form addressed potential problems such as handling matters on which the firm was not competent, fee disputes, missed deadlines, conflicts of interest, and ensuring staff confidentiality regarding client matters. One of the reasons why the self-assessment tool has received so much attention is because of a study conducted by Professor Christine Parker with the cooperation of Steve Mark and Tahlia Gordon from the New South Wales Office of the Legal Services Commissioner. This academic study found that New South Wales ILP firms that used this tool significantly reduced the number of client complaints filed against them and had a significantly lower number of complaints than non-ILP law firms that did not use the self-assessment form.<sup>10</sup>

Subsequent to the publication of the study about the results in New South Wales, the Canadian Bar Association developed a voluntary self-assessment form that focused on a firm's 'ethical infrastructure'. Colorado has also made a self-assessment form available, and Nova Scotia will be evaluating in Spring 2017 the results of its self-assessment pilot project in which it had 50 firms test two different self-assessment forms, one of which was designed for solo practitioners and smaller law firms and the other of which was designed for larger law firms. (In Nova Scotia, the draft self-assessment form is called the "draft MSELP Self-Assessment Tool;" MSELP is the acronym that refers to the need for firms to have a Management System for Ethical Legal Practice. See <http://nsbs.libguides.com/mselpresources>.) Similar instruments are in active development in Ontario, the Prairie law societies and British Columbia in Canada.

Professor Fortney conducted a second empirical study of the New South Wales regulatory regime that required the adoption of appropriate management systems and the self-assessment process discussed above.<sup>11</sup> Using data from interviews and surveys, she evaluated the relationship between self-assessment and ethical norms, systems, conduct and culture in firms, and how the self-assessment process could be improved. On the effects of the self-assessment process, Professor Fortney found that almost three quarters of the respondents who completed the self-assessment revised their law firm policies as a result of going through the self-assessment process. Her study also found that close to half of the respondents had adopted new systems, policies, and procedures as a result of the self-assessment procedure. She concluded that:

“Quite simply, these findings point to the positive impact that the self-assessment process has in encouraging firms to examine and improve the firms’ management systems, training, and ethical infrastructure. Interestingly, with respect to most steps

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<sup>10</sup> See Christine Parker, Tahlia Gordon & Steve Mark, *Regulating Law Firm Ethics Management: An Empirical Assessment of an Innovation in Regulation of the Legal Profession in New South Wales*, 37 J.L. & SOC’Y 466, 485–488, 493 (showing that on average, the complaint rate (average number of complaints per practitioner per years) for ILPs after self-assessment was two-thirds lower than the complaint rate before self-assessment).

<sup>11</sup> See Susan Fortney & Tahlia Gordon, *Adopting Law Firm Management System to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation*, 10 U. ST. THOMAS L.J. 152 (2012); available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2205301](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2205301).

taken by the firms, there was no significant difference related to firm size and steps taken.”<sup>12</sup>

Professor Fortney’s article included the table that is reproduced below that shows the impact of the self-assessment process:

**Table 1**  
**Steps Taken by Firms in connection with the First**  
**Completion of the Self-Assessment Process**

Reviewed firm policies/procedures relating to the delivery of legal services	84%
Revised firm systems, policies, or procedures	71%
Adopted new systems, policies, or procedures	47%
Strengthened firm management	42%
Devoted more attention to ethics initiatives	29%
Implemented more training for firm personnel	27%
Sought guidance from the Legal Services Commissioner/another person/organization	13%
Hired consultant to assist in developing policies and procedures	6%

One additional finding that is noteworthy but is not included in Table 1 is Professor Fortney’s finding that a majority of lawyers who used the self-assessment process were satisfied with it, including those lawyers who had been skeptical at the outset. The article notes that “sixty-two percent of the respondents reported that they agreed or strongly agreed with the following statement: the self-assessment process ‘was a learning exercise that enabled our firm to improve client service.’”

Professor Laurel Terry has recognized that virtually all U.S. jurisdictions currently have tools available to them that would allow them to deploy the self-assessment tools that have been used in Australia and Canada. Virtually all U.S. jurisdictions have adopted a version of Rule of Professional Conduct 5.1(a) that is substantially similar to the ABA Model Rule of Professional Conduct:

**Rule 5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers**

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

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<sup>12</sup> Susan Saab Fortney, *Promoting Public Protection through an “Attorney Integrity” System: Lessons from the Australian Experience with Proactive Regulation System*, 23 PROF. LAW. 16 (2015) (available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2906525](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2906525) (shorter article that includes Table 1 and summarizes the results of the study).

Professor Terry has argued that jurisdictions should add two questions to each lawyer's annual bar dues statement. The first question would ask the lawyer if he or she was subject to Rule 5.1(a).<sup>13</sup> The second question would apply to those lawyers who answered "yes" to the first question and would ask them if they were in compliance with Rule 5.1(a). The bar dues statement would include a URL for a website that would have resources available and that could include one of the already-existing self-assessment forms. (The Appendix to Professor Terry's article includes examples from the New South Wales, Canadian Bar Association, Colorado, and Nova Scotia self-assessment forms).

Professor Fortney has identified a number of steps that can be taken to encourage or push lawyers to devote time to seriously examining and improving firm practices and controls. In suggesting that interested parties consider how to integrate management-based principles into current regulatory approaches, she urged regulators to adopt and expand the use of diversion programs to deal with minor misconduct and practice management concerns.<sup>14</sup> Recognizing the role that professional liability insurers play in promoting risk management, she recommended that lawyers' professional liability insurers require completion of an audit or practice review as a condition of obtaining insurance or a lower premium.<sup>15</sup> Finally, to address concerns related to the discovery of the results of the self-assessments or practice reviews, she also proposed that jurisdictions recognize a self-evaluation privilege<sup>16</sup>.

Professor Amy Salyzyn, who helped develop the Canadian Bar Association's Self-Assessment tool, has also recommended that malpractice carriers consider what sorts of incentives they could offer to lawyers or firms that completed the self-assessment form.<sup>17</sup> She has endorsed the proactive approaches currently being used or under development in Canada, arguing that the current approach focuses more on public interest than the prior regulatory approaches.<sup>18</sup>

As these brief examples show, there are a number of tools that might be available to jurisdictions that would like to use proactive regulation. While lawyer professional misconduct undoubtedly will still occur, proactive regulation tools, well-deployed, can educate lawyers, and reduce the number of client complaints, while improving lawyer and client satisfaction.

## **9. How can jurisdictions that are interested in considering proactive regulation connect with one another?**

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<sup>13</sup> If a jurisdiction had concerns that a lawyer would not know whether he or she was a lawyer who "possesses comparable managerial authority in a law firm," that jurisdiction could limit the first question to asking whether the respondent was a partner or shareholder in his or her law firm.

<sup>14</sup> Susan Saab Fortney, *The Role of Ethics Audits in Improving Management Systems and Practices: An Empirical Examination of Management-Based Regulation of Law*, 4 ST. MARY'S J. LEGAL MAL. & ETHICS 112, 131-37 (2014), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2375219](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2375219)

<sup>15</sup> *Id.* at 138-41,

<sup>16</sup> *Id.* at 141-46.

<sup>17</sup> See Amy Salyzyn, *What if We Didn't Wait?: Canadian Law Societies and the Promotion of Effective Ethical Infrastructure in Law Practices*, 92 Canadian Bar Review 507, 543-44, 544 n.126 (2015) (endorsing the \$100 Risk Management Credit" offered by LawPro, which is Ontario's mandatory malpractice carrier, to lawyers who participate in qualifying programs, but recommending a larger discount than the current amount);

<sup>18</sup> Amy Salyzyn, *From Colleague to Cop to Coach: Contemporary Regulation of Lawyer Competence*, 94 Canadian Bar Review \_\_ (2017) (forthcoming).

There are several ways that jurisdictions that are interested in proactive regulation can connect with one another. The members of the NOBC Proactive Regulation Committee are listed on the relevant NOBC Global Resources webpage – all committee members are willing to speak to jurisdictions interested in this topic. See <https://www.nobc.org/index.php/jurisdiction-info/global-resources>.

You can also see who the attendees were at the 1<sup>st</sup> and 2<sup>nd</sup> Proactive Management Based Regulation Workshops that were held immediately following the 2015 and 2016 National Conferences on Professional Responsibility. The minutes from those sessions, including the attendees, are available as links from the Colorado PMBR Webpage, <https://perma.cc/RW6K-PTZQ>.

#### **10. Do some jurisdictions use terms other than “proactive regulation” to describe the concepts discussed in this FAQ document?**

As noted above, jurisdictions around the world have expressed interest in using a more systematic and comprehensive approach to proactive regulation in which they focus on trying to prevent lawyer misconduct, rather than waiting until after problems arise. To date, however, jurisdictions have used different terminology to express this idea. For example, the Prairie Provinces in Canada issued a consultation that used the term “compliance” based regulation. This term included the concept of proactive regulation. Some jurisdictions may use the term “risk-based” regulation in a way that includes proactive regulation.

Some of the participants from the 1<sup>st</sup> and 2<sup>nd</sup> Proactive Workshops recognized the potential confusion that arises when jurisdictions use different terminology. Some of the Workshop attendees have formed an *ad hoc* group that is trying to develop common language to discuss the recent developments, including the concepts in this FAQ. If common terminology is developed, this terminology will be included in future versions of this FAQ, on the NOBC’s Global Resources webpage, and on the Colorado PMBR webpage. (The minutes from that *ad hoc* terminology meeting currently are available on the Colorado page at this URL: <https://perma.cc/4PVL-963U>.)

Although the terminology may vary, it *is* possible to determine whether different individuals or jurisdictions are talking about the same concept, even though the words they use differ. One way to do so is to use the “who-what-when-where-why-and-how” structure that Steve Mark, Tahlia Gordon, and Laurel Terry used in their article entitled *Trends in Global Lawyer Regulation*.<sup>19</sup> As they noted in that article, a number of the recent global lawyer regulatory developments, such as the 2007 UK Legal Services Act, have adopted regulatory reforms that combine a number of these “who-what-when-where-why-and-how” factors. But it is possible for a jurisdiction to disaggregate these variables and change one of them without changing all of them. Proactive regulation deals with the issue of ‘when’ regulation occurs. As

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<sup>19</sup> See Laurel S. Terry, Steve Mark, Tahlia Gordon, *Trends and Challenges in Lawyer Regulation: The Impact of Globalization and Technology*, 80 *FORDHAM L. REV.* 2661 (2012), [http://www.personal.psu.edu/faculty/l/s/lst3/TerryMarkGordon\\_Trends\\_Lawyer\\_Regulation.pdf](http://www.personal.psu.edu/faculty/l/s/lst3/TerryMarkGordon_Trends_Lawyer_Regulation.pdf).

noted earlier, proactive regulation is regulation that focuses on the time period *before* problems arise, rather than the time period *after* problems arise.

A number of jurisdictions either have adopted – or have proposed – reforms that combine changes to both the “what” and the “when” variables. These reforms have changed the focus of “when” regulation occurs so that it includes the time period before problems arise. But some of the recent changes, such as those in U.K. and Nova Scotia, have combined the ‘when’ reforms with reforms to ‘What’ is regulated. They have made law firms, as well as individual lawyers, subject to regulation. As is addressed in greater detail in the next Question 11 and in the separate NOBC Entity Regulation FAQ document, one reason why they have done that is because a number of people believe that proactive regulation will be most effective when combined with entity regulation – in other words, that it is useful to combine reforms to both “when” regulation occurs and “what” is regulated.

Although proactive regulation and entity regulation can be combined, it is possible for a jurisdiction to separate the “when regulation occurs” variable and the “what is regulated” variable. A jurisdiction might make reforms in one of these areas without making reforms in the other area. As the New York and New Jersey examples show, it is possible to have entity regulation without proactive regulation. (See a prior FAQ in this document regarding this point). It is also possible to have proactive regulation without entity regulation, as Colorado’s letter to lawyers changing law firms and Professor Terry’s Rule 5.1(a)-bar dues suggestion show. (See a prior FAQ).

### **11. What is “proactive management based regulation (PMBR)” and how does it differ from proactive regulation?**

As noted in Question 10, at the moment, terms such as PMBR may be used differently by different jurisdictions. This is why the Ad Hoc Terminology group is working to develop a set of terms that may be used consistently. In general, however, the term “proactive management-based regulation” (PMBR), is generally said to have been coined by Professor Ted Schneyer, refers to programs designed to promote ethical law practice by assisting lawyers with proactive management.<sup>20</sup>

These programs generally have three features. First, they emphasize proactive initiatives as a complement to traditional, professional discipline. Second, they tend to focus on the responsibility of law firm management to implement policies, programs, and systems – in short, an “ethical infrastructure” -- that is designed to prevent misconduct and unsatisfactory service. Third, they strive to improve legal services and reduce problems by establishing information-sharing and collaborative relationships between regulators and service providers. The NOBC’s Entity Regulation FAQ document, which is regularly updated, provides information about PMBR and jurisdictions that have combined changes to what is regulated and changes to when regulation occurs.

### **12. What are the potential arguments against proactive regulation (and the responses)?**

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<sup>20</sup> See Ted Schneyer, *The Case for Proactive Management-Based Regulation to Improve Professional Self-Regulation for U.S. Lawyers*, 42 HOFSTRA L. REV. 233 (2013).

Before a regulator contemplates a change, it is worth considering some of the potential resistance that he or she might encounter. Here are some of the potential arguments against proactive regulation and some potential responses.

***12.1 \* Leaders of regulatory bodies don't have the power to affect the type of change discussed, nor should they.***

**Response:** Proactive regulation does not mean that the leaders of regulatory bodies have to act unilaterally. But they should recognize their potential influence and understand that it might be easier to implement a proactive system than they realize.

***12.2 \*It is difficult to measure whether proactive regulation is effective; measurement is important to an organization that needs budget allocations and accountability.***

**Response:** It is true that well-established metrics for measuring reactive, discipline-based systems exist. (These metrics include things such as the number of cases filed, time to disposition, and the results of discipline). Organizations that adopt proactive measure or an overall proactive approach undoubtedly will want to think about metrics they can use to measure their efforts and effectiveness. The metrics might be quite different and might include factors such as website visits, download counts, and changes in practice (such as those demonstrated in the qualitative and quantitative studies that have been conducted in Australia). But the fact that new metrics may be needed should not discourage a jurisdiction from adopting more proactive regulation. Jurisdiction may, however, find it useful to work with one another to develop appropriate metrics and accountability factors. Depending on the type of proactive measure, some metrics currently can be used. For example, a regulator could monitor the success of diversion measures for law practice management concerns. Specifically, the regulator could track severity and frequency of disciplinary charges filed against lawyers who completed a diversion program.

***12.3 \* Some individuals might resist the idea of proactive regulation because of a view that the jurisdiction is not "ready" to develop a system of entity regulation in which law firms are regulated along with individual lawyers (entity regulation).***

**Response:** As this FAQ has demonstrated, it is possible for a jurisdiction to adopt proactive regulation without entity regulation (and entity regulation without proactive regulation). Thus, even if a jurisdiction is unwilling to adopt entity regulation, it could decide to adopt additional proactive measures or decide to make a systemic commitment to always consider what proactive measures might be appropriate. A reluctance to adopt entity regulation should **not** be a reason to avoid proactive regulation.

***12.4 \* Some individuals might oppose proactive regulation because of a belief that the regulatory body does not have funds available to implement proactive regulation.***

**Response:** Cost should not be a barrier to proactive regulation. First of all, changing one's mindset—in and of itself—is priceless, but does not have a price tag attached. A regulator

that had a proactive mindset might discover a range of low-cost ways in which it could implement its vision. Second, if proactive regulation prevents problems, it may reduce regulatory costs rather than increase them. It is true that some jurisdictions, such as the Nova Scotia Barristers' Society, have committed resources to restructuring the regulatory system. But it is possible for a jurisdiction to begin more modestly and adopt proactive measures and a proactive mindset in which the jurisdiction begins by looking for low cost but potentially very effective proactive measures such as the email that Colorado sends to lawyers who change practice settings. One goal of this NOBC Proactive Regulation FAQ document is to encourage regulators to share ideas and experiences with one another.

***12.5 \* Some might oppose proactive regulation out of the belief that it will be too burdensome for lawyers or too intrusive into law firm practices.***

**Response:** It is certainly possible to design a proactive regulatory system to which this criticism would apply. A regulator who adopts a proactive approach will undoubtedly want to consider the issue of “proportionality” and make sure the burdens being imposed are appropriate. (This is why Nova Scotia has a Triple P regulatory system – it is committed to regulation that is proactive, principles, and proportionate.)

There are several additional steps that regulators could take to address this concern, beyond a sensitivity to proportionality that should always be present. For example, when PMBR regulation was adopted in New South Wales, Australia, the regulators were on record as stating that they were trying to change their relationship with lawyers. They wanted to be seen as a partner who could provide lawyers with assistance and help, rather than simply as an “enforcer” who showed up after problems arose. The regulators in several Canadian jurisdictions are also attempting to offer services to lawyers proactively and to have lawyers recognize that the regulators, like the lawyers, would prefer to avoid problems and want to work with the lawyers proactively to prevent problems from occurring. They are trying to change the relationship so that they are recognized as partners who can help lawyers (which helps clients).

Another response to the concern about burden or intrusiveness might focus on the concept of risk-based regulation. Many jurisdictions that are pursuing more proactive approaches to lawyer regulation are pursuing a more risk-based approach to lawyer regulation. A risk-based approach means that resources are targeted to the areas where they are most likely to be needed. Colorado, for example, does not send its law practice management resource email to lawyers who leave government practice and join an extremely large law firm. Illinois' new Rule 756(e) that requires a self-assessment every two years from lawyers who do not carry malpractice insurance. Unlike lawyers who carry insurance, uninsured lawyers may not obtain practice management advice from malpractice carriers. Moreover, injured persons may be more at risk when lawyers do not carry malpractice insurance if the uninsured lawyers do not possess nonexempt assets to pay damages in the event of a malpractice claim. A number of jurisdictions outside the U.S. have made a commitment to a risk-based approach to regulation. Among other reasons, a risk-based approach can be a more effective way for an organization to deploy limited resources.)

**12.6 \*Some might oppose proactive regulation, arguing that there is a conflict of interest between the regulator’s discipline mission and a proactive regulation approach.**

**Response:** In the view of the authors of this FAQ, there isn’t an inherent conflict between trying to prevent problems before they occur (e.g., by helping lawyers establish separate accounts for client and lawyer funds and setting up an office system regarding the operation of those funds) and disciplining lawyers after-the-fact if they engage in improper behavior (e.g., by commingling or stealing client funds). The goal of both proactive measures and a reactive discipline systems is to further a jurisdiction’s regulatory objectives of client and public protection. Both proactive and “reactive” methods can advance those goals. Regulators considering proactive regulation, however, should, however, be sensitive to these concerns when designing their systems.

**13. Is there anything else that might be helpful to read?**

The authors of this Proactive Regulation FAQ decided not to repeat in this document the same information about jurisdictional developments that appears in the NOBC Entity Regulation FAQ document. The authors also chose not to repeat in this document the information summarizing the *process* that has been used by jurisdictions that have made or are considering these changes and the recommendations in that document for jurisdictions that want to consider changes. Thus, individuals and jurisdictions who are interested in proactive regulation likely will find it helpful to read the NOBC’s Entity Regulation FAQ document, which is found on the NOBC’s Global Resources webpage. See <https://www.nobc.org/index.php/jurisdiction-info/global-resources/entity-regulation>. Some of the potential critiques of proactive regulation (and the responses to those critiques) are included in the Proactive Regulation law review article cited in note 1. Thus, useful resources for those who want to pursue this topic include the NOBC’s Entity Regulation FAQ and the Proactive Regulation 4-page blog post and the longer law review article. Regulators and others interested can also consult a 2016 article written by Professor Fortney, *Designing and Improving a Systems of Proactive Management-Based Regulation to Help Lawyers and Protect the Public*.<sup>21</sup> Drawing on data that she obtained in her empirical study of lawyers who completed the self-assessment process, the article discusses respondents concerns and outlines recommendations for persons interested in improving and designing PMBR systems.<sup>22</sup>

In addition to these resources, Appendix A to this document lists a number of additional websites, articles, and other resources. Appendix B identifies a variety of proactive measures and identifies jurisdictions that are using these measures. We encourage you to contribute to Appendix B by providing examples of proactive regulation in your jurisdiction. Please send that information to the NOBC Proactive Regulation Committee Chair Jim Coyle at [j.coyle@csc.state.co.us](mailto:j.coyle@csc.state.co.us).

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<sup>21</sup> Susan Saab Fortney, *Designing and Improving a Systems of Proactive Management-Based Regulation to Help Lawyers and Protect the Public*, JOURNAL OF THE PROFESSIONAL LAWYER (2016), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2812906](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2812906).

<sup>22</sup> *Id.* See also Terry, *Proactive Regulation*, *supra* note 1, at 788-797 ( Appendix 4 contains examples of the self-assessment forms from New South Wales, Australia, the Canadian Bar Association, Nova Scotia, and Colorado).

## Appendix A

### Webpages:

ABA Center for Professional Responsibility webpage (forthcoming)

NOBC Global Resources Webpage, See <https://www.nobc.org/index.php/jurisdiction-info/global-resources>

Nova Scotia Barristers' Society, MSLEP Webpage, <http://nsbs.org/management-systems-ethical-legal-practice-mseip>

Colorado PMBR Subcommittee Webpage, <http://www.coloradosupremecourt.us/AboutUs/PMBRMinutes.asp> (in addition to links to Colorado and U.S. materials, this webpage includes links to the relevant portals of all of the Canadian provinces)

### Law review and other articles focusing on proactive regulation:

Laurel S. Terry, *The Power of Lawyer Regulators to Increase Client & Public Protection Through Adoption of a Proactive Regulation System*, 20 LEWIS & CLARK L. REV. 717 (2016) (traditional law review article about proactive regulation that includes a discussion of developments around the world through May 2016; the appendices include examples from the various lawyer self-assessment forms that have been developed)

Laurel S. Terry, *When it Comes to Lawyers, Is an Ounce of Prevention Worth a Pound of Cure?*, JOTWELL (July 13, 2016) (4 page blog post about proactive regulation and recent developments), <http://tinyurl.com/Terry-proactive-Jot>

### Law review and other articles focusing on PMBR:

Susan Saab Fortney, *Designing and Improving a Systems of Proactive Management-Based Regulation to Help Lawyers and Protect the Public*, JOURNAL OF THE PROFESSIONAL LAWYER (2016) available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2812906](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2812906)

Susan Saab Fortney, *Promoting Public Protection through an "Attorney Integrity" System: Lessons from the Australian Experience with Proactive Regulation System*, 23 PROF. LAW. 16 (2015) available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2906525](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2906525)

Susan Saab Fortney, *The Role of Ethics Audits in Improving Management Systems and Practices: An Empirical Examination of Management-Based Regulation of Law*, 4 ST. MARY'S J. LEGAL MAL. & ETHICS 112 (2014) available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2375219](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2375219) (after examining study findings and recommendations related to the effects of the self-assessment process, the article examines how features of management-based regulation may be integrated into lawyer regulation in the U.S. and how regulators, insurers, and bar leaders can create incentives encouraging lawyers and firms to examine and improve their management systems and practice controls).

Susan Fortney & Tahlia Gordon, *Adopting Law Firm Management System to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation*, 10 U. ST. THOMAS L.J. 152 (2012), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2205301](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2205301) (examining the results of a an empirical study on PMBR in New South Wales and recommending an agenda for regulators, insurers, professional associations and researchers).

Susan Saab Fortney, *Preventing Legal Malpractice and Disciplinary Complaints: Ethics Audits as a Risk-Management Too*, BUSINESS LAW TODAY, March 2015 (ethics column).

Ted Schneyer, *The Case for Proactive Management-Based Regulation to Improve Professional Self-Regulation for U.S. Lawyers*, 42 HOFSTRA L. REV. 233 (2013).

Ted Schneyer, *On Further Reflection: How “Professional Self-Regulation” Should Promote Compliance with Broad Ethical Duties of Law Firm Management*, 53 ARIZ. L. REV. 577 (2011).

### **Law review and other articles with a broader focus:**

Amy Salyzyn, *From Colleague to Cop to Coach: Contemporary Regulation of Lawyer Competence*, 94 CANADIAN BAR REVIEW \_\_ (2017) (forthcoming) (Over the last several decades, Canadian law societies have significantly expanded their regulatory reach in relation to the post-entry competence of lawyers. In this article, a novel framework is proposed to trace the path to this current state of affairs: specifically, four different “waves” or models are identified. It is argued that the current approach represents a positive material regulatory shift towards focusing on the public interest as opposed to lawyer interests, which had dominated historically. At the same time, issues of transparency, expertise and costs remain of concern. The Hybrid Model approach embodied in new entity-based regulatory initiatives now under consideration is identified as one way to address these concerns. However, both the process used to implement such a model and the model’s ultimate content will be key determinants of its success in any given jurisdiction.)

Amy Salyzyn, *What if We Didn't Wait? Canadian Law Societies and the Promotion of Effective Ethical Infrastructure in Canadian Legal Practices*, 92 CAN. BAR. REV. 507 (2015). (This article explores whether and how law societies might become more active in promoting effective ethical infrastructures within Canadian law practices. The case presented in this article for expanded law society involvement in the ethical infrastructures of Canadian law practices is three-fold: (1) there are reasons to believe that these infrastructures could, as a general matter, be improved; (2) this improvement would, in turn, lead to improved outcomes in relation to lawyers’ ethical duties; and (3) current law society regulatory efforts are not optimally situated to assist with this improvement. Stated otherwise, law societies should become more involved in the ethical infrastructures of Canadian law practices because neither the market nor current regulatory efforts are effectively addressing this important aspect of law practice.)

Laurel S. Terry, *Globalization and the ABA Commission on Ethics 20/20: Reflections on Missed Opportunities and the Road Not Taken*, 43 HOFSTRA L. REV. 95, 128, n. 142 (2014)(suggesting the idea of using Rule 5.1 to achieve PMBR even in the absence of entity regulation).

Laurel S. Terry, [\*Why Your Jurisdiction Should Consider Jumping On The Regulatory Objectives Bandwagon\*](#), 22(1) PROF. LAW. 28 (Dec. 2013). (This article is a 15 page version of the Terry/Mark/Gordon 2012 regulatory objectives article. It is targeted to state supreme courts and lawyer regulators in the United States.)

Laurel S. Terry, Steve Mark, Tahlia Gordon, [\*Adopting Regulatory Objectives for the Legal Profession\*](#), 80 FORDHAM L. REV. 2685 (2012). (This article provides a thorough treatment of regulatory objectives in a number of jurisdictions. It includes a discussion of the different methods by which lawyers are regulated (e.g., legislation, court rules, law society bylaws); legislative history, and an analysis and comparison of the regulatory objectives in a number of jurisdictions. The regulatory objectives from a number of jurisdictions are included as appendices.)

Laurel S. Terry, [\*Trends in Global and Canadian Lawyer Regulation\*](#), 76 SASKATCHEWAN L. REV. 145 (2013). (This article uses the “who-what-when-where-why-and-how” structure developed in the 2012 Terry/Mark/Gordon “Trends” article to analyze Canadian lawyer regulation developments.)

Laurel S. Terry, Steve Mark, Tahlia Gordon, [\*Trends and Challenges in Lawyer Regulation: The Impact of Globalization and Technology\*](#), 80 FORDHAM L. REV. 2661 (2012). (This “Trends” article uses a “who-what-when-where-why-and-how” structure as a means to discuss global lawyer regulation developments around the world. Although many jurisdictions combine these developments, it offers a means to analyze the issues separately and compare regulatory approaches in different countries.)

See also <http://tinyurl.com/laurelterryslides> (includes links to presentation slides, organized by topic) and [http://works.bepress.com/laurel\\_terry/](http://works.bepress.com/laurel_terry/) (contains links to articles on a number of issues related to globalization and the legal profession, including foreign lawyer mobility provisions, a comparative analysis of UPL/lawyer monopoly provisions in countries, interest in the legal profession by antitrust authorities, EU regulation of lawyers (the most recent analysis is found in the Bologna Process articles), trade agreements’ application to legal services, FATF and “gatekeeper” issues, and transnational legal practice year-in-review articles, among other topics).

**(1) Adam Dodek, “Regulating Law Firms in Canada” (2011) 90 CANADIAN BAR REVIEW 383 (arguing that Law Societies should regulate law firms. They should do so primarily on the basis of ensuring public confidence in self-regulation and respect for the Rule of Law and only secondarily out of concerns regarding public protection.)**

# INDEPENDENT REGULATOR OF LEGAL SERVICES POLICY OUTLINE

Presented at IAALS'  
Making History: Unlocking Legal Regulation Workshop

By  
Professor Gillian Hadfield  
University of Toronto

and

Lucy Ricca, Consultant  
IAALS

**April 2019**

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**IAALS—Institute for the Advancement of the American Legal System**

John Moye Hall, 2060 South Gaylord Way, Denver, CO 80208

Phone: 303-871-6600

<http://iaals.du.edu>

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Manager	Zachariah DeMeola
Legal Assistant	Jonna Perlinger

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## INTRODUCTION

This proposal sets forth a system of regulation for legal service providers. The proposed system envisions a **non-profit, independent regulator** of legal service providers implementing a risk-based approach to regulation that seeks to advance the regulatory objective outlined below. This proposal is simply that—a proposal for which we hope to gather feedback and input from all sectors of the legal economy.

## THE REGULATOR

### CORE REGULATORY OBJECTIVE

To ensure consumers access to a well-developed, high-quality, innovative, and competitive market for legal services.<sup>1</sup>

### REGULATORY PRINCIPLES

1. Regulation should be risk-based (proportionate and responsive to actual risks of harm posed to consumers of legal services).
2. Regulation should be guided by a market-based approach.
3. Regulation should establish probabilistic thresholds for acceptable levels of harm.
4. Regulation should be empirically-driven.

### KEY RISKS

The regulator's primary approach to achieving the core regulatory objective is through the identification and reduction of the major risks to consumers in the legal services market. We have identified five key risks:

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<sup>1</sup> This system is designed specifically for the regulation of consumer facing legal services and targeted at the risks posed to the purchasers of legal services. Although we believe that ensuring the system protects the consumers' interests will serve the public interest, in particular strengthening the rule of law, the institutions of law, the administration of justice, and access to justice, it is not the primary objective. To the extent there are public policy goals not met by this system, it is our assumption that those goals should be addressed elsewhere in the system (*i.e.* the courts, the bar, other government regulators or legislation).

1. Consumer fails to exercise their legal rights because they did not know they possessed that right.
2. Consumer achieves a worse legal result than they would have had they used the next best alternative.
3. Consumer overpays for a legal service.
4. Consumer purchases a legal service not needed or not appropriate to their legal issue.
5. Consumer does not engage with the legal services market at all.

## SOURCE OF REGULATORY AUTHORITY

1. The state courts may delegate regulatory power over legal service providers to the regulator.<sup>2</sup>
2. The state courts also may enact rules:
  - a. permitting legal entities duly licensed by the regulator to practice law in the state and ensuring that such entities will not be subject to unauthorized practice of law enforcement; and
  - b. permitting traditionally licensed lawyers to enter into business relationships of any form with duly licensed legal entities.
3. The state courts retain the duty to assess the performance of the regulator, including the continuing evaluation of the regulator's achievement of the core regulatory objective and whether further potential rule changes might be necessary to advance the regulatory objective and the public interest (*e.g.* changing rules about court appearances).

## THE REGULATED MARKET

### LEGAL SERVICE PROVIDERS

Those offering any service to the public that informs, advises, assists, advocates for or drafts documents for individuals and entities on the interests, rights, and obligations of such individuals and entities under the law (local, state, federal, and international).

### RISK MATRIX

The regulator will develop a risk matrix around the key risks. The risk matrix should identify and assess risks in terms of their impact and probability on specific classes of consumers, thereby enabling the regulator to prioritize and categorize regulatory interventions. In this process, and in

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<sup>2</sup> The delegation of authority by the state courts is limited, as we have noted, by the specific core regulatory objective. The state courts maintain the authority and duty to address issues of public interest and policy beyond consumer protection, including issues of access to justice.

light of the core regulatory objective and regulatory principles, the regulator should identify levels of tolerable risk for which hard regulatory intervention is not necessary. It should also identify those risks which are intolerable in light of the core regulatory objective and principles.

Ultimately, the regulatory matrix will be developed by the regulator through engagement with various market participants and other expert sources. The risk matrix is used by the regulator both in assessing the market as a whole (establishing status quo at the outset of the new system and continually to measure impact and assess progress market-wide) and as the framework for assessment of the risk posed by individual entities within the system during application, through monitoring, and to address enforcement). See the Risk Matrix Example at Appendix A.

## THE REGULATORY PROCESS

### APPLICATION FOR LICENSE

The licensing approach is guided by the following analysis:

1. What is the specific nature of the risk posed to the consumer by this business model/product/service?
2. How does the proposed business model/product/service fit into the risk matrix?
3. Can the applicant provide sufficient evidence on the risk?
4. What mechanisms might mitigate those risks and how? What are the costs and benefits of those mechanisms?

An application for licensure could have three parts.

#### PART ONE: APPLICANT INITIATES PROCESS

The applicant describes the business model/product/service offered. The explanation should be simple and short. The applicant should submit supplemental materials (visuals, etc.) as necessary.

#### PART TWO: RISKASSESSMENT

Based on the description provided in Part One, supplemented as necessary with information requests to the applicant, the regulator initiates the risk assessment process.

With reference to the risk matrix, both the regulator and the applicant can identify the prioritized risk concerns and risk threshold requirements. The regulator shall indicate to the applicant which risks are prioritized for its particular proposal, which risk thresholds apply, and what types of quantitative or qualitative data the applicant must submit on these risks. The applicant should also

submit any information on mitigation of these risks and response to risk realization built into its model.

The second part of the risk assessment is a self-assessment in which the applicant will be expected to identify any risks to consumers not covered under part one. These may be risks specific to the type of technology proposed (the blockchain presents different concerns from a document completion tool for example), the business model, the area of law, or the consumer population targeted.

To gain a license, the applicant must, for each listed risk, show whether or how its proposed business model/product/service might trigger such risk, what processes and procedures the applicant has in place to mitigate such risk, how it might redress any harm, and any other showings required by the regulator.

The regulator shall develop a mechanism for sealed risk disclosures, to the extent any necessary disclosures around technology or other risk mitigation processes should not be public.

### PART THREE: FEES

The applicant will submit licensing fees both at the outset of the licensing process and annually in order to maintain an active license. The fee regime will be developed to scale with nationwide revenues of the applicant.

### REGULATOR RESPONSE: RISK PROFILE

The regulator will then use the application and its own research into such technical, economic, or ethical issues as necessary to develop an overall risk profile of the proposed business model/product/service. A risk profile is not a list of potential risks with little or no differentiation between them. The risk profile should assess the identified risks both in relation to each other (which are the most likely (common), which present the greatest financial risk, *etc.*) and in relation to the market for legal services overall. It may be that the risk profile is essentially the scoring of the applicant in the context of the risk matrix.

The risk profile should seek to make clear, to the applicant, the regulator, and the public, how this model/product/service compares to other similar services on certain key points. The risk profile will also guide the regulator in its regulatory approach going forward, *i.e.* how frequent to audit, what kind of ongoing monitoring or reporting, what kinds of enforcement tools need to be considered and which are not necessary.

It is important to be clear in this assessment that the risk profile is not being created as against a standard of “perfect legal service by a lawyer,” but rather is a tool to show the relative risk of this offering in context of the myriad other possible offerings on the market and as against the risks

imposed if a person does not have access to help at all. Such an assessment should be as empirically driven as possible.

The risk profile shall also to illuminate how different types of legal services inherently present different potential risks to the consumer. Obviously, the risks of poor legal help (whether lawyer or otherwise) in criminal case or “crisis point” civil case (eviction, child custody, *etc.*) are more significant, immediate, and difficult to remedy than the risks of poor legal help in a will drafting. We should not assume that the public knows or understands this in every case.

#### REGULATOR RESPONSE: DETERMINATION ON LICENSURE

After creation of the risk profile, the regulator shall make a determination on licensure. If, based on the risk profile, the regulator finds that significant risks have been identified but it is not clear how the applicant shall address and mitigate those risks, the regulator shall impose probationary requirements on the applicant targeted at those risks.

#### MONITORING AND DATA COLLECTION

Monitoring and collection of data enable continual improvement of the regulatory system toward the core objective. Through gathering of data and continual interaction with the regulated entities, the regulator is better able to understand risks in the market and identify trends. The regulator is also able to observe, measure, and adjust any regulatory initiatives to drive progress toward the core objective. Monitoring is not the regulator simply checking the box on a list of requirements.

The regulator could establish the requirement that regulated entities periodically and routinely provide standard harm data sets tied to the risk reduction objectives. The regulator should have the flexibility to reduce or eliminate specific reporting requirements if the data consistently shows no harm impacts on consumers. The regulator could have the authority to conduct unannounced testing or evaluation of a regulated entities’ performance through, for example, anonymous testing of software tools or services.

The regulated entities will have an affirmative duty themselves to monitor for and disclose any unforeseen impacts on consumers.

Data should also be used both for issuing regular market reports and for issuing guidance to the public and regulated entities.

#### ENFORCEMENT

Enforcement is necessary when the activities of licensed entities are harming consumers. The regulator takes action when evidence of consumer harm exceeds the risk thresholds identified in the risk matrix.

Evidence of harm or non-compliance can come before the regulator in a variety of ways, including:

1. Regulator finds evidence of consumer harm through the course of its monitoring, auditing, or testing of regulated entities;
2. Regulator finds evidence of consumer harm through its monitoring of the legal services market;
3. Consumer complaints; and
4. Whistleblower reports.

The regulator will develop a process for enforcement intake (complaints and funneling of information from all possible sources), investigation, and redress.

If the regulator makes a finding of consumer harm that exceeds the applicable threshold, then penalties are triggered. The penalty system should be clear, simple, and essentially automatic. If a legal service provider is unable to meet the risk threshold over a certain probationary period, then their license is suspended. To be reinstated, the legal service provider needs to provide data showing mitigation efforts and how the threshold is met. Evidence of harm at certain identified points beyond the threshold trigger monetary or other penalties, including possible revocation of license.

There should be a process for appeal of enforcement decisions, both within the regulator and to the state supreme court. The regulator should make regular reports on enforcement data and actions to the supreme court.

### OTHER DUTIES

The regulator may have other duties that advance the core objective, including reporting duties to the state supreme court and the public. The reports would include the overall state of the market, risks across the market, prioritized risk areas, and specific market sectors (by consumer, by area of law, etc.). The regulator may also have the authority to develop initiatives including public information and education campaigns.



# APPENDIX A – RISK MATRIX EXAMPLE

Consumer overpays for a legal service.	Individuals (low resourced)			1. Pricing 2. Transparency of pricing 3. Consumer comprehension of pricing
	Individuals (high resourced)			
	Businesses (low resourced)			
	Businesses (high resourced)			
Consumer purchased a legal service not needed or not appropriate to their legal issue.	Individuals (low resourced)			1. Pricing 2. Transparency of pricing 3. Competitiveness of market (data)
	Individuals (high resourced)			
	Businesses (low resourced)			
	Businesses (high resourced)			
Consumer does not engage with the legal services market at all.	Individuals (low resourced)			
	Individuals (high resourced)			
	Businesses (low resourced)			
	Businesses (high resourced)			

# APPENDIX A – RISK MATRIX EXAMPLE

RISK	CONSUMER	LIKELIHOOD	IMPACT	METRICS (SYSTEMIC)	METRICS
Consumer fails to exercise his/her legal rights because he/she did not know they possessed that right.	Individuals (low resourced)			<ol style="list-style-type: none"> <li>1. Consumer satisfaction (surveys)</li> <li>2. Consumer complaints without legal help</li> <li>3. % of consumers</li> <li>4. Consumer knowledge (surveys)</li> <li>5. Competitiveness of market (market data)</li> </ol>	<ol style="list-style-type: none"> <li>1. Outcome along legal dimensions                             <ul style="list-style-type: none"> <li>• Quality of legal service (minimum quality standards)</li> <li>• Consumer satisfaction</li> </ul> </li> </ol>
	Individuals (high resourced)				
	Businesses (low resourced)				
	Businesses (high resourced)				
Consumer achieves a worse legal result than they would have had they used the next best alternative.	Individuals (low resourced)				
	Individuals (high resourced)				
	Businesses (low resourced)				
	Businesses (high resourced)				

## Identifying and Assessing Risks Worksheet

Key Principles



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**Risk Assessment:** Risk assessment requires measuring actual harm and likelihood of actual harm as the focus, rather than application of formal rules in all cases and contexts without considering outcomes.

**Proportionality:** Total elimination of risk may actually incur more systemic harm to consumers/people in need than good. To use proportionality requires considering evidence of risk, as opposed to concern in abstract about what may harm people, followed by prescriptive action. This helps us to establish probabilistic thresholds for acceptable levels of harm, which then in turn help us to understand how best to mitigate that harm. Thresholds inform appropriate regulation and prioritize effort in ensuring compliance. For example, in a medical context we don't forbid surgery because there are risks associated with general anesthesia. Instead, we work to minimize those risks as best we can.

**Next Best Alternative:** To understand whether a risk is outweighed by a benefit, we look at the next best alternative for the consumer, who is in the position of making a choice about exposure to a given risk relative to another option. For instance, in medicine, people routinely must compare the risk of general anesthesia against the risk of foregoing a surgery. In legal services, we often compare risks by comparing alternatives only to the use of conventional legal representation, but this doesn't accurately reflect the choices of most consumers. Most consumers cannot a full-service attorney, and under the current system the next best alternative them is often not getting any help at all because, depending on the service, usually the only option is an attorney.

**Key risks to the core objective:**

1. Worse legal result for consumer than they would have had they used the next best alternative (harm to consumer because of bad legal result)
2. Consumer fails to exercise a legal right because they did not know they possessed the right
3. Consumer overpays for legal service
4. Consumer purchases legal service not needed or not appropriate to legal issue
5. Consumer does not engage with the legal services market at all

**Objective:** *To ensure consumers access to a well-developed, high-quality, innovative, and competitive market for legal services in the US.*



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Key Risk #1: Worse legal result for consumer than they would have had they used the next best alternative (harm to consumer because of bad legal result)

Key Factors for Identifying Risk Level	Individual or Entity Data Needed

Key Risk #2: Consumer fails to exercise a legal right because they did not know they possessed that right



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Key Factors for Identifying Risk Level	Individual or Entity Data Needed

Key Risk #3: Consumer overpays for a legal service

Key Factors for Identifying Risk Level	Individual or Entity Data Needed



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Key Risk #4: Consumer purchases a legal service not needed or not appropriate to their legal issue

Key Factors for Identifying Risk Level	Individual or Entity Data Needed

Key Risk #5: Consumer does not engage with the legal services market at all



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Key Factors for Identifying Risk Level	Individual or Entity Data Needed



### Risk Matrix

Risk	Consumer	Likelihood	Impact	Key Factors/Data	Intervention or Mitigation
Consumer achieves a worse legal result than they would have had they used the next best alternative.	Individuals (low resourced)				
	Individuals (high resourced)				
	Businesses (low resourced)				
	Businesses (high resourced)				
Consumer fails to exercise his/her legal rights because he/she did not know they possessed that right.	Individuals (low resourced)				
	Individuals (high resourced)				
	Businesses (low resourced)				
	Businesses (high resourced)				
Consumer overpays for a legal service	Individuals (low resourced)				



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Risk	Consumer	Likelihood	Impact	Key Factors/DAta	Intervention or Mitigation
	Individuals (high resourced)				
	Businesses (low resourced)				
	Businesses (high resourced)				
Consumer purchased a legal service not needed or not appropriate to their legal issue.	Individuals (low resourced)				
	Individuals (high resourced)				
	Businesses (low resourced)				
	Businesses (high resourced)				
	Individuals (low resourced)				



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Risk	Consumer	Likelihood	Impact	Key Factors/DAta	Intervention or Mitigation
Consumer does not engage with the legal services market at all.	Individuals (high resourced)				
	Businesses (low resourced)				
	Businesses (high resourced)				



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Date: December 17, 2020

To: California Paraprofessional Program Working Group

From: Linda Katz, Principal Program Analyst

Subject: Paraprofessional Program Regulatory Structure and Board Composition

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## EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services \(ATILS\)](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the regulatory structure for paraprofessionals. This memo outlines options for an overarching regulatory structure, namely a regulatory board, for the CPPWG's consideration.

## BACKGROUND

At its August 25, 2020, meeting, the CPPWG determined that subcommittees should be created to develop requirements for paraprofessional licensing, regulation, and discipline. These subcommittees were appointed subsequent to that meeting, and each met several times to review and consider information about their assigned topics. At its October 29, 2020, meeting, the Working Group reviewed the status reports from each of these subcommittees and provided feedback on the subcommittees' preliminary recommendations and proposals. These subcommittees have continued to meet and have provided updated reports and recommendations for the December 17 CPPWG meeting.

During the course of their discussions, the Licensing, Regulation, and Discipline Subcommittees have each identified roles and responsibilities for a paraprofessional licensing board (hereinafter referred to as the Board). This has brought to the fore the question of how this Board will be constituted and what it will be required and authorized to do.

## DISCUSSION

In developing recommendations for the Board, I reviewed the size and composition of paraprofessional licensing boards in other states, as well as the licensing boards for nonlegal professions in California. Attachment A provides a summary of this information.

In addition, I reviewed the factors that should be considered in determining Board size, structure, and composition as outlined in a 2018 report on the State Bar's board, commissions, committees, and councils (collectively referred to as committees), *Opportunities for Improving Governance and Service Delivery*.<sup>1</sup> This report emphasizes that decisions about size, structure, and composition should be driven by the purpose of the committee itself.

The Licensing, Regulation, and Discipline Subcommittees have to date identified a number of roles and responsibilities for the Board, including:

- Licensing: establishing licensing requirements and ensuring that they remain relevant; decisions regarding the addition of new practice areas.
- Regulation: responsibility for program rules, MCLE requirements, proactive regulation policies, and program evaluation.
- Discipline: potentially hearing appeals and approving certain disciplinary recommendations.

With these functions in mind, this memo considers the following issues with regard to a Board: size, composition, appointing authority, term of membership, functional (committee) structure, and reporting authority. These recommendations are presented as a starting point for CPPWG deliberation and are not intended to be conclusory.

## BOARD SIZE

At its September 13, 2018, meeting, the State Bar Board of Trustees adopted a policy to limit the size of State Bar committees to 7 or fewer members, absent a justification of the need for more members based on workload or the need for additional expertise or perspectives to carry out the work. This policy is based on research that found that larger boards are less effective in the decision-making process.

Given the broad set of responsibilities envisioned for this Board, as well as its potential role in discipline adjudication, a larger size is warranted. As reflected in the tables in Attachment A, California's professional licensing boards range in size from 9 to 15, and other states' paraprofessional licensing boards range from 11 to 15. I recommend that the Board be comprised of 13 members, which is an average of the sizes of other states' paraprofessional licensing boards and is the same size as the State Bar Board of Trustees.

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<sup>1</sup> Schauffler, Richard. *Opportunities for Improving Governance and Service Delivery: A report and Recommendations Regarding the State Bar of California's Boards, Commissions, Committees, and Councils*. September 13, 2018. <http://board.calbar.ca.gov/Agenda.aspx?id=14901&tid=0&show=100019508&s=true#10027325>

### **BOARD COMPOSITION AND APPOINTING AUTHORITY**

The composition of the Board should reflect its purpose and functions. Its purpose is to ensure that the paraprofessional program improves access to legal services while maintaining public protection. The fulfillment of that purpose is achieved through licensing, regulation, and discipline of licensees.

As reflected in Attachment A, both California's professional licensing boards and other jurisdictions' paraprofessional licensing boards include a balance of licensed professionals and public members, with Department of Consumer Affairs (DCA) boards having more public members than their paraprofessional counterparts. I recommend that the Board conform to the standards of California licensing boards in this regard. Following the model for California licensing boards, the Board composition should ensure that expertise is available that informs its work, by including members who represent the consumers that paraprofessionals will serve, as well as those who can inform the specific topics of licensing, regulation, and discipline. A balance of attorneys, licensed paraprofessionals, legal educators, and public members is recommended.

The Governor and Legislature are vested with authority to appoint members to boards that fall under the jurisdiction of the DCA, as well as some members of the State Bar Board of Trustees. The Supreme Court is vested with appointing authority for the attorney members of the State Bar Board of Trustees. The appointing authority structure for the paraprofessional Board should mirror that of the State Bar Board of Trustees.

The combined recommendations regarding Board size, composition, and appointing authority are thus as follows:

- 3 paraprofessionals appointed by the Supreme Court
  - 2 paraprofessionals appointed by the Legislature
  - 2 attorneys appointed by the Supreme Court
  - 4 public members appointed by the Governor
  - 2 public members appointed by the Legislature
- \*Board to include one representative of an educational institution that provides training for paraprofessionals; this member may be a paraprofessional, attorney, or public member.

### **BOARD TERM LIMITS**

Terms should be established that allow members enough time to learn the work of the Board and carry out its work effectively. A lack of term limits may result in a Board that stagnates, which prevents new perspectives from being introduced. Staggered terms allow for continuity by providing overlap among members. Following the model of California's professional licensing boards, which provide for longer terms than the paraprofessional licensing boards in other states, Board members should be appointed to 4-year staggered terms.

### **BOARD STRUCTURE: COMMITTEES**

The Board's structure should reflect its oversight functions. Committees might be established with oversight authority for Licensing, Regulation, and Discipline. Under this approach, each committee would make recommendations to the full Board regarding issues that fall within their respective areas of purview. Where appropriate, membership on these committees should rotate on a regular basis. This recommended committee structure mirrors that of the State Bar Board of Trustees.

### **REPORTING AUTHORITY**

As a Board under the authority of the State Bar, decisions of the Board would be subject to authorization of the State Bar Board of Trustees. The Board of Trustees may determine that it is appropriate to delegate final decision-making authority to the Board with regard to certain topics (e.g., educational and training requirements, licensee discipline, etc.). However, it is likely that requests for changes to Rules of Professional Conduct or requests for statutory changes would require approval by the Board of Trustees.

## Paraprofessional Licensing Boards

	License	Regulatory Board	Board Size, Composition, and Appointing Authority	Term
<b>Arizona</b>	Legal Paraprofessional (LP)	Board of Nonlawyer Legal Service Providers	11 members appointed by Chief Justice <ul style="list-style-type: none"> <li>• 2 Certified Legal Document Preparers</li> <li>• 2 Legal Paraprofessionals</li> <li>• 1 Judge or Court Commissioner</li> <li>• 1 Clerk of the Superior Court</li> <li>• 1 Attorney</li> <li>• 2 Public Members</li> <li>• 2 Additional Members</li> </ul>	3 years
<b>Utah</b>	Licensed Paralegal Practitioner (LPP)	Board of Bar Commissioners	13-15 Members <ul style="list-style-type: none"> <li>• 11 Elected Lawyers</li> <li>• 2 Nonlawyers appointed by Supreme Court</li> </ul>	3 years
<b>Washington</b>	Limited License Legal Technician (LLLT)	Limited License Legal Technician Board	15 voting members appointed by Supreme Court <ul style="list-style-type: none"> <li>• ≥ 11 Lawyers, LLLTs, or Limited Practice Officers (LPO) <ul style="list-style-type: none"> <li>○ ≥ 9 Active Lawyers or LLLTs</li> <li>○ ≤ 2 LPO, Judicial, or Emeritus Pro Bono Lawyers</li> </ul> </li> <li>• 4 Nonlawyers</li> </ul> 1 Ex Officio Nonvoting Representative of State Board of Community and Technical Colleges	3 years

## California Licensing Boards

	License	Regulatory Board	Board Size, Composition, and Appointing Authority	Term
	<b>Attorney</b>	State Bar Board of Trustees	13 Members <ul style="list-style-type: none"> <li>• 5 Attorneys appointed by Supreme Court</li> <li>• 2 Attorneys appointed by Legislature</li> <li>• 4 Public Members appointed by Governor</li> <li>• 2 Public Members appointed by Legislature</li> </ul>	4 years
	<b>Physician</b>	Medical Board of California	15 members <ul style="list-style-type: none"> <li>• 8 Physicians appointed by Governor</li> <li>• 5 Public Members appointed by Governor</li> <li>• 2 Public Members appointed by Legislature</li> </ul>	4 years

License	Regulatory Board	Board Size, Composition, and Appointing Authority	Term
<b>Architect</b>	Architects Board of California	10 members <ul style="list-style-type: none"> <li>• 5 Architects appointed by Governor</li> <li>• 3 Public Members appointed by Governor</li> <li>• 2 Public Members appointed by Legislature</li> </ul>	4 years
<b>Dentist (DDS)</b> Certifications: <ul style="list-style-type: none"> <li>• Dental Assistant</li> <li>• Dental Assistant in Extended Functions</li> </ul>	Dental Board of California	15 members <ul style="list-style-type: none"> <li>• 8 Dentists appointed by Governor</li> <li>• 1 Dental Hygienist appointed by Governor</li> <li>• 1 Dental Assistant appointed by Governor</li> <li>• 3 Public Members appointed by Governor</li> <li>• 2 Public Members appointed by Legislature</li> </ul>	4 years
<b>Registered Nurse</b> Certifications: <ul style="list-style-type: none"> <li>• Nurse Anesthetist</li> <li>• Nurse Midwife</li> <li>• Nurse Practitioner</li> <li>• Psychiatric/Mental Health Nurse</li> <li>• Public Health Nurse</li> </ul>	Board of Registered Nursing	9 members <ul style="list-style-type: none"> <li>• 5 Registered Nurses appointed by Governor <ul style="list-style-type: none"> <li>○ 2 Engaged in Direct Patient Care</li> <li>○ 1 Advanced Practice</li> <li>○ 1 Educator or Administrator in nurse training program</li> <li>○ 1 Administrator of a Nursing Service</li> </ul> </li> <li>• 2 Public Members appointed by Governor</li> <li>• 2 Public Members appointed by Legislature</li> </ul>	4 years



Date: February 26, 2021

To: California Paraprofessional Working Group

From: Sharon Bashan, Julianne Fellmeth, Kim Kirchmeyer, and Ira Spiro

Subject: Update and Recommendations for Disciplinary Structure for Paraprofessional Program

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## EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the requirements for paraprofessional discipline.

The Discipline Subcommittee (Subcommittee), comprised of the authors of this memorandum, is charged with the developing a proposed paraprofessional program. To that end, in the present memorandum the Subcommittee submits recommendations for CPPWG review and approval in regard to the paraprofessional disciplinary model and the designation of paraprofessional discipline records as public or private.

## DISCUSSION

The Discipline Subcommittee, comprised of the authors of this memorandum, presented the paraprofessional disciplinary model outlined in Table 1 on the following page to the CPPWG at its January 15, 2021, meeting, the CPPWG discussed and provided feedback regarding the model at that time.

**Table 1. Disciplinary Model**

<b>Model Element</b>	<b>Recommended Approach</b>
Complaint Intake and Investigation	To be handled by the Office of Chief Trial Counsel (OCTC)
Citation and Fine <sup>1</sup>	To be administered by OCTC <ul style="list-style-type: none"> <li>• If fine and fee determination is disputed, that dispute will be adjudicated by the Hearing Panel</li> </ul>
<ul style="list-style-type: none"> <li>• Initial Hearings</li> <li>• Disputed Fine and Fee Determinations</li> </ul>	Three-person Hearing Panel
Settlement Conferences	<ul style="list-style-type: none"> <li>• To take place only if OCTC and paraprofessional mutually consent</li> <li>• To be heard by staff adjudicator</li> </ul>
Appeals and Stipulated Discipline	Three-person panel or the Paraprofessional Board
Final Discipline Decision	<ul style="list-style-type: none"> <li>• Suspensions and Revocations: final discipline decision to be made by the Supreme Court</li> <li>• Appeals from the Appeals level to be heard by the Supreme Court</li> <li>• All other discipline finalized at appropriate level within the State Bar’s paraprofessional disciplinary structure, level as yet to be determined</li> </ul>

The December 15, 2020, memorandum to the CPPWG, discussed at its January 15 meeting, provides further detail regarding this proposal; that memo is provided as Attachment A. The Subcommittee seeks the CPPWG’s approval of this proposed disciplinary model with the understanding that a final recommendation regarding which body, a panel or the Paraprofessional Board, will consider appeals and stipulated discipline, will be developed after the composition of the Paraprofessional Board has been determined.

Subsequent to the January 2021 meeting the Subcommittee focused on various alternatives to discipline and the development of a proposed approach to determine which discipline records will be considered public documents. The Subcommittee was aided in this work by Ms. Danielle Lee with the State Bar’s OCTC, Mr. Andrew Tuft of the State Bar’s Office of Professional Competence, and Judge Yvette Roland, of the State Bar Court.

**ALTERNATIVES TO FORMAL DISCIPLINE/NONTRADITIONAL DISCIPLINE**

The Subcommittee explored various alternatives to the formal discipline trajectory beyond those outlined in the recommendation reviewed on January 15,<sup>2</sup> some of which exist in the

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<sup>1</sup> The term “Diversion” was also included in this box in the January 15, 2021, memo. The Subcommittee has addressed in detail various diversion options in the following section of this memorandum and made distinct recommendations accordingly. As such that particular issue has been removed from this particular table.

<sup>2</sup> Specifically, citations and fines, which the CPPWG voted to include in the model at its January 15, 2021, meeting.

attorney discipline context and some that could be imported from Department of Consumer Affairs boards. These include:

- Warning Letters
- Agreements in Lieu of Discipline
- Mandatory Fee Arbitration
- Private Reprovals

In addition, the Subcommittee explored the Alternative Discipline Program (ADP), which is in fact part of the formal attorney discipline system; ADP is a unique disciplinary pathway for attorneys whose misconduct is determined to stem directly from a substance abuse or mental health issue. Each of these alternatives or approaches is described briefly below.

### **Warning Letters**

Warning letters are issued by OCTC in circumstances where no violation has been found but OCTC determines that some action, or lack thereof, should be brought to the respondent attorney's attention, along with corresponding resource material. The Subcommittee believes these letters are useful tools and recommends that they be included in the paraprofessional discipline model.

### **Agreements in Lieu of Discipline**

Agreements in Lieu of Discipline (ALDs) are authorized by Business and Professions Code section 6092.5(i): "In addition to any other duties specified by law, the disciplinary agency shall do all of the following: Make agreements with respondents in lieu of disciplinary proceedings, regarding conditions of practice, further legal education, or other matters."

These agreements are used by OCTC for low-level discipline, for example, failure to perform competently or failure to communicate with a client, that is aberrational in nature. An attorney must stipulate to the underlying facts and admit culpability in order to be eligible for an ALD. Respondent attorneys are subject to normal probation conditions pursuant to ALDs, for example restitution, and/or client trust accounting school. While ALD's are used for low-level discipline, they are not considered disciplinary in nature and are not made public.

The Subcommittee understands that one of the benefits of the ALD tool from OCTC's perspective is that the respondent attorney stipulates to both culpability and the underlying facts; in the event that the attorney does not satisfy the terms of the ALD, OCTC can proceed directly to the filing of a Notice of Disciplinary Charges. From the attorney's perspective the obvious benefits include the fact that the ALD is not considered discipline and is not a public record.

Even in light of these dual benefits however, the Subcommittee does not recommend ALDs for inclusion in the paraprofessional discipline model at this time. The Subcommittee prioritizes transparency for the public and consumers; with this value in mind, the Subcommittee recommends that any conduct that rises to the level of actual discipline should in fact be considered discipline and should be made public accordingly.

### **Mandatory Fee Arbitration (MFA)**

The attorney MFA program is authorized under the Mandatory Fee Arbitration Act (Business and Professions Code sections 6200-6206) and is designed to provide an informal, low-cost process to resolve fee disputes between lawyer and client. About 95 percent of MFA cases are handled through local bar association arbitration programs (currently there are 32 local programs), with the remainder being arbitrated by volunteer arbitrators appointed by State Bar staff. The average annual caseload handled by the State Bar-appointed arbitrators is approximately 60 cases; and on average approximately 1,000 cases are handled by local bar association arbitration programs each year.

In addition to arbitration, the MFA program also handles requests for enforcement of fee arbitration awards. An attorney who fails to adhere to the terms of an MFA award can be placed on involuntary inactive status, therefore losing eligibility to practice. Neither participation in MFA, an award in favor of a client, nor placement on inactive status due to failure to pay, are considered discipline by the State Bar.

While the Subcommittee does have some concerns regarding the fact that MFA participation and awards are not made public, the MFA program does appear to provide effective consumer recourse for addressing fee disputes. An additional benefit is that the existence of an MFA option reduces the burden on the formal discipline system, essentially triaging fee-only disputes to a different resolution track. As such the Subcommittee recommends that the existing attorney MFA program be modified to accommodate a new paraprofessional licensee, and that this MFA program be included in the paraprofessional program accordingly.

### **Private Reprovals**

Private reprovals are issued under circumstances similar to ALDs, though they are considered discipline. The Subcommittee's rationale for not including private reprovals in the paraprofessional discipline model is similar to that articulated with respect to ALDs. Disciplinary conduct should be publicly noticed.

### **Alternative Discipline Program (ADP)**

The Subcommittee also explored the Alternative Discipline Program (ADP). This program was statutorily created as part of the Lawyer Assistance Program (LAP), which is a voluntary program for attorneys facing substance abuse or mental health challenges, funded by a portion of attorney licensing fees. There are between 5 and 10 attorneys admitted into the ADP program annually.

The ADP is designed to address substance abuse or mental health issues that caused attorney misconduct through a services and treatment plan developed by LAP/ADP personnel. A medical professional, whose services are secured by the State Bar, determines the nexus between misconduct and substance abuse/mental health issues as part of the determination of eligibility for ADP. In order to participate in ADP the respondent attorney must stipulate to underlying facts and culpability. Two levels of discipline are determined at the onset of program participation—a lower level of discipline corresponding to successful completion of ADP terms and conditions, and a higher level of discipline for the converse result, with discipline imposed

at the conclusion of the program. Participation in the ADP programs intended to last 36 months but can end early for “good behavior.”

While the Subcommittee was impressed by the structure of the ADP program, is aware of the prevalence of substance abuse and mental health in a variety of professions, and believes that, in the long run, it would be valuable for paraprofessionals to have access to both LAP and ADP, it does not recommend inclusion of ADP in the paraprofessional discipline model at this time. Because of the highly specialized and resource-intensive nature of this caseload it would not make sense for the paraprofessional discipline system to try to replicate the existing process, which involves dedicated State Bar Court judges and a host of State Bar staff and contractors. It would also be extremely difficult to incorporate paraprofessionals into the existing systems in place for attorneys. Given these facts and the projected low number of potential paraprofessional ADP program participants, the Subcommittee does not recommend including the ADP in our model at this time.

A summary of the Subcommittee’s recommendations regarding alternatives to formal discipline/nontraditional discipline is provided in Table 2.

**Table 2. Recommendations Regarding Inclusion or Exclusion of Alternatives to Formal Discipline/Non-Traditional Discipline**

<b>Alternative or Nontraditional Discipline Approach</b>	<b>Included/ Excluded?</b>	<b>Discipline?</b>
<b>Warning Letter</b>	Included	No
<b>Agreements in Lieu of Discipline</b>	Excluded	
<b>Mandatory Fee Arbitration</b>	Included	No
<b>Orders of Abatement</b>		
<b>Private Reprimands</b>	Excluded	
<b>Alternative Discipline Program</b>	Excluded	

In addition to these alternatives to discipline/nontraditional discipline outcomes fully vetted by the Subcommittee, admonishment, a disciplinary case resolution outcome available to the State Bar Court, which is not actually considered discipline, was also briefly studied. As outlined in the Next Steps section below, the Subcommittee will work to better understand how and when admonishment is used subsequent to the CPPWG’s February meeting.

**PUBLIC RECORDS**

As reflected in Table 3 below, the Subcommittee has developed a comprehensive set of recommendations regarding public versus private designation of paraprofessional discipline records. In generating these recommendations the Subcommittee was informed by the existing rules in place for attorney records as well as applicable statutes in the Medical Board context; Business and Professions Code sections 803.1 and 2027 address not only the public versus private nature of various record types, but also whether public records will be affirmatively posted on the licensing board’s website, and when/if records will be destroyed. The

Subcommittee specifically applied the following categorization to its record classification efforts:

- Public, Upon Request
- Public, On Website
- Public in Perpetuity
- Public, Finite Term
- Private, in Perpetuity

The verbiage in Table 3 has been abbreviated for ease of review purposes; the full text, which includes a description of parallel designations in the attorney and medical contexts, can be found in Attachment B.

**Table 3. Recommendations Regarding Public Records**

Intervention or Disciplinary Outcome	Private or Public?	If Public On Website or On Request	Finite or Indefinite Retention?
Warning Letter (not discipline)	Private		TBD
Citation & Fine (not discipline)	Public for 3 years from date of resolution	<ul style="list-style-type: none"> <li>• Website for 3 years unless withdrawn or dismissed</li> <li>• After 3 years transition to Private</li> </ul>	Indefinite
Notice of Disciplinary Charges	Public unless w/drawn or dismissed	On website for duration that discipline itself on website	For duration of period that underlying discipline is public
Public Repeval	Public	<ul style="list-style-type: none"> <li>• Website for 10 years</li> <li>• After 10 years transitions to Public on request</li> </ul>	Indefinitely
Probation	Public	Website	Indefinite
Interim Suspension	Public	Website	Finite: duration of interim suspension
Suspension	Public	Website: Suspensions pursuant to discipline/probation	Indefinite
Disbarment	Public	Website	Indefinite
Criminal Convictions	TBD		

## **NEXT STEPS**

The Subcommittee intends to develop recommendations regarding whether admonishments should be available as case resolution for paraprofessional Hearing and Appellate Panels, and the public versus private designation of records of paraprofessional criminal conviction.

In addition, the Subcommittee will develop recommended discipline standards to be submitted to the CPPWG for review at its June or August meeting.



# The State Bar *of California*

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: December 17, 2020

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Julianne Fellmeth, Kim Kirchmeyer, and Ira Spiro

Subject: Update and Recommendations for Disciplinary Structure for Paraprofessional Program

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the requirements for paraprofessional discipline.

### DISCUSSION

At its August 25, 2020, meeting, the CPPWG determined that subcommittees should be created to develop requirements for paraprofessional licensing, regulation, and discipline. These subcommittees were appointed subsequent to that meeting, and each met several times to review and consider information about their assigned topics. At its October 29, 2020, meeting, the Working Group reviewed the status reports from each of these subcommittees and provided feedback on the subcommittees' preliminary recommendations and proposals.

At the October 29 meeting, the Discipline Subcommittee, which comprised at that time Kim Kirchmeyer and Ira Spiro, provided the CPPWG with an update on its initial design for a paraprofessional disciplinary structure as follows:

- The State Bar's Office of the Chief Trial Counsel (OCTC) to handle complaint review and investigation;

- First level adjudication to be conducted either by a single staff adjudicator (an attorney employed by the State Bar) or by a three-person panel a public member,<sup>1</sup> and a licensee;
- Appellate level adjudication to be conducted by a distinct staff adjudicator or a three-member hearing panel; and
- An outcome of citation and fine would be established, a remedy unavailable in the attorney discipline system.

Subsequent to that meeting Sharon Bashan and Julianne Fellmeth joined the subcommittee, which has continued to meet and finalize its disciplinary structure recommendations. This memo provides an update on the status of the subcommittee’s work, along with preliminary recommendations for a legal paraprofessional disciplinary model.

**Table 1. Proposed Disciplinary Model**

Model Element	October 29 Proposal	Current Recommendation
Complaint Intake and Investigation	To be handled by OCTC	Same
Diversion Fines and Fees	To be administered by OCTC To be administered by OCTC	Same, with clarification that if an OCTC fine and fee determination is disputed that dispute will be adjudicated by the Hearing Panel
Initial Hearings and Disputed Fine and Fee Determinations	Three-person panel or staff adjudicator	Three-person Hearing Panel
Settlement Conferences	Undecided	To take place only if both OCTC and paraprofessional mutually consent.  To be heard by staff adjudicator
Appeals and Stipulated Discipline	Three-person panel or staff adjudicator	Three-person panel or the Paraprofessional Board
Final Discipline Decision	Supreme Court	Suspensions and Revocations: final discipline decision to be made by the Supreme Court.  Appeals from the Appeals level to be heard by the Supreme Court.  All other discipline finalized at appropriate level within the State Bar’s paraprofessional disciplinary structure, level as yet to be determined.

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<sup>1</sup> Public members could not be current or former attorney or paraprofessional licensees.

A detailed infographic of the model is provided as Attachment A. Selected issues are addressed below.

### **THREE-PERSON PANELS VERSUS STAFF ADJUDICATOR**

The subcommittee's October 29 update provided options, to be vetted by the Working Group, as to who would preside over the initial hearing and the first appeal, either a single staff adjudicator or a panel comprising a staff adjudicator, a public member, and a paraprofessional licensee. The identified benefits of a panel model included the ability to have broader participation in the disciplinary decision-making process, specifically enabling the participation of a paraprofessional. The Department of Consumer Affairs' disciplinary processes all allow for participation by relevant licensees. Alternatively, a staff adjudicator model would afford efficiency and cost containment benefits.

Subsequent to the October 29 meeting, the subcommittee determined that the benefits of the panel model at the Hearing level, where a majority of cases will be disposed, outweigh the potential downsides. The subcommittee continues to believe that it is important that these panel members be appropriately trained and compensated and will be generating recommendations in that regard for future CPPWG consideration.

With respect to the appellate level, the subcommittee has outlined two options for the CPPWG's consideration—a distinct three-member panel or the Paraprofessional Board.<sup>2</sup> Leveraging the licensing board, which will presumably be a volunteer in nature, at this stage would be a lower-cost option than utilizing a new three-member Appeals panel, and would still allow for participants with a mix of backgrounds and licensure statuses. Given that a relatively small number of matters are likely to be appealed, the subcommittee is less concerned about the lack of paid professional adjudicators at this level as compared to the initial hearing stage.

### **UNAUTHORIZED PRACTICE OF LAW**

The subcommittee has begun to explore the interplay between licensed paraprofessionals and the existing framework for the investigation and prosecution of the unauthorized practice of law (UPL), in part to determine whether any or statutory changes that might need to be made to address the addition of paraprofessionals a new class of legal licensee. To this end the subcommittee heard from Steve Moawad, Special Assistant to the Chief Trial Counsel, Agustin Hernandez, Supervising Attorney, OCTC, and Ryann Gerber Jorban, Deputy District Attorney with the Consumer Protection Division of the Los Angeles County District Attorney's Office. OCTC has limited statutory remedies available; it can assume jurisdiction over an unlawful practice, pursue civil fines in the superior court, and refer matters to local District Attorneys' Offices (DA Offices). DA Offices can pursue

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<sup>2</sup> As part of its deliberations, the Discipline Subcommittee acknowledged a lack of clarity regarding the structure and composition of the overarching paraprofessional board. The CPPWG's discussion of this topic at its December 17 meeting will be helpful; for the purposes of its deliberations, the subcommittee assumed that there would be a board comprised of a mix of attorney and nonattorney members that would be available to participate in the disciplinary process.

misdemeanor criminal charges<sup>3</sup>, though a lack of staffing and other resources appears to make this outcome a reality for only the most egregious matters in many jurisdictions. In fact, while the subcommittee now understands that the UPL statutes may not need to be changed to accommodate a new class of licensees, a pervasive lack of resources in OCTC and DA Offices is of concern and may need to be addressed by the CPPWG's recommendations. The addition of a new class of licensees is likely to increase the workload for both systems given the need to determine if the behaviors at issue are in fact authorized under the parameters of the licensed paraprofessional program. The subcommittee will continue to explore these issues and will determine if recommendations in this area are warranted for consideration by the CPPWG.

### **PUBLIC RECORDS**

The subcommittee has also begun deliberations regarding which paraprofessional disciplinary records should be made public. In the attorney discipline system:

- Complaints are not public until charges are filed.
- If a case is settled through stipulation prior to charges being filed, it does not become public until final discipline is imposed.
- All final discipline is public, with the exception of private reproof.
- Private reproof is public only if charges were filed in the case.

The subcommittee has considered, but not reached a decision regarding, whether fines and diversion should be made public. Fines are unavailable in the attorney discipline system. Diversion is most akin to agreements in lieu of discipline<sup>4</sup>. While there is a consumer protection argument that all types of outcomes should be made public, there is a counter-view that paraprofessionals will be less likely to agree to remedies that may ultimately be more protective than an adjudicated hearing if those remedies are made public.

In addition to the types of situations that will be made public, the subcommittee is considering the question of how long disciplinary and other records should be publicly available.

### **NEXT STEPS**

The Discipline Subcommittee will continue to meet, and will develop additional recommendations on topics including:

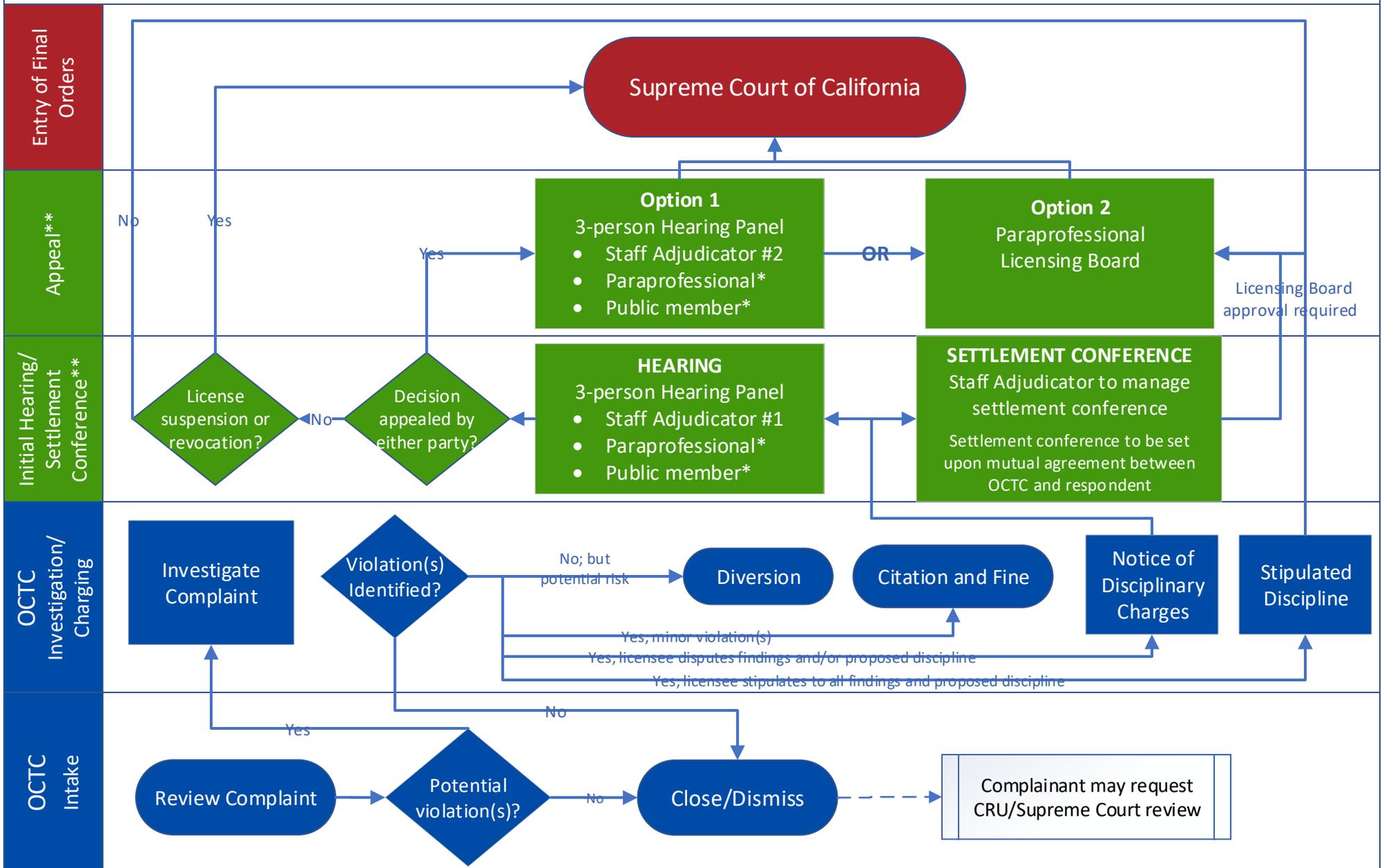
- Mandatory fee arbitration in the paraprofessional disciplinary system context;
- Compensation and training for panel members;
- Clarification of diversion, fines and fees, and alternatives in lieu of discipline;

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<sup>3</sup> Ms. Jorban identified as problematic the fact that DA Offices are limited to misdemeanor charges even when dealing with repeat UPL offenders. She suggested that statutory changes are needed to authorize felony charges in certain circumstances.

<sup>4</sup> The Discipline Subcommittee has not yet addressed agreements in lieu of discipline, a nondisciplinary outcome available in the attorney discipline system.

- Enhancements/improvements to the existing UPL enforcement structure;
- Public records; and
- Standards of discipline.



\*Panels will be appointed for a limited term, and will hear all cases during their term. Panel members will receive extensive training, and be paid for hearing cases.

\*\*OCTC to prosecute cases at hearing and appeal.

California Professional License Discipline  
Public Records Designation

ATTACHMENT B

Intervention or Disciplinary Outcome	Attorneys	Doctors	Paraprofessionals Private or Public?	If Public: On Website or On Request	Finite or Indefinite Retention?
Warning Letter	Private	Usually called an educational letter and it's Private	Private		TBD
Citation & Fine	N/A	Public 30 days after issuance unless an appeal is received and available for three years from the date the citation is resolved by payment of the administrative fine or compliance with the order of abatement.	Public for 3 years from date of resolution	<ul style="list-style-type: none"> <li>Website for 3 years unless withdrawn or dismissed</li> <li>After 3 years transition to Private</li> </ul>	Indefinite
Notice of Disciplinary Charges	Public on website unless withdrawn or dismissed	Public on the website, unless withdrawn or dismissed. If withdrawn, public upon request for one year and if dismissed public upon request indefinitely.	Public unless w/drawn or dismissed	On website for duration that discipline itself on website	For duration of period that underlying discipline is public
Public Reproval	Public	Public indefinitely, but only listed on the website for 10 years from the effective date	Could be issued before an NDC filed or after (akin to public letter of reprimand)	<ul style="list-style-type: none"> <li>Website for 10 years</li> <li>After 10 years transitions to public on request</li> </ul>	Indefinitely
Probation	Public	Public	Public	Website	Indefinite
Interim Suspension	Unclear	Public indefinitely, but only listed on the website while in place	Public	Website	Finite: duration of interim suspension

Intervention or Disciplinary Outcome	Attorneys	Doctors	Paraprofessionals Private or Public?	If Public: On Website or On Request	Finite or Indefinite Retention?
Suspension	Public	Public <ul style="list-style-type: none"> <li>If the suspension is part of an interim suspension order or similar order, public indefinitely but only posted on the website while in place</li> </ul>	Public	Website: Suspensions pursuant to discipline/probation	Indefinite
Disbarment	Public	Public	Public	Website	Indefinite
Convictions/Consumer Alerts	Unclear	Available indefinitely on the website <ul style="list-style-type: none"> <li>Misdemeanor convictions are only listed on the website if an accusation (NDC) is filed or if a decision related to the misdemeanor conviction is issued</li> </ul>	TBD		



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: February 26, 2021

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, Fariba Soroosh, and Judge Monica Wiley

Subject: Topics and Tasks for Family Law Practice Area

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program, and the specific tasks that will be allowed for licensees in each practice area.

### DISCUSSION

At its July 13 meeting, five members of the CPPWG volunteered to serve on a Family Law Subcommittee tasked with studying this practice area with the goal of generating recommendations regarding inclusion or exclusion of specific Family Law subtopics for consideration by the full body at its next meeting. The Family Law Subcommittee provided the CPPWG with updates on its deliberations at its August 25 meeting, and presented its preliminary recommendations at the December 17 meeting. At that meeting, members of the CPPWG provided feedback regarding the inclusion and exclusion of several tasks and as to whether there should be an income or estate value limit for paraprofessional representation. The CPPWG also asked the Subcommittee to make a recommendation regarding whether conservatorships and guardianships should be included in the paraprofessional program. Since

that time, the Subcommittee has met, and has developed recommendations regarding subtopics and tasks; the consideration of conservatorships and guardianships; and in-court support/representation.

### **Family Law Subtopics and Tasks**

At the December 17, 2020, CPPWG meeting, the Subcommittee presented its preliminary recommendations regarding subtopics and tasks for inclusion/exclusion in a paraprofessional program. The Subcommittee solicited and received input from CPPWG members on several topics. Based on that input and further discussion, recommendations regarding subtopics and tasks for family law, as well as educational/training requirements for this area, are included in Attachment A.

### **Violence Prevention Subtopics and Tasks**

While members of the Subcommittee are familiar with domestic violence restraining orders, they sought input from subject matter experts (SMEs) regarding the inclusion of other types of violence prevention restraining orders. Staff consulted with Judy Hitchcock, Senior Staff Attorney with Legal Assistance to the Elderly, regarding elder abuse restraining orders, and Ruth Silver-Taube, who teaches the Employment Law Clinic at Santa Clara University, regarding workplace violence restraining orders. Staff reported to the Subcommittee that the SMEs consulted agreed that paraprofessional assistance would be beneficial to clients pursuing and/or responding to all types of restraining orders; the SMEs also made recommendations regarding the training that should be required for such representation. The Subcommittee recommends the inclusion of civil harassment and gun violence restraining orders accordingly. The Subcommittee recommends inclusion of violence prevention, comprising civil harassment, domestic violence, elder abuse, gun violence, and workplace violence restraining orders, in the family law practice area. Recommendations regarding these subtopics and tasks, as well as educational/training requirements for this area, are included in Attachment A.

### **Adoption**

The Subcommittee reviewed information provided by Subcommittee member Elizabeth Olvera regarding the tasks involved in uncontested stepparent adoption. They also considered information that staff obtained in a conversation with Robert Walmsley, a member of the Academy of California Adoption Lawyers, regarding training requirements for paraprofessionals authorized to provide representation in these cases. The Subcommittee recommends inclusion of uncontested stepparent adoptions for the paraprofessional program, as reflected in Attachment A.

### **Child Welfare**

The Subcommittee considered information provided by Subcommittee member Dana McRae, based on her conversation with Ruby Marquez, who works for Santa Cruz County Counsel representing the county child welfare agency in juvenile dependency cases. Ms. Marquez believes it would be beneficial for parents to have assistance in child welfare investigations prior to dependency filing, as well as after a dependency case has been terminated. Based on

this information, the Subcommittee recommends inclusion of representation in dependency investigations pre-filing, as well as post-termination, as reflected in Attachment A.

### **Conservatorship and Guardianship**

The Subcommittee has undertaken consideration of conservatorship and guardianship subtopics and tasks for inclusion/exclusion in a paraprofessional program. While the CPPWG does not include members with in-depth knowledge on this topic, the Subcommittee has begun discussions with SMEs, who have agreed to provide recommendations in this area. The Subcommittee intends to bring its recommendations to the CPPWG at the April 19 meeting.

### **In-Court Support/Representation**

The Subcommittee is aware that the topic of in-court representation will be the subject of a facilitated discussion at the CPPWG meeting on February 26. Nonetheless, members of the Subcommittee believe that this topic is integral to the recommendations in family law and violence prevention matters included as attachments to this memo. The insights of Subcommittee members were especially helpful in our discussions.

Ms. Soroosh, who directs the Self-Help Center (SHC) at the Santa Clara Superior Court, noted that, while staff at the SHC are able to provide extensive guidance in completing and filing forms in family law cases, they are precluded from attending hearings with litigants to provide guidance and support. Even when litigants have had excellent assistance in completing and filing forms, the actual court appearance can be stressful and challenging. Litigants are often retraumatized by their experiences and are unfamiliar with the court setting. They may become intimidated or flustered in this unfamiliar setting, causing them to be disorganized and forget important information that they would like to convey to the court. Judge Wiley, who presides over family law cases, agreed. Judge Wiley suggested that it would be helpful to the court to have a trained support person who could provide guidance to self-represented litigants, and who could answer questions from the court at the hearing.

Stephen Hamilton, who is a certified family law specialist, agreed that a trained support person would be an asset in the courtroom. He strongly believes that, while a paraprofessional should be allowed to sit at counsel table to guide and prompt their client, they should be prohibited from speaking in court, even to answer direct questions from the bench. Mr. Hamilton asserted that answering questions as even those that might be perceived as procedural may involve advocacy. Mr. Hamilton believes it is essential to maintain a distinction between paraprofessionals and lawyers; in-court representation is key to this distinction. Sharon Bashan agreed with Mr. Hamilton that paraprofessionals should be allowed to sit at counsel table, but should be prohibited from speaking in court.

Ms. Elizabeth Olvera, who is a certified Legal Document Assistant, disagreed, asserting that a trained paraprofessional could competently assist their client by providing information to the court, particularly in response to direct questions from the bench. Ms. Olvera suggested that a distinction could be made between those with a JD degree and others, allowing

paraprofessionals with a JD to speak in court. Greg Fortescue, the Supreme Court's liaison to the CPPWG, noted that if paraprofessionals were to be precluded from answering questions directed to them from the bench, it would be necessary to impose a restriction on judges, precluding them from directing such questions to paraprofessionals.

There was a general agreement, but not unanimous consensus, from the Subcommittee that paraprofessionals should be allowed to provide in-court support, but not representation. In this role, paraprofessionals would be allowed to sit at counsel table, and advise and prompt clients, but not advocate for their clients or speak in court. There was a minority view that paraprofessionals should be allowed to respond to questions from the court.

**Limit on Income and/or Estate Value**

The Subcommittee considered whether a cap on either income or estate value should be imposed for paraprofessional representation in family law cases. The Subcommittee agreed that income and estate value do not necessarily correlate with case complexity and therefore does not recommend such a limit.

Family Law Subcommittee  
Subtopic and Tasks Recommendations

ATTACHMENT A

Family Law

Task	Recommendation
Dissolution/Domestic Partnerships, including dissolution, legal separation, and nullity (annulment) <ol style="list-style-type: none"> <li>1. Marital status, including status-only judgments<sup>i</sup></li> <li>2. Annulment based on bigamy, age of spouse/registrant, prior existing marriage/DP<sup>ii</sup></li> <li>3. Annulment based on incest, unsound mind, fraud, force, physical incapacity</li> </ol>	Included Included Excluded <sup>iii</sup>
Paternity (including paternity issues within dissolution, legal separation, domestic partnerships, and DCSS child support matters) <ol style="list-style-type: none"> <li>1. Complaint to establish parental relationship not involving FC 7612(b) or (c)</li> <li>2. Complaint to establish parental relationship involving FC 7612(b) or (c)</li> </ol>	Included Excluded
Summary Dissolutions	Included
Petitions for Custody and Support	Included
Child custody and visitation (including third-party joinder and intervention) except in any action where any of the following issues or claims are raised: <ol style="list-style-type: none"> <li>1. Hague Convention on International Child Abduction</li> <li>2. International or interstate custody disputes under UCCJEA</li> <li>3. Grandparent visitation (independent of family law action)</li> </ol>	Included Excluded Excluded Included
Child support <sup>iv</sup>	Included
Spousal or domestic partner support <ol style="list-style-type: none"> <li>1. Temporary</li> <li>2. Permanent (litigated/contest)/FC 4320</li> <li>3. Spousal support waivers, buyouts or nonmodifiable step downs               <ol style="list-style-type: none"> <li>a. Short term marriage [FC 4336(b)]</li> <li>b. Long term marriage</li> </ol> </li> </ol>	Included Included Included Excluded
Separate property/community property/quasi community property <sup>v</sup> <ol style="list-style-type: none"> <li>1. Joinder of pension/retirement/employee benefit plans</li> <li>2. Declaration of disclosures</li> <li>3. Referrals to experts for appraisals and valuations</li> <li>4. Post division transfer documents</li> <li>5. QDRO (referrals only)</li> </ol>	Included Included Included Included Excluded
Discovery <ol style="list-style-type: none"> <li>1. Written discovery (form interrogatories v. other)</li> <li>2. Depositions</li> <li>3. Expert discovery</li> <li>4. Subpoenas: deposition and hearing/trial</li> <li>5. Motions to compel/motions to quash not related to depositions</li> <li>6. Motions to compel/quash related to depositions</li> </ol>	Included Excluded Excluded Included Included Excluded
Quasi marital property (nullity)	Excluded

<b>Task</b>	<b>Recommendation</b>
Attorney fees, including expert and paraprofessional fees	Included
Restoration of former name	Included
Venue and jurisdiction disputes not otherwise addressed herein	Included
Marital settlement agreements [except for any issues which are within excluded areas of practice as set forth above] 1. MSA must state that it was prepared by a paraprofessional <sup>vi</sup>	Included
Post judgment/permanent order modifications [except UCCJEA/Hague]	Included
Registration of foreign judgments	Included
Premarital/Post-marital agreements (not including MSAs)	Excluded
Putative spouse claims arising from nullity action, including all issues within such a claim (e.g. quasi marital property, attorney fees, spousal support)	Excluded
Marvin/Palimony actions	Excluded
Enforcement of family law orders and judgments 1. Appointment of elisor 2. RFO/Motion for relief in issuing court to assist in enforcement 3. Contempt 4. Seek work orders support 5. Debtor's exam 6. Wage assignment 7. Writ of execution 8. Filing of lien/lis pendens 9. Response to DCSS enforcement action (e.g., license suspension, bank levy) All enforcement mechanisms not specifically identified above are excluded	Included Included Excluded Included Included Included Included Included Included
Alternative Dispute Resolution (except for areas excluded above) 1. Settlement discussions and negotiations 2. Day of court meet and confer	Included Included

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- i. If instruction includes detailed, in depth education regarding FC 2337, FL-315, FL-347, FL-318-Info, joinder and pension issues
  - ii. If instruction includes education and instruction re: bigamy v. prior existing marriage/DP and FC 2200-2210 and 2310-2312
  - iii. Education includes issue spotting, clear definition of excluded item, specific education regarding excluded issues and referral process (necessity, regulation)
  - iv. Instruction to include training on support calculators, wage assignments and role of DCSS

- v. This scope of practice presumes detailed and substantive instruction on forms of discovery, responding to discovery, objections and law and motion procedure related to discovery
- <sup>vi</sup> Companion legislation to be developed, stating that an MSA prepared by a paraprofessional that exceeds the scope of their duties is not automatically void or voidable

**Adoption**

<b>Task</b>	<b>Recommendation</b>
Adoptions not arising from a dependency petition	Included
1. Uncontested stepparent adoption <ul style="list-style-type: none"> <li>o Training on providing notice to other parent required; incorrect notice may trigger contest of adoption, or can negatively affect prospect of adoption</li> </ul>	

**Child Welfare**

<b>Task</b>	<b>Recommendation</b>
Child welfare and juvenile dependency cases	Included
1. Investigation prior to filing of dependency action	
2. JV-180: modification of dependency orders after case is closed	Included

**Violence Prevention**

<b>Task</b>	<b>Recommendation</b>
Domestic Violence, Civil Harassment, Gun Violence, Workplace Violence*	Included
Representation of petitioner	
1. Filing restraining order request – Temporary Restraining Order (TRO)	Included
2. Service of TRO on respondent and filing proof of service	Included
3. Support in mediation, where applicable	Included
4. Support in court	Included
5. Preparation of Restraining Order After Hearing (ROAH)	Included
6. Service of ROAH on respondent and filing proof of service	Included
7. Distribution of RO to law enforcement, if applicable	Included
Representation of respondent	
1. Filing response to TRO	Included
2. Service of response on petitioner and filing proof of service	Included
3. Support in court	Included

\* Educational/training requirements for violence prevention:

- Experience in violence prevention clinic
- Familiarity with types of restraining orders and remedies available under each type
- Availability of resources (e.g., domestic violence assistance, Adult Protective Services, mediation, etc.)



Date: February 26, 2021

To: The California Paraprofessional Program Working Group

From: Erica Yew, Sharon Bashan, Julianne Fellmeth, Stephen Hamilton, Kimberly Kirchmeyer, Ioana Petrou, and Fariba Soroosh

Subject: Pilot Implementation Subcommittee Recommendations

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## EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, an implementation strategy, including a recommendation as to whether to pilot the program.

At its meeting on December 17, 2020, the CPPWG heard a presentation about the potential benefits of piloting the program in California. Shortly after that meeting, CPPWG Chair, Justice Ioana Petrou, and CPPWG members Judge Erica Yew, Sharon Bashan, Julianne Fellmeth, Stephen Hamilton, Kimberly Kirchmeyer, and Fariba Soroosh, volunteered to serve on a Pilot Implementation Subcommittee; Judge Yew serves as subcommittee chair.

This memorandum contains the subcommittee's recommendations for structuring the launch of a legal paraprofessionals program. In developing these recommendations, the subcommittee considered several options including:

1. Piloting the program in a limited number of counties in several stages, conditioning subsequent implementation phases on the outcome of these pilots,
2. Launching the permanent program in a limited number of counties and/or subset of legal practice areas, phasing in additional geographies and practice areas over time,
3. Launching the program with design elements that do not match the final program design in order to expedite pilot initiation and/or provide additional consumer safeguards, and

4. Launching the permanent program in all counties and authorized practice areas without piloting or phasing in elements.

After fully considering these various approaches to program rollout, the subcommittee concluded that phased-in implementation, as opposed to any other pilot construction, is the most viable design approach. Piloting the program with a potential sunset date, and/or with features that are substantively different from those that will be reflected in the permanent program design, will likely fail to yield sufficient participants and evaluation data. The subcommittee thus recommends launching the program in at least two phases: Phase I will reflect limitations in both the number of authorized practice areas and participating geographic areas; Phase II may comprise either the wholesale rollout of the remaining authorized practice areas statewide or an expanded but not yet comprehensive set of practice areas and geographic locations.

The subcommittee specifically recommends that Phase I include the practice areas of family law, housing law (unlawful detainer and title clearing actions), and collateral criminal (expungements, infractions, and reclassifications) as defined in the final program. With respect to a limited geographic rollout, assuming this approach is viable from supply, market, and fiscal perspectives, the subcommittee tentatively recommends that the following counties be considered for Phase I implementation:

- **Northern California:** Alameda and Santa Clara Counties
- **Central California:** Fresno, Merced, and Tulare Counties
- **Southern California:** Orange County

Driving the subcommittee's recommendations are the mutually influencing priorities of protecting the public, encouraging participation in the program by both prospective paraprofessionals and consumers, and generating sufficient data to evaluate and inform program efficacy and design.

## **BACKGROUND**

The subcommittee met for the first time on January 15, 2021, and then four additional times over the months of January and February. The subcommittee's charge was to assess whether California should pilot the paraprofessional program being developed by the working group prior to full implementation and, if so, to recommend pilot features such as a timeline, practice areas, and locations. The subcommittee's work was informed by public comment, feedback from the legal services community, lessons learned from the Judicial Council's implementation of the Sargent Shriver Civil Counsel Act Pilot Projects, and education regarding the approach utilized by the California Office of Statewide Health Planning and Development, which is statutorily charged with piloting reforms in health care service delivery models.

## DISCUSSION

### To Pilot or Not to Pilot

On January 22, staff with the State Bar’s Office of Access & Inclusion held a roundtable with the legal services community to solicit feedback regarding pilot program parameters. That feedback was presented to the subcommittee at its January 26 meeting. The legal services community generally expressed support for a limited and structured pilot with the following design elements:

- A small number of pilot locations
- Attorney supervision of legal paraprofessionals
- A process to screen for and remove from the pilot unscrupulous providers
- A process to investigate and respond quickly to client complaints
- A tool to avoid diverting very low-income Californians from legal aid
- A cap on legal paraprofessionals’ fees to prevent clients from overpaying
- A bar on in-court representation by legal paraprofessionals
- A high standard for pilot participants’ legal knowledge and experience
- A narrow range of authorized legal activities within each area of law
- Close collaboration with substantive legal experts in refining the boundaries of legal paraprofessional services

At the January 26 meeting, staff also presented a three-stage pilot illustration featuring evaluation “thresholds” that the program would need to meet to progress from one stage to the next, prior to full implementation. This illustration was informed in significant part by the feedback received from the legal services community.

#### **Three-Year, Multiphase Pilot with Progression Thresholds**

<b>Stage 1: Testing Premises about Safety and Effectiveness</b>	<p><b>Phase 1 concept:</b> Test the potential for safety and efficacy with heightened safeguards. Phase 1 would resemble the ultimate program only in part since it would test assumptions about legal paraprofessional services rather than the licensure program apparatus.</p> <p><b>Location:</b> 2–3 counties with sufficient participants, clients, court support, and alternative (e.g. self-help) services (e.g. Fresno, LA, and Sacramento)</p> <p><b>Practice areas:</b> 1–2 areas, 3–5 matters within each (but matters must allow for sufficient testing)</p> <p><b>Activities:</b> Defer to practice area subcommittee(s) working with practice area experts</p> <p><b>Entry requirements:</b> (Consult Licensing Subcommittee)</p>
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	<ul style="list-style-type: none"><li>• Has a JD/LLM/paralegal certificate</li><li>• Has 4+ years in relevant area of law or has an attorney supervisor during the pilot</li><li>• Has a positive moral character determination</li></ul> <p><b>Other safeguards:</b> (Consult Regulation and Discipline Subcommittees)</p> <ul style="list-style-type: none"><li>• Mandate disclosures and referrals to self-help centers and LRSs</li><li>• Mandate rerouting tool for legal aid cases</li><li>• Regulate prices</li><li>• Require CLE</li><li>• Pay—from fees that paraprofessionals pay to participate—for experts to audit work product</li><li>• Expedite client complaint process and response/remedy</li></ul> <p><b>Timeline:</b> 12 months</p> <p><b>Data collection:</b> Rigorous focus on case outcomes and experiences of clients, judges, private bar, et al.</p> <p><b>Requirement to enter Phase 2:</b> Positive case outcomes and client satisfaction are commensurate with cases featuring attorney or self-representation.</p>
<p><b>Stage 2: Testing Program Features and Sustainability</b></p>	<p><b>Phase 2 concept:</b> Scale and test the licensure program features. Phase 2 will resemble the ultimate program on a small scale.</p> <p><b>Location:</b> 4–5 counties with sufficient participants, clients, court support, and alternative (e.g. self-help) services</p> <p><b>Practice areas:</b> 3–4 areas, 3–5 matters within each</p> <p><b>Activities:</b> Defer to practice area subcommittees working with practice area experts</p> <p><b>Entry requirements:</b> (Consult Licensing Subcommittee)</p> <ul style="list-style-type: none"><li>• Has a JD/LLM/paralegal certificate</li><li>• Has 4+ years in relevant area of law, attorney supervisor during pilot, or passed the program’s formal training and exam requirements</li><li>• Has a positive moral character determination</li></ul> <p><b>Other safeguards:</b> Same as in Phase 1 but without randomized audits of work product and with the permanent program’s discipline process</p> <p><b>Timeline:</b> 12 months</p>

	<p><b>Data collection:</b> Rigorous focus on case outcomes and experiences of clients, judges, private bar, et al.; assess efficacy of coursework, exam, and other regulations; assess impact on local justice gap and courts; compare to self-representation; assess interest in program and costs</p> <p><b>Requirement to enter Phase 3:</b> Positive case outcomes and client satisfaction are commensurate with cases featuring attorney or self-representation; positive impact on local justice gap and courts; sufficient interest to merit expanding</p>
<p><b>Stage 3: Testing in all Counties</b></p>	<p><b>Phase 3 concept:</b> Continue to scale and refine.</p> <p><b>Location:</b> All counties</p> <p><b>Practice areas:</b> All CPPWG-approved areas</p> <p><b>Activities:</b> All activities, deferring to practice area subcommittees working with practice area experts</p> <p><b>Entry requirements:</b> Same as in Phase 2</p> <p><b>Other safeguards:</b> Same as in Phase 2 but without regulating fees</p> <p><b>Timeline:</b> 12 months</p> <p><b>Data collection:</b> Same as in Phase 2</p> <p><b>Requirement to exit pilot:</b> Same as in Phase 2 plus sufficient interest among participants and courts to justify regulatory infrastructure; program is financially sustainable</p>

Staff's model included several elements that would potentially vary significantly from the final program design including:

- A pathway to licensure that would avoid the need to satisfy program educational credit, experiential, or testing requirements with the goal of expediting the process for licensing paraprofessionals during a pilot period,
- Attorney supervision of legal paraprofessionals under some circumstances,
- Quality assurance audits of legal paraprofessional work product,
- An expedited process to investigate and resolve client complaints,
- Price regulation of legal paraprofessional services, and
- A rerouting tool for Californians who might qualify for free legal aid.

As it evaluated staff's three-phase model the subcommittee became concerned that any pilot differing from the final program in its licensing requirements, consumer safeguards, or authorized activity parameters would likely come up short in at least one fundamental respect: the pilot might operate so differently from the permanent program that it would be difficult to extrapolate accurately from the pilot to the permanent program. The subcommittee was also concerned that piloting the program with a sunset provision and/or requirement that it achieve certain benchmarks in order to remain operative would dissuade prospective licensees and educational institutions from making upfront investments of time or money to participate.

The subcommittee therefore determined that a phased-in implementation, as opposed to a traditional pilot approach, would be the most viable way in which to effectuate a controlled program rollout.

### **Recommendations for a Phased Implementation**

There are two primary components of a phased-in approach: limited practice areas and/or limited geographic areas.

#### **Limited Practice Areas**

The subcommittee evaluated whether it would recommend authorizing all practice areas at once or starting with a small number of areas and phasing in others. Practical concerns about being able to concurrently develop the licensing infrastructure for all authorized practice areas, as well as a desire to keep implementation and initial evaluation manageable, led the subcommittee to recommend launching the program with just three practice areas in its first year: family, housing, and collateral criminal. In selecting these practice areas, the Subcommittee considered information suggesting that all three—especially family and housing—experience high demand among Californians. The subcommittee also observed that family and housing feature in the Minnesota legal paraprofessionals pilot project that is currently underway. Family law, for that matter, features in existing and proposed legal paraprofessional programs throughout the country. Additionally, collateral criminal matters pose fewer difficult-to-remedy risks than do some of the other areas of law that the CPPWG is examining.

#### **Limited Geographic Areas**

Based on the data currently available to it, the subcommittee provisionally recommends that the program launch in the following counties and phase in additional locations over time:

- **Northern California:** Alameda and Santa Clara Counties
- **Central California:** Fresno, Merced, and Tulare Counties
- **Southern California:** Orange County

Similar to limiting the number of practice areas upon launch, limiting the number of counties would help keep implementation and evaluation manageable. While it makes intuitive sense to launch the program on a limited geographic basis, the subcommittee grappled with significant

concerns about the viability of a small-scale program rollout. In considering whether or not to recommend a limited geographic versus statewide rollout, the subcommittee considered the following factors and data:

- **Size of the potential client population:** data source: population estimates from the U.S. Census Bureau;
- **Size of the potential licensee population:** data about the location of California Bar Exam test takers who have yet to score above a 1390 suggests the location of future legal paraprofessional participants. As of today, the Licensing Subcommittee proposes to limit participants to those who have a Juris Doctor degree or paralegal certificate. While staff await data about the location of certified paralegals in California, data about the location of those who hold a law degree and have yet to become an attorney is readily available. Data source: California Bar Exam passage data from the State Bar;
- **Size of the local justice gap:** data about the number of self-represented litigants in family law cases and number of attorneys in each county can serve as a helpful—albeit incomplete—proxy for the size of the civil justice gap. The subcommittee found this factor to be relevant since the program ultimately seeks to provide an affordable alternative to the often inaccessibly high costs of legal representation outside of finite legal aid, self-help, *pro bono*, and “low bono” offerings. Data sources: pro per litigant data for family law cases from the Judicial Council and attorney density data from the State Bar; and
- **Implementation costs:** data source: cost projections from the State Bar.

The following is an excerpt of data in each of these respective areas that staff presented to the subcommittee on February 16, 2021:

**Potential Clients: The Most Populous Counties in California**

	County	Population Estimate (2019)	Percent of State
1.	Los Angeles	10,039,107	25.4%
2.	San Diego	3,338,330	8.4%
3.	Orange	3,175,692	8.0%
4.	Riverside	2,470,546	6.3%
5.	San Bernardino	2,180,085	5.5%
6.	Santa Clara	1,927,852	4.9%
7.	Alameda	1,671,329	4.2%
8.	Sacramento	1,552,058	3.9%
9.	Contra Costa	1,153,526	2.9%
10.	Fresno	999,101	2.5%
11.	Kern	900,202	2.3%
12.	San Francisco	881,549	2.2%

**Potential Participants: Bar Exam Scores Under 1390 on the Most Recent Attempt**

	<b>County</b>	<b>Scored &lt;1390 on Last Attempt (2011-2020)</b>	<b>Percent of State</b>
1.	Los Angeles	3,479	32.6%
2.	San Diego	1,093	10.3%
3.	Orange	1,069	10.0%
4.	Alameda	666	6.2%
5. (tie)	San Francisco	584	5.5%
5. (tie)	Santa Clara	584	5.5%
6.	Sacramento	436	4.1%
7.	Contra Costa	324	3.0%
8.	Riverside	321	3.0%
9.	San Bernardino	282	2.6%
10.	San Mateo	272	2.6%
11.	Ventura	209	2.0%
12.	Fresno	141	1.3%

**Justice Gap: Pro Per Litigants in Family Law Cases (2017)**

	<b>County</b>	<b>Pro Per Litigants as Percent of Filings (Family Law 2017)</b>
1.	Colusa**	171%
2.	San Joaquin**	120%
3.	Lassen**	114%
4.	Yuba**	104%
5.	Kings	94%
6.	Santa Cruz	92%
7.	Orange	91%
8.	Madera	90%
9.	El Dorado	83%
10. (tie)	Alameda	82%
10. (tie)	Siskiyou	82%
11.	Tehama	75%
12. (tie)	Trinity	74%
12. (tie)	Imperial	74%
12. (tie)	Tulare	74%

\*\* Figure can exceed 100% because filings can have multiple pro per litigants.

**Justice Gap: Attorney Density**

Counties that have the **highest** disparity between residents and licensed attorneys

	<b>County</b>	<b>Residents per Active Attorney (2021)</b>
1.	Merced	1,791
2.	Glenn	1,775
3.	Kings	1,514
4.	Madera	1,457
5.	Lassen	1,390
6.	Imperial	1,294
7.	Modoc	1,263
8.	San Benito	1,256
9.	Tulare	1,211
10.	Tehama	1,205
11.	Mariposa	1,147
12.	Kern	1,052

**Justice Gap: Attorney Density**

Counties that have the **lowest** disparity between residents and licensed attorneys

	<b>County</b>	<b>Residents per Active Attorney (2021)</b>
1.	San Francisco	50
2.	Marin	123
3.	San Mateo	162
4.	Los Angeles	180
5. (tie)	Sacramento	186
5. (tie)	Orange	186
6.	Santa Clara	195
7.	San Diego	210
8.	Alameda	226
9.	Alpine	282
10.	Contra Costa	284
11.	Ventura	299

**Cost Comparison of Limited Geographic versus Statewide Rollout**

<b>Cost Factor</b>	<b>Fixed or Variable Cost</b>	<b>Limited Geographic Rollout</b>	<b>Statewide Rollout</b>
Governance Board Administration	Fixed	1 FTE	1 FTE
Licensing: Curriculum Requirements, Test Development & Administration	Variable	1 FTE + contract dollars	2+ FTE Increased contract dollars
Licensing: Other	Variable	.5 FTE	2+ FTE
Regulation	Variable	.5 FTE	1 FTE
Discipline	Fixed/Variable	1 FTE + Panel Member Stipends (Disciplinary Panels) OCTC staff complement <ul style="list-style-type: none"> <li>• .5 attorney</li> <li>• 1 investigator</li> <li>• .05 admin</li> <li>• .05 supervision</li> </ul>	1 FTE + Panel Member Stipends (Disciplinary Panels) OCTC staff complement
Advertising	Fixed /Variable	TBD	TBD+
Evaluation	Variable	\$50,000–\$100,000	\$150,000–\$250,000

After reviewing this data in totality, and pending additional investigation as described below, the subcommittee provisionally recommends that the following counties be included in a limited geographic program rollout:

<b>Counties</b>	<b>Selection Factors</b>
Northern California: Alameda and Santa Clara Counties	<p><b>Future client population:</b> They are among the top two most populous counties in Northern California (with a combined population of 3.6 million residents).</p> <p><b>Future paraprofessional population:</b> They are in the top three Northern California counties for Bar Exam takers who might be interested in becoming legal paraprofessionals.</p> <p><b>Size of justice gap:</b> Alameda County reports a relatively high rate of self-representation in family law (recommend excluding neighboring San Francisco County since it has the highest density of attorneys in the state).</p>
Central California: Fresno,	<p><b>Future client population:</b> Fresno is the largest county in Central California (the three counties have a combined population of 1.7 million residents).</p>

<p>Merced, and Tulare Counties</p>	<p><b>Future paraprofessional population:</b> Fresno County is the top county in Central California for Bar Exam takers who might be interested in becoming legal paraprofessionals.</p> <p><b>Size of justice gap:</b> At least one county reports a relatively high rate of self-representation in family law; additionally, Merced and Tulare have two of the lowest attorney densities in the state (Merced has the lowest).</p>
<p>Southern California: Orange County</p>	<p><b>Future client population:</b> It has the third highest population in the state at about 3.2 million residents (recommend excluding neighboring LA County since it has a population of over 10 million residents, which might overwhelm launch).</p> <p><b>Future paraprofessional population:</b> It is in the top three Southern California counties for Bar Exam takers who might be interested in becoming legal paraprofessionals.</p> <p><b>Size of justice gap:</b> It reports a relatively high rate of self-representation in family law.</p>
<p>Meaning of County Designation</p>	<p>Legal paraprofessionals could provide services in a participating county if that county court system has jurisdiction over the case. Neither the legal paraprofessional nor the client would need to reside in the county. This approach offers a familiar, venue-based analysis, and avoids unnecessary restrictions on where paraprofessionals or clients have to work or reside.</p>

The subcommittee also discussed evaluation of the phased-in implementation effort. The frequency, nature, and disposition of cases; the frequency, nature, and resolution of consumer complaints; and the price, length, and outcome of services, perhaps compared to matters where clients represented themselves or were represented by counsel, are all potential evaluation metrics. In addition to these consumer and paraprofessional focused data points, the subcommittee developed systemic evaluation metrics of interest:

- **Lopsided representation:** collect data to analyze whether licensing legal paraprofessionals disproportionately benefits one party in any type of case; this is a particular concern for unlawful detainer matters.
- **Practicality of geographic practice restrictions:** collect data to assess whether the limited geographic implementation unduly burdens legal paraprofessionals and/or clients or poses other unintended negative consequences.
- **Improved administration of justice:** collect data to evaluate whether legal paraprofessionals have improved court efficiency in participating counties.

In developing an evaluation plan the subcommittee recommends that the State Bar maintain a flexible and adaptive approach, meaning that, if, based on the analysis of data received, any significant concerns or opportunities for improvement arise, the State Bar makes modifications to program design or pilot structure as needed forthwith.

## **CONCLUSION AND NEXT STEPS**

The subcommittee is grateful for the helpful advice that it received from the Judicial Council, Office of Statewide Health Planning and Development, legal services representatives, and members of the public. The subcommittee evaluated the intricacies of a pilot model, leading it to recommend a phased implementation of the program as the most efficacious way to predict its long-term performance and allow for adequate participation and iteration—both of which are critical to the success of this important access-to-justice initiative.

As a set of next steps, the subcommittee will continue seeking information about the location of certified paralegals in California; solicit feedback from legal services providers serving recommended counties; and reach out to each respective court system to invite feedback about implementation in their counties. This research will inform the subcommittee's final recommendation about geographic rollout.



Date: February 26, 2021

To: California Paraprofessional Program Working Group

From: Amos Hartston and Fariba Soroosh

Subject: Update and Recommendations for Regulatory Structure for Paraprofessional Program

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### Executive Summary

The California Paraprofessional Program Working Group (CPPWG or Working Group) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the requirements for paraprofessional regulation.

The Regulation Subcommittee (Subcommittee) of the CPPWG has a broad charge including the development of recommendations in the areas of continuing education, financial responsibility, ethical rules governing paraprofessional conduct (including written agreement and disclosures, fee limitations, informed consent requirements, advertising limitations), and proactive/risk-based regulation. The Subcommittee presented preliminary recommendations on the Minimum Continuing Legal Education (MCLE) and financial responsibility at the CPPWG's January 2021 meeting. This memorandum includes final recommendations for MCLE and financial responsibility and provides updates on other issues being addressed by the Subcommittee.

### Discussion

At its January 15, 2021, meeting, we provided the CPPWG with an overview of initial recommendations for MCLE and financial responsibility as well as draft language related to the areas of an informed consent requirement, written agreement and disclosures, and scope of practice and prohibited acts. We also preliminarily discussed the issue of fee limitations or other regulation of fees in light of one goal of the program being the creation of a lower-cost alternative to attorney services and one risk factor to regulate being the charging of excessive fees.

**Table 1. Status of Recommendations**

Topic	Status
Continuing legal education	Recommendations ready for consideration
Financial responsibility	Recommendations ready for consideration
Written agreement and mandatory disclosures	Draft language provided for incorporation into draft rules
Informed consent requirement	Draft language provided for incorporation into draft rules
Scope of practice and prohibited acts	Draft language provided for incorporation into draft rules
Advertising limitations	Draft language provided for incorporation into draft rules
Other ethical rules	Pending
Fee limitations	Pending
Proactive/risk-based regulation	Pending
Evaluation criteria/data collection	Recommend creation of new subcommittee
Determining appropriate name for licensees	Recommend creation of new subcommittee

**Minimum Continuing Legal Education (MCLE)**

The Regulation Subcommittee has updated its recommendations related to MCLE. The Subcommittee recommends adoption of the following continuing education requirements for licensed paraprofessionals:

- 36 hours every 3 years, as follows:
  - 28 hours in the paraprofessional's practice area
  - 4 hours on legal ethics
  - 1 hour on competence issues
  - 1 hour on recognition and elimination of bias in the legal profession and society
  - 1 hour of trauma-informed practice
  - 1 hour of practice management/running a business
- No more than 18 hours may be obtained through self-study
- Each practice area subcommittee may require that the above MCLE include specific topics relevant to the paraprofessional's practice area to be included in the final MCLE regulation proposal
- The paraprofessional licensing board will be authorized to require supplemental MCLE to maintain licenses due to changes in the law or other developments, as well as discretion to impose more specific educational requirements based on practice area, identified risk factors, or other considerations. This could include designation of some of the practice area MCLE, or, alternatively, an increase in the required number of hours of MCLE to address specified issues and topics.

These recommendations reflect consideration of discussion and comments at the January 2021 CPPWG meeting as well as additional information obtained when the Subcommittee considered proactive/risk-based regulation and best practices.

As a reminder, the proposed number of MCLE hours for paraprofessionals is higher than for California attorneys, who are required to complete 25 hours every 3 years (including 4 hours on legal ethics; 1 hour on competence issues; and 1 hour on recognition and elimination of bias in the legal profession and society). Arizona has implemented 15 hours every year for paraprofessionals; Ontario has implemented 12 hours every year for paraprofessionals; Washington had implemented 30 hours every three years. Continuing education is one of the primary ways to regulate competence and address risk issues beyond initial license requirements. The Subcommittee based its recommendation of 36 hours every 3 years in part on the MCLE requirements for California Attorney Certified Specialists. Certified Specialists in California are required to complete at least 36 hours of MCLE every 3 years in their respective specialty area.<sup>1</sup>

We also adjusted the proposed self-study provision to half the required MCLE, consistent with the provision for attorneys. In addition, we included mandatory training in the areas of trauma-informed practice and practice management/running a business, both as a best practice and to address expected risk factors for paraprofessionals (discussed further below related to proactive regulation/risk-based regulation).

### **Financial Responsibility**

The Regulation Subcommittee's recommendations for financial responsibility remain consistent with the presentation during the January 2021 CPPWG meeting. The Subcommittee recommends adoption of the following financial responsibility requirements for licensed paraprofessionals:

- A mandatory \$100,000 bond for licensed paraprofessionals;
- A Client Security Fund (CSF) similar to the attorney CSF;
- Malpractice insurance should be strongly encouraged but not mandated;
- Mandatory disclosures should clearly and conspicuously disclose whether or not the paraprofessional maintains malpractice insurance;
- The State Bar should take steps to encourage insurance companies to make insurance available to licensees; and
- In the event neither a mandatory \$100,000 bond nor malpractice insurance is required for licensed paraprofessionals, the State Bar should expand the CSF into a restitution fund that compensates clients both for intentional wrongdoing and negligence/malpractice.

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<sup>1</sup> Certified specialists are required to complete 36 hours of MCLE in their respective specialty area; taken within the three-year reporting period:

- These specialty hours do count towards the 19-hour general hour requirement applicable to all attorneys, but not to the 6-hour MCLE subfield requirement (elimination of bias, ethics, etc.), unless otherwise stated on the certificate of attendance. As a result, specialists may have to complete as many as 42 hours of CLE: 36 hours of MCLE in their specialty area plus 6 hours of MCLE subfield courses.

The Regulation Subcommittee believes providing for financial responsibility is critical to ensuring consumer protection and must be part of the CPPWG's proposals. As previously presented, our discussions centered on three possible ways to provide financial responsibility: (1) a surety bond requirement; (2) malpractice insurance; and/or (3) a Client Security Fund/Restitution Fund. Further background is provided below.

### Surety Bond

The Regulation Subcommittee recommends adoption of a mandatory \$100,000 bond for licensed paraprofessionals.

A surety bond is a common way to provide for financial responsibility of licensed professionals in California. It differs from insurance in important ways, and is substantially less expensive while providing important consumer protection. Essentially, it is a three-way contract where the bond company (the surety) financially guarantees the performance of obligations of a second party (the principal or licensee) to a third party (the obligee/entity requiring the bond, i.e., the State). Surety bonds in various amounts are required for many licensed professionals in California. The amount of the bond is the total amount the surety is liable for on the bond, not a per claim amount. Accordingly, large claims or multiple claims can reduce and use up the amount of the bond. The higher the bond amount, the greater the consumer protection afforded. Table 2 provides examples of selected bond requirements for several professions:

**Table 2. Bond Requirements for Selected Licensed Professionals in California**

Profession	Amount	Statutory Authority
Immigration Consultant	\$100,000	<a href="#">Business &amp; Professions Code § 22443.1</a>
Credit Services	\$100,000	<a href="#">Civil Code § 1789.18</a>
Foreclosure Consultant	\$100,000	<a href="#">Civil Code § 2945.45(a)(2)</a>
Telephonic Sales	\$100,000	<a href="#">Business &amp; Professions Code § 17511.12</a>
Legal Document Assistant	\$25,000	<a href="#">Business &amp; Professions Code § 6405</a>
Unlawful Detainer Assistant	\$25,000	<a href="#">Business &amp; Professions Code § 6405</a>
Notary Public	\$15,000	<a href="#">Government Code § 8212</a>

A bond differs from insurance in several ways, including the following:

- The full premium is paid for the entire term of the bond; coverage does not lapse until the bond expires;
- It is significantly less expensive and burdensome to obtain;
- The bond amount covers all claims related to the period it is in effect (including claims first made after the bond expires);
- Licensees may be required to reimburse the bond issuer for any payments made;
- A client may apply directly to the bond issuer for claims; and
- In addition to negligence, bonds may cover fraud and intentional acts.

Premiums for surety bonds above \$25,000 may vary based on underwriting considerations, such as the applicant's credit score, but generally range from 1 to 3 percent of the bond amount. Bonds often are issued for multiple years.

The subcommittee explored whether requiring paraprofessionals to carry a bond would provide meaningful protection for their clients, an appropriate bond amount, and whether a bond requirement potentially would be a hardship for paraprofessionals or an unreasonable barrier to entry into the profession. **The Subcommittee concluded that a surety bond provides an important baseline consumer protection of financial responsibility** and recommends that the Working Group adopt a bond requirement for paraprofessionals. With respect to the amount of the bond, because paraprofessionals will be providing legal advice and assistance beyond what immigration consultants and Legal Document Assistants (LDAs) are permitted to do, and in order to provide meaningful consumer protection, we recommend adoption of a \$100,000 bond requirement similar to immigration consultants.

During our January 2021 discussion, we acknowledged that the Working Group may want to further consider the anticipated cost of a bond, and whether the proposed bond amount potentially could create an undue burden or a barrier to entry into the profession. The information considered by the subcommittee did not find a meaningful difference in this regard between a \$100,000 bond requirement and a \$75,000 bond requirement, which would provide less consumer protection. Based on our review, we believe a \$100,000 bond is appropriate, provides public protection consistent with other licensed professionals, and does not create an undue barrier to entry.

### **Malpractice Insurance**

The Regulation Subcommittee does not recommend adoption of a mandatory malpractice insurance requirement at this time. Additional information is needed, and the CPPWG or the State Bar may want to further consider this topic. We recommend that malpractice insurance be strongly encouraged but not mandated, and mandatory disclosures should clearly and conspicuously disclose whether or not the paraprofessional maintains malpractice insurance. In addition, we recommend that the State Bar take steps to encourage insurance companies to make insurance available to licensees.

In making this recommendation, we considered a number of factors: malpractice insurance is not required for California attorneys; it is unclear if such insurance would be available to paraprofessional in California at the start of the program; and, a lack of information about potential cost. We were mindful to try to avoid creating unnecessary barriers to entry to the profession. Although malpractice insurance would provide additional protections to both clients and paraprofessionals, a \$100,000 bond requirement may be sufficient to meet the needs of ensuring financial responsibility, at least initially, in the program.

We note that malpractice insurance is required for and available to legal paraprofessionals in Washington State. Also, malpractice insurance is commonly required by Rules of Court or local

rules in California when courts appoint attorneys in cases such as family law, probate, and criminal cases. (See, e.g., Rules of Court 5.242(b)(2) (minor's counsel); Rules of Court 7.1101 (c)(3) (counsel appointed by probate court)). After consideration, the Regulation Subcommittee believes that maintaining malpractice insurance, if it is available, is certainly a best practice. Because mandatory malpractice insurance is not required for attorneys, may not be immediately available, and the cost is uncertain and may create a barrier to entry, we are not prepared to recommend mandating insurance at this time.

### **Client Security Fund/Restitution Fund**

The Regulation Subcommittee recommends that licensed paraprofessionals be required participate in a Client Security Fund (CSF), similar to attorneys.

Attorneys in California participate in a CSF; currently, annual license fees for attorneys include \$40 toward the CSF. Payouts from the CSF are limited to situations where an attorney engaged in intentional wrongdoing such as theft. In most circumstances, final discipline or a criminal conviction is a required precondition to recovery from the CSF. Thus, claims to the CSF can take many years to be paid.

The CSF alone does not provide an effective or consumer friendly opportunity for financial responsibility, and is not available at all in cases of negligence. Therefore, we concluded that a CSF alone is not a sufficient solution for financial responsibility. The Subcommittee recommends a bond be required in addition to the CSF. However, we believe paraprofessionals should participate in a CSF similar to attorneys.

The Subcommittee recommends that final discipline not be a required condition precedent to payout from the CSF. Instead, either the existing CSF or the Paraprofessional Board or its designee will review facts and make a determination as to whether reimbursement is warranted.

### **Possible expansion of the CSF into a Restitution Fund**

The Subcommittee believes financial responsibility is a critical part of consumer and public protection. In the event the CPPWG or State Bar does not mandate a \$100,000 bond or malpractice insurance for paraprofessionals, we recommend that the CSF for paraprofessionals be expanded to compensate clients both for intentional wrongdoing and negligence/malpractice. Because of the expected expense of administration and the difficulty in funding and maintaining a restitution fund that covers negligence claims, the Subcommittee believes that requiring a \$100,000 bond and/or malpractice insurance is a better alternative than expanding the CSF to cover negligence claims.

## **Regulation of Paraprofessionals and Rules of Professional Conduct**

### **Fee Limitations**

The Subcommittee posed the following questions to the CPPWG at its January 2021 meeting:

- Should contingent fees be prohibited?

- Should flat fees be encouraged?
- Given that the purpose of the program is to provide a lower-cost alternative to engaging a lawyer, should there be any limitations or restrictions on the amount of fees?
  - For example, a bright-line fee limit or schedule, or some other method allowing regulation of fees charged that would protect against excessive fees by paraprofessionals (either hourly or total fees)
- Should any other fee limitations be considered, for example limits on advance fees?

The CPPWG did not have ample time to discuss these questions at its January meeting; they are presented for the February meeting discussion accordingly. In addition, the Regulation Subcommittee plans to hear from additional presenters and open this issue for public comment.

In addition to addressing the issue of fee limitations, the Regulation Subcommittee has drafted proposed language for regulations for paraprofessionals in the following areas:

- An informed consent requirement;
- Written agreement and mandatory disclosures;
- Scope of practice and prohibited acts; and
- Advertising limitations.

The language is provided in Attachment A. The Subcommittee is working with a staff team that has been established to help draft a full set of rule proposals for the Regulation Subcommittee to consider. With the support of the staff team, the Regulation Subcommittee will propose final rules as well as make recommendations as to whether specific regulations should be codified in the California Rules of Court, State Bar Rules, or the Rules of Professional Conduct. Thus, the draft language in Attachment A identifies our Subcommittee's proposed regulation of paraprofessionals without yet determining where the regulations will live or the proposed final language of the regulations. The CPPWG will have another opportunity to weigh in on specific rule proposals at its April meeting.

### **Informed Consent**

The Regulation Subcommittee recommends that paraprofessionals be required to obtain informed consent from clients prior to the performance of services for a fee. Draft language is attached at Attachment A, page 1.

### **Written Agreement and Mandatory Disclosures**

The Regulation Subcommittee recommends the requirement of a written agreement with mandatory disclosures outlining what paraprofessionals can and cannot do, along with other important disclosures. Draft language, which is based in part of Washington's Admissions and Practice Rules 28(G), is attached at Attachment A, pages 2-3.

### **Scope of Practice and Prohibited Acts**

The Regulation Subcommittee recommends providing regulations regarding the scope of practice authorized by the limited practice rule and prohibited acts. We believe it is important to provide general parameters for licensed paraprofessionals in addition to the work of the specific practice area subcommittees. Draft language, which is based in part on Washington's Admissions and Practice Rules 28(F) and(H); Utah's Rule 14.802(c)(1); and California Business and Professions Code sections 22441-22447 (immigrations consultants) is attached at Attachment A, pages 4-6.

### **Advertising Limitations**

The Regulation Subcommittee recommends regulations prescribing the limits of paraprofessional advertising. We have initially proposed, at minimum, that advertising and solicitation include the paraprofessional's name and license number, include a clear and conspicuous statement that the paraprofessional is not a lawyer, and if the advertisement is in a language other than English, the required statements shall be in the same language as the advertisement. We have not yet finalized proposed language, and these recommendations will be further considered by the Subcommittee and State Bar staff.

In connection with discussions about advertising limitations, the Subcommittee raised concerns that the name of the license program itself could cause unnecessary confusion and lead to misleading statements and advertising about available services. This is an important consideration in protection of the public. We recommend creation of a subcommittee focused on the name of the licensure program and of licensees.

### **Proactive/Risk-Based Regulation**

At its December 2020 meeting, the CPPWG engaged in a discussion regarding proactive regulation facilitated by Zachariah DeMeolo, Director of Legal Education and the Legal Profession at the Institute for the Advancement of American Legal Studies. The Regulation Subcommittee also heard from other subject matter experts on the topic, including Tom Clarke, Vice President, Research and Technology at the National Center for State Courts, and Tara Sklar, Professor of Health Law and Director of the Health Law and Policy Program at the University of Arizona College of Law. Mr. Clarke is involved with the development of proactive regulation in connection with the Utah sandbox. Professor Sklar is collaborating with the State Bar of California on recommendations for proactive regulation of attorneys in California.

The Subcommittee identified four key areas where proactive regulation may be helpful to mitigate risks:

- Competency concerns/failure to exercise rights or options;
- Excessive fees/client overpays;
- Outcomes should be the same or better than the next best alternative; and
- Fraud by nonlicensees.

The Subcommittee explored possible options related to proactive regulation to address these risks. Concerns were raised about data collection that would be burdensome on licensees without significant impact on mitigating risks. It was explained that proactive regulation used in the sandbox in Utah, for example, was in place of traditional regulation. Including both traditional regulation through license requirements, regulations, and discipline in addition to proactive regulation through burdensome data collection and audits could constitute over-regulation.

Another issue identified through these discussions is that there may be tensions in data collection between regulation and evaluation. The type of data collected is different and the two should not be confused. The Subcommittee believes an evaluation of the program is essential and recommends that a separate subcommittee consider data collection in connection with a program evaluation.

The Subcommittee is continuing to explore less burdensome tools that might be effective to mitigate the identified risks. These potentially include the following:

- Ethics hotline
- Checklists/toolkits
- MCLE programs targeted at identified or expected risk areas
- Paraprofessional Assistance Programs (similar to Lawyer Assistance Programs)
- Mentors
- Online paraprofessional rating system for consumer feedback
- Self-assessments

These tools can be optional and supportive rather than mandatory and burdensome, and may help improve the competency and performance of paraprofessionals. This discussion also led the Subcommittee to include targeted MCLE related to the risk area of practice management—an area of expected high risk for paraprofessionals without experience running a business.

The Regulation Subcommittee will further explore proactive regulation, with an eye toward avoiding overregulation and unnecessary burden, and will try to coordinate with expected discussions about data collection for a program evaluation.

## **Next Steps**

The Regulation Subcommittee will continue its work on proposed regulations with support from the State Bar staff team in anticipation of having final proposals for paraprofessional regulations and proposed rules for CPPWG at its April meeting.

## Draft INFORMED CONSENT language

(1) Prior to the performance of services for a fee, the [Paraprofessional] shall obtain the client's informed consent. This includes agreement based on receiving clear, understandable information in the client's preferred language about the risks and alternatives to the proposed services by a nonlawyer. The [Paraprofessional] must give the client as much information as the client needs to make an informed decision. Without limitation, the [Paraprofessional] must clearly and adequately explain:

- (a) that they are not a lawyer;
- (b) reasonable disclosure of available choices, including the availability of a lawyer as an alternative, the availability of a free consultation with a lawyer, the possible availability of limited-scope services from a lawyer, and the possibility that free legal services may be available if the client qualifies;
- (c) the risks of agreeing to a [Paraprofessional] in language that the client can understand;
- (d) the potential need to hire a lawyer if needed services go beyond the limited license of the [Paraprofessional];
- (e) the existence of any financial arrangements such as referral fees or fee sharing that the [paraprofessional] has with others; and
- (f) a reasonable estimate of the total costs of services.

(2) The [Paraprofessional] Board may provide additional information and guidance on the requirements of informed consent, including additional required disclosures related to services generally or specific to licensed practice areas, and a standard form that must be used to confirm informed consent in writing separate from the retainer agreement.

(3) If the [Paraprofessional] fails to obtain informed consent, this shall be considered as a basis for discipline and as a basis for a full refund cumulative to any other remedies.

Draft WRITTEN AGREEMENT AND MANDATORY DISCLOSURES language

(1) A [Paraprofessional] must personally perform the authorized services for the client and may not delegate these to a nonlicensed person or device. Nothing in this prohibition shall prevent a person who is not a licensed [Paraprofessional] from performing translation services;

(2) Prior to the performance of services for a fee, the [Paraprofessional] shall enter into a written contract with the client, signed by both the client and the [Paraprofessional], that provides the name, specialty area, and license number of the [Paraprofessional] and includes the following provisions:

- (a) A clear explanation of the services to be performed;
- (b) A clear and conspicuous disclosure that the [Paraprofessional] is not a lawyer, may only provide limited advice, may not represent the client in court, and will provide limited advice and assistance with preparation of court documents and related tasks. This statement shall be on the first page of the contract; in a type size, font, color, appearance, and location sufficiently noticeable for a client to read and comprehend them; in a print that contrasts with the background against which they appear; in larger type than the surrounding text; in a manner that clearly calls attention to the language. An example of an acceptable disclosure will be provided by the [Paraprofessional] Board;
- (c) [We recommend developing a mandatory disclosure attaching a description of what the [Paraprofessional] can and can't do, which must be made clear, as specifically authorized by the scope of practice regulations for the approved practice area in which the [Paraprofessional] is licensed, currently under development.];
- (d) Identification of all fees and costs to be charged to the client for the services to be performed;
- (e) A statement that upon the client's request, the [Paraprofessional] shall provide to the client any documents submitted by the client to the [Paraprofessional] and a copy of the client's file;
- (f) A statement describing the [Paraprofessional]'s duty to protect the confidentiality of information provided by the client and the [Paraprofessional]'s work product associated with the services sought or provided by the [Paraprofessional];

- (g) A statement that the client has the right to terminate the contract and services at any time, with or without cause, and receive a full refund of unearned fees. This statement shall be clearly and conspicuously set forth in the contract;
- (h) A statement confirming that the [Paraprofessional] has malpractice insurance and a surety bond as required by [Financial Responsibility Rule], and detailed and clear information about how to file a complaint about the [Paraprofessional]'s services; and
- (i) Any other disclosures, statements, or conditions required by the [Paraprofessional] Rules of Professional Conduct and the rules and regulations of the [Paraprofessional] Board.

(3) A [Paraprofessional] may not provide services that exceed the scope of practice authorized by this rule, and shall inform the client, in such instance, that the client should seek the services of a lawyer.

(4) A document prepared by a [Paraprofessional] shall include the [Paraprofessional]'s name, signature, and license number beneath the signature of the client. [Paraprofessional]s do not need to sign sworn statements or declarations of the client or a third party, and do not need to sign documents that do not require a signature by the client, such as information sheets.

Draft SCOPE OF PRACTICE AUTHORIZED BY LIMITED PRACTICE RULE language

(1) The [Paraprofessional] shall ascertain whether the issue is within the defined practice area for which the [Paraprofessional] is licensed. If it is not, the [Paraprofessional] shall not render any legal assistance on this issue and shall advise the client to seek the services of a lawyer. If the issue is within the defined practice area, the [Paraprofessional] may render the following limited legal assistance to a self-represented client:

- (a) Obtain relevant facts, help the client collect relevant information and documents, and explain the relevancy of such information to the client;
- (b) Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;
- (c) Assist with selecting and completing appropriate court forms that have been approved by the Judicial Council of California (i.e., Judicial Council forms), by the local court, by statute, by the [Paraprofessional] Board, or by a California lawyer; advise the client of the significance of the selected forms to the client's case;
- (d) Inform the client of and assist with applicable procedures for proper service of process and filing of legal documents;
- (e) Provide the client with California court-approved self-help resources and other self-help materials prepared by a California lawyer or approved by the [Paraprofessional] Board, which contain information about relevant legal requirements, case law basis for the client's claim, venue and jurisdiction requirements, and other information that may help empower the client to understand their rights, how to use court forms, how to represent themselves in court, and potentially how to resolve the dispute outside of court;
- (f) Review documents or exhibits that the client has collected or received and explain them to the client;
- (g) Perform legal research;
- (h) Draft documents to be filed with the court beyond what is permitted in paragraph (c), if the work is reviewed and approved by a California lawyer;
- (i) Advise the client as to other documents that may be necessary to the client's case, and explain how such additional documents or pleadings may affect the client's case;

- (j) Assist the client in obtaining necessary records, such as birth, death, or marriage certificates;
- (k) Communicate and negotiate with the opposing party or the party's representative regarding procedural matters, such as setting court hearings or other ministerial or civil procedure matters;
- (l) Negotiate the client's legal rights or responsibilities, provided that the client has expressly given written consent defining the parameters of the negotiation prior to the onset of the negotiation; and
- (m) Render other types of legal assistance when specifically authorized by the scope of practice regulations for the approved practice area in which the [Paraprofessional] is licensed.

(2) A [Paraprofessional] has an affirmative duty to inform clients when issues arise that are beyond the authorized scope of the [Paraprofessional]'s practice. In such circumstances, the [Paraprofessional] shall inform the client in writing that:

- (a) the issue may exist, describing in general terms the nature of the issue;
- (b) the [Paraprofessional] is not authorized to advise or assist on this issue;
- (c) the failure to obtain a lawyer's advice could be adverse to the client's interests; and
- (d) the client should consult with a lawyer to obtain appropriate advice and documents necessary to protect the client's interests.

Draft PROHIBITED ACTS language

- (1) In the course of dealing with clients or prospective clients, a [Paraprofessional] shall not:
- (a) Make any false or misleading communication about the [Paraprofessional] or the [Paraprofessional]'s services;
  - (b) Make any statement that the [Paraprofessional] can or will obtain special favors from or has special influence with any court or governmental agency, or that would lead a reasonable person to form an unjustified expectation that positive results will be obtained based on comparisons with achievements on behalf of other clients without reference to the specific factual and legal circumstances of each client's case;
  - (c) Retain any fees or costs for services not performed;
  - (d) Refuse to return documents supplied by, prepared by, or paid for by the client, upon the request of the client. These documents must be returned upon request even if there is a fee dispute between the [Paraprofessional] and the client;
  - (e) Represent or advertise, in connection with the provision of services, other legal titles or credentials that could cause a client to believe that the [Paraprofessional] possesses professional legal skills beyond those authorized by the license held by the [Paraprofessional];
  - (f) Represent a client in court proceedings unless specifically authorized by the scope of practice regulations for the approved practice area in which the [Paraprofessional] is licensed;
  - (g) Provide services to a client in connection with a legal matter in another state, unless permitted by the laws of that state to perform such services for the client;
  - (h) Represent or otherwise provide legal or law-related services to a client, except as permitted by law and the rules and regulations authorizing limited scope services by [Paraprofessionals];
  - (i) Conduct or defend a deposition;
  - (j) Initiate or respond to an appeal to an appellate court; and
  - (k) Otherwise violate the [Paraprofessional] Rules of Professional Conduct.



Date: February 26, 2021

To: California Paraprofessional Program Working Group

From: Julia Brynelson, Stephen Hamilton, Judge Michael Harper, and Claudia Torres-Ambriz

Subject: Recommendations for Licensing Requirements for Paraprofessional Program

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### Executive Summary

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the requirements for paraprofessional licensing.

### Discussion

At the October 29, 2020, meeting, the Licensing Subcommittee presented preliminary recommendations for paraprofessional licensing requirements, including prerequisites for entry into the program; educational standards for paraprofessional training programs; practical/experiential training requirements; and testing. Written and oral public comment was provided in response to these preliminary recommendations. The CPPWG also provided feedback and suggestions. At the December 17, 2020, CPPWG meeting, the Subcommittee presented revised recommendations informed by the feedback at the October meeting.

The Licensing Subcommittee met several times after the December 17 meeting to consider topics that were the subject of feedback at that meeting, including moral character determination requirements and educational requirements regarding trauma-informed representation. The Subcommittee considered feedback Board of Trustees provided at its January 21, 2021, meeting, in response to CPPWG Chair Justice Ioana Petrou's presentation, and considered suggestions from the Pilot Implementation Subcommittee regarding the

potential impact on the success of the program of the licensing requirements under consideration.

### **Moral Character Determination Process**

The recommendations presented in both October and December provided for an exclusion from paraprofessional licensure due to denial of admission to the State Bar of California due to moral character or background check information. Feedback provided at the December meeting included a suggestion that the Licensing Subcommittee consider whether denial of admission based on moral character findings in any state should be considered as a basis for exclusion from paraprofessional licensure.

The Subcommittee met with Ms. Tara Clark, Program Manager in the State Bar's Office of Moral Character Determinations. Ms. Clark explained that some states deny moral character applications for reasons that are not a basis for denial in California. Attachment A provides a summary of Character and Fitness Determinations in each state.<sup>1</sup>

Ms. Clark reviewed the procedures used by the State Bar in making moral character determinations; she explained that applicants are sometimes asked to provide additional information, and that they are afforded an informal conference if an adverse finding is under consideration by the State Bar. Applicants may appeal an adverse moral character determination to the State Bar Court and the Supreme Court. The Subcommittee reviewed the following documents and information related to this process:

- Moral Character Determination Guidelines (Attachment B)
- State Bar Rules 4.40 – 4.51 (Attachment C)
- California Rule of Court Rule 9.13 (Attachment D)

Based on the information provided by Ms. Clark, and understanding that some states' moral character determinations include factors that would not be considered dispositive in California, the Licensing Subcommittee recommends that the paraprofessional program's moral character requirements and rules mirror the requirements and rules for California attorneys.

### **Trauma-Informed Training**

At the December CPPWG meeting, the Licensing Subcommittee included a recommendation that paraprofessionals licensed in the family law practice area be required to complete educational training in trauma-informed representation. Feedback at that meeting included a suggestion that this requirement should not be limited to the family law practice area, but should instead be required for all paraprofessionals.

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<sup>1</sup> Excerpted from *2020 Comprehensive Guide to Bar Admission Requirements*. National Conference of Bar Examiners & American Bar Association Section of Legal Education and Admissions to the State Bar.  
[https://www.ncbex.org/assets/BarAdmissionGuide/CompGuide2020\\_021820\\_Online\\_Final.pdf](https://www.ncbex.org/assets/BarAdmissionGuide/CompGuide2020_021820_Online_Final.pdf)

The Subcommittee met with Ms. Claudia Peña, who teaches a course on this topic at UCLA Law School: [Re-envisioning the Lawyer's Role: Trauma Informed Lawyering and Restorative/Transformative Justice](#). Ms. Peña encouraged the Subcommittee to include trauma-informed training as a requirement for all paraprofessionals, saying that such training would assist in representation of clients, regardless of the client's legal issues. The Subcommittee also reviewed an article recommending the inclusion of trauma-informed training in law school clinics.<sup>2</sup> Based on the information provided by Ms. Peña and our review of this article, the Subcommittee recommends the inclusion of this training for all paraprofessionals.

### **Incentives for Supervision of Paraprofessional Applicants**

The Subcommittee discussed the need to ensure that experiential training opportunities will be available to aspiring paraprofessional licensees. The Subcommittee recommends that the following incentives be provided, to encourage supervision:

- Incentives for Supervising Attorneys
  - 1 hour CLE per 125 hours of supervision provided
  - CLE credit allowed for each person supervised
  - Online directory showing attorneys who have provided supervision to licensed paraprofessionals
- Incentives for Legal Services Programs
  - Funding provided for paraprofessional internships

The Subcommittee invites suggestions for additional incentives from the CPPWG, members of the legal community, and members of the public.

### **Waive-Out Option for Educational Requirements**

The Subcommittee considered feedback provided by the Board of Trustees at its January 21, 2021, meeting in response to CPPWG Chair Justice Petrou's update. Members of the Board voiced concerns that the education and training requirements for participation in the program might be excessive, since candidates for the program will have completed either a law school or paralegal education, and might serve as a deterrent to participation. In the interest of expediting the availability of paraprofessional to fill the identified need for legal services the Board urged the Licensing Subcommittee to reconsider the educational and training requirements.

The Subcommittee also reviewed an email from Judge Yew, written on behalf of the Pilot Implementation Subcommittee, which included a recommendation to balance education, experience, and testing requirements to allow for a sufficiently large pool of candidates for a pilot program rollout. The recommendation included options for candidates to waive out of the program's coursework and experience requirements by demonstrating that they had met those

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<sup>2</sup> Sarah Katz & Deeya Haldar, "The Pedagogy of Trauma-Informed Lawyering." 22 Clinical L. Rev. 359 (2015–2016). [https://www.law.nyu.edu/sites/default/files/upload\\_documents/Katz%20-%20Halder%20Pedagogy%20of%20Trauma-Informed%20Lawyering.pdf](https://www.law.nyu.edu/sites/default/files/upload_documents/Katz%20-%20Halder%20Pedagogy%20of%20Trauma-Informed%20Lawyering.pdf)

requirements prior to entry in the program, or by passing the professional responsibility and relevant practice area exams. Judge Yew’s email with recommendations from the Pilot Implementation Subcommittee is provided as Attachment E.

After reviewing the recommendations from the Pilot Implementation Subcommittee, the Licensing Subcommittee recommends that paraprofessional candidates be allowed to waive out of course requirements if they have completed the relevant coursework in the course of their law school or paralegal education. We also recommend that experience obtained through working as a paralegal or in law school clinical programs qualify toward the program’s experience requirements, subject to certification by a supervising attorney or law school instructor that the experience meets the specified criteria.

The following table provides a summary of the recommendations from the Licensing Subcommittee.

Requirement	Recommendations
<b>Educational Prerequisites</b>	JD or LL.M degree from ABA or California Accredited or Registered law school; or Paralegal qualified under Business and Professions Code § 6450(c) <ul style="list-style-type: none"> <li>• The State Bar will review applications to determine eligibility.</li> </ul>
<b>Educational Requirements</b>  <b>[In addition to prerequisites set forth above]</b>	All practice areas <ul style="list-style-type: none"> <li>• 3 credit hours Ethics and Professional Responsibility, including practice management and recognition and elimination of bias in the legal profession</li> <li>• 3 credit hours Pretrial Discovery and Evidence [practical and not theoretical]</li> <li>• 3 credit hours Court Procedure</li> <li>• 3 credit hours Court Advocacy</li> <li>• 1 unit trauma-informed representation</li> </ul> Subject matter specific credits, including theoretical and practical <ul style="list-style-type: none"> <li>• Family Law: 9 credit hours                             <ul style="list-style-type: none"> <li>○ 3 credit hours Family Law and Procedure                                     <ul style="list-style-type: none"> <li>▪ These credits may be satisfied by passing a test that covers the subject matters addressed in this course.</li> </ul> </li> <li>○ 3 credit hours Advanced Family Law and Procedure, with a focus on helping self-represented parties for hearings and trial</li> </ul> </li> <li>• Credit hours to be set based on the number of course hours projected to achieve competency in specific practice areas</li> </ul> <i>Coursework taken as part of a law school or paralegal program may satisfy the educational requirements set out above.</i>

Requirement	Recommendations	
<p><b>Practical Training (Experiential)</b></p>	<p>Requirements for Students</p> <ul style="list-style-type: none"> <li>• 1,000 hours over a minimum of 6 months</li> <li>• 500 hours must be in practice area in which paraprofessional will be licensed</li> <li>• Must include trauma-informed training</li> </ul> <p>Each Practice Area Subcommittee to identify specific requirements</p>	<p>Requirements for Supervisors</p> <ul style="list-style-type: none"> <li>• Active licensee for ≥ 4 years</li> <li>• Provide training and counsel</li> <li>• Assume responsibility for applicant’s activities</li> <li>• Approve and sign documents prepared for clients</li> <li>• Submit written declaration certifying applicant’s experience and training</li> </ul> <p>Supervision ≤ 5 applicants at a time</p> <p>Supervision incentives:</p> <ul style="list-style-type: none"> <li>• 1 hour CLE per 125 hours of supervision provided                             <ul style="list-style-type: none"> <li>○ CLE credit allowed for each person supervised</li> </ul> </li> <li>• Online directory showing attorneys who have provided supervision to licensed paraprofessionals</li> <li>• Funding provided to legal services programs for paraprofessional internships</li> </ul> <p><i>Experience working as a paralegal or in a law school clinic may satisfy the experience requirements set out above, subject to certification by the supervising attorney or law clinic instructor that it meets the specified criteria.</i></p>
<p><b>Testing</b></p>	<ul style="list-style-type: none"> <li>• Subject matter specific testing                             <ul style="list-style-type: none"> <li>○ Subject matter subcommittees to recommend specific elements and parameters of testing</li> </ul> </li> <li>• Professional Responsibility Exam modeled after attorney exam</li> <li>• Tests to be developed and administered by State Bar</li> </ul>	
<p><b>Moral Character &amp; Background Check</b></p>	<ul style="list-style-type: none"> <li>• Fingerprinting &amp; background check equivalent attorney requirements</li> <li>• Not disbarred or resigned with charges pending in any jurisdiction</li> <li>• Moral character determination requirements to mirror attorney requirements</li> </ul>	

**Next Steps**

**Educational Requirements**

Each practice area subcommittee will develop practice area-specific educational requirements, for incorporation into the program's licensing requirements.

**Waiver Process**

The waiver process will require the development of educational standards for curriculum, specifying the components for each required course. Law schools and paralegal programs will be required to provide course descriptions for review, to ensure that the completion of the courses will allow for a waiver for the specified educational requirement. This process will require State Bar staffing resources to review waiver requests from applicants, to ensure that coursework complies with relevant requirements.

## CHART 2: Character and Fitness Determinations

Jurisdiction	Does your jurisdiction have published character and fitness standards?*		Will a felony conviction bar an applicant from admission?		Does a separate entity evaluate character and fitness?		Must bar exam applicants be approved for character and fitness in your jurisdiction before they sit for the bar exam?		Do your rules provide for conditional admission?		What categories of conditional admission do your rules permit?					Does your jurisdiction have a structured program for deferring admission?	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Substance abuse	Mental disability	Debt	Criminal history	Other	Yes	No
Alabama		X		X	X			X		X							X
Alaska	X			X		X		X		X							X
Arizona	X			X		X		X	X		X	X	X	X	X		X
Arkansas	X			X		X		X		X						X	
California	X			X		X		X		X						X	
Colorado	X			X		X		X		X							X
Connecticut	X			X		X		X	X		X	X					X
Delaware	X			X		X		X		X							X
District of Columbia		X		X		X		X		X							X
Florida	X			X		X		X	X		X	X				X	
Georgia	X			X	X		X			X							X
Hawaii		X		X		X		X		X							X
Idaho	X			X		X	X		X		X	X	X	X	X		X
Illinois	X			X	X			X	X		X	X	X				X
Indiana	X			X	X			X	X		X	X	X	X	X	X	
Iowa		X		X		X	X			X							X
Kansas	X		X			X	X			X							X
Kentucky	X			X	X		X		X		X	X	X	X	X		X
Louisiana	X			X	X			X	X		X	X	X	X	X		X
Maine		X		X		X		X	X								X
Maryland		X		X	X			X		X							X
Massachusetts	X			X		X		X		X							X
Michigan	X			X	X			X		X							X
Minnesota	X			X		X		X	X		X	X	X	X	X	X	
Mississippi	X		X		X		X			X							X
Missouri	X			X		X		X		X							X
Montana	X			X	X		X		X		X	X	X	X	X		X
Nebraska	X			X		X		X	X		X	X	X	X	X		X
Nevada	X			X	X			X	X		X	X	X	X	X	X	
New Hampshire	X			X	X			X		X							X
New Jersey	X			X	X			X	X		X	X	X	X	X		X
New Mexico	X			X		X		X	X		X	X	X	X	X		X
New York		X		X	X			X		X							X
North Carolina	X			X		X		X		X							X
North Dakota	X			X		X		X	X		X	X	X	X	X		X
Ohio	X			X	X		X			X							X

\*While every jurisdiction evaluates the character and fitness of applicants for admission, not all publish codified standards under which they do so.

(continued)

CHART 2: Character and Fitness Determinations (*continued*)

Jurisdiction	Does your jurisdiction have published character and fitness standards?*		Will a felony conviction bar an applicant from admission?		Does a separate entity evaluate character and fitness?		Must bar exam applicants be approved for character and fitness in your jurisdiction before they sit for the bar exam?		Do your rules provide for conditional admission?		What categories of conditional admission do your rules permit?					Does your jurisdiction have a structured program for deferring admission?	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Substance abuse	Mental disability	Debt	Criminal history	Other	Yes	No
Oklahoma		X		X		X		X		X							X
Oregon	X			X		X		X	X		X	X	X	X	X		X
Pennsylvania		X		X		X		X		X							X
Rhode Island	X			X	X		X		X		X		X				X
South Carolina	X			X	X		X		X								X
South Dakota	X			X		X		X	X		X	X	X				X
Tennessee		X		X		X		X	X		X	X	X	X	X		X
Texas	X		X			X		X	X		X	X	X	X	X		X
Utah	X			X	X		X		X								X
Vermont	X			X	X			X		X							X
Virginia	X			X		X		X		X							X
Washington	X			X	X		X			X							X
West Virginia		X		X	X			X	X		X	X	X	X	X		X
Wisconsin	X			X		X		X	X		X	X	X	X	X		X
Wyoming	X			X	X			X	X		X	X	X				X
Guam	X			X		X		X	X		X	X	X	X	X		X
N. Mariana Islands		X	X			X		X		X							X
Palau		X		X		X	X			X							X
Puerto Rico		X		X	X			X	X								X
Virgin Islands		X		X	X			X		X							X

\*While every jurisdiction evaluates the character and fitness of applicants for admission, not all publish codified standards under which they do so.

### Supplemental Remarks

#### Will a felony conviction bar an applicant from admission?

**Connecticut** Rebuttable presumption of lack of good moral character.

**District of Columbia** A formal hearing conducted by the Committee on Admissions is mandatory for applicants who have a felony conviction.

**Florida** Not an automatic bar, but restoration of civil rights is required to apply for admission. Applicant must provide satisfactory evidence of good moral character.

**Georgia** Not an automatic bar, but a pardon or restoration of civil rights is necessary.

**Illinois** Convicted felons must first receive character and fitness certification before being permitted to write a bar examination.

**Indiana** Conviction of felony is prima facie evidence of lack of requisite good moral character. Applicant has the burden to overcome prima facie evidence.

**Kansas** Persons convicted of a felony are ineligible to apply for admission until 5 years after the date of successful completion of sentence or period of probation.

**Mississippi** Persons convicted of a felony except manslaughter or a violation of the Internal Revenue Code are ineligible.

**Missouri** Persons convicted of a felony are ineligible to apply for admission until 5 years after the date of successful completion of sentence or period of probation and until they meet all of the other requirements specified in rule pertaining to ineligibility.

**Montana** An applicant found guilty of a felony is conclusively presumed not to have present good moral character and fitness. The presumption ceases upon completion of the sentence and/or period of probation.

**Ohio** Applicants convicted of a felony must meet specific conditions and undergo additional review before they can be approved.

**Oregon** An applicant shall not be eligible for admission after having been convicted of a crime, the commission of which would have led to disbarment in all the circumstances present, had the person been an Oregon attorney at the time of conviction.

**Texas** Felony conviction or probation for a felony offense with or without an adjudication of guilt is a bar to application for 5 years after completion of sentence/probation; thereafter, the applicant must demonstrate present good moral character.

**Northern Mariana Islands** Ineligible unless applicant has been granted full pardon.

**Palau** Ineligible unless applicant has been granted full pardon.

### Does a separate entity evaluate character and fitness?

**Alabama** The Committee on Character and Fitness of the Alabama State Bar conducts hearings and makes a determination for law student registrants and applicants seeking admission by bar examination, reciprocity, and transfer of UBE score.

**Colorado** The Office of Attorney Admissions reviews all applications and certifies to the Colorado Supreme Court the applicants found to have met their burden demonstrating the character and fitness to practice law.

**Georgia** The Board to Determine Fitness of Bar Applicants is separate and distinct from the Board of Bar Examiners. The Fitness Board makes character and fitness determinations. The Office of Bar Admissions reports to both Boards, and both Boards must certify an applicant to the Supreme Court.

**Illinois** Committee appointed by the Supreme Court determines whether applicants having been assigned to the committee for certification possess good moral character and general fitness for admission to the practice of law.

**Indiana** The Indiana Supreme Court's Committee on Character and Fitness interviews each applicant and then submits a report and recommendation to the Board of Law Examiners, which makes a final determination.

**Kentucky** The Character and Fitness Committee is responsible for determining the eligibility of applicants for admission to the Kentucky Bar.

**Maryland** Character Committees appointed by the Court of Appeals of Maryland perform character investigations and interviews and make recommendations to the State Board of Law Examiners.

**Mississippi** The Board of Bar Admissions appoints persons to serve on the Committee on Character and Fitness. This committee reviews applications, conducts conferences and hearings with applicants, and makes recommendations to the Board. The Board makes the final determination to approve or deny an applicant on character and fitness grounds.

**Montana** Montana's Character & Fitness Commission, which is separate from the Board of Bar Examiners, evaluates all applicants to determine certification.

**New York** Character and fitness applications are processed by 1 of 4 appellate departments.

**Ohio** Local bar association admissions committees make recommendations to the Board of Commissioners on Character and Fitness, which makes final determinations. This Board is separate from the Board of Bar Examiners.

**Rhode Island** The Rhode Island Supreme Court Committee on Character and Fitness makes character and fitness determinations for the Court.

**Vermont** The Character and Fitness Committee.

**Virgin Islands** The Committee of Bar Examiners evaluates all applicants seeking admission by special admission, bar examination, UBE score transfer, and admission on motion to make character and fitness determinations for the Court.

**Washington** The Washington Supreme Court makes the final character and fitness determinations.

**West Virginia** District Character Committee conducts character and fitness investigation and interviews each applicant, then submits report and recommendation to the Board of Law Examiners.

### Must bar exam applicants be approved for character and fitness in your jurisdiction before they sit for the bar exam?

**Alabama** For exam applicants, character and fitness certification is issued prior to the bar exam unless a hearing before the Committee on Character & Fitness is required. If an exam applicant is required to appear for a hearing, the hearing will only be held if the applicant passes the bar exam.

**Arkansas** Completion of the character and fitness investigations process for any applicants presenting issues is done after all other requirements for eligibility have been met, including passing the bar exam and securing a passing score on the MPRE.

**District of Columbia** Applicants are required to submit an application that contains information related to character and fitness before sitting for the bar exam; however, applicants are not reviewed for character and fitness until they have passed the bar exam and obtained an MPRE score of 75 or higher.

**Florida** Applicants are required to submit the character and fitness application at the time they apply for an examination. The investigation does not have to be complete in order for an applicant to take the examination.

**Hawaii** Exceptions are determined based on information provided by each applicant (e.g., criminal history, foreign-educated attorneys, attorney complaints, grievances, etc.).

(continued)

## Supplemental Remarks (*continued*)

**Illinois** Applicants who fall under Rule 704b (felony convictions, have been disbarred in another jurisdiction, pending disciplinary charges or felonies, etc.) must have character and fitness approval prior to sitting for the exam. All other applicants may sit for the exam prior to character and fitness approval.

**Kentucky** In rare circumstances the Character and Fitness Committee may approve someone to sit under waiver but not release that applicant's grades unless and until the applicant is approved for Character and Fitness.

**Massachusetts** Character and fitness investigations are initiated upon the filing of a petition for admission and are completed in advance of release of bar exam results. Where a petitioner is unsuccessful on the bar exam, the character and fitness investigation is reopened if and when the petitioner applies to retake the bar exam.

**Michigan** Under Michigan Board of Law Examiners Rule 2, the Board may permit an applicant to sit for the examination prior to character and fitness approval. However, this is in the Board's discretion.

**Missouri** A character and fitness investigation is commenced upon receipt of a properly filed application and is not required to be completed in order to sit for the bar examination.

**Nebraska** A final determination can be deferred to allow an applicant to sit for the exam. New rules are being considered to defer all character and fitness determinations until after the bar exam so that bar exam behavior may be considered in final character and fitness approval.

**North Dakota** The character and fitness investigation is conducted simultaneously with a bar exam application being filed. The investigation does not need to be completed in order for an applicant to sit for the exam.

**Pennsylvania** Pennsylvania begins character and fitness investigations on applicants as soon as their applications are accepted. A final review is done post-exam.

**Rhode Island** Rhode Island begins its character and fitness investigations process prior to the bar examination with one-on-one character and fitness interviews between the applicant and a member of the Rhode Island Supreme Court Committee on Character and Fitness. The purpose of that interview is to determine whether further hearing before the entire Committee is necessary. If so, full hearings are held after the examination for those applicants who pass the examination.

**South Dakota** Character and fitness investigations are ongoing. A determination of character and fitness is not made until applicant passes the bar exam.

**Wisconsin** Applicants apply for character and fitness at the same time as they apply for the examination using one application. The character and fitness investigation commences prior to the exam, but applicants are not required to pass the investigation prior to sitting for the exam. If the applicant passes the exam, the investigation is completed; if the applicant fails the exam, the applicant's file is closed and the investigation is not completed.

**Palau** Applicants must provide an original certificate of good standing from the bar of each jurisdiction in which the applicant is a member of the bar, or, if the applicant is not and has never been a member of any bar, a letter from the applicant's law school attesting to the applicant's good moral character.

**Virgin Islands** The NCBE Request for Preparation of a Character and Fitness Report with the attendant fees is required upon the filing of the Application for Admission to the Virgin Islands Bar, which allows the investigation process to be conducted prior to the bar examination.

### Do your rules provide for conditional admission?

**Texas** Rule provides for probationary licensing for chemical dependency and other circumstances in which the Board determines that the protection of the public requires temporary monitoring.

### What categories of conditional admission do your rules permit?

**Maine** The Board evaluates each applicant's character and fitness after he or she passes the bar exam. According to the rule, the Board can advise the Court to grant a conditional admission. However, the rule does not state categories of cases in which the Board should recommend a conditional admission.

**Puerto Rico** Committee on Character evaluates each examinee's character and fitness after he/she passes the bar exam. According to the rule, the Committee can advise the Court to grant a conditional admission. However, the rule does not state categories of cases in which the Committee should recommend a conditional admission.

### Does your jurisdiction have a structured program for deferring admission?

**Arkansas** Issuance of license may be deferred for up to 2 years pending further evaluation, drug tests, etc.

**California** California has an abeyance program where an applicant enters into an agreement with the Committee of Bar Examiners for a set period of time. If an applicant successfully completes the program, it is likely he or she will receive a positive moral character determination without further hearings.

**Minnesota** The Board may postpone determination on an applicant's file if the file contains recent character and fitness issues and a relatively brief record of rehabilitation from past conduct. The period varies but is often 9–12 months in duration. The Board may offer this option to allow the applicant an opportunity to more fully develop and document a history of rehabilitation and evidence that he or she is able to satisfy the essential eligibility requirements for the practice of law at the time the Board considers and makes a final determination of the application. An applicant is not required to accept an offer to postpone determination and may request that the Board instead make a determination based upon the evidence that then exists.



The State Bar  
*of California*

# Moral Character Determination Guidelines

This document reflects the methodology typically utilized by the State Bar of California in completing an analysis of issues relevant to the determination of whether an applicant possesses the requisite moral character for licensure to practice law. The guidelines are intended to reflect standards set forth by the California Supreme Court and other governing law.

The utility of the guidelines is predicated on the complete and accurate disclosure of relevant facts and the provision of necessary documentation by the applicant.

The document does not contain all moral character values, acts of misconduct, mitigating and aggravating factors, or rehabilitation factors that are relevant to a moral character determination.

Applicants are unique and will be considered on their individual merits. Accordingly, these guidelines neither bind nor limit the discretion of the decision-makers.

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# Felony Conviction

## Additional Inquiry Seldom Needed

- One conviction, expunged pursuant to a statute listed in the Convictions section of the Application for Determination of Moral Character, no aggravating factors
- Nonviolent, more than five years ago, no subsequent convictions, no aggravating factors

## Additional Inquiry May Be Needed

- Not expunged pursuant to a statute listed in the Convictions section of the Application for Determination of Moral Character
- Violent

## Informal Conference May Be Needed

- Contingent on the outcome of additional inquiry and totality of the circumstances
- Involving moral turpitude<sup>1</sup>

## Mitigation, Aggravation, Rehabilitation

The length of time since a conviction, the severity of the criminal conduct, and the number and frequency of convictions are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- |                                       |   |   |  |
|---------------------------------------|---|---|--|
| • Role of applicant                   | • Honorable discharge from military   | • Payment of fines, restitution, other financial obligations        | • Pattern of misconduct  |
| • Age of applicant at time of offense | • Successful completion of parole, probation, community supervision             | • Conviction for conduct that has been legalized                    | • Attempt to conceal or mislead  |
| • Social factors of applicant         | • Completion of education, vocation, rehabilitation programs while incarcerated | • Rehabilitation related to factors that contributed to the offense | • Type of offense (for example, offenses involving a breach of trust, great bodily harm, cruelty, or abuse of authority may be particularly relevant to moral character) |
| • Time since offense                  | • Community service beyond what is required by court                            | • Record sealed, expunged, dismissed                                | • Number and type of victims   |
| • Intent                              |   |   |  |
| • Remorse, insight, accountability    |   |   |  |
| • Completion of restorative justice   |   |   |  |

<sup>1</sup>“Criminal conduct not committed in the practice of law or against a client reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney’s conduct would be likely to undermine public confidence in and respect for the legal profession.” (*In re Lesansky* (2001) 25 Cal.4th 11, 16.)



# Conviction for Drug Sales or Possession

## Additional Inquiry Seldom Needed

- Sealed via deferred entry of judgment for first time drug user under Cal. Penal Code § 1001 no aggravating factors
- Dismissed and expunged under Cal. Penal Code § 1210.1 (codifying Prop. 36) or a similar statute that permits nondisclosure to a state bar, no aggravating factors

## Additional Inquiry May Be Needed

- Drug Sales, one or more convictions
- Possession, multiple convictions

## Informal Conference May Be Needed

- Contingent on the outcome of additional inquiry and totality of the circumstances

## Mitigation, Aggravation, Rehabilitation

The length of time since a conviction, the severity of the criminal conduct, and the number and frequency of convictions are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- |                                       |   |   |  |
|---------------------------------------|---|---|--|
| • Role of applicant                   | • Honorable discharge from military   | • Payment of fines, restitution, other financial obligations        | • Pattern of misconduct  |
| • Age of applicant at time of offense | • Successful completion of parole, probation, community supervision             | • Conviction for conduct that has been legalized                    | • Attempt to conceal or mislead  |
| • Social factors of applicant         | • Completion of education, vocation, rehabilitation programs while incarcerated | • Rehabilitation related to factors that contributed to the offense | • Type of offense (for example, offenses involving a breach of trust, great bodily harm, cruelty, or abuse of authority may be particularly relevant to moral character) |
| • Time since offense                  | • Community service beyond what is required by court                            | • Record sealed, expunged, dismissed                                | • Number and type of victims   |
| • Intent                              |   |   |  |
| • Remorse, insight, accountability    |   |   |  |
| • Completion of restorative justice   |   |   |  |



# Alcohol-Related or Drug-Related Misdemeanor Conviction

## Additional Inquiry Seldom Needed

- One conviction, no aggravating factors

## Additional Inquiry May Be Needed

- One conviction, aggravating factors
- Multiple convictions

## Informal Conference May Be Needed

- Contingent on the outcome of additional inquiry and totality of the circumstances
- Aggravating factors

## Mitigation, Aggravation, Rehabilitation

The length of time since a conviction, the severity of the criminal conduct, and the number and frequency of convictions are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Role of applicant
- Age of applicant at time of offense
- Social factors of applicant
- Time since offense
- Intent
- Remorse, insight, accountability
- Completion of restorative justice
- Honorable discharge from military
- Successful completion of parole, probation, community supervision
- Completion of education, vocation, rehabilitation programs while incarcerated
- Community service beyond what is required by court
- Payment of fines, restitution, other financial obligations
- Conviction for conduct that has been legalized
- Rehabilitation related to factors that contributed to the offense
- Record sealed, expunged, dismissed
- Pattern of misconduct
- Attempt to conceal or mislead
- Type of offense (for example, offenses involving a breach of trust, great bodily harm, cruelty, or abuse of authority may be particularly relevant to moral character)
- Number and type of victims



# Adult Misdemeanor Conviction

## Additional Inquiry Seldom Needed

- Expunged, dismissed, or sealed pursuant to a statute listed in the Convictions section of the Application for Determination of Moral Character, no aggravating factors

## Additional Inquiry May Be Needed

- Not expunged, dismissed, or sealed pursuant to a statute listed in the Convictions section of the Application for Determination of Moral Character

## Informal Conference May Be Needed

- Contingent on the outcome of additional inquiry and totality of the circumstances
- Within five years, aggravating factors
- Involving moral turpitude [see footnote 2]

## Mitigation, Aggravation, Rehabilitation

The length of time since a conviction, the severity of the criminal conduct, and the number and frequency of convictions are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- |                                       |   |   |  |
|---------------------------------------|---|---|--|
| • Role of applicant                   | • Honorable discharge from military   | • Payment of fines, restitution, other financial obligations        | • Pattern of misconduct  |
| • Age of applicant at time of offense | • Successful completion of parole, probation, community supervision             | • Conviction for conduct that has been legalized                    | • Attempt to conceal or mislead  |
| • Social factors of applicant         | • Completion of education, vocation, rehabilitation programs while incarcerated | • Rehabilitation related to factors that contributed to the offense | • Type of offense (for example, offenses involving a breach of trust, great bodily harm, cruelty, or abuse of authority may be particularly relevant to moral character) |
| • Time since offense                  | • Community service beyond what is required by court                            | • Record sealed, expunged, dismissed                                | • Number and type of victims   |
| • Intent                              |   |   |  |
| • Remorse, insight, accountability    |   |   |  |
| • Completion of restorative justice   |   |   |  |

<sup>2</sup>“Criminal conduct not committed in the practice of law or against a client reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney’s conduct would be likely to undermine public confidence in and respect for the legal profession.” (*In re Lesansky* (2001) 25 Cal.4th 11, 16.)



# Vehicle Code Misdemeanor Conviction

## Additional Inquiry Seldom Needed

- Reckless driving that was not drug-related or alcohol-related, or failure to appear, more than five years ago
- Driving without a license, driving with a suspended license, or speeding; no aggravating factors

## Additional Inquiry May Be Needed

- Hit and run
- Occurred during or after law school
- Aggravating factors

## Informal Conference May Be Needed

- Contingent on the outcome of additional inquiry and totality of the circumstances

## Mitigation, Aggravation, Rehabilitation

The length of time since a conviction, the severity of the criminal conduct, and the number and frequency of convictions are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Role of applicant
- Age of applicant at time of offense
- Social factors of applicant
- Time since offense
- Intent
- Remorse, insight, accountability
- Completion of restorative justice
- Honorable discharge from military
- Successful completion of parole, probation, community supervision
- Completion of education, vocation, rehabilitation programs while incarcerated
- Community service beyond what is required by court
- Payment of fines, restitution, other financial obligations
- Conviction for conduct that has been legalized
- Rehabilitation related to factors that contributed to the offense
- Record sealed, expunged, dismissed
- Pattern of misconduct
- Attempt to conceal or mislead
- Type of offense (for example, offenses involving a breach of trust, great bodily harm, cruelty, or abuse of authority may be particularly relevant to moral character)
- Number and type of victims



# Juvenile Misdemeanor or Felony Adjudication

## Additional Inquiry Seldom Needed

- Occurred at age fifteen or younger, no aggravating factors

## Additional Inquiry May Be Needed

- Occurred between ages sixteen and eighteen
- Theft-related or gun-related
- Convictions for conduct including, but not limited to, joyriding, vandalism, stalking

## Informal Conference May Be Needed

- Contingent on the outcome of additional inquiry and totality of the circumstances

## Mitigation, Aggravation, Rehabilitation

The length of time since a conviction, the severity of the criminal conduct, and the number and frequency of convictions are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Role of applicant
- Age of applicant at time of offense
- Social factors of applicant
- Time since offense
- Intent
- Remorse, insight, accountability
- Completion of restorative justice
- Honorable discharge from military
- Successful completion of parole, probation, community supervision
- Completion of education, vocation, rehabilitation programs while incarcerated
- Community service beyond what is required by court
- Payment of fines, restitution, other financial obligations
- Conviction for conduct that has been legalized
- Rehabilitation related to factors that contributed to the offense
- Record sealed, expunged, dismissed
- Pattern of misconduct
- Attempt to conceal or mislead
- Type of offense (for example, offenses involving a breach of trust, great bodily harm, cruelty, or abuse of authority may be particularly relevant to moral character)
- Number and type of victims



## Vehicle Code Infraction

### Additional Inquiry Seldom Needed

- Seldom relevant if no aggravating factors exist

### Additional Inquiry May Be Needed

- Seldom relevant if no aggravating factors exist

### Informal Conference May Be Needed

- Contingent on the outcome of additional inquiry and totality of the circumstances

## Mitigation, Aggravation, Rehabilitation

The length of time since a conviction, the severity of the criminal conduct, and the number and frequency of convictions are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Role of applicant
- Age of applicant at time of offense
- Social factors of applicant
- Time since offense
- Intent
- Remorse, insight, accountability
- Completion of restorative justice
- Honorable discharge from military
- Successful completion of parole, probation, community supervision
- Completion of education, vocation, rehabilitation programs while incarcerated
- Community service beyond what is required by court
- Payment of fines, restitution, other financial obligations
- Conviction for conduct that has been legalized
- Rehabilitation related to factors that contributed to the offense
- Record sealed, expunged, dismissed
- Pattern of misconduct
- Attempt to conceal or mislead
- Type of offense (for example, offenses involving a breach of trust, great bodily harm, cruelty, or abuse of authority may be particularly relevant to moral character)
- Number and type of victims



# Municipal Code Violation

## Additional Inquiry Seldom Needed

- Seldom relevant if no aggravating factors
- Violations including, but not limited to excessive garbage, overgrown weeds

## Additional Inquiry May Be Needed

- Seldom relevant if no aggravating factors
- Violations including, but not limited to indecent exposure, possession of open container of alcohol

## Informal Conference May Be Needed

- Contingent on the outcome of additional inquiry and totality of the circumstances

## Mitigation, Aggravation, Rehabilitation

The length of time since a conviction, the severity of the criminal conduct, and the number and frequency of convictions are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Role of applicant
- Age of applicant at time of offense
- Social factors of applicant
- Time since offense
- Intent
- Remorse, insight, accountability
- Completion of restorative justice
- Honorable discharge from military
- Successful completion of parole, probation, community supervision
- Completion of education, vocation, rehabilitation programs while incarcerated
- Community service beyond what is required by court
- Payment of fines, restitution, other financial obligations
- Conviction for conduct that has been legalized
- Rehabilitation related to factors that contributed to the offense
- Record sealed, expunged, dismissed
- Pattern of misconduct
- Attempt to conceal or mislead
- Type of offense (for example, offenses involving a breach of trust, great bodily harm, cruelty, or abuse of authority may be particularly relevant to moral character)
- Number and type of victims



# Fraudulent Activity

## Additional Inquiry May Be Needed

- Allegations of fraud

## Informal Conference May Be Needed

- Contingent on the outcome of additional inquiry and totality of the circumstances
- Amount of financial loss considered

## Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Role of applicant
- Age of applicant at time of misconduct
- Social factors of applicant
- Time since misconduct
- Intent
- Remorse, insight, accountability
- Payment of fines, restitution, other financial obligations
- Rehabilitation related to misconduct
- Pattern of misconduct
- Attempt to conceal or mislead
- Job termination due to severe or pervasive behavior
- Financial or emotional impact on victim
- Misconduct involving abuse of authority
- Number and type of victims



# Omission or Mischaracterization on Application to the State Bar, Law School, Other Licensing Agency

## Additional Inquiry Seldom Needed

- Mistake or error

## Additional Inquiry May Be Needed

- Minor omission

## Informal Conference May Be Needed

- Material omission

## Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Role of applicant
- Age of applicant at time of misconduct
- Social factors of applicant
- Time since misconduct
- Intent
- Remorse, insight, accountability
- Payment of fines, restitution, other financial obligations
- Rehabilitation related to misconduct
- Pattern of misconduct
- Attempt to conceal or mislead
- Job termination due to severe or pervasive behavior
- Financial or emotional impact on victim
- Misconduct involving abuse of authority
- Number and type of victims



# Denial of Admission to the Practice of Law

## Additional Inquiry May Be Needed

- Any denial

## Informal Conference May Be Needed

- Based on substantive factors or moral character considerations
- Due to an adverse moral character determination in California

## Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Role of applicant
- Age of applicant at time of misconduct
- Social factors of applicant
- Time since misconduct
- Intent
- Remorse, insight, accountability
- Payment of fines, restitution, other financial obligations
- Rehabilitation related to misconduct
- Pattern of misconduct
- Attempt to conceal or mislead
- Job termination due to severe or pervasive behavior
- Financial or emotional impact on victim
- Misconduct involving abuse of authority
- Number and type of victims



# Admission or License Denial for a Nonlegal Profession

## Additional Inquiry May Be Needed

- Any denial

## Informal Conference May Be Needed

- Based on substantive factors or moral character considerations
- Contingent on the outcome of additional inquiry and totality of the circumstances

## Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Role of applicant
- Age of applicant at time of misconduct
- Social factors of applicant
- Time since misconduct
- Intent
- Remorse, insight, accountability
- Payment of fines, restitution, other financial obligations
- Rehabilitation related to misconduct
- Pattern of misconduct
- Attempt to conceal or mislead
- Job termination due to severe or pervasive behavior
- Financial or emotional impact on victim
- Misconduct involving abuse of authority
- Number and type of victims



# Honor Code or Conduct Code Violation in Law School

## Additional Inquiry Seldom Needed

- Academic dismissal due to low GPA

## Additional Inquiry May Be Needed

- Minor violation as defined by the school

## Informal Conference May Be Needed

- Serious violation as defined by the school
- Serious sanction or punishment imposed

## Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Role of applicant
- Age of applicant at time of misconduct
- Social factors of applicant
- Time since misconduct
- Intent
- Remorse, insight, accountability
- Payment of fines, restitution, other financial obligations
- Rehabilitation related to misconduct
- Pattern of misconduct
- Attempt to conceal or mislead
- Job termination due to severe or pervasive behavior
- Financial or emotional impact on victim
- Misconduct involving abuse of authority
- Number and type of victims



# Honor Code or Conduct Code Violation in Undergraduate or Post-Graduate Institution

## Additional Inquiry Seldom Needed

- Academic dismissal due to low GPA

## Additional Inquiry May Be Needed

- Minor violation as defined by the school

## Informal Conference May Be Needed

- Serious violation as defined by the school

## Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Role of applicant
- Age of applicant at time of misconduct
- Social factors of applicant
- Time since misconduct
- Intent
- Remorse, insight, accountability
- Payment of fines, restitution, other financial obligations
- Rehabilitation related to misconduct
- Pattern of misconduct
- Attempt to conceal or mislead
- Job termination due to severe or pervasive behavior
- Financial or emotional impact on victim
- Misconduct involving abuse of authority
- Number and type of victims



# Job Termination

## Additional Inquiry Seldom Needed

- Layoff
- Without cause

## Additional Inquiry May Be Needed

- With cause for conduct including, but not limited to, violation of company policy

## Informal Conference May Be Needed

- With cause for conduct including, but not limited to, violation of law

## Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Role of applicant
- Age of applicant at time of misconduct
- Social factors of applicant
- Time since misconduct
- Intent
- Remorse, insight, accountability
- Payment of fines, restitution, other financial obligations
- Rehabilitation related to misconduct
- Pattern of misconduct
- Attempt to conceal or mislead
- Job termination due to severe or pervasive behavior
- Financial or emotional impact on victim
- Misconduct involving abuse of authority
- Number and type of victims



## Breach of Fiduciary Duty

### Additional Inquiry Seldom Needed

- Complaint deemed unsubstantiated, not sustained

### Additional Inquiry May Be Needed

- Sustained or pending complaint

### Informal Conference May Be Needed

- Sustained or pending complaint, aggravating factors

## Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Role of applicant
- Age of applicant at time of misconduct
- Social factors of applicant
- Time since misconduct
- Intent
- Remorse, insight, accountability
- Nature of past due debt (for example, a debt incurred to pay for needed medical care may not reflect on moral character as a debt incurred for another reason)
- Payment of fines, restitution, other financial obligations
- Payment plan in place
- Compliance with payment agreement
- Rehabilitation related to misconduct
- Currently financially responsible
- Adverse judgment presently on appeal
- Failure to address debt or judgment
- Pattern of misconduct
- Attempt to conceal or mislead
- Number and type of victims
- Finding of contempt of court
- Misconduct involving abuse of authority



# Unpaid, Past Due State or Federal Income Taxes

## Additional Inquiry Seldom Needed

- Mistake or error
- Old, not outstanding for a sustained period of time, now in compliance

## Additional Inquiry May Be Needed

- Civil penalty or financial settlement

## Informal Conference May Be Needed

- Criminal conviction for fraud or tax evasion

## Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- |  |  |  |   |
|--|--|--|---|
| • Role of applicant                      | • Nature of past due debt (for example, a debt incurred to pay for needed medical care may not reflect on moral character as a debt incurred for another reason) | • Compliance with payment agreement    | • Failure to address debt or judgment     |
| • Age of applicant at time of misconduct | • Payment of fines, restitution, other financial obligations   | • Rehabilitation related to misconduct | • Pattern of misconduct                   |
| • Social factors of applicant            | • Payment plan in place  | • Currently financially responsible    | • Attempt to conceal or mislead           |
| • Time since misconduct                  |  | • Adverse judgment presently on appeal | • Number and type of victims              |
| • Intent                                 |  |  | • Finding of contempt of court            |
| • Remorse, insight, accountability       |  |  | • Misconduct involving abuse of authority |



# Bankruptcy

## Additional Inquiry Seldom Needed

- No objections, discharged

## Additional Inquiry May Be Needed

- Objections that were dismissed

## Informal Conference May Be Needed

- Findings of fraud, revocation of discharge, objections that were sustained

## Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Role of applicant
- Age of applicant at time of misconduct
- Social factors of applicant
- Time since misconduct
- Intent
- Remorse, insight, accountability
- Nature of past due debt (for example, a debt incurred to pay for needed medical care may not reflect on moral character as a debt incurred for another reason)
- Payment of fines, restitution, other financial obligations
- Payment plan in place
- Compliance with payment agreement
- Rehabilitation related to misconduct
- Currently financially responsible
- Adverse judgment presently on appeal
- Failure to address debt or judgment
- Pattern of misconduct
- Attempt to conceal or mislead
- Number and type of victims
- Finding of contempt of court
- Misconduct involving abuse of authority



# Past Due Debt, Debt in Collections

## Additional Inquiry Seldom Needed

- Current debt, not past due

## Additional Inquiry May Be Needed

- In collections
- Default on loans
- One or more unsatisfied judgments

## Informal Conference May Be Needed

- Numerous suits filed to recover significant debts
- One or more significant unsatisfied judgments, no attempts to satisfy

## Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- |  |  |  |   |
|--|--|--|---|
| • Role of applicant                      | • Nature of past due debt (for example, a debt incurred to pay for needed medical care may not reflect on moral character as a debt incurred for another reason) | • Compliance with payment agreement    | • Failure to address debt or judgment     |
| • Age of applicant at time of misconduct | • Payment of fines, restitution, other financial obligations   | • Rehabilitation related to misconduct | • Pattern of misconduct                   |
| • Social factors of applicant            | • Payment plan in place  | • Currently financially responsible    | • Attempt to conceal or mislead           |
| • Time since misconduct                  |  | • Adverse judgment presently on appeal | • Number and type of victims              |
| • Intent                                 |  |  | • Finding of contempt of court            |
| • Remorse, insight, accountability       |  |  | • Misconduct involving abuse of authority |



# Unauthorized Practice of Law

## Additional Inquiry May Be Needed

- Any allegation

## Informal Conference May Be Needed

- Contingent on outcome of additional inquiry and totality of the circumstances

## Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Time since offense
- Intent
- Remorse, insight, accountability
- Rehabilitation related to misconduct
- Meritorious nature of applicant's involvement in litigation or administrative action
- Favorable termination of litigation or administrative action
- Prior record
- Engagement in a type of business or enterprise that typically experiences recurrent litigation
- Pattern of misconduct
- Attempt to conceal or mislead
- Number and type of victims
- Designation of applicant as vexatious litigant
- Finding of contempt of court
- Official finding of serious misconduct, grossly incompetent practice or representation, or willful wrongdoing or misrepresentation
- Judicial designation of administrative claim as frivolous
- Judicial finding of malpractice
- Imposition of punitive damages against applicant
- Misconduct involving moral turpitude [see footnote 1]
- Omission or failure to notify other regulatory agencies or jurisdictions
- Determination of the complaint, allegation of malpractice, or allegation of unauthorized practice of law
- Financial impact on victim



# Malpractice (Attorney)

## Additional Inquiry May Be Needed

- Any allegation

## Informal Conference May Be Needed

- Multiple allegations

## Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Time since offense
- Intent
- Remorse, insight, accountability
- Rehabilitation related to misconduct
- Meritorious nature of applicant's involvement in litigation or administrative action
- Favorable termination of litigation or administrative action
- Prior record
- Engagement in a type of business or enterprise that typically experiences recurrent litigation
- Pattern of misconduct
- Attempt to conceal or mislead
- Number and type of victims
- Designation of applicant as vexatious litigant
- Finding of contempt of court
- Official finding of serious misconduct, grossly incompetent practice or representation, or willful wrongdoing or misrepresentation
- Judicial designation of administrative claim as frivolous
- Judicial finding of malpractice
- Imposition of punitive damages against applicant
- Misconduct involving moral turpitude [see footnote 1]
- Omission or failure to notify other regulatory agencies or jurisdictions
- Determination of the complaint, allegation of malpractice, or allegation of unauthorized practice of law
- Financial impact on victim



## Professional Discipline (Attorney)

### Additional Inquiry May Be Needed

- Discipline imposed

### Informal Conference May Be Needed

- Public reproof, reprimand, admonishment, suspension, disbarment

### Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Time since offense
- Intent
- Remorse, insight, accountability
- Rehabilitation related to misconduct
- Meritorious nature of applicant's involvement in litigation or administrative action
- Favorable termination of litigation or administrative action
- Prior record
- Engagement in a type of business or enterprise that typically experiences recurrent litigation
- Pattern of misconduct
- Attempt to conceal or mislead
- Number and type of victims
- Designation of applicant as vexatious litigant
- Finding of contempt of court
- Official finding of serious misconduct, grossly incompetent practice or representation, or willful wrongdoing or misrepresentation
- Judicial designation of administrative claim as frivolous
- Judicial finding of malpractice
- Imposition of punitive damages against applicant
- Misconduct involving moral turpitude [see footnote 1]
- Omission or failure to notify other regulatory agencies or jurisdictions
- Determination of the complaint, allegation of malpractice, or allegation of unauthorized practice of law
- Financial impact on victim



## Professional Complaint (Attorney)

### Additional Inquiry Seldom Needed

- No action taken by agency

### Additional Inquiry May Be Needed

- Adverse action against the attorney taken by the licensing agency
- One or more complaints

### Informal Conference May Be Needed

- Multiple complaints
- Finding of malpractice or other wrongful conduct [see Malpractice, page 24]

### Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Time since offense
- Intent
- Remorse, insight, accountability
- Rehabilitation related to misconduct
- Meritorious nature of applicant's involvement in litigation or administrative action
- Favorable termination of litigation or administrative action
- Prior record
- Engagement in a type of business or enterprise that typically experiences recurrent litigation
- Pattern of misconduct
- Attempt to conceal or mislead
- Number and type of victims
- Designation of applicant as vexatious litigant
- Finding of contempt of court
- Official finding of serious misconduct, grossly incompetent practice or representation, or willful wrongdoing or misrepresentation
- Judicial designation of administrative claim as frivolous
- Judicial finding of malpractice
- Imposition of punitive damages against applicant
- Misconduct involving moral turpitude [see footnote 1]
- Omission or failure to notify other regulatory agencies or jurisdictions
- Determination of the complaint, allegation of malpractice, or allegation of unauthorized practice of law
- Financial impact on victim



# Court Sanctions

## Additional Inquiry May Be Needed

- Any

## Informal Conference May Be Needed

- Multiple instances
- For conduct involving dishonesty

## Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Time since offense
- Intent
- Remorse, insight, accountability
- Rehabilitation related to misconduct
- Meritorious nature of applicant's involvement in litigation or administrative action
- Favorable termination of litigation or administrative action
- Prior record
- Engagement in a type of business or enterprise that typically experiences recurrent litigation
- Pattern of misconduct
- Attempt to conceal or mislead
- Number and type of victims
- Designation of applicant as vexatious litigant
- Finding of contempt of court
- Official finding of serious misconduct, grossly incompetent practice or representation, or willful wrongdoing or misrepresentation
- Judicial designation of administrative claim as frivolous
- Judicial finding of malpractice
- Imposition of punitive damages against applicant
- Misconduct involving moral turpitude [see footnote 1]
- Omission or failure to notify other regulatory agencies or jurisdictions
- Determination of the complaint, allegation of malpractice, or allegation of unauthorized practice of law
- Financial impact on victim



# Malpractice (Nonlegal Profession)

## Additional Inquiry May Be Needed

- Any allegation

## Informal Conference May Be Needed

- Multiple allegations

## Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Time since offense
- Intent
- Remorse, insight, accountability
- Rehabilitation related to misconduct
- Meritorious nature of applicant's involvement in litigation or administrative action
- Favorable termination of litigation or administrative action
- Prior record
- Engagement in a type of business or enterprise that typically experiences recurrent litigation
- Pattern of misconduct
- Attempt to conceal or mislead
- Number and type of victims
- Designation of applicant as vexatious litigant
- Finding of contempt of court
- Official finding of serious misconduct, grossly incompetent practice or representation, or willful wrongdoing or misrepresentation
- Judicial designation of administrative claim as frivolous
- Judicial finding of malpractice
- Imposition of punitive damages against applicant
- Misconduct involving moral turpitude [see footnote 1]
- Omission or failure to notify other regulatory agencies or jurisdictions
- Determination of the complaint, allegation of malpractice, or allegation of unauthorized practice of law
- Financial impact on victim



## Professional Discipline (Nonlegal Profession)

### Additional Inquiry May Be Needed

- Any disciplinary action imposed

### Informal Conference May Be Needed

- Public reproof, reprimand, admonishment, suspension, disbarment

### Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Time since offense
- Intent
- Remorse, insight, accountability
- Rehabilitation related to misconduct
- Meritorious nature of applicant's involvement in litigation or administrative action
- Favorable termination of litigation or administrative action
- Prior record
- Engagement in a type of business or enterprise that typically experiences recurrent litigation
- Pattern of misconduct
- Attempt to conceal or mislead
- Number and type of victims
- Designation of applicant as vexatious litigant
- Finding of contempt of court
- Official finding of serious misconduct, grossly incompetent practice or representation, or willful wrongdoing or misrepresentation
- Judicial designation of administrative claim as frivolous
- Judicial finding of malpractice
- Imposition of punitive damages against applicant
- Misconduct involving moral turpitude [see footnote 1]
- Omission or failure to notify other regulatory agencies or jurisdictions
- Determination of the complaint, allegation of malpractice, or allegation of unauthorized practice of law
- Financial impact on victim



## Professional Complaint (Nonlegal Profession)

### Additional Inquiry Seldom Needed

- No action taken by agency

### Additional Inquiry May Be Needed

- Adverse action against the professional taken by licensing agency
- Multiple complaints

### Informal Conference May Be Needed

- Numerous professional complaints
- Finding of malpractice or other wrongful conduct [see Malpractice, page 28]

### Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- Time since offense
- Intent
- Remorse, insight, accountability
- Rehabilitation related to misconduct
- Meritorious nature of applicant's involvement in litigation or administrative action
- Favorable termination of litigation or administrative action
- Prior record
- Engagement in a type of business or enterprise that typically experiences recurrent litigation
- Pattern of misconduct
- Attempt to conceal or mislead
- Number and type of victims
- Designation of applicant as vexatious litigant
- Finding of contempt of court
- Official finding of serious misconduct, grossly incompetent practice or representation, or willful wrongdoing or misrepresentation
- Judicial designation of administrative claim as frivolous
- Judicial finding of malpractice
- Imposition of punitive damages against applicant
- Misconduct involving moral turpitude [see footnote 1]
- Omission or failure to notify other regulatory agencies or jurisdictions
- Determination of the complaint, allegation of malpractice, or allegation of unauthorized practice of law
- Financial impact on victim



# Military Discipline

## Additional Inquiry Seldom Needed

- Conduct did not result in nonjudicial punishment, court-martial determination of guilt, or administrative discharge

## Additional Inquiry May Be Needed

- Conduct resulted in nonjudicial punishment, court-martial determination of guilt, or administrative discharge

## Informal Conference May Be Needed

- Contingent on outcome of additional inquiry and totality of the circumstances

## Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- |  |  |  |  |
|--|--|--|--|
| • Time since offense   | • Prior record   | • Official finding of serious misconduct, grossly incompetent practice or representation, or willful wrongdoing or misrepresentation | • Misconduct involving moral turpitude [see footnote 1]  |
| • Intent   | • Engagement in a type of business or enterprise that typically experiences recurrent litigation | • Judicial designation of administrative claim as frivolous  | • Omission or failure to notify other regulatory agencies or jurisdictions                                 |
| • Remorse, insight, accountability   | • Pattern of misconduct  | • Judicial finding of malpractice  | • Determination of the complaint, allegation of malpractice, or allegation of unauthorized practice of law |
| • Rehabilitation related to misconduct   | • Attempt to conceal or mislead  | • Imposition of punitive damages against applicant   | • Financial impact on victim   |
| • Meritorious nature of applicant's involvement in litigation or administrative action | • Number and type of victims   |  |  |
| • Favorable termination of litigation or administrative action                         | • Designation of applicant as vexatious litigant   |  |  |
|  | • Finding of contempt of court   |  |  |



## Civil Action

### Additional Inquiry Seldom Needed

- Family Law case including, but not limited to, a dissolution with no support or aggravating factors
- Other civil case including, but not limited to contract, landlord/tenant, personal injury; applicant is plaintiff; no aggravating factors
- Party to fewer than five cases

### Additional Inquiry May Be Needed

- Family Law ongoing support orders, ongoing restraining orders
- Other civil case, applicant is defendant or respondent, no aggravating factors
- Applicant is plaintiff, aggravating factors
- Party to more than five cases

### Informal Conference May Be Needed

- Claims of violation of court orders or nonpayment, unsatisfied judgments [see Past Due Debt, page 22]
- Excessive number of cases or numerous adverse judgments
- Entry of judgment for serious misconduct
- Finding of malpractice or other wrongful conduct [see Malpractice, page 24 and 28]

## Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- |  |  |  |  |
|--|--|--|--|
| • Time since offense   | • Prior record   | • Official finding of serious misconduct, grossly incompetent practice or representation, or willful wrongdoing or misrepresentation | • Misconduct involving moral turpitude [see footnote 1]  |
| • Intent   | • Engagement in a type of business or enterprise that typically experiences recurrent litigation | • Judicial designation of administrative claim as frivolous  | • Omission or failure to notify other regulatory agencies or jurisdictions                                 |
| • Remorse, insight, accountability   | • Pattern of misconduct  | • Judicial finding of malpractice  | • Determination of the complaint, allegation of malpractice, or allegation of unauthorized practice of law |
| • Rehabilitation related to misconduct   | • Attempt to conceal or mislead  | • Imposition of punitive damages against applicant   | • Financial impact on victim   |
| • Meritorious nature of applicant's involvement in litigation or administrative action | • Number and type of victims   |  |  |
| • Favorable termination of litigation or administrative action                         | • Designation of applicant as vexatious litigant   |  |  |
|  | • Finding of contempt of court   |  |  |



# Administrative Proceeding, Adjudication, Action

## Additional Inquiry Seldom Needed

- One administrative action, four or more years ago, with the Department of Motor Vehicles or state unemployment insurance appeals board
- Other administrative action, fewer than five actions, no aggravating factors

## Additional Inquiry May Be Needed

- Multiple actions, less than four years ago, with the Department of Motor Vehicles or state unemployment insurance appeals board
- Other administrative action, more than five actions

## Informal Conference May Be Needed

- Occurred less than one year ago with the Department of Motor Vehicles or state unemployment insurance appeals board
- Excessive number of other administrative actions
- Adverse administrative determination against the applicant for serious misconduct

## Mitigation, Aggravation, Rehabilitation

The length of time since an act of misconduct, the severity of the misconduct, and the number and frequency of acts of misconduct are given significant consideration. The following are additional factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation:

- |  |  |  |  |
|--|--|--|--|
| • Time since offense   | • Prior record   | • Official finding of serious misconduct, grossly incompetent practice or representation, or willful wrongdoing or misrepresentation | • Misconduct involving moral turpitude [see footnote 1]  |
| • Intent   | • Engagement in a type of business or enterprise that typically experiences recurrent litigation | • Judicial designation of administrative claim as frivolous  | • Omission or failure to notify other regulatory agencies or jurisdictions                                 |
| • Remorse, insight, accountability   | • Pattern of misconduct  | • Judicial finding of malpractice  | • Determination of the complaint, allegation of malpractice, or allegation of unauthorized practice of law |
| • Rehabilitation related to misconduct   | • Attempt to conceal or mislead  | • Imposition of punitive damages against applicant   | • Financial impact on victim   |
| • Meritorious nature of applicant's involvement in litigation or administrative action | • Number and type of victims   |  |  |
| • Favorable termination of litigation or administrative action                         | • Designation of applicant as vexatious litigant   |  |  |
|  | • Finding of contempt of court   |  |  |



## **Chapter 4. Moral Character Determination**

### **Rule 4.40 Moral Character Determination**

- (A) An applicant must be of good moral character as determined by the State Bar . The applicant has the burden of establishing that he or she is of good moral character.
- (B) “Good moral character” includes but is not limited to qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the law, and respect for the rights of others and the judicial process.

*Rule 4.40 adopted effective September 1, 2008; amended effective September 1, 2019.*

### **Rule 4.41 Application for Determination of Moral Character**

- (A) An applicant must submit an Application for Determination of Moral Character with required fingerprints and the fee set forth in the Schedule of Charges and Deadlines. An attorney who is suspended for disciplinary reasons or disbarred, has resigned with disciplinary charges pending or is otherwise not in good standing for disciplinary reasons in any jurisdiction may not submit an application.
- (B) An Application for Determination of Moral Character may be submitted any time after filing an Application for Registration but is deemed filed only when the application is complete.

*Rule 4.41 adopted effective September 1, 2008; amended effective November 14, 2009; previously amended effective July 22, 2011; amended effective March 9, 2018.*

### **Rule 4.42 Duty to update Application for Determination of Moral Character**

Until admitted to practice law, an applicant who has submitted an Application for Determination of Moral Character has a continuing duty to promptly notify the Office of Admissions whenever information provided in the application has changed or there is new information relevant to the application. Failure to provide updated information within thirty days after the change or addition to the information originally submitted may be cause for suspension of a positive moral character determination.

*Rule 4.42 adopted effective September 1, 2008; amended effective November 14, 2009.*

### **Rule 4.43 Abandonment of Application for Determination of Moral Character**

- (A) An Application for Determination of Moral Character is deemed abandoned and ineligible for a refund of fees if
  - (1) it is not complete within sixty days after being initiated; or

- (2) it is complete but the applicant has failed to provide additional information requested by the State Bar within ninety days of the request.
- (B) An applicant may request a review by the Committee of the State Bar's decision within 30 days of service of the notice of abandonment.
- (C) A new Application for Determination of Moral Character must be submitted with the required fee if an application has been abandoned.

*Rule 4.43 adopted effective September 1, 2008; amended effective September 1, 2019.*

#### **Rule 4.44 Withdrawal of Application for Determination of Moral Character**

- (A) An applicant may withdraw an Application for Determination of Moral Character any time before being notified that the State Bar is unable to make a determination without further inquiry and analysis.
- (B) An applicant may withdraw an application filed with the State Bar Court for a hearing on an adverse determination of moral character by filing a request for withdrawal with the Office of Chief Trial Counsel and forwarding a copy to the Office of Admissions.

*Rule 4.44 adopted effective September 1, 2008; previously amended effective November 18, 2016; amended effective September 1, 2019.*

#### **Rule 4.45 Notice regarding status of Application for Determination of Moral Character**

- (A) Within 180 days of receiving a completed Application for Determination of Moral Character, the State Bar notifies an applicant that its determination of moral character is positive or that it requires further consideration. A positive determination is valid for thirty-six months.
- (B) While an Application for Determination of Moral Character remains pending, a status report is issued to the applicant at least every 120 days.
- (C) Within 120 days of receiving additional information it has requested, the State Bar notifies the applicant that
  - (1) the applicant is determined to be of good moral character;
  - (2) the applicant has not met the burden of establishing good moral character;
  - (3) the application requires further consideration;
  - (4) the applicant is invited to an informal conference; or

- (5) the applicant is advised to enter into an Agreement of Abeyance with the State Bar.

*Rule 4.45 adopted effective September 1, 2008; previously amended effective November 18, 2016; amended effective September 1, 2019.*

**Rule 4.46 Informal conference regarding moral character**

- (A) Prior to rendering an adverse determination on a moral character application, the State Bar shall invite the applicant to an informal conference regarding the application. Acceptance of an invitation is not mandatory, and declining it entails no negative inference.
- (B) The Committee may establish procedures for an informal conference with the State Bar and require the State Bar to create a record of it by tape recording, video recording, or any other means. The applicant may attend the conference with counsel; make a written or oral statement; and present documentary evidence. Counsel is limited to observation and may not participate.

*Rule 4.46 adopted effective September 1, 2008; previously amended effective November 14, 2009; amended effective September 1, 2019.*

**Rule 4.47.1 Request for Review By the Committee of Adverse Determination**

- (A) An applicant notified of an adverse determination of moral character may request a review by the Committee. The request must be submitted to the Office of Admissions within 30 days of the date of the notice of the State Bar's determination. The applicant may submit supplemental material with the request.
- (B) Within 60 days of receipt of the request for a review, the Committee will conduct a review of the record, which may include a review of the transcript or recording of the informal conference. The Committee may request additional information from the applicant or from the State Bar. The Committee must notify the applicant of its final determination within 30 days of its decision.

*Rule 4.47.1 adopted effective September 1, 2019.*

**Rule 4.47 Appeal of adverse determination of moral character issued by Committee**

- (A) If the Committee issues an adverse determination of moral character, an applicant may file a request for hearing on the determination with the State Bar Court in accordance with the Rules of Procedure of the State Bar on Moral Character Proceedings. The request must be filed with the fee set forth in the Schedule of Charges and Deadlines within sixty days of the date of service of the notice of adverse determination.

- (B) A copy of the request for hearing must be served on the Office of Admissions and the Office of Chief Trial Counsel. Upon receipt of service, the Committee must promptly transmit all files related to the application to the Office of Chief Trial Counsel.

*Rule 4.47 adopted effective September 1, 2008; previously amended effective July 24, 2015; amended effective September 1, 2019.*

#### **Rule 4.48 Agreement of Abeyance**

- (A) The State Bar and an applicant may suspend processing of an Application for Determination of Moral Character by an Agreement of Abeyance
  - (1) when a court has ordered an applicant charged with a crime to be treated, rehabilitated, or otherwise diverted;
  - (2) when a court has suspended the sentence of an applicant convicted of a crime and placed the applicant on probation;
  - (3) when an applicant is actively seeking or obtaining treatment for chemical dependency or drug or alcohol addiction; or
  - (4) if the State Bar and an applicant otherwise agree.
- (B) An Agreement of Abeyance must be in writing and specify the period and conditions of abeyance. A copy must be provided to the applicant.

*Rule 4.48 adopted effective September 1, 2008; amended effective September 1, 2019.*

#### **Rule 4.49 New application following adverse determination of moral character**

The State Bar may permit an applicant who has received an adverse moral character determination to file another Application for Determination of Moral Character two years from the date of the final determination or at some other time set by the State Bar, for good cause shown, at the time of its adverse determination.

*Rule 4.49 adopted effective September 1, 2008; previously amended effective July 24, 2015; amended effective September 1, 2019.*

#### **Rule 4.50 Suspension of positive determination of moral character**

- (A) Before certifying an applicant for admission to the practice of law, the State Bar may notify an applicant that it has suspended a positive determination of moral character if it receives information that reasonably calls the applicant's character into question. The notice must specify the grounds for the suspension.

- (B) The application of an applicant whose positive determination has been suspended is processed in accordance with Rule 4.45.

*Rule 4.50 adopted effective September 1, 2008; previously amended effective July 22, 2011; amended effective September 1, 2019.*

#### **Rule 4.51 Validity period of positive moral character determination**

A positive determination of moral character is valid for thirty-six months. An applicant with a positive determination who has not been certified to practice law within this validity period must submit an Application for Extension of Determination of Moral Character.

*Rule 4.51 adopted effective September 1, 2008.*

#### **Rule 4.52 Extension of positive moral character determination**

- (A) An applicant who has received a positive moral character determination may submit an Application for Extension of Determination of Moral Character. The application must be filed in the last six months of the initial thirty-six month validity period with the required fingerprints and the fee set forth in the Schedule of Charges and Deadlines. If the State Bar makes a positive determination before the initial thirty-six months expires, the initial thirty-six months is extended an additional thirty-six months. If the State Bar makes a positive determination after expiration of the initial thirty-six months, an extension of thirty-six months begins at the time of its determination.
- (B) An applicant may request a review by the Committee of the State Bar's decision within 30 days of service of the notice of decision.

*Rule 4.52 adopted effective September 1, 2008; amended effective September 1, 2019.*

### **Chapter 5. Examinations**

#### **Rule 4.55 First-Year Law Students' Examination requirement**

- (A) A general applicant intending to seek admission to practice law in California must take the First-Year Law Students' Examination unless the applicant
  - (1) has satisfactorily completed
    - (a) at least two years of college work as defined by these rules and the Committee's guidelines; and
    - (b) the first-year course of instruction



# California Rules of Court

(Revised January 1, 2021)

## **Rule 9.13. Review of State Bar Court decisions**

### **(a) Review of recommendation of disbarment or suspension**

A petition to the Supreme Court by a licensee to review a decision of the State Bar Court recommending his or her disbarment or suspension from practice must be served and filed within 60 days after a certified copy of the decision complained of is filed with the Clerk of the Supreme Court. The State Bar may serve and file an answer to the petition within 15 days after filing of the petition. Within 5 days after filing of the answer, the petitioner may serve and file a reply. If review is ordered by the Supreme Court, the State Bar must serve and file a supplemental brief within 45 days after the order is filed. Within 15 days after filing of the supplemental brief, the petitioner may serve and file a reply brief.

*(Subd (a) amended effective January 1, 2019; previously relettered and amended effective October 1, 1973; previously amended effective July 1, 1968, December 1, 1990, and January 7, 2007.)*

### **(b) Review of recommendation to set aside stay of suspension or modify probation**

A petition to the Supreme Court by a licensee to review a recommendation of the State Bar Court that a stay of an order of suspension be set aside or that the duration or conditions of probation be modified on account of a violation of probation must be served and filed within 15 days after a certified copy of the recommendation complained of is filed with the Clerk of the Supreme Court. Within 15 days after filing of the petition, the State Bar may serve and file an answer. Within 5 days after filing of the answer, the petitioner may serve and file a reply.

*(Subd (b) amended effective January 1, 2019; adopted effective October 1, 1973; previously amended effective December 1, 1990; and January 1, 2007.)*

### **(c) Review of interim decisions**

A petition to the Supreme Court by a licensee to review a decision of the State Bar Court regarding interim suspension, the exercise of powers delegated by rule 9.10(b)-(e), or another interlocutory matter must be served and filed within 15 days after written notice of the adverse decision of the State Bar Court is mailed by the State Bar to the petitioner and to his or her counsel of record, if any, at their respective addresses under section 6002.1. Within 15 days after filing of the petition, the State Bar may serve and file an answer. Within 5 days after filing of the answer, the petitioner may serve and file a reply.

*(Subd (c) amended effective January 1, 2019; adopted effective December 1, 1990; previously amended effective January 1, 2007.)*

### **(d) Review of other decisions**

A petition to the Supreme Court to review any other decision of the State Bar Court or action of the Board of Trustees of the State Bar, or of any board or committee appointed by it and authorized to make a determination under the provisions of the State Bar Act, or of the chief executive officer of the State Bar or the designee of the chief executive officer authorized to make a determination under article 10 of the State Bar Act or these rules of court, must be served and filed within 60 days after written notice of the action complained of is mailed to the petitioner and to his or her counsel of record, if any, at their respective addresses under Business and Professions Code section 6002.1. Within 15 days after filing of the petition, the State Bar may serve and file an answer and

brief. Within 5 days after filing of the answer and brief, the petitioner may serve and file a reply. If review is ordered by the Supreme Court, the State Bar, within 45 days after filing of the order, may serve and file a supplemental brief. Within 15 days after filing of the supplemental brief, the petitioner may serve and file a reply brief.

*(Subd (d) amended effective January 1, 2019; previously amended effective July 1, 1968, May 1, 1986, April 2, 1987, and January 1, 2007; previously relettered and amended effective October 1, 1973, and December 1, 1990.)*

#### **(e) Contents of petition**

- (1) A petition to the Supreme Court filed under (a) or (b) of this rule must be verified, must specify the grounds relied upon, must show that review within the State Bar Court has been exhausted, must address why review is appropriate under one or more of the grounds specified in rule 9.16, and must have attached a copy of the State Bar Court decision from which relief is sought.
- (2) When review is sought under (c) or (d) of this rule, the petition must also be accompanied by a record adequate to permit review of the ruling, including:
  - (A) Legible copies of all documents and exhibits submitted to the State Bar Court or the State Bar supporting and opposing petitioner's position;
  - (B) Legible copies of all other documents submitted to the State Bar Court or the State Bar that are necessary for a complete understanding of the case and the ruling; and
  - (C) A transcript of the proceedings in the State Bar Court leading to the decision or, if a transcript is unavailable, a declaration by counsel explaining why a transcript is unavailable and fairly summarizing the proceedings, including arguments by counsel and the basis of the State Bar Court's decision, if stated; or a declaration by counsel stating that the transcript has been ordered, the date it was ordered, and the date it is expected to be filed, which must be a date before any action is requested from the Supreme Court other than issuance of a stay supported by other parts of the record.
- (3) A petitioner who requests an immediate stay must explain in the petition the reasons for the urgency and set forth all relevant time constraints.
- (4) If a petitioner does not submit the required record, the court may summarily deny the stay request, the petition, or both.

*(Subd (e) amended effective January 1, 2019; previously repealed and adopted by the Supreme Court effective December 1, 1990, and February 1, 1991; previously repealed and adopted effective March 15, 1991; previously amended effective January 1, 2007.)*

#### **(f) Service**

All petitions, briefs, reply briefs, and other pleadings filed by a petitioner under this rule must be accompanied by proof of service of three copies on the General Counsel of the State Bar at the San Francisco office of the State Bar, and of one copy on the Clerk of the State Bar Court at the Los Angeles office of the State Bar Court. The State Bar must serve the licensee at his or her address under Business and Professions Code section 6002.1, and his or her counsel of record, if any.

*(Subd (f) amended effective January 1, 2019; adopted by the Supreme Court effective December 1, 1990; previously amended by the Supreme Court effective February 1, 1991; previously amended effective March 15, 1991, and January 1, 2007.)*

*Rule 9.13 amended effective January 1, 2019; adopted as rule 59 by the Supreme Court effective April 20, 1943, and by the Judicial Council effective July 1, 1943; previously amended and renumbered as rule 952 effective October 1, 1973, and as 9.13 effective January 1, 2007; previously amended effective July 1, 1976, May 1, 1986, April 2, 1987, December 1, 1990, February 1, 1991, and March 15, 1991.*

**Katz, Linda**

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**From:** Katz, Linda  
**Sent:** Wednesday, February 3, 2021 3:26 PM  
**Subject:** CPPWG - Licensing Subcommittee: Message from Judge Yew, Chair of Pilot Implementation Subcommittee

Dear Colleagues on the CPPWG Licensing Subcommittee,

I am writing to you as Chair of the Pilot Implementation Subcommittee with recommendations for the balancing of education, experience, and testing requirements to enter the new field of legal paraprofessionals. Recognizing that these threshold features fall comfortably within the scope of your committee's work, they have also arisen for our subcommittee as we design the launch version of the Program. Like you, we are particularly motivated to attract participants to the Program while carefully protecting consumers.

To allow for a minimally large pool of candidates in the endeavor's formative years – or at least during its potentially three-year pilot – we respectfully request that the Licensing Subcommittee consider allowing legal paraprofessional candidates to:

- \* Satisfy any Program-specific coursework if they have already completed sufficient education in law school or a paralegal program;
- \* Satisfy any Program-specific experience requirements if they can show sufficient, past work or clinical experience that is relevant; and
- \* Test out of any Program-specific educational requirements, meaning that they need not satisfy all of those education requirements if they can pass the legal paraprofessional exam(s).

The Pilot Implementation Subcommittee is concerned that the Program might stumble out of the gate, thereby complicating its viability, if there is too little interest in pursuing a license in its first few years. This could happen if those who would participate perceive the requirements as too arduous. While the threshold to enter must protect consumers, we would not want to see the Program's promise to expand access to civil justice succumb to its safeguards.

While we confidently leave this aspect of balancing public protection and program viability in your capable hands, we do believe that the current proposal for education, experience, and testing to be too steep to encourage early participation. And if the waiver and test-out suggestions that I propose above would be insufficiently stringent for the ultimate Program, than we ask that you consider an expedited avenue for pilot participants. A pilot might need to launch by early 2022, before a Program-specific education or exam could become available.

Thank you for all of your very hard work and consideration,

Hon. Erica Yew  
Chair, CPPWG Pilot Implementation Subcommittee



Date: April 19, 2021

To: California Paraprofessional Program Working Group

From: Carolin Shining, Chair, Julia Brynelson, Steven Fleischman, Stephen Hamilton, Amos Hartston, Nicole Robinson, Hon. Erica Yew

Subject: Recommendations for Consumer Debt and General Civil Practice Areas

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program.

Subsequent to its April 21, 2020, meeting, the CPPWG established a number of practice area specific subcommittees including Consumer Debt and General Civil. These subcommittees met through August 2020. At the July 2020 CPPWG meeting there was a decision to merge the Consumer Debt & General Civil Subcommittees. This action was not actually implemented, however; only Consumer Debt issues were addressed between the Working Group's July and August meetings. At its August 2020 meeting the CPPWG decided to put practice area selection on hold and instead transition to the topics of paraprofessional licensing, regulation, and discipline. The final memos submitted by the Consumer Debt and General Civil Subcommittees to the CPPWG are provided as Attachments A and B.

This memorandum provides a brief discussion of the pre-hiatus work of the Consumer Debt and General Civil Subcommittees, followed by the joint Subcommittee's recommendations on all outstanding issues under its combined purview. A minority report, prepared by Subcommittee Chair Carolin Shining, follows the presentation of recommended resolutions.

## **BACKGROUND**

### **CONSUMER DEBT RELATED TOPICS**

The Consumer Debt Subcommittee was tasked with studying consumer debt related legal practice areas with the goal of generating recommendations regarding inclusion or exclusion of specific subtopics in the paraprofessional program.

The Consumer Debt Subcommittee's deliberations were grounded in the findings of the California Justice Gap Study (JGS). The JGS results for the Consumer Debt practice area identified the following specific Consumer Debt related needs:

- Identity theft;
- Unfair or deceptive lending practices;
- Credit repair services;
- Payday/short-term lenders;
- Fines and fees from criminal or juvenile cases;
- Creditor/collection agency harassment;
- Car repossession or defect/warranty issues;
- Bankruptcy;
- Wage garnishment; and
- Utility cutoff due to nonpayment or billing dispute

The Consumer Debt Subcommittee presented its initial recommendations to the CPPWG at its August 2020 meeting. Those recommendations reflected initial decisions to exclude several subtopics within the Consumer Debt practice area:

- Bankruptcy;
- Identity theft;
- Unfair or deceptive lending practices;
- Problems with credit repair services;
- Payday/short-term lenders;
- Fines and fees from criminal or juvenile cases; and
- Car repossession or defect/warranty issues.

The following Consumer Debt subtopics were identified for further study, with no final recommendations generated prior to the transition of the Working Group to the topics of licensing, regulation, and discipline subsequent to the August 2020 CPPWG meeting:

- Creditor/collection agency harassment;
- Wage garnishment; and
- Utility shutoff.

### **GENERAL CIVIL TOPICS**

The General Civil Subcommittee was unable to use the JGS to develop a complete list of potential subtopics for inclusion in the paraprofessional program. Instead, the General Civil Subcommittee reviewed the Judicial Branch Statistical Information System (JBSIS) manual to establish a definition of cases considered to be in the General Civil category. The following case types are included in the General Civil category in the JBSIS manual:

- Personal injury/property damage/wrongful death
- Tort
- Employment
- Contract
- Real Property
- Unlawful Detainer
- Judicial Review
- Complex litigation
- Small claims appeal
- Enforcement of Judgment
- Other Civil (including civil harassment and name change)

Given the breadth and range of the General Civil practice area, the fact that other CPPWG subcommittees were addressing some of the JBSIS Civil case types, and the desire to focus on areas where access to legal services is limited, the General Civil Subcommittee ruled out a number of potential subtopics. At its June 2020 meeting, the Working Group resolved to continue consideration of the following General Civil subtopics:

- Legal advice regarding preparation of affirmative and responsive pleadings in civil harassment proceedings;
- Representation of debtors in enforcement of judgment proceedings and advice and representation related to debt collection;
- Enforcement of small claims court judgments; and
- Representation of creditors in wage and hour claims in limited jurisdiction cases.

Subsequent to that meeting, civil harassment proceedings were added to the scope of areas to be considered by the Family Law Subcommittee.

### **2021 RESUMPTION OF PRACTICE AREA SUBCOMMITTEES: GENERAL CIVIL AND CONSUMER DEBT**

The combined Subcommittee met on March 2, 2021, and identified the following as outstanding areas for recommended inclusion or exclusion as follows:

- Representation of debtors in enforcement of judgment proceedings and advice and representation related to debt collection;
- Creditor harassment;

- Enforcement of small claims court judgments;
- Representation of creditors in wage and hour claims in limited jurisdiction cases;
- Wage garnishment; and
- Utility shut offs

The Subcommittee determined that the topic of representation of creditors in enforcement of wage and hour judgments should be addressed by the Employment and Income Maintenance Subcommittee, and the issue was forwarded to that group accordingly.

Recommendations for each of the remaining topics are outlined below.

### **CONSUMER DEBT, INCLUDING REPRESENTATION OF DEBTORS IN COLLECTIONS MATTERS AND CREDITOR HARASSMENT**

The Subcommittee heard from a number of practitioners in the consumer debt space including Judge Noël Wise, Alameda County Superior Court, Mr. Abbas Kazerounian, Kazerouni Law Group, Ms. Leigh Ferrin, Public Law Center, and Mr. Hoon Chun, Los Angeles County District Attorney's Office. In addition to formal presenters, the Subcommittee received public comment from several practitioners in the consumer debt space.

The various presenters educated the Subcommittee about the interplay between what had been previously viewed as fairly distinct subtopics within the broad Consumer Debt practice area, explaining that affirmative creditor harassment cases often arise from debt collection matters. The Subcommittee heard from some presenters that the vast majority of collections matters proceed by default in the superior courts, and that debtors would benefit from legal representation. Presenters shared a view that there can be a myriad of state and federal statutes and regulations at play in consumer debt matters, and that potential counter claims, some state, some federal, can materially benefit a debtor and require a high degree of specialized knowledge to access. Because of the complexity and the potential availability of counter claims, some of which might trigger removal to federal court where a paraprofessional would not be authorized to represent clients, there were very different views on the appropriateness of paraprofessional representation in this area. Some presenters felt that it would be possible to develop a check list or intake tool that could parse out the more complex cases that should be sent to attorneys; the majority did not. Judge Wise shared that in her role handling virtually all consumer debt matters that do not go to trial, she rarely sees any of these cross-complaints being raised. Further, federal filings data reviewed by the Subcommittee reflect a relatively low volume of consumer debt related matters being filed in that venue.

With respect to creditor harassment, as noted above, there was also general consensus that the multiple federal and state statutes at play are very complicated and difficult to master, and that affirmative litigation is often required to access available remedies.

The Subcommittee learned however that there are relatively simple prelitigation and communication activities that can be employed to halt some of the more aggressive telephone-related debt collection practices and to attempt to settle underlying debt.

After considering all of the subject matter expert feedback and information received, the Subcommittee took a series of votes as follows:

Resolved, that legal paraprofessionals may represent individual debtors in limited jurisdiction Consumer Debt proceedings but for the following excluded activities:

- Responding to or preparing substantive motions including anti-SLAPP motions and motions for summary judgment;
- Participating in trial setting or pretrial conferences; and
- Representing clients in trials, both jury and bench trials.

(5 Ayes, 1 Nay)

Resolved, that the following Creditor Harassment activities be included and excluded from the paraprofessional program:

Included:

- Prelitigation cease and desist and prove-up letters; and
- Prelitigation negotiation of settlements, including payment plans

Excluded:

- All superior court litigation

(4 Ayes, 1 Nay)

#### **ADDITIONAL NARRATIVE SUBMITTED BY SUBCOMMITTEE MEMBER STEVEN FLEISCHMAN:**

##### **Consumer Debt, Including Representation of Debtors in Collections Matters and Creditor Harassment**

With respect to creditor harassment, such claims are governed by a myriad of federal statutes which create significant hurdles to allowing paraprofessionals to represent individuals in such cases. Because paraprofessionals will not be licensed to practice in federal courts, they will not be able to represent clients either in original filings in federal court (which experts testified is the norm for such claims) or if a federal claim is alleged in a state court complaint and then removed to federal court by the defendant. They would only be able to represent clients where such claims are asserted in a cross-complaint in state court. Per Judge Wise, in her experience it is extremely rare to see such cross-claims in limited jurisdiction cases.

Given the problems with federal jurisdiction and the complexity of the subject matter, the Subcommittee decided this was generally not an appropriate area for inclusion in the program. However, two types of common prelitigation letters were identified as appropriate for

paraprofessionals to prepare and send: (1) a cease and desist letter; and (2) a prove up letter asking that the creditor prove the validity of the alleged debt. The Subcommittee felt that representing clients in the preparation and sending of these letters was appropriate for inclusion in the program. To this we added pre-litigation settlement negotiations.

Consumer debt was the most difficult of the remaining areas to address. Many members of the Subcommittee felt that the statistical information available on the purported need in this area is sparse. 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 at p. 25.) Of the remaining 33 percent of respondents, no attempt was made to determine if they tried to find an attorney to represent them (in a consumer debt matter or otherwise) and was not able to find an attorney to represent them. 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 any individual who attempted to locate an attorney and could not, let alone in the area of consumer debt. This information is further borne out by the fact that the vast majority of consumer debt cases (estimated at over 95 percent) are resolved by a default being taken against the consumer/defendant.

One subject matter expert presenter testified that his law firm will represent a consumer in these cases anywhere in the state, from beginning through trial, for a modest flat fee. There is no reason to believe that this does not represent the market value for legal services in this area. Thus, if a consumer can hire competent legal counsel for a modest flat fee, it is questionable whether a consumer could hire a paraprofessional for less money and be better off.

On the other hand, there is no doubt that the vast majority of individual debtors in these cases are either self-represented or simply allow their default to be taken. So, the status quo is not acceptable either, at least in the view of some members of the subcommittee. Therefore, the Subcommittee agreed to include this area in the paraprofessional program with certain limitations: (1) limited to the representation of individual debtors in limited jurisdiction cases; (2) no representation in connection with substantive motions, including summary judgment motions and anti-SLAPP motions; (3) no trial setting or pretrial conferences (because judicial officers frequently want trial counsel to attend) and (4) no jury or bench trials.

#### **WAGE GARNISHMENT**

The Subcommittee was supported in its deliberations of this topic by Ms. Elizabeth Gonzalez, Public Law Center, who spoke to the Consumer Debt Subcommittee in 2020 and worked with State Bar staff in 2021 to delineate wage garnishment related tasks.

From the 2020 discussion the Subcommittee was aware of several potential complexities in wage garnishment work including:

- Service problems are common; even if the underlying judgment was not properly served, filing a Claim of Exemption (COE) and appearing at a hearing may waive the ability to bring a motion to quash and waive personal jurisdiction objections.
- Wage garnishment should not be effectuated if defendant income is below statutory income thresholds
  - If the employer is familiar with threshold rules, wage garnishment should not be initiated. If a garnishment is initiated nonetheless, and the debtor files a COE, a court may order a payment despite the income threshold law.

Subcommittee members raised several issues and concerns during the 2021 consideration of the wage garnishment practice area. First, the Subcommittee configuration has changed since the initial review of this topic last summer, resulting in varying levels of member familiarity with the wage garnishment topic. Second, while Subcommittee members generally felt that paraprofessionals could assist defendants in completing the requisite forms, there were concerns expressed by some Subcommittee members about paraprofessionals' ability to effectively advocate in court on behalf of individuals who are the subject of wage garnishments. The fact that the Family Law Subcommittee's April 19, 2021, recommendation to the CPPWG would include wage garnishment as an authorized activity was also discussed. With these considerations in mind, the Subcommittee passed the following resolution:

Resolved, that wage garnishment, except in the Family Law practice area, will be excluded from the paraprofessional program. (4 Ayes, 1 Nay)

The Subcommittee did agree to revisit the wage garnishment issue as needed to ensure the decision to exclude, other than in the area of Family Law, does not inadvertently conflict with the Subcommittee's recommendation on the judgment enforcement practice area, outlined below.

#### **UTILITY SHUTOFF**

During its deliberations in 2020, the Consumer Debt Subcommittee heard from Ms. Gabriela Sandoval with TURN. TURN (The Utility Reform Network) champions the cleanest energy and highest quality phone service at the lowest prices possible for residential customers, low-income households, and small businesses through legal advocacy, state and federal policy development, and community organizing throughout California. TURN provides services to consumers experiencing utility shutoffs in those parts of the state that are served by private (vs. municipal) utilities. TURN provides these services free of charge to all consumers served by private utilities, regardless of income. TURN does not advertise this particular aspect of its services because of capacity concerns; there is no counterpart to TURN in the municipal utility space.

Staff followed up with TURN to further explore the utility shutoff issue in March 2021. Staff presented the following to the Subcommittee pursuant to that discussion:

- Most utility shutoffs are for \$500 or less. Given the frequently low monetary value of unpaid bills in utility shutoff matters, the funds that a consumer might pay a paraprofessional to address the shutoff would likely be sufficient to restore utility service.
- There are other unmet utility related needs where the paraprofessionals could be useful including:
  - Utility equipment damaging homes (falling on homes);
  - Power surges damaging consumers' appliance;
  - Customers being required to use utility service for tree work around power lines and then being billed for that work at exorbitant rates; and
  - Impact of rolling shutoffs now being implemented for fire mitigation purposes.

At its April 8, 2021, meeting, the Subcommittee determined that utility shutoffs would generally not be a viable practice area for inclusion in the paraprofessional program due to the low dollar values involved in these matters. There was however a concern that a blanket exclusion would inadvertently limit paraprofessionals from addressing utility shutoff issues as they arise in landlord/tenant disputes. The following resolution reflects the Subcommittee's position on this topic:

Resolved, that utility shutoff for nonpayment of utility services, except in landlord-tenant disputes, will be excluded from the paraprofessional program. (4 Ayes, 1 Nay)

#### **ENFORCEMENT OF JUDGMENTS**

Over the course of its deliberations in 2020 and 2021, the Subcommittee learned about the difficulties that many individuals have in enforcing judgments. Other CPPWG subcommittees have explicitly addressed the need for legal services in this area. The Subcommittee recognized unmet legal needs in this area, but expressed concerns about an overly expansive authorization for paraprofessional practice being taken advantage of by large institutional creditors who would find a way to assign debt to individuals who could then hire paraprofessionals. With the understanding that unlimited jurisdiction matters had previously been determined to be outside the allowable scope of paraprofessional practice, the Subcommittee determined that the problem of debt assignment was most likely to arise in limited jurisdiction (as opposed to small claims) proceedings. With this background in mind, the Subcommittee adopted the following resolution:

Resolved, that legal paraprofessionals may represent natural persons in enforcement of small claims court judgments, and natural person debtors in limited jurisdiction post-judgment enforcement proceedings. (4 Ayes, 1 Nay)

Although Mr. Hartston voted to approve the resolution, his preferred approach would be to allow paraprofessionals to represent both individual debtors and individual creditors in enforcement of judgement proceedings related to limited jurisdiction civil judgments.

## **RECOMMEND RESOLUTIONS**

**RESOLVED**, that legal paraprofessionals may represent individual debtors in limited jurisdiction Consumer Debt proceedings but for the following excluded activities:

- Responding to or preparing substantive motions including anti-SLAPP motions and motions for summary judgment;
- Participating in trial setting or pretrial conferences; and
- Representing clients in trials, both jury and bench trials.

**RESOLVED**, that the following Creditor Harassment activities be included and excluded from the paraprofessional program:

Included:

- Prelitigation cease and desist and prove-up letters; and
- Prelitigation negotiation of settlements, including payment plans.

Excluded:

- All superior court litigation

**RESOLVED**, that wage garnishment, except in the Family Law practice area, will be excluded from the paraprofessional program.

**RESOLVED**, that utility shutoff for non-payment of utility services, except in landlord-tenant disputes, will be excluded from the paraprofessional program.

**RESOLVED**, that legal paraprofessionals may represent natural persons in enforcement of small claims court judgments, and natural person debtors in limited jurisdiction post-judgment enforcement proceedings.

## **MINORITY REPORT SUBMITTED BY CAROLIN K. SHINING, CHAIR OF THE SUBCOMMITTEE**

With regard to my votes which did not approve any of the recommended resolution, the following is a partial summary of my decision not to support the recommendations:

On March 26, 2021, a vote was taken with regard to the level of “in-court” representation by Paraprofessionals by the entire Working Group. The vote resulted in a “default” position of the entire Working Group that paraprofessionals can represent consumers using “full in-court representation” except for jury trials. Using this “default position”, each subject area

subcommittee was tasked to return and then reconsider the areas that should be “excluded” from the “default” position.

This new resolution calls into question the process of extensive, months-long subcommittee work. This work was referred to as “deep dives” into the appropriateness of areas in the program. The subcommittees were presented with extensive public comment and experts in specific areas. No “default” position was presented, and therefore, the discussions did not include any consideration of what “full in court representation” should entail.

Indeed, a report of the Subcommittee was prepared for the August 25, 2021, meeting. Would that report have resulted in different findings if the committee’s position on “full court representation” had been known? The committee was given only a few hours to consider this shift in the program’s direction. The discussion as to what “full court” or “partial in court” representation would or should include.

A common refrain during our deliberations has been “isn’t someone better than no one”? The concept is that having nonlawyer appear in court as counsel for a consumer would be “better than nothing.” If the now stated “full in-court representation” position was known in consumer debt and general civil issues, I believe that this committee’s work prior to March 26 would have been very different. It is unfortunate that the March 26, 2021 resolution’s timing came as numerous subcommittees had not finalized their months of work. As a result, I am unable to support the recommended resolutions and request that this work be reconsidered pending the definition of what “full court presentation” will entail under the licensing, regulation, disciplinary and pilot subcommittees.



Date: August 25, 2020

To: California Paraprofessional Program Working Group

From: Julia Brynelson, Steven Fleischman , Stephen Hamilton, Amos Hartston, Carolin Shining, Hon. Erica Yew

Subject: Consideration of Consumer Debt as a Practice Area to Be Included in a Paraprofessional Program

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### Executive Summary

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program.

### Discussion

At its first meeting on April 21, the CPPWG discussed potential practice areas for program inclusion. One of these areas was Consumer Debt. At its July 13 meeting, six members of the CPPWG volunteered to serve on a Consumer Debt subcommittee tasked with studying this practice area with the goal of generating recommendations regarding inclusion or exclusion of specific subtopics in this practice area for consideration by the full body at its next meeting.

The Consumer Debt subcommittee, comprised of the authors of this memorandum, is considering the following in conducting our assessment of Consumer Debt Law as a potential practice area for inclusion in a paraprofessional program:

- Consumer debt-related questions and responses included in the California Justice Gap Study;
- Information gathered from representatives of other state paraprofessional programs where consumer debt-related matters are authorized; and

## Consideration of Consumer Debt as a Practice Area to Be Included in a Paraprofessional Program

August 25, 2020

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- Information obtained from subject matter experts/practitioners in the field.

### **California Justice Gap Study**

The California Justice Gap Study included questions about financial issues, including questions about problems getting credit because of identity theft, being the target of unfair lending practices or internet scams, problems with debt reduction or credit repair services, problems with terms for repayments of payday lenders, problems related to legal financial obligations, harassment by creditors, problems with pay for or repossession of a car, filing for bankruptcy, garnished wages, and disconnected utilities due to nonpayment or a billing dispute.

These issues, categorized as Consumer Debt, were the second-most common type of legal problem experienced by Californians at all income levels, with 21 percent of all households reporting at least one Consumer Debt -related problem.

The California Justice Gap Study results for the Consumer Debt practice area identified the following specific legal needs for this population:

- Identity theft
- Unfair or deceptive lending practices
- Credit repair services
- Payday/short-term lenders
- Fines and fees from criminal or juvenile cases
- Creditor/collection agency harassment
- Car repossession or defect/warranty issues
- Bankruptcy
- Wage garnishment
- Utility cutoff due to nonpayment or billing dispute

Of note, two additional or related topics that fall under Consumer Debt—representation of debtors in enforcement of judgment proceedings, and advice and representation related to debt collection—were previously addressed by the Working Group at its June 30 meeting pursuant to recommendations received regarding the General Civil practice area. The present subcommittee has not yet addressed these topics as they relate to the Consumer Debt areas under consideration. Pursuant to vote by the Working Group, the Consumer Debt and General Civil subcommittees have been combined to move forward on the related areas more efficiently.

### **Subject Matter Experts**

We met with the following attorneys who practice in the consumer protection/finance area: Mr. Noah Zinner, Bay Area Legal Aid; Ms. Leigh Ferrin, Public Law Center; Ms. Elizabeth

## Consideration of Consumer Debt as a Practice Area to Be Included in a Paraprofessional Program

August 25, 2020

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Gonzalez, Public Law Center; Ms. Gabriela Sandoval, The Utility Reform Network (TURN); Mr. Timothy Blood; Mr. Robert Hyde; Mr. David Kaminski; and Mr. Abbas Kazerounian.

### **Feedback Received From Other States**

Utah Supreme Court Justice Deno Himonas spoke with the subcommittee about the Utah Licensed Paralegal Practitioner (LPP) program. Consumer finance related matters, such as debt collection matters in which the dollar amount in issue does not exceed statutory limit for small claims (\$11,000), are authorized LPP activities in the State of Utah. Justice Himonas advised us that Utah currently has four licensed paraprofessionals and hopes to have another handful licensed in the near future.

Mr. Dave Byers, Administrative Director of the Courts in Arizona, spoke to the subcommittee about the Arizona Limited License Legal Practitioners (LLL) program, which is currently being developed. He explained that the rules for the program, which are expected to be implemented later this year, will allow LLLs to practice independently of lawyers and provide representation in any civil matter (including, but not limited to, debt cases) in limited jurisdiction cases. Neither Justice Himonas nor Mr. Byers indicated whether their states permit paraprofessionals to argue jury trials.

### **Status Update**

The subcommittee made decisions to exclude several subtopics within the Consumer Debt practice area:

- Bankruptcy;
- Identity theft;
- Unfair or deceptive lending practices;
- Problems with credit repair services;
- Payday/short-term lenders;
- Fines and fees from criminal or juvenile cases; and
- Car repossession or defect/warranty issues.

These decisions were based on various considerations, in some cases including complexity, the consequences of error in the initial stages of the proceedings, and overlapping federal court jurisdiction.

The balance of our subcommittee deliberations focused on the following remaining issues:

- Creditor/collection agency harassment;
- Wage garnishment; and
- Utility cutoff.

Following is a summary of the subject matter expert feedback received regarding some of these remaining subtopics:

**Creditor/Collection Agency Harassment**

Justice Himonas indicated that the Utah LPP includes consumer debt as an authorized activity because of the great consumer need in this area. Justice Himonas explained that the Utah program is forms-driven; essentially, LPPs can offer advice in any area in which approved court forms exist. He indicated that he is not aware of whether forms have been adopted specifically addressing creditor/collection agency harassment; in his view, the fact that there are potential federal remedies available to some consumers experiencing these problems should not preclude paraprofessional representation. LPPs are bound by an ethical obligation that requires them to advise the client if a case should be heard in federal court, and Justice Himonas believes this requirement provides sufficient protection.

Mr. Byers echoed Justice Himonas' view, stating that a majority of these cases are not complex and that there is an overarching need to increase access to legal services that should inform this work generally.

Mr. Hyde, a consumer rights attorney, asserted that consumer law is not easy to teach or quickly learn, even with a law degree or legal background and experience. He stated that the biggest problem he has identified in this area is that consumers are generally unaware of their rights and possible remedies.

Mr. Kaminski, a civil litigation attorney with practice focused on the defense of banks, creditors, and collection agencies, agreed with Mr. Hyde's overall assertion and added that, even if some cases were simple enough to be handled by paraprofessionals, the majority are not; they are often filed in federal court and are very complex in nature.

Mr. Blood, a consumer protection attorney, stated that consumer law is a very complex area and expressed that, while there are areas where nonattorneys could assist, the scope of their practice would have to be very limited.

Ms. Ferrin, Director of Litigation and Pro Bono at the Public Law Center, expressed mixed feelings about having paraprofessionals practice in this area. She stated that some of the topics and tasks are very complicated and beyond the scope of paraprofessionals; however, narrowly defined tasks and limited activities may be appropriate for a paraprofessional to perform.

### **Wage Garnishment**

Ms. Gonzalez and Mr. Kazerounian provided the subcommittee with a detailed overview of the wage garnishment process. They explained that while some steps in the process are form-driven and relatively simple and straightforward, there are critical timelines that must be adhered to, and a host of issues related to the underlying debt and consumer protections that sometimes are at issue. They asserted that an in-depth knowledge of the law in this area, as well as the interplay between various areas of consumer protection law, are needed in order to appropriately identify possible affirmative claims against the creditor in these matters beyond responding to the wage garnishment order. Their shared view was that the consumer debt area is not an appropriate area for paraprofessional licensure.

### **Utility Cutoff**

Ms. Gabriela Sandoval, Director of Strategic Initiatives at The Utility Reform Network (TURN), explained that TURN, a consumer advocacy organization, provides trainings for community advocates around the state who help consumers with complaints against utility companies. Some topics covered in the trainings are: how to stop utility shutoffs, reestablishing service, and setting up payment plans. Ms. Sandoval stated that they regularly work with community advocates that are nonattorneys.

### **Next Steps**

The subcommittee intends to continue with its work with regard to creditor/collection agency harassment, wage garnishment, and utility cutoff subsequent to the August 25 meeting, developing a full set of recommendations for the remaining subtopics and tasks included in the Consumer Debt practice area.



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: June 30, 2020

To: California Paraprofessional Program Working Group

From: Hon. Erica Yew and Steven Fleischman

Subject: Consideration of General Civil a Practice Area to be included in a Paraprofessionals Program

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### Executive Summary

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program.

### Discussion

At its first meeting on April 21, the CPPWG discussed potential practice areas for program inclusion. While there was agreement with regard to including certain practice areas for additional consideration and excluding others, several practice areas were deemed "wobblers," meaning that additional information was required before a decision could be made regarding their status. Members of the CPPWG volunteered to study each of the wobbler areas with the goal of generating recommendations regarding ongoing consideration from the program for review by the full body at its next meeting.

The present two-person team assessed the General Civil practice area. In generating our recommendations, outlined below, we considered the following data points:

- The California Courts Judicial Branch Statistical Information System (JBSIS) Manual;
- California courts data on self-represented litigants;

- California Attorney Practice Analysis; and
- Information from judges who hear civil cases.

### **JBSIS Manual**

We reviewed the Judicial Branch Statistical Information System (JBSIS) manual to establish a definition that would encompass cases to be considered in the General Civil category. The following case types are included in the General Civil category in the JBSIS manual:

- Personal injury/property damage/wrongful death
- Tort
- Employment
- Contract
- Real Property
- Unlawful Detainer
- Judicial Review
- Complex litigation
- Small claims appeal
- Enforcement of Judgment<sup>1</sup>
- Other Civil (including civil harassment and name change)

### **California Attorney Practice Analysis (CAPA)**

The CAPA survey asked attorneys to rate the depth of knowledge required to complete tasks in specific legal areas, as well as the criticality of proficiency in the tasks and legal topics (i.e., the degree of harm that may be inflicted upon clients and/or the general public if an attorney is not proficient). The CAPA study created a composite score to measure both criticality and frequency (i.e., the importance of being proficient and the frequency in performing tasks in an area) for each practice area. The composite score for Civil Procedure is 20.7, the highest among all knowledge areas. Another relevant rating is regarding the depth of knowledge (DOK) required to perform the tasks with competence. On a 5-point scale, the DOK score for Civil Procedure is 3.7, near the high end of the metric.

Based on the CAPA study, the General Civil practice group concluded that the potential for problems created by allowing nonlawyers to practice law was potentially highest in traditional litigation pending in Superior Courts. Therefore, the General Civil practice group concluded that representation by nonlawyers should be carefully circumscribed to those areas in which there is a demonstrated need for representation that the existing bar is not meeting and where there are fewer procedural issues to be handled by potential paraprofessionals.

Although not addressed by the CAPA survey, one member of the General Civil group was concerned that allowing paraprofessionals to practice in areas where there is a well-established

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<sup>1</sup> While our discussions referred to consumer debt, the JBSIS manual list Enforcement of Judgment in the definition of Civil case types.

and existing bar would exacerbate the problem of “runner and cappers,” which are prohibited by Business and Professions Code sections 6151, et seq.

### **California Courts Self-Represented Litigant Data**

The Judicial Council collects data, through JBSIS, regarding the incidence of self-representation in the courts; detailed case type information is provided by some courts. Of the reporting courts, the data suggests that between 3 (Superior Court, County of Inyo) and 92 percent (Superior Court, County of San Joaquin) of plaintiffs and between 3 (Superior Court, County of Santa Clara) and 55 percent (Superior Court, County of Mariposa) of respondents are self-represented plaintiffs in matters categorized as civil.<sup>2</sup>

### **Judges Who Hear Civil Cases**

We held a discussion with Judge Daniel Buckley from the Los Angeles Superior Court, Judge Michael Harper from the Trinity Superior Court and Judge Beth McGowen of the Santa Clara Superior Court, to learn about their experiences with civil cases and areas of need, and what type of advice and assistance might be appropriate for nonattorneys to provide. These judges were intentionally selected so that we could garner the perspectives from a large, medium, and small size court.

### **Recommendations**

From the onset, we recognized the breadth and range of the General Civil practice area; given the working group’s focus on increasing access to legal services, we ruled out a number of areas within General Civil that do not present these types of access concerns. This resulted in a limited list of potential areas for inclusion: civil harassment, enforcement of judgments, and consumer protection.

- **Civil Harassment:** Our discussion regarding this particular area within General Civil was limited; generally, though, we support measures to ensure broad access to protective orders and agree that preparation of affirmative and responsive civil harassment pleadings is appropriate work for a trained nonlawyer professional.
- **Enforcement of Judgments:** Feedback garnered from our conversation with the three judges noted above confirmed that there is a need for additional representation resources in enforcement of judgment proceedings. Our discussion centered around the practical reality that in most judgment enforcement proceedings, creditors (e.g., financial institutions) are nearly universally represented by counsel and debtors are much less likely to be; as a result, our general position is that nonlawyer paraprofessionals should be authorized to only represent debtors, as opposed to creditors, in enforcement of judgment proceedings. Finally, we did not see any need to

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<sup>2</sup> Unfortunately, data broken down by specific case type within the civil category is not available. It should also be noted that several of the courts with the highest number of filings, including Los Angeles, Sacramento, San Diego, and San Francisco, do not report information about self-represented litigants.

allow potential paraprofessionals to represent financial institutions and, thereby, decrease the cost of legal services for those entities. We did identify one needed exception to this recommended limitation, however, as related to wage and hour cases. These matters are often very low in total dollar value and as a result it is difficult for workers to collect on judgments; we accordingly recommend that nonattorney paraprofessional be authorized to represent “creditors” in wage and hour matters. Our recommendation in this area is to allow potential paraprofessionals to handle matters only in limited jurisdiction cases (under \$25,000).

- **Consumer Protection:** This is a broad area, and our discussion focused on whether small value consumer protection cases, such as lemon law, should be included. Based on our discussion with the judges, we agreed that this area should **not** be included, as cases are complex, and that legal representation is readily available. Our discussion did not extend to collection matters, as this area is being included under the broader topic of enforcement of judgments discussed above.

All of these recommendations are limited to allowing paraprofessionals to make appearances in superior courts.

A summary of our recommendations with respect to each JBSIS General Civil area is outlined in the table below.

JBSIS Case Definition	Recommendation	Rationale
Personal injury/property damage/wrongful death (e.g., auto, asbestos, product liability, medical malpractice)	Exclude	<ul style="list-style-type: none"> <li>• Complex</li> <li>• Sufficient attorney representation available</li> </ul>
Tort (e.g., business, civil rights, defamation, fraud, intellectual property, professional negligence)	Exclude	<ul style="list-style-type: none"> <li>• Complex</li> <li>• Sufficient attorney representation available</li> </ul>
Employment (e.g., wrongful termination)	N/A	Separately addressed by CPPWG
Contract (e.g., breach of contract/warranty, collections, insurance coverage)	Exclude	<ul style="list-style-type: none"> <li>• Complex</li> <li>• Sufficient attorney representation available</li> </ul>
Real Property (e.g., eminent domain/inverse condemnation, wrongful eviction)	Exclude <sup>3</sup>	Complex
Unlawful Detainer	TBD	Separately addressed by CPPWG

<sup>3</sup> Some aspects of real property cases are being considered under a separate recommendation.

Consideration of General Civil a Practice Area to be included in a Paraprofessionals Program

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Judicial Review (e.g., writ of mandate, asset forfeiture)	Exclude	Complex
Complex litigation	Exclude	Complex
Small claims appeal	Exclude	Representation statutorily precluded
Enforcement of Judgment	Include	See discussion above
Other Civil – Civil Harassment	Include	See discussion above
Other Civil – Name and Gender Changes	N/A	Separately address by CPPWG



Date: April 19, 2021

To: California Paraprofessional Program Working Group

From: Judge Erica Yew, Chair, Steven Fleischman, Carolin Shining, Ira Spiro

Subject: Recommendations for Employment and Income Maintenance Practice Areas,  
California Paraprofessional Program

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). At its first meeting on April 21, 2020, the CPPWG discussed potential practice areas for program inclusion. These areas included Employment Law and Income Maintenance proceedings. Two distinct subcommittees were initially established to explore each of these topics. The final memos submitted by these two subcommittees to the CPPWG are reflected in Attachment A and B.

Other than the Family Law Subcommittee, practice area focused subcommittees were suspended after the CPPWG's August 2020 meeting as the Working Group decided to pivot to the development of licensing, regulation, and discipline requirements and parameters for the new class of licensees.

In March 2021, a now combined Employment and Income Maintenance Subcommittee resumed review of all outstanding issues under the purview of the joint body. The recommendations of this Subcommittee are now being presented for CPPWG consideration and approval.

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### DISCUSSION

The Employment and Income Maintenance Subcommittee (Subcommittee) identified the following as topics remaining to be addressed at its first meeting on March 2, 2021:

- Representation in wage and hour claims, Division of Labor Standards Enforcement (DLSE)

- Representation in unemployment insurance benefit hearings, Employment Development Department (EDD)
- Other public benefits administrative hearings

At its first meeting on March 5, 2021, the General Civil and Consumer Debt Subcommittee requested that the present Subcommittee assume responsibility for consideration of the potential paraprofessional practice area of DLSE wage and hour judgment enforcement. The Subcommittee agreed that this topic would be appropriate for its consideration.

### **WAGE AND HOUR CLAIMS BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT**

To facilitate its assessment of DLSE proceedings the Subcommittee heard from a number of subject matter experts including Mr. Lloyd Aubry, Morrison & Foerster, Ms. Danielle Jones, Stanford Community Law Clinic, Ms. Jennifer Lutz, Pettit Kohn Ingrassia Lutz & Dolan, Ms. Ruth Silver-Taube, Santa Clara University School of Law, and Judge Socrates Manoukian, Santa Clara County Superior Court. In addition to these invited speakers, the Subcommittee heard extensive public comment from Employment Law practitioners.

These experts facilitated a solid base of understanding among Subcommittee members about the DLSE process. Mr. Aubry, who previously served as State Labor Commissioner, indicated that the DLSE process is designed to be informal and worker friendly. Non-attorneys are allowed to participate/represent parties in DLSE proceedings as is the case in all state administrative agency proceedings. According to Mr. Aubry, DLSE hearing officers are often non-lawyers. Mr. Aubry indicated that workers having additional support in gathering the documentation needed for DLSE review would be useful. Ms. Jones echoed this sentiment, indicating that while the DLSE process is worker friendly, workers need assistance in pulling together the documents they need to support their claims, and in doing the calculations of amounts owed. Ms. Jones shared her experiences training law students to represent workers in DLSE proceedings, indicating that she has successfully trained students to do the work independently in one academic quarter. Both Mr. Aubry and Ms. Jones felt that trained legal paraprofessionals could responsibly provide legal advice to workers in the DLSE setting.

Ms. Ruth Silver-Taube and Ms. Lutz shared a counter view. Ms. Silver-Taube indicated that there is a robust legal services infrastructure available to represent workers, that the work can be complex, with cultural and linguistic competency issues amplifying that complexity, and that the need to issue spot requires a significant level of knowledge and experience. While, Ms. Silver-Taube, like Ms. Jones, trains students to do wage and hour work, she does not feel that they are capable of doing the work absent attorney supervision. Ms. Lutz, in her role as employer's counsel, indicated that she does not observe a lack of attorneys willing to take employee cases, even for low dollar amounts; according to Ms. Lutz, there are financial incentives for attorneys to take these cases and therefore there is no need to license paraprofessionals to represent workers in wage and hour claims. Both Ms. Silver-Taube and Ms. Lutz also emphasized that the law in wage and hour matters is continually changing. In sum, there was a lack of consensus among the subject matter experts that present to the

Subcommittee regarding both wage and hour proceeding complexity and the availability of the legal services and private bar to fully address all workers' needs.

#### **ENFORCEMENT OF DLSE WAGE AND HOUR JUDGMENTS**

The Subcommittee heard about the challenges in enforcing wage and hour judgments from virtually all subject matter experts; one of these presenters made the Subcommittee aware of a 2015 report authored by the National Employment Law Project and the UCLA Labor Center which found that only 17 percent of wage and hour judgments in California are actually collected. While the Subcommittee learned that the DLSE has established a judgment enforcement unit, the gap between the resources available through that avenue and the need was uniformly emphasized.

#### **UNEMPLOYMENT INSURANCE AND PUBLIC BENEFITS**

The Subcommittee reviewed past resolutions pertinent to these topics in particular the June 2020 CPPWG resolution regarding the Income Maintenance practice area:

Resolved that the California Paraprofessional Working Group makes the following recommendation regarding ongoing consideration of income maintenance as a practice area for inclusion in a California paraprofessional program: Paraprofessionals are authorized to provide full scope representation at the admin agency level where nonattorneys are authorized to represent parties in administrative agency proceedings by state law. The specific details of allowed activity will be discussed at a later date.

The Subcommittee determined that there was not a need to separately assess unemployment insurance and other public benefits matters in light of previous Working Group action, and with the understanding that certain types of administrative agency proceedings had been explicitly excluded (workers' compensation, for example). Via the present agenda item, the Subcommittee then simply seeks to clarify the specific types of administrative agency proceedings covered by the CPPWG's June 2020 resolution.

#### **WAGE AND HOUR SUPERIOR COURT LITIGATION**

Much of the Subcommittee's time was focused on whether there was a need to allow paraprofessionals to represent individuals in wage and hour litigation in superior court. The statistical information available on the purported need in this area is sparse. 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 at p. 25). Of the remaining 33 percent of respondents, no attempt was made to determine if they tried to find an attorney to represent them (in a wage and hour dispute or otherwise) and was not able to find an attorney to represent them. 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 any individual who attempted to locate an attorney and could not, let alone in the area of wage and hour disputes.

Nor was staff able to identify Judicial Council statistics demonstrating that there are a high number of self-represented litigants in this area, as there are, for example, in family law or unlawful detainer cases.

The Subcommittee heard from many speakers and members of the public indicating that the availability of statutory attorney fees incentivizes private attorneys to represent workers with small wage and hour disputes. The anecdotal evidence on whether there are cases too small for attorneys to take was mixed at best. Many speakers indicated that small cases are accepted; some indicated that they are not.

In addition, we heard from several speakers that wage and hour disputes are often combined with other employment-related claims, such as discrimination or wrongful termination, and those subjects have already been excluded from the program and approved by the full Working Group. Thus, allowing paraprofessionals to represent workers in wage and hour disputes might lead to them being hindered in their ability to pursue other claims.

There was also unanimity among the speakers that California wage and hour law is incredibly complex and would be difficult for paraprofessionals to substantively master.

At least one member of the Subcommittee (Steven Fleischman) is also concerned that many wage and hour claims are subject to motions to compel arbitration and that the law on this issue is very complex and constantly changing.

At the end of the day, for a variety of reasons, a majority of the Subcommittee concluded that wage and hour superior court litigation should be excluded from the program.

#### **VOTES AND RECOMMENDED RESOLUTIONS**

The Subcommittee voted on five resolutions at its March 22 meeting; each resolution, and corresponding vote count, is provided below, followed by those resolutions recommended by the Subcommittee for CPPWG adoption.

- Paraprofessionals will be authorized to represent claimants in Division of Labor Standards Enforcement (DLSE) proceedings. (Passed, unanimously)
- Paraprofessionals will be authorized to represent claimants in the enforcement of DLSE wage and hour judgments in limited jurisdiction superior court proceedings. (3 Ayes, 1 Abstain)
- Paraprofessionals will be authorized to represent parties in the enforcement of DLSE wage and hour judgments in limited and unlimited jurisdiction superior court proceedings. (3 Nays, 1 Aye)
- Paraprofessionals will be authorized to represent parties in wage and hour proceedings in limited jurisdiction superior court claims. (3 Nays, 1 Aye)

The Subcommittee recommends that the CPPWG adopt the following resolutions:

**RESOLVED**, that the CPPWG amends the resolution regarding Income Maintenance adopted at its June 30, 2020, meeting to read as follows: the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full scope representation at the state administrative agency level in the following proceedings:

- Wage and hour proceedings, Division of Labor Standards Enforcement;
- Unemployment insurance proceedings, Employment Development Department; and
- All proceedings relating to public benefits.

**FURTHER RESOLVED**, that legal paraprofessionals will be authorized to represent claimants in the enforcement of Division of Labor Standards Enforcement wage and hour judgments in limited jurisdiction superior court proceedings.

**ALTERNATE RESOLUTION PROPOSED BY IRA SPIRO**

**RESOLVED**, that legal professionals will be authorized to represent claimants in wage and hour claims in limited jurisdiction Superior Court cases but not in PAGA cases, class actions or representative actions, and only after advising the client to attempt to find a lawyer through the California Employment Lawyers Association website and receiving from the client a statement that the client did so but was unable to find a lawyer to represent them for the action.



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: June 30, 2020

To: California Paraprofessional Program Working Group

From: Steven Fleischman, Carolin Shining, Ira Spiro, and Judge Erica Yew

Subject: Consideration of Income Maintenance Practice Area to be included in a Paraprofessionals Program

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### Executive Summary

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### Discussion

At its first meeting on April 21, 2020, the CPPWG discussed potential practice areas for program inclusion. While there was agreement with regard to including certain practice areas for additional consideration and excluding others, several practice areas were deemed "wobblers," meaning that additional information was required before a decision could be made regarding their status. Members of the CPPWG volunteered to study each of the wobbler areas with the goal of generating recommendations regarding ongoing consideration for the program for review by the full body at its next meeting.

The present team assessed the Income Maintenance practice area. In generating our recommendations, outlined below, we considered the following:

- Income maintenance-related questions and responses included in the California Justice Gap Study;

## Consideration of Income Maintenance as a Practice Area to be included in a Paraprofessional Program

June 30, 2020

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- Information obtained from subject matter experts in the field of unemployment insurance;
- Information from an administrative law judge who hears workers' compensation cases;
- Review of administrative processes for public benefits, unemployment insurance, and workers' compensation; and
- An opinion issued by the State Bar's Office of General Counsel.

### California Justice Gap Study

The California Justice Gap Study included questions about income maintenance-related issues including questions asked about trouble receiving the earned income tax credit; the reduction or termination of state government income, food, disability or housing benefits; and the denial or termination of federal Supplemental Security Income, Social Security Disability income, or Social Security Survivors benefits. Certain problems in the California Justice Gap Study in the broad category of employment were considered by some of the members to be appropriate to include in the income maintenance category for the purpose of consideration by the CPPWG, specifically related to problems with workers' compensation and unemployment insurance claims.

CJGS results were generally categorized as follows:

<b>Top 3 legal needs, all Californians</b>	<b>Top 3 legal needs, Californians at or below 125% of FPL</b>	<b>Top 3 legal needs, Californians above 125% of FPL</b>
Top 3 areas for which legal help sought and received, all Californians	Top 3 legal needs for which legal help sought and received, Californians at or below 125% of FPL	Top 3 legal needs for which legal help sought and received, Californians above 125% of FPL
Top 3 legal needs with severe impact, all Californians	Top 3 legal needs with severe impact, Californians at or below 125% of FPL	Top 3 legal needs with severe impact, Californians above 125% of FPL

Income maintenance legal needs aligned with one of these categories: top 3 legal needs with severe impact, Californians at or below 125 percent of FPL. Employment issues were among the most commonly reported types of problems for Californians at or below 125 percent of FPL.

California Justice Gap Study results for the Income Maintenance practice area identified the following specific legal needs for this population:

- Being denied or terminated from federal Supplemental Security Income;
- Being told to pay back an overpayment for SSI, SSDI or Social Security Survivors benefits;
- Not being approved for or having income, food, disability, housing, or other state government assistance reduced or terminated;
- Being denied payments or medical, mental health, or vocational help for a job-related injury (workers' compensation); and

- Being denied unemployment benefits or unemployment benefits were stopped before they were supposed to.

### **Defining the Scope of Income Maintenance Practice Area**

As noted above, we have defined the broad category of Income Maintenance to include:

- SSI and SSDI: denial of eligibility or being told to pay back overpayments
- Public Benefits, including denial or termination
- Workers' compensation insurance
- Unemployment benefits

### **Subject Matter Expert**

Staff and Judge Yew met with Ms. Ruth Silver-Taube, who teaches the employment law clinic at Santa Clara University, which handles unemployment claims and wage and hour cases. She explained that nonlawyers can assist people with filing unemployment claims, as well as with representation at administrative appeals before the Unemployment Insurance Appeals Board. Free representation is generally available through legal aid programs, although not all those who apply for unemployment insurance qualify for legal aid services

### **Workers' Compensation Judge**

Judge Yew and Mr. Fleischman met with Judge Dora Padilla, who hears cases filed with the Workers' Compensation Appeals Board (WCAB). She explained that injured workers can readily find attorney representation, as statutory provisions provide for attorneys to be compensated based on a percentage of the claimant's settlement. Current procedures allow for paralegals, who work under an attorney's supervision, to communicate directly with the court and even represent clients in court proceedings, if acknowledgment of such representation is provided by the client. The Los Angeles workers' compensation court also allows for paralegals to represent injured workers in depositions. Lien claimants (e.g., hospitals, medical offices, medical equipment providers, etc.) may be represented by either attorneys or nonattorneys, for initial claims, reconsideration, and enforcement of judgments.

Judge Padilla was asked whether she would be in favor of paraprofessionals representing injured workers in administrative proceedings without an attorney's supervision. Judge Padilla expressed her view that she would **not** be comfortable with that change and that she prefers having the ability to be able to call in an attorney on a particular case if she was not comfortable with the paralegal's representation.

### **Review of Administrative Processes**

The administrative processes for public benefits, workers' compensation, and unemployment insurance are very similar: if an initial application or claim is denied, an appeal is filed with the administrative agency that manages the benefit or insurance. A second level of appeal is available through the agency's hearing body, before an administrative law judge. The final remedy is superior court review, via an administrative writ.

Before the superior court review stage all of these administrative processes currently allow for nonattorneys to represent the claimant in the proceedings themselves and, with the exception of representation in Social Security Administration proceedings, no training or certification is required for nonattorneys. However, the statutes and regulations that allow for this representation appear to be silent about the scope of allowable representation outside of the parameters of the hearings themselves.

### **Office of General Counsel Opinion**

The State Bar's Office of General Counsel (OGC) researched the question of what entity has authority to determine whether nonattorneys can represent parties to state administrative hearings, and found that, generally, the Legislature or the administrative agencies themselves (acting under the authority granted them by the Legislature) determine who may appear in administrative hearings. However, the scope of legal services nonattorney representatives can provide incident to the mere representation of parties before administrative tribunals is not clear. Potentially, the judiciary could have some role in regulation with respect to paraprofessionals providing services related to administrative hearings, including by providing clarity in this area. The Court could delineate activities that paraprofessionals could perform incident to appearing before administrative agencies without committing the unauthorized practice of law, where such representation is authorized by statute or regulation.

Staff inquired with the State Bar's Chief Trial Counsel (CTC) as to how nonattorneys who represent parties in admin hearings are viewed from an unauthorized practice of law perspective. The CTC's response mirrored that of the OGC, noting that there are several administrative hearing offices where a person is permitted to have a nonattorney represent them at the hearing, but that the regulations governing those hearings do not typically specify whether the nonattorney can or cannot provide any other services prior to or outside of the hearing. Where there is no clear guidance provided by the rule, where the nonattorney provides other services prior to or outside the hearing, the nonattorney may effectively be engaging in the unauthorized practice of law. If the goal of the CPPWG is to expand the areas of practice where nonattorneys can provide services to members of the public, the CTC recommends that the rules be clearly written to define exactly what services the nonattorney is permitted to provide. If the intent is to allow nonattorneys to provide services outside of the hearing itself, the rule should state that the nonattorney is allowed to provide advice or guidance prior to the hearing, decide what causes of action to raise, and what evidence and witnesses to present

### **Recommendation**

Our research found that nonlawyers are currently permitted to represent parties in administrative hearings for all categories included in the Income Maintenance practice area, and that it is beyond the purview of the working group to consider changes to this construct

given the jurisdiction of the Legislature and/or the administrative agencies themselves to so authorize. Our discussion therefore focused on whether we should recommend providing explicit authority to allow nonattorneys to engage in legal activities incident to that hearing representation. While we believe that there is an important public protection rationale for clarifying the scope of authorized services provided by nonattorneys in various administrative proceedings, there was not agreement regarding what that scope should be. The recommendations of each member of our group are provided below:

**A. Representation in Administrative Proceedings:**

**Steven Fleischman:**

Except for unemployment and worker's compensation matters, paraprofessionals are authorized to provide full scope representation in support of advocacy at the administrative agency level where nonattorneys are authorized to represent parties in administrative proceedings by state law. Paraprofessionals would specifically be allowed to provide legal advice in preparation for, or in reaction to, the actual administrative hearing itself. With respect to unemployment and worker's compensation matters, nonattorney advocacy would be limited to that authorized by the respective administrative agencies responsible for these proceedings.

**Ira Spiro:**

Except in workers' compensation, paraprofessionals are authorized to provide full scope representation at the administrative agency level where nonattorneys are authorized to represent parties in administrative proceedings by state law, including representation at the administrative hearing. In workers' compensation, paraprofessionals are limited to working under the direction of an attorney, as paralegals are by statute.

**Judge Yew:**

Paraprofessionals are authorized to provide full scope representation at the administrative agency level where nonattorneys are authorized to represent parties in administrative proceedings by state or federal law. Paraprofessionals would specifically be allowed to provide legal advice in preparation for, or in reaction to, the actual administrative hearing itself.

**Carolin Shining:**

Paraprofessionals are authorized to assist in Public Benefits proceedings. The scope and details of such representation should be the subject of further debate so that the terminology proposed is clarified. (It is premature to determine how that scope will be defined and shaped in this memo at this time.)

Paraprofessionals should not be involved in unemployment or workers' compensation proceedings (see discussion below).

**B. Representation in Superior Court:**

**Steven Fleischman and Ira Spiro:**

Paraprofessionals are not authorized to provide legal advice, prepare documents or provide representation in superior court related to the appeal of a decision of an administrative review board.

**Carolin Shining:**

Paraprofessionals are not authorized to provide legal advice, prepare documents or provide representation in superior court.

**Judge Yew:**

Paraprofessionals are authorized to provide legal advice, prepare and file an administrative writ for judicial review, and provide representation in superior court to appeal the decision of an administrative review board.

While the need for clarity around authorized activities beyond those delineated in regulation exists for federal, as well as state, administrative proceedings, federal preemption could complicate any attempt to delineate authorized activities with respect to federal administrative agency proceedings. As such, we do not recommend including federal administrative proceedings that fall under the Income Maintenance practice area in a paraprofessional program.

At least one member is in favor of the working group recommending a strengthening of the Unemployment Insurance Code that would make inadmissible in evidence, in any action or special proceeding, other than a proceeding arising out of the provisions of that Code, all statements by any party, witness, administrative law judges or other person in connection with any claim or proceeding under the Code, and all documents exchanged, created, submitted or received in connection with any claim or proceeding under that Code.

A prime reason is to minimize the adverse effects of such statements on litigation of other claims between the employee and employer, in which the stakes are usually much greater than in the unemployment proceedings, and thus to minimize the adverse effects, in such litigation, of the work of paraprofessionals. Because unemployment proceedings normally take place before the employee and employer have considered potential litigation on other subjects, and because the stakes in such litigation are usually much higher than in unemployment proceedings, the parties normally and understandably do not study the law and the facts as much, or spend as much time and effort to be as unambiguous and accurate, as they would in the higher stakes litigation.

Another member adds that, notably, it is because of this complexity of these issues (as well as other complex legal issues which are specific to these two specialty areas) that the working

## Consideration of Income Maintenance as a Practice Area to be included in a Paraprofessional Program

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group should eschew further discussion of these areas as it would tax the resources of the group at this time.

Another member expressed strong opposition to such an amendment, for the reason parties in such litigation should be allowed to impeach each other and witnesses with statements in unemployment proceedings, and that unemployment claimants should not be able to make statements to obtain unemployment benefits and then make inconsistent statements in subsequently civil litigation. This member believes that it is far outside the jurisdiction of this working group to propose changes to the Discovery Act and Evidence Code regarding the admissibility of relevant evidence in a civil trial. Moreover, the opposing member feels strongly that this working group should be concerned with addressing issues within its charge and should not be used in a manner to overtly favor one group of private litigants (plaintiffs in employment cases) over another group of private litigants (defendants in employment cases), which would be the effect of this type of amendment.

With respect to representation of clients in superior court, at least one member was concerned about the results of the California Attorney Practice Analysis (CAPA) as it relates to allowing paraprofessionals to practice in superior court. The CAPA survey asked attorneys to rate the depth of knowledge required to complete tasks in specific legal areas, as well as the criticality of proficiency in the tasks and legal topics (i.e., the degree of harm that may be inflicted upon clients and/or the general public if an attorney is not proficient). The CAPA study created a composite score to measure both criticality and frequency (i.e., the importance of being proficient and the frequency in performing tasks in an area) for each practice area. The composite score for Civil Procedure is 20.7, the highest among all knowledge areas. Another relevant rating is regarding the depth of knowledge (DOK) required to perform the tasks with competence. On a 5-point scale, the DOK score for Civil Procedure is 3.7, near the high end of the metric.

Based on the CAPA study, at least one member of the Income Maintenance Group felt that the potential for problems created by allowing nonattorneys to practice law was potentially highest in litigation pending in superior courts. This member felt that this was a heightened concern with respect to petitions for writs of administrative mandate, which are highly complex procedurally and which are usually handled by a specialized bar. Therefore, this member concluded that paraprofessionals should not be permitted to represent clients in connection with petitions for writs of administrative mandate in superior courts.

One member believed that it was important to afford litigants the opportunity to have the paraprofessional who represented them follow the matter through to the superior court for review of their administrative decision. That paraprofessional would be most familiar with the facts of the matter and forcing the litigant to represent themselves in superior court may present insurmountable challenges for the litigant. In addition, forcing the litigant to hire an attorney who is not familiar with the case in order to access appellate review in the superior

## Consideration of Income Maintenance as a Practice Area to be included in a Paraprofessional Program

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court may cause the litigant to incur prohibitive costs or even discourage the litigant from seeking review or defending against a request for review. If the litigant preferred an attorney, the litigant could retain one and dismiss the paraprofessional. If the paraprofessional did not feel competent to appear in superior court, one would expect that any rules of professional conduct for the paraprofessional that would be enacted would require the paraprofessional to make such a disclosure. In addition, in many circumstances, the superior court proceedings would be more efficient with the litigant being represented by a paraprofessional or an attorney instead of appearing without any representation.

An additional recommendation generated by our group is broadly applicable to all practice areas being considered for inclusion in a paraprofessional program: new licensing requirements for the program should not disrupt existing *attorney-supervised* nonattorney advocacy and representation that is already taking place. We anticipate that the full working group will be able to consider the most appropriate approach to actualizing this recommendation during the licensing and certification phase of its work.



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: August 25, 2020

To: California Paraprofessional Program Working Group

From: Steven Fleischman, Carolin Shining, Ira Spiro, and Judge Erica Yew

Subject: Consideration of Employment Law as a Practice Area to Be Included in a Paraprofessional Program

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### Executive Summary

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program.

### Discussion

At its first meeting on April 21, the CPPWG discussed potential practice areas for program inclusion. One of these areas was Employment Law. At its July 13 meeting, four members of the CPPWG volunteered to serve on the Employment Law subcommittee, tasked with studying this practice area with the goal of generating recommendations regarding inclusion or exclusion of specific subtopics in this practice area for consideration by the full body at its next meeting.

The Employment Law subcommittee, comprised of the authors of this memorandum, considered the following in conducting our assessment of Employment Law as a potential practice area or inclusion in a paraprofessional program:

- Employment-related questions and responses included in the California Justice Gap Study; and

- Information obtained from subject matter experts.

### **California Justice Gap Study**

The California Justice Gap Study included questions about employment-related issues, including questions about an employer who did not pay wages or other earned benefits, denial of worker's compensation, unsafe working conditions, unfair termination, denial of accommodation for disability or a medical condition, denial of unemployment benefits, inadequate treatment of a workplace grievance, and sexual harassment by a supervisor or coworker, as detailed below.

Employment-related issues were the third most common type of legal problem experienced by Californians at all income levels, with 16 percent of all households reporting at least one employment-related problem. Employment ranked highest for the percentage of problems for which only nonlegal help was received by Californians overall and for those with income above 125 percent of the federal poverty level.

The California Justice Gap Study results for the Employment practice area identified the following specific legal needs for this population:

- Unfair termination
- Unsafe working conditions
- Workplace grievances that were not adequately addressed
- Sexual harassment or unfair treatment or intimidation
- Wage and hour claims
- Unemployment benefits
- Denial of disability accommodations
- Workers' compensation

### **Subject Matter Experts**

We met with the following attorneys who provide assistance with employment-related problems through nonprofit legal aid programs: Ms. DeCarol Davis, from Legal Aid at Work; Ms. Dana Hadl, from Bet Tzedek Legal Services; and Mr. Chris Knauf, from the Disability Rights Legal Center. We also met with the following attorneys in private practice, Mr. Noah Lebowitz and Ms. Abigail Zelenski, who represent employees; and Ms. Laura Reatherford and Mr. Eric Schwettmann, who represent employers. These experts shared information about the work involved in handling employment cases, as well as their opinions about the scope of work that should be permitted for paralegals in this practice area.

The subcommittee also heard from an extensive number of attorneys practicing in this area who spoke during the public comment period during our meetings. Virtually every speaker

during the public comment period opposed inclusion of these areas in any paraprofessional program.

### **Subtopics for Inclusion and Exclusion**

The three members who were present at the first meeting of our subcommittee agreed to eliminate the subtopics of unfair termination, unsafe working conditions, and sexual harassment/unfair treatment, based on the fact that they involve issues that are quite complex, the consequences of error in the initial stages of these types of proceedings can be significant, and the related actions may involve proceedings in federal court. Ira Spiro, who was not present at this meeting, provides his dissenting opinion below.

Two of the subtopics that fall under Employment, wage and hour claims and unemployment benefits, were addressed at least in part by previous action by the working group at its June 30 meeting pursuant to recommendations received regarding the General Civil and Income Maintenance practice areas. The present subcommittee did not revisit those subtopics during the deliberation process that took place between the June and August meetings.

Following is a summary of the subject matter expert feedback received regarding the remaining two subtopics within the Employment Law practice area under consideration:

### ***Workplace Grievances and Disability Accommodations***

Ms. DeCarol Davis, of Legal Aid at Work, suggested that with appropriate training, paraprofessionals could provide direct assistance to clients in the pre-litigation stage of their cases, including preparation, guidance, advice and assistance with the employee grievance process to ensure that proper procedures were followed, provided such assistance was under the supervision of an attorney. She noted that there is a significant power differential between employers and employees, and that lay representation has been shown to be very empowering.

Ms. Davis added that it would be beneficial to her organization to have trained paraprofessionals who could provide assistance to their clients. She explained that Legal Aid at Work relies on law students, which requires them to train to each new class of students. While paraprofessionals might require ongoing supervision by attorneys, the continuity of staffing would be beneficial. Ms. Davis agreed with the subcommittee's ultimate conclusion that paraprofessionals should not provide legal services in this area unsupervised by an attorney.

Ms. Hadl, of Bet Tzedek Legal Services, stated that clients, especially undocumented workers, must be advised of the potential consequences of pursuing workplace rights. Both Ms. Hadl and Ms. Davis explained that the nonattorneys assisting clients through their clinics work under the direct supervision of attorneys.

Ms. Reatherford, who represents employers in these matters, explained that her goal in advising her clients was to avoid litigation, and that it was preferable to have the employer and

## Consideration of Employment Law as a Practice Area to Be Included in a Paraprofessional Program

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employee work directly with one another. She also asserted that employees are able to find attorney representation if necessary.

Mr. Knauf, of Disability Rights Access, asserted that, without adequate training and testing, paraprofessionals might give advice in the pre-litigation stage of an employment dispute that could prove harmful if the case were later to be litigated. He stated that, even with education and training, paraprofessionals should only be permitted to give legal advice while working under the supervision of an attorney.

Mr. Lebowitz, who represents employees in workplace discrimination and disability accommodations cases, agreed that attorney supervision should be required for paraprofessionals. He explained that this is a complex area of law that is subject to significant change over time. He added that most cases are resolved pre-litigation, but that decisions made during the early stage of a case may impact any litigation that follows.

Mr. Schwettmann, who represents employers in these matters, agreed that there were risks to having nonattorneys advising and representing employees in the pre-litigation stage of workplace grievances and requests for accommodations.

Ms. Zelenski, who represents employees in these matters, also asserted that these matters are very complex, with frequent changes to the law. She stated that representation is provided to employees on a contingency fee basis, and that employees are readily able to find representation.

Robust public comment was also taken at the beginning or middle of the first three sessions. The majority of the speakers during public comment were against the inclusion of these subject matter areas in the Paraprofessional program at this time. Also, some did not permit presentations by several invited subject matter experts but it was suggested that they be invited to engage in the "deep dive" process as appropriate.

The majority of the subcommittee (three of the four members) was convinced by the testimony of the subject matter experts, as well as the overwhelming number of public comments opposing this proposal, that these remaining areas also involve complex issues, and that procedural errors during the early stages of case may have dire consequences if litigation is pursued. They were also persuaded that the interactive process, which is initiated when an employee reports a grievance or requests an accommodation, involves direct communication between employee the employer and employee, and that introducing an employee advocate might be detrimental to the process.

At least one member of the subcommittee (Steven Fleischman) was concerned that permitting paraprofessionals to advise clients on these pre-litigation areas would have the potential to turn paraprofessionals into "runners and cappers" by referring their clients to particular

attorneys if the interactive process failed and litigation was required. Mr. Fleischman was also influenced by the strong opposition to this proposal made by public interest law groups.

## Recommendations

Following are the subcommittee's recommendations for the Employment Law practice area:

Subtopics	Excluded (unanimous recommendation)	Excluded (with one dissent)
Unfair Termination		X (see below)
Unsafe Working Conditions		X (see below)
Sexual Harassment		X (see below)
Workers' Compensation	X	
Workplace Grievances		X (see below)
Workplace Accommodations		X (see below)

As noted above, our group did not unanimously agree on whether the subtopics of unfair termination, unsafe working conditions, sexual harassment, workplace grievances, and workplace accommodations should be recommended for ongoing consideration for inclusion in a paraprofessional program. Following is the dissenting recommendation from Ira Spiro:

I disagree with the rest of the Working Group not only on Workplace Grievances and Workplace Accommodations. I also disagree that Unfair Termination, Unsafe Working Conditions and Sexual Harassment should be entirely eliminated.

I will explain my disagreement, but first I strongly believe that there should be far more Working Group members who are non-lawyers, the very people whose interests this California Paraprofessional Program is supposed to be serving. I am not impugning any of the lawyers in the Working Group – I am saying that their years and decades as lawyers are bound to influence their outlooks in ways different from non-lawyers. In the full Working Group, out of 13 members there are only 2 non-lawyers, although it appears that 5 or 6 of the lawyers are not substantially engaged in the practice of law. All members of this Employment Subcommittee are lawyers, although one is a Superior Court Judge, and thus her experience varies from most lawyers. The other three are practicing lawyers and have been for decades, although presently I practice very little. Two of the members were selected by private bar associations, i.e. associations of lawyers. Many non-lawyers know a good deal about the law, the business of law and the practice of law. For example, the hundreds or thousands of paralegals, investigators and other legal workers in California, and the non-lawyer staff and retired staff of the California courts and the State Bar.

## Consideration of Employment Law as a Practice Area to Be Included in a Paraprofessional Program

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With respect to Workplace Grievances and Workplace Accommodations , I am in favor of training and licensing paraprofessionals to advise employees in dealing with employers -- without being supervised by lawyers -- in such things as disagreements about scheduling; duties to employers and insubordination; rights to vacation, leaves, and breaks; workplace health and safety; and obtaining accommodations for disabilities. Possibly there should be separate licensing for each of these areas, depending on sufficient training in each. I am in favor of paraprofessionals advising employees on these and other subjects when there is no lawsuit or imminent threat of one; I recognize the line might be hard to draw, but the Employment Panel's votes thus far would eliminate even the possibility of drawing a line.

I also favor training and licensing paraprofessionals to represent employees in Small Claims Court lawsuits against employers, where the jurisdiction is limited to amount of \$10,000 or less, and possibly in Limited Civil cases, where the jurisdiction is \$25,000. Those cases could include unfair termination, unsafe working conditions and sexual harassment. I believe judges can screen the cases to assure that they are truly within the jurisdictional amounts before allowing paraprofessionals to represent employees in the cases. Similar screening is already authorized for Limited Jurisdiction cases under Code of Civil Procedure 403.040(a).

On the other hand, I believe non-lawyers should not employ more than a small number of paraprofessionals, possibly 5 or 6, possibly fewer, and non-lawyers should not own or control any organization that employs more than that maximum number. The Paraprofessional Program should not be a means for big business to make further inroads into the legal system and the law business. And I believe it should remain the law that law firms cannot be owned or controlled by non-lawyers.

### **Next Steps**

The group will return to the review of unemployment benefits and wage and hour claims, to determine specific authorized tasks.



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: April 19, 2021

To: California Paraprofessional Program Working Group

From: Fariba Soroosh, Chair, Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, and Judge Monica F. Wiley

Subject: Topics and Tasks for Family Law Practice Area

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program, and the specific tasks that will be allowed for licensees in each practice area.

### DISCUSSION

At its July 13 meeting, five members of the CPPWG volunteered to serve on a Family Law Subcommittee tasked with generating recommendations regarding inclusion or exclusion of specific Family Law subtopics for consideration by the full body at its next meeting. The Family Law Subcommittee provided the CPPWG with updates on its deliberations at its August 25 meeting, and presented its preliminary recommendations at the December 17 meeting. At that meeting, members of the CPPWG provided feedback regarding the inclusion and exclusion of several tasks and as to whether there should be an income or estate value limit for paraprofessional representation. The CPPWG also asked the Subcommittee to make a recommendation regarding whether conservatorships and guardianships should be included in the paraprofessional program.

The Family Law Subcommittee posted initial recommendations in advance of the March 26, 2021, CPPWG meeting. Due to time constraints, those recommendations were not considered at that meeting. Since that time, the Subcommittee has met, and has developed additional recommendations regarding subtopics and tasks, including revised recommendations regarding child welfare (juvenile dependency) cases. The Family Law Subcommittee's March 26 memo is provided as Attachment A.

#### **FAMILY LAW SUBTOPICS AND TASKS**

At the December 17, 2020, CPPWG meeting, the Subcommittee presented its preliminary recommendations regarding subtopics and tasks for inclusion/exclusion in a paraprofessional program. The Subcommittee also solicited and received input from CPPWG members on several topics. Based on that input and further discussion, the recommendations regarding subtopics and tasks for family law, as well as educational/training requirements for this area, are included in Attachment B.

#### **VIOLENCE PREVENTION SUBTOPICS AND TASKS**

While members of the Subcommittee are familiar with domestic violence restraining orders, they sought input from subject matter experts (SMEs) regarding the inclusion of other types of violence prevention restraining orders. Staff consulted with Judy Hitchcock, Senior Staff Attorney with Legal Assistance to the Elderly, regarding elder abuse restraining orders, and Ruth Silver-Taube, who teaches the Employment Law Clinic at Santa Clara University, regarding workplace violence restraining orders. Staff reported to the Subcommittee that the SMEs consulted agreed that paraprofessional assistance would be beneficial to clients pursuing and/or responding to all types of restraining orders; the SMEs also made recommendations regarding the training that should be required for such representation. The Subcommittee recommends the inclusion of civil harassment and gun violence restraining orders accordingly. The Subcommittee recommends inclusion of violence prevention, comprising civil harassment, domestic violence, elder abuse, gun violence, and workplace violence restraining orders, in the family law practice area. Recommendations regarding these subtopics and tasks, as well as educational/training requirements for this area, are included in Attachment B.

#### **ADOPTION**

The Subcommittee reviewed information provided by Subcommittee member Elizabeth Olvera regarding the tasks involved in uncontested stepparent adoptions. They also considered information that staff obtained in a conversation with Robert Walmsley, a member of the Academy of California Adoption Lawyers, regarding training requirements for paraprofessionals authorized to provide representation in these cases. The Subcommittee recommends inclusion of uncontested stepparent adoptions for the paraprofessional program, as reflected in Attachment B.

#### **CHILD WELFARE**

Prior to the February 26 meeting, the Subcommittee considered information provided by Subcommittee member Dana McRae, based on her conversation with Ruby Marquez, who works for Santa Cruz County Counsel representing the county child welfare agency in juvenile dependency cases. Ms. Marquez believed it would be beneficial for parents to have assistance in child welfare investigations prior to dependency filing, as well as after a dependency case has been terminated. Based on this information, the Subcommittee initially recommended inclusion of representation in dependency investigations pre-filing, as well as post-termination.

At its April 6, 2021, meeting, the Family Law Subcommittee was joined by Mary Feldman, a certified specialist in juvenile law, who represents parties in child welfare cases. In addition to pre-filing and post-termination assistance, Ms. Feldman presented information about assistance that could be provided by paraprofessionals to parties who are not entitled to court-appointed counsel in juvenile dependency cases. Examples included grandparents and siblings seeking visitation, and de facto parent requests. Ms. Feldman explained that much of this work is forms-based and opined that self-represented litigants would benefit by having educated, trained, and experienced paraprofessionals to assist with completing and filing forms as well as representing them in court. Based on the information provided by Ms. Feldman, a majority of members of the Subcommittee agreed to the following recommendations:

- Paraprofessionals are authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition, including but not limited to:
  - Requesting documents from social services agency
  - Providing legal advice and information regarding procedures and parents' rights at the pre-filing stage
  - Gathering documents to be presented to social services agency
  - Being present and participating in social worker interviews
- Paraprofessionals are authorized to assist parties not entitled to court-appointed counsel in child welfare cases, by advising clients regarding which forms to use, and completing and filing forms. Paraprofessionals are also authorized to provide in-court representation for parties not entitled to court-appointed counsel.

Two members of the Family Law Subcommittee did not agree that paraprofessionals should be allowed to represent parties in court. Ms. Bashan disagreed with this recommendation for the following reasons: first, given the extremely serious nature of juvenile dependency proceedings where children's fates are at stake, Ms. Bashan's opinion was that in-court representation far exceeds the appropriate tasks for paraprofessionals; second, this Subcommittee heard from several subject matter experts who stated that even experienced attorneys who are not dependency attorneys are often ill-equipped to handle in-court dependency proceedings; lastly, the training and education needed to create competence would far exceed the current experiential training and education targets that this working group has set out, given that we are balancing competence with not creating onerous requirements—as we have learned from Washington State's model. Mr. Hamilton also disagreed with this recommendation based on

general concerns regarding paraprofessionals providing in-court representation, as well as those concerns identified by Ms. Bashan.

### **CONSERVATORSHIP AND GUARDIANSHIP**

The Subcommittee has undertaken consideration of conservatorship and guardianship subtopics and tasks for inclusion/exclusion in a paraprofessional program. Staff worked with the following subject matter experts to develop a task list for these topics: Ms. Ylianna Perez-Guerrero, Public Counsel; Ms. Bertha Sanchez Hayden, Bet Tzedek; Tamyra Rice, Santa Cruz County Counsel; Mr. Jonathan Kahn, Santa Clara Superior Court; and, Ms. Johanna Thai Van Dat, Santa Clara Superior Court.

The Subcommittee also met with Ms. Carlena Tapella, who has extensive experience in conservatorships. Ms. Tapella described various types of conservatorships and explained that limited conservatorships are sought by parents of children with developmental disabilities, when their children reach majority age, and petitions for these types of conservatorships are generally not contested. Ms. Tapella opined that it would be beneficial to allow paraprofessionals to assist otherwise self-represented parties with uncontested limited conservatorships, including allowing them to provide representation at court hearings. Ms. Tapella explained that there was less of a need for paraprofessional assistance for general conservatorships because petitions are routinely granted for payment of attorneys' fees from the estate of the conservatee.

Based on the information from Ms. Tapella, the Subcommittee recommended that paraprofessionals be allowed to represent parties in uncontested limited conservatorships cases, including representation at court hearings.

The subcommittee did not have the opportunity to discuss recommendations regarding guardianship cases; this recommendation will be provided at a future CPPWG meeting.

### **IN-COURT REPRESENTATION IN FAMILY LAW, VIOLENCE PREVENTION, AND ADOPTION CASES**

In our February 26, 2021, memo to the CPPWG, the Family Law Subcommittee included a discussion of in-court representation and provided the various points of view of our members. At its March 26, 2021, meeting, the CPPWG adopted a default position allowing paraprofessionals to provide full in-court representation, except for jury trials, in the practice areas for which they are licensed. The CPPWG's resolution provided that each practice area subcommittee may generate an alternative in-court representation recommendation. The Subcommittee has not had the opportunity to discuss its position on this subject. If the Subcommittee determines that an alternative recommendation is warranted, a recommendation and a rationale will be provided at future CPPWG meeting.

### **LIMIT ON INCOME AND/OR ESTATE VALUE**

The Subcommittee considered whether a cap on either income or estate value should be imposed for paraprofessional representation in family law cases. The Subcommittee agreed

that income and estate value do not necessarily correlate with case complexity and therefore does not recommend such a limit.

## **PROPOSED RESOLUTIONS**

### **FAMILY LAW, VIOLENCE PREVENTION, AND ADOPTION**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that Paraprofessionals may assist clients with the family law, violence prevention, and adoption tasks included in Attachment B.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends adoption of the educational and training requirements for these topics included in Attachment B.

### **CHILD WELFARE**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals are authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition, including but not limited to:

1. Requesting documents from social services agency
2. Providing legal advice and information regarding procedures and parents' rights at the pre-filing stage
3. Gathering documents to be presented to social services agency
4. Being present and participating in social worker interviews

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals are authorized to assist parties not entitled to court-appointed counsel in juvenile dependency cases, by advising them regarding which forms to use, and completing and filing forms.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide in-court representation for parties not entitled to court-appointed counsel in juvenile dependency cases.

**OR**

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist clients not entitled to court-appointed counsel in juvenile dependency cases by sitting at counsel table, and providing support and guidance, and responding to direct questions from the judge, but may not advocate on behalf of their clients.

**CONSERVATORSHIP**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals are authorized to assist parties in limited conservatorship cases, by advising them regarding which forms to use, and completing and filing forms.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide in-court representation for clients in limited conservatorship cases.

**OR**

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist clients in limited conservatorship cases by sitting at counsel table, and providing support and guidance, and responding to direct questions from the judge, but may not advocate on behalf of their clients.



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: February 26, 2021

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, Fariba Soroosh, and Judge Monica Wiley

Subject: Topics and Tasks for Family Law Practice Area

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program, and the specific tasks that will be allowed for licensees in each practice area.

### DISCUSSION

At its July 13 meeting, five members of the CPPWG volunteered to serve on a Family Law Subcommittee tasked with studying this practice area with the goal of generating recommendations regarding inclusion or exclusion of specific Family Law subtopics for consideration by the full body at its next meeting. The Family Law Subcommittee provided the CPPWG with updates on its deliberations at its August 25 meeting, and presented its preliminary recommendations at the December 17 meeting. At that meeting, members of the CPPWG provided feedback regarding the inclusion and exclusion of several tasks and as to whether there should be an income or estate value limit for paraprofessional representation. The CPPWG also asked the Subcommittee to make a recommendation regarding whether conservatorships and guardianships should be included in the paraprofessional program. Since

that time, the Subcommittee has met, and has developed recommendations regarding subtopics and tasks; the consideration of conservatorships and guardianships; and in-court support/representation.

### **Family Law Subtopics and Tasks**

At the December 17, 2020, CPPWG meeting, the Subcommittee presented its preliminary recommendations regarding subtopics and tasks for inclusion/exclusion in a paraprofessional program. The Subcommittee solicited and received input from CPPWG members on several topics. Based on that input and further discussion, recommendations regarding subtopics and tasks for family law, as well as educational/training requirements for this area, are included in Attachment A.

### **Violence Prevention Subtopics and Tasks**

While members of the Subcommittee are familiar with domestic violence restraining orders, they sought input from subject matter experts (SMEs) regarding the inclusion of other types of violence prevention restraining orders. Staff consulted with Judy Hitchcock, Senior Staff Attorney with Legal Assistance to the Elderly, regarding elder abuse restraining orders, and Ruth Silver-Taube, who teaches the Employment Law Clinic at Santa Clara University, regarding workplace violence restraining orders. Staff reported to the Subcommittee that the SMEs consulted agreed that paraprofessional assistance would be beneficial to clients pursuing and/or responding to all types of restraining orders; the SMEs also made recommendations regarding the training that should be required for such representation. The Subcommittee recommends the inclusion of civil harassment and gun violence restraining orders accordingly. The Subcommittee recommends inclusion of violence prevention, comprising civil harassment, domestic violence, elder abuse, gun violence, and workplace violence restraining orders, in the family law practice area. Recommendations regarding these subtopics and tasks, as well as educational/training requirements for this area, are included in Attachment A.

### **Adoption**

The Subcommittee reviewed information provided by Subcommittee member Elizabeth Olvera regarding the tasks involved in uncontested stepparent adoption. They also considered information that staff obtained in a conversation with Robert Walmsley, a member of the Academy of California Adoption Lawyers, regarding training requirements for paraprofessionals authorized to provide representation in these cases. The Subcommittee recommends inclusion of uncontested stepparent adoptions for the paraprofessional program, as reflected in Attachment A.

### **Child Welfare**

The Subcommittee considered information provided by Subcommittee member Dana McRae, based on her conversation with Ruby Marquez, who works for Santa Cruz County Counsel representing the county child welfare agency in juvenile dependency cases. Ms. Marquez believes it would be beneficial for parents to have assistance in child welfare investigations prior to dependency filing, as well as after a dependency case has been terminated. Based on

this information, the Subcommittee recommends inclusion of representation in dependency investigations pre-filing, as well as post-termination, as reflected in Attachment A.

### **Conservatorship and Guardianship**

The Subcommittee has undertaken consideration of conservatorship and guardianship subtopics and tasks for inclusion/exclusion in a paraprofessional program. While the CPPWG does not include members with in-depth knowledge on this topic, the Subcommittee has begun discussions with SMEs, who have agreed to provide recommendations in this area. The Subcommittee intends to bring its recommendations to the CPPWG at the April 19 meeting.

### **In-Court Support/Representation**

The Subcommittee is aware that the topic of in-court representation will be the subject of a facilitated discussion at the CPPWG meeting on February 26. Nonetheless, members of the Subcommittee believe that this topic is integral to the recommendations in family law and violence prevention matters included as attachments to this memo. The insights of Subcommittee members were especially helpful in our discussions.

Ms. Soroosh, who directs the Self-Help Center (SHC) at the Santa Clara Superior Court, noted that, while staff at the SHC are able to provide extensive guidance in completing and filing forms in family law cases, they are precluded from attending hearings with litigants to provide guidance and support. Even when litigants have had excellent assistance in completing and filing forms, the actual court appearance can be stressful and challenging. Litigants are often retraumatized by their experiences and are unfamiliar with the court setting. They may become intimidated or flustered in this unfamiliar setting, causing them to be disorganized and forget important information that they would like to convey to the court. Judge Wiley, who presides over family law cases, agreed. Judge Wiley suggested that it would be helpful to the court to have a trained support person who could provide guidance to self-represented litigants, and who could answer questions from the court at the hearing.

Stephen Hamilton, who is a certified family law specialist, agreed that a trained support person would be an asset in the courtroom. He strongly believes that, while a paraprofessional should be allowed to sit at counsel table to guide and prompt their client, they should be prohibited from speaking in court, even to answer direct questions from the bench. Mr. Hamilton asserted that answering questions as even those that might be perceived as procedural may involve advocacy. Mr. Hamilton believes it is essential to maintain a distinction between paraprofessionals and lawyers; in-court representation is key to this distinction. Sharon Bashan agreed with Mr. Hamilton that paraprofessionals should be allowed to sit at counsel table, but should be prohibited from speaking in court.

Ms. Elizabeth Olvera, who is a certified Legal Document Assistant, disagreed, asserting that a trained paraprofessional could competently assist their client by providing information to the court, particularly in response to direct questions from the bench. Ms. Olvera suggested that a distinction could be made between those with a JD degree and others, allowing

paraprofessionals with a JD to speak in court. Greg Fortescue, the Supreme Court's liaison to the CPPWG, noted that if paraprofessionals were to be precluded from answering questions directed to them from the bench, it would be necessary to impose a restriction on judges, precluding them from directing such questions to paraprofessionals.

There was a general agreement, but not unanimous consensus, from the Subcommittee that paraprofessionals should be allowed to provide in-court support, but not representation. In this role, paraprofessionals would be allowed to sit at counsel table, and advise and prompt clients, but not advocate for their clients or speak in court. There was a minority view that paraprofessionals should be allowed to respond to questions from the court.

**Limit on Income and/or Estate Value**

The Subcommittee considered whether a cap on either income or estate value should be imposed for paraprofessional representation in family law cases. The Subcommittee agreed that income and estate value do not necessarily correlate with case complexity and therefore does not recommend such a limit.

Family Law Subcommittee  
Subtopic and Tasks Recommendations

ATTACHMENT A

Family Law

Task	Recommendation
Dissolution/Domestic Partnerships, including dissolution, legal separation, and nullity (annulment) <ol style="list-style-type: none"> <li>1. Marital status, including status-only judgments<sup>i</sup></li> <li>2. Annulment based on bigamy, age of spouse/registrant, prior existing marriage/DP<sup>ii</sup></li> <li>3. Annulment based on incest, unsound mind, fraud, force, physical incapacity</li> </ol>	Included Included Excluded <sup>iii</sup>
Paternity (including paternity issues within dissolution, legal separation, domestic partnerships, and DCSS child support matters) <ol style="list-style-type: none"> <li>1. Complaint to establish parental relationship not involving FC 7612(b) or (c)</li> <li>2. Complaint to establish parental relationship involving FC 7612(b) or (c)</li> </ol>	Included Excluded
Summary Dissolutions	Included
Petitions for Custody and Support	Included
Child custody and visitation (including third-party joinder and intervention) except in any action where any of the following issues or claims are raised: <ol style="list-style-type: none"> <li>1. Hague Convention on International Child Abduction</li> <li>2. International or interstate custody disputes under UCCJEA</li> <li>3. Grandparent visitation (independent of family law action)</li> </ol>	Included Excluded Excluded Included
Child support <sup>iv</sup>	Included
Spousal or domestic partner support <ol style="list-style-type: none"> <li>1. Temporary</li> <li>2. Permanent (litigated/contest)/FC 4320</li> <li>3. Spousal support waivers, buyouts or nonmodifiable step downs               <ol style="list-style-type: none"> <li>a. Short term marriage [FC 4336(b)]</li> <li>b. Long term marriage</li> </ol> </li> </ol>	Included Included Included Excluded
Separate property/community property/quasi community property <sup>v</sup> <ol style="list-style-type: none"> <li>1. Joinder of pension/retirement/employee benefit plans</li> <li>2. Declaration of disclosures</li> <li>3. Referrals to experts for appraisals and valuations</li> <li>4. Post division transfer documents</li> <li>5. QDRO (referrals only)</li> </ol>	Included Included Included Included Excluded
Discovery <ol style="list-style-type: none"> <li>1. Written discovery (form interrogatories v. other)</li> <li>2. Depositions</li> <li>3. Expert discovery</li> <li>4. Subpoenas: deposition and hearing/trial</li> <li>5. Motions to compel/motions to quash not related to depositions</li> <li>6. Motions to compel/quash related to depositions</li> </ol>	Included Excluded Excluded Included Included Excluded
Quasi marital property (nullity)	Excluded

<b>Task</b>	<b>Recommendation</b>
Attorney fees, including expert and paraprofessional fees	Included
Restoration of former name	Included
Venue and jurisdiction disputes not otherwise addressed herein	Included
Marital settlement agreements [except for any issues which are within excluded areas of practice as set forth above] 1. MSA must state that it was prepared by a paraprofessional <sup>vi</sup>	Included
Post judgment/permanent order modifications [except UCCJEA/Hague]	Included
Registration of foreign judgments	Included
Premarital/Post-marital agreements (not including MSAs)	Excluded
Putative spouse claims arising from nullity action, including all issues within such a claim (e.g. quasi marital property, attorney fees, spousal support)	Excluded
Marvin/Palimony actions	Excluded
Enforcement of family law orders and judgments 1. Appointment of elisor 2. RFO/Motion for relief in issuing court to assist in enforcement 3. Contempt 4. Seek work orders support 5. Debtor's exam 6. Wage assignment 7. Writ of execution 8. Filing of lien/lis pendens 9. Response to DCSS enforcement action (e.g., license suspension, bank levy) All enforcement mechanisms not specifically identified above are excluded	Included Included Excluded Included Included Included Included Included Included
Alternative Dispute Resolution (except for areas excluded above) 1. Settlement discussions and negotiations 2. Day of court meet and confer	Included Included

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- i. If instruction includes detailed, in depth education regarding FC 2337, FL-315, FL-347, FL-318-Info, joinder and pension issues
  - ii. If instruction includes education and instruction re: bigamy v. prior existing marriage/DP and FC 2200-2210 and 2310-2312
  - iii. Education includes issue spotting, clear definition of excluded item, specific education regarding excluded issues and referral process (necessity, regulation)
  - iv. Instruction to include training on support calculators, wage assignments and role of DCSS

- v. This scope of practice presumes detailed and substantive instruction on forms of discovery, responding to discovery, objections and law and motion procedure related to discovery
- <sup>vi</sup> Companion legislation to be developed, stating that an MSA prepared by a paraprofessional that exceeds the scope of their duties is not automatically void or voidable

**Adoption**

<b>Task</b>	<b>Recommendation</b>
Adoptions not arising from a dependency petition	Included
1. Uncontested stepparent adoption <ul style="list-style-type: none"> <li>o Training on providing notice to other parent required; incorrect notice may trigger contest of adoption, or can negatively affect prospect of adoption</li> </ul>	

**Child Welfare**

<b>Task</b>	<b>Recommendation</b>
Child welfare and juvenile dependency cases	Included
1. Investigation prior to filing of dependency action	
2. JV-180: modification of dependency orders after case is closed	Included

**Violence Prevention**

<b>Task</b>	<b>Recommendation</b>
Domestic Violence, Civil Harassment, Gun Violence, Workplace Violence*	Included
Representation of petitioner	
1. Filing restraining order request – Temporary Restraining Order (TRO)	Included
2. Service of TRO on respondent and filing proof of service	Included
3. Support in mediation, where applicable	Included
4. Support in court	Included
5. Preparation of Restraining Order After Hearing (ROAH)	Included
6. Service of ROAH on respondent and filing proof of service	Included
7. Distribution of RO to law enforcement, if applicable	Included
Representation of respondent	
1. Filing response to TRO	Included
2. Service of response on petitioner and filing proof of service	Included
3. Support in court	Included

\* Educational/training requirements for violence prevention:

- Experience in violence prevention clinic
- Familiarity with types of restraining orders and remedies available under each type
- Availability of resources (e.g., domestic violence assistance, Adult Protective Services, mediation, etc.)

**Family Law Subcommittee  
Subtopic and Tasks Recommendations**

**ATTACHMENT B**

**Family Law**

<b>Task</b>	<b>Recommendation</b>
Dissolution/Domestic Partnerships, including dissolution, legal separation, and nullity (annulment) <ol style="list-style-type: none"> <li>1. Marital status, including status-only judgments<sup>i</sup></li> <li>2. Annulment based on bigamy, age of spouse/registrant, prior existing marriage/DP<sup>ii</sup></li> <li>3. Annulment based on incest, unsound mind, fraud, force, physical incapacity</li> </ol>	 Included Included Excluded <sup>iii</sup>
Paternity (including paternity issues within dissolution, legal separation, domestic partnerships, and DCSS child support matters) <ol style="list-style-type: none"> <li>1. Complaint to establish parental relationship not involving FC 7612(b) or (c)</li> <li>2. Complaint to establish parental relationship involving FC 7612(b) or (c)</li> </ol>	 Included Excluded
Summary Dissolutions	Included
Petitions for Custody and Support	Included
Child custody and visitation (including third-party joinder and intervention) except in any action where any of the following issues or claims are raised: <ol style="list-style-type: none"> <li>1. Hague Convention on International Child Abduction</li> <li>2. International or interstate custody disputes under UCCJEA</li> <li>3. Grandparent visitation (independent of family law action)</li> </ol>	 Included Excluded Excluded Included
Child support <sup>iv</sup>	Included
Spousal or domestic partner support <ol style="list-style-type: none"> <li>1. Temporary</li> <li>2. Permanent (litigated/contest)/FC 4320</li> <li>3. Spousal support waivers, buyouts or nonmodifiable step downs               <ol style="list-style-type: none"> <li>a. Short term marriage [FC 4336(b)]</li> <li>b. Long term marriage</li> </ol> </li> </ol>	 Included Included Included Excluded
Separate property/community property/quasi community property <sup>v</sup> <ol style="list-style-type: none"> <li>1. Joinder of pension/retirement/employee benefit plans</li> <li>2. Declaration of disclosures</li> <li>3. Referrals to experts for appraisals and valuations</li> <li>4. Post division transfer documents</li> <li>5. QDRO (referrals only)</li> </ol>	 Included Included Included Included Excluded
Discovery <ol style="list-style-type: none"> <li>1. Written discovery (form interrogatories v. other)</li> <li>2. Depositions</li> <li>3. Expert discovery</li> <li>4. Subpoenas: deposition and hearing/trial</li> <li>5. Motions to compel/motions to quash not related to depositions</li> <li>6. Motions to compel/quash related to depositions</li> </ol>	 Included Excluded Excluded Included Included Excluded
Quasi marital property (nullity)	Excluded

<b>Task</b>	<b>Recommendation</b>
Attorney fees, including expert and paraprofessional fees	Included
Restoration of former name	Included
Venue and jurisdiction disputes not otherwise addressed herein	Included
Marital settlement agreements [except for any issues which are within excluded areas of practice as set forth above] 1. MSA must state that it was prepared by a paraprofessional <sup>vi</sup>	Included
Post judgment/permanent order modifications [except UCCJEA/Hague]	Included
Registration of foreign judgments	Included
Premarital/Post-marital agreements (not including MSAs)	Excluded
Putative spouse claims arising from nullity action, including all issues within such a claim (e.g. quasi marital property, attorney fees, spousal support)	Excluded
Marvin/Palimony actions	Excluded
Enforcement of family law orders and judgments 1. Appointment of elisor 2. RFO/Motion for relief in issuing court to assist in enforcement 3. Contempt 4. Seek work orders support 5. Debtor's exam 6. Wage assignment 7. Writ of execution 8. Filing of lien/lis pendens 9. Response to DCSS enforcement action (e.g., license suspension, bank levy) All enforcement mechanisms not specifically identified above are excluded	Included Included Excluded Included Included Included Included Included Included
Alternative Dispute Resolution (except for areas excluded above) 1. Settlement discussions and negotiations 2. Day of court meet and confer	Included Included

- 
- i. If instruction includes detailed, in depth education regarding FC 2337, FL-315, FL-347, FL-318-Info, joinder and pension issues
  - ii. If instruction includes education and instruction re: bigamy v. prior existing marriage/DP and FC 2200-2210 and 2310-2312
  - iii. Education includes issue spotting, clear definition of excluded item, specific education regarding excluded issues and referral process (necessity, regulation)
  - iv. Instruction to include training on support calculators, wage assignments and role of DCSS

- v. This scope of practice presumes detailed and substantive instruction on forms of discovery, responding to discovery, objections and law and motion procedure related to discovery
- <sup>vi</sup> Companion legislation to be developed, stating that an MSA prepared by a paraprofessional that exceeds the scope of their duties is not automatically void or voidable

### Adoption

Task	Recommendation
Adoptions not arising from a dependency petition	Included
1. Uncontested stepparent adoption <ul style="list-style-type: none"> <li>o Training on providing notice to other parent required; incorrect notice may trigger contest of adoption, or can negatively affect prospect of adoption</li> </ul>	

### Child Welfare

Task	Recommendation
Paraprofessionals are authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition, including but not limited to:	Included
1. Requesting documents from social services agency	
2. Providing legal advice and information regarding procedures and parents' rights at the prefiling stage	
3. Gathering documents to be presented to social services agency	
4. Being present and participating in social worker interviews	
Paraprofessionals are authorized to assist parties not entitled to court-appointed counsel in juvenile dependency cases, by advising them regarding which forms to use, and completing and filing forms.	Included
Paraprofessionals are authorized to provide in-court representation for parties not entitled to court-appointed counsel.	Split Rec.

### Violence Prevention

Task	Recommendation
Domestic Violence, Civil Harassment, Gun Violence, Workplace Violence*	Included
Representation of petitioner	
5. Filing restraining order request—Temporary Restraining Order (TRO)	Included
6. Service of TRO on respondent and filing proof of service	Included
7. Support in mediation, where applicable	Included
8. Support in court	Included
9. Preparation of Restraining Order After Hearing (ROAH)	Included
10. Service of ROAH on respondent and filing proof of service	Included
11. Distribution of RO to law enforcement, if applicable	Included

Representation of respondent	
1. Filing response to TRO	Included
2. Service of response on petitioner and filing proof of service	Included

\* Educational/training requirements for violence prevention:

- Experience in violence prevention clinic
- Familiarity with types of restraining orders and remedies available under each type
- Availability of resources (e.g., domestic violence assistance, Adult Protective Services, mediation, etc.)

### Conservatorship

Task	Recommendation
Uncontested limited conservatorship cases	
1. Selection, completion, and filing of forms	Included
2. In-court representation	Split Rec.



Date: April 19, 2021

To: California Paraprofessional Program Working Group

From: Dana McRae, Nicole Robinson, and Carolin Shining

Subject: Health Subcommittee Recommendations for Paraprofessional Program

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## EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program, and the specific tasks that will be allowed for licensees in each practice area.

## DISCUSSION

At its first meeting on April 21, 2020, the CPPWG discussed potential practice areas for program inclusion. The health practice area was among those considered as “wobblers,” requiring further investigation to determine whether they should be included in the paraprofessional program. The Health Subcommittee, which initially included Ms. McRae and Ms. Shining, provided its recommendation at the June 30, 2020, Working Group meeting, that the health practice area be included for ongoing consideration in a paraprofessional program, with a focus on the following subtopics identified by the Justice Gap Study as areas of significant need:

- Billing for medical services, including copays and deductibles.
- Denial of access to services or equipment.
- Denial of access to insurance.
- Failure to inform of free services or available financial assistance.

The June 30 Health Subcommittee memo is provided as Attachment A.

Other than the Family Law Subcommittee, practice area focused subcommittees were suspended after the CPPWG's August 2020 meeting as the Working Group decided to pivot to the development of licensing, regulation, and discipline requirements and parameters for the new class of licensees. After joining the CPPWG in December, Dr. Robinson joined the Health Subcommittee, which reconvened on March 5, 2021.

In researching the topics identified above, staff and Subcommittee Chair McRae contacted subject matter experts, including Mr. Charlie Gillig, of Neighborhood Legal Services of Los Angeles; Mr. Jack Dailey, Coordinator of the Health Consumer Alliance at the Legal Aid Society of San Diego; Mr. Andy Katz, a consumer attorney who serves on the Berkeley Health Commission; and Mr. Henry Martin, Director of the Watsonville Law Center. Mr. Dailey and Mr. Katz attended the Subcommittee meeting on March 26.

The Health Subcommittee learned that Health Consumer Alliances (HCAs) provide free assistance to consumers with all of the JGS health-related legal needs identified above. HCAs are funded by grants from the Department of Managed Healthcare and Covered California, among other sources; eligibility for services is not limited by income. The greatest barrier to services is a lack of awareness of their availability. The Subcommittee agreed that the State Bar should assist in efforts to inform the public of the availability of HCAs.

In consulting with subject matter experts, the Subcommittee found that, while HCAs and patient advocates assist consumers in negotiating healthcare coverage and billing, they do not provide assistance in defending against collection of medical debt. The Subcommittee determined that issues related to medical debt should be referred to the Consumer Debt & General Civil Subcommittee. A copy of the memo from Chair McRae to that subcommittee is provided as Attachment B.

## **RECOMMENDATIONS**

The Health Subcommittee recommends that the Health practice area not be included in the paraprofessional program. The Subcommittee recommends that the CPPWG report to the Board of Trustees includes a recommendation that the State Bar assist in publicizing the availability of HCAs, including supporting the legislative efforts of those programs to require that information about their availability is included on notices from medical insurers and health care providers. The Subcommittee also recommends that the Consumer Debt & General Civil Subcommittee include medical debt in its consideration of topics for inclusion in the paraprofessional program.



# The State Bar of California

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## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

Date: June 30, 2020

To: California Paraprofessional Program Working Group

From: Dana McRae and Carolin Shining

Subject: Consideration of Health as a Practice Area to Be Included in a Paraprofessionals Program

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### Executive Summary

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program.

### Discussion

At its first meeting on April 21, 2020, the CPPWG discussed potential practice areas for program inclusion. No final determination as to the areas to be recommended was made. Several practice areas were determined to warrant further preliminary discussion as to the basis for their inclusion or exclusion. These areas were called "wobblers" meaning that additional information would be beneficial before a decision could be made regarding their status. Members of the CPPWG volunteered to study each of the wobbler areas with the goal of generating recommendations regarding ongoing consideration for the program for review by the full body at its next meeting.

The present two-person team assessed the Health practice area. In generating our recommendations, outlined below, we considered the following:

- Health care-related questions and responses included in the California Justice Gap Study; and
- Information obtained from subject matter experts.

### **California Justice Gap Study**

The California Justice Gap Study included questions about health care-related issues, including questions asked about billing, the inability to access or other problems getting health care insurance, the denial of an interpreter in a medical setting, issues with debt collection or financial assistance relating to health care insurance coverage, and payment for needed equipment, procedures, or other services, as detailed below.

Health care-related issues were the most common type of legal problem experienced by Californians at all income levels, with 30 percent of all households reporting at least one health care-related problem. Health care ranked second highest for the percentage of problems for which only nonlegal help was received by Californians overall, and third highest for those with income above 125 percent of the federal poverty level.

The California Justice Gap Study results for the Health practice area identified the following specific legal needs for this population:

- Being billed incorrectly for medical services, including copays and deductibles.
- Having health care insurance that would not cover medically needed procedures, services, medical equipment, prescriptions, transportation services, or mental health services.
- Not being informed about financial assistance for health care or that free care might be available from a hospital or at home.

### **Subject Matter Experts<sup>1</sup>**

We had meetings with representatives of several organizations that provide assistance to or serve people with health care-related legal problems. Initially, we met with representatives from Santa Cruz County, including Ms. Siobhan Kelley, from the County Counsel's Office, Ms. Ellen Timberlake, from the Human Services Department, and Ms. Leslie Conner, from the Santa Cruz Community Health Center. We subsequently met with Ms. Stacey Hawver, Executive Director of the Legal Aid Society of San Mateo County and Mr. Gerson Sorto, of Neighborhood Legal Services of Los Angeles, to discuss the medical legal partnerships (MLPs) that are part of these organizations. MLPs assist patients by addressing needs that impact their health, such as access to housing, food, and other benefits. From our discussions with the two MLPs we learned that while these types of programs do provide health-specific legal services, those types of services are not their primary focus. It was suggested that we contact the statewide Health Consumer

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<sup>1</sup> The summary of the conversations with subject matter experts is based on notes from staff, and have not been reviewed by the experts who were consulted.

Alliance (HCA), a network of 10 health consumer centers (HCCs) operated by community-based legal services organizations throughout the state, to get information about the type of health-specific legal needs outlined in the California Justice Gap Study.

To that end, we contacted Mr. Jack Dailey, coordinator of the statewide HCA and Director of the Health Consumer Center (HCC) housed within the Legal Aid Society of San Diego.

HCCs provided by legal aid programs serve the entire state; they assist people with the types of health-related problems identified in the California Justice Gap Study, including issues with billing, access to specialists, and denial of medical equipment. The HCA has identified a diverse array of funds, from the California Department of Managed Health Care, Covered California, and the California Endowment, that allows HCCs to serve people regardless of income; however, 90 percent of those served by these HCCs have a household income of less than 200 percent of the Federal Poverty Level (FPL) and another 5 percent are between 200 and 400 percent of FPL. The remaining 5 percent are above 400 percent of FPL. While services are available for free to all Californians regardless of income, the low utilization rate by Californians above 200 percent of FPL may be due to a lack of awareness about available services or an assumption of income ineligibility due to the fact that HCCs are housed within legal services programs, which generally serve low income populations. Mr. Dailey indicated that, while broader outreach may be necessary and would increase awareness, the HCCs do not currently have the capacity to serve all in need.

The legal work performed by the HCCs was described as being potentially suitable for nonattorneys to perform. In fact, there is currently a full array of nonattorney professionals assisting both HCC attorneys, and independently as part of a private market, in health-related advocacy. However, given the potential complexities involved, and the importance of relationships in solving many problems that arise, a rigorous and well-designed paraprofessional program would be required; Mr. Dailey expressed reservations about the ability of this work being performed in the absence of attorney oversight. Mr. Dailey explained that, while these areas require specialized knowledge, access to the appeals process is designed to be consumer friendly; the assistance of a licensed paraprofessionals with extensive training might be beneficial to those in need. Mr. Dailey also identified benefits planning and asset protection as areas where a trained, licensed paraprofessional might benefit consumers. One potential downside of the State Bar establishing a paraprofessional license in this area would be the possibility that those with limited means would inadvertently be diverted from the free services provided through the HCC's; careful marketing and information materials published by the State Bar would need to address this concern.

### **Medi-Cal Administrative Appeals**

The administrative processes for Medi-Cal appeals is similar to the process for public benefits, workers' compensation insurance and unemployment insurance, as detailed in the recommendation memo regarding the Income Maintenance practice area: if an initial application or claim is denied, an appeal is filed with California Department of Social Services. A

second level of appeal is available through the Department of Healthcare Service's Office of Administrative Hearings and Appeals, before an administrative law judge. The final remedy is superior court review, via an administrative writ.

The administrative processes allow for nonattorneys to represent the claimant in the proceedings themselves and no training or certification is required for nonattorneys. However, the statutes and regulations that allow for this representation appear to be silent about the scope of allowable representation outside of the parameters of the hearings themselves.

## **Recommendation**

We recommend that the Health practice area be included for ongoing consideration in a paraprofessional program, with a focus on the following subtopics identified by the California Justice Gap Study as areas of significant need:

- Billing for medical services, including copays and deductibles.
- Denial of access to services or equipment.
- Denial of access to insurance.
- Failure to inform of free services or available financial assistance.

Consideration of representation by licensed paraprofessionals in Medi-Cal appeals raises issues addressed by the discussion of representation in appeals regarding public benefits, workers' compensation and unemployment matters in the recommendation memo regarding the Income Maintenance practice area. Discussion of Medi-Cal appeals should be included during the discussion of that topic.

Paraprofessional licensing in the area of health care assistance would require rigorous licensing, training and testing, with continuing education in the field required for ongoing certification.



# The State Bar *of California*

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: March 26, 2021

To: CPPWG Consumer Debt & General Civil Subcommittee

From: Dana McRae, Chair, CPPWG Health Subcommittee

Subject: Referral of Medical Debt to Consumer Debt & General Civil Subcommittee

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The CPPWG Health Subcommittee was charged with considering licensing paraprofessionals to provide healthcare related legal assistance. The California Justice Gap Study identified the following top three needs in this area:

- Being billed incorrectly for medical services, including co-pays and deductibles.
- Having health insurance that would not cover medically needed procedures, services, medical equipment, prescriptions, transportation services or mental health services.
- Not being informed about financial assistance for health care or that free care might be available from a hospital or at home.

Our subcommittee's investigation found that there is a network of Health Consumer Alliances (HCAs) that provide free assistance in these areas; services are available regardless of income. A focus of our recommendation in this area will be for the State Bar to assist with efforts to increase consumer awareness of these services.

While HCAs assist consumers in challenging insurance bills, they are not always able to assist once bills have been incurred, and to defend against collection efforts. We recommend that the Consumer Debt & General Civil Subcommittee include medical debt in its practice area. We recommend that you consult with subject matter experts in this field, who can identify topics that should be included in the training and certification requirements for those who will be licensed in this area. Ms. Wilson and Ms. Katz can provide contact information for these experts.



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: April 19, 2021

To: California Paraprofessional Program Working Group

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

Subject: Housing Subcommittee Recommendations for Paraprofessional Program

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program, and the specific tasks that will be allowed for licensees in each practice area.

### DISCUSSION

At its first meeting on April 21, 2020, the CPPWG discussed potential practice areas for program inclusion. The Housing practice area was among those considered as "wobblers," requiring further investigation to determine whether they should be included in the paraprofessional program. The Housing Subcommittee, which initially included only Ms. Fellmeth and Mr. Spiro, provided its recommendation at the June 30, 2020, Working Group meeting, that the Housing practice area be included for ongoing consideration in a paraprofessional program, with a focus on evictions and unlawful detainer proceedings. The Subcommittee also recommended that homeownership issues related to clearing title, excluding quiet title actions, should be further studied for consideration. The June 30 memo is provided as Attachment A.

Other than the Family Law Subcommittee, practice area focused subcommittees were suspended after the CPPWG's August 2020 meeting as the Working Group decided to pivot to the development of licensing, regulation, and discipline requirements and parameters for the new class of licensees. After joining the CPPWG in December, Judge Harper, as well as Ms. Soroosh and Mr. Hartston, joined the Housing Subcommittee, which reconvened on March 1, 2021.

### **LANDLORD/TENANT DISPUTES INCLUDING EVICTION AND UNLAWFUL DETAINER**

In researching the topic of evictions and unlawful detainers, the Housing Subcommittee became aware of local and statewide efforts to establish a civil right to counsel (RTC) for tenants facing eviction. RTC ensures that tenants facing an eviction proceeding are guaranteed legal representation by an attorney, which dramatically improves a fair chance to access legal protections and stay in their homes as well as reduce the negative impacts of eviction or move-out. RTC measures have been enacted in several cities throughout the country and have been shown to work. There is a multiyear movement in several local jurisdictions in California and statewide related to a right to counsel in eviction proceedings. Members of the Housing Subcommittee expressed concern that implementing a paraprofessional licensure program in eviction cases could unintentionally undermine efforts to establish and fund right to counsel in California.

The Subcommittee also considered concerns that paraprofessional licensing might exacerbate the imbalance in representation in unlawful detainer cases in jurisdictions where tenants facing eviction did not have resources to hire paraprofessionals, but landlords were able to access this lower-cost alternative to attorneys.

The Housing Subcommittee met with Ms. Trinidad Ocampo, from Neighborhood Legal Services of Los Angeles County (NLS), and Ms. Barbara Schultz, from the Los Angeles Subcommittee of the Right to Counsel Coalition and the Legal Aid Foundation of Los Angeles. While Los Angeles has not yet fully implemented RTC for eviction cases, through Los Angeles County and Los Angeles City funding, free representation by an attorney is available to income-qualified tenants facing eviction and they predict continued increased funding for free attorneys in eviction proceedings and establishment of a formal right to counsel. Both Ms. Ocampo and Ms. Schultz expressed significant concern about allowing paraprofessional representation of tenants in counties that are moving toward implementation of RTC, both because litigants who have free attorneys available through legal services would be better off accessing a legal services attorney rather than paying for a paraprofessional, and because a paraprofessional licensure program would unintentionally undermine the multiyear effort to increase funding and establish a right to counsel in eviction cases. They also both believe that paraprofessionals could be helpful in assisting with certain landlord-tenant issues such as security deposit disputes, but warned against representation in unlawful detainer cases, citing the complexity of those cases. They both noted that competent representation required familiarity with both

state and local statutes and regulations, as well as case law. They both expressed particular concern for subsidized housing cases, which are more complex, the stakes are high, and often free legal representation by an attorney is available through a local nonprofit legal services provider.

The Subcommittee also met with Ms. Ora Prochovnick, from the San Francisco Eviction Defense Collaborative (EDC). San Francisco has implemented RTC for all tenants, regardless of income. Full scope representation by attorneys is provided free of charge in eviction cases through a network of legal service providers. So far, they are meeting the demand and are able to represent litigants in all cases where a fee attorney is requested. She noted that a “tsunami” of eviction cases is anticipated when the pandemic-based eviction limitations end. Should demand exceed their capacity, the EDC intends to implement a risk-based prioritization system; income will be one among several factors included in the assessment of risk. Ms. Prochovnick explained that, while tenants are not currently screened out based on income, income information is collected. She speculated that only approximately 15 percent of clients currently served through the EDC might be in a position to hire a paraprofessional if they were deemed ineligible for free legal services in the future because of capacity issues. Most clients would not be able to hire a paraprofessional because of their low income.

Judge Harper reported on the meeting that he and State Bar staff held with Judge Patrick McKinney, who presides over unlawful detainer cases in Alameda Superior Court. Judge McKinney reported that nearly 100 percent of tenants in unlawful detainer proceedings in his court are represented by attorneys. He added that low-income landlords were often unrepresented, and that assistance by paraprofessionals would be helpful; he added that he would be comfortable having paraprofessionals advocate in court. Judge Harper noted that the large majority of landlords and tenants in unlawful detainer cases in the Trinity County Superior Court are unrepresented; he reported that he would welcome paraprofessional representation in his court, as well.

After considering information from subject matter experts, members of the Housing Subcommittee agreed that paraprofessional assistance in landlord-tenant matters, including in pre-filing issues but excluding trials, would be beneficial. The Subcommittee believes it is essential to include a strong statement and resolution in support of the Right to Counsel in eviction cases, emphasizing that the paraprofessional program is intended to supplement, rather than supplant, efforts to establish and fund a Right to Counsel. The Subcommittee also recommends that the State Bar support changes to the California Rules of Court to require settlement conferences in unlawful detainer cases, upon the request of either party, which would both promote settlement of cases and potentially enhance the effectiveness of paraprofessional representation.

The Subcommittee considered the bond requirement and determined a \$100,000 bond is appropriate for the housing practice area.

The Subcommittee considered whether paraprofessionals should be authorized to handle in-court representation and determined that it was appropriate to have paraprofessionals handle motion hearings and default prove-ups, but not to represent litigants in jury or bench trials. In particular, the Subcommittee was concerned about inappropriately pressuring litigants to waive their constitutional right to a jury trial. The Subcommittee agreed having paraprofessionals provide advice and guidance to litigants during trial, and answering direct questions from the judge, but not provide in-court representation during jury or bench trial was the best compromise proposal for eviction cases.

The Subcommittee discussed fee caps and concern was raised about the need for regulation of fees in this area. Judge Harper determined that the Subcommittee would consider this issue further after the discussion by the full Working Group.

The Housing Subcommittee adopted the following recommendations:

1. Paraprofessionals are authorized to assist clients in landlord tenant matters, including unlawful detainer actions, except that paraprofessionals may not provide representation in bench or jury trials.
  - Paraprofessionals may assist their clients by sitting at counsel table, to provide advice and guidance, and may respond to direct questions from the judge.
2. In addition to required disclosures about the availability of a free attorney through a local legal services program for those who qualify, paraprofessionals are required to advise clients of availability of a right to counsel program, or must certify that no such program exists, in their county.
3. The resolutions by the Working Group and report to the Board of Trustees should include strong support for establishing a right to counsel in unlawful detainer proceedings, as well as a clear explanation that paraprofessional licensing in this area is meant to supplement and not undermine establishment and funding of a right to counsel.
4. Proposed changes to California Rules of Court should require a settlement conference in each unlawful detainer case, if requested by any party.

Subcommittee member Ira Spiro favors the following recommendation in place of recommendation 2, above:

- Paraprofessionals are not authorized to assist clients in landlord-tenant matters in counties where there is a realistic possibility of a Right to Counsel program. A full list of such counties should be compiled, but the list must include the counties of Los Angeles, San Francisco, Santa Clara, Contra Costa Alameda, Sacramento, Orange, and San Diego; OR

- Paraprofessionals are not authorized to assist clients in landlord-tenant matters in counties where there is a realistic possibility of a Right to Counsel program, except that in those counties paraprofessionals are authorized to assist clients in non-lawsuit matters. A full list of such counties should be compiled, but the list must include the counties of Los Angeles, San Francisco, Santa Clara, Contra Costa Alameda, Sacramento, Orange, and San Diego.

### **LIEN CLEARING**

The Housing Subcommittee considered the topic of homeownership issues related to clearing title and clearing liens from title, as discussed in its June 30 recommendation to the CPPWG. The Subcommittee decided to exclude homeownership issues and title clearing issues other than those related to clearing liens. The Subcommittee reviewed information provided by Mr. Spiro, who suggested that assistance could be provided to help clients clear liens from their title without dealing with homeownership, real estate fraud, or filing a quiet title action or other action in court. After reviewing this information, the Subcommittee adopted the following recommendation:

- Paraprofessionals are authorized to assist clients in clearing liens from titles, but are prohibited from assisting with or representing parties in quiet title actions or other matters or litigation related to home ownership or clearing title.

### **PROPOSED RESOLUTIONS**

#### **LANDLORD-TENANT**

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

- Paraprofessionals may provide in-court representation for motion hearings and default prove-ups.
- Paraprofessionals may not provide in-court representation in bench trials or jury trials.
- During trials, paraprofessionals may assist their clients by sitting at counsel table, to provide advice and guidance, and may respond to direct questions from the judge.

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

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that the Working Group and the State Bar Board of Trustees express strong support for establishing and funding a right to counsel in unlawful detainer proceedings. Moreover, it should be clear that paraprofessional licensing in this area is meant to supplement

and not undermine establishment and funding of a right to counsel. In particular, a justice gap continues to exist; paraprofessionals will not be authorized to represent litigants at trial and free attorneys may not be available due to income-restrictions placed on right to counsel programs, legal services funding and capacity issues, or because local jurisdictions have not yet implemented or fully funded a right to counsel in their jurisdiction. Paraprofessionals also may participate with legal services programs to provide free or low-cost legal services.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that proposed changes to California Rules of Court should require a settlement conference in each unlawful detainer case, if requested by any party.

**LIEN CLEARING**

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



# The State Bar of California

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## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

Date: June 30, 2020

To: California Paraprofessional Program Working Group

From: Julie D'Angelo Fellmeth and Ira Spiro

Subject: Consideration of Housing as a Practice Area to Be Included in a Paraprofessional Program

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### Executive Summary

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program.

### Discussion

At its first meeting on April 21, 2020, the CPPWG discussed potential practice areas for program inclusion. While there was agreement with regard to including certain practice areas for additional consideration and excluding others, several practice areas were deemed "wobblers," meaning that additional information was required before a decision could be made regarding their status. Members of the CPPWG volunteered to study each of the wobbler areas with the goal of generating recommendations regarding ongoing consideration for the program for review by the full body at its next meeting.

### Sources of Data and Information

In generating our recommendation, we considered the following data points:

- Housing-related questions and responses included in the California Justice Gap Survey and the ensuing Justice Gap Report (November 2019)
- [Sargent Shriver Civil Counsel Act Evaluation, June 2020 Draft](#) (2020 Shriver Evaluation)
- [Evaluation of the Sargent Shriver Civil Counsel Act \(AB590\) Housing Pilot Projects](#) (2017 Shriver Evaluation)
- [Assembly Judiciary Committee staff, Background Paper for an Informational Hearing entitled “How Can California Improve Access to Justice for Unrepresented Litigants?”](#) (February 25, 2020)
- National Low Income Housing Coalition, [Out of Reach](#) (2019)
- Statistics compiled by Kyle Nelson, a PhD candidate and instructor in the Department of Sociology at the University of California, Los Angeles.

### California Justice Gap Report

The California Justice Gap Survey included questions about both homeownership and rental housing, as follows:

**“Homeownership:** Questions asked about being the target of misleading or dishonest mortgage practices, being told by a lender that extra financial products needed to be purchased to get a mortgage, falling several payments behind on a mortgage or having a home going into foreclosure, and selling or buying property. These questions were asked of those who own their home.”

**“Rental Housing:** Questions asked about a dispute with a landlord about rules or property, difficulty getting a security deposit back, the denial of reasonable accommodations for a medical condition, trouble getting a written lease or rental contract, failure to receive basic services or repairs, a threat of eviction, denial or trouble with a housing voucher or subsidy, harassment for rent, denial of relocation assistance from an unsafe rental unit, and denial of a rental unit because of prior juvenile or criminal system involvement. These questions were asked of those who rent their home.” (CJGS Report at page 57.)

Housing issues are of clear concern to low-income Californians. The California Justice Gap Report includes findings from the State Bar’s 2018–2019 census of legal aid organizations (all emphasis added). The CJGS Report states (page 11, see also page 44): “In 2018, legal aid organizations provided services to Californians most often for problems related to housing, immigration, and health,” with housing problems—reported by 21 percent of legal aid clients, immigration by 13 percent, and health by 10 percent—at the top of the list. (The census defined “housing” as including rental housing and homeownership/foreclosure issues; CJGS at page 44.)

Similarly, at page 49, the Justice Gap Report states: “The 2019 California Justice Gap Survey of California residents showed that 39 percent of problems for which low-income Californians

received help were discussed with legal aid (see Figure 10). An analysis of those problems revealed that the top three served by legal aid were related to rental housing (15 percent), health (13 percent), and employment (11 percent). The top three problems for which low-income Californians received legal help according to the Intake Census were housing (12 percent), foreclosure (11 percent) and health (11 percent). See Figure 16. [¶] The top problems served by legal aid organizations, according to both the California Justice Gap survey and the Intake Census involved rental housing (“housing” represents rental housing in the Intake Census).” Again, housing — in particular, rental housing — topped these lists.

At page 27, the report states: “Californians at or below 125 percent of FPL were most likely to receive only nonlegal help for rental housing, income maintenance, and homeownership.”

At page 43, the report states: “Previous sections of this report explored the civil legal needs of Californians at all income levels. This section explores the assistance received by low-income Californians who actively sought assistance from a California State Bar-funded legal aid organization. Key findings include: Housing and immigration are the top two problems reported to legal aid.”

“Homeownership” issues surfaced as the second-highest area (50 percent, second only to children and custody at 54 percent) where legal help was sought and received by individuals with incomes less than 125 percent of the federal poverty line. (The California Justice Gap Report at page 34, Figure 9.) The questions posed to CJGS survey respondents included several “homeownership” issues, including problems in “selling or buying property” (the actual questions are quoted above). It is reasonable to assume that one problem in “selling or buying property” might be clouds on the title of that property. It is unclear whether the entire process of clearing title on real property constitutes the practice of law. Clearly, writing a petition to quiet title is the practice of law (this working group is authorized to recommend that competent and qualified paraprofessionals should be able to file such a petition without attorney supervision). However, it is unclear whether other steps leading up to the filing of a petition (for example, researching and securing the title report, negotiating with lienholders in an attempt to persuade them to remove their lien) constitute the practice of law. Inasmuch as “homeownership issues” landed as the second-highest problem causing survey respondents at 125 percent of the federal poverty line to seek and secure legal help (CJGS Report at page 34), yet “real property issues” are fairly low in terms of frequency and criticality (California Attorney Practice Analysis Study at page 14), we believe that activities relating to clearing title to real property should be further studied for inclusion in a paraprofessional program.

Rental housing issues were identified by 31 percent of survey respondents with incomes below 125 percent of the federal poverty line. (CJGS Report at page 34, Figure 9.) As noted above, rental housing issues top the list of legal problems most frequently plaguing low-income residents and brought to the attention of legal aid attorneys. It seems clear to us that both rental housing issues and homeownership issues should be studied in depth for inclusion in a paraprofessional program. Although the CJGS report found that rental housing issues did not

evidence the same frequency or severity levels as homeownership issues, that is difficult for us to credit; it may be related to how the CJGS survey questions were phrased. The questions on rental housing were summarized on page 57 of the CJGS Report, and are quoted above; though the questions asked about “threat of eviction,” they did not ask about actual eviction proceedings.

### **Sargent Shriver Civil Counsel Act Evaluation, June 2020 Draft**

We note for the record that we were told that neither the Judicial Council nor the State Bar collects or has data on the number of unlawful detainer (UD) actions filed annually, the percentage of UD parties who are represented by counsel, the default rate by tenant defendants in cases where they are represented by counsel vs. cases in which they are not represented, and final outcomes in cases filed where parties are represented vs. cases filed in which either party lacks counsel. In fact, we are told that many counties do not report such data to the Judicial Council, and nothing requires them to.

As such, we are forced to rely on and extrapolate from data collected in pilot projects established under the Sargent Shriver Civil Counsel Act, Government Code section 68650 *et seq.* These pilot projects provide legal representation for self-represented low-income parties in civil matters involving critical livelihood issues such as housing, child custody, domestic violence, guardianship, and conservatorship. Under the Shriver Act, the Judicial Council in 2012 established housing-related pilot projects in six California counties.<sup>1</sup> The projects involve one or more legal services agencies working in collaboration with the local superior courts; the projects are funded by increases in various court filing fees, and they are intended to serve individuals with an income at or below 200 percent of the federal poverty level and facing an opposing party with legal representation. Because of the low-income requirement, more than 99 percent of litigants served were tenants (although some projects offer services to low-income landlords). (2020 Shriver Evaluation at page 13.)

The Shriver housing pilot projects were comprehensively evaluated in 2017, and a draft updated June 2020 comprehensive evaluation is now available. Although these evaluations are replete with detailed data and observations that support the involvement of legal counsel for usually-unrepresented tenant defendants facing eviction, they are limited to six counties. However, they provide data that are helpful to a discussion of whether there is a need for competent paraprofessional representation in UD proceedings. For example, the 2020 draft evaluation states that “[s]ince the Shriver Program’s inception in 2012, a total of 43,266 low-income litigants have received some type of civil legal service. ... Of the 43,000 litigants served, about 39,000 were involved in unlawful detainer (eviction) cases....” (2020 Shriver Evaluation at page I.)

As noted elsewhere in this recommendation, the largest Shriver housing pilot project is based in Los Angeles where, in fiscal years 2013 and 2014, “an average of 16,364 unlawful detainer cases were filed annually, ... and the Los Angeles housing pilot project provided legal aid services to an

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<sup>1</sup> In 2015, one housing project dropped out; in 2018, one new housing project was funded. (2020 Shriver Evaluation at page 3.) To avoid confusion, we will refer to six California counties.

average of 3,068 cases per year (18 percent).” (2017 Evaluation at page 48.) As such, the Shriver pilot projects may be reaching only the tip of the iceberg in terms of need. According to the Draft 2020 evaluation, “[A] recent report on eviction in Fresno County found that 73 percent of landlords were represented, versus only 1 percent of tenants. In addition, studies in two jurisdictions outside of California found that approximately 90 percent of landlords had attorneys and approximately 10 percent of tenants did.” (2020 Shriver Evaluation at page 9; footnote omitted.)

Further, according to a background paper prepared by Assembly Judiciary Committee staff for a February 25, 2020 hearing entitled “How Can California Improve Access to Justice for Unrepresented Litigants,” “nearly 90 percent of tenants who file an answer in their eviction proceedings appear [] without attorneys” (at page 2), and the number of Californians “who go to court without an attorney” is “4.3 million and growing” (at page 3). According to the 2017 evaluation of the Shriver program pilot projects, “among low-income populations, it is very common for unlawful detainer cases to involve landlords with legal representation and tenants without the resources to obtain counsel. By balancing the playing field, the Shriver Program sought to provide equal access to justice and to ensure that cases were decided on their merits and not as a result of one side having legal representation.” (2017 Shriver Evaluation at page II.)

**Housing Crisis in California:** The National Low Income Housing Coalition’s (NLIHC) 2019 *Out of Reach* report ranked California as the state with the second highest housing wage in the country. According to the NLIHC, housing wage is “an estimate of the hourly wage a full-time worker must earn to afford a rental home at HUD’s fair market rent without spending more than 30 percent of their income on housing costs. ... Data from the Shriver Act evaluation indicate that, across all six housing pilot projects in 2019, the majority of Shriver clients were rental cost burdened. ... Only 19 percent of clients had rents that were classified as manageable according to HUD standards.” (2020 Shriver Evaluation at page 6.)

**Need for Legal Assistance in Unlawful Detainer Cases:** “[E]viction is one of the most pressing civil justice issues for low-income individuals, as the loss of housing poses a wide range of short- and long-term risks and consequences for families. These risks can be particularly severe for vulnerable tenants, such as the elderly and people with disabilities. Among low-income populations, it is very common for unlawful detainer cases to involve landlords with legal representation and tenants without the resources to retain counsel.” (2020 Shriver Evaluation at page II.)

“The city [of Los Angeles] estimates there are about 30,000 eviction filings in court per year, and advocates figure about 85 percent of tenants have no legal representation. Many don’t know how to defend themselves and never show up in court, immediately forfeiting their case.” (*Los Angeles Times*, April 23, 2019.) As noted above, the Shriver Los Angeles housing pilot project processed an average of only 3,068 cases per year during 2013 and 2014. (2017 Shriver Evaluation at page 48.)

**Two Categories of Services Provided by Shriver Housing Projects:** “The housing pilot projects offered two levels of legal service: (a) full representation by a Shriver attorney, and (b) unbundled services (help with discrete legal tasks). Across the six projects, 56 percent of Shriver clients received full representation and 44 percent received unbundled services.” (2020 Shriver Evaluation at page 50.)

**Landlords Nearly Always Are Represented by Counsel in Unlawful Detainer Cases:** “Of those tenants who received full representation from a Shriver attorney, 95 percent were facing a landlord who was represented by counsel (1 percent were not and 4 percent were unknown).” (2020 Shriver Evaluation at page 50.) “Of those provided with unbundled services, 71 percent faced a represented landlord (14 percent did not and 10 percent were missing this information).” (2020 Shriver Evaluation at page 14.)

**Shriver Projects, While Helpful, Do Not Come Near to Meeting the Full Need for Representation:** As noted above, the Shriver Housing Projects are located in only six of California’s 58 counties. The Shriver projects in Los Angeles, San Diego and Sacramento are quite large. But many large counties are not included, such as Alameda, Santa Clara, San Mateo, San Bernardino, Riverside, and Orange. None of the largely rural counties are included, and many of those are low-income counties.

“Staff at several of the [Shriver housing projects] reported that they were unable to serve all of the litigants who did present for help because demand for service consistently outpaced their capacity to provide it. One staff member explained, “[W]ith the current funding and staffing levels, our program cannot assist everyone that shows up for help.” Capacity problems were exacerbated for legal services agencies in rural areas that struggled to stay fully staffed.” (2020 Shriver Evaluation at page 45.)

In the Shriver Housing Projects, nearly half the clients did not receive full representation: “10,855 clients (56 percent) were provided full representation by a Shriver attorney, while the remaining 8,605 clients (44 percent) received at least one unbundled service.” (2020 Shriver Evaluation at page 14.)

“In several areas, the Shriver pilot project was the only provider of free assistance to low-income tenants facing eviction. In some places, the demand for service exceeded the capacity of the project and litigants were turned away. In other areas, especially larger geographic regions, Shriver staff noted that accessing services was challenging for tenants with disabilities, unreliable transportation, or inflexible work schedules. It could take hours, by bus, to get to the courthouse or to legal aid offices, which can be a significant impediment to accessing help, even when it is free. Enabling Shriver staff to accommodate clients by going to their homes for the initial meeting might help surmount these barriers.” (2017 Shriver Evaluation at page 191.)

Additionally, project staff expressed concern for those tenants who did not qualify for Shriver services due to their income, but who could still not afford an attorney, and therefore tended to

slip through the cracks. Further, they felt that low-income landlords would benefit from legal assistance at a greater level than what was available in the current projects.” (2017 Shriver Evaluation at page 191.)

**Defaults by Tenants Are Very Common; The Need for Assistance in Filing Answers:** “Tenants’ access to justice depends on their ability to successfully file a written response to the unlawful detainer complaint within five days. Inability to do so results in a default, whereby tenants lose possession of the property without ever presenting their side of the case.” (2020 Shriver Evaluation at page III.)

“In unlawful detainer cases, defaults tend to be very common. In 2019, across four of the counties with Shriver housing pilot projects, the average default rate was approximately 40 percent. (2020 Shriver Evaluation at page III.)

**Increased Representation of Tenants in Unlawful Detainers Does Not Result in More Trials More Work for the Courts; It Decreases the Courts’ Work:** “Balancing the playing field did not appear to make unlawful detainer proceedings more combative or drawn-out. Instead, it increased the likelihood of settlement. Across all six pilot projects, 66 percent of tenants with Shriver representation settled their cases and 4 percent resolved their cases via trial (18 percent were dismissed, 4percentresolved another way, and 8percentwere unknown). Random assignment study found that the settlement rate with balanced representation is significantly higher (67 percent) and the trial rate lower (3 percent), than what occurs when the tenant is self-represented (34 percent and 14 percent, respectively).” (2020 Shriver Evaluation at page III.)

“Although providing representation to tenants did not shorten the time to resolve cases, it did reduce the level of involvement necessary by the court to bring cases to resolution. Shriver services enabled a majority of unlawful detainer cases to resolve by settlement, which requires comparably fewer court resources, and limited the number of cases that went to trial, which is a more resource-intensive activity for court staff and judges. These efficiencies can help alleviate court congestion by reducing the load on court clerks and judicial officers, and they also translate into cost savings over time. (2020 Shriver Evaluation at page V.)

**Statistics Compiled By Kyle Nelson, a PhD candidate and instructor in the Department of Sociology at the University of California, Los Angeles.**

- Los Angeles, CA (Blue Ribbon Citizens’ Committee on Slum Housing 1997): “4% of tenants, as opposed to the ‘vast majority of landlords’ were represented [in eviction proceedings].” (Quoted in Chester Hartman and David Robinson, *Evictions: The Hidden Housing Problem*, Housing Policy Debate 14(4):461, 477 (2003).)
- Los Angeles, CA (Blue Ribbon Citizens’ Committee on Slum Housing [1997-1998]: “Of 51 tenants who attempted to defend their eviction based on conditions, not a single tenant proceeding unrepresented was successful.” (Quoted in Russell Engler, *Connecting Self-*

*Representation to Civil Gideon: What Existing Data Reveal About When Counsel Is Most Needed*, Fordham Urban Law Journal 37(1):38, 50 (2010).)

- Los Angeles, CA (Blasi 2004): “Out of 151 tenants who had asserted facts constituting breaches of the implied warranty of habitability, the total number who prevailed at trial without a lawyer was zero. And when the pro se tenants settled, as most did, the terms were no better than what would have happened had they gone to trial and lost.” Gary Blasi, *How Much Access—How Much Justice*, Fordham Law Review 73:865, 869 (2004).

## Recommendations

Many of the reports upon which we relied were published prior to the coronavirus pandemic and its resulting stay-at-home orders and economic shutdowns across California and the United States, which seem certain to exacerbate California’s housing woes. As of June 25, 2020, the U.S. unemployment rate was 13.3 percent; almost 20 million U.S. citizens are unemployed. At 15.5 percent, California’s unemployment rate is even worse. Although many jobless individuals are collecting unemployment benefits, many are unable to pay rent — leaving tenants open to eviction. In response to this crisis, state and local officials have issued orders temporarily protecting tenants from eviction for nonpayment of rent due to financial impacts related to the virus. On March 4, Governor Newsom declared a state of emergency as a result of the pandemic and, in early April, the Judicial Council issued an emergency rule suspending eviction actions; the rule will remain in place until 90 days after the Governor lifts the emergency order.

Despite these actions, some landlords are allegedly evicting nonpaying tenants without filing unlawful detainer actions by locking them out of their homes, turning off their utilities, and deploying other illegal methods (*Los Angeles Times*, June 18, 2020). Additionally, some local sheriff’s offices are resuming eviction proceedings in cases that were initiated prior to the Governor’s executive order (*San Diego Union-Tribune*, May 7, 2020). Suffice it to say that once the Governor lifts the executive order, and barring new legislation, eviction proceedings will skyrocket and overwhelm the courts, legal services organizations that sometimes represent tenants in UD actions, and even the cadre of attorneys who regularly represent landlords in those actions.

Our team concludes that the data support further consideration of the inclusion of several housing issues in a program allowing qualified paraprofessionals to practice law without attorney supervision. In particular, we recommend that rental housing issues related to eviction and unlawful detainer proceedings be included in such a program.<sup>2</sup> In addition, we recommend

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<sup>2</sup> At first blush, this practice area seemed different from the rest because of the presence of the statutory Unlawful Detainer Assistant (UDA) category, paraprofessionals authorized by law to render “assistance or advice in the prosecution or defense of an unlawful detainer claim or action.” (Bus. and Prof. Code § 6400(a).) But the UDAs really don’t make this practice area different. The idea of the Paraprofessional Program being studied by this working group is to allow paraprofessionals to do work that presently they cannot do because it constitutes the practice of law and thus violates the laws against unauthorized practice. The work of UDAs is confined to activity

that the homeownership issue of clearing title should be further studied for inclusion in such a program; we do not recommend that paraprofessionals assist with buying or selling property or handle quiet title lawsuits.

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that does not constitute the practice of law. (Bus. and Prof. Code § 6411.) Thus, in this respect UDAs are no different from any other nonlawyers and, like all nonlawyers, they are prohibited from practicing law, even in unlawful detainer proceedings.



Date: May 17, 2021

To: California Paraprofessional Program Working Group

From: Justin Ewert, Linda Katz, and Leah Wilson

Subject: Background Information to Support Paraprofessional Fee Cap Discussion

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## EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include regulation of the paraprofessional program. Among the regulatory issues being considered is whether or not to impose caps on the fees that paraprofessionals may charge. This memorandum provides background information in support of discussion of this issue.

## BACKGROUND

The Regulation Subcommittee has raised the possibility of fee caps on several occasions including in memos to the full Working Group on February 26, 2021 and April 19, 2021. In addition, other subcommittees have discussed fee caps during the course of practice area deliberations. Given that the question of fee caps raises significant policy issues, a dedicated Working Group meeting was set to fully consider, and make a decision regarding, the matter.

## DISCUSSION

### FEE CAPS IN OTHER CONTEXTS

#### Existing Fee Caps for Attorneys

Attorney fee caps exist in limited circumstances. They can be broadly characterized as follows:

- Caps on the amount an attorney can earn from clients including:
  - Limits on contingency fees
  - Hourly or per case rates set by modest means panels or referral services
- Caps on the amount an attorney can earn when serving as appointed counsel with a government payor
- Caps on attorney fee awards, including presumptively reasonable fee awards:
  - Superior Court local rules often provide guidelines for fee awards that are deemed to be presumptively reasonable; these rules typically allow for attorneys to petition for fees beyond these amounts.

Some examples of the types of attorney fee caps that have been identified are provided in table 1, below. Where specific county examples are appropriate, table 1. focuses primarily on those counties that the Working Group has, or is likely to, include in the initial paraprofessional program rollout. State and federal statutory citations are provided in Attachment A; modest means panel data in Attachment B; data gathered on court-appointed counsel rates, Attachment C; and summaries of relevant local rules, Attachment D.

**Table 1. Summary of Fee Caps**

Contingency Fees		
<b>Business and Professions Code § 6146</b>	Medical Injury Compensation Reform Act (MICRA)	<ul style="list-style-type: none"> <li>• 40% of first \$50,000</li> <li>• 33 1/3% of next \$50,000 recovered</li> <li>• 25% of the next \$500,000 recovered</li> <li>• 15% on any amount which exceeds \$600,000</li> </ul>
<b>Probate Code § 10810</b>	Attorney for Personal Representative	<ul style="list-style-type: none"> <li>• 4% of the first \$100,000</li> <li>• 3% of the next \$100,000</li> <li>• 2% of the next \$800,000</li> <li>• 1% of the next \$9,000,000</li> <li>• 0.5% of the next \$15,000,000</li> <li>• Reasonable compensation as determined by the California Probate Court for any amount above \$25,000,000</li> </ul>
<b>Labor Code § 4906</b>	Workers Compensation	Fees may not exceed reasonable amount; reasonable amount to be determined by Worker’s Compensation Appeals Board, currently 9–12% <sup>1</sup>

<sup>1</sup> State Bar staff has heard anecdotally that rates are more typically set at 15 percent, though this could not be confirmed on the Workers’ Compensation Appeals Board website.

Modest Means Panel Rates		
<b>Contra Costa County</b>	Contra Costa County Bar Association	<ul style="list-style-type: none"> <li>Level One Clients: \$40–\$80/hour</li> <li>Level Two Clients: \$80–\$125/hour</li> </ul>
<b>Los Angeles County</b>	Los Angeles County Bar Association	Flat Fees: <sup>2</sup> <ul style="list-style-type: none"> <li>LLC Business Formation: \$800</li> <li>Trademark Registration: \$500</li> <li>Uncontested Divorce: \$800</li> <li>Bankruptcy Chapter 7: \$850</li> </ul>
<b>Orange County</b>	Orange County Bar Association	No more than \$125/Hour
<b>San Diego County</b>	San Diego County Bar Association	<ul style="list-style-type: none"> <li>Family Law: \$150/hour</li> <li>Flat Fees:               <ul style="list-style-type: none"> <li>LLC Business Formation: \$1,000</li> <li>Divorce: \$1,500</li> <li>Custody: \$1,000</li> <li>Trust, Will &amp; Estate Planning: \$1,000–\$2,500</li> <li>Bankruptcy Chapter 7: \$1,000–\$1,200</li> <li>Tenant Consultations: \$150–\$350</li> </ul> </li> </ul>
Appointed Counsel Rates		
<b>Alameda County</b>	Alameda County Superior Court	<ul style="list-style-type: none"> <li>Criminal: \$100–\$180/hour</li> </ul>
<b>Fresno County</b>	Fresno County Superior Court	<ul style="list-style-type: none"> <li>Criminal: \$80/hour, \$240 minimum</li> </ul>
<b>Merced County</b>	Merced County Superior Court	<ul style="list-style-type: none"> <li>Criminal: \$125/hour</li> <li>Family Code § 3150: \$125/hour</li> </ul>
<b>Mendocino County</b>	Mendocino County Superior Court	<ul style="list-style-type: none"> <li>Criminal: \$65–\$80/hour</li> <li>Family Code § 3150<sup>3</sup>: \$65/hour</li> </ul>
<b>Sacramento County</b>		<ul style="list-style-type: none"> <li>Criminal: \$75–\$150/hour</li> <li>Family Code § 7800 \$106.12/hour</li> </ul>
<b>Santa Barbara County</b>	Santa Barbara County Superior Court	<ul style="list-style-type: none"> <li>Criminal: 100–\$125/hour</li> <li>Family Code § 3150: \$100/hour</li> </ul>
<b>Santa Clara County</b>	Santa Clara Superior Court	<ul style="list-style-type: none"> <li>Criminal: \$110–\$125/hour</li> </ul>
Attorney Fee Awards		
<b>Government Code 13973</b>	Victims Compensation Appeals Board	Cannot exceed 10% of the victim award

<sup>2</sup> Attorneys who participate in the Los Angeles County have agreed to offer these legal services at these rates. However, it is entirely up to the referred lawyer whether the client qualifies for the flat fee. Income eligibility screening for the other programs listed in this table is done by the lawyer referral service.

<sup>3</sup> Family Code section 3150 allows the court to appoint counsel to represent the interests of a minor child in a custody or visitation proceeding, upon determination that such representation is in the best interest of the child. The court may pay for appointed counsel if it determines that the parties are unable do so.

Attorney Fee Awards		
<b>Insurance Code 1619</b>	Foreign Insurer (Claims Against)	No more than 12 1/2% of the amount the court or jury determines plaintiff is entitled to recover
<b>Revenue and Taxation Code (various sections)</b>	Actions Against Tax-Related "Boards"	In statute no more than \$75/hour unless court makes an exception, w/ CPI adjustment; \$139/hour after application of CPI
<b>Revenue and Taxation Code 19717</b>	Actions Against State, Tax-Related	In statute no more than \$125/hour unless court makes and exception, w/ CPI adjustment; \$230/hour after application of CPI
<b>Alameda Court Local Rules</b>	Default Action on Note or Contract	<ul style="list-style-type: none"> <li>• Up to \$5,000 recovery: greater of 25% or \$500</li> <li>• &gt;\$5,000-\$15,000: \$1,250 + 20% of award in excess of \$5,000</li> <li>• &gt;\$15,000-\$25,000: \$3,250 + 15% of award in excess of \$15,000</li> <li>• &gt;\$25,000-\$50,000: \$4,750 + 10% of award in excess of \$25,000</li> <li>• &gt;\$50,000: \$7,250 + 5% of award in excess of \$50,000</li> </ul>
<b>Alameda Court Local Rules</b>	Unlawful Detainer	\$375 minimum fee for default or uncontested trial
<b>Fresno Court Local Rules</b>	Default Action on Note or Contract	<ul style="list-style-type: none"> <li>• 25% of first \$5,000; minimum \$400</li> <li>• 15% of next \$10,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$25,000</li> <li>• 2% of next \$50,000</li> <li>• 1% of amount over \$100,000</li> </ul>
<b>Merced Court Local Rules</b>	Unlawful Detainer	\$400 for default residential unlawful detainer
<b>Sacramento Court Local Rules</b>	Default Action on Note or Contract	<ul style="list-style-type: none"> <li>• 25% of first \$1,000; minimum \$150</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$5,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of the amount over \$50,000</li> </ul>
<b>Sacramento Court Local Rules</b>	Unlawful Detainer	<ul style="list-style-type: none"> <li>• \$200 limit for default cases</li> <li>• \$300 for uncontested trial where defendant failed to appear, has filed an answer, and non-appearance default prove-up hearing is required</li> <li>• \$500 for contested trial with represented and unrepresented parties</li> <li>• \$750 for contested trial when both parties are represented</li> </ul>

Attorney Fee Awards		
<b>Equal Access to Justice Act (EAJA) 5 US Code 504; 28 US Code 2412</b>	Awards of Attorney Fees in Cases Against US	No more than \$125/hour unless agency makes an exception, w/ CPI adjustment; \$224/hour after application of CPI
<b>26 US Code 7430</b>	Awards of Attorney Fees in Tax Matters	No more than \$170/hour unless court makes an exception, w/ CPI adjustment; \$213/hour after application of CPI

### Existing Fee Caps for Other Legal Professionals

Legal Document Assistants, Immigration Consultants, and Unlawful Detainer Assistants: no known fee caps.

### Existing Fee Caps for Legal Paraprofessionals, Other States

No known fee caps.

## METHODOLOGY FOR ESTABLISHING FEE CAPS, IF DECISION MADE TO IMPOSE

### Process by which Courts Set Appointed Counsel Rates

Staff was unable to identify any methodology by which local courts establish appointed counsel rates. The process was described by one source as “organic,” involving a review of neighboring jurisdictions’ rates and shared perceptions about what the local market would bear.

### Process by Which Modest Means Panels Set Rates

Staff found limited information regarding methodologies by which local bar associations establish modest means panel rates, if at all; it should be noted that most bar associations with such panels do not appear to impose fee limitations on participating attorneys.

Staff was advised that the Los Angeles County Bar Association Lawyer Referral and Information Service surveyed its membership and the local market to obtain the going rate for certain flat fee services. They presented their membership with reduced rates based on this information, to determine if they would be willing to perform the services at the lower rates.

The Contra Costa Bar Association appears to have one of the more developed fee structures for its moderate means panel, with tiered rates based on client gross household income, as shown in table 2.

**Table 2. Contra Costa County Bar Association Moderate Means Hourly Fees**

	Level One	Level Two
<b>Income Relative to Federal Poverty Level</b>	85%–159%	141%–233%
<b>Hourly Fees</b>	\$40–\$80	\$80–\$125
<b>Deposit on Account</b>	\$500–\$800	\$800–\$1,000

Staff was advised that the Contra Costa Moderate Means Program, which is limited to family law cases, has been temporarily shut down as they revamp qualifications. Cited among the challenges facing the program is that some of the cases are too involved for panel attorneys to take for \$80 per hour for an extended period of time. The program is considering capping the number of hours available through the program.

### **Fee Caps Established Pursuant to Dependency Counsel Fee Structure Methodology**

In 2006, the Judicial Council of California developed a model for uniform compensation of court-appointed counsel in juvenile dependency cases. Development of this model entailed the following steps:

1. Establishment of four California regions, based on the following factors:
  - Regions identified by a cost of labor study conducted previously by the Judicial Council
  - County Counsel average salary
  - Median household income
  - Median home value
2. Establishment of tiered salary and hourly pay rates for each region, pegged to County Counsel salaries, based on the following information:
  - Entry-level, mid-range, and top-range County Counsel salary for each county in each region
  - Average for each salary level, by region
    - An assumed standard number of work hours per year, used to convert salary to hourly rates
3. Determination of additional staffing requirements, including supervising attorneys, investigators/social workers, and support staff, based on the provider type (e.g., panel, firm, government agency, or solo practitioner)
4. Determination of overhead rate, including direct and indirect costs.

These steps resulted in a four-part calculus for court-appointed counsel by region:

- Attorney salaries
- Additional staff salaries
- Benefits
- Overhead/indirect rates

Additional information about the methodology can be found in Attachment E.

### **Fee Caps as a Percentage of Average Attorney Hourly Rates**

There is limited data available as to the rates that California attorneys charge; reporting on fees is not required. Two data sources have been analyzed in relation to the present fee cap discussion: the 2020 Annual Legal Trends Report published by Clio, and a 2017 State Bar licensee survey.

Clio offers a law practice management and client intake software product that is used by thousands of attorneys nationwide. Clio publishes an Annual Legal Trends Report, which includes data on average hourly rates charged by law firms, individual lawyers, and billable non-lawyers, by state and practice area. Key 2020 data is provided in table 3, below; practice area data reflects nationwide, vs. California-specific, rates. The full 2020 Annual Legal Trends Report can be found here: <https://www.clio.com/resources/legal-trends/2020-report/read-online/>

**Table 3. Clio Data**

	Law Firms	Lawyers	Nonlawyers
<b>California</b>	\$308	\$338	\$171
<b>Collections</b>	\$242	\$280	\$140
<b>Family</b>	\$237	\$265	\$140
<b>Traffic</b>	\$244	\$246	\$249

The State Bar generated an attorney fee data set pursuant to a 2017 survey of State Bar licensees. That survey revealed that the average hourly rate charged by responding California attorneys was \$380; approximately 6,500 California attorneys provided fee information. The data was further broken down to solo and small firm attorneys and selected counties, representing approximately 2,100 attorney survey respondents, as outlined in table 4.

**Table 4. 2017 Attorney Survey Hourly Fee Data**

County	Criminal	Elder Abuse	Family Law	Real Estate	Other
<i>Average</i>					
<b>Alameda</b>	277	322	327	311	352
<b>Central Valley*</b>	279	254	268	272	274
<b>Los Angeles</b>	340	362	352	383	403
<b>Orange</b>	345	327	334	338	349
<b>Sacramento</b>	247	287	273	278	302
<b>San Francisco</b>	290	423	359	375	374
<b>Santa Clara</b>	293	323	330	356	367
<i>Median</i>					
<b>Alameda</b>	263	300	350	300	350
<b>Central Valley*</b>	275	250	250	295	250
<b>Los Angeles</b>	350	350	350	375	375
<b>Orange</b>	350	325	345	350	350
<b>Sacramento</b>	200	283	263	300	300
<b>San Francisco</b>	300	388	325	355	350
<b>Santa Clara</b>	300	325	350	350	350

\*Includes Fresno, Merced, and Tulare counties.

Comprehensive fee data captured in the 2017 survey is provided as Attachment F.

## I. California Code

### MICRA

In 1975, the Medical Injury Compensation Reform Act ("MICRA") capped non-economic damages at \$250,000 and limited contingency fees that plaintiffs' attorneys could charge injured plaintiffs according to a sliding scale. No limits were placed on the amounts that an injured plaintiff could recover for medical care, lost earnings and other economic damages:

#### [Business and Professions Code section 6146](#)

(a) An attorney shall not contract for or collect a contingency fee for representing any person seeking damages in connection with an action for injury or damage against a health care provider based upon such person's alleged professional negligence in excess of the following limits:

- (1) Forty percent of the first fifty thousand dollars (\$50,000) recovered.
- (2) Thirty-three and one-third percent of the next fifty thousand dollars (\$50,000) recovered.
- (3) Twenty-five percent of the next five hundred thousand dollars (\$500,000) recovered.
- (4) Fifteen percent of any amount on which the recovery exceeds six hundred thousand dollars (\$600,000).

The limitations shall apply regardless of whether the recovery is by settlement, arbitration, or judgment, or whether the person for whom the recovery is made is a responsible adult, an infant, or a person of unsound mind.

(b) If periodic payments are awarded to the plaintiff pursuant to Section 667.7 of the Code of Civil Procedure, the court shall place a total value on these payments based upon the projected life expectancy of the plaintiff and include this amount in computing the total award from which attorney's fees are calculated under this section.

(c) For purposes of this section:

- (1) "Recovered" means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim. Costs of medical care incurred by the plaintiff and the attorney's office-overhead costs or charges are not deductible disbursements or costs for such purpose.
- (2) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500), or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Health care provider" includes the legal representatives of a health care provider.
- (3) "Professional negligence" is a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that the services are within the scope of services

for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital.

## **WORKERS COMPENSATION**

### **Labor Code section 4906**

(a) A charge, claim, or agreement for the legal services or disbursements mentioned in subdivision (a) of Section 4903, or for the expense mentioned in subdivision (b) of Section 4903, is not enforceable, valid, or binding in excess of a reasonable amount. The appeals board may determine what constitutes a reasonable amount, but payment pursuant to subdivision (a) of Section 4903 or Section 5710 shall not be allowed for any services or expenses incurred prior to the filing of the disclosure form described in subdivision (e) with the appeals board and the sending of that form to the employer, or to the insurer or third-party administrator, if either is known, by the attorney.

(b) An attorney or agent shall not demand or accept any fee from an employee or dependent of an employee for the purpose of representing the employee or dependent of an employee in any proceeding of the division, appeals board, or any appellate procedure related thereto until the amount of the fee has been approved or set by the appeals board.

(c) Any fee agreement shall be submitted to the appeals board for approval within 10 days after the agreement is made.

(d) In establishing a reasonable attorney's fee, consideration shall be given to the responsibility assumed by the attorney, the care exercised in representing the applicant, the time involved, and the results obtained.

(e) At the initial consultation, an attorney shall furnish the employee a written disclosure form promulgated by the administrative director which shall clearly and prominently describe the procedures available to the injured employee or his or her dependents. The disclosure form shall describe this section, the range of attorney's fees customarily approved by the appeals board, and the attorney's fees provisions of Section 4064 and the extent to which an employee may receive compensation without incurring attorney's fees. The disclosure form shall include the telephone number of the administrative director together with the statement that the employee may receive answers at that number to questions concerning entitlement to compensation or the procedures to follow to receive compensation. A copy of the disclosure form shall be signed by the employee and the attorney and filed with the appeals board and sent to the employer, or insurer or third-party administrator, if either is known, by the attorney within 15 days of the employee's and attorney's execution thereof.

See: <https://dir.ca.gov/dwc/FORMS/DWC3.pdf> for a sample fee disclosure statement.

## **VICTIMS COMPENSATION BOARD**

### **Government Code section 13973**

(a) Upon presentation of a claim pursuant to this chapter, the California Victim Compensation Board shall fix a time and place for the hearing of the claim, and shall mail notices of the hearing to interested persons or agencies. The board shall receive recommendations from public safety or law enforcement agencies, and evidence showing all of the following:

(1) The nature of the crime committed by the apprehended criminal or prevented by the action of the private citizen, or the nature of the action of the private citizen in rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe, and the circumstances involved.

(2) That the actions of the private citizen substantially and materially contributed to the apprehension of a criminal, the prevention of a crime, or the rescuing of a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe.

(3) That, as a direct consequence, the private citizen incurred personal injury or damage to property or died.

(4) The extent of the injury or damage for which the claimant is not compensated from any other source.

(5) Any other evidence that the board may require.

(b) If the board determines, on the basis of a preponderance of the evidence, that the state should indemnify the claimant for the injury, death, or damage sustained, it shall approve the claim for payment. In no event shall a claim be approved by the board under this article in excess of ten thousand dollars (\$10,000).

(c) In addition to any award made under this chapter, the board may award, as attorney's fees, an amount representing the reasonable value of legal services rendered a claimant, but in no event to exceed 10 percent of the amount of the award. No attorney shall charge, demand, receive, or collect for services rendered in connection with any proceedings under this chapter any amount other than that awarded as attorney's fees under this section. Claims approved under this chapter shall be paid from a separate appropriation made to the California Victim Compensation in the Budget Act and as the claims are approved by the board.

*(Amended by Stats. 2016, Ch. 31, Sec. 120. (SB 836) Effective June 27, 2016.)*

## **PROBATE**

### **Probate Code section 10810**

(a) Subject to the provisions of this part, for ordinary services the attorney for the personal representative shall receive compensation based on the value of the estate accounted for by the personal representative, as follows:

(1) Four percent on the first one hundred thousand dollars (\$100,000).

(2) Three percent on the next one hundred thousand dollars (\$100,000).

(3) Two percent on the next eight hundred thousand dollars (\$800,000).

- (4) One percent on the next nine million dollars (\$9,000,000).
  - (5) One-half of 1 percent on the next fifteen million dollars (\$15,000,000).
  - (6) For all amounts above twenty-five million dollars (\$25,000,000), a reasonable amount to be determined by the court.
- (b) For the purposes of this section, the value of the estate accounted for by the personal representative is the total amount of the appraisal of property in the inventory, plus gains over the appraisal value on sales, plus receipts, less losses from the appraisal value on sales, without reference to encumbrances or other obligations on estate property.

**Probate Code section 10811**

- (a) Subject to the provisions of this part, in addition to the compensation provided by Section 10810, the court may allow additional compensation for extraordinary services by the attorney for the personal representative in an amount the court determines is just and reasonable.
- (b) Extraordinary services by the attorney for which the court may allow compensation include services by a paralegal performing the extraordinary services under the direction and supervision of an attorney. The petition for compensation shall set forth the hours spent and services performed by the paralegal.
- (c) An attorney for the personal representative may agree to perform extraordinary service on a contingent fee basis subject to the following conditions:
- (1) The agreement is written and complies with all the requirements of Section 6147 of the Business and Professions Code.
  - (2) The agreement is approved by the court following a hearing noticed as provided in Section 10812.
  - (3) The court determines that the compensation provided in the agreement is just and reasonable and the agreement is to the advantage of the estate and in the best interests of the persons who are interested in the estate.

**INSURANCE**

**Insurance Code section 1619**

In any action against a nonadmitted foreign or alien insurer upon a contract of insurance issued or delivered in this State to a resident thereof or to a corporation authorized to do business therein, if the insurer has failed for 30 days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action. Such fee shall not exceed 12<sup>1</sup>/<sub>2</sub> percent of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than twenty-five dollars (\$25). Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

## REVENUE AND TAXATION

Ten sections of the Revenue and Tax Code ([§ 8277](#), [§ 9277](#), [§ 30459.7](#), [§ 32476](#), [§ 41176](#), [§ 43527](#), [§ 45872](#), [§ 46627](#), [§ 50156.16](#), and [§ 60635](#)) were added to allow an aggrieved party to sue for actual and direct monetary damages in superior court if an officer or employee of a board\* recklessly disregards board-published procedures.

- **\$75 per hour** limit for attorney fees, unless the court determines that an increase in the cost of living or a special factor, such as limited availability of qualified attorneys for the proceeding, justifies a higher rate.
- **\$139 per hour** CPI adjusted rate for 2021 (Based on 1993 initial fee: eight of the section were added in 1993, with two more added in the following two years.)

\*Each of these sections uses the term “board,” which may mean the California Department of Tax and Fee Administration, the Office of Tax Appeals, or the State Board of Equalization, depending on the context.

[Section 19717](#) provides that, in a civil action brought by or against the state in connection with determination, collection, or refund of any tax, interest or penalty, the prevailing party may be awarded reasonable litigation costs incurred.

- **\$125 per hour** limit for attorney fees, unless the court determines that a special factor, such as the limited availability of qualified attorneys for the proceeding, the difficulty of the issues presented in the case, or the local availability of tax expertise justifies a higher rate. Section provides for an annual CPI adjustment, rounded to the nearest multiple of ten dollars (\$10).
- **\$230 per hour** CPI adjusted rate for 2021

## II. Federal Code

### The Equal Access to Justice Act

EAJA allows awards of attorneys’ fees against the United States in certain situations.

#### [5 U.S. Code § 504](#)

An agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding.

- **\$125 per hour** limit for attorney fees, unless the agency determines that an increase in the cost of living or a special factor, such as limited availability of qualified attorneys for the proceeding, justifies a higher rate.
- **\$214** per hour CPI adjusted rate for 2021, based on \$125 in 1996.

#### [28 U.S. Code § 2412](#)

Unless expressly prohibited by statute, a court may award reasonable fees and expenses of attorneys, to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action.

- **\$125 per hour** limit for attorney fees, unless the agency determines that an increase in the cost of living or a special factor, such as limited availability of qualified attorneys for the proceeding, justifies a higher rate.
- **\$214** per hour CPI adjusted rate for 2021, based on \$125 in 1996.

### **Tax Matters**

#### [26 U.S. Code § 7430](#)

In any administrative or court proceeding which is brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this title, the prevailing party may be awarded a judgment or a settlement for reasonable litigation costs.

- **\$170 per hour** limit for attorney fees, unless the court determines that a special factor, such as the limited availability of qualified attorneys for such proceeding, the difficulty of the issues presented in the case, or the local availability of tax expertise, justifies a higher rate.
- **\$213** per hour CPI adjusted rate for 2021, based on \$170 in 2008.

The 1986 Act, while not placing tax cases back within the EAJA, amended § 7430 to make it more like the EAJA. Section 7430, as amended in 1988 and 1996, provides that, in any administrative or court proceeding brought by or against the United States, in connection with the determination, collection, or refund of any tax, interest, or penalty under the Internal Revenue Code, the prevailing party, other than the United States or a creditor of the taxpayer, may be awarded litigation costs, including reasonable attorneys' fees. Section 7430 contains the same limitations as the EAJA on the net worth of eligible plaintiffs (see § 7430(c)(4)(A)(ii), as renumbered by [P.L. 104-168](#), § 701(a)), and it originally contained the same \$75 cap on hourly rates. However, in 1996, [P.L. 104-121](#) raised EAJA's rate to \$125, and [P.L. 104-168](#), § 702, raised § 7430's to \$110, with cost of living increases after 1996. In 1998, [P.L. 105-206](#), § 3101, raised § 7430's cap to \$125, without amending the language authorizing cost of living increases after 1996. **The IRS set the fee at \$160 per hour for calendar year 2006, and \$170 per hour for calendar years 2007 and 2008.** Rev. Proc. 2005-70, 2006-53, 2007-66.



## MODERATE MEANS PROGRAM – FAMILY LAW

### ELIGIBILITY:

1. The Moderate Means Panel only accepts family law cases.
2. The case must have jurisdiction in Contra Costa County. The applicant does not have to reside in this county as long as the legal matter has jurisdiction in Contra Costa County.
3. Applicants are not eligible if they have assets in excess of \$5,000 per family, excluding the family's principal residence and retirement accounts.
4. If the applicant's assets exceed or fall below the guidelines listed in the table below, the applicant shall not be deemed eligible for a Moderate Means Program referral.
5. Moderate Means Program staff shall have the discretion to obtain, and the applicant shall be required to provide, documentation from the applicant relative to income and/or assets. If the applicant does not submit the required information within 30 days of the date that the application was received by the program, the case will be closed.
6. In order to be accepted into the program, applicants cannot qualify for Bay Area Legal Aid services or other low-income legal services.
7. If your income level falls below the guidelines you have the option to have a co-signer for the application. By co-signing on the application that person agrees to pay the attorney's fees if the applicant is unable to do so. The cosigner is also required to provide all the supporting financial and personal documentation that is required from the applicant.

### INCOME QUALIFICATION GUIDELINES:

The applicant's income (as verified by 6 weeks of pay stubs and other requested financial documentation) must fall within the guidelines listed below to be considered for the Moderate Means Program\*:

# of person(s) in Household	Level One Gross Monthly Income**	Level Two Gross Monthly Income
1 person	\$923 -- \$ 1,711	\$1,712 -- \$2,500
2 persons	\$1,244 -- \$2,184	\$2,185 -- \$3,125
3 persons	\$1,565 -- \$2,658	\$2,659 -- \$3,750
4 persons	\$1,885 -- \$3,130	\$3,131 -- \$4,375
5 persons	\$2,206 -- \$3,653	\$3,654 -- \$5,000

If additional family members add \$321 for each

\* Child support received is not calculated in the monthly income range.

\*\* The minimum qualifications under Level One are the maximum qualifications for Bay Area Legal Aid.

### FEES:

Applicants shall pay a \$40.00 *non-refundable* application processing fee to the CCCBA Moderate Means Panel. If you qualify and are accepted into the Moderate Means Program, you will have an initial 30-minute consultation with the assigned attorney. There is no charge to the client for this consultation. If the attorney accepts your case and you decide to hire the attorney, the Moderate Means Panel attorney has agreed to charge no more than the following fees for Level One and Level Two Clients (Level One and Level Two are defined by income in the table above)

	Level One Clients	Level Two Clients
Hourly Fees	\$40 - \$80	\$80 - \$125
Deposit on Account	\$500 - \$800	\$800 - 1,000



# SmartLaw



## SmartLaw Flat Fees

BY SMARTLAW | JUNE 28, 2018

LLC Business Formation: \$800

Trademark Registration: \$500

Uncontested Divorce: \$800

Bankruptcy Chapter 7: \$850

### SmartLaw Flat Fee Details

Your flat fee rate covers all attorneys' fees related to your matter. Costs related to your matter will be extra. Costs will include filing fees and any other cost required to address your legal issue, such as postage, transportation, copies, etc.

### SmartLaw Flat Fee Limitations

Below are the limitations for each SmartLaw flat fee offering.

LLC Business Formation: \$800

Single member California LLC

Completion of LLC documents

Operating agreement

Acquisition of EIN

Does not include filing fees or other costs.

Trademark Registration: \$500

Limited trademark search

Form completion

One class of goods or services

Does not include filing fees or other costs.

Uncontested divorce: \$800  
Advance agreement on division of all property  
Advance agreements on allocation of debt  
Advance agreement on child/spousal support  
Advance agreement on child custody  
Both parties in the same state  
Does not include filing fees or other costs.

Bankruptcy Chapter 7: \$850  
Single filer, initial filing  
Petition preparation  
Appearance at Meeting of Creditors  
No real estate  
Does not include reaffirmation agreement  
Does not address any objections to bankruptcy discharge  
Does not include filing fees

Participating attorneys have agreed to offer these legal services at these rates. However, it is entirely up to the referred lawyer whether or not you qualify for the flat fee rate. If you would like a second opinion on a flat fee rate, contact SmartLaw.

Participating lawyers have been screened by the Los Angeles County Bar Association for experience, insurance, good standing, and other professional requirements. The Los Angeles County Bar Association Lawyer Referral Service, SmartLaw, is certified by the State Bar of California, serves clients in Los Angeles, Riverside, San Bernardino, and Ventura counties, and refers clients in all practice areas. If you are a lawyer interested in receiving Flat Fee referrals from SmartLaw, [click here](#) for information or call (213) 896-6571 .

Find the right legal resource in Southern California by contacting SmartLaw: (866)SMARTLAW. .

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*Serving Southern California counties, SmartLaw is the best way to find the right qualified legal resource. SmartLaw is certified by the State Bar of*

**ORANGE COUNTY BAR ASSOCIATION  
MODEST MEANS PROGRAM GUIDELINES**



**BASIC STRUCTURE:**

Reduced fee for Bankruptcy Law, Consumer Law, Elder Law, Family Law, Housing (Landlord/Tenant), and Immigration Law.

**Client Eligibility for Bankruptcy, Consumer, Family, Immigration and Landlord/Tenant (Housing):**

Under \$60,000 annual gross household income, plus COLAs. Less than \$10,000 in liquid assets, plus COLAs.

*The LRIS staff will determine client eligibility.*

**Client Eligibility for Elder Law:**

Age: 60

Means: \$50,000 of assets if he or she owns a home.  
\$100,000 of assets if he or she does not own a home.

(Others who are not elderly themselves but need services pertaining to the elderly will qualify under the regular Modest Means test.)

**Attorney Eligibility:**

Agreement to abide by the LRIS rules and requirements including insurance and experience standards. For Consumer, Family Law, and Housing (Landlord/Tenant), Attorneys agree to charge no more than \$125.00 an hour, and not to request more than a \$1,000 retainer deposit.

For bankruptcy matters involving Chapter 7's with 15 creditors or less, attorney agrees to a fixed rate of \$1,000 plus filing fee. If the case involves more than 15 creditors, the attorney agrees to charge \$1,000 plus filing fee for the first 15 creditors and up to \$125.00 per hour thereafter. For bankruptcy matters involving Chapter 13's, attorney agrees to a fixed rate of \$1,300 plus filing fee.

For Elder law referrals, Attorneys agree to abide by the following fee schedule:

Set Fees: Will	<u>\$125.00</u>
Durable Power of Attorney	<u>\$75.00</u> (each)
Small Estate Administration Spousal Set-Aside	<u>\$1,000.00</u>
Deeds, Affidavits	<u>\$75.00</u>

The following services will be provided at the standard modest means rate of up to \$125.00 per hour unless otherwise approved by Court from an elder's estate:

- Review of Shared Housing Lease
- Conservatorship, Defense or Voluntary
- Elder Abuse, and Grandparent Guardianships

For Immigration Law referrals, attorneys agree that the following range of legal fees (not including government filing fees, medical exam fees, advertising fees, etc.) will be charged for the following types of petitions/applications:

▪ I-130 Immigrant Petition for Family Member (only)	\$400.00 - \$700
▪ I-130 with Adjustment of Status Application	\$1000.00 - \$1300
▪ Consular Processing	\$3000.00 - \$4000.00
▪ I-765 Application for Employment Authorization	\$125.00 - \$175
▪ I-751 Petition to Remove Conditions (joint)	\$300.00
▪ U Visa Application	\$600.00 - \$1200.00
▪ VAWA Application	\$600.00 - \$1200.00
▪ Special Immigrant Juvenile Status	\$1500.00 - \$3000.00
▪ Deferred Action for Childhood Arrivals (DACA)	\$400.00 - \$800.00
▪ DACA Renewal	\$150.00 - \$300.00
▪ N-400 Application for Naturalization	\$400.00 - \$600
▪ Cancellation of Removal (for LPRs)	\$1600.00 - \$2000.00
▪ Cancellation of Removal (for non-LPRs)	\$2500.00 - \$4000.00
▪ Temporary Protected Status	\$200.00
▪ Affirmative Asylum	\$2200.00 - \$3000.00
▪ Consultation for Detainees	\$75 - \$150
▪ Credible Fear Interview	\$250 - \$500
▪ Bond Hearing	\$650 - \$800
▪ Defensive Asylum Application	\$2500.00 - \$4000.00
▪ Administrative Appeals	\$750.00
▪ BIA Appeals	\$1500.00 - \$2000.00
▪ I-131 Application for Travel Document	\$200.00

For other types of immigration cases and cases listed above that involve services above and beyond a “typical” case (i.e., criminal issues, prior immigration violations, etc.), attorneys agree to charge no more than \$125.00 per hour, and not to request more than a \$1,000 retainer deposit.

The mission of the Modest Means Program is to meet the overwhelming need for access to the justice system by those Orange County residents with low and fixed income where access to legal aid and pro bono assistance is not possible, and household resources are insufficient to pay prevailing hourly rates for legal services. The Modest Means Program will meet this need by providing those residents access to a panel of attorneys who, along with providing a public service, will also have the opportunity to broaden their practice with the guidance of more experienced attorneys.

To be eligible for a referral to an attorney through the Program, the caller’s annual gross household income must be under \$60,000, with less than \$10,000 in liquid assets. The Lawyer Referral & Information staff will determine the client’s eligibility. *The attorney verifies client eligibility.* The caller will also be told that the attorney will charge them at a rate of up to \$125.00 per hour for legal services. If the caller indicates that they are not able to afford these fees, they will be referred to the Legal Aid Society, the Public Law Center, or to another agency for assistance.

The rules and requirements of the Lawyer Referral & Information Service apply to the Modest Means Program as well. All members must be covered by a policy of errors and omissions insurance in the minimum amount of \$100,000.00 single occurrence and \$300,000.00 aggregate per year. For Family Law and Bankruptcy, and Immigration referrals, Modest Means panel attorneys must also meet the standard qualifications. Modest Means Program participants are not required to submit the standard 15% forwarding fee for Modest Means referrals.

To participate on the Modest Means Program **only**, there is a membership fee of \$75.00 (waived for Immigration Law). There is no additional fee for members of the Lawyer Referral & Information Service.

**INDICATE YOUR INTEREST ON THE PANEL BREAKDOWN FORM**

## Family Law

### Modest Means Program

**PLEASE READ BEFORE COMPLETING APPLICATION**

The Modest Means program is a reduced fee referral program designed to make legal services accessible to lower and moderate-income people who are ineligible for legal aid and who meet the eligibility requirements of the program (see below). The Modest Means program is for **family law cases only**. The attorneys who have been accepted into this program are private attorneys – not government or legal aid attorneys – who have agreed to charge no more than \$150 per hour, with an initial deposit of \$1,500.

Below is a menu of services that may be provided to an eligible client by a Modest Means attorney. Please note that each legal issue listed below is a separate case and will be treated as different cases and will require different Modest Means agreements. After the initial deposit of \$1,500 is exhausted, you will be required to prepay additional monies (“replenish” the retainer). The amount of additional pre-payments is the attorney’s decision based on the amount of work that remains to be completed. Please be aware that this is **not a flat fee service-Attorneys on the panel charge by the hour**. At any point during the representation, the attorney may feel that the case has become too complex for the Modest Means program or may feel that he/she cannot represent you adequately. If that occurs, the attorney may request that you sign a Substitution of Attorney or the attorney may file a motion in court requesting to withdraw as your attorney. All services and fees are between the client and the assigned attorney and not the responsibility of the program.

<h3>Modest Means Program Guidelines</h3>
<p><b>Fee: \$1,500 retainer &amp; \$150 hourly rate</b></p>
<p>Services covered under the Modest Means program guidelines:</p> <ul style="list-style-type: none"> <li>• Annulment;</li> <li>• Dissolution of Marriage;</li> <li>• Legal Separation;</li> <li>• Paternity;</li> <li>• Department of Child Support Services (DCSS);</li> <li>• Child and spousal support issues to include requests for, modification of or opposition to support;</li> <li>• Child Custody;</li> <li>• Visitation rights;</li> </ul>

<ul style="list-style-type: none"> <li>• Name change;</li> <li>• Settlement Agreements;</li> <li>• Mandatory Settlement Conferences.</li> </ul>
<b>Services not covered with under the Modest Means program:</b>
<ul style="list-style-type: none"> <li>• Child Welfare Service (CWS) investigations;</li> <li>• Trials;</li> </ul> Temporary/Permanent Restraining Orders (Domestic Violence); <ul style="list-style-type: none"> <li>• Discovery;</li> <li>• Evidentiary hearings.</li> </ul>
<b>ADDITIONAL COSTS:</b>
<ul style="list-style-type: none"> <li>• \$435 initial filing fee-one-time payment to court (fees are subject to change by the CA Superior Court).</li> <li>• Additional filing fees payable to the court for each motion filed. Current filing fees range between \$60-\$85.</li> </ul>

**To Qualify:** Before you can be referred to a Modest Means attorney you must apply and meet the qualifications. There are four steps in the process before you qualify to be referred to an attorney.

**Step 1:** Complete the online pre-qualification form:

<https://www.sdcba.org/index.cfm?pg=modestMeansForm>

**Step 2:** Complete the “Request for Participation in Modest Means Program”. If you meet the criteria in the pre-qualification section, you will be asked to provide 3 current pay stubs, your last income tax return, and 3 months of bank statements for all accounts you have. If you are self-employed, please provide copies of tax returns for the last two (2) years to include your Schedule C and a current year-to-date Profit and Loss statement. If you are not employed, provide a copy of your unemployment or SSD/SSI monthly benefits and a description of how you will pay for the attorney’s services. Note: In order to qualify for this program, the household may not have income or assets in excess of the maximum income levels outlined below:

NO. IN HOUSEHOLD	TOTAL MONTHLY INCOME (GROSS)
1	\$2,845.00
2	\$3,670.00
3	\$4,571.00
4	\$5,555.00
5	\$6,500.00
6	\$7,445.00
7	\$8,890.00
8	\$9,330.00
Real Property Equity	No more than \$30k per family

Please make sure to sign and date your “Request for Participation in Modest Means Program”. Your submission will not be processed if the request is incomplete or if you fail to sign or date the document. Do not send any original documents; paperwork sent to the program will not be returned.

**Step 3:** Once we receive the request, we will review it and contact available attorneys and discuss your legal matter. The attorney has the option to meet with you to see if the attorney can help you or decline to take the case. The attorney has the final say as to whether or not the attorney believes you qualify for the program based on the parameters outlined above. Please be aware that this program is for uncontested issues. Please note that if you are not truthful in your application you may be barred from the program all together.

**Step 4:** If you do not meet the criteria in steps 1-3, you will be notified of that outcome. If you do meet the criteria in steps 1-3, you will be notified by the Modest Means Coordinator with the attorney’s contact information. You will be asked to contact the attorney to make an appointment with his/her office. A free, 30-minute consultation will involve discussing your legal matter and costs. If you decide to hire the attorney, please make sure you read and sign a retainer agreement. The attorney should provide you with a signed copy of the retainer agreement.

Please be aware that the attorneys on the Modest Means panel have agreed to take cases at a reduced hourly rate of \$150 and have the right to ask for additional upfront deposits to continue working on your case. If you can no longer pay the attorney or if you do not follow the client’s code of conduct, the attorney may request that you sign a Substitution of Attorney or the attorney may file a motion with the court requesting to withdraw as your attorney. Click [here](#) for Client’s Code of Conduct.

If you decide **not** to hire the attorney, please make sure to contact our program at [Iris@sdcba.org](mailto:Iris@sdcba.org) with the reason/s why you did not retain the attorney. We will need this information for our records. Once we receive this information, we will refer you to a different attorney. Please be aware that we have a limited amount of Modest Means attorneys on the program. Once you have exhausted the two referrals, you will not receive any additional referrals to Modest Means attorneys.

The SDCBA and the LRIS Committee reserve the right to refuse to make a referral.

If you decide to hire one of the program attorneys, all correspondence and case details are between you and the attorney with one exception - if you are not truthful in your application, you will be barred from the program.

If you have any questions, please feel free to contact the LRIS program via email at [Iris@sdcba.org](mailto:Iris@sdcba.org) or telephone at 619-231-8585.

## FREQUENTLY ASKED QUESTIONS

1. **Is this a Free/Pro Bono service?** No, the attorneys in the program are private attorneys who are offering representation at a discounted rate.
2. **If I hire an attorney do, I have to pay the \$1,500 upfront?** Yes, you must have \$1500 to start the case. Once the payment of \$1,500 is exhausted (which equates to 10 hours of attorney time), you are responsible for replenishing the retainer based on what the attorney is requesting to continue/complete the case.
3. **What is the hourly rate?** The attorneys in this program agree to charge no more than \$150 per hour. You must keep all payments up to date in order for the attorney to continue working on your case.
4. **Do the attorneys take credit cards?** Most attorneys take credit cards, but you may want to check with the attorney's office and see what form of payment he/she accepts.
5. **Can I pay the attorney on a payment plan?** No, all fees must be kept current and the attorney has the right to ask for additional upfront monies.
6. **What kind of experience do these attorneys have?** The attorneys in this program are licensed and insured attorneys who practice family law and have been approved for this program by the San Diego County Bar Association after a rigorous application process. The attorneys in this program have diverse backgrounds and experience.
7. **What should I do if I decide not to hire the attorney you referred?** Please contact [Iris@sdcba.org](mailto:Iris@sdcba.org) with the reason/s you are not hiring the attorney. You may request another referral, but please note that we will only provide referral to a total of two attorneys per legal issue.

## Modest Means Code of Conduct & Client Agreement

1. Clients must treat SDCBA Specialists and referred attorneys with dignity, respect and courtesy.
2. Clients must not engage in offensive language or behavior toward SDCBA staff or attorneys. If client does so, they will immediately be barred from the program.
3. Clients must be truthful on the Modest Means application. If they are not, they will be barred from the program. Clients agree and hereby give the SDCBA permission to release copies of the documentation and information they provide to the SDCBA to qualify for the program to the attorney to ensure that the client indeed qualifies for the Modest Means program.

4. Clients understand that they will be required to pay additional monies to the attorney which shall be determined by the attorney once the initial deposit becomes low or exhausted. You must agree to keep all payments up to date for the attorney to continue working on your case.
5. If a client has an issue or problem with an attorney, they must contact the LRIS program as soon as possible. All complaints must be in writing.
6. If you and your attorney have a disagreement about strategy, you have the right to seek new representation. Please be aware that only one more attorney will be referred through the program. If you are still dissatisfied, you will need to seek representation independently.
7. If a client qualifies for the program, they will be referred to a Modest Means attorney. If the client decides that they do not want to retain the services of the attorney, they will be referred to another attorney. Please be aware that the program will only refer to a maximum of two attorneys.
8. If you decide to terminate the services of the attorney, you must make sure you have a completed "Substitution of Attorney" document filed with the court. Also, you must not be delinquent on the bill with the hired attorney. We cannot refer you to a second attorney if you owe the previous attorney money.
9. If your case becomes contested, complex, or falls within the "services not covered" listed above, you agree to cooperate with the attorney if a request is made for you to sign a Substitution of Attorney. This does not bar you and the attorney from reaching a different agreement regarding fees and entering into a new fee contract should you and the attorney agree to do so. If you and the attorney do not reach an agreement, the attorney may file a motion in court requesting to withdraw as your attorney.

**I understand and agree to the Client Agreement. If I do not adhere to these terms I will be immediately barred from the program.**

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Please return to the LRIS Program Specialist @ [lrissdcba.org](mailto:lrissdcba.org)

## FAMILY LAW FLAT FEE PROGRAM

The Family Law Flat Fee Program is a service to help parties involved in family law matters prepare and understand the documents that need to be filed in their case. The flat fee for Dissolution of Marriage and/or Legal Separation packet is \$1500 and the flat fee for Child Custody and/or Support packet is \$1000. NOTE: Attorneys involved in these flat fee cases will **not** represent the party in court. The attorneys will provide guidance and help the party prepare to represent himself/herself.

### Dissolution of Marriage or Legal Separation

The legal work covered for the \$1,500 flat fee:

- Draft Petition/Response for Dissolution of Marriage/Legal Separation, and accompanying forms (FL-100/FL-120, FL-110, D-049, FL-105)
- Draft Client's Financial Disclosures (FL-150, FL-141, FL-142, FL-140)
- Draft the Marital Settlement Agreement
- Draft Judgment forms (FL-180, FL-165, FL-190, FL-144, FL-170)

#### Does not include:

- \$435 filing fees (fees are subject to change by the CA Superior Court).
- Representation in court
- Negotiation of terms
- Discovery

### Child Custody or Child Support or Spousal Support

The legal work covered for the \$1,000 flat fee:

- Draft or respond to Request for Order Regarding child custody, and/or child support, and/or spousal support.
- Draft FL-150 if support issues
- File and serve on opposing side
- 30-minute meeting/phone call to prepare client for Family Court Services mediation if custody issues

#### Does not include:

- \$60-85 filing fees (fees are subject to change by the CA Superior Court)
- Representation in court
- Negotiation of terms
- Discovery



## TENANT CONSULTATIONS TENANT SERVICES FEE PROGRAM GUIDELINES

<b>Office/Phone Consultation &amp; Demand Letter</b>	<b>Fee: \$ 150.00 residential, \$ 180.00 mobile home, \$ 350.00 Commercial</b>
<b>Client Requirements:</b>	<b>Client Checklist:</b>
<b>Legal work performed:</b>	<b>Attorney Checklist: Please initial</b>
<ul style="list-style-type: none"> <li>Meeting with client (tenant) review intake form and related documents, interview client regarding facts and goals.</li> </ul>	
<ul style="list-style-type: none"> <li>Answer client’s questions regarding their legal rights, duties, and options. Provide legal advice.</li> </ul>	
<ul style="list-style-type: none"> <li>Write draft of demand letter and send to client for review and approval. If changes to the draft are needed, write second and send for review/approval.</li> </ul>	
<ul style="list-style-type: none"> <li>Mail approved letter to landlord and a copy to client.</li> </ul>	
<ul style="list-style-type: none"> <li>Forward any landlord response(s) to the client. Discuss the landlord response as needed.</li> <li>If the demand letter does not achieve the desired results, provide a short follow up consultation to advise client of their next option, which is usually to sue landlord in small claims court.</li> </ul>	
<b>Does not include: (subject to an additional fee by the attorney)</b>	<b>Additional fees</b>
<ul style="list-style-type: none"> <li>Negotiating with landlord</li> </ul>	
<ul style="list-style-type: none"> <li>Conveying or repeating client demands/requests to landlord beyond those made in the letter.</li> </ul>	
<ul style="list-style-type: none"> <li>Writing a follow up letter or another letter in response to landlord’s response letter</li> </ul>	
<ul style="list-style-type: none"> <li>Acting as an intermediary between client and landlord</li> </ul>	
<ul style="list-style-type: none"> <li>Responding to any unlawful detainer or any other lawsuit.</li> </ul>	
<ul style="list-style-type: none"> <li>Assistance with preparing and/or filing a small claims case or any other type of lawsuit.</li> </ul>	



<p><b>Lease Break Office/Phone Consultation and Letter</b></p>	<p><b>Fee: \$ 350.00 residential only</b></p>
<ul style="list-style-type: none"> <li>Meeting with client (tenant) review intake form and related documents, interview client regarding facts and goals.</li> </ul>	
<ul style="list-style-type: none"> <li>Answer client’s questions regarding their legal rights, duties and options. Provide legal advice. Advise client of risks of breaking lease and potential consequences per client’s specific circumstances. Advise client that the letter is not guaranteed to persuade the landlord to release the client from liability under the subject lease agreement.</li> </ul>	
<ul style="list-style-type: none"> <li>Write draft of lease break letter and send to client for review and approval. If changes to the draft are needed, write second and send for review/approval.</li> </ul>	
<ul style="list-style-type: none"> <li>Mail approved letter to landlord and a copy to client.</li> </ul>	<p><b>New Fee Agreement and costs:</b></p>
<ul style="list-style-type: none"> <li>Forward any landlord response(s) to the client. Discuss the landlord response as needed.</li> </ul>	
<ul style="list-style-type: none"> <li>If the demand letter does not achieve the desired results, provide a short follow up consultation to advise client of their next option, which is usually to sue landlord in small claims court.</li> </ul>	
<p><b>Does not include: (subject to an additional fee by the attorney)</b></p>	<p><b>Additional fees</b></p>
<ul style="list-style-type: none"> <li>Negotiating with landlord</li> </ul>	
<ul style="list-style-type: none"> <li>Conveying or repeating client demands/requests to landlord beyond those made in the letter.</li> </ul>	
<ul style="list-style-type: none"> <li>Writing a follow up letter or an additional letter in response to landlord’s response letter</li> </ul>	
<ul style="list-style-type: none"> <li>Acting as an intermediary between client and landlord</li> </ul>	
<ul style="list-style-type: none"> <li>Responding to any unlawful detainer or any other lawsuit.</li> </ul>	

**Court-Appointed Counsel Fees\***

	<b>Criminal</b>	<b>Juvenile Dependency</b>	<b>Juvenile Delinquency</b>	<b>Family Code § 3150</b>	<b>Probate</b>	<b>Other Case Types</b>
<b>Alameda</b>	<ul style="list-style-type: none"> <li>• 5PV &amp; 5J: \$100/hour</li> <li>• 4PV &amp; 4J: \$100/hour</li> <li>• 3PVs, PRCS &amp; 3J: \$115/hour</li> <li>• 2PV &amp; 2J: \$120/hour</li> <li>• 1B, 1PV &amp; 1J: \$135/hour</li> <li>• 1A: \$150/hour</li> <li>• LWOP: \$165/hour</li> <li>• Death Penalty: \$180/hour</li> </ul>					
<b>Amador</b>	\$75/hour	\$75/hour	\$75/hour	\$75/hour		
<b>Butte</b>	\$85/hour	\$85/hour		\$85/hour		
<b>Fresno</b>	\$80 per hour; \$240 minimum					
<b>Humboldt</b>	<ul style="list-style-type: none"> <li>• \$65/hour non-life homicide</li> <li>• \$75/hour potential life homicide</li> </ul>					
<b>Imperial</b>	<ul style="list-style-type: none"> <li>• Misdemeanors \$50/hour</li> <li>• Felonies \$65/hour</li> <li>• Serious Felonies/State Prison \$75/hour</li> <li>• Death Penalty \$80/hour</li> </ul>	\$65/hour	\$65/hour			Civil/Appeals: \$50/hour
<b>Lassen</b>	<ul style="list-style-type: none"> <li>• Misdemeanors: \$80/hour</li> <li>• Felonies: \$85/hour</li> <li>• Three strikes felonies defense: \$95/hour</li> <li>• First Degree Murder: \$110/hour</li> </ul>		\$80/hour			Writs, Civil Contempt and Misdemeanor appeals: \$75/hour
<b>Madera</b>						\$65/hour
<b>Mendocino</b>	<ul style="list-style-type: none"> <li>• Class 1: \$80/hour</li> <li>• Class 2: \$75/hour</li> <li>• Class 3: \$65/hour</li> </ul>		Same as criminal	\$65/hour		\$65/hour
<b>Merced</b>	\$125/hour	\$100/hour	\$125/hour	\$125/hour		
<b>Monterey</b>	<ul style="list-style-type: none"> <li>• Misdemeanor: \$200 flat fee</li> <li>• Non-Serious Felonies: \$75/hour</li> <li>• Serious Felonies: \$100/hour</li> </ul>					
<b>Napa</b>	\$80/hour			\$150/hour		
<b>Nevada</b>	\$75/hour					
<b>Placer</b>	<ul style="list-style-type: none"> <li>• Misdemeanors \$50/hour</li> <li>• Class C Felonies: \$60/hour</li> <li>• Class B Felonies: \$65/hour</li> <li>• Class A felonies: \$75/hour</li> </ul>					

\*Staff was unable to find information for all counties.

	Criminal	Juvenile Dependency	Juvenile Delinquency	Family Code § 3150	Probate	Other Case Types
<b>Sacramento</b>	<ul style="list-style-type: none"> <li>• Misdemeanors: \$75.78/hour</li> <li>• Class C Felonies: \$86.59/hour</li> <li>• Class B Felonies: \$97.42/hour</li> <li>• Class A2 felonies: \$108.24/hour</li> <li>• Class A1 felonies: \$150/hour</li> </ul>					
<b>San Bernardino</b>	<ul style="list-style-type: none"> <li>• Misdemeanors: \$300</li> <li>• Felonies: \$65/hour</li> <li>• Serious Felonies/State Prison: \$75/hour</li> <li>• Death Penalty: \$80/hour</li> </ul>					
<b>San Diego</b>	\$60/hour					
<b>San Francisco</b>	<ul style="list-style-type: none"> <li>• Misdemeanors: \$66/hour</li> <li>• Regular Felonies: \$89/hour</li> <li>• Serious Felonies and life: \$106/hour</li> <li>• Capital Felonies: \$144/hour</li> </ul>	\$128/hour	Same as criminal	\$114/hour	\$98/hour	
<b>San Joaquin</b>	\$110/hour					
<b>San Luis Obispo</b>	<ul style="list-style-type: none"> <li>• Misdemeanors: \$65/hour</li> <li>• Felonies: \$85/hour</li> <li>• Murder: \$100/hour</li> <li>• Capital: \$150/hour</li> </ul>		<ul style="list-style-type: none"> <li>• \$65/hour</li> <li>• \$250 first appearance</li> <li>• \$200 additional appearance</li> <li>• \$250-300 half day trial</li> <li>• \$500-600 full day of trial</li> </ul>			Adoption \$85/hour
<b>Santa Barbara</b>	<ul style="list-style-type: none"> <li>• Misdemeanors: \$100/hour</li> <li>• Felonies: \$100/hour</li> <li>• Death Penalty: \$125/hour</li> </ul>			\$100/hour		
<b>Santa Clara</b>	<ul style="list-style-type: none"> <li>• Non-Death Penalty: \$110/hour</li> <li>• Death Penalty: \$125/hour</li> </ul>					
<b>Santa Cruz</b>	<ul style="list-style-type: none"> <li>• Serious Felonies: \$115/hour</li> <li>• Death Penalty: \$125/hour</li> </ul>		Homicides/Complex Serious Felonies: \$125/Hour			
<b>Solano</b>	<ul style="list-style-type: none"> <li>• Misdemeanors: \$80/hour</li> <li>• Felonies: \$85/hour</li> <li>• 3 strikes/sex life top: \$100/hour</li> <li>• Murder: \$115/hour</li> <li>• Capital Special Circumstances: \$80/hour</li> </ul>					

	Criminal	Juvenile Dependency	Juvenile Delinquency	Family Code § 3150	Probate	Other Case Types
Ventura	<ul style="list-style-type: none"> <li>• Misdemeanors \$70/hour</li> <li>• Regular Felonies: \$95/hour</li> <li>• Serious Felonies: \$125/hour</li> <li>• Homicide and life Felonies: \$140/hour</li> <li>• Capital Felonies: Determined on individual basis</li> </ul>					

Superior Court Local Rules Regarding Presumptively Reasonable Fee Awards

	Default Action on Note or Contract	Contested Action on Note or Contract	Default Action in Limited Jurisdiction Cases	Foreclosure of Mortgage or Trust Deed	Tort Actions involving Minors or Incompetent Persons	Unlawful Detainer	Open Book Account	Probate
<b>Alameda</b>	<ul style="list-style-type: none"> <li>• Up to \$5,000: greater of 25% or \$500</li> <li>• &gt;\$5,000-\$15,000: \$1,250 + 20% of award in excess of \$5,000</li> <li>• &gt;\$15,000-\$25,000: \$3,250 + 15% of award in excess of \$15,000</li> <li>• &gt;\$25,000-\$50,000: \$4,750 + 10% of award in excess of \$25,000</li> <li>• &gt;\$50,000: \$7,250 + 5% of award in excess of \$50,000</li> </ul>			Additional 10% on fee schedule provided in default on note or contract	<ul style="list-style-type: none"> <li>• 25% prior to substantial trial proceedings</li> <li>• 33 1/3% after substantial trial proceedings</li> </ul>	\$375 minimum fee for default or uncontested trial		
<b>Alpine</b>	None							
<b>Amador</b>	<ul style="list-style-type: none"> <li>• 25% of first \$1,000; minimum \$150</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$5,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of amount over \$50,000</li> </ul>	Same as for default, plus reasonable compensation based on hourly or per-day basis		Additional 10% on fee schedule provided in default on note or contract		<ul style="list-style-type: none"> <li>• \$300 limit for default cases</li> <li>• \$350 for uncontested trial</li> <li>• \$500 for contested trial</li> </ul>		
<b>Butte</b>	<ul style="list-style-type: none"> <li>• 25% of first \$1,000; minimum \$150</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$5,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of amount over \$50,000</li> </ul>	Same as for default, plus reasonable compensation based on hourly or per-day basis		Additional 10% on fee schedule provided in default on note or contract				
<b>Calaveras</b>	<ul style="list-style-type: none"> <li>• 25% of first \$1,000; minimum \$150</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$5,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of amount over \$50,000</li> </ul>							

	Default Action on Note or Contract	Contested Action on Note or Contract	Default Action in Limited Jurisdiction Cases	Foreclosure of Mortgage or Trust Deed	Tort Actions involving Minors or Incompetent Persons	Unlawful Detainer	Open Book Account	Probate
<b>Colusa</b>	<ul style="list-style-type: none"> <li>• 25% of first \$2,000</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$4,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of amount over \$50,000</li> </ul>	Same as for default, plus reasonable compensation based on hourly or per-day basis			<ul style="list-style-type: none"> <li>• 25% prior to substantial trial proceedings</li> <li>• 33 1/3% after substantial trial proceedings</li> <li>• 40% after filing appeal</li> </ul>	<ul style="list-style-type: none"> <li>• \$300 limit for default cases</li> <li>• \$400 for uncontested trial</li> </ul>		
<b>Contra Costa</b>	<ul style="list-style-type: none"> <li>• \$1-\$500: \$150</li> <li>• \$501-\$1,000: \$150 + 30% on amount over \$500</li> <li>• \$1,001-\$2,000: \$300 + 25% on amount over \$1,000</li> <li>• \$2,001-\$5,000: \$550 + 10% on amount over \$2,000</li> <li>• \$5,001-\$10,000: \$850 + 6% on amount over \$5,000</li> <li>• \$10,001-\$50,000: \$1,150 + 3% on amount over \$10,000</li> <li>• \$50,001-\$100,000: \$2,350 + 2% on amount over \$50,000</li> <li>• \$100,001 and over: \$3,350 + 1% on amount over \$100,000</li> </ul>			Additional 10% on fee schedule provided in default on note or contract		<ul style="list-style-type: none"> <li>• The greater of \$375 or fee schedule below:</li> <li>• \$1-\$500: \$150</li> <li>• \$501-\$1,000: \$150 + 30% on amount over \$500</li> <li>• \$1,001-\$2,000: \$300 + 25% on amount over \$1,000</li> <li>• \$2,001-\$5,000: \$550 + 10% on amount over \$2,000</li> <li>• \$5,001-\$10,000: \$850 + 6% on amount over \$5,000</li> <li>• \$10,001-\$50,000: \$1,150 + 3% on amount over \$10,000</li> <li>• \$50,001-\$100,000: \$2,350 + 2% on amount over \$50,000</li> <li>• \$100,001 and over: \$3,350 + 1% on amount over \$100,000</li> </ul>		

	Default Action on Note or Contract	Contested Action on Note or Contract	Default Action in Limited Jurisdiction Cases	Foreclosure of Mortgage or Trust Deed	Tort Actions involving Minors or Incompetent Persons	Unlawful Detainer	Open Book Account	Probate
<b>Del Norte</b>	<ul style="list-style-type: none"> <li>• 25% of first \$2,000; minimum \$175</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$4,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of next \$50,000</li> </ul>							
<b>El Dorado</b>	<ul style="list-style-type: none"> <li>• 25% of first \$1,000</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$5,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of the amount over \$50,000</li> </ul>					<ul style="list-style-type: none"> <li>• \$200 limit for default cases</li> <li>• \$300 for uncontested trial where defendant failed to appear, has filed an answer, and non-appearance default prove-up hearing is required</li> <li>• \$500 for contested trial with represented and unrepresented parties</li> <li>• \$750 for contested trial when both parties are represented</li> </ul>		

	Default Action on Note or Contract	Contested Action on Note or Contract	Default Action in Limited Jurisdiction Cases	Foreclosure of Mortgage or Trust Deed	Tort Actions involving Minors or Incompetent Persons	Unlawful Detainer	Open Book Account	Probate
Fresno	<ul style="list-style-type: none"> <li>• 25% of first \$5,000; minimum \$400</li> <li>• 15% of next \$10,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$25,000</li> <li>• 2% of next \$50,000</li> <li>• 1% of amount over \$100,000</li> </ul>			Additional 10% on contingency rate schedule provided in default on note or contract				<p>Compensation allowed pursuant to CRC 7.750-7.752.</p> <p>The following flat fees allowed, without compliance with CRC:</p> <ul style="list-style-type: none"> <li>• \$2,500 to establish conservatorship or guardianship, and preparation of the first account</li> <li>• \$1,250 Court confirmed sale of real property</li> <li>• \$600 Attorney-prepared income tax returns</li> <li>• \$1,250 per year: each timely filed subsequent account</li> </ul>
Glenn							<p>\$960 or 25% of the obligation, whichever is less, for personal, family, or household debt</p> <p>\$1,200 or 25% of the obligation, whichever is less, for other debt.</p>	

	Default Action on Note or Contract	Contested Action on Note or Contract	Default Action in Limited Jurisdiction Cases	Foreclosure of Mortgage or Trust Deed	Tort Actions involving Minors or Incompetent Persons	Unlawful Detainer	Open Book Account	Probate
<b>Humboldt</b>	<ul style="list-style-type: none"> <li>• Up to \$1,000: 15%; minimum \$75</li> <li>• &gt;\$1,000-\$10,000: \$150 + 6% of award in excess of \$1,000</li> <li>• &gt;\$10,000-\$50,000: \$690 + 3% of award in excess of \$10,000</li> <li>• &gt;\$50,000-\$100,000: \$1,890 + 2% of award in excess of \$50,000</li> <li>• &gt;\$100,000: \$2,8950 + 1% of award in excess of \$100,000</li> </ul>							
<b>Imperial</b>	<ul style="list-style-type: none"> <li>• 25% of first \$1,000; minimum \$150</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$5,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of amount over \$50,000</li> </ul>							
<b>Inyo</b>	<ul style="list-style-type: none"> <li>• 25% of first \$2,000</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$4,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of amount over \$50,000</li> </ul>	Same as for default, plus reasonable compensation based on hourly or per-day basis						
<b>Kern</b>	<ul style="list-style-type: none"> <li>• 20% of first \$5,000; minimum \$150</li> <li>• 15% of next \$10,000</li> <li>• 10% of next \$35,000</li> <li>• 5% of amount over \$50,000</li> </ul>					<ul style="list-style-type: none"> <li>• \$300 limit for default cases</li> <li>• \$400 for uncontested trial</li> <li>• \$500 for contested trial</li> </ul>		

	Default Action on Note or Contract	Contested Action on Note or Contract	Default Action in Limited Jurisdiction Cases	Foreclosure of Mortgage or Trust Deed	Tort Actions involving Minors or Incompetent Persons	Unlawful Detainer	Open Book Account	Probate
<b>Kings</b>	<ul style="list-style-type: none"> <li>• Up to \$1,000: 25%</li> <li>• \$1,001-\$7,500: \$250 + 15% of award in excess of \$1,000</li> <li>• \$7,501-\$15,000: \$1,225 + 10% of award in excess of \$7,500</li> <li>• \$15,001-\$25,000: \$1,975 + 4% of award in excess of \$15,000</li> <li>• Over \$25,000: \$2,275 + 5% of award in excess of \$25,000</li> </ul>				<ul style="list-style-type: none"> <li>• 25% prior to commencement of trial</li> <li>• 33 1/3% after commencement of trial</li> <li>• 40% after filing appeal</li> </ul>			
<b>Lake</b>	<ul style="list-style-type: none"> <li>• 25% of first \$1,000</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$4,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of next \$50,000</li> <li>• 2% of next \$100,000</li> </ul>					<ul style="list-style-type: none"> <li>• \$350 for default cases</li> <li>• \$400 for uncontested trial</li> <li>• \$500 for contested trial</li> </ul>		
<b>Lassen</b>					25% of amount recovered			

	Default Action on Note or Contract	Contested Action on Note or Contract	Default Action in Limited Jurisdiction Cases	Foreclosure of Mortgage or Trust Deed	Tort Actions involving Minors or Incompetent Persons	Unlawful Detainer	Open Book Account	Probate	
Los Angeles	<ul style="list-style-type: none"> <li>• Up to \$1,000: 15%; minimum \$75</li> <li>• &gt;\$1,000-\$10,000: \$150 + 6% of award in excess of \$1,000</li> <li>• &gt;\$10,000-\$50,000: \$690 + 3% of award in excess of \$10,000</li> <li>• &gt;\$50,000-\$100,000: \$1,890 + 2% of award in excess of \$50,000</li> <li>• &gt;\$100,000: \$2,890 + 1% of award in excess of \$100,000</li> </ul>	<ul style="list-style-type: none"> <li>• Up to \$1,000: 15%; min. \$100</li> <li>• &gt;\$1,000-\$10,000: \$150 + 8% of award in excess of \$1,000</li> <li>• &gt;\$10,000-\$50,000: \$870 + 6% of award in excess of \$10,000</li> <li>• &gt;\$50,000-\$100,000: \$3,270 + 4% of award in excess of \$50,000</li> <li>• &gt;\$100,000: \$5,270 + % of award in excess of \$100,000</li> </ul>		Additional 10% on fee schedule provided in default on note or contract					
Madera	<ul style="list-style-type: none"> <li>• Up to \$1,000: 15%; minimum \$75</li> <li>• &gt;\$1,000-\$10,000: \$150 + 6% of award in excess of \$1,000</li> <li>• &gt;\$10,000-\$50,000: \$690 + 3% of award in excess of \$10,000</li> <li>• &gt;\$50,000-\$100,000: \$1,890 + 2% of award in excess of \$50,000</li> <li>• &gt;\$100,000: \$2,690 + 1% of award in excess of \$100,000</li> </ul>			Additional 10% on fee schedule provided in default on note or contract			<ul style="list-style-type: none"> <li>• Up to \$1,000: 15%; min. \$75</li> <li>• &gt;\$1,000-\$10,000: \$150 + 6% of award in excess of \$1,000</li> <li>• &gt;\$10,000-\$50,000: \$690 + 3% of award in excess of \$10,000</li> <li>• &gt;\$50,000-\$100,000: \$1,890 + 2% of award in excess of \$50,000</li> <li>• &gt;\$100,000: \$2,690 + 1% of award in excess of \$100,000</li> </ul>		
Marin					25% of net proceeds				
Mariposa	None								

	Default Action on Note or Contract	Contested Action on Note or Contract	Default Action in Limited Jurisdiction Cases	Foreclosure of Mortgage or Trust Deed	Tort Actions involving Minors or Incompetent Persons	Unlawful Detainer	Open Book Account	Probate
<b>Mendocino</b>					<ul style="list-style-type: none"> <li>• 25% prior to commencement of trial</li> <li>• 33 1/3% after commencement of trial</li> <li>• 40% after filing appeal</li> </ul>			
<b>Merced</b>	<ul style="list-style-type: none"> <li>• 20% of first \$5,000; minimum \$400</li> <li>• 10% of next \$20,000</li> <li>• 2% of next \$50,000</li> <li>• 1% of amount over \$100,000</li> </ul>			Additional 10% on fee schedule provided in default on note or contract		Default residential UD: \$400		
<b>Modoc</b>					<ul style="list-style-type: none"> <li>• 25% prior to commencement of trial</li> <li>• 33 1/3% after commencement of trial</li> <li>• 40% after filing appeal</li> </ul>			
<b>Mono</b>	<ul style="list-style-type: none"> <li>• 25% of first \$2,000</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$4,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of amount over \$50,000</li> </ul>	Same as for default, plus reasonable compensation based on hourly or per-day basis				<ul style="list-style-type: none"> <li>• \$300 for default cases</li> <li>• \$400 for uncontested trial</li> </ul>		

	Default Action on Note or Contract	Contested Action on Note or Contract	Default Action in Limited Jurisdiction Cases	Foreclosure of Mortgage or Trust Deed	Tort Actions involving Minors or Incompetent Persons	Unlawful Detainer	Open Book Account	Probate
<b>Monterey</b>	<ul style="list-style-type: none"> <li>• Up to \$2,000: 25%</li> <li>• &gt;\$2,000-\$5,000: greater of 20% or \$500</li> <li>• &gt;\$5,000-\$10,000: greater of 15% or \$1,000</li> <li>• &gt;\$10,000-\$25,000: greater of 12% or \$1,500</li> <li>• &gt;\$25,000: 10% of amount between \$25,000 and 5% of any additional amount</li> </ul>					\$450 for default cases		Nonlitigated conservatorship and guardianship: up to \$350/hour
<b>Napa</b>	<ul style="list-style-type: none"> <li>• 20% of first \$5,000; \$500 minimum</li> <li>• 15% of next \$10,000</li> <li>• 10% of next \$25,000</li> <li>• 5% of amount over \$40,000</li> </ul>					\$600 for default cases		
<b>Nevada</b>	<ul style="list-style-type: none"> <li>• 25% of first \$1,000; \$150 minimum</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$5,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of amount over \$50,000</li> </ul>					Not to exceed \$800 for default cases or uncontested trial		

	Default Action on Note or Contract	Contested Action on Note or Contract	Default Action in Limited Jurisdiction Cases	Foreclosure of Mortgage or Trust Deed	Tort Actions involving Minors or Incompetent Persons	Unlawful Detainer	Open Book Account	Probate
<b>Orange</b>	<ul style="list-style-type: none"> <li>• Up to \$5,000: 25%; minimum \$400</li> <li>• &gt;\$5,000-\$25,000: \$500 + 6% of award in excess of \$5,000</li> <li>• &gt;\$25,000-\$60,000: \$1,700 + 3% of award in excess of \$25,000</li> <li>• &gt;\$60,000-\$100,000: \$2,750 + 2% of award in excess of \$60,000</li> <li>• \$100,000 or more: \$3,550 + 1% of award in excess of \$100,000</li> </ul>							
<b>Placer</b>	<ul style="list-style-type: none"> <li>• 25% of first \$2,000; \$150 minimum</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$5,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of next \$50,000</li> <li>• over \$100,000: as authorized by the court</li> </ul>					<ul style="list-style-type: none"> <li>• \$300 for default cases</li> <li>• \$350 for uncontested trial</li> <li>• \$425 for contested trial</li> </ul>		
<b>Plumas</b>	<ul style="list-style-type: none"> <li>• 25% of first \$2,000; \$300 minimum</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$5,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of next \$50,000</li> <li>• over \$150,000: as authorized by the court</li> </ul>	Same as for default, plus reasonable compensation based on hourly or per-day basis						

	Default Action on Note or Contract	Contested Action on Note or Contract	Default Action in Limited Jurisdiction Cases	Foreclosure of Mortgage or Trust Deed	Tort Actions involving Minors or Incompetent Persons	Unlawful Detainer	Open Book Account	Probate
<b>Riverside</b>	<ul style="list-style-type: none"> <li>• Up to \$1,000: 25%</li> <li>• \$,001-\$7,500: \$250 + 15% of award in excess of \$1,000</li> <li>• \$7,501-\$15,000: \$1,225 + 10% of award in excess of \$7,500</li> <li>• \$15,001-\$25,000: \$1,975 + 4% of award in excess of \$15,000</li> <li>• \$250,000 or more: \$2,375 + 2% of award in excess of \$25,000</li> </ul>							
<b>Sacramento</b>	<ul style="list-style-type: none"> <li>• 25% of first \$1,000; minimum \$150</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$5,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of the amount over \$50,000</li> </ul>	Same as for default, plus reasonable compensation based on hourly or per-day basis				<ul style="list-style-type: none"> <li>• \$200 limit for default cases</li> <li>• \$300 for uncontested trial where defendant failed to appear, has filed an answer, and non-appearance default prove-up hearing is required</li> <li>• \$500 for contested trial with represented and unrepresented parties</li> <li>• \$750 for contested trial when both parties are represented</li> </ul>		
<b>San Benito</b>	<ul style="list-style-type: none"> <li>• \$250 for the first \$1,000; plus</li> <li>• 6% of next \$9,000</li> <li>• 3% of next \$40,000</li> <li>• 2% of next \$50,000</li> <li>• 1% of next \$100,000</li> </ul>							

	Default Action on Note or Contract	Contested Action on Note or Contract	Default Action in Limited Jurisdiction Cases	Foreclosure of Mortgage or Trust Deed	Tort Actions involving Minors or Incompetent Persons	Unlawful Detainer	Open Book Account	Probate
San Bernardino	<ul style="list-style-type: none"> <li>• 25% of the first \$1,000; minimum \$75</li> <li>• 10% of next \$14,000</li> <li>• 3% of next \$35,000</li> <li>• 2% of next \$50,000</li> <li>• 1% of amount over \$100,000</li> </ul>			Additional 10% on fee schedule provided in default on note or contract				

	Default Action on Note or Contract	Contested Action on Note or Contract	Default Action in Limited Jurisdiction Cases	Foreclosure of Mortgage or Trust Deed	Tort Actions involving Minors or Incompetent Persons	Unlawful Detainer	Open Book Account	Probate	
San Diego	<ul style="list-style-type: none"> <li>• \$0 to \$300: \$100</li> <li>• \$301-\$400: \$125</li> <li>• \$401-\$500: \$150</li> <li>• \$501-\$700: \$ 175</li> <li>• \$701-\$900: \$200</li> <li>• \$901-\$1,000: \$250</li> <li>• \$1,001-\$1,500: \$300</li> <li>• \$1,501-\$2,000: \$375</li> <li>• \$2,001-\$2,500: \$450</li> <li>• \$2,501-\$3,000: \$525</li> <li>• \$3,001-\$3,500: \$600</li> <li>• \$3,501-\$4,000: \$675</li> <li>• \$4,001-\$4,500: \$750</li> <li>• \$4,501-\$5,000: \$825</li> <li>• \$5,001-\$6,000: \$900</li> <li>• \$6,001-\$7,000: \$1,000</li> <li>• \$7,001-\$8,000: \$1,100</li> <li>• \$8,001-\$9,000: \$1,200</li> <li>• \$9,001-\$10,000: \$1,300</li> <li>• \$10,001-\$12,500: \$1,400</li> <li>• \$12,501-\$15,000: \$1,500</li> <li>• \$15,001-\$17,500: \$1,600</li> <li>• \$17,501-\$20,000: \$1,700</li> <li>• \$20,001-\$22,500: \$1,800</li> <li>• \$22,501-\$25,000: \$1,900</li> <li>• Over \$25,000: Add 2% of the next \$25,000</li> <li>• Over \$50,000: Add 1% of the next \$50,000</li> <li>• Over \$100,000: Add .5%</li> </ul>								
San Francisco			See Appendix A						

<p><b>San Joaquin</b></p>	<ul style="list-style-type: none"> <li>• 25% of first \$1,000; \$150 minimum</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$5,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of amount over \$50,000</li> </ul>	<p>Same as for default, plus reasonable compensation based on hourly or per-day basis</p>	<p>Additional 10% on fee schedule provided in default on note or contract</p>	<p>\$300 for default cases</p>	<p>\$960 or 25% of the obligation, whichever is less, for personal, family, or household debt \$1,200 or 25% of the obligation, whichever is less, for other debt.</p>	<p><b>Attorney for Trust:</b></p> <ul style="list-style-type: none"> <li>• Amount equiv.to one-third of professional trustee’s normal fee for a 12-month period, or \$1,000, whichever is greater.</li> <li>• Amount equivalent to one-half of non-professional trustee’s normal fee for a 12-month period, or \$1,000, whichever is greater.</li> </ul> <p><b>Conservatorship/Guardianship of Person</b></p> <ul style="list-style-type: none"> <li>• Counsel to private professional fiduciary: amount equivalent to one-third of fiduciary’s normal fee for 12-month period, or \$1,000, whichever is greater.</li> <li>• Counsel to non-licensed fiduciary: amount equivalent to one-half of fiduciary’s normal fee for a 12-month period, or \$1,500, whichever is greater.</li> <li>• Attorney for the conservator or conservatee: not to exceed \$1,000.</li> </ul>
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	Default Action on Note or Contract	Contested Action on Note or Contract	Default Action in Limited Jurisdiction Cases	Foreclosure of Mortgage or Trust Deed	Tort Actions involving Minors or Incompetent Persons	Unlawful Detainer	Open Book Account	Probate
<b>San Luis Obispo</b>	<ul style="list-style-type: none"> <li>• Any part of first \$1,000; (\$250 minimum) fee</li> <li>• 20% of next \$4,000 (\$800 maximum)</li> <li>• 15% of next \$5,000 (\$750 maximum)</li> <li>• 10% of next \$5,000 (\$500 maximum)</li> <li>• 5% of next \$35,000 (\$1,750 maximum)</li> <li>• 2% of the next \$50,000 (\$1,000 maximum)</li> <li>• 1% of the amount over \$100,000</li> </ul>				Limited to 25% of net proceeds			
<b>San Mateo</b>	See Appendix B							
<b>Santa Barbara</b>	<ul style="list-style-type: none"> <li>• Up to \$1,000: \$250</li> <li>• &gt;1,000-\$5,000: \$250 + 20% of award in excess of \$1,000</li> <li>• &gt;\$5,000-\$10,000: \$1,050 + 15% of award in excess of \$5,000</li> <li>• &gt;\$10,000-\$15,000: \$1,800 + 10% of award in excess of \$10,000</li> <li>• &gt;\$15,000-\$50,000: \$2,300 + 5% of award in excess of \$15,000</li> <li>• &gt;\$50,000-\$100,000: \$4,050 + 2% of award in excess of \$50,000</li> <li>• \$100,000 or more: \$5,050 + 1% of award in excess of \$100,000</li> </ul>					Default judgment: \$100		

	Default Action on Note or Contract	Contested Action on Note or Contract	Default Action in Limited Jurisdiction Cases	Foreclosure of Mortgage or Trust Deed	Tort Actions involving Minors or Incompetent Persons	Unlawful Detainer	Open Book Account	Probate
<b>Santa Clara</b>	<ul style="list-style-type: none"> <li>• Up to \$500: \$150</li> <li>• \$501-\$2,500: \$150 + 25% of amount over \$500</li> <li>• \$2,501-\$5,000: \$650 + 15% of amount over \$2,500</li> <li>• \$5,001-\$10,000: \$1,100 + 6% of amount over \$5,000</li> <li>• \$10,001-\$50,000: \$1,400 + 3% of amount over \$10,000</li> <li>• \$50,001-\$100,000: \$2,600 + 2% of amount over \$50,000</li> <li>• Over \$100,000: \$3,600 + 1% of amount over \$100,000</li> </ul>					Default judgment: \$375		
<b>Santa Cruz</b>	<ul style="list-style-type: none"> <li>• 20% of first \$1,000; \$100 minimum</li> <li>• 10% of next \$9,000</li> <li>• 3% of next \$40,000</li> <li>• 2% of next \$50,000</li> <li>• 1% of amount over \$100,000</li> </ul>							
<b>Shasta</b>	<ul style="list-style-type: none"> <li>• 25% of first \$2,000;</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$4,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of amounts in excess of \$50,000</li> </ul>	Same as for default, plus reasonable compensation based on hourly or per-day basis						

	Default Action on Note or Contract	Contested Action on Note or Contract	Default Action in Limited Jurisdiction Cases	Foreclosure of Mortgage or Trust Deed	Tort Actions involving Minors or Incompetent Persons	Unlawful Detainer	Open Book Account	Probate
Sierra	<ul style="list-style-type: none"> <li>• 25% of first \$2,000; \$300 minimum</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$4,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of amounts in excess of \$50,000, on the next \$100,000</li> <li>• In excess of \$150,000: to be fixed at court's discretion</li> </ul>	Same as for default, plus reasonable compensation based on hourly or per-day basis						
Siskiyou	<ul style="list-style-type: none"> <li>• 25% of first \$2,000; \$300 minimum</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$4,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of amounts in excess of \$50,000, on the next \$100,000</li> <li>• In excess of \$150,000: to be fixed at court's discretion</li> </ul>	Same as for default, plus reasonable compensation based on hourly or per-day basis						

	Default Action on Note or Contract	Contested Action on Note or Contract	Default Action in Limited Jurisdiction Cases	Foreclosure of Mortgage or Trust Deed	Tort Actions involving Minors or Incompetent Persons	Unlawful Detainer	Open Book Account	Probate
<b>Solano</b>	<ul style="list-style-type: none"> <li>• 25% of first \$1,000; \$150 minimum</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$5,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of amounts in excess of \$50,000</li> </ul>		<ul style="list-style-type: none"> <li>• Up to \$600: \$150</li> <li>• \$600-\$1,000: \$150 + 25% of amount over \$600</li> <li>• \$1,000-\$10,000: \$250 + 15% of amount over \$1,000</li> <li>• \$10,000-\$25,000: \$1,600 + 10% of amount over \$10,000</li> </ul>			<ul style="list-style-type: none"> <li>• 25% of first \$1,000; \$300 minimum</li> <li>• 15% of next \$9,000</li> <li>• 10% of next \$15,000</li> </ul>	<ul style="list-style-type: none"> <li>• Up to \$600: \$150</li> <li>• \$600-\$1,000: \$150 + 25% of amount over \$600</li> <li>• \$1,000-\$10,000: \$250 + 15% of amount over \$1,000</li> <li>• \$10,000-\$25,000: \$1,600 + 10% of amount over \$10,000</li> </ul>	
<b>Sonoma</b>			<ul style="list-style-type: none"> <li>• 35% of first \$1,500;</li> <li>• 30% of second \$1,500</li> <li>• 25% of third \$1,500</li> <li>• 10% of amount in excess of \$4,500</li> </ul>			<ul style="list-style-type: none"> <li>• Default: \$300</li> <li>• Court trials: \$375</li> </ul>		
<b>Stanislaus</b>	<ul style="list-style-type: none"> <li>• 25% of first \$1,000; \$100 minimum</li> <li>• 10% of next \$9,000</li> <li>• 5% of next \$40,000</li> <li>• 2% of amount over \$50,000</li> </ul>					<ul style="list-style-type: none"> <li>• Default without appearance: \$250</li> <li>• Default with appearance: \$300</li> </ul>		
<b>Sutter</b>	None							

	Default Action on Note or Contract	Contested Action on Note or Contract	Default Action in Limited Jurisdiction Cases	Foreclosure of Mortgage or Trust Deed	Tort Actions involving Minors or Incompetent Persons	Unlawful Detainer	Open Book Account	Probate
<b>Tehama</b>	<ul style="list-style-type: none"> <li>• 25% of first \$2,000</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$4,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of amount in excess of \$50,000</li> </ul>							
<b>Trinity</b>	<ul style="list-style-type: none"> <li>• 25% of first \$2,000</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$4,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of amount in excess of \$50,000</li> </ul>							
<b>Tulare</b>	<ul style="list-style-type: none"> <li>• 25% of first \$5,000; minimum \$250</li> <li>• 10% of amount over \$5,000</li> </ul>							
<b>Tuolumne</b>	<ul style="list-style-type: none"> <li>• 25% of first \$1,000</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$5,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of amount in excess of \$50,000</li> </ul>							
<b>Ventura</b>	<ul style="list-style-type: none"> <li>• First \$1,000: \$250</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$5,000</li> <li>• 10% of next \$5,000</li> <li>• 5% of next \$35,000</li> <li>• 2% of next \$50,000</li> <li>• 1% of amount over \$100,000</li> </ul>				<ul style="list-style-type: none"> <li>• 25% for settlement more than two weeks prior to trial</li> <li>• 33 1/3% for disposition within two weeks of, during, or after trial</li> <li>• 40% after filing appeal</li> </ul>	Default: \$450		

	Default Action on Note or Contract	Contested Action on Note or Contract	Default Action in Limited Jurisdiction Cases	Foreclosure of Mortgage or Trust Deed	Tort Actions involving Minors or Incompetent Persons	Unlawful Detainer	Open Book Account	Probate
Yolo	<ul style="list-style-type: none"> <li>• 25% of first \$2,000: \$350 minimum</li> <li>• 20% of next \$4,000</li> <li>• 15% of next \$4,000</li> <li>• 10% of next \$10,000</li> <li>• 5% of next \$30,000</li> <li>• 2% of amount in excess of first \$50,000</li> <li>• 2% of next \$100,000</li> <li>• In excess of \$150,000: to be fixed at court's discretion</li> </ul>							
Yuba							<ul style="list-style-type: none"> <li>• \$960 or 25% of the obligation, whichever is less, for personal, family, or household debt</li> <li>• \$1,200 or 25% of the obligation, whichever is less, for other debt.</li> </ul>	

## APPENDIX A

**Fee Schedule for Attorney Compensation for Limited Jurisdiction Cases**

Where the principal sued for is:	Attorney's Fee:
\$ 10 to \$ 50	\$ 10
51 to 75	15
76 to 100	30
101 to 150	50
151 to 200	70
201 to 300	95
301 to 400	120
401 to 500	150
501 to 600	180
601 to 700	210
701 to 800	240
801 to 900	270
901 to 1,000	300
1,001 to 1,100	325
1,101 to 1,200	350
1,201 to 1,300	375
1,301 to 1,500	400
1,501 to 1,750	425
1,751 to 2,000	450
2,001 to 2,250	485
2,251 to 2,500	520
2,501 to 2,750	560
2,751 to 3,000	600
3,001 to 3,250	630
3,251 to 3,500	660
3,501 to 3,750	690
3,751 to 4,000	720
4,001 to 4,250	750
4,251 to 4,500	775
4,501 to 4,750	800
4,751 to 5,000	825
5,001 to 5,250	850
5,251 to 5,500	875
5,501 to 5,750	900

5,751 to 6,000	925
6,001 to 6,250	950
6,251 to 6,500	975
6,501 to 6,750	1,000
6,751 to 7,000	1,025
7,001 to 7,250	1,050
7,251 to 7,500	1,075
7,501 to 7,750	1,100
7,751 to 8,000	1,125
8,001 to 8,250	1,150
8,251 to 8,500	1,175
8,501 to 8,750	1,200
8,751 to 9,000	1,225
9,001 to 9,250	1,250
9,251 to 9,500	1,275
9,501 to 9,750	1,300
9,751 to 10,000	1,325
10,001 to 10,250	1,350
10,251 to 10,500	1,375
10,501 to 10,750	1,400
10,751 to 11,000	1,425
11,001 to 11,250	1,450
11,251 to 11,500	1,475
11,501 to 11,750	1,500
11,751 to 12,000	1,525
12,001 to 12,250	1,550
12,251 to 12,500	1,575
12,501 to 12,750	1,600
12,751 to 13,000	1,625
13,001 to 13,250	1,650
13,251 to 13,500	1,675
13,501 to 13,750	1,700
13,751 to 14,000	1,725
14,001 to 14,250	1,750
14,251 to 14,500	1,775
14,501 to 14,750	1,800
14,751 to 15,000	1,825
15,001 to 15,250	1,850

15,251 to 15,500	1,875
15,501 to 15,750	1,900
15,751 to 16,000	1,925
16,001 to 16,250	1,950
16,251 to 16,500	1,975
16,501 to 16,750	2,000
16,751 to 17,000	2,025
17,001 to 17,250	2,050
17,251 to 17,500	2,075
17,501 to 17,750	2,100
17,751 to 18,000	2,125
18,001 to 18,250	2,150
18,251 to 18,500	2,175
18,501 to 18,750	2,200
18,751 to 19,000	2,225
19,001 to 19,250	2,250
19,251 to 19,500	2,275
19,501 to 19,750	2,300
19,751 to 20,000	2,325
20,001 to 20,250	2,350
20,251 to 20,500	2,375
20,501 to 20,750	2,400
20,751 to 21,000	2,425
21,001 to 21,250	2,450
21,251 to 21,500	2,475
21,501 to 21,750	2,500
21,751 to 22,000	2,525
22,001 to 22,250	2,550
22,251 to 22,500	2,575
22,501 to 22,750	2,600
22,751 to 23,000	2,625
23,001 to 23,250	2,650
23,251 to 23,500	2,675
23,501 to 23,750	2,700
23,751 to 24,000	2,725
24,001 to 24,250	2,750
24,251 to 24,500	2,775
24,501 to 24,750	2,800

24,751 to 25,000

2,825

**COURT SCHEDULE OF ATTORNEY FEES**

\$	0	to	\$ 5,000	\$ 300 or 20% whichever is higher								
	5,001	to	5,250	1,035	11,251	to	11,500	1,550	17,251	to	17,500	1,670
	5,251	to	5,500	1,070	11,501	to	11,750	1,555	17,501	to	17,750	1,675
	5,501	to	5,750	1,105	11,751	to	12,000	1,560	17,751	to	18,000	1,680
	5,751	to	6,000	1,140	12,001	to	12,250	1,565	18,001	to	18,250	1,685
	6,001	to	6,250	1,170	12,251	to	12,500	1,570	18,251	to	18,500	1,690
	6,251	to	6,500	1,200	12,501	to	12,750	1,575	18,501	to	18,750	1,695
	6,501	to	6,750	1,230	12,751	to	13,000	1,580	18,751	to	19,000	1,700
	6,751	to	7,000	1,280	13,001	to	13,250	1,585	19,001	to	19,250	1,705
	7,001	to	7,250	1,285	13,251	to	13,500	1,590	19,251	to	19,500	1,710
	7,251	to	7,500	1,310	13,501	to	13,750	1,595	19,501	to	19,750	1,715
	7,501	to	7,750	1,335	13,751	to	14,000	1,600	19,751	to	20,000	1,720
	7,751	to	8,000	1,380	14,001	to	14,250	1,605	20,001	to	20,250	1,725
	8,001	to	8,250	1,380	14,251	to	14,500	1,610	20,251	to	20,500	1,730
	8,251	to	8,500	1,400	14,501	to	14,750	1,615	20,501	to	20,750	1,735
	8,501	to	8,750	1,420	14,751	to	15,000	1,620	20,751	to	21,000	1,740
	8,751	to	9,000	1,440	15,001	to	15,250	1,625	21,001	to	21,250	1,745
	9,001	to	9,250	1,455	15,251	to	15,500	1,630	21,251	to	21,500	1,750
	9,251	to	9,500	1,470	15,501	to	15,750	1,635	21,501	to	21,750	1,755
	9,501	to	9,750	1,485	15,751	to	16,000	1,640	21,751	to	22,000	1,760
	9,751	to	10,000	1,500	16,001	to	16,250	1,645	22,001	to	22,250	1,765
	10,001	to	10,250	1,510	16,251	to	16,500	1,650	22,251	to	22,500	1,770
	10,251	to	10,500	1,520	16,501	to	16,750	1,655	22,501	to	22,750	1,775
	10,501	to	10,750	1,530	16,751	to	17,000	1,660	22,751	to	23,000	1,780
	10,751	to	11,000	1,540	17,001	to	17,250	1,665				
	11,001	to	11,250	1,545	Over \$23,000 - \$1,780 plus 1 ½ % of the amount over \$23,000							

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: AOC Center for Families, Children & the Courts  
Diane Nunn, Division Director  
Lee Morhar, Assistant Director  
Leah Wilson, Supervising Court Services Analyst, 415-865-7977

DATE: October 25, 2006

SUBJECT: Juvenile Dependency: DRAFT Pilot Program and Court-Appointed Counsel

Issue Statement

Costs for court-appointed counsel representing children and indigent parents in juvenile dependency proceedings are included as “trial court operations” under the Trial Court Funding Act. As such, the Judicial Council has overseen expenditures of these funds since the onset of trial court funding<sup>1</sup>. In the last five years, the council has been particularly active in the court-appointed counsel program area, with respect to both quality of practice and fiscal considerations. As this report describes, a number of factors, including escalating program costs and legislative direction for the development of caseload standards for court-appointed counsel, led the council to direct staff to implement the Dependency Representation, Administration, Funding, and Training (DRAFT) pilot program for a three-year period beginning in July 2004. The goal of the DRAFT pilot program is to improve the quality of attorney representation for parents and children in dependency cases in as cost-effective manner as possible.

DRAFT comprises a partnership between 10 volunteer court systems and the Administrative Office of the Courts.<sup>2</sup> Escalating costs in non-DRAFT courts during the first two years of the program’s existence have rendered the results of the pilot

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<sup>1</sup> Lockyer-Isenberg Trial Court Funding Act of 1997 (Stats. 1997, ch.850).

<sup>2</sup> A request for letters of interest (LOIs) regarding DRAFT program participation was sent to the courts in April 2004. Sixteen courts submitted letters of interest in DRAFT program participation. Of these courts, the following 10 were selected: Imperial, Los Angeles, Marin, Mendocino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Cruz, and Stanislaus. Courts were selected based upon criteria including dependency population size, geography, service-delivery model mix, fiscal implications of existing contractual obligations, and an assessment of AOC staff’s ability to provide comprehensive DRAFT program services to each selected court.

particularly critical; standards developed under DRAFT address the concomitant goals of ensuring quality court-appointed counsel representation and realizing program cost containment.

### Recommendation

AOC staff recommends that the Judicial Council request the DRAFT Pilot Program Implementation Committee to provide a final DRAFT pilot program report in August 2007 with recommendations therein regarding: (1) proposed court-appointed counsel caseload, compensation, and performance standards for statewide implementation; and (2) cost-containment approaches that account for both the limited funding available and the importance of quality representation in the state's juvenile dependency courts.

### Rationale for Recommendation

Court-appointed counsel costs in juvenile dependency proceedings have been a state fiscal responsibility since the onset of trial court funding. In the transition to state funding, trial court systems inherited the unique dependency counsel service-delivery models of their respective counties. As a result, little uniformity exists between court systems with respect to provider types (e.g. private vs. government attorneys), fee structures (e.g. per case vs. annual contract rates) and standards of practice (which, for the most part, are defined by local court rules).

The significance of the lack of uniformity and absence of practice and compensation standards has been highlighted by several factors including escalating program costs and legislative direction regarding the establishment of court-appointed counsel caseload standards.

Legislation<sup>3</sup> (Sen. Bill 2160, Stats. 2000, ch. 450) amended section 317 of the Welfare and Institutions Code to require (1) the appointment of counsel for children in almost all dependency cases; (2) caseloads and training for appointed counsel that ensure adequate representation; and (3) Judicial Council promulgation of rules establishing caseload standards, training requirements, and guidelines for appointment of counsel for children. In 2001 the Judicial Council took action regarding the effective delivery of court-appointed counsel services in juvenile dependency proceedings. In addition to adopting a rule of court that mandated the appointment of counsel for children subject to dependency proceedings in all but the rarest of circumstances, the council directed staff to undertake a study to identify caseload standards for attorneys representing both parents and children.

In 2002 the Judicial Council made a series of policy decisions regarding funding for court-appointed counsel, including transitioning the program from the aggregate Trial Court Trust Fund distribution to a reimbursable line-item. The reimbursement funding

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<sup>3</sup> The Judicial Council co sponsored Senate Bill 2160; no opposition to the bill was filed in the Legislature.

mechanism results in courts being reimbursed by the AOC in *arrears* for actual court-appointed counsel costs incurred. The purpose behind reimbursement funding is to ensure the use of court-appointed counsel funding solely for that purpose, and to thereby eliminate the practice extant at the onset of the policy by which dependency counsel funding was used to support other court operations. While reimbursement funding has resulted in the establishment of a dedicated dependency counsel funding stream, it has not achieved another implicit objective — cost containment. In fact, statewide court-appointed counsel expenditures have increased an average of 8 percent annually since the onset of reimbursement funding, a rate which has consistently exceeded corollary increases in the statewide appropriation.

In fiscal year 2004–2005, in response to both escalating program costs and the legislative mandate to develop and implement dependency counsel caseload standards, the council launched the DRAFT pilot program.

DRAFT shifted responsibility for administering dependency counsel contracts from participating courts to the AOC; DRAFT is a partnership in which the courts retain responsibility for attorney selection and the AOC has responsibility for direct attorney payment. Primary components of DRAFT include competitive bidding for court-appointed counsel services, execution of standardized appointed counsel contracts, and the development and promulgation of attorney performance and training standards.

The partnership between DRAFT-participating courts and the AOC was formalized with the establishment of the DRAFT Pilot Program Implementation Committee (committee). The committee, which is chaired by Justice Richard D. Huffman, includes at least one judicial and one court administration representative from each participating court, as well as additional juvenile court judicial officers, court administrators, and trial and appellate court attorneys.

The committee has seven working groups charged with overseeing the development of policies and standards addressing DRAFT attorney performance, compensation, and reporting requirements. The efforts of three of these working groups are described below.

*Attorney Performance Working Group: Caseload and performance standards*

The Court-Appointed Counsel Caseload Study (caseload study) report received by the council in June 2004 was premised on work that began pursuant to council direction in 2002. At that time, the AOC contracted with the American Humane Association for a quantitative caseload study of trial-level court-appointed dependency counsel based upon an assessment of the duties required as part of the representation and the amount of time required to perform those tasks.

The caseload study comprised four distinct components, including the identification of a standardized set of attorney “tasks” and a two-week workload study, during which approximately 600 attorneys statewide reported time spent on identified tasks.

The results of each caseload study component indicated a recommended maximum caseload figure of *141 cases, or clients*, per full-time dependency attorney<sup>4</sup>. The proposed maximum caseload of 141 clients compared to a statewide average at the onset of the caseload study of 273 clients per attorney.

Because of the obvious fiscal implications of caseload reduction this significant and the fact that important issues, such as the impact of non-attorney support staffing on requisite caseloads, were not addressed in the report, the Judicial Council did not adopt the caseload standard as identified but instead directed staff to pilot the standard, or caseload reduction, as part of the DRAFT pilot program.

One of the challenges faced in attempting to pilot caseload reduction as part of DRAFT implementation has been a lack of accurate data on current attorney caseloads. Requests for Proposals (RFPs) and contract specifications under DRAFT have been designed to address the ongoing need for attorney workload data via the inclusion of consistent mandatory data collection and reporting requirements.

The results of DRAFT caseload standard implementation, as reflected in executed DRAFT contracts, are provided in the following table.

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<sup>4</sup> Caseload Study findings suggested that each client be counted as one case, regardless of sibling group affiliation.

<b>Court System</b>	<b>Pre-DRAFT Caseload</b>	<b>Post-DRAFT Caseload</b>
<b>Imperial</b>	<b>377</b>	<b>205</b>
<b>Los Angeles</b>	<b>unavailable<sup>5</sup></b>	<b>267</b>
<b>Marin</b>	<b>51</b>	<b>110</b>
<b>Mendocino</b>	<b>92</b>	<b>168</b>
<b>San Diego</b>	<b>363</b>	<b>286</b>
<b>San Joaquin</b>	<b>288</b>	<b>205</b>
<b>San Luis Obispo</b>	<b>180</b>	<b>118</b>
<b>Santa Barbara</b>	<b>201</b>	<b>118</b>
<b>Santa Cruz</b>	<b>136</b>	<b>136</b>
<b>Stanislaus</b>	<b>217</b>	<b>177</b>

As shown in the table, the implementation of DRAFT reduced caseloads in the majority of participating courts; exceptions can be attributed to factors such as inordinately low caseloads at the onset of DRAFT (Marin and Mendocino) and pre-DRAFT attorney caseloads approximating recommended caseload standards (Santa Cruz).

DRAFT's Attorney Performance Working Group (APWG) is charged with identifying and evaluating the relationship between caseload standard implementation and attorney performance. To that end, the APWG has developed and promulgated practice standards which serve as the basis for all performance expectations delineated in DRAFT RFPs and contracts, experience and training requirements for attorneys seeking new dependency appointments, enhanced annual training requirements for all dependency counsel, and an attorney performance review process, whereby court-appointed counsel will be evaluated by their peers, clients, and judicial officers, to be implemented January 1, 2007.

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<sup>5</sup> Pre-DRAFT caseload data could not be generated because parent clients in Los Angeles were represented by private solo practitioners who did not track caseload information for either their dependency or non dependency caseloads.

*Compensation and Organizational Models Working Group: Compensation standards*

The Compensation and Organizational Models Working Group of the DRAFT Pilot Program Implementation Committee is charged with developing attorney rates and cost models. At the onset of its work in this area, the working group made a policy decision regarding the development of *regional*, versus statewide, appointed-counsel rates. Staff utilized a combination of data sources to develop proposals for regional rates. These sources included (1) the Watson-Wyatt study of court employees conducted as a precursor to the transition of court staff from county to court employees; (2) county counsel salary information; (3) census data on median home value; and (4) census data on median income. Staff began its regional rate analysis with the four regions identified by the Watson-Wyatt study; court affiliation with any particular region was then adjusted as census and county counsel salary data were taken into account. Specifically, staff averaged each court’s ranking among the data sources (Watson-Wyatt, county counsel salary, and census data) and “rounded” up to generate a DRAFT-court regional ranking. DRAFT court affiliation by region is shown in the following table:

<b>County</b>	<b>Watson-Wyatt Study</b>	<b>County Counsel Average Salary</b>	<b>Household Income</b>	<b>Home Value</b>	<b>DRAFT Region<sup>6</sup></b>
<b>Imperial</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>
<b>Los Angeles</b>	<b>3</b>	<b>4</b>	<b>2</b>	<b>2</b>	<b>3</b>
<b>Marin</b>	<b>3</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>
<b>Mendocino</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>2</b>
<b>San Diego</b>	<b>2</b>	<b>4</b>	<b>2</b>	<b>2</b>	<b>3</b>
<b>San Joaquin</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>2</b>
<b>San Luis Obispo</b>	<b>1</b>	<b>3</b>	<b>2</b>	<b>2</b>	<b>2</b>
<b>Santa Barbara</b>	<b>2</b>	<b>3</b>	<b>2</b>	<b>2</b>	<b>3</b>
<b>Santa Cruz</b>	<b>2</b>	<b>2</b>	<b>3</b>	<b>3</b>	<b>3</b>
<b>Stanislaus</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>2</b>

<sup>6</sup> For each data source, 1 is low, 4 is high. Recommended compensation rates are thus lowest in DRAFT Region 1 and highest in DRAFT Region 4.

Subsequent to determining DRAFT regional rankings staff addressed the issue of developing compensation levels for each region. Working group members made another important policy decision at this juncture, determining that court-appointed counsel salaries (not including benefit packages) should be pegged to those of county counsel. This decision reflects equity and recognition principles at the heart of the DRAFT pilot program's goal of improving the quality of court-appointed counsel practice.

County counsel salary data for entry-level, mid- and high-range positions were analyzed to create regional court-appointed counsel rates; these rates essentially reflect the regional average of midrange county counsel salaries. Regional rates are used in conjunction with caseload data in DRAFT contract negotiations to identify the total expected cost of direct attorney services. Court caseload determines the number of full-time attorneys required, and the regional rate dictates the marginal cost of those attorneys. It is important to note that while caseload and compensation standards form the basis of aggregate negotiated contract amounts, providers, once under contract, are free to allocate that budget internally as they see fit.<sup>7</sup> The impact of this internal allocation flexibility is that organizational providers can offer a broad salary range to current and prospective employees so long as the *average* of all attorney salaries is equivalent to the funded regional rate.

There are very few providers in DRAFT-participating courts that are compensated on an hourly basis; those that remain are paid at rates that reflect variations on the hourly equivalent of each regional contractual rate. Three hourly rate tiers have been established for each region; local presiding juvenile court judges are asked to set the appropriate payment tier for individual appointed counsel based on experience and skill level.

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<sup>7</sup> Contractors have budgetary discretion within certain parameters; DRAFT contracts stipulate a minimum number of full-time-equivalent attorneys and investigators/social workers if applicable.

DRAFT regional salary and hourly rates are provided below:

		Annual Salary	Hourly Rate
<b>DRAFT Region 1</b>	<b>Tier 1</b>	<b>\$43,908</b>	<b>\$55</b>
	<b>Tier 2</b>	<b>\$65,592</b>	<b>\$60</b>
	<b>Tier 3</b>	<b>\$87,276</b>	<b>\$65</b>
<b>DRAFT Region 2</b>	<b>Tier 1</b>	<b>\$51,251</b>	<b>\$65</b>
	<b>Tier 2</b>	<b>\$76,622</b>	<b>\$70</b>
	<b>Tier 3</b>	<b>\$101,993</b>	<b>\$75</b>
<b>DRAFT Region 3</b>	<b>Tier 1</b>	<b>\$52,304</b>	<b>\$75</b>
	<b>Tier 2</b>	<b>\$88,568</b>	<b>\$80</b>
	<b>Tier 3</b>	<b>\$124,833</b>	<b>\$85</b>
<b>DRAFT Region 4</b>	<b>Tier 1</b>	<b>\$70,637</b>	<b>\$85</b>
	<b>Tier 2</b>	<b>\$102,170</b>	<b>\$90</b>
	<b>Tier 3</b>	<b>\$133,703</b>	<b>\$95</b>

While the process of developing regional rates for direct attorney services has been finalized under DRAFT, additional work remains with respect to developing a comprehensive cost model for appointed counsel services. Remaining factors to consider include supervisory attorney staff, non attorney staffing, and overhead costs. Data collected from non-DRAFT providers via survey and analysis of DRAFT contracts will serve as the starting point for the development of staffing and overhead ratios. The data are provided in the tables that follow:

<b>Provider Type</b>	<b>Staffing Ratios</b>		
	<b>Supervising Attorneys to Line Attorneys</b>	<b>Investigators/Social Workers to Line Attorneys</b>	<b>Support Staff to Line Attorneys</b>
<b>Administered Panel</b>	<b>0.1</b>	<b>0</b>	<b>0.1</b>
<b>Firm (Non Profit or Private)</b>	<b>0.1</b>	<b>0.5</b>	<b>0.6</b>
<b>Government Agency</b>	<b>0.1</b>	<b>0.4</b>	<b>0.5</b>
<b>Solo Practitioner</b>	<b>0</b>	<b>0.2</b>	<b>0.3</b>

Overhead by Provider Type				
Provider Type	Average by Provider Type		Overall Average	
	Direct	Indirect	Direct	Indirect
Administered Panel	75%	25%	74%	26%
Firm	65%	35%		
Government Agency	75%	25%		
Solo Practitioner	81%	19%		

It is important to emphasize that the data above regarding staffing ratios and average overhead costs reflects current patterns only. No analysis has been done to determine whether or not these averages are in fact consistent with optimal practice from either a performance or fiscal perspective. Finalization of staffing ratios and overhead rates will ultimately account for not only current practice but also “best” practice as related to both quality of attorney performance and cost efficacy. The development of a ratio with respect to investigator/social worker staffing will have particularly significant implications. It is anticipated that there will be a direct relationship between such staffing and attorney caseload, with the caseload standard being adjusted upwards as the level of available investigator/social worker support increases.

*DRAF implementation costs*

The preceding background regarding DRAFT regional rates informs an analysis of the following table, which outlines the implementation costs of DRAFT-negotiated contracts.

<b>Court System</b>	<b>Pre-DRAFT Costs<sup>8</sup></b>	<b>Post-DRAFT Costs</b>
<b>Imperial</b>	<b>\$420,074</b>	<b>\$785,864</b>
<b>Los Angeles</b>	<b>\$23,658,326</b>	<b>\$28,445,562</b>
<b>Marin</b>	<b>\$449,892</b>	<b>\$405,320</b>
<b>Mendocino</b>	<b>\$493,298</b>	<b>\$775,713</b>
<b>San Diego</b>	<b>\$11,459,720</b>	<b>\$11,044,069</b>
<b>San Joaquin</b>	<b>\$1,329,998</b>	<b>\$3,379,505</b>
<b>San Luis Obispo</b>	<b>\$455,722</b>	<b>\$583,188</b>
<b>Santa Barbara</b>	<b>\$457,343</b>	<b>\$1,523,100</b>
<b>Santa Cruz</b>	<b>\$674,689</b>	<b>\$944,807</b>
<b>Stanislaus</b>	<b>\$132,115</b>	<b>\$1,258,367</b>

The table shows implementation cost increases in all DRAFT courts other than Marin and San Diego; these increases can be attributed to the following factors:

- Inclusion of county costs not previously charged to the courts (underreporting):
  - Imperial: \$136,800
  - Santa Barbara: \$705,500
  - Stanislaus: \$816,092
- Historical underfunding rendered pre-DRAFT average costs per child in foster care unreasonably low; pre-DRAFT costs averaged \$1,896 annually for all parties associated with a given child in foster care (e.g., child and all parents) and post-DRAFT costs average \$2,312.
- Pre-DRAFT funding level was artificially low, reflecting the impact of implementation of reimbursement funding and a related “penalty” for failure to spend entire allocation on court-appointed counsel services (Los Angeles).
- Caseload reduction averaging 28 percent among affected courts:
  - Imperial: 46 percent reduction
  - San Diego: 21 percent
  - San Joaquin: 29 percent
  - San Luis Obispo: 11 percent
  - Santa Barbara: 41 percent
  - Stanislaus: 18 percent
- Implementation of compensation standards for all providers in each court system
- Lack of sufficient competition

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<sup>8</sup> Pre-DRAFT costs reflect fiscal year 2003–2004 costs; post-DRAFT reflect current year costs for all courts other than Los Angeles. Los Angeles post-DRAFT costs reflect fiscal year 2007–2008 as a transition from pre- to post-DRAFT providers is currently taking place in Los Angeles.

### *Outcome and Process Evaluation Working Group: Outcome analysis*

The far-reaching implications of DRAFT for both participating and non participating court systems renders a systemic analysis of the effort critical. At a most basic level that analysis must address the question, what outcomes can reasonably be expected as a result of the implementation of caseload and compensation standards? The Outcome and Process Evaluation Working Group of the DRAFT Pilot Program Implementation Committee has tackled this question and identified *measurable* expected outcomes of the DRAFT pilot program as follows:

- Compensation and workload parity among court-appointed counsel providers;
- Improvement in judicial, peer, and client satisfaction with court-appointed counsel services; and
- Improvement in specified child welfare permanency and well-being outcomes for children in foster care as identified by the state Department of Social Services.<sup>9</sup>

These child welfare outcomes include:

- Reduced time to reunification;
- Reduced time to guardianship;
- Increased placements with kin; and
- Increased frequency of placement with some or all siblings.

### *DRAFT program benefits realized by courts not participating in the pilot program*

Standard RFP and contract templates have been created for utilization in DRAFT courts. These documents contain detailed performance and data collection requirements that enable a correlation of compensation and workload. A number of courts that are not participating in DRAFT as pilot courts have requested technical assistance from the AOC with respect to competitive bidding for court-appointed counsel services and subsequent contract negotiations; pilot program staff have provided these courts with the DRAFT templates. Courts' current interest in obtaining tools to more effectively manage this program area is another factor emphasizing the need for a comprehensive approach to the administration of court-appointed counsel services.

### *Conclusion*

As highlighted in this report, court-appointed counsel costs statewide have escalated significantly in the last several fiscal years, and at a pace exceeding available funding levels. While the program's growth has not surpassed that of other trial court operations areas such as security and interpreter services, there is little to no available data that can be used to determine the reason for the growth in non-DRAFT courts. While anecdotally cost increases may be attributable to important efforts, including caseload reduction or

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<sup>9</sup> All 50 states' child welfare agencies were audited by the federal government between 2001 and 2004; California's review was conducted in 2002. Those reviews were premised on federally identified child welfare outcomes. In response to its review, California modified those outcomes. The DRAFT analysis utilizes the state-modified child welfare outcomes.

performance standards implementation, it is virtually impossible to advocate for additional resources absent additional data upon which requests can be justified.

The DRAFT program has made significant strides toward identifying and implementing standardized reporting and caseload and compensation standards. Results of these efforts will ultimately benefit the statewide court-appointed counsel area, with broad applicability as related to the concurrent goals of ensuring quality representation and program cost stability.

Alternative Actions Considered

Not applicable.

Comments from Interested Parties

Not applicable.

Implementation Requirements and Costs

Not applicable.

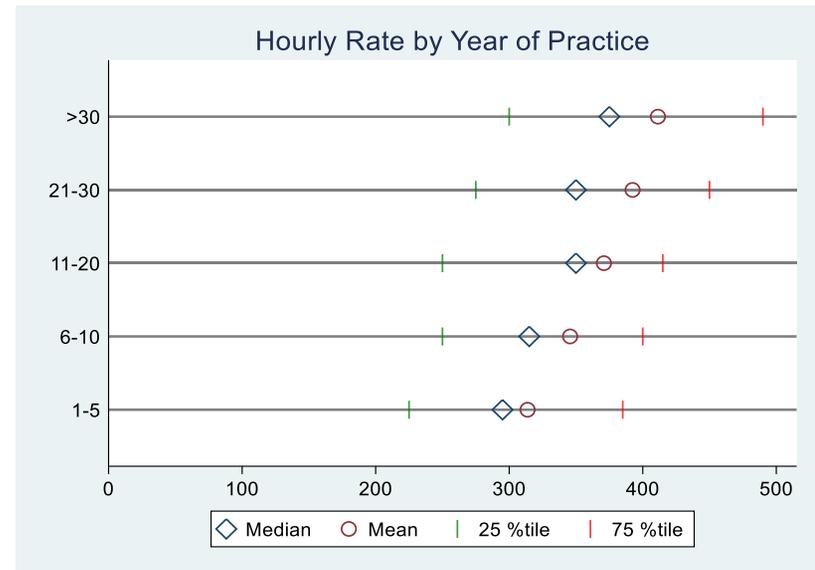
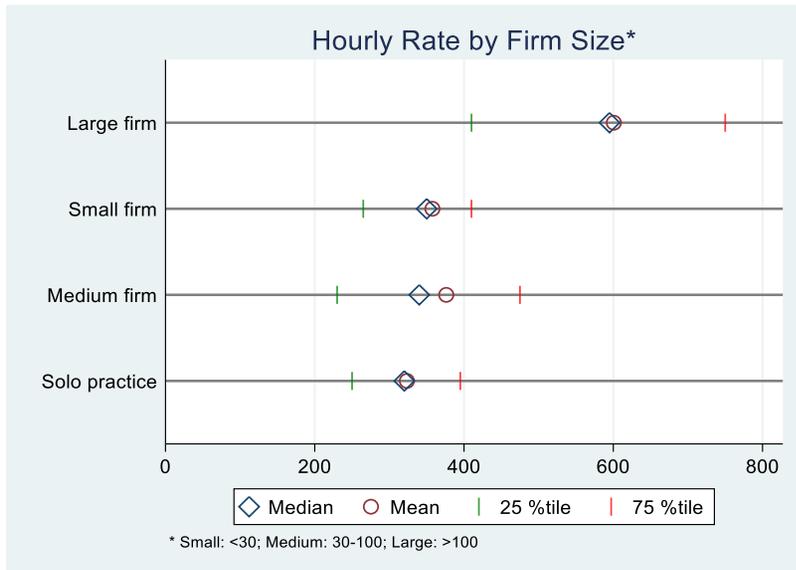
Hourly Rate Charged by Attorneys - Based on Attorney Survey of 2017

Data limited to attorneys with practice in California

Firm Size*	N	Average	25th %tile	Median	75th %tile
Large firm	963	601	410	595	750
Small firm	2,366	358	265	350	410
Medium firm	518	376	230	340	475
Solo practice	2,665	323	250	320	395
<b>Total</b>	<b>6,512</b>	<b>381</b>	<b>250</b>	<b>350</b>	<b>450</b>

\* Small: <30; Medium: 30-100; Large: >100.

Year in Practice	N	Average	25th %tile	Median	75th %tile
>30	2,290	411	300	375	490
11-20	967	371	250	350	415
21-30	997	392	275	350	450
6-10	569	346	250	315	400
1-5	714	314	225	295	385
<b>Total</b>	<b>5,537</b>	<b>382</b>	<b>250</b>	<b>350</b>	<b>450</b>



## Hourly Rate Charged by Attorneys - Based on Attorney Survey of 2017

Data limited to attorneys with practice in California

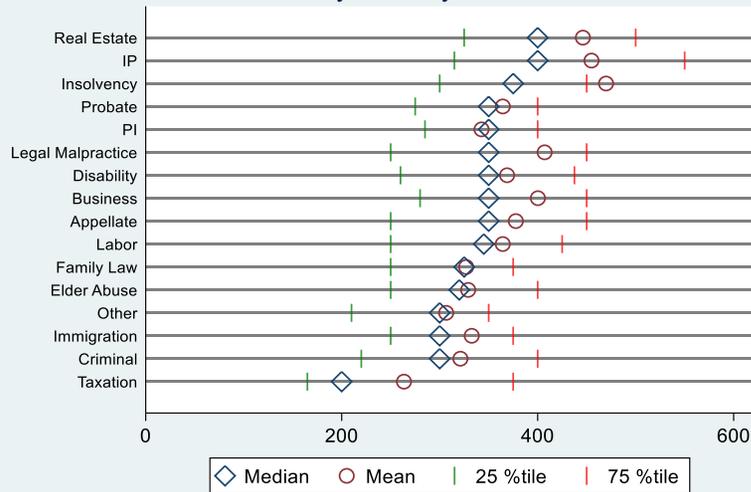
Practice Area*	N	Average	25th %tile	Median	75th %tile
IP	951	456	300	400	550
Real Estate	474	439	315	400	500
Appellate	1,099	375	250	350	450
Business	3,206	395	275	350	450
Insolvency	266	450	300	350	450
Probate	1,906	358	275	350	400
Legal Malpractice	276	395	250	343	450
Family	1,002	321	250	325	375
Labor	566	358	250	325	415
PI	1,297	336	275	325	395
Disability	200	371	250	318	425
Criminal	757	316	200	300	400
Elder Abuse	329	315	235	300	395
Immigration	280	312	215	300	368
Other	1,440	298	200	295	350
Taxation	326	262	165	215	375
<b>Total</b>	<b>11,916</b>	<b>368</b>	<b>250</b>	<b>350</b>	<b>425</b>

\* Each respondent may select more than one practice area.

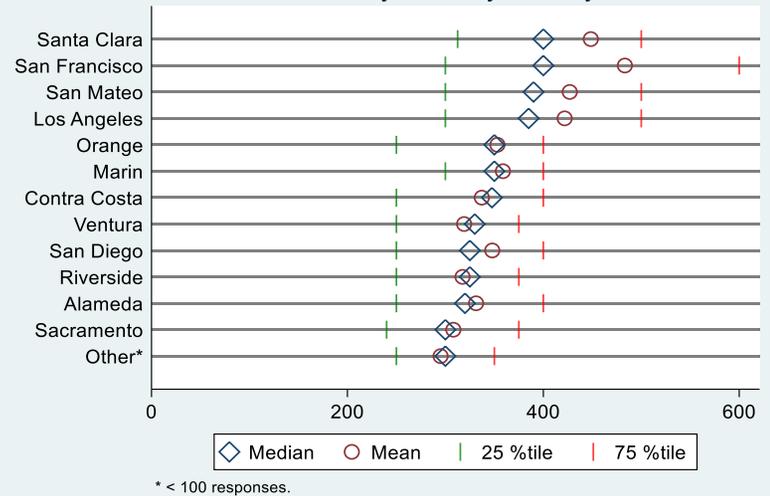
County	N	Average	25th %tile	Median	75th %tile
San Francisco	675	483	300	400	600
Santa Clara	344	448	313	400	500
San Mateo	159	427	300	390	500
Los Angeles	1,955	422	300	385	500
Marin	100	359	300	350	400
Orange	677	353	250	350	400
Contra Costa	188	337	250	348	400
Ventura	138	319	250	330	375
Riverside	140	318	250	325	375
San Diego	723	348	250	325	400
Alameda	270	331	250	320	400
Other*	866	295	250	300	350
Sacramento	277	308	240	300	375
<b>Total</b>	<b>6,512</b>	<b>381</b>	<b>250</b>	<b>350</b>	<b>450</b>

\* < 100 respondents.

### Hourly Rate by Practice Area



### Hourly Rate by County



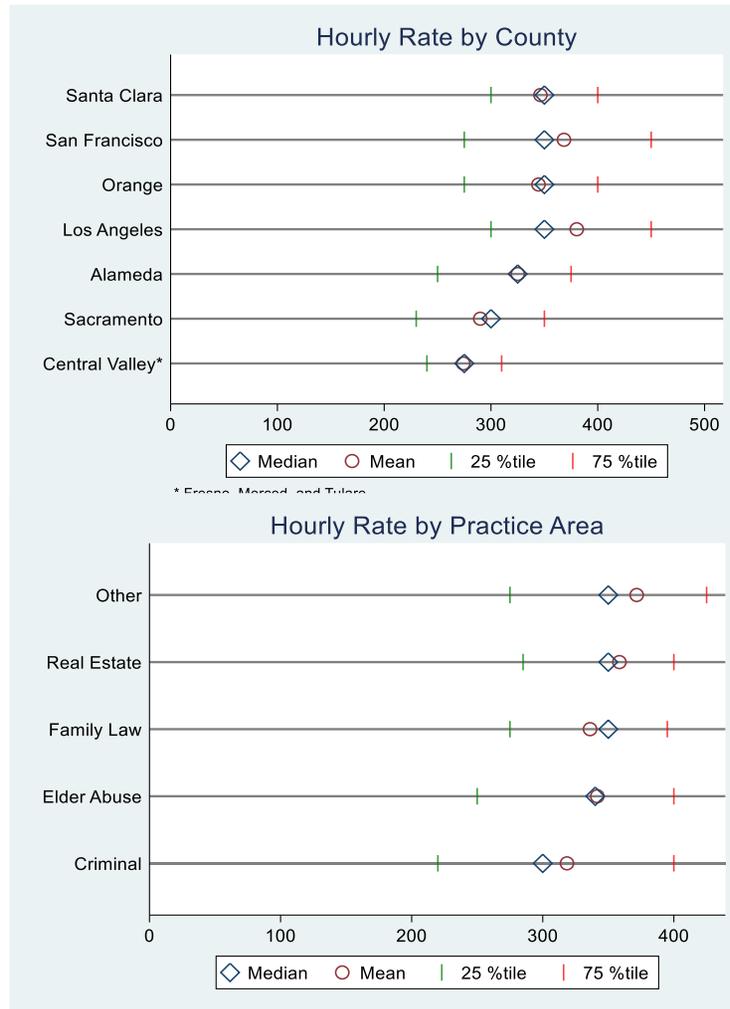
\* < 100 responses.

### Hourly Rate Charged by Attorneys - Based on Attorney Survey of 2017

For Select Counties and Practice Areas, Limited to Solo and Small Firm Attorneys

County	Criminal	Elder Abuse	Family Law	Real Estate	Other	Total
<b>Average</b>						
Alameda	277	322	327	311	352	325
Central Valley*	279	254	268	272	274	272
Los Angeles	340	362	352	383	403	378
Orange	345	327	334	338	349	341
Sacramento	247	287	273	278	302	284
San Francisco	290	423	359	375	374	365
Santa Clara	293	323	330	356	367	344
Total	318	342	336	358	372	353
<b>Median</b>						
Alameda	263	300	350	300	350	300
Central Valley*	275	250	250	295	250	255
Los Angeles	350	350	350	375	375	350
Orange	350	325	345	350	350	350
Sacramento	200	283	263	300	300	285
San Francisco	300	388	325	355	350	350
Santa Clara	300	325	350	350	350	350
Total	300	340	350	350	350	350
<b>Number of Responses</b>						
Alameda	24	17	35	39	66	181
Central Valley*	16	5	20	31	25	97
Los Angeles	147	69	208	396	408	1,228
Orange	60	28	89	149	139	465
Sacramento	23	18	34	43	83	201
San Francisco	30	12	49	78	109	278
Santa Clara	26	12	47	55	67	207
Total	326	161	482	791	897	2,657

\* Fresno, Merced, and Tulare counties combined.



Practice Areas presented as options for selection in the survey

- Appellate
- Business
- Criminal
- Disability
- Elder Abuse
- Family Law
- Immigration
- Insolvency
- Intellectual Property
- Juv Dependency
- Juv Delinquency
- Labor Relations
- Legal Malpractice
- Military and Veteran
- Other
- Personal Injury
- Probate
- Real Estate
- Taxation
- Workers Compensation



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: June 10, 2021

To: California Paraprofessional Program Working Group

From: Fariba Soroosh, Chair, Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, and Judge Monica F. Wiley

Subject: Family Law Subcommittee Recommendations for Paraprofessional Program

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program, and the specific tasks that will be allowed for licensees in each practice area.

### DISCUSSION

The Family, Children, and Custody Subcommittee (Family Law Subcommittee) posted initial recommendations in advance of the February 26, 2021, and April 19, 2021, CPPWG meetings. Due to time constraints, those recommendations were not considered at these meeting. The Family Law Subcommittee's February 26 and April 19 memos are provided as Attachments A and B, respectively.

Subsequent to the April 19 meeting, the Subcommittee met and developed additional recommendations regarding subtopics and tasks. This memo provides a comprehensive discussion of the Subcommittee's deliberations and recommendations, including as related to in-court

representation, where the Subcommittee has determined that deviation from the CPPWG's default position is appropriate.<sup>1</sup>

## **FAMILY LAW**

The Subcommittee has received input from the Working Group, many stakeholders in the legal community, and specialists in several of the areas under discussion. Based on this input, and further discussion, the Subcommittee makes the following recommendations:

### **Family Law Tasks**

Paraprofessionals are authorized to provide representation in family law matters, with the following exceptions:

- Nullity matters:
  - Petitions based on incest, unsound mind, fraud, force, physical incapacity
  - Putative spouse establishment
  - Division of quasi-marital property
- Petition to establish parental relationship involving Family Code § 7612(b) or (c)
- Child custody and visitation involving Hague Convention or UCCJEA
- Qualified Domestic Relations Order (QDRO)
- Discovery:
  - Depositions
  - Expert discovery
  - Related motions
- Pre-marital/post-marital agreements
- Marital/palimony actions
- Contempt actions

Members of the Subcommittee did not reach a consensus recommendation regarding the following task:

- Spousal or domestic partner support in long term marriages

All but one of the Subcommittee members recommend that paraprofessionals be allowed to assist with these matters if they are included in a marital settlement agreement, but not if they are the subject of litigation. Mr. Hamilton recommends that paraprofessionals not be authorized to assist in these matters, whether or not they are contested.

### **In-Court Representation**

Paraprofessionals are authorized to provide full in-court representation, excluding jury trials, with the following exception:

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<sup>1</sup> Mr. Hamilton may provide further clarification regarding his recommendations in a separate memo, to be published in an addendum to this memo.

- Hearings on emergency custody or visitation requests when a judge has granted temporary emergency orders. At such hearings, paraprofessionals are authorized to sit at counsel table to support and advise their client, and may answer direct procedural questions from the judge.
  - The reason for this variation from the CPPWG's default recommendation is that the court's granting of the temporary emergency orders reflects a determination that the child is at risk. The Subcommittee believes that this situation will require training beyond that which will be required of paraprofessionals.

### **Limit on Income and/or Estate Value**

The Subcommittee considered whether a cap on either income or estate value should be imposed for paraprofessional representation in family law cases. The Subcommittee agreed that income and estate value do not necessarily correlate with case complexity and therefore does not recommend such a limit.

### **VIOLENCE PREVENTION**

While members of the Subcommittee are familiar with domestic violence restraining orders, they sought input from subject matter experts (SMEs) regarding the inclusion of other types of violence prevention restraining orders. Staff consulted with Judy Hitchcock, Senior Staff Attorney with Legal Assistance to the Elderly, regarding elder abuse restraining orders, and Ruth Silver-Taube, who teaches the Employment Law Clinic at Santa Clara University, regarding workplace violence restraining orders. Staff reported to the Subcommittee that the SMEs consulted agreed that paraprofessional assistance would be beneficial to clients pursuing and/or responding to all types of restraining orders. Based on this information the Subcommittee makes the following recommendations:

#### **Violence Prevention Tasks**

Paraprofessionals are authorized to provide representation in all violence prevention matters.

#### **In-Court Representation**

Paraprofessionals are authorized to provide full in-court representation, excluding jury trials, with the following exception:

- If expert witness testimony will be introduced, paraprofessionals are prohibited from introducing or cross-examining expert witnesses, unless the client provides informed consent.

Another potential exception relates to in-court representation in domestic violence hearings involving children. The Subcommittee did not reach consensus regarding this exception. Ms. Bashan, Mr. Hamilton, and Ms. Soroosh recommend that paraprofessionals not be allowed to provide representation in these hearings. Ms. McRae, Ms. Olvera, and Judge Wiley recommend that paraprofessionals be allowed to provide such representation.

## **ADOPTION**

The Subcommittee reviewed information provided by Subcommittee member Elizabeth Olvera regarding the tasks involved in uncontested stepparent adoptions. The Subcommittee also considered information that staff obtained in a conversation with Robert Walmsley, a member of the Academy of California Adoption Lawyers, regarding training requirements for paraprofessionals authorized to provide representation in these cases. Based on this information the Subcommittee makes the following recommendations:

### **Adoption Tasks**

Paraprofessionals are authorized to provide representation in uncontested adoptions, with the following exception:

- Adoptions arising from dependency petitions.

## **CHILD WELFARE**

Prior to the February 26 meeting, the Subcommittee considered information provided by Subcommittee member Dana McRae, based on her conversation with Ruby Marquez, Chief Assistant County Counsel in the County Counsel's Office of Santa Cruz County. Ms. Marquez believed it would be beneficial for parents to have assistance in child welfare investigations prior to dependency filing, as well as after a dependency case has been terminated. Based on this information, the Subcommittee initially recommended inclusion of representation in dependency investigations pre-filing, as well as post-termination.

At its meeting on April 6, 2021, the Family Law Subcommittee was joined by Mary Feldman, a certified specialist in juvenile law, who represents parties in child welfare cases. In addition to pre-filing and post-termination assistance, Ms. Feldman presented information about assistance that could be provided by paraprofessionals to parties who are not entitled to court-appointed counsel in juvenile dependency cases. Examples included grandparents and siblings seeking visitation, and de facto parent requests. Ms. Feldman explained that much of this work is forms-based and opined that self-represented litigants would benefit by having educated, trained, and experienced paraprofessionals to assist with completing and filing forms as well as representing them in court. Based on the information provided by Ms. Feldman the Subcommittee agreed to the following recommendations:

### **Child Welfare Tasks**

- Paraprofessionals are authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition.
- Paraprofessionals are authorized to assist parties in juvenile dependency cases who are not entitled to court-appointed counsel in these cases.

### **In-Court Representation**

The Subcommittee did not reach a consensus on a recommendation regarding in-court representation in child welfare cases. Ms. Bashan and Mr. Hamilton recommend the following deviation from the CPPWG default position regarding in-court representation:

- Paraprofessionals are not authorized to represent parties in court in juvenile dependency cases.
- Paraprofessionals are authorized to sit at counsel table to support and advise their clients, and may answer direct procedural questions from the judge.

Ms. Bashan provides the following reasons for her recommendation: first, given the extremely serious nature of juvenile dependency proceedings where children's fates are at stake, in-court representation far exceeds the appropriate tasks for paraprofessionals; second, this Subcommittee heard from several subject matter experts who stated that even experienced attorneys who are not dependency attorneys are often ill-equipped to handle in-court dependency proceedings; lastly, the training and education needed to create competence would far exceed the current experiential training and education targets that the CPPWG has set out, in light of the need to require competence without creating onerous requirements for participation. Mr. Hamilton's recommendation is based on general concerns regarding paraprofessionals providing in-court representation, as well as those concerns articulated by Ms. Bashan.

### **CONSERVATORSHIP AND GUARDIANSHIP**

The Subcommittee has considered conservatorship and guardianship subtopics and tasks for inclusion/exclusion in a paraprofessional program. Staff worked with the following subject matter experts to develop a task list for these topics: Ms. Ylianna Perez-Guerrero, Public Counsel; Ms. Bertha Sanchez Hayden, Bet Tzedek; Tamyra Rice, an attorney with the County Counsel's Office of Santa Cruz County; Mr. Jonathan Kahn, Santa Clara Superior Court; and, Ms. Johanna Thai Van Dat, Santa Clara Superior Court.

The Subcommittee also met with Ms. Carlena Tapella, who has extensive experience in conservatorships. Ms. Tapella described various types of conservatorships and explained that limited conservatorships are sought by parents of children with developmental disabilities, when their children reach majority age, and petitions for these types of conservatorships are generally not contested. Ms. Tapella opined that it would be beneficial to allow paraprofessionals to assist otherwise self-represented parties with uncontested limited conservatorships, including allowing them to provide representation at court hearings. Ms. Tapella explained that there was less of a need for paraprofessional assistance for general conservatorships because petitions are routinely granted for payment of attorneys' fees from the estate of the conservatee. Finally, the Subcommittee met with Mr. Robert Colyar, former probate attorney for the Santa Clara Superior Court, who suggested that representation by a paraprofessional with the appropriate education and training would be beneficial to parties in

uncontested guardianship and conservatorship proceedings. Based on this information, the Subcommittee makes the following representation:

### **Conservatorship and Guardianship**

Paraprofessionals are authorized to assist parties in uncontested conservatorship and guardianship cases, with the following exception:

- Guardianships established in dependency court for parties entitled to court-appointed counsel.

### **In-Court Representation**

The Subcommittee did not reach a consensus on a recommendation regarding in-court representation in conservatorship and guardianship cases.

Ms. Bashan, Mr. Hamilton, and Ms. Soroosh recommend the following deviation from the CPPWG default position regarding in-court representation:

- Paraprofessionals are authorized to sit at counsel table to support and advise their client, and may answer direct procedural questions from the judge.

Ms. Bashan, Mr. Hamilton, and Ms. Soroosh provided the following reasons for their recommendation:

- Litigation of these matters crosses over into work that should be reserved for attorneys; allowing paraprofessionals to litigate these matters might lead to the failure of the paraprofessional program.

## **PROPOSED RESOLUTIONS**

### **FAMILY LAW**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide representation in all family law matters, with the following exceptions:

- Nullity matters:
  - Petitions based on incest, unsound mind, fraud, force, physical incapacity
  - Putative spouse establishment
  - Division of quasi-marital property
- Petition to establish parental relationship involving FC § 7612(b) or (c)
- Child custody and visitation involving Hague Convention or UCCJEA
- Qualified Domestic Relations Order (QDRO)
- Spousal or domestic partner support in long term marriages, unless included in a marital settlement agreement\*
- Discovery:
  - Depositions

- Expert discovery
- Related motions
- Pre-marital/post-marital agreements
- Marvin/palimony actions
- Contempt actions

\*Alternate resolution may exclude spousal or domestic partner support in long term marriages, including those in a marital settlement agreement.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation, excluding jury trials, in family law matters, with the following exception:

- Hearings on emergency custody or visitation requests when a judge has granted temporary emergency orders. At such hearings, paraprofessionals are authorized to sit at counsel table to support and advise their client, and may answer direct procedural questions from the judge.

#### **VIOLENCE PREVENTION**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide representation in all violence prevention matters.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation in violence prevention matters, excluding jury trials, with the following exception:

- If expert witness testimony will be introduced, paraprofessionals are prohibited from introducing or cross-examining expert witnesses, unless the client provides informed consent.

OR

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation, excluding jury trials, with the following exceptions:

- Domestic violence hearings involving children.
- If expert witness testimony will be introduced, paraprofessionals are prohibited from introducing or cross-examining expert witnesses, unless the client provides informed consent.

## **ADOPTION**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide representation in uncontested adoptions, with the following exception:

- Adoptions arising from dependency petitions.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation in uncontested adoption matters, except for those arising from dependency petitions.

## **CHILD WELFARE**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist parties not entitled to court-appointed counsel in juvenile dependency cases.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation for parties not entitled to court-appointed counsel in juvenile dependency cases.

## **OR**

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals not be authorized to represent parties in court in juvenile dependency cases, but are authorized to sit at counsel table to support and advise their clients, and may answer direct procedural questions from the judge.

## **CONSERVATORSHIP AND GUARDIANSHIP**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist parties in uncontested conservatorship and guardianship cases, with the following exception:

- Guardianships established in dependency court for parties entitled to court-appointed counsel.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation for clients in uncontested conservatorship and guardianship cases.

**OR**

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist clients in uncontested conservatorship and guardianship cases by sitting at counsel table, and providing support and guidance, and responding to direct questions from the judge, but may not advocate on behalf of their clients.



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: February 26, 2021

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, Fariba Soroosh, and Judge Monica Wiley

Subject: Topics and Tasks for Family Law Practice Area

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program, and the specific tasks that will be allowed for licensees in each practice area.

### DISCUSSION

At its July 13 meeting, five members of the CPPWG volunteered to serve on a Family Law Subcommittee tasked with studying this practice area with the goal of generating recommendations regarding inclusion or exclusion of specific Family Law subtopics for consideration by the full body at its next meeting. The Family Law Subcommittee provided the CPPWG with updates on its deliberations at its August 25 meeting, and presented its preliminary recommendations at the December 17 meeting. At that meeting, members of the CPPWG provided feedback regarding the inclusion and exclusion of several tasks and as to whether there should be an income or estate value limit for paraprofessional representation. The CPPWG also asked the Subcommittee to make a recommendation regarding whether conservatorships and guardianships should be included in the paraprofessional program. Since

that time, the Subcommittee has met, and has developed recommendations regarding subtopics and tasks; the consideration of conservatorships and guardianships; and in-court support/representation.

### **Family Law Subtopics and Tasks**

At the December 17, 2020, CPPWG meeting, the Subcommittee presented its preliminary recommendations regarding subtopics and tasks for inclusion/exclusion in a paraprofessional program. The Subcommittee solicited and received input from CPPWG members on several topics. Based on that input and further discussion, recommendations regarding subtopics and tasks for family law, as well as educational/training requirements for this area, are included in Attachment A.

### **Violence Prevention Subtopics and Tasks**

While members of the Subcommittee are familiar with domestic violence restraining orders, they sought input from subject matter experts (SMEs) regarding the inclusion of other types of violence prevention restraining orders. Staff consulted with Judy Hitchcock, Senior Staff Attorney with Legal Assistance to the Elderly, regarding elder abuse restraining orders, and Ruth Silver-Taube, who teaches the Employment Law Clinic at Santa Clara University, regarding workplace violence restraining orders. Staff reported to the Subcommittee that the SMEs consulted agreed that paraprofessional assistance would be beneficial to clients pursuing and/or responding to all types of restraining orders; the SMEs also made recommendations regarding the training that should be required for such representation. The Subcommittee recommends the inclusion of civil harassment and gun violence restraining orders accordingly. The Subcommittee recommends inclusion of violence prevention, comprising civil harassment, domestic violence, elder abuse, gun violence, and workplace violence restraining orders, in the family law practice area. Recommendations regarding these subtopics and tasks, as well as educational/training requirements for this area, are included in Attachment A.

### **Adoption**

The Subcommittee reviewed information provided by Subcommittee member Elizabeth Olvera regarding the tasks involved in uncontested stepparent adoption. They also considered information that staff obtained in a conversation with Robert Walmsley, a member of the Academy of California Adoption Lawyers, regarding training requirements for paraprofessionals authorized to provide representation in these cases. The Subcommittee recommends inclusion of uncontested stepparent adoptions for the paraprofessional program, as reflected in Attachment A.

### **Child Welfare**

The Subcommittee considered information provided by Subcommittee member Dana McRae, based on her conversation with Ruby Marquez, who works for Santa Cruz County Counsel representing the county child welfare agency in juvenile dependency cases. Ms. Marquez believes it would be beneficial for parents to have assistance in child welfare investigations prior to dependency filing, as well as after a dependency case has been terminated. Based on

this information, the Subcommittee recommends inclusion of representation in dependency investigations pre-filing, as well as post-termination, as reflected in Attachment A.

### **Conservatorship and Guardianship**

The Subcommittee has undertaken consideration of conservatorship and guardianship subtopics and tasks for inclusion/exclusion in a paraprofessional program. While the CPPWG does not include members with in-depth knowledge on this topic, the Subcommittee has begun discussions with SMEs, who have agreed to provide recommendations in this area. The Subcommittee intends to bring its recommendations to the CPPWG at the April 19 meeting.

### **In-Court Support/Representation**

The Subcommittee is aware that the topic of in-court representation will be the subject of a facilitated discussion at the CPPWG meeting on February 26. Nonetheless, members of the Subcommittee believe that this topic is integral to the recommendations in family law and violence prevention matters included as attachments to this memo. The insights of Subcommittee members were especially helpful in our discussions.

Ms. Soroosh, who directs the Self-Help Center (SHC) at the Santa Clara Superior Court, noted that, while staff at the SHC are able to provide extensive guidance in completing and filing forms in family law cases, they are precluded from attending hearings with litigants to provide guidance and support. Even when litigants have had excellent assistance in completing and filing forms, the actual court appearance can be stressful and challenging. Litigants are often retraumatized by their experiences and are unfamiliar with the court setting. They may become intimidated or flustered in this unfamiliar setting, causing them to be disorganized and forget important information that they would like to convey to the court. Judge Wiley, who presides over family law cases, agreed. Judge Wiley suggested that it would be helpful to the court to have a trained support person who could provide guidance to self-represented litigants, and who could answer questions from the court at the hearing.

Stephen Hamilton, who is a certified family law specialist, agreed that a trained support person would be an asset in the courtroom. He strongly believes that, while a paraprofessional should be allowed to sit at counsel table to guide and prompt their client, they should be prohibited from speaking in court, even to answer direct questions from the bench. Mr. Hamilton asserted that answering questions as even those that might be perceived as procedural may involve advocacy. Mr. Hamilton believes it is essential to maintain a distinction between paraprofessionals and lawyers; in-court representation is key to this distinction. Sharon Bashan agreed with Mr. Hamilton that paraprofessionals should be allowed to sit at counsel table, but should be prohibited from speaking in court.

Ms. Elizabeth Olvera, who is a certified Legal Document Assistant, disagreed, asserting that a trained paraprofessional could competently assist their client by providing information to the court, particularly in response to direct questions from the bench. Ms. Olvera suggested that a distinction could be made between those with a JD degree and others, allowing

paraprofessionals with a JD to speak in court. Greg Fortescue, the Supreme Court's liaison to the CPPWG, noted that if paraprofessionals were to be precluded from answering questions directed to them from the bench, it would be necessary to impose a restriction on judges, precluding them from directing such questions to paraprofessionals.

There was a general agreement, but not unanimous consensus, from the Subcommittee that paraprofessionals should be allowed to provide in-court support, but not representation. In this role, paraprofessionals would be allowed to sit at counsel table, and advise and prompt clients, but not advocate for their clients or speak in court. There was a minority view that paraprofessionals should be allowed to respond to questions from the court.

**Limit on Income and/or Estate Value**

The Subcommittee considered whether a cap on either income or estate value should be imposed for paraprofessional representation in family law cases. The Subcommittee agreed that income and estate value do not necessarily correlate with case complexity and therefore does not recommend such a limit.

Family Law Subcommittee  
Subtopic and Tasks Recommendations

ATTACHMENT A

Family Law

Task	Recommendation
Dissolution/Domestic Partnerships, including dissolution, legal separation, and nullity (annulment) <ol style="list-style-type: none"> <li>1. Marital status, including status-only judgments<sup>i</sup></li> <li>2. Annulment based on bigamy, age of spouse/registrant, prior existing marriage/DP<sup>ii</sup></li> <li>3. Annulment based on incest, unsound mind, fraud, force, physical incapacity</li> </ol>	Included Included Excluded <sup>iii</sup>
Paternity (including paternity issues within dissolution, legal separation, domestic partnerships, and DCSS child support matters) <ol style="list-style-type: none"> <li>1. Complaint to establish parental relationship not involving FC 7612(b) or (c)</li> <li>2. Complaint to establish parental relationship involving FC 7612(b) or (c)</li> </ol>	Included Excluded
Summary Dissolutions	Included
Petitions for Custody and Support	Included
Child custody and visitation (including third-party joinder and intervention) except in any action where any of the following issues or claims are raised: <ol style="list-style-type: none"> <li>1. Hague Convention on International Child Abduction</li> <li>2. International or interstate custody disputes under UCCJEA</li> <li>3. Grandparent visitation (independent of family law action)</li> </ol>	Included Excluded Excluded Included
Child support <sup>iv</sup>	Included
Spousal or domestic partner support <ol style="list-style-type: none"> <li>1. Temporary</li> <li>2. Permanent (litigated/contest)/FC 4320</li> <li>3. Spousal support waivers, buyouts or nonmodifiable step downs               <ol style="list-style-type: none"> <li>a. Short term marriage [FC 4336(b)]</li> <li>b. Long term marriage</li> </ol> </li> </ol>	Included Included Included Excluded
Separate property/community property/quasi community property <sup>v</sup> <ol style="list-style-type: none"> <li>1. Joinder of pension/retirement/employee benefit plans</li> <li>2. Declaration of disclosures</li> <li>3. Referrals to experts for appraisals and valuations</li> <li>4. Post division transfer documents</li> <li>5. QDRO (referrals only)</li> </ol>	Included Included Included Included Excluded
Discovery <ol style="list-style-type: none"> <li>1. Written discovery (form interrogatories v. other)</li> <li>2. Depositions</li> <li>3. Expert discovery</li> <li>4. Subpoenas: deposition and hearing/trial</li> <li>5. Motions to compel/motions to quash not related to depositions</li> <li>6. Motions to compel/quash related to depositions</li> </ol>	Included Excluded Excluded Included Included Excluded
Quasi marital property (nullity)	Excluded

<b>Task</b>	<b>Recommendation</b>
Attorney fees, including expert and paraprofessional fees	Included
Restoration of former name	Included
Venue and jurisdiction disputes not otherwise addressed herein	Included
Marital settlement agreements [except for any issues which are within excluded areas of practice as set forth above] 1. MSA must state that it was prepared by a paraprofessional <sup>vi</sup>	Included
Post judgment/permanent order modifications [except UCCJEA/Hague]	Included
Registration of foreign judgments	Included
Premarital/Post-marital agreements (not including MSAs)	Excluded
Putative spouse claims arising from nullity action, including all issues within such a claim (e.g. quasi marital property, attorney fees, spousal support)	Excluded
Marvin/Palimony actions	Excluded
Enforcement of family law orders and judgments 1. Appointment of elisor 2. RFO/Motion for relief in issuing court to assist in enforcement 3. Contempt 4. Seek work orders support 5. Debtor's exam 6. Wage assignment 7. Writ of execution 8. Filing of lien/lis pendens 9. Response to DCSS enforcement action (e.g., license suspension, bank levy) All enforcement mechanisms not specifically identified above are excluded	Included Included Excluded Included Included Included Included Included Included
Alternative Dispute Resolution (except for areas excluded above) 1. Settlement discussions and negotiations 2. Day of court meet and confer	Included Included

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- i. If instruction includes detailed, in depth education regarding FC 2337, FL-315, FL-347, FL-318-Info, joinder and pension issues
  - ii. If instruction includes education and instruction re: bigamy v. prior existing marriage/DP and FC 2200-2210 and 2310-2312
  - iii. Education includes issue spotting, clear definition of excluded item, specific education regarding excluded issues and referral process (necessity, regulation)
  - iv. Instruction to include training on support calculators, wage assignments and role of DCSS

- v. This scope of practice presumes detailed and substantive instruction on forms of discovery, responding to discovery, objections and law and motion procedure related to discovery
- <sup>vi</sup> Companion legislation to be developed, stating that an MSA prepared by a paraprofessional that exceeds the scope of their duties is not automatically void or voidable

**Adoption**

<b>Task</b>	<b>Recommendation</b>
Adoptions not arising from a dependency petition 1. Uncontested stepparent adoption <ul style="list-style-type: none"> <li>o Training on providing notice to other parent required; incorrect notice may trigger contest of adoption, or can negatively affect prospect of adoption</li> </ul>	Included

**Child Welfare**

<b>Task</b>	<b>Recommendation</b>
Child welfare and juvenile dependency cases 1. Investigation prior to filing of dependency action 2. JV-180: modification of dependency orders after case is closed	Included Included

**Violence Prevention**

<b>Task</b>	<b>Recommendation</b>
Domestic Violence, Civil Harassment, Gun Violence, Workplace Violence*	Included
Representation of petitioner 1. Filing restraining order request – Temporary Restraining Order (TRO) 2. Service of TRO on respondent and filing proof of service 3. Support in mediation, where applicable 4. Support in court 5. Preparation of Restraining Order After Hearing (ROAH) 6. Service of ROAH on respondent and filing proof of service 7. Distribution of RO to law enforcement, if applicable	Included Included Included Included Included Included Included
Representation of respondent 1. Filing response to TRO 2. Service of response on petitioner and filing proof of service 3. Support in court	Included Included Included

\* Educational/training requirements for violence prevention:

- Experience in violence prevention clinic
- Familiarity with types of restraining orders and remedies available under each type
- Availability of resources (e.g., domestic violence assistance, Adult Protective Services, mediation, etc.)



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: April 19, 2021

To: California Paraprofessional Program Working Group

From: Fariba Soroosh, Chair, Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, and Judge Monica F. Wiley

Subject: Topics and Tasks for Family Law Practice Area

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program, and the specific tasks that will be allowed for licensees in each practice area.

### DISCUSSION

At its July 13 meeting, five members of the CPPWG volunteered to serve on a Family Law Subcommittee tasked with generating recommendations regarding inclusion or exclusion of specific Family Law subtopics for consideration by the full body at its next meeting. The Family Law Subcommittee provided the CPPWG with updates on its deliberations at its August 25 meeting, and presented its preliminary recommendations at the December 17 meeting. At that meeting, members of the CPPWG provided feedback regarding the inclusion and exclusion of several tasks and as to whether there should be an income or estate value limit for paraprofessional representation. The CPPWG also asked the Subcommittee to make a recommendation regarding whether conservatorships and guardianships should be included in the paraprofessional program.

The Family Law Subcommittee posted initial recommendations in advance of the March 26, 2021, CPPWG meeting. Due to time constraints, those recommendations were not considered at that meeting. Since that time, the Subcommittee has met, and has developed additional recommendations regarding subtopics and tasks, including revised recommendations regarding child welfare (juvenile dependency) cases. The Family Law Subcommittee's March 26 memo is provided as Attachment A.

#### **FAMILY LAW SUBTOPICS AND TASKS**

At the December 17, 2020, CPPWG meeting, the Subcommittee presented its preliminary recommendations regarding subtopics and tasks for inclusion/exclusion in a paraprofessional program. The Subcommittee also solicited and received input from CPPWG members on several topics. Based on that input and further discussion, the recommendations regarding subtopics and tasks for family law, as well as educational/training requirements for this area, are included in Attachment B.

#### **VIOLENCE PREVENTION SUBTOPICS AND TASKS**

While members of the Subcommittee are familiar with domestic violence restraining orders, they sought input from subject matter experts (SMEs) regarding the inclusion of other types of violence prevention restraining orders. Staff consulted with Judy Hitchcock, Senior Staff Attorney with Legal Assistance to the Elderly, regarding elder abuse restraining orders, and Ruth Silver-Taube, who teaches the Employment Law Clinic at Santa Clara University, regarding workplace violence restraining orders. Staff reported to the Subcommittee that the SMEs consulted agreed that paraprofessional assistance would be beneficial to clients pursuing and/or responding to all types of restraining orders; the SMEs also made recommendations regarding the training that should be required for such representation. The Subcommittee recommends the inclusion of civil harassment and gun violence restraining orders accordingly. The Subcommittee recommends inclusion of violence prevention, comprising civil harassment, domestic violence, elder abuse, gun violence, and workplace violence restraining orders, in the family law practice area. Recommendations regarding these subtopics and tasks, as well as educational/training requirements for this area, are included in Attachment B.

#### **ADOPTION**

The Subcommittee reviewed information provided by Subcommittee member Elizabeth Olvera regarding the tasks involved in uncontested stepparent adoptions. They also considered information that staff obtained in a conversation with Robert Walmsley, a member of the Academy of California Adoption Lawyers, regarding training requirements for paraprofessionals authorized to provide representation in these cases. The Subcommittee recommends inclusion of uncontested stepparent adoptions for the paraprofessional program, as reflected in Attachment B.

#### **CHILD WELFARE**

Prior to the February 26 meeting, the Subcommittee considered information provided by Subcommittee member Dana McRae, based on her conversation with Ruby Marquez, who works for Santa Cruz County Counsel representing the county child welfare agency in juvenile dependency cases. Ms. Marquez believed it would be beneficial for parents to have assistance in child welfare investigations prior to dependency filing, as well as after a dependency case has been terminated. Based on this information, the Subcommittee initially recommended inclusion of representation in dependency investigations pre-filing, as well as post-termination.

At its April 6, 2021, meeting, the Family Law Subcommittee was joined by Mary Feldman, a certified specialist in juvenile law, who represents parties in child welfare cases. In addition to pre-filing and post-termination assistance, Ms. Feldman presented information about assistance that could be provided by paraprofessionals to parties who are not entitled to court-appointed counsel in juvenile dependency cases. Examples included grandparents and siblings seeking visitation, and de facto parent requests. Ms. Feldman explained that much of this work is forms-based and opined that self-represented litigants would benefit by having educated, trained, and experienced paraprofessionals to assist with completing and filing forms as well as representing them in court. Based on the information provided by Ms. Feldman, a majority of members of the Subcommittee agreed to the following recommendations:

- Paraprofessionals are authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition, including but not limited to:
  - Requesting documents from social services agency
  - Providing legal advice and information regarding procedures and parents' rights at the pre-filing stage
  - Gathering documents to be presented to social services agency
  - Being present and participating in social worker interviews
- Paraprofessionals are authorized to assist parties not entitled to court-appointed counsel in child welfare cases, by advising clients regarding which forms to use, and completing and filing forms. Paraprofessionals are also authorized to provide in-court representation for parties not entitled to court-appointed counsel.

Two members of the Family Law Subcommittee did not agree that paraprofessionals should be allowed to represent parties in court. Ms. Bashan disagreed with this recommendation for the following reasons: first, given the extremely serious nature of juvenile dependency proceedings where children's fates are at stake, Ms. Bashan's opinion was that in-court representation far exceeds the appropriate tasks for paraprofessionals; second, this Subcommittee heard from several subject matter experts who stated that even experienced attorneys who are not dependency attorneys are often ill-equipped to handle in-court dependency proceedings; lastly, the training and education needed to create competence would far exceed the current experiential training and education targets that this working group has set out, given that we are balancing competence with not creating onerous requirements—as we have learned from Washington State's model. Mr. Hamilton also disagreed with this recommendation based on

general concerns regarding paraprofessionals providing in-court representation, as well as those concerns identified by Ms. Bashan.

### **CONSERVATORSHIP AND GUARDIANSHIP**

The Subcommittee has undertaken consideration of conservatorship and guardianship subtopics and tasks for inclusion/exclusion in a paraprofessional program. Staff worked with the following subject matter experts to develop a task list for these topics: Ms. Ylianna Perez-Guerrero, Public Counsel; Ms. Bertha Sanchez Hayden, Bet Tzedek; Tamyra Rice, Santa Cruz County Counsel; Mr. Jonathan Kahn, Santa Clara Superior Court; and, Ms. Johanna Thai Van Dat, Santa Clara Superior Court.

The Subcommittee also met with Ms. Carlena Tapella, who has extensive experience in conservatorships. Ms. Tapella described various types of conservatorships and explained that limited conservatorships are sought by parents of children with developmental disabilities, when their children reach majority age, and petitions for these types of conservatorships are generally not contested. Ms. Tapella opined that it would be beneficial to allow paraprofessionals to assist otherwise self-represented parties with uncontested limited conservatorships, including allowing them to provide representation at court hearings. Ms. Tapella explained that there was less of a need for paraprofessional assistance for general conservatorships because petitions are routinely granted for payment of attorneys' fees from the estate of the conservatee.

Based on the information from Ms. Tapella, the Subcommittee recommended that paraprofessionals be allowed to represent parties in uncontested limited conservatorships cases, including representation at court hearings.

The subcommittee did not have the opportunity to discuss recommendations regarding guardianship cases; this recommendation will be provided at a future CPPWG meeting.

### **IN-COURT REPRESENTATION IN FAMILY LAW, VIOLENCE PREVENTION, AND ADOPTION CASES**

In our February 26, 2021, memo to the CPPWG, the Family Law Subcommittee included a discussion of in-court representation and provided the various points of view of our members. At its March 26, 2021, meeting, the CPPWG adopted a default position allowing paraprofessionals to provide full in-court representation, except for jury trials, in the practice areas for which they are licensed. The CPPWG's resolution provided that each practice area subcommittee may generate an alternative in-court representation recommendation. The Subcommittee has not had the opportunity to discuss its position on this subject. If the Subcommittee determines that an alternative recommendation is warranted, a recommendation and a rationale will be provided at future CPPWG meeting.

### **LIMIT ON INCOME AND/OR ESTATE VALUE**

The Subcommittee considered whether a cap on either income or estate value should be imposed for paraprofessional representation in family law cases. The Subcommittee agreed

that income and estate value do not necessarily correlate with case complexity and therefore does not recommend such a limit.

## **PROPOSED RESOLUTIONS**

### **FAMILY LAW, VIOLENCE PREVENTION, AND ADOPTION**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that Paraprofessionals may assist clients with the family law, violence prevention, and adoption tasks included in Attachment B.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends adoption of the educational and training requirements for these topics included in Attachment B.

### **CHILD WELFARE**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals are authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition, including but not limited to:

1. Requesting documents from social services agency
2. Providing legal advice and information regarding procedures and parents' rights at the pre-filing stage
3. Gathering documents to be presented to social services agency
4. Being present and participating in social worker interviews

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals are authorized to assist parties not entitled to court-appointed counsel in juvenile dependency cases, by advising them regarding which forms to use, and completing and filing forms.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide in-court representation for parties not entitled to court-appointed counsel in juvenile dependency cases.

**OR**

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist clients not entitled to court-appointed counsel in juvenile dependency cases by sitting at counsel table, and providing support and guidance, and responding to direct questions from the judge, but may not advocate on behalf of their clients.

**CONSERVATORSHIP**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals are authorized to assist parties in limited conservatorship cases, by advising them regarding which forms to use, and completing and filing forms.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide in-court representation for clients in limited conservatorship cases.

**OR**

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist clients in limited conservatorship cases by sitting at counsel table, and providing support and guidance, and responding to direct questions from the judge, but may not advocate on behalf of their clients.



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: February 26, 2021

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, Fariba Soroosh, and Judge Monica Wiley

Subject: Topics and Tasks for Family Law Practice Area

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program, and the specific tasks that will be allowed for licensees in each practice area.

### DISCUSSION

At its July 13 meeting, five members of the CPPWG volunteered to serve on a Family Law Subcommittee tasked with studying this practice area with the goal of generating recommendations regarding inclusion or exclusion of specific Family Law subtopics for consideration by the full body at its next meeting. The Family Law Subcommittee provided the CPPWG with updates on its deliberations at its August 25 meeting, and presented its preliminary recommendations at the December 17 meeting. At that meeting, members of the CPPWG provided feedback regarding the inclusion and exclusion of several tasks and as to whether there should be an income or estate value limit for paraprofessional representation. The CPPWG also asked the Subcommittee to make a recommendation regarding whether conservatorships and guardianships should be included in the paraprofessional program. Since

that time, the Subcommittee has met, and has developed recommendations regarding subtopics and tasks; the consideration of conservatorships and guardianships; and in-court support/representation.

### **Family Law Subtopics and Tasks**

At the December 17, 2020, CPPWG meeting, the Subcommittee presented its preliminary recommendations regarding subtopics and tasks for inclusion/exclusion in a paraprofessional program. The Subcommittee solicited and received input from CPPWG members on several topics. Based on that input and further discussion, recommendations regarding subtopics and tasks for family law, as well as educational/training requirements for this area, are included in Attachment A.

### **Violence Prevention Subtopics and Tasks**

While members of the Subcommittee are familiar with domestic violence restraining orders, they sought input from subject matter experts (SMEs) regarding the inclusion of other types of violence prevention restraining orders. Staff consulted with Judy Hitchcock, Senior Staff Attorney with Legal Assistance to the Elderly, regarding elder abuse restraining orders, and Ruth Silver-Taube, who teaches the Employment Law Clinic at Santa Clara University, regarding workplace violence restraining orders. Staff reported to the Subcommittee that the SMEs consulted agreed that paraprofessional assistance would be beneficial to clients pursuing and/or responding to all types of restraining orders; the SMEs also made recommendations regarding the training that should be required for such representation. The Subcommittee recommends the inclusion of civil harassment and gun violence restraining orders accordingly. The Subcommittee recommends inclusion of violence prevention, comprising civil harassment, domestic violence, elder abuse, gun violence, and workplace violence restraining orders, in the family law practice area. Recommendations regarding these subtopics and tasks, as well as educational/training requirements for this area, are included in Attachment A.

### **Adoption**

The Subcommittee reviewed information provided by Subcommittee member Elizabeth Olvera regarding the tasks involved in uncontested stepparent adoption. They also considered information that staff obtained in a conversation with Robert Walmsley, a member of the Academy of California Adoption Lawyers, regarding training requirements for paraprofessionals authorized to provide representation in these cases. The Subcommittee recommends inclusion of uncontested stepparent adoptions for the paraprofessional program, as reflected in Attachment A.

### **Child Welfare**

The Subcommittee considered information provided by Subcommittee member Dana McRae, based on her conversation with Ruby Marquez, who works for Santa Cruz County Counsel representing the county child welfare agency in juvenile dependency cases. Ms. Marquez believes it would be beneficial for parents to have assistance in child welfare investigations prior to dependency filing, as well as after a dependency case has been terminated. Based on

this information, the Subcommittee recommends inclusion of representation in dependency investigations pre-filing, as well as post-termination, as reflected in Attachment A.

### **Conservatorship and Guardianship**

The Subcommittee has undertaken consideration of conservatorship and guardianship subtopics and tasks for inclusion/exclusion in a paraprofessional program. While the CPPWG does not include members with in-depth knowledge on this topic, the Subcommittee has begun discussions with SMEs, who have agreed to provide recommendations in this area. The Subcommittee intends to bring its recommendations to the CPPWG at the April 19 meeting.

### **In-Court Support/Representation**

The Subcommittee is aware that the topic of in-court representation will be the subject of a facilitated discussion at the CPPWG meeting on February 26. Nonetheless, members of the Subcommittee believe that this topic is integral to the recommendations in family law and violence prevention matters included as attachments to this memo. The insights of Subcommittee members were especially helpful in our discussions.

Ms. Soroosh, who directs the Self-Help Center (SHC) at the Santa Clara Superior Court, noted that, while staff at the SHC are able to provide extensive guidance in completing and filing forms in family law cases, they are precluded from attending hearings with litigants to provide guidance and support. Even when litigants have had excellent assistance in completing and filing forms, the actual court appearance can be stressful and challenging. Litigants are often retraumatized by their experiences and are unfamiliar with the court setting. They may become intimidated or flustered in this unfamiliar setting, causing them to be disorganized and forget important information that they would like to convey to the court. Judge Wiley, who presides over family law cases, agreed. Judge Wiley suggested that it would be helpful to the court to have a trained support person who could provide guidance to self-represented litigants, and who could answer questions from the court at the hearing.

Stephen Hamilton, who is a certified family law specialist, agreed that a trained support person would be an asset in the courtroom. He strongly believes that, while a paraprofessional should be allowed to sit at counsel table to guide and prompt their client, they should be prohibited from speaking in court, even to answer direct questions from the bench. Mr. Hamilton asserted that answering questions as even those that might be perceived as procedural may involve advocacy. Mr. Hamilton believes it is essential to maintain a distinction between paraprofessionals and lawyers; in-court representation is key to this distinction. Sharon Bashan agreed with Mr. Hamilton that paraprofessionals should be allowed to sit at counsel table, but should be prohibited from speaking in court.

Ms. Elizabeth Olvera, who is a certified Legal Document Assistant, disagreed, asserting that a trained paraprofessional could competently assist their client by providing information to the court, particularly in response to direct questions from the bench. Ms. Olvera suggested that a distinction could be made between those with a JD degree and others, allowing

paraprofessionals with a JD to speak in court. Greg Fortescue, the Supreme Court's liaison to the CPPWG, noted that if paraprofessionals were to be precluded from answering questions directed to them from the bench, it would be necessary to impose a restriction on judges, precluding them from directing such questions to paraprofessionals.

There was a general agreement, but not unanimous consensus, from the Subcommittee that paraprofessionals should be allowed to provide in-court support, but not representation. In this role, paraprofessionals would be allowed to sit at counsel table, and advise and prompt clients, but not advocate for their clients or speak in court. There was a minority view that paraprofessionals should be allowed to respond to questions from the court.

**Limit on Income and/or Estate Value**

The Subcommittee considered whether a cap on either income or estate value should be imposed for paraprofessional representation in family law cases. The Subcommittee agreed that income and estate value do not necessarily correlate with case complexity and therefore does not recommend such a limit.

Family Law Subcommittee  
Subtopic and Tasks Recommendations

ATTACHMENT A

Family Law

Task	Recommendation
Dissolution/Domestic Partnerships, including dissolution, legal separation, and nullity (annulment) <ol style="list-style-type: none"> <li>1. Marital status, including status-only judgments<sup>i</sup></li> <li>2. Annulment based on bigamy, age of spouse/registrant, prior existing marriage/DP<sup>ii</sup></li> <li>3. Annulment based on incest, unsound mind, fraud, force, physical incapacity</li> </ol>	Included Included Excluded <sup>iii</sup>
Paternity (including paternity issues within dissolution, legal separation, domestic partnerships, and DCSS child support matters) <ol style="list-style-type: none"> <li>1. Complaint to establish parental relationship not involving FC 7612(b) or (c)</li> <li>2. Complaint to establish parental relationship involving FC 7612(b) or (c)</li> </ol>	Included Excluded
Summary Dissolutions	Included
Petitions for Custody and Support	Included
Child custody and visitation (including third-party joinder and intervention) except in any action where any of the following issues or claims are raised: <ol style="list-style-type: none"> <li>1. Hague Convention on International Child Abduction</li> <li>2. International or interstate custody disputes under UCCJEA</li> <li>3. Grandparent visitation (independent of family law action)</li> </ol>	Included Excluded Excluded Included
Child support <sup>iv</sup>	Included
Spousal or domestic partner support <ol style="list-style-type: none"> <li>1. Temporary</li> <li>2. Permanent (litigated/contest)/FC 4320</li> <li>3. Spousal support waivers, buyouts or nonmodifiable step downs               <ol style="list-style-type: none"> <li>a. Short term marriage [FC 4336(b)]</li> <li>b. Long term marriage</li> </ol> </li> </ol>	Included Included Included Excluded
Separate property/community property/quasi community property <sup>v</sup> <ol style="list-style-type: none"> <li>1. Joinder of pension/retirement/employee benefit plans</li> <li>2. Declaration of disclosures</li> <li>3. Referrals to experts for appraisals and valuations</li> <li>4. Post division transfer documents</li> <li>5. QDRO (referrals only)</li> </ol>	Included Included Included Included Excluded
Discovery <ol style="list-style-type: none"> <li>1. Written discovery (form interrogatories v. other)</li> <li>2. Depositions</li> <li>3. Expert discovery</li> <li>4. Subpoenas: deposition and hearing/trial</li> <li>5. Motions to compel/motions to quash not related to depositions</li> <li>6. Motions to compel/quash related to depositions</li> </ol>	Included Excluded Excluded Included Included Excluded
Quasi marital property (nullity)	Excluded

<b>Task</b>	<b>Recommendation</b>
Attorney fees, including expert and paraprofessional fees	Included
Restoration of former name	Included
Venue and jurisdiction disputes not otherwise addressed herein	Included
Marital settlement agreements [except for any issues which are within excluded areas of practice as set forth above] 1. MSA must state that it was prepared by a paraprofessional <sup>vi</sup>	Included
Post judgment/permanent order modifications [except UCCJEA/Hague]	Included
Registration of foreign judgments	Included
Premarital/Post-marital agreements (not including MSAs)	Excluded
Putative spouse claims arising from nullity action, including all issues within such a claim (e.g. quasi marital property, attorney fees, spousal support)	Excluded
Marvin/Palimony actions	Excluded
Enforcement of family law orders and judgments 1. Appointment of elisor 2. RFO/Motion for relief in issuing court to assist in enforcement 3. Contempt 4. Seek work orders support 5. Debtor's exam 6. Wage assignment 7. Writ of execution 8. Filing of lien/lis pendens 9. Response to DCSS enforcement action (e.g., license suspension, bank levy) All enforcement mechanisms not specifically identified above are excluded	Included Included Excluded Included Included Included Included Included Included
Alternative Dispute Resolution (except for areas excluded above) 1. Settlement discussions and negotiations 2. Day of court meet and confer	Included Included

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- i. If instruction includes detailed, in depth education regarding FC 2337, FL-315, FL-347, FL-318-Info, joinder and pension issues
  - ii. If instruction includes education and instruction re: bigamy v. prior existing marriage/DP and FC 2200-2210 and 2310-2312
  - iii. Education includes issue spotting, clear definition of excluded item, specific education regarding excluded issues and referral process (necessity, regulation)
  - iv. Instruction to include training on support calculators, wage assignments and role of DCSS

- v. This scope of practice presumes detailed and substantive instruction on forms of discovery, responding to discovery, objections and law and motion procedure related to discovery
- <sup>vi</sup> Companion legislation to be developed, stating that an MSA prepared by a paraprofessional that exceeds the scope of their duties is not automatically void or voidable

**Adoption**

<b>Task</b>	<b>Recommendation</b>
Adoptions not arising from a dependency petition 1. Uncontested stepparent adoption <ul style="list-style-type: none"> <li>o Training on providing notice to other parent required; incorrect notice may trigger contest of adoption, or can negatively affect prospect of adoption</li> </ul>	Included

**Child Welfare**

<b>Task</b>	<b>Recommendation</b>
Child welfare and juvenile dependency cases 1. Investigation prior to filing of dependency action 2. JV-180: modification of dependency orders after case is closed	Included Included

**Violence Prevention**

<b>Task</b>	<b>Recommendation</b>
Domestic Violence, Civil Harassment, Gun Violence, Workplace Violence*	Included
Representation of petitioner 1. Filing restraining order request – Temporary Restraining Order (TRO) 2. Service of TRO on respondent and filing proof of service 3. Support in mediation, where applicable 4. Support in court 5. Preparation of Restraining Order After Hearing (ROAH) 6. Service of ROAH on respondent and filing proof of service 7. Distribution of RO to law enforcement, if applicable	Included Included Included Included Included Included Included
Representation of respondent 1. Filing response to TRO 2. Service of response on petitioner and filing proof of service 3. Support in court	Included Included Included

\* Educational/training requirements for violence prevention:

- Experience in violence prevention clinic
- Familiarity with types of restraining orders and remedies available under each type
- Availability of resources (e.g., domestic violence assistance, Adult Protective Services, mediation, etc.)

**Family Law Subcommittee  
Subtopic and Tasks Recommendations**

**ATTACHMENT B**

**Family Law**

Task	Recommendation
Dissolution/Domestic Partnerships, including dissolution, legal separation, and nullity (annulment) <ol style="list-style-type: none"> <li>1. Marital status, including status-only judgments<sup>i</sup></li> <li>2. Annulment based on bigamy, age of spouse/registrant, prior existing marriage/DP<sup>ii</sup></li> <li>3. Annulment based on incest, unsound mind, fraud, force, physical incapacity</li> </ol>	Included Included Excluded <sup>iii</sup>
Paternity (including paternity issues within dissolution, legal separation, domestic partnerships, and DCSS child support matters) <ol style="list-style-type: none"> <li>1. Complaint to establish parental relationship not involving FC 7612(b) or (c)</li> <li>2. Complaint to establish parental relationship involving FC 7612(b) or (c)</li> </ol>	Included Excluded
Summary Dissolutions	Included
Petitions for Custody and Support	Included
Child custody and visitation (including third-party joinder and intervention) except in any action where any of the following issues or claims are raised: <ol style="list-style-type: none"> <li>1. Hague Convention on International Child Abduction</li> <li>2. International or interstate custody disputes under UCCJEA</li> <li>3. Grandparent visitation (independent of family law action)</li> </ol>	Included Excluded Excluded Included
Child support <sup>iv</sup>	Included
Spousal or domestic partner support <ol style="list-style-type: none"> <li>1. Temporary</li> <li>2. Permanent (litigated/contest)/FC 4320</li> <li>3. Spousal support waivers, buyouts or nonmodifiable step downs               <ol style="list-style-type: none"> <li>a. Short term marriage [FC 4336(b)]</li> <li>b. Long term marriage</li> </ol> </li> </ol>	Included Included Included Excluded
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Discovery <ol style="list-style-type: none"> <li>1. Written discovery (form interrogatories v. other)</li> <li>2. Depositions</li> <li>3. Expert discovery</li> <li>4. Subpoenas: deposition and hearing/trial</li> <li>5. Motions to compel/motions to quash not related to depositions</li> <li>6. Motions to compel/quash related to depositions</li> </ol>	Included Excluded Excluded Included Included Excluded
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<b>Task</b>	<b>Recommendation</b>
Attorney fees, including expert and paraprofessional fees	Included
Restoration of former name	Included
Venue and jurisdiction disputes not otherwise addressed herein	Included
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Post judgment/permanent order modifications [except UCCJEA/Hague]	Included
Registration of foreign judgments	Included
Premarital/Post-marital agreements (not including MSAs)	Excluded
Putative spouse claims arising from nullity action, including all issues within such a claim (e.g. quasi marital property, attorney fees, spousal support)	Excluded
Marvin/Palimony actions	Excluded
Enforcement of family law orders and judgments 1. Appointment of elisor 2. RFO/Motion for relief in issuing court to assist in enforcement 3. Contempt 4. Seek work orders support 5. Debtor's exam 6. Wage assignment 7. Writ of execution 8. Filing of lien/lis pendens 9. Response to DCSS enforcement action (e.g., license suspension, bank levy) All enforcement mechanisms not specifically identified above are excluded	Included Included Excluded Included Included Included Included Included Included
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- i. If instruction includes detailed, in depth education regarding FC 2337, FL-315, FL-347, FL-318-Info, joinder and pension issues
  - ii. If instruction includes education and instruction re: bigamy v. prior existing marriage/DP and FC 2200-2210 and 2310-2312
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- v. This scope of practice presumes detailed and substantive instruction on forms of discovery, responding to discovery, objections and law and motion procedure related to discovery
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**Adoption**

<b>Task</b>	<b>Recommendation</b>
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**Child Welfare**

<b>Task</b>	<b>Recommendation</b>
Paraprofessionals are authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition, including but not limited to: <ol style="list-style-type: none"> <li>1. Requesting documents from social services agency</li> <li>2. Providing legal advice and information regarding procedures and parents’ rights at the prefiling stage</li> <li>3. Gathering documents to be presented to social services agency</li> <li>4. Being present and participating in social worker interviews</li> </ol>	Included
Paraprofessionals are authorized to assist parties not entitled to court-appointed counsel in juvenile dependency cases, by advising them regarding which forms to use, and completing and filing forms.	Included
Paraprofessionals are authorized to provide in-court representation for parties not entitled to court-appointed counsel.	Split Rec.

**Violence Prevention**

<b>Task</b>	<b>Recommendation</b>
Domestic Violence, Civil Harassment, Gun Violence, Workplace Violence* Representation of petitioner	Included
5. Filing restraining order request—Temporary Restraining Order (TRO)	Included
6. Service of TRO on respondent and filing proof of service	Included
7. Support in mediation, where applicable	Included
8. Support in court	Included
9. Preparation of Restraining Order After Hearing (ROAH)	Included
10. Service of ROAH on respondent and filing proof of service	Included
11. Distribution of RO to law enforcement, if applicable	Included

Representation of respondent	
1. Filing response to TRO	Included
2. Service of response on petitioner and filing proof of service	Included

\* Educational/training requirements for violence prevention:

- Experience in violence prevention clinic
- Familiarity with types of restraining orders and remedies available under each type
- Availability of resources (e.g., domestic violence assistance, Adult Protective Services, mediation, etc.)

### Conservatorship

Task	Recommendation
Uncontested limited conservatorship cases	
1. Selection, completion, and filing of forms	Included
2. In-court representation	Split Rec.



Date: June 25, 2021

To: California Paraprofessional Program Working Group

From: Carolin Shining, Chair, Julia Brynelson, Steven Fleischman, Stephen Hamilton, Amos Hartston, Nicole Robinson, and Hon. Erica Yew

Subject: Consumer Debt & General Civil Subcommittee Recommendations for a Paraprofessional Program

### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG’s charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG’s recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program.

### BACKGROUND

In its April 19, 2021 report, the Consumer Debt & General Civil Subcommittee presented the following five recommendations to the CPPWG:

Requirement	Recommendations
<b>Consumer Debt</b>	<p><b>Resolved</b>, that legal paraprofessionals may represent individual debtors in limited jurisdiction Consumer Debt proceedings but for the following excluded activities:</p> <ul style="list-style-type: none"> <li>• Responding to or preparing substantive motions including anti-SLAPP motions and motions for summary judgment;</li> <li>• Participating in trial setting or pre-trial conferences; and</li> </ul> <p>Representing clients in trials, both jury and bench trials.</p>

Requirement	Recommendations
<b>Creditor Harassment</b>	<b>Resolved</b> , that the following Creditor Harassment activities be included and excluded from the paraprofessional program: Included: <ul style="list-style-type: none"><li>• Pre-litigation cease and desist and prove-up letters; and</li><li>• Pre-litigation negotiation of settlements, including payment plans.</li></ul> Excluded: <ul style="list-style-type: none"><li>• All superior court litigation</li></ul>
<b>Wage Garnishment</b>	<b>Resolved</b> , that wage garnishment, except in the Family Law practice area, will be excluded from the paraprofessional program.
<b>Utility Shutoff</b>	<b>Resolved</b> , that utility shutoff for non-payment of utility services, except in landlord-tenant disputes, will be excluded from the paraprofessional program.
<b>Enforcement of Judgments</b>	<b>Resolved</b> , that legal paraprofessionals may represent natural persons in enforcement of small claims court judgments, and natural person debtors in limited jurisdiction post-judgment enforcement proceedings.

The Subcommittee noted that it might subsequently revise its recommendation to generally exclude wage garnishment from the scope of paraprofessional licensure if it was determined on further analysis that doing so would negatively impact the ability of paraprofessionals to meaningfully engage in judgment enforcement work.

In addition, during the April 19, 2021, CPPWG meeting, concern was raised regarding the proposed exclusion of utility shutoff issues from the scope of paraprofessional licensure. The Subcommittee agreed to consider this issue further as well.

At the April meeting, the CPPWG adopted the Subcommittee's recommendations regarding (1) consumer debt, and (2) creditor harassment, but deferred on the other three proposed resolutions. Given the possibility of future revised recommendations, the CPPWG expressed a preference for postponing consideration of the wage garnishment, utility shutoff, and enforcement of judgment recommendations, allowing the Subcommittee to further consider these issues and come back to the CPPWG with revised recommendations at a later date.

The Subcommittee met on June 8, 2021, to consider outstanding issues as identified at the April 19 CPPWG meeting.

## DISCUSSION

At its meeting on June 8, the Subcommittee heard from Mr. Richard Morrison, a nonattorney professional judgment enforcer. Mr. Morrison explained the importance of wage garnishment as a tool in judgment enforcement work, indicating that it is essential and integral; he equated judgment enforcement without wage garnishment to carpentry without a hammer. Mr.

## Consumer Debt & General Civil Subcommittee Recommendations for a Paraprofessional Program

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Morrison also stated that, in his view, wage garnishment is not too complex for the paraprofessional program. Although the Subcommittee had previously heard contrary views, the Subcommittee was generally persuaded by Mr. Morrison's views. One member did remain opposed to these views based on the CPPWG's general inclusion of full representation in court.

In addition, the Subcommittee discussed the possibility of wage garnishment being implicated in not just distinct enforcement of judgment matters but also generally in consumer debt and creditor harassment cases. For example, a paraprofessional might be asked to assist with a wage garnishment issue as part of broader representation in a consumer debt matter. In light of wage garnishment's relevance not just to judgment enforcement work but also to other areas of the consumer debt and general civil practice area, the Subcommittee determined that the best course of action would be to not have a resolution explicitly addressing wage garnishment work, with an understanding that wage garnishment will be an included component of the consumer debt, creditor harassment, and enforcement of judgment practices. As a result, the Subcommittee withdraws its proposed resolution excluding wage garnishment.

The Subcommittee then turned to utility shutoffs. Some members expressed the view that the original rationale for recommending exclusion of utility shutoff work in other than very limited circumstances was no longer convincing in light of both the concerns expressed by the full CPPWG and the undeniable need in this area. After discussion, the Subcommittee decided to withdraw its proposed resolution excluding utility shutoff. Similar to wage garnishment, without an express exclusion, the understanding is that utility shutoff will be an included component part of the consumer debt and general civil practice, viewed as a type of consumer debt.

The Subcommittee's reconsideration of wage garnishments, enforcement of judgments, and utility shutoffs caused it to further review the previously adopted CPPWG consumer debt and creditor harassment resolutions. In light of this review, the Subcommittee proposes to modify the CPPWG's adopted creditor harassment resolution and submits a revised enforcement of judgments resolution for the CPPWG's consideration at its June 25, 2021, meeting.

With respect to the previously approved creditor harassment resolution, the Subcommittee became concerned that the term "creditor harassment" may unintentionally be too limiting, and the intent is to include prelitigation communication and negotiation in relation to various consumer debt issues that may not technically qualify as creditor harassment. Therefore, with one member opposed, the Subcommittee proposes to amend the creditor harassment resolution to include consumer debt issues more broadly. The proposed revised resolution also clarifies that these activities can be undertaken only on behalf of natural persons. If adopted, this resolution would replace that the creditor harassment resolution adopted by the CPPWG at its April 19 meeting.

With respect to the previously recommended enforcement of judgments resolution, the originally submitted resolution restricted representation in limited jurisdiction matters to debtors. After further consideration, again with one member opposing the resolution based on the full in-court provisions of the program, the Subcommittee recommends not including this limitation.

## **PROPOSED RESOLUTIONS**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that the following consumer debt and creditor harassment activities on behalf of natural persons be included and excluded from the paraprofessional program:

Included:

- Prelitigation cease and desist and prove-up letters; and
- Prelitigation negotiation of settlements, including payment plans

Excluded:

- All superior court litigation

**RESOLVED**, that California Paraprofessional Program Working Group recommends that legal paraprofessionals may represent natural persons in enforcement of small claims court judgments, and natural persons in limited jurisdiction post-judgment enforcement proceedings.

## **MINORITY POSITION IN OPPOSITION TO THE RECOMMENDATIONS AS SUBMITTED BY CAROLIN SHINING, CHAIR**

On March 26, 2021, a vote was taken with regard to the level of “in-court” representation by Paraprofessionals by the entire Working Group. The vote resulted in a “default” position of the entire Working Group that paraprofessionals can represent consumers using “full in-court representation” except for jury trials. Using this “default position”, each subject area subcommittee was tasked to return and then reconsider the areas that should be “excluded” from the “default position.

This process called into question the extensive, months-long subcommittee work. This work was referred to as “deep dives” into the appropriateness of areas in the program. The subcommittees were presented with extensive public comment and experts in specific areas. No “default” position was presented, and therefore, the discussions did not include any consideration of what “full in court representation” should entail. Indeed, a report of the Subcommittee was prepared for the August 25, 2020, meeting. Would that report have resulted in different findings if the committee’s position on “full court representation” had been known? The committee was given only a few hours to consider this shift in the program’s direction. The discussion as to what “full court” or “partial in court” representation would or should include.

Consumer Debt & General Civil Subcommittee Recommendations for a Paraprofessional Program

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A common refrain during our deliberations has been “isn’t someone better than no one”? The concept is that having nonlawyer appear in court as counsel for a consumer would be “better than nothing.” If the now stated “full in-court representation” position was known in consumer debt and general civil issues, I believe that this committee’s work prior to March 26 would have been very different. It is unfortunate that the March 26, 2021, resolution’s timing came as numerous subcommittees had not finalized their months of work. As a result, I am unable to support those recommendations that approve in-court representation. I request that this work be reconsidered pending the definition of what “full court representation” will entail including the work being performed under the parallel licensing, regulation, disciplinary and pilot subcommittees.



Date: June 25, 2021

To: California Paraprofessional Program Working Group

From: Linda Katz, and Leah Wilson

Subject: Results of Survey Regarding Licensee Name

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## EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include a recommended name for licensees.

## BACKGROUND

CPPWG Chair Justice Petrou and Ms. Leah Wilson met with a principal from Catchword Branding, an expert in brand development and selection of names for services. After a brainstorming session during which the purpose of the program was discussed, the firm provided a list of names for consideration, as well as follow-up questions for consideration. Two surveys were developed to solicit opinions from the members of the Working Group and associated staff.

## DISCUSSION

### Initial Survey

On April 21, 2021, a survey was sent via Qualtrics to all 19 members of the CPPWG and 15 members of State Bar and Supreme Court staff who support the Working Group. A total of 20 individuals completed the survey, including 16 CPPWG members, 3 staff, and 1 unidentified respondent. The following pages provide a summary of the questions and responses.

**Question 1.** Please rank your top five choices from the following list:

## Results of Survey Regarding Licensee Name

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- Law Advisor
- Law Consultant
- Law Coordinator
- Law Practitioner
- Law Professional
- Law Rep
- LawPro
- LawTech
- Legal Advisor
- Legal Consultant
- Legal Coordinator
- Legal Practitioner
- Legal Professional
- Legal Rep
- Independent Legal Advisor (ILA)
- Independent Legal Consultant (ILC)
- Independent Legal Coordinator (ILC)
- Independent Legal Practitioner (ILP)
- Independent Legal Professional
- Independent Legal Rep (ILR)
- Certified Law Advisor (CLA)
- Certified Law Consultant (CLC)
- Certified Law Coordinator (CLC)
- Certified Law Practitioner (CLP)
- Certified Law Professional (CLP)
- Certified Law Rep (CLR)
- Certified Legal Advisor (CLA)
- Certified Legal Consultant
- Certified Legal Coordinator (CLC)
- Certified Legal Practitioner (CLP)
- Certified Legal Professional
- Certified Legal Rep (CLR)

### *Most overall votes from members:*

1. 7 votes:
  - Certified Legal Advisor
2. 5 votes:
  - Certified Legal Consultant
  - Certified Legal Practitioner
  - Certified Law Practitioner
  - Certified Legal Professional
3. 4 votes:
  - Certified Law Advisor

### *Most votes in top 3 ranking from members:*

1. 5 votes:
  - Certified Legal Advisor
  - Certified Legal Consultant
2. 4 votes:
  - Certified Legal Practitioner
3. 3 votes:
  - Certified Law Advisor

**Question 2.** Please provide your idea(s) for license names not included on the list above.

**Responses:**

[Bracketed names indicate respondent's selections]

- Use the word "licensed" instead of "certified" for the choices I made above. [Certified Legal Advisor, Certified Legal Consultant, Certified Legal Practitioner, Certified Legal Rep]
- Certified/licensed non attorney legal rep/consultant/advisor/practitioner
- I liked the term paraprofessional actually
- Licensed Law Practitioner, Licensed Law Professional, Licensed Law Consultant, Licensed Law Advisor
- Licensed Legal Practitioner, Licensed Legal Professional
- Limited License Legal Technician (LLLT) - my most preferred. Certified Limited Legal Practitioner (CLLP) Legal Paraprofessional
- Paralegal Practitioner; Paralegal Advocate; Legal Assistant Practitioner
- Professional Legal Assistant (PLA)

**Question 3.** Why do you like the names that you selected? What characteristics or message do they convey?

**Responses:**

[Bracketed names indicate respondent's selections]

- 1-3 use the term "certified" which alerts users that there is some process of certification that has taken place and gives the practitioner the imprimatur of legitimacy. [Certified Legal Practitioner; Certified Legal Professional; Certified Legal Consultant]
- I am very concerned that consumers will be misled by the name of the program. It must avoid misleading consumers into believing the licensee is an attorney. "Paralegal Practitioner" or "Paralegal Advocate" is easier to understand and descriptive than the names on the list. [Certified Law Practitioner; Certified Legal Practitioner; Legal Practitioner]
- I like having certified in the name b/c it signals that the person had to complete some minimum qualifications and are being regulated. [Certified Law Professional; Certified Legal Consultant; Certified Legal Practitioner]
- I think it is important to include the term certified, much like we do with certified law students who are permitted to appear in court. I like the name that includes the idea of representation, but I don't like the abbreviation of rep which is why I did not rank it higher. I think "rep" also has alternate meanings and while long, I think representative might be worth the long name as it really captures what I think we are contemplating [Certified Law Professional; Certified Legal Consultant; Certified Legal Practitioner]
- I want names not to be confused with lawyer. [Certified Legal Consultant; Independent Legal Rep; Certified Law Coordinator]
- I want the title to not be confused with an attorney or paralegal. I want to communicate that their authority is limited. I want it to be understood that they will need a license or

some proof of being able to be engaged in this work. I want it to sound very different from attorney and paralegal. [Limited License Legal Technician (LLLT) - my most preferred. Certified Limited Legal Practitioner (CLLP) Legal Paraprofessional]

- In my opinion, these names communicate the job description more accurately than others. I believe that inserting the words “non attorney” in the title is even better as it clearly communicates to the consumer that this person is not an attorney. [Use the word “licensed” instead of “certified” in these names: Certified Legal Advisor, Certified Legal Consultant, Certified Legal Practitioner, Certified Legal Rep]
- Makes it clear the person is an independent legal advisor but not a lawyer or paralegal [Certified Legal Advisor, Certified Legal Professional, Independent Legal Consultant, Independent Legal Practitioner, Independent Legal Professional]
- The fact that this person is LICENSED. “Licensed” is more accurate than “certified.” [Licensed Legal Practitioner, Licensed Legal Professional]
- Though I prefer short names, I think it's important here to include “licensed” or “certified” to lend more credibility to these people, and to distinguish them from unlicensed people who call themselves law advisors, etc. AND, “licensed” is better than “certified,” because that's what they will be, licensed. ALSO, “law” rather than “legal” because people might think “legal” simply means not illegal, and I think that confusion will be worse in Spanish translation of the terms. ALSO not “rep” because some of them might be licensed to advise and assist, but not represent. [Licensed Law Practitioner, Licensed Law Professional, Licensed Law Consultant, Licensed Law Advisor]

**Question 4.** Are there any choices that you strongly dislike? Why not? What characteristics or message do they convey?

**Responses:**

- All of the proposed names using the words "Law" or "Legal" are likely to be misleading and convey that the licensee is an attorney. The names that use "practitioner" are better
- Anything resembling lawyer or attorney
- Do not like the ones that begin with 'law' - sound awkward
- Everything that states Legal Advisor/Counsel/Practitioner or Law Advisor/Counsel/Practitioner I most dislike. I think it is too close to sounding like an attorney and therefore confusing. I believe starting the title with limited or certified is helpful to the consumer.
- I did not like any of the choices with independent b/c it is unclear if there is any affiliation to a regulatory body.
- I do not think a name that includes the word “independent” is accurate. The court is independent. The licensed paraprofessional is supposed to be representing the client, advancing that client’s case, etc. That person is not really independent so that seems like a complete misnomer to me.
- I don’t like “independent” as it could create confusion for those working in law firms.

- I don't like the use of the word "certified" --- these people will be LICENSED by the State Bar of California and their title ought to convey that.
- I strongly dislike all of the choices that use "law" and "independent" in the title. I think these titles minimize the assistance that the paraprofessional can provide to clients both in and out of the courtroom.
- Law Rep, Law Pro and Law Tech are nice and short, but don't sound very professional, very respectable. Sound like an advertisement.
- The ones with the word "law" sound awkward. "Independent" communicates nothing of value to the consumers but "certified" and "licensed" indicate that the person went through a special process to be able to do this work. "Coordinator" and "professional" do not accurately describe the job.

**Question 5.** Do you have any strong preferences, in terms of style?

- One-word name
- Two-word name
- Newly coined name
- Easy-to-remember acronym
- Other

**Multiple choice responses:**

1. Easy-to-remember acronym (30 votes)
2. Newly coined name (16 votes)
3. Two-word name (15 votes)

**Other responses:**

- Include the word "Licensed" because that's what they will be, and communicates that they have officially recognized status. "Certified" isn't quite the same, could mean just an endorsement or evaluation.
- No preference as long as the word certified is included to help people distinguish from notarios and other pretenders -- I think this will be a VERY important aspect of the name. Maybe it should be Certified Representative (CR) since the term law or legal may be redundant? Or Certified Legal Representative (CLR)
- Non-misleading is the most important factor
- The word "licensed" ought to be in the title. Also, the word "independent" could be in there to convey the fact that these people do not need lawyer supervision.

**Question 6.** Are there words or concepts that should be further explored?

**Responses:**

- How these phrases translate into Spanish and other languages commonly spoken in California to avoid confusion

- Include the word “Licensed” because that's what they will be, and communicates that they have officially recognized status. “Certified” isn't quite the same, could mean just an endorsement or evaluation.
- Limited; Licensed; Paraprofessional; Certified Limited Legal Paraprofessional (CLLP) or Technician (CLLT)
- Name should identify paraprofessionals without much explanation.
- Practitioner or advocate
- The use of the full word “representative”

**Question 7.** Are there words or concepts that should be avoided?

**Responses:**

- Coordinator
- Law or Legal
- Lawyer or anything that translates to abogado in Spanish
- Legal Advisor; Legal Counsel
- Not rep or representative, because some might be licensed only to advise and assist, but not represent.
- The use of the word “Independent”

**Follow-up Survey**

The results of the initial survey were shared with Catchword Branding, which assisted in the development of a follow-up survey. Based on that review and discussion, which included an assessment of both quantitative votes and comments received, as well as an analysis of the acronym (or initialism) that a particular name would generate, a list of eight potential names was included in the follow-up survey. Respondents were asked to rank their top three choices from the following list:

- Certified Legal Advisor (CLA)
- Certified Legal Consultant (CLC)
- Certified Legal Practitioner (CLP)
- Licensed Legal Advisor (LLA)
- Limited License Legal Consultant (LLLC)
- Limited License Legal Practitioner (LLLP)
- Licensed Paraprofessional Legal Consultant (LPLC)
- Paraprofessional Legal Consultant (PLC)

The survey was sent to all 19 members of the CPPWG on June 10; a reminder was sent on June 16 to those who did not complete the survey. Following is a summary of the votes, which were received from 14 members of the working group:

## Results of Survey Regarding Licensee Name

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### *Most overall votes:*

1. 8 votes:
  - Limited License Legal Practitioner (LLLP)
2. 7 votes:
  - Certified Legal Practitioner (CLP)
3. 6 votes:
  - Licensed Legal Advisor (LLA)
4. 5 votes:
  - Licensed Paraprofessional Legal Consultant (LPLC)

### *Most first place votes:*

1. 6 votes:
  - Limited License Legal Practitioner (LLLP)
2. 3 votes:
  - Licensed Legal Advisor (LLA)
3. 2 votes:
  - Certified Legal Advisor (LLA)

The results of both the April 21 and June 10 surveys will inform a discussion of naming options at the June 25 CPPWG meeting.



Date: June 25, 2021

To: California Paraprofessional Program Working Group

From: Julia Brynelson, Stephen Hamilton, Judge Michael Harper, and Claudia Torres-Ambriz

Subject: Revised Recommendations for Licensing Requirements for a Paraprofessional Program

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## EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the requirements for paraprofessional licensing.

## DISCUSSION

At its meeting on February 26, 2021, the CPPWG adopted the following licensing requirements for paraprofessionals, as recommended by the Licensing Subcommittee:

Requirement	Recommendations
<b>Educational Prerequisites</b>	JD or LLM degree from ABA or California Accredited or Registered law school; or Paralegal qualified under <a href="#">Business and Professions Code § 6450(c)</a> <ul style="list-style-type: none"><li>• The State Bar will review applications to determine eligibility.</li></ul>
<b>Educational Requirements</b> <b>[In addition to prerequisites set forth above]</b>	All practice areas <ul style="list-style-type: none"><li>• 3 credit hours Ethics and Professional Responsibility, including practice management and recognition and elimination of bias in the legal profession</li><li>• 3 credit hours Pretrial Discovery and Evidence [practical and not theoretical]</li><li>• 3 credit hours Court Procedure</li><li>• 3 credit hours Court Advocacy</li></ul>

Requirement	Recommendations	
<p><i>Coursework taken as part of a law school or paralegal program may satisfy the educational requirements.</i></p>	<ul style="list-style-type: none"> <li>• 1 credit hour trauma-informed representation</li> <li>• Subject matter specific credits, including theoretical and practical                             <ul style="list-style-type: none"> <li>• Family Law: 9 credit hours                                     <ul style="list-style-type: none"> <li>○ 3 credit hours Family Law and Procedure   <ul style="list-style-type: none"> <li>▪ These credits may be satisfied by passing a test that covers the subject matters addressed in this course.</li> </ul> </li> <li>○ 3 credit hours Advanced Family Law and Procedure, with a focus on helping self-represented parties for hearings and trial</li> </ul> </li> </ul> </li> <li>• Credit hours to be set based on the number of course hours projected to achieve competency in specific practice areas</li> </ul>	
<p><b>Practical Training (Experiential)</b></p> <p><i>Experience working as a paralegal or in a law school clinic may satisfy the experience requirements, subject to certification by the supervising attorney or law clinic instructor that it meets the specified criteria.</i></p>	<p>Requirements for Students</p> <ul style="list-style-type: none"> <li>• 1,000 hours over a minimum of 6 months</li> <li>• 500 hours must be in practice area in which paraprofessional will be licensed</li> <li>• Must include trauma-informed training</li> </ul> <p>Each Practice Area Subcommittee to identify specific requirements</p>	<p>Requirements for Supervisors</p> <ul style="list-style-type: none"> <li>• Active licensee for ≥ 4 years</li> <li>• Provide training and counsel</li> <li>• Assume responsibility for applicant’s activities</li> <li>• Approve and sign documents prepared for clients</li> <li>• Submit written declaration certifying applicant’s experience and training</li> </ul> <p>Supervision ≤ 5 applicants at a time</p> <p>Supervision incentives:</p> <ul style="list-style-type: none"> <li>• 1 hour CLE per 125 hours of supervision provided                             <ul style="list-style-type: none"> <li>○ CLE credit allowed for each person supervised</li> </ul> </li> <li>• Online directory showing attorneys who have provided supervision to licensed paraprofessionals</li> <li>• Funding provided to legal services programs for paraprofessional internships</li> </ul>
<p><b>Testing</b></p>	<ul style="list-style-type: none"> <li>• Subject matter specific testing                             <ul style="list-style-type: none"> <li>○ Subject matter subcommittees to recommend specific elements and parameters of testing</li> </ul> </li> <li>• Professional Responsibility Exam modeled after attorney exam</li> <li>• Tests to be developed and administered by State Bar</li> </ul>	
<p><b>Moral Character &amp;</b></p>	<ul style="list-style-type: none"> <li>• Fingerprinting &amp; background check equivalent attorney requirements</li> <li>• Not disbarred or resigned with charges pending in any jurisdiction</li> </ul>	

Requirement	Recommendations
Background Check	<ul style="list-style-type: none"><li>Moral character determination requirements to mirror attorney requirements</li></ul>

The Licensing Subcommittee reconvened on March 30, to consider a request from CPPWG member Elizabeth Olvera that the eligibility prerequisites for the paraprofessional program be expanded to allow Legal Document Assistants (LDAs) to be eligible to participate in the program. Ms. Olvera explained that many LDAs have been providing self-help services to their clients for many years, and would be a valuable addition to the program.

The Subcommittee reviewed [Business and Professions Code section 6402.1](#), which specifies the eligibility requirements for LDAs, as follows:

To be eligible to apply for registration under this chapter as a legal document assistant, the applicant shall possess at least one of the following:

- (a) A high school diploma or general equivalency diploma, and either a minimum of two years of law-related experience under the supervision of a licensed attorney, or a minimum of two years experience, prior to January 1, 1999, providing self-help service.
- (b) A baccalaureate degree in any field and either a minimum of one year of law-related experience under the supervision of a licensed attorney, or a minimum of one year of experience, prior to January 1, 1999, providing self-help service.
- (c) A certificate of completion from a paralegal program that is institutionally accredited but not approved by the American Bar Association, that requires successful completion of a minimum of 24 semester units, or the equivalent, in legal specialization courses.
- (d) A certificate of completion from a paralegal program approved by the American Bar Association.

Members of the Subcommittee did not believe that a high school or general equivalency diploma, as required by subdivision (a), provide a sufficient educational groundwork for paraprofessionals, regardless of the years of experience gained as an LDA. Further, the Subcommittee determined that LDAs qualified pursuant to subdivisions (c) and (d) already meet the eligibility requirements adopted by the CPPWG at the February 26 meeting.

The Subcommittee agreed that registered LDAs who are qualified pursuant to Business and Professions Code section 6402.1, subdivision (b), should be deemed eligible for participation in the paraprofessional program. It was further agreed that those qualifying on this basis should not be eligible for a waiver of the educational requirements of the program, since they have not completed a law-related educational program at a law school or paraprofessional program. Similarly, the Subcommittee agreed that experience working as an LDA is not substantially the same as experience working under the supervision of an attorney. On this basis, applicants qualifying pursuant to this section should not be eligible for a waiver of the program's experience requirements.

Following are the Licensing Subcommittee's revised prerequisites for eligibility for the paraprofessional program:

1. JD or LLM degree from ABA or California Accredited or Registered law school; or
2. Paralegal qualified pursuant to [Business and Professions Code section 6450\(c\)](#); or
3. Legal Document Assistant qualified pursuant to [Business and Professions Code section 6402.1\(b\)](#)
  - o Applicants who are admitted to the program pursuant to criterion three are not eligible for a waiver of educational or experience requirements.

## **PROPOSED RESOLUTIONS**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends the following revised prerequisites for eligibility for the paraprofessional program:

1. JD or LLM degree from ABA or California Accredited or Registered law school; or
2. Paralegal qualified pursuant to [Business and Professions Code section 6450\(c\)](#); or
3. Legal Document Assistant qualified pursuant to [Business and Professions Code section 6402.1\(b\)](#)
  - o Applicants who are admitted to the program pursuant to criterion three are not eligible for a waiver of educational or experience requirements.



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Date: June 25, 2021

To: Members, California Paraprofessional Program Working Group

From: Brady R. Dewar, Assistant General Counsel

Subject: Update Regarding Legal Review of Working Group Recommendations

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The Office of General Counsel (OGC) has been engaged in a legal review of the Working Group's work to date to identify remaining open issues for the Working Group's consideration. OGC has completed most of its review of references to "attorney," "lawyer," and similar terms in the Code of Civil Procedure and Evidence Code, as well as its review of statutes and rules pertaining to the licensing and regulation of attorneys. Attachment A provides an analysis of rules and statutes that may need to be modified or adapted in order to implement the paraprofessional program. Through this review, OGC has identified 15 open issues where the Working Group may consider making additional recommendations. These items will be brought to the appropriate subcommittees for discussion and recommendation before being brought back to the full Working Group. These open issues are listed below; we will welcome preliminary questions or comments about these issues, or our review process, at the June 25 meeting.

*Attorney Regulation-Related Statutes and Rules*

1. Should paraprofessionals be required to open IOLTA accounts for client funds? (Bus. & Prof. Code §§ 6210 – 6228; Related State Bar Rules 2.100 – 2.118)
2. Should paraprofessionals receive MCLE credit for speaking engagements? (State Bar Rule 2.81)
3. Should paraprofessionals receive MCLE credit for teaching? (State Bar Rule 2.82)
4. Should paraprofessionals be able to seek credit for unapproved MCLE activities? (State Bar Rule 2.86)

*Code of Civil Procedure*

1. Should claims against paraprofessionals be subject to same statute of limitations as claims against attorneys? (Civ. Proc. Code § 340.6)
2. Should paraprofessionals be barred from acting as a surety, as are attorneys? (Civ. Proc. Code § 995.510)
3. Should paraprofessional work be protected to same extent as attorney work is protected by attorney work product doctrine? (Civ. Proc. Code §§ 2018.010 – 2018.080)

### *Evidence Code*

1. Should the lawyer-client privilege explicitly protect communications with paraprofessionals to same extent as client communications with attorneys? (Evid. Code §§ 912(c), 917, 950 – 962)

### *State Bar Act Provisions Regarding Attorney Duties*

1. Should paraprofessionals be required by statute to participate in disciplinary and regulatory proceedings against them, as are attorneys? (Bus. & Prof. Code § 6068(i))
2. Should statute require paraprofessionals to maintain records with State Bar, as it requires attorneys to do? (Bus. & Prof. Code § 6068(j))
3. Should paraprofessionals be required by statute to self-report to the State Bar enumerated occurrences such as felony charges against the paraprofessional, as are attorneys? (Bus. & Prof. Code § 6068(o))
4. Should paraprofessionals be subject to discipline for reporting suspected immigration status of certain parties or witnesses to the same extent attorneys are? (Bus. & Prof. Code § 6103.7)
5. Should paraprofessionals be subject to discipline for advocating overthrow of the government to the same extent attorneys are? (Bus. & Prof. Code § 6106.1)
6. Should the Rules of Professional Conduct for Licensed Paraprofessionals incorporate provisions of Business & Professions Code § 6106.9 concerning sexual relations between attorney and client? (Note: The Regulation Committee voted to recommend incorporating these provisions into the rules.)

### *Attorney Licensing Rules and Statutes*

1. Should a similar rule to State Bar Rule 4.33 be adopted to allow for review of paraprofessionals' educational records for possible waiver of requirements?

All of these open issues, as well as the many statutes and rules that were reviewed and which staff determined did *not* pose open policy questions for elevation to the Working Group, are outlined in the bookmarked pdf file entitled "OGC Review of Issues Related to Paraprofessional Regulation."

OGC's review of the Code of Civil Procedure and Evidence Code identified numerous statutory provisions that reference "attorney," but that do not raise open issues for the Working Group. In some cases, the statutes concerned areas of the law beyond the scope of the contemplated paraprofessional program. In other cases, the statutory provisions provided for signatures by attorneys, service on attorneys, fees for attorney work as sanctions, and made other procedural provisions with respect to attorneys. Where a paraprofessional is permitted to perform tasks currently performed only by an attorney, these statutes will need to be changed to encompass paraprofessionals to allow the court to function as intended by the statute. These changes do not pose open issues for the Working Group to consider, as they are simply necessary to allow paraprofessionals to do the work the Working Group is recommending, they be authorized to do.

In other areas, staff determined that additional Working Group recommendations are not needed because the precise rules at issue will need to be determined later as an administrative or operational

matter. For instance, detailed provisions regarding testing accommodations or fees will need to be decided at a later date.

If you have concerns or questions about statutes or rules listed on the table that were not elevated to the Working Group as an open issue, please let staff know.

The bulk of OGC's review is completed, though OGC attorneys reviewing the Family and Housing practice area recommendations may identify open issues there as those Subcommittees complete their work. Additionally, based on feedback from a Working Group member, OGC will be reviewing Civil Code provisions regarding attorneys; it will raise any open issues identified to the appropriate Subcommittees.

**OPEN ISSUES FOR WORKING GROUP CONSIDERATION AND RECOMMENDATION FROM REVIEW OF ATTORNEY REGULATION STATUTES & RULES**

	<b>Statute or Rule</b>	<b>Modification or Parallel Provision Needed To Recognize Paraprofessional Program?</b>	<b>Directly Related Working Group Resolutions?</b>	<b>Notes</b>
1	<p>Bus. &amp; Prof. Code §§ 6210 – 6228 [IOLTA Statute]</p> <p>Related State Bar Rules 2.100 – 2.118</p>	<p>Yes, if Working Group recommendation is to require paraprofessionals to maintain IOLTA accounts to same extent as attorneys.</p>	No.	<p>These statutory sections and rules establish the IOLTA program. Any attorney who hold client funds is required to establish an IOLTA (Interest On Lawyers Trust Accounts) account and place client funds in the pooled account when the funds will be held for a short duration or are of a small enough amount such that it would be impracticable to collect interest and pay it to the client. Interest on funds in IOLTA accounts are paid to the State Bar, which distributes the funds to legal services organizations to fund civil legal services for the indigent.</p> <p>The Working Group should recommend whether paraprofessionals who hold client funds should be required to open and place funds in IOLTA accounts to the same extent attorneys are. Such a recommendation would treat paraprofessionals (and their clients) the same as attorneys (and their clients), and would support access to justice by providing funds for civil legal services to the indigent.</p>
2	<p>State Bar Rule 2.81 [Speaking]</p>	<p>Yes, if Working Group recommendation is to provide participatory MCLE credit to paraprofessionals for speaking.</p>	No.	<p>This rule allows attorneys who present at approved MCLE events to receive MCLE credit in the amount of up to four times the time they spend presenting. This rule recognizes that teaching MCLE courses often involves particular mastery of the material and significant preparation time, and encourages attorney participation as MCLE presenters.</p> <p>The Working Group should recommend whether paraprofessionals should receive MCLE credit for presenting at approved MCLE events on the same or modified basis as attorneys do. Factors supporting doing so may include giving paraprofessionals the same flexibility in this regard afforded to attorneys and encouraging paraprofessionals to</p>

				engage in teaching. Factors weighing against such a recommendation may include keeping a tighter control over approved MCLE activities and ensuring that all paraprofessionals receive MCLE in the traditional manner.
3	State Bar Rule 2.82 [Teaching]	Yes, if Working Group recommendation is to provide participatory MCLE credit to paraprofessionals for speaking.	No.	<p>This rule provides that licensees may claim participatory MCLE credit at various accrual rates for teaching a law school course as either the assigned or a guest or substitute instructor.</p> <p>The Working Group should recommend whether paraprofessionals should receive MCLE credit for teaching courses required to become a paraprofessional program on the same or modified basis as attorneys do. Factors supporting doing so may include giving paraprofessionals the same flexibility in this regard afforded to attorneys and encouraging paraprofessionals to engage in teaching. Factors weighing against such a recommendation may include keeping a tighter control over approved MCLE activities and ensuring that all paraprofessionals receive MCLE in the traditional manner.</p>
4	State Bar Rule 2.86 [Licensee credit request]	Yes, if Working Group recommendation is to allow paraprofessionals to request MCLE credit for unapproved activities.	No.	<p>This rule allows licensees to apply for MCLE credit for unapproved activities.</p> <p>The Working Group should recommend whether paraprofessionals should also be permitted to apply for MCLE credit. Factors supporting doing so may include giving paraprofessionals the same flexibility in this regard afforded to attorneys. Factors weighing against such a recommendation may include keeping a tighter control over approved MCLE activities and reducing administrative burden.</p>

**AREAS WHERE NO MODIFICATIONS TO STATUE OR RULES NEEDED**  
**OR WHERE MODIFICATIONS WILL FOLLOW FROM EXISTING WORKING GROUP RECOMMENDATIONS AND STATE BAR ADMINISTRATIVE/OPERATIONAL DECISIONS**

**Business & Professions Code Attorney Regulation Provisions**

	Section & Title	Modification or Parallel Provision Needed To Recognize Paraprofessional Program?	Directly Related Working Group Resolutions?	Notes
6	§ 6002 [Licensees]	Yes.	No.	Administrative/operational matter: Definition of "licensee."
7	§ 6002.1 [Official Licensing Records]	Yes.	No.	Administrative/operational matter: paraprofessionals will need to maintain similar records.
8	§ 6003 [Classes of Licensees]	Yes.	No.	Administrative/operational matter: inactive status for paraprofessionals.
9	§ 6004 [Active Licensees]	Yes.	No.	Administrative/operational matter: inactive status for paraprofessionals.
10	§ 6005 [Inactive Licensees]	Yes.	No.	Administrative/operational matter: inactive status for paraprofessionals.
11	§ 6006 [Retirement from Practice; Privileges of Inactive Licensees]	Yes.	No.	Administrative/operational matter: inactive status for paraprofessionals.
12	§ 6007 [Involuntary Enrollment as an Inactive Licensee]	Yes.		Administrative/operational matter: involuntary inactive enrollment for paraprofessionals.
13	§ 6009 [City or County Registration of Attorneys Who Qualify as Lobbyists; Lobbyist Information That May be Required to be Disclosed]	Yes.	No.	Administrative/operational matter: Disclosure of lobbying activities by paraprofessionals.
14	§ 6009.3 [Attorney to Inform Client in Writing Concerning Voluntary Contributions]	No.	No.	Relates only to the preparation of tax returns, and applies to "all persons" preparing returns, not just attorneys, so there is no need to modify this section to address paraprofessionals specifically.

	Section & Title	Modification or Parallel Provision Needed To Recognize Paraprofessional Program?	Directly Related Working Group Resolutions?	Notes
15	§ 6009.5 [Collection and Reporting of Demographic Data— Procedures and Limitations]	Yes.	No.	Administrative/operational matter: Paraprofessionals should be given access to the same mechanism for reporting required for licensees, or an equivalent one.
16	§ 6054 [Criminal History Information; Fingerprinting]	Yes.	Working Group recommended fingerprinting requirements equivalent to those for attorneys.	Administrative/operational matter.
	§ 6069 [Authorization for Disclosure of Financial Records; Subpoena; Notice; Review]	Yes.	No.	Administrative/operational matter.
17	§ 6070 [Establishment and Administration; Adoption of Rule by Supreme Court]	Yes.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Establishment of MCLE requirement for paraprofessionals pursuant to Working Group recommendations should be set forth similarly in a separate section, or in additional language in this session
18	§ 6071 [Legal Education in Remedies Available for Civil Rights Violations; Amendment of Rule by Supreme Court]	No.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each:	No similar MCLE recommendation made by Working Group.

	Section & Title	Modification or Parallel Provision Needed To Recognize Paraprofessional Program?	Directly Related Working Group Resolutions?	Notes
			competence, elimination of bias, trauma-informed practice; practice management	
19	§ 6140 [Annual License Fee; Time of Payment]	Yes.	No.	Administrative/operational matter: fee provisions to be set by State Bar based on determination of costs of program.
20	§ 6140.02 [Association Adoption of Dues Schedule; Voluntary Payment; Collection of Membership Fees]	No.	No.	Relates only to CLA membership and dues; no application to paraprofessionals.
21	§ 6140.03 [Increase in Annual Fee to Support Nonprofits Providing Free Legal Services to Needy; Opt Out Provision]	Yes.	No.	Administrative/operational matter: fee provisions to be set by State Bar based on determination of costs of program.
22	§ 6140.05 [State Bar Lobbying Activities–Keller Deduction; Limits on Expenditures]	Yes.	No.	Administrative/operational matter: fee provisions to be set by State Bar based on determination of costs of program. Any <i>Keller</i> issues to be determined by State Bar based on advice of counsel.
23	§ 6140.5 [Client Security Fund; Establishment; Payments; Administration; Funding]	Yes.	<u>Financial Responsibility Requirements:</u> \$100,000 bond; subject to recommendation of lower amount by practice area subcommittees; Client Security Fund	Security fund statutes and rules for paraprofessionals to be drafted based on Working Group resolution regarding same.
24	§ 6140.55 [Increase Annual License Fee–Client Security Fund]	Yes.	<u>Financial Responsibility Requirements:</u>	Security fund statutes and rules for paraprofessionals to be drafted based on Working Group resolution regarding same.

	Section & Title	Modification or Parallel Provision Needed To Recognize Paraprofessional Program?	Directly Related Working Group Resolutions?	Notes
			\$100,000 bond; subject to recommendation of lower amount by practice area subcommittees; Client Security Fund	
25	§ 6140.56 [State Bar Analysis and Review of Client Security Fund; Report to Legislature]	Yes.	<u>Financial Responsibility Requirements:</u> \$100,000 bond; subject to recommendation of lower amount by practice area subcommittees; Client Security Fund	Security fund statutes and rules for paraprofessionals to be drafted based on Working Group resolution regarding same.
26	§ 6140.6 [Costs of Disciplinary System]	Yes.	No.	Paraprofessional fees for costs of discipline to parallel attorney rules.
27	§ 6140.7 [Disciplinary Costs Added to License Fee]	Yes.	No.	As with licensees, costs assessed against paraprofessionals to be added to and become part of the license fee.
28	§ 6140.9 [Support for Programs Established Pursuant to Attorney Diversion and Assistance Act and Related Programs]	Depending on administrative/operational decision by State Bar.	No.	State Bar to determine whether current diversion and assistant programs can and should be expanded to cover paraprofessionals. No Working Group recommendation needed at this time.
29	§ 6141 [Inactive License Fee; Waivers]	Yes.	No.	Administrative/operational matter: fee provisions to be set by State Bar based on determination of costs of program.
30	§ 6141.1 [Waiver of License Fee]	Yes.	No.	Administrative/operational matter: fee provisions to be set by State Bar based on determination of costs of program.
31	§ 6141.3 [Affinity Programs; Use of Revenues]	No.	No.	Not relevant given Legislature's intent that any affinity programs no longer be administrated by the State Bar after 2018.

	Section & Title	Modification or Parallel Provision Needed To Recognize Paraprofessional Program?	Directly Related Working Group Resolutions?	Notes
32	§ 6142 [Certificate of Payment]	Yes.	No.	Administrative/operational matter: Paraprofessionals should also receive a certificate of license fee payment.
33	§ 6143 [Suspension of Nonpayment and Reinstatement; Penalties]	Yes.	No.	Administrative/operational matter: Paraprofessionals should also be suspended for nonpayment of any applicable licensing fee.
34	§ 6143.5 [Licensees Failure to Pay Child Support]	Yes.	No.	Administrative/operational matter: Paraprofessionals should also be subject to Family Code section 17520 for failure to pay child support.

**State Bar Rules – Attorney Regulation Provisions**

	Section & Title	Add Parallel Statue/Rule for Paraprofessionals?	Any Directly Related Resolutions Already Considered?	Notes
1	Rule 2.1 [Roll of attorneys]	Yes.	No.	Administrative/operational matter.
2	Rule 2.2 [Public information, duty to update licensee record]	Yes.	No.	Administrative/operational matter.
3	Rule 2.10 [Definitions]	Yes.	No.	Administrative/operational matter.
4	Rule 2.11 [Due Date]	Yes.	No.	Administrative/operational matter.
5	Rule 2.12 [New licensees]	Yes.	No.	Administrative/operational matter.
6	Rule 2.13 [Late payment penalties]	Yes.	No.	Administrative/operational matter.
7	Rule 2.14 [No refund]	Yes.	No.	Administrative/operational matter.
8	Rule 2.15 [Scaling]	Yes.	No.	Administrative/operational matter: fee provisions to be set by State Bar based on determination of costs of program.
9	Rule 2.16 [Waivers]	Yes.	No.	Administrative/operational matter: fee provisions to be set by State Bar based on determination of costs of program.
10	Rule 2.17 [Keller deductions and challenges]	Yes.	No.	Administrative/operational matter: fee provisions to be set by State Bar based on determination of costs of program.
11	Rule 2.18 [Payment by credit card, debit card, or electronic funds transfer]	Yes.	No.	Administrative/operational matter: fee provisions to be set by State Bar based on determination of costs of program.
12	Rule 2.30 [Inactive license status]	Yes.	No.	Administrative/operational matter: inactive status for paraprofessionals.
13	Rule 2.31 [Change of license status]	Yes.	No.	Administrative/operational matter: inactive status for paraprofessionals.

	Section & Title	Add Parallel Statute/Rule for Paraprofessionals?	Any Directly Related Resolutions Already Considered?	Notes
14	Rule 2.32 [Inactive enrollment for failure to comply with Minimum Continuing Legal Education (MCLE) requirements]	Yes.	<u>MCLE Requirements</u> : 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	This rule relates to inactive enrollment for failure to comply with MCLE requirements. Because the WG has already made policy determinations regarding the MCLE requirements, it is likely not necessary to consult with the WG about whether and how to implement.
15	Rule 2.33 [Suspension for failure to pay annual license fees and outstanding penalties or costs]	Yes.	No.	Administrative/operational matter: fee provisions to be set by State Bar based on determination of costs of program.
16	Rule 2.34 [Suspension for failure to comply with a family or child support obligation]	Yes.	No.	Administrative/operational matter: fee provisions to be set by State Bar based on determination of costs of program.
17	Rule 2.35 [Suspension for disciplinary violations]	Yes.	No.	Administrative/operational matter: fee provisions to be set by State Bar based on determination of costs of program. This rule relates to licensing fees during periods of suspension.
18	Rule 2.36 [Suspension for failure to pay state taxes]	Yes.	No.	Administrative/operational matter.
19	Rule 2.40 [Multiple accrual rates for annual license fees]	Yes.	No.	Administrative/operational matter: fee provisions to be set by State Bar based on determination of costs of program. This rule relates to licensing fees during periods of suspension.
20	Rule 2.45 [Voluntary resignation]	Yes	No.	Administrative/operational matter.
21	Rule 2.46 [Noncompliance with Attorney Fingerprinting Requirement]	Yes.	Working Group recommended fingerprinting requirements equivalent to those for attorneys.	Administrative/operational matter.

	Section & Title	Add Parallel Statue/Rule for Paraprofessionals?	Any Directly Related Resolutions Already Considered?	Notes
22	Rule 2.50 [Purpose of MCLE]	Yes.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and administrative/operational considerations.
23	Rule 2.51 [Definitions]	Yes.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and administrative/operational considerations.
24	Rule 2.52 [MCLE Activities]	Yes.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and administrative/operational considerations.
25	Rule 2.53 [New licensees]	Yes.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and administrative/operational considerations. Subsection (D), regarding State Bar New Attorney Training, inapplicable to paraprofessionals.
26	Rule 2.54 [Exemptions]	No.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	No such exemptions recommended by Working Group.
27	Rule 2.55 [Modifications]	Yes.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice	Rule to be developed based on existing Working Group

	Section & Title	Add Parallel Statue/Rule for Paraprofessionals?	Any Directly Related Resolutions Already Considered?	Notes
			area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	recommendations regarding MCLE for paraprofessionals and administrative/operational considerations.
28	Rule 2.70 [Compliance groups]	Maybe.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and administrative/operational considerations.
29	Rule 2.71 [Compliance periods]	Yes.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and administrative/operational considerations.
30	Rule 2.72 [Requirements]	Yes.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and administrative/operational considerations.
31	Rule 2.73 [Record of MCLE]	Yes.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and administrative/operational considerations.
32	Rule 2.80 [Attending programs and classes]	Yes.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and administrative/operational considerations.

	Section & Title	Add Parallel Statue/Rule for Paraprofessionals?	Any Directly Related Resolutions Already Considered?	Notes
33	Rule 2.83 [Self-study]	Yes.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management. "No more than 18 hours may be obtained through self-study.:	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and administrative/operational considerations.
34	Rule 2.84 [Legal specialization]	No.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Addresses MCLE credit for courses approved by California Board of Legal Specialization. No application to paraprofessional program.
35	Rule 2.85 [Education taken while physically out of state]	No.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Paraprofessional program currently limited to California.
36	Rule 2.87 [Bar examinations and MPRE]	Yes.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	This rule prohibits claims of MCLE credit for preparation for or taking a bar exam or the MPRE. Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and administrative/operational considerations.
37	Rule 2.90 [Definition]	Yes.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and

	Section & Title	Add Parallel Statute/Rule for Paraprofessionals?	Any Directly Related Resolutions Already Considered?	Notes
			bias, trauma-informed practice; practice management	administrative/operational considerations.
38	Rule 2.91 [Notice of noncompliance]	Yes.	<u>MCLE Requirements</u> : 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and administrative/operational considerations.
39	Rule 2.92 [Enrollment as inactive for MCLE noncompliance]	Yes.	<u>MCLE Requirements</u> : 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and administrative/operational considerations.
40	Rule 2.93 [Reinstatement following MCLE noncompliance]	Yes.	<u>MCLE Requirements</u> : 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and administrative/operational considerations.
41	Rule 2.130 [Comparable Interest Rate or Dividend Requirement]	No.	No.	This rule relates to IOLTA-eligible institutions, and not licensees, and thus likely needs not be modified or recreated for paraprofessionals.
42	Rule 2.131 [Payments to the State Bar]	No.	No.	This rule relates to IOLTA-eligible institutions, and not licensees, and thus likely needs not be modified or recreated for paraprofessionals.
43	Rule 3.420 [Client Security Fund]	Yes.	<u>Financial Responsibility Requirements</u> : "Paraprofessionals must contribute to a Client Security Fund (CSF), to be established with rules that mirror those of the attorney CSF"	Working Group has directed paraprofessional CSF rules to mirror these rules.

	Section & Title	Add Parallel Statue/Rule for Paraprofessionals?	Any Directly Related Resolutions Already Considered?	Notes
44	Rule 3.421 [Client Security Fund Commission]	Yes.	<u>Financial Responsibility Requirements</u> : “Paraprofessionals must contribute to a Client Security Fund (CSF), to be established with rules that mirror those of the attorney CSF”	Working Group has directed paraprofessional CSF rules to mirror these rules.
45	Rule 3.430 [General requirements for reimbursement]	Yes.	<u>Financial Responsibility Requirements</u> : “Paraprofessionals must contribute to a Client Security Fund (CSF), to be established with rules that mirror those of the attorney CSF”	Working Group has directed paraprofessional CSF rules to mirror these rules.
46	Rule 3.431 [Dishonest conduct]	Yes.	<u>Financial Responsibility Requirements</u> : “Paraprofessionals must contribute to a Client Security Fund (CSF), to be established with rules that mirror those of the attorney CSF”	Working Group has directed paraprofessional CSF rules to mirror these rules.
47	Rule 3.432 [Required status of attorney]	Yes.	<u>Financial Responsibility Requirements</u> : “Paraprofessionals must contribute to a Client Security Fund (CSF), to be established with rules that mirror those of the attorney CSF”	Working Group has directed paraprofessional CSF rules to mirror these rules.
48	Rule 3.433 [Excluded applicants]	Yes.	<u>Financial Responsibility Requirements</u> : “Paraprofessionals must contribute to a Client Security Fund (CSF), to be established with rules that mirror those of the attorney CSF”	Working Group has directed paraprofessional CSF rules to mirror these rules.
49	Rule 3.434 [Reimbursement limitations and exclusions]	Yes.	<u>Financial Responsibility Requirements</u> : “Paraprofessionals must contribute to a Client Security Fund (CSF), to be established with	Working Group has directed paraprofessional CSF rules to mirror these rules.

	Section & Title	Add Parallel Statue/Rule for Paraprofessionals?	Any Directly Related Resolutions Already Considered?	Notes
			rules that mirror those of the attorney CSF”	
50	Rule 3.435 [Factors that may limit reimbursement]	Yes.	<u>Financial Responsibility Requirements</u> : “Paraprofessionals must contribute to a Client Security Fund (CSF), to be established with rules that mirror those of the attorney CSF”	Working Group has directed paraprofessional CSF rules to mirror these rules.
51	Rule 3.436 [Attorney-client relationship required to reimburse loan or investment loss]	Yes.	<u>Financial Responsibility Requirements</u> : “Paraprofessionals must contribute to a Client Security Fund (CSF), to be established with rules that mirror those of the attorney CSF”	Working Group has directed paraprofessional CSF rules to mirror these rules.
52	Rule 3.440 [Application for reimbursement]	Yes.	<u>Financial Responsibility Requirements</u> : “Paraprofessionals must contribute to a Client Security Fund (CSF), to be established with rules that mirror those of the attorney CSF”	Working Group has directed paraprofessional CSF rules to mirror these rules.
53	Rule 3.441 [Review of applications]	Yes.	<u>Financial Responsibility Requirements</u> : “Paraprofessionals must contribute to a Client Security Fund (CSF), to be established with rules that mirror those of the attorney CSF”	Working Group has directed paraprofessional CSF rules to mirror these rules.
54	Rule 3.442 [Notice of Intention to Pay]	Yes.	<u>Financial Responsibility Requirements</u> : “Paraprofessionals must contribute to a Client Security Fund (CSF), to be established with rules that mirror those of the attorney CSF”	Working Group has directed paraprofessional CSF rules to mirror these rules.
55	Rule 3.443 [Tentative Decisions]	Yes.	<u>Financial Responsibility Requirements</u> : “Paraprofessionals must contribute to a Client Security	Working Group has directed paraprofessional CSF rules to mirror these rules.

	Section & Title	Add Parallel Statue/Rule for Paraprofessionals?	Any Directly Related Resolutions Already Considered?	Notes
			Fund (CSF), to be established with rules that mirror those of the attorney CSF”	
56	Rule 3.444 [Final Decisions]	Yes.	<u>Financial Responsibility Requirements</u> : “Paraprofessionals must contribute to a Client Security Fund (CSF), to be established with rules that mirror those of the attorney CSF”	Working Group has directed paraprofessional CSF rules to mirror these rules.
57	Rule 3.445 [Service of decisions and Notice of Intention to Pay]	Yes.	<u>Financial Responsibility Requirements</u> : “Paraprofessionals must contribute to a Client Security Fund (CSF), to be established with rules that mirror those of the attorney CSF”	Working Group has directed paraprofessional CSF rules to mirror these rules.
58	Rule 3.450 [Superior court review]	Yes.	<u>Financial Responsibility Requirements</u> : “Paraprofessionals must contribute to a Client Security Fund (CSF), to be established with rules that mirror those of the attorney CSF”	Working Group has directed paraprofessional CSF rules to mirror these rules.
59	Rule 3.451 [Repayment of reimbursement by attorney]	Yes.	<u>Financial Responsibility Requirements</u> : “Paraprofessionals must contribute to a Client Security Fund (CSF), to be established with rules that mirror those of the attorney CSF”	Working Group has directed paraprofessional CSF rules to mirror these rules.
60	Rule 3.452 [Enforcement of State Bar rights]	Yes.	<u>Financial Responsibility Requirements</u> : “Paraprofessionals must contribute to a Client Security Fund (CSF), to be established with rules that mirror those of the attorney CSF”	Working Group has directed paraprofessional CSF rules to mirror these rules.

	Section & Title	Add Parallel Statute/Rule for Paraprofessionals?	Any Directly Related Resolutions Already Considered?	Notes
61	Rule 3.460 [Records shared with Chief Trial Counsel]	Yes.	<u>Financial Responsibility Requirements</u> : "Paraprofessionals must contribute to a Client Security Fund (CSF), to be established with rules that mirror those of the attorney CSF"	Working Group has directed paraprofessional CSF rules to mirror these rules.
62	Rule 3.461 [Public access to records and proceedings]	Yes.	<u>Financial Responsibility Requirements</u> : "Paraprofessionals must contribute to a Client Security Fund (CSF), to be established with rules that mirror those of the attorney CSF"	Working Group has directed paraprofessional CSF rules to mirror these rules.
63	Rule 3.600 [Definitions]	No.	<u>MCLE Requirements</u> : 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and administrative/operational considerations.
64	Rule 3.601 [MCLE Activities]	No.	<u>MCLE Requirements</u> : 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and administrative/operational considerations.
65	Rule 3.602 [Responsibilities of every provider]	No.	<u>MCLE Requirements</u> : 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and administrative/operational considerations.
66	Rule 3.603 [State Bar Activity Auditors]	No.	<u>MCLE Requirements</u> : 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and

	Section & Title	Add Parallel Statute/Rule for Paraprofessionals?	Any Directly Related Resolutions Already Considered?	Notes
			bias, trauma-informed practice; practice management	administrative/operational considerations.
67	Rule 3.604 [Suspension or revocation of provider approval]	No.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and administrative/operational considerations.
68	Rule 3.605 [Complaints about Providers]	No.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and administrative/operational considerations.
69	Rule 3.620 [Applying for Multiple Activity Provider status]	No.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and administrative/operational considerations.
70	Rule 3.621 [Renewing Multiple Activity Provider status]	No.	<u>MCLE Requirements:</u> 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	Rule to be developed based on existing Working Group recommendations regarding MCLE for paraprofessionals and administrative/operational considerations.

**REGULATION – THE RULES OF COURT**

	Section & Title	Add Parallel Statue/Rule for Paraprofessionals?	Any Related Resolutions Already Considered?	Notes
1	Rule 9.7 [Oath required when admitted to practice law]	Yes, or modify existing rule to include paraprofessionals.	No.	This rule relates to the oath required upon admission. Because this rule doesn't implicate important "policy decisions," it is likely not necessary to consult with the WG about whether and how to implement.
2	Rule 9.8 [Roll of attorneys admitted to practice]	Yes, or modify existing rule to include paraprofessionals.	No.	This rule relates to the roll of attorneys maintained by the State Bar. Because this rule doesn't implicate important "policy decisions," it is likely not necessary to consult with the WG about whether and how to implement.
3	Rule 9.9 [Online reporting by attorneys]	Yes, or modify existing rule to include paraprofessionals.	No.	This rule relates to reporting of contact information with the State Bar. Because this rule doesn't implicate important "policy decisions," it is likely not necessary to consult with the WG about whether and how to implement.
4	Rule 9.9.5 [Attorney Fingerprinting]	Yes.	Working Group recommended fingerprinting requirements equivalent to those for attorneys.	Administrative/operational matter.
5	Rule 9.31 [Minimum continuing legal education]	Yes.	<u>MCLE Requirements</u> : 36 hours every 3 years; 28 hours in practice area; 4 hours legal ethics; 1 hour each: competence, elimination of bias, trauma-informed practice; practice management	This rule outlines the MCLE program. Because the WG has already made policy determinations regarding the MCLE requirements, it is likely not necessary to consult with the WG about whether and how to implement.

**REVIEW OF CODE OF CIVIL PROCEDURE FOR STATUTES NEEDING ADJUSTMENT TO IMPLEMENT PARAPROFESSIONAL PROGRAM**

**Issues Needing Working Group Input**

<b>Code of Civil Procedure Section</b>	<b>Reference to Attorney/Lawyer</b>	<b>Notes/Recommendation</b>
§ 340.6	Establishes 1-year statute of limitations for claims against an attorney for a wrongful act or omission	The Working Group should recommend that malpractice causes of action against paraprofessionals be subject to the same statute of limitations as for attorneys. Both types of causes of action are based on wrongful acts or omissions in the practice of law.
§ 995.510	Surety – No member of the State Bar shall act as a surety	The Code of Civil Procedure provides that no member of the State bar shall act as a surety (one who promises to answer for the debt, default, or miscarriage of another, or hypothecates property as security therefor). Paraprofessionals who practice law should presumably be treated the same as attorneys in this regard.
§§ 2018.010, 2018.020, 2018.030, 2018.040, 2018.050, 2018.060, 2018.070, 2018.080	Attorney Work Product – various references to “attorney” or “lawyer”	<p>These statutes codify the attorney work product doctrine, and have the purposes of “[p]reserv[ing] the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of those cases” and “[p]revent[ing] attorneys from taking undue advantage of their adversary's industry and efforts.” These rationales apply equally to paraprofessionals practicing law.</p> <p>The Working Group should recommend that work product of paraprofessionals be protected by the work product doctrine to the same extent that work product of attorneys is. Not extending the protection to paralegals could give attorneys an unfair advantage in litigation against parties represented by paraprofessionals, as the work product of those paraprofessionals could be subject to discovery while the attorneys’ work product is not.</p>

**References to Attorney/Lawyer in Code of Civil Procedure – No Unresolved Policy Issue**

<b>Code of Civil Procedure Section</b>	<b>Reference to Attorney/Lawyer</b>	<b>Change Needed to Encompass Paraprofessionals</b>
§ 33	Applies to prosecuting attorney	No; beyond scope of program.
§§ 36, 36.5	Motion for preference (references to party's attorney)	Yes; language should encompass paraprofessional in even paraprofessional performs this task.
§ 75	Submission of uncontested matter (by party's attorney)	Yes; language must encompass paraprofessional in even paraprofessional performs this task.
§ 85	Limited Jurisdiction Case (reference to "attorney's fees")	Yes; language should encompass paraprofessional's fees.
§ 88	Limited Jurisdiction Case – declaratory relief after non-binding fee arbitration	Yes; language should encompass paraprofessional in even paraprofessional performs this task.
§ 94	Subpoena may require mailing of documents to "party's counsel"	Yes; language should encompass mailing to paraprofessional.
§ 96.	Request for statement of witnesses, and description and copies of evidence  (reference to "attorney for" in standard form)	Yes; language should encompass paraprofessional in even paraprofessional performs this task.
§ 116.220	Small claims jurisdiction – declaratory relief after non-binding fee arbitration	Yes; language should encompass paraprofessional in event paraprofessional and client have fee arbitration.
§ 116.231	Removal from small claims of certain cases where defendant is represented by "legal counsel"	No; beyond scope.

§ 116.320	Small claims form must state party may not be represented by attorney	No; beyond scope.
§ 116.390	References to attorney's fees in cases transferred from small claims court	Yes; language should encompass paraprofessional's fees.
§§ 116.530, 116.540(m), 116.541(d), 116.770(c)	Prohibition on attorneys appearing in small claims court and exceptions	No; beyond scope.
§§ 116.780, 116.790	Attorney fees on appeal of small claims awards	No; beyond scope.
§ 116.830	Attorney fees for enforcement of small claims judgement	Yes; language should encompass paraprofessional's fees in event paraprofessionals may enforce small claims judgments.
§ 128	Contempt orders against attorneys	Yes; modification should make clear courts may issue sanctions against paraprofessional appearing in court to same extent as attorneys.
§ 128.5	Frivolous actions – payment by attorney of expenses including attorney's fees	Yes; modification should make clear courts may issue awards against paraprofessional appearing in court to same extent as attorneys.
§ 128.7	Pleadings: Signature requirement by attorneys of record	Yes; modification should make clear requirement applies to paraprofessionals appearing in court so same extent as attorneys.
§ 130	Relates to disclosure of autopsy reports to criminal defense attorneys	No; beyond scope.
§ 155	Proceedings related to judicial determinations regarding the custody and care of immigrant children	No; beyond scope.

§ 166.1	“Counsel” may request or object to interlocutory appeal	Yes; modification should make clear paraprofessionals appearing in litigation where permitted to do so can take same actions as attorneys.
§§ 170.3, 170.6	Disqualification of judges – various references to attorneys	Yes; modification should make clear paraprofessionals appearing in litigation where permitted to do so can take same actions as attorneys.
§ 170.9	Judge’s acceptance of gift – attorney referred to in definition of foreign bar association	No; beyond scope.
§ 177.5	Sanctions power against “a party [or] a party’s attorney”, power does not apply to “advocacy of counsel before the court”	Yes; modification should make clear courts may issue sanctions against paraprofessional appearing in court to same extent as attorneys.
§§ 206, 229 (plus other hits for “counsel”)	Jury selection	No; beyond scope.
§ 259	Court commissioner’s power regarding attorney’s fees; service of exceptions to commissioner’s report to be served on opposing “counsel”	Yes; modification should make clear attorney’s fees include paraprofessionals fees for authorized paraprofessional work and that service on counsel includes paraprofessionals where authorized to appear.
§ 262	Sherriff’s execution of orders by party’s attorney	Yes; modification should make clear that reference to party’s attorney includes part’s paraprofessional where such representation is permitted.
§ 269	Court reporters: references to attorneys in criminal and jury trials	No; beyond scope.
§ 271	Reference to obligation of attorney to maintain file (transcript)	Yes; modification should make clear that paraprofessional permitted to appear has same obligation as attorney.

§§ 283 - 286	Authority of attorneys of record to bind clients in litigation; provisions regarding changing attorney of record	Yes; modification should subject paralegals permitted to represent clients in court to these provisions to same extent as attorneys
§§ 340.1, 340.16	Reference to attorney in civil actions brought regarding childhood sexual assault	No; beyond scope.
§§ 340.3, 340.35	References to attorney in statutes of limitation for claims involving felony offense or sexual abuse of a minor	No; beyond scope.
§ 353.1	Extension of limitations period by persons who were represented by attorney whose practice is taken over by court	Yes; modification necessary if court is permitted to take over paraprofessional's practice to afford same extension given to persons represented by attorney.
§ 354.8	Attorney's fees for actions involving assault, torture, etc	Yes; modification should make clear that paraprofessional fees can be recovered for paraprofessionals doing permitted work to same extent as attorney's fees.
§ 365	Attorneys subject to discipline for failure to comply with laws regarding commencement of actions for professional negligence by healthcare providers	No; beyond scope.
§ 382.4	Pertains to class actions	No; beyond scope
§ 386.6	Attorney's fees for interpleader motions	Yes; modification should make clear that paraprofessional fees can be recovered for paraprofessionals doing permitted work to same extent as attorney's fees.
§§ 367.3, 372.5	Use of Pseudonyms in Pleadings; attorneys	Yes; modification should make clear that paraprofessional permitted to appear has same obligation as attorney.

	required to use pseudonym in cases where party uses pseudonym	
§ 387	Service of intervention papers on parties represented or not represented by an attorney	Yes; modification should make clear that service on party represented by paraprofessional is subject to same rules as service on party represented by attorney.
§§ 391, 391.3	Reference to attorney's fees in posting security by vexatious litigants and other similar references to attorney and counsel	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees.
§§ 396a, 396b	Reference to declaration by plaintiff's attorney regarding venue in certain actions, similar reference to attorney's fees; reference to consent by defendant's counsel; reference to counsel's fees	Yes; modification should make clear that paraprofessional permitted to appear has same obligation as attorney and that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees.
§ 397	Reference to motion for attorney's fees in transfer motion in marriage dissolution cases	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees.
§ 399	Reference to attorney's fees in transfer motions	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees.
§ 404.1	Coordination of civil actions: references to convenience of counsel and work product of counsel	Yes; modification should make clear that paraprofessional permitted to appear has same obligations and rights as attorney in action.
§ 405.21	Attorney of record may sign lis pendens notices	Yes, if lis pendens notices may be used in actions where paraprofessionals permitted to appear; modification should make clear that paraprofessional permitted to appear has same obligations and rights as attorney in action.

§ 405.38	Attorney's fees in motion to expunge lis pendens notice	Yes, if lis pendens notices may be used in actions where paraprofessionals permitted to appear; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees.
§§ 411.20, 411.21	Notice to parties' attorneys related to insufficient funds for filing fees	Yes; modification should make clear that paraprofessionals doing permitted work should receive same notices as attorneys.
§ 411.35	Attorney forms to be filed in engineer/architect/etc malpractice actions	No; beyond scope.
§ 411.20.5. Nonpayment of electronic filing fees by attorney of record; sanction	Attorney of record can be sanctioned for failing to pay electronic filing fees	Yes; modification should make clear that paraprofessional permitted to appear has same obligation and is subject to same sanctions as attorney.
§ 412.20	Summons must state recipient may seek the advice of an attorney	No; recipient of summons maintains right to seek advice of an attorney.
§ 425.11	Service of statement regarding damages on attorney in personal injury or wrongful death action	No; beyond scope.
§ 425.115	Signing and service of statement regarding punitive damages	Yes; modification should make clear that paraprofessionals permitted to appear in an action should receive service to same extent as attorneys.
§§ 425.16, 425.17, 425.18	Attorney's fees in anti-SLAPP motion	No; beyond scope.
§§ 425.50, 425.55	Construction-related accessibility claims (references to signature on complaint and high frequency litigants)	No; beyond scope.
§ 428.60	Service of cross-complaint on party's attorney	Yes; modification should make clear that paraprofessionals permitted to appear in an action should receive service to same extent as attorneys.

§§ 430.41, 435.5, 439	Meet-and-confer requirement for certain motions (JOP, MTS, demurrer) does not apply to party "not represented by counsel"	Yes; modification should make clear that parties represented by paraprofessionals who are permitted to appear must meet-and-confer as if they were represented by attorneys.
§ 437c	Notice of motion for summary adjudication must be signed by "counsel"	Yes; modification should make clear that paraprofessional permitted to appear has same obligations as attorney.
§§ 446, 454	Signature of attorneys in verified pleadings	Yes; modification should make clear that paraprofessional permitted to appear has same obligations as attorney.
§ 465	Service of post-complaint pleadings on adverse party's attorney	Yes; modification should make clear that paraprofessionals permitted to appear in an action should receive service to same extent as attorneys.
§ 473	Relief from order or judgment based on mistake; references to attorney and counsel	Yes; modification should make clear that paraprofessional permitted to appear has same obligations and rights as attorney.
§ 473.1. Court assuming jurisdiction over attorney's practice; relief from judgment, order or proceeding	Relief from judgment where Court takes jurisdiction over law practice	Yes; modification necessary if court is permitted to take over paraprofessional's practice to afford same relief given to persons represented by attorney.
§ 482.050	Making delayed-public complaint available to party or his attorney	Yes; modification should make clear that paraprofessional permitted to appear has same obligations and rights as attorney.
§§ 482.070, 482.110, 483.010, 484.340, 488.020, 488.030, 488.510,	Service on attorney of record of defendant in attachment actions; provisions on attorney's fee in such actions; presence of	Yes; modification should make clear that paraprofessional permitted to appear has same obligations and rights as attorney.

488.610, 488.730, 491.110	attorney at attachment hearing; instructions from plaintiff's attorney to levying officer	
§ 490.02	Liability for attorney's fees for wrongful attachment	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations as attorneys.
§§ 491.130, 491.160	Attorney's fees related to examinations in attachment proceedings	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations as attorneys.
§ 512.040	Notice to defendant in writ of possession they may wish to consult attorney	No; defendant maintains right to consult attorney.
§ 527	Certifications by and notifications of attorneys with respect to TROs	Yes; modification should make clear that paraprofessional permitted to appear has same obligations and rights as attorney.
§§ 527.6, 527.7, 527.8	TROs and injunctions regarding harassment, violence, school safety	No; beyond scope.
§ 532	Reference to "attorney's fees" with regard to injunctions	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations as attorneys.
§ 566	No "attorney of a party" in an action can be appointed receiver in that action	Yes, if receiver can be appointed in an action where a paraprofessional appears; modification should make clear that such paraprofessional also may not be appointed receiver.
§ 575.2	Attorney's fees in motions regarding violations of local rules regarding pretrial conferences	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations as attorneys.
§ 580	Reference to "attorney's fees" in judgment limits for limited civil cases	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations as attorneys.

§ 580c	Attorneys' fees in foreclosure cases	No; beyond scope.
§ 581	Consent by party's attorney to dismissal; trial begins upon opening statement of "counsel"	Yes; modifications should make that trial also begins upon opening statement of paraprofessional permitted to appear, and that paraprofessional permitted to appear may give consent to same extent as attorney.
§§ 585, 585.5, 587	References to attorney's fees in default judgments; reference to serving notice on defendant's attorney	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations and rights as attorneys.
§§ 595, 1054.1	Postponement of trial where attorney of record is member of Legislature; other extensions of time for such attorneys of record	Yes; modification should make clear that provision applies to paraprofessional of record to same extent as attorney.
§ 595.2	Postponement of trial on agreement of attorneys of record	Yes; modification should make clear that provision applies to paraprofessional of record to same extent as attorney.
§ 607	Order of proceedings where defendants have different "counsel"	Yes; modification should make clear that "counsel" includes paraprofessionals permitted to appear.
§§ 630.01, 630.09, 630.10, 630.020, 630.027	References to expedited jury trials	No; beyond scope.
§ 639	Referee – party's ability to pay referee fees not determined by "counsel's" ability to pay	Yes; modification should make clear that "counsel" includes paraprofessionals.
§ 657	Reference to attorney not preparing order in reference to motion for new trial	Yes; to the extent an attorney should not be ordered to prepare an order, a paraprofessional should not either.

§ 664.5	Service of notice of entry of judgment where prevailing party not represented by counsel	Yes; modification should make clear that service rules where party not represented by counsel apply where party not represented by counsel or paraprofessional.
§ 664.6	Attorney for party may sign stipulated judgment	Yes; modification should make clear that paraprofessional doing authorized work may sign stipulated judgment.
§ 664.7	Stipulated judgment in construction defect action: stipulation through "counsel"	No; beyond scope.
§ 667.7	Payment of attorney's fees by judgment debtor in certain cases against healthcare providers	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations as attorneys.
§ 670	Reference to "defendant's attorney" in provision regarding judgment roll	Yes; modification should make clear that "attorney" includes paraprofessionals when authorized to appear.
§ 674	Reference to "judgment debtor's attorney of record" in provision regarding abstract of judgment	Yes; modification should make clear that "attorney" includes paraprofessionals when authorized to appear.
§ 676.9	Uniform Foreign Money Claims Act -- Prejudgment interest based on conduct of party's attorney causing undue delay or expense	Yes; modification should make clear that "attorney" includes paraprofessionals when authorized to appear.
§§ 684.010, 684.020, 684.040, 684.050, 684.110, 684.115, 684.0120	Service of papers in enforcement of judgment actions	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.

§§ 685.040, 685.070, 687.010	Enforcing judgments: judgment creditor may get “attorney’s fees”; other references to judgment creditor’s attorney	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 687.410	Attorney’s fees to prevailing party in action related to improper lien on real property owner	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§§ 697.510, 697.550, 699.030, 699.060	Attorney’s fees on motions related to judgment lien on personal property; other references to attorneys in proceedings related to judgment on personal property	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 699.510	Writ of execution: attorney’s fee for someone wrongfully subject to enforcement of judgement proceedings	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 701.020, 701.030	Attorney’s fees incurred by judgment creditor in establishing third party liability; similar provision re garnishee’s liability	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 701.600	Attorney’s fees for defaulting bidder in execution sale	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 701.820	Attorney’s fees for levying officer in execution sale	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.

§§ 704.790, 706.105	Notice to attorneys for judgment debtor	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§§ 708.110, 7087.120, 708.170	Notice regarding liability to judgment creditor for attorney's fees connected with examination	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§§ 720.160, 720.260	Indemnification by judgment creditor of third person claimant or secured party or lienholder against attorney's fees	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§§ 724.050, 724.220	Attorney's fees by judgment debtor related to satisfaction of judgment	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 724.060	Satisfaction of judgment; signature by attorney	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§§ 724.080, 724.260	Attorney's fees related to satisfaction of judgment	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§§ 726, 730	Attorney's fees and notices to attorneys related to mortgage foreclosures	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 731.5	Action related to closure of public trails; attorney's fees	No; beyond scope.
§ 736	Action by secured lender related to environmental breach; attorney's fees	No; beyond scope.
§ 751.23	Notices related to actions to reestablish destroyed land records	No; beyond scope.
§§ 765.020, 765.030	Petition regarding lien or encumbrance filed to harass	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.

§§ 836, 839, 842	Notices and service related to groundwater rights	No; beyond scope.
§ 871.5	Action related to good faith improvement of property owned by another; attorney's fees	No; beyond scope.
§§ 871.11 , 1179.03	Attorney's fees in Actions to Recover Covid-19 Rental Debt	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§§ 873.110, 873.120, 873.150, 873.650	Referee in partition action may engage an attorney; related provisions	No; beyond scope.
§§ 873.690, 873.760, 874.010, 874.020	Attorney of party in a partition sale may not purchase; attorney's fees related to partition sales	No; beyond scope.
§ 903	Attorney of record of person who dies with right to appeal may file appeal	No; beyond scope.
§ 904.1	Appealability of sanctions orders against attorneys of parties	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 917.75	Effect of notice of appeal on enforcement of judgment or order awarding certain "attorney's fees" or costs	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 991	Affidavit accompanying summons related to proceeding against joint debtors to be signed by "plaintiff, his agent,	No; likely beyond scope, but reference to attorney also includes "agent" and "representative" and would thus cover a paraprofessional.

	representative, or attorney”	
§ 996.480	Attorney’s fee for beneficiary claiming against surety	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 998	Reference to attorney’s fees as part of post-offer costs; reference to “counsel”	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 1002	Settlement agreement for civil actions involving acts that are predicates for sex crimes; reference to State Bar investigation of violations	No; beyond scope.
§ 1010	Notices of motion may be served on an “attorney”	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 1010.6	Electronic service: Various references to attorney and counsel	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 1011	Personal service: various references to attorney	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§§ 1013a, 1013b	Proof of service; references to “an active member of the State Bar of California”	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 1014	Appearance: defendant’s attorney entitled to notice after defendant appears	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 1015	Service on attorney of non-resident party	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 1019.5	Notice of court’s decision on motions to parties’ attorneys	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.

§ 1020	Service by registered mail: reference to notices provided to a party's attorney	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 1021	Reference to attorney's or counsel's fees being decided by agreement except where law provides otherwise	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees.
§ 1021.4	Attorney's fees for plaintiff against defendant who committed felony	No; beyond scope.
§ 1021.5	Attorney's fees for party enforcing right affecting the public interest	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees.
§ 1021.6	Attorney's fees for party prevailing on claim for implied indemnity	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees.
§ 1021.7	Action against peace officers or for libel or slander pursuant to Civ. Code §§ 45 or 46; attorney's fees for defendants	No; beyond scope.
§ 1021.9	Attorney's fees for prevailing plaintiff in actions for trespassing on certain agricultural land	No; beyond scope.
§ 1021.10. Action for failure to comply with Jenkins Act	Cigarette Tax enforcement; attorney's fees	No; beyond scope.
§ 1028.5	Attorney's fees in civil action between small	No; beyond scope.

	business or licensee and state regulatory agency	
§ 1029.5	Liability of unlicensed person providing goods and services for which license is required; attorney's fees	No; beyond scope.
§ 1030	Undertaking as security for attorney's fees where plaintiff resides out of state	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees.
§ 1031	Attorney's fee in action for recovery of wages where less than \$300 demanded	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees.
§ 1033	Attorney's fees in limited civil case where recovery less than the maximum for small claims court	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees.
§ 1033.5	Attorney's fees as recoverable costs	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees.
§ 1036	Attorney's fees in inverse condemnation proceedings	No; beyond scope.
§ 1036	Attorney's fees in bad faith actions under Government Claims Act or for express or implied indemnity or contribution	No; beyond scope.
§ 1054	Extension of time upon agreement of attorneys of record	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 1094.6	Reference to sending record to "attorney of record" related to judicial review of administrative orders	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.

§ 1132	Judgment by confession allowed where attorney representing defendant reviews and certifies	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 1161.2, 1161.2.5	Access to limited civil case records for summary proceedings for obtaining real property possession – reference to party’s attorney	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§§ 1174.2, 1174.21, 1174.3, 1179.01.5, 1179.02.5	Unlawful detainer – references to attorney’s fees and attorney of record	Yes; modification should make clear that paraprofessional fees for permitted paraprofessional work should be treated same as attorney fees and that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 1179	Relief against a forfeiture of a lease – tenant appearing without a lawyer may make application orally	Yes; modification should make clear that paraprofessional appearing without a paraprofessional permitted to engage in such representation or lawyer may make the application orally.
§§ 1206, 1208	Notice regarding certain writs of attachment or execution	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§§ 1209, 1218	Provisions relating to contempt by attorneys and counsel	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
Part 3, Title 7 §§ 1235.140, 1250.330, 1250.410, 1255.450, 1258.230, 1263.615, 1268.220, 1273.020, 1273.040	Eminent Domain Law	No; beyond scope.

§§ 1280 – 1294.4, 1297.11 – 1297.432	Provisions regarding arbitration	No; beyond scope.
§§ 1374, 1423	Attorney’s fees related to unclaimed property	No; beyond scope.
§ 1734, 1735	Attorney’s declaration in application for judgment under Tribal Court Civil Money Judgment Act; related provision regarding notice to attorney	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 1775.1	Civil Action Mediation: “any act to be performed by a party may also be performed by his or her counsel or record”	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§ 1952.2	Reference to attorneys in provision regarding return of trial materials	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when performing permitted tasks.
§§ 1985, 1985.2, 1985.3, 1985.6, 1985.8, 1987, 1987.1, 1987.2, 1987.5	Attorney at law may issue subpoenas; related provisions; provisions regarding personal and employment records; provision regarding notice to counsel	Yes; modification should make clear that paraprofessionals may issue subpoenas (to the extent within scope of permitted practice) and that they have the same related obligations and rights as attorneys when performing permitted subpoena-related tasks.
§ 2017.220	Discovery sanctions pertaining to discovery in matter involving sexual harassment/assault/battery	No; beyond scope.
§ 2020.210	Attorney of record may issue a deposition subpoena	Yes; modification should make clear that paraprofessionals may issue subpoenas (to the extent within scope of permitted practice) and that they have the same related obligations and rights as attorneys when performing permitted subpoena-related tasks.

§ 2020.220	Reference to attorney work product and discovery sanctions related to subpoenas of ESI	Yes; reference to attorney work product should be modified as necessary based on Working Group recommendation regarding applicability of attorney work product exception to paraprofessionals. Modification should also make clear that that paraprofessionals have the same obligations and rights as attorneys when conducting permitted ESI discovery.
§§ 2020.420, 2025.320	Deposition officer shall not be a relative or employee of an attorney of the parties; other provisions relating to conduct of deposition officer	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when engaged in permitted representation.
§ 2020.430	Reference to delivery of business records to subpoenaing party's attorney	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when engaged in permitted tasks.
§§ 2017.020, 2019.030, 2023.050, 2023.010, 2023.020, 2023.030, 2023.040, 2023.050, 2024.050, 2025.260, 2025.410, 2025.420, 2025.430, 2025.440, 2025.450, 2025.480, 2025.520, 2025.530, 2028.040,	Discovery sanctions on attorneys	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when engaged in permitted tasks.

2028.050, 2030.090, 2030.290, 2030.300, 2030.310, 2031.060, 2031.300, 2031.310, 2031.320, 2032.240, 2032.250, 2032.510, 2032.620, 2032.650, 2033.080, 2033.280, 2033.290, 2034.250, 2034.470, 2034.630, 2034.730		
§§ 2025.220, 2025.240, 2025.290 (counsel), 2025.295 (counsel), 2025.310, 2025.330, 2025.340 (attorney and counsel), 2025.410, 2025.420 (counsel), 2025.460, 2025.510, 2025.550, 2025.560	Deposition notice: various references to attorney; attendance at deposition by attorney; provisions related to recording, objections, transcripts etc.	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when engaged in permitted tasks.

§§ 2028.060, 2028.070	Deposition by written questions: provisions relating to what attorneys can do	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when engaged in permitted tasks.
§§ 2029.300, 2029.350. Foreign subpoenas	Issuing CA subpoenas based on foreign proceedings	No; beyond scope.
§§ 2030.050, 2030.250	Various references to attorneys in provisions regarding interrogatories; identification on forms, signing responses, etc.	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when engaged in permitted tasks.
§§ 2031.250	Various references to attorneys in provisions regarding document requests; identification on forms, signing responses, etc.	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when engaged in permitted tasks.
§§ 2032.510, 2032.530	“Attorney” of examinee may attend medical examination	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when engaged in permitted tasks.
§§ 2033.050, 2033.240, 2033.420	Requests for admission: forms, signing responses, attorney’s fees for failing to admit	Yes; modification should make clear that paraprofessionals have same obligations and rights as attorneys when engaged in permitted tasks.
§§ 2034.260, 2034.430, 2034.450	Exchange of expert witness information: Various references to attorney and counsel	Yes, if Working Group recommends permitting paraprofessionals to engage in expert discovery in any practice area; modification should make clear that paraprofessionals have same obligations and rights as attorneys when engaged in permitted tasks.

**REVIEW OF EVIDENCE CODE FOR STATUTES NEEDING ADJUSTMENT TO IMPLEMENT PARAPROFESSIONAL PROGRAM**

Issues Needing Working Group Input

Evidence Code Section	Reference to Attorney/Lawyer	Notes/Recommendation
§§ 912(c), 917, 950, 951, 952, 954, 955, 956, 956.5, 958, 959, 962	Provisions establishing "Lawyer-client privilege"	<p>These sections create the evidentiary privilege for confidential lawyer-client communications. Arguably, the statutes would cover communications between clients and paraprofessionals without modification because Evidence Code section 950 defines "lawyer" for purposes of the privilege as "a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation." The paraprofessionals contemplated by this program will be authorized to practice law to some extent. However, clarification is advisable to avoid confusion.</p> <p>The Working Group should recommend that communications between paraprofessionals and their clients should be privileged to the same extent as communications between attorneys and their clients. "The fundamental purpose [of the privilege] is to safeguard the confidential relationship between clients and their attorneys so as to promote full and open discussion of the facts and tactics surrounding individual legal matters." <i>Costco Wholesale Corp. v. Superior Ct.</i>, 47 Cal. 4th 725, 732 (2009) (internal quotations omitted). This rationale applies with equal force to paraprofessionals practicing law as it does to attorneys practicing law. Further, applying the privilege to paraprofessionals will encourage their clients to be candid and make full disclosures to the paraprofessionals. This will help ensure that paraprofessionals have all necessary facts, not only to represent their clients but to refer them to an attorney in the event that the client needs legal services that can only be performed by an attorney.</p>

References to Attorney/Lawyer in Code of Civil Procedure – No Unresolved Policy Issue

Evidence Code Section	Reference to Attorney/Lawyer	Change Needed to Encompass Paraprofessionals
§ 351.3	Immigration status shall not be disclosed by a party "or his or her attorney"	Yes; modification should make clear that paraprofessional performing permitted activities has same obligations and rights as attorney.

§ 351.4	In criminal action, immigration status shall not be disclosed by a party “or his or her attorney”	No; beyond scope.
§ 352.1	Exclusion of victim name and address; reference to notice to defendant’s attorney	No; beyond scope.
§ 712	Evidence of blood samples at trial in criminal action; service of affidavit on counsel	No; beyond scope.
§ 752	Interpreters – reference to witness being understood by counsel	Yes; modification should make clear that paraprofessional performing permitted activities has same obligations and rights as attorney, including to understand witness.
§ 756	Court interpreter services: reference to assisting communications with “party’s attorney”	Yes; modification should make clear that paraprofessional performing permitted activities has same obligations and rights as attorney, including interpreter services.
§ 777	Exclusion of witnesses does not apply to employee designated by “attorney” of non-natural person party	Yes; modification should make clear that paraprofessional performing permitted activities has same obligations and rights as attorney.
§ 783	Reference to “plaintiff’s attorney” in provision concerning motion practice in civil action alleging sexual harassment, sexual assault, or sexual battery	No; beyond scope.
§ 913	Counsel may not comment on exercise of privilege	Yes; modification should make clear that paraprofessional performing permitted activities has same obligations and rights as attorney.
§§ 966, 967, 968	Lawyer referral service-client privilege	No; beyond scope.

§ 1017	Reference to lawyer for criminal defendant advising on insanity plea or defense based on mental/emotional condition in provision regarding psychotherapist-client privilege	No; beyond scope.
§ 1061	Reference to dissemination of trade secrets in criminal proceedings to “counsel for the parties, including their associate attorneys, paralegals, and investigators”	No; beyond scope.
§§ 1062, 1063	Reference to “defendant’s counsel” attending in camera hearing on motion to exclude public from criminal proceedings due to trade secret; related provision	No; beyond scope.
§ 1122	Disclosure of document regarding attorney’s compliance with Evidence Code § 1129 (mediation confidentiality)	Yes; modification should make clear that paraprofessional performing permitted activities has same obligations and rights as attorney.
§ 1127	Attorney’s fees for mediator defending against discovery into mediation writings	No; beyond scope.
§ 1129	Attorney must obtain signed acknowledgment by client of confidentiality	Yes; modification should make clear that paraprofessional performing permitted activities has same obligations and rights as attorney.

	restrictions prior to mediation	
§ 1158	Inspection of medical records by “attorney” for patient	Yes; modification should make clear that paraprofessional performing permitted activities has same obligations and rights as attorney.
§ 1293	Reference to “attorney for parent or guardian” making motion in a proceeding to declare the minor a dependent child	Yes, if paraprofessional practice in this area is recommended; modification should make clear that paraprofessional performing permitted activities has same obligations and rights as attorney.
§ 1350	Criminal trial – reference to defendant’s counsel in provision relating to exception to hearsay rule for unavailable declarant	No; beyond scope.
§ 1380	Criminal trial – reference to defendant’s counsel in provision relating to exception to hearsay rule for statements by elder and dependent adult victims of abuse	No; beyond scope.
§ 751	Intepreter’s oath makes reference to providing translation to “counsel”	Yes; modification should make clear that paraprofessional performing permitted activities has same obligations and rights as attorney.
§§ 1560(e); 1561	Business records subpoena may direct witness to make records available for inspection by party’s “attorney”; similar references	Yes; modification should make clear that paraprofessional performing permitted activities has same obligations and rights as attorney.

§ 1563	References to attorney and attorney's fees in provisions regarding witness fees	Yes; modification should make clear that paraprofessional performing permitted activities has same obligations and rights as attorney and that paraprofessional fees for authorized work should be treated the same as attorney fees.
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**STATE BAR ACT PROVISIONS REGARDING ATTORNEY DUTIES**

**Working Group Should Consider Recommendation**

	<b>CA State Bar Act Section, Title, and Text</b>	<b>Any Related Paraprofessional RPC Already Being Considered</b>	<b>Notes /Recommendation</b>
1	<p><a href="#">6068</a> Duties of Attorneys</p> <p>Subd. (i) re cooperate and participate in a regulatory or disciplinary proceeding against the attorney</p> <p>“It is the duty of an attorney to ... cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself. However, this subdivision shall not be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subdivision shall not be construed to require an attorney to cooperate with a request that requires him or her to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the attorney's practice. Any exercise by an attorney of any constitutional or statutory privilege shall not be used against the attorney in a regulatory or disciplinary proceeding against him or her.”</p>		<p>To allow for effective administration of the Paraprofessional discipline system, a similar requirement should be imposed on Paraprofessionals. The Working Group should recommend that the Legislature extend an analogous provision to Paraprofessionals.</p>
2	<p><a href="#">6068</a> Duties of Attorneys</p> <p>Subd. (j) re comply with section 6002.1 (licensee records)</p> <p>“It is the duty of an attorney to ... comply with the requirements of Section 6002.1.”</p>		<p>To allow for effective administration of Paraprofessional licensing and regulation, a similar requirement should be imposed on Paraprofessionals. The Working Group should recommend that the Legislature extend an analogous provision to Paraprofessionals, imposing a duty to comply with statutes or rules enacted regarding State Bar records to be maintained by</p>

**STATE BAR ACT PROVISIONS REGARDING ATTORNEY DUTIES**

			<p>Paraprofessionals. The particular records Paraprofessionals will be required to maintain and update (i.e., the Paraprofessional equivalent of Section 6002.1) will be decided as an administrative/operational matter.</p>
<p>3</p>	<p><a href="#">6068</a> Duties of Attorneys</p> <p>Subd. (o) re w/in 30-days, self-report to the State Bar certain enumerated occurrences (e.g., the bringing of an indictment or information charging a felony against the attorney)</p> <p>“It is the duty of an attorney to ... report to the State Bar, in writing, within 30 days of the time the attorney has knowledge of any of the following:</p> <p>(1) The filing of three or more lawsuits in a 12-month period against the attorney for malpractice or other wrongful conduct committed in a professional capacity.</p> <p>(2) The entry of judgment against the attorney in a civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity.</p> <p>(3) The imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000).</p> <p>(4) The bringing of an indictment or information charging a felony against the attorney.</p> <p>(5) The conviction of the attorney, including any verdict of guilty, or plea of guilty or no contest, of a felony, or a misdemeanor committed in the course of the practice of law, or in a manner in which a client of the attorney was the victim, or a necessary element of which, as determined by the statutory or common law definition of the misdemeanor, involves improper conduct of an attorney, including dishonesty or other</p>		<p>To allow for effective administration of the Paraprofessional discipline system, a similar requirement should be imposed on Paraprofessionals. The Working Group should recommend that the Legislature extend an analogous provision to Paraprofessionals.</p>

**STATE BAR ACT PROVISIONS REGARDING ATTORNEY DUTIES**

	<p>moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or a misdemeanor of that type.</p> <p>(6) The imposition of discipline against the attorney by a professional or occupational disciplinary agency or licensing board, whether in California or elsewhere.</p> <p>(7) Reversal of judgment in a proceeding based in whole or in part upon misconduct, grossly incompetent representation, or willful misrepresentation by an attorney.</p> <p>(8) As used in this subdivision, “against the attorney” includes claims and proceedings against any firm of attorneys for the practice of law in which the attorney was a partner at the time of the conduct complained of and any law corporation in which the attorney was a shareholder at the time of the conduct complained of unless the matter has to the attorney's knowledge already been reported by the law firm or corporation.</p> <p>(9) The State Bar may develop a prescribed form for the making of reports required by this section, usage of which it may require by rule or regulation.</p> <p>(10) This subdivision is only intended to provide that the failure to report as required herein may serve as a basis of discipline.”</p>		
4	<p>6103.7 Report of Suspected Immigration Status Cause for Discipline</p> <p>“It is cause for suspension, disbarment, or other discipline for any licensee of the State Bar to report suspected immigration status or threaten to report suspected immigration status of a witness or party to a civil or administrative action or his or her family member to a federal, state, or local agency because the witness or party exercises or has exercised a right</p>	<p>(Compare Rule 3.4 re improperly causing a witness to be unavailable; Rule 8.4 re conduct prejudicial to the administration of justice; and Rule 3.10 re improper threats to bring criminal, administrative or disciplinary charges)</p>	<p>Rules 3.4, 8.4, and 3.1 cover related but not coextensive ground.</p> <p>Working Group should consider recommending that Paraprofessional Rules of Professional Conduct incorporate the provisions of Cal Bus. &amp; Prof. Code § 6103.7. Alternatively, the Working Group could consider recommending that the Legislature extend the statutory provision to cover Paraprofessionals, and consider implementing a rule only if the Legislature does not do so.</p>

**STATE BAR ACT PROVISIONS REGARDING ATTORNEY DUTIES**

	related to his or her employment or hiring of residential real property, broadly interpreted. As used in this section, “family member” means a spouse, parent, sibling, child, uncle, aunt, niece, nephew, cousin, grandparent, or grandchild related by blood, adoption, marriage, or domestic partnership.”		
5	6106.1 Advocacy of Overthrow of Government  “Advocating the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, constitutes a cause for disbarment or suspension.”	(Compare Rule 8.4 re certain criminal conduct)	Rule 8.4 covers similar ground.  Working Group should consider recommending that Paraprofessional Rules of Professional Conduct incorporate the provisions of Cal Bus. & Prof. Code § 6106.1. Alternatively, the Working Group could consider recommending that the Legislature extend the statutory provision to cover Paraprofessionals, and consider implementing a rule only if the Legislature does not do so.
6	6106.9 Sexual Relations Between Attorney and Client  “(a) It shall constitute cause for the imposition of discipline of an attorney within the meaning of this chapter for an attorney to do any of the following: (1) Expressly or impliedly condition the performance of legal services for a current or prospective client upon the client's willingness to engage in sexual relations with the attorney. (2) Employ coercion, intimidation, or undue influence in entering into sexual relations with a client. (3) Continue representation of a client with whom the attorney has sexual relations if the sexual relations cause the attorney to perform legal services incompetently in violation of Rule 3-110 of the Rules of Professional Conduct of the State Bar of California, or if the sexual relations would, or would be likely to, damage or prejudice the client's case.	Rule 1.8.10 sexual relations with client	The 6106.9 prohibitions in subd. (a)(1) [conditioning legal services on sexual relations] and (a)(2) [use coercion or undue to obtain sexual relations] are not in the RPC because the RPC applies only when sexual relations occur.  Working Group should recommend that Paraprofessional Rules of Professional Conduct incorporate the provisions of Cal Bus. & Prof. Code § 6106.9.  Legislature may decide to include Paraprofessionals in statute as well.  Note: Regulation Subcommittee voted 3-0 on June 17 to incorporate statute into Rules of Paraprofessional Conduct.

**STATE BAR ACT PROVISIONS REGARDING ATTORNEY DUTIES**

<p>(b) Subdivision (a) shall not apply to sexual relations between attorneys and their spouses or persons in an equivalent domestic relationship or to ongoing consensual sexual relationships that predate the initiation of the attorney-client relationship.</p> <p>(c) Where an attorney in a firm has sexual relations with a client but does not participate in the representation of that client, the attorneys in the firm shall not be subject to discipline under this section solely because of the occurrence of those sexual relations.</p> <p>(d) For the purposes of this section, “sexual relations” means sexual intercourse or the touching of an intimate part of another person for the purpose of sexual arousal, gratification, or abuse.</p> <p>(e) Any complaint made to the State Bar alleging a violation of subdivision (a) shall be verified under oath by the person making the complaint.”</p>		
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**No Working Group Recommendation Needed**

	CA State Bar Act Section and Title	Any Related Paraprofessional RPC Already Being Considered	Notes /Recommendation
1	6068 Duties of Attorneys Subd. (a) re support laws	Rule 8.4 conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation; and certain criminal conduct	Rule 8.4 covers similar ground.  Legislature may decide to include Paraprofessionals in statute as well.

**STATE BAR ACT PROVISIONS REGARDING ATTORNEY DUTIES**

	CA State Bar Act Section and Title	Any Related Paraprofessional RPC Already Being Considered	Notes /Recommendation
2	6068 Duties of Attorneys Subd. (b) re maintain respect for courts & judicial officers	Rule 8.2 false or reckless statement concerning the qualifications or integrity of a judge  Rule 8.4 conduct prejudicial to the administration of justice	Rules 8.2 and 8.4 cover similar ground.  Legislature may decide to include Paraprofessionals in statute as well.
3	6068 Duties of Attorneys Subd. (c) re counsel or maintain only actions, proceedings or defenses that are legal or just	Rule 1.2.1 shall not counsel a client in conduct that is criminal, fraudulent or a violation of law	Rule 1.2.1 covers similar ground.  Legislature may decide to include Paraprofessionals in statute as well.
4	6068 Duties of Attorneys Subd. (d) re use only means consistent with truth & not mislead a judge or judicial officer	Rule 3.3 candor to a tribunal	Rule 3.3 covers similar ground.  Legislature may decide to include Paraprofessionals in statute as well.
5	6068 Duties of Attorneys Subd. (e) re maintain a client's confidence and secrets w/ exception for disclosure of information to prevent a criminal act of death or substantial bodily harm	Rule 1.6 confidential information of a client	Rule 1.6 covers similar ground.  Legislature may decide to include Paraprofessionals in statute as well.
6	6068 Duties of Attorneys Subd. (f) re to advance no fact prejudicial to the honor or reputation of a part or witness unless required by the justice of the cause	Rule 8.4 conduct prejudicial to the administration of justice (also, see 3 series)	Rule 8.4 covers similar ground.  Legislature may decide to include Paraprofessionals in statute as well.

**STATE BAR ACT PROVISIONS REGARDING ATTORNEY DUTIES**

	CA State Bar Act Section and Title	Any Related Paraprofessional RPC Already Being Considered	Notes /Recommendation
7	6068 Duties of Attorneys Subd. (g) re not to encourage either the commencement or continuance of an action or proceeding from any correct motive of passion or interest	Rule 1.2.1 shall not counsel a client in conduct that is criminal, fraudulent or a violation of law  Rule 1.3 diligence  Rule 1.7 conflicting relationships and interests  Rule 3.10 improper threats to bring criminal, administrative or disciplinary charges	Rules 1.2.1, 1.3, 1.7 and 3.10 cover similar ground.  Legislature may decide to include Paraprofessionals in statute as well.
8	6068 Duties of Attorneys Subd. (h) re never to reject the cause of the defenseless or oppressed		Might be implicated if Paraprofessionals become subject to appointment by courts. No action recommended now.
9	6068 Duties of Attorneys Subd. (k) re comply with all conditions of any disciplinary probation	Rule 8.1.1 compliance with conditions of discipline and agreements in lieu of discipline	Rule 8.1.1 covers similar ground.  Legislature may decide to include Paraprofessionals in statute as well.
10	6068 Duties of Attorneys Subd. (l) re keep all agreements made in lieu of discipline	Rule 8.1.1 compliance with conditions of discipline and agreements in lieu of discipline	Rule 8.1.1 covers similar ground.  Legislature may decide to include Paraprofessionals in statute as well.

**STATE BAR ACT PROVISIONS REGARDING ATTORNEY DUTIES**

	CA State Bar Act Section and Title	Any Related Paraprofessional RPC Already Being Considered	Notes /Recommendation
11	6068 Duties of Attorneys Subd. (m) re respond promptly to reasonable status inquiries by clients and keep clients informed of significant developments	Rule 1.4 communication with clients	Rule 1.4 covers similar ground.  Legislature may decide to include Paraprofessionals in statute as well.
12	6068 Duties of Attorneys Subd. (n) re provide copies to clients of certain documents as prescribed in the rules	Rule 1.4 communication with clients, including requests for copies of significant documents	Rule 1.4 covers similar ground.  Legislature may decide to include Paraprofessionals in statute as well.
13	6090.5 Attorney/Client Agreement No to File Complaint-Cause for Discipline	Rule 5.6 shall not participate in offering or making an agreement that precludes the reporting of a rule violation	Rule 5.6 covers similar ground.  Legislature may decide to include Paraprofessionals in statute as well.
14	6100 Disbarment or Suspension under statutes do not limit inherent Supreme Court authority to discipline		6100 is a separation of powers provision. No modification necessary to launch program, though Legislature may choose to explicitly recognize Supreme Court's inherent power over the practice of law with respect to Paraprofessionals.
15	6103 Sanctions for Violation or Oath or Attorney's Duties		If Paraprofessionals are required to take an oath, Legislature may choose to extend to Paraprofessionals.
16	6103.5 Communication of Written Offer of Settlement Offer to Client	Rule 1.4.1 communication of settlement offers	Rule 1.4.1 covers similar ground.  Legislature may decide to include Paraprofessionals in statute as well.
17	6103.6 re prohibited dual compensation of a lawyer serving as trustee (incorporates by reference Probate Code sec. 15687)	(Compare Rule 1.5 re illegal fees)	Beyond scope of Paraprofessional program.  6103.6 refers to Probate Code sec. 21350 & sec. 21360, but both are repealed.  Probate Code sec. 15687 remains valid.

**STATE BAR ACT PROVISIONS REGARDING ATTORNEY DUTIES**

	CA State Bar Act Section and Title	Any Related Paraprofessional RPC Already Being Considered	Notes /Recommendation
18	6104 Appearing for Party without Authority	Rule 3.3 misleading a tribunal	Rule 3.3 covers similar ground.  Legislature may decide to include Paraprofessionals in statute as well.
19	6105 Permitting Misuse of Name	Rule 5.1 and 5.3 supervision  Rule 5.5 aiding unauthorized practice	Rules 5.1, 5.3, and 5.5 Rule 1.4.1 cover similar ground.  Legislature may decide to include Paraprofessionals in statute as well.)
20	6106 Moral Turpitude, Dishonesty or Corruption Irrespective of Criminal Conviction	Rule 8.4 conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation; and certain criminal conduct	Rule 8.4 covers similar ground.  Legislature may decide to include Paraprofessionals in statute as well.
21	6106.2 re abusive ADA construction defect demand letters (incorporates by reference Civ. Code sec. 55.31 or 55.32)	Rule 1.2.1 shall not counsel a client in conduct that is criminal, fraudulent or a violation of law	Likely beyond scope. Rule 1.2.1 covers similar ground.
22	6106.3 re abusive mortgage loan modification conduct (incorporates by reference Civ. Code sec. 2944.6)	Rule 1.1 Competence  Rule 1.2.1 shall not counsel a client in conduct that is criminal, fraudulent or a violation of law  Rule 1.5 illegal fees.	Likely beyond scope. Rules 1.1, 1.2.1 and 1.5 cover similar ground.

**STATE BAR ACT PROVISIONS REGARDING ATTORNEY DUTIES**

	CA State Bar Act Section and Title	Any Related Paraprofessional RPC Already Being Considered	Notes /Recommendation
23	6106.5 Insurance Claims; Fraud (incorporates by reference Ins. Code sec. 1871.4 & Penal Code sec. 550)	Rule 8.4 conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation; and certain criminal conduct	Likely beyond scope. Rule 8.4 covers similar ground.
24	6106.7 Professional Sports Service Contracts (incorporates by reference Miller-Ayala Athlete Agents Act, Labor Code sec. 18895)	Rule 1.5 illegal fees	Likely beyond scope. Rule 1.5 covers similar ground.
25	6128 Deceit, Collusion, Delay of Suit and Improper Receipt of Money as Misdemeanor (Note: imposes a criminal penalty but has been used for disciplinary charges.)	Rule 8.4 conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation; and certain criminal conduct  Rule 3.3 misleading a tribunal  Rule 1.3 diligence	Rule 8.4 covers similar ground.  Legislature may decide to include Paraprofessionals in statute as well.
26	6129 Buying Claim as Misdemeanor (Note: imposes criminal penalty.)	Rule 8.4 conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation; and certain criminal conduct  Rule 1.7 conflicting relationships and interests	Rules 8.4 and 1.7 covers similar ground.  Legislature may decide to include Paraprofessionals in statute as well.

**STATE BAR ACT PROVISIONS REGARDING ATTORNEY DUTIES**

	CA State Bar Act Section and Title	Any Related Paraprofessional RPC Already Being Considered	Notes /Recommendation
27	6130 Disbarred or Suspended Attorney Suing as Assignee (Note: no statement of penalty.)	<p>Rule 8.4 conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation; and certain criminal conduct</p> <p>Rule 1.7 conflicting relationships and interests</p>	<p>Rules 8.4 and 1.7 covers similar ground.</p> <p>Legislature may decide to include Paraprofessionals in statute as well.</p>
28	6131 Aiding Defense Where Partner or Self has Acted as Public Prosecutor; Misdemeanor and Disbarment	<p>Rule 1.6 confidential information of a client</p> <p>Rule 1.7 and 1.9 conflicting relationships and interests</p>	<p>Beyond scope. It is not anticipated that paraprofessionals will serve as prosecutors.</p>
29	6132 Law Firm Name-Removal of Name of Disciplined Attorney (Note: this code section does not include a statement of a penalty/remedy.)	<p>Rules 7.1, 7.2 and 7.4 communications, advertising, and firm names</p> <p>Rule 5.5 aiding unauthorized practice</p> <p>Rule 5.3.1 employment of disbarred, suspended, resigned, or involuntarily inactive lawyers or licensed paraprofessionals</p>	<p>Rules 7.1, 7.2, 7.4, 5.5, and 5.3.1 cover similar ground.</p> <p>Legislature may decide to include Paraprofessionals in statute as well.</p>

**STATE BAR ACT PROVISIONS REGARDING ATTORNEY DUTIES**

	CA State Bar Act Section and Title	Any Related Paraprofessional RPC Already Being Considered	Notes /Recommendation
30	6133 Supervision of Disciplined Attorney Activities by Law Firms	<p>Rules 7.1, 7.2 and 7.4 communications, advertising, and firm names</p> <p>Rule 5.1 and 5.3 supervision</p> <p>Rule 5.5 aiding unauthorized practice</p> <p>Rule 5.3.1 employment of disbarred, suspended, resigned, or involuntarily inactive lawyers or licensed paraprofessionals</p>	<p>Rules 7.1, 7.2, 7.4, 5.1, 5.3, 5.3.1, and 5.5 cover similar ground.</p> <p>Legislature may decide to include Paraprofessionals in statute as well.</p>
31	6146 – 6149 re MICRA and written fee agreement requirements	<p>Rule 1.5.2 written agreement and informed consent</p> <p>Rule 1.5 Illegal fees</p>	Beyond scope.
32	6157 – 6159.2 re legal advertising, including electronic media advertising and retention of copies of advertisements	Rules 7.1 – 7.6 communications, solicitation, advertising, and firm names	<p>The 7 series rules cover similar ground.</p> <p>Legislature may decide to include Paraprofessionals in statute as well.</p>
33	6155 & 6156 re certified lawyer referral services, including a prohibition that no attorney shall accept referrals from a service that is not registered with the State Bar	Rule 5.4(a)(4) permitted fee sharing with an authorized paraprofessional referral service	Beyond scope unless Lawyer Referral Services regulatory scheme is expanded to include paraprofessionals.

**STATE BAR ACT PROVISIONS REGARDING ATTORNEY DUTIES**

	CA State Bar Act Section and Title	Any Related Paraprofessional RPC Already Being Considered	Notes /Recommendation
34	6175 – 6177 re sale of financial products to client by a lawyer acting as a fiduciary	Rule 1.8.1 business transactions with a client and pecuniary interests adverse to a client	Rule 1.8.1 covers similar ground.  Legislature may decide to include Paraprofessionals in statute as well.

**OPEN ISSUES FOR WORKING GROUP CONSIDERATION AND RECOMMENDATION FROM REVIEW OF ATTORNEY LICENSING STATUTES & RULES**

	<b>Rule, Title, and Text</b>	<b>Modification or Parallel Provision Needed To Recognize Paraprofessional Program?</b>	<b>Directly Related Working Group Resolutions?</b>	<b>Recommendation/Notes</b>
1	<p>State Bar Rule 4.33 [Evaluation of Study Completed or Contemplated]</p> <p>“An applicant may request that the Committee determine whether general or legal education contemplated or completed by the applicant meets the eligibility requirements of these rules for beginning the study of law, the First-Year Law Students’ Examination or the California Bar Examination. The request must be submitted on the required form with certified transcripts and the fee set forth in the Schedule of Charges and Deadlines. A written response indicating whether or not the education is sufficient will be issued within sixty days of receipt of the request.”</p>	Yes.	<p>The Working Group has adopted licensing requirements providing the following:</p> <p>“Coursework taken as part of a law school or paralegal program may satisfy the program’s educational requirements.<sup>1</sup></p> <p><sup>1</sup> The waiver process will require the development of educational standards for curriculum, specifying the components for each required course. Law schools and paralegal programs will be required to provide course descriptions for review, to ensure that the completion of the courses will allow for a waiver for the specified educational requirement. This process will require State Bar staffing resources to review waiver requests from applicants, to ensure that coursework complies</p>	The Working Group should consider making a recommendation whether it recommends a similar review process to that set forth in State Bar Rule 4.33.

			with relevant requirements.”	
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**AREAS WHERE NO MODIFICATIONS TO STATUE OR RULES NEEDED**  
**OR WHERE MODIFICATIONS WILL FOLLOW FROM EXISTING WORKING GROUP RECOMMENDATIONS AND STATE BAR ADMINISTRATIVE/OPERATIONAL DECISIONS**

**Business & Professions Code Attorney Admissions Provisions**

	<b>Section &amp; Title</b>	<b>Modification or Parallel Provision Needed To Recognize Paraprofessional Program?</b>	<b>Directly Related Working Group Resolutions?</b>	<b>Notes</b>
1	§ 6060 [Qualifications; Examination]	Yes.	<u>Educational Prerequisites, Educational Requirements, Practical Training, Testing, Moral Character and Background Check:</u> See Feb. 26, 2021 Memo re: Recommendations for Licensing Requirements for Paraprofessional Program.	Statute and/or rules will be developed to implement licensing requirements recommended by Working Group. No additional issues raised by this statute.
2	§ 6060.1 [Violation of University or Law School Rules; Use in Denying Admission to Practice Law]	Yes.	<u>Moral Character and Background Check:</u> Moral character determination requirements to mirror attorney requirements.	Statute and/or rules will be developed to implement licensing requirements recommended by Working Group. No additional issues raised by this statute.
3	§ 6060.2 [Confidentiality of Investigations or Proceedings Concerning Moral Character; Written Waiver; Permitted Disclosures]	Yes.	<u>Moral Character and Background Check:</u> Moral character determination requirements to mirror attorney requirements.	Statute and/or rules will be developed to implement licensing requirements recommended by Working Group. No additional issues raised by this statute.
4	§ 6060.3 [Applications for Bar Examination; Filing Deadline; Late Filings; Late Filing Fees]	Yes.	<u>Testing:</u> Tests to be developed and administered by State Bar.	Administrative/operational matter: test development and administration.

	<b>Section &amp; Title</b>	<b>Modification or Parallel Provision Needed To Recognize Paraprofessional Program?</b>	<b>Directly Related Working Group Resolutions?</b>	<b>Notes</b>
5	§ 6060.5 [Different Bar Examinations for Particular Applicants]	Yes.	No.	Administrative/operational matter: test development and administration.
6	§ 6060.6 [Application for Registration; Federal Tax ID Number in Lieu of Social Security Number]	Yes.	No.	Administrative/operational matter: test development and administration.
7	§ 6060.7 [Approval, Regulation and Oversight of Degree-Granting Law Schools by Examining Committee]	No.	<u>Educational Prerequisites:</u> JD or LLM degree from ABA or Cal Accredited or Registered Law School or Paralegal qualified under B&P Code § 6450(c).	No new oversight contemplated by Working Group.
8	§ 6060.9 [Accreditation of Law Schools; Prohibited Conditions]	No.	<u>Educational Prerequisites:</u> JD or LLM degree from ABA or Cal Accredited or Registered Law School or Paralegal qualified under B&P Code § 6450(c).	No new oversight contemplated by Working Group.
9	§ 6060.25 [Confidentiality of Information Provided by Applicant to the State Bar for Admission and License to Practice Law; Disclosure of Information]	Yes.	No.	Administrative/operational matter: procedure for admissions.
10	§ 6061 [Disclosure Statement Required of Unaccredited Law Schools; Content; Signatures; Refunds; Rules and Regulations]	No.	<u>Educational Prerequisites:</u> JD or LLM degree from ABA or Cal Accredited or Registered Law School or Paralegal qualified under B&P Code § 6450(c).	No new oversight contemplated by Working Group.
11	§ 6061.5 [Unaccredited Law Schools; Self-Reference as	No.	<u>Educational Prerequisites:</u> JD or LLM degree from ABA	No new oversight contemplated by Working Group.

	<b>Section &amp; Title</b>	<b>Modification or Parallel Provision Needed To Recognize Paraprofessional Program?</b>	<b>Directly Related Working Group Resolutions?</b>	<b>Notes</b>
	University or Part of University]		or Cal Accredited or Registered Law School or Paralegal qualified under B&P Code § 6450(c).	
12	§ 6061.7 [Law Schools Not Approved by the ABA; Disclosure on Web Site; Required Information; Accuracy of Information]	No.	<u>Educational Prerequisites:</u> JD or LLM degree from ABA or Cal Accredited or Registered Law School or Paralegal qualified under B&P Code § 6450(c).	No new oversight contemplated by Working Group.
13	§ 6062 [Out-of-State Attorneys]	No.	No.	Paraprofessional program currently limited to California.
14	§ 6063 [Fees]	Yes.	No.	Administrative/operational matter: fee provisions.
15	§ 6064 [Admission]	Maybe.	No.	Administrative/operational matter: procedure for admission.
16	§ 6064.1 [Advocacy of Overthrow of Government]	Yes.	<u>Moral Character and Background Check:</u> Moral character determination requirements to mirror attorney requirements.	Statute and/or rules will be developed to implement licensing requirements recommended by Working Group. No additional issues raised by this statute.
17	§ 6067 [Oath]	Yes.	No.	Administrative/operational matter: procedure for admission.

**State Bar Rules Attorney Admissions Provisions**

	<b>Rule &amp; Title</b>	<b>Modification or Parallel Provision Needed To Recognize Paraprofessional Program?</b>	<b>Directly Related Working Group Resolutions?</b>	<b>Notes</b>
1	Rule 4.1 [Authority]	Yes.	No.	Administrative/operational matter.

	<b>Rule &amp; Title</b>	<b>Modification or Parallel Provision Needed To Recognize Paraprofessional Program?</b>	<b>Directly Related Working Group Resolutions?</b>	<b>Notes</b>
2	Rule 4.2 [Scope of Rules]	Yes.	No.	Administrative/operational matter.
3	Rule 4.3 [Definitions]	Yes.	No.	Administrative/operational matter.
4	Rule 4.4 [Confidentiality]	Yes.	No.	Administrative/operational matter.
5	Rule 4.5 [Submissions]	Yes.	No.	Administrative/operational matter.
6	Rule 4.6 [Investigations and Hearings]	Yes.	No.	Administrative/operational matter.
7	Rule 4.7 [Statistics]	Yes.	No.	Administrative/operational matter.
8	Rule 4.8 [Extensions of Time]	Yes.	No.	Administrative/operational matter.
9	Rule 4.9 [Review by Supreme Court]	Yes.	No.	Rules will be drafted providing Supreme Court with required oversight over admissions.
10	Rule 4.10 [Fees]	Yes.	No.	Administrative/operational matter: setting fees.
11	Rule 4.15 [Certification to Supreme Court]	Yes.	<u>Educational Prerequisites, Educational Requirements, Practical Training, Testing, Moral Character and Background Check: See Feb. 26, 2021 Memo re: Recommendations for Licensing Requirements for Paraprofessional Program.</u>	Administrative/operational matter: procedure for admission.
12	Rule 4.16 [Application for Admission]	Yes.	<u>Educational Prerequisites, Educational Requirements, Practical Training, Testing, Moral Character and Background Check: See Feb. 26, 2021 Memo re: Recommendations for Licensing Requirements for Paraprofessional Program.</u>	Administrative/operational matter: procedure for admission.

	<b>Rule &amp; Title</b>	<b>Modification or Parallel Provision Needed To Recognize Paraprofessional Program?</b>	<b>Directly Related Working Group Resolutions?</b>	<b>Notes</b>
13	Rule 4.25 [General Education]	No.	No.	This rule addresses educational requirements inapplicable to paraprofessional licensing requirements as recommended by Working Group.
14	Rule 4.26 [Legal Education]	Yes.	<u>Educational Prerequisites:</u> JD or LLM degree from ABA or Cal Accredited or Registered Law School or Paralegal qualified under B&P Code § 6450(c).	Statute and/or rules will be developed to implement licensing requirements recommended by Working Group. No additional issues raised by this Rule.
15	Rule 4.27 [Study in a Fixed-Facility Unaccredited Law School]	No.	<u>Educational Prerequisites:</u> JD or LLM degree from ABA or Cal Accredited or Registered Law School or Paralegal qualified under B&P Code § 6450(c).	Statute and/or rules will be developed to implement licensing requirements recommended by Working Group. No additional issues raised by this Rule concerning additional requirements placed on graduates of registered law schools.
16	Rule 4.28 [Study by Correspondence or Distance Learning]	No.	<u>Educational Prerequisites:</u> JD or LLM degree from ABA or Cal Accredited or Registered Law School or Paralegal qualified under B&P Code § 6450(c).	Statute and/or rules will be developed to implement licensing requirements recommended by Working Group. No additional issues raised by this Rule concerning additional requirements regarding correspondence or distance learning.
17	Rule 4.29 [Study in a Law Office of Judge's Chambers]	No.	<u>Educational Prerequisites:</u> JD or LLM degree from ABA or Cal Accredited or Registered Law School or Paralegal qualified under B&P Code § 6450(c).	Statute and/or rules will be developed to implement licensing requirements recommended by Working Group. No additional issues raised by this Rule concerning additional requirements regarding study of law in a judge's chambers.
18	Rule 4.30 [Legal Education in a Foreign State or Country]	No.	<u>Educational Prerequisites:</u> JD or LLM degree from ABA or Cal Accredited or Registered Law School or Paralegal qualified under B&P Code § 6450(c).	Beyond scope of licensing recommendations for paraprofessional program.

	<b>Rule &amp; Title</b>	<b>Modification or Parallel Provision Needed To Recognize Paraprofessional Program?</b>	<b>Directly Related Working Group Resolutions?</b>	<b>Notes</b>
19	Rule 4.31 [Credit for Law Study After Passing the First-Year Law Students' Examination]	No.	No.	No first-year law student's examination recommended as part of paraprofessional program.
20	Rule 4.32 [Repeated Courses]	Yes.	No.	Administrative/operational: recognition of coursework.
21				
22	Rule 4.40 [Moral Character Determination]	Yes.	<u>Moral Character and Background Check</u> : Moral character determination requirements to mirror attorney requirements.	Statute and/or rules will be developed to implement Moral Character recommendation of Working Group. No additional issues raised by this Rule.
23	Rule 4.41 [Application for Determination of Moral Character]	Yes.	<u>Moral Character and Background Check</u> : Moral character determination requirements to mirror attorney requirements.	Statute and/or rules will be developed to implement Moral Character recommendation of Working Group. No additional issues raised by this Rule.
24	Rule 4.42 [Duty to Update Application for Determination of Moral Character]	Yes.	<u>Moral Character and Background Check</u> : Moral character determination requirements to mirror attorney requirements.	Statute and/or rules will be developed to implement Moral Character recommendation of Working Group. No additional issues raised by this Rule.
25	Rule 4.43 [Abandonment of Application for Determination of Moral Character]	Yes.	<u>Moral Character and Background Check</u> : Moral character determination requirements to mirror attorney requirements.	Statute and/or rules will be developed to implement Moral Character recommendation of Working Group. No additional issues raised by this Rule.
26	Rule 4.4 [Withdrawal of Application for Determination of Moral Character]	Yes.	<u>Moral Character and Background Check</u> : Moral character determination requirements to mirror attorney requirements.	Statute and/or rules will be developed to implement Moral Character recommendation of Working Group. No additional issues raised by this Rule.

	<b>Rule &amp; Title</b>	<b>Modification or Parallel Provision Needed To Recognize Paraprofessional Program?</b>	<b>Directly Related Working Group Resolutions?</b>	<b>Notes</b>
27	Rule 4.45 [Notice Regarding Status of Application for Determination of Moral Character]	Yes.	<u>Moral Character and Background Check</u> : Moral character determination requirements to mirror attorney requirements.	Statute and/or rules will be developed to implement Moral Character recommendation of Working Group. No additional issues raised by this Rule.
28	Rule 4.46 [Informal Conference Regarding Moral Character]	Yes.	<u>Moral Character and Background Check</u> : Moral character determination requirements to mirror attorney requirements.	Statute and/or rules will be developed to implement Moral Character recommendation of Working Group. No additional issues raised by this Rule.
29	Rule 4.47 [Appeal of Adverse Determination of Moral Character Issued by Committee]	Yes.	<u>Moral Character and Background Check</u> : Moral character determination requirements to mirror attorney requirements.	Statute and/or rules will be developed to implement Moral Character recommendation of Working Group. No additional issues raised by this Rule.
30	Rule 4.48 [Agreement of Abeyance]	Yes.	<u>Moral Character and Background Check</u> : Moral character determination requirements to mirror attorney requirements.	Statute and/or rules will be developed to implement Moral Character recommendation of Working Group. No additional issues raised by this Rule.
31	Rule 4.49 [New Application Following Adverse Determination of Moral Character]	Yes.	<u>Moral Character and Background Check</u> : Moral character determination requirements to mirror attorney requirements.	Statute and/or rules will be developed to implement Moral Character recommendation of Working Group. No additional issues raised by this Rule.
32	Rule 4.50 [Suspension of Positive Determination of Moral Character]	Yes.	<u>Moral Character and Background Check</u> : Moral character determination requirements to mirror attorney requirements.	Statute and/or rules will be developed to implement Moral Character recommendation of Working Group. No additional issues raised by this Rule.
33	Rule 4.51 [Validity Period of Positive Moral Character Determination]	Yes.	<u>Moral Character and Background Check</u> : Moral character determination	Statute and/or rules will be developed to implement Moral Character recommendation of Working Group. No additional issues raised by this Rule.

	<b>Rule &amp; Title</b>	<b>Modification or Parallel Provision Needed To Recognize Paraprofessional Program?</b>	<b>Directly Related Working Group Resolutions?</b>	<b>Notes</b>
			requirements to mirror attorney requirements.	
34	Rule 4.52 [Extension of Positive Moral Character Determination]	Yes.	<u>Moral Character and Background Check</u> : Moral character determination requirements to mirror attorney requirements.	Statute and/or rules will be developed to implement Moral Character recommendation of Working Group. No additional issues raised by this Rule.
35	Rule 4.55 [First-Year Law Students' Examination Requirement]	No.	No.	No first-year law student's examination recommended as part of paraprofessional program.
36	Rule 4.56 [First-Year Law Students' Examination]	No.	No.	No first-year law student's examination recommended as part of paraprofessional program.
37	Rule 4.57 [Exempt Applicants Taking First-Year Law Students' Examination]	No.	No.	No first-year law student's examination recommended as part of paraprofessional program.
38	Rule 4.58 [Application for the First-Year Law Students' Examination]	No.	No.	No first-year law student's examination recommended as part of paraprofessional program.
39	Rule 4.59 [Multistate Professional Responsibility Examination]	Yes.	<u>Testing</u> : Professional Responsibility Exam to be modeled after attorney exam.	Statute and/or rules will be developed to implement professional responsibility exam recommendation of Working Group. No additional issues raised by this Rule.
40	Rule 4.60 [California Bar Examination]	Yes.	<u>Testing</u> : Subject matter specific testing – subject matter subcommittees to recommend specific elements and parameters of testing. Tests to be developed and administered by the State Bar.	Administrative/operational matter: test development and administration. Rules to be drafted to accommodate remote open book testing.

	<b>Rule &amp; Title</b>	<b>Modification or Parallel Provision Needed To Recognize Paraprofessional Program?</b>	<b>Directly Related Working Group Resolutions?</b>	<b>Notes</b>
41	Rule 4.61 [Applications for the California Bar Examination]	Yes.	No.	Administrative/operational matter: test development and administration.
42	Rule 4.62 [Access to Examination Answers and Scores]	Maybe.	No.	Administrative/operational matter: test development and administration.
43	Rule 4.70 [Conduct Required at Examinations]	Yes.	No.	Administrative/operational matter: test development and administration.
44	Rule 4.71 [Reports of Conduct Violations]	Yes.	No.	Administrative/operational matter: test development and administration.
45	Rule 4.72 [Request for an Administrative Hearing on Conduct Violation]	Yes.	No.	Administrative/operational matter: test development and administration.
46	Rule 4.73 [Procedure for an Administrative Hearing on Conduct Violation]	Yes.	No.	Administrative/operational matter: test development and administration.
47	Rule 4.74 [Review of State Bar's Findings and Recommendations by Committee]	Yes.	No.	Administrative/operational matter: test development and administration.
48	Rule 4.80 [Eligibility for Testing Accommodations]	Yes.	No.	Administrative/operational matter: test development and administration.
49	Rule 4.81 [Testing Accommodations in General]	Yes.	No.	Administrative/operational matter: test development and administration.
50	Rule 4.82 [Definitions]	Yes.	No.	Administrative/operational matter: test development and administration.
51	Rule 4.83 [Guidelines for Testing Accommodations]	Yes.	No.	Administrative/operational matter: test development and administration.
52	Rule 4.84 [When to File a Petition for Testing Accommodations]	Yes.	No.	Administrative/operational matter: test development and administration.

	<b>Rule &amp; Title</b>	<b>Modification or Parallel Provision Needed To Recognize Paraprofessional Program?</b>	<b>Directly Related Working Group Resolutions?</b>	<b>Notes</b>
53	Rule 4.85 [Initial Petition for Testing Accommodations]	Yes.	No.	Administrative/operational matter: test development and administration.
54	Rule 4.86 [Subsequent Petitions for Testing Accommodations]	Yes.	No.	Administrative/operational matter: test development and administration.
55	Rule 4.87 [Emergency Petitions for Testing Accommodations]	Yes.	No.	Administrative/operational matter: test development and administration.
56	Rule 4.88 [State Bar Response to Petition for Testing Accommodations]	Yes.	No.	Administrative/operational matter: test development and administration.
57	Rule 4.89 [Applicant Response to Proposed Modification or Request for Information]	Yes.	No.	Administrative/operational matter: test development and administration.
58	Rule 4.90 [Committee Review of Denied or Modified Petition]	Yes.	No.	Administrative/operational matter: test development and administration.
59	Rule 4.91 [Confidentiality of Petitions for Testing Accommodations]	Yes.	No.	Administrative/operational matter: test development and administration.
60	Rule 4.92 [False or Misleading Information in Petition for Testing Accommodations]	Yes.	No.	Administrative/operational matter: test development and administration.

**Rules of Court Attorney Admissions Provisions**

	<b>Rule &amp; Title</b>	<b>Add Parallel Statue/Rule for Paraprofessionals?</b>	<b>Any Related Resolutions Already Considered?</b>	<b>Notes</b>
1	Rule <a href="#">9.0</a> [Title and Source]	Yes.	No.	Administrative/operational matter.
2	Rule <a href="#">9.1</a> [Definitions]	Yes.	No.	Administrative/operational matter.
3	Rule <a href="#">9.3</a> [Inherent Power of Supreme Court]	Yes.	No.	Administrative/operational matter.
4	Rule <a href="#">9.4</a> [Nomination and Appointment of Members to the Committee of Bar Examiners]	Yes.	No.	Governance issue for paraprofessional program; recommendation to be made by State Bar.
5	Rule <a href="#">9.5</a> [Supreme Court Approval of Admissions Rules]	Yes.	No.	Governance issue for paraprofessional program; recommendation to be made by State Bar.
6	Rule <a href="#">9.6</a> [Supreme Court Approval of Bar Examination]	Yes.	No.	Governance issue for paraprofessional program; recommendation to be made by State Bar.
7	Rule <a href="#">9.7</a> [Oath Required When Admitted to Practice Law]	Yes.	No.	Administrative/operational matter: procedure for admission.
8	Rule <a href="#">9.8</a> [Roll of Attorneys Admitted to Practice]	Yes.	No.	Administrative/operational matter.
9	Rule <a href="#">9.9</a> [Online Reporting by Attorneys]	Yes.	No.	Administrative/operational matter.
10	Rule <a href="#">9.9.5</a> [Attorney Fingerprinting]	Yes.	Working Group recommended fingerprinting requirements equivalent to those for attorneys.	Statutes and/or rules will be developed to implement Working Group recommendation. No additional policy issues raised by this Rule.
11	Rule <a href="#">9.30</a> [Law School Study in Schools Other Than Those Accredited by the Examining Committee]	No.	No.	Statute and/or rules will be developed to implement educational requirements recommended by Working Group. No additional issues raised by this Rule.

**STATUTORY AND RULE CITES FOR OPEN ISSUES**

Open Issue	Statutory and Rule Provisions
<p>State Bar Act / State Bar &amp; Court Rules – Open Issue 1</p> <p>Bus. &amp; Prof. Code §§ 6210 – 6228 [IOLTA Statute] Related State Bar Rules 2.100 - 2.118</p>	<p>§ 6210. Legislative findings; purpose The Legislature finds that, due to insufficient funding, existing programs providing free legal services in civil matters to indigent persons, especially underserved client groups, such as the elderly, the disabled, juveniles, and non-English-speaking persons, do not adequately meet the needs of these persons. It is the purpose of this article to expand the availability and improve the quality of existing free legal services in civil matters to indigent persons, and to initiate new programs that will provide services to them. The Legislature finds that the use of funds collected by the State Bar pursuant to this article for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes in the judicial branch of government. The Legislature further finds that the expansion, improvement, and initiation of legal services to indigent persons will aid in the advancement of the science of jurisprudence and the improvement of the administration of justice.</p> <p>§ 6211. Establishment by attorney of IOLTA account; interest and dividends earned to be paid to State Bar; other accounts not prohibited; rules of professional conduct; authority of Supreme Court or State Bar not affected (a) An attorney or law firm that, in the course of the practice of law, receives or disburses trust funds shall establish and maintain an IOLTA account in which the attorney or law firm shall deposit or invest all client deposits or funds that are nominal in amount or are on deposit or invested for a short period of time. All such client funds may be deposited or invested in a single unsegregated account. The interest and dividends earned on all those accounts shall be paid to the State Bar of California to be used for the purposes set forth in this article. (b) Nothing in this article shall be construed to prohibit an attorney or law firm from establishing one or more interest bearing bank trust deposit accounts or dividend-paying trust investment accounts as may be permitted by the Supreme Court, with the interest or dividends earned on the accounts payable to clients for trust funds not deposited or invested in accordance with subdivision (a). (c) With the approval of the Supreme Court, the State Bar may formulate and enforce rules of professional conduct pertaining to the use by attorneys or law firms of an IOLTA account for unsegregated client funds pursuant to this article. (d) Nothing in this article shall be construed as affecting or impairing the disciplinary powers and authority of the Supreme Court or of the State Bar or as modifying the statutes and rules governing the conduct of licensees of the State Bar.</p> <p>§ 6212. Establishment by attorney of IOLTA account; amount of interest; remittance to State Bar; reporting of IOLTA account compliance and other information; statements and reports An attorney who, or a law firm that, establishes an IOLTA account pursuant to subdivision (a) of Section 6211 shall comply with all of the following provisions:</p>

(a) The IOLTA account shall be established and maintained with an eligible institution offering or making available an IOLTA account that meets the requirements of this article. The IOLTA account shall be established and maintained consistent with the attorney's or law firm's duties of professional responsibility. An eligible financial institution shall have no responsibility for selecting the deposit or investment product chosen for the IOLTA account.

(b) Except as provided in subdivision (f), the rate of interest or dividends payable on any IOLTA account shall not be less than the interest rate or dividends generally paid by the eligible institution to nonattorney customers on accounts of the same type meeting the same minimum balance and other eligibility requirements as the IOLTA account. In determining the interest rate or dividend payable on any IOLTA account, an eligible institution may consider, in addition to the balance in the IOLTA account, risk or other factors customarily considered by the eligible institution when setting the interest rate or dividends for its non-IOLTA accounts, provided that the factors do not discriminate between IOLTA customers and non-IOLTA customers and that these factors do not include the fact that the account is an IOLTA account. The eligible institution shall calculate interest and dividends in accordance with its standard practice for non-IOLTA customers. Nothing in this article shall preclude an eligible institution from paying a higher interest rate or dividend on an IOLTA account or from electing to waive any fees and service charges on an IOLTA account.

(c) Reasonable fees may be deducted from the interest or dividends remitted on an IOLTA account only at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. No other fees or service charges may be deducted from the interest or dividends earned on an IOLTA account. Unless and until the State Bar enacts regulations exempting from compliance with subdivision (a) of Section 6211 those accounts for which maintenance fees exceed the interest or dividends paid, an eligible institution may deduct the fees and service charges in excess of the interest or dividends paid on an IOLTA account from the aggregate interest and dividends remitted to the State Bar. Fees and service charges other than reasonable fees shall be the sole responsibility of, and may only be charged to, the attorney or law firm maintaining the IOLTA account. Fees and charges shall not be assessed against or deducted from the principal of any IOLTA account. It is the intent of the Legislature that the State Bar develop policies so that eligible institutions do not incur uncompensated administrative costs in adapting their systems to comply with the provisions of Chapter 422 of the Statutes of 2007 or in making investment products available to IOLTA members.

(d) The attorney or law firm shall report IOLTA account compliance and all other IOLTA account information required by the State Bar in the manner specified by the State Bar.

(e) The eligible institution shall be directed to do all of the following:

- (1) To remit interest or dividends on the IOLTA account, less reasonable fees, to the State Bar, at least quarterly.
- (2) To transmit to the State Bar with each remittance a statement showing the name of the attorney or law firm for which the remittance is sent, for each account the rate of interest applied or dividend paid, the amount and type of fees deducted, if any, and the average balance for each account for each month of the period for which the report is made.
- (3) To transmit to the attorney or law firm customer at the same time a report showing the amount paid to the State Bar for that period, the rate of interest or dividend applied, the amount of fees and service charges deducted, if any, and the average daily account balance for each month of the period for which the report is made.

(f) An eligible institution has no affirmative duty to offer or make investment products available to IOLTA customers. However, if an eligible institution offers or makes investment products available to non-IOLTA customers, in order to remain an IOLTA-eligible institution, it shall make those products available to IOLTA customers or pay an interest rate on the IOLTA deposit account that is comparable to the rate of return or the dividends generally paid on that investment product for similar customers meeting the same minimum balance and other requirements applicable to the investment product. If the eligible institution elects to pay that higher interest rate, the eligible institution may subject the IOLTA deposit account to equivalent fees and charges assessable against the investment product.

§ 6213. Definitions

As used in this article:

(a) "Qualified legal services project" means either of the following:

(1) A nonprofit project incorporated and operated exclusively in California that provides as its primary purpose and function legal services without charge to indigent persons and that has quality control procedures approved by the State Bar of California.

(2) A program operated exclusively in California by a nonprofit law school accredited by the State Bar of California that meets the requirements of subparagraphs (A) and (B).

(A) The program shall have operated for at least two years at a cost of at least twenty thousand dollars (\$20,000) per year as an identifiable law school unit with a primary purpose and function of providing legal services without charge to indigent persons.

(B) The program shall have quality control procedures approved by the State Bar of California.

(b) "Qualified support center" means an incorporated nonprofit legal services center that has as its primary purpose and function the provision of legal training, legal technical assistance, or advocacy support without charge and which actually provides through an office in California a significant level of legal training, legal technical assistance, or advocacy support without charge to qualified legal services projects on a statewide basis in California.

(c) "Recipient" means a qualified legal services project or support center receiving financial assistance under this article.

(d) "Indigent person" means a person whose income is (1) 125 percent or less of the current poverty threshold established by the United States Office of Management and Budget, or (2) who is eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act. With regard to a project that provides free services of attorneys in private practice without compensation, "indigent person" also means a person whose income is 75 percent or less of the maximum levels of income for lower income households as defined in Section 50079.5 of the Health and Safety Code. For the purpose of this subdivision, the income of a person who is disabled shall be determined after deducting the costs of medical and other disability-related special expenses.

(e) "Fee generating case" means a case or matter that, if undertaken on behalf of an indigent person by an attorney in private practice, reasonably may be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from the opposing party. A case shall not be considered fee generating if adequate representation is unavailable and any of the following circumstances exist:

	<p>(1) The recipient has determined that free referral is not possible because of any of the following reasons:</p> <p>(A) The case has been rejected by the local lawyer referral service, or if there is no such service, by two attorneys in private practice who have experience in the subject matter of the case.</p> <p>(B) Neither the referral service nor any attorney will consider the case without payment of a consultation fee.</p> <p>(C) The case is of the type that attorneys in private practice in the area ordinarily do not accept, or do not accept without prepayment of a fee.</p> <p>(D) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.</p> <p>(2) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims.</p> <p>(3) A court has appointed a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.</p> <p>(4) The case involves the rights of a claimant under a publicly supported benefit program for which entitlement to benefit is based on need.</p> <p>(f) "Legal Services Corporation" means the Legal Services Corporation established under the Legal Services Corporation Act of 1974 (P.L. 93-355; 42 U.S.C. Sec. 2996 et seq.).</p> <p>(g) "Older Americans Act" means the Older Americans Act of 1965, as amended (P.L. 89-73; 42 U.S.C. Sec. 3001 et seq.).</p> <p>(h) "Developmentally Disabled Assistance Act" means the Developmentally Disabled Assistance and Bill of Rights Act, as amended (P.L. 94-103; 42 U.S.C. Sec. 6001 et seq.).</p> <p>(i) "Supplemental security income recipient" means an individual receiving or eligible to receive payments under Title XVI of the federal Social Security Act, or payments under Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code.</p> <p>(j) "IOLTA account" means an account or investment product established and maintained pursuant to subdivision (a) of Section 6211 that is any of the following:</p> <p>(1) An interest-bearing checking account.</p> <p>(2) An investment sweep product that is a daily (overnight) financial institution repurchase agreement or an open-end money market fund.</p> <p>(3) An investment product authorized by California Supreme Court rule or order.</p> <p>A daily financial institution repurchase agreement shall be fully collateralized by United States Government Securities or other comparably conservative debt securities, and may be established only with any eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money market fund shall be invested solely in United States Government Securities or repurchase agreements fully collateralized by United States Government Securities or other comparably conservative debt securities, shall hold itself out as a "money market fund" as that term is defined by federal statutes and regulations under</p>
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the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars (\$250,000,000).

(k) "Eligible institution" means either of the following:

(1) A bank, savings and loan, or other financial institution regulated by a federal or state agency that pays interest or dividends in the IOLTA account and carries deposit insurance from an agency of the federal government.

(2) Any other type of financial institution authorized by the California Supreme Court.

§ 6214. Qualified legal service projects

(a) Projects meeting the requirements of subdivision (a) of Section 6213 which are funded either in whole or part by the Legal Services Corporation or with Older American Act funds shall be presumed qualified legal services projects for the purpose of this article.

(b) Projects meeting the requirements of subdivision (a) of Section 6213 but not qualifying under the presumption specified in subdivision (a) shall qualify for funds under this article if they meet all of the following additional criteria:

(1) They receive cash funds from other sources in the amount of at least twenty thousand dollars (\$20,000) per year to support free legal representation to indigent persons.

(2) They have demonstrated community support for the operation of a viable ongoing program.

(3) They provide one or both of the following special services:

(A) The coordination of the recruitment of substantial numbers of attorneys in private practice to provide free legal representation to indigent persons or to qualified legal services projects in California.

(B) The provision of legal representation, training, or technical assistance on matters concerning special client groups, including the elderly, the disabled, juveniles, and non-English-speaking groups, or on matters of specialized substantive law important to the special client groups.

§ 6214.5. Qualified legal services projects; eligibility for distributions of funds

A law school program that meets the definition of a "qualified legal services project" as defined in paragraph (2) of subdivision (a) of Section 6213, and that applied to the State Bar for funding under this article not later than February 17, 1984, shall be deemed eligible for all distributions of funds made under Section 6216.

§ 6215. Qualified support centers

(a) Support centers satisfying the qualifications specified in subdivision (b) of Section 6213 which were operating an office and providing services in California on December 31, 1980, shall be presumed to be qualified support centers for the purposes of this article.

(b) Support centers not qualifying under the presumption specified in subdivision (a) may qualify as a support center by meeting both of the following additional criteria:

(1) Meeting quality control standards established by the State Bar.

(2) Being deemed to be of special need by a majority of the qualified legal services projects.

§ 6216. Distribution of funds

The State Bar shall distribute all moneys received under the program established by this article for the provision of civil legal services to indigent persons. The funds first shall be distributed 18 months from the effective date of this article, or upon such a date, as shall be determined by the State Bar, that adequate funds are available to initiate the program. Thereafter, the funds shall be distributed on an annual basis. All distributions of funds shall be made in the following order and in the following manner:

(a) To pay the actual administrative costs of the program, including any costs incurred after the adoption of this article and a reasonable reserve therefor.

(b) Eighty-five percent of the funds remaining after payment of administrative costs allocated pursuant to this article shall be distributed to qualified legal services projects. Distribution shall be by a pro rata county-by-county formula based upon the number of persons whose income is 125 percent or less of the current poverty threshold per county. For the purposes of this section, the source of data identifying the number of persons per county shall be the latest available figures from the United States Department of Commerce, Bureau of the Census. Projects from more than one county may pool their funds to operate a joint, multicounty legal services project serving each of their respective counties.

(1)(A) In any county which is served by more than one qualified legal services project, the State Bar shall distribute funds for the county to those projects which apply on a pro rata basis, based upon the amount of their total budget expended in the prior year for legal services in that county as compared to the total expended in the prior year for legal services by all qualified legal services projects applying therefor in the county. In determining the amount of funds to be allocated to a qualified legal services project specified in paragraph (2) of subdivision (a) of Section 6213, the State Bar shall recognize only expenditures attributable to the representation of indigent persons as constituting the budget of the program.

(B) The State Bar shall reserve 10 percent of the funds allocated to the county for distribution to programs meeting the standards of subparagraph (A) of paragraph (3) and paragraphs (1) and (2) of subdivision (b) of Section 6214 and which perform the services described in subparagraph (A) of paragraph (3) of Section 6214 as their principal means of delivering legal services. The State Bar shall distribute the funds for that county to those programs which apply on a pro rata basis, based upon the amount of their total budget expended for free legal services in that county as compared to the total expended for free legal services by all programs meeting the standards of subparagraph (A) of paragraph (3) and paragraphs (1) and (2) of subdivision (b) of Section 6214 in that county. The State Bar shall distribute any funds for which no program has qualified pursuant hereto, in accordance with the provisions of subparagraph (A) of paragraph (1) of this subdivision.

(2) In any county in which there is no qualified legal services projects providing services, the State Bar shall reserve for the remainder of the fiscal year for distribution the pro rata share of funds as provided for by this article. Upon application of a qualified legal services project proposing to provide legal services to the indigent of the county, the State Bar shall distribute the funds to the project. Any funds not so distributed shall be added to the funds to be distributed the following year.

(c) Fifteen percent of the funds remaining after payment of administrative costs allocated for the purposes of this article shall be distributed equally by the State Bar to qualified support centers which apply for the funds. The funds provided to support centers shall be used only for the provision of legal services within California. Qualified support centers that receive funds to provide services to qualified legal services projects from sources other than this article, shall submit and shall have approved by the State Bar a plan assuring that the services funded under this article are in addition to those already funded for qualified legal services projects by other sources.

§ 6217. Maintenance of quality services, professional standards, attorney-client privilege; funds to be expended in accordance with article; interference with attorney prohibited

With respect to the provision of legal assistance under this article, each recipient shall ensure all of the following:

- (a) The maintenance of quality service and professional standards.
- (b) The expenditure of funds received in accordance with the provisions of this article.
- (c) The preservation of the attorney-client privilege in any case, and the protection of the integrity of the adversary process from any impairment in furnishing legal assistance to indigent persons.
- (d) That no one shall interfere with any attorney funded in whole or in part by this article in carrying out his or her professional responsibility to his or her client as established by the rules of professional responsibility and this chapter.

§ 6218. Eligibility for services; establishment of guidelines; funds to be expended in accordance with article

All legal services projects and support centers receiving funds pursuant to this article shall adopt financial eligibility guidelines for indigent persons.

- (a) Qualified legal services programs shall ensure that funds appropriated pursuant to this article shall be used solely to defray the costs of providing legal services to indigent persons or for such other purposes as set forth in this article.
- (b) Funds received pursuant to this article by support centers shall only be used to provide services to qualified legal services projects as defined in subdivision (a) of Section 6213 which are used pursuant to a plan as required by subdivision (c) of Section 6216, or as permitted by Section 6219.

§ 6219. Provision of work opportunities and scholarships for disadvantaged law students

Qualified legal services projects and support centers may use funds provided under this article to provide work opportunities with pay, and where feasible, scholarships for disadvantaged law students to help defray their law school expenses.

§ 6220. Private attorneys providing legal services without charge; support center services

Attorneys in private practice who are providing legal services without charge to indigent persons shall not be disqualified from receiving the services of the qualified support centers.

§ 6221. Services for indigent members of disadvantaged and underserved groups

Qualified legal services projects shall make significant efforts to utilize 20 percent of the funds allocated under this article for increasing the availability of services to the elderly, the disabled, juveniles, or other indigent persons who are members of disadvantaged and underserved groups within their service area.

§ 6222. Recipients of funds to submit annual financial statements; information included in annual report of State Bar receipts and expenditures

A recipient of funds allocated pursuant to this article annually shall submit a financial statement to the State Bar, including an audit of the funds by a certified public accountant or a fiscal review approved by the State Bar, a report demonstrating the programs on which they were expended, a report on the recipient's compliance with the requirements of Section 6217, and progress in meeting the service expansion requirements of Section 6221.

The Board of Trustees of the State Bar shall include a report of receipts of funds under this article, expenditures for administrative costs, and disbursements of the funds, on a county-by-county basis, in the annual report of State Bar receipts and expenditures required pursuant to Section 6145.

§ 6223. Expenditure of funds; prohibitions

No funds allocated by the State Bar pursuant to this article shall be used for any of the following purposes:

- (a) The provision of legal assistance with respect to any fee generating case, except in accordance with guidelines which shall be promulgated by the State Bar.
- (b) The provision of legal assistance with respect to any criminal proceeding.
- (c) The provision of legal assistance, except to indigent persons or except to provide support services to qualified legal services projects as defined by this article.

§ 6224. State bar; powers; determination of qualifications to receive funds; denial of funds; termination; procedures

The State Bar shall have the power to determine that an applicant for funding is not qualified to receive funding, to deny future funding, or to terminate existing funding because the recipient is not operating in compliance with the requirements or restrictions of this article.

A denial of an application for funding or for future funding or an action by the State Bar to terminate an existing grant of funds under this article shall not become final until the applicant or recipient has been afforded reasonable notice and an opportunity for a timely and fair hearing. Pending final determination of any hearing held with reference to termination of funding, financial assistance shall be continued at its existing level on a month-to-month basis. Hearings for denial shall be conducted by an impartial hearing officer whose decision shall be final. The hearing officer shall render a decision no later than 30 days after the conclusion of the hearing. Specific procedures governing the conduct of the hearings of this section shall be determined by the State Bar pursuant to Section 6225.

§ 6225. Implementation of article; adoption of rules and regulations; procedures

The Board of Trustees of the State Bar shall adopt the regulations and procedures necessary to implement this article and to ensure that the funds allocated herein are utilized to provide civil legal services to indigent persons, especially underserved client groups such as but not limited to the elderly, the disabled, juveniles, and non-English-speaking persons.

In adopting the regulations the Board of Trustees shall comply with the following procedures:

(a) The board shall publish a preliminary draft of the regulations and procedures, which shall be distributed, together with notice of the hearings required by subdivision (b), to commercial banking institutions, to licensees of the State Bar, and to potential recipients of funds.

(b) The board shall hold at least two public hearings, one in southern California and one in northern California where affected and interested parties shall be afforded an opportunity to present oral and written testimony regarding the proposed regulations and procedures.

§ 6226. Implementation of article; resolution

The program authorized by this article shall become operative only upon the adoption of a resolution by the Board of Trustees of the State Bar stating that regulations have been adopted pursuant to Section 6225 which conform the program to all applicable tax and banking statutes, regulations, and rulings.

§ 6227. Credit of state not pledged

Nothing in this article shall create an obligation or pledge of the credit of the State of California or of the State Bar of California. Claims arising by reason of acts done pursuant to this article shall be limited to the moneys generated hereunder.

§ 6228. Severability

If any provision of this article or the application thereof to any group or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

Rule 2.100 Definitions

A "Chargeable fee" is a per-check charge, per-deposit charge, fee in lieu of minimum balance, federal deposit insurance fee, or sweep fee.

A "Client" is a person or a group of persons that has engaged the attorney or firm for a common purpose.

"Comparably conservative" in Business and Professions Code 6213(j) includes, but is not limited to, securities issued by Government Sponsored Enterprises.

An "Exempt Account" is exempt from IOLTA requirements because it does not meet the productivity criteria established by the Legal Services Trust Fund Commission.

"Funds" are monies held in a fiduciary capacity by a licensee for the benefit of a client or a third party.

An "IOLTA account" is an Interest on Lawyers' Trust Account as defined in Business and Professions Code section 6213(j).

An "IOLTA-eligible institution" is an eligible institution as defined in 6213(k) that meets the requirements of these rules, State Bar guidelines, and the State Bar Act.

"IOLTA funds" are the interest or dividends generated by IOLTA accounts.

A "licensee" is a licensee and a licensee's law firm.

A "licensee business expense" is an expense that a licensee incurs in the ordinary course of business, such as charges for check printing, deposit stamps, insufficient fund charges, collection charges, wire transfer fees, fees for cash management, and any other fee that is not a chargeable fee.

#### Rule 2.110 Funds to be held in an IOLTA account

Licensees must establish IOLTA accounts for funds that cannot earn income for the client or third party in excess of the costs incurred to secure such income because the funds are nominal in amount or held for a short period of time. In determining whether funds can earn income in excess of costs, a licensee must consider the following factors: (1) the amount of the funds to be deposited;

(2) the expected duration of the deposit, including the likelihood of delay in resolving the matter for which the funds are held;

(3) the rates of interest or dividends at eligible institutions where the funds are to be deposited;

(4) the cost of establishing and administering non-IOLTA accounts for the client or third party's benefit, including service charges, the costs of the licensee's services, and the costs of preparing any tax reports required for income earned on the funds;

(5) the capability of eligible institutions or the licensee to calculate and pay income to individual clients or third parties;

(6) any other circumstances that affect the ability of the funds to earn a net return for the client or third party.

The State Bar will not bring disciplinary charges against a licensee for determining in good faith whether or not to place funds in an IOLTA account.

**Rule 2.111 Funds not to be held in an IOLTA account**

If a licensee determines that the funds can earn income for the benefit of the client or third party in excess of the costs incurred to secure such income, the funds must be deposited in a trust account in accordance with the provisions of Section 6211(b) of the Business and Professions Code and Rule 4-100 of the Rules of Professional Conduct or as the client or third party directs in writing.

A licensee should not designate an exempt account<sup>1</sup>As defined in Rule 2.100 (D) as an IOLTA account.

**Rule 2.112 Review of funds in an IOLTA account**

A licensee must review an IOLTA account at reasonable intervals to determine whether changed circumstances require funds be moved out of the IOLTA account.

**Rule 2.113 Charges against IOLTA funds**

A licensee may allow an IOLTA-eligible institution to deduct chargeable fees permitted by Business and Professions Code 6212(c) from IOLTA funds. A licensee must pay any licensee business expense and may not allow the bank to deduct such expenses from IOLTA funds. If the State Bar becomes aware that a licensee business expense is erroneously deducted from IOLTA funds, the State Bar will inform the IOLTA-eligible institution and request that the error be corrected.

**Rule 2.114 Reporting to the State Bar**

A licensee must report compliance with these rules.

**Rule 2.115 Consent to reporting**

By establishing funds in an account, a licensee consents to the eligible institution's furnishing account information to the State Bar as required by these rules, State Bar guidelines, and the State Bar Act.

	<p>Rule 2.116 Liquidity requirements IOLTA accounts must allow prompt withdrawal of funds, except that such accounts may be subject to notification requirements applicable to all other accounts of the same class at the eligible institution so long as the notification requirement does not exceed thirty days.</p> <p>Rule 2.117 Institution eligibility requirements A licensee may place an IOLTA account only in an IOLTA-eligible institution. The State Bar will maintain a list of IOLTA-eligible institutions.</p> <p>Rule 2.118 No change to other duties and obligations of a licensee Nothing in these rules shall be construed as affecting or impairing the duties and obligations of a licensee pursuant to the statutes and rules governing the conduct of licensees of the State Bar including, but not limited to, provisions of Rule 1.15 of the Rules of Professional Conduct requiring a licensee to promptly notify a client of the receipt of the client's funds and to promptly pay or deliver to the client, as requested by the client, the funds in the possession of the licensee which the client is entitled to receive.</p>
<p>State Ba3 Act / State Bar &amp; Court Rules – Open Issue 2</p> <p>State Bar Rule 2.81 [Speaking]</p>	<p>Rule 2.81 Speaking A licensee may claim participatory MCLE credit for speaking at an approved MCLE activity.</p> <p>(A) A principal speaker, who is responsible for preparing and delivering a program or class and its related materials, may claim (1) actual speaking time multiplied by four for the first presentation; or (2) actual speaking time only for each time a presentation is repeated without significant change.</p> <p>(B) A panelist may claim (1) either of the following for the first panel presentation: (a) scheduled individual speaking time multiplied by four, plus the actual time spent in attendance at the remainder of the presentation; or (b) when times have not been scheduled for individual speakers, an equal share of the total time for all speakers multiplied by four plus the actual time spent in attendance at the remainder of the presentation. (2) actual speaking time only for each time a presentation is repeated without significant change.</p> <p>(C) A licensee who introduces speakers or serves as a moderator may claim only the MCLE credit available to any attendee.</p>
<p>State Bar Act / State Bar &amp; Court</p>	<p>Rule 2.82 Teaching</p>

<p>Rules – Open Issue 3</p> <p>State Bar Rule 2.82 [Teaching]</p>	<p>A licensee may claim participatory MCLE credit for teaching a law school course.</p> <p>(A) A licensee assigned to teach a course may claim no more than the credit hours granted by the law school multiplied by twelve or actual speaking time for required MCLE in legal ethics, elimination of bias, or competence issues.</p> <p>(B) A guest lecturer or substitute teacher may claim</p> <p>(1) actual speaking time multiplied by four for the first presentation; or</p> <p>(2) actual speaking time only for each time a presentation is repeated without significant change.</p>
<p>State Bar Act / State Bar &amp; Court Rules – Open Issue 4</p> <p>State Bar Rule 2.86 [Licensee credit request]</p>	<p>Rule 2.86 Licensee credit request</p> <p>A licensee may apply for MCLE credit for an educational activity directly relevant to the licensee’s practice but not otherwise approved if the activity substantially meets State Bar standards. The application must be submitted with the appropriate fee.</p>
<p>Code of Civil Procedure – Open Issue 1</p> <p>Civ. Proc. Code § 340.6</p>	<p>§ 340.6. Attorneys; wrongful professional act or omission; tolling of period</p> <p>(a) An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first. If the plaintiff is required to establish the plaintiff's factual innocence for an underlying criminal charge as an element of the plaintiff's claim, the action shall be commenced within two years after the plaintiff achieves postconviction exoneration in the form of a final judicial disposition of the criminal case. Except for a claim for which the plaintiff is required to establish the plaintiff's factual innocence, the time for commencement of legal action shall not exceed four years except that the period shall be tolled during the time that any of the following exist:</p> <p style="padding-left: 40px;">(1) The plaintiff has not sustained actual injury.</p> <p style="padding-left: 40px;">(2) The attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred.</p>

	<p>(3) The attorney willfully conceals the facts constituting known to the attorney, except that this subdivision shall</p> <p>(4) The plaintiff is under a legal or physical disability that action.</p> <p>(5) A dispute between the lawyer and client concerning Article 13 (commencing with Section 6200) of Chapter 4 of Code. As used in this paragraph, “pending” means from the date a after receipt of notice of the award of the arbitrators, or receipt of otherwise terminated, whichever occurs first.</p> <p>In an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, the period of limitations provided for by this section shall commence to run upon the occurrence of that act or event.</p>	<p>the wrongful act or omission when those facts are toll only the four-year limitation.</p> <p>restricts the plaintiff's ability to commence legal</p> <p>fees, costs, or both is pending resolution under Division 3 of the Business and Professions request for arbitration is filed until 30 days notice that the arbitration is</p>
Code of Civil Procedure – Open Issue 2  Civ. Proc. Code § 995.510	<p>§ 995.510. Sufficiency of sureties; conditions</p> <p>(a) A personal surety on a bond is sufficient if all of the following conditions are satisfied:</p> <p>(1) The surety is a person other than the principal. No act as a surety.</p> <p>(2) The surety is a resident, and either an owner of real</p> <p>(3) The surety is worth the amount of the bond in real money over and above all debts and liabilities, exclusive of judgment.</p> <p>If the amount of a bond exceeds ten thousand dollars (\$10,000) and is executed by more than two personal sureties, the worth of a personal surety may be less than the amount of the bond, so long as the aggregate worth of all sureties executing the bond is twice the amount of the bond.</p>	<p>officer of the court or member of the State Bar shall</p> <p>property or householder, within the state.</p> <p>or personal property, or both, situated in this state, property exempt from enforcement of a</p>
Code of Civil Procedure – Open Issue 3  Civ. Proc. Code § 2018.010	<p>§ 2018.010. “Client” defined</p> <p>For purposes of this chapter, “client” means a “client” as defined in Section 951 of the Evidence Code.</p>	
Code of Civil Procedure – Open Issue 3 (cont.)	<p>§ 2018.020. Policy of the state</p> <p>It is the policy of the state to do both of the following:</p>	

Civ. Proc. Code § 2018.020	<p>(a) Preserve the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of those cases.</p> <p>Prevent attorneys from taking undue advantage of their adversary's industry and efforts.</p>
Code of Civil Procedure – Open Issue 3 (cont.)  Civ. Proc. Code § 2018.030	<p>§ 2018.030. Writings and written documentation</p> <p>(a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.</p> <p>The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.</p>
Code of Civil Procedure – Open Issue 3 (cont.)  Civ. Proc. Code § 2018.040	<p>§ 2018.040. Restatement of existing law</p> <p>This chapter is intended to be a restatement of existing law relating to protection of work product. It is not intended to expand or reduce the extent to which work product is discoverable under existing law in any action.</p>
Code of Civil Procedure – Open Issue 3 (cont.)  Civ. Proc. Code § 2018.050	<p>§ 2018.050. Participation in crime or fraud</p> <p>Notwithstanding Section 2018.040, when a lawyer is suspected of knowingly participating in a crime or fraud, there is no protection of work product under this chapter in any official investigation by a law enforcement agency or proceeding or action brought by a public prosecutor in the name of the people of the State of California if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or fraud.</p>
Code of Civil Procedure – Open Issue 3 (cont.)  Civ. Proc. Code § 2018.060	<p>§ 2018.060. In camera hearings</p> <p>Nothing in this chapter is intended to limit an attorney's ability to request an in camera hearing as provided for in <i>People v. Superior Court (Laff)</i> (2001) 25 Cal.4th 703.1</p>

<p>Code of Civil Procedure – Open Issue 3 (cont.)</p> <p>Civ. Proc. Code § 2018.070</p>	<p>§ 2018.070. Disciplinary proceedings</p> <p>(a) The State Bar may discover the work product of an attorney against whom disciplinary charges are pending when it is relevant to issues of breach of duty by the lawyer and requisite client approval has been granted.</p> <p>(b) Where requested and for good cause, discovery under this section shall be subject to a protective order to ensure the confidentiality of the work product except for its use by the State Bar in disciplinary investigations and its consideration under seal in State Bar Court proceedings.</p> <p>For purposes of this chapter, whenever a client has initiated a complaint against an attorney, the requisite client approval shall be deemed to have been granted.</p>
<p>Code of Civil Procedure – Open Issue 3 (cont.)</p> <p>Civ. Proc. Code § 2018.080</p>	<p>§ 2018.080. Breach of duty; actions against attorney by client or former client</p> <p>In an action between an attorney and a client or a former client of the attorney, no work product privilege under this chapter exists if the work product is relevant to an issue of breach by the attorney of a duty to the client arising out of the attorney-client relationship.</p>
<p>Evidence Code – Open Issue 1</p> <p>Evid. Code § 912</p>	<p>§ 912. Waiver of privilege</p> <p>(a) Except as otherwise provided in this section, the right of any person to claim a privilege provided by Section 954 (lawyer-client privilege) ... is waived with respect to a communication protected by the privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone. Consent to disclosure is manifested by any statement or other conduct of the holder of the privilege indicating consent to the disclosure, including failure to claim the privilege in any proceeding in which the holder has legal standing and the opportunity to claim the privilege.</p> <p>(b) Where two or more persons are joint holders of a privilege provided by Section 954 (lawyer-client privilege)... a waiver of the right of a particular joint holder of the privilege to claim the privilege does not affect the right of another joint holder to claim the privilege....</p> <p>(c) A disclosure that is itself privileged is not a waiver of any privilege.</p> <p>A disclosure in confidence of a communication that is protected by a privilege provided by Section 954 (lawyer-client privilege), ..., when disclosure is reasonably necessary for the accomplishment of the purpose for which the lawyer... was consulted, is not a waiver of the privilege.</p>
<p>Evidence Code – Open Issue 1 (cont.)</p>	<p>§ 917. Presumption that certain communications are confidential; privileged character of electronic communications</p>

Evid. Code § 917	<p>(a) If a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of the lawyer-client... relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential.</p> <p>A communication between persons in a relationship listed in subdivision (a) does not lose its privileged character for the sole reason that it is communicated by electronic means or because persons involved in the delivery, facilitation, or storage of electronic communication may have access to the content of the communication.</p>
<p>Evidence Code – Open Issue 1 (cont.)</p> <p>Evid. Code § 950</p>	<p>§ 950. Lawyer</p> <p>As used in this article, “lawyer” means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.</p>
<p>Evidence Code – Open Issue 1 (cont.)</p> <p>Evid. Code § 951</p>	<p>§ 951. Client</p> <p>As used in this article, “client” means a person who, directly or through an authorized representative, consults a lawyer for the purpose of retaining the lawyer or securing legal service or advice from him in his professional capacity, and includes an incompetent (a) who himself so consults the lawyer or (b) whose guardian or conservator so consults the lawyer in behalf of the incompetent.</p>
<p>Evidence Code – Open Issue 1 (cont.)</p> <p>Evid. Code § 952</p>	<p>§ 952. Confidential communication between client and lawyer</p> <p>As used in this article, “confidential communication between client and lawyer” means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.</p>
<p>Evidence Code – Open Issue 1 (cont.)</p> <p>Evid. Code § 954</p>	<p>§ 954. Lawyer-client privilege</p> <p>Subject to Section 912 and except as otherwise provided in this article, the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer if the privilege is claimed by:</p> <ul style="list-style-type: none"> <li>(a) The holder of the privilege;</li> <li>(b) A person who is authorized to claim the privilege by the holder of the privilege; or</li> </ul>

	<p>(c) The person who was the lawyer at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.</p> <p>The relationship of attorney and client shall exist between a law corporation as defined in Article 10 (commencing with Section 6160) of Chapter 4 of Division 3 of the Business and Professions Code and the persons to whom it renders professional services, as well as between such persons and members of the State Bar employed by such corporation to render services to such persons. The word “persons” as used in this subdivision includes partnerships, corporations, limited liability companies, associations and other groups and entities.</p>
<p>Evidence Code – Open Issue 1 (cont.)</p> <p>Evid. Code § 955</p>	<p>§ 955. When lawyer required to claim privilege</p> <p>The lawyer who received or made a communication subject to the privilege under this article shall claim the privilege whenever he is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) of Section 954.</p>
<p>Evidence Code – Open Issue 1 (cont.)</p> <p>Evid. Code § 956</p>	<p>§ 956. Exception: Crime or fraud; applicability to legal services for lawful cannabis-related activities</p> <p>(a) There is no privilege under this article if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.</p> <p>This exception to the privilege granted by this article shall not apply to legal services rendered in compliance with state and local laws on medicinal cannabis or adult-use cannabis, and confidential communications provided for the purpose of rendering those services are confidential communications between client and lawyer, as defined in Section 952, provided the lawyer also advises the client on conflicts with respect to federal law.</p>
<p>Evidence Code – Open Issue 1 (cont.)</p> <p>Evid. Code § 956.5</p>	<p>§ 956.5. Exception: Prevention of criminal act likely to result in death or substantial bodily harm</p> <p>There is no privilege under this article if the lawyer reasonably believes that disclosure of any confidential communication relating to representation of a client is necessary to prevent a criminal act that the lawyer reasonably believes is likely to result in the death of, or substantial bodily harm to, an individual.</p>
<p>Evidence Code – Open Issue 1 (cont.)</p> <p>Evid. Code § 958</p>	<p>§ 958. Exception: Breach of duty arising out of lawyer-client relationship</p> <p>There is no privilege under this article as to a communication relevant to an issue of breach, by the lawyer or by the client, of a duty arising out of the lawyer-client relationship.</p>
<p>Evidence Code – Open Issue 1 (cont.)</p>	<p>§ 959. Exception: Lawyer as attesting witness</p>

Evid. Code § 959	There is no privilege under this article as to a communication relevant to an issue concerning the intention or competence of a client executing an attested document of which the lawyer is an attesting witness, or concerning the execution or attestation of such a document.
Evidence Code – Open Issue 1 (cont.)  Evid. Code § 962	<p>§ 962. Exception: Joint clients</p> <p>Where two or more clients have retained or consulted a lawyer upon a matter of common interest, none of them, nor the successor in interest of any of them, may claim a privilege under this article as to a communication made in the course of that relationship when such communication is offered in a civil proceeding between one of such clients (or his successor in interest) and another of such clients (or his successor in interest).</p>



Date: June 25, 2021

To: The California Paraprofessional Program Working Group

From: Sharon Bashan, Julianne Fellmeth, Stephen Hamilton, Kimberly Kirchmeyer, Ioana Petrou, Fariba Soroosh, and Erica Yew

Subject: Pilot Implementation Subcommittee Recommendation for a Fourth Implementation Region

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## EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, an implementation strategy including a recommendation as to where to implement the program. An Implementation Subcommittee (Subcommittee) was established to fulfill this aspect of the CPPWG's charge.

On February 26, 2021, the CPPWG adopted the Implementation Subcommittee's recommendations as outlined in Attachment A. These recommendations included a plan to launch the paraprofessional program in a limited number of geographic areas as follows:

- **Northern California:** Alameda and Santa Clara Counties.
- **Central California:** Fresno, Merced, and Tulare Counties.
- **Southern California:** Orange County.

The CPPWG also directed the Subcommittee to identify a fourth region for geographic rollout, centered around Sacramento County. This memorandum contains the Subcommittee's recommendation made pursuant to that direction.

## BACKGROUND AND DISCUSSION

CPPWG member Judge Harper, Presiding Judge of the Trinity County Superior Court, met with State Bar staff in March 2021 to review data about and potential configurations for a far Northern region. The Subcommittee then met on April 27, 2021, to deliberate about a fourth region centered around Sacramento County. At that meeting, the Subcommittee reviewed data for “far Northern” California counties as follows:

- **Future client population:** 2019 population estimates from the U.S. Census Bureau.
- **Future paraprofessional population:** Bar exam data from the State Bar of California and paralegal graduation data from the American Bar Association (ABA).<sup>1</sup>
- **Civil justice gap:** Pro per litigant data for family law cases from the Judicial Council of California and attorney density data from the State Bar of California.

Staff collected data for all counties north of the Bay Area.<sup>2</sup> The following tables show the 15 counties that rank highest in each category of analysis:

**Potential Clients:**

The Most Populous Counties in Northern California

	<b>County</b>	<b>Population (2019)</b>
1.	Sacramento	1,552,058
2.	Sonoma	494,336
3.	Placer	398,329
4.	Yolo	220,500
5.	Butte	219,186
6.	El Dorado	192,843
7.	Shasta	180,080
8.	Napa	137,744
9.	Humboldt	135,558
10.	Nevada	99,755
11.	Sutter	96,971
12.	Mendocino	86,749
13.	Yuba	78,668
14.	Tehama	65,084

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<sup>1</sup> The data about ABA approved paralegal programs spans 2016 to 2020 and comes from 19 schools that agreed to share their figures with the State Bar. This data strongly supports including Sacramento County in any Northern California region. Since it would be possible to identify some schools by their county, this memo excludes a county-by-county presentation of the data.

<sup>2</sup> Staff compiled data for 26 counties: Alpine, Amador, Butte, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba.

15.	Lake	64,386
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**Potential Participants:**

Most Bar Exam Scores Under 1390 (on Last Attempt) in Northern California

	County	Scored <1390 on Last Attempt (2011-2020)
1.	Sacramento	436
2.	Sonoma	112
3.	Placer	107
4.	Yolo	67
5.	El Dorado	41
6.	Butte	22
7.	Sutter	16
8. (tie)	Shasta	14
8. (tie)	Napa	14
9.	Nevada	13
10.	Mendocino	11
11.	Humboldt	10
12. (tie)	Yuba	4
12. (tie)	Lake	4
12. (tie)	Amador	4

**Justice Gap:**

Highest Rates of Self-Representation in Family Law in Northern California<sup>3</sup>

	County	Pro Per Litigants as Percent of Filings (Family Law 2017)
1.	Colusa**	171%
2.	Lassen**	114%
3.	Yuba**	104%
4.	El Dorado	83%
5.	Siskiyou	82%
6.	Tehama	75%
7.	Trinity	74%
8.	Lake	72%
9.	Plumas	64%
10.	Humboldt	60%

<sup>3</sup> Data is unavailable for nine counties: Alpine, Amador, Del Norte, Glenn, Mendocino, Nevada, Placer, Sacramento, and Sierra.

11.	Sonoma	59%
12.	Shasta	55%
13.	Napa	51%
14.	Butte	50%
15.	Modoc	47%

\*\* Figure can exceed 100% because filings can have multiple pro per litigants.

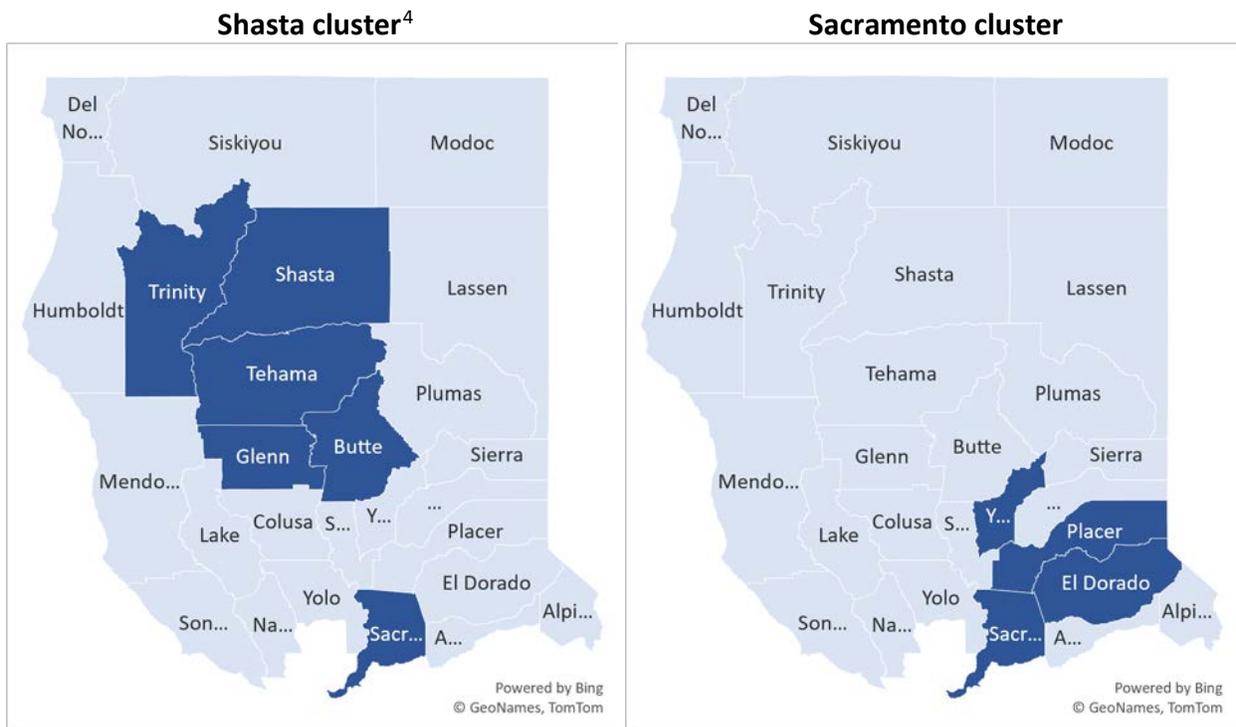
**Justice Gap:**

Highest Disparity Between Residents and Attorneys in Northern California

	County	Residents per Active Attorney (2021)
1.	Glenn	1,775
2.	Lassen	1,390
3.	Modoc	1,263
4.	Tehama	1,205
5.	Yuba	1,049
6.	Colusa	1,026
7.	Sutter	951
8.	Lake	894
9.	Trinity	768
10.	Del Norte	713
11.	Butte	635
12.	Siskiyou	622
13.	Amador	593
14.	Shasta	572
15.	Humboldt	562

In light of the above data, the Subcommittee settled on two possible configurations for a far Northern region:

- **Shasta cluster:** Butte, Glenn, Sacramento, Shasta, Tehama, and Trinity (a noncontiguous region).
- **Sacramento cluster:** El Dorado, Placer, Sacramento, and Yuba.



Both options sought to balance prospective client, paraprofessional, and justice gap indicators. The Shasta cluster included more rural—and higher justice gap—counties. The Sacramento cluster offered more clients and paraprofessionals.

	<b>Shasta cluster</b>	<b>Sacramento cluster</b>
<b>Counties</b>	Butte, Glenn, Shasta, Tehama, and Trinity (plus Sacramento)	El Dorado, Placer, Sacramento, and Yuba
<b>Contiguous</b>	No	Yes
<b>Client population center(s)</b>	Sacramento: 1,552,000 people (Remaining counties: 505,000)  <b>Total: 2,057,000 people</b>	Sacramento: 1,552,000 people Placer: 398,000 people (Remaining counties: 272,000)  <b>Total: 2,222,000 people</b>
<b>Paraprofessional population center(s)</b>	Sacramento	Placer and Sacramento
<b>High civil justice gap</b>	Glenn and Tehama have above 1,000 residents per attorney.	Yuba has above 1,000 residents per attorney.

<sup>4</sup> A note about the Shasta cluster: Most counties in Northern California are rural. It was important to the Subcommittee, therefore, that it consider a predominantly rural cluster. Butte and Shasta counties would serve as the primary source of clients in the contiguous region. Butte County has a population of approximately 219,000 people and Shasta County 180,000 people. Sacramento would serve as a noncontiguous source of paraprofessionals as well as the likely source of the bulk of paraprofessional clients.

	<b>Shasta cluster</b>	<b>Sacramento cluster</b>
	Tehama and Trinity report high rates of self-representation in family law.	El Dorado and Yuba report high rates of self-representation in family law.
<b>Emphasizes</b>	Rural counties with comparatively large justice gaps	Population centers

After considering each option, the Subcommittee recommends the Sacramento cluster (El Dorado, Placer, Sacramento, and Yuba Counties) as the fourth implementation region. The Shasta cluster’s paraprofessional population will be too small to yield meaningful participation and data in the program’s first year. According to California Bar Exam and paralegal graduation data, future paraprofessionals are likely to live in Sacramento and its adjacent counties. While Sacramento is part of the Shasta cluster, it is geographically separate which could pose challenges for paraprofessionals and clients.

In contrast, the Sacramento cluster allows for enough paraprofessionals and clients while still including at least two counties (El Dorado and Yuba) with relatively high civil justice gaps. Sacramento and Placer have the first and third highest bar exam measures respectively for future paraprofessionals. Furthermore, paralegal graduation data suggests that future paraprofessionals will live in or near that region. Finally, the Sacramento cluster has about 165,000 more people living in its geographically concentrated, contiguous area.

## **CONCLUSION**

The Subcommittee recommends an additional region for phased program implementation: A Sacramento-based cluster comprised of El Dorado, Placer, Sacramento, and Yuba Counties.

## **PROPOSED RESOLUTION**

**RESOLVED**, that the California Paraprofessional Program Working Group amends its February 26, 2021, resolution regarding geographic areas to be included in the initial phase of the program, by adding the following Northern California counties:

- El Dorado
- Placer
- Sacramento
- Yuba



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: February 26, 2021

To: The California Paraprofessional Program Working Group

From: Erica Yew, Sharon Bashan, Julianne Fellmeth, Stephen Hamilton, Kimberly Kirchmeyer, Ioana Petrou, and Fariba Soroosh

Subject: Pilot Implementation Subcommittee Recommendations

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, an implementation strategy, including a recommendation as to whether to pilot the program.

At its meeting on December 17, 2020, the CPPWG heard a presentation about the potential benefits of piloting the program in California. Shortly after that meeting, CPPWG Chair, Justice Ioana Petrou, and CPPWG members Judge Erica Yew, Sharon Bashan, Julianne Fellmeth, Stephen Hamilton, Kimberly Kirchmeyer, and Fariba Soroosh, volunteered to serve on a Pilot Implementation Subcommittee; Judge Yew serves as subcommittee chair.

This memorandum contains the subcommittee's recommendations for structuring the launch of a legal paraprofessionals program. In developing these recommendations, the subcommittee considered several options including:

1. Piloting the program in a limited number of counties in several stages, conditioning subsequent implementation phases on the outcome of these pilots,
2. Launching the permanent program in a limited number of counties and/or subset of legal practice areas, phasing in additional geographies and practice areas over time,
3. Launching the program with design elements that do not match the final program design in order to expedite pilot initiation and/or provide additional consumer safeguards, and

4. Launching the permanent program in all counties and authorized practice areas without piloting or phasing in elements.

After fully considering these various approaches to program rollout, the subcommittee concluded that phased-in implementation, as opposed to any other pilot construction, is the most viable design approach. Piloting the program with a potential sunset date, and/or with features that are substantively different from those that will be reflected in the permanent program design, will likely fail to yield sufficient participants and evaluation data. The subcommittee thus recommends launching the program in at least two phases: Phase I will reflect limitations in both the number of authorized practice areas and participating geographic areas; Phase II may comprise either the wholesale rollout of the remaining authorized practice areas statewide or an expanded but not yet comprehensive set of practice areas and geographic locations.

The subcommittee specifically recommends that Phase I include the practice areas of family law, housing law (unlawful detainer and title clearing actions), and collateral criminal (expungements, infractions, and reclassifications) as defined in the final program. With respect to a limited geographic rollout, assuming this approach is viable from supply, market, and fiscal perspectives, the subcommittee tentatively recommends that the following counties be considered for Phase I implementation:

- **Northern California:** Alameda and Santa Clara Counties
- **Central California:** Fresno, Merced, and Tulare Counties
- **Southern California:** Orange County

Driving the subcommittee's recommendations are the mutually influencing priorities of protecting the public, encouraging participation in the program by both prospective paraprofessionals and consumers, and generating sufficient data to evaluate and inform program efficacy and design.

## **BACKGROUND**

The subcommittee met for the first time on January 15, 2021, and then four additional times over the months of January and February. The subcommittee's charge was to assess whether California should pilot the paraprofessional program being developed by the working group prior to full implementation and, if so, to recommend pilot features such as a timeline, practice areas, and locations. The subcommittee's work was informed by public comment, feedback from the legal services community, lessons learned from the Judicial Council's implementation of the Sargent Shriver Civil Counsel Act Pilot Projects, and education regarding the approach utilized by the California Office of Statewide Health Planning and Development, which is statutorily charged with piloting reforms in health care service delivery models.

## DISCUSSION

### To Pilot or Not to Pilot

On January 22, staff with the State Bar’s Office of Access & Inclusion held a roundtable with the legal services community to solicit feedback regarding pilot program parameters. That feedback was presented to the subcommittee at its January 26 meeting. The legal services community generally expressed support for a limited and structured pilot with the following design elements:

- A small number of pilot locations
- Attorney supervision of legal paraprofessionals
- A process to screen for and remove from the pilot unscrupulous providers
- A process to investigate and respond quickly to client complaints
- A tool to avoid diverting very low-income Californians from legal aid
- A cap on legal paraprofessionals’ fees to prevent clients from overpaying
- A bar on in-court representation by legal paraprofessionals
- A high standard for pilot participants’ legal knowledge and experience
- A narrow range of authorized legal activities within each area of law
- Close collaboration with substantive legal experts in refining the boundaries of legal paraprofessional services

At the January 26 meeting, staff also presented a three-stage pilot illustration featuring evaluation “thresholds” that the program would need to meet to progress from one stage to the next, prior to full implementation. This illustration was informed in significant part by the feedback received from the legal services community.

### Three-Year, Multiphase Pilot with Progression Thresholds

<p><b>Stage 1: Testing Premises about Safety and Effectiveness</b></p>	<p><b>Phase 1 concept:</b> Test the potential for safety and efficacy with heightened safeguards. Phase 1 would resemble the ultimate program only in part since it would test assumptions about legal paraprofessional services rather than the licensure program apparatus.</p> <p><b>Location:</b> 2–3 counties with sufficient participants, clients, court support, and alternative (e.g. self-help) services (e.g. Fresno, LA, and Sacramento)</p> <p><b>Practice areas:</b> 1–2 areas, 3–5 matters within each (but matters must allow for sufficient testing)</p> <p><b>Activities:</b> Defer to practice area subcommittee(s) working with practice area experts</p> <p><b>Entry requirements:</b> (Consult Licensing Subcommittee)</p>
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	<ul style="list-style-type: none"> <li>• Has a JD/LLM/paralegal certificate</li> <li>• Has 4+ years in relevant area of law or has an attorney supervisor during the pilot</li> <li>• Has a positive moral character determination</li> </ul> <p><b>Other safeguards:</b> (Consult Regulation and Discipline Subcommittees)</p> <ul style="list-style-type: none"> <li>• Mandate disclosures and referrals to self-help centers and LRSs</li> <li>• Mandate rerouting tool for legal aid cases</li> <li>• Regulate prices</li> <li>• Require CLE</li> <li>• Pay—from fees that paraprofessionals pay to participate—for experts to audit work product</li> <li>• Expedite client complaint process and response/remedy</li> </ul> <p><b>Timeline:</b> 12 months</p> <p><b>Data collection:</b> Rigorous focus on case outcomes and experiences of clients, judges, private bar, et al.</p> <p><b>Requirement to enter Phase 2:</b> Positive case outcomes and client satisfaction are commensurate with cases featuring attorney or self-representation.</p>
<p><b>Stage 2: Testing Program Features and Sustainability</b></p>	<p><b>Phase 2 concept:</b> Scale and test the licensure program features. Phase 2 will resemble the ultimate program on a small scale.</p> <p><b>Location:</b> 4–5 counties with sufficient participants, clients, court support, and alternative (e.g. self-help) services</p> <p><b>Practice areas:</b> 3–4 areas, 3–5 matters within each</p> <p><b>Activities:</b> Defer to practice area subcommittees working with practice area experts</p> <p><b>Entry requirements:</b> (Consult Licensing Subcommittee)</p> <ul style="list-style-type: none"> <li>• Has a JD/LLM/paralegal certificate</li> <li>• Has 4+ years in relevant area of law, attorney supervisor during pilot, or passed the program’s formal training and exam requirements</li> <li>• Has a positive moral character determination</li> </ul> <p><b>Other safeguards:</b> Same as in Phase 1 but without randomized audits of work product and with the permanent program’s discipline process</p> <p><b>Timeline:</b> 12 months</p>

	<p><b>Data collection:</b> Rigorous focus on case outcomes and experiences of clients, judges, private bar, et al.; assess efficacy of coursework, exam, and other regulations; assess impact on local justice gap and courts; compare to self-representation; assess interest in program and costs</p> <p><b>Requirement to enter Phase 3:</b> Positive case outcomes and client satisfaction are commensurate with cases featuring attorney or self-representation; positive impact on local justice gap and courts; sufficient interest to merit expanding</p>
<p><b>Stage 3: Testing in all Counties</b></p>	<p><b>Phase 3 concept:</b> Continue to scale and refine.</p> <p><b>Location:</b> All counties</p> <p><b>Practice areas:</b> All CPPWG-approved areas</p> <p><b>Activities:</b> All activities, deferring to practice area subcommittees working with practice area experts</p> <p><b>Entry requirements:</b> Same as in Phase 2</p> <p><b>Other safeguards:</b> Same as in Phase 2 but without regulating fees</p> <p><b>Timeline:</b> 12 months</p> <p><b>Data collection:</b> Same as in Phase 2</p> <p><b>Requirement to exit pilot:</b> Same as in Phase 2 plus sufficient interest among participants and courts to justify regulatory infrastructure; program is financially sustainable</p>

Staff's model included several elements that would potentially vary significantly from the final program design including:

- A pathway to licensure that would avoid the need to satisfy program educational credit, experiential, or testing requirements with the goal of expediting the process for licensing paraprofessionals during a pilot period,
- Attorney supervision of legal paraprofessionals under some circumstances,
- Quality assurance audits of legal paraprofessional work product,
- An expedited process to investigate and resolve client complaints,
- Price regulation of legal paraprofessional services, and
- A rerouting tool for Californians who might qualify for free legal aid.

As it evaluated staff's three-phase model the subcommittee became concerned that any pilot differing from the final program in its licensing requirements, consumer safeguards, or authorized activity parameters would likely come up short in at least one fundamental respect: the pilot might operate so differently from the permanent program that it would be difficult to extrapolate accurately from the pilot to the permanent program. The subcommittee was also concerned that piloting the program with a sunset provision and/or requirement that it achieve certain benchmarks in order to remain operative would dissuade prospective licensees and educational institutions from making upfront investments of time or money to participate.

The subcommittee therefore determined that a phased-in implementation, as opposed to a traditional pilot approach, would be the most viable way in which to effectuate a controlled program rollout.

### **Recommendations for a Phased Implementation**

There are two primary components of a phased-in approach: limited practice areas and/or limited geographic areas.

#### **Limited Practice Areas**

The subcommittee evaluated whether it would recommend authorizing all practice areas at once or starting with a small number of areas and phasing in others. Practical concerns about being able to concurrently develop the licensing infrastructure for all authorized practice areas, as well as a desire to keep implementation and initial evaluation manageable, led the subcommittee to recommend launching the program with just three practice areas in its first year: family, housing, and collateral criminal. In selecting these practice areas, the Subcommittee considered information suggesting that all three—especially family and housing—experience high demand among Californians. The subcommittee also observed that family and housing feature in the Minnesota legal paraprofessionals pilot project that is currently underway. Family law, for that matter, features in existing and proposed legal paraprofessional programs throughout the country. Additionally, collateral criminal matters pose fewer difficult-to-remedy risks than do some of the other areas of law that the CPPWG is examining.

#### **Limited Geographic Areas**

Based on the data currently available to it, the subcommittee provisionally recommends that the program launch in the following counties and phase in additional locations over time:

- **Northern California:** Alameda and Santa Clara Counties
- **Central California:** Fresno, Merced, and Tulare Counties
- **Southern California:** Orange County

Similar to limiting the number of practice areas upon launch, limiting the number of counties would help keep implementation and evaluation manageable. While it makes intuitive sense to launch the program on a limited geographic basis, the subcommittee grappled with significant

concerns about the viability of a small-scale program rollout. In considering whether or not to recommend a limited geographic versus statewide rollout, the subcommittee considered the following factors and data:

- **Size of the potential client population:** data source: population estimates from the U.S. Census Bureau;
- **Size of the potential licensee population:** data about the location of California Bar Exam test takers who have yet to score above a 1390 suggests the location of future legal paraprofessional participants. As of today, the Licensing Subcommittee proposes to limit participants to those who have a Juris Doctor degree or paralegal certificate. While staff await data about the location of certified paralegals in California, data about the location of those who hold a law degree and have yet to become an attorney is readily available. Data source: California Bar Exam passage data from the State Bar;
- **Size of the local justice gap:** data about the number of self-represented litigants in family law cases and number of attorneys in each county can serve as a helpful—albeit incomplete—proxy for the size of the civil justice gap. The subcommittee found this factor to be relevant since the program ultimately seeks to provide an affordable alternative to the often inaccessibly high costs of legal representation outside of finite legal aid, self-help, *pro bono*, and “low bono” offerings. Data sources: pro per litigant data for family law cases from the Judicial Council and attorney density data from the State Bar; and
- **Implementation costs:** data source: cost projections from the State Bar.

The following is an excerpt of data in each of these respective areas that staff presented to the subcommittee on February 16, 2021:

#### Potential Clients: The Most Populous Counties in California

	County	Population Estimate (2019)	Percent of State
1.	Los Angeles	10,039,107	25.4%
2.	San Diego	3,338,330	8.4%
3.	Orange	3,175,692	8.0%
4.	Riverside	2,470,546	6.3%
5.	San Bernardino	2,180,085	5.5%
6.	Santa Clara	1,927,852	4.9%
7.	Alameda	1,671,329	4.2%
8.	Sacramento	1,552,058	3.9%
9.	Contra Costa	1,153,526	2.9%
10.	Fresno	999,101	2.5%
11.	Kern	900,202	2.3%
12.	San Francisco	881,549	2.2%

**Potential Participants: Bar Exam Scores Under 1390 on the Most Recent Attempt**

	<b>County</b>	<b>Scored &lt;1390 on Last Attempt (2011-2020)</b>	<b>Percent of State</b>
1.	Los Angeles	3,479	32.6%
2.	San Diego	1,093	10.3%
3.	Orange	1,069	10.0%
4.	Alameda	666	6.2%
5. (tie)	San Francisco	584	5.5%
5. (tie)	Santa Clara	584	5.5%
6.	Sacramento	436	4.1%
7.	Contra Costa	324	3.0%
8.	Riverside	321	3.0%
9.	San Bernardino	282	2.6%
10.	San Mateo	272	2.6%
11.	Ventura	209	2.0%
12.	Fresno	141	1.3%

**Justice Gap: Pro Per Litigants in Family Law Cases (2017)**

	<b>County</b>	<b>Pro Per Litigants as Percent of Filings (Family Law 2017)</b>
1.	Colusa**	171%
2.	San Joaquin**	120%
3.	Lassen**	114%
4.	Yuba**	104%
5.	Kings	94%
6.	Santa Cruz	92%
7.	Orange	91%
8.	Madera	90%
9.	El Dorado	83%
10. (tie)	Alameda	82%
10. (tie)	Siskiyou	82%
11.	Tehama	75%
12. (tie)	Trinity	74%
12. (tie)	Imperial	74%
12. (tie)	Tulare	74%

\*\* Figure can exceed 100% because filings can have multiple pro per litigants.

**Justice Gap: Attorney Density**Counties that have the **highest** disparity between residents and licensed attorneys

	<b>County</b>	<b>Residents per Active Attorney (2021)</b>
1.	Merced	1,791
2.	Glenn	1,775
3.	Kings	1,514
4.	Madera	1,457
5.	Lassen	1,390
6.	Imperial	1,294
7.	Modoc	1,263
8.	San Benito	1,256
9.	Tulare	1,211
10.	Tehama	1,205
11.	Mariposa	1,147
12.	Kern	1,052

**Justice Gap: Attorney Density**Counties that have the **lowest** disparity between residents and licensed attorneys

	<b>County</b>	<b>Residents per Active Attorney (2021)</b>
1.	San Francisco	50
2.	Marin	123
3.	San Mateo	162
4.	Los Angeles	180
5. (tie)	Sacramento	186
5. (tie)	Orange	186
6.	Santa Clara	195
7.	San Diego	210
8.	Alameda	226
9.	Alpine	282
10.	Contra Costa	284
11.	Ventura	299

**Cost Comparison of Limited Geographic versus Statewide Rollout**

<b>Cost Factor</b>	<b>Fixed or Variable Cost</b>	<b>Limited Geographic Rollout</b>	<b>Statewide Rollout</b>
Governance Board Administration	Fixed	1 FTE	1 FTE
Licensing: Curriculum Requirements, Test Development & Administration	Variable	1 FTE + contract dollars	2+ FTE Increased contract dollars
Licensing: Other	Variable	.5 FTE	2+ FTE
Regulation	Variable	.5 FTE	1 FTE
Discipline	Fixed/Variable	1 FTE + Panel Member Stipends (Disciplinary Panels) OCTC staff complement <ul style="list-style-type: none"> <li>• .5 attorney</li> <li>• 1 investigator</li> <li>• .05 admin</li> <li>• .05 supervision</li> </ul>	1 FTE + Panel Member Stipends (Disciplinary Panels) OCTC staff complement
Advertising	Fixed /Variable	TBD	TBD+
Evaluation	Variable	\$50,000–\$100,000	\$150,000–\$250,000

After reviewing this data in totality, and pending additional investigation as described below, the subcommittee provisionally recommends that the following counties be included in a limited geographic program rollout:

<b>Counties</b>	<b>Selection Factors</b>
Northern California: Alameda and Santa Clara Counties	<p><b>Future client population:</b> They are among the top two most populous counties in Northern California (with a combined population of 3.6 million residents).</p> <p><b>Future paraprofessional population:</b> They are in the top three Northern California counties for Bar Exam takers who might be interested in becoming legal paraprofessionals.</p> <p><b>Size of justice gap:</b> Alameda County reports a relatively high rate of self-representation in family law (recommend excluding neighboring San Francisco County since it has the highest density of attorneys in the state).</p>
Central California: Fresno,	<p><b>Future client population:</b> Fresno is the largest county in Central California (the three counties have a combined population of 1.7 million residents).</p>

Merced, and Tulare Counties	<p><b>Future paraprofessional population:</b> Fresno County is the top county in Central California for Bar Exam takers who might be interested in becoming legal paraprofessionals.</p> <p><b>Size of justice gap:</b> At least one county reports a relatively high rate of self-representation in family law; additionally, Merced and Tulare have two of the lowest attorney densities in the state (Merced has the lowest).</p>
Southern California: Orange County	<p><b>Future client population:</b> It has the third highest population in the state at about 3.2 million residents (recommend excluding neighboring LA County since it has a population of over 10 million residents, which might overwhelm launch).</p> <p><b>Future paraprofessional population:</b> It is in the top three Southern California counties for Bar Exam takers who might be interested in becoming legal paraprofessionals.</p> <p><b>Size of justice gap:</b> It reports a relatively high rate of self-representation in family law.</p>
Meaning of County Designation	<p>Legal paraprofessionals could provide services in a participating county if that county court system has jurisdiction over the case. Neither the legal paraprofessional nor the client would need to reside in the county. This approach offers a familiar, venue-based analysis, and avoids unnecessary restrictions on where paraprofessionals or clients have to work or reside.</p>

The subcommittee also discussed evaluation of the phased-in implementation effort. The frequency, nature, and disposition of cases; the frequency, nature, and resolution of consumer complaints; and the price, length, and outcome of services, perhaps compared to matters where clients represented themselves or were represented by counsel, are all potential evaluation metrics. In addition to these consumer and paraprofessional focused data points, the subcommittee developed systemic evaluation metrics of interest:

- **Lopsided representation:** collect data to analyze whether licensing legal paraprofessionals disproportionately benefits one party in any type of case; this is a particular concern for unlawful detainer matters.
- **Practicality of geographic practice restrictions:** collect data to assess whether the limited geographic implementation unduly burdens legal paraprofessionals and/or clients or poses other unintended negative consequences.
- **Improved administration of justice:** collect data to evaluate whether legal paraprofessionals have improved court efficiency in participating counties.

In developing an evaluation plan the subcommittee recommends that the State Bar maintain a flexible and adaptive approach, meaning that, if, based on the analysis of data received, any significant concerns or opportunities for improvement arise, the State Bar makes modifications to program design or pilot structure as needed forthwith.

## **CONCLUSION AND NEXT STEPS**

The subcommittee is grateful for the helpful advice that it received from the Judicial Council, Office of Statewide Health Planning and Development, legal services representatives, and members of the public. The subcommittee evaluated the intricacies of a pilot model, leading it to recommend a phased implementation of the program as the most efficacious way to predict its long-term performance and allow for adequate participation and iteration—both of which are critical to the success of this important access-to-justice initiative.

As a set of next steps, the subcommittee will continue seeking information about the location of certified paralegals in California; solicit feedback from legal services providers serving recommended counties; and reach out to each respective court system to invite feedback about implementation in their counties. This research will inform the subcommittee's final recommendation about geographic rollout.



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: June 25, 2021

To: California Paraprofessional Program Working Group

From: California Paraprofessional Working Group Staff

Subject: Draft Rules of Professional Conduct for Paraprofessional Licensees

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The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services \(ATILS\)](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, rules of professional conduct for paraprofessional licensees.

A current draft of these proposed rules is provided as Attachment 1 for CPPWG review and discussion; there will not be a vote taken on these rules at the CPPWG's June 25 meeting. The draft rules presented to the CPPWG at its April 19, 2021, meeting are provided as Attachment 2.

**RULES OF PROFESSIONAL CONDUCT FOR LICENSED PARAPROFESSIONALS****Rule 1.0 Purpose and Function of the Rules of Professional Conduct for Licensed Paraprofessionals**

## (a) Purpose.

The following rules are intended to regulate professional conduct of ~~lawyer~~licensed paraprofessionals through discipline. They have been adopted by the Board of Trustees of the State Bar of California and approved by the Supreme Court of California ~~pursuant to Business and Professions Code sections 6076 and 6077~~ to protect the public, the courts, and the legal profession; protect the integrity of the legal system; and promote the administration of justice and confidence in the legal profession. These rules together with any standards adopted by the Board of Trustees pursuant to these rules shall be binding upon all ~~lawyer~~licensed paraprofessionals.

## (b) Function.

(1) A willful violation of any of these rules is a basis for discipline.

(2) The prohibition of certain conduct in these rules is not exclusive. ~~Lawyer~~Licensed paraprofessionals are also bound by applicable law including relevant statutes, the California Rules of Court, and the State Bar Act (Bus. & Prof. Code, § 6000 et seq.) and opinions of California courts.

(3) A violation of a rule does not itself give rise to a cause of action for damages caused by failure to comply with the rule. Nothing in these rules or the Comments to the rules is intended to enlarge or to restrict the law regarding the liability of ~~lawyers~~ licensed paraprofessionals to others.

## (c) Purpose of Comments.

The comments are not a basis for imposing discipline but are intended only to provide guidance for interpreting and practicing in compliance with the rules.

(d) These rules may be cited and referred to as the “California Rules of Professional Conduct for Licensed Paraprofessionals.”

**Comment**

[Reserved]

**Rule 1.0.1 Terminology**

(a) “Belief” or “believes” means that the person\* involved actually supposes the fact in question to be true. A person’s\* belief may be inferred from circumstances.

(b) “Licensed Paraprofessional” means a person\* licensed to engage in the limited practice of law pursuant to [ADD reference to CRC rule(s) and/or State Bar Act provisions defining licensing process and scope of permissible practice.]

(c) “Firm” or “law firm” means a licensed paraprofessional, licensed parafessionals, a lawyer, or lawyers in a law partnership; a professional law corporation; a ~~lawyer~~licensed paraprofessional acting as a sole proprietorship; an association authorized to practice law; or ~~lawyer~~licensed paraprofessionals ~~licensed paraprofessional~~ employed in a legal services organization or in the legal department, division or office of a corporation, of a government organization, or of another organization.

(d) “Fraud” or “fraudulent” means conduct that is fraudulent under the law of the applicable jurisdiction and has a purpose to deceive.

(e) “Informed consent” means a person’s\* agreement to a proposed course of conduct after the lawyerlicensed paraprofessional has communicated and explained (i) the relevant circumstances and (ii) the material risks, including any actual and reasonably\* foreseeable adverse consequences of the proposed course of conduct.

(e-1) “Informed written consent” means that the disclosures and the consent required by paragraph (e) must be in writing.\*

(f) “Knowingly,” “known,” or “knows” means actual knowledge of the fact in question. A person’s\* knowledge may be inferred from circumstances.

(g) “Partner” means a member of a partnership, a shareholder in a law firm\* organized as a professional corporation, or a member of an association authorized to practice law.

(g-1) “Person” has the meaning stated in Evidence Code section 175.

(h) “Reasonable” or “reasonably” when used in relation to conduct by a lawyerlicensed paraprofessional means the conduct of a reasonably prudent and competent lawyerlicensed paraprofessional.

(i) “Reasonable belief” or “reasonably believes” when used in reference to a lawyerlicensed paraprofessional means that the lawyerlicensed paraprofessional believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) “Reasonably should know” when used in reference to a lawyerlicensed paraprofessional means that a lawyerlicensed paraprofessional of reasonable prudence and competence would ascertain the matter in question.

(k) “Screened” means the isolation of a lawyerlicensed paraprofessional from any participation in a matter, including the timely imposition of procedures within a law firm\* that are adequate under the circumstances (i) to protect information that the isolated lawyerlicensed paraprofessional is obligated to protect under these rules or other law; and (ii) to protect against other law firm\* lawyers, licensed paraprofessionals and nonlawyers, and non-licensed paraprofessional personnel communicating with the lawyerlicensed paraprofessional with respect to the matter.

(l) “Substantial” when used in reference to degree or extent means a material matter of clear and weighty importance.

(m) “Tribunal” means: (i) a court, an arbitrator, an administrative law judge, or an administrative body acting in an adjudicative capacity and authorized to make a decision that can be binding on the parties involved; or (ii) a special master or other person\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

(n) “Writing” or “written” has the meaning stated in Evidence Code section 250. A “signed” writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed, inserted, or adopted by or at the direction of a person\* with the intent to sign the writing.

(o) “Lawyer RPC” denotes the California Rules of Professional Conduct for Lawyers.

#### **Comment**

[Reserved]

## CHAPTER 1.

### LAWYER LICENSED PARAPROFESSIONAL-CLIENT RELATIONSHIP

#### Rule 1.1 Competence

(a) A lawyer licensed paraprofessional shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.

(b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably\* necessary for the performance of such service.

(c) If a lawyer licensed paraprofessional does not have sufficient learning and skill when the legal services within the scope of the licensure are undertaken, the lawyer licensed paraprofessional nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyer licensed paraprofessional or a lawyer whom the lawyer licensed paraprofessional reasonably believes\* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyer licensed paraprofessional or lawyer whom the lawyer licensed paraprofessional reasonably believes\* to be competent.

~~(d) In an emergency a lawyer licensed paraprofessional may give advice or assistance in a matter in which the lawyer licensed paraprofessional does not have the skill ordinarily required if referral to, or association or consultation with, another lawyer licensed paraprofessional or lawyer would be impractical. Assistance in an emergency must be limited to that reasonably\* necessary in the circumstances.~~

#### Comment

[Reserved]

#### Rule 1.2 Scope of Representation and Allocation of Authority

(a) Subject to rule 1.2.1, a lawyer licensed -paraprofessional shall abide by a client’s decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably\* consult with the client as to the means by which they are to be pursued. Subject to ~~Business and Professions Code section 6068, subdivision (e)(1) and~~ rule 1.6, a licensed paraprofessional lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A licensed paraprofessional lawyer shall abide by a client’s decision whether to settle a matter. ~~Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.~~

(b) A lawyer licensed paraprofessional may limit the scope of the representation if the limitation is reasonable\* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.\*

#### Comment

[Reserved]

### Rule 1.2.1 Advising or Assisting the Violation of Law

- (a) A licensed paraprofessional lawyer shall not counsel a client to engage, or assist a client in conduct that the lawyer licensed paraprofessional knows\* is criminal, fraudulent,\* or a violation of any law, rule, or ruling of a tribunal.\*
- (b) Notwithstanding paragraph (a), a licensed paraprofessional lawyer may:
- (1) discuss the legal consequences of any proposed course of conduct with a client; and
  - (2) counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of a law, rule, or ruling of a tribunal.\*

#### Comment

[Reserved]

### Rule 1.3 Diligence

- (a) A licensed paraprofessional lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.
- (b) For purposes of this rule, “reasonable diligence” shall mean that a lawyer licensed paraprofessional acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer licensed paraprofessional.

#### Comment

[Reserved]

### Rule 1.4 Communication with Clients

- (a) A licensed paraprofessional lawyer shall:
- (1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client’s informed consent\* is required by these rules or the State Bar Act applicable law;
  - (2) reasonably\* consult with the client about the means by which to accomplish the client’s objectives in the representation;
  - (3) keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed; and
  - (4) advise the client about any relevant limitation on the lawyer licensed paraprofessional’s conduct when the lawyer licensed paraprofessional knows\* that the client expects assistance not permitted by these rules Rules of Professional Conduct or other law.
- (b) A lawyer licensed paraprofessional shall explain a matter to the extent reasonably\* necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer licensed paraprofessional may delay transmission of information to a client if the lawyer licensed paraprofessional reasonably believes\* that the client would be likely to react in a way that may cause imminent harm to the client or others.

(d) A ~~lawyer~~ licensed paraprofessional's obligation under this rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or limitation under statutory or decisional law.

**Comment**

[Reserved]

**Rule 1.4.1 Communication of Settlement Offers**

~~(a) A lawyer~~ licensed paraprofessional shall promptly communicate to the ~~lawyer~~ licensed paraprofessional's client:

~~(1) all terms and conditions of a proposed plea bargain or other dispositive offer made to the client in a criminal matter; and~~

~~(2) all amounts, terms, and conditions of any written\* offer of settlement made to the client in all other matters.~~

~~(b) As used in this rule, "client" includes a person\* who possesses the authority to accept an offer of settlement or plea, or, in a class action, all the named representatives of the class.~~

**Comment**

[Reserved]

**Rule 1.4.2 Notice to Consumers Prior to Consultation with a Prospective Client ~~Disclosure of Professional Liability Insurance~~**

(a) Prior to a prospective client's consultation with a licensed paraprofessional for the purpose of retaining the licensed paraprofessional or securing legal services or advice from the licensed paraprofessional in the licensed paraprofessional's professional capacity, the licensed paraprofessional shall disclose orally and provide the written\* disclosures to the prospective client in the prospective client's preferred language that:

(1) the licensed paraprofessional is not a lawyer;

(2) the licensed paraprofessional has a license to provide limited legal services, the area of practice in which the licensed paraprofessional is licensed, and that the licensed paraprofessional cannot provide all services that a lawyer can provide in this area of practice;

(3) the prospective client may need to hire a lawyer if the legal services that the prospective client seeks are beyond the limited scope of the licensed paraprofessional's license;

(4) there may be other alternative choices available for the prospective client to consider, including, but not limited to, 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 or potentially free legal services from a local legal aid organization if the prospective client qualifies;

(5) a general description of the licensed paraprofessional's fee structure and billing methods; and

(6) whether the licensed paraprofessional does or does not have professional liability insurance based on the licensed paraprofessional's reasonable knowledge\* at the time of the disclosure,

~~(a) A licensed paraprofessional who knows\* or reasonably should know\* that the licensed paraprofessional does not have professional liability insurance shall inform a client in writing,\* at the time of the client's engagement of the licensed paraprofessional, that the licensed paraprofessional does not have professional liability insurance.~~

~~(b) If the licensed paraprofessional provides notice to the prospective client prior to consultation that the licensed paraprofessional does have professional liability insurance pursuant to paragraph (a)(6) and a licensed paraprofessional-client relationship is formed, the licensed paraprofessional shall inform the client in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional no longer has professional liability insurance during the representation of the client. If notice under paragraph (a) has not been provided at the time of a client's engagement of the licensed paraprofessional, the licensed paraprofessional shall inform the client in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional no longer has professional liability insurance during the representation of the client.~~

~~(c) This rule does not apply to:~~

~~(1) a licensed paraprofessional who knows\* or reasonably should know\* at the time of the client's engagement of the licensed paraprofessional that the licensed paraprofessional's legal representation of the client in the matter will not exceed four hours; provided that if the representation subsequently exceeds four hours, the licensed paraprofessional must comply with paragraphs (a) and (b);~~

~~(2) a licensed paraprofessional who is employed as a government licensed paraprofessional or in-house counsel when that licensed paraprofessional is representing or providing legal advice to a client in that capacity;~~

~~(3) a licensed paraprofessional who is rendering legal services in an emergency to avoid foreseeable prejudice to the rights or interests of the client;~~

~~(4) a licensed paraprofessional who has previously advised the client in writing\* under paragraph (a) or (b) that the licensed paraprofessional does not have professional liability insurance.~~

[Reserved]

### **Rule 1.4.3 Informed Written Consent\* to Representation**

(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 legal services may be available to low-income individuals from a legal aid program if the client qualifies. [The following additional phrase recommended by Amos Hartston only: "with available contact information"];

(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.

### Comments

[Reserved]

### **Rule 1.5 Fees for Legal Services**

(a) A ~~lawyer~~licensed paraprofessional shall not make an agreement for, charge, or collect an unconscionable or illegal fee.

(b) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. The factors to be considered in determining the unconscionability of a fee include without limitation the following:

- (1) whether the ~~lawyer~~licensed paraprofessional engaged in fraud\* or overreaching in negotiating or setting the fee;
- (2) whether the ~~lawyer~~licensed paraprofessional has failed to disclose material facts;
- (3) the amount of the fee in proportion to the value of the services performed;
- (4) the relative sophistication of the ~~licensed paraprofessional~~lawyer and the client;
- (5) the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (6) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the ~~licensed paraprofessional~~lawyer;
- (7) the amount involved and the results obtained;
- (8) the time limitations imposed by the client or by the circumstances;
- (9) the nature and length of the professional relationship with the client;
- (10) the experience, reputation, and ability of the ~~licensed paraprofessional~~lawyer or lawyers performing the services;
- (11) whether the fee is fixed or contingent;
- (12) the time and labor required; and
- (13) whether the client gave informed consent\* to the fee.

(14) the fee customarily charged by licensed paraprofessionals and lawyers in the locality for similar legal service.

(c) A licensed paraprofessional~~lawyer~~ shall not make an agreement for, charge, or collect:

~~(1) any fee in a family law matter, the payment or amount of which is contingent upon the securing of a dissolution or declaration of nullity of a marriage or upon the amount of spousal or child support, or property settlement in lieu thereof; a contingent fee except in an enforcement of judgment matter within the scope of the licensed paraprofessional's licensure. Any contingent fee permitted under this paragraph shall not exceed thirty-three and one-third percent of the total value of the judgment subject to the enforcement action. [alternative if adopted as a court rule or statute:       ].~~

~~(2) a contingent fee for representing a defendant in a criminal case.~~

(d) A licensed paraprofessional ~~lawyer may~~ **shall not** make an agreement for, charge, or collect a fee that is denominated as "earned on receipt" or "non-refundable," or in similar terms, ~~only if the fee is a true retainer and the client agrees in writing\* after disclosure that the client will not be entitled to a refund of all or part of the fee charged. A true retainer is a fee that a client pays to a lawyer to ensure the lawyer's availability to the client during a specified period or on a specified matter, but not to any extent as compensation for legal services performed or to be performed.~~

(e) A ~~lawyer~~licensed paraprofessional may make an agreement for, charge, or collect a flat fee for specified legal services. A flat fee is a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the ~~lawyer~~licensed paraprofessional providing those services.

#### Comment

[Reserved]

#### Rule 1.5.1 Fee Divisions Among Lawyer ~~Licensed Paraprofessionals~~ and With Lawyers

(a) Lawyer ~~Licensed paraprofessionals~~ who are not in the same law firm\* shall not divide a fee for legal services unless:

(1) the lawyer ~~licensed paraprofessionals~~ enter into a written\* agreement to divide the fee;

~~(2) the division is in proportion to the legal services performed by each licensed paraprofessional or each licensed paraprofessional assumes joint responsibility for the representation.~~

~~(23) the client has consented in writing,\* either at the time the lawyer ~~licensed paraprofessionals~~ enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the lawyer ~~licensed paraprofessionals~~ or law firms\* that are parties to the division; and (iii) the terms of the division; and~~

~~(34) the total fee charged by all lawyer ~~licensed paraprofessionals~~ is not increased solely by reason of the agreement to divide fees.~~

(b) A licensed paraprofessional and a lawyer who are not in the same law firm\* shall not divide a fee for legal services unless:

(1) the licensed paraprofessional and the lawyer enter into a written\* agreement to divide the fee;

(2) the division is in proportion to the legal services performed by each licensed paraprofessional and the lawyer;

(3) the client has consented in writing,\* either at the time the licensed paraprofessional and the lawyer enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessional, the lawyer, or law firms\* that are parties to the division; and (iii) the terms of the division; and

(4) the total fee charged by all licensed paraprofessionals and lawyers is not increased solely by reason of the agreement to divide fees.

(b)(c) This rule does not apply to a division of fees pursuant to court order.

**Comment**

[Reserved]

**Rule 1.5.2 Written Agreement to Representation**

Prior to the performance of legal services for a fee, the licensed paraprofessional shall enter into a written\* agreement with the client in a separate writing,\* provided in the prospective client's preferred language, and signed by both the client and the licensed paraprofessional, that provides the licensed paraprofessional's name, specialty area, mailing address, street address, telephone numbers, facsimile numbers, internet address, and license number of the licensed paraprofessional, and includes the following provisions:

- (a) A clear and conspicuous disclosure that the licensed paraprofessional is not a lawyer and may only provide limited legal advice and services within the scope of the licensed paraprofessional's licensure. This statement shall be on the first page of the contract; in a type size, font, color, appearance, and location sufficiently noticeable for a client to read and comprehend them; in a print that contrasts with the background against which they appear; in larger type than the surrounding text; in a manner that clearly calls attention to the language;
- (b) An explanation of the general nature of the legal services to be provided to the client;
- (c) A reasonable estimate of the total fees, expenses, and costs of services provided by the licensed paraprofessional, and the basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the matter;
- (d) A statement that, pursuant to rule 1.4, the licensed paraprofessional must keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed pursuant to rule 1.16;
- (e) A statement describing the licensed paraprofessional's duty to protect the confidentiality of information related to the representation under rule 1.6, including information provided in confidence by the client and the licensed paraprofessional's work product associated with the legal services sought or provided by the licensed paraprofessional;
- (f) A statement that, pursuant to rule 1.16(a)(4), the client has the right to terminate the contract and services at any time, with or without cause, and receive a full refund of unearned fees pursuant to rule 1.16(e)(2);
- (g) A statement confirming that the licensed paraprofessional is required by [add rule of court reference] to carry a surety bond in the amount of \$100,000, the name of the surety bond carrier, and information on how to file a claim against the surety bond if necessary;
- (h) A statement confirming if the licensed paraprofessional has or does not have professional liability insurance. If the licensed paraprofessional has professional liability insurance, the name of the carrier, the amount of coverage, and how to file a claim if necessary;
- (i) A statement describing how to file a complaint with the State Bar of California;

- (j) A statement regarding the respective responsibilities of the licensed paraprofessional and the client as to the performance of the agreement; and
- (k) Any other disclosures, statements, or conditions required by the [Paraprofessional] Rules of Professional Conduct and the rules and regulations of the [Paraprofessional] Board.

#### Comments

#### **Rule 1.6 Confidential Information of a Client**

(a) A ~~lawyer~~licensed paraprofessional shall not reveal information ~~protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ unless the client gives informed consent,\* or the disclosure is permitted by paragraph (b) of this rule.

(b) A ~~lawyer~~licensed paraprofessional may, but is not required to, reveal information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ to the extent that the ~~lawyer~~licensed paraprofessional reasonably believes\* the disclosure is necessary to prevent a criminal act that the ~~lawyer~~licensed paraprofessional reasonably believes\* is likely to result in death of, or substantial\* bodily harm to, an individual, as provided in paragraph (c).

(c) Before revealing information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ to prevent a criminal act as provided in paragraph (b), a ~~lawyer~~licensed paraprofessional shall, if reasonable\* under the circumstances:

(1) make a good faith effort to persuade the client: (i) not to commit or to continue the criminal act; or (ii) to pursue a course of conduct that will prevent the threatened death or substantial\* bodily harm; or do both (i) and (ii); and

(2) inform the client, at an appropriate time, of the ~~lawyer~~licensed paraprofessional's ability or decision to reveal information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ as provided in paragraph (b).

(d) In revealing information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to representation of a client~~ as provided in paragraph (b), the ~~lawyer~~licensed paraprofessional's disclosure must be no more than is necessary to prevent the criminal act, given the information known\* to the ~~lawyer~~licensed paraprofessional at the time of the disclosure.

(e) A ~~lawyer~~licensed paraprofessional who does not reveal information permitted by paragraph (b) does not violate this rule.

#### **Comment**

[Reserved]

#### **Rule 1.7 Conflict of Interest: Current Clients**

(a) A ~~lawyer~~licensed paraprofessional shall not, without informed written consent\* from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.

(b) A ~~lawyer~~licensed paraprofessional shall not, without informed written consent\* from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the ~~lawyer~~licensed paraprofessional's

representation of the client will be materially limited by the lawyerlicensed paraprofessional's responsibilities to or relationships with another client, a former client or a third person,\* or by the lawyerlicensed paraprofessional's own interests.

(c) Even when a significant risk requiring a lawyerlicensed paraprofessional to comply with paragraph (b) is not present, a lawyerlicensed paraprofessional shall not represent a client without written\* disclosure of the relationship to the client and compliance with paragraph (d) where:

(1) the lawyerlicensed paraprofessional has, or knows\* that another lawyer or licensed paraprofessional in the lawyerlicensed paraprofessional's firm\* has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter; or

(2) the lawyerlicensed paraprofessional knows\* or reasonably should know\* that another party's lawyer or licensed paraprofessional is a spouse, parent, child, or sibling of the lawyerlicensed paraprofessional, lives with the lawyerlicensed paraprofessional, is a client of the lawyerlicensed paraprofessional or another lawyer or licensed paraprofessional in the lawyerlicensed paraprofessional's firm,\* or has an intimate personal relationship with the lawyerlicensed paraprofessional.

(d) Representation is permitted under this rule only if the lawyerlicensed paraprofessional complies with paragraphs (a), (b), and (c), and:

(1) the lawyerlicensed paraprofessional reasonably believes\* that the lawyerlicensed paraprofessional will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law; and

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyerlicensed paraprofessional in the same litigation or other proceeding before a tribunal.

(e) For purposes of this rule, "matter" includes any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons,\* or a discrete and identifiable class of persons.\*

**Comment**

[Reserved]

**Rule 1.8.1 Business Transactions with a Client and Pecuniary Interests Adverse to a Client**

A lawyerlicensed paraprofessional shall not enter into a business transaction with a client, or knowingly\* acquire an ownership, possessory, security or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

(a) the transaction or acquisition and its terms are fair and reasonable\* to the client and the terms and the lawyerlicensed paraprofessional's role in the transaction or acquisition are fully disclosed and transmitted in writing\* to the client in a manner that should reasonably\* have been understood by the client;

(b) the client either is represented in the transaction or acquisition by an independent lawyer of the client's choice or the client is advised in writing\* to seek the advice of an independent lawyer of the client's choice and is given a reasonable\* opportunity to seek that advice; and

(c) the client thereafter provides informed written consent\* to the terms of the transaction or acquisition, and to the lawyerlicensed paraprofessional's role in it.

## Comment

[Reserved]

### Rule 1.8.2 Use of Current Client's Information

A lawyer licensed paraprofessional shall not use a client's information protected by ~~Business and Professions Code section 6068, subdivision (e)(1)~~ rule 1.6 to the disadvantage of the client unless the client gives informed consent,\* except as permitted by these rules or ~~the State Bar Act~~ applicable law.

## Comment

[Reserved]

### Rule 1.8.3 Gifts from Client

(a) A lawyer licensed paraprofessional shall not:

~~(1) solicit a client to make a substantial\* gift, including a testamentary gift, to the lawyer licensed paraprofessional or a person\* related to the lawyer licensed paraprofessional, unless the lawyer licensed paraprofessional or other recipient of the gift is related to the client.~~

~~(2) prepare on behalf of a client an instrument giving the lawyer or a person\* related to the lawyer any substantial\* gift, unless (i) the lawyer or other recipient of the gift is related to the client, or (ii) the client has been advised by an independent lawyer who has provided a certificate of independent review that complies with the requirements of Probate Code section 21384.~~

(b) For purposes of this rule, related persons\* include a person\* who is "related by blood or affinity" as that term is defined in California Probate Code section 21374, subdivision (a).

## Comment

[Reserved]

### Rule 1.8.4 [Reserved]

### Rule 1.8.5 Payment of Personal or Business Expenses Incurred by or for a Client

(a) A lawyer licensed paraprofessional shall not directly or indirectly pay or agree to pay, guarantee, or represent that the lawyer licensed paraprofessional or lawyer licensed paraprofessional's law firm\* will pay the personal or business expenses of a prospective or existing client.

(b) Notwithstanding paragraph (a), a lawyer licensed paraprofessional may:

(1) pay or agree to pay such expenses to third persons,\* from funds collected or to be collected for the client as a result of the representation, with the consent of the client;

(2) after the lawyer licensed paraprofessional is retained by the client, agree to lend money to the client based on the client's written\* promise to repay the loan, provided the lawyer licensed paraprofessional complies with rules 1.7(b), 1.7(c), and 1.8.1 before making the loan or agreeing to do so;

(3) advance the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the client's interests, the repayment of which may be contingent on the outcome of the matter; and

(4) pay the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the interests of an indigent person\* in a matter in which the lawyerlicensed paraprofessional represents the client.

(c) "Costs" within the meaning of paragraphs (b)(3) and (b)(4) are not limited to those costs that are taxable or recoverable under any applicable statute or rule of court but may include any reasonable\* expenses of litigation, including court costs, and reasonable\* expenses in preparing for litigation or in providing other legal services to the client.

(d) Nothing in this rule shall be deemed to limit the application of rule 1.8.9.

### **Rule 1.8.6 Compensation from One Other than Client**

A lawyerlicensed paraprofessional shall not enter into an agreement for, charge, or accept compensation for representing a client from one other than the client unless:

(a) there is no interference with the lawyerlicensed paraprofessional's independent professional judgment or with the lawyerlicensed paraprofessional-client relationship;

(b) information is protected as required by Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6; and

(c) the lawyerlicensed paraprofessional obtains the client's informed written consent\* at or before the time the lawyerlicensed paraprofessional has entered into the agreement for, charged, or accepted the compensation, or as soon thereafter as reasonably\* practicable, provided that no disclosure or consent is required if:

(1) nondisclosure or the compensation is otherwise authorized by law or a court order; or

(2) the lawyerlicensed paraprofessional is rendering legal services on behalf of any public agency or nonprofit organization that provides legal services to other public agencies or the public.

### **Comment**

[Reserved]

### **Rule 1.8.7 Aggregate Settlements**

~~(a) A lawyerlicensed paraprofessional who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregate agreement as to guilty or nolo contendere pleas, unless each client gives informed written consent.\* The lawyerlicensed paraprofessional's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person\* in the settlement.~~

~~(b) This rule does not apply to class action settlements subject to court approval.~~

### **Rule 1.8.8 Limiting Liability to Client**

A lawyerlicensed paraprofessional shall not:

(a) Contract with a client prospectively limiting the lawyerlicensed paraprofessional's liability to the client for the lawyerlicensed paraprofessional's professional malpractice; or

(b) Settle a claim or potential claim for the lawyer-licensed paraprofessional's liability to a client or former client for the lawyer-licensed paraprofessional's professional malpractice, unless the client or former client is either:

- (1) represented by an independent lawyer concerning the settlement; or
- (2) advised in writing\* by the lawyer-licensed paraprofessional to seek the advice of an independent lawyer of the client's choice regarding the settlement and given a reasonable\* opportunity to seek that advice.

**Comment**

[Reserved]

**Rule 1.8.9 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review**

(a) A lawyer-licensed paraprofessional shall not directly or indirectly purchase property at a probate, foreclosure, receiver's, trustee's, or judicial sale in an action or proceeding in which such lawyer-licensed paraprofessional or any lawyer or licensed paraprofessional affiliated by reason of personal, business, or professional relationship with that lawyer-licensed paraprofessional or with that lawyer-licensed paraprofessional's law firm\* is acting as a lawyer for a party or as executor, receiver, trustee, administrator, guardian, or conservator.

~~(b) A lawyer shall not represent the seller at a probate, foreclosure, receiver, trustee, or judicial sale in an action or proceeding in which the purchaser is a spouse or relative of the lawyer or of another lawyer in the lawyer's law firm\* or is an employee of the lawyer or the lawyer's law firm.\*~~

~~(e)~~ This rule does not prohibit a lawyer-licensed paraprofessional's participation in transactions that are specifically authorized by and comply with Probate Code sections 9880 through 9885, but such transactions remain subject to the provisions of rules 1.8.1 and 1.7.

**Comment**

[Reserved]

**Rule 1.8.10 Sexual Relations with Current Client**

(a) A lawyer-licensed paraprofessional shall not engage:

- (1) -in sexual relations with a current client who is not the lawyer-licensed paraprofessional's spouse or registered domestic partner, unless a consensual sexual relationship existed between them when the lawyer-licensed paraprofessional-client relationship commenced;
- (2) exoressly or impliedly condition the performance of legal services for a current or prospective client upon the client's willingness to engage in sexual relations with the licensed paraprofessional; or
- (3) employ coercion, intimidation, or undue influence in entering into sexual relations with a client.

(b) For purposes of this rule, "sexual relations" means sexual intercourse or the touching of an intimate part of another person\* for the purpose of sexual arousal, gratification, or abuse.

(c) If a person\* other than the client alleges a violation of this rule, no Notice of Disciplinary Charges may be filed by the State Bar against a lawyer licensed paraprofessional under this rule until the State Bar has attempted to obtain the client's statement regarding, and has considered, whether the client would be unduly burdened by further investigation or a charge.

**Comment**

[Reserved]

**Rule 1.8.11 Imputation of Prohibitions Under Rules 1.8.1 to 1.8.9**

While licensed paraprofessionals ~~lawyers~~ are associated in a law firm,\* with other paraprofessionals or lawyers, a prohibition in rules 1.8.1 through 1.8.9 or in the Lawyer RPC, rules 1.8.1 through 1.8.9 that applies to any one of them shall apply to all of them.

**Comment**

[Reserved]

**Rule 1.9 Duties to Former Clients**

(a) A lawyer licensed paraprofessional who has formerly represented a client in a matter shall not thereafter represent another person\* in the same or a substantially related matter in which that person's\* interests are materially adverse to the interests of the former client unless the former client gives informed written consent.\*

(b) A lawyer licensed paraprofessional shall not knowingly\* represent a person\* in the same or a substantially related matter in which a firm\* with which the lawyer licensed paraprofessional formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person;\* and

(2) about whom the lawyer licensed paraprofessional had acquired information protected by ~~Business and Professions Code section 6068, subdivision (e) and~~ rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed written consent.\*

(c) A lawyer licensed paraprofessional who has formerly represented a client in a matter or whose present or former firm\* has formerly represented a client in a matter shall not thereafter:

(1) use information protected by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6 acquired by virtue of the representation of the former client to the disadvantage of the former client except as these rules ~~of the State Bar Act~~ would permit with respect to a current client, or when the information has become generally known;\* or

(2) reveal information protected by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6 acquired by virtue of the representation of the former client except as these rules ~~or the State Bar Act~~ permit with respect to a current client.

**Comment**

[Reserved]

### Rule 1.10 Imputation of Conflicts of Interest: General Rule

(a) While ~~lawyers~~ licensed paraprofessionals are associated in a firm with other licensed paraprofessionals or lawyers,\* none of them shall knowingly\* represent a client when any one of them practicing alone would be prohibited from doing so by rules 1.7 or 1.9 or by the Lawyer Rules, rules 1.7 or 1.9 unless

(1) the prohibition is based on a personal interest of the prohibited ~~lawyer~~licensed paraprofessional or lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining licensed paraprofessionals or lawyers in the firm;\* or

(2) the prohibition is based upon rule 1.9(a) or (b) or the Lawyer RPC, rule 1.9(a) or (b), and arises out of the prohibited ~~lawyer~~licensed paraprofessional's or lawyer's association with a prior firm,\* and

(i) the prohibited ~~lawyer~~licensed paraprofessional or lawyer did not substantially participate in the same or a substantially related matter;

(ii) the prohibited ~~lawyer~~licensed paraprofessional or lawyer is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(iii) written\* notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this rule, which shall include a description of the screening\* procedures employed; and an agreement by the firm\* to respond promptly to any written\* inquiries or objections by the former client about the screening\* procedures.

(b) When a ~~lawyer~~licensed paraprofessional has terminated an association with a firm,\* the firm\* is not prohibited from thereafter representing a person\* with interests materially adverse to those of a client represented by the formerly associated ~~lawyer~~licensed paraprofessional and not currently represented by the firm,\* unless:

(1) the matter is the same or substantially related to that in which the formerly associated ~~lawyer~~licensed paraprofessional represented the client; and

(2) any ~~lawyer~~licensed paraprofessional or lawyer remaining in the firm\* has information protected by rule 1.6 or 1.9(c), or by Business and Professions Code section 6068, subdivision (e) and the Lawyer RPC, rules 1.6 and 1.9(c), that is material to the matter.

(c) A prohibition under this rule may be waived by each affected client under the conditions stated in rule 1.7.

(d) The imputation of a conflict of interest to a licensed paraprofessional~~lawyers~~ associated in a firm\* with former or current government lawyer or former or current government licensed paraprofessionals is governed by rule 1.11.

#### Comment

[Reserved]

### Rule 1.11 Special Conflicts of Interest for Former and Current Government Officials and Employees

(a) Except as law may otherwise expressly permit, a ~~lawyer~~licensed paraprofessional who has formerly served as a public official or employee of the government:

(1) is subject to rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the ~~lawyer~~licensed paraprofessional participated personally and substantially as a public official or employee, unless the appropriate government agency

gives its informed written consent\* to the representation. This paragraph shall not apply to matters governed by rule 1.12(a).

(b) When a lawyerlicensed paraprofessional is prohibited from representation under paragraph (a), no lawyerlicensed paraprofessional or lawyer in a firm\* with which that lawyerlicensed paraprofessional is associated may knowingly\* undertake or continue representation in such a matter unless:

(1) the personally prohibited lawyerlicensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written\* notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule

(c) Except as law may otherwise expressly permit, a lawyerlicensed paraprofessional who was a public official or employee and, during that employment, acquired information that the lawyerlicensed paraprofessional knows\* is confidential government information about a person,\* may not represent a private client whose interests are adverse to that person\* in a matter in which the information could be used to the material disadvantage of that person.\* As used in this rule, the term “confidential government information” means information that has been obtained under governmental authority, that, at the time this rule is applied, the government is prohibited by law from disclosing to the public, or has a legal privilege not to disclose, and that is not otherwise available to the public. A firm\* with which that lawyerlicensed paraprofessional is associated may undertake or continue representation in the matter only if the personally prohibited lawyerlicensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyerlicensed paraprofessional currently serving as a public official or employee:

(1) is subject to rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyerlicensed paraprofessional participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed written consent;\* or

(ii) negotiate for private employment with any person\* who is involved as a party, or as a lawyer or licensed paraprofessional for a party, or with a law firm\* for a party, in a matter in which the lawyerlicensed paraprofessional is participating personally and substantially, ~~except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by rule 1.12(b) and subject to the conditions stated in rule 1.12(b).~~

#### Comment

[Reserved]

#### Rule 1.12 Former ~~Judge~~, Arbitrator, Mediator, or Other Third-Party Neutral

(a) Except as stated in paragraph (d), a lawyerlicensed paraprofessional shall not represent anyone in connection with a matter in which the lawyerlicensed paraprofessional participated personally and substantially as ~~an judge or other adjudicative officer, or a~~ judicial staff ~~attorney member or law clerk~~ to such a person,\* or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give informed written consent.\*

(b) A ~~lawyer-licensed paraprofessional~~ shall not seek employment from any person\* who is involved as a party or as lawyer or licensed paraprofessional for a party, or with a law firm\* for a party, in a matter in which the ~~lawyer-licensed paraprofessional~~ is participating personally and substantially as ~~a judge or other an~~ adjudicative officer ~~or as an~~ arbitrator, mediator, or other third party neutral. A ~~lawyer-licensed paraprofessional~~ serving as a judicial staff ~~attorney member or law clerk~~ to a judge or other adjudicative officer may seek employment from a party, or with a lawyer, licensed paraprofessional, or a law firm\* for a party, in a matter in which the staff ~~attorney member or clerk~~ is participating personally and substantially, but only with the approval of the court.

(c) If a lawyer-licensed paraprofessional is prohibited from representation by paragraph (a), other licensed paraprofessional or lawyers in a firm\* with which that lawyer-licensed paraprofessional is associated may knowingly\* undertake or continue representation in the matter only if:

- (1) the prohibition does not arise from the lawyer-licensed paraprofessional's service as a mediator ~~or settlement judge~~;
- (2) the prohibited lawyer-licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and
- (3) written\* notice is promptly given to the parties and any appropriate tribunal\* to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

#### Comment

[Reserved]

#### Rule 1.13 ~~[Reserved] Organization as Client~~

~~(a) ——— A lawyer employed or retained by an organization shall conform his or her representation to the concept that the client is the organization itself, acting through its duly authorized directors, officers, employees, members, shareholders, or other constituents overseeing the particular engagement.~~

~~(b) ——— If a lawyer representing an organization knows\* that a constituent is acting, intends to act or refuses to act in a matter related to the representation in a manner that the lawyer knows\* or reasonably should know\* is (i) a violation of a legal obligation to the organization or a violation of law reasonably\* imputable to the organization, and (ii) likely to result in substantial\* injury to the organization, the lawyer shall proceed as is reasonably\* necessary in the best lawful interest of the organization. Unless the lawyer reasonably believes\* that it is not necessary in the best lawful interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.~~

~~(c) In taking any action pursuant to paragraph (b), the lawyer shall not reveal information protected by Business and Professions Code section 6068, subdivision (e).~~

~~(d) If, despite the lawyer's actions in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or fails to act, in a manner that is a violation of a legal obligation to the~~

organization or a violation of law reasonably\* imputable to the organization, and is likely to result in substantial\* injury to the organization, the lawyer shall continue to proceed as is reasonably\* necessary in the best lawful interests of the organization. The lawyer's response may include the lawyer's right and, where appropriate, duty to resign or withdraw in accordance with rule 1.16.

(c) A lawyer who reasonably believes\* that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b), or who resigns or withdraws under circumstances described in paragraph (d), shall proceed as the lawyer reasonably believes\* necessary to assure that the organization's highest authority is informed of the lawyer's discharge, resignation, or withdrawal.

(f) In dealing with an organization's constituents, a lawyer representing the organization shall explain the identity of the lawyer's client whenever the lawyer knows\* or reasonably should know\* that the organization's interests are adverse to those of the constituent(s) with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its constituents, subject to the provisions of rules 1.7, 1.8.2, 1.8.6, and 1.8.7. If the organization's consent to the dual representation is required by any of these rules, the consent shall be given by an appropriate official, constituent, or body of the organization other than the individual who is to be represented, or by the shareholders.

Comment

[Reserved]

## Rule 1.14 [Reserved]

## Rule 1.15 Safekeeping Funds and Property of Clients and Other Persons\*

(a) All funds received or held by a ~~lawyer-licensed paraprofessional~~ or a licensed paraprofessional's law firm\* for the benefit of a client, or other person\* to whom the ~~lawyer-licensed paraprofessional~~ owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled "Trust Account" or words of similar import, maintained in the State of California, or, with written\* consent of the client, in any other jurisdiction where there is a substantial\* relationship between the client or the client's business and the other jurisdiction.

~~(b) Notwithstanding paragraph (a), a flat fee paid in advance for legal services may be deposited in a paraprofessional's lawyer's or paraprofessional law firm's operating account, provided:~~

~~(c)~~ Funds belonging to the ~~lawyer-licensed paraprofessional~~ or the licensed paraprofessional's law firm\* shall not be deposited or otherwise commingled with funds held in a trust account except:

- (1) funds reasonably\* sufficient to pay bank charges; and
- (2) funds belonging in part to a client or other person\* and in part presently or potentially to the ~~lawyer-licensed paraprofessional~~ or the licensed paraprofessional's law firm\*,\* in which case the portion belonging to the ~~lawyer-licensed paraprofessional~~ or the paraprofessional's law firm\* must be withdrawn at the earliest reasonable\*

time after the lawyer licensed paraprofessional or the licensed paraprofessional law firm's interest in that portion becomes fixed. However, if a client or other person\* disputes the lawyer licensed paraprofessional or the licensed paraprofessional's law firm's right to receive a portion of trust funds, the disputed portion shall not be withdrawn until the dispute is finally resolved.

(dc) A lawyer licensed paraprofessional shall:

- (1) promptly notify a client or other person\* of the receipt of funds, securities, or other property in which the lawyer licensed paraprofessional knows\* or reasonably should know\* the client or other person\* has an interest;
- (2) identify and label securities and properties of a client or other person\* promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
- (3) maintain complete records of all funds, securities, and other property of a client or other person\* coming into the possession of the lawyer licensed paraprofessional or the licensed paraprofessional's law firm;\*
- (4) promptly account in writing\* to the client or other person\* for whom the lawyer licensed paraprofessional or the licensed paraprofessional's law firm\* holds funds or property;
- (5) preserve records of all funds and property held by a lawyer licensed paraprofessional or the licensed paraprofessional's law firm\* under this rule for a period of no less than five years after final appropriate distribution of such funds or property;
- (6) comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar; and
- (7) promptly distribute, as requested by the client or other person,\* any undisputed funds or property in the possession of the lawyer licensed paraprofessional or the licensed paraprofessional's law firm\* that the client or other person\* is entitled to receive.

(ed) The Board of Trustees of the State Bar shall have the authority to formulate and adopt standards as to what "records" shall be maintained by lawyer licensed paraprofessionals and law firms\* in accordance with paragraph (d)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyer licensed paraprofessionals.

*Standards:*

Pursuant to this rule, the Board of Trustees of the State Bar adopted the following standards, effective November 1, 2018, as to what "records" shall be maintained by lawyer licensed paraprofessionals and licensed paraprofessionals' law firms\* in accordance with paragraph (d)(3).

- (1) A lawyer licensed paraprofessional shall, from the date of receipt of funds of the client or other person\* through the period ending five years from the date of appropriate disbursement of such funds, maintain:
  - (a) a written\* ledger for each client or other person\* on whose behalf funds are held that sets forth:
    - (i) the name of such client or other person;\*
    - (ii) the date, amount and source of all funds received on behalf of such client or other person;\*
    - (iii) the date, amount, payee and purpose of each disbursement made on behalf of such client or other person;\* and
    - (iv) the current balance for such client or other person;\*

- (b) a written\* journal for each bank account that sets forth:
  - (i) the name of such account;
  - (ii) the date, amount and client or other person\* affected by each debit and credit; and
  - (iii) the current balance in such account;
- (c) all bank statements and cancelled checks for each bank account; and
- (d) each monthly reconciliation (balancing) of (a), (b), and (c).

(2) A lawyerlicensed paraprofessional shall, from the date of receipt of all securities and other properties held for the benefit of client or other person\* through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a written\* journal that specifies:

- (a) each item of security and property held;
- (b) the person\* on whose behalf the security or property is held;
- (c) the date of receipt of the security or property;
- (d) the date of distribution of the security or property; and
- (e) person\* to whom the security or property was distributed.

**Comment**

[Reserved]

**Rule 1.16 Declining or Terminating Representation**

(a) Except as stated in paragraph (c), a lawyerlicensed paraprofessional shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the lawyerlicensed paraprofessional knows\* or reasonably should know\* that the client is bringing an action, conducting a defense, or asserting a position in litigation, ~~or taking an appeal,~~ without probable cause and for the purpose of harassing or maliciously injuring any person;\*
- (2) the lawyerlicensed paraprofessional knows\* or reasonably should know\* that the representation will result in violation of these rules or ~~of the State Bar Act~~applicable other law;
- (3) the lawyerlicensed paraprofessional's mental or physical condition renders it unreasonably difficult to carry out the representation effectively; or
- (4) the client discharges the lawyerlicensed paraprofessional; or

(5) the licensed paraprofessional knows or \*reasonably should know\* that the subject of the representation is beyond the scope of the defined practice area for which the licensed paraprofessional is licensed as set forth in [add CRC rule reference setting forth permissible scope of practice]. If the subject of the representation is beyond the scope of the licensed paraprofessional's defined practice area, the licensed paraprofessional shall not render any legal assistance and shall advise the client in writing to seek the services of a lawyer or licensed paraprofessional authorized to provide legal services on the subject of the representation.

- (b) Except as stated in paragraph (c), a lawyer-licensed paraprofessional may withdraw from representing a client if:
- (1) the client insists upon presenting a claim or defense in litigation, or asserting a position or making a demand in a non-litigation matter, that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;
  - (2) the client either seeks to pursue a criminal or fraudulent\* course of conduct or has used the lawyer-licensed paraprofessional's services to advance a course of conduct that the lawyer-licensed paraprofessional reasonably believes\* was a crime or fraud;\*
  - (3) the client insists that the lawyer-licensed paraprofessional pursue a course of conduct that is criminal or fraudulent;\*
  - (4) the client by other conduct renders it unreasonably difficult for the lawyer-licensed paraprofessional to carry out the representation effectively;
  - (5) the client breaches a material term of an agreement with, or obligation, to the lawyer-licensed paraprofessional relating to the representation, and the lawyer-licensed paraprofessional has given the client a reasonable\* warning after the breach that the lawyer-licensed paraprofessional will withdraw unless the client fulfills the agreement or performs the obligation;
  - (6) the client knowingly\* and freely assents to termination of the representation;
  - (7) the inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;
  - (8) the lawyer-licensed paraprofessional's mental or physical condition renders it difficult for the lawyer-licensed paraprofessional to carry out the representation effectively; or
  - (9) a continuation of the representation is likely to result in a violation of these rules or the State Bar Act applicable law; or
  - (10) the lawyer-licensed paraprofessional believes\* in good faith, in a proceeding pending before a tribunal,\* that the tribunal\* will find the existence of other good cause for withdrawal.
- (c) If permission for termination of a representation is required by the rules of a tribunal,\* a lawyer-licensed paraprofessional shall not terminate a representation before that tribunal\* without its permission.
- (d) A lawyer-licensed paraprofessional shall not terminate a representation until the lawyer-licensed paraprofessional has taken reasonable\* steps to avoid reasonably\* foreseeable prejudice to the rights of the client, such as giving the client sufficient notice to permit the client to retain other counsel representation, and complying with paragraph (e).
- (e) Upon the termination of a representation for any reason:
- (1) subject to any applicable protective order, non-disclosure agreement, statute or regulation, the lawyer-licensed paraprofessional promptly shall release to the client, at the request of the client, all client materials and property. "Client materials and property" includes correspondence, pleadings, deposition transcripts, experts' reports and other writings,\* exhibits, and physical evidence, whether in tangible, electronic or other form, and other items reasonably\* necessary to the client's representation, whether the client has paid for them or not; and
  - (2) the lawyer-licensed paraprofessional promptly shall refund any part of a fee or expense paid in advance that the lawyer-licensed paraprofessional has not earned or incurred. ~~This provision is not applicable to a true retainer fee paid solely for the purpose of ensuring the availability of the lawyer for the matter.~~

#### Comment

[Reserved]

### Rule 1.17 Sale of a Law Practice

All or substantially\* all of the law practice of a ~~lawyer~~licensed paraprofessional, living or deceased, including goodwill, may be sold to another licensed paraprofessional, a lawyer or law firm\* subject to all the following conditions:

- (a) Fees charged to clients shall not be increased solely by reason of the sale.
- (b) If the sale contemplates the transfer of responsibility for work not yet completed or responsibility for client files or information protected by ~~Business and Professions Code section 6068, subdivision (e)(1), rule 1.6(a)~~, then;
  - (1) if the seller is deceased, or has a conservator or other person\* acting in a representative capacity, and no lawyer has been appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, then prior to the transfer;
    - (i) the purchaser shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client's rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
    - (ii) the purchaser shall obtain the written\* consent of the client. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(1)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.
  - (2) in all other circumstances, not less than 90 days prior to the transfer;
    - (i) the seller, or the lawyer appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client's rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
    - (ii) the seller, or the lawyer appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, shall obtain the written\* consent of the client prior to the transfer. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(2)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.
- (c) If substitution is required by the rules of a tribunal\* in which a matter is pending, all steps necessary to substitute a lawyer shall be taken.
- (d) The purchaser shall comply with the applicable requirements of rules 1.7 and 1.9.
- (e) Confidential information shall not be disclosed to a nonlawyer in connection with a sale under this rule.
- (f) This rule does not apply to the admission to or retirement from a law firm,\* retirement plans and similar arrangements, or sale of tangible assets of a law practice.

### Comment

[Reserved]

### Rule 1.18 Duties to Prospective Client

(a) A person\* who, directly or through an authorized representative, consults a lawyerlicensed paraprofessional for the purpose of retaining the lawyerlicensed paraprofessional or securing legal service or advice from the lawyerlicensed paraprofessional in the lawyerlicensed paraprofessional's professional capacity, is a prospective client.

(b) Even when no lawyerlicensed paraprofessional-client relationship ensues, a lawyerlicensed paraprofessional who has communicated with a prospective client shall not use or reveal information protected by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6(a) that the lawyerlicensed paraprofessional learned as a result of the consultation, except as rule 1.9 would permit with respect to information of a former client.

(c) A lawyerlicensed paraprofessional subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyerlicensed paraprofessional received from the prospective client information protected by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6(a) that is material to the matter, except as provided in paragraph (d). If a lawyerlicensed paraprofessional is prohibited from representation under this paragraph or a lawyer is prohibited from representation under Lawyer RPC rule 1.18(c), no lawyerlicensed paraprofessional in a firm\* with which that lawyerlicensed paraprofessional is associated may knowingly\* undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer or licensed paraprofessional has received information that prohibits representation as provided in paragraph (c), representation of the affected client is permissible if:

(1) both the affected client and the prospective client have given informed written consent,\* or

(2) the lawyer or licensed paraprofessional who received the information took reasonable\* measures to avoid exposure to more information than was reasonably\* necessary to determine whether to represent the prospective client; and

(i) the prohibited lawyer or licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written\* notice is promptly given to the prospective client to enable the prospective client to ascertain compliance with the provisions of this rule.

#### Comment

[Reserved]

## CHAPTER 2. COUNSELOR

### Rule 2.1 Advisor

In representing a client, a lawyerlicensed paraprofessional shall exercise independent professional judgment and render candid advice.

#### Comment

[Reserved]

**Rule 2.2 [Reserved]**

**Rule 2.3 [Reserved]**

**Rule 2.4 Lawyer Licensed Paraprofessional as Third-Party Neutral**

(a) A lawyer licensed paraprofessional serves as a third-party neutral when the lawyer licensed paraprofessional assists two or more persons\* who are not clients of the lawyer licensed paraprofessional to reach a resolution of a dispute, or other matter, that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer licensed paraprofessional to assist the parties to resolve the matter.

(b) A lawyer licensed paraprofessional serving as a third-party neutral shall inform unrepresented parties that the lawyer licensed paraprofessional is not representing them. When the lawyer licensed paraprofessional knows\* or reasonably should know\* that a party does not understand the lawyer licensed paraprofessional's role in the matter, the lawyer licensed paraprofessional shall explain the difference between the lawyer licensed paraprofessional's role as a third-party neutral and a lawyer licensed paraprofessional's role as one who represents a client.

**Comment**

[Reserved]

**Rule 2.4.1 ~~[Reserved] Lawyer as Temporary Judge, Referee, or Court Appointed Arbitrator~~**

~~A lawyer who is serving as a temporary judge, referee, or court appointed arbitrator, and is subject to canon 6D of the California Code of Judicial Ethics, shall comply with the terms of that canon.~~

**CHAPTER 3. ADVOCATE**

**Rule 3.1 Meritorious Claims and Contentions**

~~(a) A lawyer licensed paraprofessional shall not:~~

~~(a1) assist with bringing or continue continuing an action, conducting a defense, or asserting a position in litigation, or take an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person;\* or~~

~~(b2) assist with presenting a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of the existing law.~~

~~(b) A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, or involuntary commitment or confinement, may nevertheless defend the proceeding by requiring that every element of the case be established.~~

**Rule 3.2 Delay of Litigation**

In representing a client, a lawyer licensed paraprofessional shall not use means that have no substantial\* purpose other than to delay or prolong the proceeding or to cause needless expense.

## Comment

[Reserved]

### Rule 3.3 Candor Toward the Tribunal\*

(a) A lawyer licensed paraprofessional shall not:

(1) knowingly\* make a false statement of fact or law to a tribunal\* or fail to correct a false statement of material fact or law previously made to the tribunal\* by the lawyer licensed paraprofessional;

(2) fail to disclose to the tribunal\* legal authority in the controlling jurisdiction known\* to the lawyer licensed paraprofessional to be directly adverse to the position of the client and not disclosed by opposing counsel party, or knowingly\* misquote to a tribunal\* the language of a book, statute, decision or other authority; or

(3) offer evidence that the lawyer licensed paraprofessional knows\* to be false. If a lawyer licensed paraprofessional or the lawyer licensed paraprofessional's client, ~~or a witness called by the lawyer~~, has offered material evidence, and the lawyer licensed paraprofessional comes to know\* of its falsity, the lawyer licensed paraprofessional shall take reasonable\* remedial measures, including, if necessary, disclosure to the tribunal,\* unless disclosure is prohibited by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6. A lawyer licensed paraprofessional may refuse to offer evidence, ~~other than the testimony of a defendant in a criminal matter,~~ that the lawyer licensed paraprofessional reasonably believes\* is false.

(b) A lawyer licensed paraprofessional who represents a client in a proceeding before a tribunal\* and who knows\* that a person\* intends to engage, is engaging or has engaged in criminal or fraudulent\* conduct related to the proceeding shall take reasonable\* remedial measures to the extent permitted by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding.

(d) In an ex parte proceeding where notice to the opposing party in the proceeding is not required or given and the opposing party is not present, a lawyer licensed paraprofessional shall inform the tribunal\* of all material facts known\* to the licensed paraprofessional lawyer that will enable the tribunal\* to make an informed decision, whether or not the facts are adverse to the position of the client.

## Comment

[Reserved]

### Rule 3.4 Fairness to Opposing Party and Counsel

A lawyer licensed paraprofessional shall not:

(a) unlawfully obstruct another party's access to evidence, including a witness, or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer licensed paraprofessional shall not counsel or assist another person\* to do any such act;

(b) suppress any evidence that the lawyer licensed paraprofessional or the lawyer licensed paraprofessional's client has a legal obligation to reveal or to produce;

(c) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(d) directly or indirectly pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case. Except where prohibited by law, a ~~lawyer~~licensed paraprofessional may advance, guarantee, or acquiesce in the payment of:

- (1) expenses reasonably\* incurred by a witness in attending or testifying;
- (2) reasonable\* compensation to a witness for loss of time in attending or testifying; or
- (3) a reasonable\* fee for the professional services of an expert witness;

(e) advise or directly or indirectly cause a person\* to secrete himself or herself or to leave the jurisdiction of a tribunal\* for the purpose of making that person\* unavailable as a witness therein; or

(f) knowingly\* disobey an obligation under the rules of a tribunal\* except for an open refusal based on an assertion that no valid obligation exists; ~~or~~

(g) in trial, assert personal knowledge of facts in issue except when testifying as a witness; ~~or state a personal opinion as to the guilt or innocence of an accused.~~

#### Comment

[Reserved]

#### Rule 3.5 Contact with Judges, Officials, and Employees, ~~and Jurors~~

(a) Except as permitted by statute, an applicable code of judicial ethics or code of judicial conduct, or standards governing employees of a tribunal,\* a ~~lawyer~~licensed paraprofessional shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal.\* This rule does not prohibit a ~~lawyer~~licensed paraprofessional from contributing to the campaign fund of a judge or judicial officer running for election or confirmation pursuant to applicable law pertaining to such contributions.

(b) Unless permitted to do so by law, an applicable code of judicial ethics or code of judicial conduct, a rule or ruling of a tribunal,\* or a court order, a ~~lawyer~~licensed paraprofessional shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before the judge or judicial officer, except:

~~(1) in open court;~~

(2) with the consent of all other counsel and any unrepresented parties in the matter;

~~(3) in the presence of all other counsel and any unrepresented parties in the matter;~~

(4) in writing\* with a copy thereof furnished to all other ~~counsel~~represented and ~~any~~ unrepresented parties in the matter; ~~or,~~

~~(5) in ex parte matters.~~

(c) As used in this rule, "judge" and "judicial officer" shall also include: (i) administrative law judges; (ii) neutral arbitrators; (iii) State Bar Court judges; (iv) members of an administrative body acting in an adjudicative capacity; and (v) law clerks, research attorneys, or other court personnel who participate in the decision-making process, including referees, special masters, or other persons\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

~~(d) A lawyer connected with a case shall not communicate directly or indirectly with anyone the lawyer knows\* to be a member of the venire from which the jury will be selected for trial of that case.~~

~~(e) During trial, a lawyer connected with the case shall not communicate directly or indirectly with any juror.~~

~~(f) During trial, a lawyer who is not connected with the case shall not communicate directly or indirectly concerning the case with anyone the lawyer knows\* is a juror in the case.~~

~~(g) After discharge of the jury from further consideration of a case a lawyer shall not communicate directly or indirectly with a juror if:~~

~~(1) the communication is prohibited by law or court order;~~

~~(2) the juror has made known\* to the lawyer a desire not to communicate; or~~

~~(3) the communication involves misrepresentation, coercion, or duress, or is intended to harass or embarrass the juror or to influence the juror's actions in future jury service.~~

~~(h) A lawyer shall not directly or indirectly conduct an out of court investigation of a person\* who is either a member of a venire or a juror in a manner likely to influence the state of mind of such person\* in connection with present or future jury service.~~

~~(i) All restrictions imposed by this rule also apply to communications with, or investigations of, members of the family of a person\* who is either a member of a venire or a juror.~~

~~(j) A lawyer shall reveal promptly to the court improper conduct by a person\* who is either a member of a venire or a juror, or by another toward a person\* who is either a member of a venire or a juror or a member of his or her family, of which the lawyer has knowledge.~~

~~(k) This rule does not prohibit a lawyer from communicating with persons\* who are members of a venire or jurors as a part of the official proceedings.~~

~~(l) For purposes of this rule, "juror" means any empaneled, discharged, or excused juror.~~

#### **Comment**

[Reserved]

#### **Rule 3.6 Trial Publicity**

(a) A lawyer-licensed paraprofessional who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows\* or reasonably should know\* will (i) be disseminated by means of public communication and (ii) have a substantial\* likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), but only to the extent permitted by Business and Professions Code section 6068, subdivision (e) and rule 1.6, licensed paraprofessional lawyer may state:

(1) the claim, ~~offense~~ or defense involved and, except when prohibited by law, the identity of the persons\* involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto; and

(6) a warning of danger concerning the behavior of a person\* involved, when there is reason to believe\* that there exists the likelihood of substantial\* harm to an individual or to the public but only to the extent that dissemination by public communication is reasonably\* necessary to protect the individual or the public; and

~~(7) in a criminal case, in addition to paragraphs (1) through (6):~~

~~(i) the identity, general area of residence, and occupation of the accused;~~

~~(ii) if the accused has not been apprehended, the information necessary to aid in apprehension of that person;\*~~

~~(iii) the fact, time, and place of arrest; and (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.~~

(c) Notwithstanding paragraph (a), a licensed paraprofessional lawyer may make a statement that a reasonable\* licensed paraprofessional lawyer would believe\* is required to protect a client from the substantial\* undue prejudicial effect of recent publicity not initiated by the licensed paraprofessional lawyer or the licensed paraprofessional's lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No licensed paraprofessional lawyer associated in a law firm\* ~~or government agency~~ with a licensed paraprofessional lawyer subject to paragraph (a) or a lawyer subject to Lawyer RPC rule 3.6(a) shall make a statement prohibited by paragraph (a).

#### Comment

#### Rule 3.7 ~~Lawyer~~ Licensed Paraprofessional as Witness

(a) A ~~lawyer~~ licensed paraprofessional shall not act as an advocate in a trial in which the ~~lawyer~~ licensed paraprofessional is likely to be a witness unless:

(1) the licensed paraprofessional's lawyer's testimony relates to an uncontested issue or matter;

(2) the licensed paraprofessional lawyer's testimony relates to the nature and value of legal services rendered in the case; or

(3) the licensed paraprofessional lawyer has obtained informed written consent\* from the client. ~~If the lawyer represents the People or a governmental entity, the consent shall be obtained from the head of the office or a designee of the head of the office by which the lawyer is employed.~~

(b) A licensed paraprofessional lawyer may act as advocate in a trial in which another licensed paraprofessional or lawyer in the lawyer's firm\* is likely to be called as a witness unless precluded from doing so by rule 1.7 or rule 1.9.

#### Rule 3.8 ~~[RESERVED] Special Responsibilities of a Prosecutor~~

~~The prosecutor in a criminal case shall:~~

~~(a) not institute or continue to prosecute a charge that the prosecutor knows\* is not supported by probable cause;~~

~~(b) make reasonable\* efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable\* opportunity to obtain counsel;~~

~~(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights unless the tribunal\* has approved the appearance of the accused in propria persona;~~

~~(d) make timely disclosure to the defense of all evidence or information known\* to the prosecutor that the prosecutor knows\* or reasonably should know\* tends to negate the guilt of the accused, mitigate the offense, or mitigate the sentence, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;\* and~~

~~(e) exercise reasonable\* care to prevent persons\* under the supervision or direction of the prosecutor, including investigators, law enforcement personnel, employees or other persons\* assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 3.6.~~

~~(f) When a prosecutor knows\* of new, credible and material evidence creating a reasonable\* likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:~~

~~(1) promptly disclose that evidence to an appropriate court or authority, and~~

~~(2) if the conviction was obtained in the prosecutor's jurisdiction,~~

~~(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and~~

~~(ii) undertake further investigation, or make reasonable\* efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.~~

~~(g) When a prosecutor knows\* of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.~~

#### **Comment**

**{RESERVED}**

### **Rule 3.9 Advocate in Nonadjudicative Proceedings**

A licensed paraprofessional lawyer representing a client before a legislative body or administrative agency in connection with a pending nonadjudicative matter or proceeding shall disclose that the appearance is in a representative capacity, except when the licensed paraprofessional lawyer seeks information from an agency that is available to the public.

### **Rule 3.10 Threatening Criminal, Administrative, or Disciplinary Charges**

(a) A lawyer/licensed paraprofessional shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.

(b) As used in paragraph (a) of this rule, the term "administrative charges" means the filing or lodging of a complaint with any governmental organization that may order or recommend the loss or suspension of a license, or may impose or recommend the imposition of a fine, pecuniary sanction, or other sanction of a quasi-criminal nature but does not include filing charges with an administrative entity required by law as a condition precedent to maintaining a civil action.

(c) As used in this rule, the term "civil dispute" means a controversy or potential controversy over the rights and duties of two or more persons\* under civil law, whether or not an action has been commenced, and includes an administrative proceeding of a quasi-civil nature pending before a federal, state, or local governmental entity.

#### **Comment**

[Reserved]

## CHAPTER 4. TRANSACTIONS WITH PERSONS\* OTHER THAN CLIENTS

### Rule 4.1 Truthfulness in Statements to Others

In the course of representing a client a ~~lawyer~~licensed paraprofessional shall not knowingly:\*

- (a) make a false statement of material fact or law to a third person;\* or
- (b) fail to disclose a material fact to a third person\* when disclosure is necessary to avoid assisting a criminal or fraudulent\* act by a client, unless disclosure is prohibited by ~~Business and Professions Code section 6068, subdivision (e)(1) or~~ rule 1.6.

#### Comment

[Reserved]

### Rule 4.2 Communication with a Represented Person\*

(a) In representing a client, a ~~lawyer~~licensed paraprofessional shall not communicate directly or indirectly about the subject of the representation with a person\* the ~~lawyer~~licensed paraprofessional knows\* to be represented by ~~another lawyer or another licensed paraprofessional~~ in the matter, unless the ~~lawyer~~licensed paraprofessional has the consent of the other lawyer or licensed paraprofessional.

(b) In the case of a represented corporation, partnership, association, or other private or governmental organization, this rule prohibits communications with:

- (1) A current officer, director, partner,\* or managing agent of the organization; or
  - (2) A current employee, member, agent, or other constituent of the organization, if the subject of the communication is any act or omission of such person\* in connection with the matter which may be binding upon or imputed to the organization for purposes of civil or criminal liability.
- (c) This rule shall not prohibit:
- (1) communications with a public official, board, committee, or body; or
  - (2) communications otherwise authorized by law or a court order.
- (d) For purposes of this rule:
- (1) "Managing agent" means an employee, member, agent, or other constituent of an organization with substantial\* discretionary authority over decisions that determine organizational policy.
  - (2) "Public official" means a public officer of the United States government, or of a state, county, city, town, political subdivision, or other governmental organization, with the comparable decision-making authority and responsibilities as the organizational constituents described in paragraph (b)(1).

#### Comment

[Reserved]

### Rule 4.3 Communicating with an Unrepresented Person\*

(a) In communicating on behalf of a client with a person\* who is not represented by a lawyer or licensed paraprofessional ~~counsel~~, a lawyerlicensed paraprofessional shall not state or imply that the lawyerlicensed paraprofessional is disinterested. When the lawyerlicensed paraprofessional knows\* or reasonably should know\* that the unrepresented person\* incorrectly believes\* the lawyerlicensed paraprofessional is disinterested in the matter, the lawyerlicensed paraprofessional shall make reasonable\* efforts to correct the misunderstanding. If the lawyerlicensed paraprofessional knows\* or reasonably should know\* that the interests of the unrepresented person\* are in conflict with the interests of the client, the lawyerlicensed paraprofessional shall not give legal advice to that person,\* except that the lawyerlicensed paraprofessional may, but is not required to, advise the person\* to secure ~~counsel~~legal representation.

(b) In communicating on behalf of a client with a person\* who is not represented by ~~counsel~~a lawyer or licensed paraprofessional, a lawyerlicensed paraprofessional shall not seek to obtain privileged or other confidential information the lawyerlicensed paraprofessional knows\* or reasonably should know\* the person\* may not reveal without violating a duty to another or which the lawyerlicensed paraprofessional is not otherwise entitled to receive.

#### Comment

[Reserved]

### Rule 4.4 Duties Concerning Inadvertently Transmitted Writings\*

Where it is reasonably\* apparent to a lawyerlicensed paraprofessional who receives a writing\* relating to a lawyerlicensed paraprofessional's representation of a client that the writing\* was inadvertently sent or produced, and the lawyerlicensed paraprofessional knows\* or reasonably should know\* that the writing\* is privileged or subject to the work product doctrine, the lawyerlicensed paraprofessional shall:

(a) refrain from examining the writing\* any more than is necessary to determine that it is privileged or subject to the work product doctrine, and

(b) promptly notify the sender.

#### Comment

[Reserved]

## CHAPTER 5. LAW FIRMS\* AND ASSOCIATIONS

### Rule 5.1 Responsibilities of Managerial and Supervisory LawyerLicensed paraprofessionals

(a) A lawyerlicensed paraprofessional who individually or together with other licensed paraprofessionals or lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that all lawyerlicensed paraprofessionals in the firm\* comply with these rules and the State Bar Act.

(b) A lawyerlicensed paraprofessional having direct supervisory authority over another lawyerlicensed paraprofessional, whether or not a member or employee of the same law firm,\* shall make reasonable\* efforts to ensure that the other lawyerlicensed paraprofessional complies with these rules and ~~the State Bar Act~~applicable law.

(c) A lawyerlicensed paraprofessional shall be responsible for another lawyerlicensed paraprofessional's violation of these rules and ~~the State Bar Act~~applicable law if:

- (1) the lawyerlicensed paraprofessional orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or
- (2) the lawyerlicensed paraprofessional, individually or together with other licensed paraprofessionals or lawyers, possesses managerial authority in the law firm\* in which the other lawyerlicensed paraprofessional practices, or has direct supervisory authority over the other lawyerlicensed paraprofessional, whether or not a member or employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

**Comment**

[Reserved]

**Rule 5.2 Responsibilities of a Subordinate LawyerLicensed paraprofessional**

(a) A lawyerlicensed paraprofessional shall comply with these rules and ~~the State Bar Act~~ notwithstanding that the lawyerlicensed paraprofessional acts at the direction of a lawyer, another lawyer a licensed paraprofessional, or other person.\*

(b) A subordinate lawyerlicensed paraprofessional does not violate these rules ~~or the State Bar Act~~ if that lawyerlicensed paraprofessional acts in accordance with a supervisory lawyer's or supervisory licensed paraprofessional's reasonable\* resolution of an arguable question of professional duty.

**Comment**

[Reserved]

**Rule 5.3 Responsibilities Regarding Non-Licensed lawyer Assistants**

With respect to an individual not licensed to practice law who is nonlawyer employed or retained by or associated with a lawyerlicensed paraprofessional:

(a) a lawyerlicensed paraprofessional who individually or together with other licensed paraprofessionals or lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that the nonlawyer's nonlicensee's conduct is compatible with the professional obligations of the lawyerlicensed paraprofessional;

(b) a lawyerlicensed paraprofessional having direct supervisory authority over the nonlawyerlicensee, whether or not an employee of the same law firm,\* shall make reasonable\* efforts to ensure that the person's\* conduct is compatible with the professional obligations of the lawyerlicensed paraprofessional; and

(c) a lawyerlicensed paraprofessional shall be responsible for conduct of such a person\* that would be a violation of these rules ~~or the State Bar Act~~ if engaged in by a lawyerlicensed paraprofessional if:

- (1) the lawyerlicensed paraprofessional orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or
- (2) the lawyerlicensed paraprofessional, individually or together with other licensed paraprofessionals or lawyers, possesses managerial authority in the law firm\* in which the person\* is employed, or has direct supervisory authority over the person,\* whether or not an employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

**Comment**

[Reserved]

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

(a) For purposes of this rule:

- (1) “Employ” means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;
- (2) “MemberLicensee” means a member-licensee of the State Bar of California;
- (3) “Involuntarily inactive memberlicensee” means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203, subdivision (d)(1), or California Rules of Court, rule 9.31(d);
- (4) “Resigned memberlicensee” means a member-licensee who has resigned from the State Bar while disciplinary charges are pending; and
- (5) “Ineligible person” means a member-licensee whose current status with the State Bar of California is disbarred, suspended, resigned, or involuntarily inactive.

(b) A lawyerlicensed paraprofessional shall not employ, associate in practice with, or assist a person\* the lawyerlicensed paraprofessional knows\* or reasonably should know\* is an ineligible person to perform the following on behalf of the lawyerlicensed paraprofessional’s client:

- (1) Render legal consultation or advice to the client;
- (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
- (3) Appear as a representative of the client at a deposition or other discovery matter;
- (4) Negotiate or transact any matter for or on behalf of the client with third parties;
- (5) Receive, disburse or otherwise handle the client’s funds; or
- (6) Engage in activities that constitute the practice of law.

(c) A lawyerlicensed paraprofessional may employ, associate in practice with, or assist an ineligible person to perform research, drafting or clerical activities, including but not limited to:

- (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
- (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or

~~(3) Accompanying an active lawyerlicensed paraprofessional in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active lawyerlicensed paraprofessional who will appear as the representative of the client.~~

(d) Prior to or at the time of employing, associating in practice with, or assisting a person\* the licensed paraprofessional~~lawyer~~ knows\* or reasonably should know\* is an ineligible person, the lawyerlicensed paraprofessional

shall serve upon the State Bar written\* notice of the employment, including a full description of such person's current ~~bar licensee~~ status. The written\* notice shall also list the activities prohibited in paragraph (b) and state that the ineligible person will not perform such activities. The ~~licensed paraprofessional~~ ~~lawyer~~ shall serve similar written\* notice upon each client on whose specific matter such person\* will work, prior to or at the time of employing, associating with, or assisting such person\* to work on the client's specific matter. The ~~lawyer~~ ~~licensed paraprofessional~~ shall obtain proof of service of the client's written\* notice and shall retain such proof and a true and correct copy of the client's written\* notice for two years following termination of the ~~lawyer~~ ~~licensed paraprofessional~~'s employment by the client.

(e) A ~~lawyer~~ ~~licensed paraprofessional~~ may, without client or State Bar notification, employ, associate in practice with, or assist an ineligible person whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.

(f) When the ~~lawyer~~ ~~licensed paraprofessional~~ no longer employs, associates in practice with, or assists the ineligible person, the ~~lawyer~~ ~~licensed paraprofessional~~ shall promptly serve upon the State Bar written\* notice of the termination.

#### Comment

[Reserved]

#### Rule 5.4 Financial and Similar Arrangements with ~~Lawyers and Non~~ ~~lawyer~~ ~~licensees~~

(a) A ~~lawyer~~ ~~licensed paraprofessional~~ or law firm\* shall not share legal fees directly or indirectly with an ~~nonlawyer person\* individual 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 ~~lawyer~~ ~~licensed paraprofessional~~ with the ~~lawyer~~ ~~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 ~~lawyer~~ ~~licensed paraprofessional~~'s death, to the ~~lawyer~~ ~~licensed paraprofessional~~'s estate or to one or more specified persons;\*

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

(3) a ~~lawyer~~ ~~licensed paraprofessional~~ or law firm\* may include ~~nonlawyer~~ 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 ~~or the State Bar Act~~;

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

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

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

(d) A ~~lawyer~~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:

(1) an individual who is not a lawyer or a licensed paraprofessional~~nonlawyer~~ 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;

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

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

(e) A licensed paraprofessional shall not practice in a law firm\* with a lawyer if:

(1) licensed paraprofessionals direct or regulate any lawyer's professional judgment in rendering legal services;

(2) licensed paraprofessionals have direct supervisory authority over any lawyer; or

(3) licensed paraprofessionals possess a majority ownership interest or exercise controlling managerial authority in the firm;

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

(g) A ~~lawyer~~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 ~~lawyer~~licensed paraprofessional's independent professional judgment, or with the ~~lawyer~~licensed paraprofessional-client relationship, or allows or aids any person\* to practice law in violation of these rules or ~~the State Bar Act~~applicable law.

**Comment [GFF: add a comment to clarify that PPs and lawyers can co-own law firms and share legal fees so long as they comply with paragraph (e). Pursuant to paragraph (e), a majority-PP-owned law firm cannot employ an attorney.]**

[Reserved]

**Rule 5.5 Unauthorized Practice of Law; ~~Multijurisdictional Practice of Law~~**

~~(a) A lawyer~~Licensed paraprofessionals admitted to practice law in California shall not:

~~(1a)~~ practice law in California beyond the permissible scope of their license;

~~(b)~~ hold out or otherwise represent to the public that the licensed paraprofessional is permitted to practice law beyond the permissible scope of their license;

~~(c)~~ practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction;  
or

~~(d2)~~ knowingly\* assist a person\* in the unauthorized practice of law in that jurisdictionCalifornia or any other jurisdiction.

~~(b) A paraprofessional lawyer who is not admitted to practice law in California shall not:~~

~~(1) except as authorized by these rules or other law, establish or maintain a resident office or other systematic or continuous presence in California for the practice of law; or~~

~~(2) hold out to the public or otherwise represent that the paraprofessional lawyer is admitted to practice law in California.~~

**Comment** Amos: consider adding a comment that explains that a PP when acting as solely as a paralegal are not engaging in UPL unless they are practicing law outside the scope when doing so.]

[Reserved]

**Rule 5.6 Restrictions on a ~~Lawyer~~Licensed Paraprofessional's Right to Practice**

(a) Unless authorized by law, a ~~lawyer~~licensed paraprofessional shall not participate in offering or making:

(1) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a ~~lawyer~~licensed paraprofessional to practice after termination of the relationship, except an agreement that concerns benefits upon retirement; or

(2) an agreement that imposes a restriction on a ~~lawyer~~licensed paraprofessional's right to practice in connection with a settlement of a client controversy, or otherwise.

(b) A ~~lawyer~~licensed paraprofessional shall not participate in offering or making an agreement which precludes the reporting of a violation of these rules.

~~(c) This rule does not prohibit an agreement that is authorized by Business and Professions Code sections 6092.5, subdivision (i) or 6093.~~

**Comment**

[Reserved]

**Rule 5.7 [Reserved]**

**CHAPTER 6. PUBLIC SERVICE**

## Rule 6.1 [Reserved]

## Rule 6.2 [Reserved]

### Rule 6.3 Membership in Legal Services Organization

A ~~lawyer~~licensed paraprofessional may serve as a director, officer or member of a legal services organization, apart from the law firm\* in which the ~~lawyer~~licensed paraprofessional practices, notwithstanding that the organization serves persons\* having interests adverse to a client of the ~~lawyer~~licensed paraprofessional. The ~~lawyer~~licensed paraprofessional shall not knowingly\* participate in a decision or action of the organization:

- (a) if participating in the decision or action would be incompatible with the ~~lawyer~~licensed paraprofessional's obligations to a client under ~~Business and Professions Code section 6068, subdivision (e)(1) or~~ rules 1.6(a), 1.7, 1.9, or 1.18; or
- (b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the ~~lawyer~~licensed paraprofessional.

#### Comment

[Reserved]

## Rule 6.4 [Reserved]

### Rule 6.5 Limited Legal Services Programs

(a) A ~~lawyer~~licensed paraprofessional who, under the auspices of a program sponsored by a court, government agency, bar association, law school, or nonprofit organization, provides short-term limited legal services to a client without expectation by either the ~~lawyer~~licensed paraprofessional or the client that the ~~lawyer~~licensed paraprofessional will provide continuing representation in the matter:

- (1) is subject to rules 1.7 and 1.9(a) only if the ~~lawyer~~licensed paraprofessional knows\* that the representation of the client involves a conflict of interest; and
- (2) is subject to rule 1.10 only if the ~~lawyer~~licensed paraprofessional knows\* that another ~~lawyer~~licensed paraprofessional or a lawyer associated with the ~~lawyer~~licensed paraprofessional in a law firm\* is prohibited from representation by rule 1.7 or 1.9(a) or Lawyer RPC rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), rule 1.10 is inapplicable to a representation governed by this rule.

(c) The personal disqualification of a ~~lawyer~~licensed paraprofessional participating in the program will not be imputed to other ~~paraprofessionals licensed paraprofessional or~~ lawyers participating in the program.

#### Comment

[Reserved] [Will need clarifying comments similar to CRPC 6.5 that this is not permission to ignore conflicts for the duration, i.e., this rule applies only to short-term legal information/advice scenarios, e.g., Law Day. If the PP wants to continue to represent the client, the PP must comply w/ the conflicts rules.]

**CHAPTER 7.  
INFORMATION ABOUT LEGAL SERVICES**

**Rule 7.1 Communications Concerning a LawyerLicensed paraprofessional's Services**

(a) A lawyerlicensed paraprofessional shall not make a false or misleading communication about the lawyerlicensed paraprofessional or the lawyerlicensed paraprofessional's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the communication considered as a whole not materially misleading.

(b) The Board of Trustees of the State Bar may formulate and adopt standards as to communications that will be presumed to violate rule 7.1, 7.2, 7.3, ~~7.4~~ or 7.5. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these rules. "Presumption affecting the burden of proof" means that presumption defined in Evidence Code sections 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyerlicensed paraprofessionals.

**Comment**

[Reserved]

**Rule 7.2 Advertising**

(a) Subject to the requirements of rules 7.1 and 7.3, a lawyerlicensed paraprofessional may advertise services through any written,\* recorded or electronic means of communication, including public media.

(b) A lawyerlicensed paraprofessional shall not compensate, promise or give anything of value to a person\* for the purpose of recommending or securing the services of the lawyerlicensed paraprofessional or the lawyerlicensed paraprofessional's law firm,\* except that a lawyerlicensed paraprofessional may:

- (1) pay the reasonable\* costs of advertisements or communications permitted by this rule;
- (2) pay the usual charges of a legal services plan or a qualified lawyerlicensed paraprofessional referral service. A qualified lawyerlicensed paraprofessional referral service is a lawyerlicensed paraprofessional referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a LawyerLicensed paraprofessional Referral Service in California;
- (3) pay for a law practice in accordance with rule 1.17;
- (4) refer clients to another lawyerlicensed paraprofessional, a lawyer or a nonlawyer-professional pursuant to an arrangement not otherwise prohibited under these ~~Rules rules or the State Bar Act~~ that provides for the other person\* to refer clients or customers to the lawyerlicensed paraprofessional, if:
  - (i) the reciprocal referral arrangement is not exclusive; and
  - (ii) the client is informed of the existence and nature of the arrangement;
- (5) offer or give a gift or gratuity to a person\* having made a recommendation resulting in the employment of the lawyerlicensed paraprofessional or the lawyerlicensed paraprofessional's law firm,\* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.

(c) Any communication made pursuant to this rule shall include: (1) the name and ~~address-contact information~~ of at least one lawyer, licensed paraprofessional or law firm\* responsible for its content, (2) include in the communication at least one licensed paraprofessional's license number; and (3) include in the communication a clear and conspicuous statement that the licensed paraprofessional is not a lawyer.

## Comment

[Reserved]

### Rule 7.3 Solicitation of Clients

(a) A lawyerlicensed paraprofessional shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the lawyerlicensed paraprofessional's pecuniary gain, unless the person\* contacted:

- (1) is a lawyer or a licensed paraprofessional; or
- (2) has a family, close personal, or prior professional relationship with the lawyerlicensed paraprofessional.

(b) A lawyerlicensed paraprofessional shall not solicit professional employment by written,\* recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the person\* being solicited has made known\* to the lawyerlicensed paraprofessional a desire not to be solicited by the lawyerlicensed paraprofessional; or
- (2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress or harassment.

(c) Every written,\* recorded or electronic communication from a lawyerlicensed paraprofessional soliciting professional employment from any person\* known\* to be in need of legal services in a particular matter shall include:

- (1) the word "Advertisement" or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person\* specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.
- (2) include the name, contact information, and license number of the licensed paraprofessional responsible fo the content of the communication;
- (3) include a clear and conspicuous statement that the paraprofessional is not a lawyer; and
- (4) if an advertisement subject to this subdivision is in a language other than English, the statements required by this subdivision shall be in the same language as the advertisement.

(d) A licensed paraprofessional shall not act as a runner or capper for another licensed paraprofessional, nor solicit another person to act as a runner or capper for atthe licensed paraprofessional.

(1) For purposes of paragraph (d), a "runner or capper" is any person, firm, association, or corporation acting for consideration in any manner or in any capacity as an agent for an attorney, a paraprofessional, or a law firm, in the solicitation or procurement of business for the licensed paraprofessional except as otherwise authorized by these rules.

(2) Nothing in paragraph (d) shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by these rules.

(e) Notwithstanding the prohibitions in paragraph (a), a lawyerlicensed paraprofessional may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyerlicensed paraprofessional that uses in-person, live telephone or real-time electronic contact to solicit memberships or subscriptions for the plan from persons\* who are not known\* to need legal services in a particular matter covered by the plan.

(ef) As used in this rule, the terms “solicitation” and “solicit” refer to an oral or written\* targeted communication initiated by or on behalf of the lawyer licensed paraprofessional that is directed to a specific person\* and that offers to provide, or can reasonably\* be understood as offering to provide, legal services.

**Comment**

[Reserved]

**Rule 7.4 ~~[RESERVED] Communication of Licensed Fields of Practice and Authorized Legal Services and Specialization~~**

~~(a) A lawyer shall not state that the lawyer is a certified specialist licensed to practice in a particular field of law, unless:~~

~~(1) the lawyer is currently certified currently licensed as a specialist by the Board of Legal Specialization, or any other entity accredited by the State Bar to practice in that particular field of law to designate specialists pursuant to standards adopted by the Board of Trustees; and~~

~~(2) the name of the certifying organization is clearly identified in the communication.~~

~~(b) Notwithstanding paragraph (a), a lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may also communicate that his or her practice specializes in, is limited to, or is concentrated in a particular field of law, subject to the requirements of rule 7.1.~~

**Rule 7.5 Firm\* Names and Trade Names**

(a) A lawyer licensed paraprofessional shall not use a firm\* name, trade name or other professional designation that violates rule 7.1.

(b) A lawyer licensed paraprofessional in private practice shall not use a firm\* name, trade name or other professional designation that states or implies a relationship with a government agency or with a public or charitable legal services organization, or otherwise violates rule 7.1.

(c) A lawyer licensed paraprofessional shall not state or imply that the lawyer licensed paraprofessional practices in or has a professional relationship with a law firm\* or other organization unless that is the fact.

**Comment**

[Reserved]

**Rule 7.6 [Reserved]**

\*\*NOTE FROM AMOS: IN CONNECTION WITH CONSIDERATION OF ADVERTISING LIMITATIONS, WE ALSO SHOULD CONSIDER THE NAME OF THE PROPOSED PARAPROFESSIONAL LICENSE. THE NAME OF THE PROGRAM AND LICENSE CAN HAVE SIGNIFICANT IMPACT ON WHETHER THE PUBLIC IS LIKELY TO BE MISLED ABOUT AVAILABLE SERVICES AND THE DIFFERENCES BETWEEN HIRING A PARAPROFESSIONAL AND HIRING A LAWYER. THIS IS AN IMPORTANT CONSIDERATION IN PROTECTIN OF THE PUBLIC.

**CHAPTER 8.  
MAINTAINING THE INTEGRITY  
OF THE PROFESSION**

**Rule 8.1 False Statement Regarding Application for Admission to Practice Law**

- (a) An applicant for admission to practice law as a licensed paraprofessional shall not, in connection with that person's\* own application for admission, make a statement of material fact that the lawyerlicensed paraprofessional knows\* to be false, or make such a statement with reckless disregard as to its truth or falsity.
- (b) A lawyerlicensed paraprofessional shall not, in connection with another person's\* application for admission to practice law as a lawyer or licensed paraprofessional, make a statement of material fact that the lawyerlicensed paraprofessional knows\* to be false.
- (c) An applicant for admission to practice law as a licensed paraprofessional, or a lawyerlicensed paraprofessional in connection with an application for admission, shall not fail to disclose a fact necessary to correct a statement known\* by the applicant or the lawyerlicensed paraprofessional to have created a material misapprehension in the matter, except that this rule does not authorize disclosure of information protected by ~~Business and Professions Code section 6068, subdivision (e)~~ and rule 1.6.
- (d) As used in this rule, "admission to practice law" includes admission or readmission to membership-licensure in the State Bar; reinstatement to active membership-licensure in the State Bar; and any similar process relating to admission or certification to practice law in California or elsewhere.

**Comment**

[Reserved]

**Rule 8.1.1 Compliance with Conditions of Discipline ~~and Agreements in Lieu of Discipline~~**

A lawyerlicensed paraprofessional shall comply with the terms and conditions attached to any agreement in lieu of discipline, any public ~~or private~~ reproof, or to other discipline administered by the State Bar pursuant to ~~Business and Professions Code sections 6077 and 6078 and California Rules of Court, rule 9.19.~~

**Comment**

[Reserved]

**Rule 8.2 Judicial Officials**

~~(a) A lawyerlicensed paraprofessional shall not make a statement of fact that the lawyerlicensed paraprofessional knows\* to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or judicial officer, or of a candidate for election or appointment to judicial office.~~

~~(b) A lawyer who is a candidate for judicial office in California shall comply with canon 5 of the California Code of Judicial Ethics. For purposes of this rule, "candidate for judicial office" means a lawyer seeking judicial office by election. The determination of when a lawyer is a candidate for judicial office by election is defined in the terminology section of the California Code of Judicial Ethics. A lawyer's duty to comply with this rule shall end when the lawyer announces withdrawal of the lawyer's candidacy or when the results of the election are final, whichever occurs first.~~

~~(c) A lawyer who seeks appointment to judicial office shall comply with canon 5B(1) of the California Code of Judicial Ethics. A lawyer becomes an applicant seeking judicial office by appointment at the time of first submission of an application or personal data questionnaire to the appointing authority. A lawyer's duty to comply with this rule shall end when the lawyer advises the appointing authority of the withdrawal of the lawyer's application.~~

## Comment

[Reserved]

### Rule 8.3 [Reserved]

### Rule 8.4 Misconduct

It is professional misconduct for a lawyer licensed paraprofessional to:

- (a) violate these rules ~~or the State Bar Act~~, knowingly\* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer licensed paraprofessional's honesty, trustworthiness, or fitness as a lawyer licensed paraprofessional in other respects;
- (c) engage in conduct involving dishonesty, fraud,\* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, ~~the State Bar Act~~, or other law; or
- (f) knowingly\* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).

## Comment

[Reserved]

### Rule 8.4.1 Prohibited Discrimination, Harassment and Retaliation

- (a) In representing a client, or in terminating or refusing to accept the representation of any client, a lawyer licensed paraprofessional shall not:
  - (1) unlawfully harass or unlawfully discriminate against persons\* on the basis of any protected characteristic; or
  - (2) unlawfully retaliate against persons.\*
- (b) In relation to a law firm's operations, a lawyer licensed paraprofessional shall not:
  - (1) on the basis of any protected characteristic,
    - (i) unlawfully discriminate or knowingly\* permit unlawful discrimination;
    - (ii) unlawfully harass or knowingly\* permit the unlawful harassment of an employee, an applicant, an unpaid intern or volunteer, or a person\* providing services pursuant to a contract; or
    - (iii) unlawfully refuse to hire or employ a person\*, or refuse to select a person\* for a training program leading to employment, or bar or discharge a person\* from employment or from a training program leading to employment, or discriminate against a person\* in compensation or in terms, conditions, or privileges of employment; or
  - (2) unlawfully retaliate against persons.\*

(c) For purposes of this rule:

(1) “protected characteristic” means race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, military and veteran status, or other category of discrimination prohibited by applicable law, whether the category is actual or perceived;

(2) “knowingly permit” means to fail to advocate corrective action where the lawyerlicensed paraprofessional knows\* of a discriminatory policy or practice that results in the unlawful discrimination or harassment prohibited by paragraph (b);

(3) “unlawfully” and “unlawful” shall be determined by reference to applicable state and federal statutes and decisions making unlawful discrimination or harassment in employment and in offering goods and services to the public; and

(4) “retaliate” means to take adverse action against a person\* because that person\* has (i) opposed, or (ii) pursued, participated in, or assisted any action alleging, any conduct prohibited by paragraphs (a)(1) or (b)(1) of this rule.

(d) A lawyerlicensed paraprofessional who is the subject of a State Bar investigation or State Bar ~~Court-disciplinary~~ proceeding alleging a violation of this rule shall promptly notify the State Bar of any criminal, civil, or administrative action premised, whether in whole or part, on the same conduct that is the subject of the State Bar investigation or State Bar ~~Court-disciplinary~~ proceeding.

(e) Upon being issued a notice of a disciplinary charge under this rule, a lawyerlicensed paraprofessional shall:

(1) if the notice is of a disciplinary charge under paragraph (a) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Department of Justice, Coordination and Review Section; or

(2) if the notice is of a disciplinary charge under paragraph (b) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Equal Employment Opportunity Commission.

(f) This rule shall not preclude a lawyerlicensed paraprofessional from:

~~(1) representing a client alleged to have engaged in unlawful discrimination, harassment, or retaliation;~~

~~(2) declining or withdrawing from a representation as required or permitted by rule 1.16; or~~

~~(3) providing advice and engaging in advocacy as otherwise required or permitted by these rules and applicable law and the State Bar Act.~~

#### Comment

[Reserved]

#### Rule 8.5 Disciplinary Authority; Choice of Law

(a) Disciplinary Authority.

A lawyerlicensed paraprofessional admitted to practice in California is subject to the disciplinary authority of California, regardless of where the lawyerlicensed paraprofessional's conduct occurs. ~~A lawyer not admitted in California is also subject to the disciplinary authority of California if the lawyer provides or offers to provide any legal services in California.~~ A lawyerlicensed paraprofessional may be subject to the disciplinary authority of both California and another jurisdiction for the same conduct.

(b) Choice of Law.

In any exercise of the disciplinary authority of California, the rules of professional conduct to be applied shall be as follows:

- (1) for conduct in connection with a matter pending before a tribunal,\* the rules of the jurisdiction in which the tribunal\* sits, unless the rules of the tribunal\* provide otherwise; and
- (2) for any other conduct, the rules of the jurisdiction in which the lawyerlicensed paraprofessional's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyerlicensed paraprofessional shall not be subject to discipline if the lawyerlicensed paraprofessional's conduct conforms to the rules of a jurisdiction in which the lawyerlicensed paraprofessional reasonably believes\* the predominant effect of the lawyerlicensed paraprofessional's conduct will occur.

**Comment**

[Reserved]



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: April 19, 2021

To: California Paraprofessional Program Working Group

From: Amos Hartston and Fariba Soroosh

Subject: Regulation Subcommittee Status Update and Draft Rules of Paraprofessional Conduct

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, proposed rules of paraprofessional conduct. The CPPWG is asked to consider and provide feedback regarding a draft set of paraprofessional conduct rules at its April 19, 2021, meeting. A final set of paraprofessional conduct rules will be submitted to the CPPWG for a vote at its June meeting.

### BACKGROUND

The Regulation Subcommittee has a broad charge including the development of recommendations in the areas of continuing education, financial responsibility, ethical rules governing paraprofessional conduct, and proactive/risk-based regulation. The Subcommittee previously presented recommendations regarding Minimum Continuing Education (MCLE) requirements and financial responsibility that were voted on and approved by the Working Group. The Subcommittee has continued its work addressing other regulation issues.

On several issues including (1) requirements for a written agreement including mandatory disclosures, (2) requirements for pre-engagement informed consent, (3) advertising limitations, (4) fee limitations, (5) proactive risk-based regulation, (6) and rules of professional conduct, the Subcommittee first worked through policy decisions about potential regulations separate from

drafting proposed language and determining if the regulation should be located in court rules, rules of professional conduct, or proposed statutory changes. A summary of key Subcommittee policy decisions and deliberations is provided in Table 1.

**Table 1. Summary of Key Policy Decisions**

Topic	Status
Continuing legal education	Working Group approved at March 18, 2021, CPPWG meeting
Financial responsibility; bond requirement	Working Group approved at March 18, 2021, CPPWG meeting
Written agreement including specified mandatory disclosures	Draft ready for consideration at April 21, 2021, CPPWG meeting
Pre-engagement informed consent requirement	Draft ready for consideration at April 21, 2021, CPPWG meeting
Advertising limitations	Draft ready for consideration at April 21, 2021, CPPWG meeting
Fee limitations or possible fee caps	Pending; recommendations not finalized
Proactive/risk-based regulation	Pending; recommendations not finalized

With respect to development of draft rules of professional conduct, after making these policy decisions, the Subcommittee has worked closely with State Bar staff and the California Supreme Court's liaison to the Working Group to develop a draft set of rules of paraprofessional conduct (RPPC). As a foundational matter, the Subcommittee decided to structure the draft rules to track the rules of professional conduct for attorneys (RPC) specifically, and, more globally, the overall structure for the regulation of attorney conduct, which includes a web of the RPC's, discipline rules, and statutes. This approach differs from that taken by other jurisdictions with licensed legal paraprofessionals. The Regulation Subcommittee, in consultation with its staff support, determined that the benefits of mirroring the overall regulatory structure in place for California attorneys are significant. A working draft of the RPPC, with proposed changes relative to the RPC for attorneys shown in redline, is provided as Attachment A.

With proposed policy decisions regarding regulation of paraprofessionals and the decision regarding overall approach in mind, the Subcommittee, with staff support, put together a draft set of RPPC's for paraprofessionals that track the RPCs for attorneys. Where appropriate, modification or deletion of rules of professional conduct are being proposed to track policy decisions made about regulation of paraprofessionals or where RPCs were identified that were not clearly, or necessarily, applicable in the RPPC context. A summary of key policy recommendations made by the Subcommittee beyond those outlined in Table 1 above, is provided in Table 2 on the following page.

**Table 2. Summary of Additional Policy Recommendations**

Topic	Recommendation
Can paraprofessionals represent organizations?	Recommendation: No
Can paraprofessionals provide limited scope representation?	Recommendation: Yes
Can paraprofessionals charge advanced fees?	Recommendation: Yes
Can paraprofessionals charge contingency fees?	Recommendation: Yes, enforcement of judgment matters only and subject to a cap of 33.33% (or other cap to be determined)
Are paraprofessionals required to deposit unearned fees in a trust account?	Recommendation: Yes
Can paraprofessionals act as runners and cappers for attorneys or other paraprofessionals, or have runners and cappers working for them?	Recommendation: No
Must paraprofessionals work under direct supervision of a lawyer?	Recommendation: No
Can paraprofessionals co-own firms and share fees with other paraprofessionals within the same firm?	Recommendation: Yes
Can paraprofessionals in different firms split fees (true referral fees)?	Recommendation: Yes, with restrictions similar to attorneys
Can paraprofessionals and attorneys co-own firms and share fees between attorneys and paraprofessionals within the same firm?	Recommendation: Yes, with the restriction that paraprofessionals must have minority ownership
Can paraprofessionals share fees with attorneys who do not practice in the same law firm?	Recommendation: Yes, under the same restrictions that allow fee sharing among lawyers under rule 1.5.1
Can paraprofessionals sell interest in a firm to another paraprofessional or attorney?	Recommendation: Yes
Can paraprofessionals enter business transactions or obtain interests adverse to clients?	Recommendation: Undecided
Can paraprofessionals loan money to clients?	Recommendation: Undecided

## DISCUSSION

This section provides a brief overview of each policy issue and identifies the rule<sup>1</sup> and statutory implications of the decisions made by the Subcommittee.

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<sup>1</sup> In this memorandum, rule generally refers to the Rules of Professional Conduct. While there has been an attempt to make clear distinctions throughout, in some circumstances rule may refer to Rules of Court or State Bar Rules.

## Paraprofessional-Client Relationship<sup>2</sup>

Policy 1: Whether paraprofessionals need to make certain **disclosures** to prospective clients and must they obtain their **informed written consent** prior initiating representation?

Answer: Yes. The Subcommittee recommends that the paraprofessional obtain a client's acknowledgement of certain disclosures and obtain written consent to representation in a separate writing from the mandatory written agreement, discussed *post*. The informed consent requirement is set forth in a proposed rule 1.4.2, which incorporates a professional liability insurance disclosure requirement similar to that found under the lawyer version of the rule while also including the certain other unique disclosures for paraprofessionals (i.e., that the paraprofessional is not a lawyer, the reasonable alternatives to obtaining legal assistance from a paraprofessional, the risks of obtaining legal assistance from a paraprofessional, the potential need to obtain assistance from a lawyer or another paraprofessional if need for assistance goes beyond scope of licensure, existence of other financial arrangements related to representation, reasonable estimate of legal costs.)

Informed of risks of hiring a paraprofessional. Form that can be used by the paraprofessional. What triggers the disclosure.

Additional, practice specific, disclosures, may be warranted.

Rules affected: New rule 1.4.2.

Policy 2: Does a paraprofessional need to enter into a **written agreement** with a client at the initiation of representation?

Answer: Yes. Currently lawyers are required to enter into written agreement if it anticipated the cost of legal services will exceed \$1,000 or it involves a contingency fee based on the outcome of the matter. Business and Professions

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<sup>2</sup> In addition to the issues described in this section, the Regulation Subcommittee discussed Code of Civil Procedure section 284(2) requires a client to either submit a substitution of counsel form signed by their lawyer to clerical change the attorney of record or file a noticed motion to obtain a court order dismissing a lawyer. This provision seems to conflict with the absolute right of a client to discharge their attorney because there are anecdotal instances in which a counsel of record refuses to sign a substitution of counsel form to obtain some advantage over their client. While this would clearly be a disciplinable offense, clients often cannot wait to for resolution of a State Bar complaint or have the wherewithal to seek a court order by noticed motion. The Regulation Subcommittee will consider proposing an amendment to section 284(2) to address this problem.

Code (BPC) sections 6147 and 6148. The rules do not require lawyers to enter into a written agreement with clients when the cost of legal services is not anticipated to exceed \$1,000 except when they are splitting legal fees (See rule 1.5.1).

Rules affected: New rule 1.5.2 reflects the Subcommittee's recommendation for written agreement requirements.

Statutes that may be affected: BPC 6147 and 6148 to the extent the CPPWG wishes to seek amendments to these statutes to make a failure to enter into a written agreement with a client voidable at the client's election.

Policy 3: Can paraprofessionals charge **contingency fees** and if so, under what circumstances?

Answer: Yes, they should be permitted to charge contingency fees in enforcement of final judgment actions only, subject to a fee cap (to be decided).

Rules affected: Rule 1.5 (Fees for Legal Services) and new rule 1.4.1 (Informed Consent) and rule 1.4.2 (Written Agreement).

Statutes that may be affected: BPC section 6147 requires lawyers to enter into a written agreement with the client and to include provisions that comply with the statute.

Policy 4: Can paraprofessionals charge **advanced fees** to cover fees, costs, and expenses?

Answer: Yes, under the same circumstances that a lawyer can charge such fees, with no exceptions. There is an exception for lawyers that allow them to obtain informed consent if the client agrees to allow them to place advance fee in operating account. This exception not included.

Rules affected: Rule 1.15 setting forth the trust account obligations and rule 1.16(e) setting forth the obligation to return unearned fees. Rule 1.8.5 allows an attorney to pay costs and expenses to third parties using advance fees with client consent.

Statutes that may be affected: The IOLTA statutes (BPC section 6210, 6211) need to be amended to include paraprofessional trust accounts within the scope of the program.

Policy 5: Can paraprofessionals place **advanced fees in their operating account** if the client consents just as lawyers are permitted to do under rule 1.15(b)?

Answer: No. This exception for lawyers was specifically carved out to accommodate concerns of criminal defense and bankruptcy attorneys that placing advance fees in trust accounts might subject them to government seizure or forfeiture. Neither of these areas of law are contemplated as being within permissible scope of practice of paraprofessionals.

Rules affected: Rule 1.15(b) should be removed from the RPPC version, thus paragraph (a) will require placement in the trust account and paragraph (c) will require the paraprofessional to move funds to the operating account as earned.

Policy 6: Can paraprofessionals charge **true retainer fees**?

Answer: No. Lawyers are prohibited from designating an advance fee as “earned upon receipt” or “nonrefundable” unless it is a true retainer fee, defined as “a fee that a client pays to a lawyer to ensure the lawyer’s availability to the client during a specified period or on a specified matter, but not to any extent as compensation for legal services performed or to be performed.”

Paraprofessionals will not be permitted to charge true retainer so no advance fee can ever be designated as “earned upon receipt” or “non-refundable.”

Rules affected: Rule 1.5(d).

Policy 7: Can paraprofessionals **pay personal or business expenses** owed to third parties with advance funds with the client’s consent?

Answer: Yes. This is an exception to the general prohibition on a lawyer directly or indirectly paying or agree to pay personal or business expenses of a prospective or existing client. (RPC rule 1.8.5(a), (b)(1).) Consent to do so can be verbal. The Subcommittee also wishes to retain the same exceptions under rule 1.8.5(b)(3) allowing cost repayment contingent on outcome and rule 1.8.5(b)(4) allowing payment of costs and expenses of an indigent client without expectation of repayment.

Rules affected: Rule 1.8.5.

Policy 8: Can paraprofessionals enter **business transactions** or obtain a **pecuniary interest adverse to a client** and if so, under what circumstances? FC2033

Answer: Undecided. Under rule 1.8.1, lawyers can only enter into a business transaction or knowingly acquire an ownership interest adverse to a client unless: (i) terms are fair and reasonable and lawyer's role in the transaction is fully disclosed in writing in a manner reasonably understood; (ii) client is represented by other counsel or his advised in writing to seek independent advice and given an opportunity to do so; and (iii) the client gives informed written consent. (These requirements are consistent with BPC section 6175.3 governing a lawyer's sale of financial product to current or former clients who are elder or dependent adults.) One example that might be contemplated is if a paraprofessional obtains an assignment of a final money judgment from a client in an effort to enforce the judgment. The Subcommittee intends to seek additional information to determine the impact of a complete prohibition.

Rules affected: Rule 1.8.1 and 1.8.5.

Statutes that may be affected: BPC section 6175.3.

Policy 9: Can paraprofessionals ***loan money to existing clients*** and if so, under what circumstances?

Answer: Undecided. Lawyers are able to do so if it does not create a conflict of interest under rule 1.7 and they comply with the ethical obligations under rule 1.8.1 governing business transactions with clients. The Regulation Subcommittee intends to ask other subcommittees to determine whether or not this rule is necessary to facilitate access. To the extent it is allowed, the Subcommittee may propose to regulate the interest rate that can be charged (note that rule 1.8.1 (a) already requires the terms of any transaction with a client must be "fair and reasonable").

Rules affected: Rule 1.8.1 and 1.8.5.

Policy 10: Can a paraprofessional ***solicit a substantial gift*** from a client and if so, under what circumstances?

Answer: Yes, but only under the limited circumstances allowed for lawyers (i.e., if lawyer or the recipient of the gift is related to the client). There is no need for the additional prohibition on a paraprofessional drafting an instrument that conveys a substantial gift to the paraprofessional or a relative of the paraprofessional because they will not be authorized to draft such instruments.

Rules affected: Rule 1.8.3

Policy 11: Can a paraprofessional ***purchase a property at a foreclosure or judicial sale*** if the paraprofessional is acting as legal representative in the transaction or as an executor, receiver, trustee, administrator, guardian, or conservator?

Answer: No, following rule 1.8.9, which prohibits a lawyer or anyone affiliated with the lawyer from purchasing a property at foreclosure or judicial sale under these circumstances. However, such transactions may be permissible under Probate Code sections 9880 through 9885 so long as the lawyer complies with rules 1.8.1 and 1.7.

Rules affected: Rules 1.8.9, 1.8.1, 1.7.

Statutes that may be affected: Probate Code sections 9880 through 9885.

Policy 12: Whether paraprofessional can ***represent organizations***?

Answer: No, paraprofessional can only represent individuals.

Rules affected: Rules 1.13 (Organization as Client).

Policy 13: Should paraprofessionals be permitted to provide limited scope representation?

Answer: Yes. Rules of Court, rules 3.35-3.37 (limited scope rule applicable in civil matters generally), 5.425 [limited scope rule applicable in family law matters] permitting the unbundling of legal services were intended to lower costs for clients by reducing the amount of time a lawyer puts into a legal matter.

Rules affected: Rule 1.2(b) (Scope of Representation and Allocation of Authority) permits a lawyer to limit the scope of representation if limitation is reasonable, permitted by law, and client gives informed consent.

Statutes and other Rules affected: Rules of Court, rules 3.35-3.37, 5.425 would have to be amended to allow this level of limited scope representation by paraprofessionals.

### **Relationships Among Paraprofessionals**

Policy 14: Can paraprofessionals ***co-own a law firm*** with other paraprofessionals?

Answer: Yes, subject to the same rules that apply to lawyers governing conflicts of interest, sale of firm, supervision of staff, prohibitions on unlawful harassment, discrimination, and retaliation in firm operations, etc. Statutory

changes may be needed to ensure registration of such LLP and PCs with the State Bar.

Rules affected: Rule 1.0.1(c), (g), (k) [definitions of a “law firm,” “partner,” and “screened”]; rules 1.7 (Conflicts of Interest: Current Client); 1.8.11 (Imputation of Conflicts under rules 1.8.1 through 1.8.10); 1.9 (Duties to Former Clients); 1.10 (Imputation of Conflicts of Interest: General Rule); 1.11 (Special Conflicts of Interest for Former and Current Government Officials and Employees); 1.12 (Former Arbitrator, Mediator, or Third-Party Neutral); 1.15 (Safekeeping Funds and Property of Clients and Other Persons); 1.17 (Sale of a Law Practice); 1.18 (Duties to Prospective Clients); 5.1 (Responsibilities of Managerial and Supervisory Paraprofessionals); 5.2 (Responsibilities of a Subordinate Licensed Paraprofessional); 5.3 (Responsibilities Regarding Non-Licensed Assistants); 5.3.1 (Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Paraprofessionals); 5.4 (Financial and Similar Arrangements with Lawyers and Nonlicensees); 7.2 (Advertising); 7.5 (Firm Names and Trade Names); 8.4.1 (Prohibited Discrimination, Harassment and Retaliation)

Statutes and other Rules that may be affected: BPC sections 6174, 6174.5 and State Bar Rules 3.170 et seq. [governing registration of maintenance attorney LLPs]; BPC section 6160 et seq and State Bar Rules 3.150 et seq. [Law corporations organized under Corporate Code section 13400 et seq. must be registered with and certified by the State Bar]; BPC 6175 et seq. [Provision of Financial Services by Lawyers].

Policy 15: Can paraprofessionals ***sell their interest in a law firm*** to another paraprofessional or a lawyer?

Answer: Yes, subject to the same requirements applicable to lawyers selling interest in their law firms under rule 1.17.

Rules affected: Rules 1.17 (Sale of a Law Practice), 1.16 (Declining or Terminating Representation, 5.4(a)(2) (Financial and Similar Arrangements with Nonlawyers), 7.2(a)(3) (Advertising).

Statutes and other Rules that may be affected: BPC sections 6174, 6174.5 and State Bar Rules 3.170 et seq. [governing registration of maintenance attorney LLPs]; BPC section 6160 et seq and State Bar Rules 3.150 et seq. [Law corporations organized under Corporate Code section 13400 et seq. must be registered with and certified by the State Bar].

Policy 16: Can paraprofessionals who work in ***different law firms split fees?***

Answer: Yes, based on the same criteria that applies to lawyers, meaning that pure referral fees are permissible.

Rules affected: Rules 1.5.1, 5.4, and 7.2. Rule 7.2(b) states that a lawyer may not “compensate, give, or promise anything of value” to another person, including a lawyer, for recommending or securing the referral of business to a lawyer or law firm with some exceptions, including that a lawyer may make a referral to another lawyer or nonlawyer so long as it does not violate the rule or State Bar Act, it is a reciprocal referral arrangement is not exclusive, and the client is informed of the existence and nature. Rule 5.4 prohibits fee direct or indirect fee sharing with nonlawyers with certain exception not applicable here. Finally, rule 1.5.1 provides lawyers not in the same firm can split legal fees so long as (1) they enter into a written agreement to do so; (2) the client consents in a writing that provides full disclosure of the fact that the division will be made, the identity of the lawyers or firms that are parties to the division and the terms of the division; and (3) the total fee charged to the client does not increase as a result solely due to the agreement to divide the fees. Consequences of failure to comply is that the lawyers may be subject to discipline and the agreement may not be enforceable on public policy grounds. (*Scolinos v. Kolts* (1995) 37 Cal.App.4th 635, 639; *Chambers v. Kay* (2002) 29 Cal.4th 142, 156.) Importantly, unlike the Model Rule 1.5(e) and the versions of the rule in most other jurisdictions, California does not require a division of fees in proportion to the services performed by each lawyer or they each take responsibility for the representation. This opens the door for sharing fees with another lawyer for a client referral alone so long as they comply with rules 1.5.1 and 7.2(b). The rationale for allowing such forwarding or pure referral fees is well-stated in *Moran v. Harris* (1982) 131 Cal.App.3d 913, 921–922: “If the ultimate goal is to assure the best possible representation for a client, a forwarding fee is an economic incentive to less capable lawyers to seek out experienced specialists to handle a case. Thus, with marketplace forces at work, the specialist develops a continuing source of business, the client is benefited and the conscientious, but less experienced lawyer is subsidized to competently handle the cases he retains and to assure his continued search for referral of complex cases to the best lawyers in particular fields.” The duty of competence includes the exercise of care in referrals under rule 1.1(c).

Statutes that may be affected: BPC section 6154 prohibits runners and cappers for lawyers unless otherwise permitted under the RPC. No such prohibition exists for runners and cappers for paraprofessionals. BPC section 6148 may be indirectly implicated as well because it requires a written agreement for any provision of legal services where it is reasonably foreseeable that the total cost to the client will exceed \$1,000. The agreement must explain the fee structure.

## Relationships with Lawyers

Policy 17: Whether paraprofessionals must practice under the ***direct supervision of a lawyer?***

Answer: No.

Rules affected: Rules 1.2 (Scope of Representation and Allocation of Authority), rules 5.1 (Responsibilities of Managerial and Supervisory Paraprofessionals), 5.2 (Responsibilities of Subordinate Paraprofessionals), 5.3 (Responsibilities Regarding Nonlawyer Assistants), and 5.5 (Unauthorized Practice of Law).

Policy 18: Whether ***lawyers and paraprofessionals can co-own the same law firm?***

Answer: Yes. The subcommittee has decided that paraprofessionals can hold less than 50 percent ownership in a law firm co-owned with attorneys and may supervise nonlawyer staff.

Rules affected: Most importantly, rule 5.4 which has been amended to permit paraprofessionals and lawyers to co-own law firms. See new paragraphs (e) and (f) to rule 5.4. Additionally, the following rules are affected by this decision: rules 1.0.1(c), (g), (k) [definitions of a “law firm,” “partner,” and “screened”]; 1.7 (Conflicts of Interest: Current Client); 1.8.11 (Imputation of Conflicts under rules 1.8.1 through 1.8.10); 1.9 (Duties to Former Clients); 1.10 (Imputation of Conflicts of Interest: General Rule); 1.11 (Special Conflicts of Interest for Former and Current Government Officials and Employees); 1.12 (Former Arbitrator, Mediator, or Third-Party Neutral); 1.15 (Safekeeping Funds and Property of Clients and Other Persons); 1.17 (Sale of a Law Practice); 1.18 (Duties to Prospective Clients); 5.1 (Responsibilities of Managerial and Supervisory Paraprofessionals); 5.2 (Responsibilities of a Subordinate Licensed Paraprofessional); 5.3 (Responsibilities Regarding Non-Licensed Assistants); 5.3.1 (Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Paraprofessionals); 5.4 (Financial and Similar Arrangements with Lawyers and Nonlicensees); 7.2 (Advertising); 7.5 (Firm Names and Trade Names); 8.4.1 (Prohibited Discrimination, Harassment and Retaliation).

Statutes that may be affected: BPC section 6174, 6174.5 and State Bar Rules 3.170 et seq. [governing registration of maintenance attorney LLPs]; BPC section 6160 et seq and State Bar Rules 3.150 et seq. [Law corporations organized under Corporate Code section 13400 et seq. must be registered with and certified by the State Bar]; BPC section 6175 et seq. [Provision of Financial Services by Lawyers]

Policy 19: Whether paraprofessionals can **share legal fees with lawyers** who do not practice in the same law firm and if so, under what circumstances?

Answer: Yes, under the same rules that allow fee sharing among lawyers under rule 1.5.1.

Rules and statutes affected: See response to Question #16.

### **Advertising and Solicitation**

Policy 20: Whether the same ethical standards that apply to lawyers regarding **communication, solicitation, and advertising of legal services** should apply to paraprofessionals?

Answer: Yes and additional obligations should also be imposed. Under rules 7.2(c) and 7.3(c), all advertising and solicitation communications placed by a licensed paraprofessional regarding the availability of legal services must include the name and contact information for the licensed paraprofessional or law firm responsible for the content, the paraprofessional's license number and a clear and conspicuous statement indicating that the licensed paraprofessional is not a lawyer.

Rules affected: Rules 7.1, 7.2, and 7.3.

Policy 21: Whether there should be a prohibition on licensed paraprofessionals acting as a **runner or capper** for another paraprofessional or attorney?

Answer: Yes. Currently BPC section 6152 prohibits any person from acting as a runner or capper for any attorney and prohibits any person from soliciting another person to act as a runner or capper for an attorney. There is no current prohibition from a person acting as a runner or capper for a licensed paraprofessional or soliciting someone to act as a runner or capper for a licensed paraprofessional. The regulation subcommittee recommends adopting an amended version of rule 7.3 to fill this regulatory gap.

Rules affected: Rule 7.3 (Solicitation of Clients).

Statutes that may be affected: BPC section 6152.

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## Rule 1.0 Purpose and Function of the Rules of Professional Conduct for Licensed Paraprofessionals

### (a) Purpose.

The following rules are intended to regulate professional conduct of lawyerlicensed paraprofessionals through discipline. They have been adopted by the Board of Trustees of the State Bar of California and approved by the Supreme Court of California ~~pursuant to Business and Professions Code sections 6076 and 6077~~ to protect the public, the courts, and the legal profession; protect the integrity of the legal system; and promote the administration of justice and confidence in the legal profession. These rules together with any standards adopted by the Board of Trustees pursuant to these rules shall be binding upon all lawyerlicensed paraprofessionals.

### (b) Function.

(1) A willful violation of any of these rules is a basis for discipline.

(2) The prohibition of certain conduct in these rules is not exclusive. LawyerLicensed paraprofessionals are also bound by applicable law including relevant statutes, the California Rules of Court, and the State Bar Act (Bus. & Prof. Code, § 6000 et seq.) and opinions of California courts.

(3) A violation of a rule does not itself give rise to a cause of action for damages caused by failure to comply with the rule. Nothing in these rules or the Comments to the rules is intended to enlarge or to restrict the law regarding the liability of lawyers- licensed paraprofessionals to others.

### (c) Purpose of Comments.

The comments are not a basis for imposing discipline but are intended only to provide guidance for interpreting and practicing in compliance with the rules.

(d) These rules may be cited and referred to as the “California Rules of Professional Conduct for Licensed Paraprofessionals.”

### Comment

[Reserved]

### Rule 1.0.1 Terminology

(a) “Belief” or “believes” means that the person\* involved actually supposes the fact in question to be true. A person’s\* belief may be inferred from circumstances.

(b) ~~[Reserved]~~ [FG1]

(c) “Firm” or “law firm” means a licensed paraprofessional, licensed parafessionals, a lawyer, or lawyers in a law partnership; a professional law corporation; a ~~lawyerlicensed paraprofessional-licensed paraprofessional~~ acting as a sole proprietorship; an association authorized to practice law; or ~~lawyerlicensed paraprofessionals- licensed paraprofessional~~ employed in a legal services organization or in the legal department, division or office of a corporation, of a government organization, or of another organization.

(d) “Fraud” or “fraudulent” means conduct that is fraudulent under the law of the applicable jurisdiction and has a purpose to deceive.

(e) “Informed consent” means a person’s\* agreement to a proposed course of conduct after the lawyerlicensed paraprofessional has communicated and explained (i) the relevant circumstances and (ii) the material risks, including any actual and reasonably\* foreseeable adverse consequences of the proposed course of conduct.

(e-1) "Informed written consent" means that the disclosures and the consent required by paragraph (e) must be in writing.\*

(f) "Knowingly," "known," or "knows" means actual knowledge of the fact in question. A person's\* knowledge may be inferred from circumstances.

(g) "Partner" means a member of a partnership, a shareholder in a law firm\* organized as a professional corporation, or a member of an association authorized to practice law.

(g-1) "Person" has the meaning stated in Evidence Code section 175.

(h) "Reasonable" or "reasonably" when used in relation to conduct by a lawyerlicensed paraprofessional means the conduct of a reasonably prudent and competent lawyerlicensed paraprofessional.

(i) "Reasonable belief" or "reasonably believes" when used in reference to a lawyerlicensed paraprofessional means that the lawyerlicensed paraprofessional believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) "Reasonably should know" when used in reference to a lawyerlicensed paraprofessional means that a lawyerlicensed paraprofessional of reasonable prudence and competence would ascertain the matter in question.

(k) "Screened" means the isolation of a lawyerlicensed paraprofessional from any participation in a matter, including the timely imposition of procedures within a law firm\* that are adequate under the circumstances (i) to protect information that the isolated lawyerlicensed paraprofessional is obligated to protect under these rules or other law; and (ii) to protect against other law firm\* lawyers, licensed paraprofessionals and nonlawyers, and non-licensed paraprofessional personnel communicating with the lawyerlicensed paraprofessional with respect to the matter.

(l) "Substantial" when used in reference to degree or extent means a material matter of clear and weighty importance.

(m) "Tribunal" means: (i) a court, an arbitrator, an administrative law judge, or an administrative body acting in an adjudicative capacity and authorized to make a decision that can be binding on the parties involved; or (ii) a special master or other person\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

(n) "Writing" or "written" has the meaning stated in Evidence Code section 250. A "signed" writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed, inserted, or adopted by or at the direction of a person\* with the intent to sign the writing.

(o) "Lawyer RPC" denotes the California Rules of Professional Conduct for Lawyers<sup>[FG2]</sup>.

**Comment**

[Reserved]

**CHAPTER 1.**

**LAWYERLICENSED PARAPROFESSIONAL-CLIENT RELATIONSHIP**

**Rule 1.1 Competence**

(a) A lawyerlicensed paraprofessional shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.

(b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably\* necessary for the performance of such service.

(c) If a lawyerlicensed paraprofessional does not have sufficient learning and skill when the legal services within the scope of the licensure are undertaken, the lawyerlicensed paraprofessional nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyerlicensed paraprofessional or a lawyer whom the lawyerlicensed paraprofessional reasonably believes\* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyerlicensed paraprofessional or lawyer whom the lawyerlicensed paraprofessional reasonably believes\* to be competent.

(d) In an emergency a lawyerlicensed paraprofessional may give advice or assistance in a matter in which the lawyerlicensed paraprofessional does not have the skill ordinarily required if referral to, or association or consultation with, another lawyerlicensed paraprofessional or lawyer would be impractical. Assistance in an emergency must be limited to that reasonably\* necessary in the circumstances<sup>[FG3]</sup>.

#### Comment

[Reserved<sup>[FG4]</sup>]

### Rule 1.2 Scope of Representation and Allocation of Authority

(a) Subject to rule 1.2.1, a lawyerlicensed -paraprofessional shall abide by a client’s decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably\* consult with the client as to the means by which they are to be pursued. Subject to ~~Business and Professions Code section 6068, subdivision (e)(1) and~~ rule 1.6, a licensed paraprofessional lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A licensed paraprofessional lawyer shall abide by a client’s decision whether to settle a matter. ~~Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify~~<sup>[FG5]</sup>.

(b) A lawyerlicensed paraprofessional may limit the scope of the representation if the limitation is reasonable\* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.\*

#### Comment

[Reserved]

#### Rule 1.2.1 Advising or Assisting the Violation of Law

(a) A licensed paraprofessional lawyer shall not counsel a client to engage, or assist a client in conduct that the lawyerlicensed paraprofessional knows\* is criminal, fraudulent,\* or a violation of any law, rule, or ruling of a tribunal.\*

(b) Notwithstanding paragraph (a), a licensed paraprofessional lawyer may:

- (1) discuss the legal consequences of any proposed course of conduct with a client; and
- (2) counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of a law, rule, or ruling of a tribunal.\*

#### Comment

[Reserved]

### Rule 1.3 Diligence

- (a) A ~~licensed paraprofessional lawyer~~ shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.
- (b) For purposes of this rule, “reasonable diligence” shall mean that a ~~lawyer~~licensed paraprofessional acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the ~~lawyer~~licensed paraprofessional.

#### Comment

[Reserved]

### Rule 1.4 Communication with Clients

- (a) A ~~licensed paraprofessional lawyer~~ shall:
- (1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client’s informed consent\* is required by these rules or ~~the State Bar Act~~applicable law;
  - (2) reasonably\* consult with the client about the means by which to accomplish the client’s objectives in the representation;
  - (3) keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed; and
  - (4) advise the client about any relevant limitation on the ~~lawyer~~licensed paraprofessional’s conduct when the ~~lawyer~~licensed paraprofessional knows\* that the client expects assistance not permitted by ~~these rules~~ Rules of Professional Conduct or other law.
- (b) A ~~lawyer~~licensed paraprofessional shall explain a matter to the extent reasonably\* necessary to permit the client to make informed decisions regarding the representation.
- (c) A ~~lawyer~~licensed paraprofessional may delay transmission of information to a client if the ~~lawyer~~licensed paraprofessional reasonably believes\* that the client would be likely to react in a way that may cause imminent harm to the client or others.
- (d) A ~~lawyer~~licensed paraprofessional’s obligation under this rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or limitation under statutory or decisional law.

#### Comment

[Reserved]

#### Rule 1.4.1 Communication of Settlement Offers

- ~~(a) A licensed paraprofessional lawyer shall promptly communicate to the lawyer licensed paraprofessional’s client:~~
- ~~(1) all terms and conditions of a proposed plea bargain or other dispositive offer made to the client in a criminal matter; and~~ [FG6]
- ~~(2) all amounts, terms, and conditions of any written\* offer of settlement made to the client in all other matters.~~

~~(b) As used in this rule, “client” includes a person\* who possesses the authority to accept an offer of settlement or plea, or, in a class action, all the named representatives of the class[FG7].~~

#### Comment

[Reserved]

#### Rule 1.4.2 Mandatory Disclosures and Informed Consent of Professional Liability Insurance

(a) Prior to a prospective client’s engagement of the licensed paraprofessional, the licensed paraprofessional shall provide certain written disclosures in the prospective client’s preferred language and obtain the prospective client’s informed written consent\* to representation. The written disclosures shall include the following:

- (1) A statement that the licensed paraprofessional is not a lawyer;
- (2) Reasonable\* disclosure of available alternative choices, including the availability of a lawyer as an alternative[FG8], the availability of a free consultation with a lawyer, the possible availability of limited-scope services from a lawyer, and the possibility that free legal services may be available if the client qualifies;
- (3) The risks of agreeing to obtaining legal services from a licensed paraprofessional in language that the client can understand[FG9];
- (4) The potential need to hire a lawyer or another licensed paraprofessional if needed services go beyond the limited license of the licensed paraprofessional;
- (5) the existence of any financial arrangements such as referral fees or fee sharing that the [paraprofessional] has with others; and [FG10]
- (6) a reasonable estimate of the total costs of services[FG11].
- (7) If the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional does not have professional liability insurance, the licensed paraprofessional shall inform a client in writing\* at the time of the engagement of the licensed paraprofessional, that the licensed paraprofessional does not have professional liability insurance.

~~(a) A paraprofessional lawyer who knows\* or reasonably should know\* that the paraprofessional lawyer does not have professional liability insurance shall inform a client in writing,\* at the time of the client’s engagement of the lawyer, that the paraprofessional lawyer does not have professional liability insurance.~~

~~(b) If notice under paragraph (a)(7) has not been provided at the time of prior to a client’s engagement of the lawyer licensed paraprofessional, the lawyer licensed paraprofessional shall inform the client in writing\* within thirty days of the date the lawyer licensed paraprofessional knows\* or reasonably should know\* that the lawyer licensed paraprofessional no longer has professional liability insurance during the representation of the client.~~

~~(c) This rule Notwithstanding paragraphs (a)(7) and (b), the obligation to disclose that a licensed paraprofessional does not have professional liability insurance does not apply to:~~

- ~~(1) a lawyer licensed paraprofessional who knows\* or reasonably should know\* at the time of the client’s engagement of the lawyer licensed paraprofessional that the lawyer licensed paraprofessional’s legal representation of the client in~~

the matter will not exceed four hours; provided that if the representation subsequently exceeds four hours, the lawyer-licensed paraprofessional must comply with paragraphs (a)(7) and (b);

~~(2) a lawyer who is employed as a government lawyer or in-house counsel when that lawyer is representing or providing legal advice to a client in that capacity~~ [FG12];

(32) a lawyer-licensed paraprofessional who is rendering legal services in an emergency to avoid foreseeable prejudice to the rights or interests of the client;

(43) a lawyer-licensed paraprofessional who has previously advised the client in writing\* under paragraph (a)(7) or (b) that the lawyer-licensed paraprofessional does not have professional liability insurance.

#### Comment

[Reserved] [FG13]

#### Rule 1.5 Fees for Legal Services

(a) A lawyer-licensed paraprofessional shall not make an agreement for, charge, or collect an unconscionable or illegal fee.

(b) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. The factors to be considered in determining the unconscionability of a fee include without limitation the following:

- (1) whether the lawyer-licensed paraprofessional engaged in fraud\* or overreaching in negotiating or setting the fee;
- (2) whether the lawyer-licensed paraprofessional has failed to disclose material facts;
- (3) the amount of the fee in proportion to the value of the services performed;
- (4) the relative sophistication of the licensed paraprofessional~~lawyer~~ and the client;
- (5) the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (6) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the licensed paraprofessional~~lawyer~~;
- (7) the amount involved and the results obtained;
- (8) the time limitations imposed by the client or by the circumstances;
- (9) the nature and length of the professional relationship with the client;
- (10) the experience, reputation, and ability of the licensed paraprofessional~~lawyer or lawyers~~ performing the services;
- (11) whether the fee is fixed or contingent;
- (12) the time and labor required; and
- (13) whether the client gave informed consent\* to the fee.

~~(12) whether the fee charged is less than the fee customarily charged by licensed paraprofessionals in the locality for similar legal services~~ [FG14]

(c) A licensed paraprofessional~~lawyer~~ shall not make an agreement for, charge, or collect:

~~(1) any fee in a family law matter, the payment or amount of which is contingent upon the securing of a dissolution or declaration of nullity of a marriage or upon the amount of spousal or child support, or property settlement in lieu thereof;~~

~~(2) a contingent fee for representing a defendant in a criminal case.~~

~~(dc) A licensed paraprofessional lawyer may shall not make an agreement for, charge, or collect a fee that is denominated as “earned on receipt” or “non-refundable,” or in similar terms, only if the fee is a true retainer and the client agrees in writing\* after disclosure that the client will not be entitled to a refund of all or part of the fee charged. A true retainer is a fee that a client pays to a lawyer to ensure the lawyer’s availability to the client during a specified period or on a specified matter, but not to any extent as compensation for legal services performed or to be performed. [Reserved] [FG15].~~

(ed) A lawyer licensed paraprofessional may make an agreement for, charge, or collect a flat fee for specified legal services. A flat fee is a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the lawyer licensed paraprofessional providing those services.

**Comment** [FG16]

[Reserved]

### **Rule 1.5.1 Fee Divisions Among Lawyer Licensed paraprofessionals**

(a) Lawyer licensed paraprofessionals who are not in the same law firm\* shall not divide a fee for legal services unless:

(1) the lawyer licensed paraprofessionals enter into a written\* agreement to divide the fee;

(2) the client has consented in writing,\* either at the time the lawyer licensed paraprofessionals enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the lawyer licensed paraprofessionals or law firms\* that are parties to the division; and (iii) the terms of the division; and

(3) the total fee charged by all lawyer licensed paraprofessionals is not increased solely by reason of the agreement to divide fees.

(b) This rule does not apply to a division of fees pursuant to court order.

**Comment**

[Reserved]

### **Rule 1.5.2 Written Agreement**

(a) Prior to the performance of legal services for a fee, the licensed paraprofessional shall enter into a written\* agreement with the client, signed by both the client and the licensed paraprofessional, that provides the name, specialty area, and license number of the licensed paraprofessional, and includes the following provisions:

(1) An explanation of the general nature of the legal services to be provided to the client [FG17];

(2) A clear and conspicuous disclosure that the licensed paraprofessional is not a lawyer, may only provide limited legal advice, and will provide limited advice and assistance with preparation of court documents and related tasks [FG18]. This statement shall be on the first page of the contract; in a type size, font, color, appearance, and location sufficiently noticeable for a client to read and comprehend them; in a print that contrasts with the

background against which they appear; in larger type than the surrounding text; in a manner that clearly calls attention to the language<sup>[FG19]</sup>.

- (3) Any basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the matter;<sup>[FG20]</sup>
- (4) A statement that, pursuant to rule 1.4, the licensed paraprofessional must keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed pursuant to rule 1.16;
- (5) A statement describing the licensed paraprofessional's duty to protect the confidentiality of information related to the representation under rule 1.6, including information provided in confidence by the client and the licensed paraprofessional's work product associated with the legal services sought or provided by the licensed paraprofessional;
- (6) A statement that, pursuant to rule 1.16(a)(4), the client has the right to terminate the contract and services at any time, with or without cause, and receive a full refund of unearned fees pursuant to rule 1.16(e)(2). This statement shall be clearly and conspicuously set forth in the contract<sup>[FG21]</sup>;
- (7) A statement confirming that the licensed paraprofessional has surety bond as required by **add rule of court reference**;
- (8) detailed and clear information about how to file a complaint about the licensed paraprofessional's service;
- (9) A statement regarding the respective responsibilities of the licensed paraprofessional and the client as to the performance of the agreement<sup>[FG22]</sup>; and
- (10) Any other disclosures, statements, or conditions required by the **Paraprofessional** Rules of Professional Conduct and the rules and regulations of the **Paraprofessional** Board.

#### Comments<sup>[FG23]</sup>

Add: An example of an acceptable disclosure required under paragraph (a) will be provided by the Paraprofessional Board; We recommend developing a mandatory disclosure attaching a description of what the licensed paraprofessional can and can't do, which must be made clear, as specifically authorized by the scope of practice regulations for the approved practice area in which the licensed paraprofessional is licensed, currently under development.

#### Rule 1.6 Confidential Information of a Client

- (a) A ~~lawyer~~licensed paraprofessional shall not reveal information ~~protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ unless the client gives informed consent,\* or the disclosure is permitted by paragraph (b) of this rule.
- (b) A ~~lawyer~~licensed paraprofessional may, but is not required to, reveal information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ to the extent that the ~~lawyer~~licensed paraprofessional reasonably believes\* the disclosure is necessary to prevent a criminal act that the ~~lawyer~~licensed paraprofessional reasonably believes\* is likely to result in death of, or substantial\* bodily harm to, an individual, as provided in paragraph (c).

(c) Before revealing information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ to prevent a criminal act as provided in paragraph (b), a lawyerlicensed paraprofessional shall, if reasonable\* under the circumstances:

(1) make a good faith effort to persuade the client: (i) not to commit or to continue the criminal act; or (ii) to pursue a course of conduct that will prevent the threatened death or substantial\* bodily harm; or do both (i) and (ii); and

(2) inform the client, at an appropriate time, of the lawyerlicensed paraprofessional's ability or decision to reveal information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ as provided in paragraph (b).

(d) In revealing information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to representation of a client~~ as provided in paragraph (b), the lawyerlicensed paraprofessional's disclosure must be no more than is necessary to prevent the criminal act, given the information known\* to the lawyerlicensed paraprofessional at the time of the disclosure.

(e) A lawyerlicensed paraprofessional who does not reveal information permitted by paragraph (b) does not violate this rule.

#### Comment

[Reserved][FG24]

#### Rule 1.7 Conflict of Interest: Current Clients

(a) A lawyerlicensed paraprofessional shall not, without informed written consent\* from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.

(b) A lawyerlicensed paraprofessional shall not, without informed written consent\* from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyerlicensed paraprofessional's representation of the client will be materially limited by the lawyerlicensed paraprofessional's responsibilities to or relationships with another client, a former client or a third person,\* or by the lawyerlicensed paraprofessional's own interests.

(c) Even when a significant risk requiring a lawyerlicensed paraprofessional to comply with paragraph (b) is not present, a lawyerlicensed paraprofessional shall not represent a client without written\* disclosure of the relationship to the client and compliance with paragraph (d) where:

(1) the lawyerlicensed paraprofessional has, or knows\* that another lawyer[FG25] or licensed paraprofessional in the lawyerlicensed paraprofessional's firm\* has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter; or

(2) the lawyerlicensed paraprofessional knows\* or reasonably should know\* that another party's lawyer [FG26] or licensed paraprofessional is a spouse, parent, child, or sibling of the lawyerlicensed paraprofessional, lives with the lawyerlicensed paraprofessional, is a client of the lawyerlicensed paraprofessional or another lawyer [FG27] or licensed paraprofessional in the lawyerlicensed paraprofessional's firm,\* or has an intimate personal relationship with the lawyerlicensed paraprofessional.

(d) Representation is permitted under this rule only if the lawyerlicensed paraprofessional complies with paragraphs (a), (b), and (c), and:

(1) the lawyerlicensed paraprofessional reasonably believes\* that the lawyerlicensed paraprofessional will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law; and

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyerlicensed paraprofessional in the same litigation or other proceeding before a tribunal.

(e) For purposes of this rule, “matter” includes any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons,\* or a discrete and identifiable class of persons.\*

**Comment**

[Reserved]

**Rule 1.8.1 Business <sup>[FG28]</sup> Transactions with a Client and Pecuniary Interests Adverse to a Client**

A lawyerlicensed paraprofessional shall not enter into a business transaction with a client, or knowingly\* acquire an ownership, possessory, security or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

(a) the transaction or acquisition and its terms are fair and reasonable\* to the client and the terms and the lawyerlicensed paraprofessional's role in the transaction or acquisition are fully disclosed and transmitted in writing\* to the client in a manner that should reasonably\* have been understood by the client;

(b) the client either is represented in the transaction or acquisition by an independent lawyer <sup>[FG29]</sup> of the client's choice or the client is advised in writing\* to seek the advice of an independent lawyer of the client's choice and is given a reasonable\* opportunity to seek that advice; and

(c) the client thereafter provides informed written consent\* to the terms of the transaction or acquisition, and to the lawyerlicensed paraprofessional's role in it.

**Comment**

[Reserved]

**Rule 1.8.2 Use of Current Client's Information**

A lawyerlicensed paraprofessional shall not use a client's information protected by ~~Business and Professions Code section 6068, subdivision (e)(1)~~ rule 1.6 to the disadvantage of the client unless the client gives informed consent,\* except as permitted by these rules or ~~the State Bar Act~~ applicable law.

**Comment**

[Reserved]

**Rule 1.8.3 Gifts from Client**

(a) A lawyerlicensed paraprofessional shall not:

(1) solicit a client to make a substantial\* gift, including a testamentary gift, to the lawyerlicensed paraprofessional or a person\* related to the lawyerlicensed paraprofessional, unless the lawyerlicensed paraprofessional or other recipient of the gift is related to the client, or

(2) prepare on behalf of a client an instrument <sup>[FG30]</sup> giving the lawyerlicensed paraprofessional or a person\* related to the lawyerlicensed paraprofessional any substantial\* gift, unless (i) the lawyerlicensed paraprofessional or other

recipient of the gift is related to the client, or (ii) the client has been advised by an independent lawyer who has provided a certificate of independent review that complies with the requirements of Probate Code section 21384.

(b) For purposes of this rule, related persons\* include a person\* who is “related by blood or affinity” as that term is defined in California Probate Code section 21374, subdivision (a).

**Comment**

[Reserved]

**Rule 1.8.4 [Reserved]**

**Rule 1.8.5 Payment of Personal or Business Expenses Incurred by or for a Client**

(a) A ~~lawyer~~licensed paraprofessional shall not directly or indirectly pay or agree to pay, guarantee, or represent that the ~~lawyer~~licensed paraprofessional or ~~lawyer~~licensed paraprofessional’s law firm\* will pay the personal or business expenses of a prospective or existing client.

(b) Notwithstanding paragraph (a), a ~~lawyer~~licensed paraprofessional may:

(1) pay or agree to pay such expenses to third persons,\* from funds collected or to be collected for the client as a result of the representation, with the consent of the client;

(2) after the ~~lawyer~~licensed paraprofessional is retained by the client, agree to lend money to the client based on the client’s written\* promise to repay the loan[FG31], provided the ~~lawyer~~licensed paraprofessional complies with rules 1.7(b), 1.7(c), and 1.8.1 before making the loan or agreeing to do so;

(3) advance the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the client’s interests, the repayment of which may be contingent on the outcome of the matter; and

(4) pay the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the interests of an indigent person\* in a matter in which the ~~lawyer~~licensed paraprofessional represents the client.

(c) “Costs” within the meaning of paragraphs (b)(3) and (b)(4) are not limited to those costs that are taxable or recoverable under any applicable statute or rule of court but may include any reasonable\* expenses of litigation, including court costs, and reasonable\* expenses in preparing for litigation or in providing other legal services to the client.

(d) Nothing in this rule shall be deemed to limit the application of rule 1.8.9.

**Rule 1.8.6 Compensation from One Other than Client**

A ~~lawyer~~licensed paraprofessional shall not enter into an agreement for, charge, or accept compensation for representing a client from one other than the client unless:

(a) there is no interference with the ~~lawyer~~licensed paraprofessional’s independent professional judgment or with the ~~lawyer~~licensed paraprofessional-client relationship;

(b) information is protected as required by Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6; and

(c) the lawyerlicensed paraprofessional obtains the client's informed written consent\* at or before the time the lawyerlicensed paraprofessional has entered into the agreement for, charged, or accepted the compensation, or as soon thereafter as reasonably\* practicable, provided that no disclosure or consent is required if:

- (1) nondisclosure or the compensation is otherwise authorized by law or a court order; or
- (2) the lawyerlicensed paraprofessional is rendering legal services on behalf of any public agency or nonprofit organization that provides legal services to other public agencies or the public.

**Comment**

[Reserved]

**Rule 1.8.7 Aggregate Settlements**

~~(a) A lawyerlicensed paraprofessional who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregate agreement as to guilty or nolo contendere pleas, unless each client gives informed written consent.\* The lawyerlicensed paraprofessional's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person\* in the settlement.~~

~~(b) This rule does not apply to class action settlements subject to court approval. [FG32]~~

**Rule 1.8.8 Limiting Liability to Client**

A lawyerlicensed paraprofessional shall not:

- (a) Contract with a client prospectively limiting the lawyerlicensed paraprofessional's liability to the client for the lawyerlicensed paraprofessional's professional malpractice; or
- (b) Settle a claim or potential claim for the lawyerlicensed paraprofessional's liability to a client or former client for the lawyerlicensed paraprofessional's professional malpractice, unless the client or former client is either:
  - (1) represented by an independent lawyer [FG33] concerning the settlement; or
  - (2) advised in writing\* by the lawyerlicensed paraprofessional to seek the advice of an independent lawyerlicensed paraprofessional of the client's choice regarding the settlement and given a reasonable\* opportunity to seek that advice.

**Comment**

[Reserved]

**Rule 1.8.9 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review**

- (a) A lawyerlicensed paraprofessional shall not directly or indirectly purchase property at a probate, foreclosure, receiver's, trustee's, or judicial sale in an action or proceeding in which such lawyerlicensed paraprofessional or any lawyer or licensed paraprofessional affiliated by reason of personal, business, or professional relationship with that lawyerlicensed paraprofessional or with that lawyerlicensed paraprofessional's law firm\* is acting as a lawyer [FG34] or licensed paraprofessional for a party or as executor, receiver, trustee, administrator, guardian, or conservator.
- (b) A lawyerlicensed paraprofessional shall not represent the seller [FG35] at a probate, foreclosure, receiver, trustee, or judicial sale in an action or proceeding in which the purchaser is a spouse or relative of the lawyerlicensed paraprofessional

or of another lawyer licensed paraprofessional or lawyer in the lawyer licensed paraprofessional's law firm\* or is an employee of the lawyer licensed paraprofessional or the lawyer licensed paraprofessional's law firm.\*

(c) This rule does not prohibit a lawyer licensed paraprofessional's participation in transactions that are specifically authorized by and comply with Probate Code sections 9880 through 9885, but such transactions remain subject to the provisions of rules 1.8.1 and 1.7.

#### Comment

[Reserved]

#### Rule 1.8.10 Sexual Relations with Current Client

(a) A lawyer licensed paraprofessional shall not engage:

(1) in sexual relations with a current client who is not the lawyer licensed paraprofessional's spouse or registered domestic partner, unless a consensual sexual relationship existed between them when the lawyer licensed paraprofessional-client relationship commenced.

(2) expressly or impliedly condition the performance of legal services for a current or prospective client upon the client's willingness to engage in sexual relations with the licensed paraprofessional; or

(3) employ coercion, intimidation, or undue influence in entering into sexual relations with a client G361.

(b) For purposes of this rule, "sexual relations" means sexual intercourse or the touching of an intimate part of another person\* for the purpose of sexual arousal, gratification, or abuse.

(c) If a person\* other than the client alleges a violation of this rule, no Notice of Disciplinary Charges may be filed by the State Bar against a lawyer licensed paraprofessional under this rule until the State Bar has attempted to obtain the client's statement regarding, and has considered, whether the client would be unduly burdened by further investigation or a charge.

#### Comment

[Reserved]

#### Rule 1.8.11 Imputation of Prohibitions Under Rules 1.8.1 to 1.8.9

While licensed paraprofessionals lawyers are associated in a law firm,\* with other paraprofessionals or lawyers, a prohibition in rules 1.8.1 through 1.8.9 or in the Lawyer RPC, rules 1.8.1 through 1.8.9 that applies to any one of them shall apply to all of them F37.

#### Comment

[Reserved]

### Rule 1.9 Duties to Former Clients

(a) A lawyer licensed paraprofessional who has formerly represented a client in a matter shall not thereafter represent another person\* in the same or a substantially related matter in which that person's\* interests are materially adverse to the interests of the former client unless the former client gives informed written consent.\*

(b) A lawyer licensed paraprofessional shall not knowingly\* represent a person\* in the same or a substantially related matter in which a firm\* with which the lawyer licensed paraprofessional formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person;\* and

(2) about whom the lawyer licensed paraprofessional had acquired information protected by Business and Professions Code section 6068, subdivision (e) and rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed written consent.\*

(c) A lawyer licensed paraprofessional who has formerly represented a client in a matter or whose present or former firm\* has formerly represented a client in a matter shall not thereafter:

(1) use information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6 acquired by virtue of the representation of the former client to the disadvantage of the former client except as these rules or the State Bar Act would permit with respect to a current client, or when the information has become generally known;\* or

(2) reveal information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6 acquired by virtue of the representation of the former client except as these rules or the State Bar Act permit with respect to a current client.

#### Comment

[Reserved]

### Rule 1.10 Imputation of Conflicts of Interest: General Rule

(a) While lawyers licensed paraprofessionals are associated in a firm with other licensed paraprofessionals or lawyers,\* none of them shall knowingly\* represent a client when any one of them practicing alone would be prohibited from doing so by rules 1.7 or 1.9 or by the Lawyer Rules, rules 1.7 or 1.9 unless<sup>[FG38]</sup>

(1) the prohibition is based on a personal interest of the prohibited lawyer licensed paraprofessional or lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining licensed paraprofessionals or lawyers in the firm,\* or

(2) the prohibition is based upon rule 1.9(a) or (b) or the Lawyer RPC, rule 1.9(a) or (b), and arises out of the prohibited lawyer licensed paraprofessional's or lawyer's association with a prior firm,\* and

(i) the prohibited lawyer licensed paraprofessional or lawyer did not substantially participate in the same or a substantially related matter;

(ii) the prohibited lawyer licensed paraprofessional or lawyer is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(iii) written\* notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this rule, which shall include a description of the screening\* procedures

employed; and an agreement by the firm\* to respond promptly to any written\* inquiries or objections by the former client about the screening\* procedures.

(b) When a lawyerlicensed paraprofessional has terminated an association with a firm,\* the firm\* is not prohibited from thereafter representing a person\* with interests materially adverse to those of a client represented by the formerly associated lawyerlicensed paraprofessional and not currently represented by the firm,\* unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyerlicensed paraprofessional represented the client; and

(2) any lawyerlicensed paraprofessional or lawyer remaining in the firm\* has information protected by rule 1.6 or 1.9(c), or by Business and Professions Code section 6068, subdivision (e) and the Lawyer RPC, rules 1.6 and 1.9(c), that is material to the matter.

(c) A prohibition under this rule may be waived by each affected client under the conditions stated in rule 1.7.

(d) The imputation of a conflict of interest to a licensed paraprofessional lawyers associated in a firm\* with former or current government lawyer or former or current government licensed paraprofessionals is governed by rule 1.11.

#### Comment

[Reserved]

### Rule 1.11 Special Conflicts of Interest for Former and Current Government Officials and Employees

(a) Except as law may otherwise expressly permit, a lawyerlicensed paraprofessional who has formerly served as a public official or employee of the government:

(1) is subject to rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyerlicensed paraprofessional participated personally and substantially as a public official or employee, unless the appropriate government agency gives its informed written consent\* to the representation. This paragraph shall not apply to matters governed by rule 1.12(a).

(b) When a lawyerlicensed paraprofessional is prohibited from representation under paragraph (a), no lawyerlicensed paraprofessional or lawyer [FG39] in a firm\* with which that lawyerlicensed paraprofessional is associated may knowingly\* undertake or continue representation in such a matter unless:

(1) the personally prohibited lawyerlicensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written\* notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule

(c) Except as law may otherwise expressly permit, a lawyerlicensed paraprofessional who was a public official or employee and, during that employment, acquired information that the lawyerlicensed paraprofessional knows\* is confidential government information about a person,\* may not represent a private client whose interests are adverse to that person\* in a matter in which the information could be used to the material disadvantage of that person.\* As used in this rule, the term “confidential government information” means information that has been obtained under governmental authority, that, at the time this rule is applied, the government is prohibited by law from disclosing to the public, or has a legal privilege not to disclose, and that is not otherwise available to the public. A firm\* with which that lawyerlicensed paraprofessional is associated may undertake or continue representation in the matter only if the personally prohibited lawyerlicensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer licensed paraprofessional currently serving as a public official or employee:

(1) is subject to rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer licensed paraprofessional participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed written consent;\* or

(ii) negotiate for private employment with any person\* who is involved as a party, or as a lawyer or licensed paraprofessional for a party, or with a law firm\* for a party, in a matter in which the lawyer licensed paraprofessional is participating personally and substantially, ~~except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by rule 1.12(b) and subject to the conditions stated in rule 1.12(b)~~<sup>[FG40]</sup>.

#### Comment

[Reserved]

#### Rule 1.12 Former ~~Judge, Arbitrator, Mediator, or Other Third-Party Neutral~~

(a) Except as stated in paragraph (d), a lawyer licensed paraprofessional shall not represent anyone in connection with a matter in which the lawyer licensed paraprofessional participated personally and substantially as ~~an judge or other adjudicative officer, or a~~ judicial staff ~~attorney member or law clerk~~ to such a person,\* or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give informed written consent.\*

(b) A ~~lawyer licensed paraprofessional~~ shall not seek employment from any person\* who is involved as a party or as lawyer or licensed paraprofessional for a party, or with a law firm\* for a party, in a matter in which the ~~lawyer licensed paraprofessional~~ is participating personally and substantially as ~~a judge or other an~~ adjudicative officer ~~or as an~~, arbitrator, mediator, or other third party neutral. A lawyer licensed paraprofessional serving as a judicial staff ~~attorney member or law clerk~~ to a judge or other adjudicative officer may seek employment from a party, or with a lawyer, licensed paraprofessional, or a law firm\* for a party, in a matter in which the staff ~~attorney member or clerk~~ is participating personally and substantially, but only with the approval of the court.

(c) If a lawyer licensed paraprofessional is prohibited from representation by paragraph (a), other licensed paraprofessional or lawyers <sup>[FG41]</sup> in a firm\* with which that lawyer licensed paraprofessional is associated may knowingly\* undertake or continue representation in the matter only if:

(1) the prohibition does not arise from the lawyer licensed paraprofessional's service as a mediator ~~or settlement judge~~;

(2) the prohibited lawyer licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(3) written\* notice is promptly given to the parties and any appropriate tribunal\* to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

## Comment

[Reserved]

### Rule 1.13 ~~[Reserved] Organization as Client~~ [FG42]

~~(a) A lawyer employed or retained by an organization shall conform his or her representation to the concept that the client is the organization itself, acting through its duly authorized directors, officers, employees, members, shareholders, or other constituents overseeing the particular engagement.~~

~~(b) If a lawyer representing an organization knows\* that a constituent is acting, intends to act or refuses to act in a matter related to the representation in a manner that the lawyer knows\* or reasonably should know\* is (i) a violation of a legal obligation to the organization or a violation of law reasonably\* imputable to the organization, and (ii) likely to result in substantial\* injury to the organization, the lawyer shall proceed as is reasonably\* necessary in the best lawful interest of the organization. Unless the lawyer reasonably believes\* that it is not necessary in the best lawful interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.~~

~~(c) In taking any action pursuant to paragraph (b), the lawyer shall not reveal information protected by Business and Professions Code section 6068, subdivision (e).~~

~~(d) If, despite the lawyer's actions in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or fails to act, in a manner that is a violation of a legal obligation to the organization or a violation of law reasonably\* imputable to the organization, and is likely to result in substantial\* injury to the organization, the lawyer shall continue to proceed as is reasonably\* necessary in the best lawful interests of the organization. The lawyer's response may include the lawyer's right and, where appropriate, duty to resign or withdraw in accordance with rule 1.16.~~

~~(e) A lawyer who reasonably believes\* that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b), or who resigns or withdraws under circumstances described in paragraph (d), shall proceed as the lawyer reasonably believes\* necessary to assure that the organization's highest authority is informed of the lawyer's discharge, resignation, or withdrawal.~~

~~(f) In dealing with an organization's constituents, a lawyer representing the organization shall explain the identity of the lawyer's client whenever the lawyer knows\* or reasonably should know\* that the organization's interests are adverse to those of the constituent(s) with whom the lawyer is dealing.~~

~~(g) A lawyer representing an organization may also represent any of its constituents, subject to the provisions of rules 1.7, 1.8.2, 1.8.6, and 1.8.7. If the organization's consent to the dual representation is required by any of these rules, the consent shall be given by an appropriate official, constituent, or body of the organization other than the individual who is to be represented, or by the shareholders.~~

Comment

[Reserved]

## Rule 1.14 [Reserved]

## Rule 1.15 Safekeeping Funds and Property of Clients and Other Persons\*

(a) All funds received or held by a lawyer licensed paraprofessional or a licensed paraprofessional's law firm\* for the benefit of a client, or other person\* to whom the lawyer licensed paraprofessional owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled "Trust Account" or words of similar import, maintained in the State of California, or, with written\* consent of the client, in any other jurisdiction where there is a substantial\* relationship between the client or the client's business and the other jurisdiction<sup>[FG43]</sup>.

~~(b) Notwithstanding paragraph (a), a flat fee paid in advance for legal services may be deposited in a paraprofessional's <sup>[FG44]</sup>lawyer's or paraprofessional law firm's operating account, provided:~~

~~(1) the paraprofessional lawyer or paraprofessional law firm\* discloses to the client in writing\* (i) that the client has a right under paragraph (a) to require that the flat fee be deposited in an identified trust account until the fee is earned, and (ii) that the client is entitled to a refund of any amount of the fee that has not been earned in the event the representation is terminated or the services for which the fee has been paid are not completed; and~~

~~(2) if the flat fee exceeds \$1,000.00, the client's agreement to deposit the flat fee in the paraprofessional's lawyer's operating account and the disclosures required by paragraph (b)(1) are set forth in a writing\* signed by the client.~~

(c) Funds belonging to the lawyer licensed paraprofessional or the licensed paraprofessional's law firm\* shall not be deposited or otherwise commingled with funds held in a trust account except:

(1) funds reasonably\* sufficient to pay bank charges; and

(2) funds belonging in part to a client or other person\* and in part presently or potentially to the lawyer licensed paraprofessional or the licensed paraprofessional's law firm,\* in which case the portion belonging to the lawyer licensed paraprofessional or the paraprofessional's law firm\* must be withdrawn at the earliest reasonable\* time after the lawyer licensed paraprofessional or the licensed paraprofessional law firm's interest in that portion becomes fixed. However, if a client or other person\* disputes the lawyer licensed paraprofessional or the licensed paraprofessional's law firm's right to receive a portion of trust funds, the disputed portion shall not be withdrawn until the dispute is finally resolved.

(d) A lawyer licensed paraprofessional shall:

(1) promptly notify a client or other person\* of the receipt of funds, securities, or other property in which the lawyer licensed paraprofessional knows\* or reasonably should know\* the client or other person\* has an interest;

(2) identify and label securities and properties of a client or other person\* promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;

(3) maintain complete records of all funds, securities, and other property of a client or other person\* coming into the possession of the lawyer licensed paraprofessional or the licensed paraprofessional's law firm;\*

- (4) promptly account in writing\* to the client or other person\* for whom the lawyer licensed paraprofessional or the licensed paraprofessional's law firm\* holds funds or property;
  - (5) preserve records of all funds and property held by a lawyer licensed paraprofessional or the licensed paraprofessional's law firm\* under this rule for a period of no less than five years after final appropriate distribution of such funds or property;
  - (6) comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar[FG45]; and
  - (7) promptly distribute, as requested by the client or other person,\* any undisputed funds or property in the possession of the lawyer licensed paraprofessional or the licensed paraprofessional's law firm\* that the client or other person\* is entitled to receive.
- (e) The Board of Trustees of the State Bar shall have the authority to formulate and adopt standards as to what "records" shall be maintained by lawyer licensed paraprofessionals and law firms\* in accordance with paragraph (d)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyer licensed paraprofessionals.

*Standards:*

Pursuant to this rule, the Board of Trustees of the State Bar adopted [FG46] the following standards, effective November 1, 2018, as to what "records" shall be maintained by lawyer licensed paraprofessionals and licensed paraprofessionals' law firms\* in accordance with paragraph (d)(3).

- (1) A lawyer licensed paraprofessional shall, from the date of receipt of funds of the client or other person\* through the period ending five years from the date of appropriate disbursement of such funds, maintain:
  - (a) a written\* ledger for each client or other person\* on whose behalf funds are held that sets forth:
    - (i) the name of such client or other person;\*
    - (ii) the date, amount and source of all funds received on behalf of such client or other person;\*
    - (iii) the date, amount, payee and purpose of each disbursement made on behalf of such client or other person;\* and
    - (iv) the current balance for such client or other person;\*
  - (b) a written\* journal for each bank account that sets forth:
    - (i) the name of such account;
    - (ii) the date, amount and client or other person\* affected by each debit and credit; and
    - (iii) the current balance in such account;
  - (c) all bank statements and cancelled checks for each bank account; and
  - (d) each monthly reconciliation (balancing) of (a), (b), and (c).
- (2) A lawyer licensed paraprofessional shall, from the date of receipt of all securities and other properties held for the benefit of client or other person\* through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a written\* journal that specifies:

- (a) each item of security and property held;
- (b) the person\* on whose behalf the security or property is held;
- (c) the date of receipt of the security or property;
- (d) the date of distribution of the security or property; and
- (e) person\* to whom the security or property was distributed.

**Comment**

[Reserved]

**Rule 1.16 Declining or Terminating Representation**

(a) Except as stated in paragraph (c), a lawyer licensed paraprofessional shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the lawyer licensed paraprofessional knows\* or reasonably should know\* that the client is bringing an action, conducting a defense, or asserting a position in litigation, ~~or taking an appeal,~~ without probable cause and for the purpose of harassing or maliciously injuring any person;\*

(2) the lawyer licensed paraprofessional knows\* or reasonably should know\* that the representation will result in violation of these rules or ~~of the State Bar Act~~ applicable law;

(3) the lawyer licensed paraprofessional's mental or physical condition renders it unreasonably difficult to carry out the representation effectively; or

(4) the client discharges the lawyer licensed paraprofessional; or

(5) the licensed paraprofessional knows or reasonably should know that the subject of the representation is beyond the scope of the defined practice area for which the licensed paraprofessional is licensed as set forth in [redacted] [FG47]. If the subject of the representation is beyond the scope of the licensed paraprofessional's defined practice area, the licensed paraprofessional shall not render any legal assistance and shall advise the client to seek the services of a lawyer or licensed paraprofessional authorized to provide legal services on the subject of the representation.

(b) Except as stated in paragraph (c), a lawyer licensed paraprofessional may withdraw from representing a client if:

(1) the client insists upon presenting a claim or defense in litigation, or asserting a position or making a demand in a non-litigation matter, that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;

(2) the client either seeks to pursue a criminal or fraudulent\* course of conduct or has used the lawyer licensed paraprofessional's services to advance a course of conduct that the lawyer licensed paraprofessional reasonably believes\* was a crime or fraud;\*

(3) the client insists that the lawyer licensed paraprofessional pursue a course of conduct that is criminal or fraudulent;\*

(4) the client by other conduct renders it unreasonably difficult for the lawyer licensed paraprofessional to carry out the representation effectively;

- (5) the client breaches a material term of an agreement with, or obligation, to the lawyer licensed paraprofessional relating to the representation, and the lawyer licensed paraprofessional has given the client a reasonable\* warning after the breach that the lawyer licensed paraprofessional will withdraw unless the client fulfills the agreement or performs the obligation;
  - (6) the client knowingly\* and freely assents to termination of the representation;
  - (7) the inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;
  - (8) the lawyer licensed paraprofessional's mental or physical condition renders it difficult for the lawyer licensed paraprofessional to carry out the representation effectively; or
  - (9) a continuation of the representation is likely to result in a violation of these rules or the State Bar Act applicable law; or
  - (10) the lawyer licensed paraprofessional believes\* in good faith, in a proceeding pending before a tribunal,\* that the tribunal\* will find the existence of other good cause for withdrawal.
- (c) If permission for termination of a representation is required by the rules of a tribunal,\* a lawyer licensed paraprofessional shall not terminate a representation before that tribunal\* without its permission.
- (d) A lawyer licensed paraprofessional shall not terminate a representation until the lawyer licensed paraprofessional has taken reasonable\* steps to avoid reasonably\* foreseeable prejudice to the rights of the client, such as giving the client sufficient notice to permit the client to retain other counsel representation, and complying with paragraph (e).
- (e) Upon the termination of a representation for any reason:
- (1) subject to any applicable protective order, non-disclosure agreement, statute or regulation, the lawyer licensed paraprofessional promptly shall release to the client, at the request of the client, all client materials and property. "Client materials and property" includes correspondence, pleadings, deposition transcripts, experts' reports and other writings,\* exhibits, and physical evidence, whether in tangible, electronic or other form, and other items reasonably\* necessary to the client's representation, whether the client has paid for them or not; and
  - (2) the lawyer licensed paraprofessional promptly shall refund any part of a fee or expense paid in advance that the lawyer licensed paraprofessional has not earned or incurred. ~~This provision is not applicable to a true retainer fee paid solely for the purpose of ensuring the availability of the lawyer for the matter.~~

**Comment**<sup>[FG48]</sup>

[Reserved]

**Rule 1.17 Sale of a Law Practice**

All or substantially\* all of the law practice of a lawyer licensed paraprofessional, living <sup>[FG49]</sup> or deceased, including goodwill, may be sold to another licensed paraprofessional, a lawyer or law firm\* subject to all the following conditions:

- (a) Fees charged to clients shall not be increased solely by reason of the sale.
- (b) If the sale contemplates the transfer of responsibility for work not yet completed or responsibility for client files or information protected by ~~Business and Professions Code section 6068, subdivision (e)(1), rule 1.6(a)~~, then;

(1) if the seller is deceased, or has a conservator or other person\* acting in a representative capacity, and no lawyer has been appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, then prior to the transfer;

(i) the purchaser shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client's rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and

(ii) the purchaser shall obtain the written\* consent of the client. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(1)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.

(2) in all other circumstances, not less than 90 days prior to the transfer;

(i) the seller, or the lawyer appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client's rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and

(ii) the seller, or the lawyer appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, shall obtain the written\* consent of the client prior to the transfer. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(2)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.

(c) If substitution is required by the rules of a tribunal\* in which a matter is pending, all steps necessary to substitute a lawyer shall be taken.

(d) The purchaser shall comply with the applicable requirements of rules 1.7 and 1.9.

(e) Confidential information shall not be disclosed to a nonlawyer in connection with a sale under this rule.

(f) This rule does not apply to the admission to or retirement from a law firm,\* retirement plans and similar arrangements, or sale of tangible assets of a law practice.

#### Comment

[Reserved]

#### Rule 1.18 Duties to Prospective Client

(a) A person\* who, directly or through an authorized representative, consults a lawyerlicensed paraprofessional for the purpose of retaining the lawyerlicensed paraprofessional or securing legal service or advice from the lawyerlicensed paraprofessional in the lawyerlicensed paraprofessional's professional capacity, is a prospective client.

(b) Even when no lawyerlicensed paraprofessional-client relationship ensues, a lawyerlicensed paraprofessional who has communicated with a prospective client shall not use or reveal information protected by Business and Professions Code

~~section 6068, subdivision (e) and~~ rule 1.6(a) that the lawyer licensed paraprofessional learned as a result of the consultation, except as rule 1.9 would permit with respect to information of a former client.

(c) A lawyer licensed paraprofessional subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer licensed paraprofessional received from the prospective client information protected by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6(a) that is material to the matter, except as provided in paragraph (d). If a lawyer licensed paraprofessional is prohibited from representation under this paragraph or a lawyer [FG51] is prohibited from representation under Lawyer RPC rule 1.18(c), no lawyer licensed paraprofessional in a firm\* with which that lawyer licensed paraprofessional is associated may knowingly\* undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer or licensed paraprofessional has received information that prohibits representation as provided in paragraph (c), representation of the affected client is permissible if:

- (1) both the affected client and the prospective client have given informed written consent,\* or
- (2) the lawyer or licensed paraprofessional who received the information took reasonable\* measures to avoid exposure to more information than was reasonably\* necessary to determine whether to represent the prospective client; and
  - (i) the prohibited lawyer or licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and
  - (ii) written\* notice is promptly given to the prospective client to enable the prospective client to ascertain compliance with the provisions of this rule.

**Comment**

[Reserved]

**CHAPTER 2. COUNSELOR**

**Rule 2.1 Advisor**

In representing a client, a lawyer licensed paraprofessional shall exercise independent professional judgment and render candid advice.

**Comment**

[Reserved]

**Rule 2.2 [Reserved]**

**Rule 2.3 [Reserved]**

**Rule 2.4 Lawyer Licensed Paraprofessional as Third-Party Neutral**

(a) A lawyer licensed paraprofessional serves as a third-party neutral when the lawyer licensed paraprofessional assists two or more persons\* who are not clients of the lawyer licensed paraprofessional to reach a resolution of a dispute, or other

matter, that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer-licensed paraprofessional to assist the parties to resolve the matter.

(b) A lawyer-licensed paraprofessional serving as a third-party neutral shall inform unrepresented parties that the lawyer-licensed paraprofessional is not representing them. When the lawyer-licensed paraprofessional knows\* or reasonably should know\* that a party does not understand the lawyer-licensed paraprofessional's role in the matter, the lawyer-licensed paraprofessional shall explain the difference between the lawyer-licensed paraprofessional's role as a third-party neutral and a lawyer-licensed paraprofessional's role as one who represents a client.

#### Comment

[Reserved]

#### Rule 2.4.1 ~~[Reserved] Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator~~

~~A lawyer who is serving as a temporary judge, referee, or court-appointed arbitrator, and is subject to canon 6D of the California Code of Judicial Ethics, shall comply with the terms of that canon.~~

## CHAPTER 3. ADVOCATE

### Rule 3.1 Meritorious Claims and Contentions

~~(a)~~—A lawyer-licensed paraprofessional shall not:

~~(a1)~~ assist with bringing or ~~continue-continuing~~ an action, conducting a defense, or asserting a position in litigation, ~~or take an appeal,~~ without probable cause and for the purpose of harassing or maliciously injuring any person;\* or

~~(b2)~~ assist with presenting a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of the existing law.

~~(b)~~—A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, or involuntary commitment or confinement, may nevertheless defend the proceeding by requiring that every element of the case be established.

### Rule 3.2 Delay of Litigation

In representing a client, a lawyer-licensed paraprofessional shall not use means that have no substantial\* purpose other than to delay or prolong the proceeding or to cause needless expense.

#### Comment

[Reserved]

### Rule 3.3 Candor Toward the Tribunal\*

(a) A lawyer-licensed paraprofessional shall not:

(1) knowingly\* make a false statement of fact or law to a tribunal\* or fail to correct a false statement of material fact or law previously made to the tribunal\* by the lawyer-licensed paraprofessional;

(2) fail to disclose to the tribunal\* legal authority in the controlling jurisdiction known\* to the lawyerlicensed paraprofessional to be directly adverse to the position of the client and not disclosed by opposing counselparty, or knowingly\* misquote to a tribunal\* the language of a book, statute, decision or other authority; or

(3) offer evidence that the lawyerlicensed paraprofessional knows\* to be false. If a lawyerlicensed paraprofessional or the lawyerlicensed paraprofessional's client, ~~or a witness called by the lawyer~~, has offered material evidence, and the lawyerlicensed paraprofessional comes to know\* of its falsity, the lawyerlicensed paraprofessional shall take reasonable\* remedial measures, including, if necessary, disclosure to the tribunal,\* unless disclosure is prohibited by Business and Professions Code section 6068, subdivision (e) and rule 1.6. A lawyerlicensed paraprofessional may refuse to offer evidence, ~~other than the testimony of a defendant in a criminal matter,~~ that the lawyerlicensed paraprofessional reasonably believes\* is false.

(b) A lawyerlicensed paraprofessional who represents a client in a proceeding before a tribunal\* and who knows\* that a person\* intends to engage, is engaging or has engaged in criminal or fraudulent\* conduct related to the proceeding shall take reasonable\* remedial measures to the extent permitted by Business and Professions Code section 6068, subdivision (e) and rule 1.6.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding.

~~(d) In an ex parte proceeding where notice to the opposing party in the proceeding is not required or given and the opposing party is not present, a lawyer shall inform the tribunal\* of all material facts known\* to the lawyer that will enable the tribunal\* to make an informed decision, whether or not the facts are adverse to the position of the client.~~<sup>[FG52]</sup>

#### Comment

[Reserved]

### Rule 3.4 Fairness to Opposing Party and Counsel

A lawyerlicensed paraprofessional shall not:

(a) unlawfully obstruct another party's access to evidence, including a witness, or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyerlicensed paraprofessional shall not counsel or assist another person\* to do any such act;

(b) suppress any evidence that the lawyerlicensed paraprofessional or the lawyerlicensed paraprofessional's client has a legal obligation to reveal or to produce;

(c) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(d) directly or indirectly pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case. Except where prohibited by law, a lawyerlicensed paraprofessional may advance, guarantee, or acquiesce in the payment of:

- (1) expenses reasonably\* incurred by a witness in attending or testifying;
- (2) reasonable\* compensation to a witness for loss of time in attending or testifying; or
- (3) a reasonable\* fee for the professional services of an expert witness;

(e) advise or directly or indirectly cause a person\* to secrete himself or herself or to leave the jurisdiction of a tribunal\* for the purpose of making that person\* unavailable as a witness therein; or

(f) knowingly\* disobey an obligation under the rules of a tribunal\* except for an open refusal based on an assertion that no valid obligation exists; ~~or~~

(g) in trial, assert personal knowledge of facts in issue except when testifying as a witness, ~~or state a personal opinion as to the guilt or innocence of an accused~~ [FG53].

#### Comment

[Reserved]

### Rule 3.5 Contact with Judges, Officials, and Employees, ~~and Jurors~~

(a) Except as permitted by statute, an applicable code of judicial ethics or code of judicial conduct, or standards governing employees of a tribunal,\* a lawyer licensed paraprofessional shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal.\* This rule does not prohibit a lawyer licensed paraprofessional from contributing to the campaign fund of a judge or judicial officer running for election or confirmation pursuant to applicable law pertaining to such contributions.

(b) Unless permitted to do so by law, an applicable code of judicial ethics or code of judicial conduct, a rule or ruling of a tribunal,\* or a court order, a lawyer licensed paraprofessional shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before the judge or judicial officer, except:

~~(1) in open court;~~

~~(2) with the consent of all other counsel and any unrepresented parties in the matter;~~

~~(3) in the presence of all other counsel and any unrepresented parties in the matter;~~

~~(4) in writing\* with a copy thereof furnished to all other counsel represented and any unrepresented parties in the matter; or,~~

~~(5) in ex parte matters.~~

(c) As used in this rule, “judge” and “judicial officer” shall also include: (i) administrative law judges; (ii) neutral arbitrators; (iii) State Bar Court judges; (iv) members of an administrative body acting in an adjudicative capacity; and (v) law clerks, research attorneys, or other court personnel who participate in the decision-making process, including referees, special masters, or other persons\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

~~(d) A lawyer connected with a case shall not communicate directly or indirectly with anyone the lawyer knows\* to be a member of the venire from which the jury will be selected for trial of that case.~~

~~(e) During trial, a lawyer connected with the case shall not communicate directly or indirectly with any juror.~~

~~(f) During trial, a lawyer who is not connected with the case shall not communicate directly or indirectly concerning the case with anyone the lawyer knows\* is a juror in the case.~~

~~(g) After discharge of the jury from further consideration of a case a lawyer shall not communicate directly or indirectly with a juror if:~~

~~(1) the communication is prohibited by law or court order;~~

~~(2) the juror has made known\* to the lawyer a desire not to communicate; or~~

~~(3) — the communication involves misrepresentation, coercion, or duress, or is intended to harass or embarrass the juror or to influence the juror’s actions in future jury service.~~

~~(h) — A lawyer shall not directly or indirectly conduct an out of court investigation of a person\* who is either a member of a venire or a juror in a manner likely to influence the state of mind of such person\* in connection with present or future jury service.~~

~~(i) — All restrictions imposed by this rule also apply to communications with, or investigations of, members of the family of a person\* who is either a member of a venire or a juror.~~

~~(j) — A lawyer shall reveal promptly to the court improper conduct by a person\* who is either a member of a venire or a juror, or by another toward a person\* who is either a member of a venire or a juror or a member of his or her family, of which the lawyer has knowledge.~~

~~(k) — This rule does not prohibit a lawyer from communicating with persons\* who are members of a venire or jurors as a part of the official proceedings.~~

~~(l) — For purposes of this rule, “juror” means any empaneled, discharged, or excused juror. [FG54]~~

#### Comment

[Reserved]

#### Rule 3.6 ~~[Reserved]~~ Trial Publicity

~~(a) — A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows\* or reasonably should know\* will (i) be disseminated by means of public communication and (ii) have a substantial\* likelihood of materially prejudicing an adjudicative proceeding in the matter.~~

~~(b) — Notwithstanding paragraph (a), but only to the extent permitted by Business and Professions Code section 6068, subdivision (c) and rule 1.6, lawyer may state:~~

~~(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons\* involved;~~

~~(2) information contained in a public record;~~

~~(3) that an investigation of a matter is in progress;~~

~~(4) the scheduling or result of any step in litigation;~~

~~(5) a request for assistance in obtaining evidence and information necessary thereto;~~

~~(6) a warning of danger concerning the behavior of a person\* involved, when there is reason to believe\* that there exists the likelihood of substantial\* harm to an individual or to the public but only to the extent that dissemination by public communication is reasonably\* necessary to protect the individual or the public; and~~

~~(7) in a criminal case, in addition to paragraphs (1) through (6):~~

~~(i) the identity, general area of residence, and occupation of the accused;~~

~~(ii) if the accused has not been apprehended, the information necessary to aid in apprehension of that person;\*~~

~~(iii) the fact, time, and place of arrest; and (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.~~

~~(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable\* lawyer would believe\* is required to protect a client from the substantial\* undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.~~

~~(d) No lawyer associated in a law firm\* or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).~~

**Comment**

**Rule 3.7 ~~Lawyer-Licensed Paraprofessional~~ as Witness**

(a) A ~~lawyer-licensed paraprofessional~~ shall not act as an advocate in a trial in which the lawyer is likely to be a witness unless:

(1) the ~~licensed paraprofessional's lawyer's~~ testimony relates to an uncontested issue or matter;

(2) the ~~licensed paraprofessional lawyer's~~ testimony relates to the nature and value of legal services rendered in the case; or

(3) the ~~licensed paraprofessional lawyer~~ has obtained informed written consent\* from the client. ~~If the lawyer represents the People or a governmental entity, the consent shall be obtained from the head of the office or a designee of the head of the office by which the lawyer is employed.~~

(b) A ~~licensed paraprofessional lawyer~~ may act as advocate in a trial in which another ~~licensed paraprofessional or~~ lawyer in the lawyer's firm\* is likely to be called as a witness unless precluded from doing so by rule 1.7 or rule 1.9.

**Rule 3.8 ~~[RESERVED] Special Responsibilities of a Prosecutor~~**

~~The prosecutor in a criminal case shall:~~

~~(a) not institute or continue to prosecute a charge that the prosecutor knows\* is not supported by probable cause;~~

~~(b) make reasonable\* efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable\* opportunity to obtain counsel;~~

~~(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights unless the tribunal\* has approved the appearance of the accused in propria persona;~~

~~(d) make timely disclosure to the defense of all evidence or information known\* to the prosecutor that the prosecutor knows\* or reasonably should know\* tends to negate the guilt of the accused, mitigate the offense, or mitigate the sentence, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;\* and~~

~~(e) exercise reasonable\* care to prevent persons\* under the supervision or direction of the prosecutor, including investigators, law enforcement personnel, employees or other persons\* assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 3.6.~~

~~(f) When a prosecutor knows\* of new, credible and material evidence creating a reasonable\* likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:~~

~~(1) promptly disclose that evidence to an appropriate court or authority, and~~

~~(2) if the conviction was obtained in the prosecutor's jurisdiction,~~

~~(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and~~

~~(ii) undertake further investigation, or make reasonable\* efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.~~

~~(g) When a prosecutor knows\* of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.~~

**Comment**

~~[RESERVED]~~

**Rule 3.9 Advocate in Nonadjudicative Proceedings**

A ~~licensed paraprofessional lawyer~~ representing a client before a legislative body or administrative agency in connection with a pending nonadjudicative matter or proceeding shall disclose that the appearance is in a representative capacity, except when the ~~licensed paraprofessional lawyer~~ seeks information from an agency that is available to the public.

**Rule 3.10 Threatening Criminal, Administrative, or Disciplinary Charges**

(a) A ~~lawyer~~licensed paraprofessional shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.

(b) As used in paragraph (a) of this rule, the term “administrative charges” means the filing or lodging of a complaint with any governmental organization that may order or recommend the loss or suspension of a license, or may impose or recommend the imposition of a fine, pecuniary sanction, or other sanction of a quasi-criminal nature but does not include filing charges with an administrative entity required by law as a condition precedent to maintaining a civil action.

(c) As used in this rule, the term “civil dispute” means a controversy or potential controversy over the rights and duties of two or more persons\* under civil law, whether or not an action has been commenced, and includes an administrative proceeding of a quasi-civil nature pending before a federal, state, or local governmental entity.

**Comment**

[Reserved]

**CHAPTER 4.  
TRANSACTIONS WITH PERSONS\*  
OTHER THAN CLIENTS**

**Rule 4.1 Truthfulness in Statements to Others**

In the course of representing a client a ~~lawyer~~licensed paraprofessional shall not knowingly:\*

(a) make a false statement of material fact or law to a third person;\* or

(b) fail to disclose a material fact to a third person\* when disclosure is necessary to avoid assisting a criminal or fraudulent\* act by a client, unless disclosure is prohibited by ~~Business and Professions Code section 6068, subdivision (e)(1)~~ or rule 1.6.

## Comment

[Reserved]

### Rule 4.2 Communication with a Represented Person\*

(a) In representing a client, a lawyer licensed paraprofessional shall not communicate directly or indirectly about the subject of the representation with a person\* the lawyer licensed paraprofessional knows\* to be represented by another lawyer [FG55] or another licensed paraprofessional in the matter, unless the lawyer licensed paraprofessional has the consent of the other lawyer or licensed paraprofessional.

(b) In the case of a represented corporation, partnership, association, or other private or governmental organization, this rule prohibits communications with:

(1) A current officer, director, partner,\* or managing agent of the organization; or

(2) A current employee, member, agent, or other constituent of the organization, if the subject of the communication is any act or omission of such person\* in connection with the matter which may be binding upon or imputed to the organization for purposes of civil or criminal liability.

(c) This rule shall not prohibit:

(1) communications with a public official, board, committee, or body; or

(2) communications otherwise authorized by law or a court order.

(d) For purposes of this rule:

(1) "Managing agent" means an employee, member, agent, or other constituent of an organization with substantial\* discretionary authority over decisions that determine organizational policy.

(2) "Public official" means a public officer of the United States government, or of a state, county, city, town, political subdivision, or other governmental organization, with the comparable decision-making authority and responsibilities as the organizational constituents described in paragraph (b)(1).

## Comment

[Reserved]

### Rule 4.3 Communicating with an Unrepresented Person\*

(a) In communicating on behalf of a client with a person\* who is not represented by a lawyer [FG56] or licensed paraprofessional counsel, a lawyer licensed paraprofessional shall not state or imply that the lawyer licensed paraprofessional is disinterested. When the lawyer licensed paraprofessional knows\* or reasonably should know\* that the unrepresented person\* incorrectly believes\* the lawyer licensed paraprofessional is disinterested in the matter, the lawyer licensed paraprofessional shall make reasonable\* efforts to correct the misunderstanding. If the lawyer licensed paraprofessional knows\* or reasonably should know\* that the interests of the unrepresented person\* are in conflict with the interests of the client, the lawyer licensed paraprofessional shall not give legal advice to that person,\* except that the lawyer licensed paraprofessional may, but is not required to, advise the person\* to secure counsel legal representation.

(b) In communicating on behalf of a client with a person\* who is not represented by counsel a lawyer or licensed paraprofessional, a lawyer licensed paraprofessional shall not seek to obtain privileged or other confidential information the lawyer licensed paraprofessional knows\* or reasonably should know\* the person\* may not reveal without violating a duty to another or which the lawyer licensed paraprofessional is not otherwise entitled to receive.

**Comment**

[Reserved]

**Rule 4.4 Duties Concerning Inadvertently Transmitted Writings\***

Where it is reasonably\* apparent to a lawyerlicensed paraprofessional who receives a writing\* relating to a lawyerlicensed paraprofessional's representation of a client that the writing\* was inadvertently sent or produced, and the lawyerlicensed paraprofessional knows\* or reasonably should know\* that the writing\* is privileged or subject to the work product doctrine, the lawyerlicensed paraprofessional shall:

- (a) refrain from examining the writing\* any more than is necessary to determine that it is privileged or subject to the work product doctrine, and
- (b) promptly notify the sender.

**Comment**

[Reserved]

**CHAPTER 5.  
LAW FIRMS\* AND ASSOCIATIONS**

**Rule 5.1 Responsibilities of Managerial and Supervisory LawyerLicensed paraprofessionals**

(a) A lawyerlicensed paraprofessional who individually [FG57] or together with other licensed paraprofessionals or lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that all lawyerlicensed paraprofessionals in the firm\* comply with these rules and the State Bar Act.

(b) A lawyerlicensed paraprofessional having direct supervisory authority over another lawyerlicensed paraprofessional, whether or not a member or employee of the same law firm,\* shall make reasonable\* efforts to ensure that the other lawyerlicensed paraprofessional complies with these rules and the State Bar Act applicable law.

(c) A lawyerlicensed paraprofessional shall be responsible for another lawyerlicensed paraprofessional's violation of these rules and the State Bar Act applicable law if:

- (1) the lawyerlicensed paraprofessional orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or
- (2) the lawyerlicensed paraprofessional, individually or together with other licensed paraprofessionals or lawyers, possesses managerial authority in the law firm\* in which the other lawyerlicensed paraprofessional practices, or has direct supervisory authority over the other lawyerlicensed paraprofessional, whether or not a member or employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

**Comment**

[Reserved]

**Rule 5.2 Responsibilities of a Subordinate LawyerLicensed paraprofessional**

(a) A lawyerlicensed paraprofessional shall comply with these rules and ~~the State Bar Act~~ notwithstanding that the lawyerlicensed paraprofessional acts at the direction of a lawyer, another lawyer a licensed paraprofessional, or other person.\*

(b) A subordinate lawyerlicensed paraprofessional does not violate these rules ~~or the State Bar Act~~ if that lawyerlicensed paraprofessional acts in accordance with a supervisory lawyer's or supervisory licensed paraprofessional's reasonable\* resolution of an arguable question of professional duty.

**Comment**

[Reserved]

**Rule 5.3 Responsibilities Regarding Non-Licensed ~~lawyer~~ Assistants**

With respect to an individual not licensed to practice law who is nonlawyer employed or retained by or associated with a lawyerlicensed paraprofessional:

(a) a lawyerlicensed paraprofessional who individually or together with other licensed paraprofessionals or lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that the nonlawyer's nonlicensee's conduct is compatible with the professional obligations of the lawyerlicensed paraprofessional;

(b) a lawyerlicensed paraprofessional having direct supervisory authority over the nonlawyerlicensee, whether or not an employee of the same law firm,\* shall make reasonable\* efforts to ensure that the person's\* conduct is compatible with the professional obligations of the lawyerlicensed paraprofessional; and

(c) a lawyerlicensed paraprofessional shall be responsible for conduct of such a person\* that would be a violation of these rules ~~or the State Bar Act~~ if engaged in by a lawyerlicensed paraprofessional if:

(1) the lawyerlicensed paraprofessional orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or

(2) the lawyerlicensed paraprofessional, individually or together with other licensed paraprofessionals or lawyers, possesses managerial authority in the law firm\* in which the person\* is employed, or has direct supervisory authority over the person,\* whether or not an employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

**Comment**

[Reserved]

**Rule 5.3.1 Employment<sup>[FG58]</sup> of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Licensed Paraprofessionals**

(a) For purposes of this rule:

(1) "Employ" means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;

(2) "MemberLicensee" means a member-licensee of the State Bar of California;

(3) "Involuntarily inactive memberlicensee" means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203, subdivision (d)(1), or California Rules of Court, rule 9<sup>[FG59]</sup>.31(d);

- (4) “Resigned memberlicensee” means a member-licensee who has resigned from the State Bar while disciplinary charges are pending; and
- (5) “Ineligible person” means a member-licensee whose current status with the State Bar of California is disbarred, suspended, resigned, or involuntarily inactive.
- (b) A lawyerlicensed paraprofessional shall not employ, associate in practice with, or assist a person\* the lawyerlicensed paraprofessional knows\* or reasonably should know\* is an ineligible person to perform the following on behalf of the lawyerlicensed paraprofessional’s client:
- (1) Render legal consultation or advice to the client;
  - (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
  - (3) Appear as a representative of the client at a deposition or other discovery matter;
  - (4) Negotiate or transact any matter for or on behalf of the client with third parties;
  - (5) Receive, disburse or otherwise handle the client’s funds; or
  - (6) Engage in activities that constitute the practice of law.
- (c) A lawyerlicensed paraprofessional may employ, associate in practice with, or assist an ineligible person to perform research, drafting or clerical activities, including but not limited to:
- (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
  - (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or
  - (3) Accompanying an active lawyerlicensed paraprofessional in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active lawyerlicensed paraprofessional who will appear as the representative of the client.
- (d) Prior to or at the time of employing, associating in practice with, or assisting a person\* the licensed paraprofessional~~lawyer~~ knows\* or reasonably should know\* is an ineligible person, the lawyerlicensed paraprofessional shall serve upon the State Bar written\* notice of the employment, including a full description of such person’s current bar-licensee status. The written\* notice shall also list the activities prohibited in paragraph (b) and state that the ineligible person will not perform such activities. The licensed paraprofessional~~lawyer~~ shall serve similar written\* notice upon each client on whose specific matter such person\* will work, prior to or at the time of employing, associating with, or assisting such person\* to work on the client’s specific matter. The lawyerlicensed paraprofessional shall obtain proof of service of the client’s written\* notice and shall retain such proof and a true and correct copy of the client’s written\* notice for two years following termination of the lawyerlicensed paraprofessional’s employment by the client.
- (e) A lawyerlicensed paraprofessional may, without client or State Bar notification, employ, associate in practice with, or assist an ineligible person whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.
- (f) When the lawyerlicensed paraprofessional no longer employs, associates in practice with, or assists the ineligible person, the lawyerlicensed paraprofessional shall promptly serve upon the State Bar written\* notice of the termination.

**Comment**

[Reserved]

#### Rule 5.4 Financial and Similar Arrangements with Lawyers and Nonlawyer Licensees

(a) A lawyer licensed paraprofessional or law firm\* shall not share legal fees directly or indirectly with a nonlawyer 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 lawyer licensed paraprofessional with the lawyer 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 lawyer licensed paraprofessional's death, to the lawyer licensed paraprofessional's estate or to one or more specified persons;\*

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

(3) a lawyer licensed paraprofessional or law firm\* may include nonlawyer 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 ~~or the State Bar Act~~;

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

(5) a lawyer 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 lawyer licensed paraprofessional or law firm\* in the matter.   

(6) [G60] 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 lawyer licensed paraprofessional shall not form a partnership or other organization with a individual who is not a lawyer or licensed paraprofessional ~~nonlawyer~~ if any of the activities of the partnership or other organization consist of the practice of law.

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

(d) A lawyer licensed paraprofessional shall not practice with or in the form of a professional corporation or other organization [FG61] authorized to practice law for a profit if:

- (1) ~~an individual who is not a lawyer or a licensed paraprofessional~~~~nonlawyer~~ 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;
- (2) ~~an individual who is not a lawyer or a licensed paraprofessional~~~~nonlawyer~~ is a director or officer of the corporation or occupies a position of similar responsibility in any other form of organization; or
- (3) ~~an nonlawyer~~ ~~individual who is not a lawyer or a licensed paraprofessional~~ has the right or authority to direct or control the ~~lawyer~~~~licensed paraprofessional~~'s independent professional judgment.

(e) A licensed paraprofessional may:

(1) share fees with a lawyer who is in the same firm as the licensed paraprofessional;

(2) form a partnership with a lawyer where the activities of the partnership consist of the practice of law; or

(3) practice with or in the form of a professional corporation, association, or other business structure authorized to practice law for a profit in which a lawyer owns an interest or serves as a corporate director or officer or occupies a position of similar responsibility.

(f) A licensed paraprofessional and a lawyer may practice in a jointly owned firm or other business structure authorized by paragraph (e) of this rule only if: [G62]

(1) licensed paraprofessionals do not direct or regulate any lawyer's professional judgment in rendering legal services;

(2) licensed paraprofessionals have no direct supervisory authority over any lawyer;

(3) licensed paraprofessionals do not possess a majority ownership interest or exercise controlling managerial authority in the firm; and

(4) licensed paraprofessional with managerial authority in the firm expressly undertake responsibility for the conduct of licensed paraprofessional partners or owners to the same extent they are responsible for the conduct of lawyers in the firm under Lawyer RPC rule 5.1.

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

(f) A ~~lawyer~~~~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 ~~lawyer~~~~licensed paraprofessional~~'s independent professional judgment, or with the ~~lawyer~~~~licensed paraprofessional~~-client relationship, or allows or aids any person\* to practice law in violation of these rules or ~~the State Bar Act~~applicable law.

#### Comment

[Reserved]

#### Rule 5.5 Unauthorized Practice of Law; ~~Multijurisdictional Practice of Law~~

~~(a) A ~~lawyer~~~~licensed paraprofessionals~~ admitted to practice law in California shall not:~~

~~(a) practice law in California beyond the permissible scope of their ~~license~~ [FG63];~~

~~(b) hold out or otherwise represent to the public that the licensed paraprofessional is permitted to practice law beyond the permissible scope of their license;~~

~~(c) practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction; or~~

~~(d2) knowingly\* assist a person\* in the unauthorized practice of law in that jurisdiction California or any other jurisdiction.~~

~~(b) A paraprofessional lawyer who is not admitted to practice law in California shall not:~~

~~(1) except as authorized by these rules or other law, establish or maintain a resident office or other systematic or continuous presence in California for the practice of law; or~~

~~(2) hold out to the public or otherwise represent that the paraprofessional lawyer is admitted to practice law in California.~~

**Comment**<sup>[FG64]</sup>

[Reserved]

### **Rule 5.6 Restrictions on a ~~Lawyer~~Licensed paraprofessional's Right to Practice**

(a) Unless authorized by law, a ~~lawyer~~licensed paraprofessional shall not participate in offering or making:

(1) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a ~~lawyer~~licensed paraprofessional to practice after termination of the relationship, except an agreement that concerns benefits upon retirement; or

(2) an agreement that imposes a restriction on a ~~lawyer~~licensed paraprofessional's right to practice in connection with a settlement of a client controversy, or otherwise.

(b) A ~~lawyer~~licensed paraprofessional shall not participate in offering or making an agreement which precludes the reporting of a violation of these rules.

~~(c) This rule does not prohibit an agreement that is authorized by Business<sup>[FG65]</sup> and Professions Code sections 6092.5, subdivision (i) or 6093.~~

**Comment**

[Reserved]

### **Rule 5.7 [Reserved]**

### **Rule 5.8 BUSINESS STRUCTURES INVOLVING LLLT AND LAWYER OWNERSHIP<sup>[G66]</sup>**

## **CHAPTER 6. PUBLIC SERVICE**

### **Rule 6.1 [Reserved]**

### **Rule 6.2 [Reserved]**

**Rule 6.3 Membership in Legal Services Organization**

A lawyerlicensed paraprofessional may serve as a director, officer or member of a legal services organization, apart from the law firm\* in which the lawyerlicensed paraprofessional practices, notwithstanding that the organization serves persons\* having interests adverse to a client of the lawyerlicensed paraprofessional. The lawyerlicensed paraprofessional shall not knowingly\* participate in a decision or action of the organization:

- (a) if participating in the decision or action would be incompatible with the lawyerlicensed paraprofessional's obligations to a client under ~~Business and Professions Code section 6068, subdivision (e)(1)~~ or rules 1.6(a), 1.7, 1.9, or 1.18; or
- (b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyerlicensed paraprofessional.

**Comment**

[Reserved]

**Rule 6.4 [Reserved]**

**Rule 6.5 Limited Legal Services Programs**

(a) A lawyerlicensed paraprofessional who, under the auspices of a program sponsored by a court, government agency, bar association, law school, or nonprofit organization, provides short-term limited legal services to a client without expectation by either the lawyerlicensed paraprofessional or the client that the lawyerlicensed paraprofessional will provide continuing representation in the matter:

- (1) is subject to rules 1.7 and 1.9(a) only if the lawyerlicensed paraprofessional knows\* that the representation of the client involves a conflict of interest; and
- (2) is subject to rule 1.10 only if the lawyerlicensed paraprofessional knows\* that another lawyerlicensed paraprofessional or a lawyer ~~FG67~~ associated with the lawyerlicensed paraprofessional in a law firm\* is prohibited from representation by rule 1.7 or 1.9(a) or Lawyer RPC rule 1.7 or 1.9(a) with respect to the matter.

- (b) Except as provided in paragraph (a)(2), rule 1.10 is inapplicable to a representation governed by this rule.
- (c) The personal disqualification of a lawyerlicensed paraprofessional participating in the program will not be imputed to other paraprofessionals licensed paraprofessional or lawyers participating in the program.

**Comment**

[Reserved]

**CHAPTER 7.  
INFORMATION ABOUT LEGAL SERVICES**

**Rule 7.1 Communications Concerning a LawyerLicensed paraprofessional's Services**

(a) A lawyerlicensed paraprofessional shall not make a false or misleading communication about the lawyerlicensed paraprofessional or the lawyerlicensed paraprofessional's services. A communication is false or misleading if it contains a

material misrepresentation of fact or law, or omits a fact necessary to make the communication considered as a whole not materially misleading.

(b) The Board of Trustees of the State Bar may formulate and adopt standards as to communications that will be presumed to violate rule 7.1, 7.2, 7.3, ~~7.4~~ or 7.5. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these rules. "Presumption affecting the burden of proof" means that presumption defined in Evidence Code sections 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all ~~lawyer~~licensed paraprofessionals.

**Comment**<sup>[FG68]</sup>

[Reserved]

### Rule 7.2 Advertising

(a) Subject to the requirements of rules 7.1 and 7.3, a ~~lawyer~~licensed paraprofessional may advertise services through any written,\* recorded or electronic means of communication, including public media.

(b) A ~~lawyer~~licensed paraprofessional shall not compensate, promise or give anything of value to a person\* for the purpose of recommending or securing the services of the ~~lawyer~~licensed paraprofessional or the ~~lawyer~~licensed paraprofessional's law firm,\* except that a ~~lawyer~~licensed paraprofessional may:

(1) pay the reasonable\* costs of advertisements or communications permitted by this rule;

(2) pay the usual charges of a legal services plan <sup>[FG69]</sup> or a qualified ~~lawyer~~licensed paraprofessional referral service. A qualified ~~lawyer~~licensed paraprofessional referral <sup>[FG70]</sup> service is a ~~lawyer~~licensed paraprofessional referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a ~~Lawyer~~Licensed paraprofessional Referral Service in California;

(3) pay for a law practice in accordance with rule 1.17;

(4) refer clients to another ~~lawyer~~licensed paraprofessional, a lawyer or a nonlawyer-professional pursuant to an arrangement not otherwise prohibited under these ~~Rules~~rules or the State Bar Act that provides for the other person\* to refer clients or customers to the ~~lawyer~~licensed paraprofessional, if:

(i) the reciprocal referral arrangement is not exclusive; and

(ii) the client is informed of the existence and nature of the arrangement;

(5) offer or give a gift or gratuity to a person\* having made a recommendation resulting in the employment of the ~~lawyer~~licensed paraprofessional or the ~~lawyer~~licensed paraprofessional's law firm,\* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.

(c) Any communication made pursuant to this rule shall include: (1) the name and ~~address~~contact information of at least one ~~lawyer~~<sup>[FG71]</sup>licensed paraprofessional or law firm\* responsible for its content, (2) include in the communication at least one licensed paraprofessional's license number; and (3) include in the communication a clear and conspicuous statement that the licensed paraprofessional is not a lawyer.

**Comment**

[Reserved]

### Rule 7.3 Solicitation of Clients

(a) A lawyerlicensed paraprofessional shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the lawyerlicensed paraprofessional's pecuniary gain, unless the person\* contacted:

(1) is a lawyer or a licensed paraprofessional; or

(2) has a family, close personal, or prior professional relationship with the lawyerlicensed paraprofessional.

(b) A lawyerlicensed paraprofessional shall not solicit professional employment by written,\* recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the person\* being solicited has made known\* to the lawyerlicensed paraprofessional a desire not to be solicited by the lawyerlicensed paraprofessional; or

(2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress or harassment.

(c) Every written,\* recorded or electronic communication from a lawyerlicensed paraprofessional soliciting professional employment from any person\* known\* to be in need of legal services in a particular matter shall include:

(1) the word "Advertisement" or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person\* specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.

(2) -include the name, contact information, and license number of the licensed paraprofessional responsible fo the content of the communication;

(3) -include a clear and conspicuous statement that the paraprofessional is not a lawyer; and

(4)- if an advertisement subject to this subdivision is in a language other than English, the statements required by this subdivision shall be in the same language as the advertisement.

(d) A licensed paraprofessional shall not act as a runner or capper other licensed paraprofessional, nor solicit another person to act as a runner or capper for a licensed paraprofessional.

(1) For purposes of paragraph (d), a "runner or capper" is any person, firm, association, or corporation acting for consideration in any manner or in any capacity as an agent for an attorney, a paraprofessional, or a law firm, in the solicitation or procurement of business for the licensed paraprofessional except as otherwise authorized by these rules.

(2) Nothing in paragraph (d) shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by these rules.

(e) Notwithstanding the prohibitions in paragraph (a), a lawyerlicensed paraprofessional may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyerlicensed paraprofessional that uses in-person, live telephone or real-time electronic contact to solicit memberships or subscriptions for the plan from persons\* who are not known\* to need legal services in a particular matter covered by the plan.

(ef) As used in this rule, the terms "solicitation" and "solicit" refer to an oral or written\* targeted communication initiated by or on behalf of the lawyerlicensed paraprofessional that is directed to a specific person\* and that offers to provide, or can reasonably\* be understood as offering to provide, legal services.

#### Comment

[Reserved]

**Rule 7.4 ~~[RESERVED] Communication of Licensed Fields of Practice and Authorized Legal Services and Specialization~~**

~~(a) A lawyer shall not state that the lawyer is a certified specialist licensed to practice in a particular field of law, unless:~~

~~(1) the lawyer is currently certified currently licensed as a specialist by the Board of Legal Specialization, or any other entity accredited by the State Bar to practice in that particular field of law to designate specialists pursuant to standards adopted by the Board of Trustees; and~~

~~(2) the name of the certifying organization is clearly identified in the communication.~~

~~(b) Notwithstanding paragraph (a), a lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may also communicate that his or her practice specializes in, is limited to, or is concentrated in a particular field of law, subject to the requirements of rule 7.1.~~

**Rule 7.5 Firm\* Names and Trade Names**

(a) A ~~lawyer licensed paraprofessional~~ shall not use a firm\* name, trade name or other professional designation that violates rule 7.1.

(b) A ~~lawyer licensed paraprofessional~~ in private practice shall not use a firm\* name, trade name or other professional designation that states or implies a relationship with a government agency or with a public or charitable legal services organization, or otherwise violates rule 7.1.

(c) A ~~lawyer licensed paraprofessional~~ shall not state or imply that the ~~lawyer licensed paraprofessional~~ practices in or has a professional relationship with a law firm\* or other organization unless that is the fact.

**Comment**

[Reserved]

**Rule 7.6 ~~[Reserved]~~**

\*\*NOTE FROM AMOS: IN CONNECTION WITH CONSIDERATION OF ADVERTISING LIMITATIONS, WE ALSO SHOULD CONSIDER THE NAME OF THE PROPOSED PARAPROFESSIONAL LICENSE. THE NAME OF THE PROGRAM AND LICENSE CAN HAVE SIGNIFICANT IMPACT ON WHETHER THE PUBLIC IS LIKELY TO BE MISLED ABOUT AVAILABLE SERVICES AND THE DIFFERENCES BETWEEN HIRING A PARAPROFESSIONAL AND HIRING A LAWYER. THIS IS AN IMPORTANT CONSIDERATION IN PROTECTIN OF THE PUBLIC.

**CHAPTER 8.  
MAINTAINING THE INTEGRITY  
OF THE PROFESSION**

**Rule 8.1 False Statement Regarding Application for Admission to Practice Law**

(a) An applicant for admission to practice law as a licensed paraprofessional shall not, in connection with that person's\* own application for admission, make a statement of material fact that the lawyerlicensed paraprofessional knows\* to be false, or make such a statement with reckless disregard as to its truth or falsity.

(b) A lawyerlicensed paraprofessional shall not, in connection with another person's\* application for admission to practice law as a lawyer or licensed paraprofessional, make a statement of material fact that the lawyerlicensed paraprofessional knows\* to be false.

(c) An applicant for admission to practice law as a licensed paraprofessional, or a lawyerlicensed paraprofessional in connection with an application for admission, shall not fail to disclose a fact necessary to correct a statement known\* by the applicant or the lawyerlicensed paraprofessional to have created a material misapprehension in the matter, except that this rule does not authorize disclosure of information protected by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6.

(d) As used in this rule, "admission to practice law" includes admission or readmission to membership-licensure in the State Bar; reinstatement to active membership-licensure in the State Bar; and any similar process relating to admission or certification to practice law in California or elsewhere.

#### Comment

[Reserved]

#### Rule 8.1.1 Compliance with Conditions of Discipline ~~and Agreements in Lieu of Discipline~~

A lawyerlicensed paraprofessional shall comply with the terms and conditions attached to ~~any agreement in lieu of discipline,~~ any public ~~or private~~ reproof, or to other discipline administered by the State Bar pursuant <sup>[FG72]</sup> to ~~Business and Professions Code sections 6077 and 6078 and California Rules of Court, rule 9.19.~~

#### Comment

[Reserved]

#### Rule 8.2 Judicial Officials

~~(a) A lawyerlicensed paraprofessional shall not make a statement of fact that the lawyerlicensed paraprofessional knows\* to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or judicial officer, or of a candidate for election or appointment to judicial office.~~

~~(b) A lawyer who is a candidate for judicial office in California shall comply with canon 5 of the California Code of Judicial Ethics. For purposes of this rule, "candidate for judicial office" means a lawyer seeking judicial office by election. The determination of when a lawyer is a candidate for judicial office by election is defined in the terminology section of the California Code of Judicial Ethics. A lawyer's duty to comply with this rule shall end when the lawyer announces withdrawal of the lawyer's candidacy or when the results of the election are final, whichever occurs first.~~

~~(c) A lawyer who seeks appointment to judicial office shall comply with canon 5B(1) of the California Code of Judicial Ethics. A lawyer becomes an applicant seeking judicial office by appointment at the time of first submission of an application or personal data questionnaire to the appointing authority. A lawyer's duty to comply with this rule shall end when the lawyer advises the appointing authority of the withdrawal of the lawyer's application.~~

#### Comment

[Reserved]

#### Rule 8.3 [Reserved]

## Rule 8.4 Misconduct

It is professional misconduct for a lawyerlicensed paraprofessional to:

- (a) violate these rules ~~or the State Bar Act~~, knowingly\* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyerlicensed paraprofessional's honesty, trustworthiness, or fitness as a lawyerlicensed paraprofessional in other respects;
- (c) engage in conduct involving dishonesty, fraud,\* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, ~~the State Bar Act~~, or other law; or
- (f) knowingly\* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).

### Comment

[Reserved]

### Rule 8.4.1 Prohibited Discrimination, Harassment and Retaliation

- (a) In representing a client, or in terminating or refusing to accept the representation of any client, a lawyerlicensed paraprofessional shall not:
  - (1) unlawfully harass or unlawfully discriminate against persons\* on the basis of any protected characteristic; or
  - (2) unlawfully retaliate against persons.\*
- (b) In relation to a law firm's operations, a lawyerlicensed paraprofessional shall not:
  - (1) on the basis of any protected characteristic,
    - (i) unlawfully discriminate or knowingly\* permit unlawful discrimination;
    - (ii) unlawfully harass or knowingly\* permit the unlawful harassment of an employee, an applicant, an unpaid intern or volunteer, or a person\* providing services pursuant to a contract; or
    - (iii) unlawfully refuse to hire or employ a person\*, or refuse to select a person\* for a training program leading to employment, or bar or discharge a person\* from employment or from a training program leading to employment, or discriminate against a person\* in compensation or in terms, conditions, or privileges of employment; or
  - (2) unlawfully retaliate against persons.\*
- (c) For purposes of this rule:
  - (1) "protected characteristic" means race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual

orientation, age, military and veteran status, or other category of discrimination prohibited by applicable law, whether the category is actual or perceived;

(2) “knowingly permit” means to fail to advocate corrective action where the lawyerlicensed paraprofessional knows\* of a discriminatory policy or practice that results in the unlawful discrimination or harassment prohibited by paragraph (b);

(3) “unlawfully” and “unlawful” shall be determined by reference to applicable state and federal statutes and decisions making unlawful discrimination or harassment in employment and in offering goods and services to the public; and

(4) “retaliate” means to take adverse action against a person\* because that person\* has (i) opposed, or (ii) pursued, participated in, or assisted any action alleging, any conduct prohibited by paragraphs (a)(1) or (b)(1) of this rule.

(d) A lawyerlicensed paraprofessional who is the subject of a State Bar investigation or State Bar ~~Court-disciplinary~~ proceeding alleging a violation of this rule shall promptly notify the State Bar of any criminal, civil, or administrative action premised, whether in whole or part, on the same conduct that is the subject of the State Bar investigation or State Bar ~~Court~~ disciplinary proceeding.

(e) Upon being issued a notice of a disciplinary charge under this rule, a lawyerlicensed paraprofessional shall:

(1) if the notice is of a disciplinary charge under paragraph (a) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Department of Justice, Coordination and Review Section; or

(2) if the notice is of a disciplinary charge under paragraph (b) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Equal Employment Opportunity Commission.

(f) This rule shall not preclude a lawyerlicensed paraprofessional from:

~~(1) representing a client alleged to have engaged in unlawful discrimination, harassment, or retaliation;~~

~~(2) declining or withdrawing from a representation as required or permitted by rule 1.16; or~~

~~(3) providing advice and engaging in advocacy as otherwise required or permitted by these rules and applicable law and the State Bar Act.~~

#### Comment

[Reserved]

#### Rule 8.5 Disciplinary Authority; Choice of Law

(a) Disciplinary Authority.

A lawyerlicensed paraprofessional admitted to practice in California is subject to the disciplinary authority of California, regardless of where the lawyerlicensed paraprofessional's conduct occurs. ~~A lawyer not admitted in California is also subject to the disciplinary authority of California if the lawyer provides or offers to provide any legal services in California.~~ A lawyerlicensed paraprofessional may be subject to the disciplinary authority of both California and another jurisdiction for the same conduct.

(b) Choice of Law.

In any exercise of the disciplinary authority of California, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal,\* the rules of the jurisdiction in which the tribunal\* sits, unless the rules of the tribunal\* provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyerlicensed paraprofessional's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyerlicensed paraprofessional shall not be subject to discipline if the lawyerlicensed paraprofessional's conduct conforms to the rules of a jurisdiction in which the lawyerlicensed paraprofessional reasonably believes\* the predominant effect of the lawyerlicensed paraprofessional's conduct will occur.

**Comment**

[Reserved]



# The State Bar of California

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## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

Date: June 10, 2021

To: California Paraprofessional Program Working Group

From: Fariba Soroosh, Chair, Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, and Judge Monica F. Wiley

Subject: Family Law Subcommittee Recommendations for Paraprofessional Program

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program, and the specific tasks that will be allowed for licensees in each practice area.

### DISCUSSION

The Family, Children, and Custody Subcommittee (Family Law Subcommittee) posted initial recommendations in advance of the February 26, 2021, and April 19, 2021, CPPWG meetings. Due to time constraints, those recommendations were not considered at these meetings. The Family Law Subcommittee's February 26 and April 19 memos are provided as Attachments A and B, respectively.

Subsequent to the April 19 meeting, the Subcommittee met and developed additional recommendations regarding subtopics and tasks. This memo provides a comprehensive discussion of the Subcommittee's deliberations and recommendations, including as related to in-court

representation, where the Subcommittee has determined that deviation from the CPPWG's default position is appropriate.<sup>1</sup>

## **FAMILY LAW**

The Subcommittee has received input from the Working Group, many stakeholders in the legal community, and specialists in several of the areas under discussion. Based on this input, and further discussion, the Subcommittee makes the following recommendations:

### **Family Law Tasks**

Paraprofessionals are authorized to provide representation in family law matters, with the following exceptions:

- Nullity matters:
  - Petitions based on incest, unsound mind, fraud, force, physical incapacity
  - Putative spouse establishment
  - Division of quasi-marital property
- Petition to establish parental relationship involving Family Code § 7612(b) or (c)
- Child custody and visitation involving Hague Convention or UCCJEA
- Qualified Domestic Relations Order (QDRO)
- Discovery:
  - Depositions
  - Expert discovery
  - Related motions
- Pre-marital/post-marital agreements
- Marital/palimony actions
- Contempt actions

Members of the Subcommittee did not reach a consensus recommendation regarding the following task:

- Spousal or domestic partner support in long term marriages

All but one of the Subcommittee members recommend that paraprofessionals be allowed to assist with these matters if they are included in a marital settlement agreement, but not if they are the subject of litigation. Mr. Hamilton recommends that paraprofessionals not be authorized to assist in these matters, whether or not they are contested.

### **In-Court Representation**

Paraprofessionals are authorized to provide full in-court representation, excluding jury trials, with the following exception:

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<sup>1</sup> Mr. Hamilton may provide further clarification regarding his recommendations in a separate memo, to be published in an addendum to this memo.

- Hearings on emergency custody or visitation requests when a judge has granted temporary emergency orders. At such hearings, paraprofessionals are authorized to sit at counsel table to support and advise their client, and may answer direct procedural questions from the judge.
  - The reason for this variation from the CPPWG's default recommendation is that the court's granting of the temporary emergency orders reflects a determination that the child is at risk. The Subcommittee believes that this situation will require training beyond that which will be required of paraprofessionals.

### **Limit on Income and/or Estate Value**

The Subcommittee considered whether a cap on either income or estate value should be imposed for paraprofessional representation in family law cases. The Subcommittee agreed that income and estate value do not necessarily correlate with case complexity and therefore does not recommend such a limit.

### **VIOLENCE PREVENTION**

While members of the Subcommittee are familiar with domestic violence restraining orders, they sought input from subject matter experts (SMEs) regarding the inclusion of other types of violence prevention restraining orders. Staff consulted with Judy Hitchcock, Senior Staff Attorney with Legal Assistance to the Elderly, regarding elder abuse restraining orders, and Ruth Silver-Taube, who teaches the Employment Law Clinic at Santa Clara University, regarding workplace violence restraining orders. Staff reported to the Subcommittee that the SMEs consulted agreed that paraprofessional assistance would be beneficial to clients pursuing and/or responding to all types of restraining orders. Based on this information the Subcommittee makes the following recommendations:

#### **Violence Prevention Tasks**

Paraprofessionals are authorized to provide representation in all violence prevention matters.

#### **In-Court Representation**

Paraprofessionals are authorized to provide full in-court representation, excluding jury trials, with the following exception:

- If expert witness testimony will be introduced, paraprofessionals are prohibited from introducing or cross-examining expert witnesses, unless the client provides informed consent.

Another potential exception relates to in-court representation in domestic violence hearings involving children. The Subcommittee did not reach consensus regarding this exception. Ms. Bashan, Mr. Hamilton, and Ms. Soroosh recommend that paraprofessionals not be allowed to provide representation in these hearings. Ms. McRae, Ms. Olvera, and Judge Wiley recommend that paraprofessionals be allowed to provide such representation.

## **ADOPTION**

The Subcommittee reviewed information provided by Subcommittee member Elizabeth Olvera regarding the tasks involved in uncontested stepparent adoptions. The Subcommittee also considered information that staff obtained in a conversation with Robert Walmsley, a member of the Academy of California Adoption Lawyers, regarding training requirements for paraprofessionals authorized to provide representation in these cases. Based on this information the Subcommittee makes the following recommendations:

### **Adoption Tasks**

Paraprofessionals are authorized to provide representation in uncontested adoptions, with the following exception:

- Adoptions arising from dependency petitions.

## **CHILD WELFARE**

Prior to the February 26 meeting, the Subcommittee considered information provided by Subcommittee member Dana McRae, based on her conversation with Ruby Marquez, Chief Assistant County Counsel in the County Counsel's Office of Santa Cruz County. Ms. Marquez believed it would be beneficial for parents to have assistance in child welfare investigations prior to dependency filing, as well as after a dependency case has been terminated. Based on this information, the Subcommittee initially recommended inclusion of representation in dependency investigations pre-filing, as well as post-termination.

At its meeting on April 6, 2021, the Family Law Subcommittee was joined by Mary Feldman, a certified specialist in juvenile law, who represents parties in child welfare cases. In addition to pre-filing and post-termination assistance, Ms. Feldman presented information about assistance that could be provided by paraprofessionals to parties who are not entitled to court-appointed counsel in juvenile dependency cases. Examples included grandparents and siblings seeking visitation, and de facto parent requests. Ms. Feldman explained that much of this work is forms-based and opined that self-represented litigants would benefit by having educated, trained, and experienced paraprofessionals to assist with completing and filing forms as well as representing them in court. Based on the information provided by Ms. Feldman the Subcommittee agreed to the following recommendations:

### **Child Welfare Tasks**

- Paraprofessionals are authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition.
- Paraprofessionals are authorized to assist parties in juvenile dependency cases who are not entitled to court-appointed counsel in these cases.

### **In-Court Representation**

The Subcommittee did not reach a consensus on a recommendation regarding in-court representation in child welfare cases. Ms. Bashan and Mr. Hamilton recommend the following deviation from the CPPWG default position regarding in-court representation:

- Paraprofessionals are not authorized to represent parties in court in juvenile dependency cases.
- Paraprofessionals are authorized to sit at counsel table to support and advise their clients, and may answer direct procedural questions from the judge.

Ms. Bashan provides the following reasons for her recommendation: first, given the extremely serious nature of juvenile dependency proceedings where children's fates are at stake, in-court representation far exceeds the appropriate tasks for paraprofessionals; second, this Subcommittee heard from several subject matter experts who stated that even experienced attorneys who are not dependency attorneys are often ill-equipped to handle in-court dependency proceedings; lastly, the training and education needed to create competence would far exceed the current experiential training and education targets that the CPPWG has set out, in light of the need to require competence without creating onerous requirements for participation. Mr. Hamilton's recommendation is based on general concerns regarding paraprofessionals providing in-court representation, as well as those concerns articulated by Ms. Bashan.

### **CONSERVATORSHIP AND GUARDIANSHIP**

The Subcommittee has considered conservatorship and guardianship subtopics and tasks for inclusion/exclusion in a paraprofessional program. Staff worked with the following subject matter experts to develop a task list for these topics: Ms. Ylianna Perez-Guerrero, Public Counsel; Ms. Bertha Sanchez Hayden, Bet Tzedek; Tamyra Rice, an attorney with the County Counsel's Office of Santa Cruz County; Mr. Jonathan Kahn, Santa Clara Superior Court; and, Ms. Johanna Thai Van Dat, Santa Clara Superior Court.

The Subcommittee also met with Ms. Carlena Tapella, who has extensive experience in conservatorships. Ms. Tapella described various types of conservatorships and explained that limited conservatorships are sought by parents of children with developmental disabilities, when their children reach majority age, and petitions for these types of conservatorships are generally not contested. Ms. Tapella opined that it would be beneficial to allow paraprofessionals to assist otherwise self-represented parties with uncontested limited conservatorships, including allowing them to provide representation at court hearings. Ms. Tapella explained that there was less of a need for paraprofessional assistance for general conservatorships because petitions are routinely granted for payment of attorneys' fees from the estate of the conservatee. Finally, the Subcommittee met with Mr. Robert Colyar, former probate attorney for the Santa Clara Superior Court, who suggested that representation by a paraprofessional with the appropriate education and training would be beneficial to parties in

uncontested guardianship and conservatorship proceedings. Based on this information, the Subcommittee makes the following representation:

### **Conservatorship and Guardianship**

Paraprofessionals are authorized to assist parties in uncontested conservatorship and guardianship cases, with the following exception:

- Guardianships established in dependency court for parties entitled to court-appointed counsel.

### **In-Court Representation**

The Subcommittee did not reach a consensus on a recommendation regarding in-court representation in conservatorship and guardianship cases.

Ms. Bashan, Mr. Hamilton, and Ms. Soroosh recommend the following deviation from the CPPWG default position regarding in-court representation:

- Paraprofessionals are authorized to sit at counsel table to support and advise their client, and may answer direct procedural questions from the judge.

Ms. Bashan, Mr. Hamilton, and Ms. Soroosh provided the following reasons for their recommendation:

- Litigation of these matters crosses over into work that should be reserved for attorneys; allowing paraprofessionals to litigate these matters might lead to the failure of the paraprofessional program.

## **PROPOSED RESOLUTIONS**

### **FAMILY LAW**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide representation in all family law matters, with the following exceptions:

- Nullity matters:
  - Petitions based on incest, unsound mind, fraud, force, physical incapacity
  - Putative spouse establishment
  - Division of quasi-marital property
- Petition to establish parental relationship involving FC § 7612(b) or (c)
- Child custody and visitation involving Hague Convention or UCCJEA
- Qualified Domestic Relations Order (QDRO)
- Spousal or domestic partner support in long term marriages, unless included in a marital settlement agreement\*
- Discovery:
  - Depositions

- Expert discovery
- Related motions
- Pre-marital/post-marital agreements
- Marvin/palimony actions
- Contempt actions

\*Alternate resolution may exclude spousal or domestic partner support in long term marriages, including those in a marital settlement agreement.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation, excluding jury trials, in family law matters, with the following exception:

- Hearings on emergency custody or visitation requests when a judge has granted temporary emergency orders. At such hearings, paraprofessionals are authorized to sit at counsel table to support and advise their client, and may answer direct procedural questions from the judge.

#### **VIOLENCE PREVENTION**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide representation in all violence prevention matters.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation in violence prevention matters, excluding jury trials, with the following exception:

- If expert witness testimony will be introduced, paraprofessionals are prohibited from introducing or cross-examining expert witnesses, unless the client provides informed consent.

OR

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation, excluding jury trials, with the following exceptions:

- Domestic violence hearings involving children.
- If expert witness testimony will be introduced, paraprofessionals are prohibited from introducing or cross-examining expert witnesses, unless the client provides informed consent.

## **ADOPTION**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide representation in uncontested adoptions, with the following exception:

- Adoptions arising from dependency petitions.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation in uncontested adoption matters, except for those arising from dependency petitions.

## **CHILD WELFARE**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist parties not entitled to court-appointed counsel in juvenile dependency cases.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation for parties not entitled to court-appointed counsel in juvenile dependency cases.

## **OR**

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals not be authorized to represent parties in court in juvenile dependency cases, but are authorized to sit at counsel table to support and advise their clients, and may answer direct procedural questions from the judge.

## **CONSERVATORSHIP AND GUARDIANSHIP**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist parties in uncontested conservatorship and guardianship cases, with the following exception:

- Guardianships established in dependency court for parties entitled to court-appointed counsel.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation for clients in uncontested conservatorship and guardianship cases.

**OR**

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist clients in uncontested conservatorship and guardianship cases by sitting at counsel table, and providing support and guidance, and responding to direct questions from the judge, but may not advocate on behalf of their clients.



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: February 26, 2021

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, Fariba Soroosh, and Judge Monica Wiley

Subject: Topics and Tasks for Family Law Practice Area

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program, and the specific tasks that will be allowed for licensees in each practice area.

### DISCUSSION

At its July 13 meeting, five members of the CPPWG volunteered to serve on a Family Law Subcommittee tasked with studying this practice area with the goal of generating recommendations regarding inclusion or exclusion of specific Family Law subtopics for consideration by the full body at its next meeting. The Family Law Subcommittee provided the CPPWG with updates on its deliberations at its August 25 meeting, and presented its preliminary recommendations at the December 17 meeting. At that meeting, members of the CPPWG provided feedback regarding the inclusion and exclusion of several tasks and as to whether there should be an income or estate value limit for paraprofessional representation. The CPPWG also asked the Subcommittee to make a recommendation regarding whether conservatorships and guardianships should be included in the paraprofessional program. Since

that time, the Subcommittee has met, and has developed recommendations regarding subtopics and tasks; the consideration of conservatorships and guardianships; and in-court support/representation.

### **Family Law Subtopics and Tasks**

At the December 17, 2020, CPPWG meeting, the Subcommittee presented its preliminary recommendations regarding subtopics and tasks for inclusion/exclusion in a paraprofessional program. The Subcommittee solicited and received input from CPPWG members on several topics. Based on that input and further discussion, recommendations regarding subtopics and tasks for family law, as well as educational/training requirements for this area, are included in Attachment A.

### **Violence Prevention Subtopics and Tasks**

While members of the Subcommittee are familiar with domestic violence restraining orders, they sought input from subject matter experts (SMEs) regarding the inclusion of other types of violence prevention restraining orders. Staff consulted with Judy Hitchcock, Senior Staff Attorney with Legal Assistance to the Elderly, regarding elder abuse restraining orders, and Ruth Silver-Taube, who teaches the Employment Law Clinic at Santa Clara University, regarding workplace violence restraining orders. Staff reported to the Subcommittee that the SMEs consulted agreed that paraprofessional assistance would be beneficial to clients pursuing and/or responding to all types of restraining orders; the SMEs also made recommendations regarding the training that should be required for such representation. The Subcommittee recommends the inclusion of civil harassment and gun violence restraining orders accordingly. The Subcommittee recommends inclusion of violence prevention, comprising civil harassment, domestic violence, elder abuse, gun violence, and workplace violence restraining orders, in the family law practice area. Recommendations regarding these subtopics and tasks, as well as educational/training requirements for this area, are included in Attachment A.

### **Adoption**

The Subcommittee reviewed information provided by Subcommittee member Elizabeth Olvera regarding the tasks involved in uncontested stepparent adoption. They also considered information that staff obtained in a conversation with Robert Walmsley, a member of the Academy of California Adoption Lawyers, regarding training requirements for paraprofessionals authorized to provide representation in these cases. The Subcommittee recommends inclusion of uncontested stepparent adoptions for the paraprofessional program, as reflected in Attachment A.

### **Child Welfare**

The Subcommittee considered information provided by Subcommittee member Dana McRae, based on her conversation with Ruby Marquez, who works for Santa Cruz County Counsel representing the county child welfare agency in juvenile dependency cases. Ms. Marquez believes it would be beneficial for parents to have assistance in child welfare investigations prior to dependency filing, as well as after a dependency case has been terminated. Based on

this information, the Subcommittee recommends inclusion of representation in dependency investigations pre-filing, as well as post-termination, as reflected in Attachment A.

### **Conservatorship and Guardianship**

The Subcommittee has undertaken consideration of conservatorship and guardianship subtopics and tasks for inclusion/exclusion in a paraprofessional program. While the CPPWG does not include members with in-depth knowledge on this topic, the Subcommittee has begun discussions with SMEs, who have agreed to provide recommendations in this area. The Subcommittee intends to bring its recommendations to the CPPWG at the April 19 meeting.

### **In-Court Support/Representation**

The Subcommittee is aware that the topic of in-court representation will be the subject of a facilitated discussion at the CPPWG meeting on February 26. Nonetheless, members of the Subcommittee believe that this topic is integral to the recommendations in family law and violence prevention matters included as attachments to this memo. The insights of Subcommittee members were especially helpful in our discussions.

Ms. Soroosh, who directs the Self-Help Center (SHC) at the Santa Clara Superior Court, noted that, while staff at the SHC are able to provide extensive guidance in completing and filing forms in family law cases, they are precluded from attending hearings with litigants to provide guidance and support. Even when litigants have had excellent assistance in completing and filing forms, the actual court appearance can be stressful and challenging. Litigants are often retraumatized by their experiences and are unfamiliar with the court setting. They may become intimidated or flustered in this unfamiliar setting, causing them to be disorganized and forget important information that they would like to convey to the court. Judge Wiley, who presides over family law cases, agreed. Judge Wiley suggested that it would be helpful to the court to have a trained support person who could provide guidance to self-represented litigants, and who could answer questions from the court at the hearing.

Stephen Hamilton, who is a certified family law specialist, agreed that a trained support person would be an asset in the courtroom. He strongly believes that, while a paraprofessional should be allowed to sit at counsel table to guide and prompt their client, they should be prohibited from speaking in court, even to answer direct questions from the bench. Mr. Hamilton asserted that answering questions as even those that might be perceived as procedural may involve advocacy. Mr. Hamilton believes it is essential to maintain a distinction between paraprofessionals and lawyers; in-court representation is key to this distinction. Sharon Bashan agreed with Mr. Hamilton that paraprofessionals should be allowed to sit at counsel table, but should be prohibited from speaking in court.

Ms. Elizabeth Olvera, who is a certified Legal Document Assistant, disagreed, asserting that a trained paraprofessional could competently assist their client by providing information to the court, particularly in response to direct questions from the bench. Ms. Olvera suggested that a distinction could be made between those with a JD degree and others, allowing

paraprofessionals with a JD to speak in court. Greg Fortescue, the Supreme Court's liaison to the CPPWG, noted that if paraprofessionals were to be precluded from answering questions directed to them from the bench, it would be necessary to impose a restriction on judges, precluding them from directing such questions to paraprofessionals.

There was a general agreement, but not unanimous consensus, from the Subcommittee that paraprofessionals should be allowed to provide in-court support, but not representation. In this role, paraprofessionals would be allowed to sit at counsel table, and advise and prompt clients, but not advocate for their clients or speak in court. There was a minority view that paraprofessionals should be allowed to respond to questions from the court.

**Limit on Income and/or Estate Value**

The Subcommittee considered whether a cap on either income or estate value should be imposed for paraprofessional representation in family law cases. The Subcommittee agreed that income and estate value do not necessarily correlate with case complexity and therefore does not recommend such a limit.

Family Law Subcommittee  
Subtopic and Tasks Recommendations

ATTACHMENT A

Family Law

Task	Recommendation
Dissolution/Domestic Partnerships, including dissolution, legal separation, and nullity (annulment) <ol style="list-style-type: none"> <li>1. Marital status, including status-only judgments<sup>i</sup></li> <li>2. Annulment based on bigamy, age of spouse/registrant, prior existing marriage/DP<sup>ii</sup></li> <li>3. Annulment based on incest, unsound mind, fraud, force, physical incapacity</li> </ol>	Included Included Excluded <sup>iii</sup>
Paternity (including paternity issues within dissolution, legal separation, domestic partnerships, and DCSS child support matters) <ol style="list-style-type: none"> <li>1. Complaint to establish parental relationship not involving FC 7612(b) or (c)</li> <li>2. Complaint to establish parental relationship involving FC 7612(b) or (c)</li> </ol>	Included Excluded
Summary Dissolutions	Included
Petitions for Custody and Support	Included
Child custody and visitation (including third-party joinder and intervention) except in any action where any of the following issues or claims are raised: <ol style="list-style-type: none"> <li>1. Hague Convention on International Child Abduction</li> <li>2. International or interstate custody disputes under UCCJEA</li> <li>3. Grandparent visitation (independent of family law action)</li> </ol>	Included Excluded Excluded Included
Child support <sup>iv</sup>	Included
Spousal or domestic partner support <ol style="list-style-type: none"> <li>1. Temporary</li> <li>2. Permanent (litigated/contest)/FC 4320</li> <li>3. Spousal support waivers, buyouts or nonmodifiable step downs               <ol style="list-style-type: none"> <li>a. Short term marriage [FC 4336(b)]</li> <li>b. Long term marriage</li> </ol> </li> </ol>	Included Included Included Excluded
Separate property/community property/quasi community property <sup>v</sup> <ol style="list-style-type: none"> <li>1. Joinder of pension/retirement/employee benefit plans</li> <li>2. Declaration of disclosures</li> <li>3. Referrals to experts for appraisals and valuations</li> <li>4. Post division transfer documents</li> <li>5. QDRO (referrals only)</li> </ol>	Included Included Included Included Excluded
Discovery <ol style="list-style-type: none"> <li>1. Written discovery (form interrogatories v. other)</li> <li>2. Depositions</li> <li>3. Expert discovery</li> <li>4. Subpoenas: deposition and hearing/trial</li> <li>5. Motions to compel/motions to quash not related to depositions</li> <li>6. Motions to compel/quash related to depositions</li> </ol>	Included Excluded Excluded Included Included Excluded
Quasi marital property (nullity)	Excluded

<b>Task</b>	<b>Recommendation</b>
Attorney fees, including expert and paraprofessional fees	Included
Restoration of former name	Included
Venue and jurisdiction disputes not otherwise addressed herein	Included
Marital settlement agreements [except for any issues which are within excluded areas of practice as set forth above] 1. MSA must state that it was prepared by a paraprofessional <sup>vi</sup>	Included
Post judgment/permanent order modifications [except UCCJEA/Hague]	Included
Registration of foreign judgments	Included
Premarital/Post-marital agreements (not including MSAs)	Excluded
Putative spouse claims arising from nullity action, including all issues within such a claim (e.g. quasi marital property, attorney fees, spousal support)	Excluded
Marvin/Palimony actions	Excluded
Enforcement of family law orders and judgments 1. Appointment of elisor 2. RFO/Motion for relief in issuing court to assist in enforcement 3. Contempt 4. Seek work orders support 5. Debtor's exam 6. Wage assignment 7. Writ of execution 8. Filing of lien/lis pendens 9. Response to DCSS enforcement action (e.g., license suspension, bank levy) All enforcement mechanisms not specifically identified above are excluded	Included Included Excluded Included Included Included Included Included Included
Alternative Dispute Resolution (except for areas excluded above) 1. Settlement discussions and negotiations 2. Day of court meet and confer	Included Included

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- i. If instruction includes detailed, in depth education regarding FC 2337, FL-315, FL-347, FL-318-Info, joinder and pension issues
  - ii. If instruction includes education and instruction re: bigamy v. prior existing marriage/DP and FC 2200-2210 and 2310-2312
  - iii. Education includes issue spotting, clear definition of excluded item, specific education regarding excluded issues and referral process (necessity, regulation)
  - iv. Instruction to include training on support calculators, wage assignments and role of DCSS

- v. This scope of practice presumes detailed and substantive instruction on forms of discovery, responding to discovery, objections and law and motion procedure related to discovery
- <sup>vi</sup> Companion legislation to be developed, stating that an MSA prepared by a paraprofessional that exceeds the scope of their duties is not automatically void or voidable

**Adoption**

<b>Task</b>	<b>Recommendation</b>
Adoptions not arising from a dependency petition 1. Uncontested stepparent adoption <ul style="list-style-type: none"> <li>o Training on providing notice to other parent required; incorrect notice may trigger contest of adoption, or can negatively affect prospect of adoption</li> </ul>	Included

**Child Welfare**

<b>Task</b>	<b>Recommendation</b>
Child welfare and juvenile dependency cases 1. Investigation prior to filing of dependency action 2. JV-180: modification of dependency orders after case is closed	Included Included

**Violence Prevention**

<b>Task</b>	<b>Recommendation</b>
Domestic Violence, Civil Harassment, Gun Violence, Workplace Violence*	Included
Representation of petitioner 1. Filing restraining order request – Temporary Restraining Order (TRO) 2. Service of TRO on respondent and filing proof of service 3. Support in mediation, where applicable 4. Support in court 5. Preparation of Restraining Order After Hearing (ROAH) 6. Service of ROAH on respondent and filing proof of service 7. Distribution of RO to law enforcement, if applicable	Included Included Included Included Included Included Included
Representation of respondent 1. Filing response to TRO 2. Service of response on petitioner and filing proof of service 3. Support in court	Included Included Included

\* Educational/training requirements for violence prevention:

- Experience in violence prevention clinic
- Familiarity with types of restraining orders and remedies available under each type
- Availability of resources (e.g., domestic violence assistance, Adult Protective Services, mediation, etc.)



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: April 19, 2021

To: California Paraprofessional Program Working Group

From: Fariba Soroosh, Chair, Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, and Judge Monica F. Wiley

Subject: Topics and Tasks for Family Law Practice Area

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program, and the specific tasks that will be allowed for licensees in each practice area.

### DISCUSSION

At its July 13 meeting, five members of the CPPWG volunteered to serve on a Family Law Subcommittee tasked with generating recommendations regarding inclusion or exclusion of specific Family Law subtopics for consideration by the full body at its next meeting. The Family Law Subcommittee provided the CPPWG with updates on its deliberations at its August 25 meeting, and presented its preliminary recommendations at the December 17 meeting. At that meeting, members of the CPPWG provided feedback regarding the inclusion and exclusion of several tasks and as to whether there should be an income or estate value limit for paraprofessional representation. The CPPWG also asked the Subcommittee to make a recommendation regarding whether conservatorships and guardianships should be included in the paraprofessional program.

The Family Law Subcommittee posted initial recommendations in advance of the March 26, 2021, CPPWG meeting. Due to time constraints, those recommendations were not considered at that meeting. Since that time, the Subcommittee has met, and has developed additional recommendations regarding subtopics and tasks, including revised recommendations regarding child welfare (juvenile dependency) cases. The Family Law Subcommittee's March 26 memo is provided as Attachment A.

#### **FAMILY LAW SUBTOPICS AND TASKS**

At the December 17, 2020, CPPWG meeting, the Subcommittee presented its preliminary recommendations regarding subtopics and tasks for inclusion/exclusion in a paraprofessional program. The Subcommittee also solicited and received input from CPPWG members on several topics. Based on that input and further discussion, the recommendations regarding subtopics and tasks for family law, as well as educational/training requirements for this area, are included in Attachment B.

#### **VIOLENCE PREVENTION SUBTOPICS AND TASKS**

While members of the Subcommittee are familiar with domestic violence restraining orders, they sought input from subject matter experts (SMEs) regarding the inclusion of other types of violence prevention restraining orders. Staff consulted with Judy Hitchcock, Senior Staff Attorney with Legal Assistance to the Elderly, regarding elder abuse restraining orders, and Ruth Silver-Taube, who teaches the Employment Law Clinic at Santa Clara University, regarding workplace violence restraining orders. Staff reported to the Subcommittee that the SMEs consulted agreed that paraprofessional assistance would be beneficial to clients pursuing and/or responding to all types of restraining orders; the SMEs also made recommendations regarding the training that should be required for such representation. The Subcommittee recommends the inclusion of civil harassment and gun violence restraining orders accordingly. The Subcommittee recommends inclusion of violence prevention, comprising civil harassment, domestic violence, elder abuse, gun violence, and workplace violence restraining orders, in the family law practice area. Recommendations regarding these subtopics and tasks, as well as educational/training requirements for this area, are included in Attachment B.

#### **ADOPTION**

The Subcommittee reviewed information provided by Subcommittee member Elizabeth Olvera regarding the tasks involved in uncontested stepparent adoptions. They also considered information that staff obtained in a conversation with Robert Walmsley, a member of the Academy of California Adoption Lawyers, regarding training requirements for paraprofessionals authorized to provide representation in these cases. The Subcommittee recommends inclusion of uncontested stepparent adoptions for the paraprofessional program, as reflected in Attachment B.

#### **CHILD WELFARE**

Prior to the February 26 meeting, the Subcommittee considered information provided by Subcommittee member Dana McRae, based on her conversation with Ruby Marquez, who works for Santa Cruz County Counsel representing the county child welfare agency in juvenile dependency cases. Ms. Marquez believed it would be beneficial for parents to have assistance in child welfare investigations prior to dependency filing, as well as after a dependency case has been terminated. Based on this information, the Subcommittee initially recommended inclusion of representation in dependency investigations pre-filing, as well as post-termination.

At its April 6, 2021, meeting, the Family Law Subcommittee was joined by Mary Feldman, a certified specialist in juvenile law, who represents parties in child welfare cases. In addition to pre-filing and post-termination assistance, Ms. Feldman presented information about assistance that could be provided by paraprofessionals to parties who are not entitled to court-appointed counsel in juvenile dependency cases. Examples included grandparents and siblings seeking visitation, and de facto parent requests. Ms. Feldman explained that much of this work is forms-based and opined that self-represented litigants would benefit by having educated, trained, and experienced paraprofessionals to assist with completing and filing forms as well as representing them in court. Based on the information provided by Ms. Feldman, a majority of members of the Subcommittee agreed to the following recommendations:

- Paraprofessionals are authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition, including but not limited to:
  - Requesting documents from social services agency
  - Providing legal advice and information regarding procedures and parents' rights at the pre-filing stage
  - Gathering documents to be presented to social services agency
  - Being present and participating in social worker interviews
- Paraprofessionals are authorized to assist parties not entitled to court-appointed counsel in child welfare cases, by advising clients regarding which forms to use, and completing and filing forms. Paraprofessionals are also authorized to provide in-court representation for parties not entitled to court-appointed counsel.

Two members of the Family Law Subcommittee did not agree that paraprofessionals should be allowed to represent parties in court. Ms. Bashan disagreed with this recommendation for the following reasons: first, given the extremely serious nature of juvenile dependency proceedings where children's fates are at stake, Ms. Bashan's opinion was that in-court representation far exceeds the appropriate tasks for paraprofessionals; second, this Subcommittee heard from several subject matter experts who stated that even experienced attorneys who are not dependency attorneys are often ill-equipped to handle in-court dependency proceedings; lastly, the training and education needed to create competence would far exceed the current experiential training and education targets that this working group has set out, given that we are balancing competence with not creating onerous requirements—as we have learned from Washington State's model. Mr. Hamilton also disagreed with this recommendation based on

general concerns regarding paraprofessionals providing in-court representation, as well as those concerns identified by Ms. Bashan.

#### **CONSERVATORSHIP AND GUARDIANSHIP**

The Subcommittee has undertaken consideration of conservatorship and guardianship subtopics and tasks for inclusion/exclusion in a paraprofessional program. Staff worked with the following subject matter experts to develop a task list for these topics: Ms. Ylianna Perez-Guerrero, Public Counsel; Ms. Bertha Sanchez Hayden, Bet Tzedek; Tamyra Rice, Santa Cruz County Counsel; Mr. Jonathan Kahn, Santa Clara Superior Court; and, Ms. Johanna Thai Van Dat, Santa Clara Superior Court.

The Subcommittee also met with Ms. Carlena Tapella, who has extensive experience in conservatorships. Ms. Tapella described various types of conservatorships and explained that limited conservatorships are sought by parents of children with developmental disabilities, when their children reach majority age, and petitions for these types of conservatorships are generally not contested. Ms. Tapella opined that it would be beneficial to allow paraprofessionals to assist otherwise self-represented parties with uncontested limited conservatorships, including allowing them to provide representation at court hearings. Ms. Tapella explained that there was less of a need for paraprofessional assistance for general conservatorships because petitions are routinely granted for payment of attorneys' fees from the estate of the conservatee.

Based on the information from Ms. Tapella, the Subcommittee recommended that paraprofessionals be allowed to represent parties in uncontested limited conservatorships cases, including representation at court hearings.

The subcommittee did not have the opportunity to discuss recommendations regarding guardianship cases; this recommendation will be provided at a future CPPWG meeting.

#### **IN-COURT REPRESENTATION IN FAMILY LAW, VIOLENCE PREVENTION, AND ADOPTION CASES**

In our February 26, 2021, memo to the CPPWG, the Family Law Subcommittee included a discussion of in-court representation and provided the various points of view of our members. At its March 26, 2021, meeting, the CPPWG adopted a default position allowing paraprofessionals to provide full in-court representation, except for jury trials, in the practice areas for which they are licensed. The CPPWG's resolution provided that each practice area subcommittee may generate an alternative in-court representation recommendation. The Subcommittee has not had the opportunity to discuss its position on this subject. If the Subcommittee determines that an alternative recommendation is warranted, a recommendation and a rationale will be provided at future CPPWG meeting.

#### **LIMIT ON INCOME AND/OR ESTATE VALUE**

The Subcommittee considered whether a cap on either income or estate value should be imposed for paraprofessional representation in family law cases. The Subcommittee agreed

that income and estate value do not necessarily correlate with case complexity and therefore does not recommend such a limit.

## **PROPOSED RESOLUTIONS**

### **FAMILY LAW, VIOLENCE PREVENTION, AND ADOPTION**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that Paraprofessionals may assist clients with the family law, violence prevention, and adoption tasks included in Attachment B.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends adoption of the educational and training requirements for these topics included in Attachment B.

### **CHILD WELFARE**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals are authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition, including but not limited to:

1. Requesting documents from social services agency
2. Providing legal advice and information regarding procedures and parents' rights at the pre-filing stage
3. Gathering documents to be presented to social services agency
4. Being present and participating in social worker interviews

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals are authorized to assist parties not entitled to court-appointed counsel in juvenile dependency cases, by advising them regarding which forms to use, and completing and filing forms.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide in-court representation for parties not entitled to court-appointed counsel in juvenile dependency cases.

**OR**

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist clients not entitled to court-appointed counsel in juvenile dependency cases by sitting at counsel table, and providing support and guidance, and responding to direct questions from the judge, but may not advocate on behalf of their clients.

**CONSERVATORSHIP**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals are authorized to assist parties in limited conservatorship cases, by advising them regarding which forms to use, and completing and filing forms.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide in-court representation for clients in limited conservatorship cases.

**OR**

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist clients in limited conservatorship cases by sitting at counsel table, and providing support and guidance, and responding to direct questions from the judge, but may not advocate on behalf of their clients.



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: February 26, 2021

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, Fariba Soroosh, and Judge Monica Wiley

Subject: Topics and Tasks for Family Law Practice Area

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program, and the specific tasks that will be allowed for licensees in each practice area.

### DISCUSSION

At its July 13 meeting, five members of the CPPWG volunteered to serve on a Family Law Subcommittee tasked with studying this practice area with the goal of generating recommendations regarding inclusion or exclusion of specific Family Law subtopics for consideration by the full body at its next meeting. The Family Law Subcommittee provided the CPPWG with updates on its deliberations at its August 25 meeting, and presented its preliminary recommendations at the December 17 meeting. At that meeting, members of the CPPWG provided feedback regarding the inclusion and exclusion of several tasks and as to whether there should be an income or estate value limit for paraprofessional representation. The CPPWG also asked the Subcommittee to make a recommendation regarding whether conservatorships and guardianships should be included in the paraprofessional program. Since

that time, the Subcommittee has met, and has developed recommendations regarding subtopics and tasks; the consideration of conservatorships and guardianships; and in-court support/representation.

### **Family Law Subtopics and Tasks**

At the December 17, 2020, CPPWG meeting, the Subcommittee presented its preliminary recommendations regarding subtopics and tasks for inclusion/exclusion in a paraprofessional program. The Subcommittee solicited and received input from CPPWG members on several topics. Based on that input and further discussion, recommendations regarding subtopics and tasks for family law, as well as educational/training requirements for this area, are included in Attachment A.

### **Violence Prevention Subtopics and Tasks**

While members of the Subcommittee are familiar with domestic violence restraining orders, they sought input from subject matter experts (SMEs) regarding the inclusion of other types of violence prevention restraining orders. Staff consulted with Judy Hitchcock, Senior Staff Attorney with Legal Assistance to the Elderly, regarding elder abuse restraining orders, and Ruth Silver-Taube, who teaches the Employment Law Clinic at Santa Clara University, regarding workplace violence restraining orders. Staff reported to the Subcommittee that the SMEs consulted agreed that paraprofessional assistance would be beneficial to clients pursuing and/or responding to all types of restraining orders; the SMEs also made recommendations regarding the training that should be required for such representation. The Subcommittee recommends the inclusion of civil harassment and gun violence restraining orders accordingly. The Subcommittee recommends inclusion of violence prevention, comprising civil harassment, domestic violence, elder abuse, gun violence, and workplace violence restraining orders, in the family law practice area. Recommendations regarding these subtopics and tasks, as well as educational/training requirements for this area, are included in Attachment A.

### **Adoption**

The Subcommittee reviewed information provided by Subcommittee member Elizabeth Olvera regarding the tasks involved in uncontested stepparent adoption. They also considered information that staff obtained in a conversation with Robert Walmsley, a member of the Academy of California Adoption Lawyers, regarding training requirements for paraprofessionals authorized to provide representation in these cases. The Subcommittee recommends inclusion of uncontested stepparent adoptions for the paraprofessional program, as reflected in Attachment A.

### **Child Welfare**

The Subcommittee considered information provided by Subcommittee member Dana McRae, based on her conversation with Ruby Marquez, who works for Santa Cruz County Counsel representing the county child welfare agency in juvenile dependency cases. Ms. Marquez believes it would be beneficial for parents to have assistance in child welfare investigations prior to dependency filing, as well as after a dependency case has been terminated. Based on

this information, the Subcommittee recommends inclusion of representation in dependency investigations pre-filing, as well as post-termination, as reflected in Attachment A.

### **Conservatorship and Guardianship**

The Subcommittee has undertaken consideration of conservatorship and guardianship subtopics and tasks for inclusion/exclusion in a paraprofessional program. While the CPPWG does not include members with in-depth knowledge on this topic, the Subcommittee has begun discussions with SMEs, who have agreed to provide recommendations in this area. The Subcommittee intends to bring its recommendations to the CPPWG at the April 19 meeting.

### **In-Court Support/Representation**

The Subcommittee is aware that the topic of in-court representation will be the subject of a facilitated discussion at the CPPWG meeting on February 26. Nonetheless, members of the Subcommittee believe that this topic is integral to the recommendations in family law and violence prevention matters included as attachments to this memo. The insights of Subcommittee members were especially helpful in our discussions.

Ms. Soroosh, who directs the Self-Help Center (SHC) at the Santa Clara Superior Court, noted that, while staff at the SHC are able to provide extensive guidance in completing and filing forms in family law cases, they are precluded from attending hearings with litigants to provide guidance and support. Even when litigants have had excellent assistance in completing and filing forms, the actual court appearance can be stressful and challenging. Litigants are often retraumatized by their experiences and are unfamiliar with the court setting. They may become intimidated or flustered in this unfamiliar setting, causing them to be disorganized and forget important information that they would like to convey to the court. Judge Wiley, who presides over family law cases, agreed. Judge Wiley suggested that it would be helpful to the court to have a trained support person who could provide guidance to self-represented litigants, and who could answer questions from the court at the hearing.

Stephen Hamilton, who is a certified family law specialist, agreed that a trained support person would be an asset in the courtroom. He strongly believes that, while a paraprofessional should be allowed to sit at counsel table to guide and prompt their client, they should be prohibited from speaking in court, even to answer direct questions from the bench. Mr. Hamilton asserted that answering questions as even those that might be perceived as procedural may involve advocacy. Mr. Hamilton believes it is essential to maintain a distinction between paraprofessionals and lawyers; in-court representation is key to this distinction. Sharon Bashan agreed with Mr. Hamilton that paraprofessionals should be allowed to sit at counsel table, but should be prohibited from speaking in court.

Ms. Elizabeth Olvera, who is a certified Legal Document Assistant, disagreed, asserting that a trained paraprofessional could competently assist their client by providing information to the court, particularly in response to direct questions from the bench. Ms. Olvera suggested that a distinction could be made between those with a JD degree and others, allowing

paraprofessionals with a JD to speak in court. Greg Fortescue, the Supreme Court's liaison to the CPPWG, noted that if paraprofessionals were to be precluded from answering questions directed to them from the bench, it would be necessary to impose a restriction on judges, precluding them from directing such questions to paraprofessionals.

There was a general agreement, but not unanimous consensus, from the Subcommittee that paraprofessionals should be allowed to provide in-court support, but not representation. In this role, paraprofessionals would be allowed to sit at counsel table, and advise and prompt clients, but not advocate for their clients or speak in court. There was a minority view that paraprofessionals should be allowed to respond to questions from the court.

**Limit on Income and/or Estate Value**

The Subcommittee considered whether a cap on either income or estate value should be imposed for paraprofessional representation in family law cases. The Subcommittee agreed that income and estate value do not necessarily correlate with case complexity and therefore does not recommend such a limit.

Family Law Subcommittee  
Subtopic and Tasks Recommendations

ATTACHMENT A

Family Law

Task	Recommendation
Dissolution/Domestic Partnerships, including dissolution, legal separation, and nullity (annulment) <ol style="list-style-type: none"> <li>1. Marital status, including status-only judgments<sup>i</sup></li> <li>2. Annulment based on bigamy, age of spouse/registrant, prior existing marriage/DP<sup>ii</sup></li> <li>3. Annulment based on incest, unsound mind, fraud, force, physical incapacity</li> </ol>	Included Included Excluded <sup>iii</sup>
Paternity (including paternity issues within dissolution, legal separation, domestic partnerships, and DCSS child support matters) <ol style="list-style-type: none"> <li>1. Complaint to establish parental relationship not involving FC 7612(b) or (c)</li> <li>2. Complaint to establish parental relationship involving FC 7612(b) or (c)</li> </ol>	Included Excluded
Summary Dissolutions	Included
Petitions for Custody and Support	Included
Child custody and visitation (including third-party joinder and intervention) except in any action where any of the following issues or claims are raised: <ol style="list-style-type: none"> <li>1. Hague Convention on International Child Abduction</li> <li>2. International or interstate custody disputes under UCCJEA</li> <li>3. Grandparent visitation (independent of family law action)</li> </ol>	Included Excluded Excluded Included
Child support <sup>iv</sup>	Included
Spousal or domestic partner support <ol style="list-style-type: none"> <li>1. Temporary</li> <li>2. Permanent (litigated/contest)/FC 4320</li> <li>3. Spousal support waivers, buyouts or nonmodifiable step downs               <ol style="list-style-type: none"> <li>a. Short term marriage [FC 4336(b)]</li> <li>b. Long term marriage</li> </ol> </li> </ol>	Included Included Included Excluded
Separate property/community property/quasi community property <sup>v</sup> <ol style="list-style-type: none"> <li>1. Joinder of pension/retirement/employee benefit plans</li> <li>2. Declaration of disclosures</li> <li>3. Referrals to experts for appraisals and valuations</li> <li>4. Post division transfer documents</li> <li>5. QDRO (referrals only)</li> </ol>	Included Included Included Included Excluded
Discovery <ol style="list-style-type: none"> <li>1. Written discovery (form interrogatories v. other)</li> <li>2. Depositions</li> <li>3. Expert discovery</li> <li>4. Subpoenas: deposition and hearing/trial</li> <li>5. Motions to compel/motions to quash not related to depositions</li> <li>6. Motions to compel/quash related to depositions</li> </ol>	Included Excluded Excluded Included Included Excluded
Quasi marital property (nullity)	Excluded

<b>Task</b>	<b>Recommendation</b>
Attorney fees, including expert and paraprofessional fees	Included
Restoration of former name	Included
Venue and jurisdiction disputes not otherwise addressed herein	Included
Marital settlement agreements [except for any issues which are within excluded areas of practice as set forth above] 1. MSA must state that it was prepared by a paraprofessional <sup>vi</sup>	Included
Post judgment/permanent order modifications [except UCCJEA/Hague]	Included
Registration of foreign judgments	Included
Premarital/Post-marital agreements (not including MSAs)	Excluded
Putative spouse claims arising from nullity action, including all issues within such a claim (e.g. quasi marital property, attorney fees, spousal support)	Excluded
Marvin/Palimony actions	Excluded
Enforcement of family law orders and judgments 1. Appointment of elisor 2. RFO/Motion for relief in issuing court to assist in enforcement 3. Contempt 4. Seek work orders support 5. Debtor's exam 6. Wage assignment 7. Writ of execution 8. Filing of lien/lis pendens 9. Response to DCSS enforcement action (e.g., license suspension, bank levy) All enforcement mechanisms not specifically identified above are excluded	Included Included Excluded Included Included Included Included Included Included
Alternative Dispute Resolution (except for areas excluded above) 1. Settlement discussions and negotiations 2. Day of court meet and confer	Included Included

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- i. If instruction includes detailed, in depth education regarding FC 2337, FL-315, FL-347, FL-318-Info, joinder and pension issues
  - ii. If instruction includes education and instruction re: bigamy v. prior existing marriage/DP and FC 2200-2210 and 2310-2312
  - iii. Education includes issue spotting, clear definition of excluded item, specific education regarding excluded issues and referral process (necessity, regulation)
  - iv. Instruction to include training on support calculators, wage assignments and role of DCSS

- v. This scope of practice presumes detailed and substantive instruction on forms of discovery, responding to discovery, objections and law and motion procedure related to discovery
- <sup>vi</sup> Companion legislation to be developed, stating that an MSA prepared by a paraprofessional that exceeds the scope of their duties is not automatically void or voidable

**Adoption**

<b>Task</b>	<b>Recommendation</b>
Adoptions not arising from a dependency petition 1. Uncontested stepparent adoption <ul style="list-style-type: none"> <li>o Training on providing notice to other parent required; incorrect notice may trigger contest of adoption, or can negatively affect prospect of adoption</li> </ul>	Included

**Child Welfare**

<b>Task</b>	<b>Recommendation</b>
Child welfare and juvenile dependency cases 1. Investigation prior to filing of dependency action 2. JV-180: modification of dependency orders after case is closed	Included Included

**Violence Prevention**

<b>Task</b>	<b>Recommendation</b>
Domestic Violence, Civil Harassment, Gun Violence, Workplace Violence*	Included
Representation of petitioner 1. Filing restraining order request – Temporary Restraining Order (TRO) 2. Service of TRO on respondent and filing proof of service 3. Support in mediation, where applicable 4. Support in court 5. Preparation of Restraining Order After Hearing (ROAH) 6. Service of ROAH on respondent and filing proof of service 7. Distribution of RO to law enforcement, if applicable	Included Included Included Included Included Included Included
Representation of respondent 1. Filing response to TRO 2. Service of response on petitioner and filing proof of service 3. Support in court	Included Included Included

\* Educational/training requirements for violence prevention:

- Experience in violence prevention clinic
- Familiarity with types of restraining orders and remedies available under each type
- Availability of resources (e.g., domestic violence assistance, Adult Protective Services, mediation, etc.)

**Family Law Subcommittee  
Subtopic and Tasks Recommendations**

**ATTACHMENT B**

**Family Law**

<b>Task</b>	<b>Recommendation</b>
Dissolution/Domestic Partnerships, including dissolution, legal separation, and nullity (annulment) <ol style="list-style-type: none"> <li>1. Marital status, including status-only judgments<sup>i</sup></li> <li>2. Annulment based on bigamy, age of spouse/registrant, prior existing marriage/DP<sup>ii</sup></li> <li>3. Annulment based on incest, unsound mind, fraud, force, physical incapacity</li> </ol>	 Included Included Excluded <sup>iii</sup>
Paternity (including paternity issues within dissolution, legal separation, domestic partnerships, and DCSS child support matters) <ol style="list-style-type: none"> <li>1. Complaint to establish parental relationship not involving FC 7612(b) or (c)</li> <li>2. Complaint to establish parental relationship involving FC 7612(b) or (c)</li> </ol>	 Included Excluded
Summary Dissolutions	Included
Petitions for Custody and Support	Included
Child custody and visitation (including third-party joinder and intervention) except in any action where any of the following issues or claims are raised: <ol style="list-style-type: none"> <li>1. Hague Convention on International Child Abduction</li> <li>2. International or interstate custody disputes under UCCJEA</li> <li>3. Grandparent visitation (independent of family law action)</li> </ol>	 Included Excluded Excluded Included
Child support <sup>iv</sup>	Included
Spousal or domestic partner support <ol style="list-style-type: none"> <li>1. Temporary</li> <li>2. Permanent (litigated/contest)/FC 4320</li> <li>3. Spousal support waivers, buyouts or nonmodifiable step downs               <ol style="list-style-type: none"> <li>a. Short term marriage [FC 4336(b)]</li> <li>b. Long term marriage</li> </ol> </li> </ol>	 Included Included Included Excluded
Separate property/community property/quasi community property <sup>v</sup> <ol style="list-style-type: none"> <li>1. Joinder of pension/retirement/employee benefit plans</li> <li>2. Declaration of disclosures</li> <li>3. Referrals to experts for appraisals and valuations</li> <li>4. Post division transfer documents</li> <li>5. QDRO (referrals only)</li> </ol>	 Included Included Included Included Excluded
Discovery <ol style="list-style-type: none"> <li>1. Written discovery (form interrogatories v. other)</li> <li>2. Depositions</li> <li>3. Expert discovery</li> <li>4. Subpoenas: deposition and hearing/trial</li> <li>5. Motions to compel/motions to quash not related to depositions</li> <li>6. Motions to compel/quash related to depositions</li> </ol>	 Included Excluded Excluded Included Included Excluded
Quasi marital property (nullity)	Excluded

<b>Task</b>	<b>Recommendation</b>
Attorney fees, including expert and paraprofessional fees	Included
Restoration of former name	Included
Venue and jurisdiction disputes not otherwise addressed herein	Included
Marital settlement agreements [except for any issues which are within excluded areas of practice as set forth above] 1. MSA must state that it was prepared by a paraprofessional <sup>vi</sup>	Included
Post judgment/permanent order modifications [except UCCJEA/Hague]	Included
Registration of foreign judgments	Included
Premarital/Post-marital agreements (not including MSAs)	Excluded
Putative spouse claims arising from nullity action, including all issues within such a claim (e.g. quasi marital property, attorney fees, spousal support)	Excluded
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Enforcement of family law orders and judgments 1. Appointment of elisor 2. RFO/Motion for relief in issuing court to assist in enforcement 3. Contempt 4. Seek work orders support 5. Debtor's exam 6. Wage assignment 7. Writ of execution 8. Filing of lien/lis pendens 9. Response to DCSS enforcement action (e.g., license suspension, bank levy) All enforcement mechanisms not specifically identified above are excluded	Included Included Excluded Included Included Included Included Included Included
Alternative Dispute Resolution (except for areas excluded above) 1. Settlement discussions and negotiations 2. Day of court meet and confer	Included Included

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- i. If instruction includes detailed, in depth education regarding FC 2337, FL-315, FL-347, FL-318-Info, joinder and pension issues
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  - iii. Education includes issue spotting, clear definition of excluded item, specific education regarding excluded issues and referral process (necessity, regulation)
  - iv. Instruction to include training on support calculators, wage assignments and role of DCSS

- v. This scope of practice presumes detailed and substantive instruction on forms of discovery, responding to discovery, objections and law and motion procedure related to discovery
- <sup>vi</sup> Companion legislation to be developed, stating that an MSA prepared by a paraprofessional that exceeds the scope of their duties is not automatically void or voidable

### Adoption

Task	Recommendation
Adoptions not arising from a dependency petition	Included
1. Uncontested stepparent adoption <ul style="list-style-type: none"> <li>o Training on providing notice to other parent required; incorrect notice may trigger contest of adoption, or can negatively affect prospect of adoption</li> </ul>	

### Child Welfare

Task	Recommendation
Paraprofessionals are authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition, including but not limited to:	Included
1. Requesting documents from social services agency	
2. Providing legal advice and information regarding procedures and parents' rights at the prefiling stage	
3. Gathering documents to be presented to social services agency	
4. Being present and participating in social worker interviews	
Paraprofessionals are authorized to assist parties not entitled to court-appointed counsel in juvenile dependency cases, by advising them regarding which forms to use, and completing and filing forms.	Included
Paraprofessionals are authorized to provide in-court representation for parties not entitled to court-appointed counsel.	Split Rec.

### Violence Prevention

Task	Recommendation
Domestic Violence, Civil Harassment, Gun Violence, Workplace Violence*	Included
Representation of petitioner	
5. Filing restraining order request—Temporary Restraining Order (TRO)	Included
6. Service of TRO on respondent and filing proof of service	Included
7. Support in mediation, where applicable	Included
8. Support in court	Included
9. Preparation of Restraining Order After Hearing (ROAH)	Included
10. Service of ROAH on respondent and filing proof of service	Included
11. Distribution of RO to law enforcement, if applicable	Included

Representation of respondent	
1. Filing response to TRO	Included
2. Service of response on petitioner and filing proof of service	Included

\* Educational/training requirements for violence prevention:

- Experience in violence prevention clinic
- Familiarity with types of restraining orders and remedies available under each type
- Availability of resources (e.g., domestic violence assistance, Adult Protective Services, mediation, etc.)

### Conservatorship

Task	Recommendation
Uncontested limited conservatorship cases	
1. Selection, completion, and filing of forms	Included
2. In-court representation	Split Rec.



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: June 25, 2021

To: California Paraprofessional Program Working Group

From: Linda Katz, Principal Program Analyst

Subject: Paraprofessional Program Governance Structure and Functions

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services \(ATILS\)](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the regulatory structure for paraprofessionals. This memo provides recommendations detailing a proposed governance structure and functions for the CPPWG's consideration.

### BACKGROUND

At its December 17, 2020, meeting the CPPWG considered staff recommendations regarding the composition and structure of the paraprofessional regulatory board. The December 17 memo is provided as Attachment 1. During that meeting, the Working Group provided feedback regarding the size, composition, and appointing authority of the governing board. This memo provides revised recommendations incorporating feedback received from the CPPWG, State Bar leadership, and the Supreme Court.

### DISCUSSION

The CPPWG report to the Board of Trustees will include recommendations regarding the name of the paraprofessional oversight body, and its composition and scope of authority. This memo provides recommendations in all of these areas.

### Licensing Board Name

Staff consulted with State Bar leadership regarding the name of the paraprofessional oversight body and, based on feedback received, recommends the name [Paraprofessional]<sup>1</sup> Licensing and Oversight Committee (PLOC). The recommendation to title the oversight body a committee versus a board stems from the fact that the State Bar itself is governed by a board, the Board of Trustees; all subentities that report to or are governed by the Board are titled committees or commissions.

### Composition and Appointing Authority

Recommendations included in the December 17 staff memo were informed by the following sources of information:

- A 2018 report on the State Bar’s board, commissions, committees, and councils (collectively referred to as committees), *Opportunities for Improving Governance and Service Delivery*;<sup>2</sup>
- A review of the size and composition of paraprofessional licensing boards in other states; and
- A review of the size and composition of licensing boards for nonlegal professions in California.

Table 1 provides the recommendations for the size, composition, and appointing authority for the PLOC included in the December 17 memo, alongside revised recommendations based on feedback provided by the CPPWG at its December 2020 meeting.

Table 1. Composition and Appointing Authority

December 17, 2020 Recommendation		Revised Recommendation	
Member Type	Appointing Authority	Member Type	Appointing Authority
3 Paraprofessionals	Supreme Court	Judge	Supreme Court
2 Paraprofessionals	Legislature	Attorney	Board of Trustees
2 Attorneys	Supreme Court	Paraprofessional <sup>3</sup>	Board of Trustees
4 Public (non-licensee)	Governor	Public (non-licensee)	Governor
2 Public (non-licensee)	Legislature	Public (non-licensee)	State Assembly
*Committee to include one representative of an educational institution that provides training for paraprofessionals; this member may be a paraprofessional, attorney, or public member.		Public (non-licensee)	State Senate
		Paraprofessional Educator	California Board of Community Colleges or California Law School with Paraprofessional Program

<sup>1</sup> Name will reflect the license name that is selected.

<sup>2</sup> Schauffler, Richard. *Opportunities for Improving Governance and Service Delivery: A report and Recommendations Regarding the State Bar of California’s Boards, Commissions, Committees, and Councils*. September 13, 2018. <http://board.calbar.ca.gov/Agenda.aspx?id=14901&tid=0&show=100019508&s=true#10027325>

<sup>3</sup> When available.

As shown in table 1, the recommended size of the PLOC has been reduced from 13 to 7 members, reflecting the CPPWG’s recommendation of a reduction; this size also conforms to the policy adopted by the Board of Trustees at its September 13, 2018 meeting. The CPPWG also suggested that the committee include a judge, and that attorney and paraprofessional members be appointed by the Board of Trustees.

**Governance Functions and Authority**

Authority for oversight of the paraprofessional program will ultimately rest with the Supreme Court, which has the authority to license individuals to practice law. As with the licensure of attorneys, the Supreme Court delegates the responsibility for licensing, regulation, and discipline to the State Bar, and limits its direct involvement to matters requiring adjudication by the Supreme Court. Functional oversight will be provided by the Paraprofessional Licensing and Oversight Committee, the Board of Trustees, and the Legislature. Recommendations for the authority for each specific function were informed by a review of State Bar operations, including existing attorney Admissions and Attorney Regulation functions and relevant decision-making authority, as well as by paraprofessional disciplinary recommendations previously adopted by the CPPWG. In addition, staff consulted State Bar leadership and Supreme Court staff in developing the recommendations provided in table 2.

Table 2. Governance Functions

<b>POLICY</b>	<b>Committee</b>	<b>Board of Trustees</b>	<b>Supreme Court</b>	<b>Legislature</b>
Keep abreast of national and international developments in paraprofessional licensing	Implement	Receive updates	—	—
Program evaluation metrics and assessment	Approve	Receive updates	—	—
Consumer and prospective licensee outreach and education	Implement	Receive updates	—	—
<b>LICENSURE</b>	<b>Committee</b>	<b>Board of Trustees</b>	<b>Supreme Court</b>	<b>Legislature</b>
<b>Eligibility</b>				
Appeals of staff denial of eligibility	Approve	—	Discretionary Review	—
<b>Education</b>				
Establish educational requirements	Recommend	Recommend	Approve	Provide input
Approve learning objectives	Approve		—	—
<b>Experiential Training</b>				
Establish experiential requirements	Recommend	Recommend	Approve	Provide input
Establish attorney supervision requirements	Approve		Approve	Provide input
Establish incentives for attorney supervision	Recommend	Approve	—	—
<b>Waivers</b>				
Appeal of staff denial of waiver of educational or experiential hours	Approve	—	—	—
<b>Moral Character</b>				
Reviews & Informal Conferences	Approve	—	—	—
Review appeal of staff decision	Approve	—	Discretionary Review	
Set Fees	Recommend	Approve	—	—

Paraprofessional Program Governance Structure and Functions

June 25, 2021

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LICENSURE	Committee	Board of Trustees	Supreme Court	Legislature
<b>Exam Development</b>				
Develop questions	Approve	—	—	—
Review of questions	Approve	—	—	—
Evaluate grading	Approve	—	—	—
Sampling plan	Approve	—	—	—
Challenges to exam questions	Approve	—	Discretionary Review	—
Set exam fee	Recommend	Approve	—	—
<b>Testing Accommodations</b>				
Policy development	Approve	—	—	—
Review petitions	Approve	—	—	—
Review appeals	Approve	—	Discretionary Review	—
<b>Eligibility &amp; Enforcement of Exam Rules</b>				
Policy development	Approve	—	—	—
Enforcement	Approve	—	—	—
Appeals	Approve	—	Discretionary Review	—
<b>Exam Analysis &amp; Review</b>				
Design standard setting study	Recommend	Approve	—	—
Design content validation study	Recommend	Approve	—	—
Design job analysis	Recommend	Approve	—	—
<b>Paraprofessional Educational Institutions</b>				
Certification	Approve	—	—	—
REGULATION	Committee	Board of Trustees	Supreme Court	Legislature
<b>MCLE</b>				
MCLE Provider certification criteria	Approve	—	—	—
MCLE Requirements	Approve	—	Final Decision	Provide Input
<b>Financial Responsibility</b>				
Establish requirements	Approve	—	Final Decision	Provide Input
<b>Rules of Professional Conduct</b>				
Establish and modify	Recommend	Approve	Final Decision	—
<b>State Bar Rules<sup>4</sup></b>				
Establish and modify	Recommend	Approve	Final Decision	—
<b>State Bar Rules of Procedure</b>				
Establish and modify	Recommend	Approve	—	—
<b>California Rules of Court</b>				
Establish and modify	Recommend	Recommend	Final Decision	—
<b>Statutes (State Bar Act, other statutes)</b>				
Establish and modify	Recommend	Recommend	Provide input	Final Decision

<sup>4</sup> Some State Bar Rules are statutorily subject to approval by the Supreme Court (e.g., Minimum Standards for Lawyer Referral Services).

DISCIPLINE	Committee	Board of Trustees	Supreme Court	Legislature
Compensation for hearing officers	Approve			
Hearing panel selection	Recommend	Approve	—	—
Settlement	Approve	—	—	—
License Suspension/Revocation	Recommend	—	Final Decision	—
Other Discipline	Approve	—	—	—

## PROPOSED RESOLUTIONS

RESOLVED, that the California Paraprofessional Program Working Group recommends that the program’s Licensing and Oversight Committee reflect the following composition and appointing authority:

Member Type	Appointing Authority
Judge	Supreme Court
Attorney	Board of Trustees
Paraprofessional <sup>5</sup>	Board of Trustees
Public (non-licensee)	Governor
Public (non-licensee)	State Assembly
Public (non-licensee)	State Senate
Paraprofessional Educator	California Board of Community Colleges or California Law School with Paraprofessional Program

RESOLVED, that the California Paraprofessional Program Working Group recommends that the governance functions for the paraprofessional program reflect the authority provided in table 2 of this memo.

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<sup>5</sup> When available.



# The State Bar of California

## MISSION ADVANCEMENT AND ACCOUNTABILITY DIVISION

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Date: December 17, 2020

To: California Paraprofessional Program Working Group

From: Linda Katz, Principal Program Analyst

Subject: Paraprofessional Program Regulatory Structure and Board Composition

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services \(ATILS\)](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the regulatory structure for paraprofessionals. This memo outlines options for an overarching regulatory structure, namely a regulatory board, for the CPPWG's consideration.

### BACKGROUND

At its August 25, 2020, meeting, the CPPWG determined that subcommittees should be created to develop requirements for paraprofessional licensing, regulation, and discipline. These subcommittees were appointed subsequent to that meeting, and each met several times to review and consider information about their assigned topics. At its October 29, 2020, meeting, the Working Group reviewed the status reports from each of these subcommittees and provided feedback on the subcommittees' preliminary recommendations and proposals. These subcommittees have continued to meet and have provided updated reports and recommendations for the December 17 CPPWG meeting.

During the course of their discussions, the Licensing, Regulation, and Discipline Subcommittees have each identified roles and responsibilities for a paraprofessional licensing board (hereinafter referred to as the Board). This has brought to the fore the question of how this Board will be constituted and what it will be required and authorized to do.

## DISCUSSION

In developing recommendations for the Board, I reviewed the size and composition of paraprofessional licensing boards in other states, as well as the licensing boards for nonlegal professions in California. Attachment A provides a summary of this information.

In addition, I reviewed the factors that should be considered in determining Board size, structure, and composition as outlined in a 2018 report on the State Bar's board, commissions, committees, and councils (collectively referred to as committees), *Opportunities for Improving Governance and Service Delivery*.<sup>1</sup> This report emphasizes that decisions about size, structure, and composition should be driven by the purpose of the committee itself.

The Licensing, Regulation, and Discipline Subcommittees have to date identified a number of roles and responsibilities for the Board, including:

- Licensing: establishing licensing requirements and ensuring that they remain relevant; decisions regarding the addition of new practice areas.
- Regulation: responsibility for program rules, MCLE requirements, proactive regulation policies, and program evaluation.
- Discipline: potentially hearing appeals and approving certain disciplinary recommendations.

With these functions in mind, this memo considers the following issues with regard to a Board: size, composition, appointing authority, term of membership, functional (committee) structure, and reporting authority. These recommendations are presented as a starting point for CPPWG deliberation and are not intended to be conclusory.

## BOARD SIZE

At its September 13, 2018, meeting, the State Bar Board of Trustees adopted a policy to limit the size of State Bar committees to 7 or fewer members, absent a justification of the need for more members based on workload or the need for additional expertise or perspectives to carry out the work. This policy is based on research that found that larger boards are less effective in the decision-making process.

Given the broad set of responsibilities envisioned for this Board, as well as its potential role in discipline adjudication, a larger size is warranted. As reflected in the tables in Attachment A, California's professional licensing boards range in size from 9 to 15, and other states' paraprofessional licensing boards range from 11 to 15. I recommend that the Board be comprised of 13 members, which is an average of the sizes of other states' paraprofessional licensing boards and is the same size as the State Bar Board of Trustees.

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<sup>1</sup> Schauffler, Richard. *Opportunities for Improving Governance and Service Delivery: A report and Recommendations Regarding the State Bar of California's Boards, Commissions, Committees, and Councils*. September 13, 2018. <http://board.calbar.ca.gov/Agenda.aspx?id=14901&tid=0&show=100019508&s=true#10027325>

### **BOARD COMPOSITION AND APPOINTING AUTHORITY**

The composition of the Board should reflect its purpose and functions. Its purpose is to ensure that the paraprofessional program improves access to legal services while maintaining public protection. The fulfillment of that purpose is achieved through licensing, regulation, and discipline of licensees.

As reflected in Attachment A, both California's professional licensing boards and other jurisdictions' paraprofessional licensing boards include a balance of licensed professionals and public members, with Department of Consumer Affairs (DCA) boards having more public members than their paraprofessional counterparts. I recommend that the Board conform to the standards of California licensing boards in this regard. Following the model for California licensing boards, the Board composition should ensure that expertise is available that informs its work, by including members who represent the consumers that paraprofessionals will serve, as well as those who can inform the specific topics of licensing, regulation, and discipline. A balance of attorneys, licensed paraprofessionals, legal educators, and public members is recommended.

The Governor and Legislature are vested with authority to appoint members to boards that fall under the jurisdiction of the DCA, as well as some members of the State Bar Board of Trustees. The Supreme Court is vested with appointing authority for the attorney members of the State Bar Board of Trustees. The appointing authority structure for the paraprofessional Board should mirror that of the State Bar Board of Trustees.

The combined recommendations regarding Board size, composition, and appointing authority are thus as follows:

- 3 paraprofessionals appointed by the Supreme Court
  - 2 paraprofessionals appointed by the Legislature
  - 2 attorneys appointed by the Supreme Court
  - 4 public members appointed by the Governor
  - 2 public members appointed by the Legislature
- \*Board to include one representative of an educational institution that provides training for paraprofessionals; this member may be a paraprofessional, attorney, or public member.

### **BOARD TERM LIMITS**

Terms should be established that allow members enough time to learn the work of the Board and carry out its work effectively. A lack of term limits may result in a Board that stagnates, which prevents new perspectives from being introduced. Staggered terms allow for continuity by providing overlap among members. Following the model of California's professional licensing boards, which provide for longer terms than the paraprofessional licensing boards in other states, Board members should be appointed to 4-year staggered terms.

### **BOARD STRUCTURE: COMMITTEES**

The Board's structure should reflect its oversight functions. Committees might be established with oversight authority for Licensing, Regulation, and Discipline. Under this approach, each committee would make recommendations to the full Board regarding issues that fall within their respective areas of purview. Where appropriate, membership on these committees should rotate on a regular basis. This recommended committee structure mirrors that of the State Bar Board of Trustees.

### **REPORTING AUTHORITY**

As a Board under the authority of the State Bar, decisions of the Board would be subject to authorization of the State Bar Board of Trustees. The Board of Trustees may determine that it is appropriate to delegate final decision-making authority to the Board with regard to certain topics (e.g., educational and training requirements, licensee discipline, etc.). However, it is likely that requests for changes to Rules of Professional Conduct or requests for statutory changes would require approval by the Board of Trustees.

## Paraprofessional Licensing Boards

	License	Regulatory Board	Board Size, Composition, and Appointing Authority	Term
<b>Arizona</b>	Legal Paraprofessional (LP)	Board of Nonlawyer Legal Service Providers	11 members appointed by Chief Justice <ul style="list-style-type: none"> <li>• 2 Certified Legal Document Preparers</li> <li>• 2 Legal Paraprofessionals</li> <li>• 1 Judge or Court Commissioner</li> <li>• 1 Clerk of the Superior Court</li> <li>• 1 Attorney</li> <li>• 2 Public Members</li> <li>• 2 Additional Members</li> </ul>	3 years
<b>Utah</b>	Licensed Paralegal Practitioner (LPP)	Board of Bar Commissioners	13-15 Members <ul style="list-style-type: none"> <li>• 11 Elected Lawyers</li> <li>• 2 Nonlawyers appointed by Supreme Court</li> </ul>	3 years
<b>Washington</b>	Limited License Legal Technician (LLLT)	Limited License Legal Technician Board	15 voting members appointed by Supreme Court <ul style="list-style-type: none"> <li>• ≥ 11 Lawyers, LLLTs, or Limited Practice Officers (LPO) <ul style="list-style-type: none"> <li>○ ≥ 9 Active Lawyers or LLLTs</li> <li>○ ≤ 2 LPO, Judicial, or Emeritus Pro Bono Lawyers</li> </ul> </li> <li>• 4 Nonlawyers</li> </ul> 1 Ex Officio Nonvoting Representative of State Board of Community and Technical Colleges	3 years

## California Licensing Boards

	License	Regulatory Board	Board Size, Composition, and Appointing Authority	Term
	<b>Attorney</b>	State Bar Board of Trustees	13 Members <ul style="list-style-type: none"> <li>• 5 Attorneys appointed by Supreme Court</li> <li>• 2 Attorneys appointed by Legislature</li> <li>• 4 Public Members appointed by Governor</li> <li>• 2 Public Members appointed by Legislature</li> </ul>	4 years
	<b>Physician</b>	Medical Board of California	15 members <ul style="list-style-type: none"> <li>• 8 Physicians appointed by Governor</li> <li>• 5 Public Members appointed by Governor</li> <li>• 2 Public Members appointed by Legislature</li> </ul>	4 years

License	Regulatory Board	Board Size, Composition, and Appointing Authority	Term
<b>Architect</b>	Architects Board of California	10 members <ul style="list-style-type: none"> <li>• 5 Architects appointed by Governor</li> <li>• 3 Public Members appointed by Governor</li> <li>• 2 Public Members appointed by Legislature</li> </ul>	4 years
<b>Dentist (DDS)</b> Certifications: <ul style="list-style-type: none"> <li>• Dental Assistant</li> <li>• Dental Assistant in Extended Functions</li> </ul>	Dental Board of California	15 members <ul style="list-style-type: none"> <li>• 8 Dentists appointed by Governor</li> <li>• 1 Dental Hygienist appointed by Governor</li> <li>• 1 Dental Assistant appointed by Governor</li> <li>• 3 Public Members appointed by Governor</li> <li>• 2 Public Members appointed by Legislature</li> </ul>	4 years
<b>Registered Nurse</b> Certifications: <ul style="list-style-type: none"> <li>• Nurse Anesthetist</li> <li>• Nurse Midwife</li> <li>• Nurse Practitioner</li> <li>• Psychiatric/Mental Health Nurse</li> <li>• Public Health Nurse</li> </ul>	Board of Registered Nursing	9 members <ul style="list-style-type: none"> <li>• 5 Registered Nurses appointed by Governor <ul style="list-style-type: none"> <li>○ 2 Engaged in Direct Patient Care</li> <li>○ 1 Advanced Practice</li> <li>○ 1 Educator or Administrator in nurse training program</li> <li>○ 1 Administrator of a Nursing Service</li> </ul> </li> <li>• 2 Public Members appointed by Governor</li> <li>• 2 Public Members appointed by Legislature</li> </ul>	4 years



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: July 26, 2021

To: California Paraprofessional Program Working Group

From: Fariba Soroosh, Chair, Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, and Judge Monica F. Wiley

Subject: Family, Children, and Custody Subcommittee Recommendations for Paraprofessional Program

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program, and the specific tasks that will be allowed for licenses in each practice area.

### BACKGROUND

At the meeting on June 10, 2021, the Family, Children, and Custody Subcommittee presented its recommendations regarding tasks for inclusion in the paraprofessional program. At that meeting, the CPPWG adopted recommendations regarding paraprofessional representation in family law, adoption, and violence prevention. The Subcommittee's recommendations regarding representation in conservatorship, guardianship, and child welfare cases were included in its memo to the CPPWG; due to time constraints, consideration of conservatorship and guardianship was deferred to the June 25 CPPWG meeting. Consideration of child welfare cases was deferred to allow the Subcommittee to consider concerns raised by written and oral public comment. This memo also includes recommendations regarding appointment of

paraprofessionals to represent children in child custody cases, and a clarification regarding representation in violence prevention cases.

## **DISCUSSION**

### **Child Welfare**

The June 10, 2021 memo from the Family, Children, and Custody Subcommittee (provided as Attachment 1) included the following recommendations:

- Paraprofessionals are authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition.
- Paraprofessionals are authorized to assist parties in juvenile dependency cases who are not entitled to court-appointed counsel in these cases.

In advance of its June 10 meeting, the CPPWG received written public comment from the Children's Law Center of California (CLC), which expressed concern about the above recommendations. CLC urged the Working Group to allow more time for analysis and discussion prior to adopting a recommendation, and suggested that dependency professionals be invited to offer their insights on this topic. Based on this recommendation, the CPPWG deferred consideration of representation in child welfare cases to allow the Subcommittee to seek this input.

The Subcommittee met on June 29, and invited input from subject matter experts in child welfare cases. Ms. Leslie Heimov, CLC Executive Director; and Ms. Amanda Kennedy, Supervising Attorney with Legal Advocates for Children and Youth at the Law Foundation of Silicon Valley, were invited to participate as panelists during this meeting. Public comment was also provided by a number of attorneys experienced in child welfare representation.

Ms. Heimov and Ms. Kennedy both expressed concern about allowing paraprofessionals to provide assistance in child welfare cases. They noted that this area is particularly complex, and requires a significant amount of training and experience in order to provide competent assistance. With regard to pre-filing assistance, concerns were raised that incorrect guidance might lead to the filing of a dependency petition. They also noted that county social workers, who are often advised not to communicate with attorneys in the absence of county counsel, might be reluctant to work with paraprofessionals who are engaged to help parents during a pre-filing investigation.

With regard to assisting parties in juvenile dependency cases who are not entitled to court-appointed counsel, Ms. Soroosh explained the Subcommittee's intent was to allow paraprofessionals to assist with filing a [JV-180 form](#), which may be used by siblings, grandparents, or other interested parties to request that the court recognize their relationship with a dependent child. She acknowledged that assistance with completing these forms is available at court Self-Help Centers. Ms. Heimov suggested that judges are accustomed to considering these requests, and that in-court assistance was not necessary.

Some members of the Subcommittee continue to believe that there is an unmet need, particularly with regard to prefiling assistance. However, based on the information provided by Ms. Heimov and Ms. Kennedy, as well as from public comment provided by several attorneys experienced in child welfare cases, the Subcommittee agreed that paraprofessionals should not be authorized to provide assistance in these cases.

### **Representation of Children in Child Custody Matters**

At its June 10 meeting, the Subcommittee reviewed a memo provided by Mr. Hamilton, provided as Attachment 2. The Subcommittee agreed with Mr. Hamilton's recommendation that paraprofessionals should not be appointed to represent children in child custody matters. Subsequent to that meeting, sections of the Family Code that provide for appointment of counsel for both parents and children in family law cases were identified that were not included in Mr. Hamilton's memo. The Subcommittee recommends that paraprofessionals not be authorized to act as appointed counsel in case types that are within the purview of this subcommittee.

### **Violence Prevention**

At its June 10 meeting, the CPPWG adopted the following resolution:

- **RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide representation in violence prevention matters, as delineated in Attachment B to the April 19, 2021 memo from the Family Law Subcommittee.

Subsequent to that meeting, it was noted that elder abuse was inadvertently omitted from Attachment B referenced in the resolution. The Subcommittee agreed that elder abuse should be included in this practice area.

### **PROPOSED RESOLUTIONS**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals not be authorized to act as appointed counsel in case types that are within the purview of the Family, Children and Custody Subcommittee.

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that the resolution regarding violence prevention adopted at the June 10, 2021 meeting be amended as follows:

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide representation in violence prevention matters, ~~as delineated in Attachment B to the April 19, 2021 memo from the Family Law Subcommittee~~ including domestic violence, elder abuse, gun violence, civil harassment, and workplace violence.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation, excluding jury trials, with the following exceptions:

- Domestic violence hearings involving children.
- If expert witness testimony will be introduced, paraprofessionals are prohibited from introducing or cross-examining expert witnesses.



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: June 10, 2021

To: California Paraprofessional Program Working Group

From: Fariba Soroosh, Chair, Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, and Judge Monica F. Wiley

Subject: Family Law Subcommittee Recommendations for Paraprofessional Program

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program, and the specific tasks that will be allowed for licensees in each practice area.

### DISCUSSION

The Family, Children, and Custody Subcommittee (Family Law Subcommittee) posted initial recommendations in advance of the February 26, 2021, and April 19, 2021, CPPWG meetings. Due to time constraints, those recommendations were not considered at these meeting. The Family Law Subcommittee's February 26 and April 19 memos are provided as Attachments A and B, respectively.

Subsequent to the April 19 meeting, the Subcommittee met and developed additional recommendations regarding subtopics and tasks. This memo provides a comprehensive discussion of the Subcommittee's deliberations and recommendations, including as related to in-court

representation, where the Subcommittee has determined that deviation from the CPPWG's default position is appropriate.<sup>1</sup>

## **FAMILY LAW**

The Subcommittee has received input from the Working Group, many stakeholders in the legal community, and specialists in several of the areas under discussion. Based on this input, and further discussion, the Subcommittee makes the following recommendations:

### **Family Law Tasks**

Paraprofessionals are authorized to provide representation in family law matters, with the following exceptions:

- Nullity matters:
  - Petitions based on incest, unsound mind, fraud, force, physical incapacity
  - Putative spouse establishment
  - Division of quasi-marital property
- Petition to establish parental relationship involving Family Code § 7612(b) or (c)
- Child custody and visitation involving Hague Convention or UCCJEA
- Qualified Domestic Relations Order (QDRO)
- Discovery:
  - Depositions
  - Expert discovery
  - Related motions
- Pre-marital/post-marital agreements
- Marital/palimony actions
- Contempt actions

Members of the Subcommittee did not reach a consensus recommendation regarding the following task:

- Spousal or domestic partner support in long term marriages

All but one of the Subcommittee members recommend that paraprofessionals be allowed to assist with these matters if they are included in a marital settlement agreement, but not if they are the subject of litigation. Mr. Hamilton recommends that paraprofessionals not be authorized to assist in these matters, whether or not they are contested.

### **In-Court Representation**

Paraprofessionals are authorized to provide full in-court representation, excluding jury trials, with the following exception:

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<sup>1</sup> Mr. Hamilton may provide further clarification regarding his recommendations in a separate memo, to be published in an addendum to this memo.

- Hearings on emergency custody or visitation requests when a judge has granted temporary emergency orders. At such hearings, paraprofessionals are authorized to sit at counsel table to support and advise their client, and may answer direct procedural questions from the judge.
  - The reason for this variation from the CPPWG's default recommendation is that the court's granting of the temporary emergency orders reflects a determination that the child is at risk. The Subcommittee believes that this situation will require training beyond that which will be required of paraprofessionals.

### **Limit on Income and/or Estate Value**

The Subcommittee considered whether a cap on either income or estate value should be imposed for paraprofessional representation in family law cases. The Subcommittee agreed that income and estate value do not necessarily correlate with case complexity and therefore does not recommend such a limit.

### **VIOLENCE PREVENTION**

While members of the Subcommittee are familiar with domestic violence restraining orders, they sought input from subject matter experts (SMEs) regarding the inclusion of other types of violence prevention restraining orders. Staff consulted with Judy Hitchcock, Senior Staff Attorney with Legal Assistance to the Elderly, regarding elder abuse restraining orders, and Ruth Silver-Taube, who teaches the Employment Law Clinic at Santa Clara University, regarding workplace violence restraining orders. Staff reported to the Subcommittee that the SMEs consulted agreed that paraprofessional assistance would be beneficial to clients pursuing and/or responding to all types of restraining orders. Based on this information the Subcommittee makes the following recommendations:

#### **Violence Prevention Tasks**

Paraprofessionals are authorized to provide representation in all violence prevention matters.

#### **In-Court Representation**

Paraprofessionals are authorized to provide full in-court representation, excluding jury trials, with the following exception:

- If expert witness testimony will be introduced, paraprofessionals are prohibited from introducing or cross-examining expert witnesses, unless the client provides informed consent.

Another potential exception relates to in-court representation in domestic violence hearings involving children. The Subcommittee did not reach consensus regarding this exception. Ms. Bashan, Mr. Hamilton, and Ms. Soroosh recommend that paraprofessionals not be allowed to provide representation in these hearings. Ms. McRae, Ms. Olvera, and Judge Wiley recommend that paraprofessionals be allowed to provide such representation.

## **ADOPTION**

The Subcommittee reviewed information provided by Subcommittee member Elizabeth Olvera regarding the tasks involved in uncontested stepparent adoptions. The Subcommittee also considered information that staff obtained in a conversation with Robert Walmsley, a member of the Academy of California Adoption Lawyers, regarding training requirements for paraprofessionals authorized to provide representation in these cases. Based on this information the Subcommittee makes the following recommendations:

### **Adoption Tasks**

Paraprofessionals are authorized to provide representation in uncontested adoptions, with the following exception:

- Adoptions arising from dependency petitions.

## **CHILD WELFARE**

Prior to the February 26 meeting, the Subcommittee considered information provided by Subcommittee member Dana McRae, based on her conversation with Ruby Marquez, Chief Assistant County Counsel in the County Counsel's Office of Santa Cruz County. Ms. Marquez believed it would be beneficial for parents to have assistance in child welfare investigations prior to dependency filing, as well as after a dependency case has been terminated. Based on this information, the Subcommittee initially recommended inclusion of representation in dependency investigations pre-filing, as well as post-termination.

At its meeting on April 6, 2021, the Family Law Subcommittee was joined by Mary Feldman, a certified specialist in juvenile law, who represents parties in child welfare cases. In addition to pre-filing and post-termination assistance, Ms. Feldman presented information about assistance that could be provided by paraprofessionals to parties who are not entitled to court-appointed counsel in juvenile dependency cases. Examples included grandparents and siblings seeking visitation, and de facto parent requests. Ms. Feldman explained that much of this work is forms-based and opined that self-represented litigants would benefit by having educated, trained, and experienced paraprofessionals to assist with completing and filing forms as well as representing them in court. Based on the information provided by Ms. Feldman the Subcommittee agreed to the following recommendations:

### **Child Welfare Tasks**

- Paraprofessionals are authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition.
- Paraprofessionals are authorized to assist parties in juvenile dependency cases who are not entitled to court-appointed counsel in these cases.

### **In-Court Representation**

The Subcommittee did not reach a consensus on a recommendation regarding in-court representation in child welfare cases. Ms. Bashan and Mr. Hamilton recommend the following deviation from the CPPWG default position regarding in-court representation:

- Paraprofessionals are not authorized to represent parties in court in juvenile dependency cases.
- Paraprofessionals are authorized to sit at counsel table to support and advise their clients, and may answer direct procedural questions from the judge.

Ms. Bashan provides the following reasons for her recommendation: first, given the extremely serious nature of juvenile dependency proceedings where children's fates are at stake, in-court representation far exceeds the appropriate tasks for paraprofessionals; second, this Subcommittee heard from several subject matter experts who stated that even experienced attorneys who are not dependency attorneys are often ill-equipped to handle in-court dependency proceedings; lastly, the training and education needed to create competence would far exceed the current experiential training and education targets that the CPPWG has set out, in light of the need to require competence without creating onerous requirements for participation. Mr. Hamilton's recommendation is based on general concerns regarding paraprofessionals providing in-court representation, as well as those concerns articulated by Ms. Bashan.

### **CONSERVATORSHIP AND GUARDIANSHIP**

The Subcommittee has considered conservatorship and guardianship subtopics and tasks for inclusion/exclusion in a paraprofessional program. Staff worked with the following subject matter experts to develop a task list for these topics: Ms. Ylianna Perez-Guerrero, Public Counsel; Ms. Bertha Sanchez Hayden, Bet Tzedek; Tamyra Rice, an attorney with the County Counsel's Office of Santa Cruz County; Mr. Jonathan Kahn, Santa Clara Superior Court; and, Ms. Johanna Thai Van Dat, Santa Clara Superior Court.

The Subcommittee also met with Ms. Carlena Tapella, who has extensive experience in conservatorships. Ms. Tapella described various types of conservatorships and explained that limited conservatorships are sought by parents of children with developmental disabilities, when their children reach majority age, and petitions for these types of conservatorships are generally not contested. Ms. Tapella opined that it would be beneficial to allow paraprofessionals to assist otherwise self-represented parties with uncontested limited conservatorships, including allowing them to provide representation at court hearings. Ms. Tapella explained that there was less of a need for paraprofessional assistance for general conservatorships because petitions are routinely granted for payment of attorneys' fees from the estate of the conservatee. Finally, the Subcommittee met with Mr. Robert Colyar, former probate attorney for the Santa Clara Superior Court, who suggested that representation by a paraprofessional with the appropriate education and training would be beneficial to parties in

uncontested guardianship and conservatorship proceedings. Based on this information, the Subcommittee makes the following representation:

### **Conservatorship and Guardianship**

Paraprofessionals are authorized to assist parties in uncontested conservatorship and guardianship cases, with the following exception:

- Guardianships established in dependency court for parties entitled to court-appointed counsel.

### **In-Court Representation**

The Subcommittee did not reach a consensus on a recommendation regarding in-court representation in conservatorship and guardianship cases.

Ms. Bashan, Mr. Hamilton, and Ms. Soroosh recommend the following deviation from the CPPWG default position regarding in-court representation:

- Paraprofessionals are authorized to sit at counsel table to support and advise their client, and may answer direct procedural questions from the judge.

Ms. Bashan, Mr. Hamilton, and Ms. Soroosh provided the following reasons for their recommendation:

- Litigation of these matters crosses over into work that should be reserved for attorneys; allowing paraprofessionals to litigate these matters might lead to the failure of the paraprofessional program.

## **PROPOSED RESOLUTIONS**

### **FAMILY LAW**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide representation in all family law matters, with the following exceptions:

- Nullity matters:
  - Petitions based on incest, unsound mind, fraud, force, physical incapacity
  - Putative spouse establishment
  - Division of quasi-marital property
- Petition to establish parental relationship involving FC § 7612(b) or (c)
- Child custody and visitation involving Hague Convention or UCCJEA
- Qualified Domestic Relations Order (QDRO)
- Spousal or domestic partner support in long term marriages, unless included in a marital settlement agreement\*
- Discovery:
  - Depositions

- Expert discovery
- Related motions
- Pre-marital/post-marital agreements
- Marvin/palimony actions
- Contempt actions

\*Alternate resolution may exclude spousal or domestic partner support in long term marriages, including those in a marital settlement agreement.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation, excluding jury trials, in family law matters, with the following exception:

- Hearings on emergency custody or visitation requests when a judge has granted temporary emergency orders. At such hearings, paraprofessionals are authorized to sit at counsel table to support and advise their client, and may answer direct procedural questions from the judge.

#### **VIOLENCE PREVENTION**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide representation in all violence prevention matters.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation in violence prevention matters, excluding jury trials, with the following exception:

- If expert witness testimony will be introduced, paraprofessionals are prohibited from introducing or cross-examining expert witnesses, unless the client provides informed consent.

OR

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation, excluding jury trials, with the following exceptions:

- Domestic violence hearings involving children.
- If expert witness testimony will be introduced, paraprofessionals are prohibited from introducing or cross-examining expert witnesses, unless the client provides informed consent.

## **ADOPTION**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide representation in uncontested adoptions, with the following exception:

- Adoptions arising from dependency petitions.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation in uncontested adoption matters, except for those arising from dependency petitions.

## **CHILD WELFARE**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist parties not entitled to court-appointed counsel in juvenile dependency cases.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation for parties not entitled to court-appointed counsel in juvenile dependency cases.

## **OR**

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals not be authorized to represent parties in court in juvenile dependency cases, but are authorized to sit at counsel table to support and advise their clients, and may answer direct procedural questions from the judge.

## **CONSERVATORSHIP AND GUARDIANSHIP**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist parties in uncontested conservatorship and guardianship cases, with the following exception:

- Guardianships established in dependency court for parties entitled to court-appointed counsel.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide full in-court representation for clients in uncontested conservatorship and guardianship cases.

**OR**

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist clients in uncontested conservatorship and guardianship cases by sitting at counsel table, and providing support and guidance, and responding to direct questions from the judge, but may not advocate on behalf of their clients.



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: February 26, 2021

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, Fariba Soroosh, and Judge Monica Wiley

Subject: Topics and Tasks for Family Law Practice Area

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program, and the specific tasks that will be allowed for licensees in each practice area.

### DISCUSSION

At its July 13 meeting, five members of the CPPWG volunteered to serve on a Family Law Subcommittee tasked with studying this practice area with the goal of generating recommendations regarding inclusion or exclusion of specific Family Law subtopics for consideration by the full body at its next meeting. The Family Law Subcommittee provided the CPPWG with updates on its deliberations at its August 25 meeting, and presented its preliminary recommendations at the December 17 meeting. At that meeting, members of the CPPWG provided feedback regarding the inclusion and exclusion of several tasks and as to whether there should be an income or estate value limit for paraprofessional representation. The CPPWG also asked the Subcommittee to make a recommendation regarding whether conservatorships and guardianships should be included in the paraprofessional program. Since

that time, the Subcommittee has met, and has developed recommendations regarding subtopics and tasks; the consideration of conservatorships and guardianships; and in-court support/representation.

### **Family Law Subtopics and Tasks**

At the December 17, 2020, CPPWG meeting, the Subcommittee presented its preliminary recommendations regarding subtopics and tasks for inclusion/exclusion in a paraprofessional program. The Subcommittee solicited and received input from CPPWG members on several topics. Based on that input and further discussion, recommendations regarding subtopics and tasks for family law, as well as educational/training requirements for this area, are included in Attachment A.

### **Violence Prevention Subtopics and Tasks**

While members of the Subcommittee are familiar with domestic violence restraining orders, they sought input from subject matter experts (SMEs) regarding the inclusion of other types of violence prevention restraining orders. Staff consulted with Judy Hitchcock, Senior Staff Attorney with Legal Assistance to the Elderly, regarding elder abuse restraining orders, and Ruth Silver-Taube, who teaches the Employment Law Clinic at Santa Clara University, regarding workplace violence restraining orders. Staff reported to the Subcommittee that the SMEs consulted agreed that paraprofessional assistance would be beneficial to clients pursuing and/or responding to all types of restraining orders; the SMEs also made recommendations regarding the training that should be required for such representation. The Subcommittee recommends the inclusion of civil harassment and gun violence restraining orders accordingly. The Subcommittee recommends inclusion of violence prevention, comprising civil harassment, domestic violence, elder abuse, gun violence, and workplace violence restraining orders, in the family law practice area. Recommendations regarding these subtopics and tasks, as well as educational/training requirements for this area, are included in Attachment A.

### **Adoption**

The Subcommittee reviewed information provided by Subcommittee member Elizabeth Olvera regarding the tasks involved in uncontested stepparent adoption. They also considered information that staff obtained in a conversation with Robert Walmsley, a member of the Academy of California Adoption Lawyers, regarding training requirements for paraprofessionals authorized to provide representation in these cases. The Subcommittee recommends inclusion of uncontested stepparent adoptions for the paraprofessional program, as reflected in Attachment A.

### **Child Welfare**

The Subcommittee considered information provided by Subcommittee member Dana McRae, based on her conversation with Ruby Marquez, who works for Santa Cruz County Counsel representing the county child welfare agency in juvenile dependency cases. Ms. Marquez believes it would be beneficial for parents to have assistance in child welfare investigations prior to dependency filing, as well as after a dependency case has been terminated. Based on

this information, the Subcommittee recommends inclusion of representation in dependency investigations pre-filing, as well as post-termination, as reflected in Attachment A.

### **Conservatorship and Guardianship**

The Subcommittee has undertaken consideration of conservatorship and guardianship subtopics and tasks for inclusion/exclusion in a paraprofessional program. While the CPPWG does not include members with in-depth knowledge on this topic, the Subcommittee has begun discussions with SMEs, who have agreed to provide recommendations in this area. The Subcommittee intends to bring its recommendations to the CPPWG at the April 19 meeting.

### **In-Court Support/Representation**

The Subcommittee is aware that the topic of in-court representation will be the subject of a facilitated discussion at the CPPWG meeting on February 26. Nonetheless, members of the Subcommittee believe that this topic is integral to the recommendations in family law and violence prevention matters included as attachments to this memo. The insights of Subcommittee members were especially helpful in our discussions.

Ms. Soroosh, who directs the Self-Help Center (SHC) at the Santa Clara Superior Court, noted that, while staff at the SHC are able to provide extensive guidance in completing and filing forms in family law cases, they are precluded from attending hearings with litigants to provide guidance and support. Even when litigants have had excellent assistance in completing and filing forms, the actual court appearance can be stressful and challenging. Litigants are often retraumatized by their experiences and are unfamiliar with the court setting. They may become intimidated or flustered in this unfamiliar setting, causing them to be disorganized and forget important information that they would like to convey to the court. Judge Wiley, who presides over family law cases, agreed. Judge Wiley suggested that it would be helpful to the court to have a trained support person who could provide guidance to self-represented litigants, and who could answer questions from the court at the hearing.

Stephen Hamilton, who is a certified family law specialist, agreed that a trained support person would be an asset in the courtroom. He strongly believes that, while a paraprofessional should be allowed to sit at counsel table to guide and prompt their client, they should be prohibited from speaking in court, even to answer direct questions from the bench. Mr. Hamilton asserted that answering questions as even those that might be perceived as procedural may involve advocacy. Mr. Hamilton believes it is essential to maintain a distinction between paraprofessionals and lawyers; in-court representation is key to this distinction. Sharon Bashan agreed with Mr. Hamilton that paraprofessionals should be allowed to sit at counsel table, but should be prohibited from speaking in court.

Ms. Elizabeth Olvera, who is a certified Legal Document Assistant, disagreed, asserting that a trained paraprofessional could competently assist their client by providing information to the court, particularly in response to direct questions from the bench. Ms. Olvera suggested that a distinction could be made between those with a JD degree and others, allowing

paraprofessionals with a JD to speak in court. Greg Fortescue, the Supreme Court's liaison to the CPPWG, noted that if paraprofessionals were to be precluded from answering questions directed to them from the bench, it would be necessary to impose a restriction on judges, precluding them from directing such questions to paraprofessionals.

There was a general agreement, but not unanimous consensus, from the Subcommittee that paraprofessionals should be allowed to provide in-court support, but not representation. In this role, paraprofessionals would be allowed to sit at counsel table, and advise and prompt clients, but not advocate for their clients or speak in court. There was a minority view that paraprofessionals should be allowed to respond to questions from the court.

**Limit on Income and/or Estate Value**

The Subcommittee considered whether a cap on either income or estate value should be imposed for paraprofessional representation in family law cases. The Subcommittee agreed that income and estate value do not necessarily correlate with case complexity and therefore does not recommend such a limit.

Family Law Subcommittee  
Subtopic and Tasks Recommendations

ATTACHMENT A

Family Law

Task	Recommendation
Dissolution/Domestic Partnerships, including dissolution, legal separation, and nullity (annulment) <ol style="list-style-type: none"> <li>1. Marital status, including status-only judgments<sup>i</sup></li> <li>2. Annulment based on bigamy, age of spouse/registrant, prior existing marriage/DP<sup>ii</sup></li> <li>3. Annulment based on incest, unsound mind, fraud, force, physical incapacity</li> </ol>	Included Included Excluded <sup>iii</sup>
Paternity (including paternity issues within dissolution, legal separation, domestic partnerships, and DCSS child support matters) <ol style="list-style-type: none"> <li>1. Complaint to establish parental relationship not involving FC 7612(b) or (c)</li> <li>2. Complaint to establish parental relationship involving FC 7612(b) or (c)</li> </ol>	Included Excluded
Summary Dissolutions	Included
Petitions for Custody and Support	Included
Child custody and visitation (including third-party joinder and intervention) except in any action where any of the following issues or claims are raised: <ol style="list-style-type: none"> <li>1. Hague Convention on International Child Abduction</li> <li>2. International or interstate custody disputes under UCCJEA</li> <li>3. Grandparent visitation (independent of family law action)</li> </ol>	Included Excluded Excluded Included
Child support <sup>iv</sup>	Included
Spousal or domestic partner support <ol style="list-style-type: none"> <li>1. Temporary</li> <li>2. Permanent (litigated/contest)/FC 4320</li> <li>3. Spousal support waivers, buyouts or nonmodifiable step downs               <ol style="list-style-type: none"> <li>a. Short term marriage [FC 4336(b)]</li> <li>b. Long term marriage</li> </ol> </li> </ol>	Included Included Included Excluded
Separate property/community property/quasi community property <sup>v</sup> <ol style="list-style-type: none"> <li>1. Joinder of pension/retirement/employee benefit plans</li> <li>2. Declaration of disclosures</li> <li>3. Referrals to experts for appraisals and valuations</li> <li>4. Post division transfer documents</li> <li>5. QDRO (referrals only)</li> </ol>	Included Included Included Included Excluded
Discovery <ol style="list-style-type: none"> <li>1. Written discovery (form interrogatories v. other)</li> <li>2. Depositions</li> <li>3. Expert discovery</li> <li>4. Subpoenas: deposition and hearing/trial</li> <li>5. Motions to compel/motions to quash not related to depositions</li> <li>6. Motions to compel/quash related to depositions</li> </ol>	Included Excluded Excluded Included Included Excluded
Quasi marital property (nullity)	Excluded

<b>Task</b>	<b>Recommendation</b>
Attorney fees, including expert and paraprofessional fees	Included
Restoration of former name	Included
Venue and jurisdiction disputes not otherwise addressed herein	Included
Marital settlement agreements [except for any issues which are within excluded areas of practice as set forth above] 1. MSA must state that it was prepared by a paraprofessional <sup>vi</sup>	Included
Post judgment/permanent order modifications [except UCCJEA/Hague]	Included
Registration of foreign judgments	Included
Premarital/Post-marital agreements (not including MSAs)	Excluded
Putative spouse claims arising from nullity action, including all issues within such a claim (e.g. quasi marital property, attorney fees, spousal support)	Excluded
Marvin/Palimony actions	Excluded
Enforcement of family law orders and judgments 1. Appointment of elisor 2. RFO/Motion for relief in issuing court to assist in enforcement 3. Contempt 4. Seek work orders support 5. Debtor's exam 6. Wage assignment 7. Writ of execution 8. Filing of lien/lis pendens 9. Response to DCSS enforcement action (e.g., license suspension, bank levy) All enforcement mechanisms not specifically identified above are excluded	Included Included Excluded Included Included Included Included Included Included
Alternative Dispute Resolution (except for areas excluded above) 1. Settlement discussions and negotiations 2. Day of court meet and confer	Included Included

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- i. If instruction includes detailed, in depth education regarding FC 2337, FL-315, FL-347, FL-318-Info, joinder and pension issues
  - ii. If instruction includes education and instruction re: bigamy v. prior existing marriage/DP and FC 2200-2210 and 2310-2312
  - iii. Education includes issue spotting, clear definition of excluded item, specific education regarding excluded issues and referral process (necessity, regulation)
  - iv. Instruction to include training on support calculators, wage assignments and role of DCSS

- v. This scope of practice presumes detailed and substantive instruction on forms of discovery, responding to discovery, objections and law and motion procedure related to discovery
- <sup>vi</sup> Companion legislation to be developed, stating that an MSA prepared by a paraprofessional that exceeds the scope of their duties is not automatically void or voidable

**Adoption**

<b>Task</b>	<b>Recommendation</b>
Adoptions not arising from a dependency petition 1. Uncontested stepparent adoption <ul style="list-style-type: none"> <li>o Training on providing notice to other parent required; incorrect notice may trigger contest of adoption, or can negatively affect prospect of adoption</li> </ul>	Included

**Child Welfare**

<b>Task</b>	<b>Recommendation</b>
Child welfare and juvenile dependency cases 1. Investigation prior to filing of dependency action 2. JV-180: modification of dependency orders after case is closed	Included Included

**Violence Prevention**

<b>Task</b>	<b>Recommendation</b>
Domestic Violence, Civil Harassment, Gun Violence, Workplace Violence*	Included
Representation of petitioner 1. Filing restraining order request – Temporary Restraining Order (TRO) 2. Service of TRO on respondent and filing proof of service 3. Support in mediation, where applicable 4. Support in court 5. Preparation of Restraining Order After Hearing (ROAH) 6. Service of ROAH on respondent and filing proof of service 7. Distribution of RO to law enforcement, if applicable	Included Included Included Included Included Included Included
Representation of respondent 1. Filing response to TRO 2. Service of response on petitioner and filing proof of service 3. Support in court	Included Included Included

\* Educational/training requirements for violence prevention:

- Experience in violence prevention clinic
- Familiarity with types of restraining orders and remedies available under each type
- Availability of resources (e.g., domestic violence assistance, Adult Protective Services, mediation, etc.)



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: April 19, 2021

To: California Paraprofessional Program Working Group

From: Fariba Soroosh, Chair, Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, and Judge Monica F. Wiley

Subject: Topics and Tasks for Family Law Practice Area

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program, and the specific tasks that will be allowed for licensees in each practice area.

### DISCUSSION

At its July 13 meeting, five members of the CPPWG volunteered to serve on a Family Law Subcommittee tasked with generating recommendations regarding inclusion or exclusion of specific Family Law subtopics for consideration by the full body at its next meeting. The Family Law Subcommittee provided the CPPWG with updates on its deliberations at its August 25 meeting, and presented its preliminary recommendations at the December 17 meeting. At that meeting, members of the CPPWG provided feedback regarding the inclusion and exclusion of several tasks and as to whether there should be an income or estate value limit for paraprofessional representation. The CPPWG also asked the Subcommittee to make a recommendation regarding whether conservatorships and guardianships should be included in the paraprofessional program.

The Family Law Subcommittee posted initial recommendations in advance of the March 26, 2021, CPPWG meeting. Due to time constraints, those recommendations were not considered at that meeting. Since that time, the Subcommittee has met, and has developed additional recommendations regarding subtopics and tasks, including revised recommendations regarding child welfare (juvenile dependency) cases. The Family Law Subcommittee's March 26 memo is provided as Attachment A.

#### **FAMILY LAW SUBTOPICS AND TASKS**

At the December 17, 2020, CPPWG meeting, the Subcommittee presented its preliminary recommendations regarding subtopics and tasks for inclusion/exclusion in a paraprofessional program. The Subcommittee also solicited and received input from CPPWG members on several topics. Based on that input and further discussion, the recommendations regarding subtopics and tasks for family law, as well as educational/training requirements for this area, are included in Attachment B.

#### **VIOLENCE PREVENTION SUBTOPICS AND TASKS**

While members of the Subcommittee are familiar with domestic violence restraining orders, they sought input from subject matter experts (SMEs) regarding the inclusion of other types of violence prevention restraining orders. Staff consulted with Judy Hitchcock, Senior Staff Attorney with Legal Assistance to the Elderly, regarding elder abuse restraining orders, and Ruth Silver-Taube, who teaches the Employment Law Clinic at Santa Clara University, regarding workplace violence restraining orders. Staff reported to the Subcommittee that the SMEs consulted agreed that paraprofessional assistance would be beneficial to clients pursuing and/or responding to all types of restraining orders; the SMEs also made recommendations regarding the training that should be required for such representation. The Subcommittee recommends the inclusion of civil harassment and gun violence restraining orders accordingly. The Subcommittee recommends inclusion of violence prevention, comprising civil harassment, domestic violence, elder abuse, gun violence, and workplace violence restraining orders, in the family law practice area. Recommendations regarding these subtopics and tasks, as well as educational/training requirements for this area, are included in Attachment B.

#### **ADOPTION**

The Subcommittee reviewed information provided by Subcommittee member Elizabeth Olvera regarding the tasks involved in uncontested stepparent adoptions. They also considered information that staff obtained in a conversation with Robert Walmsley, a member of the Academy of California Adoption Lawyers, regarding training requirements for paraprofessionals authorized to provide representation in these cases. The Subcommittee recommends inclusion of uncontested stepparent adoptions for the paraprofessional program, as reflected in Attachment B.

#### **CHILD WELFARE**

Prior to the February 26 meeting, the Subcommittee considered information provided by Subcommittee member Dana McRae, based on her conversation with Ruby Marquez, who works for Santa Cruz County Counsel representing the county child welfare agency in juvenile dependency cases. Ms. Marquez believed it would be beneficial for parents to have assistance in child welfare investigations prior to dependency filing, as well as after a dependency case has been terminated. Based on this information, the Subcommittee initially recommended inclusion of representation in dependency investigations pre-filing, as well as post-termination.

At its April 6, 2021, meeting, the Family Law Subcommittee was joined by Mary Feldman, a certified specialist in juvenile law, who represents parties in child welfare cases. In addition to pre-filing and post-termination assistance, Ms. Feldman presented information about assistance that could be provided by paraprofessionals to parties who are not entitled to court-appointed counsel in juvenile dependency cases. Examples included grandparents and siblings seeking visitation, and de facto parent requests. Ms. Feldman explained that much of this work is forms-based and opined that self-represented litigants would benefit by having educated, trained, and experienced paraprofessionals to assist with completing and filing forms as well as representing them in court. Based on the information provided by Ms. Feldman, a majority of members of the Subcommittee agreed to the following recommendations:

- Paraprofessionals are authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition, including but not limited to:
  - Requesting documents from social services agency
  - Providing legal advice and information regarding procedures and parents' rights at the pre-filing stage
  - Gathering documents to be presented to social services agency
  - Being present and participating in social worker interviews
- Paraprofessionals are authorized to assist parties not entitled to court-appointed counsel in child welfare cases, by advising clients regarding which forms to use, and completing and filing forms. Paraprofessionals are also authorized to provide in-court representation for parties not entitled to court-appointed counsel.

Two members of the Family Law Subcommittee did not agree that paraprofessionals should be allowed to represent parties in court. Ms. Bashan disagreed with this recommendation for the following reasons: first, given the extremely serious nature of juvenile dependency proceedings where children's fates are at stake, Ms. Bashan's opinion was that in-court representation far exceeds the appropriate tasks for paraprofessionals; second, this Subcommittee heard from several subject matter experts who stated that even experienced attorneys who are not dependency attorneys are often ill-equipped to handle in-court dependency proceedings; lastly, the training and education needed to create competence would far exceed the current experiential training and education targets that this working group has set out, given that we are balancing competence with not creating onerous requirements—as we have learned from Washington State's model. Mr. Hamilton also disagreed with this recommendation based on

general concerns regarding paraprofessionals providing in-court representation, as well as those concerns identified by Ms. Bashan.

### **CONSERVATORSHIP AND GUARDIANSHIP**

The Subcommittee has undertaken consideration of conservatorship and guardianship subtopics and tasks for inclusion/exclusion in a paraprofessional program. Staff worked with the following subject matter experts to develop a task list for these topics: Ms. Ylianna Perez-Guerrero, Public Counsel; Ms. Bertha Sanchez Hayden, Bet Tzedek; Tamyra Rice, Santa Cruz County Counsel; Mr. Jonathan Kahn, Santa Clara Superior Court; and, Ms. Johanna Thai Van Dat, Santa Clara Superior Court.

The Subcommittee also met with Ms. Carlena Tapella, who has extensive experience in conservatorships. Ms. Tapella described various types of conservatorships and explained that limited conservatorships are sought by parents of children with developmental disabilities, when their children reach majority age, and petitions for these types of conservatorships are generally not contested. Ms. Tapella opined that it would be beneficial to allow paraprofessionals to assist otherwise self-represented parties with uncontested limited conservatorships, including allowing them to provide representation at court hearings. Ms. Tapella explained that there was less of a need for paraprofessional assistance for general conservatorships because petitions are routinely granted for payment of attorneys' fees from the estate of the conservatee.

Based on the information from Ms. Tapella, the Subcommittee recommended that paraprofessionals be allowed to represent parties in uncontested limited conservatorships cases, including representation at court hearings.

The subcommittee did not have the opportunity to discuss recommendations regarding guardianship cases; this recommendation will be provided at a future CPPWG meeting.

### **IN-COURT REPRESENTATION IN FAMILY LAW, VIOLENCE PREVENTION, AND ADOPTION CASES**

In our February 26, 2021, memo to the CPPWG, the Family Law Subcommittee included a discussion of in-court representation and provided the various points of view of our members. At its March 26, 2021, meeting, the CPPWG adopted a default position allowing paraprofessionals to provide full in-court representation, except for jury trials, in the practice areas for which they are licensed. The CPPWG's resolution provided that each practice area subcommittee may generate an alternative in-court representation recommendation. The Subcommittee has not had the opportunity to discuss its position on this subject. If the Subcommittee determines that an alternative recommendation is warranted, a recommendation and a rationale will be provided at future CPPWG meeting.

### **LIMIT ON INCOME AND/OR ESTATE VALUE**

The Subcommittee considered whether a cap on either income or estate value should be imposed for paraprofessional representation in family law cases. The Subcommittee agreed

that income and estate value do not necessarily correlate with case complexity and therefore does not recommend such a limit.

## **PROPOSED RESOLUTIONS**

### **FAMILY LAW, VIOLENCE PREVENTION, AND ADOPTION**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that Paraprofessionals may assist clients with the family law, violence prevention, and adoption tasks included in Attachment B.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends adoption of the educational and training requirements for these topics included in Attachment B.

### **CHILD WELFARE**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals are authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition, including but not limited to:

1. Requesting documents from social services agency
2. Providing legal advice and information regarding procedures and parents' rights at the pre-filing stage
3. Gathering documents to be presented to social services agency
4. Being present and participating in social worker interviews

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals are authorized to assist parties not entitled to court-appointed counsel in juvenile dependency cases, by advising them regarding which forms to use, and completing and filing forms.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide in-court representation for parties not entitled to court-appointed counsel in juvenile dependency cases.

**OR**

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist clients not entitled to court-appointed counsel in juvenile dependency cases by sitting at counsel table, and providing support and guidance, and responding to direct questions from the judge, but may not advocate on behalf of their clients.

**CONSERVATORSHIP**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals are authorized to assist parties in limited conservatorship cases, by advising them regarding which forms to use, and completing and filing forms.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to provide in-court representation for clients in limited conservatorship cases.

**OR**

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be authorized to assist clients in limited conservatorship cases by sitting at counsel table, and providing support and guidance, and responding to direct questions from the judge, but may not advocate on behalf of their clients.



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: February 26, 2021

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Stephen Hamilton, Dana McRae, Elizabeth Olvera, Fariba Soroosh, and Judge Monica Wiley

Subject: Topics and Tasks for Family Law Practice Area

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program, and the specific tasks that will be allowed for licensees in each practice area.

### DISCUSSION

At its July 13 meeting, five members of the CPPWG volunteered to serve on a Family Law Subcommittee tasked with studying this practice area with the goal of generating recommendations regarding inclusion or exclusion of specific Family Law subtopics for consideration by the full body at its next meeting. The Family Law Subcommittee provided the CPPWG with updates on its deliberations at its August 25 meeting, and presented its preliminary recommendations at the December 17 meeting. At that meeting, members of the CPPWG provided feedback regarding the inclusion and exclusion of several tasks and as to whether there should be an income or estate value limit for paraprofessional representation. The CPPWG also asked the Subcommittee to make a recommendation regarding whether conservatorships and guardianships should be included in the paraprofessional program. Since

that time, the Subcommittee has met, and has developed recommendations regarding subtopics and tasks; the consideration of conservatorships and guardianships; and in-court support/representation.

### **Family Law Subtopics and Tasks**

At the December 17, 2020, CPPWG meeting, the Subcommittee presented its preliminary recommendations regarding subtopics and tasks for inclusion/exclusion in a paraprofessional program. The Subcommittee solicited and received input from CPPWG members on several topics. Based on that input and further discussion, recommendations regarding subtopics and tasks for family law, as well as educational/training requirements for this area, are included in Attachment A.

### **Violence Prevention Subtopics and Tasks**

While members of the Subcommittee are familiar with domestic violence restraining orders, they sought input from subject matter experts (SMEs) regarding the inclusion of other types of violence prevention restraining orders. Staff consulted with Judy Hitchcock, Senior Staff Attorney with Legal Assistance to the Elderly, regarding elder abuse restraining orders, and Ruth Silver-Taube, who teaches the Employment Law Clinic at Santa Clara University, regarding workplace violence restraining orders. Staff reported to the Subcommittee that the SMEs consulted agreed that paraprofessional assistance would be beneficial to clients pursuing and/or responding to all types of restraining orders; the SMEs also made recommendations regarding the training that should be required for such representation. The Subcommittee recommends the inclusion of civil harassment and gun violence restraining orders accordingly. The Subcommittee recommends inclusion of violence prevention, comprising civil harassment, domestic violence, elder abuse, gun violence, and workplace violence restraining orders, in the family law practice area. Recommendations regarding these subtopics and tasks, as well as educational/training requirements for this area, are included in Attachment A.

### **Adoption**

The Subcommittee reviewed information provided by Subcommittee member Elizabeth Olvera regarding the tasks involved in uncontested stepparent adoption. They also considered information that staff obtained in a conversation with Robert Walmsley, a member of the Academy of California Adoption Lawyers, regarding training requirements for paraprofessionals authorized to provide representation in these cases. The Subcommittee recommends inclusion of uncontested stepparent adoptions for the paraprofessional program, as reflected in Attachment A.

### **Child Welfare**

The Subcommittee considered information provided by Subcommittee member Dana McRae, based on her conversation with Ruby Marquez, who works for Santa Cruz County Counsel representing the county child welfare agency in juvenile dependency cases. Ms. Marquez believes it would be beneficial for parents to have assistance in child welfare investigations prior to dependency filing, as well as after a dependency case has been terminated. Based on

this information, the Subcommittee recommends inclusion of representation in dependency investigations pre-filing, as well as post-termination, as reflected in Attachment A.

### **Conservatorship and Guardianship**

The Subcommittee has undertaken consideration of conservatorship and guardianship subtopics and tasks for inclusion/exclusion in a paraprofessional program. While the CPPWG does not include members with in-depth knowledge on this topic, the Subcommittee has begun discussions with SMEs, who have agreed to provide recommendations in this area. The Subcommittee intends to bring its recommendations to the CPPWG at the April 19 meeting.

### **In-Court Support/Representation**

The Subcommittee is aware that the topic of in-court representation will be the subject of a facilitated discussion at the CPPWG meeting on February 26. Nonetheless, members of the Subcommittee believe that this topic is integral to the recommendations in family law and violence prevention matters included as attachments to this memo. The insights of Subcommittee members were especially helpful in our discussions.

Ms. Soroosh, who directs the Self-Help Center (SHC) at the Santa Clara Superior Court, noted that, while staff at the SHC are able to provide extensive guidance in completing and filing forms in family law cases, they are precluded from attending hearings with litigants to provide guidance and support. Even when litigants have had excellent assistance in completing and filing forms, the actual court appearance can be stressful and challenging. Litigants are often retraumatized by their experiences and are unfamiliar with the court setting. They may become intimidated or flustered in this unfamiliar setting, causing them to be disorganized and forget important information that they would like to convey to the court. Judge Wiley, who presides over family law cases, agreed. Judge Wiley suggested that it would be helpful to the court to have a trained support person who could provide guidance to self-represented litigants, and who could answer questions from the court at the hearing.

Stephen Hamilton, who is a certified family law specialist, agreed that a trained support person would be an asset in the courtroom. He strongly believes that, while a paraprofessional should be allowed to sit at counsel table to guide and prompt their client, they should be prohibited from speaking in court, even to answer direct questions from the bench. Mr. Hamilton asserted that answering questions as even those that might be perceived as procedural may involve advocacy. Mr. Hamilton believes it is essential to maintain a distinction between paraprofessionals and lawyers; in-court representation is key to this distinction. Sharon Bashan agreed with Mr. Hamilton that paraprofessionals should be allowed to sit at counsel table, but should be prohibited from speaking in court.

Ms. Elizabeth Olvera, who is a certified Legal Document Assistant, disagreed, asserting that a trained paraprofessional could competently assist their client by providing information to the court, particularly in response to direct questions from the bench. Ms. Olvera suggested that a distinction could be made between those with a JD degree and others, allowing

paraprofessionals with a JD to speak in court. Greg Fortescue, the Supreme Court's liaison to the CPPWG, noted that if paraprofessionals were to be precluded from answering questions directed to them from the bench, it would be necessary to impose a restriction on judges, precluding them from directing such questions to paraprofessionals.

There was a general agreement, but not unanimous consensus, from the Subcommittee that paraprofessionals should be allowed to provide in-court support, but not representation. In this role, paraprofessionals would be allowed to sit at counsel table, and advise and prompt clients, but not advocate for their clients or speak in court. There was a minority view that paraprofessionals should be allowed to respond to questions from the court.

**Limit on Income and/or Estate Value**

The Subcommittee considered whether a cap on either income or estate value should be imposed for paraprofessional representation in family law cases. The Subcommittee agreed that income and estate value do not necessarily correlate with case complexity and therefore does not recommend such a limit.

Family Law Subcommittee  
Subtopic and Tasks Recommendations

ATTACHMENT A

Family Law

Task	Recommendation
Dissolution/Domestic Partnerships, including dissolution, legal separation, and nullity (annulment) <ol style="list-style-type: none"> <li>1. Marital status, including status-only judgments<sup>i</sup></li> <li>2. Annulment based on bigamy, age of spouse/registrant, prior existing marriage/DP<sup>ii</sup></li> <li>3. Annulment based on incest, unsound mind, fraud, force, physical incapacity</li> </ol>	Included Included Excluded <sup>iii</sup>
Paternity (including paternity issues within dissolution, legal separation, domestic partnerships, and DCSS child support matters) <ol style="list-style-type: none"> <li>1. Complaint to establish parental relationship not involving FC 7612(b) or (c)</li> <li>2. Complaint to establish parental relationship involving FC 7612(b) or (c)</li> </ol>	Included Excluded
Summary Dissolutions	Included
Petitions for Custody and Support	Included
Child custody and visitation (including third-party joinder and intervention) except in any action where any of the following issues or claims are raised: <ol style="list-style-type: none"> <li>1. Hague Convention on International Child Abduction</li> <li>2. International or interstate custody disputes under UCCJEA</li> <li>3. Grandparent visitation (independent of family law action)</li> </ol>	Included Excluded Excluded Included
Child support <sup>iv</sup>	Included
Spousal or domestic partner support <ol style="list-style-type: none"> <li>1. Temporary</li> <li>2. Permanent (litigated/contest)/FC 4320</li> <li>3. Spousal support waivers, buyouts or nonmodifiable step downs               <ol style="list-style-type: none"> <li>a. Short term marriage [FC 4336(b)]</li> <li>b. Long term marriage</li> </ol> </li> </ol>	Included Included Included Excluded
Separate property/community property/quasi community property <sup>v</sup> <ol style="list-style-type: none"> <li>1. Joinder of pension/retirement/employee benefit plans</li> <li>2. Declaration of disclosures</li> <li>3. Referrals to experts for appraisals and valuations</li> <li>4. Post division transfer documents</li> <li>5. QDRO (referrals only)</li> </ol>	Included Included Included Included Excluded
Discovery <ol style="list-style-type: none"> <li>1. Written discovery (form interrogatories v. other)</li> <li>2. Depositions</li> <li>3. Expert discovery</li> <li>4. Subpoenas: deposition and hearing/trial</li> <li>5. Motions to compel/motions to quash not related to depositions</li> <li>6. Motions to compel/quash related to depositions</li> </ol>	Included Excluded Excluded Included Included Excluded
Quasi marital property (nullity)	Excluded

<b>Task</b>	<b>Recommendation</b>
Attorney fees, including expert and paraprofessional fees	Included
Restoration of former name	Included
Venue and jurisdiction disputes not otherwise addressed herein	Included
Marital settlement agreements [except for any issues which are within excluded areas of practice as set forth above] 1. MSA must state that it was prepared by a paraprofessional <sup>vi</sup>	Included
Post judgment/permanent order modifications [except UCCJEA/Hague]	Included
Registration of foreign judgments	Included
Premarital/Post-marital agreements (not including MSAs)	Excluded
Putative spouse claims arising from nullity action, including all issues within such a claim (e.g. quasi marital property, attorney fees, spousal support)	Excluded
Marvin/Palimony actions	Excluded
Enforcement of family law orders and judgments 1. Appointment of elisor 2. RFO/Motion for relief in issuing court to assist in enforcement 3. Contempt 4. Seek work orders support 5. Debtor's exam 6. Wage assignment 7. Writ of execution 8. Filing of lien/lis pendens 9. Response to DCSS enforcement action (e.g., license suspension, bank levy) All enforcement mechanisms not specifically identified above are excluded	Included Included Excluded Included Included Included Included Included Included
Alternative Dispute Resolution (except for areas excluded above) 1. Settlement discussions and negotiations 2. Day of court meet and confer	Included Included

- 
- i. If instruction includes detailed, in depth education regarding FC 2337, FL-315, FL-347, FL-318-Info, joinder and pension issues
  - ii. If instruction includes education and instruction re: bigamy v. prior existing marriage/DP and FC 2200-2210 and 2310-2312
  - iii. Education includes issue spotting, clear definition of excluded item, specific education regarding excluded issues and referral process (necessity, regulation)
  - iv. Instruction to include training on support calculators, wage assignments and role of DCSS

- v. This scope of practice presumes detailed and substantive instruction on forms of discovery, responding to discovery, objections and law and motion procedure related to discovery
- <sup>vi</sup> Companion legislation to be developed, stating that an MSA prepared by a paraprofessional that exceeds the scope of their duties is not automatically void or voidable

**Adoption**

<b>Task</b>	<b>Recommendation</b>
Adoptions not arising from a dependency petition	Included
1. Uncontested stepparent adoption <ul style="list-style-type: none"> <li>o Training on providing notice to other parent required; incorrect notice may trigger contest of adoption, or can negatively affect prospect of adoption</li> </ul>	

**Child Welfare**

<b>Task</b>	<b>Recommendation</b>
Child welfare and juvenile dependency cases	Included
1. Investigation prior to filing of dependency action	
2. JV-180: modification of dependency orders after case is closed	Included

**Violence Prevention**

<b>Task</b>	<b>Recommendation</b>
Domestic Violence, Civil Harassment, Gun Violence, Workplace Violence*	Included
Representation of petitioner	
1. Filing restraining order request – Temporary Restraining Order (TRO)	Included
2. Service of TRO on respondent and filing proof of service	Included
3. Support in mediation, where applicable	Included
4. Support in court	Included
5. Preparation of Restraining Order After Hearing (ROAH)	Included
6. Service of ROAH on respondent and filing proof of service	Included
7. Distribution of RO to law enforcement, if applicable	Included
Representation of respondent	
1. Filing response to TRO	Included
2. Service of response on petitioner and filing proof of service	Included
3. Support in court	Included

\* Educational/training requirements for violence prevention:

- Experience in violence prevention clinic
- Familiarity with types of restraining orders and remedies available under each type
- Availability of resources (e.g., domestic violence assistance, Adult Protective Services, mediation, etc.)

**Family Law Subcommittee  
Subtopic and Tasks Recommendations**

**ATTACHMENT B**

**Family Law**

Task	Recommendation
Dissolution/Domestic Partnerships, including dissolution, legal separation, and nullity (annulment) <ol style="list-style-type: none"> <li>1. Marital status, including status-only judgments<sup>i</sup></li> <li>2. Annulment based on bigamy, age of spouse/registrant, prior existing marriage/DP<sup>ii</sup></li> <li>3. Annulment based on incest, unsound mind, fraud, force, physical incapacity</li> </ol>	Included Included Excluded <sup>iii</sup>
Paternity (including paternity issues within dissolution, legal separation, domestic partnerships, and DCSS child support matters) <ol style="list-style-type: none"> <li>1. Complaint to establish parental relationship not involving FC 7612(b) or (c)</li> <li>2. Complaint to establish parental relationship involving FC 7612(b) or (c)</li> </ol>	Included Excluded
Summary Dissolutions	Included
Petitions for Custody and Support	Included
Child custody and visitation (including third-party joinder and intervention) except in any action where any of the following issues or claims are raised: <ol style="list-style-type: none"> <li>1. Hague Convention on International Child Abduction</li> <li>2. International or interstate custody disputes under UCCJEA</li> <li>3. Grandparent visitation (independent of family law action)</li> </ol>	Included Excluded Excluded Included
Child support <sup>iv</sup>	Included
Spousal or domestic partner support <ol style="list-style-type: none"> <li>1. Temporary</li> <li>2. Permanent (litigated/contest)/FC 4320</li> <li>3. Spousal support waivers, buyouts or nonmodifiable step downs               <ol style="list-style-type: none"> <li>a. Short term marriage [FC 4336(b)]</li> <li>b. Long term marriage</li> </ol> </li> </ol>	Included Included Included Excluded
Separate property/community property/quasi community property <sup>v</sup> <ol style="list-style-type: none"> <li>1. Joinder of pension/retirement/employee benefit plans</li> <li>2. Declaration of disclosures</li> <li>3. Referrals to experts for appraisals and valuations</li> <li>4. Post division transfer documents</li> <li>5. QDRO (referrals only)</li> </ol>	Included Included Included Included Excluded
Discovery <ol style="list-style-type: none"> <li>1. Written discovery (form interrogatories v. other)</li> <li>2. Depositions</li> <li>3. Expert discovery</li> <li>4. Subpoenas: deposition and hearing/trial</li> <li>5. Motions to compel/motions to quash not related to depositions</li> <li>6. Motions to compel/quash related to depositions</li> </ol>	Included Excluded Excluded Included Included Excluded
Quasi marital property (nullity)	Excluded

<b>Task</b>	<b>Recommendation</b>
Attorney fees, including expert and paraprofessional fees	Included
Restoration of former name	Included
Venue and jurisdiction disputes not otherwise addressed herein	Included
Marital settlement agreements [except for any issues which are within excluded areas of practice as set forth above] 1. MSA must state that it was prepared by a paraprofessional <sup>vi</sup>	Included
Post judgment/permanent order modifications [except UCCJEA/Hague]	Included
Registration of foreign judgments	Included
Premarital/Post-marital agreements (not including MSAs)	Excluded
Putative spouse claims arising from nullity action, including all issues within such a claim (e.g. quasi marital property, attorney fees, spousal support)	Excluded
Marvin/Palimony actions	Excluded
Enforcement of family law orders and judgments 1. Appointment of elisor 2. RFO/Motion for relief in issuing court to assist in enforcement 3. Contempt 4. Seek work orders support 5. Debtor's exam 6. Wage assignment 7. Writ of execution 8. Filing of lien/lis pendens 9. Response to DCSS enforcement action (e.g., license suspension, bank levy) All enforcement mechanisms not specifically identified above are excluded	Included Included Excluded Included Included Included Included Included Included
Alternative Dispute Resolution (except for areas excluded above) 1. Settlement discussions and negotiations 2. Day of court meet and confer	Included Included

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- i. If instruction includes detailed, in depth education regarding FC 2337, FL-315, FL-347, FL-318-Info, joinder and pension issues
  - ii. If instruction includes education and instruction re: bigamy v. prior existing marriage/DP and FC 2200-2210 and 2310-2312
  - iii. Education includes issue spotting, clear definition of excluded item, specific education regarding excluded issues and referral process (necessity, regulation)
  - iv. Instruction to include training on support calculators, wage assignments and role of DCSS

- v. This scope of practice presumes detailed and substantive instruction on forms of discovery, responding to discovery, objections and law and motion procedure related to discovery
- <sup>vi</sup> Companion legislation to be developed, stating that an MSA prepared by a paraprofessional that exceeds the scope of their duties is not automatically void or voidable

**Adoption**

<b>Task</b>	<b>Recommendation</b>
Adoptions not arising from a dependency petition 1. Uncontested stepparent adoption <ul style="list-style-type: none"> <li>o Training on providing notice to other parent required; incorrect notice may trigger contest of adoption, or can negatively affect prospect of adoption</li> </ul>	Included

**Child Welfare**

<b>Task</b>	<b>Recommendation</b>
Paraprofessionals are authorized to assist parents and guardians in child welfare tasks prior to the filing of a juvenile dependency petition, including but not limited to: <ol style="list-style-type: none"> <li>1. Requesting documents from social services agency</li> <li>2. Providing legal advice and information regarding procedures and parents’ rights at the prefiling stage</li> <li>3. Gathering documents to be presented to social services agency</li> <li>4. Being present and participating in social worker interviews</li> </ol>	Included
Paraprofessionals are authorized to assist parties not entitled to court-appointed counsel in juvenile dependency cases, by advising them regarding which forms to use, and completing and filing forms.	Included
Paraprofessionals are authorized to provide in-court representation for parties not entitled to court-appointed counsel.	Split Rec.

**Violence Prevention**

<b>Task</b>	<b>Recommendation</b>
Domestic Violence, Civil Harassment, Gun Violence, Workplace Violence* Representation of petitioner	Included
5. Filing restraining order request—Temporary Restraining Order (TRO)	Included
6. Service of TRO on respondent and filing proof of service	Included
7. Support in mediation, where applicable	Included
8. Support in court	Included
9. Preparation of Restraining Order After Hearing (ROAH)	Included
10. Service of ROAH on respondent and filing proof of service	Included
11. Distribution of RO to law enforcement, if applicable	Included

Representation of respondent	
1. Filing response to TRO	Included
2. Service of response on petitioner and filing proof of service	Included

\* Educational/training requirements for violence prevention:

- Experience in violence prevention clinic
- Familiarity with types of restraining orders and remedies available under each type
- Availability of resources (e.g., domestic violence assistance, Adult Protective Services, mediation, etc.)

### Conservatorship

Task	Recommendation
Uncontested limited conservatorship cases	
1. Selection, completion, and filing of forms	Included
2. In-court representation	Split Rec.

# MEMORANDUM



**To:** Family Law Subcommittee  
California State Bar Paraprofessional Working Group

**From:** Stephen Hamilton *SH*

**Date:** June 24, 2021

**Subject:** Minor's Counsel

Dear Subcommittee Members:

Fariba and I were contacted by Andrew Cain, Directing Attorney of Legal Advocates for Children and Youth in the Bay Area. Fariba and I both know Andrew from the California State Bar/California Lawyers Association Family Law Executive Committee (FLEXCOM). To say Andrew is a rock star in his advocacy and representation of children would be a gross understatement.

Andrew asked us whether it was expected/anticipated whether paraprofessionals could represent minors in family Court. My initial thought was that they could not, since I assumed based on the Family Code and the Rules of Court only attorneys could do so. However a further review of the code and rules undermined my original thought.

The rules governing appointment of minor's counsel are set forth in Family Code Section 3150 and California Rules of Court 5.240-5.242. Nowhere in those sections is the term "attorney" used. Instead, they use the term "counsel." Rule 5.242 states that minor's counsel must be an active member of the State Bar. However since the State Bar will be licensing paraprofessionals there is an ambiguity as to whether paraprofessionals will be active members of the State Bar.

Family Law Subcommittee  
June 24, 2021  
Page 2

It is my position that paraprofessionals should not be appointed as minor's counsel. My position is based in part on the fact that this is not an access to justice issue. Most court's will appoint counsel at reduced rates (\$85 in San Luis Obispo County) and pay counsel from the Court's funds subject to reimbursement by the parents. Only in cases where the parents have the means can minor's counsel seek a higher rate of compensation.

At our next meeting, I am therefore proposing the following amendment to our previous adoption of the scope of services paraprofessionals may offer in family law matters:

Resolved, that paraprofessionals may not be appointed as minor's counsel as authorized by Family Code Section 3150 and California Rules of Court 5.240-5.242.

This resolution is consistent with the input Fariba and I received from Mr. Cain.

Regards,

Stephen D. Hamilton, Esq.  
Certified Family Law Specialist  
Fellow, American Academy of Matrimonial Lawyers  
154 West Branch Street  
Arroyo Grande, CA 93420  
Telephone: (805) 473-6520  
Facsimile: (805) 473-6521



Date: July 26, 2021

To: California Paraprofessional Program Working Group

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

Subject: Revised Housing Subcommittee Recommendations for Paraprofessional Program

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## EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program, and the specific tasks that will be allowed for licensees in each practice area.

## BACKGROUND

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

## DISCUSSION

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

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

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

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

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

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

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

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

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

## PROPOSED RESOLUTIONS

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

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

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

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

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

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

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

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

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



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: July 26, 2021

To: California Paraprofessional Program Working Group

From: California Paraprofessional Working Group Staff

Subject: Proposed Rules of Professional Conduct for Paraprofessional Licensees

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The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services \(ATILS\)](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, rules of professional conduct for paraprofessional licensees.

A preliminary draft of the Paraprofessional Rules of Professional Conduct (Rules) was provided for discussion at the June 25, 2021, CPPWG meeting. The Regulation Subcommittee has continued to meet since that time, and has developed a full set of Rules; the CPPWG will vote on the Rules at the July 26 meeting.

**Attachment A** to this memorandum provides a summary of the proposed Rules, including a comparison of each proposed paraprofessional rule with the existing attorney rule, and a recommendation regarding whether a separate or group vote should be taken for that rule. Rules considered noncontroversial have been designated for a group vote, and will be considered in one resolution. Rules that are considered controversial, or for which there was not consensus among members of the Regulation Subcommittee, are recommended for individual votes. Members of the CPPWG may request that any rule designated for group vote be considered for individual vote.

**Attachment B** provides a full set of the proposed Rules. Each rule is first presented as a "clean" version that reflects the proposed rule, followed by a "redline" version that reflects changes from the existing attorney rule.

**Attachment C** provides redline versions of each of the rules designated in Attachment A for individual vote.

PROPOSED RULE	Same as Attorney Standard or Not the Same (representative issue(s))	Plan for July 26th Full Working Group Meeting
<b>1.0</b> Purpose and Function of the Rules of Professional Conduct for [Licensed Paraprofessionals]	Same	GROUP VOTE
<b>1.0.1</b> Terminology	Not the Same (added definition of “licensed paraprofessional”)	GROUP VOTE
<b>1.1</b> Competence	Not the Same (no exception for giving advice or assistance in an emergency)	GROUP VOTE
<b>1.2</b> Scope of Representation and Allocation of Authority	Not the Same (last provision of 1.2(a) deleted because PP’s will not be practicing criminal law)	GROUP VOTE
<b>1.2.1</b> Advising or Assisting the Violation of Law	Same	GROUP VOTE
<b>1.3</b> Diligence	Same	GROUP VOTE
<b>1.4</b> Communication with Clients	Same	GROUP VOTE
<b>1.4.1</b> Communication of Settlement Offers	Not the Same (removes provisions related to criminal law, as well as organization & class action representation because PP’s will not be practicing in these areas)	GROUP VOTE
<b>1.4.2</b> Notice to Consumers Prior to Consultation with a Prospective Client	Not the Same (Paraprofessionals will be required to give notice they are not an attorney along with other required standardized disclosures prior to consultation)	INDIVIDUAL VOTE
<b>1.4.3</b> Informed Written Consent to Representation	Not the Same (Paraprofessionals will be required to obtain the prospective client’s informed written consent after consultation, tailored to the facts of the case, but prior to representation)	INDIVIDUAL VOTE
<b>1.5</b> Fees for Legal Services	Not the Same (new factor (14) added regarding fee customarily charged to determine if fees are unconscionable; (c)(1) & (2) replaced with a not-to-exceed limit on contingency fee %; no ability to charge a “true” retainer fee)	INDIVIDUAL VOTE

PROPOSED RULE	Same as Attorney Standard or Not the Same (representative issue(s))	Plan for July 26th Full Working Group Meeting
<b>1.5.1</b> Fee Divisions Among Licensed Paraprofessionals and with Lawyers	Not the Same (Paraprofessionals will not be able to charge referral fees [no “pure” referral fees]; limits fee sharing to splitting fees in proportion to the services actually performed or with the assumption of joint responsibility in an area where the PP is licensed to practice – following model rule requirements)	INDIVIDUAL VOTE
<b>1.5.2</b> Written Agreement to Representation	Not the Same (Paraprofessionals will be required to enter into a written retainer agreement with specified disclosures [written agreements for lawyers are included in the B&P Code])	INDIVIDUAL VOTE
<b>1.6</b> Confidential Information of a Client	Same (removes references to B&P 6068(e)(1))	GROUP VOTE
<b>1.7</b> Conflict of Interest: Current Clients	Same	GROUP VOTE
<b>1.8.1</b> Business Transactions with a Client and Pecuniary Interests Adverse to a Client	Same	GROUP VOTE
<b>1.8.2</b> Use of Current Client’s Information	Same (removes references to B&P 6068(e)(1) and State Bar Act)	GROUP VOTE
<b>1.8.3</b> Gifts from Clients	Not the Same (removes provision re preparing an instrument as PP’s will not be practicing in this area)	GROUP VOTE
<b>1.8.5</b> Payment of Personal or Business Expenses Incurred by or for a Client	Same	GROUP VOTE
<b>1.8.6</b> Compensation from One Other Than Client	Same	GROUP VOTE
<b>1.8.7</b> Aggregate Settlements	Not the Same (removes provisions related to criminal law & class action representation because PP’s will not be practicing in these areas)	GROUP VOTE
<b>1.8.8</b> Limiting Liability to Client	Same	GROUP VOTE
<b>1.8.9</b> Purchasing Property at a Foreclosure Sale or a Sale Subject to Judicial Review	Not the Same (removes provision related to representing a seller at specified proceedings because PP’s will not be practicing in these areas)	GROUP VOTE

PROPOSED RULE	Same as Attorney Standard or Not the Same (representative issue(s))	Plan for July 26th Full Working Group Meeting
<b>1.8.10</b> Sexual Relations with Current Client	Not the Same (prohibits conduct conditioning performance and coercion/intimidation/undue influence [prohibitions for lawyers are included in B&P § 6106.9])	GROUP VOTE
<b>1.8.11</b> Imputation of Personal Conflicts (Rules 1.8.1 to 1.8.9) (See also Rule 1.10)	Same (adds cross-reference to RPC's for attorneys)	GROUP VOTE
<b>1.9</b> Duties to Former Clients	Same (although removes references to B&P 6068(e)(1) & State Bar Act)	GROUP VOTE
<b>1.10</b> Imputation of Conflicts of Interest: General Rule	Same (adds cross-reference to RPC's for attorneys)	GROUP VOTE
<b>1.11</b> Special Conflicts of Interest for Former and Current Government Officials and Employees	Same (removes reference to serving as a law clerk because it is understood judicial law clerks must be attorneys)	GROUP VOTE
<b>1.12</b> Former Arbitrator, Mediator, or Other Third-Party Neutral	Same (reference to "Judge" in title and rule are removed)	GROUP VOTE
<b>1.13</b> Organization as Client	Not the Same (PP's will not be permitted to represent organizations so this rule is not needed)	GROUP VOTE
<b>1.15</b> Safekeeping Funds and Property of Clients and Other Persons	Not the Same (provision re flat fees paid in advance has been removed)	GROUP VOTE
<b>1.16</b> Declining or Terminating Representation	Not the Same ((a)(5) added re declining/ withdrawing from representation if subject of representation is beyond the license with requirement to advise client in writing; reference to State Bar Act removed)	GROUP VOTE
<b>1.17</b> Sale of a Law Practice	Same (removes Bus. & Prof. Code references)	GROUP VOTE
<b>1.18</b> Duties to Prospective Client	Same	GROUP VOTE
<b>2.1</b> Advisor	Same	GROUP VOTE

PROPOSED RULE	Same as Attorney Standard or Not the Same (representative issue(s))	Plan for July 26th Full Working Group Meeting
<b>2.4</b> Lawyer as Third-Party Neutral	Same	GROUP VOTE
<b>2.4.1</b> Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator	Not the Same (PP's not expected to act as temporary judges, referees, or court-appointed arbitrators so rule is not needed)	GROUP VOTE
<b>3.1</b> Meritorious Claims and Contentions	Not the Same (rule changed to "assist with" and provision regarding criminal proceeding deleted PP's will not be practicing criminal law)	GROUP VOTE
<b>3.2</b> Delay of Litigation	Same	GROUP VOTE
<b>3.3</b> Candor Toward the Tribunal	Same (references to B&P 6068(e)(1) & criminal matters removed)	GROUP VOTE
<b>3.4</b> Fairness to Opposing Party and Counsel	Same (reference to guilt or innocence of the accused removed because PP's will not be practicing criminal law)	GROUP VOTE
<b>3.5</b> Contact with Judges, Officials, and Employees	Not the Same (references to jurors removed; (b)(1), (3) & (5) removed; and (d) through (l) removed because PP's will not be permitted to try cases in front of a jury)	GROUP VOTE
<b>3.6</b> Trial Publicity	Same (references to a criminal case removed because PP's will not be practicing criminal law)	GROUP VOTE
<b>3.7</b> Lawyer as Witness	Same (references to representing the People or a governmental entity removed because PP's will not be practicing in these areas)	GROUP VOTE
<b>3.8</b> Special Responsibilities of a Prosecutor	Not the Same (PP's will not be practicing criminal law so rule is not needed)	GROUP VOTE
<b>3.9</b> Advocate in Nonadjudicative Proceedings	Same	GROUP VOTE
<b>3.10</b> Threatening Criminal, Administrative, or Disciplinary Charges	Same	GROUP VOTE
<b>4.1</b> Truthfulness in Statements to Others	Same (reference to B&P Code section 6068(e) removed)	GROUP VOTE
<b>4.2</b> Communication with a Represented Person	Same	GROUP VOTE

PROPOSED RULE	Same as Attorney Standard or Not the Same (representative issue(s))	Plan for July 26th Full Working Group Meeting
4.3 Communicating with an Unrepresented Person	Same	GROUP VOTE
4.4 Duties Concerning Inadvertently Transmitted Writings	Same	GROUP VOTE
5.1 Responsibilities of Managerial and Supervisory Licensed paraprofessionals	Same	GROUP VOTE
5.2 Responsibilities of a Subordinate Licensed paraprofessionals	Same	GROUP VOTE
5.3 Responsibilities Regarding Non-Licensed Assistants	Same	GROUP VOTE
5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Licensed Paraprofessionals	Same (allows paraprofessionals to hire a paraprofessional or lawyer who has been disbarred, suspended, resigned, or is involuntarily inactive to perform certain limited research, drafting, or clerical activities with restrictions and notice requirements designed for consumer protection)	INDIVIDUAL VOTE
5.4 Financial and Similar Arrangements with Lawyers and Nonlicensees	Not the Same (allows paraprofessionals to have ownership interest in law firms, limited to a minority interest if attorneys are either owners or employees; subparagraph (e) added which limits PP's activities when working in a law firm with a lawyer)	INDIVIDUAL VOTE
5.5 Unauthorized Practice of Law	Not the Same (provisions added stating PP's can't practice outside their scope, nor hold out as permitted to practice beyond their scope; multijurisdictional practice of law removed from title and rule)	GROUP VOTE
5.6 Restrictions on a Licensed Paraprofessional's Right to Practice	Same (subparagraph (c) removed regarding agreements in lieu of discipline because statutory references to B&P Code 6092.5(i) & 6093 not currently applicable to PP's)	GROUP VOTE

PROPOSED RULE	Same as Attorney Standard or Not the Same (representative issue(s))	Plan for July 26th Full Working Group Meeting
<b>6.3</b> Membership in Legal Services Organizations	Same (reference to B&P Code section 6068(e) removed)	GROUP VOTE
<b>6.5</b> Limited Legal Services Programs	Same (cross-reference to attorney RPC's is added)	GROUP VOTE
<b>7.1</b> Communications Concerning Licensed Paraprofessionals Services	Same	GROUP VOTE
<b>7.2</b> Advertising	Not the Same (this section provides advertising requirements similar to lawyers; however, in addition, subparagraph (c) requires Paraprofessionals to include a statement that PP is not a lawyer and their license number in all advertising, and subparagraph (d) requires PP's website to include the disclosures required by 1.4.2(a))	INDIVIDUAL VOTE
<b>7.3</b> Solicitation of Clients	Not the Same (this section provides solicitation requirements similar to lawyers; however, in addition, subparagraph (c)(3) – (5) requires Paraprofessionals to include a statement that PP is not a lawyer and their license number in all solicitations in the same language as the solicitation, and subparagraph (d) prohibits running and capping [similar to lawyer restrictions in the B&P code])	INDIVIDUAL VOTE
<b>7.4</b> Communications of Fields of Practice and Specialization	Not the Same (PP's will not be certified as specialists so rule is not needed)	GROUP VOTE
<b>7.5</b> Firm Names and Letterheads	Same	GROUP VOTE
<b>8.1</b> False Statement Regarding Application for Admission to Practice Law	Same (reference to B&P Code section 6068(e) removed)	GROUP VOTE
<b>8.1.1</b> Compliance with Conditions of Discipline	Not the Same (references to ALD and private reproof removed, as well as to B&P Code and CRC because they don't refer to PP's)	GROUP VOTE

PROPOSED RULE	Same as Attorney Standard or Not the Same (representative issue(s))	Plan for July 26th Full Working Group Meeting
8.2 Judicial Officials	Not the Same (paragraphs (b) & (c) removed because PP's will not be candidates for, or appointed to, judicial office)	GROUP VOTE
8.4 Misconduct	Same (statutory obligations may be added later)	GROUP VOTE
8.4.1 Prohibited Discrimination, Harassment and Retaliation	Same (reference to representing a client alleged to have engaged in unlawful discrimination, harassment, or retaliation removed because PP's will not be practicing in those areas)	GROUP VOTE
8.5 Disciplinary Authority; Choice of Law	Same (reference to others being subject to the disciplinary authority of CA removed)	GROUP VOTE
<b>TOTAL = 71 rules considered</b>	<b>Same = 43</b> <b>Not the Same = 28</b>	<b>Group Vote ("consent") = 62 rules</b>  <b>Separate presentations/votes = 9 rules</b>

## RULES OF PROFESSIONAL CONDUCT FOR LICENSED PARAPROFESSIONALS

### Rule 1.0 Purpose and Function of the Rules of Professional Conduct for Licensed Paraprofessionals (Proposed Rule – Clean Version)

(a) Purpose.

The following rules are intended to regulate professional conduct of licensed paraprofessionals through discipline. They have been adopted by the Board of Trustees of the State Bar of California and approved by the Supreme Court of California to protect the public, the courts, and the legal profession; protect the integrity of the legal system; and promote the administration of justice and confidence in the legal profession. These rules together with any standards adopted by the Board of Trustees pursuant to these rules shall be binding upon all licensed paraprofessionals.

(b) Function.

- (1) A willful violation of any of these rules is a basis for discipline.
- (2) The prohibition of certain conduct in these rules is not exclusive. Licensed paraprofessionals are also bound by applicable law including relevant statutes, the California Rules of Court, and opinions of California courts.
- (3) A violation of a rule does not itself give rise to a cause of action for damages caused by failure to comply with the rule. Nothing in these rules or the Comments to the rules is intended to enlarge or to restrict the law regarding the liability of licensed paraprofessionals to others.

(c) Purpose of Comments.

The comments are not a basis for imposing discipline but are intended only to provide guidance for interpreting and practicing in compliance with the rules.

(d) These rules may be cited and referred to as the “California Rules of Professional Conduct for Licensed Paraprofessionals.”

**Comment**

[Reserved]

### Rule 1.0 Purpose and Function of the Rules of Professional Conduct for Licensed Paraprofessionals (Proposed Rule – Redline Version)

(a) Purpose.

The following rules are intended to regulate professional conduct of ~~lawyer~~licensed paraprofessionals through discipline. They have been adopted by the Board of Trustees of the State Bar of California and approved by the Supreme Court of California ~~pursuant to Business and Professions Code sections 6076 and 6077~~ to protect the public, the courts, and the legal profession; protect the integrity of the legal system; and promote the administration of justice and confidence in the legal profession. These rules together with any standards adopted by the Board of Trustees pursuant to these rules shall be binding upon all ~~lawyer~~licensed paraprofessionals.

(b) Function.

- (1) A willful violation of any of these rules is a basis for discipline.

(2) The prohibition of certain conduct in these rules is not exclusive. Lawyer Licensed paraprofessionals are also bound by applicable law including relevant statutes, the California Rules of Court, and the State Bar Act (Bus. & Prof. Code, § 6000 et seq.) and opinions of California courts.

(3) A violation of a rule does not itself give rise to a cause of action for damages caused by failure to comply with the rule. Nothing in these rules or the Comments to the rules is intended to enlarge or to restrict the law regarding the liability of lawyers- licensed paraprofessionals to others.

(c) Purpose of Comments.

The comments are not a basis for imposing discipline but are intended only to provide guidance for interpreting and practicing in compliance with the rules.

(d) These rules may be cited and referred to as the “California Rules of Professional Conduct for Licensed Paraprofessionals.”

#### **Comment**

[Reserved]

### **Rule 1.0.1 Terminology (Proposed Rule – Clean Version)**

(a) “Belief” or “believes” means that the person\* involved actually supposes the fact in question to be true. A person’s\* belief may be inferred from circumstances.

(b) “Licensed Paraprofessional” means a person\* licensed to engage in the limited practice of law pursuant to **[ADD reference to CRC rule(s) and/or State Bar Act provisions defining licensing process and scope of permissible practice]**.

(c) “Firm” or “law firm” means a licensed paraprofessional, licensed paraprofessionals, a lawyer, or lawyers in a law partnership; a professional law corporation; a licensed paraprofessional acting as a sole proprietorship; an association authorized to practice law; or licensed paraprofessional licensed paraprofessional employed in a legal services organization or in the legal department, division or office of a corporation, of a government organization, or of another organization.

(d) “Fraud” or “fraudulent” means conduct that is fraudulent under the law of the applicable jurisdiction and has a purpose to deceive.

(e) “Informed consent” means a person’s\* agreement to a proposed course of conduct after the licensed paraprofessional has communicated and explained (i) the relevant circumstances and (ii) the material risks, including any actual and reasonably\* foreseeable adverse consequences of the proposed course of conduct.

(e-1) “Informed written consent” means that the disclosures and the consent required by paragraph (e) must be in writing.\*

(f) “Knowingly,” “known,” or “knows” means actual knowledge of the fact in question. A person’s\* knowledge may be inferred from circumstances.

(g) “Partner” means a member of a partnership, a shareholder in a law firm\* organized as a professional corporation, or a member of an association authorized to practice law.

(g-1) “Person” has the meaning stated in Evidence Code section 175.

(h) “Reasonable” or “reasonably” when used in relation to conduct by a licensed paraprofessional means the conduct of a reasonably prudent and competent licensed paraprofessional.

- (i) “Reasonable belief” or “reasonably believes” when used in reference to a licensed paraprofessional means that the licensed paraprofessional believes the matter in question and that the circumstances are such that the belief is reasonable.
- (j) “Reasonably should know” when used in reference to a licensed paraprofessional means that a licensed paraprofessional of reasonable prudence and competence would ascertain the matter in question.
- (k) “Screened” means the isolation of a licensed paraprofessional from any participation in a matter, including the timely imposition of procedures within a law firm\* that are adequate under the circumstances (i) to protect information that the isolated licensed paraprofessional is obligated to protect under these rules or other law; and (ii) to protect against other law firm\* lawyers, licensed paraprofessionals and nonlawyers, and non-licensed paraprofessional personnel communicating with the licensed paraprofessional with respect to the matter.
- (l) “Substantial” when used in reference to degree or extent means a material matter of clear and weighty importance.
- (m) “Tribunal” means: (i) a court, an arbitrator, an administrative law judge, or an administrative body acting in an adjudicative capacity and authorized to make a decision that can be binding on the parties involved; or (ii) a special master or other person\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.
- (n) “Writing” or “written” has the meaning stated in Evidence Code section 250. A “signed” writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed, inserted, or adopted by or at the direction of a person\* with the intent to sign the writing.
- (o) “Lawyer RPC” denotes the California Rules of Professional Conduct for Lawyers.

**Comment**

[Reserved]

**Rule 1.0.1 Terminology  
(Proposed Rule – Redline Version)**

- (a) “Belief” or “believes” means that the person\* involved actually supposes the fact in question to be true. A person’s\* belief may be inferred from circumstances.
- (b) “Licensed Paraprofessional” means a person\* licensed to engage in the limited practice of law pursuant to [ADD reference to CRC rule(s) and/or State Bar Act provisions defining licensing process and scope of permissible practice].
- (c) “Firm” or “law firm” means a licensed paraprofessional, licensed parafessionals, a lawyer, or lawyers in a law partnership; a professional law corporation; a lawyer-licensed paraprofessional acting as a sole proprietorship; an association authorized to practice law; or lawyer-licensed paraprofessionals- licensed paraprofessional employed in a legal services organization or in the legal department, division or office of a corporation, of a government organization, or of another organization.
- (d) “Fraud” or “fraudulent” means conduct that is fraudulent under the law of the applicable jurisdiction and has a purpose to deceive.
- (e) “Informed consent” means a person’s\* agreement to a proposed course of conduct after the lawyer-licensed paraprofessional has communicated and explained (i) the relevant circumstances and (ii) the material risks, including any actual and reasonably\* foreseeable adverse consequences of the proposed course of conduct.
- (e-1) “Informed written consent” means that the disclosures and the consent required by paragraph (e) must be in writing.\*

(f) “Knowingly,” “known,” or “knows” means actual knowledge of the fact in question. A person’s\* knowledge may be inferred from circumstances.

(g) “Partner” means a member of a partnership, a shareholder in a law firm\* organized as a professional corporation, or a member of an association authorized to practice law.

(g-1) “Person” has the meaning stated in Evidence Code section 175.

(h) “Reasonable” or “reasonably” when used in relation to conduct by a [lawyer-licensed paraprofessional](#) means the conduct of a reasonably prudent and competent [lawyer-licensed paraprofessional](#).

(i) “Reasonable belief” or “reasonably believes” when used in reference to a [lawyer-licensed paraprofessional](#) means that the [lawyer-licensed paraprofessional](#) believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) “Reasonably should know” when used in reference to a [lawyer-licensed paraprofessional](#) means that a [lawyer-licensed paraprofessional](#) of reasonable prudence and competence would ascertain the matter in question.

(k) “Screened” means the isolation of a [lawyer-licensed paraprofessional](#) from any participation in a matter, including the timely imposition of procedures within a law firm\* that are adequate under the circumstances (i) to protect information that the isolated [lawyer-licensed paraprofessional](#) is obligated to protect under these rules or other law; and (ii) to protect against other law firm\* lawyers, [licensed paraprofessionals](#) and nonlawyers, [and non-licensed paraprofessional](#) personnel communicating with the [lawyer-licensed paraprofessional](#) with respect to the matter.

(l) “Substantial” when used in reference to degree or extent means a material matter of clear and weighty importance.

(m) “Tribunal” means: (i) a court, an arbitrator, an administrative law judge, or an administrative body acting in an adjudicative capacity and authorized to make a decision that can be binding on the parties involved; or (ii) a special master or other person\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

(n) “Writing” or “written” has the meaning stated in Evidence Code section 250. A “signed” writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed, inserted, or adopted by or at the direction of a person\* with the intent to sign the writing.

[\(o\) “Lawyer RPC” denotes the California Rules of Professional Conduct for Lawyers.](#)

#### **Comment**

[Reserved]

**CHAPTER 1.**  
**LAWYERLICENSED PARAPROFESSIONAL-CLIENT RELATIONSHIP**

**Rule 1.1 Competence**  
**(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- (b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably\* necessary for the performance of such service.
- (c) If a licensed paraprofessional does not have sufficient learning and skill when the legal services within the scope of the licensure are undertaken, the licensed paraprofessional nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another licensed paraprofessional or a lawyer whom the licensed paraprofessional reasonably believes\* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another licensed paraprofessional or lawyer whom the licensed paraprofessional reasonably believes\* to be competent.

**Comment**

[Reserved]

**Rule 1.1 Competence**  
**(Proposed Rule – Redline Version)**

- (a) A lawyerlicensed paraprofessional shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- (b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably\* necessary for the performance of such service.
- (c) If a lawyerlicensed paraprofessional does not have sufficient learning and skill when the legal services within the scope of the licensure are undertaken, the lawyerlicensed paraprofessional nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyerlicensed paraprofessional or a lawyer whom the lawyerlicensed paraprofessional reasonably believes\* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyerlicensed paraprofessional or lawyer whom the lawyerlicensed paraprofessional reasonably believes\* to be competent.
- ~~(d) In an emergency a lawyerlicensed paraprofessional may give advice or assistance in a matter in which the lawyerlicensed paraprofessional does not have the skill ordinarily required if referral to, or association or consultation with, another lawyerlicensed paraprofessional or lawyer would be impractical. Assistance in an emergency must be limited to that reasonably\* necessary in the circumstances.~~

**Comment**

[Reserved]

**Rule 1.2 Scope of Representation and Allocation of Authority**  
**(Proposed Rule – Clean Version)**

(a) Subject to rule 1.2.1, a licensed paraprofessional shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably\* consult with the client as to the means by which they are to be pursued. Subject to rule 1.6, a licensed paraprofessional may take such action on behalf of the client as is impliedly authorized to carry out the representation. A licensed paraprofessional shall abide by a client's decision whether to settle a matter. .

(b) A licensed paraprofessional may limit the scope of the representation if the limitation is reasonable\* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent\* **Comment**

[Reserved]

### **Rule 1.2 Scope of Representation and Allocation of Authority (Proposed Rule – Redline Version)**

(a) Subject to rule 1.2.1, a ~~lawyer~~licensed paraprofessional shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably\* consult with the client as to the means by which they are to be pursued. Subject to ~~Business and Professions Code section 6068, subdivision (e)(1) and~~ rule 1.6, a licensed paraprofessional ~~lawyer~~ may take such action on behalf of the client as is impliedly authorized to carry out the representation. A licensed paraprofessional ~~lawyer~~ shall abide by a client's decision whether to settle a matter. ~~Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.~~

(b) A lawyer-licensed paraprofessional may limit the scope of the representation if the limitation is reasonable\* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.\*

#### **Comment**

[Reserved]

### **Rule 1.2.1 Advising or Assisting the Violation of Law (Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not counsel a client to engage, or assist a client in conduct that the licensed paraprofessional knows\* is criminal, fraudulent,\* or a violation of any law, rule, or ruling of a tribunal.\*

(b) Notwithstanding paragraph (a), a licensed paraprofessional may:

(1) discuss the legal consequences of any proposed course of conduct with a client; and

(2) counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of a law, rule, or ruling of a tribunal.\*

#### **Comment**

[Reserved]

**Rule 1.2.1 Advising or Assisting the Violation of Law  
(Proposed Rule – Redline Version)**

- (a) A ~~licensed paraprofessional lawyer~~ shall not counsel a client to engage, or assist a client in conduct that the ~~lawyer~~licensed paraprofessional knows\* is criminal, fraudulent,\* or a violation of any law, rule, or ruling of a tribunal.\*
- (b) Notwithstanding paragraph (a), a ~~licensed paraprofessional lawyer~~ may:
- (1) discuss the legal consequences of any proposed course of conduct with a client; and
  - (2) counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of a law, rule, or ruling of a tribunal.\*

**Comment**

[Reserved]

**Rule 1.3 Diligence  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.
- (b) For purposes of this rule, “reasonable diligence” shall mean that a licensed paraprofessional acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the licensed paraprofessional.

**Comment**

[Reserved]

**Rule 1.3 Diligence  
(Proposed Rule – Redline Version)**

- (a) A ~~licensed paraprofessional lawyer~~ shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.
- (b) For purposes of this rule, “reasonable diligence” shall mean that a ~~lawyer~~licensed paraprofessional acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the ~~lawyer~~licensed paraprofessional.

**Comment**

[Reserved]

**Rule 1.4 Communication with Clients  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall:
- (1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client’s informed consent\* is required by these rules or applicable law;

- (2) reasonably\* consult with the client about the means by which to accomplish the client’s objectives in the representation;
  - (3) keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed; and
  - (4) advise the client about any relevant limitation on the licensed paraprofessional’s conduct when the licensed paraprofessional knows\* that the client expects assistance not permitted by these rules or other law.
- (b) A licensed paraprofessional shall explain a matter to the extent reasonably\* necessary to permit the client to make informed decisions regarding the representation.
- (c) A licensed paraprofessional may delay transmission of information to a client if the licensed paraprofessional reasonably believes\* that the client would be likely to react in a way that may cause imminent harm to the client or others.
- (d) A licensed paraprofessional’s obligation under this rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or limitation under statutory or decisional law.

**Comment**

[Reserved]

**Rule 1.4 Communication with Clients  
(Proposed Rule – Redline Version)**

- (a) A licensed paraprofessional ~~lawyer~~ shall:
- (1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client’s informed consent\* is required by these rules or ~~the State Bar Act~~ applicable law;
  - (2) reasonably\* consult with the client about the means by which to accomplish the client’s objectives in the representation;
  - (3) keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed; and
  - (4) advise the client about any relevant limitation on the ~~lawyer~~ licensed paraprofessional’s conduct when the ~~lawyer~~ licensed paraprofessional knows\* that the client expects assistance not permitted by ~~these rules~~ Rules of Professional Conduct or other law.
- (b) A lawyer ~~licensed paraprofessional~~ shall explain a matter to the extent reasonably\* necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer ~~licensed paraprofessional~~ may delay transmission of information to a client if the lawyer ~~licensed paraprofessional~~ reasonably believes\* that the client would be likely to react in a way that may cause imminent harm to the client or others.
- (d) A lawyer ~~licensed paraprofessional~~’s obligation under this rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or limitation under statutory or decisional law.

**Comment**

[Reserved]

**Rule 1.4.1 Communication of Settlement Offers  
(Proposed Rule – Clean Version)**

A licensed paraprofessional shall promptly communicate to the licensed paraprofessional's client all amounts, terms, and conditions of any written\* offer of settlement made to the client.

**Comment**

[Reserved]

**Rule 1.4.1 Communication of Settlement Offers  
(Proposed Rule – Redline Version)**

~~(a) A licensed paraprofessional lawyer shall promptly communicate to the lawyer/~~licensed paraprofessional's client :

~~(1) all terms and conditions of a proposed plea bargain or other dispositive offer made to the client in a criminal matter; and~~

~~(2) all amounts, terms, and conditions of any written\* offer of settlement made to the client in all other matters.~~

~~(b) As used in this rule, "client" includes a person\* who possesses the authority to accept an offer of settlement or plea, or, in a class action, all the named representatives of the class.~~

**Comment**

[Reserved]

**Rule 1.4.2 Notice to Consumers Prior to Consultation with a Prospective Client  
(Proposed Rule – Clean Version)**

(a) Prior to a prospective client's consultation with a licensed paraprofessional for the purpose of retaining the licensed paraprofessional or securing legal services or advice from the licensed paraprofessional in the licensed paraprofessional's professional capacity, the licensed paraprofessional shall disclose orally and provide, at the time of the consultation or as soon thereafter as reasonably\* practicable the written\* disclosures to the prospective client in the prospective client's preferred language that:

- (1) the licensed paraprofessional is not a lawyer;
- (2) the licensed paraprofessional has a license to provide limited legal services, the area of practice in which the licensed paraprofessional is licensed, and that the licensed paraprofessional cannot provide all services that a lawyer can provide in this area of practice;
- (3) the prospective client may need to hire a lawyer if the legal services that the prospective client seeks are beyond the limited scope of the licensed paraprofessional's license;
- (4) there may be other alternative choices available for the prospective client to consider, including, but not limited to, 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, or potentially free legal services from a local legal aid organization if the prospective client qualifies;

- (5) a general description of the licensed paraprofessional's fee structure and billing methods; and
- (6) whether the licensed paraprofessional does or does not have professional liability insurance based on the licensed paraprofessional's reasonable knowledge\* at the time of the disclosure,

(b) If the licensed paraprofessional provides notice to the prospective client prior to consultation that the licensed paraprofessional does have professional liability insurance pursuant to paragraph (a)(6) and a licensed paraprofessional-client relationship is formed, the licensed paraprofessional shall inform the client in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional no longer has professional liability insurance during the representation of the client.

[Reserved]

**Rule 1.4.2 Notice to Consumers Prior to Consultation with a Prospective Client~~Disclosure of Professional Liability Insurance~~  
(Proposed Rule – Redline Version)**

(a) Prior to a prospective client's consultation with a licensed paraprofessional for the purpose of retaining the licensed paraprofessional or securing legal services or advice from the licensed paraprofessional in the licensed paraprofessional's professional capacity, the licensed paraprofessional shall disclose orally and provide, at the time of the consultation or as soon thereafter as reasonably\* practicable the written\* disclosures to the prospective client in the prospective client's preferred language that:

- (1) the licensed paraprofessional is not a lawyer;
- (2) the licensed paraprofessional has a license to provide limited legal services, the area of practice in which the licensed paraprofessional is licensed, and that the licensed paraprofessional cannot provide all services that a lawyer can provide in this area of practice;
- (3) the prospective client may need to hire a lawyer if the legal services that the prospective client seeks are beyond the limited scope of the licensed paraprofessional's license;
- (4) there may be other alternative choices available for the prospective client to consider, including, but not limited to, 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, or potentially free legal services from a local legal aid organization if the prospective client qualifies;
- (5) a general description of the licensed paraprofessional's fee structure and billing methods; and
- (6) whether the licensed paraprofessional does or does not have professional liability insurance based on the licensed paraprofessional's reasonable knowledge\* at the time of the disclosure,

~~(a) A licensed paraprofessional who knows\* or reasonably should know\* that the licensed paraprofessional does not have professional liability insurance shall inform a client in writing,\* at the time of the client's engagement of the licensed paraprofessional, that the licensed paraprofessional does not have professional liability insurance.~~

~~(b) If the licensed paraprofessional provides notice to the prospective client prior to consultation that the licensed paraprofessional does have professional liability insurance pursuant to paragraph (a)(6) and a licensed paraprofessional-client relationship is formed, the licensed paraprofessional shall inform the client in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional no longer has professional liability insurance during the representation of the client. If notice under paragraph (a) has not been provided at the time of a client's engagement of the licensed paraprofessional, the licensed paraprofessional shall inform the client~~

in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional no longer has professional liability insurance during the representation of the client.

~~(c) This rule does not apply to:~~

~~(1) a licensed paraprofessional who knows\* or reasonably should know\* at the time of the client's engagement of the licensed paraprofessional that the licensed paraprofessional's legal representation of the client in the matter will not exceed four hours; provided that if the representation subsequently exceeds four hours, the licensed paraprofessional must comply with paragraphs (a) and (b);~~

~~(2) a licensed paraprofessional who is employed as a government licensed paraprofessional or in-house counsel when that licensed paraprofessional is representing or providing legal advice to a client in that capacity;~~

~~(3) a licensed paraprofessional who is rendering legal services in an emergency to avoid foreseeable prejudice to the rights or interests of the client;~~

~~(4) a licensed paraprofessional who has previously advised the client in writing\* under paragraph (a) or (b) that the licensed paraprofessional does not have professional liability insurance.~~

[Reserved]

### **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 legal services may be available to low-income individuals from a legal aid program if the client qualifies;

(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.

#### **Comments**

[Reserved]

**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 legal services may be available to low-income individuals from a legal aid program if the client qualifies;

(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.

**Comments**

[Reserved]

**Rule 1.5 Fees for Legal Services**  
**(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not make an agreement for, charge, or collect an unconscionable or illegal fee.

(b) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. The factors to be considered in determining the unconscionability of a fee include without limitation the following:

(1) whether the licensed paraprofessional engaged in fraud\* or overreaching in negotiating or setting the fee;

(2) whether the licensed paraprofessional has failed to disclose material facts;

(3) the amount of the fee in proportion to the value of the services performed;

(4) the relative sophistication of the licensed paraprofessional and the client;

(5) the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(6) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the licensed paraprofessional;

- (7) the amount involved and the results obtained;
- (8) the time limitations imposed by the client or by the circumstances;
- (9) the nature and length of the professional relationship with the client;
- (10) the experience, reputation, and ability of the licensed paraprofessional performing the services;
- (11) whether the fee is fixed or contingent;
- (12) the time and labor required; and
- (13) whether the client gave informed consent\* to the fee.
- (14) the fee customarily charged by licensed paraprofessionals and lawyers in the locality for similar legal service.

(c) A licensed paraprofessional shall not make an agreement for, charge, or collect a contingent fee except in an enforcement of judgment matter within the scope of the licensed paraprofessional’s licensure. Any contingent fee permitted under this paragraph shall not exceed thirty-three and one-third percent of the total value of the judgment subject to the enforcement action.

(d) A licensed paraprofessional shall not make an agreement for, charge, or collect a fee that is denominated as “earned on receipt” or “non-refundable,” or in similar terms.]

(e) A licensed paraprofessional may make an agreement for, charge, or collect a flat fee for specified legal services. A flat fee is a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the licensed paraprofessional providing those services.

**Comment**

[Reserved]

**Rule 1.5 Fees for Legal Services  
(Proposed Rule – Redline Version)**

(a) A ~~lawyer~~ licensed paraprofessional shall not make an agreement for, charge, or collect an unconscionable or illegal fee.

(b) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. The factors to be considered in determining the unconscionability of a fee include without limitation the following:

- (1) whether the ~~lawyer~~ licensed paraprofessional engaged in fraud\* or overreaching in negotiating or setting the fee;
- (2) whether the ~~lawyer~~ licensed paraprofessional has failed to disclose material facts;
- (3) the amount of the fee in proportion to the value of the services performed;
- (4) the relative sophistication of the licensed paraprofessional~~lawyer~~ and the client;
- (5) the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

- (6) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the licensed paraprofessional~~lawyer~~;
- (7) the amount involved and the results obtained;
- (8) the time limitations imposed by the client or by the circumstances;
- (9) the nature and length of the professional relationship with the client;
- (10) the experience, reputation, and ability of the licensed paraprofessional~~lawyer or lawyers~~ performing the services;
- (11) whether the fee is fixed or contingent;
- (12) the time and labor required; and
- (13) whether the client gave informed consent\* to the fee.

(14) the fee customarily charged by licensed paraprofessionals and lawyers in the locality for similar legal service.

(c) A licensed paraprofessional~~lawyer~~ shall not make an agreement for, charge, or collect:

~~(1) any fee in a family law matter, the payment or amount of which is contingent upon the securing of a dissolution or declaration of nullity of a marriage or upon the amount of spousal or child support, or property settlement in lieu thereof; a contingent fee except in an enforcement of judgment matter within the scope of the licensed paraprofessional's licensure. Any contingent fee permitted under this paragraph shall not exceed thirty-three and one-third percent of the total value of the judgment subject to the enforcement action. ~~or~~~~

~~(2) a contingent fee for representing a defendant in a criminal case.~~

(d) A licensed paraprofessional ~~lawyer may shall not~~ make an agreement for, charge, or collect a fee that is denominated as "earned on receipt" or "non-refundable," or in similar terms, ~~only if the fee is a true retainer and the client agrees in writing\* after disclosure that the client will not be entitled to a refund of all or part of the fee charged. A true retainer is a fee that a client pays to a lawyer to ensure the lawyer's availability to the client during a specified period or on a specified matter, but not to any extent as compensation for legal services performed or to be performed. .]~~

(e) A ~~lawyer~~licensed paraprofessional may make an agreement for, charge, or collect a flat fee for specified legal services. A flat fee is a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the ~~lawyer~~licensed paraprofessional providing those services.

**Comment**

[Reserved]

**Rule 1.5.1 Fee Divisions Among Licensed Paraprofessionals and With Lawyers  
(Proposed Rule – Clean Version)**

- (a) Licensed paraprofessionals who are not in the same law firm\* shall not divide a fee for legal services unless:
  - (1) the licensed paraprofessionals enter into a written\* agreement to divide the fee;
  - (2) the division is in proportion to the legal services performed by each licensed paraprofessional or each licensed paraprofessional assumes joint responsibility for the representation.

- (3) the client has consented in writing,\* either at the time the licensed paraprofessionals enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessionals or law firms\* that are parties to the division; and (iii) the terms of the division; and
  - (4) the total fee charged by all licensed paraprofessionals is not increased solely by reason of the agreement to divide fees.
- (b) A licensed paraprofessional and a lawyer who are not in the same law firm\* shall not divide a fee for legal services unless:
- (1) the licensed paraprofessional and the lawyer enter into a written\* agreement to divide the fee;
  - (2) the division is in proportion to the legal services performed by licensed paraprofessional and the lawyer;
  - (3) the client has consented in writing,\* either at the time the licensed paraprofessional and the lawyer enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessional, the lawyer, or law firms\* that are parties to the division; and (iii) the terms of the division; and
  - (4) the total fee charged by all licensed paraprofessionals and lawyers is not increased solely by reason of the agreement to divide fees.
- (c) This rule does not apply to a division of fees pursuant to court order.

**Comment**

[Reserved]

**Rule 1.5.1 Fee Divisions Among ~~Lawyer~~Licensed Paraprofessionals and With Lawyers  
(Proposed Rule – Redline Version)**

- (a) ~~Lawyer~~Licensed paraprofessionals who are not in the same law firm\* shall not divide a fee for legal services unless:
- (1) the ~~lawyer~~licensed paraprofessionals enter into a written\* agreement to divide the fee;
  - (2) the division is in proportion to the legal services performed by each licensed paraprofessional or each licensed paraprofessional assumes joint responsibility for the representation.
  - (23) the client has consented in writing,\* either at the time the ~~lawyer~~licensed paraprofessionals enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the ~~lawyer~~licensed paraprofessionals or law firms\* that are parties to the division; and (iii) the terms of the division; and
  - (34) the total fee charged by all ~~lawyer~~licensed paraprofessionals is not increased solely by reason of the agreement to divide fees.
- (b) A licensed paraprofessional and a lawyer who are not in the same law firm\* shall not divide a fee for legal services unless:
- (1) the licensed paraprofessional and the lawyer enter into a written\* agreement to divide the fee;
  - (2) the division is in proportion to the legal services performed by ~~each~~ licensed paraprofessional and the lawyer;

(3) the client has consented in writing,\* either at the time the licensed paraprofessional and the lawyer enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessional, the lawyer, or law firms\* that are parties to the division; and (iii) the terms of the division; and

(4) the total fee charged by all licensed paraprofessionals and lawyers is not increased solely by reason of the agreement to divide fees.

(b) This rule does not apply to a division of fees pursuant to court order.

#### Comment

[Reserved]

### Rule 1.5.2 Written Agreement to Representation (Proposed Rule – Clean Version)

Prior to the performance of legal services for a fee, the licensed paraprofessional shall enter into a written\* agreement with the client in a separate writing,\* provided in the prospective client’s preferred language, and signed by both the client and the licensed paraprofessional, that provides the licensed paraprofessional’s name, specialty area, mailing address, street address, telephone numbers, facsimile numbers, internet address, and license number of the licensed paraprofessional, and includes the following provisions:

- (a) A clear and conspicuous disclosure that the licensed paraprofessional is not a lawyer and may only provide limited legal advice and services within the scope of the licensed paraprofessional’s licensure. This statement shall be on the first page of the contract; in a type size, font, color, appearance, and location sufficiently noticeable for a client to read and comprehend them; in a print that contrasts with the background against which they appear; in larger type than the surrounding text; in a manner that clearly calls attention to the language;
- (b) An explanation of the general nature of the legal services to be provided to the client;
- (c) A reasonable estimate of the total fees, expenses, and costs of services provided by the licensed paraprofessional, and the basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the matter;
- (d) A statement that, pursuant to rule 1.4, the licensed paraprofessional must keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed;
- (e) A statement describing the licensed paraprofessional’s duty to protect the confidentiality of information related to the representation under rule 1.6, including information provided in confidence by the client and the licensed paraprofessional’s work product associated with the legal services sought or provided by the licensed paraprofessional;
- (f) A statement that, pursuant to rule 1.16(a)(4), the client has the right to terminate the contract and services at any time, with or without cause, and receive a full refund of unearned fees pursuant to rule 1.16(e)(2);
- (g) A statement confirming that the licensed paraprofessional is required by **[add rule of court reference]** to carry a surety bond in the amount of \$100,000, the name of the surety bond carrier, and information on how to file a claim against the surety bond if necessary;
- (h) A statement confirming if the licensed paraprofessional has or does not have professional liability insurance. If the licensed paraprofessional has professional liability insurance, the name of the carrier, the amount of coverage, and how to file a claim if necessary;

- (i) A statement describing how to file a complaint with the State Bar of California;
- (j) A statement regarding the respective responsibilities of the licensed paraprofessional and the client as to the performance of the agreement; and
- (k) Any other disclosures, statements, or conditions required by the [Paraprofessional] Rules of Professional Conduct and the rules and regulations of the [Paraprofessional] Board.

**Comment**

**Rule 1.5.2 Written Agreement to Representation**  
**(Proposed Rule – Redline Version)**

Prior to the performance of legal services for a fee, the licensed paraprofessional shall enter into a written\* agreement with the client in a separate writing,\* provided in the prospective client’s preferred language, and signed by both the client and the licensed paraprofessional, that provides the licensed paraprofessional’s name, specialty area, mailing address, street address, telephone numbers, facsimile numbers, internet address, and license number of the licensed paraprofessional, and includes the following provisions:

(a) A clear and conspicuous disclosure that the licensed paraprofessional is not a lawyer and may only provide limited legal advice and services within the scope of the licensed paraprofessional’s licensure. This statement shall be on the first page of the contract; in a type size, font, color, appearance, and location sufficiently noticeable for a client to read and comprehend them; in a print that contrasts with the background against which they appear; in larger type than the surrounding text; in a manner that clearly calls attention to the language;

(b) An explanation of the general nature of the legal services to be provided to the client;

(c) A reasonable estimate of the total fees, expenses, and costs of services provided by the licensed paraprofessional, and the basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the matter;

(d) A statement that, pursuant to rule 1.4, the licensed paraprofessional must keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed ~~pursuant to rule 1.16;~~

(e) A statement describing the licensed paraprofessional’s duty to protect the confidentiality of information related to the representation under rule 1.6, including information provided in confidence by the client and the licensed paraprofessional’s work product associated with the legal services sought or provided by the licensed paraprofessional;

(f) A statement that, pursuant to rule 1.16(a)(4), the client has the right to terminate the contract and services at any time, with or without cause, and receive a full refund of unearned fees pursuant to rule 1.16(e)(2);

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

(h) A statement confirming if the licensed paraprofessional has or does not have professional liability insurance. If the licensed paraprofessional has professional liability insurance, the name of the carrier, the amount of coverage, and how to file a claim if necessary;

(i) A statement describing how to file a complaint with the State Bar of California;

(j) A statement regarding the respective responsibilities of the licensed paraprofessional and the client as to the performance of the agreement; and

~~(k)~~Any other disclosures, statements, or conditions required by the [Paraprofessional] Rules of Professional Conduct and the rules and regulations of the [Paraprofessional] Board.

Comment

**Rule 1.6 Confidential Information of a Client  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall not reveal confidential information relating to the representation of a client unless the client gives informed consent,\* or the disclosure is permitted by paragraph (b) of this rule.
- (b) A licensed paraprofessional may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the licensed paraprofessional reasonably believes\* the disclosure is necessary to prevent a criminal act that the licensed paraprofessional reasonably believes\* is likely to result in death of, or substantial\* bodily harm to, an individual, as provided in paragraph (c).
- (c) Before revealing confidential information relating to the representation of a client to prevent a criminal act as provided in paragraph (b), a licensed paraprofessional shall, if reasonable\* under the circumstances:
- (1) make a good faith effort to persuade the client: (i) not to commit or to continue the criminal act; or (ii) to pursue a course of conduct that will prevent the threatened death or substantial\* bodily harm; or do both (i) and (ii); and
  - (2) inform the client, at an appropriate time, of the licensed paraprofessional's ability or decision to reveal information relating to the representation of a client as provided in paragraph (b).
- (d) In revealing confidential information relating to representation of a client as provided in paragraph (b), the licensed paraprofessional's disclosure must be no more than is necessary to prevent the criminal act, given the confidential information known\* to the licensed paraprofessional at the time of the disclosure.
- (e) A licensed paraprofessional who does not reveal confidential information permitted by paragraph (b) does not violate this rule.

**Comment**

[Reserved]

**Rule 1.6 Confidential Information of a Client  
(Proposed Rule – Redline Version)**

- (a) A ~~lawyer~~licensed paraprofessional shall not reveal confidential information ~~protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ unless the client gives informed consent,\* or the disclosure is permitted by paragraph (b) of this rule.
- (b) A ~~lawyer~~licensed paraprofessional may, but is not required to, reveal confidential information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ to the extent that the ~~lawyer~~licensed paraprofessional reasonably believes\* the disclosure is necessary to prevent a criminal act that the ~~lawyer~~licensed paraprofessional reasonably believes\* is likely to result in death of, or substantial\* bodily harm to, an individual, as provided in paragraph (c).
- (c) Before revealing confidential information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ to prevent a criminal act as provided in paragraph (b), a ~~lawyer~~licensed paraprofessional shall, if reasonable\* under the circumstances:

- (1) make a good faith effort to persuade the client: (i) not to commit or to continue the criminal act; or (ii) to pursue a course of conduct that will prevent the threatened death or substantial\* bodily harm; or do both (i) and (ii); and
  - (2) inform the client, at an appropriate time, of the lawyerlicensed paraprofessional's ability or decision to reveal information protected by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client as provided in paragraph (b).
- (d) In revealing confidential information protected by Business and Professions Code section 6068, subdivision (e)(1) relating to representation of a client as provided in paragraph (b), the lawyerlicensed paraprofessional's disclosure must be no more than is necessary to prevent the criminal act, given the confidential information known\* to the lawyerlicensed paraprofessional at the time of the disclosure.
- (e) A lawyerlicensed paraprofessional who does not reveal confidential information permitted by paragraph (b) does not violate this rule.

**Comment**

[Reserved]

**Rule 1.7 Conflict of Interest: Current Clients  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall not, without informed written consent\* from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.
- (b) A licensed paraprofessional shall not, without informed written consent\* from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the licensed paraprofessional's representation of the client will be materially limited by the licensed paraprofessional's responsibilities to or relationships with another client, a former client or a third person,\* or by the licensed paraprofessional's own interests.
- (c) Even when a significant risk requiring a licensed paraprofessional to comply with paragraph (b) is not present, a licensed paraprofessional shall not represent a client without written\* disclosure of the relationship to the client and compliance with paragraph (d) where:
- (1) the licensed paraprofessional has, or knows\* that another lawyer or licensed paraprofessional in the licensed paraprofessional's firm\* has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter; or
  - (2) the licensed paraprofessional knows\* or reasonably should know\* that another party's lawyer or licensed paraprofessional is a spouse, parent, child, or sibling of the licensed paraprofessional, lives with the licensed paraprofessional, is a client of the licensed paraprofessional or another lawyer or licensed paraprofessional in the licensed paraprofessional's firm,\* or has an intimate personal relationship with the licensed paraprofessional.
- (d) Representation is permitted under this rule only if the licensed paraprofessional complies with paragraphs (a), (b), and (c), and:
- (1) the licensed paraprofessional reasonably believes\* that the licensed paraprofessional will be able to provide competent and diligent representation to each affected client;
  - (2) the representation is not prohibited by law; and
  - (3) the representation does not involve the assertion of a claim by one client against another client represented by the licensed paraprofessional in the same litigation or other proceeding before a tribunal.

(e) For purposes of this rule, “matter” includes any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons,\* or a discrete and identifiable class of persons.\*

**Comment**

[Reserved]

**Rule 1.7 Conflict of Interest: Current Clients  
(Proposed Rule – Redline Version)**

(a) A ~~lawyer~~licensed paraprofessional shall not, without informed written consent\* from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.

(b) A ~~lawyer~~licensed paraprofessional shall not, without informed written consent\* from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the ~~lawyer~~licensed paraprofessional’s representation of the client will be materially limited by the ~~lawyer~~licensed paraprofessional’s responsibilities to or relationships with another client, a former client or a third person,\* or by the ~~lawyer~~licensed paraprofessional’s own interests.

(c) Even when a significant risk requiring a ~~lawyer~~licensed paraprofessional to comply with paragraph (b) is not present, a ~~lawyer~~licensed paraprofessional shall not represent a client without written\* disclosure of the relationship to the client and compliance with paragraph (d) where:

(1) the ~~lawyer~~licensed paraprofessional has, or knows\* that another lawyer or licensed paraprofessional in the ~~lawyer~~licensed paraprofessional’s firm\* has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter; or

(2) the ~~lawyer~~licensed paraprofessional knows\* or reasonably should know\* that another party’s lawyer or licensed paraprofessional is a spouse, parent, child, or sibling of the ~~lawyer~~licensed paraprofessional, lives with the ~~lawyer~~licensed paraprofessional, is a client of the ~~lawyer~~licensed paraprofessional or another lawyer or licensed paraprofessional in the ~~lawyer~~licensed paraprofessional’s firm,\* or has an intimate personal relationship with the ~~lawyer~~licensed paraprofessional.

(d) Representation is permitted under this rule only if the ~~lawyer~~licensed paraprofessional complies with paragraphs (a), (b), and (c), and:

(1) the ~~lawyer~~licensed paraprofessional reasonably believes\* that the ~~lawyer~~licensed paraprofessional will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law; and

(3) the representation does not involve the assertion of a claim by one client against another client represented by the ~~lawyer~~licensed paraprofessional in the same litigation or other proceeding before a tribunal.

(e) For purposes of this rule, “matter” includes any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons,\* or a discrete and identifiable class of persons.\*

**Comment**

[Reserved]

**Rule 1.8.1 Business Transactions with a Client and Pecuniary Interests Adverse to a Client  
(Proposed Rule – Clean Version)**

A licensed paraprofessional shall not enter into a business transaction with a client, or knowingly\* acquire an ownership, possessory, security or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

- (a) the transaction or acquisition and its terms are fair and reasonable\* to the client and the terms and the licensed paraprofessional's role in the transaction or acquisition are fully disclosed and transmitted in writing\* to the client in a manner that should reasonably\* have been understood by the client;
- (b) the client either is represented in the transaction or acquisition by an independent lawyer of the client's choice or the client is advised in writing\* to seek the advice of an independent lawyer of the client's choice and is given a reasonable\* opportunity to seek that advice; and
- (c) the client thereafter provides informed written consent\* to the terms of the transaction or acquisition, and to the licensed paraprofessional's role in it.

**Comment**

[Reserved]

**Rule 1.8.1 Business Transactions with a Client and Pecuniary Interests Adverse to a Client  
(Proposed Rule – Redline Version)**

A ~~lawyer~~licensed paraprofessional shall not enter into a business transaction with a client, or knowingly\* acquire an ownership, possessory, security or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

- (a) the transaction or acquisition and its terms are fair and reasonable\* to the client and the terms and the ~~lawyer~~licensed paraprofessional's role in the transaction or acquisition are fully disclosed and transmitted in writing\* to the client in a manner that should reasonably\* have been understood by the client;
- (b) the client either is represented in the transaction or acquisition by an independent lawyer of the client's choice or the client is advised in writing\* to seek the advice of an independent lawyer of the client's choice and is given a reasonable\* opportunity to seek that advice; and
- (c) the client thereafter provides informed written consent\* to the terms of the transaction or acquisition, and to the ~~lawyer~~licensed paraprofessional's role in it.

**Comment**

[Reserved]

**Rule 1.8.2 Use of Current Client's Information  
(Proposed Rule – Clean Version)**

A licensed paraprofessional shall not use a client's information protected by rule 1.6 to the disadvantage of the client unless the client gives informed consent,\* except as permitted by these rules or applicable law.

**Comment**

[Reserved]

**Rule 1.8.2 Use of Current Client’s Information  
(Proposed Rule – Redline Version)**

A lawyer/licensed paraprofessional shall not use a client’s information protected by Business and Professions Code section 6068, subdivision (e)(1)/rule 1.6 to the disadvantage of the client unless the client gives informed consent,\* except as permitted by these rules or the State Bar Act/applicable law.

**Comment**

[Reserved]

**Rule 1.8.3 Gifts from Client  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not solicit a client to make a substantial\* gift, including a testamentary gift, to the licensed paraprofessional or a person\* related to the licensed paraprofessional, unless the licensed paraprofessional or other recipient of the gift is related to the client, or

(b) For purposes of this rule, related persons\* include a person\* who is “related by blood or affinity” as that term is defined in California Probate Code section 21374, subdivision (a).

**Comment**

[Reserved]

**Rule 1.8.3 Gifts from Client  
(Proposed Rule – Redline Version)**

(a) A lawyer/licensed paraprofessional shall not:

~~(1) solicit a client to make a substantial\* gift, including a testamentary gift, to the lawyer/licensed paraprofessional or a person\* related to the lawyer/licensed paraprofessional, unless the lawyer/licensed paraprofessional or other recipient of the gift is related to the client, or~~

~~(2) prepare on behalf of a client an instrument giving the lawyer or a person\* related to the lawyer any substantial\* gift, unless (i) the lawyer or other recipient of the gift is related to the client, or (ii) the client has been advised by an independent lawyer who has provided a certificate of independent review that complies with the requirements of Probate Code section 21384.~~

(b) For purposes of this rule, related persons\* include a person\* who is “related by blood or affinity” as that term is defined in California Probate Code section 21374, subdivision (a).

**Comment**

[Reserved]

**Rule 1.8.4 [Reserved]**

**Rule 1.8.5 Payment of Personal or Business Expenses Incurred by or for a Client  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall not directly or indirectly pay or agree to pay, guarantee, or represent that the licensed paraprofessional or licensed paraprofessional's law firm\* will pay the personal or business expenses of a prospective or existing client.
- (b) Notwithstanding paragraph (a), a licensed paraprofessional may:
  - (1) pay or agree to pay such expenses to third persons,\* from funds collected or to be collected for the client as a result of the representation, with the consent of the client;
  - (2) after the licensed paraprofessional is retained by the client, agree to lend money to the client based on the client's written\* promise to repay the loan, provided the licensed paraprofessional complies with rules 1.7(b), 1.7(c), and 1.8.1 before making the loan or agreeing to do so;
  - (3) advance the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the client's interests, the repayment of which may be contingent on the outcome of the matter; and
  - (4) pay the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the interests of an indigent person\* in a matter in which the licensed paraprofessional represents the client.
- (c) "Costs" within the meaning of paragraphs (b)(3) and (b)(4) are not limited to those costs that are taxable or recoverable under any applicable statute or rule of court but may include any reasonable\* expenses of litigation, including court costs, and reasonable\* expenses in preparing for litigation or in providing other legal services to the client.
- (d) Nothing in this rule shall be deemed to limit the application of rule 1.8.9.

**Rule 1.8.5 Payment of Personal or Business Expenses Incurred by or for a Client  
(Proposed Rule – Redline Version)**

- (a) A ~~lawyer~~licensed paraprofessional shall not directly or indirectly pay or agree to pay, guarantee, or represent that the ~~lawyer~~licensed paraprofessional or ~~lawyer~~licensed paraprofessional's law firm\* will pay the personal or business expenses of a prospective or existing client.
- (b) Notwithstanding paragraph (a), a ~~lawyer~~licensed paraprofessional may:
  - (1) pay or agree to pay such expenses to third persons,\* from funds collected or to be collected for the client as a result of the representation, with the consent of the client;
  - (2) after the ~~lawyer~~licensed paraprofessional is retained by the client, agree to lend money to the client based on the client's written\* promise to repay the loan, provided the ~~lawyer~~licensed paraprofessional complies with rules 1.7(b), 1.7(c), and 1.8.1 before making the loan or agreeing to do so;
  - (3) advance the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the client's interests, the repayment of which may be contingent on the outcome of the matter; and
  - (4) pay the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the interests of an indigent person\* in a matter in which the ~~lawyer~~licensed paraprofessional represents the client.
- (c) "Costs" within the meaning of paragraphs (b)(3) and (b)(4) are not limited to those costs that are taxable or recoverable under any applicable statute or rule of court but may include any reasonable\* expenses of litigation, including court costs, and reasonable\* expenses in preparing for litigation or in providing other legal services to the client.
- (d) Nothing in this rule shall be deemed to limit the application of rule 1.8.9.

**Rule 1.8.6 Compensation from One Other than Client  
(Proposed Rule – Clean Version)**

A licensed paraprofessional shall not enter into an agreement for, charge, or accept compensation for representing a client from one other than the client unless:

- (a) there is no interference with the licensed paraprofessional’s independent professional judgment or with the licensed paraprofessional-client relationship;
- (b) information is protected as required by Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6; and
- (c) the licensed paraprofessional obtains the client’s informed written consent\* at or before the time the licensed paraprofessional has entered into the agreement for, charged, or accepted the compensation, or as soon thereafter as reasonably\* practicable, provided that no disclosure or consent is required if:
  - (1) nondisclosure or the compensation is otherwise authorized by law or a court order; or
  - (2) the licensed paraprofessional is rendering legal services on behalf of any public agency or nonprofit organization that provides legal services to other public agencies or the public.

**Comment**

[Reserved]

**Rule 1.8.6 Compensation from One Other than Client  
(Proposed Rule – Redline Version)**

A lawyer licensed paraprofessional shall not enter into an agreement for, charge, or accept compensation for representing a client from one other than the client unless:

- (a) there is no interference with the lawyer licensed paraprofessional’s independent professional judgment or with the lawyer licensed paraprofessional-client relationship;
- (b) information is protected as required by Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6; and
- (c) the lawyer licensed paraprofessional obtains the client’s informed written consent\* at or before the time the lawyer licensed paraprofessional has entered into the agreement for, charged, or accepted the compensation, or as soon thereafter as reasonably\* practicable, provided that no disclosure or consent is required if:
  - (1) nondisclosure or the compensation is otherwise authorized by law or a court order; or
  - (2) the lawyer licensed paraprofessional is rendering legal services on behalf of any public agency or nonprofit organization that provides legal services to other public agencies or the public.

**Comment**

[Reserved]

**Rule 1.8.7 Aggregate Settlements  
(Proposed Rule – Clean Version)**

A licensed paraprofessional who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients unless each client gives informed written consent.\* The licensed paraprofessional's disclosure shall include the existence and nature of all the claims involved and of the participation of each person\* in the settlement.

**Rule 1.8.7 Aggregate Settlements  
(Proposed Rule – Redline Version)**

~~(a) A lawyer licensed paraprofessional who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregate agreement as to guilty or nolo contendere pleas, unless each client gives informed written consent.\* The lawyer licensed paraprofessional's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person\* in the settlement.~~

~~(b) This rule does not apply to class action settlements subject to court approval.~~

**Rule 1.8.8 Limiting Liability to Client  
(Proposed Rule – Clean Version)**

A licensed paraprofessional shall not:

- (a) Contract with a client prospectively limiting the licensed paraprofessional's liability to the client for the licensed paraprofessional's professional malpractice; or
- (b) Settle a claim or potential claim for the licensed paraprofessional's liability to a client or former client for the licensed paraprofessional's professional malpractice, unless the client or former client is either:
  - (1) represented by an independent lawyer concerning the settlement; or
  - (2) advised in writing\* by the licensed paraprofessional to seek the advice of an independent lawyer of the client's choice regarding the settlement and given a reasonable\* opportunity to seek that advice.

**Comment**

[Reserved]

**Rule 1.8.8 Limiting Liability to Client  
(Proposed Rule – Redline Version)**

A lawyer licensed paraprofessional shall not:

- (a) Contract with a client prospectively limiting the lawyer licensed paraprofessional's liability to the client for the lawyer licensed paraprofessional's professional malpractice; or
- (b) Settle a claim or potential claim for the lawyer licensed paraprofessional's liability to a client or former client for the lawyer licensed paraprofessional's professional malpractice, unless the client or former client is either:
  - (1) represented by an independent lawyer concerning the settlement; or
  - (2) advised in writing\* by the lawyer licensed paraprofessional to seek the advice of an independent lawyer of the client's choice regarding the settlement and given a reasonable\* opportunity to seek that advice.

**Comment**

[Reserved]

**Rule 1.8.9 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not directly or indirectly purchase property at a probate, foreclosure, receiver's, trustee's, or judicial sale in an action or proceeding in which such licensed paraprofessional or any lawyer or licensed paraprofessional affiliated by reason of personal, business, or professional relationship with that licensed paraprofessional or with that licensed paraprofessional's law firm\* is acting as a lawyer for a party or as executor, receiver, trustee, administrator, guardian, or conservator.

(b) This rule does not prohibit a licensed paraprofessional's participation in transactions that are specifically authorized by and comply with Probate Code sections 9880 through 9885, but such transactions remain subject to the provisions of rules 1.8.1 and 1.7.

**Comment**

[Reserved]

**Rule 1.8.9 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review  
(Proposed Rule – Redline Version)**

(a) A ~~lawyer~~licensed paraprofessional shall not directly or indirectly purchase property at a probate, foreclosure, receiver's, trustee's, or judicial sale in an action or proceeding in which such ~~lawyer~~licensed paraprofessional or any lawyer or licensed paraprofessional affiliated by reason of personal, business, or professional relationship with that ~~lawyer~~licensed paraprofessional or with that ~~lawyer~~licensed paraprofessional's law firm\* is acting as a lawyer for a party or as executor, receiver, trustee, administrator, guardian, or conservator.

~~(b) A lawyer shall not represent the seller at a probate, foreclosure, receiver, trustee, or judicial sale in an action or proceeding in which the purchaser is a spouse or relative of the lawyer or of another lawyer in the lawyer's law firm\* or is an employee of the lawyer or the lawyer's law firm.\*~~

~~(c)~~ This rule does not prohibit a ~~lawyer~~licensed paraprofessional's participation in transactions that are specifically authorized by and comply with Probate Code sections 9880 through 9885, but such transactions remain subject to the provisions of rules 1.8.1 and 1.7.

**Comment**

[Reserved]

**Rule 1.8.10 Sexual Relations with Current Client  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not engage:

(1) in sexual relations with a current client who is not the licensed paraprofessional's spouse or registered domestic partner, unless a consensual sexual relationship existed between them when the licensed paraprofessional-client relationship commenced;

(2) expressly or impliedly condition the performance of legal services for a current or prospective client upon the client's willingness to engage in sexual relations with the licensed paraprofessional; or

(3) employ coercion, intimidation, or undue influence in seeking to enter into sexual relations with a client.

(b) For purposes of this rule, “sexual relations” means sexual intercourse or the touching of an intimate part of another person\* for the purpose of sexual arousal, gratification, or abuse.

(c) If a person\* other than the client alleges a violation of this rule, no Notice of Disciplinary Charges may be filed by the State Bar against a licensed paraprofessional under this rule until the State Bar has attempted to obtain the client’s statement regarding, and has considered, whether the client would be unduly burdened by further investigation or a charge.

**Comment**

[Reserved]

**Rule 1.8.10 Sexual Relations with Current Client  
(Proposed Rule – Redline Version)**

(a) A lawyerlicensed paraprofessional shall not engage:

(1) in sexual relations with a current client who is not the lawyerlicensed paraprofessional’s spouse or registered domestic partner, unless a consensual sexual relationship existed between them when the lawyerlicensed paraprofessional-client relationship commenced;

(2) expressly or impliedly condition the performance of legal services for a current or prospective client upon the client’s willingness to engage in sexual relations with the licensed paraprofessional; or

(3) employ coercion, intimidation, or undue influence in enteringseeking to enter into sexual relations with a client.

(b) For purposes of this rule, “sexual relations” means sexual intercourse or the touching of an intimate part of another person\* for the purpose of sexual arousal, gratification, or abuse.

(c) If a person\* other than the client alleges a violation of this rule, no Notice of Disciplinary Charges may be filed by the State Bar against a lawyerlicensed paraprofessional under this rule until the State Bar has attempted to obtain the client’s statement regarding, and has considered, whether the client would be unduly burdened by further investigation or a charge.

**Comment**

[Reserved]

**Rule 1.8.11 Imputation of Prohibitions Under Rules 1.8.1 to 1.8.9  
(Proposed Rule – Clean Version)**

While licensed paraprofessionals are associated in a law firm\* with other paraprofessionals or lawyers, a prohibition in rules 1.8.1 through 1.8.9 or in the Lawyer RPC, rules 1.8.1 through 1.8.9 that applies to any one of them shall apply to all of them.

**Comment**

[Reserved]

**Rule 1.8.11 Imputation of Prohibitions Under Rules 1.8.1 to 1.8.9  
(Proposed Rule – Redline Version)**

While ~~licensed paraprofessionals lawyers~~ are associated in a law firm,\* with other paraprofessionals or lawyers, a prohibition in rules 1.8.1 through 1.8.9 or in the Lawyer RPC, rules 1.8.1 through 1.8.9 that applies to any one of them shall apply to all of them.

**Comment**

[Reserved]

**Rule 1.9 Duties to Former Clients  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional who has formerly represented a client in a matter shall not thereafter represent another person\* in the same or a substantially related matter in which that person's\* interests are materially adverse to the interests of the former client unless the former client gives informed written consent.\*
- (b) A licensed paraprofessional shall not knowingly\* represent a person\* in the same or a substantially related matter in which a firm\* with which the licensed paraprofessional formerly was associated had previously represented a client
- (1) whose interests are materially adverse to that person;\* and
  - (2) about whom the licensed paraprofessional had acquired information protected by rules 1.6 and 1.9(c) that is material to the matter;
- unless the former client gives informed written consent.\*
- (c) A licensed paraprofessional who has formerly represented a client in a matter or whose present or former firm\* has formerly represented a client in a matter shall not thereafter:
- (1) use information protected by rule 1.6 acquired by virtue of the representation of the former client to the disadvantage of the former client except as these rules would permit with respect to a current client, or when the information has become generally known;\* or
  - (2) reveal information protected by rule 1.6 acquired by virtue of the representation of the former client except as these rules permit with respect to a current client.

**Comment**

[Reserved]

**Rule 1.9 Duties to Former Clients  
(Proposed Rule – Redline Version)**

- (a) A ~~lawyer~~licensed paraprofessional who has formerly represented a client in a matter shall not thereafter represent another person\* in the same or a substantially related matter in which that person's\* interests are materially adverse to the interests of the former client unless the former client gives informed written consent.\*
- (b) A ~~lawyer~~licensed paraprofessional shall not knowingly\* represent a person\* in the same or a substantially related matter in which a firm\* with which the ~~lawyer~~licensed paraprofessional formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person;\* and

(2) about whom the [lawyerlicensed paraprofessional](#) had acquired information protected by [Business and Professions Code section 6068, subdivision \(e\)](#) and rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed written consent.\*

(c) A [lawyerlicensed paraprofessional](#) who has formerly represented a client in a matter or whose present or former firm\* has formerly represented a client in a matter shall not thereafter:

(1) use information protected by [Business and Professions Code section 6068, subdivision \(e\)](#) and rule 1.6 acquired by virtue of the representation of the former client to the disadvantage of the former client except as these rules [or the State Bar Act](#) would permit with respect to a current client, or when the information has become generally known;\* or

(2) reveal information protected by [Business and Professions Code section 6068, subdivision \(e\)](#) and rule 1.6 acquired by virtue of the representation of the former client except as these rules [or the State Bar Act](#) permit with respect to a current client.

#### Comment

[Reserved]

### **Rule 1.10 Imputation of Conflicts of Interest: General Rule (Proposed Rule – Clean Version)**

(a) While licensed paraprofessionals are associated in a firm with other licensed paraprofessionals or lawyers,\* none of them shall knowingly\* represent a client when any one of them practicing alone would be prohibited from doing so by rules 1.7 or 1.9 or by the Lawyer Rules, rules 1.7 or 1.9 unless

(1) the prohibition is based on a personal interest of the prohibited licensed paraprofessional or lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining licensed paraprofessionals in the firm;\* or

(2) the prohibition is based upon rule 1.9(a) or (b) or the Lawyer RPC, rule 1.9(a) or (b), and arises out of the prohibited licensed paraprofessional's or lawyer's association with a prior firm,\* and

(i) the prohibited licensed paraprofessional or lawyer did not substantially participate in the same or a substantially related matter;

(ii) the prohibited licensed paraprofessional or lawyer is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(iii) written\* notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this rule, which shall include a description of the screening\* procedures employed; and an agreement by the firm\* to respond promptly to any written\* inquiries or objections by the former client about the screening\* procedures.

(b) When a licensed paraprofessional has terminated an association with a firm,\* the firm\* is not prohibited from thereafter representing a person\* with interests materially adverse to those of a client represented by the formerly associated licensed paraprofessional and not currently represented by the firm,\* unless:

(1) the matter is the same or substantially related to that in which the formerly associated licensed paraprofessional represented the client; and

(2) any licensed paraprofessional or lawyer remaining in the firm\* has information protected by rule 1.6 or 1.9(c), or by Business and Professions Code section 6068, subdivision (e) and the Lawyer RPC, rules 1.6 and 1.9(c), that is material to the matter.

(c) A prohibition under this rule may be waived by each affected client under the conditions stated in rule 1.7.

(d) The imputation of a conflict of interest to a licensed paraprofessional associated in a firm\* with former or current government lawyer or former or current government licensed paraprofessional is governed by rule 1.11.

#### Comment

[Reserved]

### Rule 1.10 Imputation of Conflicts of Interest: General Rule (Proposed Rule – Redline Version)

(a) While ~~lawyers~~ licensed paraprofessionals are associated in a firm with other licensed paraprofessionals or lawyers,\* none of them shall knowingly\* represent a client when any one of them practicing alone would be prohibited from doing so by rules 1.7 or 1.9 or by the Lawyer Rules, rules 1.7 or 1.9 unless

(1) the prohibition is based on a personal interest of the prohibited ~~lawyer~~licensed paraprofessional or lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining licensed paraprofessionals or lawyers in the firm;\* or

(2) the prohibition is based upon rule 1.9(a) or (b) or the Lawyer RPC, rule 1.9(a) or (b), and arises out of the prohibited ~~lawyer~~licensed paraprofessional's or lawyer's association with a prior firm,\* and

(i) the prohibited ~~lawyer~~licensed paraprofessional or lawyer did not substantially participate in the same or a substantially related matter;

(ii) the prohibited ~~lawyer~~licensed paraprofessional or lawyer is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(iii) written\* notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this rule, which shall include a description of the screening\* procedures employed; and an agreement by the firm\* to respond promptly to any written\* inquiries or objections by the former client about the screening\* procedures.

(b) When a ~~lawyer~~licensed paraprofessional has terminated an association with a firm,\* the firm\* is not prohibited from thereafter representing a person\* with interests materially adverse to those of a client represented by the formerly associated ~~lawyer~~licensed paraprofessional and not currently represented by the firm,\* unless:

(1) the matter is the same or substantially related to that in which the formerly associated ~~lawyer~~licensed paraprofessional represented the client; and

(2) any ~~lawyer~~licensed paraprofessional or lawyer remaining in the firm\* has information protected by rule 1.6 or 1.9(c), or by Business and Professions Code section 6068, subdivision (e) and the Lawyer RPC, rules 1.6 and 1.9(c), that is material to the matter.

(c) A prohibition under this rule may be waived by each affected client under the conditions stated in rule 1.7.

(d) The imputation of a conflict of interest to a licensed paraprofessional~~lawyers~~ associated in a firm\* with former or current government lawyer or former or current government licensed paraprofessionals is governed by rule 1.11.

**Comment**

[Reserved]

**Rule 1.11 Special Conflicts of Interest for Former and Current Government Officials and Employees  
(Proposed Rule – Clean Version)**

(a) Except as law may otherwise expressly permit, a licensed paraprofessional who has formerly served as a public official or employee of the government:

(1) is subject to rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the licensed paraprofessional participated personally and substantially as a public official or employee, unless the appropriate government agency gives its informed written consent\* to the representation. This paragraph shall not apply to matters governed by rule 1.12(a).

(b) When a licensed paraprofessional is prohibited from representation under paragraph (a), no licensed paraprofessional or lawyer in a firm\* with which that licensed paraprofessional is associated may knowingly\* undertake or continue representation in such a matter unless:

(1) the personally prohibited licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written\* notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule

(c) Except as law may otherwise expressly permit, a licensed paraprofessional who was a public official or employee and, during that employment, acquired information that the licensed paraprofessional knows\* is confidential government information about a person,\* may not represent a private client whose interests are adverse to that person\* in a matter in which the information could be used to the material disadvantage of that person.\* As used in this rule, the term “confidential government information” means information that has been obtained under governmental authority, that, at the time this rule is applied, the government is prohibited by law from disclosing to the public, or has a legal privilege not to disclose, and that is not otherwise available to the public. A firm\* with which that licensed paraprofessional is associated may undertake or continue representation in the matter only if the personally prohibited licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a licensed paraprofessional currently serving as a public official or employee:

(1) is subject to rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the licensed paraprofessional participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed written consent;\* or

(ii) negotiate for private employment with any person\* who is involved as a party, or as a lawyer or licensed paraprofessional for a party, or with a law firm\* for a party, in a matter in which the licensed paraprofessional is participating personally and substantially.

**Comment**

[Reserved]

**Rule 1.11 Special Conflicts of Interest for Former and Current Government Officials and Employees  
(Proposed Rule – Redline Version)**

(a) Except as law may otherwise expressly permit, a lawyer licensed paraprofessional who has formerly served as a public official or employee of the government:

(1) is subject to rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer licensed paraprofessional participated personally and substantially as a public official or employee, unless the appropriate government agency gives its informed written consent\* to the representation. This paragraph shall not apply to matters governed by rule 1.12(a).

(b) When a lawyer licensed paraprofessional is prohibited from representation under paragraph (a), no lawyer licensed paraprofessional or lawyer in a firm\* with which that lawyer licensed paraprofessional is associated may knowingly\* undertake or continue representation in such a matter unless:

(1) the personally prohibited lawyer licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written\* notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule

(c) Except as law may otherwise expressly permit, a lawyer licensed paraprofessional who was a public official or employee and, during that employment, acquired information that the lawyer licensed paraprofessional knows\* is confidential government information about a person,\* may not represent a private client whose interests are adverse to that person\* in a matter in which the information could be used to the material disadvantage of that person.\* As used in this rule, the term “confidential government information” means information that has been obtained under governmental authority, that, at the time this rule is applied, the government is prohibited by law from disclosing to the public, or has a legal privilege not to disclose, and that is not otherwise available to the public. A firm\* with which that lawyer licensed paraprofessional is associated may undertake or continue representation in the matter only if the personally prohibited lawyer licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer licensed paraprofessional currently serving as a public official or employee:

(1) is subject to rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer licensed paraprofessional participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed written consent;\* or

(ii) negotiate for private employment with any person\* who is involved as a party, or as a lawyer or licensed paraprofessional for a party, or with a law firm\* for a party, in a matter in which the lawyer licensed paraprofessional is participating personally and substantially, ~~except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by rule 1.12(b) and subject to the conditions stated in rule 1.12(b).~~

**Comment**

[Reserved]

**Rule 1.12 Former Arbitrator, Mediator, or Other Third-Party Neutral  
(Proposed Rule – Clean Version)**

(a) Except as stated in paragraph (d), a licensed paraprofessional shall not represent anyone in connection with a matter in which the licensed paraprofessional participated personally and substantially as an adjudicative officer or a judicial staff member to such a person,\* or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give informed written consent.\*

(b) A licensed paraprofessional shall not seek employment from any person\* who is involved as a party or as lawyer or licensed paraprofessional for a party, or with a law firm\* for a party, in a matter in which the licensed paraprofessional is participating personally and substantially as an adjudicative officer, arbitrator, mediator, or other third party neutral. A licensed paraprofessional serving as a judicial staff member to a judge or other adjudicative officer may seek employment from a party, or with a lawyer, licensed paraprofessional, or a law firm\* for a party, in a matter in which the staff member is participating personally and substantially, but only with the approval of the court.

(c) If a licensed paraprofessional is prohibited from representation by paragraph (a), other licensed paraprofessional or lawyers in a firm\* with which that licensed paraprofessional is associated may knowingly\* undertake or continue representation in the matter only if:

- (1) the prohibition does not arise from the licensed paraprofessional's service as a mediator;
- (2) the prohibited licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and
- (3) written\* notice is promptly given to the parties and any appropriate tribunal\* to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

**Comment**

[Reserved]

**Rule 1.12 Former ~~Judge~~, Arbitrator, Mediator, or Other Third-Party Neutral  
(Proposed Rule – Redline Version)**

(a) Except as stated in paragraph (d), a lawyer-licensed paraprofessional shall not represent anyone in connection with a matter in which the lawyer-licensed paraprofessional participated personally and substantially as an ~~judge or other~~ adjudicative officer, ~~or a~~ judicial staff ~~attorney member or law clerk~~ to such a person,\* or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give informed written consent.\*

(b) A lawyer-licensed paraprofessional shall not seek employment from any person\* who is involved as a party or as lawyer or licensed paraprofessional for a party, or with a law firm\* for a party, in a matter in which the lawyer-licensed paraprofessional is participating personally and substantially as a ~~judge or other an~~ adjudicative officer ~~or as an~~ arbitrator, mediator, or other third party neutral. A lawyer-licensed paraprofessional serving as a judicial staff ~~attorney member or law clerk~~ to a judge or other adjudicative officer may seek employment from a party, or with a lawyer, licensed

paraprofessional, or a law firm\* for a party, in a matter in which the staff attorney member or clerk is participating personally and substantially, but only with the approval of the court.

(c) If a lawyer licensed paraprofessional is prohibited from representation by paragraph (a), other licensed paraprofessional or lawyers in a firm\* with which that lawyer licensed paraprofessional is associated may knowingly\* undertake or continue representation in the matter only if:

(1) the prohibition does not arise from the lawyer licensed paraprofessional's service as a mediator ~~or settlement judge~~;

(2) the prohibited lawyer licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(3) written\* notice is promptly given to the parties and any appropriate tribunal\* to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

#### Comment

[Reserved]

#### Rule 1.13 [Reserved] (Proposed Rule – Clean Version)

#### Rule 1.13 ~~[Reserved]~~ Organization as Client (Proposed Rule – Redline Version)

~~(a) A lawyer employed or retained by an organization shall conform his or her representation to the concept that the client is the organization itself, acting through its duly authorized directors, officers, employees, members, shareholders, or other constituents overseeing the particular engagement.~~

~~(b) If a lawyer representing an organization knows\* that a constituent is acting, intends to act or refuses to act in a matter related to the representation in a manner that the lawyer knows\* or reasonably should know\* is (i) a violation of a legal obligation to the organization or a violation of law reasonably\* imputable to the organization, and (ii) likely to result in substantial\* injury to the organization, the lawyer shall proceed as is reasonably\* necessary in the best lawful interest of the organization. Unless the lawyer reasonably believes\* that it is not necessary in the best lawful interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.~~

~~(c) In taking any action pursuant to paragraph (b), the lawyer shall not reveal information protected by Business and Professions Code section 6068, subdivision (e).~~

~~(d) If, despite the lawyer's actions in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or fails to act, in a manner that is a violation of a legal obligation to the organization or a violation of law reasonably\* imputable to the organization, and is likely to result in substantial\* injury to the organization, the lawyer shall continue to proceed as is reasonably\* necessary in the best lawful interests of the organization. The lawyer's response may include the lawyer's right and, where appropriate, duty to resign or withdraw in accordance with rule 1.16.~~

~~(e) A lawyer who reasonably believes\* that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b), or who resigns or withdraws under circumstances described in paragraph (d), shall proceed as the lawyer~~

reasonably believes\* necessary to assure that the organization's highest authority is informed of the lawyer's discharge, resignation, or withdrawal.

(f) In dealing with an organization's constituents, a lawyer representing the organization shall explain the identity of the lawyer's client whenever the lawyer knows\* or reasonably should know\* that the organization's interests are adverse to those of the constituent(s) with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its constituents, subject to the provisions of rules 1.7, 1.8.2, 1.8.6, and 1.8.7. If the organization's consent to the dual representation is required by any of these rules, the consent shall be given by an appropriate official, constituent, or body of the organization other than the individual who is to be represented, or by the shareholders.

#### **Comment**

[Reserved]

### **Rule 1.14 [Reserved]**

### **Rule 1.15 Safekeeping Funds and Property of Clients and Other Persons\* (Proposed Rule – Clean Version)**

(a) All funds received or held by a licensed paraprofessional or a licensed paraprofessional's law firm\* for the benefit of a client, or other person\* to whom the licensed paraprofessional owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled "Trust Account" or words of similar import, maintained in the State of California, or, with written\* consent of the client, in any other jurisdiction where there is a substantial\* relationship between the client or the client's business and the other jurisdiction.

(b) Funds belonging to the licensed paraprofessional or the licensed paraprofessional's law firm\* shall not be deposited or otherwise commingled with funds held in a trust account except:

(1) funds reasonably\* sufficient to pay bank charges; and

(2) funds belonging in part to a client or other person\* and in part presently or potentially to the licensed paraprofessional or the licensed paraprofessional's law firm\*,\* in which case the portion belonging to the licensed paraprofessional or the paraprofessional's law firm\* must be withdrawn at the earliest reasonable\* time after the licensed paraprofessional or the licensed paraprofessional law firm's interest in that portion becomes fixed. However, if a client or other person\* disputes the licensed paraprofessional or the licensed paraprofessional's law firm's right to receive a portion of trust funds, the disputed portion shall not be withdrawn until the dispute is finally resolved.

(c) A licensed paraprofessional shall:

(1) promptly notify a client or other person\* of the receipt of funds, securities, or other property in which the licensed paraprofessional knows\* or reasonably should know\* the client or other person\* has an interest;

(2) identify and label securities and properties of a client or other person\* promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;

(3) maintain complete records of all funds, securities, and other property of a client or other person\* coming into the possession of the licensed paraprofessional or the licensed paraprofessional's law firm;\*

- (4) promptly account in writing\* to the client or other person\* for whom the licensed paraprofessional or the licensed paraprofessional's law firm\* holds funds or property;
- (5) preserve records of all funds and property held by a licensed paraprofessional or the licensed paraprofessional's law firm\* under this rule for a period of no less than five years after final appropriate distribution of such funds or property;
- (6) comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar; and
- (7) promptly distribute, as requested by the client or other person,\* any undisputed funds or property in the possession of the licensed paraprofessional or the licensed paraprofessional's law firm\* that the client or other person\* is entitled to receive.

(d) The Board of Trustees of the State Bar shall have the authority to formulate and adopt standards as to what "records" shall be maintained by licensed paraprofessionals and law firms\* in accordance with paragraph (d)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all licensed paraprofessionals.

*Standards:*

Pursuant to this rule, the Board of Trustees of the State Bar adopted the following standards, effective \_\_\_\_\_, as to what "records" shall be maintained by licensed paraprofessionals and licensed paraprofessionals' law firms\* in accordance with paragraph (d)(3).

- (1) A licensed paraprofessional shall, from the date of receipt of funds of the client or other person\* through the period ending five years from the date of appropriate disbursement of such funds, maintain:
  - (a) a written\* ledger for each client or other person\* on whose behalf funds are held that sets forth:
    - (i) the name of such client or other person;\*
    - (ii) the date, amount and source of all funds received on behalf of such client or other person;\*
    - (iii) the date, amount, payee and purpose of each disbursement made on behalf of such client or other person;\* and
    - (iv) the current balance for such client or other person;\*
  - (b) a written\* journal for each bank account that sets forth:
    - (i) the name of such account;
    - (ii) the date, amount and client or other person\* affected by each debit and credit; and
    - (iii) the current balance in such account;
  - (c) all bank statements and cancelled checks for each bank account; and
  - (d) each monthly reconciliation (balancing) of (a), (b), and (c).
- (2) A licensed paraprofessional shall, from the date of receipt of all securities and other properties held for the benefit of client or other person\* through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a written\* journal that specifies:

- (a) each item of security and property held;
- (b) the person\* on whose behalf the security or property is held;
- (c) the date of receipt of the security or property;
- (d) the date of distribution of the security or property; and
- (e) person\* to whom the security or property was distributed.

**Comment**

[Reserved]

**Rule 1.15 Safekeeping Funds and Property of Clients and Other Persons\***  
**(Proposed Rule – Redline Version)**

(a) All funds received or held by a lawyer-licensed paraprofessional or a licensed paraprofessional's law firm\* for the benefit of a client, or other person\* to whom the lawyer-licensed paraprofessional owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled "Trust Account" or words of similar import, maintained in the State of California, or, with written\* consent of the client, in any other jurisdiction where there is a substantial\* relationship between the client or the client's business and the other jurisdiction.

~~(b) Notwithstanding paragraph (a), a flat fee paid in advance for legal services may be deposited in a paraprofessional's lawyer's or paraprofessional law firm's operating account, provided:~~

~~(e)~~ Funds belonging to the lawyer-licensed paraprofessional or the licensed paraprofessional's law firm\* shall not be deposited or otherwise commingled with funds held in a trust account except:

- (1) funds reasonably\* sufficient to pay bank charges; and
- (2) funds belonging in part to a client or other person\* and in part presently or potentially to the lawyer-licensed paraprofessional or the licensed paraprofessional's law firm,\* in which case the portion belonging to the lawyer-licensed paraprofessional or the paraprofessional's law firm\* must be withdrawn at the earliest reasonable\* time after the lawyer-licensed paraprofessional or the licensed paraprofessional law firm's interest in that portion becomes fixed. However, if a client or other person\* disputes the lawyer-licensed paraprofessional or the licensed paraprofessional's law firm's right to receive a portion of trust funds, the disputed portion shall not be withdrawn until the dispute is finally resolved.

~~(d)~~ A lawyer-licensed paraprofessional shall:

- (1) promptly notify a client or other person\* of the receipt of funds, securities, or other property in which the lawyer-licensed paraprofessional knows\* or reasonably should know\* the client or other person\* has an interest;
- (2) identify and label securities and properties of a client or other person\* promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
- (3) maintain complete records of all funds, securities, and other property of a client or other person\* coming into the possession of the lawyer-licensed paraprofessional or the licensed paraprofessional's law firm;\*
- (4) promptly account in writing\* to the client or other person\* for whom the lawyer-licensed paraprofessional or the licensed paraprofessional's law firm\* holds funds or property;

(5) preserve records of all funds and property held by a [lawyerlicensed paraprofessional](#) or [the licensed paraprofessional's](#) law firm\* under this rule for a period of no less than five years after final appropriate distribution of such funds or property;

(6) comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar; and

(7) promptly distribute, as requested by the client or other person,\* any undisputed funds or property in the possession of the [lawyerlicensed paraprofessional](#) or [the licensed paraprofessional's](#) law firm\* that the client or other person\* is entitled to receive.

(ed) The Board of Trustees of the State Bar shall have the authority to formulate and adopt standards as to what "records" shall be maintained by [lawyerlicensed paraprofessionals](#) and law firms\* in accordance with paragraph (d)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all [lawyerlicensed paraprofessionals](#).

*Standards:*

Pursuant to this rule, the Board of Trustees of the State Bar adopted the following standards, effective [November 1, 2018](#), as to what "records" shall be maintained by [lawyerlicensed paraprofessionals](#) and [licensed paraprofessionals'](#) law firms\* in accordance with paragraph (d)(3).

(1) A [lawyerlicensed paraprofessional](#) shall, from the date of receipt of funds of the client or other person\* through the period ending five years from the date of appropriate disbursement of such funds, maintain:

- (a) a written\* ledger for each client or other person\* on whose behalf funds are held that sets forth:
  - (i) the name of such client or other person;\*
  - (ii) the date, amount and source of all funds received on behalf of such client or other person;\*
  - (iii) the date, amount, payee and purpose of each disbursement made on behalf of such client or other person;\* and
  - (iv) the current balance for such client or other person;\*
- (b) a written\* journal for each bank account that sets forth:
  - (i) the name of such account;
  - (ii) the date, amount and client or other person\* affected by each debit and credit; and
  - (iii) the current balance in such account;
- (c) all bank statements and cancelled checks for each bank account; and
- (d) each monthly reconciliation (balancing) of (a), (b), and (c).

(2) A [lawyerlicensed paraprofessional](#) shall, from the date of receipt of all securities and other properties held for the benefit of client or other person\* through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a written\* journal that specifies:

- (a) each item of security and property held;
- (b) the person\* on whose behalf the security or property is held;

- (c) the date of receipt of the security or property;
- (d) the date of distribution of the security or property; and
- (e) person\* to whom the security or property was distributed.

**Comment**

[Reserved]

**Rule 1.16 Declining or Terminating Representation  
(Proposed Rule – Clean Version)**

(a) Except as stated in paragraph (c), a licensed paraprofessional shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the licensed paraprofessional knows\* or reasonably should know\* that the client is bringing an action, conducting a defense or asserting a position in litigation, without probable cause and for the purpose of harassing or maliciously injuring any person;\*
- (2) the licensed paraprofessional knows\* or reasonably should know\* that the representation will result in violation of these rules or other law;
- (3) the licensed paraprofessional's mental or physical condition renders it unreasonably difficult to carry out the representation effectively; or
- (4) the client discharges the licensed paraprofessional; or
- (5) the licensed paraprofessional knows or reasonably should know that the subject of the representation is beyond the scope of the defined practice area for which the licensed paraprofessional is licensed as set forth in [add CRC rule reference setting forth permissible scope of practice]. If the subject of the representation is beyond the scope of the licensed paraprofessional's defined practice area, the licensed paraprofessional shall not render any legal assistance and shall advise the client in writing to seek the services of a lawyer or licensed paraprofessional authorized to provide legal services on the subject of the representation.

(b) Except as stated in paragraph (c), a licensed paraprofessional may withdraw from representing a client if:

- (1) the client insists upon presenting a claim or defense in litigation, or asserting a position or making a demand in a non-litigation matter, that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;
- (2) the client either seeks to pursue a criminal or fraudulent\* course of conduct or has used the licensed paraprofessional's services to advance a course of conduct that the licensed paraprofessional reasonably believes\* was a crime or fraud;\*
- (3) the client insists that the licensed paraprofessional pursue a course of conduct that is criminal or fraudulent;\*
- (4) the client by other conduct renders it unreasonably difficult for the licensed paraprofessional to carry out the representation effectively;
- (5) the client breaches a material term of an agreement with, or obligation, to the licensed paraprofessional relating to the representation, and the licensed paraprofessional has given the client a reasonable\* warning after the breach that the licensed paraprofessional will withdraw unless the client fulfills the agreement or performs the obligation;

- (6) the client knowingly\* and freely assents to termination of the representation;
  - (7) the inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;
  - (8) the licensed paraprofessional's mental or physical condition renders it difficult for the licensed paraprofessional to carry out the representation effectively; or
  - (9) a continuation of the representation is likely to result in a violation of these rules or applicable law; or
  - (10) the licensed paraprofessional believes\* in good faith, in a proceeding pending before a tribunal,\* that the tribunal\* will find the existence of other good cause for withdrawal.
- (c) If permission for termination of a representation is required by the rules of a tribunal,\* a licensed paraprofessional shall not terminate a representation before that tribunal\* without its permission.
- (d) A licensed paraprofessional shall not terminate a representation until the licensed paraprofessional has taken reasonable\* steps to avoid reasonably\* foreseeable prejudice to the rights of the client, such as giving the client sufficient notice to permit the client to retain other representation, and complying with paragraph (e).
- (e) Upon the termination of a representation for any reason:
- (1) subject to any applicable protective order, non-disclosure agreement, statute or regulation, the licensed paraprofessional promptly shall release to the client, at the request of the client, all client materials and property. "Client materials and property" includes correspondence, pleadings, deposition transcripts, experts' reports and other writings,\* exhibits, and physical evidence, whether in tangible, electronic or other form, and other items reasonably\* necessary to the client's representation, whether the client has paid for them or not; and
  - (2) the licensed paraprofessional promptly shall refund any part of a fee or expense paid in advance that the licensed paraprofessional has not earned or incurred.

**Comment**

[Reserved]

**Rule 1.16 Declining or Terminating Representation  
(Proposed Rule – Redline Version)**

- (a) Except as stated in paragraph (c), a lawyer licensed paraprofessional shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
- (1) the lawyer licensed paraprofessional knows\* or reasonably should know\* that the client is bringing an action, conducting a defense, or asserting a position in litigation, ~~or taking an appeal,~~ without probable cause and for the purpose of harassing or maliciously injuring any person;\*
  - (2) the lawyer licensed paraprofessional knows\* or reasonably should know\* that the representation will result in violation of these rules or ~~of the State Bar Act~~applicable other law;
  - (3) the lawyer licensed paraprofessional's mental or physical condition renders it unreasonably difficult to carry out the representation effectively; or
  - (4) the client discharges the lawyer licensed paraprofessional; or

(5) the licensed paraprofessional knows or reasonably should know that the subject of the representation is beyond the scope of the defined practice area for which the licensed paraprofessional is licensed as set forth in [\[add CRC rule reference setting forth permissible scope of practice\]](#). If the subject of the representation is beyond the scope of the licensed paraprofessional’s defined practice area, the licensed paraprofessional shall not render any legal assistance and shall advise the client in writing to seek the services of a lawyer or licensed paraprofessional authorized to provide legal services on the subject of the representation.

- (b) Except as stated in paragraph (c), a [lawyer licensed paraprofessional](#) may withdraw from representing a client if:
- (1) the client insists upon presenting a claim or defense in litigation, or asserting a position or making a demand in a non-litigation matter, that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;
  - (2) the client either seeks to pursue a criminal or fraudulent\* course of conduct or has used the [lawyer licensed paraprofessional](#)’s services to advance a course of conduct that the [lawyer licensed paraprofessional](#) reasonably believes\* was a crime or fraud;\*
  - (3) the client insists that the [lawyer licensed paraprofessional](#) pursue a course of conduct that is criminal or fraudulent;\*
  - (4) the client by other conduct renders it unreasonably difficult for the [lawyer licensed paraprofessional](#) to carry out the representation effectively;
  - (5) the client breaches a material term of an agreement with, or obligation, to the [lawyer licensed paraprofessional](#) relating to the representation, and the [lawyer licensed paraprofessional](#) has given the client a reasonable\* warning after the breach that the [lawyer licensed paraprofessional](#) will withdraw unless the client fulfills the agreement or performs the obligation;
  - (6) the client knowingly\* and freely assents to termination of the representation;
  - (7) the inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;
  - (8) the [lawyer licensed paraprofessional](#)’s mental or physical condition renders it difficult for the [lawyer licensed paraprofessional](#) to carry out the representation effectively; or
  - (9) a continuation of the representation is likely to result in a violation of these rules or [the State Bar Act applicable law](#); or
  - (10) the [lawyer licensed paraprofessional](#) believes\* in good faith, in a proceeding pending before a tribunal,\* that the tribunal\* will find the existence of other good cause for withdrawal.
- (c) If permission for termination of a representation is required by the rules of a tribunal,\* a [lawyer licensed paraprofessional](#) shall not terminate a representation before that tribunal\* without its permission.
- (d) A [lawyer licensed paraprofessional](#) shall not terminate a representation until the [lawyer licensed paraprofessional](#) has taken reasonable\* steps to avoid reasonably\* foreseeable prejudice to the rights of the client, such as giving the client sufficient notice to permit the client to retain other [counsel representation](#), and complying with paragraph (e).
- (e) Upon the termination of a representation for any reason:
- (1) subject to any applicable protective order, non-disclosure agreement, statute or regulation, the [lawyer licensed paraprofessional](#) promptly shall release to the client, at the request of the client, all client materials and property. “Client materials and property” includes correspondence, pleadings, deposition transcripts, experts’

reports and other writings,\* exhibits, and physical evidence, whether in tangible, electronic or other form, and other items reasonably\* necessary to the client’s representation, whether the client has paid for them or not; and

(2) the lawyerlicensed paraprofessional promptly shall refund any part of a fee or expense paid in advance that the lawyerlicensed paraprofessional has not earned or incurred. This provision is not applicable to a true retainer fee paid solely for the purpose of ensuring the availability of the lawyer for the matter.

**Comment**

[Reserved]

**Rule 1.17 Sale of a Law Practice  
(Proposed Rule – Clean Version)**

All or substantially\* all of the law practice of a licensed paraprofessional, living or deceased, including goodwill, may be sold to another licensed paraprofessional, a lawyer or law firm\* subject to all the following conditions:

- (a) Fees charged to clients shall not be increased solely by reason of the sale.
- (b) If the sale contemplates the transfer of responsibility for work not yet completed or responsibility for client files or information protected by rule 1.6(a), then;
  - (1) if the seller is deceased, or has a conservator or other person\* acting in a representative capacity, and no lawyer has been appointed to act for the seller, then prior to the transfer;
    - (i) the purchaser shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client’s rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
    - (ii) the purchaser shall obtain the written\* consent of the client. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(1)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.
  - (2) in all other circumstances, not less than 90 days prior to the transfer;
    - (i) the seller, or the lawyer appointed to act for the seller, shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client’s rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
    - (ii) the seller, or the lawyer appointed to act for the seller, shall obtain the written\* consent of the client prior to the transfer. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(2)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.
- (c) If substitution is required by the rules of a tribunal\* in which a matter is pending, all steps necessary to substitute a lawyer shall be taken.
- (d) The purchaser shall comply with the applicable requirements of rules 1.7 and 1.9.

- (e) Confidential information shall not be disclosed to a nonlawyer in connection with a sale under this rule.
- (f) This rule does not apply to the admission to or retirement from a law firm,\* retirement plans and similar arrangements, or sale of tangible assets of a law practice.

**Comment**

[Reserved]

**Rule 1.17 Sale of a Law Practice  
(Proposed Rule – Redline Version)**

All or substantially\* all of the law practice of a ~~lawyer~~licensed paraprofessional, living or deceased, including goodwill, may be sold to another licensed paraprofessional, a lawyer or law firm\* subject to all the following conditions:

- (a) Fees charged to clients shall not be increased solely by reason of the sale.
- (b) If the sale contemplates the transfer of responsibility for work not yet completed or responsibility for client files or information protected by ~~Business and Professions Code section 6068, subdivision (e)(1), rule 1.6(a)~~, then;
  - (1) if the seller is deceased, or has a conservator or other person\* acting in a representative capacity, and no lawyer has been appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, then prior to the transfer;
    - (i) the purchaser shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client’s rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
    - (ii) the purchaser shall obtain the written\* consent of the client. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(1)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.
  - (2) in all other circumstances, not less than 90 days prior to the transfer;
    - (i) the seller, or the lawyer appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client’s rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
    - (ii) the seller, or the lawyer appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, shall obtain the written\* consent of the client prior to the transfer. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(2)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.
- (c) If substitution is required by the rules of a tribunal\* in which a matter is pending, all steps necessary to substitute a lawyer shall be taken.
- (d) The purchaser shall comply with the applicable requirements of rules 1.7 and 1.9.

- (e) Confidential information shall not be disclosed to a nonlawyer in connection with a sale under this rule.
- (f) This rule does not apply to the admission to or retirement from a law firm,\* retirement plans and similar arrangements, or sale of tangible assets of a law practice.

**Comment**

[Reserved]

**Rule 1.18 Duties to Prospective Client  
(Proposed Rule – Clean Version)**

- (a) A person\* who, directly or through an authorized representative, consults a licensed paraprofessional for the purpose of retaining the licensed paraprofessional or securing legal service or advice from the licensed paraprofessional in the licensed paraprofessional's professional capacity, is a prospective client.
- (b) Even when no licensed paraprofessional-client relationship ensues, a licensed paraprofessional who has communicated with a prospective client shall not use or reveal information protected by rule 1.6(a) that the licensed paraprofessional learned as a result of the consultation, except as rule 1.9 would permit with respect to information of a former client.
- (c) A licensed paraprofessional subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the licensed paraprofessional received from the prospective client information protected by rule 1.6(a) that is material to the matter, except as provided in paragraph (d).
- (d) If a licensed paraprofessional is prohibited from representation under this paragraph or a lawyer is prohibited from representation under Lawyer RPC rule 1.18(c), no licensed paraprofessional in a firm\* with which that licensed paraprofessional is associated may knowingly\* undertake or continue representation in such a matter, except as provided in paragraph (d).
- (d) When the lawyer or licensed paraprofessional has received information that prohibits representation as provided in paragraph (c), representation of the affected client is permissible if:
  - (1) both the affected client and the prospective client have given informed written consent,\* or
  - (2) the lawyer or licensed paraprofessional who received the information took reasonable\* measures to avoid exposure to more information than was reasonably\* necessary to determine whether to represent the prospective client; and
    - (i) the prohibited lawyer or licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and
    - (ii) written\* notice is promptly given to the prospective client to enable the prospective client to ascertain compliance with the provisions of this rule.

**Comment**

[Reserved]

**Rule 1.18 Duties to Prospective Client  
(Proposed Rule – Redline Version)**

(a) A person\* who, directly or through an authorized representative, consults a lawyerlicensed paraprofessional for the purpose of retaining the lawyerlicensed paraprofessional or securing legal service or advice from the lawyerlicensed paraprofessional in the lawyerlicensed paraprofessional's professional capacity, is a prospective client.

(b) Even when no lawyerlicensed paraprofessional-client relationship ensues, a lawyerlicensed paraprofessional who has communicated with a prospective client shall not use or reveal information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6(a) that the lawyerlicensed paraprofessional learned as a result of the consultation, except as rule 1.9 would permit with respect to information of a former client.

(c) A lawyerlicensed paraprofessional subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyerlicensed paraprofessional received from the prospective client information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6(a) that is material to the matter, except as provided in paragraph (d). If a lawyerlicensed paraprofessional is prohibited from representation under this paragraph or a lawyer is prohibited from representation under Lawyer RPC rule 1.18(c), no lawyerlicensed paraprofessional in a firm\* with which that lawyerlicensed paraprofessional is associated may knowingly\* undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer or licensed paraprofessional has received information that prohibits representation as provided in paragraph (c), representation of the affected client is permissible if:

- (1) both the affected client and the prospective client have given informed written consent,\* or
- (2) the lawyer or licensed paraprofessional who received the information took reasonable\* measures to avoid exposure to more information than was reasonably\* necessary to determine whether to represent the prospective client; and
  - (i) the prohibited lawyer or licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and
  - (ii) written\* notice is promptly given to the prospective client to enable the prospective client to ascertain compliance with the provisions of this rule.

**Comment**

[Reserved]

**CHAPTER 2. COUNSELOR**

**Rule 2.1 Advisor  
(Proposed Rule – Clean Version)**

In representing a client, a licensed paraprofessional shall exercise independent professional judgment and render candid advice.

**Comment**

[Reserved]

**Rule 2.1 Advisor  
(Proposed Rule – Redline Version)**

In representing a client, a lawyer licensed paraprofessional shall exercise independent professional judgment and render candid advice.

**Comment**

[Reserved]

**Rule 2.2 [Reserved]**

**Rule 2.3 [Reserved]**

**Rule 2.4 Licensed Paraprofessional as Third-Party Neutral  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional serves as a third-party neutral when the licensed paraprofessional assists two or more persons\* who are not clients of the licensed paraprofessional to reach a resolution of a dispute, or other matter, that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the licensed paraprofessional to assist the parties to resolve the matter.

(b) A licensed paraprofessional serving as a third-party neutral shall inform unrepresented parties that the licensed paraprofessional is not representing them. When the licensed paraprofessional knows\* or reasonably should know\* that a party does not understand the licensed paraprofessional's role in the matter, the licensed paraprofessional shall explain the difference between the licensed paraprofessional's role as a third-party neutral and a licensed paraprofessional's role as one who represents a client.

**Comment**

[Reserved]

**Rule 2.4 Lawyer Licensed Paraprofessional as Third-Party Neutral  
(Proposed Rule – Redline Version)**

(a) A lawyer licensed paraprofessional serves as a third-party neutral when the lawyer licensed paraprofessional assists two or more persons\* who are not clients of the lawyer licensed paraprofessional to reach a resolution of a dispute, or other matter, that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer licensed paraprofessional to assist the parties to resolve the matter.

(b) A lawyer licensed paraprofessional serving as a third-party neutral shall inform unrepresented parties that the lawyer licensed paraprofessional is not representing them. When the lawyer licensed paraprofessional knows\* or reasonably should know\* that a party does not understand the lawyer licensed paraprofessional's role in the matter, the lawyer licensed paraprofessional shall explain the difference between the lawyer licensed paraprofessional's role as a third-party neutral and a lawyer licensed paraprofessional's role as one who represents a client.

**Comment**

[Reserved]

**Rule 2.4.1 [Reserved]  
(Proposed Rule – Clean Version)**

**Rule 2.4.1 ~~[Reserved] Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator~~**  
**(Proposed Rule – Redline Version)**

~~A lawyer who is serving as a temporary judge, referee, or court-appointed arbitrator, and is subject to canon 6D of the California Code of Judicial Ethics, shall comply with the terms of that canon.~~

**CHAPTER 3. ADVOCATE**

**Rule 3.1 Meritorious Claims and Contentions**  
**(Proposed Rule – Clean Version)**

A licensed paraprofessional shall not:

- (a) assist with bringing or continuing an action, conducting a defense, or asserting a position in litigation, without probable cause and for the purpose of harassing or maliciously injuring any person;\* or
- (b) assist with presenting a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of the existing law.

**Rule 3.1 Meritorious Claims and Contentions**  
**(Proposed Rule – Redline Version)**

~~(a) — A lawyer licensed paraprofessional shall not:~~

~~(a1) assist with bringing or continue continuing an action, conducting a defense, or asserting a position in litigation, or take an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person;\* or~~

~~(b2) assist with presenting a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of the existing law.~~

~~(b) — A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, or involuntary commitment or confinement, may nevertheless defend the proceeding by requiring that every element of the case be established.~~

**Rule 3.2 Delay of Litigation**  
**(Proposed Rule – Clean Version)**

In representing a client, a licensed paraprofessional shall not use means that have no substantial\* purpose other than to delay or prolong the proceeding or to cause needless expense.

**Comment**

[Reserved]

**Rule 3.2 Delay of Litigation**  
**(Proposed Rule – Redline Version)**

In representing a client, a lawyer licensed paraprofessional shall not use means that have no substantial\* purpose other than to delay or prolong the proceeding or to cause needless expense.

**Comment**

[Reserved]

**Rule 3.3 Candor Toward the Tribunal\***  
**(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall not:
- (1) knowingly\* make a false statement of fact or law to a tribunal\* or fail to correct a false statement of material fact or law previously made to the tribunal\* by the licensed paraprofessional;
  - (2) fail to disclose to the tribunal\* legal authority in the controlling jurisdiction known\* to the licensed paraprofessional to be directly adverse to the position of the client and not disclosed by opposing party, or knowingly\* misquote to a tribunal\* the language of a book, statute, decision or other authority; or
  - (3) offer evidence that the licensed paraprofessional knows\* to be false. If a licensed paraprofessional or the licensed paraprofessional's client, has offered material evidence, and the licensed paraprofessional comes to know\* of its falsity, the licensed paraprofessional shall take reasonable\* remedial measures, including, if necessary, disclosure to the tribunal,\* unless disclosure is prohibited by rule 1.6. A licensed paraprofessional may refuse to offer evidence that the licensed paraprofessional reasonably believes\* is false.
- (b) A licensed paraprofessional who represents a client in a proceeding before a tribunal\* and who knows\* that a person\* intends to engage, is engaging or has engaged in criminal or fraudulent\* conduct related to the proceeding shall take reasonable\* remedial measures to the extent permitted by rule 1.6.
- (c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding.
- (d) In an ex parte proceeding where notice to the opposing party in the proceeding is not required or given and the opposing party is not present, a licensed paraprofessional shall inform the tribunal\* of all material facts known\* to the licensed paraprofessional that will enable the tribunal\* to make an informed decision, whether or not the facts are adverse to the position of the client.

**Comment**

[Reserved]

**Rule 3.3 Candor Toward the Tribunal\***  
**(Proposed Rule – Redline Version)**

- (a) A lawyer licensed paraprofessional shall not:
- (1) knowingly\* make a false statement of fact or law to a tribunal\* or fail to correct a false statement of material fact or law previously made to the tribunal\* by the lawyer licensed paraprofessional;
  - (2) fail to disclose to the tribunal\* legal authority in the controlling jurisdiction known\* to the lawyer licensed paraprofessional to be directly adverse to the position of the client and not disclosed by opposing counsel party, or knowingly\* misquote to a tribunal\* the language of a book, statute, decision or other authority; or
  - (3) offer evidence that the lawyer licensed paraprofessional knows\* to be false. If a lawyer licensed paraprofessional or the lawyer licensed paraprofessional's client, ~~or a witness called by the lawyer~~, has offered material evidence, and the lawyer licensed paraprofessional comes to know\* of its falsity, the lawyer licensed paraprofessional shall take reasonable\* remedial measures, including, if necessary, disclosure to the tribunal,\*

unless disclosure is prohibited by ~~Business and Professions Code section 6068, subdivision (e) and rule 1.6~~. A ~~lawyer~~licensed paraprofessional may refuse to offer evidence, ~~other than the testimony of a defendant in a criminal matter,~~ that the ~~lawyer~~licensed paraprofessional reasonably believes\* is false.

(b) A ~~lawyer~~licensed paraprofessional who represents a client in a proceeding before a tribunal\* and who knows\* that a person\* intends to engage, is engaging or has engaged in criminal or fraudulent\* conduct related to the proceeding shall take reasonable\* remedial measures to the extent permitted by ~~Business and Professions Code section 6068, subdivision (e) and rule 1.6~~.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding.

(d) In an ex parte proceeding where notice to the opposing party in the proceeding is not required or given and the opposing party is not present, a ~~lawyer~~licensed paraprofessional shall inform the tribunal\* of all material facts known\* to the ~~licensed paraprofessional lawyer~~ that will enable the tribunal\* to make an informed decision, whether or not the facts are adverse to the position of the client.

#### **Comment**

[Reserved]

### **Rule 3.4 Fairness to Opposing Party and Counsel (Proposed Rule – Clean Version)**

A licensed paraprofessional shall not:

- (a) unlawfully obstruct another party's access to evidence, including a witness, or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A licensed paraprofessional shall not counsel or assist another person\* to do any such act;
- (b) suppress any evidence that the licensed paraprofessional or the licensed paraprofessional's client has a legal obligation to reveal or to produce;
- (c) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (d) directly or indirectly pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case. Except where prohibited by law, a licensed paraprofessional may advance, guarantee, or acquiesce in the payment of:
  - (1) expenses reasonably\* incurred by a witness in attending or testifying;
  - (2) reasonable\* compensation to a witness for loss of time in attending or testifying; or
  - (3) a reasonable\* fee for the professional services of an expert witness;
- (e) advise or directly or indirectly cause a person\* to secrete himself or herself or to leave the jurisdiction of a tribunal\* for the purpose of making that person\* unavailable as a witness therein; or
- (f) knowingly\* disobey an obligation under the rules of a tribunal\* except for an open refusal based on an assertion that no valid obligation exists.
- (g) in trial, assert personal knowledge of facts in issue except when testifying as a witness.

#### **Comment**

[Reserved]

### Rule 3.4 Fairness to Opposing Party and Counsel (Proposed Rule – Redline Version)

A lawyer~~licensed~~ paraprofessional shall not:

- (a) unlawfully obstruct another party's access to evidence, including a witness, or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer~~licensed~~ paraprofessional shall not counsel or assist another person\* to do any such act;
- (b) suppress any evidence that the lawyer~~licensed~~ paraprofessional or the lawyer~~licensed~~ paraprofessional's client has a legal obligation to reveal or to produce;
- (c) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (d) directly or indirectly pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case. Except where prohibited by law, a lawyer~~licensed~~ paraprofessional may advance, guarantee, or acquiesce in the payment of:
  - (1) expenses reasonably\* incurred by a witness in attending or testifying;
  - (2) reasonable\* compensation to a witness for loss of time in attending or testifying; or
  - (3) a reasonable\* fee for the professional services of an expert witness;
- (e) advise or directly or indirectly cause a person\* to secrete himself or herself or to leave the jurisdiction of a tribunal\* for the purpose of making that person\* unavailable as a witness therein; or
- (f) knowingly\* disobey an obligation under the rules of a tribunal\* except for an open refusal based on an assertion that no valid obligation exists; ~~or~~
- (g) in trial, assert personal knowledge of facts in issue except when testifying as a witness; ~~or state a personal opinion as to the guilt or innocence of an accused.~~

#### Comment

[Reserved]

### Rule 3.5 Contact with Judges, Officials, and Employees (Proposed Rule – Clean Version)

- (a) Except as permitted by statute, an applicable code of judicial ethics or code of judicial conduct, or standards governing employees of a tribunal,\* a licensed paraprofessional shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal.\* This rule does not prohibit a licensed paraprofessional from contributing to the campaign fund of a judge or judicial officer running for election or confirmation pursuant to applicable law pertaining to such contributions.
- (b) Unless permitted to do so by law, an applicable code of judicial ethics or code of judicial conduct, a rule or ruling of a tribunal,\* or a court order, a licensed paraprofessional shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before the judge or judicial officer, except:

- (1) with the consent of all other counsel and any unrepresented parties in the matter;
- (2) in writing\* with a copy thereof furnished to all other represented and unrepresented parties in the matter.

(c) As used in this rule, “judge” and “judicial officer” shall also include: (i) administrative law judges; (ii) neutral arbitrators; (iii) State Bar Court judges; (iv) members of an administrative body acting in an adjudicative capacity; and (v) law clerks, research attorneys, or other court personnel who participate in the decision-making process, including referees, special masters, or other persons\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

#### Comment

[Reserved]

### Rule 3.5 Contact with Judges, Officials, ~~and Employees, and Jurors~~ (Proposed Rule – Redline Version)

(a) Except as permitted by statute, an applicable code of judicial ethics or code of judicial conduct, or standards governing employees of a tribunal,\* a lawyerlicensed paraprofessional shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal.\* This rule does not prohibit a lawyerlicensed paraprofessional from contributing to the campaign fund of a judge or judicial officer running for election or confirmation pursuant to applicable law pertaining to such contributions.

(b) Unless permitted to do so by law, an applicable code of judicial ethics or code of judicial conduct, a rule or ruling of a tribunal,\* or a court order, a lawyerlicensed paraprofessional shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before the judge or judicial officer, except:

~~(1) in open court;~~

~~(2) with the consent of all other counsel and any unrepresented parties in the matter;~~

~~(3) in the presence of all other counsel and any unrepresented parties in the matter;~~

~~(4) in writing\* with a copy thereof furnished to all other counsel-represented and any unrepresented parties in the matter; or~~

~~(5) in ex parte matters.~~

(c) As used in this rule, “judge” and “judicial officer” shall also include: (i) administrative law judges; (ii) neutral arbitrators; (iii) State Bar Court judges; (iv) members of an administrative body acting in an adjudicative capacity; and (v) law clerks, research attorneys, or other court personnel who participate in the decision-making process, including referees, special masters, or other persons\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

~~(d) A lawyer connected with a case shall not communicate directly or indirectly with anyone the lawyer knows\* to be a member of the venire from which the jury will be selected for trial of that case.~~

~~(e) During trial, a lawyer connected with the case shall not communicate directly or indirectly with any juror.~~

~~(f) During trial, a lawyer who is not connected with the case shall not communicate directly or indirectly concerning the case with anyone the lawyer knows\* is a juror in the case.~~

~~(g) After discharge of the jury from further consideration of a case a lawyer shall not communicate directly or indirectly with a juror if:~~

~~(1) the communication is prohibited by law or court order;~~

~~(2) the juror has made known\* to the lawyer a desire not to communicate; or~~

~~(3) the communication involves misrepresentation, coercion, or duress, or is intended to harass or embarrass the juror or to influence the juror's actions in future jury service.~~

~~(h) A lawyer shall not directly or indirectly conduct an out of court investigation of a person\* who is either a member of a venire or a juror in a manner likely to influence the state of mind of such person\* in connection with present or future jury service.~~

~~(i) All restrictions imposed by this rule also apply to communications with, or investigations of, members of the family of a person\* who is either a member of a venire or a juror.~~

~~(j) A lawyer shall reveal promptly to the court improper conduct by a person\* who is either a member of a venire or a juror, or by another toward a person\* who is either a member of a venire or a juror or a member of his or her family, of which the lawyer has knowledge.~~

~~(k) This rule does not prohibit a lawyer from communicating with persons\* who are members of a venire or jurors as a part of the official proceedings.~~

~~(l) For purposes of this rule, "juror" means any empaneled, discharged, or excused juror.~~

#### **Comment**

[Reserved]

### **Rule 3.6 Trial Publicity (Proposed Rule – Clean Version)**

(a) A licensed paraprofessional who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows\* or reasonably should know\* will (i) be disseminated by means of public communication and (ii) have a substantial\* likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), but only to the extent permitted by rule 1.6, licensed paraprofessional may state:

- (1) the claim or defense involved and, except when prohibited by law, the identity of the persons\* involved;
- (2) information contained in a public record;
- (3) that an investigation of a matter is in progress;
- (4) the scheduling or result of any step in litigation;
- (5) a request for assistance in obtaining evidence and information necessary thereto; and
- (6) a warning of danger concerning the behavior of a person\* involved, when there is reason to believe\* that there exists the likelihood of substantial\* harm to an individual or to the public but only to the extent that dissemination by public communication is reasonably\* necessary to protect the individual or the public.

(c) Notwithstanding paragraph (a), a licensed paraprofessional may make a statement that a reasonable\* licensed paraprofessional would believe\* is required to protect a client from the substantial\* undue prejudicial effect of recent

publicity not initiated by the licensed paraprofessional or the licensed paraprofessional's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No licensed paraprofessional associated in a law firm\* with a licensed paraprofessional subject to paragraph (a) or a lawyer subject to Lawyer RPC rule 3.6(a) shall make a statement prohibited by paragraph (a).

#### Comment

### Rule 3.6 Trial Publicity (Proposed Rule – Redline Version)

(a) A ~~lawyer-licensed paraprofessional~~ who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows\* or reasonably should know\* will (i) be disseminated by means of public communication and (ii) have a substantial\* likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), but only to the extent permitted by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6, ~~licensed paraprofessional lawyer~~ may state:

- (1) the claim, ~~offense~~ or defense involved and, except when prohibited by law, the identity of the persons\* involved;
- (2) information contained in a public record;
- (3) that an investigation of a matter is in progress;
- (4) the scheduling or result of any step in litigation;
- (5) a request for assistance in obtaining evidence and information necessary thereto; ~~and~~
- (6) a warning of danger concerning the behavior of a person\* involved, when there is reason to believe\* that there exists the likelihood of substantial\* harm to an individual or to the public but only to the extent that dissemination by public communication is reasonably\* necessary to protect the individual or the public; ~~and~~
- ~~(7) in a criminal case, in addition to paragraphs (1) through (6):
  - (i) the identity, general area of residence, and occupation of the accused;
  - (ii) if the accused has not been apprehended, the information necessary to aid in apprehension of that person;\*
  - (iii) the fact, time, and place of arrest; and (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.~~

(c) Notwithstanding paragraph (a), a ~~licensed paraprofessional lawyer~~ may make a statement that a reasonable\* ~~licensed paraprofessional lawyer~~ would believe\* is required to protect a client from the substantial\* undue prejudicial effect of recent publicity not initiated by the ~~licensed paraprofessional lawyer~~ or the ~~licensed paraprofessional's lawyer's~~ client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No ~~licensed paraprofessional lawyer~~ associated in a law firm\* ~~or government agency~~ with a ~~licensed paraprofessional lawyer~~ subject to paragraph (a) ~~or a lawyer subject to Lawyer RPC rule 3.6(a)~~ shall make a statement prohibited by paragraph (a).

#### Comment

**Rule 3.7 Licensed Paraprofessional as Witness  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not act as an advocate in a trial in which the licensed paraprofessional is likely to be a witness unless:

- (1) the licensed paraprofessional’s testimony relates to an uncontested issue or matter;
- (2) the licensed paraprofessional’s testimony relates to the nature and value of legal services rendered in the case; or
- (3) the licensed paraprofessional has obtained informed written consent\* from the client.

(b) A licensed paraprofessional may act as advocate in a trial in which another licensed paraprofessional or lawyer in the lawyer’s firm\* is likely to be called as a witness unless precluded from doing so by rule 1.7 or rule 1.9.

**Rule 3.7 ~~Lawyer-Licensed Paraprofessional~~ as Witness  
(Proposed Rule – Redline Version)**

(a) A ~~lawyer-licensed paraprofessional~~ shall not act as an advocate in a trial in which the ~~lawyer-licensed paraprofessional~~ is likely to be a witness unless:

- (1) the ~~licensed paraprofessional’s lawyer’s~~ testimony relates to an uncontested issue or matter;
- (2) the ~~licensed paraprofessional lawyer’s~~ testimony relates to the nature and value of legal services rendered in the case; or
- (3) the ~~licensed paraprofessional lawyer~~ has obtained informed written consent\* from the client. ~~If the lawyer represents the People or a governmental entity, the consent shall be obtained from the head of the office or a designee of the head of the office by which the lawyer is employed.~~

(b) A ~~licensed paraprofessional lawyer~~ may act as advocate in a trial in which another ~~licensed paraprofessional or~~ lawyer in the lawyer’s firm\* is likely to be called as a witness unless precluded from doing so by rule 1.7 or rule 1.9.

**Rule 3.8 [RESERVED]  
(Proposed Rule – Clean Version)**

**Rule 3.8 [RESERVED] ~~Special Responsibilities of a Prosecutor~~  
(Proposed Rule – Redline Version)**

~~The prosecutor in a criminal case shall:~~

- ~~(a) not institute or continue to prosecute a charge that the prosecutor knows\* is not supported by probable cause;~~
- ~~(b) make reasonable\* efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable\* opportunity to obtain counsel;~~
- ~~(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights unless the tribunal\* has approved the appearance of the accused in propria persona;~~
- ~~(d) make timely disclosure to the defense of all evidence or information known\* to the prosecutor that the prosecutor knows\* or reasonably should know\* tends to negate the guilt of the accused, mitigate the offense, or mitigate the sentence, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;\* and~~

~~(e) exercise reasonable\* care to prevent persons\* under the supervision or direction of the prosecutor, including investigators, law enforcement personnel, employees or other persons\* assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 3.6.~~

~~(f) When a prosecutor knows\* of new, credible and material evidence creating a reasonable\* likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:~~

~~(1) promptly disclose that evidence to an appropriate court or authority, and~~

~~(2) if the conviction was obtained in the prosecutor's jurisdiction,~~

~~(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and~~

~~(ii) undertake further investigation, or make reasonable\* efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.~~

~~(g) When a prosecutor knows\* of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.~~

#### **Comment**

**[RESERVED]**

### **Rule 3.9 Advocate in Nonadjudicative Proceedings (Proposed Rule – Clean Version)**

A licensed paraprofessional representing a client before a legislative body or administrative agency in connection with a pending nonadjudicative matter or proceeding shall disclose that the appearance is in a representative capacity, except when the licensed paraprofessional seeks information from an agency that is available to the public.

### **Rule 3.9 Advocate in Nonadjudicative Proceedings (Proposed Rule – Redline Version)**

A licensed paraprofessional lawyer representing a client before a legislative body or administrative agency in connection with a pending nonadjudicative matter or proceeding shall disclose that the appearance is in a representative capacity, except when the licensed paraprofessional lawyer seeks information from an agency that is available to the public.

### **Rule 3.10 Threatening Criminal, Administrative, or Disciplinary Charges (Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.

(b) As used in paragraph (a) of this rule, the term “administrative charges” means the filing or lodging of a complaint with any governmental organization that may order or recommend the loss or suspension of a license, or may impose or recommend the imposition of a fine, pecuniary sanction, or other sanction of a quasi-criminal nature but does not include filing charges with an administrative entity required by law as a condition precedent to maintaining a civil action.

(c) As used in this rule, the term “civil dispute” means a controversy or potential controversy over the rights and duties of two or more persons\* under civil law, whether or not an action has been commenced, and includes an administrative proceeding of a quasi-civil nature pending before a federal, state, or local governmental entity.

**Comment**

[Reserved]

**Rule 3.10 Threatening Criminal, Administrative, or Disciplinary Charges  
(Proposed Rule – Redline Version)**

- (a) A ~~lawyer~~licensed paraprofessional shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.
- (b) As used in paragraph (a) of this rule, the term “administrative charges” means the filing or lodging of a complaint with any governmental organization that may order or recommend the loss or suspension of a license, or may impose or recommend the imposition of a fine, pecuniary sanction, or other sanction of a quasi-criminal nature but does not include filing charges with an administrative entity required by law as a condition precedent to maintaining a civil action.
- (c) As used in this rule, the term “civil dispute” means a controversy or potential controversy over the rights and duties of two or more persons\* under civil law, whether or not an action has been commenced, and includes an administrative proceeding of a quasi-civil nature pending before a federal, state, or local governmental entity.

**Comment**

[Reserved]

**CHAPTER 4.  
TRANSACTIONS WITH PERSONS\*  
OTHER THAN CLIENTS**

**Rule 4.1 Truthfulness in Statements to Others  
(Proposed Rule – Clean Version)**

In the course of representing a client a licensed paraprofessional shall not knowingly:\*

- (a) make a false statement of material fact or law to a third person;\* or
- (b) fail to disclose a material fact to a third person\* when disclosure is necessary to avoid assisting a criminal or fraudulent\* act by a client, unless disclosure is prohibited by rule 1.6.

**Comment**

[Reserved]

**Rule 4.1 Truthfulness in Statements to Others  
(Proposed Rule – Redline Version)**

In the course of representing a client a ~~lawyer~~licensed paraprofessional shall not knowingly:\*

- (a) make a false statement of material fact or law to a third person;\* or
- (b) fail to disclose a material fact to a third person\* when disclosure is necessary to avoid assisting a criminal or fraudulent\* act by a client, unless disclosure is prohibited by ~~Business and Professions Code section 6068, subdivision (e)(1)~~ or rule 1.6.

**Comment**

[Reserved]

**Rule 4.2 Communication with a Represented Person\*  
(Proposed Rule – Clean Version)**

- (a) In representing a client, a licensed paraprofessional shall not communicate directly or indirectly about the subject of the representation with a person\* the licensed paraprofessional knows\* to be represented by a lawyer or another licensed paraprofessional in the matter, unless the licensed paraprofessional has the consent of the other lawyer or licensed paraprofessional.
- (b) In the case of a represented corporation, partnership, association, or other private or governmental organization, this rule prohibits communications with:
- (1) A current officer, director, partner,\* or managing agent of the organization; or
  - (2) A current employee, member, agent, or other constituent of the organization, if the subject of the communication is any act or omission of such person\* in connection with the matter which may be binding upon or imputed to the organization for purposes of civil or criminal liability.
- (c) This rule shall not prohibit:
- (1) communications with a public official, board, committee, or body; or
  - (2) communications otherwise authorized by law or a court order.
- (d) For purposes of this rule:
- (1) “Managing agent” means an employee, member, agent, or other constituent of an organization with substantial\* discretionary authority over decisions that determine organizational policy.
  - (2) “Public official” means a public officer of the United States government, or of a state, county, city, town, political subdivision, or other governmental organization, with the comparable decision-making authority and responsibilities as the organizational constituents described in paragraph (b)(1).

**Comment**

[Reserved]

**Rule 4.2 Communication with a Represented Person\*  
(Proposed Rule – Redline Version)**

- (a) In representing a client, a ~~lawyer~~ licensed paraprofessional shall not communicate directly or indirectly about the subject of the representation with a person\* the ~~lawyer~~ licensed paraprofessional knows\* to be represented by a ~~another~~ lawyer or another licensed paraprofessional in the matter, unless the ~~lawyer~~ licensed paraprofessional has the consent of the other lawyer or licensed paraprofessional.
- (b) In the case of a represented corporation, partnership, association, or other private or governmental organization, this rule prohibits communications with:
- (1) A current officer, director, partner,\* or managing agent of the organization; or

(2) A current employee, member, agent, or other constituent of the organization, if the subject of the communication is any act or omission of such person\* in connection with the matter which may be binding upon or imputed to the organization for purposes of civil or criminal liability.

(c) This rule shall not prohibit:

(1) communications with a public official, board, committee, or body; or

(2) communications otherwise authorized by law or a court order.

(d) For purposes of this rule:

(1) “Managing agent” means an employee, member, agent, or other constituent of an organization with substantial\* discretionary authority over decisions that determine organizational policy.

(2) “Public official” means a public officer of the United States government, or of a state, county, city, town, political subdivision, or other governmental organization, with the comparable decision-making authority and responsibilities as the organizational constituents described in paragraph (b)(1).

#### Comment

[Reserved]

### **Rule 4.3 Communicating with an Unrepresented Person\* (Proposed Rule – Clean Version)**

(a) In communicating on behalf of a client with a person\* who is not represented by a lawyer or licensed paraprofessional, a licensed paraprofessional shall not state or imply that the licensed paraprofessional is disinterested. When the licensed paraprofessional knows\* or reasonably should know\* that the unrepresented person\* incorrectly believes\* the licensed paraprofessional is disinterested in the matter, the licensed paraprofessional shall make reasonable\* efforts to correct the misunderstanding. If the licensed paraprofessional knows\* or reasonably should know\* that the interests of the unrepresented person\* are in conflict with the interests of the client, the licensed paraprofessional shall not give legal advice to that person,\* except that the licensed paraprofessional may, but is not required to, advise the person\* to secure legal representation.

(b) In communicating on behalf of a client with a person\* who is not represented by a lawyer or licensed paraprofessional, a licensed paraprofessional shall not seek to obtain privileged or other confidential information the licensed paraprofessional knows\* or reasonably should know\* the person\* may not reveal without violating a duty to another or which the licensed paraprofessional is not otherwise entitled to receive.

#### Comment

[Reserved]

### **Rule 4.3 Communicating with an Unrepresented Person\* (Proposed Rule – Redline Version)**

(a) In communicating on behalf of a client with a person\* who is not represented by a lawyer or licensed paraprofessional ~~counsel~~, a ~~lawyer~~licensed paraprofessional shall not state or imply that the ~~lawyer~~licensed paraprofessional is disinterested. When the ~~lawyer~~licensed paraprofessional knows\* or reasonably should know\* that the unrepresented person\* incorrectly believes\* the ~~lawyer~~licensed paraprofessional is disinterested in the matter, the ~~lawyer~~licensed paraprofessional shall make reasonable\* efforts to correct the misunderstanding. If the ~~lawyer~~licensed paraprofessional knows\* or reasonably should know\* that the interests of the unrepresented person\* are in conflict

with the interests of the client, the [lawyer-licensed paraprofessional](#) shall not give legal advice to that person,\* except that the [lawyer-licensed paraprofessional](#) may, but is not required to, advise the person\* to secure [counsel/legal representation](#).

(b) In communicating on behalf of a client with a person\* who is not represented by [counsel a lawyer or licensed paraprofessional](#), a [lawyer-licensed paraprofessional](#) shall not seek to obtain privileged or other confidential information the [lawyer-licensed paraprofessional](#) knows\* or reasonably should know\* the person\* may not reveal without violating a duty to another or which the [lawyer-licensed paraprofessional](#) is not otherwise entitled to receive.

**Comment**

[Reserved]

**Rule 4.4 Duties Concerning Inadvertently Transmitted Writings\*  
(Proposed Rule – Clean Version)**

Where it is reasonably\* apparent to a licensed paraprofessional who receives a writing\* relating to a licensed paraprofessional’s representation of a client that the writing\* was inadvertently sent or produced, and the licensed paraprofessional knows\* or reasonably should know\* that the writing\* is privileged or subject to the work product doctrine, the licensed paraprofessional shall:

- (a) refrain from examining the writing\* any more than is necessary to determine that it is privileged or subject to the work product doctrine, and
- (b) promptly notify the sender.

**Comment**

[Reserved]

**Rule 4.4 Duties Concerning Inadvertently Transmitted Writings\*  
(Proposed Rule – Redline Version)**

Where it is reasonably\* apparent to a [lawyer-licensed paraprofessional](#) who receives a writing\* relating to a [lawyer-licensed paraprofessional](#)’s representation of a client that the writing\* was inadvertently sent or produced, and the [lawyer-licensed paraprofessional](#) knows\* or reasonably should know\* that the writing\* is privileged or subject to the work product doctrine, the [lawyer-licensed paraprofessional](#) shall:

- (a) refrain from examining the writing\* any more than is necessary to determine that it is privileged or subject to the work product doctrine, and
- (b) promptly notify the sender.

**Comment**

[Reserved]

**CHAPTER 5.  
LAW FIRMS\* AND ASSOCIATIONS**

**Rule 5.1 Responsibilities of Managerial and Supervisory Licensed Paraprofessionals  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional who individually or together with other licensed paraprofessionals or lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that all licensed paraprofessionals in the firm\* comply with these rules and the State Bar Act.
- (b) A licensed paraprofessional having direct supervisory authority over another licensed paraprofessional, whether or not a member or employee of the same law firm,\* shall make reasonable\* efforts to ensure that the other licensed paraprofessional complies with these rules and applicable law.
- (c) A licensed paraprofessional shall be responsible for another licensed paraprofessional’s violation of these rules and applicable law if:
- (1) the licensed paraprofessional orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or
  - (2) the licensed paraprofessional, individually or together with other licensed paraprofessionals or lawyers, possesses managerial authority in the law firm\* in which the other licensed paraprofessional practices, or has direct supervisory authority over the other licensed paraprofessional, whether or not a member or employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

**Comment**

[Reserved]

**Rule 5.1 Responsibilities of Managerial and Supervisory ~~Lawyer~~Licensed Paraprofessionals  
(Proposed Rule – Redline Version)**

- (a) A ~~lawyer~~licensed paraprofessional who individually or together with other licensed paraprofessionals or lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that all ~~lawyer~~licensed paraprofessionals in the firm\* comply with these rules and the State Bar Act.
- (b) A ~~lawyer~~licensed paraprofessional having direct supervisory authority over another ~~lawyer~~licensed paraprofessional, whether or not a member or employee of the same law firm,\* shall make reasonable\* efforts to ensure that the other ~~lawyer~~licensed paraprofessional complies with these rules and ~~the State Bar Act~~applicable law.
- (c) A ~~lawyer~~licensed paraprofessional shall be responsible for another ~~lawyer~~licensed paraprofessional’s violation of these rules and ~~the State Bar Act~~applicable law if:
- (3) the ~~lawyer~~licensed paraprofessional orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or
  - (4) the ~~lawyer~~licensed paraprofessional, individually or together with other licensed paraprofessionals or lawyers, possesses managerial authority in the law firm\* in which the other ~~lawyer~~licensed paraprofessional practices, or has direct supervisory authority over the other ~~lawyer~~licensed paraprofessional, whether or not a member or employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

**Comment**

[Reserved]

**Rule 5.2 Responsibilities of a Subordinate Licensed Paraprofessional  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall comply with these rules and notwithstanding that the licensed paraprofessional acts at the direction of a lawyer, another a licensed paraprofessional, or other person.\*
- (b) A subordinate licensed paraprofessional does not violate these rules if that licensed paraprofessional acts in accordance with a supervisory lawyer's or supervisory licensed paraprofessional's reasonable\* resolution of an arguable question of professional duty.

**Comment**

[Reserved]

**Rule 5.2 Responsibilities of a Subordinate ~~Lawyer~~Licensed ~~Paraprofessional~~  
(Proposed Rule – Redline Version)**

- (a) A ~~lawyer~~licensed paraprofessional shall comply with these rules and ~~the State Bar Act~~ notwithstanding that the ~~lawyer~~licensed paraprofessional acts at the direction of a lawyer, another ~~lawyer~~ a licensed paraprofessional, or other person.\*
- (b) A subordinate ~~lawyer~~licensed paraprofessional does not violate these rules ~~or the State Bar Act~~ if that ~~lawyer~~licensed paraprofessional acts in accordance with a supervisory lawyer's or supervisory licensed paraprofessional's reasonable\* resolution of an arguable question of professional duty.

**Comment**

[Reserved]

**Rule 5.3 Responsibilities Regarding Non-Licensed Assistants  
(Proposed Rule – Clean Version)**

With respect to an individual not licensed to practice law who is employed or retained by or associated with a licensed paraprofessional:

- (a) a licensed paraprofessional who individually or together with other licensed paraprofessionals or lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that the nonlicensee's conduct is compatible with the professional obligations of the licensed paraprofessional;
- (b) a licensed paraprofessional having direct supervisory authority over the nonlicensee, whether or not an employee of the same law firm,\* shall make reasonable\* efforts to ensure that the person's\* conduct is compatible with the professional obligations of the licensed paraprofessional; and
- (c) a licensed paraprofessional shall be responsible for conduct of such a person\* that would be a violation of these rules if engaged in by a licensed paraprofessional if:
- (1) the licensed paraprofessional orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or

(2) the licensed paraprofessional, individually or together with other licensed paraprofessionals or lawyers, possesses managerial authority in the law firm\* in which the person\* is employed, or has direct supervisory authority over the person,\* whether or not an employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

**Comment**

[Reserved]

**Rule 5.3 Responsibilities Regarding Non-Licensed ~~lawyer~~ Assistants  
(Proposed Rule – Redline Version)**

With respect to an individual not licensed to practice law who is ~~nonlawyer~~ employed or retained by or associated with a lawyer~~licensed paraprofessional~~:

- (a) a lawyer~~licensed paraprofessional~~ who individually or together with other licensed paraprofessionals or lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that the nonlawyer's-nonlicensee's conduct is compatible with the professional obligations of the lawyer~~licensed paraprofessional~~;
- (b) a lawyer~~licensed paraprofessional~~ having direct supervisory authority over the nonlawyer~~licensee~~, whether or not an employee of the same law firm,\* shall make reasonable\* efforts to ensure that the person's\* conduct is compatible with the professional obligations of the lawyer~~licensed paraprofessional~~; and
- (c) a lawyer~~licensed paraprofessional~~ shall be responsible for conduct of such a person\* that would be a violation of these rules or the State Bar Act~~if engaged in by a lawyer~~licensed paraprofessional~~~~-if:
  - (1) the lawyer~~licensed paraprofessional~~-orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or
  - (2) the lawyer~~licensed paraprofessional~~, individually or together with other licensed paraprofessionals or lawyers, possesses managerial authority in the law firm\* in which the person\* is employed, or has direct supervisory authority over the person,\* whether or not an employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

**Comment**

[Reserved]

**Rule 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Licensed Paraprofessionals  
(Proposed Rule – Clean Version)**

- (a) For purposes of this rule:
  - (1) "Employ" means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;
  - (2) "Licensee" means a licensee of the State Bar of California;
  - (3) "Involuntarily inactive licensee" means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203, subdivision (d)(1), or California Rules of Court, rule 9.31(d);

(4) “Resigned licensee” means a licensee who has resigned from the State Bar while disciplinary charges are pending; and

(5) “Ineligible person” means a licensee whose current status with the State Bar of California is disbarred, suspended, resigned, or involuntarily inactive.

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

- (1) Render legal consultation or advice to the client;
- (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
- (3) Appear as a representative of the client at a deposition or other discovery matter;
- (4) Negotiate or transact any matter for or on behalf of the client with third parties;
- (5) Receive, disburse or otherwise handle the client’s funds; or
- (6) Engage in activities that constitute the practice of law.

(c) A licensed paraprofessional may employ, associate in practice with, or assist an ineligible person to perform research, drafting or clerical activities, including but not limited to:

- (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
- (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or
- (3) Accompanying an active licensed paraprofessional in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active licensed paraprofessional who will appear as the representative of the client.

(d) Prior to or at the time of employing, associating in practice with, or assisting a person\* the licensed paraprofessional knows\* or reasonably should know\* is an ineligible person, the licensed paraprofessional shall serve upon the State Bar written\* notice of the employment, including a full description of such person’s current licensee status. The written\* notice shall also list the activities prohibited in paragraph (b) and state that the ineligible person will not perform such activities. The licensed paraprofessional shall serve similar written\* notice upon each client on whose specific matter such person\* will work, prior to or at the time of employing, associating with, or assisting such person\* to work on the client’s specific matter. The licensed paraprofessional shall obtain proof of service of the client’s written\* notice and shall retain such proof and a true and correct copy of the client’s written\* notice for two years following termination of the licensed paraprofessional’s employment by the client.

(e) A licensed paraprofessional may, without client or State Bar notification, employ, associate in practice with, or assist an ineligible person whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.

(f) When the licensed paraprofessional no longer employs, associates in practice with, or assists the ineligible person, the licensed paraprofessional shall promptly serve upon the State Bar written\* notice of the termination.

**Comment**

[Reserved]

**Rule 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Licensed Paraprofessionals**  
**(Proposed Rule – Redline Version)**

(a) For purposes of this rule:

- (1) “Employ” means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;
- (2) “MemberLicensee” means a member-licensee of the State Bar of California;
- (3) “Involuntarily inactive memberlicensee” means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203, subdivision (d)(1), or California Rules of Court, rule 9.31(d);
- (4) “Resigned memberlicensee” means a member-licensee who has resigned from the State Bar while disciplinary charges are pending; and
- (5) “Ineligible person” means a member-licensee whose current status with the State Bar of California is disbarred, suspended, resigned, or involuntarily inactive.

(b) A lawyer-licensed paraprofessional shall not employ, associate in practice with, or assist a person\* the lawyer-licensed paraprofessional knows\* or reasonably should know\* is an ineligible person to perform the following on behalf of the lawyer-licensed paraprofessional’s client:

- (1) Render legal consultation or advice to the client;
- (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
- (3) Appear as a representative of the client at a deposition or other discovery matter;
- (4) Negotiate or transact any matter for or on behalf of the client with third parties;
- (5) Receive, disburse or otherwise handle the client’s funds; or
- (6) Engage in activities that constitute the practice of law.

(c) A lawyer-licensed paraprofessional may employ, associate in practice with, or assist an ineligible person to perform research, drafting or clerical activities, including but not limited to:

- (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
- (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or
- (3) Accompanying an active lawyer-licensed paraprofessional in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active lawyer-licensed paraprofessional who will appear as the representative of the client.

(d) Prior to or at the time of employing, associating in practice with, or assisting a person\* the licensed paraprofessional lawyer knows\* or reasonably should know\* is an ineligible person, the lawyer licensed paraprofessional shall serve upon the State Bar written\* notice of the employment, including a full description of such person's current bar licensee status. The written\* notice shall also list the activities prohibited in paragraph (b) and state that the ineligible person will not perform such activities. The licensed paraprofessional lawyer shall serve similar written\* notice upon each client on whose specific matter such person\* will work, prior to or at the time of employing, associating with, or assisting such person\* to work on the client's specific matter. The lawyer licensed paraprofessional shall obtain proof of service of the client's written\* notice and shall retain such proof and a true and correct copy of the client's written\* notice for two years following termination of the lawyer licensed paraprofessional's employment by the client.

(e) A lawyer licensed paraprofessional may, without client or State Bar notification, employ, associate in practice with, or assist an ineligible person whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.

(f) When the lawyer licensed paraprofessional no longer employs, associates in practice with, or assists the ineligible person, the lawyer licensed paraprofessional shall promptly serve upon the State Bar written\* notice of the termination.

#### **Comment**

[Reserved]

### **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 directly or indirectly with an individual 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 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 a 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.

(c) 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:

(1) 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;

(2) 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

(3) 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.

(e) A licensed paraprofessional shall not practice in a law firm\* with a lawyer if:

(1) licensed paraprofessionals direct or regulate any lawyer's professional judgment in rendering legal services;

(2) licensed paraprofessionals have supervisory authority over any lawyer; or

(3) licensed paraprofessionals possess a majority ownership interest or exercise controlling managerial authority in the firm;

(f) 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, a licensed paraprofessional referral service unless it complies with such Minimum Standards for Licensed Paraprofessional Referral Services.

(g) 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.

#### **Comment**

[Reserved]

**Rule 5.4 Financial and Similar Arrangements with Lawyers and Nonlawyer licensees**  
**(Proposed Rule – Redline Version)**

(a) A lawyer licensed paraprofessional or law firm\* shall not share legal fees directly or indirectly with an ~~nonlawyer person\*~~ individual 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 lawyer licensed paraprofessional with the lawyer 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 lawyer licensed paraprofessional's death, to the lawyer licensed paraprofessional's estate or to one or more specified persons;\*

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

(3) a lawyer licensed paraprofessional or law firm\* may include ~~nonlawyer~~ 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 ~~or the State Bar Act~~;

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

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

(c) A lawyer licensed paraprofessional shall not permit a person\* who recommends, employs, or pays the lawyer licensed paraprofessional to render legal services for another to direct or regulate the lawyer licensed paraprofessional's

independent professional judgment or interfere with the ~~lawyer~~licensed paraprofessional-client relationship in rendering legal services.

(d) A ~~lawyer~~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:

- (1) ~~an individual who is not a lawyer or a licensed paraprofessional~~nonlawyer owns any interest in it, except that a fiduciary representative of a lawyer's or ~~licensed paraprofessional~~licensed paraprofessional's estate may hold the lawyer's or ~~licensed paraprofessional~~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~~nonlawyer is a director or officer of the corporation or occupies a position of similar responsibility in any other form of organization; or
- (3) ~~an nonlawyer~~individual who is not a lawyer or a licensed paraprofessional has the right or authority to direct or control the ~~lawyer~~licensed paraprofessional's independent professional judgment.

(e) A licensed paraprofessional shall not practice in a law firm\* with a lawyer if:

(1) licensed paraprofessionals direct or regulate any lawyer's professional judgment in rendering legal services;

(2) licensed paraprofessionals have ~~direct~~ supervisory authority over any lawyer; or

(3) licensed paraprofessionals possess a majority ownership interest or exercise controlling managerial authority in the firm;

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

(g) A ~~lawyer~~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 ~~lawyer~~licensed paraprofessional's independent professional judgment, or with the ~~lawyer~~licensed paraprofessional-client relationship, or allows or aids any person\* to practice law in violation of these rules or ~~the State Bar Act~~applicable law.

#### **Comment**

[Reserved]

### **Rule 5.5 Unauthorized Practice of Law (Proposed Rule – Clean Version)**

Licensed paraprofessionals admitted to practice law in California shall not:

- (a) practice law in California beyond the permissible scope of their license;
- (b) hold out or otherwise represent to the public that the licensed paraprofessional is permitted to practice law beyond the permissible scope of their license;
- (c) practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction;  
or
- (d) knowingly\* assist a person\* in the unauthorized practice of law in California or any other jurisdiction.

**Comment**

[Reserved]

**Rule 5.5 Unauthorized Practice of Law; ~~Multijurisdictional Practice of Law~~  
(Proposed Rule – Redline Version)**

~~(a) A lawyer~~Licensed paraprofessionals admitted to practice law in California shall not:

~~(1a)~~ practice law in California beyond the permissible scope of their a;

~~(b)~~ hold out or otherwise represent to the public that the licensed paraprofessional is permitted to practice law beyond the permissible scope of their license;

~~(c)~~ practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction;  
or

~~(d2)~~ knowingly\* assist a person\* in the unauthorized practice of law in that jurisdictionCalifornia or any other jurisdiction.

~~(b) A paraprofessional lawyer who is not admitted to practice law in California shall not:~~

~~(1) except as authorized by these rules or other law, establish or maintain a resident office or other systematic or continuous presence in California for the practice of law; or~~

~~(2) hold out to the public or otherwise represent that the paraprofessional lawyer is admitted to practice law in California.~~

**Comment**

[Reserved]

**Rule 5.6 Restrictions on a Licensed Paraprofessional's Right to Practice  
(Proposed Rule – Clean Version)**

(a) Unless authorized by law, a licensed paraprofessional shall not participate in offering or making:

(1) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a licensed paraprofessional to practice after termination of the relationship, except an agreement that concerns benefits upon retirement; or

(2) an agreement that imposes a restriction on a licensed paraprofessional's right to practice in connection with a settlement of a client controversy, or otherwise.

(b) A licensed paraprofessional shall not participate in offering or making an agreement which precludes the reporting of a violation of these rules.

**Comment**

[Reserved]

**Rule 5.6 Restrictions on a ~~Lawyer~~Licensed Paraprofessional's Right to Practice  
(Proposed Rule – Redline Version)**

- (a) Unless authorized by law, a ~~lawyer~~licensed paraprofessional shall not participate in offering or making:
- (1) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a ~~lawyer~~licensed paraprofessional to practice after termination of the relationship, except an agreement that concerns benefits upon retirement; or
  - (2) an agreement that imposes a restriction on a ~~lawyer~~licensed paraprofessional's right to practice in connection with a settlement of a client controversy, or otherwise.
- (b) A ~~lawyer~~licensed paraprofessional shall not participate in offering or making an agreement which precludes the reporting of a violation of these rules.

~~(c) This rule does not prohibit an agreement that is authorized by Business and Professions Code sections 6092.5, subdivision (i) or 6093.~~

**Comment**

[Reserved]

**Rule 5.7 [Reserved]**

**CHAPTER 6. PUBLIC SERVICE**

**Rule 6.1 [Reserved]**

**Rule 6.2 [Reserved]**

**Rule 6.3 Membership in Legal Services Organization  
(Proposed Rule – Clean Version)**

A licensed paraprofessional may serve as a director, officer or member of a legal services organization, apart from the law firm\* in which the licensed paraprofessional practices, notwithstanding that the organization serves persons\* having interests adverse to a client of the licensed paraprofessional. The licensed paraprofessional shall not knowingly\* participate in a decision or action of the organization:

- (a) if participating in the decision or action would be incompatible with the licensed paraprofessional's obligations to a client under rules 1.6(a), 1.7, 1.9, or 1.18; or
- (b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the licensed paraprofessional.

**Comment**

[Reserved]

**Rule 6.3 Membership in Legal Services Organization**

**(Proposed Rule – Redline Version)**

A lawyer licensed paraprofessional may serve as a director, officer or member of a legal services organization, apart from the law firm\* in which the lawyer licensed paraprofessional practices, notwithstanding that the organization serves persons\* having interests adverse to a client of the lawyer licensed paraprofessional. The lawyer licensed paraprofessional shall not knowingly\* participate in a decision or action of the organization:

- (a) if participating in the decision or action would be incompatible with the lawyer licensed paraprofessional's obligations to a client under Business and Professions Code section 6068, subdivision (e)(1) or rules 1.6(a), 1.7, 1.9, or 1.18; or
- (b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer licensed paraprofessional.

**Comment**

[Reserved]

**Rule 6.4 [Reserved]**

**Rule 6.5 Limited Legal Services Programs  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional who, under the auspices of a program sponsored by a court, government agency, bar association, law school, or nonprofit organization, provides short-term limited legal services to a client without expectation by either the licensed paraprofessional or the client that the licensed paraprofessional will provide continuing representation in the matter:
  - (1) is subject to rules 1.7 and 1.9(a) only if the licensed paraprofessional knows\* that the representation of the client involves a conflict of interest; and
  - (2) is subject to rule 1.10 only if the licensed paraprofessional knows\* that another licensed paraprofessional or a lawyer associated with the licensed paraprofessional in a law firm\* is prohibited from representation by rule 1.7 or 1.9(a) or Lawyer RPC rule 1.7 or 1.9(a) with respect to the matter.
- (b) Except as provided in paragraph (a)(2), rule 1.10 is inapplicable to a representation governed by this rule.
- (c) The personal disqualification of a licensed paraprofessional participating in the program will not be imputed to other licensed paraprofessional or lawyers participating in the program.

**Comment**

[Reserved]

**Rule 6.5 Limited Legal Services Programs  
(Proposed Rule – Redline Version)**

- (a) A lawyer licensed paraprofessional who, under the auspices of a program sponsored by a court, government agency, bar association, law school, or nonprofit organization, provides short-term limited legal services to a client without expectation by either the lawyer licensed paraprofessional or the client that the lawyer licensed paraprofessional will provide continuing representation in the matter:

(1) is subject to rules 1.7 and 1.9(a) only if the lawyer licensed paraprofessional knows\* that the representation of the client involves a conflict of interest; and

(2) is subject to rule 1.10 only if the lawyer licensed paraprofessional knows\* that another lawyer licensed paraprofessional or a lawyer associated with the lawyer licensed paraprofessional in a law firm\* is prohibited from representation by rule 1.7 or 1.9(a) or Lawyer RPC rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), rule 1.10 is inapplicable to a representation governed by this rule.

(c) The personal disqualification of a lawyer licensed paraprofessional participating in the program will not be imputed to other paraprofessionals licensed paraprofessional or lawyers participating in the program.

**Comment**

[Reserved]

**CHAPTER 7.  
INFORMATION ABOUT LEGAL SERVICES**

**Rule 7.1 Communications Concerning a Licensed Paraprofessional's Services  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not make a false or misleading communication about the licensed paraprofessional or the licensed paraprofessional's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the communication considered as a whole not materially misleading.

(b) The Board of Trustees of the State Bar may formulate and adopt standards as to communications that will be presumed to violate rule 7.1, 7.2, 7.3, or 7.5. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these rules. "Presumption affecting the burden of proof" means that presumption defined in Evidence Code sections 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all licensed paraprofessional.

**Comment**

[Reserved]

**Rule 7.1 Communications Concerning a Lawyer Licensed Paraprofessional's Services  
(Proposed Rule – Redline Version)**

(a) A lawyer licensed paraprofessional shall not make a false or misleading communication about the lawyer licensed paraprofessional or the lawyer licensed paraprofessional's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the communication considered as a whole not materially misleading.

(b) The Board of Trustees of the State Bar may formulate and adopt standards as to communications that will be presumed to violate rule 7.1, 7.2, 7.3, ~~7.4~~ or 7.5. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these rules. "Presumption affecting the burden of proof" means that presumption defined in Evidence Code sections 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyer licensed paraprofessionals.

**Comment**

[Reserved]

**Rule 7.2 Advertising  
(Proposed Rule – Clean Version)**

- (a) Subject to the requirements of rules 7.1 and 7.3, a licensed paraprofessional may advertise services through any written,\* recorded or electronic means of communication, including public media.
- (b) A licensed paraprofessional shall not compensate, promise or give anything of value to a person\* for the purpose of recommending or securing the services of the licensed paraprofessional or the licensed paraprofessional’s law firm,\* except that a licensed paraprofessional may:
- (1) pay the reasonable\* costs of advertisements or communications permitted by this rule;
  - (2) pay the usual charges of a legal services plan or a qualified licensed paraprofessional referral service. A qualified licensed paraprofessional referral service is a licensed paraprofessional referral service established, sponsored and operated in accordance with the State Bar of California’s Minimum Standards for a Licensed paraprofessional Referral Service in California;
  - (3) pay for a law practice in accordance with rule 1.17;
  - (4) refer clients to another licensed paraprofessional, a lawyer or a nonlawyerprofessional pursuant to an arrangement not otherwise prohibited under these rules that provides for the other person\* to refer clients or customers to the licensed paraprofessional, if:
    - (i) the reciprocal referral arrangement is not exclusive; and
    - (ii) the client is informed of the existence and nature of the arrangement;
  - (5) offer or give a gift or gratuity to a person\* having made a recommendation resulting in the employment of the licensed paraprofessional or the licensed paraprofessional’s law firm,\* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.
- (c) Any communication made pursuant to this rule shall include: (1) the name and contact information of at least one lawyer, licensed paraprofessional or law firm\* responsible for its content, (2) include in the communication at least one licensed paraprofessional’s license number; and (3) include in the communication a clear and conspicuous statement that the licensed paraprofessional is not a lawyer. (d) If a licensed paraprofessional’s law firm maintains a website advertising the licensed paraprofessional’s services, the website must include a page that contains all the mandatory disclosures required under rule 1.4.2(a).

**Comment**

[Reserved]

**Rule 7.2 Advertising  
(Proposed Rule – Redline Version)**

- (a) Subject to the requirements of rules 7.1 and 7.3, a ~~lawyer~~licensed paraprofessional may advertise services through any written,\* recorded or electronic means of communication, including public media.

(b) A lawyer licensed paraprofessional shall not compensate, promise or give anything of value to a person\* for the purpose of recommending or securing the services of the lawyer licensed paraprofessional or the lawyer licensed paraprofessional's law firm,\* except that a lawyer licensed paraprofessional may:

- (1) pay the reasonable\* costs of advertisements or communications permitted by this rule;
- (2) pay the usual charges of a legal services plan or a qualified lawyer licensed paraprofessional referral service. A qualified lawyer licensed paraprofessional referral service is a lawyer licensed paraprofessional referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a Lawyer Licensed Paraprofessional Referral Service in California;
- (3) pay for a law practice in accordance with rule 1.17;
- (4) refer clients to another lawyer licensed paraprofessional, a lawyer or a nonlawyer-professional pursuant to an arrangement not otherwise prohibited under these Rules-rules or the State Bar Act that provides for the other person\* to refer clients or customers to the lawyer licensed paraprofessional, if:
  - (i) the reciprocal referral arrangement is not exclusive; and
  - (ii) the client is informed of the existence and nature of the arrangement;
- (5) offer or give a gift or gratuity to a person\* having made a recommendation resulting in the employment of the lawyer licensed paraprofessional or the lawyer licensed paraprofessional's law firm,\* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.

(c) Any communication made pursuant to this rule shall include: (1) the name and address-contact information of at least one lawyer, licensed paraprofessional or law firm\* responsible for its content, (2) include in the communication at least one licensed paraprofessional's license number; and (3) include in the communication a clear and conspicuous statement that the licensed paraprofessional is not a lawyer.

(d) If a licensed paraprofessional's law firm maintains a website advertising the licensed paraprofessional's services, the website must include a page that contains all the mandatory disclosures required under rule 1.4.2(a).

#### **Comment**

[Reserved]

### **Rule 7.3 Solicitation of Clients (Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the licensed paraprofessional's pecuniary gain, unless the person\* contacted:

- (1) is a lawyer or a licensed paraprofessional; or
- (2) has a family, close personal, or prior professional relationship with the licensed paraprofessional.

(b) A licensed paraprofessional shall not solicit professional employment by written,\* recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the person\* being solicited has made known\* to the licensed paraprofessional a desire not to be solicited by the licensed paraprofessional; or
  - (2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress or harassment.
- (c) Every written,\* recorded or electronic communication from a licensed paraprofessional soliciting professional employment from any person\* known\* to be in need of legal services in a particular matter shall include:
- (1) the word “Advertisement” or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person\* specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.
  - (2) include the name, contact information, and license number of the licensed paraprofessional responsible for the content of the communication;
  - (3) include a clear and conspicuous statement that the paraprofessional is not a lawyer; and
  - (4) if an advertisement subject to this subdivision is in a language other than English, the statements required by this subdivision shall be in the same language as the advertisement.
- (d) A licensed paraprofessional shall not act as a runner or capper for another licensed paraprofessional, nor solicit another person to act as a runner or capper for the licensed paraprofessional.
- (1) For purposes of paragraph (d), a “runner or capper” is any person, firm, association, or corporation acting for consideration in any manner or in any capacity as an agent for an attorney, a paraprofessional, or a law firm, in the solicitation or procurement of business for the licensed paraprofessional except as otherwise authorized by these rules.
  - (2) Nothing in paragraph (d) shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by these rules.
- (e) Notwithstanding the prohibitions in paragraph (a), a licensed paraprofessional may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the licensed paraprofessional that uses in-person, live telephone or real-time electronic contact to solicit memberships or subscriptions for the plan from persons\* who are not known\* to need legal services in a particular matter covered by the plan.
- (f) As used in this rule, the terms “solicitation” and “solicit” refer to an oral or written\* targeted communication initiated by or on behalf of the licensed paraprofessional that is directed to a specific person\* and that offers to provide, or can reasonably\* be understood as offering to provide, legal services.

**Comment**

[Reserved]

**Rule 7.3 Solicitation of Clients  
(Proposed Rule – Redline Version)**

- (a) A lawyerlicensed paraprofessional shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the lawyerlicensed paraprofessional's pecuniary gain, unless the person\* contacted:
- (1) is a lawyer or a licensed paraprofessional; or
  - (2) has a family, close personal, or prior professional relationship with the lawyerlicensed paraprofessional.

(b) A lawyer licensed paraprofessional shall not solicit professional employment by written,\* recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the person\* being solicited has made known\* to the lawyer licensed paraprofessional a desire not to be solicited by the lawyer licensed paraprofessional; or
- (2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress or harassment.

(c) Every written,\* recorded or electronic communication from a lawyer licensed paraprofessional soliciting professional employment from any person\* known\* to be in need of legal services in a particular matter shall include:

- (1) the word “Advertisement” or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person\* specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.
- (2) include the name, contact information, and license number of the licensed paraprofessional responsible for the content of the communication;
- (3) include a clear and conspicuous statement that the paraprofessional is not a lawyer; and
- (4) if an advertisement subject to this subdivision is in a language other than English, the statements required by this subdivision shall be in the same language as the advertisement.

(d) A licensed paraprofessional shall not act as a runner or capper for another licensed paraprofessional, nor solicit another person to act as a runner or capper for the licensed paraprofessional.

(1) For purposes of paragraph (d), a “runner or capper” is any person, firm, association, or corporation acting for consideration in any manner or in any capacity as an agent for an attorney, a paraprofessional, or a law firm, in the solicitation or procurement of business for the licensed paraprofessional except as otherwise authorized by these rules.

(2) Nothing in paragraph (d) shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by these rules.

(e) Notwithstanding the prohibitions in paragraph (a), a lawyer licensed paraprofessional may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer licensed paraprofessional that uses in-person, live telephone or real-time electronic contact to solicit memberships or subscriptions for the plan from persons\* who are not known\* to need legal services in a particular matter covered by the plan.

(ef) As used in this rule, the terms “solicitation” and “solicit” refer to an oral or written\* targeted communication initiated by or on behalf of the lawyer licensed paraprofessional that is directed to a specific person\* and that offers to provide, or can reasonably\* be understood as offering to provide, legal services.

**Comment**

[Reserved]

**Rule 7.4 [RESERVED]  
(Proposed Rule – Clean Version)**

**Rule 7.4 ~~[RESERVED] Communication of Licensed Fields of Practice and Authorized Legal Services and Specialization~~**  
**(Proposed Rule – Redline Version)**

~~(a) A lawyer shall not state that the lawyer is a certified specialist licensed to practice in a particular field of law, unless:~~

~~(1) the lawyer is currently certified currently licensed as a specialist by the Board of Legal Specialization, or any other entity accredited by the State Bar to practice in that particular field of law to designate specialists pursuant to standards adopted by the Board of Trustees; and~~

~~(2) the name of the certifying organization is clearly identified in the communication.~~

~~(b) Notwithstanding paragraph (a), a lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may also communicate that his or her practice specializes in, is limited to, or is concentrated in a particular field of law, subject to the requirements of rule 7.1.~~

**Rule 7.5 Firm\* Names and Trade Names**  
**(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not use a firm\* name, trade name or other professional designation that violates rule 7.1.

(b) A licensed paraprofessional in private practice shall not use a firm\* name, trade name or other professional designation that states or implies a relationship with a government agency or with a public or charitable legal services organization, or otherwise violates rule 7.1.

(c) A licensed paraprofessional shall not state or imply that the licensed paraprofessional practices in or has a professional relationship with a law firm\* or other organization unless that is the fact.

**Comment**

[Reserved]

**Rule 7.5 Firm\* Names and Trade Names**  
**(Proposed Rule – Redline Version)**

(a) A ~~lawyer licensed paraprofessional~~ shall not use a firm\* name, trade name or other professional designation that violates rule 7.1.

(b) A ~~lawyer licensed paraprofessional~~ in private practice shall not use a firm\* name, trade name or other professional designation that states or implies a relationship with a government agency or with a public or charitable legal services organization, or otherwise violates rule 7.1.

(c) A ~~lawyer licensed paraprofessional~~ shall not state or imply that the ~~lawyer licensed paraprofessional~~ practices in or has a professional relationship with a law firm\* or other organization unless that is the fact.

**Comment**

[Reserved]

**Rule 7.6 [Reserved]**

**CHAPTER 8.  
MAINTAINING THE INTEGRITY  
OF THE PROFESSION**

**Rule 8.1 False Statement Regarding Application for Admission to Practice Law  
(Proposed Rule – Clean Version)**

- (a) An applicant for admission to practice law as a licensed paraprofessional shall not, in connection with that person's\* own application for admission, make a statement of material fact that the licensed paraprofessional knows\* to be false, or make such a statement with reckless disregard as to its truth or falsity.
- (b) A licensed paraprofessional shall not, in connection with another person's\* application for admission to practice law as a lawyer or licensed paraprofessional, make a statement of material fact that the licensed paraprofessional knows\* to be false.
- (c) An applicant for admission to practice law as a licensed paraprofessional, or a licensed paraprofessional in connection with an application for admission, shall not fail to disclose a fact necessary to correct a statement known\* by the applicant or the licensed paraprofessional to have created a material misapprehension in the matter, except that this rule does not authorize disclosure of information protected by rule 1.6.
- (d) As used in this rule, "admission to practice law" includes admission or readmission to licensure in the State Bar; reinstatement to active licensure in the State Bar; and any similar process relating to admission or certification to practice law in California or elsewhere.

**Comment**

[Reserved]

**Rule 8.1 False Statement Regarding Application for Admission to Practice Law  
(Proposed Rule – Redline Version)**

- (a) An applicant for admission to practice law as a licensed paraprofessional shall not, in connection with that person's\* own application for admission, make a statement of material fact that the lawyer/licensed paraprofessional knows\* to be false, or make such a statement with reckless disregard as to its truth or falsity.
- (b) A lawyer/licensed paraprofessional shall not, in connection with another person's\* application for admission to practice law as a lawyer or licensed paraprofessional, make a statement of material fact that the lawyer/licensed paraprofessional knows\* to be false.
- (c) An applicant for admission to practice law as a licensed paraprofessional, or a lawyer/licensed paraprofessional in connection with an application for admission, shall not fail to disclose a fact necessary to correct a statement known\* by the applicant or the lawyer/licensed paraprofessional to have created a material misapprehension in the matter, except that this rule does not authorize disclosure of information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6.
- (d) As used in this rule, "admission to practice law" includes admission or readmission to membership licensure in the State Bar; reinstatement to active membership licensure in the State Bar; and any similar process relating to admission or certification to practice law in California or elsewhere.

**Comment**

[Reserved]

**Rule 8.1.1 Compliance with Conditions of Discipline  
(Proposed Rule – Clean Version)**

A licensed paraprofessional shall comply with the terms and conditions attached to any public reproof, or to other discipline administered by the State Bar pursuant to.

**Comment**

[Reserved]

**Rule 8.1.1 Compliance with Conditions of Discipline and Agreements in Lieu of Discipline  
(Proposed Rule – Redline Version)**

A ~~lawyer~~ licensed paraprofessional shall comply with the terms and conditions attached to ~~any agreement in lieu of discipline~~, any public ~~or private~~ reproof, or to other discipline administered by the State Bar pursuant to ~~Business and Professions Code sections 6077 and 6078 and California Rules of Court, rule 9.19.~~

**Comment**

[Reserved]

**Rule 8.2 Judicial Officials  
(Proposed Rule – Clean Version)**

A licensed paraprofessional shall not make a statement of fact that the licensed paraprofessional knows\* to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or judicial officer, or of a candidate for election or appointment to judicial office.

**Comment**

[Reserved]

**Rule 8.2 Judicial Officials  
(Proposed Rule – Redline Version)**

~~(a) — A lawyer licensed paraprofessional shall not make a statement of fact that the lawyer licensed paraprofessional knows\* to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or judicial officer, or of a candidate for election or appointment to judicial office.~~

~~(b) — A lawyer who is a candidate for judicial office in California shall comply with canon 5 of the California Code of Judicial Ethics. For purposes of this rule, “candidate for judicial office” means a lawyer seeking judicial office by election. The determination of when a lawyer is a candidate for judicial office by election is defined in the terminology section of the California Code of Judicial Ethics. A lawyer’s duty to comply with this rule shall end when the lawyer announces withdrawal of the lawyer’s candidacy or when the results of the election are final, whichever occurs first.~~

~~(c) — A lawyer who seeks appointment to judicial office shall comply with canon 5B(1) of the California Code of Judicial Ethics. A lawyer becomes an applicant seeking judicial office by appointment at the time of first submission of an application or personal data questionnaire to the appointing authority. A lawyer’s duty to comply with this rule shall end when the lawyer advises the appointing authority of the withdrawal of the lawyer’s application.~~

**Comment**

[Reserved]

### Rule 8.3 [Reserved]

### Rule 8.4 Misconduct (Proposed Rule – Clean Version)

It is professional misconduct for a licensed paraprofessional to:

- (a) violate these rules, knowingly\* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the licensed paraprofessional's honesty, trustworthiness, or fitness as a licensed paraprofessional in other respects;
- (c) engage in conduct involving dishonesty, fraud,\* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, or other law; or
- (f) knowingly\* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).
- (g) report suspected immigration status or threaten to report suspected immigration status of a witness or party to a civil or administrative action or his or her family member to a federal, state, or local agency because the witness or party exercises or has exercised a right related to his or her employment, broadly interpreted.
- (h) advocate the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means.

#### Comment

[Reserved]

### Rule 8.4 Misconduct (Proposed Rule – Redline Version)

It is professional misconduct for a lawyer licensed paraprofessional to:

- (a) violate these rules ~~or the State Bar Act~~, knowingly\* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer licensed paraprofessional's honesty, trustworthiness, or fitness as a lawyer licensed paraprofessional in other respects;
- (c) engage in conduct involving dishonesty, fraud,\* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, ~~the State Bar Act~~, or other law; or

(f) knowingly\* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, “judge” and “judicial officer” have the same meaning as in rule 3.5(c).

(g) report suspected immigration status or threaten to report suspected immigration status of a witness or party to a civil or administrative action or his or her family member to a federal, state, or local agency because the witness or party exercises or has exercised a right related to his or her employment, broadly interpreted.

(h) advocate the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means.

#### **Comment**

[Reserved]

### **Rule 8.4.1 Prohibited Discrimination, Harassment and Retaliation (Proposed Rule – Clean Version)**

(a) In representing a client, or in terminating or refusing to accept the representation of any client, a licensed paraprofessional shall not:

- (1) unlawfully harass or unlawfully discriminate against persons\* on the basis of any protected characteristic; or
- (2) unlawfully retaliate against persons.\*

(b) In relation to a law firm’s operations, a licensed paraprofessional shall not:

- (1) on the basis of any protected characteristic,
  - (i) unlawfully discriminate or knowingly\* permit unlawful discrimination;
  - (ii) unlawfully harass or knowingly\* permit the unlawful harassment of an employee, an applicant, an unpaid intern or volunteer, or a person\* providing services pursuant to a contract; or
  - (iii) unlawfully refuse to hire or employ a person\*, or refuse to select a person\* for a training program leading to employment, or bar or discharge a person\* from employment or from a training program leading to employment, or discriminate against a person\* in compensation or in terms, conditions, or privileges of employment; or
- (2) unlawfully retaliate against persons.\*

(c) For purposes of this rule:

- (1) “protected characteristic” means race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, military and veteran status, or other category of discrimination prohibited by applicable law, whether the category is actual or perceived;
- (2) “knowingly permit” means to fail to advocate corrective action where the licensed paraprofessional knows\* of a discriminatory policy or practice that results in the unlawful discrimination or harassment prohibited by paragraph (b);
- (3) “unlawfully” and “unlawful” shall be determined by reference to applicable state and federal statutes and decisions making unlawful discrimination or harassment in employment and in offering goods and services to the public; and

- (4) “retaliate” means to take adverse action against a person\* because that person\* has (i) opposed, or (ii) pursued, participated in, or assisted any action alleging, any conduct prohibited by paragraphs (a)(1) or (b)(1) of this rule.
- (d) A licensed paraprofessional who is the subject of a State Bar investigation or State Bar disciplinary proceeding alleging a violation of this rule shall promptly notify the State Bar of any criminal, civil, or administrative action premised, whether in whole or part, on the same conduct that is the subject of the State Bar investigation or State Bar disciplinary proceeding.
- (e) Upon being issued a notice of a disciplinary charge under this rule, a licensed paraprofessional shall:
- (1) if the notice is of a disciplinary charge under paragraph (a) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Department of Justice, Coordination and Review Section; or
  - (2) if the notice is of a disciplinary charge under paragraph (b) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Equal Employment Opportunity Commission.
- (f) This rule shall not preclude a licensed paraprofessional from:
- (1) declining or withdrawing from a representation as required or permitted by rule 1.16; or
  - (2) providing advice and engaging in advocacy as otherwise required or permitted by these rules and applicable law.

**Comment**

[Reserved]

**Rule 8.4.1 Prohibited Discrimination, Harassment and Retaliation  
(Proposed Rule – Redline Version)**

- (a) In representing a client, or in terminating or refusing to accept the representation of any client, a lawyer-licensed paraprofessional shall not:
- (1) unlawfully harass or unlawfully discriminate against persons\* on the basis of any protected characteristic; or
  - (2) unlawfully retaliate against persons.\*
- (b) In relation to a law firm’s operations, a lawyer-licensed paraprofessional shall not:
- (1) on the basis of any protected characteristic,
    - (i) unlawfully discriminate or knowingly\* permit unlawful discrimination;
    - (ii) unlawfully harass or knowingly\* permit the unlawful harassment of an employee, an applicant, an unpaid intern or volunteer, or a person\* providing services pursuant to a contract; or
    - (iii) unlawfully refuse to hire or employ a person\*, or refuse to select a person\* for a training program leading to employment, or bar or discharge a person\* from employment or from a training program leading to employment, or discriminate against a person\* in compensation or in terms, conditions, or privileges of employment; or
  - (2) unlawfully retaliate against persons.\*

- (c) For purposes of this rule:
- (1) “protected characteristic” means race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, military and veteran status, or other category of discrimination prohibited by applicable law, whether the category is actual or perceived;
  - (2) “knowingly permit” means to fail to advocate corrective action where the lawyer licensed paraprofessional knows\* of a discriminatory policy or practice that results in the unlawful discrimination or harassment prohibited by paragraph (b);
  - (3) “unlawfully” and “unlawful” shall be determined by reference to applicable state and federal statutes and decisions making unlawful discrimination or harassment in employment and in offering goods and services to the public; and
  - (4) “retaliate” means to take adverse action against a person\* because that person\* has (i) opposed, or (ii) pursued, participated in, or assisted any action alleging, any conduct prohibited by paragraphs (a)(1) or (b)(1) of this rule.
- (d) A lawyer licensed paraprofessional who is the subject of a State Bar investigation or State Bar Court-disciplinary proceeding alleging a violation of this rule shall promptly notify the State Bar of any criminal, civil, or administrative action premised, whether in whole or part, on the same conduct that is the subject of the State Bar investigation or State Bar Court-disciplinary proceeding.
- (e) Upon being issued a notice of a disciplinary charge under this rule, a lawyer licensed paraprofessional shall:
- (1) if the notice is of a disciplinary charge under paragraph (a) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Department of Justice, Coordination and Review Section; or
  - (2) if the notice is of a disciplinary charge under paragraph (b) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Equal Employment Opportunity Commission.
- (f) This rule shall not preclude a lawyer licensed paraprofessional from:
- ~~(1) representing a client alleged to have engaged in unlawful discrimination, harassment, or retaliation;~~
  - ~~(2) declining or withdrawing from a representation as required or permitted by rule 1.16; or~~
  - ~~(3) providing advice and engaging in advocacy as otherwise required or permitted by these rules and applicable law and the State Bar Act.~~

**Comment**

[Reserved]

**Rule 8.5 Disciplinary Authority; Choice of Law  
(Proposed Rule – Clean Version)**

- (a) Disciplinary Authority.

A licensed paraprofessional admitted to practice in California is subject to the disciplinary authority of California, regardless of where the licensed paraprofessional’s conduct occurs. . A licensed paraprofessional may be subject to the disciplinary authority of both California and another jurisdiction for the same conduct.

(b) Choice of Law.

In any exercise of the disciplinary authority of California, the rules of professional conduct to be applied shall be as follows:

- (1) for conduct in connection with a matter pending before a tribunal,\* the rules of the jurisdiction in which the tribunal\* sits, unless the rules of the tribunal\* provide otherwise; and
- (2) for any other conduct, the rules of the jurisdiction in which the licensed paraprofessional's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A licensed paraprofessional shall not be subject to discipline if the licensed paraprofessional's conduct conforms to the rules of a jurisdiction in which the licensed paraprofessional reasonably believes\* the predominant effect of the licensed paraprofessional's conduct will occur.

**Comment**

[Reserved]

**Rule 8.5 Disciplinary Authority; Choice of Law  
(Proposed Rule – Redline Version)**

(a) Disciplinary Authority.

A ~~lawyer~~licensed paraprofessional admitted to practice in California is subject to the disciplinary authority of California, regardless of where the ~~lawyer~~licensed paraprofessional's conduct occurs. ~~A lawyer not admitted in California is also subject to the disciplinary authority of California if the lawyer provides or offers to provide any legal services in California.~~ A ~~lawyer~~licensed paraprofessional may be subject to the disciplinary authority of both California and another jurisdiction for the same conduct.

(b) Choice of Law.

In any exercise of the disciplinary authority of California, the rules of professional conduct to be applied shall be as follows:

- (1) for conduct in connection with a matter pending before a tribunal,\* the rules of the jurisdiction in which the tribunal\* sits, unless the rules of the tribunal\* provide otherwise; and
- (2) for any other conduct, the rules of the jurisdiction in which the ~~lawyer~~licensed paraprofessional's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A ~~lawyer~~licensed paraprofessional shall not be subject to discipline if the ~~lawyer~~licensed paraprofessional's conduct conforms to the rules of a jurisdiction in which the ~~lawyer~~licensed paraprofessional reasonably believes\* the predominant effect of the ~~lawyer~~licensed paraprofessional's conduct will occur.

**Comment**

[Reserved]

## PROPOSED RULES FOR INDIVIDUAL VOTE

## CHAPTER 1.

LAWYERLICENSED PARAPROFESSIONAL-CLIENT RELATIONSHIP**Rule 1.4.2 Notice to Consumers Prior to Consultation with a Prospective Client  
(Proposed Rule – Clean Version)**

(a) Prior to a prospective client's consultation with a licensed paraprofessional for the purpose of retaining the licensed paraprofessional or securing legal services or advice from the licensed paraprofessional in the licensed paraprofessional's professional capacity, the licensed paraprofessional shall disclose orally and provide, at the time of the consultation or as soon thereafter as reasonably\* practicable the written\* disclosures to the prospective client in the prospective client's preferred language that:

- (1) the licensed paraprofessional is not a lawyer;
- (2) the licensed paraprofessional has a license to provide limited legal services, the area of practice in which the licensed paraprofessional is licensed, and that the licensed paraprofessional cannot provide all services that a lawyer can provide in this area of practice;
- (3) the prospective client may need to hire a lawyer if the legal services that the prospective client seeks are beyond the limited scope of the licensed paraprofessional's license;
- (4) there may be other alternative choices available for the prospective client to consider, including, but not limited to, 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, or potentially free legal services from a local legal aid organization if the prospective client qualifies;
- (5) a general description of the licensed paraprofessional's fee structure and billing methods; and
- (6) whether the licensed paraprofessional does or does not have professional liability insurance based on the licensed paraprofessional's reasonable knowledge\* at the time of the disclosure,

(b) If the licensed paraprofessional provides notice to the prospective client prior to consultation that the licensed paraprofessional does have professional liability insurance pursuant to paragraph (a)(6) and a licensed paraprofessional-client relationship is formed, the licensed paraprofessional shall inform the client in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional no longer has professional liability insurance during the representation of the client.

[Reserved]

**Rule 1.4.2 Notice to Consumers Prior to Consultation with a Prospective Client~~Disclosure of Professional Liability Insurance~~  
(Proposed Rule – Redline Version)**

(a) Prior to a prospective client's consultation with a licensed paraprofessional for the purpose of retaining the licensed paraprofessional or securing legal services or advice from the licensed paraprofessional in the licensed paraprofessional's professional capacity, the licensed paraprofessional shall disclose orally and provide, at the time of the consultation or as soon thereafter as reasonably\* practicable the written\* disclosures to the prospective client in the prospective client's preferred language that:

- (1) the licensed paraprofessional is not a lawyer;

## PROPOSED RULES FOR INDIVIDUAL VOTE

(2) the licensed paraprofessional has a license to provide limited legal services, the area of practice in which the licensed paraprofessional is licensed, and that the licensed paraprofessional cannot provide all services that a lawyer can provide in this area of practice;

(3) the prospective client may need to hire a lawyer if the legal services that the prospective client seeks are beyond the limited scope of the licensed paraprofessional's license;

(4) there may be other alternative choices available for the prospective client to consider, including, but not limited to, 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, or potentially free legal services from a local legal aid organization if the prospective client qualifies;

(5) a general description of the licensed paraprofessional's fee structure and billing methods; and

(6) whether the licensed paraprofessional does or does not have professional liability insurance based on the licensed paraprofessional's reasonable knowledge\* at the time of the disclosure,

~~(a) A licensed paraprofessional who knows\* or reasonably should know\* that the licensed paraprofessional does not have professional liability insurance shall inform a client in writing,\* at the time of the client's engagement of the licensed paraprofessional, that the licensed paraprofessional does not have professional liability insurance.~~

~~(b) If the licensed paraprofessional provides notice to the prospective client prior to consultation that the licensed paraprofessional does have professional liability insurance pursuant to paragraph (a)(6) and a licensed paraprofessional-client relationship is formed, the licensed paraprofessional shall inform the client in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional no longer has professional liability insurance during the representation of the client. If notice under paragraph (a) has not been provided at the time of a client's engagement of the licensed paraprofessional, the licensed paraprofessional shall inform the client in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional no longer has professional liability insurance during the representation of the client.~~

~~(c) This rule does not apply to:~~

~~(1) a licensed paraprofessional who knows\* or reasonably should know\* at the time of the client's engagement of the licensed paraprofessional that the licensed paraprofessional's legal representation of the client in the matter will not exceed four hours; provided that if the representation subsequently exceeds four hours, the licensed paraprofessional must comply with paragraphs (a) and (b);~~

~~(2) a licensed paraprofessional who is employed as a government licensed paraprofessional or in-house counsel when that licensed paraprofessional is representing or providing legal advice to a client in that capacity;~~

~~(3) a licensed paraprofessional who is rendering legal services in an emergency to avoid foreseeable prejudice to the rights or interests of the client;~~

~~(4) a licensed paraprofessional who has previously advised the client in writing\* under paragraph (a) or (b) that the licensed paraprofessional does not have professional liability insurance.~~

[Reserved]

## PROPOSED RULES FOR INDIVIDUAL VOTE

### 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 legal services may be available to low-income individuals from a legal aid program if the client qualifies;
- (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.

#### Comments

[Reserved]

### 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 legal services may be available to low-income individuals from a legal aid program if the client qualifies;
- (3) The potential need to hire a lawyer if needed services go beyond the limited scope of legal practice under the paraprofessional's license;

## PROPOSED RULES FOR INDIVIDUAL VOTE

(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.

### Comments

[Reserved]

## PROPOSED RULES FOR INDIVIDUAL VOTE

### Rule 1.5 Fees for Legal Services (Proposed Rule – Clean Version)

- (a) A licensed paraprofessional shall not make an agreement for, charge, or collect an unconscionable or illegal fee.
- (b) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. The factors to be considered in determining the unconscionability of a fee include without limitation the following:
- (1) whether the licensed paraprofessional engaged in fraud\* or overreaching in negotiating or setting the fee;
  - (2) whether the licensed paraprofessional has failed to disclose material facts;
  - (3) the amount of the fee in proportion to the value of the services performed;
  - (4) the relative sophistication of the licensed paraprofessional and the client;
  - (5) the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
  - (6) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the licensed paraprofessional;
  - (7) the amount involved and the results obtained;
  - (8) the time limitations imposed by the client or by the circumstances;
  - (9) the nature and length of the professional relationship with the client;
  - (10) the experience, reputation, and ability of the licensed paraprofessional performing the services;
  - (11) whether the fee is fixed or contingent;
  - (12) the time and labor required; and
  - (13) whether the client gave informed consent\* to the fee.
  - (14) the fee customarily charged by licensed paraprofessionals and lawyers in the locality for similar legal service.
- (c) A licensed paraprofessional shall not make an agreement for, charge, or collect a contingent fee except in an enforcement of judgment matter within the scope of the licensed paraprofessional's licensure. Any contingent fee permitted under this paragraph shall not exceed thirty-three and one-third percent of the total value of the judgment subject to the enforcement action.
- (d) A licensed paraprofessional shall not make an agreement for, charge, or collect a fee that is denominated as "earned on receipt" or "non-refundable," or in similar terms. .]
- (e) A licensed paraprofessional may make an agreement for, charge, or collect a flat fee for specified legal services. A flat fee is a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the licensed paraprofessional providing those services.

## PROPOSED RULES FOR INDIVIDUAL VOTE

### Comment

[Reserved]

### Rule 1.5 Fees for Legal Services (Proposed Rule – Redline Version)

(a) A ~~lawyer~~licensed paraprofessional shall not make an agreement for, charge, or collect an unconscionable or illegal ~~fee~~.

(b) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. The factors to be considered in determining the unconscionability of a fee include without limitation the following:

- (1) whether the ~~lawyer~~licensed paraprofessional engaged in fraud\* or overreaching in negotiating or setting the fee;
- (2) whether the ~~lawyer~~licensed paraprofessional has failed to disclose material facts;
- (3) the amount of the fee in proportion to the value of the services performed;
- (4) the relative sophistication of the ~~licensed paraprofessional~~lawyer and the client;
- (5) the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (6) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the ~~licensed paraprofessional~~lawyer;
- (7) the amount involved and the results obtained;
- (8) the time limitations imposed by the client or by the circumstances;
- (9) the nature and length of the professional relationship with the client;
- (10) the experience, reputation, and ability of the ~~licensed paraprofessional~~lawyer or lawyers performing the services;
- (11) whether the fee is fixed or contingent;
- (12) the time and labor required; and
- (13) whether the client gave informed consent\* to the fee.

(14) the fee customarily charged by licensed paraprofessionals and lawyers in the locality for similar legal service.

(c) A ~~licensed paraprofessional~~lawyer shall not make an agreement for, charge, or collect:

(1) any fee in a family law matter, the payment or amount of which is contingent upon the securing of a dissolution or declaration of nullity of a marriage or upon the amount of spousal or child support, or property settlement in lieu thereof; a contingent fee except in an enforcement of judgment matter within the scope of the licensed paraprofessional's licensure. Any contingent fee permitted under this paragraph shall not exceed thirty-three and one-third percent of the total value of the judgment subject to the enforcement action. ✕

## PROPOSED RULES FOR INDIVIDUAL VOTE

~~(2) — a contingent fee for representing a defendant in a criminal case.~~

(d) A licensed paraprofessional lawyer ~~may shall not~~ make an agreement for, charge, or collect a fee that is denominated as “earned on receipt” or “non-refundable,” or in similar terms, ~~only if the fee is a true retainer and the client agrees in writing\* after disclosure that the client will not be entitled to a refund of all or part of the fee charged. A true retainer is a fee that a client pays to a lawyer to ensure the lawyer’s availability to the client during a specified period or on a specified matter, but not to any extent as compensation for legal services performed or to be performed. .]~~

(e) A ~~lawyer~~licensed paraprofessional may make an agreement for, charge, or collect a flat fee for specified legal services. A flat fee is a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the ~~lawyer~~licensed paraprofessional providing those services.

### Comment

[Reserved]

## PROPOSED RULES FOR INDIVIDUAL VOTE

### Rule 1.5.1 Fee Divisions Among Licensed Paraprofessionals and With Lawyers (Proposed Rule – Clean Version)

- (a) Licensed paraprofessionals who are not in the same law firm\* shall not divide a fee for legal services unless:
- (1) the licensed paraprofessionals enter into a written\* agreement to divide the fee;
  - (2) the division is in proportion to the legal services performed by each licensed paraprofessional or each licensed paraprofessional assumes joint responsibility for the representation.
  - (3) the client has consented in writing,\* either at the time the licensed paraprofessionals enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessionals or law firms\* that are parties to the division; and (iii) the terms of the division; and
  - (4) the total fee charged by all licensed paraprofessionals is not increased solely by reason of the agreement to divide fees.
- (b) A licensed paraprofessional and a lawyer who are not in the same law firm\* shall not divide a fee for legal services unless:
- (1) the licensed paraprofessional and the lawyer enter into a written\* agreement to divide the fee;
  - (2) the division is in proportion to the legal services performed by licensed paraprofessional and the lawyer;
  - (3) the client has consented in writing,\* either at the time the licensed paraprofessional and the lawyer enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessional, the lawyer, or law firms\* that are parties to the division; and (iii) the terms of the division; and
  - (4) the total fee charged by all licensed paraprofessionals and lawyers is not increased solely by reason of the agreement to divide fees.
- (c) This rule does not apply to a division of fees pursuant to court order.

#### Comment

[Reserved]

### Rule 1.5.1 Fee Divisions Among ~~Lawyer~~Licensed Paraprofessionals and With Lawyers (Proposed Rule – Redline Version)

- (a) ~~Lawyer~~Licensed paraprofessionals who are not in the same law firm\* shall not divide a fee for legal services unless:
- (1) the ~~lawyer~~licensed paraprofessionals enter into a written\* agreement to divide the fee;
  - (2) the division is in proportion to the legal services performed by each licensed paraprofessional or each licensed paraprofessional assumes joint responsibility for the representation.
  - (23) the client has consented in writing,\* either at the time the ~~lawyer~~licensed paraprofessionals enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the ~~lawyer~~licensed paraprofessionals or law firms\* that are parties to the division; and (iii) the terms of the division; and

## PROPOSED RULES FOR INDIVIDUAL VOTE

~~(34)~~ the total fee charged by all ~~lawyer~~licensed paraprofessionals is not increased solely by reason of the agreement to divide fees.

(b) A licensed paraprofessional and a lawyer who are not in the same law firm\* shall not divide a fee for legal services unless:

(1) the licensed paraprofessional and the lawyer enter into a written\* agreement to divide the fee;

(2) the division is in proportion to the legal services performed by ~~each~~ licensed paraprofessional and the lawyer;

(3) the client has consented in writing,\* either at the time the licensed paraprofessional and the lawyer enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessional, the lawyer, or law firms\* that are parties to the division; and (iii) the terms of the division; and

(4) the total fee charged by all licensed paraprofessionals and lawyers is not increased solely by reason of the agreement to divide fees.

~~(b)~~ This rule does not apply to a division of fees pursuant to court order.

### Comment

[Reserved]

## PROPOSED RULES FOR INDIVIDUAL VOTE

### Rule 1.5.2 Written Agreement to Representation (Proposed Rule – Clean Version)

Prior to the performance of legal services for a fee, the licensed paraprofessional shall enter into a written\* agreement with the client in a separate writing,\* provided in the prospective client's preferred language, and signed by both the client and the licensed paraprofessional, that provides the licensed paraprofessional's name, specialty area, mailing address, street address, telephone numbers, facsimile numbers, internet address, and license number of the licensed paraprofessional, and includes the following provisions:

- (a) A clear and conspicuous disclosure that the licensed paraprofessional is not a lawyer and may only provide limited legal advice and services within the scope of the licensed paraprofessional's licensure. This statement shall be on the first page of the contract; in a type size, font, color, appearance, and location sufficiently noticeable for a client to read and comprehend them; in a print that contrasts with the background against which they appear; in larger type than the surrounding text; in a manner that clearly calls attention to the language;
- (b) An explanation of the general nature of the legal services to be provided to the client;
- (c) A reasonable estimate of the total fees, expenses, and costs of services provided by the licensed paraprofessional, and the basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the matter;
- (d) A statement that, pursuant to rule 1.4, the licensed paraprofessional must keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed;
- (e) A statement describing the licensed paraprofessional's duty to protect the confidentiality of information related to the representation under rule 1.6, including information provided in confidence by the client and the licensed paraprofessional's work product associated with the legal services sought or provided by the licensed paraprofessional;
- (f) A statement that, pursuant to rule 1.16(a)(4), the client has the right to terminate the contract and services at any time, with or without cause, and receive a full refund of unearned fees pursuant to rule 1.16(e)(2);
- (g) A statement confirming that the licensed paraprofessional is required by [add rule of court reference] to carry a surety bond in the amount of \$100,000, the name of the surety bond carrier, and information on how to file a claim against the surety bond if necessary;
- (h) A statement confirming if the licensed paraprofessional has or does not have professional liability insurance. If the licensed paraprofessional has professional liability insurance, the name of the carrier, the amount of coverage, and how to file a claim if necessary;
- (i) A statement describing how to file a complaint with the State Bar of California;
- (j) A statement regarding the respective responsibilities of the licensed paraprofessional and the client as to the performance of the agreement; and
- (k) Any other disclosures, statements, or conditions required by the [Paraprofessional] Rules of Professional Conduct and the rules and regulations of the [Paraprofessional] Board.

#### Comment

## PROPOSED RULES FOR INDIVIDUAL VOTE

### Rule 1.5.2 Written Agreement to Representation (Proposed Rule – Redline Version)

Prior to the performance of legal services for a fee, the licensed paraprofessional shall enter into a written\* agreement with the client in a separate writing,\* provided in the prospective client’s preferred language, and signed by both the client and the licensed paraprofessional, that provides the licensed paraprofessional’s name, specialty area, mailing address, street address, telephone numbers, facsimile numbers, internet address, and license number of the licensed paraprofessional, and includes the following provisions:

(a) A clear and conspicuous disclosure that the licensed paraprofessional is not a lawyer and may only provide limited legal advice and services within the scope of the licensed paraprofessional’s licensure. This statement shall be on the first page of the contract; in a type size, font, color, appearance, and location sufficiently noticeable for a client to read and comprehend them; in a print that contrasts with the background against which they appear; in larger type than the surrounding text; in a manner that clearly calls attention to the language;

(b) An explanation of the general nature of the legal services to be provided to the client;

(c) A reasonable estimate of the total fees, expenses, and costs of services provided by the licensed paraprofessional, and the basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the matter;

(d) A statement that, pursuant to rule 1.4, the licensed paraprofessional must keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed-pursuant to rule 1.16;

(e) A statement describing the licensed paraprofessional’s duty to protect the confidentiality of information related to the representation under rule 1.6, including information provided in confidence by the client and the licensed paraprofessional’s work product associated with the legal services sought or provided by the licensed paraprofessional;

(f) A statement that, pursuant to rule 1.16(a)(4), the client has the right to terminate the contract and services at any time, with or without cause, and receive a full refund of unearned fees pursuant to rule 1.16(e)(2);

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

(h) A statement confirming if the licensed paraprofessional has or does not have professional liability insurance. If the licensed paraprofessional has professional liability insurance, the name of the carrier, the amount of coverage, and how to file a claim if necessary;

(i) A statement describing how to file a complaint with the State Bar of California;

(j) A statement regarding the respective responsibilities of the licensed paraprofessional and the client as to the performance of the agreement; and

(k) Any other disclosures, statements, or conditions required by the [Paraprofessional] Rules of Professional Conduct and the rules and regulations of the [Paraprofessional] Board.

#### Comment

## PROPOSED RULES FOR INDIVIDUAL VOTE

### CHAPTER 5. LAW FIRMS\* AND ASSOCIATIONS

#### **Rule 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Licensed Paraprofessionals (Proposed Rule – Clean Version)**

(a) For purposes of this rule:

- (1) “Employ” means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;
- (2) “Licensee” means a licensee of the State Bar of California;
- (3) “Involuntarily inactive licensee” means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203, subdivision (d)(1), or California Rules of Court, rule 9.31(d);
- (4) “Resigned licensee” means a licensee who has resigned from the State Bar while disciplinary charges are pending; and
- (5) “Ineligible person” means a licensee whose current status with the State Bar of California is disbarred, suspended, resigned, or involuntarily inactive.

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

- (1) Render legal consultation or advice to the client;
- (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
- (3) Appear as a representative of the client at a deposition or other discovery matter;
- (4) Negotiate or transact any matter for or on behalf of the client with third parties;
- (5) Receive, disburse or otherwise handle the client’s funds; or
- (6) Engage in activities that constitute the practice of law.

(c) A licensed paraprofessional may employ, associate in practice with, or assist an ineligible person to perform research, drafting or clerical activities, including but not limited to:

- (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
- (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or

## PROPOSED RULES FOR INDIVIDUAL VOTE

- (3) Accompanying an active licensed paraprofessional in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active licensed paraprofessional who will appear as the representative of the client.
- (d) Prior to or at the time of employing, associating in practice with, or assisting a person\* the licensed paraprofessional knows\* or reasonably should know\* is an ineligible person, the licensed paraprofessional shall serve upon the State Bar written\* notice of the employment, including a full description of such person's current licensee status. The written\* notice shall also list the activities prohibited in paragraph (b) and state that the ineligible person will not perform such activities. The licensed paraprofessional shall serve similar written\* notice upon each client on whose specific matter such person\* will work, prior to or at the time of employing, associating with, or assisting such person\* to work on the client's specific matter. The licensed paraprofessional shall obtain proof of service of the client's written\* notice and shall retain such proof and a true and correct copy of the client's written\* notice for two years following termination of the licensed paraprofessional's employment by the client.
- (e) A licensed paraprofessional may, without client or State Bar notification, employ, associate in practice with, or assist an ineligible person whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.
- (f) When the licensed paraprofessional no longer employs, associates in practice with, or assists the ineligible person, the licensed paraprofessional shall promptly serve upon the State Bar written\* notice of the termination.

### Comment

[Reserved]

### Rule 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Licensed Paraprofessionals (Proposed Rule – Redline Version)

- (a) For purposes of this rule:
- (1) "Employ" means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;
  - (2) "~~Member Licensee~~" means a ~~member-licensee~~ of the State Bar of California;
  - (3) "Involuntarily inactive ~~member licensee~~" means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203, subdivision (d)(1), or California Rules of Court, rule 9.31(d);
  - (4) "Resigned ~~member licensee~~" means a ~~member-licensee~~ who has resigned from the State Bar while disciplinary charges are pending; and
  - (5) "Ineligible person" means a ~~member-licensee~~ whose current status with the State Bar of California is disbarred, suspended, resigned, or involuntarily inactive.
- (b) A ~~lawyer licensed paraprofessional~~ shall not employ, associate in practice with, or assist a person\* the ~~lawyer licensed paraprofessional~~ knows\* or reasonably should know\* is an ineligible person to perform the following on behalf of the ~~lawyer licensed paraprofessional~~'s client:
- (1) Render legal consultation or advice to the client;

## PROPOSED RULES FOR INDIVIDUAL VOTE

- (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
- (3) Appear as a representative of the client at a deposition or other discovery matter;
- (4) Negotiate or transact any matter for or on behalf of the client with third parties;
- (5) Receive, disburse or otherwise handle the client's funds; or
- (6) Engage in activities that constitute the practice of law.

(c) A lawyerlicensed paraprofessional may employ, associate in practice with, or assist an ineligible person to perform research, drafting or clerical activities, including but not limited to:

- (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
- (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or
- (3) Accompanying an active lawyerlicensed paraprofessional in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active lawyerlicensed paraprofessional who will appear as the representative of the client.

(d) Prior to or at the time of employing, associating in practice with, or assisting a person\* the licensed paraprofessional~~lawyer~~ knows\* or reasonably should know\* is an ineligible person, the lawyerlicensed paraprofessional shall serve upon the State Bar written\* notice of the employment, including a full description of such person's current bar-licensee status. The written\* notice shall also list the activities prohibited in paragraph (b) and state that the ineligible person will not perform such activities. The licensed paraprofessional~~lawyer~~ shall serve similar written\* notice upon each client on whose specific matter such person\* will work, prior to or at the time of employing, associating with, or assisting such person\* to work on the client's specific matter. The lawyerlicensed paraprofessional shall obtain proof of service of the client's written\* notice and shall retain such proof and a true and correct copy of the client's written\* notice for two years following termination of the lawyerlicensed paraprofessional's employment by the client.

(e) A lawyerlicensed paraprofessional may, without client or State Bar notification, employ, associate in practice with, or assist an ineligible person whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.

(f) When the lawyerlicensed paraprofessional no longer employs, associates in practice with, or assists the ineligible person, the lawyerlicensed paraprofessional shall promptly serve upon the State Bar written\* notice of the termination.

### Comment

[Reserved]

## PROPOSED RULES FOR INDIVIDUAL VOTE

### 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 directly or indirectly with an individual 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 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 a 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.

## PROPOSED RULES FOR INDIVIDUAL VOTE

- (c) 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:
- (1) 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;
  - (2) 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
  - (3) 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.
- (e) A licensed paraprofessional shall not practice in a law firm\* with a lawyer if:
- (1) licensed paraprofessionals direct or regulate any lawyer's professional judgment in rendering legal services;
  - (2) licensed paraprofessionals have supervisory authority over any lawyer; or
  - (3) licensed paraprofessionals possess a majority ownership interest or exercise controlling managerial authority in the firm;
- (f) 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, a licensed paraprofessional referral service unless it complies with such Minimum Standards for Licensed Paraprofessional Referral Services.
- (g) 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.

### Comment

[Reserved]

### Rule 5.4 Financial and Similar Arrangements with Lawyers and Nonlawyerlicensees (Proposed Rule – Redline Version)

- (a) A lawyerlicensed paraprofessional or law firm\* shall not share legal fees directly or indirectly with an ~~nonlawyerperson\*~~ individual 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 lawyerlicensed paraprofessional with the lawyerlicensed paraprofessional's firm,\* partner,\* or associate may provide for the payment of money or other consideration over a reasonable\* period of time after the lawyerlicensed paraprofessional's death, to the lawyerlicensed paraprofessional's estate or to one or more specified persons;\*

## PROPOSED RULES FOR INDIVIDUAL VOTE

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

(3) a lawyer-licensed paraprofessional or law firm\* may include ~~nonlawyer~~ 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 ~~or the State Bar Act~~;

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

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

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

(d) A lawyer-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:

(1) an individual who is not a lawyer or a licensed paraprofessional~~nonlawyer~~ 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;

## PROPOSED RULES FOR INDIVIDUAL VOTE

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

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

(e) A licensed paraprofessional shall not practice in a law firm\* with a lawyer if:

(1) licensed paraprofessionals direct or regulate any lawyer's professional judgment in rendering legal services;

(2) licensed paraprofessionals have ~~direct~~ supervisory authority over any lawyer; or

(3) licensed paraprofessionals possess a majority ownership interest or exercise controlling managerial authority in the firm;

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

(g) A ~~lawyer-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 ~~lawyer-licensed paraprofessional~~'s independent professional judgment, or with the ~~lawyer-licensed paraprofessional~~-client relationship, or allows or aids any person\* to practice law in violation of these rules or ~~the State Bar Act~~applicable law.

### **Comment**

[Reserved]

## PROPOSED RULES FOR INDIVIDUAL VOTE

### CHAPTER 7. INFORMATION ABOUT LEGAL SERVICES

#### Rule 7.2 Advertising (Proposed Rule – Clean Version)

- (a) Subject to the requirements of rules 7.1 and 7.3, a licensed paraprofessional may advertise services through any written,\* recorded or electronic means of communication, including public media.
- (b) A licensed paraprofessional shall not compensate, promise or give anything of value to a person\* for the purpose of recommending or securing the services of the licensed paraprofessional or the licensed paraprofessional's law firm,\* except that a licensed paraprofessional may:
- (1) pay the reasonable\* costs of advertisements or communications permitted by this rule;
  - (2) pay the usual charges of a legal services plan or a qualified licensed paraprofessional referral service. A qualified licensed paraprofessional referral service is a licensed paraprofessional referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a Licensed Paraprofessional Referral Service in California;
  - (3) pay for a law practice in accordance with rule 1.17;
  - (4) refer clients to another licensed paraprofessional, a lawyer or a nonlawyer professional pursuant to an arrangement not otherwise prohibited under these rules that provides for the other person\* to refer clients or customers to the licensed paraprofessional, if:
    - (i) the reciprocal referral arrangement is not exclusive; and
    - (ii) the client is informed of the existence and nature of the arrangement;
  - (5) offer or give a gift or gratuity to a person\* having made a recommendation resulting in the employment of the licensed paraprofessional or the licensed paraprofessional's law firm,\* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.
- (c) Any communication made pursuant to this rule shall include: (1) the name and contact information of at least one lawyer, licensed paraprofessional or law firm\* responsible for its content, (2) include in the communication at least one licensed paraprofessional's license number; and (3) include in the communication a clear and conspicuous statement that the licensed paraprofessional is not a lawyer. (d) If a licensed paraprofessional's law firm maintains a website advertising the licensed paraprofessional's services, the website must include a page that contains all the mandatory disclosures required under rule 1.4.2(a).

#### Comment

[Reserved]

#### Rule 7.2 Advertising (Proposed Rule – Redline Version)

- (a) Subject to the requirements of rules 7.1 and 7.3, a ~~lawyer~~ licensed paraprofessional may advertise services through any written,\* recorded or electronic means of communication, including public media.

## PROPOSED RULES FOR INDIVIDUAL VOTE

(b) A lawyer-licensed paraprofessional shall not compensate, promise or give anything of value to a person\* for the purpose of recommending or securing the services of the lawyer-licensed paraprofessional or the lawyer-licensed paraprofessional's law firm,\* except that a lawyer-licensed paraprofessional may:

- (1) pay the reasonable\* costs of advertisements or communications permitted by this rule;
- (2) pay the usual charges of a legal services plan or a qualified lawyer-licensed paraprofessional referral service. A qualified lawyer-licensed paraprofessional referral service is a lawyer-licensed paraprofessional referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a Lawyer-Licensed paraprofessional Referral Service in California;
- (3) pay for a law practice in accordance with rule 1.17;
- (4) refer clients to another lawyer-licensed paraprofessional, a lawyer or a nonlawyer-professional pursuant to an arrangement not otherwise prohibited under these Rules-rules or the State Bar Act that provides for the other person\* to refer clients or customers to the lawyer-licensed paraprofessional, if:
  - (i) the reciprocal referral arrangement is not exclusive; and
  - (ii) the client is informed of the existence and nature of the arrangement;
- (5) offer or give a gift or gratuity to a person\* having made a recommendation resulting in the employment of the lawyer-licensed paraprofessional or the lawyer-licensed paraprofessional's law firm,\* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.

(c) Any communication made pursuant to this rule shall include: (1) the name and ~~address-contact information~~ of at least one lawyer, licensed paraprofessional or law firm\* responsible for its content, (2) include in the communication at least one licensed paraprofessional's license number; and (3) include in the communication a clear and conspicuous statement that the licensed paraprofessional is not a lawyer.

(d) If a licensed paraprofessional's law firm maintains a website advertising the licensed paraprofessional's services, the website must include a page that contains all the mandatory disclosures required under rule 1.4.2(a).

### Comment

[Reserved]

## PROPOSED RULES FOR INDIVIDUAL VOTE

### Rule 7.3 Solicitation of Clients (Proposed Rule – Clean Version)

- (a) A licensed paraprofessional shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the licensed paraprofessional's pecuniary gain, unless the person\* contacted:
- (1) is a lawyer or a licensed paraprofessional; or
  - (2) has a family, close personal, or prior professional relationship with the licensed paraprofessional.
- (b) A licensed paraprofessional shall not solicit professional employment by written,\* recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:
- (1) the person\* being solicited has made known\* to the licensed paraprofessional a desire not to be solicited by the licensed paraprofessional; or
  - (2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress or harassment.
- (c) Every written,\* recorded or electronic communication from a licensed paraprofessional soliciting professional employment from any person\* known\* to be in need of legal services in a particular matter shall include:
- (1) the word "Advertisement" or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person\* specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.
  - (2) include the name, contact information, and license number of the licensed paraprofessional responsible for the content of the communication;
  - (3) include a clear and conspicuous statement that the paraprofessional is not a lawyer; and
  - (4) if an advertisement subject to this subdivision is in a language other than English, the statements required by this subdivision shall be in the same language as the advertisement.
- (d) A licensed paraprofessional shall not act as a runner or capper for another licensed paraprofessional, nor solicit another person to act as a runner or capper for the licensed paraprofessional.
- (1) For purposes of paragraph (d), a "runner or capper" is any person, firm, association, or corporation acting for consideration in any manner or in any capacity as an agent for an attorney, a paraprofessional, or a law firm, in the solicitation or procurement of business for the licensed paraprofessional except as otherwise authorized by these rules.
  - (2) Nothing in paragraph (d) shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by these rules.
- (e) Notwithstanding the prohibitions in paragraph (a), a licensed paraprofessional may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the licensed paraprofessional that uses in-person, live telephone or real-time electronic contact to solicit memberships or subscriptions for the plan from persons\* who are not known\* to need legal services in a particular matter covered by the plan.

## PROPOSED RULES FOR INDIVIDUAL VOTE

(f) As used in this rule, the terms “solicitation” and “solicit” refer to an oral or written\* targeted communication initiated by or on behalf of the licensed paraprofessional that is directed to a specific person\* and that offers to provide, or can reasonably\* be understood as offering to provide, legal services.

### Comment

[Reserved]

### Rule 7.3 Solicitation of Clients (Proposed Rule – Redline Version)

(a) A lawyerlicensed paraprofessional shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the lawyerlicensed paraprofessional's pecuniary gain, unless the person\* contacted:

- (1) is a lawyer or a licensed paraprofessional; or
- (2) has a family, close personal, or prior professional relationship with the lawyerlicensed paraprofessional.

(b) A lawyerlicensed paraprofessional shall not solicit professional employment by written,\* recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the person\* being solicited has made known\* to the lawyerlicensed paraprofessional a desire not to be solicited by the lawyerlicensed paraprofessional; or
- (2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress or harassment.

(c) Every written,\* recorded or electronic communication from a lawyerlicensed paraprofessional soliciting professional employment from any person\* known\* to be in need of legal services in a particular matter shall include:

(1) the word “Advertisement” or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person\* specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.

(2) include the name, contact information, and license number of the licensed paraprofessional responsible for the content of the communication;

(3) include a clear and conspicuous statement that the paraprofessional is not a lawyer; and

(4) if an advertisement subject to this subdivision is in a language other than English, the statements required by this subdivision shall be in the same language as the advertisement.

(d) A licensed paraprofessional shall not act as a runner or capper for another licensed paraprofessional, nor solicit another person to act as a runner or capper for the licensed paraprofessional.

(1) For purposes of paragraph (d), a “runner or capper” is any person, firm, association, or corporation acting for consideration in any manner or in any capacity as an agent for an attorney, a paraprofessional, or a law firm, in the solicitation or procurement of business for the licensed paraprofessional except as otherwise authorized by these rules.

## PROPOSED RULES FOR INDIVIDUAL VOTE

(2) Nothing in paragraph (d) shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by these rules.

(e) Notwithstanding the prohibitions in paragraph (a), a lawyerlicensed paraprofessional may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyerlicensed paraprofessional that uses in-person, live telephone or real-time electronic contact to solicit memberships or subscriptions for the plan from persons\* who are not known\* to need legal services in a particular matter covered by the plan.

(ef) As used in this rule, the terms “solicitation” and “solicit” refer to an oral or written\* targeted communication initiated by or on behalf of the lawyerlicensed paraprofessional that is directed to a specific person\* and that offers to provide, or can reasonably\* be understood as offering to provide, legal services.

### Comment

[Reserved]



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: August 16, 2021

To: California Paraprofessional Program Working Group

From: California Paraprofessional Program Working Group Staff

Subject: Proposed Rules of Professional Conduct for Paraprofessional Licensees

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The California Paraprofessional Program Working Group (CPPWG or Working Group) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services \(ATILS\)](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include proposed rules of professional conduct for paraprofessional licensees.

The Regulation Subcommittee has been meeting regularly for several months, and has developed a full set of proposed Paraprofessional Rules of Professional Conduct (Rules or rules). At its July 26, 2021, meeting, the CPPWG considered these proposed Rules, and the Regulation Subcommittee's recommendation to adopt most of the rules in a group vote, setting aside nine rules for individual discussion and vote; CPPWG members were advised in advance of the meeting that they could request that any rule designated for group vote be considered for individual vote. A copy of the Regulation Subcommittee's July 26 memo is provided as Attachment 1.

Prior to and during the July 26 meeting, three additional rules (1.4.1, 1.17, and 3.5) were identified for individual discussion, and were excluded from the group vote. At that meeting, the CPPWG adopted the following resolution:

**RESOLVED**, that the California Paraprofessional Program Working Group recommends adoption of the Paraprofessional Rules of Professional Conduct proposed by the Regulation Subcommittee, with the exception of the following rules: 1.4.1, 1.4.2, 1.4.3, 1.5, 1.5.1, 1.5.2, 1.17, 3.5, 5.3.1, 5.4, 7.2, and 7.3, which will be individually considered by the Working Group.

The Regulation Subcommittee met on July 29 to review and consider the three additional Rules that were excluded from the group vote, and the feedback provided by the CPPWG at its July 26

meeting. Based on that feedback, revised recommendations for rules 1.4.1, 1.17, and 3.5, are provided below.

### Rule 1.4.1 Communication of Settlement Offers

#### July 26 Recommendation

~~(a) — A licensed paraprofessional lawyer shall promptly communicate to the lawyer/ licensed paraprofessional’s client :~~

~~(1) — all terms and conditions of a proposed plea bargain or other dispositive offer made to the client in a criminal matter; and~~

~~(2) — all amounts, terms, and conditions of any written\* offer of settlement made to the client in all other matters.~~

~~(b) — As used in this rule, “client” includes a person\* who possesses the authority to accept an offer of settlement or plea, or, in a class action, all the named representatives of the class.~~

#### CPPWG Feedback

CPPWG members suggested that (2) (b) should be partially restored, to clarify that this rule may require a paraprofessional to communicate an offer of settlement to a person who is not the paraprofessional’s client but is a person authorized to accept a settlement on behalf of the client (e.g., the client’s attorney in fact). However, in restoring (2)(b), there should be no confusion created over the general limitation that a paraprofessional may only represent individual clients.

#### Revised Recommendation

~~(a) — A licensed paraprofessional lawyer shall promptly communicate to the lawyer/ licensed paraprofessional’s client :~~

~~(1) — all terms and conditions of a proposed plea bargain or other dispositive offer made to the client in a criminal matter; and~~

~~(2) — all amounts, terms, and conditions of any written\* offer of settlement made to the client in all other matters.~~

~~(b) As used in this rule, “client” includes a person\* who possesses the authority to accept an offer of settlement or plea, or, in a class action, all the named representatives of the class.~~

The Subcommittee recommends that a Comment be added to clarify that although a “person who possesses the authority to accept an offer of settlement” might be either an individual or an entity, only an individual rather than an entity can be the client of a paraprofessional.

### Rule 1.17 Sale of a Law Practice

A member of the CPPWG objected to the title of this rule, stating that a paraprofessional practice was not a law practice.

#### Revised Recommendation

Rule 1.17 Sale of a Licensed Paraprofessional’s Law Practice

### Rule 3.5 Conduct with Judges, Officials, and Employees

#### July 26 Recommendation

(a) Except as permitted by statute, an applicable code of judicial ethics or code of judicial conduct, or standards governing employees of a tribunal,\* a lawyer-licensed paraprofessional shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal.\* This rule does not prohibit a lawyer-licensed paraprofessional from contributing to the campaign fund of a judge or judicial officer running for election or confirmation pursuant to applicable law pertaining to such contributions.

(b) Unless permitted to do so by law, an applicable code of judicial ethics or code of judicial conduct, a rule or ruling of a tribunal,\* or a court order, a lawyer-licensed paraprofessional shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before the judge or judicial officer, except:

~~(1) — in open court;~~

~~(2) — with the consent of all other counsel and any unrepresented parties in the matter;~~

~~(3) — in the presence of all other counsel and any unrepresented parties in the matter;~~

~~(4) — in writing\* with a copy thereof furnished to all other counsel-represented and any unrepresented parties in the matter; ~~or,~~~~

~~(5) — in ex parte matters.~~

(c) As used in this rule, “judge” and “judicial officer” shall also include: (i) administrative law judges; (ii) neutral arbitrators; (iii) State Bar Court judges; (iv) members of an administrative body acting in an adjudicative capacity; and (v) law clerks, research attorneys, or other court personnel who participate in the decision-making process, including referees, special masters, or other persons\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

~~(d) — A lawyer connected with a case shall not communicate directly or indirectly with anyone the lawyer knows\* to be a member of the venire from which the jury will be selected for trial of that case.~~

~~(e) — During trial, a lawyer connected with the case shall not communicate directly or indirectly with any juror.~~

~~(f) — During trial, a lawyer who is not connected with the case shall not communicate directly or indirectly concerning the case with anyone the lawyer knows\* is a juror in the case.~~

~~(g) — After discharge of the jury from further consideration of a case a lawyer shall not communicate directly or indirectly with a juror if:~~

~~(1) — the communication is prohibited by law or court order;~~

~~(2) — the juror has made known\* to the lawyer a desire not to communicate; or~~

~~(3) — the communication involves misrepresentation, coercion, or duress, or is intended to harass or embarrass the juror or to influence the juror’s actions in future jury service.~~

~~(h) — A lawyer shall not directly or indirectly conduct an out of court investigation of a person\* who is either a member of a venire or a juror in a manner likely to influence the state of mind of such person\* in connection with present or future jury service.~~

~~(i) — All restrictions imposed by this rule also apply to communications with, or investigations of, members of the family of a person\* who is either a member of a venire or a juror.~~

~~(j) — A lawyer shall reveal promptly to the court improper conduct by a person\* who is either a member of a venire or a juror, or by another toward a person\* who is either a member of a venire or a juror or a member of his or her family, of which the lawyer has knowledge.~~

~~(k) — This rule does not prohibit a lawyer from communicating with persons\* who are members of a venire or jurors as a part of the official proceedings.~~

~~(l) — For purposes of this rule, “juror” means any empaneled, discharged, or excused juror.~~

### CPPWG Feedback

CPPWG members noted that paraprofessionals will be authorized to represent clients in court, it was suggested that the exceptions listed under paragraph (b) be restored

### Revised Recommendation

(a) Except as permitted by statute, an applicable code of judicial ethics or code of judicial conduct, or standards governing employees of a tribunal,\* a lawyer licensed paraprofessional shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal.\* This rule does not prohibit a lawyer licensed paraprofessional from contributing to the campaign fund of a judge or judicial officer running for election or confirmation pursuant to applicable law pertaining to such contributions.

(b) Unless permitted to do so by law, an applicable code of judicial ethics or code of judicial conduct, a rule or ruling of a tribunal,\* or a court order, a lawyer licensed paraprofessional shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before the judge or judicial officer, except:

- (1) in open court;
- (2) with the consent of all other counsel and any unrepresented parties in the matter;
- (3) in the presence of all other counsel and any unrepresented parties in the matter;
- (4) in writing\* with a copy thereof furnished to all other counsel represented and ~~any~~ unrepresented parties in the matter; or
- (5) in ex parte matters.

[Paragraphs (d)-(l) are not repeated here, as the recommendation has not been revised.]

Attachment 2 provides clean and redline versions of the rules excluded from the individual votes.



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: July 26, 2021

To: California Paraprofessional Program Working Group

From: California Paraprofessional Working Group Staff

Subject: Proposed Rules of Professional Conduct for Paraprofessional Licensees

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The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services \(ATILS\)](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, rules of professional conduct for paraprofessional licensees.

A preliminary draft of the Paraprofessional Rules of Professional Conduct (Rules) was provided for discussion at the June 25, 2021, CPPWG meeting. The Regulation Subcommittee has continued to meet since that time, and has developed a full set of Rules; the CPPWG will vote on the Rules at the July 26 meeting.

**Attachment A** to this memorandum provides a summary of the proposed Rules, including a comparison of each proposed paraprofessional rule with the existing attorney rule, and a recommendation regarding whether a separate or group vote should be taken for that rule. Rules considered noncontroversial have been designated for a group vote, and will be considered in one resolution. Rules that are considered controversial, or for which there was not consensus among members of the Regulation Subcommittee, are recommended for individual votes. Members of the CPPWG may request that any rule designated for group vote be considered for individual vote.

**Attachment B** provides a full set of the proposed Rules. Each rule is first presented as a "clean" version that reflects the proposed rule, followed by a "redline" version that reflects changes from the existing attorney rule.

**Attachment C** provides redline versions of each of the rules designated in Attachment A for individual vote.

PROPOSED RULE	Same as Attorney Standard or Not the Same (representative issue(s))	Plan for July 26th Full Working Group Meeting
<b>1.0</b> Purpose and Function of the Rules of Professional Conduct for [Licensed Paraprofessionals]	Same	GROUP VOTE
<b>1.0.1</b> Terminology	Not the Same (added definition of “licensed paraprofessional”)	GROUP VOTE
<b>1.1</b> Competence	Not the Same (no exception for giving advice or assistance in an emergency)	GROUP VOTE
<b>1.2</b> Scope of Representation and Allocation of Authority	Not the Same (last provision of 1.2(a) deleted because PP’s will not be practicing criminal law)	GROUP VOTE
<b>1.2.1</b> Advising or Assisting the Violation of Law	Same	GROUP VOTE
<b>1.3</b> Diligence	Same	GROUP VOTE
<b>1.4</b> Communication with Clients	Same	GROUP VOTE
<b>1.4.1</b> Communication of Settlement Offers	Not the Same (removes provisions related to criminal law, as well as organization & class action representation because PP’s will not be practicing in these areas)	GROUP VOTE
<b>1.4.2</b> Notice to Consumers Prior to Consultation with a Prospective Client	Not the Same (Paraprofessionals will be required to give notice they are not an attorney along with other required standardized disclosures prior to consultation)	INDIVIDUAL VOTE
<b>1.4.3</b> Informed Written Consent to Representation	Not the Same (Paraprofessionals will be required to obtain the prospective client’s informed written consent after consultation, tailored to the facts of the case, but prior to representation)	INDIVIDUAL VOTE
<b>1.5</b> Fees for Legal Services	Not the Same (new factor (14) added regarding fee customarily charged to determine if fees are unconscionable; (c)(1) & (2) replaced with a not-to-exceed limit on contingency fee %; no ability to charge a “true” retainer fee)	INDIVIDUAL VOTE

PROPOSED RULE	Same as Attorney Standard or Not the Same (representative issue(s))	Plan for July 26th Full Working Group Meeting
<b>1.5.1</b> Fee Divisions Among Licensed Paraprofessionals and with Lawyers	Not the Same (Paraprofessionals will not be able to charge referral fees [no “pure” referral fees]; limits fee sharing to splitting fees in proportion to the services actually performed or with the assumption of joint responsibility in an area where the PP is licensed to practice – following model rule requirements)	INDIVIDUAL VOTE
<b>1.5.2</b> Written Agreement to Representation	Not the Same (Paraprofessionals will be required to enter into a written retainer agreement with specified disclosures [written agreements for lawyers are included in the B&P Code])	INDIVIDUAL VOTE
<b>1.6</b> Confidential Information of a Client	Same (removes references to B&P 6068(e)(1))	GROUP VOTE
<b>1.7</b> Conflict of Interest: Current Clients	Same	GROUP VOTE
<b>1.8.1</b> Business Transactions with a Client and Pecuniary Interests Adverse to a Client	Same	GROUP VOTE
<b>1.8.2</b> Use of Current Client’s Information	Same (removes references to B&P 6068(e)(1) and State Bar Act)	GROUP VOTE
<b>1.8.3</b> Gifts from Clients	Not the Same (removes provision re preparing an instrument as PP’s will not be practicing in this area)	GROUP VOTE
<b>1.8.5</b> Payment of Personal or Business Expenses Incurred by or for a Client	Same	GROUP VOTE
<b>1.8.6</b> Compensation from One Other Than Client	Same	GROUP VOTE
<b>1.8.7</b> Aggregate Settlements	Not the Same (removes provisions related to criminal law & class action representation because PP’s will not be practicing in these areas)	GROUP VOTE
<b>1.8.8</b> Limiting Liability to Client	Same	GROUP VOTE
<b>1.8.9</b> Purchasing Property at a Foreclosure Sale or a Sale Subject to Judicial Review	Not the Same (removes provision related to representing a seller at specified proceedings because PP’s will not be practicing in these areas)	GROUP VOTE

PROPOSED RULE	Same as Attorney Standard or Not the Same (representative issue(s))	Plan for July 26th Full Working Group Meeting
<b>1.8.10</b> Sexual Relations with Current Client	Not the Same (prohibits conduct conditioning performance and coercion/intimidation/undue influence [prohibitions for lawyers are included in B&P § 6106.9])	GROUP VOTE
<b>1.8.11</b> Imputation of Personal Conflicts (Rules 1.8.1 to 1.8.9) (See also Rule 1.10)	Same (adds cross-reference to RPC's for attorneys)	GROUP VOTE
<b>1.9</b> Duties to Former Clients	Same (although removes references to B&P 6068(e)(1) & State Bar Act)	GROUP VOTE
<b>1.10</b> Imputation of Conflicts of Interest: General Rule	Same (adds cross-reference to RPC's for attorneys)	GROUP VOTE
<b>1.11</b> Special Conflicts of Interest for Former and Current Government Officials and Employees	Same (removes reference to serving as a law clerk because it is understood judicial law clerks must be attorneys)	GROUP VOTE
<b>1.12</b> Former Arbitrator, Mediator, or Other Third-Party Neutral	Same (reference to "Judge" in title and rule are removed)	GROUP VOTE
<b>1.13</b> Organization as Client	Not the Same (PP's will not be permitted to represent organizations so this rule is not needed)	GROUP VOTE
<b>1.15</b> Safekeeping Funds and Property of Clients and Other Persons	Not the Same (provision re flat fees paid in advance has been removed)	GROUP VOTE
<b>1.16</b> Declining or Terminating Representation	Not the Same ((a)(5) added re declining/ withdrawing from representation if subject of representation is beyond the license with requirement to advise client in writing; reference to State Bar Act removed)	GROUP VOTE
<b>1.17</b> Sale of a Law Practice	Same (removes Bus. & Prof. Code references)	GROUP VOTE
<b>1.18</b> Duties to Prospective Client	Same	GROUP VOTE
<b>2.1</b> Advisor	Same	GROUP VOTE

PROPOSED RULE	Same as Attorney Standard or Not the Same (representative issue(s))	Plan for July 26th Full Working Group Meeting
<b>2.4</b> Lawyer as Third-Party Neutral	Same	GROUP VOTE
<b>2.4.1</b> Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator	Not the Same (PP's not expected to act as temporary judges, referees, or court-appointed arbitrators so rule is not needed)	GROUP VOTE
<b>3.1</b> Meritorious Claims and Contentions	Not the Same (rule changed to "assist with" and provision regarding criminal proceeding deleted PP's will not be practicing criminal law)	GROUP VOTE
<b>3.2</b> Delay of Litigation	Same	GROUP VOTE
<b>3.3</b> Candor Toward the Tribunal	Same (references to B&P 6068(e)(1) & criminal matters removed)	GROUP VOTE
<b>3.4</b> Fairness to Opposing Party and Counsel	Same (reference to guilt or innocence of the accused removed because PP's will not be practicing criminal law)	GROUP VOTE
<b>3.5</b> Contact with Judges, Officials, and Employees	Not the Same (references to jurors removed; (b)(1), (3) & (5) removed; and (d) through (l) removed because PP's will not be permitted to try cases in front of a jury)	GROUP VOTE
<b>3.6</b> Trial Publicity	Same (references to a criminal case removed because PP's will not be practicing criminal law)	GROUP VOTE
<b>3.7</b> Lawyer as Witness	Same (references to representing the People or a governmental entity removed because PP's will not be practicing in these areas)	GROUP VOTE
<b>3.8</b> Special Responsibilities of a Prosecutor	Not the Same (PP's will not be practicing criminal law so rule is not needed)	GROUP VOTE
<b>3.9</b> Advocate in Nonadjudicative Proceedings	Same	GROUP VOTE
<b>3.10</b> Threatening Criminal, Administrative, or Disciplinary Charges	Same	GROUP VOTE
<b>4.1</b> Truthfulness in Statements to Others	Same (reference to B&P Code section 6068(e) removed)	GROUP VOTE
<b>4.2</b> Communication with a Represented Person	Same	GROUP VOTE

PROPOSED RULE	Same as Attorney Standard or Not the Same (representative issue(s))	Plan for July 26th Full Working Group Meeting
4.3 Communicating with an Unrepresented Person	Same	GROUP VOTE
4.4 Duties Concerning Inadvertently Transmitted Writings	Same	GROUP VOTE
5.1 Responsibilities of Managerial and Supervisory Licensed paraprofessionals	Same	GROUP VOTE
5.2 Responsibilities of a Subordinate Licensed paraprofessionals	Same	GROUP VOTE
5.3 Responsibilities Regarding Non-Licensed Assistants	Same	GROUP VOTE
5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Licensed Paraprofessionals	Same (allows paraprofessionals to hire a paraprofessional or lawyer who has been disbarred, suspended, resigned, or is involuntarily inactive to perform certain limited research, drafting, or clerical activities with restrictions and notice requirements designed for consumer protection)	INDIVIDUAL VOTE
5.4 Financial and Similar Arrangements with Lawyers and Nonlicensees	Not the Same (allows paraprofessionals to have ownership interest in law firms, limited to a minority interest if attorneys are either owners or employees; subparagraph (e) added which limits PP's activities when working in a law firm with a lawyer)	INDIVIDUAL VOTE
5.5 Unauthorized Practice of Law	Not the Same (provisions added stating PP's can't practice outside their scope, nor hold out as permitted to practice beyond their scope; multijurisdictional practice of law removed from title and rule)	GROUP VOTE
5.6 Restrictions on a Licensed Paraprofessional's Right to Practice	Same (subparagraph (c) removed regarding agreements in lieu of discipline because statutory references to B&P Code 6092.5(i) & 6093 not currently applicable to PP's)	GROUP VOTE

PROPOSED RULE	Same as Attorney Standard or Not the Same (representative issue(s))	Plan for July 26th Full Working Group Meeting
<b>6.3</b> Membership in Legal Services Organizations	Same (reference to B&P Code section 6068(e) removed)	GROUP VOTE
<b>6.5</b> Limited Legal Services Programs	Same (cross-reference to attorney RPC's is added)	GROUP VOTE
<b>7.1</b> Communications Concerning Licensed Paraprofessionals Services	Same	GROUP VOTE
<b>7.2</b> Advertising	Not the Same (this section provides advertising requirements similar to lawyers; however, in addition, subparagraph (c) requires Paraprofessionals to include a statement that PP is not a lawyer and their license number in all advertising, and subparagraph (d) requires PP's website to include the disclosures required by 1.4.2(a))	INDIVIDUAL VOTE
<b>7.3</b> Solicitation of Clients	Not the Same (this section provides solicitation requirements similar to lawyers; however, in addition, subparagraph (c)(3) – (5) requires Paraprofessionals to include a statement that PP is not a lawyer and their license number in all solicitations in the same language as the solicitation, and subparagraph (d) prohibits running and capping [similar to lawyer restrictions in the B&P code])	INDIVIDUAL VOTE
<b>7.4</b> Communications of Fields of Practice and Specialization	Not the Same (PP's will not be certified as specialists so rule is not needed)	GROUP VOTE
<b>7.5</b> Firm Names and Letterheads	Same	GROUP VOTE
<b>8.1</b> False Statement Regarding Application for Admission to Practice Law	Same (reference to B&P Code section 6068(e) removed)	GROUP VOTE
<b>8.1.1</b> Compliance with Conditions of Discipline	Not the Same (references to ALD and private reproof removed, as well as to B&P Code and CRC because they don't refer to PP's)	GROUP VOTE

PROPOSED RULE	Same as Attorney Standard or Not the Same (representative issue(s))	Plan for July 26th Full Working Group Meeting
8.2 Judicial Officials	Not the Same (paragraphs (b) & (c) removed because PP's will not be candidates for, or appointed to, judicial office)	GROUP VOTE
8.4 Misconduct	Same (statutory obligations may be added later)	GROUP VOTE
8.4.1 Prohibited Discrimination, Harassment and Retaliation	Same (reference to representing a client alleged to have engaged in unlawful discrimination, harassment, or retaliation removed because PP's will not be practicing in those areas)	GROUP VOTE
8.5 Disciplinary Authority; Choice of Law	Same (reference to others being subject to the disciplinary authority of CA removed)	GROUP VOTE
<b>TOTAL = 71 rules considered</b>	<b>Same = 43</b> <b>Not the Same = 28</b>	<b>Group Vote ("consent") = 62 rules</b>  <b>Separate presentations/votes = 9 rules</b>

## RULES OF PROFESSIONAL CONDUCT FOR LICENSED PARAPROFESSIONALS

### Rule 1.0 Purpose and Function of the Rules of Professional Conduct for Licensed Paraprofessionals (Proposed Rule – Clean Version)

(a) Purpose.

The following rules are intended to regulate professional conduct of licensed paraprofessionals through discipline. They have been adopted by the Board of Trustees of the State Bar of California and approved by the Supreme Court of California to protect the public, the courts, and the legal profession; protect the integrity of the legal system; and promote the administration of justice and confidence in the legal profession. These rules together with any standards adopted by the Board of Trustees pursuant to these rules shall be binding upon all licensed paraprofessionals.

(b) Function.

- (1) A willful violation of any of these rules is a basis for discipline.
- (2) The prohibition of certain conduct in these rules is not exclusive. Licensed paraprofessionals are also bound by applicable law including relevant statutes, the California Rules of Court, and opinions of California courts.
- (3) A violation of a rule does not itself give rise to a cause of action for damages caused by failure to comply with the rule. Nothing in these rules or the Comments to the rules is intended to enlarge or to restrict the law regarding the liability of licensed paraprofessionals to others.

(c) Purpose of Comments.

The comments are not a basis for imposing discipline but are intended only to provide guidance for interpreting and practicing in compliance with the rules.

(d) These rules may be cited and referred to as the “California Rules of Professional Conduct for Licensed Paraprofessionals.”

**Comment**

[Reserved]

### Rule 1.0 Purpose and Function of the Rules of Professional Conduct for Licensed Paraprofessionals (Proposed Rule – Redline Version)

(a) Purpose.

The following rules are intended to regulate professional conduct of ~~lawyer~~licensed paraprofessionals through discipline. They have been adopted by the Board of Trustees of the State Bar of California and approved by the Supreme Court of California ~~pursuant to Business and Professions Code sections 6076 and 6077~~ to protect the public, the courts, and the legal profession; protect the integrity of the legal system; and promote the administration of justice and confidence in the legal profession. These rules together with any standards adopted by the Board of Trustees pursuant to these rules shall be binding upon all ~~lawyer~~licensed paraprofessionals.

(b) Function.

- (1) A willful violation of any of these rules is a basis for discipline.

(2) The prohibition of certain conduct in these rules is not exclusive. Lawyer Licensed paraprofessionals are also bound by applicable law including relevant statutes, the California Rules of Court, and the State Bar Act (Bus. & Prof. Code, § 6000 et seq.) and opinions of California courts.

(3) A violation of a rule does not itself give rise to a cause of action for damages caused by failure to comply with the rule. Nothing in these rules or the Comments to the rules is intended to enlarge or to restrict the law regarding the liability of lawyers- licensed paraprofessionals to others.

(c) Purpose of Comments.

The comments are not a basis for imposing discipline but are intended only to provide guidance for interpreting and practicing in compliance with the rules.

(d) These rules may be cited and referred to as the “California Rules of Professional Conduct for Licensed Paraprofessionals.”

#### **Comment**

[Reserved]

### **Rule 1.0.1 Terminology (Proposed Rule – Clean Version)**

(a) “Belief” or “believes” means that the person\* involved actually supposes the fact in question to be true. A person’s\* belief may be inferred from circumstances.

(b) “Licensed Paraprofessional” means a person\* licensed to engage in the limited practice of law pursuant to **[ADD reference to CRC rule(s) and/or State Bar Act provisions defining licensing process and scope of permissible practice]**.

(c) “Firm” or “law firm” means a licensed paraprofessional, licensed paraprofessionals, a lawyer, or lawyers in a law partnership; a professional law corporation; a licensed paraprofessional acting as a sole proprietorship; an association authorized to practice law; or licensed paraprofessional licensed paraprofessional employed in a legal services organization or in the legal department, division or office of a corporation, of a government organization, or of another organization.

(d) “Fraud” or “fraudulent” means conduct that is fraudulent under the law of the applicable jurisdiction and has a purpose to deceive.

(e) “Informed consent” means a person’s\* agreement to a proposed course of conduct after the licensed paraprofessional has communicated and explained (i) the relevant circumstances and (ii) the material risks, including any actual and reasonably\* foreseeable adverse consequences of the proposed course of conduct.

(e-1) “Informed written consent” means that the disclosures and the consent required by paragraph (e) must be in writing.\*

(f) “Knowingly,” “known,” or “knows” means actual knowledge of the fact in question. A person’s\* knowledge may be inferred from circumstances.

(g) “Partner” means a member of a partnership, a shareholder in a law firm\* organized as a professional corporation, or a member of an association authorized to practice law.

(g-1) “Person” has the meaning stated in Evidence Code section 175.

(h) “Reasonable” or “reasonably” when used in relation to conduct by a licensed paraprofessional means the conduct of a reasonably prudent and competent licensed paraprofessional.

- (i) “Reasonable belief” or “reasonably believes” when used in reference to a licensed paraprofessional means that the licensed paraprofessional believes the matter in question and that the circumstances are such that the belief is reasonable.
- (j) “Reasonably should know” when used in reference to a licensed paraprofessional means that a licensed paraprofessional of reasonable prudence and competence would ascertain the matter in question.
- (k) “Screened” means the isolation of a licensed paraprofessional from any participation in a matter, including the timely imposition of procedures within a law firm\* that are adequate under the circumstances (i) to protect information that the isolated licensed paraprofessional is obligated to protect under these rules or other law; and (ii) to protect against other law firm\* lawyers, licensed paraprofessionals and nonlawyers, and non-licensed paraprofessional personnel communicating with the licensed paraprofessional with respect to the matter.
- (l) “Substantial” when used in reference to degree or extent means a material matter of clear and weighty importance.
- (m) “Tribunal” means: (i) a court, an arbitrator, an administrative law judge, or an administrative body acting in an adjudicative capacity and authorized to make a decision that can be binding on the parties involved; or (ii) a special master or other person\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.
- (n) “Writing” or “written” has the meaning stated in Evidence Code section 250. A “signed” writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed, inserted, or adopted by or at the direction of a person\* with the intent to sign the writing.
- (o) “Lawyer RPC” denotes the California Rules of Professional Conduct for Lawyers.

**Comment**

[Reserved]

**Rule 1.0.1 Terminology  
(Proposed Rule – Redline Version)**

- (a) “Belief” or “believes” means that the person\* involved actually supposes the fact in question to be true. A person’s\* belief may be inferred from circumstances.
- (b) “Licensed Paraprofessional” means a person\* licensed to engage in the limited practice of law pursuant to [ADD reference to CRC rule(s) and/or State Bar Act provisions defining licensing process and scope of permissible practice].
- (c) “Firm” or “law firm” means a licensed paraprofessional, licensed parafessionals, a lawyer, or lawyers in a law partnership; a professional law corporation; a lawyer-licensed paraprofessional acting as a sole proprietorship; an association authorized to practice law; or lawyer-licensed paraprofessionals- licensed paraprofessional employed in a legal services organization or in the legal department, division or office of a corporation, of a government organization, or of another organization.
- (d) “Fraud” or “fraudulent” means conduct that is fraudulent under the law of the applicable jurisdiction and has a purpose to deceive.
- (e) “Informed consent” means a person’s\* agreement to a proposed course of conduct after the lawyer-licensed paraprofessional has communicated and explained (i) the relevant circumstances and (ii) the material risks, including any actual and reasonably\* foreseeable adverse consequences of the proposed course of conduct.
- (e-1) “Informed written consent” means that the disclosures and the consent required by paragraph (e) must be in writing.\*

(f) “Knowingly,” “known,” or “knows” means actual knowledge of the fact in question. A person’s\* knowledge may be inferred from circumstances.

(g) “Partner” means a member of a partnership, a shareholder in a law firm\* organized as a professional corporation, or a member of an association authorized to practice law.

(g-1) “Person” has the meaning stated in Evidence Code section 175.

(h) “Reasonable” or “reasonably” when used in relation to conduct by a [lawyer-licensed paraprofessional](#) means the conduct of a reasonably prudent and competent [lawyer-licensed paraprofessional](#).

(i) “Reasonable belief” or “reasonably believes” when used in reference to a [lawyer-licensed paraprofessional](#) means that the [lawyer-licensed paraprofessional](#) believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) “Reasonably should know” when used in reference to a [lawyer-licensed paraprofessional](#) means that a [lawyer-licensed paraprofessional](#) of reasonable prudence and competence would ascertain the matter in question.

(k) “Screened” means the isolation of a [lawyer-licensed paraprofessional](#) from any participation in a matter, including the timely imposition of procedures within a law firm\* that are adequate under the circumstances (i) to protect information that the isolated [lawyer-licensed paraprofessional](#) is obligated to protect under these rules or other law; and (ii) to protect against other law firm\* lawyers, [licensed paraprofessionals](#) and nonlawyers, [and non-licensed paraprofessional](#) personnel communicating with the [lawyer-licensed paraprofessional](#) with respect to the matter.

(l) “Substantial” when used in reference to degree or extent means a material matter of clear and weighty importance.

(m) “Tribunal” means: (i) a court, an arbitrator, an administrative law judge, or an administrative body acting in an adjudicative capacity and authorized to make a decision that can be binding on the parties involved; or (ii) a special master or other person\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

(n) “Writing” or “written” has the meaning stated in Evidence Code section 250. A “signed” writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed, inserted, or adopted by or at the direction of a person\* with the intent to sign the writing.

[\(o\) “Lawyer RPC” denotes the California Rules of Professional Conduct for Lawyers.](#)

#### **Comment**

[Reserved]

## CHAPTER 1.

### LAWYERLICENSED PARAPROFESSIONAL-CLIENT RELATIONSHIP

#### **Rule 1.1 Competence (Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- (b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably\* necessary for the performance of such service.
- (c) If a licensed paraprofessional does not have sufficient learning and skill when the legal services within the scope of the licensure are undertaken, the licensed paraprofessional nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another licensed paraprofessional or a lawyer whom the licensed paraprofessional reasonably believes\* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another licensed paraprofessional or lawyer whom the licensed paraprofessional reasonably believes\* to be competent.

#### **Comment**

[Reserved]

#### **Rule 1.1 Competence (Proposed Rule – Redline Version)**

- (a) A lawyerlicensed paraprofessional shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- (b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably\* necessary for the performance of such service.
- (c) If a lawyerlicensed paraprofessional does not have sufficient learning and skill when the legal services within the scope of the licensure are undertaken, the lawyerlicensed paraprofessional nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyerlicensed paraprofessional or a lawyer whom the lawyerlicensed paraprofessional reasonably believes\* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyerlicensed paraprofessional or lawyer whom the lawyerlicensed paraprofessional reasonably believes\* to be competent.
- ~~(d) In an emergency a lawyerlicensed paraprofessional may give advice or assistance in a matter in which the lawyerlicensed paraprofessional does not have the skill ordinarily required if referral to, or association or consultation with, another lawyerlicensed paraprofessional or lawyer would be impractical. Assistance in an emergency must be limited to that reasonably\* necessary in the circumstances.~~

#### **Comment**

[Reserved]

#### **Rule 1.2 Scope of Representation and Allocation of Authority (Proposed Rule – Clean Version)**

(a) Subject to rule 1.2.1, a licensed paraprofessional shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably\* consult with the client as to the means by which they are to be pursued. Subject to rule 1.6, a licensed paraprofessional may take such action on behalf of the client as is impliedly authorized to carry out the representation. A licensed paraprofessional shall abide by a client's decision whether to settle a matter. .

(b) A licensed paraprofessional may limit the scope of the representation if the limitation is reasonable\* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent\* **Comment**

[Reserved]

### **Rule 1.2 Scope of Representation and Allocation of Authority (Proposed Rule – Redline Version)**

(a) Subject to rule 1.2.1, a ~~lawyer~~licensed paraprofessional shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably\* consult with the client as to the means by which they are to be pursued. Subject to ~~Business and Professions Code section 6068, subdivision (e)(1) and~~ rule 1.6, a licensed paraprofessional ~~lawyer~~ may take such action on behalf of the client as is impliedly authorized to carry out the representation. A licensed paraprofessional ~~lawyer~~ shall abide by a client's decision whether to settle a matter. ~~Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.~~

(b) A lawyer-licensed paraprofessional may limit the scope of the representation if the limitation is reasonable\* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.\*

#### **Comment**

[Reserved]

### **Rule 1.2.1 Advising or Assisting the Violation of Law (Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not counsel a client to engage, or assist a client in conduct that the licensed paraprofessional knows\* is criminal, fraudulent,\* or a violation of any law, rule, or ruling of a tribunal.\*

(b) Notwithstanding paragraph (a), a licensed paraprofessional may:

(1) discuss the legal consequences of any proposed course of conduct with a client; and

(2) counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of a law, rule, or ruling of a tribunal.\*

#### **Comment**

[Reserved]

**Rule 1.2.1 Advising or Assisting the Violation of Law  
(Proposed Rule – Redline Version)**

- (a) A ~~licensed paraprofessional lawyer~~ shall not counsel a client to engage, or assist a client in conduct that the ~~lawyer~~licensed paraprofessional knows\* is criminal, fraudulent,\* or a violation of any law, rule, or ruling of a tribunal.\*
- (b) Notwithstanding paragraph (a), a ~~licensed paraprofessional lawyer~~ may:
- (1) discuss the legal consequences of any proposed course of conduct with a client; and
  - (2) counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of a law, rule, or ruling of a tribunal.\*

**Comment**

[Reserved]

**Rule 1.3 Diligence  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.
- (b) For purposes of this rule, “reasonable diligence” shall mean that a licensed paraprofessional acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the licensed paraprofessional.

**Comment**

[Reserved]

**Rule 1.3 Diligence  
(Proposed Rule – Redline Version)**

- (a) A ~~licensed paraprofessional lawyer~~ shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.
- (b) For purposes of this rule, “reasonable diligence” shall mean that a ~~lawyer~~licensed paraprofessional acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the ~~lawyer~~licensed paraprofessional.

**Comment**

[Reserved]

**Rule 1.4 Communication with Clients  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall:
- (1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client’s informed consent\* is required by these rules or applicable law;

- (2) reasonably\* consult with the client about the means by which to accomplish the client’s objectives in the representation;
  - (3) keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed; and
  - (4) advise the client about any relevant limitation on the licensed paraprofessional’s conduct when the licensed paraprofessional knows\* that the client expects assistance not permitted by these rules or other law.
- (b) A licensed paraprofessional shall explain a matter to the extent reasonably\* necessary to permit the client to make informed decisions regarding the representation.
- (c) A licensed paraprofessional may delay transmission of information to a client if the licensed paraprofessional reasonably believes\* that the client would be likely to react in a way that may cause imminent harm to the client or others.
- (d) A licensed paraprofessional’s obligation under this rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or limitation under statutory or decisional law.

**Comment**

[Reserved]

**Rule 1.4 Communication with Clients  
(Proposed Rule – Redline Version)**

- (a) A licensed paraprofessional ~~lawyer~~ shall:
- (1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client’s informed consent\* is required by these rules or ~~the State Bar Act~~ applicable law;
  - (2) reasonably\* consult with the client about the means by which to accomplish the client’s objectives in the representation;
  - (3) keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed; and
  - (4) advise the client about any relevant limitation on the ~~lawyer~~ licensed paraprofessional’s conduct when the ~~lawyer~~ licensed paraprofessional knows\* that the client expects assistance not permitted by ~~these rules~~ Rules of Professional Conduct or other law.
- (b) A ~~lawyer~~ licensed paraprofessional shall explain a matter to the extent reasonably\* necessary to permit the client to make informed decisions regarding the representation.
- (c) A ~~lawyer~~ licensed paraprofessional may delay transmission of information to a client if the ~~lawyer~~ licensed paraprofessional reasonably believes\* that the client would be likely to react in a way that may cause imminent harm to the client or others.
- (d) A ~~lawyer~~ licensed paraprofessional’s obligation under this rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or limitation under statutory or decisional law.

**Comment**

[Reserved]

**Rule 1.4.1 Communication of Settlement Offers  
(Proposed Rule – Clean Version)**

A licensed paraprofessional shall promptly communicate to the licensed paraprofessional's client all amounts, terms, and conditions of any written\* offer of settlement made to the client.

**Comment**

[Reserved]

**Rule 1.4.1 Communication of Settlement Offers  
(Proposed Rule – Redline Version)**

~~(a) A licensed paraprofessional lawyer shall promptly communicate to the lawyer/ licensed paraprofessional's client :~~

~~(1) all terms and conditions of a proposed plea bargain or other dispositive offer made to the client in a criminal matter; and~~

~~(2) all amounts, terms, and conditions of any written\* offer of settlement made to the client in all other matters.~~

~~(b) As used in this rule, "client" includes a person\* who possesses the authority to accept an offer of settlement or plea, or, in a class action, all the named representatives of the class.~~

**Comment**

[Reserved]

**Rule 1.4.2 Notice to Consumers Prior to Consultation with a Prospective Client  
(Proposed Rule – Clean Version)**

(a) Prior to a prospective client's consultation with a licensed paraprofessional for the purpose of retaining the licensed paraprofessional or securing legal services or advice from the licensed paraprofessional in the licensed paraprofessional's professional capacity, the licensed paraprofessional shall disclose orally and provide, at the time of the consultation or as soon thereafter as reasonably\* practicable the written\* disclosures to the prospective client in the prospective client's preferred language that:

- (1) the licensed paraprofessional is not a lawyer;
- (2) the licensed paraprofessional has a license to provide limited legal services, the area of practice in which the licensed paraprofessional is licensed, and that the licensed paraprofessional cannot provide all services that a lawyer can provide in this area of practice;
- (3) the prospective client may need to hire a lawyer if the legal services that the prospective client seeks are beyond the limited scope of the licensed paraprofessional's license;
- (4) there may be other alternative choices available for the prospective client to consider, including, but not limited to, 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, or potentially free legal services from a local legal aid organization if the prospective client qualifies;

- (5) a general description of the licensed paraprofessional's fee structure and billing methods; and
- (6) whether the licensed paraprofessional does or does not have professional liability insurance based on the licensed paraprofessional's reasonable knowledge\* at the time of the disclosure,

(b) If the licensed paraprofessional provides notice to the prospective client prior to consultation that the licensed paraprofessional does have professional liability insurance pursuant to paragraph (a)(6) and a licensed paraprofessional-client relationship is formed, the licensed paraprofessional shall inform the client in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional no longer has professional liability insurance during the representation of the client.

[Reserved]

**Rule 1.4.2 Notice to Consumers Prior to Consultation with a Prospective Client~~Disclosure of Professional Liability Insurance~~  
(Proposed Rule – Redline Version)**

(a) Prior to a prospective client's consultation with a licensed paraprofessional for the purpose of retaining the licensed paraprofessional or securing legal services or advice from the licensed paraprofessional in the licensed paraprofessional's professional capacity, the licensed paraprofessional shall disclose orally and provide, at the time of the consultation or as soon thereafter as reasonably\* practicable the written\* disclosures to the prospective client in the prospective client's preferred language that:

- (1) the licensed paraprofessional is not a lawyer;
- (2) the licensed paraprofessional has a license to provide limited legal services, the area of practice in which the licensed paraprofessional is licensed, and that the licensed paraprofessional cannot provide all services that a lawyer can provide in this area of practice;
- (3) the prospective client may need to hire a lawyer if the legal services that the prospective client seeks are beyond the limited scope of the licensed paraprofessional's license;
- (4) there may be other alternative choices available for the prospective client to consider, including, but not limited to, 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, or potentially free legal services from a local legal aid organization if the prospective client qualifies;
- (5) a general description of the licensed paraprofessional's fee structure and billing methods; and
- (6) whether the licensed paraprofessional does or does not have professional liability insurance based on the licensed paraprofessional's reasonable knowledge\* at the time of the disclosure,

~~(a) A licensed paraprofessional who knows\* or reasonably should know\* that the licensed paraprofessional does not have professional liability insurance shall inform a client in writing,\* at the time of the client's engagement of the licensed paraprofessional, that the licensed paraprofessional does not have professional liability insurance.~~

~~(b) If the licensed paraprofessional provides notice to the prospective client prior to consultation that the licensed paraprofessional does have professional liability insurance pursuant to paragraph (a)(6) and a licensed paraprofessional-client relationship is formed, the licensed paraprofessional shall inform the client in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional no longer has professional liability insurance during the representation of the client. If notice under paragraph (a) has not been provided at the time of a client's engagement of the licensed paraprofessional, the licensed paraprofessional shall inform the client~~

in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional no longer has professional liability insurance during the representation of the client.

~~(c) This rule does not apply to:~~

~~(1) a licensed paraprofessional who knows\* or reasonably should know\* at the time of the client's engagement of the licensed paraprofessional that the licensed paraprofessional's legal representation of the client in the matter will not exceed four hours; provided that if the representation subsequently exceeds four hours, the licensed paraprofessional must comply with paragraphs (a) and (b);~~

~~(2) a licensed paraprofessional who is employed as a government licensed paraprofessional or in-house counsel when that licensed paraprofessional is representing or providing legal advice to a client in that capacity;~~

~~(3) a licensed paraprofessional who is rendering legal services in an emergency to avoid foreseeable prejudice to the rights or interests of the client;~~

~~(4) a licensed paraprofessional who has previously advised the client in writing\* under paragraph (a) or (b) that the licensed paraprofessional does not have professional liability insurance.~~

[Reserved]

### **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 legal services may be available to low-income individuals from a legal aid program if the client qualifies;

(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.

#### **Comments**

[Reserved]

**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 legal services may be available to low-income individuals from a legal aid program if the client qualifies;

(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.

**Comments**

[Reserved]

**Rule 1.5 Fees for Legal Services**  
**(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not make an agreement for, charge, or collect an unconscionable or illegal fee.

(b) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. The factors to be considered in determining the unconscionability of a fee include without limitation the following:

(1) whether the licensed paraprofessional engaged in fraud\* or overreaching in negotiating or setting the fee;

(2) whether the licensed paraprofessional has failed to disclose material facts;

(3) the amount of the fee in proportion to the value of the services performed;

(4) the relative sophistication of the licensed paraprofessional and the client;

(5) the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(6) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the licensed paraprofessional;

- (7) the amount involved and the results obtained;
- (8) the time limitations imposed by the client or by the circumstances;
- (9) the nature and length of the professional relationship with the client;
- (10) the experience, reputation, and ability of the licensed paraprofessional performing the services;
- (11) whether the fee is fixed or contingent;
- (12) the time and labor required; and
- (13) whether the client gave informed consent\* to the fee.
- (14) the fee customarily charged by licensed paraprofessionals and lawyers in the locality for similar legal service.

(c) A licensed paraprofessional shall not make an agreement for, charge, or collect a contingent fee except in an enforcement of judgment matter within the scope of the licensed paraprofessional’s licensure. Any contingent fee permitted under this paragraph shall not exceed thirty-three and one-third percent of the total value of the judgment subject to the enforcement action.

(d) A licensed paraprofessional shall not make an agreement for, charge, or collect a fee that is denominated as “earned on receipt” or “non-refundable,” or in similar terms.]

(e) A licensed paraprofessional may make an agreement for, charge, or collect a flat fee for specified legal services. A flat fee is a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the licensed paraprofessional providing those services.

**Comment**

[Reserved]

**Rule 1.5 Fees for Legal Services  
(Proposed Rule – Redline Version)**

(a) A ~~lawyer~~ licensed paraprofessional shall not make an agreement for, charge, or collect an unconscionable or illegal fee.

(b) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. The factors to be considered in determining the unconscionability of a fee include without limitation the following:

- (1) whether the ~~lawyer~~ licensed paraprofessional engaged in fraud\* or overreaching in negotiating or setting the fee;
- (2) whether the ~~lawyer~~ licensed paraprofessional has failed to disclose material facts;
- (3) the amount of the fee in proportion to the value of the services performed;
- (4) the relative sophistication of the ~~licensed paraprofessional~~ lawyer and the client;
- (5) the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

- (6) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the licensed paraprofessional~~lawyer~~;
- (7) the amount involved and the results obtained;
- (8) the time limitations imposed by the client or by the circumstances;
- (9) the nature and length of the professional relationship with the client;
- (10) the experience, reputation, and ability of the licensed paraprofessional~~lawyer or lawyers~~ performing the services;
- (11) whether the fee is fixed or contingent;
- (12) the time and labor required; and
- (13) whether the client gave informed consent\* to the fee.

(14) the fee customarily charged by licensed paraprofessionals and lawyers in the locality for similar legal service.

(c) A licensed paraprofessional~~lawyer~~ shall not make an agreement for, charge, or collect:

~~(1) any fee in a family law matter, the payment or amount of which is contingent upon the securing of a dissolution or declaration of nullity of a marriage or upon the amount of spousal or child support, or property settlement in lieu thereof; a contingent fee except in an enforcement of judgment matter within the scope of the licensed paraprofessional's licensure. Any contingent fee permitted under this paragraph shall not exceed thirty-three and one-third percent of the total value of the judgment subject to the enforcement action. ~~or~~~~

~~(2) a contingent fee for representing a defendant in a criminal case.~~

(d) A licensed paraprofessional ~~lawyer may shall not~~ make an agreement for, charge, or collect a fee that is denominated as "earned on receipt" or "non-refundable," or in similar terms, ~~only if the fee is a true retainer and the client agrees in writing\* after disclosure that the client will not be entitled to a refund of all or part of the fee charged. A true retainer is a fee that a client pays to a lawyer to ensure the lawyer's availability to the client during a specified period or on a specified matter, but not to any extent as compensation for legal services performed or to be performed. .]~~

(e) A ~~lawyer~~licensed paraprofessional may make an agreement for, charge, or collect a flat fee for specified legal services. A flat fee is a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the ~~lawyer~~licensed paraprofessional providing those services.

**Comment**

[Reserved]

**Rule 1.5.1 Fee Divisions Among Licensed Paraprofessionals and With Lawyers  
(Proposed Rule – Clean Version)**

- (a) Licensed paraprofessionals who are not in the same law firm\* shall not divide a fee for legal services unless:
  - (1) the licensed paraprofessionals enter into a written\* agreement to divide the fee;
  - (2) the division is in proportion to the legal services performed by each licensed paraprofessional or each licensed paraprofessional assumes joint responsibility for the representation.

- (3) the client has consented in writing,\* either at the time the licensed paraprofessionals enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessionals or law firms\* that are parties to the division; and (iii) the terms of the division; and
  - (4) the total fee charged by all licensed paraprofessionals is not increased solely by reason of the agreement to divide fees.
- (b) A licensed paraprofessional and a lawyer who are not in the same law firm\* shall not divide a fee for legal services unless:
- (1) the licensed paraprofessional and the lawyer enter into a written\* agreement to divide the fee;
  - (2) the division is in proportion to the legal services performed by licensed paraprofessional and the lawyer;
  - (3) the client has consented in writing,\* either at the time the licensed paraprofessional and the lawyer enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessional, the lawyer, or law firms\* that are parties to the division; and (iii) the terms of the division; and
  - (4) the total fee charged by all licensed paraprofessionals and lawyers is not increased solely by reason of the agreement to divide fees.
- (c) This rule does not apply to a division of fees pursuant to court order.

**Comment**

[Reserved]

**Rule 1.5.1 Fee Divisions Among ~~Lawyer~~Licensed Paraprofessionals and With Lawyers  
(Proposed Rule – Redline Version)**

- (a) ~~Lawyer~~Licensed paraprofessionals who are not in the same law firm\* shall not divide a fee for legal services unless:
- (1) the ~~lawyer~~licensed paraprofessionals enter into a written\* agreement to divide the fee;
  - (2) the division is in proportion to the legal services performed by each licensed paraprofessional or each licensed paraprofessional assumes joint responsibility for the representation.
  - (23) the client has consented in writing,\* either at the time the ~~lawyer~~licensed paraprofessionals enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the ~~lawyer~~licensed paraprofessionals or law firms\* that are parties to the division; and (iii) the terms of the division; and
  - (34) the total fee charged by all ~~lawyer~~licensed paraprofessionals is not increased solely by reason of the agreement to divide fees.
- (b) A licensed paraprofessional and a lawyer who are not in the same law firm\* shall not divide a fee for legal services unless:
- (1) the licensed paraprofessional and the lawyer enter into a written\* agreement to divide the fee;
  - (2) the division is in proportion to the legal services performed by ~~each~~ licensed paraprofessional and the lawyer;

(3) the client has consented in writing,\* either at the time the licensed paraprofessional and the lawyer enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessional, the lawyer, or law firms\* that are parties to the division; and (iii) the terms of the division; and

(4) the total fee charged by all licensed paraprofessionals and lawyers is not increased solely by reason of the agreement to divide fees.

(b) This rule does not apply to a division of fees pursuant to court order.

#### Comment

[Reserved]

### Rule 1.5.2 Written Agreement to Representation (Proposed Rule – Clean Version)

Prior to the performance of legal services for a fee, the licensed paraprofessional shall enter into a written\* agreement with the client in a separate writing,\* provided in the prospective client’s preferred language, and signed by both the client and the licensed paraprofessional, that provides the licensed paraprofessional’s name, specialty area, mailing address, street address, telephone numbers, facsimile numbers, internet address, and license number of the licensed paraprofessional, and includes the following provisions:

- (a) A clear and conspicuous disclosure that the licensed paraprofessional is not a lawyer and may only provide limited legal advice and services within the scope of the licensed paraprofessional’s licensure. This statement shall be on the first page of the contract; in a type size, font, color, appearance, and location sufficiently noticeable for a client to read and comprehend them; in a print that contrasts with the background against which they appear; in larger type than the surrounding text; in a manner that clearly calls attention to the language;
- (b) An explanation of the general nature of the legal services to be provided to the client;
- (c) A reasonable estimate of the total fees, expenses, and costs of services provided by the licensed paraprofessional, and the basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the matter;
- (d) A statement that, pursuant to rule 1.4, the licensed paraprofessional must keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed;
- (e) A statement describing the licensed paraprofessional’s duty to protect the confidentiality of information related to the representation under rule 1.6, including information provided in confidence by the client and the licensed paraprofessional’s work product associated with the legal services sought or provided by the licensed paraprofessional;
- (f) A statement that, pursuant to rule 1.16(a)(4), the client has the right to terminate the contract and services at any time, with or without cause, and receive a full refund of unearned fees pursuant to rule 1.16(e)(2);
- (g) A statement confirming that the licensed paraprofessional is required by [add rule of court reference] to carry a surety bond in the amount of \$100,000, the name of the surety bond carrier, and information on how to file a claim against the surety bond if necessary;
- (h) A statement confirming if the licensed paraprofessional has or does not have professional liability insurance. If the licensed paraprofessional has professional liability insurance, the name of the carrier, the amount of coverage, and how to file a claim if necessary;

- (i) A statement describing how to file a complaint with the State Bar of California;
- (j) A statement regarding the respective responsibilities of the licensed paraprofessional and the client as to the performance of the agreement; and
- (k) Any other disclosures, statements, or conditions required by the [Paraprofessional] Rules of Professional Conduct and the rules and regulations of the [Paraprofessional] Board.

**Comment**

**Rule 1.5.2 Written Agreement to Representation**  
**(Proposed Rule – Redline Version)**

Prior to the performance of legal services for a fee, the licensed paraprofessional shall enter into a written\* agreement with the client in a separate writing,\* provided in the prospective client’s preferred language, and signed by both the client and the licensed paraprofessional, that provides the licensed paraprofessional’s name, specialty area, mailing address, street address, telephone numbers, facsimile numbers, internet address, and license number of the licensed paraprofessional, and includes the following provisions:

(a) A clear and conspicuous disclosure that the licensed paraprofessional is not a lawyer and may only provide limited legal advice and services within the scope of the licensed paraprofessional’s licensure. This statement shall be on the first page of the contract; in a type size, font, color, appearance, and location sufficiently noticeable for a client to read and comprehend them; in a print that contrasts with the background against which they appear; in larger type than the surrounding text; in a manner that clearly calls attention to the language;

(b) An explanation of the general nature of the legal services to be provided to the client;

(c) A reasonable estimate of the total fees, expenses, and costs of services provided by the licensed paraprofessional, and the basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the matter;

(d) A statement that, pursuant to rule 1.4, the licensed paraprofessional must keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed-pursuant to rule 1.16;

(e) A statement describing the licensed paraprofessional’s duty to protect the confidentiality of information related to the representation under rule 1.6, including information provided in confidence by the client and the licensed paraprofessional’s work product associated with the legal services sought or provided by the licensed paraprofessional;

(f) A statement that, pursuant to rule 1.16(a)(4), the client has the right to terminate the contract and services at any time, with or without cause, and receive a full refund of unearned fees pursuant to rule 1.16(e)(2);

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

(h) A statement confirming if the licensed paraprofessional has or does not have professional liability insurance. If the licensed paraprofessional has professional liability insurance, the name of the carrier, the amount of coverage, and how to file a claim if necessary;

(i) A statement describing how to file a complaint with the State Bar of California;

(j) A statement regarding the respective responsibilities of the licensed paraprofessional and the client as to the performance of the agreement; and

~~(k)~~Any other disclosures, statements, or conditions required by the [Paraprofessional] Rules of Professional Conduct and the rules and regulations of the [Paraprofessional] Board.

Comment

**Rule 1.6 Confidential Information of a Client  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall not reveal confidential information relating to the representation of a client unless the client gives informed consent,\* or the disclosure is permitted by paragraph (b) of this rule.
- (b) A licensed paraprofessional may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the licensed paraprofessional reasonably believes\* the disclosure is necessary to prevent a criminal act that the licensed paraprofessional reasonably believes\* is likely to result in death of, or substantial\* bodily harm to, an individual, as provided in paragraph (c).
- (c) Before revealing confidential information relating to the representation of a client to prevent a criminal act as provided in paragraph (b), a licensed paraprofessional shall, if reasonable\* under the circumstances:
- (1) make a good faith effort to persuade the client: (i) not to commit or to continue the criminal act; or (ii) to pursue a course of conduct that will prevent the threatened death or substantial\* bodily harm; or do both (i) and (ii); and
  - (2) inform the client, at an appropriate time, of the licensed paraprofessional's ability or decision to reveal information relating to the representation of a client as provided in paragraph (b).
- (d) In revealing confidential information relating to representation of a client as provided in paragraph (b), the licensed paraprofessional's disclosure must be no more than is necessary to prevent the criminal act, given the confidential information known\* to the licensed paraprofessional at the time of the disclosure.
- (e) A licensed paraprofessional who does not reveal confidential information permitted by paragraph (b) does not violate this rule.

**Comment**

[Reserved]

**Rule 1.6 Confidential Information of a Client  
(Proposed Rule – Redline Version)**

- (a) A ~~lawyer~~licensed paraprofessional shall not reveal confidential information ~~protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ unless the client gives informed consent,\* or the disclosure is permitted by paragraph (b) of this rule.
- (b) A ~~lawyer~~licensed paraprofessional may, but is not required to, reveal confidential information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ to the extent that the ~~lawyer~~licensed paraprofessional reasonably believes\* the disclosure is necessary to prevent a criminal act that the ~~lawyer~~licensed paraprofessional reasonably believes\* is likely to result in death of, or substantial\* bodily harm to, an individual, as provided in paragraph (c).
- (c) Before revealing confidential information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ to prevent a criminal act as provided in paragraph (b), a ~~lawyer~~licensed paraprofessional shall, if reasonable\* under the circumstances:

- (1) make a good faith effort to persuade the client: (i) not to commit or to continue the criminal act; or (ii) to pursue a course of conduct that will prevent the threatened death or substantial\* bodily harm; or do both (i) and (ii); and
  - (2) inform the client, at an appropriate time, of the lawyerlicensed paraprofessional's ability or decision to reveal information protected by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client as provided in paragraph (b).
- (d) In revealing confidential information protected by Business and Professions Code section 6068, subdivision (e)(1) relating to representation of a client as provided in paragraph (b), the lawyerlicensed paraprofessional's disclosure must be no more than is necessary to prevent the criminal act, given the confidential information known\* to the lawyerlicensed paraprofessional at the time of the disclosure.
- (e) A lawyerlicensed paraprofessional who does not reveal confidential information permitted by paragraph (b) does not violate this rule.

**Comment**

[Reserved]

**Rule 1.7 Conflict of Interest: Current Clients  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall not, without informed written consent\* from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.
- (b) A licensed paraprofessional shall not, without informed written consent\* from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the licensed paraprofessional's representation of the client will be materially limited by the licensed paraprofessional's responsibilities to or relationships with another client, a former client or a third person,\* or by the licensed paraprofessional's own interests.
- (c) Even when a significant risk requiring a licensed paraprofessional to comply with paragraph (b) is not present, a licensed paraprofessional shall not represent a client without written\* disclosure of the relationship to the client and compliance with paragraph (d) where:
- (1) the licensed paraprofessional has, or knows\* that another lawyer or licensed paraprofessional in the licensed paraprofessional's firm\* has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter; or
  - (2) the licensed paraprofessional knows\* or reasonably should know\* that another party's lawyer or licensed paraprofessional is a spouse, parent, child, or sibling of the licensed paraprofessional, lives with the licensed paraprofessional, is a client of the licensed paraprofessional or another lawyer or licensed paraprofessional in the licensed paraprofessional's firm,\* or has an intimate personal relationship with the licensed paraprofessional.
- (d) Representation is permitted under this rule only if the licensed paraprofessional complies with paragraphs (a), (b), and (c), and:
- (1) the licensed paraprofessional reasonably believes\* that the licensed paraprofessional will be able to provide competent and diligent representation to each affected client;
  - (2) the representation is not prohibited by law; and
  - (3) the representation does not involve the assertion of a claim by one client against another client represented by the licensed paraprofessional in the same litigation or other proceeding before a tribunal.

(e) For purposes of this rule, “matter” includes any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons,\* or a discrete and identifiable class of persons.\*

**Comment**

[Reserved]

**Rule 1.7 Conflict of Interest: Current Clients  
(Proposed Rule – Redline Version)**

(a) A ~~lawyer~~licensed paraprofessional shall not, without informed written consent\* from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.

(b) A ~~lawyer~~licensed paraprofessional shall not, without informed written consent\* from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the ~~lawyer~~licensed paraprofessional’s representation of the client will be materially limited by the ~~lawyer~~licensed paraprofessional’s responsibilities to or relationships with another client, a former client or a third person,\* or by the ~~lawyer~~licensed paraprofessional’s own interests.

(c) Even when a significant risk requiring a ~~lawyer~~licensed paraprofessional to comply with paragraph (b) is not present, a ~~lawyer~~licensed paraprofessional shall not represent a client without written\* disclosure of the relationship to the client and compliance with paragraph (d) where:

(1) the ~~lawyer~~licensed paraprofessional has, or knows\* that another lawyer or licensed paraprofessional in the ~~lawyer~~licensed paraprofessional’s firm\* has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter; or

(2) the ~~lawyer~~licensed paraprofessional knows\* or reasonably should know\* that another party’s lawyer or licensed paraprofessional is a spouse, parent, child, or sibling of the ~~lawyer~~licensed paraprofessional, lives with the ~~lawyer~~licensed paraprofessional, is a client of the ~~lawyer~~licensed paraprofessional or another lawyer or licensed paraprofessional in the ~~lawyer~~licensed paraprofessional’s firm,\* or has an intimate personal relationship with the ~~lawyer~~licensed paraprofessional.

(d) Representation is permitted under this rule only if the ~~lawyer~~licensed paraprofessional complies with paragraphs (a), (b), and (c), and:

(1) the ~~lawyer~~licensed paraprofessional reasonably believes\* that the ~~lawyer~~licensed paraprofessional will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law; and

(3) the representation does not involve the assertion of a claim by one client against another client represented by the ~~lawyer~~licensed paraprofessional in the same litigation or other proceeding before a tribunal.

(e) For purposes of this rule, “matter” includes any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons,\* or a discrete and identifiable class of persons.\*

**Comment**

[Reserved]

**Rule 1.8.1 Business Transactions with a Client and Pecuniary Interests Adverse to a Client  
(Proposed Rule – Clean Version)**

A licensed paraprofessional shall not enter into a business transaction with a client, or knowingly\* acquire an ownership, possessory, security or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

- (a) the transaction or acquisition and its terms are fair and reasonable\* to the client and the terms and the licensed paraprofessional's role in the transaction or acquisition are fully disclosed and transmitted in writing\* to the client in a manner that should reasonably\* have been understood by the client;
- (b) the client either is represented in the transaction or acquisition by an independent lawyer of the client's choice or the client is advised in writing\* to seek the advice of an independent lawyer of the client's choice and is given a reasonable\* opportunity to seek that advice; and
- (c) the client thereafter provides informed written consent\* to the terms of the transaction or acquisition, and to the licensed paraprofessional's role in it.

**Comment**

[Reserved]

**Rule 1.8.1 Business Transactions with a Client and Pecuniary Interests Adverse to a Client  
(Proposed Rule – Redline Version)**

A ~~lawyer~~licensed paraprofessional shall not enter into a business transaction with a client, or knowingly\* acquire an ownership, possessory, security or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

- (a) the transaction or acquisition and its terms are fair and reasonable\* to the client and the terms and the ~~lawyer~~licensed paraprofessional's role in the transaction or acquisition are fully disclosed and transmitted in writing\* to the client in a manner that should reasonably\* have been understood by the client;
- (b) the client either is represented in the transaction or acquisition by an independent lawyer of the client's choice or the client is advised in writing\* to seek the advice of an independent lawyer of the client's choice and is given a reasonable\* opportunity to seek that advice; and
- (c) the client thereafter provides informed written consent\* to the terms of the transaction or acquisition, and to the ~~lawyer~~licensed paraprofessional's role in it.

**Comment**

[Reserved]

**Rule 1.8.2 Use of Current Client's Information  
(Proposed Rule – Clean Version)**

A licensed paraprofessional shall not use a client's information protected by rule 1.6 to the disadvantage of the client unless the client gives informed consent,\* except as permitted by these rules or applicable law.

**Comment**

[Reserved]

**Rule 1.8.2 Use of Current Client’s Information  
(Proposed Rule – Redline Version)**

A lawyerlicensed paraprofessional shall not use a client’s information protected by Business and Professions Code section 6068, subdivision (e)(1)rule 1.6 to the disadvantage of the client unless the client gives informed consent,\* except as permitted by these rules or the State Bar Actapplicable law.

**Comment**

[Reserved]

**Rule 1.8.3 Gifts from Client  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not solicit a client to make a substantial\* gift, including a testamentary gift, to the licensed paraprofessional or a person\* related to the licensed paraprofessional, unless the licensed paraprofessional or other recipient of the gift is related to the client, or

(b) For purposes of this rule, related persons\* include a person\* who is “related by blood or affinity” as that term is defined in California Probate Code section 21374, subdivision (a).

**Comment**

[Reserved]

**Rule 1.8.3 Gifts from Client  
(Proposed Rule – Redline Version)**

(a) A lawyerlicensed paraprofessional shall not:

~~(1) solicit a client to make a substantial\* gift, including a testamentary gift, to the lawyerlicensed paraprofessional or a person\* related to the lawyerlicensed paraprofessional, unless the lawyerlicensed paraprofessional or other recipient of the gift is related to the client, or~~

~~(2) prepare on behalf of a client an instrument giving the lawyer or a person\* related to the lawyer any substantial\* gift, unless (i) the lawyer or other recipient of the gift is related to the client, or (ii) the client has been advised by an independent lawyer who has provided a certificate of independent review that complies with the requirements of Probate Code section 21384.~~

(b) For purposes of this rule, related persons\* include a person\* who is “related by blood or affinity” as that term is defined in California Probate Code section 21374, subdivision (a).

**Comment**

[Reserved]

**Rule 1.8.4 [Reserved]**

**Rule 1.8.5 Payment of Personal or Business Expenses Incurred by or for a Client  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall not directly or indirectly pay or agree to pay, guarantee, or represent that the licensed paraprofessional or licensed paraprofessional's law firm\* will pay the personal or business expenses of a prospective or existing client.
- (b) Notwithstanding paragraph (a), a licensed paraprofessional may:
  - (1) pay or agree to pay such expenses to third persons,\* from funds collected or to be collected for the client as a result of the representation, with the consent of the client;
  - (2) after the licensed paraprofessional is retained by the client, agree to lend money to the client based on the client's written\* promise to repay the loan, provided the licensed paraprofessional complies with rules 1.7(b), 1.7(c), and 1.8.1 before making the loan or agreeing to do so;
  - (3) advance the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the client's interests, the repayment of which may be contingent on the outcome of the matter; and
  - (4) pay the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the interests of an indigent person\* in a matter in which the licensed paraprofessional represents the client.
- (c) "Costs" within the meaning of paragraphs (b)(3) and (b)(4) are not limited to those costs that are taxable or recoverable under any applicable statute or rule of court but may include any reasonable\* expenses of litigation, including court costs, and reasonable\* expenses in preparing for litigation or in providing other legal services to the client.
- (d) Nothing in this rule shall be deemed to limit the application of rule 1.8.9.

**Rule 1.8.5 Payment of Personal or Business Expenses Incurred by or for a Client  
(Proposed Rule – Redline Version)**

- (a) A ~~lawyer~~licensed paraprofessional shall not directly or indirectly pay or agree to pay, guarantee, or represent that the ~~lawyer~~licensed paraprofessional or ~~lawyer~~licensed paraprofessional's law firm\* will pay the personal or business expenses of a prospective or existing client.
- (b) Notwithstanding paragraph (a), a ~~lawyer~~licensed paraprofessional may:
  - (1) pay or agree to pay such expenses to third persons,\* from funds collected or to be collected for the client as a result of the representation, with the consent of the client;
  - (2) after the ~~lawyer~~licensed paraprofessional is retained by the client, agree to lend money to the client based on the client's written\* promise to repay the loan, provided the ~~lawyer~~licensed paraprofessional complies with rules 1.7(b), 1.7(c), and 1.8.1 before making the loan or agreeing to do so;
  - (3) advance the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the client's interests, the repayment of which may be contingent on the outcome of the matter; and
  - (4) pay the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the interests of an indigent person\* in a matter in which the ~~lawyer~~licensed paraprofessional represents the client.
- (c) "Costs" within the meaning of paragraphs (b)(3) and (b)(4) are not limited to those costs that are taxable or recoverable under any applicable statute or rule of court but may include any reasonable\* expenses of litigation, including court costs, and reasonable\* expenses in preparing for litigation or in providing other legal services to the client.
- (d) Nothing in this rule shall be deemed to limit the application of rule 1.8.9.

**Rule 1.8.6 Compensation from One Other than Client  
(Proposed Rule – Clean Version)**

A licensed paraprofessional shall not enter into an agreement for, charge, or accept compensation for representing a client from one other than the client unless:

- (a) there is no interference with the licensed paraprofessional’s independent professional judgment or with the licensed paraprofessional-client relationship;
- (b) information is protected as required by Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6; and
- (c) the licensed paraprofessional obtains the client’s informed written consent\* at or before the time the licensed paraprofessional has entered into the agreement for, charged, or accepted the compensation, or as soon thereafter as reasonably\* practicable, provided that no disclosure or consent is required if:
  - (1) nondisclosure or the compensation is otherwise authorized by law or a court order; or
  - (2) the licensed paraprofessional is rendering legal services on behalf of any public agency or nonprofit organization that provides legal services to other public agencies or the public.

**Comment**

[Reserved]

**Rule 1.8.6 Compensation from One Other than Client  
(Proposed Rule – Redline Version)**

A lawyer licensed paraprofessional shall not enter into an agreement for, charge, or accept compensation for representing a client from one other than the client unless:

- (a) there is no interference with the lawyer licensed paraprofessional’s independent professional judgment or with the lawyer licensed paraprofessional-client relationship;
- (b) information is protected as required by Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6; and
- (c) the lawyer licensed paraprofessional obtains the client’s informed written consent\* at or before the time the lawyer licensed paraprofessional has entered into the agreement for, charged, or accepted the compensation, or as soon thereafter as reasonably\* practicable, provided that no disclosure or consent is required if:
  - (1) nondisclosure or the compensation is otherwise authorized by law or a court order; or
  - (2) the lawyer licensed paraprofessional is rendering legal services on behalf of any public agency or nonprofit organization that provides legal services to other public agencies or the public.

**Comment**

[Reserved]

**Rule 1.8.7 Aggregate Settlements  
(Proposed Rule – Clean Version)**

A licensed paraprofessional who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients unless each client gives informed written consent.\* The licensed paraprofessional's disclosure shall include the existence and nature of all the claims involved and of the participation of each person\* in the settlement.

**Rule 1.8.7 Aggregate Settlements  
(Proposed Rule – Redline Version)**

~~(a) A lawyer licensed paraprofessional who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregate agreement as to guilty or nolo contendere pleas, unless each client gives informed written consent.\* The lawyer licensed paraprofessional's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person\* in the settlement.~~

~~(b) This rule does not apply to class action settlements subject to court approval.~~

**Rule 1.8.8 Limiting Liability to Client  
(Proposed Rule – Clean Version)**

A licensed paraprofessional shall not:

- (a) Contract with a client prospectively limiting the licensed paraprofessional's liability to the client for the licensed paraprofessional's professional malpractice; or
- (b) Settle a claim or potential claim for the licensed paraprofessional's liability to a client or former client for the licensed paraprofessional's professional malpractice, unless the client or former client is either:
  - (1) represented by an independent lawyer concerning the settlement; or
  - (2) advised in writing\* by the licensed paraprofessional to seek the advice of an independent lawyer of the client's choice regarding the settlement and given a reasonable\* opportunity to seek that advice.

**Comment**

[Reserved]

**Rule 1.8.8 Limiting Liability to Client  
(Proposed Rule – Redline Version)**

A lawyer licensed paraprofessional shall not:

- (a) Contract with a client prospectively limiting the lawyer licensed paraprofessional's liability to the client for the lawyer licensed paraprofessional's professional malpractice; or
- (b) Settle a claim or potential claim for the lawyer licensed paraprofessional's liability to a client or former client for the lawyer licensed paraprofessional's professional malpractice, unless the client or former client is either:
  - (1) represented by an independent lawyer concerning the settlement; or
  - (2) advised in writing\* by the lawyer licensed paraprofessional to seek the advice of an independent lawyer of the client's choice regarding the settlement and given a reasonable\* opportunity to seek that advice.

**Comment**

[Reserved]

**Rule 1.8.9 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not directly or indirectly purchase property at a probate, foreclosure, receiver's, trustee's, or judicial sale in an action or proceeding in which such licensed paraprofessional or any lawyer or licensed paraprofessional affiliated by reason of personal, business, or professional relationship with that licensed paraprofessional or with that licensed paraprofessional's law firm\* is acting as a lawyer for a party or as executor, receiver, trustee, administrator, guardian, or conservator.

(b) This rule does not prohibit a licensed paraprofessional's participation in transactions that are specifically authorized by and comply with Probate Code sections 9880 through 9885, but such transactions remain subject to the provisions of rules 1.8.1 and 1.7.

**Comment**

[Reserved]

**Rule 1.8.9 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review  
(Proposed Rule – Redline Version)**

(a) A ~~lawyer~~licensed paraprofessional shall not directly or indirectly purchase property at a probate, foreclosure, receiver's, trustee's, or judicial sale in an action or proceeding in which such ~~lawyer~~licensed paraprofessional or any lawyer or licensed paraprofessional affiliated by reason of personal, business, or professional relationship with that ~~lawyer~~licensed paraprofessional or with that ~~lawyer~~licensed paraprofessional's law firm\* is acting as a lawyer for a party or as executor, receiver, trustee, administrator, guardian, or conservator.

~~(b) A lawyer shall not represent the seller at a probate, foreclosure, receiver, trustee, or judicial sale in an action or proceeding in which the purchaser is a spouse or relative of the lawyer or of another lawyer in the lawyer's law firm\* or is an employee of the lawyer or the lawyer's law firm.\*~~

~~(c)~~ This rule does not prohibit a ~~lawyer~~licensed paraprofessional's participation in transactions that are specifically authorized by and comply with Probate Code sections 9880 through 9885, but such transactions remain subject to the provisions of rules 1.8.1 and 1.7.

**Comment**

[Reserved]

**Rule 1.8.10 Sexual Relations with Current Client  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not engage:

(1) in sexual relations with a current client who is not the licensed paraprofessional's spouse or registered domestic partner, unless a consensual sexual relationship existed between them when the licensed paraprofessional-client relationship commenced;

(2) expressly or impliedly condition the performance of legal services for a current or prospective client upon the client's willingness to engage in sexual relations with the licensed paraprofessional; or

(3) employ coercion, intimidation, or undue influence in seeking to enter into sexual relations with a client.

(b) For purposes of this rule, “sexual relations” means sexual intercourse or the touching of an intimate part of another person\* for the purpose of sexual arousal, gratification, or abuse.

(c) If a person\* other than the client alleges a violation of this rule, no Notice of Disciplinary Charges may be filed by the State Bar against a licensed paraprofessional under this rule until the State Bar has attempted to obtain the client’s statement regarding, and has considered, whether the client would be unduly burdened by further investigation or a charge.

**Comment**

[Reserved]

**Rule 1.8.10 Sexual Relations with Current Client  
(Proposed Rule – Redline Version)**

(a) A lawyer licensed paraprofessional shall not engage:

(1) in sexual relations with a current client who is not the lawyer licensed paraprofessional’s spouse or registered domestic partner, unless a consensual sexual relationship existed between them when the lawyer licensed paraprofessional-client relationship commenced;

(2) expressly or impliedly condition the performance of legal services for a current or prospective client upon the client’s willingness to engage in sexual relations with the licensed paraprofessional; or

(3) employ coercion, intimidation, or undue influence in entering seeking to enter into sexual relations with a client.

(b) For purposes of this rule, “sexual relations” means sexual intercourse or the touching of an intimate part of another person\* for the purpose of sexual arousal, gratification, or abuse.

(c) If a person\* other than the client alleges a violation of this rule, no Notice of Disciplinary Charges may be filed by the State Bar against a lawyer licensed paraprofessional under this rule until the State Bar has attempted to obtain the client’s statement regarding, and has considered, whether the client would be unduly burdened by further investigation or a charge.

**Comment**

[Reserved]

**Rule 1.8.11 Imputation of Prohibitions Under Rules 1.8.1 to 1.8.9  
(Proposed Rule – Clean Version)**

While licensed paraprofessionals are associated in a law firm\* with other paraprofessionals or lawyers, a prohibition in rules 1.8.1 through 1.8.9 or in the Lawyer RPC, rules 1.8.1 through 1.8.9 that applies to any one of them shall apply to all of them.

**Comment**

[Reserved]

**Rule 1.8.11 Imputation of Prohibitions Under Rules 1.8.1 to 1.8.9  
(Proposed Rule – Redline Version)**

While ~~licensed paraprofessionals lawyers~~ are associated in a law firm,\* with other paraprofessionals or lawyers, a prohibition in rules 1.8.1 through 1.8.9 or in the Lawyer RPC, rules 1.8.1 through 1.8.9 that applies to any one of them shall apply to all of them.

**Comment**

[Reserved]

**Rule 1.9 Duties to Former Clients  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional who has formerly represented a client in a matter shall not thereafter represent another person\* in the same or a substantially related matter in which that person's\* interests are materially adverse to the interests of the former client unless the former client gives informed written consent.\*

(b) A licensed paraprofessional shall not knowingly\* represent a person\* in the same or a substantially related matter in which a firm\* with which the licensed paraprofessional formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person;\* and

(2) about whom the licensed paraprofessional had acquired information protected by rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed written consent.\*

(c) A licensed paraprofessional who has formerly represented a client in a matter or whose present or former firm\* has formerly represented a client in a matter shall not thereafter:

(1) use information protected by rule 1.6 acquired by virtue of the representation of the former client to the disadvantage of the former client except as these rules would permit with respect to a current client, or when the information has become generally known;\* or

(2) reveal information protected by rule 1.6 acquired by virtue of the representation of the former client except as these rules permit with respect to a current client.

**Comment**

[Reserved]

**Rule 1.9 Duties to Former Clients  
(Proposed Rule – Redline Version)**

(a) A ~~lawyer~~licensed paraprofessional who has formerly represented a client in a matter shall not thereafter represent another person\* in the same or a substantially related matter in which that person's\* interests are materially adverse to the interests of the former client unless the former client gives informed written consent.\*

(b) A ~~lawyer~~licensed paraprofessional shall not knowingly\* represent a person\* in the same or a substantially related matter in which a firm\* with which the ~~lawyer~~licensed paraprofessional formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person;\* and

(2) about whom the [lawyerlicensed paraprofessional](#) had acquired information protected by [Business and Professions Code section 6068, subdivision \(e\)](#) and rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed written consent.\*

(c) A [lawyerlicensed paraprofessional](#) who has formerly represented a client in a matter or whose present or former firm\* has formerly represented a client in a matter shall not thereafter:

(1) use information protected by [Business and Professions Code section 6068, subdivision \(e\)](#) and rule 1.6 acquired by virtue of the representation of the former client to the disadvantage of the former client except as these rules ~~of the State Bar Act~~ would permit with respect to a current client, or when the information has become generally known;\* or

(2) reveal information protected by [Business and Professions Code section 6068, subdivision \(e\)](#) and rule 1.6 acquired by virtue of the representation of the former client except as these rules ~~of the State Bar Act~~ permit with respect to a current client.

#### Comment

[Reserved]

### **Rule 1.10 Imputation of Conflicts of Interest: General Rule (Proposed Rule – Clean Version)**

(a) While licensed paraprofessionals are associated in a firm with other licensed paraprofessionals or lawyers,\* none of them shall knowingly\* represent a client when any one of them practicing alone would be prohibited from doing so by rules 1.7 or 1.9 or by the Lawyer Rules, rules 1.7 or 1.9 unless

(1) the prohibition is based on a personal interest of the prohibited licensed paraprofessional or lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining licensed paraprofessionals in the firm;\* or

(2) the prohibition is based upon rule 1.9(a) or (b) or the Lawyer RPC, rule 1.9(a) or (b), and arises out of the prohibited licensed paraprofessional's or lawyer's association with a prior firm,\* and

(i) the prohibited licensed paraprofessional or lawyer did not substantially participate in the same or a substantially related matter;

(ii) the prohibited licensed paraprofessional or lawyer is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(iii) written\* notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this rule, which shall include a description of the screening\* procedures employed; and an agreement by the firm\* to respond promptly to any written\* inquiries or objections by the former client about the screening\* procedures.

(b) When a licensed paraprofessional has terminated an association with a firm,\* the firm\* is not prohibited from thereafter representing a person\* with interests materially adverse to those of a client represented by the formerly associated licensed paraprofessional and not currently represented by the firm,\* unless:

(1) the matter is the same or substantially related to that in which the formerly associated licensed paraprofessional represented the client; and

(2) any licensed paraprofessional or lawyer remaining in the firm\* has information protected by rule 1.6 or 1.9(c), or by Business and Professions Code section 6068, subdivision (e) and the Lawyer RPC, rules 1.6 and 1.9(c), that is material to the matter.

(c) A prohibition under this rule may be waived by each affected client under the conditions stated in rule 1.7.

(d) The imputation of a conflict of interest to a licensed paraprofessional associated in a firm\* with former or current government lawyer or former or current government licensed paraprofessional is governed by rule 1.11.

#### Comment

[Reserved]

### Rule 1.10 Imputation of Conflicts of Interest: General Rule (Proposed Rule – Redline Version)

(a) While ~~lawyers~~ licensed paraprofessionals are associated in a firm ~~with other licensed paraprofessionals or lawyers~~,\* none of them shall knowingly\* represent a client when any one of them practicing alone would be prohibited from doing so by rules 1.7 or 1.9 ~~or by the Lawyer Rules, rules 1.7 or 1.9~~ unless

(1) the prohibition is based on a personal interest of the prohibited ~~lawyer~~ licensed paraprofessional or lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining ~~licensed paraprofessionals or lawyers~~ in the firm;\* or

(2) the prohibition is based upon rule 1.9(a) or (b) ~~or the Lawyer RPC, rule 1.9(a) or (b)~~, and arises out of the prohibited ~~lawyer~~ licensed paraprofessional's or lawyer's association with a prior firm,\* and

(i) the prohibited ~~lawyer~~ licensed paraprofessional or lawyer did not substantially participate in the same or a substantially related matter;

(ii) the prohibited ~~lawyer~~ licensed paraprofessional or lawyer is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(iii) written\* notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this rule, which shall include a description of the screening\* procedures employed; and an agreement by the firm\* to respond promptly to any written\* inquiries or objections by the former client about the screening\* procedures.

(b) When a ~~lawyer~~ licensed paraprofessional has terminated an association with a firm,\* the firm\* is not prohibited from thereafter representing a person\* with interests materially adverse to those of a client represented by the formerly associated ~~lawyer~~ licensed paraprofessional and not currently represented by the firm,\* unless:

(1) the matter is the same or substantially related to that in which the formerly associated ~~lawyer~~ licensed paraprofessional represented the client; and

(2) any ~~lawyer~~ licensed paraprofessional or lawyer remaining in the firm\* has information protected by rule 1.6 or 1.9(c), or by Business and Professions Code section 6068, subdivision (e) and ~~the Lawyer RPC~~, rules 1.6 and 1.9(c), that is material to the matter.

(c) A prohibition under this rule may be waived by each affected client under the conditions stated in rule 1.7.

(d) The imputation of a conflict of interest to ~~a licensed paraprofessional~~ ~~lawyers~~ associated in a firm\* with former or current government lawyer ~~or former or current government licensed paraprofessionals~~ is governed by rule 1.11.

**Comment**

[Reserved]

**Rule 1.11 Special Conflicts of Interest for Former and Current Government Officials and Employees  
(Proposed Rule – Clean Version)**

(a) Except as law may otherwise expressly permit, a licensed paraprofessional who has formerly served as a public official or employee of the government:

(1) is subject to rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the licensed paraprofessional participated personally and substantially as a public official or employee, unless the appropriate government agency gives its informed written consent\* to the representation. This paragraph shall not apply to matters governed by rule 1.12(a).

(b) When a licensed paraprofessional is prohibited from representation under paragraph (a), no licensed paraprofessional or lawyer in a firm\* with which that licensed paraprofessional is associated may knowingly\* undertake or continue representation in such a matter unless:

(1) the personally prohibited licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written\* notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule

(c) Except as law may otherwise expressly permit, a licensed paraprofessional who was a public official or employee and, during that employment, acquired information that the licensed paraprofessional knows\* is confidential government information about a person,\* may not represent a private client whose interests are adverse to that person\* in a matter in which the information could be used to the material disadvantage of that person.\* As used in this rule, the term “confidential government information” means information that has been obtained under governmental authority, that, at the time this rule is applied, the government is prohibited by law from disclosing to the public, or has a legal privilege not to disclose, and that is not otherwise available to the public. A firm\* with which that licensed paraprofessional is associated may undertake or continue representation in the matter only if the personally prohibited licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a licensed paraprofessional currently serving as a public official or employee:

(1) is subject to rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the licensed paraprofessional participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed written consent;\* or

(ii) negotiate for private employment with any person\* who is involved as a party, or as a lawyer or licensed paraprofessional for a party, or with a law firm\* for a party, in a matter in which the licensed paraprofessional is participating personally and substantially.

**Comment**

[Reserved]

**Rule 1.11 Special Conflicts of Interest for Former and Current Government Officials and Employees  
(Proposed Rule – Redline Version)**

(a) Except as law may otherwise expressly permit, a lawyer licensed paraprofessional who has formerly served as a public official or employee of the government:

(1) is subject to rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer licensed paraprofessional participated personally and substantially as a public official or employee, unless the appropriate government agency gives its informed written consent\* to the representation. This paragraph shall not apply to matters governed by rule 1.12(a).

(b) When a lawyer licensed paraprofessional is prohibited from representation under paragraph (a), no lawyer licensed paraprofessional or lawyer in a firm\* with which that lawyer licensed paraprofessional is associated may knowingly\* undertake or continue representation in such a matter unless:

(1) the personally prohibited lawyer licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written\* notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule

(c) Except as law may otherwise expressly permit, a lawyer licensed paraprofessional who was a public official or employee and, during that employment, acquired information that the lawyer licensed paraprofessional knows\* is confidential government information about a person,\* may not represent a private client whose interests are adverse to that person\* in a matter in which the information could be used to the material disadvantage of that person.\* As used in this rule, the term “confidential government information” means information that has been obtained under governmental authority, that, at the time this rule is applied, the government is prohibited by law from disclosing to the public, or has a legal privilege not to disclose, and that is not otherwise available to the public. A firm\* with which that lawyer licensed paraprofessional is associated may undertake or continue representation in the matter only if the personally prohibited lawyer licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer licensed paraprofessional currently serving as a public official or employee:

(1) is subject to rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer licensed paraprofessional participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed written consent;\* or

(ii) negotiate for private employment with any person\* who is involved as a party, or as a lawyer or licensed paraprofessional for a party, or with a law firm\* for a party, in a matter in which the lawyer licensed paraprofessional is participating personally and substantially, ~~except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by rule 1.12(b) and subject to the conditions stated in rule 1.12(b).~~

**Comment**

[Reserved]

**Rule 1.12 Former Arbitrator, Mediator, or Other Third-Party Neutral  
(Proposed Rule – Clean Version)**

(a) Except as stated in paragraph (d), a licensed paraprofessional shall not represent anyone in connection with a matter in which the licensed paraprofessional participated personally and substantially as an adjudicative officer or a judicial staff member to such a person,\* or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give informed written consent.\*

(b) A licensed paraprofessional shall not seek employment from any person\* who is involved as a party or as lawyer or licensed paraprofessional for a party, or with a law firm\* for a party, in a matter in which the licensed paraprofessional is participating personally and substantially as an adjudicative officer, arbitrator, mediator, or other third party neutral. A licensed paraprofessional serving as a judicial staff member to a judge or other adjudicative officer may seek employment from a party, or with a lawyer, licensed paraprofessional, or a law firm\* for a party, in a matter in which the staff member is participating personally and substantially, but only with the approval of the court.

(c) If a licensed paraprofessional is prohibited from representation by paragraph (a), other licensed paraprofessional or lawyers in a firm\* with which that licensed paraprofessional is associated may knowingly\* undertake or continue representation in the matter only if:

- (1) the prohibition does not arise from the licensed paraprofessional’s service as a mediator;
- (2) the prohibited licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and
- (3) written\* notice is promptly given to the parties and any appropriate tribunal\* to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

**Comment**

[Reserved]

**Rule 1.12 Former ~~Judge~~, Arbitrator, Mediator, or Other Third-Party Neutral  
(Proposed Rule – Redline Version)**

(a) Except as stated in paragraph (d), a lawyer-licensed paraprofessional shall not represent anyone in connection with a matter in which the lawyer-licensed paraprofessional participated personally and substantially as an ~~judge or other~~ adjudicative officer, ~~or a~~ judicial staff ~~attorney member or law clerk~~ to such a person,\* or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give informed written consent.\*

(b) A lawyer-licensed paraprofessional shall not seek employment from any person\* who is involved as a party or as lawyer or licensed paraprofessional for a party, or with a law firm\* for a party, in a matter in which the lawyer-licensed paraprofessional is participating personally and substantially as a ~~judge or other an~~ adjudicative officer ~~or as an~~ arbitrator, mediator, or other third party neutral. A lawyer-licensed paraprofessional serving as a judicial staff ~~attorney member or law clerk~~ to a judge or other adjudicative officer may seek employment from a party, or with a lawyer, licensed

paraprofessional, or a law firm\* for a party, in a matter in which the staff attorney member or clerk is participating personally and substantially, but only with the approval of the court.

(c) If a lawyer licensed paraprofessional is prohibited from representation by paragraph (a), other licensed paraprofessional or lawyers in a firm\* with which that lawyer licensed paraprofessional is associated may knowingly\* undertake or continue representation in the matter only if:

(1) the prohibition does not arise from the lawyer licensed paraprofessional's service as a mediator ~~or settlement judge~~;

(2) the prohibited lawyer licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(3) written\* notice is promptly given to the parties and any appropriate tribunal\* to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

#### Comment

[Reserved]

#### Rule 1.13 [Reserved] (Proposed Rule – Clean Version)

#### Rule 1.13 ~~[Reserved]~~ Organization as Client (Proposed Rule – Redline Version)

~~(a) A lawyer employed or retained by an organization shall conform his or her representation to the concept that the client is the organization itself, acting through its duly authorized directors, officers, employees, members, shareholders, or other constituents overseeing the particular engagement.~~

~~(b) If a lawyer representing an organization knows\* that a constituent is acting, intends to act or refuses to act in a matter related to the representation in a manner that the lawyer knows\* or reasonably should know\* is (i) a violation of a legal obligation to the organization or a violation of law reasonably\* imputable to the organization, and (ii) likely to result in substantial\* injury to the organization, the lawyer shall proceed as is reasonably\* necessary in the best lawful interest of the organization. Unless the lawyer reasonably believes\* that it is not necessary in the best lawful interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.~~

~~(c) In taking any action pursuant to paragraph (b), the lawyer shall not reveal information protected by Business and Professions Code section 6068, subdivision (e).~~

~~(d) If, despite the lawyer's actions in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or fails to act, in a manner that is a violation of a legal obligation to the organization or a violation of law reasonably\* imputable to the organization, and is likely to result in substantial\* injury to the organization, the lawyer shall continue to proceed as is reasonably\* necessary in the best lawful interests of the organization. The lawyer's response may include the lawyer's right and, where appropriate, duty to resign or withdraw in accordance with rule 1.16.~~

~~(e) A lawyer who reasonably believes\* that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b), or who resigns or withdraws under circumstances described in paragraph (d), shall proceed as the lawyer~~

reasonably believes\* necessary to assure that the organization's highest authority is informed of the lawyer's discharge, resignation, or withdrawal.

(f) In dealing with an organization's constituents, a lawyer representing the organization shall explain the identity of the lawyer's client whenever the lawyer knows\* or reasonably should know\* that the organization's interests are adverse to those of the constituent(s) with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its constituents, subject to the provisions of rules 1.7, 1.8.2, 1.8.6, and 1.8.7. If the organization's consent to the dual representation is required by any of these rules, the consent shall be given by an appropriate official, constituent, or body of the organization other than the individual who is to be represented, or by the shareholders.

#### **Comment**

[Reserved]

### **Rule 1.14 [Reserved]**

### **Rule 1.15 Safekeeping Funds and Property of Clients and Other Persons\* (Proposed Rule – Clean Version)**

(a) All funds received or held by a licensed paraprofessional or a licensed paraprofessional's law firm\* for the benefit of a client, or other person\* to whom the licensed paraprofessional owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled "Trust Account" or words of similar import, maintained in the State of California, or, with written\* consent of the client, in any other jurisdiction where there is a substantial\* relationship between the client or the client's business and the other jurisdiction.

(b) Funds belonging to the licensed paraprofessional or the licensed paraprofessional's law firm\* shall not be deposited or otherwise commingled with funds held in a trust account except:

(1) funds reasonably\* sufficient to pay bank charges; and

(2) funds belonging in part to a client or other person\* and in part presently or potentially to the licensed paraprofessional or the licensed paraprofessional's law firm\*,\* in which case the portion belonging to the licensed paraprofessional or the paraprofessional's law firm\* must be withdrawn at the earliest reasonable\* time after the licensed paraprofessional or the licensed paraprofessional law firm's interest in that portion becomes fixed. However, if a client or other person\* disputes the licensed paraprofessional or the licensed paraprofessional's law firm's right to receive a portion of trust funds, the disputed portion shall not be withdrawn until the dispute is finally resolved.

(c) A licensed paraprofessional shall:

(1) promptly notify a client or other person\* of the receipt of funds, securities, or other property in which the licensed paraprofessional knows\* or reasonably should know\* the client or other person\* has an interest;

(2) identify and label securities and properties of a client or other person\* promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;

(3) maintain complete records of all funds, securities, and other property of a client or other person\* coming into the possession of the licensed paraprofessional or the licensed paraprofessional's law firm;\*

- (4) promptly account in writing\* to the client or other person\* for whom the licensed paraprofessional or the licensed paraprofessional's law firm\* holds funds or property;
- (5) preserve records of all funds and property held by a licensed paraprofessional or the licensed paraprofessional's law firm\* under this rule for a period of no less than five years after final appropriate distribution of such funds or property;
- (6) comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar; and
- (7) promptly distribute, as requested by the client or other person,\* any undisputed funds or property in the possession of the licensed paraprofessional or the licensed paraprofessional's law firm\* that the client or other person\* is entitled to receive.

(d) The Board of Trustees of the State Bar shall have the authority to formulate and adopt standards as to what "records" shall be maintained by licensed paraprofessionals and law firms\* in accordance with paragraph (d)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all licensed paraprofessionals.

*Standards:*

Pursuant to this rule, the Board of Trustees of the State Bar adopted the following standards, effective \_\_\_\_\_, as to what "records" shall be maintained by licensed paraprofessionals and licensed paraprofessionals' law firms\* in accordance with paragraph (d)(3).

- (1) A licensed paraprofessional shall, from the date of receipt of funds of the client or other person\* through the period ending five years from the date of appropriate disbursement of such funds, maintain:
  - (a) a written\* ledger for each client or other person\* on whose behalf funds are held that sets forth:
    - (i) the name of such client or other person;\*
    - (ii) the date, amount and source of all funds received on behalf of such client or other person;\*
    - (iii) the date, amount, payee and purpose of each disbursement made on behalf of such client or other person;\* and
    - (iv) the current balance for such client or other person;\*
  - (b) a written\* journal for each bank account that sets forth:
    - (i) the name of such account;
    - (ii) the date, amount and client or other person\* affected by each debit and credit; and
    - (iii) the current balance in such account;
  - (c) all bank statements and cancelled checks for each bank account; and
  - (d) each monthly reconciliation (balancing) of (a), (b), and (c).
- (2) A licensed paraprofessional shall, from the date of receipt of all securities and other properties held for the benefit of client or other person\* through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a written\* journal that specifies:

- (a) each item of security and property held;
- (b) the person\* on whose behalf the security or property is held;
- (c) the date of receipt of the security or property;
- (d) the date of distribution of the security or property; and
- (e) person\* to whom the security or property was distributed.

**Comment**

[Reserved]

**Rule 1.15 Safekeeping Funds and Property of Clients and Other Persons\*  
(Proposed Rule – Redline Version)**

(a) All funds received or held by a lawyer-licensed paraprofessional or a licensed paraprofessional's law firm\* for the benefit of a client, or other person\* to whom the lawyer-licensed paraprofessional owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled "Trust Account" or words of similar import, maintained in the State of California, or, with written\* consent of the client, in any other jurisdiction where there is a substantial\* relationship between the client or the client's business and the other jurisdiction.

~~(b) Notwithstanding paragraph (a), a flat fee paid in advance for legal services may be deposited in a paraprofessional's lawyer's or paraprofessional law firm's operating account, provided:~~

~~(e)~~ Funds belonging to the lawyer-licensed paraprofessional or the licensed paraprofessional's law firm\* shall not be deposited or otherwise commingled with funds held in a trust account except:

- (1) funds reasonably\* sufficient to pay bank charges; and
- (2) funds belonging in part to a client or other person\* and in part presently or potentially to the lawyer-licensed paraprofessional or the licensed paraprofessional's law firm,\* in which case the portion belonging to the lawyer-licensed paraprofessional or the paraprofessional's law firm\* must be withdrawn at the earliest reasonable\* time after the lawyer-licensed paraprofessional or the licensed paraprofessional law firm's interest in that portion becomes fixed. However, if a client or other person\* disputes the lawyer-licensed paraprofessional or the licensed paraprofessional's law firm's right to receive a portion of trust funds, the disputed portion shall not be withdrawn until the dispute is finally resolved.

~~(d)~~ A lawyer-licensed paraprofessional shall:

- (1) promptly notify a client or other person\* of the receipt of funds, securities, or other property in which the lawyer-licensed paraprofessional knows\* or reasonably should know\* the client or other person\* has an interest;
- (2) identify and label securities and properties of a client or other person\* promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
- (3) maintain complete records of all funds, securities, and other property of a client or other person\* coming into the possession of the lawyer-licensed paraprofessional or the licensed paraprofessional's law firm;\*
- (4) promptly account in writing\* to the client or other person\* for whom the lawyer-licensed paraprofessional or the licensed paraprofessional's law firm\* holds funds or property;

(5) preserve records of all funds and property held by a [lawyerlicensed paraprofessional](#) or [the licensed paraprofessional's](#) law firm\* under this rule for a period of no less than five years after final appropriate distribution of such funds or property;

(6) comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar; and

(7) promptly distribute, as requested by the client or other person,\* any undisputed funds or property in the possession of the [lawyerlicensed paraprofessional](#) or [the licensed paraprofessional's](#) law firm\* that the client or other person\* is entitled to receive.

(ed) The Board of Trustees of the State Bar shall have the authority to formulate and adopt standards as to what "records" shall be maintained by [lawyerlicensed paraprofessionals](#) and law firms\* in accordance with paragraph (d)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all [lawyerlicensed paraprofessionals](#).

*Standards:*

Pursuant to this rule, the Board of Trustees of the State Bar adopted the following standards, effective [November 1, 2018](#), as to what "records" shall be maintained by [lawyerlicensed paraprofessionals](#) and [licensed paraprofessionals'](#) law firms\* in accordance with paragraph (d)(3).

(1) A [lawyerlicensed paraprofessional](#) shall, from the date of receipt of funds of the client or other person\* through the period ending five years from the date of appropriate disbursement of such funds, maintain:

- (a) a written\* ledger for each client or other person\* on whose behalf funds are held that sets forth:
  - (i) the name of such client or other person;\*
  - (ii) the date, amount and source of all funds received on behalf of such client or other person;\*
  - (iii) the date, amount, payee and purpose of each disbursement made on behalf of such client or other person;\* and
  - (iv) the current balance for such client or other person;\*
- (b) a written\* journal for each bank account that sets forth:
  - (i) the name of such account;
  - (ii) the date, amount and client or other person\* affected by each debit and credit; and
  - (iii) the current balance in such account;
- (c) all bank statements and cancelled checks for each bank account; and
- (d) each monthly reconciliation (balancing) of (a), (b), and (c).

(2) A [lawyerlicensed paraprofessional](#) shall, from the date of receipt of all securities and other properties held for the benefit of client or other person\* through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a written\* journal that specifies:

- (a) each item of security and property held;
- (b) the person\* on whose behalf the security or property is held;

- (c) the date of receipt of the security or property;
- (d) the date of distribution of the security or property; and
- (e) person\* to whom the security or property was distributed.

**Comment**

[Reserved]

**Rule 1.16 Declining or Terminating Representation  
(Proposed Rule – Clean Version)**

(a) Except as stated in paragraph (c), a licensed paraprofessional shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the licensed paraprofessional knows\* or reasonably should know\* that the client is bringing an action, conducting a defense or asserting a position in litigation, without probable cause and for the purpose of harassing or maliciously injuring any person;\*
- (2) the licensed paraprofessional knows\* or reasonably should know\* that the representation will result in violation of these rules or other law;
- (3) the licensed paraprofessional's mental or physical condition renders it unreasonably difficult to carry out the representation effectively; or
- (4) the client discharges the licensed paraprofessional; or
- (5) the licensed paraprofessional knows or reasonably should know that the subject of the representation is beyond the scope of the defined practice area for which the licensed paraprofessional is licensed as set forth in [add CRC rule reference setting forth permissible scope of practice]. If the subject of the representation is beyond the scope of the licensed paraprofessional's defined practice area, the licensed paraprofessional shall not render any legal assistance and shall advise the client in writing to seek the services of a lawyer or licensed paraprofessional authorized to provide legal services on the subject of the representation.

(b) Except as stated in paragraph (c), a licensed paraprofessional may withdraw from representing a client if:

- (1) the client insists upon presenting a claim or defense in litigation, or asserting a position or making a demand in a non-litigation matter, that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;
- (2) the client either seeks to pursue a criminal or fraudulent\* course of conduct or has used the licensed paraprofessional's services to advance a course of conduct that the licensed paraprofessional reasonably believes\* was a crime or fraud;\*
- (3) the client insists that the licensed paraprofessional pursue a course of conduct that is criminal or fraudulent;\*
- (4) the client by other conduct renders it unreasonably difficult for the licensed paraprofessional to carry out the representation effectively;
- (5) the client breaches a material term of an agreement with, or obligation, to the licensed paraprofessional relating to the representation, and the licensed paraprofessional has given the client a reasonable\* warning after the breach that the licensed paraprofessional will withdraw unless the client fulfills the agreement or performs the obligation;

- (6) the client knowingly\* and freely assents to termination of the representation;
  - (7) the inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;
  - (8) the licensed paraprofessional's mental or physical condition renders it difficult for the licensed paraprofessional to carry out the representation effectively; or
  - (9) a continuation of the representation is likely to result in a violation of these rules or applicable law; or
  - (10) the licensed paraprofessional believes\* in good faith, in a proceeding pending before a tribunal,\* that the tribunal\* will find the existence of other good cause for withdrawal.
- (c) If permission for termination of a representation is required by the rules of a tribunal,\* a licensed paraprofessional shall not terminate a representation before that tribunal\* without its permission.
- (d) A licensed paraprofessional shall not terminate a representation until the licensed paraprofessional has taken reasonable\* steps to avoid reasonably\* foreseeable prejudice to the rights of the client, such as giving the client sufficient notice to permit the client to retain other representation, and complying with paragraph (e).
- (e) Upon the termination of a representation for any reason:
- (1) subject to any applicable protective order, non-disclosure agreement, statute or regulation, the licensed paraprofessional promptly shall release to the client, at the request of the client, all client materials and property. "Client materials and property" includes correspondence, pleadings, deposition transcripts, experts' reports and other writings,\* exhibits, and physical evidence, whether in tangible, electronic or other form, and other items reasonably\* necessary to the client's representation, whether the client has paid for them or not; and
  - (2) the licensed paraprofessional promptly shall refund any part of a fee or expense paid in advance that the licensed paraprofessional has not earned or incurred.

**Comment**

[Reserved]

**Rule 1.16 Declining or Terminating Representation  
(Proposed Rule – Redline Version)**

- (a) Except as stated in paragraph (c), a lawyer licensed paraprofessional shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
- (1) the lawyer licensed paraprofessional knows\* or reasonably should know\* that the client is bringing an action, conducting a defense, or asserting a position in litigation, ~~or taking an appeal,~~ without probable cause and for the purpose of harassing or maliciously injuring any person;\*
  - (2) the lawyer licensed paraprofessional knows\* or reasonably should know\* that the representation will result in violation of these rules or ~~of the State Bar Act~~applicable other law;
  - (3) the lawyer licensed paraprofessional's mental or physical condition renders it unreasonably difficult to carry out the representation effectively; or
  - (4) the client discharges the lawyer licensed paraprofessional; or

(5) the licensed paraprofessional knows or reasonably should know that the subject of the representation is beyond the scope of the defined practice area for which the licensed paraprofessional is licensed as set forth in [\[add CRC rule reference setting forth permissible scope of practice\]](#). If the subject of the representation is beyond the scope of the licensed paraprofessional's defined practice area, the licensed paraprofessional shall not render any legal assistance and shall advise the client in writing to seek the services of a lawyer or licensed paraprofessional authorized to provide legal services on the subject of the representation.

- (b) Except as stated in paragraph (c), a [lawyer licensed paraprofessional](#) may withdraw from representing a client if:
- (1) the client insists upon presenting a claim or defense in litigation, or asserting a position or making a demand in a non-litigation matter, that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;
  - (2) the client either seeks to pursue a criminal or fraudulent\* course of conduct or has used the [lawyer licensed paraprofessional](#)'s services to advance a course of conduct that the [lawyer licensed paraprofessional](#) reasonably believes\* was a crime or fraud;\*
  - (3) the client insists that the [lawyer licensed paraprofessional](#) pursue a course of conduct that is criminal or fraudulent;\*
  - (4) the client by other conduct renders it unreasonably difficult for the [lawyer licensed paraprofessional](#) to carry out the representation effectively;
  - (5) the client breaches a material term of an agreement with, or obligation, to the [lawyer licensed paraprofessional](#) relating to the representation, and the [lawyer licensed paraprofessional](#) has given the client a reasonable\* warning after the breach that the [lawyer licensed paraprofessional](#) will withdraw unless the client fulfills the agreement or performs the obligation;
  - (6) the client knowingly\* and freely assents to termination of the representation;
  - (7) the inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;
  - (8) the [lawyer licensed paraprofessional](#)'s mental or physical condition renders it difficult for the [lawyer licensed paraprofessional](#) to carry out the representation effectively; or
  - (9) a continuation of the representation is likely to result in a violation of these rules or [the State Bar Act applicable law](#); or
  - (10) the [lawyer licensed paraprofessional](#) believes\* in good faith, in a proceeding pending before a tribunal,\* that the tribunal\* will find the existence of other good cause for withdrawal.
- (c) If permission for termination of a representation is required by the rules of a tribunal,\* a [lawyer licensed paraprofessional](#) shall not terminate a representation before that tribunal\* without its permission.
- (d) A [lawyer licensed paraprofessional](#) shall not terminate a representation until the [lawyer licensed paraprofessional](#) has taken reasonable\* steps to avoid reasonably\* foreseeable prejudice to the rights of the client, such as giving the client sufficient notice to permit the client to retain other [counsel representation](#), and complying with paragraph (e).
- (e) Upon the termination of a representation for any reason:
- (1) subject to any applicable protective order, non-disclosure agreement, statute or regulation, the [lawyer licensed paraprofessional](#) promptly shall release to the client, at the request of the client, all client materials and property. "Client materials and property" includes correspondence, pleadings, deposition transcripts, experts'

reports and other writings,\* exhibits, and physical evidence, whether in tangible, electronic or other form, and other items reasonably\* necessary to the client’s representation, whether the client has paid for them or not; and

(2) the lawyerlicensed paraprofessional promptly shall refund any part of a fee or expense paid in advance that the lawyerlicensed paraprofessional has not earned or incurred. This provision is not applicable to a true retainer fee paid solely for the purpose of ensuring the availability of the lawyer for the matter.

**Comment**

[Reserved]

**Rule 1.17 Sale of a Law Practice  
(Proposed Rule – Clean Version)**

All or substantially\* all of the law practice of a licensed paraprofessional, living or deceased, including goodwill, may be sold to another licensed paraprofessional, a lawyer or law firm\* subject to all the following conditions:

- (a) Fees charged to clients shall not be increased solely by reason of the sale.
- (b) If the sale contemplates the transfer of responsibility for work not yet completed or responsibility for client files or information protected by rule 1.6(a), then;
  - (1) if the seller is deceased, or has a conservator or other person\* acting in a representative capacity, and no lawyer has been appointed to act for the seller, then prior to the transfer;
    - (i) the purchaser shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client’s rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
    - (ii) the purchaser shall obtain the written\* consent of the client. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(1)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.
  - (2) in all other circumstances, not less than 90 days prior to the transfer;
    - (i) the seller, or the lawyer appointed to act for the seller, shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client’s rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
    - (ii) the seller, or the lawyer appointed to act for the seller, shall obtain the written\* consent of the client prior to the transfer. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(2)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.
- (c) If substitution is required by the rules of a tribunal\* in which a matter is pending, all steps necessary to substitute a lawyer shall be taken.
- (d) The purchaser shall comply with the applicable requirements of rules 1.7 and 1.9.

- (e) Confidential information shall not be disclosed to a nonlawyer in connection with a sale under this rule.
- (f) This rule does not apply to the admission to or retirement from a law firm,\* retirement plans and similar arrangements, or sale of tangible assets of a law practice.

**Comment**

[Reserved]

**Rule 1.17 Sale of a Law Practice  
(Proposed Rule – Redline Version)**

All or substantially\* all of the law practice of a ~~lawyer~~licensed paraprofessional, living or deceased, including goodwill, may be sold to another licensed paraprofessional, a lawyer or law firm\* subject to all the following conditions:

- (a) Fees charged to clients shall not be increased solely by reason of the sale.
- (b) If the sale contemplates the transfer of responsibility for work not yet completed or responsibility for client files or information protected by ~~Business and Professions Code section 6068, subdivision (e)(1), rule 1.6(a)~~, then;
  - (1) if the seller is deceased, or has a conservator or other person\* acting in a representative capacity, and no lawyer has been appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, then prior to the transfer;
    - (i) the purchaser shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client’s rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
    - (ii) the purchaser shall obtain the written\* consent of the client. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(1)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.
  - (2) in all other circumstances, not less than 90 days prior to the transfer;
    - (i) the seller, or the lawyer appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client’s rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
    - (ii) the seller, or the lawyer appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, shall obtain the written\* consent of the client prior to the transfer. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(2)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.
- (c) If substitution is required by the rules of a tribunal\* in which a matter is pending, all steps necessary to substitute a lawyer shall be taken.
- (d) The purchaser shall comply with the applicable requirements of rules 1.7 and 1.9.

- (e) Confidential information shall not be disclosed to a nonlawyer in connection with a sale under this rule.
- (f) This rule does not apply to the admission to or retirement from a law firm,\* retirement plans and similar arrangements, or sale of tangible assets of a law practice.

**Comment**

[Reserved]

**Rule 1.18 Duties to Prospective Client  
(Proposed Rule – Clean Version)**

- (a) A person\* who, directly or through an authorized representative, consults a licensed paraprofessional for the purpose of retaining the licensed paraprofessional or securing legal service or advice from the licensed paraprofessional in the licensed paraprofessional’s professional capacity, is a prospective client.
- (b) Even when no licensed paraprofessional-client relationship ensues, a licensed paraprofessional who has communicated with a prospective client shall not use or reveal information protected by rule 1.6(a) that the licensed paraprofessional learned as a result of the consultation, except as rule 1.9 would permit with respect to information of a former client.
- (c) A licensed paraprofessional subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the licensed paraprofessional received from the prospective client information protected by rule 1.6(a) that is material to the matter, except as provided in paragraph (d).
- (d) If a licensed paraprofessional is prohibited from representation under this paragraph or a lawyer is prohibited from representation under Lawyer RPC rule 1.18(c), no licensed paraprofessional in a firm\* with which that licensed paraprofessional is associated may knowingly\* undertake or continue representation in such a matter, except as provided in paragraph (d).
- (d) When the lawyer or licensed paraprofessional has received information that prohibits representation as provided in paragraph (c), representation of the affected client is permissible if:
  - (1) both the affected client and the prospective client have given informed written consent,\* or
  - (2) the lawyer or licensed paraprofessional who received the information took reasonable\* measures to avoid exposure to more information than was reasonably\* necessary to determine whether to represent the prospective client; and
    - (i) the prohibited lawyer or licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and
    - (ii) written\* notice is promptly given to the prospective client to enable the prospective client to ascertain compliance with the provisions of this rule.

**Comment**

[Reserved]

**Rule 1.18 Duties to Prospective Client  
(Proposed Rule – Redline Version)**

(a) A person\* who, directly or through an authorized representative, consults a lawyerlicensed paraprofessional for the purpose of retaining the lawyerlicensed paraprofessional or securing legal service or advice from the lawyerlicensed paraprofessional in the lawyerlicensed paraprofessional's professional capacity, is a prospective client.

(b) Even when no lawyerlicensed paraprofessional-client relationship ensues, a lawyerlicensed paraprofessional who has communicated with a prospective client shall not use or reveal information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6(a) that the lawyerlicensed paraprofessional learned as a result of the consultation, except as rule 1.9 would permit with respect to information of a former client.

(c) A lawyerlicensed paraprofessional subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyerlicensed paraprofessional received from the prospective client information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6(a) that is material to the matter, except as provided in paragraph (d). If a lawyerlicensed paraprofessional is prohibited from representation under this paragraph or a lawyer is prohibited from representation under Lawyer RPC rule 1.18(c), no lawyerlicensed paraprofessional in a firm\* with which that lawyerlicensed paraprofessional is associated may knowingly\* undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer or licensed paraprofessional has received information that prohibits representation as provided in paragraph (c), representation of the affected client is permissible if:

- (1) both the affected client and the prospective client have given informed written consent,\* or
- (2) the lawyer or licensed paraprofessional who received the information took reasonable\* measures to avoid exposure to more information than was reasonably\* necessary to determine whether to represent the prospective client; and
  - (i) the prohibited lawyer or licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and
  - (ii) written\* notice is promptly given to the prospective client to enable the prospective client to ascertain compliance with the provisions of this rule.

**Comment**

[Reserved]

**CHAPTER 2. COUNSELOR**

**Rule 2.1 Advisor  
(Proposed Rule – Clean Version)**

In representing a client, a licensed paraprofessional shall exercise independent professional judgment and render candid advice.

**Comment**

[Reserved]

**Rule 2.1 Advisor  
(Proposed Rule – Redline Version)**

In representing a client, a lawyer licensed paraprofessional shall exercise independent professional judgment and render candid advice.

**Comment**

[Reserved]

**Rule 2.2 [Reserved]**

**Rule 2.3 [Reserved]**

**Rule 2.4 Licensed Paraprofessional as Third-Party Neutral  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional serves as a third-party neutral when the licensed paraprofessional assists two or more persons\* who are not clients of the licensed paraprofessional to reach a resolution of a dispute, or other matter, that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the licensed paraprofessional to assist the parties to resolve the matter.

(b) A licensed paraprofessional serving as a third-party neutral shall inform unrepresented parties that the licensed paraprofessional is not representing them. When the licensed paraprofessional knows\* or reasonably should know\* that a party does not understand the licensed paraprofessional's role in the matter, the licensed paraprofessional shall explain the difference between the licensed paraprofessional's role as a third-party neutral and a licensed paraprofessional's role as one who represents a client.

**Comment**

[Reserved]

**Rule 2.4 Lawyer Licensed Paraprofessional as Third-Party Neutral  
(Proposed Rule – Redline Version)**

(a) A lawyer licensed paraprofessional serves as a third-party neutral when the lawyer licensed paraprofessional assists two or more persons\* who are not clients of the lawyer licensed paraprofessional to reach a resolution of a dispute, or other matter, that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer licensed paraprofessional to assist the parties to resolve the matter.

(b) A lawyer licensed paraprofessional serving as a third-party neutral shall inform unrepresented parties that the lawyer licensed paraprofessional is not representing them. When the lawyer licensed paraprofessional knows\* or reasonably should know\* that a party does not understand the lawyer licensed paraprofessional's role in the matter, the lawyer licensed paraprofessional shall explain the difference between the lawyer licensed paraprofessional's role as a third-party neutral and a lawyer licensed paraprofessional's role as one who represents a client.

**Comment**

[Reserved]

**Rule 2.4.1 [Reserved]  
(Proposed Rule – Clean Version)**

**Rule 2.4.1 ~~[Reserved] Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator~~**  
**(Proposed Rule – Redline Version)**

~~A lawyer who is serving as a temporary judge, referee, or court-appointed arbitrator, and is subject to canon 6D of the California Code of Judicial Ethics, shall comply with the terms of that canon.~~

**CHAPTER 3. ADVOCATE**

**Rule 3.1 Meritorious Claims and Contentions**  
**(Proposed Rule – Clean Version)**

A licensed paraprofessional shall not:

- (a) assist with bringing or continuing an action, conducting a defense, or asserting a position in litigation, without probable cause and for the purpose of harassing or maliciously injuring any person;\* or
- (b) assist with presenting a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of the existing law.

**Rule 3.1 Meritorious Claims and Contentions**  
**(Proposed Rule – Redline Version)**

~~(a) — A lawyer licensed paraprofessional shall not:~~

~~(a1) assist with bringing or continue continuing an action, conducting a defense, or asserting a position in litigation, or take an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person;\* or~~

~~(b2) assist with presenting a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of the existing law.~~

~~(b) — A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, or involuntary commitment or confinement, may nevertheless defend the proceeding by requiring that every element of the case be established.~~

**Rule 3.2 Delay of Litigation**  
**(Proposed Rule – Clean Version)**

In representing a client, a licensed paraprofessional shall not use means that have no substantial\* purpose other than to delay or prolong the proceeding or to cause needless expense.

**Comment**

[Reserved]

**Rule 3.2 Delay of Litigation**  
**(Proposed Rule – Redline Version)**

In representing a client, a lawyer licensed paraprofessional shall not use means that have no substantial\* purpose other than to delay or prolong the proceeding or to cause needless expense.

**Comment**

[Reserved]

**Rule 3.3 Candor Toward the Tribunal\***  
**(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall not:
- (1) knowingly\* make a false statement of fact or law to a tribunal\* or fail to correct a false statement of material fact or law previously made to the tribunal\* by the licensed paraprofessional;
  - (2) fail to disclose to the tribunal\* legal authority in the controlling jurisdiction known\* to the licensed paraprofessional to be directly adverse to the position of the client and not disclosed by opposing party, or knowingly\* misquote to a tribunal\* the language of a book, statute, decision or other authority; or
  - (3) offer evidence that the licensed paraprofessional knows\* to be false. If a licensed paraprofessional or the licensed paraprofessional's client, has offered material evidence, and the licensed paraprofessional comes to know\* of its falsity, the licensed paraprofessional shall take reasonable\* remedial measures, including, if necessary, disclosure to the tribunal,\* unless disclosure is prohibited by rule 1.6. A licensed paraprofessional may refuse to offer evidence that the licensed paraprofessional reasonably believes\* is false.
- (b) A licensed paraprofessional who represents a client in a proceeding before a tribunal\* and who knows\* that a person\* intends to engage, is engaging or has engaged in criminal or fraudulent\* conduct related to the proceeding shall take reasonable\* remedial measures to the extent permitted by rule 1.6.
- (c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding.
- (d) In an ex parte proceeding where notice to the opposing party in the proceeding is not required or given and the opposing party is not present, a licensed paraprofessional shall inform the tribunal\* of all material facts known\* to the licensed paraprofessional that will enable the tribunal\* to make an informed decision, whether or not the facts are adverse to the position of the client.

**Comment**

[Reserved]

**Rule 3.3 Candor Toward the Tribunal\***  
**(Proposed Rule – Redline Version)**

- (a) A lawyer licensed paraprofessional shall not:
- (1) knowingly\* make a false statement of fact or law to a tribunal\* or fail to correct a false statement of material fact or law previously made to the tribunal\* by the lawyer licensed paraprofessional;
  - (2) fail to disclose to the tribunal\* legal authority in the controlling jurisdiction known\* to the lawyer licensed paraprofessional to be directly adverse to the position of the client and not disclosed by opposing counsel party, or knowingly\* misquote to a tribunal\* the language of a book, statute, decision or other authority; or
  - (3) offer evidence that the lawyer licensed paraprofessional knows\* to be false. If a lawyer licensed paraprofessional or the lawyer licensed paraprofessional's client, ~~or a witness called by the lawyer~~, has offered material evidence, and the lawyer licensed paraprofessional comes to know\* of its falsity, the lawyer licensed paraprofessional shall take reasonable\* remedial measures, including, if necessary, disclosure to the tribunal,\*

unless disclosure is prohibited by ~~Business and Professions Code section 6068, subdivision (e) and rule 1.6~~. A ~~lawyer~~licensed paraprofessional may refuse to offer evidence, ~~other than the testimony of a defendant in a criminal matter,~~ that the ~~lawyer~~licensed paraprofessional reasonably believes\* is false.

(b) A ~~lawyer~~licensed paraprofessional who represents a client in a proceeding before a tribunal\* and who knows\* that a person\* intends to engage, is engaging or has engaged in criminal or fraudulent\* conduct related to the proceeding shall take reasonable\* remedial measures to the extent permitted by ~~Business and Professions Code section 6068, subdivision (e) and rule 1.6~~.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding.

(d) In an ex parte proceeding where notice to the opposing party in the proceeding is not required or given and the opposing party is not present, a ~~lawyer~~licensed paraprofessional shall inform the tribunal\* of all material facts known\* to the ~~licensed paraprofessional lawyer~~ that will enable the tribunal\* to make an informed decision, whether or not the facts are adverse to the position of the client.

#### Comment

[Reserved]

### Rule 3.4 Fairness to Opposing Party and Counsel (Proposed Rule – Clean Version)

A licensed paraprofessional shall not:

- (a) unlawfully obstruct another party's access to evidence, including a witness, or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A licensed paraprofessional shall not counsel or assist another person\* to do any such act;
- (b) suppress any evidence that the licensed paraprofessional or the licensed paraprofessional's client has a legal obligation to reveal or to produce;
- (c) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (d) directly or indirectly pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case. Except where prohibited by law, a licensed paraprofessional may advance, guarantee, or acquiesce in the payment of:
  - (1) expenses reasonably\* incurred by a witness in attending or testifying;
  - (2) reasonable\* compensation to a witness for loss of time in attending or testifying; or
  - (3) a reasonable\* fee for the professional services of an expert witness;
- (e) advise or directly or indirectly cause a person\* to secrete himself or herself or to leave the jurisdiction of a tribunal\* for the purpose of making that person\* unavailable as a witness therein; or
- (f) knowingly\* disobey an obligation under the rules of a tribunal\* except for an open refusal based on an assertion that no valid obligation exists.
- (g) in trial, assert personal knowledge of facts in issue except when testifying as a witness.

#### Comment

[Reserved]

### Rule 3.4 Fairness to Opposing Party and Counsel (Proposed Rule – Redline Version)

A lawyer~~licensed~~ paraprofessional shall not:

- (a) unlawfully obstruct another party's access to evidence, including a witness, or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer~~licensed~~ paraprofessional shall not counsel or assist another person\* to do any such act;
- (b) suppress any evidence that the lawyer~~licensed~~ paraprofessional or the lawyer~~licensed~~ paraprofessional's client has a legal obligation to reveal or to produce;
- (c) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (d) directly or indirectly pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case. Except where prohibited by law, a lawyer~~licensed~~ paraprofessional may advance, guarantee, or acquiesce in the payment of:
  - (1) expenses reasonably\* incurred by a witness in attending or testifying;
  - (2) reasonable\* compensation to a witness for loss of time in attending or testifying; or
  - (3) a reasonable\* fee for the professional services of an expert witness;
- (e) advise or directly or indirectly cause a person\* to secrete himself or herself or to leave the jurisdiction of a tribunal\* for the purpose of making that person\* unavailable as a witness therein; or
- (f) knowingly\* disobey an obligation under the rules of a tribunal\* except for an open refusal based on an assertion that no valid obligation exists; ~~or~~
- (g) in trial, assert personal knowledge of facts in issue except when testifying as a witness; ~~or state a personal opinion as to the guilt or innocence of an accused.~~

#### Comment

[Reserved]

### Rule 3.5 Contact with Judges, Officials, and Employees (Proposed Rule – Clean Version)

- (a) Except as permitted by statute, an applicable code of judicial ethics or code of judicial conduct, or standards governing employees of a tribunal,\* a licensed paraprofessional shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal.\* This rule does not prohibit a licensed paraprofessional from contributing to the campaign fund of a judge or judicial officer running for election or confirmation pursuant to applicable law pertaining to such contributions.
- (b) Unless permitted to do so by law, an applicable code of judicial ethics or code of judicial conduct, a rule or ruling of a tribunal,\* or a court order, a licensed paraprofessional shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before the judge or judicial officer, except:

- (1) with the consent of all other counsel and any unrepresented parties in the matter;
- (2) in writing\* with a copy thereof furnished to all other represented and unrepresented parties in the matter.

(c) As used in this rule, “judge” and “judicial officer” shall also include: (i) administrative law judges; (ii) neutral arbitrators; (iii) State Bar Court judges; (iv) members of an administrative body acting in an adjudicative capacity; and (v) law clerks, research attorneys, or other court personnel who participate in the decision-making process, including referees, special masters, or other persons\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

#### Comment

[Reserved]

### Rule 3.5 Contact with Judges, Officials, ~~and Employees, and Jurors~~ (Proposed Rule – Redline Version)

(a) Except as permitted by statute, an applicable code of judicial ethics or code of judicial conduct, or standards governing employees of a tribunal,\* a lawyerlicensed paraprofessional shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal.\* This rule does not prohibit a lawyerlicensed paraprofessional from contributing to the campaign fund of a judge or judicial officer running for election or confirmation pursuant to applicable law pertaining to such contributions.

(b) Unless permitted to do so by law, an applicable code of judicial ethics or code of judicial conduct, a rule or ruling of a tribunal,\* or a court order, a lawyerlicensed paraprofessional shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before the judge or judicial officer, except:

~~(1) in open court;~~

~~(2) with the consent of all other counsel and any unrepresented parties in the matter;~~

~~(3) in the presence of all other counsel and any unrepresented parties in the matter;~~

~~(4) in writing\* with a copy thereof furnished to all other counsel-represented and any unrepresented parties in the matter; or~~

~~(5) in ex parte matters.~~

(c) As used in this rule, “judge” and “judicial officer” shall also include: (i) administrative law judges; (ii) neutral arbitrators; (iii) State Bar Court judges; (iv) members of an administrative body acting in an adjudicative capacity; and (v) law clerks, research attorneys, or other court personnel who participate in the decision-making process, including referees, special masters, or other persons\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

~~(d) A lawyer connected with a case shall not communicate directly or indirectly with anyone the lawyer knows\* to be a member of the venire from which the jury will be selected for trial of that case.~~

~~(e) During trial, a lawyer connected with the case shall not communicate directly or indirectly with any juror.~~

~~(f) During trial, a lawyer who is not connected with the case shall not communicate directly or indirectly concerning the case with anyone the lawyer knows\* is a juror in the case.~~

~~(g) After discharge of the jury from further consideration of a case a lawyer shall not communicate directly or indirectly with a juror if:~~

~~(1) the communication is prohibited by law or court order;~~

~~(2) the juror has made known\* to the lawyer a desire not to communicate; or~~

~~(3) the communication involves misrepresentation, coercion, or duress, or is intended to harass or embarrass the juror or to influence the juror's actions in future jury service.~~

~~(h) A lawyer shall not directly or indirectly conduct an out of court investigation of a person\* who is either a member of a venire or a juror in a manner likely to influence the state of mind of such person\* in connection with present or future jury service.~~

~~(i) All restrictions imposed by this rule also apply to communications with, or investigations of, members of the family of a person\* who is either a member of a venire or a juror.~~

~~(j) A lawyer shall reveal promptly to the court improper conduct by a person\* who is either a member of a venire or a juror, or by another toward a person\* who is either a member of a venire or a juror or a member of his or her family, of which the lawyer has knowledge.~~

~~(k) This rule does not prohibit a lawyer from communicating with persons\* who are members of a venire or jurors as a part of the official proceedings.~~

~~(l) For purposes of this rule, "juror" means any empaneled, discharged, or excused juror.~~

#### **Comment**

[Reserved]

### **Rule 3.6 Trial Publicity (Proposed Rule – Clean Version)**

(a) A licensed paraprofessional who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows\* or reasonably should know\* will (i) be disseminated by means of public communication and (ii) have a substantial\* likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), but only to the extent permitted by rule 1.6, licensed paraprofessional may state:

- (1) the claim or defense involved and, except when prohibited by law, the identity of the persons\* involved;
- (2) information contained in a public record;
- (3) that an investigation of a matter is in progress;
- (4) the scheduling or result of any step in litigation;
- (5) a request for assistance in obtaining evidence and information necessary thereto; and
- (6) a warning of danger concerning the behavior of a person\* involved, when there is reason to believe\* that there exists the likelihood of substantial\* harm to an individual or to the public but only to the extent that dissemination by public communication is reasonably\* necessary to protect the individual or the public.

(c) Notwithstanding paragraph (a), a licensed paraprofessional may make a statement that a reasonable\* licensed paraprofessional would believe\* is required to protect a client from the substantial\* undue prejudicial effect of recent

publicity not initiated by the licensed paraprofessional or the licensed paraprofessional's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No licensed paraprofessional associated in a law firm\* with a licensed paraprofessional subject to paragraph (a) or a lawyer subject to Lawyer RPC rule 3.6(a) shall make a statement prohibited by paragraph (a).

#### Comment

### Rule 3.6 Trial Publicity (Proposed Rule – Redline Version)

(a) A ~~lawyer~~ licensed paraprofessional who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows\* or reasonably should know\* will (i) be disseminated by means of public communication and (ii) have a substantial\* likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), but only to the extent permitted by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6, licensed paraprofessional ~~lawyer~~ may state:

- (1) the claim, ~~offense~~ or defense involved and, except when prohibited by law, the identity of the persons\* involved;
- (2) information contained in a public record;
- (3) that an investigation of a matter is in progress;
- (4) the scheduling or result of any step in litigation;
- (5) a request for assistance in obtaining evidence and information necessary thereto; and
- (6) a warning of danger concerning the behavior of a person\* involved, when there is reason to believe\* that there exists the likelihood of substantial\* harm to an individual or to the public but only to the extent that dissemination by public communication is reasonably\* necessary to protect the individual or the public; ~~and~~
- ~~(7) in a criminal case, in addition to paragraphs (1) through (6):~~
  - ~~(i) the identity, general area of residence, and occupation of the accused;~~
  - ~~(ii) if the accused has not been apprehended, the information necessary to aid in apprehension of that person;\*~~
  - ~~(iii) the fact, time, and place of arrest; and (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.~~

(c) Notwithstanding paragraph (a), a licensed paraprofessional ~~lawyer~~ may make a statement that a reasonable\* licensed paraprofessional ~~lawyer~~ would believe\* is required to protect a client from the substantial\* undue prejudicial effect of recent publicity not initiated by the licensed paraprofessional ~~lawyer~~ or the licensed paraprofessional's ~~lawyer's~~ client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No licensed paraprofessional ~~lawyer~~ associated in a law firm\* ~~or government agency~~ with a licensed paraprofessional ~~lawyer~~ subject to paragraph (a) or a lawyer subject to Lawyer RPC rule 3.6(a) shall make a statement prohibited by paragraph (a).

#### Comment

**Rule 3.7 Licensed Paraprofessional as Witness  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not act as an advocate in a trial in which the licensed paraprofessional is likely to be a witness unless:

- (1) the licensed paraprofessional’s testimony relates to an uncontested issue or matter;
- (2) the licensed paraprofessional’s testimony relates to the nature and value of legal services rendered in the case; or
- (3) the licensed paraprofessional has obtained informed written consent\* from the client.

(b) A licensed paraprofessional may act as advocate in a trial in which another licensed paraprofessional or lawyer in the lawyer’s firm\* is likely to be called as a witness unless precluded from doing so by rule 1.7 or rule 1.9.

**Rule 3.7 ~~Lawyer-Licensed Paraprofessional~~ as Witness  
(Proposed Rule – Redline Version)**

(a) A ~~lawyer-licensed paraprofessional~~ shall not act as an advocate in a trial in which the ~~lawyer-licensed paraprofessional~~ is likely to be a witness unless:

- (1) the ~~licensed paraprofessional’s lawyer’s~~ testimony relates to an uncontested issue or matter;
- (2) the ~~licensed paraprofessional lawyer’s~~ testimony relates to the nature and value of legal services rendered in the case; or
- (3) the ~~licensed paraprofessional lawyer~~ has obtained informed written consent\* from the client. ~~If the lawyer represents the People or a governmental entity, the consent shall be obtained from the head of the office or a designee of the head of the office by which the lawyer is employed.~~

(b) A ~~licensed paraprofessional lawyer~~ may act as advocate in a trial in which another ~~licensed paraprofessional or~~ lawyer in the lawyer’s firm\* is likely to be called as a witness unless precluded from doing so by rule 1.7 or rule 1.9.

**Rule 3.8 [RESERVED]  
(Proposed Rule – Clean Version)**

**Rule 3.8 [RESERVED] ~~Special Responsibilities of a Prosecutor~~  
(Proposed Rule – Redline Version)**

~~The prosecutor in a criminal case shall:~~

- ~~(a) not institute or continue to prosecute a charge that the prosecutor knows\* is not supported by probable cause;~~
- ~~(b) make reasonable\* efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable\* opportunity to obtain counsel;~~
- ~~(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights unless the tribunal\* has approved the appearance of the accused in propria persona;~~
- ~~(d) make timely disclosure to the defense of all evidence or information known\* to the prosecutor that the prosecutor knows\* or reasonably should know\* tends to negate the guilt of the accused, mitigate the offense, or mitigate the sentence, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;\* and~~

~~(e) exercise reasonable\* care to prevent persons\* under the supervision or direction of the prosecutor, including investigators, law enforcement personnel, employees or other persons\* assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 3.6.~~

~~(f) When a prosecutor knows\* of new, credible and material evidence creating a reasonable\* likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:~~

~~(1) promptly disclose that evidence to an appropriate court or authority, and~~

~~(2) if the conviction was obtained in the prosecutor's jurisdiction,~~

~~(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and~~

~~(ii) undertake further investigation, or make reasonable\* efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.~~

~~(g) When a prosecutor knows\* of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.~~

#### **Comment**

**[RESERVED]**

### **Rule 3.9 Advocate in Nonadjudicative Proceedings (Proposed Rule – Clean Version)**

A licensed paraprofessional representing a client before a legislative body or administrative agency in connection with a pending nonadjudicative matter or proceeding shall disclose that the appearance is in a representative capacity, except when the licensed paraprofessional seeks information from an agency that is available to the public.

### **Rule 3.9 Advocate in Nonadjudicative Proceedings (Proposed Rule – Redline Version)**

A licensed paraprofessional lawyer representing a client before a legislative body or administrative agency in connection with a pending nonadjudicative matter or proceeding shall disclose that the appearance is in a representative capacity, except when the licensed paraprofessional lawyer seeks information from an agency that is available to the public.

### **Rule 3.10 Threatening Criminal, Administrative, or Disciplinary Charges (Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.

(b) As used in paragraph (a) of this rule, the term “administrative charges” means the filing or lodging of a complaint with any governmental organization that may order or recommend the loss or suspension of a license, or may impose or recommend the imposition of a fine, pecuniary sanction, or other sanction of a quasi-criminal nature but does not include filing charges with an administrative entity required by law as a condition precedent to maintaining a civil action.

(c) As used in this rule, the term “civil dispute” means a controversy or potential controversy over the rights and duties of two or more persons\* under civil law, whether or not an action has been commenced, and includes an administrative proceeding of a quasi-civil nature pending before a federal, state, or local governmental entity.

**Comment**

[Reserved]

**Rule 3.10 Threatening Criminal, Administrative, or Disciplinary Charges  
(Proposed Rule – Redline Version)**

- (a) A ~~lawyer~~licensed paraprofessional shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.
- (b) As used in paragraph (a) of this rule, the term “administrative charges” means the filing or lodging of a complaint with any governmental organization that may order or recommend the loss or suspension of a license, or may impose or recommend the imposition of a fine, pecuniary sanction, or other sanction of a quasi-criminal nature but does not include filing charges with an administrative entity required by law as a condition precedent to maintaining a civil action.
- (c) As used in this rule, the term “civil dispute” means a controversy or potential controversy over the rights and duties of two or more persons\* under civil law, whether or not an action has been commenced, and includes an administrative proceeding of a quasi-civil nature pending before a federal, state, or local governmental entity.

**Comment**

[Reserved]

**CHAPTER 4.  
TRANSACTIONS WITH PERSONS\*  
OTHER THAN CLIENTS**

**Rule 4.1 Truthfulness in Statements to Others  
(Proposed Rule – Clean Version)**

In the course of representing a client a licensed paraprofessional shall not knowingly:\*

- (a) make a false statement of material fact or law to a third person;\* or
- (b) fail to disclose a material fact to a third person\* when disclosure is necessary to avoid assisting a criminal or fraudulent\* act by a client, unless disclosure is prohibited by rule 1.6.

**Comment**

[Reserved]

**Rule 4.1 Truthfulness in Statements to Others  
(Proposed Rule – Redline Version)**

In the course of representing a client a ~~lawyer~~licensed paraprofessional shall not knowingly:\*

- (a) make a false statement of material fact or law to a third person;\* or
- (b) fail to disclose a material fact to a third person\* when disclosure is necessary to avoid assisting a criminal or fraudulent\* act by a client, unless disclosure is prohibited by ~~Business and Professions Code section 6068, subdivision (e)(1)~~ or rule 1.6.

**Comment**

[Reserved]

**Rule 4.2 Communication with a Represented Person\*  
(Proposed Rule – Clean Version)**

- (a) In representing a client, a licensed paraprofessional shall not communicate directly or indirectly about the subject of the representation with a person\* the licensed paraprofessional knows\* to be represented by a lawyer or another licensed paraprofessional in the matter, unless the licensed paraprofessional has the consent of the other lawyer or licensed paraprofessional.
- (b) In the case of a represented corporation, partnership, association, or other private or governmental organization, this rule prohibits communications with:
- (1) A current officer, director, partner,\* or managing agent of the organization; or
  - (2) A current employee, member, agent, or other constituent of the organization, if the subject of the communication is any act or omission of such person\* in connection with the matter which may be binding upon or imputed to the organization for purposes of civil or criminal liability.
- (c) This rule shall not prohibit:
- (1) communications with a public official, board, committee, or body; or
  - (2) communications otherwise authorized by law or a court order.
- (d) For purposes of this rule:
- (1) “Managing agent” means an employee, member, agent, or other constituent of an organization with substantial\* discretionary authority over decisions that determine organizational policy.
  - (2) “Public official” means a public officer of the United States government, or of a state, county, city, town, political subdivision, or other governmental organization, with the comparable decision-making authority and responsibilities as the organizational constituents described in paragraph (b)(1).

**Comment**

[Reserved]

**Rule 4.2 Communication with a Represented Person\*  
(Proposed Rule – Redline Version)**

- (a) In representing a client, a ~~lawyer~~ licensed paraprofessional shall not communicate directly or indirectly about the subject of the representation with a person\* the ~~lawyer~~ licensed paraprofessional knows\* to be represented by a ~~another~~ lawyer or another licensed paraprofessional in the matter, unless the ~~lawyer~~ licensed paraprofessional has the consent of the other lawyer or licensed paraprofessional.
- (b) In the case of a represented corporation, partnership, association, or other private or governmental organization, this rule prohibits communications with:
- (1) A current officer, director, partner,\* or managing agent of the organization; or

(2) A current employee, member, agent, or other constituent of the organization, if the subject of the communication is any act or omission of such person\* in connection with the matter which may be binding upon or imputed to the organization for purposes of civil or criminal liability.

(c) This rule shall not prohibit:

(1) communications with a public official, board, committee, or body; or

(2) communications otherwise authorized by law or a court order.

(d) For purposes of this rule:

(1) “Managing agent” means an employee, member, agent, or other constituent of an organization with substantial\* discretionary authority over decisions that determine organizational policy.

(2) “Public official” means a public officer of the United States government, or of a state, county, city, town, political subdivision, or other governmental organization, with the comparable decision-making authority and responsibilities as the organizational constituents described in paragraph (b)(1).

#### Comment

[Reserved]

### **Rule 4.3 Communicating with an Unrepresented Person\* (Proposed Rule – Clean Version)**

(a) In communicating on behalf of a client with a person\* who is not represented by a lawyer or licensed paraprofessional, a licensed paraprofessional shall not state or imply that the licensed paraprofessional is disinterested. When the licensed paraprofessional knows\* or reasonably should know\* that the unrepresented person\* incorrectly believes\* the licensed paraprofessional is disinterested in the matter, the licensed paraprofessional shall make reasonable\* efforts to correct the misunderstanding. If the licensed paraprofessional knows\* or reasonably should know\* that the interests of the unrepresented person\* are in conflict with the interests of the client, the licensed paraprofessional shall not give legal advice to that person,\* except that the licensed paraprofessional may, but is not required to, advise the person\* to secure legal representation.

(b) In communicating on behalf of a client with a person\* who is not represented by a lawyer or licensed paraprofessional, a licensed paraprofessional shall not seek to obtain privileged or other confidential information the licensed paraprofessional knows\* or reasonably should know\* the person\* may not reveal without violating a duty to another or which the licensed paraprofessional is not otherwise entitled to receive.

#### Comment

[Reserved]

### **Rule 4.3 Communicating with an Unrepresented Person\* (Proposed Rule – Redline Version)**

(a) In communicating on behalf of a client with a person\* who is not represented by a lawyer or licensed paraprofessional ~~counsel~~, a ~~lawyer~~licensed paraprofessional shall not state or imply that the ~~lawyer~~licensed paraprofessional is disinterested. When the ~~lawyer~~licensed paraprofessional knows\* or reasonably should know\* that the unrepresented person\* incorrectly believes\* the ~~lawyer~~licensed paraprofessional is disinterested in the matter, the ~~lawyer~~licensed paraprofessional shall make reasonable\* efforts to correct the misunderstanding. If the ~~lawyer~~licensed paraprofessional knows\* or reasonably should know\* that the interests of the unrepresented person\* are in conflict

with the interests of the client, the [lawyer-licensed paraprofessional](#) shall not give legal advice to that person,\* except that the [lawyer-licensed paraprofessional](#) may, but is not required to, advise the person\* to secure [counsel/legal representation](#).

(b) In communicating on behalf of a client with a person\* who is not represented by [counsel a lawyer or licensed paraprofessional](#), a [lawyer-licensed paraprofessional](#) shall not seek to obtain privileged or other confidential information the [lawyer-licensed paraprofessional](#) knows\* or reasonably should know\* the person\* may not reveal without violating a duty to another or which the [lawyer-licensed paraprofessional](#) is not otherwise entitled to receive.

**Comment**

[Reserved]

**Rule 4.4 Duties Concerning Inadvertently Transmitted Writings\*  
(Proposed Rule – Clean Version)**

Where it is reasonably\* apparent to a licensed paraprofessional who receives a writing\* relating to a licensed paraprofessional’s representation of a client that the writing\* was inadvertently sent or produced, and the licensed paraprofessional knows\* or reasonably should know\* that the writing\* is privileged or subject to the work product doctrine, the licensed paraprofessional shall:

- (a) refrain from examining the writing\* any more than is necessary to determine that it is privileged or subject to the work product doctrine, and
- (b) promptly notify the sender.

**Comment**

[Reserved]

**Rule 4.4 Duties Concerning Inadvertently Transmitted Writings\*  
(Proposed Rule – Redline Version)**

Where it is reasonably\* apparent to a [lawyer-licensed paraprofessional](#) who receives a writing\* relating to a [lawyer-licensed paraprofessional](#)’s representation of a client that the writing\* was inadvertently sent or produced, and the [lawyer-licensed paraprofessional](#) knows\* or reasonably should know\* that the writing\* is privileged or subject to the work product doctrine, the [lawyer-licensed paraprofessional](#) shall:

- (a) refrain from examining the writing\* any more than is necessary to determine that it is privileged or subject to the work product doctrine, and
- (b) promptly notify the sender.

**Comment**

[Reserved]

**CHAPTER 5.  
LAW FIRMS\* AND ASSOCIATIONS**

**Rule 5.1 Responsibilities of Managerial and Supervisory Licensed Paraprofessionals  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional who individually or together with other licensed paraprofessionals or lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that all licensed paraprofessionals in the firm\* comply with these rules and the State Bar Act.
- (b) A licensed paraprofessional having direct supervisory authority over another licensed paraprofessional, whether or not a member or employee of the same law firm,\* shall make reasonable\* efforts to ensure that the other licensed paraprofessional complies with these rules and applicable law.
- (c) A licensed paraprofessional shall be responsible for another licensed paraprofessional’s violation of these rules and applicable law if:
- (1) the licensed paraprofessional orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or
  - (2) the licensed paraprofessional, individually or together with other licensed paraprofessionals or lawyers, possesses managerial authority in the law firm\* in which the other licensed paraprofessional practices, or has direct supervisory authority over the other licensed paraprofessional, whether or not a member or employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

**Comment**

[Reserved]

**Rule 5.1 Responsibilities of Managerial and Supervisory ~~Lawyer~~Licensed Paraprofessionals  
(Proposed Rule – Redline Version)**

- (a) A ~~lawyer~~licensed paraprofessional who individually or together with other licensed paraprofessionals or lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that all ~~lawyer~~licensed paraprofessionals in the firm\* comply with these rules and the State Bar Act.
- (b) A ~~lawyer~~licensed paraprofessional having direct supervisory authority over another ~~lawyer~~licensed paraprofessional, whether or not a member or employee of the same law firm,\* shall make reasonable\* efforts to ensure that the other ~~lawyer~~licensed paraprofessional complies with these rules and ~~the State Bar Act~~applicable law.
- (c) A ~~lawyer~~licensed paraprofessional shall be responsible for another ~~lawyer~~licensed paraprofessional’s violation of these rules and ~~the State Bar Act~~applicable law if:
- (3) the ~~lawyer~~licensed paraprofessional orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or
  - (4) the ~~lawyer~~licensed paraprofessional, individually or together with other licensed paraprofessionals or lawyers, possesses managerial authority in the law firm\* in which the other ~~lawyer~~licensed paraprofessional practices, or has direct supervisory authority over the other ~~lawyer~~licensed paraprofessional, whether or not a member or employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

**Comment**

[Reserved]

**Rule 5.2 Responsibilities of a Subordinate Licensed Paraprofessional  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall comply with these rules and notwithstanding that the licensed paraprofessional acts at the direction of a lawyer, another a licensed paraprofessional, or other person.\*
- (b) A subordinate licensed paraprofessional does not violate these rules if that licensed paraprofessional acts in accordance with a supervisory lawyer's or supervisory licensed paraprofessional's reasonable\* resolution of an arguable question of professional duty.

**Comment**

[Reserved]

**Rule 5.2 Responsibilities of a Subordinate ~~Lawyer~~Licensed ~~Paraprofessional~~  
(Proposed Rule – Redline Version)**

- (a) A ~~lawyer~~licensed paraprofessional shall comply with these rules and ~~the State Bar Act~~ notwithstanding that the ~~lawyer~~licensed paraprofessional acts at the direction of a lawyer, another ~~lawyer~~ a licensed paraprofessional, or other person.\*
- (b) A subordinate ~~lawyer~~licensed paraprofessional does not violate these rules ~~or the State Bar Act~~ if that ~~lawyer~~licensed paraprofessional acts in accordance with a supervisory lawyer's or supervisory licensed paraprofessional's reasonable\* resolution of an arguable question of professional duty.

**Comment**

[Reserved]

**Rule 5.3 Responsibilities Regarding Non-Licensed Assistants  
(Proposed Rule – Clean Version)**

With respect to an individual not licensed to practice law who is employed or retained by or associated with a licensed paraprofessional:

- (a) a licensed paraprofessional who individually or together with other licensed paraprofessionals or lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that the nonlicensee's conduct is compatible with the professional obligations of the licensed paraprofessional;
- (b) a licensed paraprofessional having direct supervisory authority over the nonlicensee, whether or not an employee of the same law firm,\* shall make reasonable\* efforts to ensure that the person's\* conduct is compatible with the professional obligations of the licensed paraprofessional; and
- (c) a licensed paraprofessional shall be responsible for conduct of such a person\* that would be a violation of these rules if engaged in by a licensed paraprofessional if:
- (1) the licensed paraprofessional orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or

(2) the licensed paraprofessional, individually or together with other licensed paraprofessionals or lawyers, possesses managerial authority in the law firm\* in which the person\* is employed, or has direct supervisory authority over the person,\* whether or not an employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

**Comment**

[Reserved]

**Rule 5.3 Responsibilities Regarding Non-Licensed ~~lawyer~~ Assistants  
(Proposed Rule – Redline Version)**

With respect to an individual not licensed to practice law who is ~~nonlawyer~~ employed or retained by or associated with a lawyer~~licensed paraprofessional~~:

- (a) a lawyer~~licensed paraprofessional~~ who individually or together with other licensed paraprofessionals or lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that the nonlawyer's-nonlicensee's conduct is compatible with the professional obligations of the lawyer~~licensed paraprofessional~~;
- (b) a lawyer~~licensed paraprofessional~~ having direct supervisory authority over the nonlawyer~~licensee~~, whether or not an employee of the same law firm,\* shall make reasonable\* efforts to ensure that the person's\* conduct is compatible with the professional obligations of the lawyer~~licensed paraprofessional~~; and
- (c) a lawyer~~licensed paraprofessional~~ shall be responsible for conduct of such a person\* that would be a violation of these rules or the State Bar Act if engaged in by a lawyer~~licensed paraprofessional~~ if:
  - (1) the lawyer~~licensed paraprofessional~~ orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or
  - (2) the lawyer~~licensed paraprofessional~~, individually or together with other licensed paraprofessionals or lawyers, possesses managerial authority in the law firm\* in which the person\* is employed, or has direct supervisory authority over the person,\* whether or not an employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

**Comment**

[Reserved]

**Rule 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Licensed Paraprofessionals  
(Proposed Rule – Clean Version)**

- (a) For purposes of this rule:
  - (1) "Employ" means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;
  - (2) "Licensee" means a licensee of the State Bar of California;
  - (3) "Involuntarily inactive licensee" means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203, subdivision (d)(1), or California Rules of Court, rule 9.31(d);

(4) “Resigned licensee” means a licensee who has resigned from the State Bar while disciplinary charges are pending; and

(5) “Ineligible person” means a licensee whose current status with the State Bar of California is disbarred, suspended, resigned, or involuntarily inactive.

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

- (1) Render legal consultation or advice to the client;
- (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
- (3) Appear as a representative of the client at a deposition or other discovery matter;
- (4) Negotiate or transact any matter for or on behalf of the client with third parties;
- (5) Receive, disburse or otherwise handle the client’s funds; or
- (6) Engage in activities that constitute the practice of law.

(c) A licensed paraprofessional may employ, associate in practice with, or assist an ineligible person to perform research, drafting or clerical activities, including but not limited to:

- (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
- (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or
- (3) Accompanying an active licensed paraprofessional in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active licensed paraprofessional who will appear as the representative of the client.

(d) Prior to or at the time of employing, associating in practice with, or assisting a person\* the licensed paraprofessional knows\* or reasonably should know\* is an ineligible person, the licensed paraprofessional shall serve upon the State Bar written\* notice of the employment, including a full description of such person’s current licensee status. The written\* notice shall also list the activities prohibited in paragraph (b) and state that the ineligible person will not perform such activities. The licensed paraprofessional shall serve similar written\* notice upon each client on whose specific matter such person\* will work, prior to or at the time of employing, associating with, or assisting such person\* to work on the client’s specific matter. The licensed paraprofessional shall obtain proof of service of the client’s written\* notice and shall retain such proof and a true and correct copy of the client’s written\* notice for two years following termination of the licensed paraprofessional’s employment by the client.

(e) A licensed paraprofessional may, without client or State Bar notification, employ, associate in practice with, or assist an ineligible person whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.

(f) When the licensed paraprofessional no longer employs, associates in practice with, or assists the ineligible person, the licensed paraprofessional shall promptly serve upon the State Bar written\* notice of the termination.

**Comment**

[Reserved]

**Rule 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Licensed Paraprofessionals**  
**(Proposed Rule – Redline Version)**

(a) For purposes of this rule:

- (1) “Employ” means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;
- (2) “MemberLicensee” means a member-licensee of the State Bar of California;
- (3) “Involuntarily inactive memberlicensee” means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203, subdivision (d)(1), or California Rules of Court, rule 9.31(d);
- (4) “Resigned memberlicensee” means a member-licensee who has resigned from the State Bar while disciplinary charges are pending; and
- (5) “Ineligible person” means a member-licensee whose current status with the State Bar of California is disbarred, suspended, resigned, or involuntarily inactive.

(b) A lawyer-licensed paraprofessional shall not employ, associate in practice with, or assist a person\* the lawyer-licensed paraprofessional knows\* or reasonably should know\* is an ineligible person to perform the following on behalf of the lawyer-licensed paraprofessional’s client:

- (1) Render legal consultation or advice to the client;
- (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
- (3) Appear as a representative of the client at a deposition or other discovery matter;
- (4) Negotiate or transact any matter for or on behalf of the client with third parties;
- (5) Receive, disburse or otherwise handle the client’s funds; or
- (6) Engage in activities that constitute the practice of law.

(c) A lawyer-licensed paraprofessional may employ, associate in practice with, or assist an ineligible person to perform research, drafting or clerical activities, including but not limited to:

- (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
- (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or
- (3) Accompanying an active lawyer-licensed paraprofessional in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active lawyer-licensed paraprofessional who will appear as the representative of the client.

(d) Prior to or at the time of employing, associating in practice with, or assisting a person\* the licensed paraprofessional lawyer knows\* or reasonably should know\* is an ineligible person, the lawyer licensed paraprofessional shall serve upon the State Bar written\* notice of the employment, including a full description of such person's current bar licensee status. The written\* notice shall also list the activities prohibited in paragraph (b) and state that the ineligible person will not perform such activities. The licensed paraprofessional lawyer shall serve similar written\* notice upon each client on whose specific matter such person\* will work, prior to or at the time of employing, associating with, or assisting such person\* to work on the client's specific matter. The lawyer licensed paraprofessional shall obtain proof of service of the client's written\* notice and shall retain such proof and a true and correct copy of the client's written\* notice for two years following termination of the lawyer licensed paraprofessional's employment by the client.

(e) A lawyer licensed paraprofessional may, without client or State Bar notification, employ, associate in practice with, or assist an ineligible person whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.

(f) When the lawyer licensed paraprofessional no longer employs, associates in practice with, or assists the ineligible person, the lawyer licensed paraprofessional shall promptly serve upon the State Bar written\* notice of the termination.

#### **Comment**

[Reserved]

### **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 directly or indirectly with an individual 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 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 a 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.

(c) 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:

(1) 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;

(2) 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

(3) 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.

(e) A licensed paraprofessional shall not practice in a law firm\* with a lawyer if:

(1) licensed paraprofessionals direct or regulate any lawyer's professional judgment in rendering legal services;

(2) licensed paraprofessionals have supervisory authority over any lawyer; or

(3) licensed paraprofessionals possess a majority ownership interest or exercise controlling managerial authority in the firm;

(f) 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, a licensed paraprofessional referral service unless it complies with such Minimum Standards for Licensed Paraprofessional Referral Services.

(g) 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.

#### **Comment**

[Reserved]

**Rule 5.4 Financial and Similar Arrangements with Lawyers and Nonlawyer licensees**  
**(Proposed Rule – Redline Version)**

(a) A lawyer licensed paraprofessional or law firm\* shall not share legal fees directly or indirectly with an ~~nonlawyer person\*~~ individual 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 lawyer licensed paraprofessional with the lawyer 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 lawyer licensed paraprofessional's death, to the lawyer licensed paraprofessional's estate or to one or more specified persons;\*

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

(3) a lawyer licensed paraprofessional or law firm\* may include ~~nonlawyer~~ 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 ~~or the State Bar Act~~;

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

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

(c) A lawyer licensed paraprofessional shall not permit a person\* who recommends, employs, or pays the lawyer licensed paraprofessional to render legal services for another to direct or regulate the lawyer licensed paraprofessional's

independent professional judgment or interfere with the ~~lawyer~~licensed paraprofessional-client relationship in rendering legal services.

(d) A ~~lawyer~~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:

(1) ~~an individual who is not a lawyer or a licensed paraprofessional~~nonlawyer owns any interest in it, except that a fiduciary representative of a lawyer's or ~~licensed paraprofessional~~licensed paraprofessional's estate may hold the lawyer's or ~~licensed paraprofessional~~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~~nonlawyer is a director or officer of the corporation or occupies a position of similar responsibility in any other form of organization; or

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

(e) A licensed paraprofessional shall not practice in a law firm\* with a lawyer if:

(1) licensed paraprofessionals direct or regulate any lawyer's professional judgment in rendering legal services;

(2) licensed paraprofessionals have ~~direct~~ supervisory authority over any lawyer; or

(3) licensed paraprofessionals possess a majority ownership interest or exercise controlling managerial authority in the firm;

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

(g) A ~~lawyer~~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 ~~lawyer~~licensed paraprofessional's independent professional judgment, or with the ~~lawyer~~licensed paraprofessional-client relationship, or allows or aids any person\* to practice law in violation of these rules or ~~the State Bar Act~~applicable law.

#### Comment

[Reserved]

### Rule 5.5 Unauthorized Practice of Law (Proposed Rule – Clean Version)

Licensed paraprofessionals admitted to practice law in California shall not:

- (a) practice law in California beyond the permissible scope of their license;
- (b) hold out or otherwise represent to the public that the licensed paraprofessional is permitted to practice law beyond the permissible scope of their license;
- (c) practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction;  
or
- (d) knowingly\* assist a person\* in the unauthorized practice of law in California or any other jurisdiction.

**Comment**

[Reserved]

**Rule 5.5 Unauthorized Practice of Law; ~~Multijurisdictional Practice of Law~~  
(Proposed Rule – Redline Version)**

~~(a) A lawyer~~Licensed paraprofessionals admitted to practice law in California shall not:

~~(1a)~~ practice law in California beyond the permissible scope of their a;

~~(b)~~ hold out or otherwise represent to the public that the licensed paraprofessional is permitted to practice law beyond the permissible scope of their license;

~~(c)~~ practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction;  
or

~~(d2)~~ knowingly\* assist a person\* in the unauthorized practice of law in ~~that jurisdiction~~California or any other jurisdiction.

~~(b) A paraprofessional lawyer who is not admitted to practice law in California shall not:~~

~~(1) except as authorized by these rules or other law, establish or maintain a resident office or other systematic or continuous presence in California for the practice of law; or~~

~~(2) hold out to the public or otherwise represent that the paraprofessional lawyer is admitted to practice law in California.~~

**Comment**

[Reserved]

**Rule 5.6 Restrictions on a Licensed Paraprofessional's Right to Practice  
(Proposed Rule – Clean Version)**

(a) Unless authorized by law, a licensed paraprofessional shall not participate in offering or making:

(1) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a licensed paraprofessional to practice after termination of the relationship, except an agreement that concerns benefits upon retirement; or

(2) an agreement that imposes a restriction on a licensed paraprofessional's right to practice in connection with a settlement of a client controversy, or otherwise.

(b) A licensed paraprofessional shall not participate in offering or making an agreement which precludes the reporting of a violation of these rules.

**Comment**

[Reserved]

**Rule 5.6 Restrictions on a ~~Lawyer~~Licensed Paraprofessional's Right to Practice  
(Proposed Rule – Redline Version)**

- (a) Unless authorized by law, a ~~lawyer~~licensed paraprofessional shall not participate in offering or making:
- (1) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a ~~lawyer~~licensed paraprofessional to practice after termination of the relationship, except an agreement that concerns benefits upon retirement; or
  - (2) an agreement that imposes a restriction on a ~~lawyer~~licensed paraprofessional's right to practice in connection with a settlement of a client controversy, or otherwise.
- (b) A ~~lawyer~~licensed paraprofessional shall not participate in offering or making an agreement which precludes the reporting of a violation of these rules.

~~(c) This rule does not prohibit an agreement that is authorized by Business and Professions Code sections 6092.5, subdivision (i) or 6093.~~

**Comment**

[Reserved]

**Rule 5.7 [Reserved]**

**CHAPTER 6. PUBLIC SERVICE**

**Rule 6.1 [Reserved]**

**Rule 6.2 [Reserved]**

**Rule 6.3 Membership in Legal Services Organization  
(Proposed Rule – Clean Version)**

A licensed paraprofessional may serve as a director, officer or member of a legal services organization, apart from the law firm\* in which the licensed paraprofessional practices, notwithstanding that the organization serves persons\* having interests adverse to a client of the licensed paraprofessional. The licensed paraprofessional shall not knowingly\* participate in a decision or action of the organization:

- (a) if participating in the decision or action would be incompatible with the licensed paraprofessional's obligations to a client under rules 1.6(a), 1.7, 1.9, or 1.18; or
- (b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the licensed paraprofessional.

**Comment**

[Reserved]

**Rule 6.3 Membership in Legal Services Organization**

**(Proposed Rule – Redline Version)**

A lawyer licensed paraprofessional may serve as a director, officer or member of a legal services organization, apart from the law firm\* in which the lawyer licensed paraprofessional practices, notwithstanding that the organization serves persons\* having interests adverse to a client of the lawyer licensed paraprofessional. The lawyer licensed paraprofessional shall not knowingly\* participate in a decision or action of the organization:

- (a) if participating in the decision or action would be incompatible with the lawyer licensed paraprofessional's obligations to a client under ~~Business and Professions Code section 6068, subdivision (e)(1)~~ or rules 1.6(a), 1.7, 1.9, or 1.18; or
- (b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer licensed paraprofessional.

**Comment**

[Reserved]

**Rule 6.4 [Reserved]**

**Rule 6.5 Limited Legal Services Programs  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional who, under the auspices of a program sponsored by a court, government agency, bar association, law school, or nonprofit organization, provides short-term limited legal services to a client without expectation by either the licensed paraprofessional or the client that the licensed paraprofessional will provide continuing representation in the matter:
  - (1) is subject to rules 1.7 and 1.9(a) only if the licensed paraprofessional knows\* that the representation of the client involves a conflict of interest; and
  - (2) is subject to rule 1.10 only if the licensed paraprofessional knows\* that another licensed paraprofessional or a lawyer associated with the licensed paraprofessional in a law firm\* is prohibited from representation by rule 1.7 or 1.9(a) or Lawyer RPC rule 1.7 or 1.9(a) with respect to the matter.
- (b) Except as provided in paragraph (a)(2), rule 1.10 is inapplicable to a representation governed by this rule.
- (c) The personal disqualification of a licensed paraprofessional participating in the program will not be imputed to other licensed paraprofessional or lawyers participating in the program.

**Comment**

[Reserved]

**Rule 6.5 Limited Legal Services Programs  
(Proposed Rule – Redline Version)**

- (a) A lawyer licensed paraprofessional who, under the auspices of a program sponsored by a court, government agency, bar association, law school, or nonprofit organization, provides short-term limited legal services to a client without expectation by either the lawyer licensed paraprofessional or the client that the lawyer licensed paraprofessional will provide continuing representation in the matter:

(1) is subject to rules 1.7 and 1.9(a) only if the lawyer licensed paraprofessional knows\* that the representation of the client involves a conflict of interest; and

(2) is subject to rule 1.10 only if the lawyer licensed paraprofessional knows\* that another lawyer licensed paraprofessional or a lawyer associated with the lawyer licensed paraprofessional in a law firm\* is prohibited from representation by rule 1.7 or 1.9(a) or Lawyer RPC rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), rule 1.10 is inapplicable to a representation governed by this rule.

(c) The personal disqualification of a lawyer licensed paraprofessional participating in the program will not be imputed to other paraprofessionals licensed paraprofessional or lawyers participating in the program.

**Comment**

[Reserved]

**CHAPTER 7.  
INFORMATION ABOUT LEGAL SERVICES**

**Rule 7.1 Communications Concerning a Licensed Paraprofessional’s Services  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not make a false or misleading communication about the licensed paraprofessional or the licensed paraprofessional’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the communication considered as a whole not materially misleading.

(b) The Board of Trustees of the State Bar may formulate and adopt standards as to communications that will be presumed to violate rule 7.1, 7.2, 7.3, or 7.5. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these rules. “Presumption affecting the burden of proof” means that presumption defined in Evidence Code sections 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all licensed paraprofessional.

**Comment**

[Reserved]

**Rule 7.1 Communications Concerning a Lawyer Licensed Paraprofessional’s Services  
(Proposed Rule – Redline Version)**

(a) A lawyer licensed paraprofessional shall not make a false or misleading communication about the lawyer licensed paraprofessional or the lawyer licensed paraprofessional’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the communication considered as a whole not materially misleading.

(b) The Board of Trustees of the State Bar may formulate and adopt standards as to communications that will be presumed to violate rule 7.1, 7.2, 7.3, ~~7.4~~ or 7.5. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these rules. “Presumption affecting the burden of proof” means that presumption defined in Evidence Code sections 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyer licensed paraprofessionals.

**Comment**

[Reserved]

**Rule 7.2 Advertising  
(Proposed Rule – Clean Version)**

- (a) Subject to the requirements of rules 7.1 and 7.3, a licensed paraprofessional may advertise services through any written,\* recorded or electronic means of communication, including public media.
- (b) A licensed paraprofessional shall not compensate, promise or give anything of value to a person\* for the purpose of recommending or securing the services of the licensed paraprofessional or the licensed paraprofessional’s law firm,\* except that a licensed paraprofessional may:
- (1) pay the reasonable\* costs of advertisements or communications permitted by this rule;
  - (2) pay the usual charges of a legal services plan or a qualified licensed paraprofessional referral service. A qualified licensed paraprofessional referral service is a licensed paraprofessional referral service established, sponsored and operated in accordance with the State Bar of California’s Minimum Standards for a Licensed paraprofessional Referral Service in California;
  - (3) pay for a law practice in accordance with rule 1.17;
  - (4) refer clients to another licensed paraprofessional, a lawyer or a nonlawyerprofessional pursuant to an arrangement not otherwise prohibited under these rules that provides for the other person\* to refer clients or customers to the licensed paraprofessional, if:
    - (i) the reciprocal referral arrangement is not exclusive; and
    - (ii) the client is informed of the existence and nature of the arrangement;
  - (5) offer or give a gift or gratuity to a person\* having made a recommendation resulting in the employment of the licensed paraprofessional or the licensed paraprofessional’s law firm,\* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.
- (c) Any communication made pursuant to this rule shall include: (1) the name and contact information of at least one lawyer, licensed paraprofessional or law firm\* responsible for its content, (2) include in the communication at least one licensed paraprofessional’s license number; and (3) include in the communication a clear and conspicuous statement that the licensed paraprofessional is not a lawyer. (d) If a licensed paraprofessional’s law firm maintains a website advertising the licensed paraprofessional’s services, the website must include a page that contains all the mandatory disclosures required under rule 1.4.2(a).

**Comment**

[Reserved]

**Rule 7.2 Advertising  
(Proposed Rule – Redline Version)**

- (a) Subject to the requirements of rules 7.1 and 7.3, a ~~lawyer~~licensed paraprofessional may advertise services through any written,\* recorded or electronic means of communication, including public media.

(b) A lawyer licensed paraprofessional shall not compensate, promise or give anything of value to a person\* for the purpose of recommending or securing the services of the lawyer licensed paraprofessional or the lawyer licensed paraprofessional's law firm,\* except that a lawyer licensed paraprofessional may:

- (1) pay the reasonable\* costs of advertisements or communications permitted by this rule;
- (2) pay the usual charges of a legal services plan or a qualified lawyer licensed paraprofessional referral service. A qualified lawyer licensed paraprofessional referral service is a lawyer licensed paraprofessional referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a Lawyer Licensed Paraprofessional Referral Service in California;
- (3) pay for a law practice in accordance with rule 1.17;
- (4) refer clients to another lawyer licensed paraprofessional, a lawyer or a nonlawyer-professional pursuant to an arrangement not otherwise prohibited under these Rules-rules or the State Bar Act that provides for the other person\* to refer clients or customers to the lawyer licensed paraprofessional, if:
  - (i) the reciprocal referral arrangement is not exclusive; and
  - (ii) the client is informed of the existence and nature of the arrangement;
- (5) offer or give a gift or gratuity to a person\* having made a recommendation resulting in the employment of the lawyer licensed paraprofessional or the lawyer licensed paraprofessional's law firm,\* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.

(c) Any communication made pursuant to this rule shall include: (1) the name and address-contact information of at least one lawyer, licensed paraprofessional or law firm\* responsible for its content, (2) include in the communication at least one licensed paraprofessional's license number; and (3) include in the communication a clear and conspicuous statement that the licensed paraprofessional is not a lawyer.

(d) If a licensed paraprofessional's law firm maintains a website advertising the licensed paraprofessional's services, the website must include a page that contains all the mandatory disclosures required under rule 1.4.2(a).

#### **Comment**

[Reserved]

### **Rule 7.3 Solicitation of Clients (Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the licensed paraprofessional's pecuniary gain, unless the person\* contacted:

- (1) is a lawyer or a licensed paraprofessional; or
- (2) has a family, close personal, or prior professional relationship with the licensed paraprofessional.

(b) A licensed paraprofessional shall not solicit professional employment by written,\* recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the person\* being solicited has made known\* to the licensed paraprofessional a desire not to be solicited by the licensed paraprofessional; or
  - (2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress or harassment.
- (c) Every written,\* recorded or electronic communication from a licensed paraprofessional soliciting professional employment from any person\* known\* to be in need of legal services in a particular matter shall include:
- (1) the word “Advertisement” or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person\* specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.
  - (2) include the name, contact information, and license number of the licensed paraprofessional responsible for the content of the communication;
  - (3) include a clear and conspicuous statement that the paraprofessional is not a lawyer; and
  - (4) if an advertisement subject to this subdivision is in a language other than English, the statements required by this subdivision shall be in the same language as the advertisement.
- (d) A licensed paraprofessional shall not act as a runner or capper for another licensed paraprofessional, nor solicit another person to act as a runner or capper for the licensed paraprofessional.
- (1) For purposes of paragraph (d), a “runner or capper” is any person, firm, association, or corporation acting for consideration in any manner or in any capacity as an agent for an attorney, a paraprofessional, or a law firm, in the solicitation or procurement of business for the licensed paraprofessional except as otherwise authorized by these rules.
  - (2) Nothing in paragraph (d) shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by these rules.
- (e) Notwithstanding the prohibitions in paragraph (a), a licensed paraprofessional may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the licensed paraprofessional that uses in-person, live telephone or real-time electronic contact to solicit memberships or subscriptions for the plan from persons\* who are not known\* to need legal services in a particular matter covered by the plan.
- (f) As used in this rule, the terms “solicitation” and “solicit” refer to an oral or written\* targeted communication initiated by or on behalf of the licensed paraprofessional that is directed to a specific person\* and that offers to provide, or can reasonably\* be understood as offering to provide, legal services.

**Comment**

[Reserved]

**Rule 7.3 Solicitation of Clients  
(Proposed Rule – Redline Version)**

- (a) A lawyerlicensed paraprofessional shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the lawyerlicensed paraprofessional's pecuniary gain, unless the person\* contacted:
- (1) is a lawyer or a licensed paraprofessional; or
  - (2) has a family, close personal, or prior professional relationship with the lawyerlicensed paraprofessional.

(b) A lawyer licensed paraprofessional shall not solicit professional employment by written,\* recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the person\* being solicited has made known\* to the lawyer licensed paraprofessional a desire not to be solicited by the lawyer licensed paraprofessional; or
- (2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress or harassment.

(c) Every written,\* recorded or electronic communication from a lawyer licensed paraprofessional soliciting professional employment from any person\* known\* to be in need of legal services in a particular matter shall include:

- (1) the word “Advertisement” or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person\* specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.
- (2) include the name, contact information, and license number of the licensed paraprofessional responsible for the content of the communication;
- (3) include a clear and conspicuous statement that the paraprofessional is not a lawyer; and
- (4) if an advertisement subject to this subdivision is in a language other than English, the statements required by this subdivision shall be in the same language as the advertisement.

(d) A licensed paraprofessional shall not act as a runner or capper for another licensed paraprofessional, nor solicit another person to act as a runner or capper for the licensed paraprofessional.

- (1) For purposes of paragraph (d), a “runner or capper” is any person, firm, association, or corporation acting for consideration in any manner or in any capacity as an agent for an attorney, a paraprofessional, or a law firm, in the solicitation or procurement of business for the licensed paraprofessional except as otherwise authorized by these rules.
- (2) Nothing in paragraph (d) shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by these rules.

(e) Notwithstanding the prohibitions in paragraph (a), a lawyer licensed paraprofessional may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer licensed paraprofessional that uses in-person, live telephone or real-time electronic contact to solicit memberships or subscriptions for the plan from persons\* who are not known\* to need legal services in a particular matter covered by the plan.

(ef) As used in this rule, the terms “solicitation” and “solicit” refer to an oral or written\* targeted communication initiated by or on behalf of the lawyer licensed paraprofessional that is directed to a specific person\* and that offers to provide, or can reasonably\* be understood as offering to provide, legal services.

**Comment**

[Reserved]

**Rule 7.4 [RESERVED]  
(Proposed Rule – Clean Version)**

**Rule 7.4 ~~[RESERVED] Communication of Licensed Fields of Practice and Authorized Legal Services and Specialization~~**  
**(Proposed Rule – Redline Version)**

~~(a) A lawyer shall not state that the lawyer is a certified specialist licensed to practice in a particular field of law, unless:~~

~~(1) the lawyer is currently certified currently licensed as a specialist by the Board of Legal Specialization, or any other entity accredited by the State Bar to practice in that particular field of law to designate specialists pursuant to standards adopted by the Board of Trustees; and~~

~~(2) the name of the certifying organization is clearly identified in the communication.~~

~~(b) Notwithstanding paragraph (a), a lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may also communicate that his or her practice specializes in, is limited to, or is concentrated in a particular field of law, subject to the requirements of rule 7.1.~~

**Rule 7.5 Firm\* Names and Trade Names**  
**(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not use a firm\* name, trade name or other professional designation that violates rule 7.1.

(b) A licensed paraprofessional in private practice shall not use a firm\* name, trade name or other professional designation that states or implies a relationship with a government agency or with a public or charitable legal services organization, or otherwise violates rule 7.1.

(c) A licensed paraprofessional shall not state or imply that the licensed paraprofessional practices in or has a professional relationship with a law firm\* or other organization unless that is the fact.

**Comment**

[Reserved]

**Rule 7.5 Firm\* Names and Trade Names**  
**(Proposed Rule – Redline Version)**

(a) A ~~lawyer licensed paraprofessional~~ shall not use a firm\* name, trade name or other professional designation that violates rule 7.1.

(b) A ~~lawyer licensed paraprofessional~~ in private practice shall not use a firm\* name, trade name or other professional designation that states or implies a relationship with a government agency or with a public or charitable legal services organization, or otherwise violates rule 7.1.

(c) A ~~lawyer licensed paraprofessional~~ shall not state or imply that the ~~lawyer licensed paraprofessional~~ practices in or has a professional relationship with a law firm\* or other organization unless that is the fact.

**Comment**

[Reserved]

**Rule 7.6 [Reserved]**

**CHAPTER 8.  
MAINTAINING THE INTEGRITY  
OF THE PROFESSION**

**Rule 8.1 False Statement Regarding Application for Admission to Practice Law  
(Proposed Rule – Clean Version)**

- (a) An applicant for admission to practice law as a licensed paraprofessional shall not, in connection with that person's\* own application for admission, make a statement of material fact that the licensed paraprofessional knows\* to be false, or make such a statement with reckless disregard as to its truth or falsity.
- (b) A licensed paraprofessional shall not, in connection with another person's\* application for admission to practice law as a lawyer or licensed paraprofessional, make a statement of material fact that the licensed paraprofessional knows\* to be false.
- (c) An applicant for admission to practice law as a licensed paraprofessional, or a licensed paraprofessional in connection with an application for admission, shall not fail to disclose a fact necessary to correct a statement known\* by the applicant or the licensed paraprofessional to have created a material misapprehension in the matter, except that this rule does not authorize disclosure of information protected by rule 1.6.
- (d) As used in this rule, "admission to practice law" includes admission or readmission to licensure in the State Bar; reinstatement to active licensure in the State Bar; and any similar process relating to admission or certification to practice law in California or elsewhere.

**Comment**

[Reserved]

**Rule 8.1 False Statement Regarding Application for Admission to Practice Law  
(Proposed Rule – Redline Version)**

- (a) An applicant for admission to practice law as a licensed paraprofessional shall not, in connection with that person's\* own application for admission, make a statement of material fact that the lawyer/licensed paraprofessional knows\* to be false, or make such a statement with reckless disregard as to its truth or falsity.
- (b) A lawyer/licensed paraprofessional shall not, in connection with another person's\* application for admission to practice law as a lawyer or licensed paraprofessional, make a statement of material fact that the lawyer/licensed paraprofessional knows\* to be false.
- (c) An applicant for admission to practice law as a licensed paraprofessional, or a lawyer/licensed paraprofessional in connection with an application for admission, shall not fail to disclose a fact necessary to correct a statement known\* by the applicant or the lawyer/licensed paraprofessional to have created a material misapprehension in the matter, except that this rule does not authorize disclosure of information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6.
- (d) As used in this rule, "admission to practice law" includes admission or readmission to membership licensure in the State Bar; reinstatement to active membership licensure in the State Bar; and any similar process relating to admission or certification to practice law in California or elsewhere.

**Comment**

[Reserved]

**Rule 8.1.1 Compliance with Conditions of Discipline  
(Proposed Rule – Clean Version)**

A licensed paraprofessional shall comply with the terms and conditions attached to any public reproof, or to other discipline administered by the State Bar pursuant to.

**Comment**

[Reserved]

**Rule 8.1.1 Compliance with Conditions of Discipline and Agreements in Lieu of Discipline  
(Proposed Rule – Redline Version)**

A ~~lawyer~~licensed paraprofessional shall comply with the terms and conditions attached to ~~any agreement in lieu of discipline~~, any public ~~or private~~ reproof, or to other discipline administered by the State Bar pursuant to ~~Business and Professions Code sections 6077 and 6078 and California Rules of Court, rule 9.19.~~

**Comment**

[Reserved]

**Rule 8.2 Judicial Officials  
(Proposed Rule – Clean Version)**

A licensed paraprofessional shall not make a statement of fact that the licensed paraprofessional knows\* to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or judicial officer, or of a candidate for election or appointment to judicial office.

**Comment**

[Reserved]

**Rule 8.2 Judicial Officials  
(Proposed Rule – Redline Version)**

~~(a) — A lawyer licensed paraprofessional shall not make a statement of fact that the lawyer licensed paraprofessional knows\* to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or judicial officer, or of a candidate for election or appointment to judicial office.~~

~~(b) — A lawyer who is a candidate for judicial office in California shall comply with canon 5 of the California Code of Judicial Ethics. For purposes of this rule, “candidate for judicial office” means a lawyer seeking judicial office by election. The determination of when a lawyer is a candidate for judicial office by election is defined in the terminology section of the California Code of Judicial Ethics. A lawyer’s duty to comply with this rule shall end when the lawyer announces withdrawal of the lawyer’s candidacy or when the results of the election are final, whichever occurs first.~~

~~(c) — A lawyer who seeks appointment to judicial office shall comply with canon 5B(1) of the California Code of Judicial Ethics. A lawyer becomes an applicant seeking judicial office by appointment at the time of first submission of an application or personal data questionnaire to the appointing authority. A lawyer’s duty to comply with this rule shall end when the lawyer advises the appointing authority of the withdrawal of the lawyer’s application.~~

**Comment**

[Reserved]

### Rule 8.3 [Reserved]

### Rule 8.4 Misconduct (Proposed Rule – Clean Version)

It is professional misconduct for a licensed paraprofessional to:

- (a) violate these rules, knowingly\* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the licensed paraprofessional's honesty, trustworthiness, or fitness as a licensed paraprofessional in other respects;
- (c) engage in conduct involving dishonesty, fraud,\* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, or other law; or
- (f) knowingly\* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).
- (g) report suspected immigration status or threaten to report suspected immigration status of a witness or party to a civil or administrative action or his or her family member to a federal, state, or local agency because the witness or party exercises or has exercised a right related to his or her employment, broadly interpreted.
- (h) advocate the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means.

#### Comment

[Reserved]

### Rule 8.4 Misconduct (Proposed Rule – Redline Version)

It is professional misconduct for a lawyer licensed paraprofessional to:

- (a) violate these rules ~~or the State Bar Act~~, knowingly\* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer licensed paraprofessional's honesty, trustworthiness, or fitness as a lawyer licensed paraprofessional in other respects;
- (c) engage in conduct involving dishonesty, fraud,\* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, ~~the State Bar Act~~, or other law; or

(f) knowingly\* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, “judge” and “judicial officer” have the same meaning as in rule 3.5(c).

(g) report suspected immigration status or threaten to report suspected immigration status of a witness or party to a civil or administrative action or his or her family member to a federal, state, or local agency because the witness or party exercises or has exercised a right related to his or her employment, broadly interpreted.

(h) advocate the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means.

#### **Comment**

[Reserved]

### **Rule 8.4.1 Prohibited Discrimination, Harassment and Retaliation (Proposed Rule – Clean Version)**

(a) In representing a client, or in terminating or refusing to accept the representation of any client, a licensed paraprofessional shall not:

- (1) unlawfully harass or unlawfully discriminate against persons\* on the basis of any protected characteristic; or
- (2) unlawfully retaliate against persons.\*

(b) In relation to a law firm’s operations, a licensed paraprofessional shall not:

- (1) on the basis of any protected characteristic,
  - (i) unlawfully discriminate or knowingly\* permit unlawful discrimination;
  - (ii) unlawfully harass or knowingly\* permit the unlawful harassment of an employee, an applicant, an unpaid intern or volunteer, or a person\* providing services pursuant to a contract; or
  - (iii) unlawfully refuse to hire or employ a person\*, or refuse to select a person\* for a training program leading to employment, or bar or discharge a person\* from employment or from a training program leading to employment, or discriminate against a person\* in compensation or in terms, conditions, or privileges of employment; or
- (2) unlawfully retaliate against persons.\*

(c) For purposes of this rule:

- (1) “protected characteristic” means race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, military and veteran status, or other category of discrimination prohibited by applicable law, whether the category is actual or perceived;
- (2) “knowingly permit” means to fail to advocate corrective action where the licensed paraprofessional knows\* of a discriminatory policy or practice that results in the unlawful discrimination or harassment prohibited by paragraph (b);
- (3) “unlawfully” and “unlawful” shall be determined by reference to applicable state and federal statutes and decisions making unlawful discrimination or harassment in employment and in offering goods and services to the public; and

- (4) “retaliate” means to take adverse action against a person\* because that person\* has (i) opposed, or (ii) pursued, participated in, or assisted any action alleging, any conduct prohibited by paragraphs (a)(1) or (b)(1) of this rule.
- (d) A licensed paraprofessional who is the subject of a State Bar investigation or State Bar disciplinary proceeding alleging a violation of this rule shall promptly notify the State Bar of any criminal, civil, or administrative action premised, whether in whole or part, on the same conduct that is the subject of the State Bar investigation or State Bar disciplinary proceeding.
- (e) Upon being issued a notice of a disciplinary charge under this rule, a licensed paraprofessional shall:
- (1) if the notice is of a disciplinary charge under paragraph (a) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Department of Justice, Coordination and Review Section; or
  - (2) if the notice is of a disciplinary charge under paragraph (b) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Equal Employment Opportunity Commission.
- (f) This rule shall not preclude a licensed paraprofessional from:
- (1) declining or withdrawing from a representation as required or permitted by rule 1.16; or
  - (2) providing advice and engaging in advocacy as otherwise required or permitted by these rules and applicable law.

**Comment**

[Reserved]

**Rule 8.4.1 Prohibited Discrimination, Harassment and Retaliation  
(Proposed Rule – Redline Version)**

- (a) In representing a client, or in terminating or refusing to accept the representation of any client, a lawyerlicensed paraprofessional shall not:
- (1) unlawfully harass or unlawfully discriminate against persons\* on the basis of any protected characteristic; or
  - (2) unlawfully retaliate against persons.\*
- (b) In relation to a law firm’s operations, a lawyerlicensed paraprofessional shall not:
- (1) on the basis of any protected characteristic,
    - (i) unlawfully discriminate or knowingly\* permit unlawful discrimination;
    - (ii) unlawfully harass or knowingly\* permit the unlawful harassment of an employee, an applicant, an unpaid intern or volunteer, or a person\* providing services pursuant to a contract; or
    - (iii) unlawfully refuse to hire or employ a person\*, or refuse to select a person\* for a training program leading to employment, or bar or discharge a person\* from employment or from a training program leading to employment, or discriminate against a person\* in compensation or in terms, conditions, or privileges of employment; or
  - (2) unlawfully retaliate against persons.\*

- (c) For purposes of this rule:
- (1) “protected characteristic” means race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, military and veteran status, or other category of discrimination prohibited by applicable law, whether the category is actual or perceived;
  - (2) “knowingly permit” means to fail to advocate corrective action where the lawyer licensed paraprofessional knows\* of a discriminatory policy or practice that results in the unlawful discrimination or harassment prohibited by paragraph (b);
  - (3) “unlawfully” and “unlawful” shall be determined by reference to applicable state and federal statutes and decisions making unlawful discrimination or harassment in employment and in offering goods and services to the public; and
  - (4) “retaliate” means to take adverse action against a person\* because that person\* has (i) opposed, or (ii) pursued, participated in, or assisted any action alleging, any conduct prohibited by paragraphs (a)(1) or (b)(1) of this rule.
- (d) A lawyer licensed paraprofessional who is the subject of a State Bar investigation or State Bar Court-disciplinary proceeding alleging a violation of this rule shall promptly notify the State Bar of any criminal, civil, or administrative action premised, whether in whole or part, on the same conduct that is the subject of the State Bar investigation or State Bar Court-disciplinary proceeding.
- (e) Upon being issued a notice of a disciplinary charge under this rule, a lawyer licensed paraprofessional shall:
- (1) if the notice is of a disciplinary charge under paragraph (a) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Department of Justice, Coordination and Review Section; or
  - (2) if the notice is of a disciplinary charge under paragraph (b) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Equal Employment Opportunity Commission.
- (f) This rule shall not preclude a lawyer licensed paraprofessional from:
- ~~(1) representing a client alleged to have engaged in unlawful discrimination, harassment, or retaliation;~~
  - ~~(2)~~ declining or withdrawing from a representation as required or permitted by rule 1.16; or
  - ~~(3)~~ providing advice and engaging in advocacy as otherwise required or permitted by these rules and applicable law and the State Bar Act.

**Comment**

[Reserved]

**Rule 8.5 Disciplinary Authority; Choice of Law  
(Proposed Rule – Clean Version)**

- (a) Disciplinary Authority.

A licensed paraprofessional admitted to practice in California is subject to the disciplinary authority of California, regardless of where the licensed paraprofessional’s conduct occurs. . A licensed paraprofessional may be subject to the disciplinary authority of both California and another jurisdiction for the same conduct.

(b) Choice of Law.

In any exercise of the disciplinary authority of California, the rules of professional conduct to be applied shall be as follows:

- (1) for conduct in connection with a matter pending before a tribunal,\* the rules of the jurisdiction in which the tribunal\* sits, unless the rules of the tribunal\* provide otherwise; and
- (2) for any other conduct, the rules of the jurisdiction in which the licensed paraprofessional's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A licensed paraprofessional shall not be subject to discipline if the licensed paraprofessional's conduct conforms to the rules of a jurisdiction in which the licensed paraprofessional reasonably believes\* the predominant effect of the licensed paraprofessional's conduct will occur.

**Comment**

[Reserved]

**Rule 8.5 Disciplinary Authority; Choice of Law  
(Proposed Rule – Redline Version)**

(a) Disciplinary Authority.

A ~~lawyer~~licensed paraprofessional admitted to practice in California is subject to the disciplinary authority of California, regardless of where the ~~lawyer~~licensed paraprofessional's conduct occurs. ~~A lawyer not admitted in California is also subject to the disciplinary authority of California if the lawyer provides or offers to provide any legal services in California.~~ A ~~lawyer~~licensed paraprofessional may be subject to the disciplinary authority of both California and another jurisdiction for the same conduct.

(b) Choice of Law.

In any exercise of the disciplinary authority of California, the rules of professional conduct to be applied shall be as follows:

- (1) for conduct in connection with a matter pending before a tribunal,\* the rules of the jurisdiction in which the tribunal\* sits, unless the rules of the tribunal\* provide otherwise; and
- (2) for any other conduct, the rules of the jurisdiction in which the ~~lawyer~~licensed paraprofessional's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A ~~lawyer~~licensed paraprofessional shall not be subject to discipline if the ~~lawyer~~licensed paraprofessional's conduct conforms to the rules of a jurisdiction in which the ~~lawyer~~licensed paraprofessional reasonably believes\* the predominant effect of the ~~lawyer~~licensed paraprofessional's conduct will occur.

**Comment**

[Reserved]

## PROPOSED RULES FOR INDIVIDUAL VOTE

## CHAPTER 1.

LAWYERLICENSED PARAPROFESSIONAL-CLIENT RELATIONSHIP**Rule 1.4.2 Notice to Consumers Prior to Consultation with a Prospective Client  
(Proposed Rule – Clean Version)**

(a) Prior to a prospective client's consultation with a licensed paraprofessional for the purpose of retaining the licensed paraprofessional or securing legal services or advice from the licensed paraprofessional in the licensed paraprofessional's professional capacity, the licensed paraprofessional shall disclose orally and provide, at the time of the consultation or as soon thereafter as reasonably\* practicable the written\* disclosures to the prospective client in the prospective client's preferred language that:

- (1) the licensed paraprofessional is not a lawyer;
- (2) the licensed paraprofessional has a license to provide limited legal services, the area of practice in which the licensed paraprofessional is licensed, and that the licensed paraprofessional cannot provide all services that a lawyer can provide in this area of practice;
- (3) the prospective client may need to hire a lawyer if the legal services that the prospective client seeks are beyond the limited scope of the licensed paraprofessional's license;
- (4) there may be other alternative choices available for the prospective client to consider, including, but not limited to, 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, or potentially free legal services from a local legal aid organization if the prospective client qualifies;
- (5) a general description of the licensed paraprofessional's fee structure and billing methods; and
- (6) whether the licensed paraprofessional does or does not have professional liability insurance based on the licensed paraprofessional's reasonable knowledge\* at the time of the disclosure,

(b) If the licensed paraprofessional provides notice to the prospective client prior to consultation that the licensed paraprofessional does have professional liability insurance pursuant to paragraph (a)(6) and a licensed paraprofessional-client relationship is formed, the licensed paraprofessional shall inform the client in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional no longer has professional liability insurance during the representation of the client.

[Reserved]

**Rule 1.4.2 Notice to Consumers Prior to Consultation with a Prospective Client~~Disclosure of Professional Liability Insurance~~  
(Proposed Rule – Redline Version)**

(a) Prior to a prospective client's consultation with a licensed paraprofessional for the purpose of retaining the licensed paraprofessional or securing legal services or advice from the licensed paraprofessional in the licensed paraprofessional's professional capacity, the licensed paraprofessional shall disclose orally and provide, at the time of the consultation or as soon thereafter as reasonably\* practicable the written\* disclosures to the prospective client in the prospective client's preferred language that:

- (1) the licensed paraprofessional is not a lawyer;

## PROPOSED RULES FOR INDIVIDUAL VOTE

(2) the licensed paraprofessional has a license to provide limited legal services, the area of practice in which the licensed paraprofessional is licensed, and that the licensed paraprofessional cannot provide all services that a lawyer can provide in this area of practice;

(3) the prospective client may need to hire a lawyer if the legal services that the prospective client seeks are beyond the limited scope of the licensed paraprofessional's license;

(4) there may be other alternative choices available for the prospective client to consider, including, but not limited to, 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, or potentially free legal services from a local legal aid organization if the prospective client qualifies;

(5) a general description of the licensed paraprofessional's fee structure and billing methods; and

(6) whether the licensed paraprofessional does or does not have professional liability insurance based on the licensed paraprofessional's reasonable knowledge\* at the time of the disclosure,

~~(a) A licensed paraprofessional who knows\* or reasonably should know\* that the licensed paraprofessional does not have professional liability insurance shall inform a client in writing,\* at the time of the client's engagement of the licensed paraprofessional, that the licensed paraprofessional does not have professional liability insurance.~~

~~(b) If the licensed paraprofessional provides notice to the prospective client prior to consultation that the licensed paraprofessional does have professional liability insurance pursuant to paragraph (a)(6) and a licensed paraprofessional-client relationship is formed, the licensed paraprofessional shall inform the client in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional no longer has professional liability insurance during the representation of the client. If notice under paragraph (a) has not been provided at the time of a client's engagement of the licensed paraprofessional, the licensed paraprofessional shall inform the client in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional no longer has professional liability insurance during the representation of the client.~~

~~(c) This rule does not apply to:~~

~~(1) a licensed paraprofessional who knows\* or reasonably should know\* at the time of the client's engagement of the licensed paraprofessional that the licensed paraprofessional's legal representation of the client in the matter will not exceed four hours; provided that if the representation subsequently exceeds four hours, the licensed paraprofessional must comply with paragraphs (a) and (b);~~

~~(2) a licensed paraprofessional who is employed as a government licensed paraprofessional or in-house counsel when that licensed paraprofessional is representing or providing legal advice to a client in that capacity;~~

~~(3) a licensed paraprofessional who is rendering legal services in an emergency to avoid foreseeable prejudice to the rights or interests of the client;~~

~~(4) a licensed paraprofessional who has previously advised the client in writing\* under paragraph (a) or (b) that the licensed paraprofessional does not have professional liability insurance.~~

[Reserved]

## PROPOSED RULES FOR INDIVIDUAL VOTE

### 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 legal services may be available to low-income individuals from a legal aid program if the client qualifies;
- (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.

#### Comments

[Reserved]

### 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 legal services may be available to low-income individuals from a legal aid program if the client qualifies;
- (3) The potential need to hire a lawyer if needed services go beyond the limited scope of legal practice under the paraprofessional's license;

## PROPOSED RULES FOR INDIVIDUAL VOTE

(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.

### Comments

[Reserved]

## PROPOSED RULES FOR INDIVIDUAL VOTE

### Rule 1.5 Fees for Legal Services (Proposed Rule – Clean Version)

- (a) A licensed paraprofessional shall not make an agreement for, charge, or collect an unconscionable or illegal fee.
- (b) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. The factors to be considered in determining the unconscionability of a fee include without limitation the following:
- (1) whether the licensed paraprofessional engaged in fraud\* or overreaching in negotiating or setting the fee;
  - (2) whether the licensed paraprofessional has failed to disclose material facts;
  - (3) the amount of the fee in proportion to the value of the services performed;
  - (4) the relative sophistication of the licensed paraprofessional and the client;
  - (5) the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
  - (6) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the licensed paraprofessional;
  - (7) the amount involved and the results obtained;
  - (8) the time limitations imposed by the client or by the circumstances;
  - (9) the nature and length of the professional relationship with the client;
  - (10) the experience, reputation, and ability of the licensed paraprofessional performing the services;
  - (11) whether the fee is fixed or contingent;
  - (12) the time and labor required; and
  - (13) whether the client gave informed consent\* to the fee.
  - (14) the fee customarily charged by licensed paraprofessionals and lawyers in the locality for similar legal service.
- (c) A licensed paraprofessional shall not make an agreement for, charge, or collect a contingent fee except in an enforcement of judgment matter within the scope of the licensed paraprofessional's licensure. Any contingent fee permitted under this paragraph shall not exceed thirty-three and one-third percent of the total value of the judgment subject to the enforcement action.
- (d) A licensed paraprofessional shall not make an agreement for, charge, or collect a fee that is denominated as "earned on receipt" or "non-refundable," or in similar terms. .]
- (e) A licensed paraprofessional may make an agreement for, charge, or collect a flat fee for specified legal services. A flat fee is a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the licensed paraprofessional providing those services.

## PROPOSED RULES FOR INDIVIDUAL VOTE

### Comment

[Reserved]

### Rule 1.5 Fees for Legal Services (Proposed Rule – Redline Version)

(a) A ~~lawyer~~licensed paraprofessional shall not make an agreement for, charge, or collect an unconscionable or illegal ~~fee~~.

(b) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. The factors to be considered in determining the unconscionability of a fee include without limitation the following:

- (1) whether the ~~lawyer~~licensed paraprofessional engaged in fraud\* or overreaching in negotiating or setting the fee;
- (2) whether the ~~lawyer~~licensed paraprofessional has failed to disclose material facts;
- (3) the amount of the fee in proportion to the value of the services performed;
- (4) the relative sophistication of the ~~licensed paraprofessional~~lawyer and the client;
- (5) the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (6) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the ~~licensed paraprofessional~~lawyer;
- (7) the amount involved and the results obtained;
- (8) the time limitations imposed by the client or by the circumstances;
- (9) the nature and length of the professional relationship with the client;
- (10) the experience, reputation, and ability of the ~~licensed paraprofessional~~lawyer or lawyers performing the services;
- (11) whether the fee is fixed or contingent;
- (12) the time and labor required; and
- (13) whether the client gave informed consent\* to the fee.

(14) the fee customarily charged by licensed paraprofessionals and lawyers in the locality for similar legal service.

(c) A ~~licensed paraprofessional~~lawyer shall not make an agreement for, charge, or collect:

(1) any fee in a family law matter, the payment or amount of which is contingent upon the securing of a dissolution or declaration of nullity of a marriage or upon the amount of spousal or child support, or property settlement in lieu thereof; a contingent fee except in an enforcement of judgment matter within the scope of the licensed paraprofessional's licensure. Any contingent fee permitted under this paragraph shall not exceed thirty-three and one-third percent of the total value of the judgment subject to the enforcement action. ☞

## PROPOSED RULES FOR INDIVIDUAL VOTE

~~(2) — a contingent fee for representing a defendant in a criminal case.~~

(d) A ~~licensed paraprofessional lawyer may shall not~~ make an agreement for, charge, or collect a fee that is denominated as “earned on receipt” or “non-refundable,” or in similar terms, ~~only if the fee is a true retainer and the client agrees in writing\* after disclosure that the client will not be entitled to a refund of all or part of the fee charged. A true retainer is a fee that a client pays to a lawyer to ensure the lawyer’s availability to the client during a specified period or on a specified matter, but not to any extent as compensation for legal services performed or to be performed.]~~

(e) A ~~lawyer~~ licensed paraprofessional may make an agreement for, charge, or collect a flat fee for specified legal services. A flat fee is a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the ~~lawyer~~ licensed paraprofessional providing those services.

### Comment

[Reserved]

## PROPOSED RULES FOR INDIVIDUAL VOTE

### Rule 1.5.1 Fee Divisions Among Licensed Paraprofessionals and With Lawyers (Proposed Rule – Clean Version)

- (a) Licensed paraprofessionals who are not in the same law firm\* shall not divide a fee for legal services unless:
- (1) the licensed paraprofessionals enter into a written\* agreement to divide the fee;
  - (2) the division is in proportion to the legal services performed by each licensed paraprofessional or each licensed paraprofessional assumes joint responsibility for the representation.
  - (3) the client has consented in writing,\* either at the time the licensed paraprofessionals enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessionals or law firms\* that are parties to the division; and (iii) the terms of the division; and
  - (4) the total fee charged by all licensed paraprofessionals is not increased solely by reason of the agreement to divide fees.
- (b) A licensed paraprofessional and a lawyer who are not in the same law firm\* shall not divide a fee for legal services unless:
- (1) the licensed paraprofessional and the lawyer enter into a written\* agreement to divide the fee;
  - (2) the division is in proportion to the legal services performed by licensed paraprofessional and the lawyer;
  - (3) the client has consented in writing,\* either at the time the licensed paraprofessional and the lawyer enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessional, the lawyer, or law firms\* that are parties to the division; and (iii) the terms of the division; and
  - (4) the total fee charged by all licensed paraprofessionals and lawyers is not increased solely by reason of the agreement to divide fees.
- (c) This rule does not apply to a division of fees pursuant to court order.

#### Comment

[Reserved]

### Rule 1.5.1 Fee Divisions Among ~~Lawyer~~Licensed Paraprofessionals and With Lawyers (Proposed Rule – Redline Version)

- (a) ~~Lawyer~~Licensed paraprofessionals who are not in the same law firm\* shall not divide a fee for legal services unless:
- (1) the ~~lawyer~~licensed paraprofessionals enter into a written\* agreement to divide the fee;
  - (2) the division is in proportion to the legal services performed by each licensed paraprofessional or each licensed paraprofessional assumes joint responsibility for the representation.
  - (23) the client has consented in writing,\* either at the time the ~~lawyer~~licensed paraprofessionals enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the ~~lawyer~~licensed paraprofessionals or law firms\* that are parties to the division; and (iii) the terms of the division; and

## PROPOSED RULES FOR INDIVIDUAL VOTE

~~(34)~~ the total fee charged by all ~~lawyer~~licensed paraprofessionals is not increased solely by reason of the agreement to divide fees.

(b) A licensed paraprofessional and a lawyer who are not in the same law firm\* shall not divide a fee for legal services unless:

(1) the licensed paraprofessional and the lawyer enter into a written\* agreement to divide the fee;

(2) the division is in proportion to the legal services performed by ~~each~~ licensed paraprofessional and the lawyer;

(3) the client has consented in writing,\* either at the time the licensed paraprofessional and the lawyer enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessional, the lawyer, or law firms\* that are parties to the division; and (iii) the terms of the division; and

(4) the total fee charged by all licensed paraprofessionals and lawyers is not increased solely by reason of the agreement to divide fees.

~~(b)~~ This rule does not apply to a division of fees pursuant to court order.

### Comment

[Reserved]

## PROPOSED RULES FOR INDIVIDUAL VOTE

### Rule 1.5.2 Written Agreement to Representation (Proposed Rule – Clean Version)

Prior to the performance of legal services for a fee, the licensed paraprofessional shall enter into a written\* agreement with the client in a separate writing,\* provided in the prospective client's preferred language, and signed by both the client and the licensed paraprofessional, that provides the licensed paraprofessional's name, specialty area, mailing address, street address, telephone numbers, facsimile numbers, internet address, and license number of the licensed paraprofessional, and includes the following provisions:

- (a) A clear and conspicuous disclosure that the licensed paraprofessional is not a lawyer and may only provide limited legal advice and services within the scope of the licensed paraprofessional's licensure. This statement shall be on the first page of the contract; in a type size, font, color, appearance, and location sufficiently noticeable for a client to read and comprehend them; in a print that contrasts with the background against which they appear; in larger type than the surrounding text; in a manner that clearly calls attention to the language;
- (b) An explanation of the general nature of the legal services to be provided to the client;
- (c) A reasonable estimate of the total fees, expenses, and costs of services provided by the licensed paraprofessional, and the basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the matter;
- (d) A statement that, pursuant to rule 1.4, the licensed paraprofessional must keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed;
- (e) A statement describing the licensed paraprofessional's duty to protect the confidentiality of information related to the representation under rule 1.6, including information provided in confidence by the client and the licensed paraprofessional's work product associated with the legal services sought or provided by the licensed paraprofessional;
- (f) A statement that, pursuant to rule 1.16(a)(4), the client has the right to terminate the contract and services at any time, with or without cause, and receive a full refund of unearned fees pursuant to rule 1.16(e)(2);
- (g) A statement confirming that the licensed paraprofessional is required by [add rule of court reference] to carry a surety bond in the amount of \$100,000, the name of the surety bond carrier, and information on how to file a claim against the surety bond if necessary;
- (h) A statement confirming if the licensed paraprofessional has or does not have professional liability insurance. If the licensed paraprofessional has professional liability insurance, the name of the carrier, the amount of coverage, and how to file a claim if necessary;
- (i) A statement describing how to file a complaint with the State Bar of California;
- (j) A statement regarding the respective responsibilities of the licensed paraprofessional and the client as to the performance of the agreement; and
- (k) Any other disclosures, statements, or conditions required by the [Paraprofessional] Rules of Professional Conduct and the rules and regulations of the [Paraprofessional] Board.

#### Comment

## PROPOSED RULES FOR INDIVIDUAL VOTE

### Rule 1.5.2 Written Agreement to Representation (Proposed Rule – Redline Version)

Prior to the performance of legal services for a fee, the licensed paraprofessional shall enter into a written\* agreement with the client in a separate writing,\* provided in the prospective client’s preferred language, and signed by both the client and the licensed paraprofessional, that provides the licensed paraprofessional’s name, specialty area, mailing address, street address, telephone numbers, facsimile numbers, internet address, and license number of the licensed paraprofessional, and includes the following provisions:

(a) A clear and conspicuous disclosure that the licensed paraprofessional is not a lawyer and may only provide limited legal advice and services within the scope of the licensed paraprofessional’s licensure. This statement shall be on the first page of the contract; in a type size, font, color, appearance, and location sufficiently noticeable for a client to read and comprehend them; in a print that contrasts with the background against which they appear; in larger type than the surrounding text; in a manner that clearly calls attention to the language;

(b) An explanation of the general nature of the legal services to be provided to the client;

(c) A reasonable estimate of the total fees, expenses, and costs of services provided by the licensed paraprofessional, and the basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the matter;

(d) A statement that, pursuant to rule 1.4, the licensed paraprofessional must keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed-pursuant to rule 1.16;

(e) A statement describing the licensed paraprofessional’s duty to protect the confidentiality of information related to the representation under rule 1.6, including information provided in confidence by the client and the licensed paraprofessional’s work product associated with the legal services sought or provided by the licensed paraprofessional;

(f) A statement that, pursuant to rule 1.16(a)(4), the client has the right to terminate the contract and services at any time, with or without cause, and receive a full refund of unearned fees pursuant to rule 1.16(e)(2);

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

(h) A statement confirming if the licensed paraprofessional has or does not have professional liability insurance. If the licensed paraprofessional has professional liability insurance, the name of the carrier, the amount of coverage, and how to file a claim if necessary;

(i) A statement describing how to file a complaint with the State Bar of California;

(j) A statement regarding the respective responsibilities of the licensed paraprofessional and the client as to the performance of the agreement; and

(k) Any other disclosures, statements, or conditions required by the [Paraprofessional] Rules of Professional Conduct and the rules and regulations of the [Paraprofessional] Board.

#### Comment

## PROPOSED RULES FOR INDIVIDUAL VOTE

### CHAPTER 5. LAW FIRMS\* AND ASSOCIATIONS

#### **Rule 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Licensed Paraprofessionals (Proposed Rule – Clean Version)**

(a) For purposes of this rule:

- (1) “Employ” means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;
- (2) “Licensee” means a licensee of the State Bar of California;
- (3) “Involuntarily inactive licensee” means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203, subdivision (d)(1), or California Rules of Court, rule 9.31(d);
- (4) “Resigned licensee” means a licensee who has resigned from the State Bar while disciplinary charges are pending; and
- (5) “Ineligible person” means a licensee whose current status with the State Bar of California is disbarred, suspended, resigned, or involuntarily inactive.

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

- (1) Render legal consultation or advice to the client;
- (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
- (3) Appear as a representative of the client at a deposition or other discovery matter;
- (4) Negotiate or transact any matter for or on behalf of the client with third parties;
- (5) Receive, disburse or otherwise handle the client’s funds; or
- (6) Engage in activities that constitute the practice of law.

(c) A licensed paraprofessional may employ, associate in practice with, or assist an ineligible person to perform research, drafting or clerical activities, including but not limited to:

- (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
- (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or

## PROPOSED RULES FOR INDIVIDUAL VOTE

- (3) Accompanying an active licensed paraprofessional in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active licensed paraprofessional who will appear as the representative of the client.
- (d) Prior to or at the time of employing, associating in practice with, or assisting a person\* the licensed paraprofessional knows\* or reasonably should know\* is an ineligible person, the licensed paraprofessional shall serve upon the State Bar written\* notice of the employment, including a full description of such person's current licensee status. The written\* notice shall also list the activities prohibited in paragraph (b) and state that the ineligible person will not perform such activities. The licensed paraprofessional shall serve similar written\* notice upon each client on whose specific matter such person\* will work, prior to or at the time of employing, associating with, or assisting such person\* to work on the client's specific matter. The licensed paraprofessional shall obtain proof of service of the client's written\* notice and shall retain such proof and a true and correct copy of the client's written\* notice for two years following termination of the licensed paraprofessional's employment by the client.
- (e) A licensed paraprofessional may, without client or State Bar notification, employ, associate in practice with, or assist an ineligible person whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.
- (f) When the licensed paraprofessional no longer employs, associates in practice with, or assists the ineligible person, the licensed paraprofessional shall promptly serve upon the State Bar written\* notice of the termination.

### Comment

[Reserved]

### Rule 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Licensed Paraprofessionals (Proposed Rule – Redline Version)

- (a) For purposes of this rule:
- (1) "Employ" means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;
  - (2) "~~Member Licensee~~" means a ~~member-licensee~~ of the State Bar of California;
  - (3) "Involuntarily inactive ~~member licensee~~" means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203, subdivision (d)(1), or California Rules of Court, rule 9.31(d);
  - (4) "Resigned ~~member licensee~~" means a ~~member-licensee~~ who has resigned from the State Bar while disciplinary charges are pending; and
  - (5) "Ineligible person" means a ~~member-licensee~~ whose current status with the State Bar of California is disbarred, suspended, resigned, or involuntarily inactive.
- (b) A ~~lawyer licensed paraprofessional~~ shall not employ, associate in practice with, or assist a person\* the ~~lawyer licensed paraprofessional~~ knows\* or reasonably should know\* is an ineligible person to perform the following on behalf of the ~~lawyer licensed paraprofessional's~~ client:
- (1) Render legal consultation or advice to the client;

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- (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
- (3) Appear as a representative of the client at a deposition or other discovery matter;
- (4) Negotiate or transact any matter for or on behalf of the client with third parties;
- (5) Receive, disburse or otherwise handle the client's funds; or
- (6) Engage in activities that constitute the practice of law.

(c) A lawyerlicensed paraprofessional may employ, associate in practice with, or assist an ineligible person to perform research, drafting or clerical activities, including but not limited to:

- (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
- (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or
- (3) Accompanying an active lawyerlicensed paraprofessional in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active lawyerlicensed paraprofessional who will appear as the representative of the client.

(d) Prior to or at the time of employing, associating in practice with, or assisting a person\* the licensed paraprofessional~~lawyer~~ knows\* or reasonably should know\* is an ineligible person, the lawyerlicensed paraprofessional shall serve upon the State Bar written\* notice of the employment, including a full description of such person's current bar-licensee status. The written\* notice shall also list the activities prohibited in paragraph (b) and state that the ineligible person will not perform such activities. The licensed paraprofessional~~lawyer~~ shall serve similar written\* notice upon each client on whose specific matter such person\* will work, prior to or at the time of employing, associating with, or assisting such person\* to work on the client's specific matter. The lawyerlicensed paraprofessional shall obtain proof of service of the client's written\* notice and shall retain such proof and a true and correct copy of the client's written\* notice for two years following termination of the lawyerlicensed paraprofessional's employment by the client.

(e) A lawyerlicensed paraprofessional may, without client or State Bar notification, employ, associate in practice with, or assist an ineligible person whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.

(f) When the lawyerlicensed paraprofessional no longer employs, associates in practice with, or assists the ineligible person, the lawyerlicensed paraprofessional shall promptly serve upon the State Bar written\* notice of the termination.

### Comment

[Reserved]

## PROPOSED RULES FOR INDIVIDUAL VOTE

### 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 directly or indirectly with an individual 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 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 a 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.

## PROPOSED RULES FOR INDIVIDUAL VOTE

- (c) 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:
- (1) 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;
  - (2) 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
  - (3) 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.
- (e) A licensed paraprofessional shall not practice in a law firm\* with a lawyer if:
- (1) licensed paraprofessionals direct or regulate any lawyer's professional judgment in rendering legal services;
  - (2) licensed paraprofessionals have supervisory authority over any lawyer; or
  - (3) licensed paraprofessionals possess a majority ownership interest or exercise controlling managerial authority in the firm;
- (f) 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, a licensed paraprofessional referral service unless it complies with such Minimum Standards for Licensed Paraprofessional Referral Services.
- (g) 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.

### Comment

[Reserved]

### Rule 5.4 Financial and Similar Arrangements with Lawyers and Nonlawyerlicensees (Proposed Rule – Redline Version)

- (a) A lawyerlicensed paraprofessional or law firm\* shall not share legal fees directly or indirectly with an ~~nonlawyerperson\*~~ individual 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 lawyerlicensed paraprofessional with the lawyerlicensed paraprofessional's firm,\* partner,\* or associate may provide for the payment of money or other consideration over a reasonable\* period of time after the lawyerlicensed paraprofessional's death, to the lawyerlicensed paraprofessional's estate or to one or more specified persons;\*

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

(3) a lawyer-licensed paraprofessional or law firm\* may include ~~nonlawyer~~ 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 ~~or the State Bar Act~~;

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

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

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

(d) A lawyer-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:

(1) an individual who is not a lawyer or a licensed paraprofessional~~nonlawyer~~ 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;

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

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

(e) A licensed paraprofessional shall not practice in a law firm\* with a lawyer if:

(1) licensed paraprofessionals direct or regulate any lawyer's professional judgment in rendering legal services;

(2) licensed paraprofessionals have ~~direct~~ supervisory authority over any lawyer; or

(3) licensed paraprofessionals possess a majority ownership interest or exercise controlling managerial authority in the firm;

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

(g) A ~~lawyer-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 ~~lawyer-licensed paraprofessional~~'s independent professional judgment, or with the ~~lawyer-licensed paraprofessional~~-client relationship, or allows or aids any person\* to practice law in violation of these rules or ~~the State Bar Act~~applicable law.

### Comment

[Reserved]

## PROPOSED RULES FOR INDIVIDUAL VOTE

### CHAPTER 7. INFORMATION ABOUT LEGAL SERVICES

#### Rule 7.2 Advertising (Proposed Rule – Clean Version)

- (a) Subject to the requirements of rules 7.1 and 7.3, a licensed paraprofessional may advertise services through any written,\* recorded or electronic means of communication, including public media.
- (b) A licensed paraprofessional shall not compensate, promise or give anything of value to a person\* for the purpose of recommending or securing the services of the licensed paraprofessional or the licensed paraprofessional's law firm,\* except that a licensed paraprofessional may:
- (1) pay the reasonable\* costs of advertisements or communications permitted by this rule;
  - (2) pay the usual charges of a legal services plan or a qualified licensed paraprofessional referral service. A qualified licensed paraprofessional referral service is a licensed paraprofessional referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a Licensed Paraprofessional Referral Service in California;
  - (3) pay for a law practice in accordance with rule 1.17;
  - (4) refer clients to another licensed paraprofessional, a lawyer or a nonlawyer professional pursuant to an arrangement not otherwise prohibited under these rules that provides for the other person\* to refer clients or customers to the licensed paraprofessional, if:
    - (i) the reciprocal referral arrangement is not exclusive; and
    - (ii) the client is informed of the existence and nature of the arrangement;
  - (5) offer or give a gift or gratuity to a person\* having made a recommendation resulting in the employment of the licensed paraprofessional or the licensed paraprofessional's law firm,\* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.
- (c) Any communication made pursuant to this rule shall include: (1) the name and contact information of at least one lawyer, licensed paraprofessional or law firm\* responsible for its content, (2) include in the communication at least one licensed paraprofessional's license number; and (3) include in the communication a clear and conspicuous statement that the licensed paraprofessional is not a lawyer. (d) If a licensed paraprofessional's law firm maintains a website advertising the licensed paraprofessional's services, the website must include a page that contains all the mandatory disclosures required under rule 1.4.2(a).

#### Comment

[Reserved]

#### Rule 7.2 Advertising (Proposed Rule – Redline Version)

- (a) Subject to the requirements of rules 7.1 and 7.3, a ~~lawyer~~ licensed paraprofessional may advertise services through any written,\* recorded or electronic means of communication, including public media.

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(b) A lawyer-licensed paraprofessional shall not compensate, promise or give anything of value to a person\* for the purpose of recommending or securing the services of the lawyer-licensed paraprofessional or the lawyer-licensed paraprofessional's law firm,\* except that a lawyer-licensed paraprofessional may:

- (1) pay the reasonable\* costs of advertisements or communications permitted by this rule;
- (2) pay the usual charges of a legal services plan or a qualified lawyer-licensed paraprofessional referral service. A qualified lawyer-licensed paraprofessional referral service is a lawyer-licensed paraprofessional referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a Lawyer-Licensed paraprofessional Referral Service in California;
- (3) pay for a law practice in accordance with rule 1.17;
- (4) refer clients to another lawyer-licensed paraprofessional, a lawyer or a nonlawyer-professional pursuant to an arrangement not otherwise prohibited under these Rules-rules or the State Bar Act that provides for the other person\* to refer clients or customers to the lawyer-licensed paraprofessional, if:
  - (i) the reciprocal referral arrangement is not exclusive; and
  - (ii) the client is informed of the existence and nature of the arrangement;
- (5) offer or give a gift or gratuity to a person\* having made a recommendation resulting in the employment of the lawyer-licensed paraprofessional or the lawyer-licensed paraprofessional's law firm,\* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.

(c) Any communication made pursuant to this rule shall include: (1) the name and ~~address-contact information~~ of at least one lawyer, licensed paraprofessional or law firm\* responsible for its content, (2) include in the communication at least one licensed paraprofessional's license number; and (3) include in the communication a clear and conspicuous statement that the licensed paraprofessional is not a lawyer.

(d) If a licensed paraprofessional's law firm maintains a website advertising the licensed paraprofessional's services, the website must include a page that contains all the mandatory disclosures required under rule 1.4.2(a).

### Comment

[Reserved]

## PROPOSED RULES FOR INDIVIDUAL VOTE

### Rule 7.3 Solicitation of Clients (Proposed Rule – Clean Version)

- (a) A licensed paraprofessional shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the licensed paraprofessional's pecuniary gain, unless the person\* contacted:
- (1) is a lawyer or a licensed paraprofessional; or
  - (2) has a family, close personal, or prior professional relationship with the licensed paraprofessional.
- (b) A licensed paraprofessional shall not solicit professional employment by written,\* recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:
- (1) the person\* being solicited has made known\* to the licensed paraprofessional a desire not to be solicited by the licensed paraprofessional; or
  - (2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress or harassment.
- (c) Every written,\* recorded or electronic communication from a licensed paraprofessional soliciting professional employment from any person\* known\* to be in need of legal services in a particular matter shall include:
- (1) the word "Advertisement" or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person\* specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.
  - (2) include the name, contact information, and license number of the licensed paraprofessional responsible for the content of the communication;
  - (3) include a clear and conspicuous statement that the paraprofessional is not a lawyer; and
  - (4) if an advertisement subject to this subdivision is in a language other than English, the statements required by this subdivision shall be in the same language as the advertisement.
- (d) A licensed paraprofessional shall not act as a runner or capper for another licensed paraprofessional, nor solicit another person to act as a runner or capper for the licensed paraprofessional.
- (1) For purposes of paragraph (d), a "runner or capper" is any person, firm, association, or corporation acting for consideration in any manner or in any capacity as an agent for an attorney, a paraprofessional, or a law firm, in the solicitation or procurement of business for the licensed paraprofessional except as otherwise authorized by these rules.
  - (2) Nothing in paragraph (d) shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by these rules.
- (e) Notwithstanding the prohibitions in paragraph (a), a licensed paraprofessional may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the licensed paraprofessional that uses in-person, live telephone or real-time electronic contact to solicit memberships or subscriptions for the plan from persons\* who are not known\* to need legal services in a particular matter covered by the plan.

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(f) As used in this rule, the terms “solicitation” and “solicit” refer to an oral or written\* targeted communication initiated by or on behalf of the licensed paraprofessional that is directed to a specific person\* and that offers to provide, or can reasonably\* be understood as offering to provide, legal services.

### Comment

[Reserved]

### Rule 7.3 Solicitation of Clients (Proposed Rule – Redline Version)

(a) A lawyerlicensed paraprofessional shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the lawyerlicensed paraprofessional's pecuniary gain, unless the person\* contacted:

- (1) is a lawyer or a licensed paraprofessional; or
- (2) has a family, close personal, or prior professional relationship with the lawyerlicensed paraprofessional.

(b) A lawyerlicensed paraprofessional shall not solicit professional employment by written,\* recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the person\* being solicited has made known\* to the lawyerlicensed paraprofessional a desire not to be solicited by the lawyerlicensed paraprofessional; or
- (2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress or harassment.

(c) Every written,\* recorded or electronic communication from a lawyerlicensed paraprofessional soliciting professional employment from any person\* known\* to be in need of legal services in a particular matter shall include:

(1) the word “Advertisement” or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person\* specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.

(2) include the name, contact information, and license number of the licensed paraprofessional responsible for the content of the communication;

(3) include a clear and conspicuous statement that the paraprofessional is not a lawyer; and

(4) if an advertisement subject to this subdivision is in a language other than English, the statements required by this subdivision shall be in the same language as the advertisement.

(d) A licensed paraprofessional shall not act as a runner or capper for another licensed paraprofessional, nor solicit another person to act as a runner or capper for the licensed paraprofessional.

(1) For purposes of paragraph (d), a “runner or capper” is any person, firm, association, or corporation acting for consideration in any manner or in any capacity as an agent for an attorney, a paraprofessional, or a law firm, in the solicitation or procurement of business for the licensed paraprofessional except as otherwise authorized by these rules.

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(2) Nothing in paragraph (d) shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by these rules.

(e) Notwithstanding the prohibitions in paragraph (a), a lawyerlicensed paraprofessional may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyerlicensed paraprofessional that uses in-person, live telephone or real-time electronic contact to solicit memberships or subscriptions for the plan from persons\* who are not known\* to need legal services in a particular matter covered by the plan.

(ef) As used in this rule, the terms “solicitation” and “solicit” refer to an oral or written\* targeted communication initiated by or on behalf of the lawyerlicensed paraprofessional that is directed to a specific person\* and that offers to provide, or can reasonably\* be understood as offering to provide, legal services.

### **Comment**

[Reserved]

## CHAPTER 1.

LAWYERLICENSED PARAPROFESSIONAL-CLIENT RELATIONSHIP**Rule 1.4.1 Communication of Settlement Offers  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall promptly communicate to the licensed paraprofessional's client all amounts, terms, and conditions of any written\* offer of settlement made to the client.
- (b) As used in this rule, "client" includes a person\* who possesses the authority to accept an offer of settlement.

**Comment**

[Reserved]

**Rule 1.4.1 Communication of Settlement Offers  
(Proposed Rule – Redline Version)**

- (a) A licensed paraprofessional ~~lawyer~~ shall promptly communicate to the lawyer/licensed paraprofessional's client ~~:~~
- ~~(1) all terms and conditions of a proposed plea bargain or other dispositive offer made to the client in a criminal matter; and~~
- ~~(2) all amounts, terms, and conditions of any written\* offer of settlement made to the client in all other matters.~~
- (b) As used in this rule, "client" includes a person\* who possesses the authority to accept an offer of settlement ~~or plea, or, in a class action, all the named representatives of the class.~~

**Comment**

[Reserved]

**Rule 1.4.2 Notice to Consumers Prior to Consultation with a Prospective Client  
(Proposed Rule – Clean Version)**

- (a) Prior to a prospective client's consultation with a licensed paraprofessional for the purpose of retaining the licensed paraprofessional or securing legal services or advice from the licensed paraprofessional in the licensed paraprofessional's professional capacity, the licensed paraprofessional shall disclose orally and provide, at the time of the consultation or as soon thereafter as reasonably\* practicable the written\* disclosures to the prospective client in the prospective client's preferred language that:
- (1) the licensed paraprofessional is not a lawyer;
  - (2) the licensed paraprofessional has a license to provide limited legal services, the area of practice in which the licensed paraprofessional is licensed, and that the licensed paraprofessional cannot provide all services that a lawyer can provide in this area of practice;
  - (3) the prospective client may need to hire a lawyer if the legal services that the prospective client seeks are beyond the limited scope of the licensed paraprofessional's license;
  - (4) there may be other alternative choices available for the prospective client to consider, including, but not limited to, 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, or potentially free legal services from a local legal aid organization if the prospective client qualifies;

(5) a general description of the licensed paraprofessional's fee structure and billing methods; and

(6) whether the licensed paraprofessional does or does not have professional liability insurance based on the licensed paraprofessional's reasonable knowledge\* at the time of the disclosure,

(b) If the licensed paraprofessional provides notice to the prospective client prior to consultation that the licensed paraprofessional does have professional liability insurance pursuant to paragraph (a)(6) and a licensed paraprofessional-client relationship is formed, the licensed paraprofessional shall inform the client in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional no longer has professional liability insurance during the representation of the client.

[Reserved]

**Rule 1.4.2 Notice to Consumers Prior to Consultation with a Prospective Client~~Disclosure of Professional Liability Insurance~~  
(Proposed Rule – Redline Version)**

(a) Prior to a prospective client's consultation with a licensed paraprofessional for the purpose of retaining the licensed paraprofessional or securing legal services or advice from the licensed paraprofessional in the licensed paraprofessional's professional capacity, the licensed paraprofessional shall disclose orally and provide, at the time of the consultation or as soon thereafter as reasonably\* practicable the written\* disclosures to the prospective client in the prospective client's preferred language that:

(1) the licensed paraprofessional is not a lawyer;

(2) the licensed paraprofessional has a license to provide limited legal services, the area of practice in which the licensed paraprofessional is licensed, and that the licensed paraprofessional cannot provide all services that a lawyer can provide in this area of practice;

(3) the prospective client may need to hire a lawyer if the legal services that the prospective client seeks are beyond the limited scope of the licensed paraprofessional's license;

(4) there may be other alternative choices available for the prospective client to consider, including, but not limited to, 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, or potentially free legal services from a local legal aid organization if the prospective client qualifies;

(5) a general description of the licensed paraprofessional's fee structure and billing methods; and

(6) whether the licensed paraprofessional does or does not have professional liability insurance based on the licensed paraprofessional's reasonable knowledge\* at the time of the disclosure,

~~(a) A licensed paraprofessional who knows\* or reasonably should know\* that the licensed paraprofessional does not have professional liability insurance shall inform a client in writing,\* at the time of the client's engagement of the licensed paraprofessional, that the licensed paraprofessional does not have professional liability insurance.~~

(b) If the licensed paraprofessional provides notice to the prospective client prior to consultation that the licensed paraprofessional does have professional liability insurance pursuant to paragraph (a)(6) and a licensed paraprofessional-client relationship is formed, the licensed paraprofessional shall inform the client in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional no longer has professional liability insurance during the representation of the client.~~If notice under~~

~~paragraph (a) has not been provided at the time of a client's engagement of the licensed paraprofessional, the licensed paraprofessional shall inform the client in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional no longer has professional liability insurance during the representation of the client.~~

~~(c) This rule does not apply to:~~

~~(1) a licensed paraprofessional who knows\* or reasonably should know\* at the time of the client's engagement of the licensed paraprofessional that the licensed paraprofessional's legal representation of the client in the matter will not exceed four hours; provided that if the representation subsequently exceeds four hours, the licensed paraprofessional must comply with paragraphs (a) and (b);~~

~~(2) a licensed paraprofessional who is employed as a government licensed paraprofessional or in-house counsel when that licensed paraprofessional is representing or providing legal advice to a client in that capacity;~~

~~(3) a licensed paraprofessional who is rendering legal services in an emergency to avoid foreseeable prejudice to the rights or interests of the client;~~

~~(4) a licensed paraprofessional who has previously advised the client in writing\* under paragraph (a) or (b) that the licensed paraprofessional does not have professional liability insurance.~~

[Reserved]

**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 legal services may be available to low-income individuals from a legal aid program if the client qualifies;
- (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.

**Comments**

[Reserved]

**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 legal services may be available to low-income individuals from a legal aid program if the client qualifies;
- (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.

**Comments**

[Reserved]

**Rule 1.5 Fees for Legal Services  
(Proposed Rule – Clean Version)**

- (a) A licensed paraprofessional shall not make an agreement for, charge, or collect an unconscionable or illegal fee.
- (b) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. The factors to be considered in determining the unconscionability of a fee include without limitation the following:
- (1) whether the licensed paraprofessional engaged in fraud\* or overreaching in negotiating or setting the fee;
  - (2) whether the licensed paraprofessional has failed to disclose material facts;
  - (3) the amount of the fee in proportion to the value of the services performed;
  - (4) the relative sophistication of the licensed paraprofessional and the client;
  - (5) the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
  - (6) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the licensed paraprofessional;
  - (7) the amount involved and the results obtained;
  - (8) the time limitations imposed by the client or by the circumstances;
  - (9) the nature and length of the professional relationship with the client;
  - (10) the experience, reputation, and ability of the licensed paraprofessional performing the services;
  - (11) whether the fee is fixed or contingent;
  - (12) the time and labor required; and
  - (13) whether the client gave informed consent\* to the fee.
  - (14) the fee customarily charged by licensed paraprofessionals and lawyers in the locality for similar legal service.
- (c) A licensed paraprofessional shall not make an agreement for, charge, or collect a contingent fee except in an enforcement of judgment matter within the scope of the licensed paraprofessional's licensure. Any contingent fee permitted under this paragraph shall not exceed thirty-three and one-third percent of the total value of the judgment subject to the enforcement action.
- (d) A licensed paraprofessional shall not make an agreement for, charge, or collect a fee that is denominated as "earned on receipt" or "non-refundable," or in similar terms. .]
- (e) A licensed paraprofessional may make an agreement for, charge, or collect a flat fee for specified legal services. A flat fee is a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the licensed paraprofessional providing those services.

**Comment**  
[Reserved]

**Rule 1.5 Fees for Legal Services  
(Proposed Rule – Redline Version)**

(a) A ~~lawyer~~licensed paraprofessional shall not make an agreement for, charge, or collect an unconscionable or illegal fee.

(b) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. The factors to be considered in determining the unconscionability of a fee include without limitation the following:

- (1) whether the ~~lawyer~~licensed paraprofessional engaged in fraud\* or overreaching in negotiating or setting the fee;
- (2) whether the ~~lawyer~~licensed paraprofessional has failed to disclose material facts;
- (3) the amount of the fee in proportion to the value of the services performed;
- (4) the relative sophistication of the ~~licensed paraprofessional~~lawyer and the client;
- (5) the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (6) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the ~~licensed paraprofessional~~lawyer;
- (7) the amount involved and the results obtained;
- (8) the time limitations imposed by the client or by the circumstances;
- (9) the nature and length of the professional relationship with the client;
- (10) the experience, reputation, and ability of the ~~licensed paraprofessional~~lawyer or lawyers performing the services;
- (11) whether the fee is fixed or contingent;
- (12) the time and labor required; and
- (13) whether the client gave informed consent\* to the fee.

(14) the fee customarily charged by licensed paraprofessionals and lawyers in the locality for similar legal service.

(c) A ~~licensed paraprofessional~~lawyer shall not make an agreement for, charge, or collect:

~~(1) any fee in a family law matter, the payment or amount of which is contingent upon the securing of a dissolution or declaration of nullity of a marriage or upon the amount of spousal or child support, or property settlement in lieu thereof; a contingent fee except in an enforcement of judgment matter within the scope of the licensed paraprofessional's licensure. Any contingent fee permitted under this paragraph shall not exceed thirty-three and one-third percent of the total value of the judgment subject to the enforcement action. or~~

~~(2) a contingent fee for representing a defendant in a criminal case.~~

(d) A ~~licensed paraprofessional~~lawyer may shall not make an agreement for, charge, or collect a fee that is denominated as "earned on receipt" or "non-refundable," or in similar terms, ~~only if the fee is a true retainer and the~~

~~client agrees in writing\* after disclosure that the client will not be entitled to a refund of all or part of the fee charged. A true retainer is a fee that a client pays to a lawyer to ensure the lawyer's availability to the client during a specified period or on a specified matter, but not to any extent as compensation for legal services performed or to be performed.]~~

(e) A [lawyer licensed paraprofessional](#) may make an agreement for, charge, or collect a flat fee for specified legal services. A flat fee is a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the [lawyer licensed paraprofessional](#) providing those services.

**Comment**

[Reserved]

**Rule 1.5.1 Fee Divisions Among Licensed Paraprofessionals and With Lawyers  
(Proposed Rule – Clean Version)**

- (a) Licensed paraprofessionals who are not in the same law firm\* shall not divide a fee for legal services unless:
- (1) the licensed paraprofessionals enter into a written\* agreement to divide the fee;
  - (2) the division is in proportion to the legal services performed by each licensed paraprofessional or each licensed paraprofessional assumes joint responsibility for the representation.
  - (3) the client has consented in writing,\* either at the time the licensed paraprofessionals enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessionals or law firms\* that are parties to the division; and (iii) the terms of the division; and
  - (4) the total fee charged by all licensed paraprofessionals is not increased solely by reason of the agreement to divide fees.
- (b) A licensed paraprofessional and a lawyer who are not in the same law firm\* shall not divide a fee for legal services unless:
- (1) the licensed paraprofessional and the lawyer enter into a written\* agreement to divide the fee;
  - (2) the division is in proportion to the legal services performed by licensed paraprofessional and the lawyer;
  - (3) the client has consented in writing,\* either at the time the licensed paraprofessional and the lawyer enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessional, the lawyer, or law firms\* that are parties to the division; and (iii) the terms of the division; and
  - (4) the total fee charged by all licensed paraprofessionals and lawyers is not increased solely by reason of the agreement to divide fees.
- (c) This rule does not apply to a division of fees pursuant to court order.

**Comment**

[Reserved]

**Rule 1.5.1 Fee Divisions Among ~~Lawyer~~Licensed Paraprofessionals and With Lawyers  
(Proposed Rule – Redline Version)**

- (a) ~~Lawyer~~Licensed paraprofessionals who are not in the same law firm\* shall not divide a fee for legal services unless:
- (1) the ~~lawyer~~licensed paraprofessionals enter into a written\* agreement to divide the fee;
  - (2) the division is in proportion to the legal services performed by each licensed paraprofessional or each licensed paraprofessional assumes joint responsibility for the representation.
  - (23) the client has consented in writing,\* either at the time the ~~lawyer~~licensed paraprofessionals enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the ~~lawyer~~licensed paraprofessionals or law firms\* that are parties to the division; and (iii) the terms of the division; and

~~(34)~~ the total fee charged by all ~~lawyer~~licensed paraprofessionals is not increased solely by reason of the agreement to divide fees.

(b) A licensed paraprofessional and a lawyer who are not in the same law firm\* shall not divide a fee for legal services unless:

(1) the licensed paraprofessional and the lawyer enter into a written\* agreement to divide the fee;

(2) the division is in proportion to the legal services performed by ~~each~~ licensed paraprofessional and the lawyer;

(3) the client has consented in writing,\* either at the time the licensed paraprofessional and the lawyer enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessional, the lawyer, or law firms\* that are parties to the division; and (iii) the terms of the division; and

(4) the total fee charged by all licensed paraprofessionals and lawyers is not increased solely by reason of the agreement to divide fees.

~~(b)~~ This rule does not apply to a division of fees pursuant to court order.

**Comment**

[Reserved]

**Rule 1.5.1 Fee Divisions Among Licensed Paraprofessionals and With Lawyers**  
**(Proposed Rule – Clean Version)**  
**[Alternate Version Proposed by CPPWG Member Steven Fleischman]**

- (a) Licensed paraprofessionals who are not in the same law firm\* shall not divide a fee for legal services unless:
- (1) the licensed paraprofessionals enter into a written\* agreement to divide the fee;
  - (2) the division is in proportion to the legal services performed by each licensed paraprofessional or each licensed paraprofessional assumes joint responsibility for the representation.
  - (3) the client has consented in writing,\* either at the time the licensed paraprofessionals enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessionals or law firms\* that are parties to the division; and (iii) the terms of the division; and
  - (4) the total fee charged by all licensed paraprofessionals is not increased solely by reason of the agreement to divide fees.
- (b) A licensed paraprofessional and a lawyer who are not in the same law firm\* shall not divide a fee for legal services unless:
- (1) the licensed paraprofessional and the lawyer enter into a written\* agreement to divide the fee;
  - (2) the division is in proportion to the legal services performed by licensed paraprofessional and the lawyer;
  - (3) the client has consented in writing,\* either at the time the licensed paraprofessional and the lawyer enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessional, the lawyer, or law firms\* that are parties to the division; and (iii) the terms of the division; and
  - (4) the total fee charged by all licensed paraprofessionals and lawyers is not increased solely by reason of the agreement to divide fees; and
  - (5) No fee shall be divided between a licensed paraprofessional and a lawyer under this rule may relate to any services performed which fall outside the scope of the licensed paraprofessional's license, including but not limited to any services rendered in their capacity as a paralegal.
- (c) This rule does not apply to a division of fees pursuant to court order.

**Comment**

[Reserved]

**Rule 1.5.1 Fee Divisions Among ~~Lawyer~~Licensed Paraprofessionals and With Lawyers**  
**(Proposed Rule – Redline Version)**  
**[Alternate Version Proposed by CPPWG Member Steven Fleischman]**

- (a) ~~Lawyer~~Licensed paraprofessionals who are not in the same law firm\* shall not divide a fee for legal services unless:
- (1) the ~~lawyer~~licensed paraprofessionals enter into a written\* agreement to divide the fee;

(2) the division is in proportion to the legal services performed by each licensed paraprofessional or each licensed paraprofessional assumes joint responsibility for the representation.

(23) the client has consented in writing,\* either at the time the lawyer/licensed paraprofessionals enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the lawyer/licensed paraprofessionals or law firms\* that are parties to the division; and (iii) the terms of the division; and

(34) the total fee charged by all lawyer/licensed paraprofessionals is not increased solely by reason of the agreement to divide fees.

(b) A licensed paraprofessional and a lawyer who are not in the same law firm\* shall not divide a fee for legal services unless:

(1) the licensed paraprofessional and the lawyer enter into a written\* agreement to divide the fee;

(2) the division is in proportion to the legal services performed by each licensed paraprofessional and the lawyer;

(3) the client has consented in writing,\* either at the time the licensed paraprofessional and the lawyer enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the licensed paraprofessional, the lawyer, or law firms\* that are parties to the division; and (iii) the terms of the division; and

(4) the total fee charged by all licensed paraprofessionals and lawyers is not increased solely by reason of the agreement to divide fees.

(5) No fee shall be divided between a licensed paraprofessional and a lawyer under this rule may relate to any services performed which fall outside the scope of the licensed paraprofessional's license, including but not limited to any services rendered in their capacity as a paralegal.

(bc) This rule does not apply to a division of fees pursuant to court order.

#### **Comment**

[Reserved]

**Rule 1.5.2 Written Agreement to Representation  
(Proposed Rule – Clean Version)**

Prior to the performance of legal services for a fee, the licensed paraprofessional shall enter into a written\* agreement with the client in a separate writing,\* provided in the prospective client’s preferred language, and signed by both the client and the licensed paraprofessional, that provides the licensed paraprofessional’s name, specialty area, mailing address, street address, telephone numbers, facsimile numbers, internet address, and license number of the licensed paraprofessional, and includes the following provisions:

- (a) A clear and conspicuous disclosure that the licensed paraprofessional is not a lawyer and may only provide limited legal advice and services within the scope of the licensed paraprofessional’s licensure. This statement shall be on the first page of the contract; in a type size, font, color, appearance, and location sufficiently noticeable for a client to read and comprehend them; in a print that contrasts with the background against which they appear; in larger type than the surrounding text; in a manner that clearly calls attention to the language;
- (b) An explanation of the general nature of the legal services to be provided to the client;
- (c) A reasonable estimate of the total fees, expenses, and costs of services provided by the licensed paraprofessional, and the basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the matter;
- (d) A statement that, pursuant to rule 1.4, the licensed paraprofessional must keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed;
- (e) A statement describing the licensed paraprofessional’s duty to protect the confidentiality of information related to the representation under rule 1.6, including information provided in confidence by the client and the licensed paraprofessional’s work product associated with the legal services sought or provided by the licensed paraprofessional;
- (f) A statement that, pursuant to rule 1.16(a)(4), the client has the right to terminate the contract and services at any time, with or without cause, and receive a full refund of unearned fees pursuant to rule 1.16(e)(2);
- (g) A statement confirming that the licensed paraprofessional is required by [add rule of court reference] to carry a surety bond in the amount of \$100,000, the name of the surety bond carrier, and information on how to file a claim against the surety bond if necessary;
- (h) A statement confirming if the licensed paraprofessional has or does not have professional liability insurance. If the licensed paraprofessional has professional liability insurance, the name of the carrier, the amount of coverage, and how to file a claim if necessary;
- (i) A statement describing how to file a complaint with the State Bar of California;
- (j) A statement regarding the respective responsibilities of the licensed paraprofessional and the client as to the performance of the agreement; and
- (k) Any other disclosures, statements, or conditions required by the [Paraprofessional] Rules of Professional Conduct and the rules and regulations of the [Paraprofessional] Board.

**Comment**

**Rule 1.5.2 Written Agreement to Representation**  
**(Proposed Rule – Redline Version)**

Prior to the performance of legal services for a fee, the licensed paraprofessional shall enter into a written\* agreement with the client in a separate writing,\* provided in the prospective client’s preferred language, and signed by both the client and the licensed paraprofessional, that provides the licensed paraprofessional’s name, specialty area, mailing address, street address, telephone numbers, facsimile numbers, internet address, and license number of the licensed paraprofessional, and includes the following provisions:

(a) A clear and conspicuous disclosure that the licensed paraprofessional is not a lawyer and may only provide limited legal advice and services within the scope of the licensed paraprofessional’s licensure. This statement shall be on the first page of the contract; in a type size, font, color, appearance, and location sufficiently noticeable for a client to read and comprehend them; in a print that contrasts with the background against which they appear; in larger type than the surrounding text; in a manner that clearly calls attention to the language;

(b) An explanation of the general nature of the legal services to be provided to the client;

(c) A reasonable estimate of the total fees, expenses, and costs of services provided by the licensed paraprofessional, and the basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the matter;

(d) A statement that, pursuant to rule 1.4, the licensed paraprofessional must keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed-~~pursuant to rule 1.16;~~

(e) A statement describing the licensed paraprofessional’s duty to protect the confidentiality of information related to the representation under rule 1.6, including information provided in confidence by the client and the licensed paraprofessional’s work product associated with the legal services sought or provided by the licensed paraprofessional;

(f) A statement that, pursuant to rule 1.16(a)(4), the client has the right to terminate the contract and services at any time, with or without cause, and receive a full refund of unearned fees pursuant to rule 1.16(e)(2);

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

(h) A statement confirming if the licensed paraprofessional has or does not have professional liability insurance. If the licensed paraprofessional has professional liability insurance, the name of the carrier, the amount of coverage, and how to file a claim if necessary;

(i) A statement describing how to file a complaint with the State Bar of California;

(j) A statement regarding the respective responsibilities of the licensed paraprofessional and the client as to the performance of the agreement; and

~~(k)~~(k)Any other disclosures, statements, or conditions required by the [Paraprofessional] Rules of Professional Conduct and the rules and regulations of the [Paraprofessional] Board.

**Comment**

**Rule 1.17 Sale of a Licensed Paraprofessional's Law Practice  
(Proposed Rule – Clean Version)**

All or substantially\* all of the law practice of a licensed paraprofessional, living or deceased, including goodwill, may be sold to another licensed paraprofessional, a lawyer or law firm\* subject to all the following conditions:

- (a) Fees charged to clients shall not be increased solely by reason of the sale.
- (b) If the sale contemplates the transfer of responsibility for work not yet completed or responsibility for client files or information protected by rule 1.6(a), then;
  - (1) if the seller is deceased, or has a conservator or other person\* acting in a representative capacity, and no lawyer has been appointed to act for the seller, then prior to the transfer;
    - (i) the purchaser shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client's rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
    - (ii) the purchaser shall obtain the written\* consent of the client. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(1)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.
  - (2) in all other circumstances, not less than 90 days prior to the transfer;
    - (i) the seller, or the lawyer appointed to act for the seller, shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client's rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
    - (ii) the seller, or the lawyer appointed to act for the seller, shall obtain the written\* consent of the client prior to the transfer. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(2)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.
- (c) If substitution is required by the rules of a tribunal\* in which a matter is pending, all steps necessary to substitute a lawyer shall be taken.
- (d) The purchaser shall comply with the applicable requirements of rules 1.7 and 1.9.
- (e) Confidential information shall not be disclosed to a nonlawyer in connection with a sale under this rule.
- (f) This rule does not apply to the admission to or retirement from a law firm,\* retirement plans and similar arrangements, or sale of tangible assets of a law practice.

**Comment**

**Rule 1.17 Sale of a Licensed Paraprofessional's Law Practice  
(Proposed Rule – Redline Version)**

All or substantially\* all of the law practice of a ~~lawyer~~licensed paraprofessional, living or deceased, including goodwill, may be sold to another licensed paraprofessional, a lawyer or law firm\* subject to all the following conditions:

- (a) Fees charged to clients shall not be increased solely by reason of the sale.
- (b) If the sale contemplates the transfer of responsibility for work not yet completed or responsibility for client files or information protected by ~~Business and Professions Code section 6068, subdivision (e)(1), rule 1.6(a)~~, then:
  - (1) if the seller is deceased, or has a conservator or other person\* acting in a representative capacity, and no lawyer has been appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, then prior to the transfer;
    - (i) the purchaser shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client's rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
    - (ii) the purchaser shall obtain the written\* consent of the client. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(1)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.
  - (2) in all other circumstances, not less than 90 days prior to the transfer;
    - (i) the seller, or the lawyer appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client's rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
    - (ii) the seller, or the lawyer appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, shall obtain the written\* consent of the client prior to the transfer. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(2)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.
- (c) If substitution is required by the rules of a tribunal\* in which a matter is pending, all steps necessary to substitute a lawyer shall be taken.
- (d) The purchaser shall comply with the applicable requirements of rules 1.7 and 1.9.
- (e) Confidential information shall not be disclosed to a nonlawyer in connection with a sale under this rule.
- (f) This rule does not apply to the admission to or retirement from a law firm,\* retirement plans and similar arrangements, or sale of tangible assets of a law practice.

**Comment**

## CHAPTER 3. ADVOCATE

### Rule 3.5 Contact with Judges, Officials, and Employees (Proposed Rule – Clean Version)

(a) Except as permitted by statute, an applicable code of judicial ethics or code of judicial conduct, or standards governing employees of a tribunal,\* a licensed paraprofessional shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal.\* This rule does not prohibit a licensed paraprofessional from contributing to the campaign fund of a judge or judicial officer running for election or confirmation pursuant to applicable law pertaining to such contributions.

(b) Unless permitted to do so by law, an applicable code of judicial ethics or code of judicial conduct, a rule or ruling of a tribunal,\* or a court order, a licensed paraprofessional shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before the judge or judicial officer, except:

- (1) in open court;
- (2) with the consent of all other counsel and any unrepresented parties in the matter;
- (3) in the presence of all other counsel and any unrepresented parties in the matter; or
- (4) in writing\* with a copy thereof furnished to all other represented and unrepresented parties in the matter.

(c) As used in this rule, “judge” and “judicial officer” shall also include: (i) administrative law judges; (ii) neutral arbitrators; (iii) State Bar Court judges; (iv) members of an administrative body acting in an adjudicative capacity; and (v) law clerks, research attorneys, or other court personnel who participate in the decision-making process, including referees, special masters, or other persons\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

#### Comment

[Reserved]

### Rule 3.5 Contact with Judges, Officials, ~~and Employees,~~ and Jurors (Proposed Rule – Redline Version)

(a) Except as permitted by statute, an applicable code of judicial ethics or code of judicial conduct, or standards governing employees of a tribunal,\* a lawyer licensed paraprofessional shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal.\* This rule does not prohibit a lawyer licensed paraprofessional from contributing to the campaign fund of a judge or judicial officer running for election or confirmation pursuant to applicable law pertaining to such contributions.

(b) Unless permitted to do so by law, an applicable code of judicial ethics or code of judicial conduct, a rule or ruling of a tribunal,\* or a court order, a lawyer licensed paraprofessional shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before the judge or judicial officer, except:

- (1) in open court;

- (2) with the consent of all other counsel and any unrepresented parties in the matter;
- (3) in the presence of all other counsel and any unrepresented parties in the matter;
- (4) in writing\* with a copy thereof furnished to all other ~~counsel-represented~~ and ~~any~~ unrepresented parties in the matter; or
- (5) in ex parte matters.

(c) As used in this rule, “judge” and “judicial officer” shall also include: (i) administrative law judges; (ii) neutral arbitrators; (iii) State Bar Court judges; (iv) members of an administrative body acting in an adjudicative capacity; and (v) law clerks, research attorneys, or other court personnel who participate in the decision-making process, including referees, special masters, or other persons\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

~~(d) A lawyer connected with a case shall not communicate directly or indirectly with anyone the lawyer knows\* to be a member of the venire from which the jury will be selected for trial of that case.~~

~~(e) During trial, a lawyer connected with the case shall not communicate directly or indirectly with any juror.~~

~~(f) During trial, a lawyer who is not connected with the case shall not communicate directly or indirectly concerning the case with anyone the lawyer knows\* is a juror in the case.~~

~~(g) After discharge of the jury from further consideration of a case a lawyer shall not communicate directly or indirectly with a juror if:~~

~~(1) the communication is prohibited by law or court order;~~

~~(2) the juror has made known\* to the lawyer a desire not to communicate; or~~

~~(3) the communication involves misrepresentation, coercion, or duress, or is intended to harass or embarrass the juror or to influence the juror’s actions in future jury service.~~

~~(h) A lawyer shall not directly or indirectly conduct an out of court investigation of a person\* who is either a member of a venire or a juror in a manner likely to influence the state of mind of such person\* in connection with present or future jury service.~~

~~(i) All restrictions imposed by this rule also apply to communications with, or investigations of, members of the family of a person\* who is either a member of a venire or a juror.~~

~~(j) A lawyer shall reveal promptly to the court improper conduct by a person\* who is either a member of a venire or a juror, or by another toward a person\* who is either a member of a venire or a juror or a member of his or her family, of which the lawyer has knowledge.~~

~~(k) This rule does not prohibit a lawyer from communicating with persons\* who are members of a venire or jurors as a part of the official proceedings.~~

~~(l) For purposes of this rule, “juror” means any empaneled, discharged, or excused juror.~~

## Comment

[Reserved]

**CHAPTER 5.**  
**LAW FIRMS\* AND ASSOCIATIONS**

**Rule 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Licensed Paraprofessionals**  
**(Proposed Rule – Clean Version)**

- (a) For purposes of this rule:
- (1) “Employ” means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;
  - (2) “Licensee” means a licensee of the State Bar of California;
  - (3) “Involuntarily inactive licensee” means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203, subdivision (d)(1), or California Rules of Court, rule 9.31(d);
  - (4) “Resigned licensee” means a licensee who has resigned from the State Bar while disciplinary charges are pending; and
  - (5) “Ineligible person” means a licensee whose current status with the State Bar of California is disbarred, suspended, resigned, or involuntarily inactive.
- (b) A licensed paraprofessional shall not employ, associate in practice with, or assist a person\* the licensed paraprofessional knows\* or reasonably should know\* is an ineligible person to perform the following on behalf of the licensed paraprofessional’s client:
- (1) Render legal consultation or advice to the client;
  - (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
  - (3) Appear as a representative of the client at a deposition or other discovery matter;
  - (4) Negotiate or transact any matter for or on behalf of the client with third parties;
  - (5) Receive, disburse or otherwise handle the client’s funds; or
  - (6) Engage in activities that constitute the practice of law.
- (c) A licensed paraprofessional may employ, associate in practice with, or assist an ineligible person to perform research, drafting or clerical activities, including but not limited to:
- (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
  - (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or

(3) Accompanying an active licensed paraprofessional in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active licensed paraprofessional who will appear as the representative of the client.

(d) Prior to or at the time of employing, associating in practice with, or assisting a person\* the licensed paraprofessional knows\* or reasonably should know\* is an ineligible person, the licensed paraprofessional shall serve upon the State Bar written\* notice of the employment, including a full description of such person's current licensee status. The written\* notice shall also list the activities prohibited in paragraph (b) and state that the ineligible person will not perform such activities. The licensed paraprofessional shall serve similar written\* notice upon each client on whose specific matter such person\* will work, prior to or at the time of employing, associating with, or assisting such person\* to work on the client's specific matter. The licensed paraprofessional shall obtain proof of service of the client's written\* notice and shall retain such proof and a true and correct copy of the client's written\* notice for two years following termination of the licensed paraprofessional's employment by the client.

(e) A licensed paraprofessional may, without client or State Bar notification, employ, associate in practice with, or assist an ineligible person whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.

(f) When the licensed paraprofessional no longer employs, associates in practice with, or assists the ineligible person, the licensed paraprofessional shall promptly serve upon the State Bar written\* notice of the termination.

#### Comment

[Reserved]

### **Rule 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Licensed Paraprofessionals** (Proposed Rule – Redline Version)

(a) For purposes of this rule:

(1) "Employ" means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;

(2) "~~Member Licensee~~" means a ~~member-licensee~~ of the State Bar of California;

(3) "Involuntarily inactive ~~member licensee~~" means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203, subdivision (d)(1), or California Rules of Court, rule 9.31(d);

(4) "Resigned ~~member licensee~~" means a ~~member-licensee~~ who has resigned from the State Bar while disciplinary charges are pending; and

(5) "Ineligible person" means a ~~member-licensee~~ whose current status with the State Bar of California is disbarred, suspended, resigned, or involuntarily inactive.

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

(1) Render legal consultation or advice to the client;

- (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
- (3) Appear as a representative of the client at a deposition or other discovery matter;
- (4) Negotiate or transact any matter for or on behalf of the client with third parties;
- (5) Receive, disburse or otherwise handle the client's funds; or
- (6) Engage in activities that constitute the practice of law.

(c) A [lawyerlicensed paraprofessional](#) may employ, associate in practice with, or assist an ineligible person to perform research, drafting or clerical activities, including but not limited to:

- (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
- (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or
- (3) Accompanying an active [lawyerlicensed paraprofessional](#) in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active [lawyerlicensed paraprofessional](#) who will appear as the representative of the client.

(d) Prior to or at the time of employing, associating in practice with, or assisting a person\* the [licensed paraprofessional](#)~~lawyer~~ knows\* or reasonably should know\* is an ineligible person, the [lawyerlicensed paraprofessional](#) shall serve upon the State Bar written\* notice of the employment, including a full description of such person's current ~~bar~~-licensee status. The written\* notice shall also list the activities prohibited in paragraph (b) and state that the ineligible person will not perform such activities. The [licensed paraprofessional](#)~~lawyer~~ shall serve similar written\* notice upon each client on whose specific matter such person\* will work, prior to or at the time of employing, associating with, or assisting such person\* to work on the client's specific matter. The [lawyerlicensed paraprofessional](#) shall obtain proof of service of the client's written\* notice and shall retain such proof and a true and correct copy of the client's written\* notice for two years following termination of the [lawyerlicensed paraprofessional](#)'s employment by the client.

(e) A [lawyerlicensed paraprofessional](#) may, without client or State Bar notification, employ, associate in practice with, or assist an ineligible person whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.

(f) When the [lawyerlicensed paraprofessional](#) no longer employs, associates in practice with, or assists the ineligible person, the [lawyerlicensed paraprofessional](#) shall promptly serve upon the State Bar written\* notice of the termination.

#### **Comment**

[Reserved]

**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 directly or indirectly with an individual 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 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 a 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.

- (c) 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:
- (1) 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;
  - (2) 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
  - (3) 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.
- (e) A licensed paraprofessional shall not practice in a law firm\* with a lawyer if:
- (1) licensed paraprofessionals direct or regulate any lawyer's professional judgment in rendering legal services;
  - (2) licensed paraprofessionals have supervisory authority over any lawyer; or
  - (3) licensed paraprofessionals possess a majority ownership interest or exercise controlling managerial authority in the firm;
- (f) 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, a licensed paraprofessional referral service unless it complies with such Minimum Standards for Licensed Paraprofessional Referral Services.
- (g) 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.

#### Comment

[Reserved]

### Rule 5.4 Financial and Similar Arrangements with Lawyers and Nonlawyer licensees (Proposed Rule – Redline Version)

- (a) A lawyer licensed paraprofessional or law firm\* shall not share legal fees directly or indirectly with an nonlawyer person\* individual 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 lawyer licensed paraprofessional with the lawyer 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 lawyer licensed paraprofessional's death, to the lawyer licensed paraprofessional's estate or to one or more specified persons;\*

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

(3) a lawyer-licensed paraprofessional or law firm\* may include ~~nonlawyer~~ 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 ~~or the State Bar Act~~;

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

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

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

(d) A lawyer-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:

(1) an individual who is not a lawyer or a licensed paraprofessional~~nonlawyer~~ 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;

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

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

(e) A licensed paraprofessional shall not practice in a law firm\* with a lawyer if:

(1) licensed paraprofessionals direct or regulate any lawyer's professional judgment in rendering legal services;

(2) licensed paraprofessionals have ~~direct~~ supervisory authority over any lawyer; or

(3) licensed paraprofessionals possess a majority ownership interest or exercise controlling managerial authority in the firm;

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

(g) A ~~lawyer-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 ~~lawyer-licensed paraprofessional~~'s independent professional judgment, or with the ~~lawyer-licensed paraprofessional~~-client relationship, or allows or aids any person\* to practice law in violation of these rules or ~~the State Bar Act~~applicable law.

#### **Comment**

[Reserved]

**Rule 5.4 Financial and Similar Arrangements with Lawyers and Nonlicensees**  
**(Proposed Rule – Clean Version)**  
**[Alternate Version Proposed by CPPWG Member Steven Fleischman]**

- (a) A licensed paraprofessional or law firm\* shall not share legal fees directly or indirectly with an individual 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 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 a 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.

- (c) 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:
- (1) 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;
  - (2) 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
  - (3) 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.
- (e) A licensed paraprofessional shall not practice in a law firm\* with a lawyer if:
- (1) licensed paraprofessionals direct or regulate any lawyer's professional judgment in rendering legal services;
  - (2) licensed paraprofessionals have supervisory authority over any lawyer; or
  - (3) any licensed paraprofessional possesses any ownership interest or exercises controlling managerial authority in the firm.
- (f) 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, a licensed paraprofessional referral service unless it complies with such Minimum Standards for Licensed Paraprofessional Referral Services.
- (g) 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.

#### Comment

[Reserved]

### Rule 5.4 Financial and Similar Arrangements with Lawyers and Nonlicensees (Proposed Rule – Redline Version)

- (a) A ~~lawyer~~licensed paraprofessional or law firm\* shall not share legal fees directly or indirectly with an ~~nonlawyer person\* individual 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 ~~lawyer~~licensed paraprofessional with the ~~lawyer~~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 ~~lawyer~~licensed paraprofessional's death, to the ~~lawyer~~licensed paraprofessional's estate or to one or more specified persons;\*

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

(3) a lawyer licensed paraprofessional or law firm\* may include ~~nonlawyer~~ 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 ~~or the State Bar Act~~;

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

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

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

(d) A lawyer 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:

(1) an individual who is not a lawyer or a licensed paraprofessional~~nonlawyer~~ 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;

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

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

(e) A licensed paraprofessional shall not practice in a law firm\* with a lawyer if:

(1) licensed paraprofessionals direct or regulate any lawyer's professional judgment in rendering legal services;

(2) licensed paraprofessionals have ~~direct~~ supervisory authority over any lawyer; or

(3) ~~any~~ licensed paraprofessionals possess ~~any majority~~ ownership interest or exercise controlling managerial authority in the firm;

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

(g) A ~~lawyer~~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 ~~lawyer~~licensed paraprofessional's independent professional judgment, or with the ~~lawyer~~licensed paraprofessional-client relationship, or allows or aids any person\* to practice law in violation of these rules or ~~the State Bar Act~~applicable law.

#### **Comment**

[Reserved]

**CHAPTER 7.  
INFORMATION ABOUT LEGAL SERVICES**

**Rule 7.2 Advertising  
(Proposed Rule – Clean Version)**

- (a) Subject to the requirements of rules 7.1 and 7.3, a licensed paraprofessional may advertise services through any written,\* recorded or electronic means of communication, including public media.
- (b) A licensed paraprofessional shall not compensate, promise or give anything of value to a person\* for the purpose of recommending or securing the services of the licensed paraprofessional or the licensed paraprofessional's law firm,\* except that a licensed paraprofessional may:
- (1) pay the reasonable\* costs of advertisements or communications permitted by this rule;
  - (2) pay the usual charges of a legal services plan or a qualified licensed paraprofessional referral service. A qualified licensed paraprofessional referral service is a licensed paraprofessional referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a Licensed Paraprofessional Referral Service in California;
  - (3) pay for a law practice in accordance with rule 1.17;
  - (4) refer clients to another licensed paraprofessional, a lawyer or a nonlawyer professional pursuant to an arrangement not otherwise prohibited under these rules that provides for the other person\* to refer clients or customers to the licensed paraprofessional, if:
    - (i) the reciprocal referral arrangement is not exclusive; and
    - (ii) the client is informed of the existence and nature of the arrangement;
  - (5) offer or give a gift or gratuity to a person\* having made a recommendation resulting in the employment of the licensed paraprofessional or the licensed paraprofessional's law firm,\* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.
- (c) Any communication made pursuant to this rule shall include: (1) the name and contact information of at least one lawyer, licensed paraprofessional or law firm\* responsible for its content, (2) include in the communication at least one licensed paraprofessional's license number; and (3) include in the communication a clear and conspicuous statement that the licensed paraprofessional is not a lawyer. (d) If a licensed paraprofessional's law firm maintains a website advertising the licensed paraprofessional's services, the website must include a page that contains all the mandatory disclosures required under rule 1.4.2(a).

**Comment**

[Reserved]

**Rule 7.2 Advertising  
(Proposed Rule – Redline Version)**

- (a) Subject to the requirements of rules 7.1 and 7.3, a ~~lawyer~~ licensed paraprofessional may advertise services through any written,\* recorded or electronic means of communication, including public media.

(b) A lawyer-licensed paraprofessional shall not compensate, promise or give anything of value to a person\* for the purpose of recommending or securing the services of the lawyer-licensed paraprofessional or the lawyer-licensed paraprofessional's law firm,\* except that a lawyer-licensed paraprofessional may:

- (1) pay the reasonable\* costs of advertisements or communications permitted by this rule;
- (2) pay the usual charges of a legal services plan or a qualified lawyer-licensed paraprofessional referral service. A qualified lawyer-licensed paraprofessional referral service is a lawyer-licensed paraprofessional referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a Lawyer-Licensed paraprofessional Referral Service in California;
- (3) pay for a law practice in accordance with rule 1.17;
- (4) refer clients to another lawyer-licensed paraprofessional, a lawyer or a nonlawyer-professional pursuant to an arrangement not otherwise prohibited under these Rules-rules or the State Bar Act that provides for the other person\* to refer clients or customers to the lawyer-licensed paraprofessional, if:
  - (i) the reciprocal referral arrangement is not exclusive; and
  - (ii) the client is informed of the existence and nature of the arrangement;
- (5) offer or give a gift or gratuity to a person\* having made a recommendation resulting in the employment of the lawyer-licensed paraprofessional or the lawyer-licensed paraprofessional's law firm,\* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.

(c) Any communication made pursuant to this rule shall include: (1) the name and ~~address~~-contact information of at least one lawyer, licensed paraprofessional or law firm\* responsible for its content, (2) include in the communication at least one licensed paraprofessional's license number; and (3) include in the communication a clear and conspicuous statement that the licensed paraprofessional is not a lawyer.

(d) If a licensed paraprofessional's law firm maintains a website advertising the licensed paraprofessional's services, the website must include a page that contains all the mandatory disclosures required under rule 1.4.2(a).

#### **Comment**

[Reserved]

**Rule 7.3 Solicitation of Clients  
(Proposed Rule – Clean Version)**

(a) A licensed paraprofessional shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the licensed paraprofessional's pecuniary gain, unless the person\* contacted:

- (1) is a lawyer or a licensed paraprofessional; or
- (2) has a family, close personal, or prior professional relationship with the licensed paraprofessional.

(b) A licensed paraprofessional shall not solicit professional employment by written,\* recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the person\* being solicited has made known\* to the licensed paraprofessional a desire not to be solicited by the licensed paraprofessional; or
- (2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress or harassment.

(c) Every written,\* recorded or electronic communication from a licensed paraprofessional soliciting professional employment from any person\* known\* to be in need of legal services in a particular matter shall include:

- (1) the word "Advertisement" or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person\* specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.
- (2) include the name, contact information, and license number of the licensed paraprofessional responsible for the content of the communication;
- (3) include a clear and conspicuous statement that the paraprofessional is not a lawyer; and
- (4) if an advertisement subject to this subdivision is in a language other than English, the statements required by this subdivision shall be in the same language as the advertisement.

(d) A licensed paraprofessional shall not act as a runner or capper for another licensed paraprofessional, nor solicit another person to act as a runner or capper for the licensed paraprofessional.

- (1) For purposes of paragraph (d), a "runner or capper" is any person, firm, association, or corporation acting for consideration in any manner or in any capacity as an agent for an attorney, a paraprofessional, or a law firm, in the solicitation or procurement of business for the licensed paraprofessional except as otherwise authorized by these rules.
- (2) Nothing in paragraph (d) shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by these rules.

(e) Notwithstanding the prohibitions in paragraph (a), a licensed paraprofessional may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the licensed paraprofessional that uses in-person, live telephone or real-time electronic contact to solicit memberships or subscriptions for the plan from persons\* who are not known\* to need legal services in a particular matter covered by the plan.

(f) As used in this rule, the terms “solicitation” and “solicit” refer to an oral or written\* targeted communication initiated by or on behalf of the licensed paraprofessional that is directed to a specific person\* and that offers to provide, or can reasonably\* be understood as offering to provide, legal services.

#### Comment

[Reserved]

### Rule 7.3 Solicitation of Clients (Proposed Rule – Redline Version)

(a) A lawyerlicensed paraprofessional shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the lawyerlicensed paraprofessional's pecuniary gain, unless the person\* contacted:

- (1) is a lawyer or a licensed paraprofessional; or
- (2) has a family, close personal, or prior professional relationship with the lawyerlicensed paraprofessional.

(b) A lawyerlicensed paraprofessional shall not solicit professional employment by written,\* recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the person\* being solicited has made known\* to the lawyerlicensed paraprofessional a desire not to be solicited by the lawyerlicensed paraprofessional; or
- (2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress or harassment.

(c) Every written,\* recorded or electronic communication from a lawyerlicensed paraprofessional soliciting professional employment from any person\* known\* to be in need of legal services in a particular matter shall include:

(1) the word “Advertisement” or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person\* specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.

(2) include the name, contact information, and license number of the licensed paraprofessional responsible for the content of the communication;

(3) include a clear and conspicuous statement that the paraprofessional is not a lawyer; and

(4) if an advertisement subject to this subdivision is in a language other than English, the statements required by this subdivision shall be in the same language as the advertisement.

(d) A licensed paraprofessional shall not act as a runner or capper for another licensed paraprofessional, nor solicit another person to act as a runner or capper for the licensed paraprofessional.

(1) For purposes of paragraph (d), a “runner or capper” is any person, firm, association, or corporation acting for consideration in any manner or in any capacity as an agent for an attorney, a paraprofessional, or a law firm, in the solicitation or procurement of business for the licensed paraprofessional except as otherwise authorized by these rules.

(2) Nothing in paragraph (d) shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by these rules.

(e) Notwithstanding the prohibitions in paragraph (a), a lawyerlicensed paraprofessional may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyerlicensed paraprofessional that uses in-person, live telephone or real-time electronic contact to solicit memberships or subscriptions for the plan from persons\* who are not known\* to need legal services in a particular matter covered by the plan.

(ef) As used in this rule, the terms “solicitation” and “solicit” refer to an oral or written\* targeted communication initiated by or on behalf of the lawyerlicensed paraprofessional that is directed to a specific person\* and that offers to provide, or can reasonably\* be understood as offering to provide, legal services.

**Comment**

[Reserved]



Date: August 31, 2021

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Julianne Fellmeth, Kim Kirchmeyer, and Ira Spiro

Subject: Discipline Subcommittee Recommendations Regarding Disclosure of Criminal Charges and Convictions

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## EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, recommendations regarding requirements for paraprofessional discipline.

The Discipline Subcommittee has previously provided, and the CPPWG has approved, recommendations regarding the structure of the discipline system and the public disclosure of disciplinary actions taken against paraprofessionals. This memo provides recommendations regarding public disclosure of criminal charges against, and convictions of, paraprofessionals.

## BACKGROUND

At its March 18, 2021, meeting, the CPPWG adopted recommendations for a paraprofessional discipline system. The adopted resolution specified that appeals would be heard by the Paraprofessional Licensing Board.<sup>1</sup> The CPPWG also adopted recommendation regarding the public disclosure of paraprofessional disciplinary records. The Discipline Subcommittee's

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<sup>1</sup> The title for the licensing entity has since been changed to Paraprofessional Licensing and Oversight Committee, in recognition that it is a subentity of the State Bar Board of Trustees.

## Discipline Subcommittee Recommendations Regarding Disclosure of Criminal Charges and Convictions

August 31, 2021

Page 2

February 26, 2021, memo, which served as the basis for the CPPWG's March 18 action, is provided as Attachment 1.

The February 26 memo did not include recommendations regarding the public disclosure of information about criminal charges against and convictions of paraprofessionals. This memo provides these recommendations.

### **DISCUSSION**

Prior to making recommendations regarding the public disclosure of information about criminal charges against and convictions of paraprofessionals, the Discipline Subcommittee reviewed information about how similar information is handled for attorneys.

#### **Felony Charges**

Pursuant to a resolution adopted by the Board of Trustees at its November 16, 2018, meeting, when the State Bar learns that an attorney has been charged with a felony, the following consumer alert is posted above the attorney's name on the licensee's State Bar profile page:

License Status: **Not Eligible to Practice Law**

#### **CONSUMER ALERT**

This attorney has been charged with a felony. For more information, contact the Office of Chief Trial Counsel by calling 213-765-1350 or emailing

[ConvictionMonitoring@calbar.ca.gov](mailto:ConvictionMonitoring@calbar.ca.gov). The State Bar posts consumer alerts online when lawyers are charged in a criminal court with a felony or felonies. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar. This alert is based on the following case(s):

- SBC-20-C-30839 (Copy/Paste this number into the [State Bar Court Portal](#))

**DISCLAIMER:** The filing of criminal charges does not constitute a finding of guilt or professional misconduct. Criminal defendants are presumed to be innocent until proven guilty in a court of law.

### Criminal Convictions

When the State Bar learns that an attorney has been convicted of a crime, the conviction record is transmitted to State Bar Court.<sup>2,3</sup> The record of transmission is posted to the attorney's profile page. Following is an example of how this information appears:

Date	License Status 	Discipline 	Administrative Action 
Present	Active		
7/22/2021		Conviction record transmitted to State Bar Court 21-C-30510 	
4/29/2021		Conviction record transmitted to State Bar Court 21-C-30319 	
6/1/2004	Admitted to the State Bar of California		

### RECOMMENDATION

The Discipline Subcommittee recommends that public disclosure of criminal charges against, and convictions of, paraprofessionals, mirror public disclosure requirements for attorneys. Records of conviction should be transmitted to the Paraprofessional Licensing and Oversight Committee, as the CPPWG's adopted recommendations for a discipline system do not include the State Bar Court. Any required statutory amendments to Business and Professions Code section 6101 should be included in implementation of the paraprofessional program.

### PROPOSED RESOLUTION

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that public disclosure of criminal charges against and convictions of paraprofessionals mirror public disclosure requirements for attorneys.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that conviction records be transmitted to the Paraprofessional Licensing and Oversight Committee, and any required statutory amendments to Business and Professions Code section 6101 be included in implementation of the paraprofessional program.

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<sup>2</sup> [Business and Professions Code § 6101](#) requires the State Bar to transmit the record of conviction to the Supreme Court. The Supreme Court has delegated the review of these records to the State Bar Court's Review Department.

<sup>3</sup> Misdemeanor convictions that do not involve the practice of law or moral turpitude are not transmitted to State Bar Court or reported on the attorney's profile. See [Business and Professions Code § 6068\(o\)\(5\)](#).



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: February 26, 2021

To: California Paraprofessional Working Group

From: Sharon Bashan, Julianne Fellmeth, Kim Kirchmeyer, and Ira Spiro

Subject: Update and Recommendations for Disciplinary Structure for Paraprofessional Program

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the requirements for paraprofessional discipline.

The Discipline Subcommittee (Subcommittee), comprised of the authors of this memorandum, is charged with the developing a proposed paraprofessional program. To that end, in the present memorandum the Subcommittee submits recommendations for CPPWG review and approval in regard to the paraprofessional disciplinary model and the designation of paraprofessional discipline records as public or private.

### DISCUSSION

The Discipline Subcommittee, comprised of the authors of this memorandum, presented the paraprofessional disciplinary model outlined in Table 1 on the following page to the CPPWG at its January 15, 2021, meeting, the CPPWG discussed and provided feedback regarding the model at that time.

**Table 1. Disciplinary Model**

<b>Model Element</b>	<b>Recommended Approach</b>
Complaint Intake and Investigation	To be handled by the Office of Chief Trial Counsel (OCTC)
Citation and Fine <sup>1</sup>	To be administered by OCTC <ul style="list-style-type: none"> <li>• If fine and fee determination is disputed, that dispute will be adjudicated by the Hearing Panel</li> </ul>
<ul style="list-style-type: none"> <li>• Initial Hearings</li> <li>• Disputed Fine and Fee Determinations</li> </ul>	Three-person Hearing Panel
Settlement Conferences	<ul style="list-style-type: none"> <li>• To take place only if OCTC and paraprofessional mutually consent</li> <li>• To be heard by staff adjudicator</li> </ul>
Appeals and Stipulated Discipline	Three-person panel or the Paraprofessional Board
Final Discipline Decision	<ul style="list-style-type: none"> <li>• Suspensions and Revocations: final discipline decision to be made by the Supreme Court</li> <li>• Appeals from the Appeals level to be heard by the Supreme Court</li> <li>• All other discipline finalized at appropriate level within the State Bar’s paraprofessional disciplinary structure, level as yet to be determined</li> </ul>

The December 15, 2020, memorandum to the CPPWG, discussed at its January 15 meeting, provides further detail regarding this proposal; that memo is provided as Attachment A. The Subcommittee seeks the CPPWG’s approval of this proposed disciplinary model with the understanding that a final recommendation regarding which body, a panel or the Paraprofessional Board, will consider appeals and stipulated discipline, will be developed after the composition of the Paraprofessional Board has been determined.

Subsequent to the January 2021 meeting the Subcommittee focused on various alternatives to discipline and the development of a proposed approach to determine which discipline records will be considered public documents. The Subcommittee was aided in this work by Ms. Danielle Lee with the State Bar’s OCTC, Mr. Andrew Tuft of the State Bar’s Office of Professional Competence, and Judge Yvette Roland, of the State Bar Court.

**ALTERNATIVES TO FORMAL DISCIPLINE/NONTRADITIONAL DISCIPLINE**

The Subcommittee explored various alternatives to the formal discipline trajectory beyond those outlined in the recommendation reviewed on January 15,<sup>2</sup> some of which exist in the

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<sup>1</sup> The term “Diversion” was also included in this box in the January 15, 2021, memo. The Subcommittee has addressed in detail various diversion options in the following section of this memorandum and made distinct recommendations accordingly. As such that particular issue has been removed from this particular table.

<sup>2</sup> Specifically, citations and fines, which the CPPWG voted to include in the model at its January 15, 2021, meeting.

attorney discipline context and some that could be imported from Department of Consumer Affairs boards. These include:

- Warning Letters
- Agreements in Lieu of Discipline
- Mandatory Fee Arbitration
- Private Reprovals

In addition, the Subcommittee explored the Alternative Discipline Program (ADP), which is in fact part of the formal attorney discipline system; ADP is a unique disciplinary pathway for attorneys whose misconduct is determined to stem directly from a substance abuse or mental health issue. Each of these alternatives or approaches is described briefly below.

### **Warning Letters**

Warning letters are issued by OCTC in circumstances where no violation has been found but OCTC determines that some action, or lack thereof, should be brought to the respondent attorney's attention, along with corresponding resource material. The Subcommittee believes these letters are useful tools and recommends that they be included in the paraprofessional discipline model.

### **Agreements in Lieu of Discipline**

Agreements in Lieu of Discipline (ALDs) are authorized by Business and Professions Code section 6092.5(i): "In addition to any other duties specified by law, the disciplinary agency shall do all of the following: Make agreements with respondents in lieu of disciplinary proceedings, regarding conditions of practice, further legal education, or other matters."

These agreements are used by OCTC for low-level discipline, for example, failure to perform competently or failure to communicate with a client, that is aberrational in nature. An attorney must stipulate to the underlying facts and admit culpability in order to be eligible for an ALD. Respondent attorneys are subject to normal probation conditions pursuant to ALDs, for example restitution, and/or client trust accounting school. While ALD's are used for low-level discipline, they are not considered disciplinary in nature and are not made public.

The Subcommittee understands that one of the benefits of the ALD tool from OCTC's perspective is that the respondent attorney stipulates to both culpability and the underlying facts; in the event that the attorney does not satisfy the terms of the ALD, OCTC can proceed directly to the filing of a Notice of Disciplinary Charges. From the attorney's perspective the obvious benefits include the fact that the ALD is not considered discipline and is not a public record.

Even in light of these dual benefits however, the Subcommittee does not recommend ALDs for inclusion in the paraprofessional discipline model at this time. The Subcommittee prioritizes transparency for the public and consumers; with this value in mind, the Subcommittee recommends that any conduct that rises to the level of actual discipline should in fact be considered discipline and should be made public accordingly.

### **Mandatory Fee Arbitration (MFA)**

The attorney MFA program is authorized under the Mandatory Fee Arbitration Act (Business and Professions Code sections 6200-6206) and is designed to provide an informal, low-cost process to resolve fee disputes between lawyer and client. About 95 percent of MFA cases are handled through local bar association arbitration programs (currently there are 32 local programs), with the remainder being arbitrated by volunteer arbitrators appointed by State Bar staff. The average annual caseload handled by the State Bar-appointed arbitrators is approximately 60 cases; and on average approximately 1,000 cases are handled by local bar association arbitration programs each year.

In addition to arbitration, the MFA program also handles requests for enforcement of fee arbitration awards. An attorney who fails to adhere to the terms of an MFA award can be placed on involuntary inactive status, therefore losing eligibility to practice. Neither participation in MFA, an award in favor of a client, nor placement on inactive status due to failure to pay, are considered discipline by the State Bar.

While the Subcommittee does have some concerns regarding the fact that MFA participation and awards are not made public, the MFA program does appear to provide effective consumer recourse for addressing fee disputes. An additional benefit is that the existence of an MFA option reduces the burden on the formal discipline system, essentially triaging fee-only disputes to a different resolution track. As such the Subcommittee recommends that the existing attorney MFA program be modified to accommodate a new paraprofessional licensee, and that this MFA program be included in the paraprofessional program accordingly.

### **Private Reprovals**

Private reprovals are issued under circumstances similar to ALDs, though they are considered discipline. The Subcommittee's rationale for not including private reprovals in the paraprofessional discipline model is similar to that articulated with respect to ALDs. Disciplinary conduct should be publicly noticed.

### **Alternative Discipline Program (ADP)**

The Subcommittee also explored the Alternative Discipline Program (ADP). This program was statutorily created as part of the Lawyer Assistance Program (LAP), which is a voluntary program for attorneys facing substance abuse or mental health challenges, funded by a portion of attorney licensing fees. There are between 5 and 10 attorneys admitted into the ADP program annually.

The ADP is designed to address substance abuse or mental health issues that caused attorney misconduct through a services and treatment plan developed by LAP/ADP personnel. A medical professional, whose services are secured by the State Bar, determines the nexus between misconduct and substance abuse/mental health issues as part of the determination of eligibility for ADP. In order to participate in ADP the respondent attorney must stipulate to underlying facts and culpability. Two levels of discipline are determined at the onset of program participation—a lower level of discipline corresponding to successful completion of ADP terms and conditions, and a higher level of discipline for the converse result, with discipline imposed

at the conclusion of the program. Participation in the ADP programs intended to last 36 months but can end early for “good behavior.”

While the Subcommittee was impressed by the structure of the ADP program, is aware of the prevalence of substance abuse and mental health in a variety of professions, and believes that, in the long run, it would be valuable for paraprofessionals to have access to both LAP and ADP, it does not recommend inclusion of ADP in the paraprofessional discipline model at this time. Because of the highly specialized and resource-intensive nature of this caseload it would not make sense for the paraprofessional discipline system to try to replicate the existing process, which involves dedicated State Bar Court judges and a host of State Bar staff and contractors. It would also be extremely difficult to incorporate paraprofessionals into the existing systems in place for attorneys. Given these facts and the projected low number of potential paraprofessional ADP program participants, the Subcommittee does not recommend including the ADP in our model at this time.

A summary of the Subcommittee’s recommendations regarding alternatives to formal discipline/nontraditional discipline is provided in Table 2.

**Table 2. Recommendations Regarding Inclusion or Exclusion of Alternatives to Formal Discipline/Non-Traditional Discipline**

<b>Alternative or Nontraditional Discipline Approach</b>	<b>Included/ Excluded?</b>	<b>Discipline?</b>
<b>Warning Letter</b>	Included	No
<b>Agreements in Lieu of Discipline</b>	Excluded	
<b>Mandatory Fee Arbitration</b>	Included	No
<b>Orders of Abatement</b>		
<b>Private Reprimands</b>	Excluded	
<b>Alternative Discipline Program</b>	Excluded	

In addition to these alternatives to discipline/nontraditional discipline outcomes fully vetted by the Subcommittee, admonishment, a disciplinary case resolution outcome available to the State Bar Court, which is not actually considered discipline, was also briefly studied. As outlined in the Next Steps section below, the Subcommittee will work to better understand how and when admonishment is used subsequent to the CPPWG’s February meeting.

**PUBLIC RECORDS**

As reflected in Table 3 below, the Subcommittee has developed a comprehensive set of recommendations regarding public versus private designation of paraprofessional discipline records. In generating these recommendations the Subcommittee was informed by the existing rules in place for attorney records as well as applicable statutes in the Medical Board context; Business and Professions Code sections 803.1 and 2027 address not only the public versus private nature of various record types, but also whether public records will be affirmatively posted on the licensing board’s website, and when/if records will be destroyed. The

Subcommittee specifically applied the following categorization to its record classification efforts:

- Public, Upon Request
- Public, On Website
- Public in Perpetuity
- Public, Finite Term
- Private, in Perpetuity

The verbiage in Table 3 has been abbreviated for ease of review purposes; the full text, which includes a description of parallel designations in the attorney and medical contexts, can be found in Attachment B.

**Table 3. Recommendations Regarding Public Records**

Intervention or Disciplinary Outcome	Private or Public?	If Public On Website or On Request	Finite or Indefinite Retention?
Warning Letter (not discipline)	Private		TBD
Citation & Fine (not discipline)	Public for 3 years from date of resolution	<ul style="list-style-type: none"> <li>• Website for 3 years unless withdrawn or dismissed</li> <li>• After 3 years transition to Private</li> </ul>	Indefinite
Notice of Disciplinary Charges	Public unless w/drawn or dismissed	On website for duration that discipline itself on website	For duration of period that underlying discipline is public
Public Repeval	Public	<ul style="list-style-type: none"> <li>• Website for 10 years</li> <li>• After 10 years transitions to Public on request</li> </ul>	Indefinitely
Probation	Public	Website	Indefinite
Interim Suspension	Public	Website	Finite: duration of interim suspension
Suspension	Public	Website: Suspensions pursuant to discipline/probation	Indefinite
Disbarment	Public	Website	Indefinite
Criminal Convictions	TBD		

## **NEXT STEPS**

The Subcommittee intends to develop recommendations regarding whether admonishments should be available as case resolution for paraprofessional Hearing and Appellate Panels, and the public versus private designation of records of paraprofessional criminal conviction.

In addition, the Subcommittee will develop recommended discipline standards to be submitted to the CPPWG for review at its June or August meeting.



# The State Bar *of California*

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: December 17, 2020

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Julianne Fellmeth, Kim Kirchmeyer, and Ira Spiro

Subject: Update and Recommendations for Disciplinary Structure for Paraprofessional Program

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the requirements for paraprofessional discipline.

### DISCUSSION

At its August 25, 2020, meeting, the CPPWG determined that subcommittees should be created to develop requirements for paraprofessional licensing, regulation, and discipline. These subcommittees were appointed subsequent to that meeting, and each met several times to review and consider information about their assigned topics. At its October 29, 2020, meeting, the Working Group reviewed the status reports from each of these subcommittees and provided feedback on the subcommittees' preliminary recommendations and proposals.

At the October 29 meeting, the Discipline Subcommittee, which comprised at that time Kim Kirchmeyer and Ira Spiro, provided the CPPWG with an update on its initial design for a paraprofessional disciplinary structure as follows:

- The State Bar's Office of the Chief Trial Counsel (OCTC) to handle complaint review and investigation;

- First level adjudication to be conducted either by a single staff adjudicator (an attorney employed by the State Bar) or by a three-person panel a public member,<sup>1</sup> and a licensee;
- Appellate level adjudication to be conducted by a distinct staff adjudicator or a three-member hearing panel; and
- An outcome of citation and fine would be established, a remedy unavailable in the attorney discipline system.

Subsequent to that meeting Sharon Bashan and Julianne Fellmeth joined the subcommittee, which has continued to meet and finalize its disciplinary structure recommendations. This memo provides an update on the status of the subcommittee’s work, along with preliminary recommendations for a legal paraprofessional disciplinary model.

**Table 1. Proposed Disciplinary Model**

Model Element	October 29 Proposal	Current Recommendation
Complaint Intake and Investigation	To be handled by OCTC	Same
Diversion Fines and Fees	To be administered by OCTC To be administered by OCTC	Same, with clarification that if an OCTC fine and fee determination is disputed that dispute will be adjudicated by the Hearing Panel
Initial Hearings and Disputed Fine and Fee Determinations	Three-person panel or staff adjudicator	Three-person Hearing Panel
Settlement Conferences	Undecided	To take place only if both OCTC and paraprofessional mutually consent.  To be heard by staff adjudicator
Appeals and Stipulated Discipline	Three-person panel or staff adjudicator	Three-person panel or the Paraprofessional Board
Final Discipline Decision	Supreme Court	Suspensions and Revocations: final discipline decision to be made by the Supreme Court.  Appeals from the Appeals level to be heard by the Supreme Court.  All other discipline finalized at appropriate level within the State Bar’s paraprofessional disciplinary structure, level as yet to be determined.

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<sup>1</sup> Public members could not be current or former attorney or paraprofessional licensees.

A detailed infographic of the model is provided as Attachment A. Selected issues are addressed below.

### **THREE-PERSON PANELS VERSUS STAFF ADJUDICATOR**

The subcommittee's October 29 update provided options, to be vetted by the Working Group, as to who would preside over the initial hearing and the first appeal, either a single staff adjudicator or a panel comprising a staff adjudicator, a public member, and a paraprofessional licensee. The identified benefits of a panel model included the ability to have broader participation in the disciplinary decision-making process, specifically enabling the participation of a paraprofessional. The Department of Consumer Affairs' disciplinary processes all allow for participation by relevant licensees. Alternatively, a staff adjudicator model would afford efficiency and cost containment benefits.

Subsequent to the October 29 meeting, the subcommittee determined that the benefits of the panel model at the Hearing level, where a majority of cases will be disposed, outweigh the potential downsides. The subcommittee continues to believe that it is important that these panel members be appropriately trained and compensated and will be generating recommendations in that regard for future CPPWG consideration.

With respect to the appellate level, the subcommittee has outlined two options for the CPPWG's consideration—a distinct three-member panel or the Paraprofessional Board.<sup>2</sup> Leveraging the licensing board, which will presumably be a volunteer in nature, at this stage would be a lower-cost option than utilizing a new three-member Appeals panel, and would still allow for participants with a mix of backgrounds and licensure statuses. Given that a relatively small number of matters are likely to be appealed, the subcommittee is less concerned about the lack of paid professional adjudicators at this level as compared to the initial hearing stage.

### **UNAUTHORIZED PRACTICE OF LAW**

The subcommittee has begun to explore the interplay between licensed paraprofessionals and the existing framework for the investigation and prosecution of the unauthorized practice of law (UPL), in part to determine whether any or statutory changes that might need to be made to address the addition of paraprofessionals a new class of legal licensee. To this end the subcommittee heard from Steve Moawad, Special Assistant to the Chief Trial Counsel, Agustin Hernandez, Supervising Attorney, OCTC, and Ryann Gerber Jorban, Deputy District Attorney with the Consumer Protection Division of the Los Angeles County District Attorney's Office. OCTC has limited statutory remedies available; it can assume jurisdiction over an unlawful practice, pursue civil fines in the superior court, and refer matters to local District Attorneys' Offices (DA Offices). DA Offices can pursue

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<sup>2</sup> As part of its deliberations, the Discipline Subcommittee acknowledged a lack of clarity regarding the structure and composition of the overarching paraprofessional board. The CPPWG's discussion of this topic at its December 17 meeting will be helpful; for the purposes of its deliberations, the subcommittee assumed that there would be a board comprised of a mix of attorney and nonattorney members that would be available to participate in the disciplinary process.

misdemeanor criminal charges<sup>3</sup>, though a lack of staffing and other resources appears to make this outcome a reality for only the most egregious matters in many jurisdictions. In fact, while the subcommittee now understands that the UPL statutes may not need to be changed to accommodate a new class of licensees, a pervasive lack of resources in OCTC and DA Offices is of concern and may need to be addressed by the CPPWG's recommendations. The addition of a new class of licensees is likely to increase the workload for both systems given the need to determine if the behaviors at issue are in fact authorized under the parameters of the licensed paraprofessional program. The subcommittee will continue to explore these issues and will determine if recommendations in this area are warranted for consideration by the CPPWG.

### **PUBLIC RECORDS**

The subcommittee has also begun deliberations regarding which paraprofessional disciplinary records should be made public. In the attorney discipline system:

- Complaints are not public until charges are filed.
- If a case is settled through stipulation prior to charges being filed, it does not become public until final discipline is imposed.
- All final discipline is public, with the exception of private reproof.
- Private reproof is public only if charges were filed in the case.

The subcommittee has considered, but not reached a decision regarding, whether fines and diversion should be made public. Fines are unavailable in the attorney discipline system. Diversion is most akin to agreements in lieu of discipline<sup>4</sup>. While there is a consumer protection argument that all types of outcomes should be made public, there is a counter-view that paraprofessionals will be less likely to agree to remedies that may ultimately be more protective than an adjudicated hearing if those remedies are made public.

In addition to the types of situations that will be made public, the subcommittee is considering the question of how long disciplinary and other records should be publicly available.

### **NEXT STEPS**

The Discipline Subcommittee will continue to meet, and will develop additional recommendations on topics including:

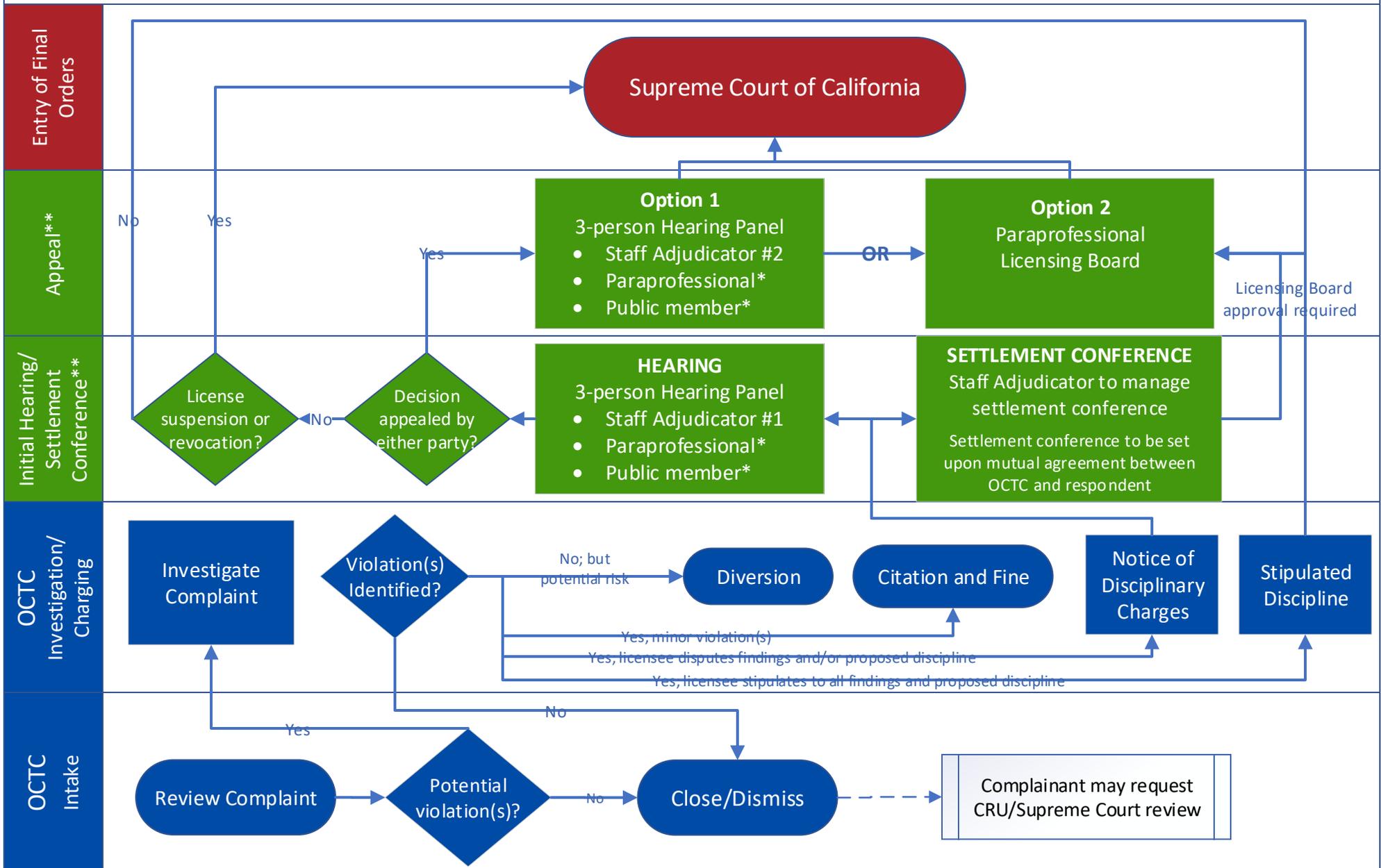
- Mandatory fee arbitration in the paraprofessional disciplinary system context;
- Compensation and training for panel members;
- Clarification of diversion, fines and fees, and alternatives in lieu of discipline;

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<sup>3</sup> Ms. Jorban identified as problematic the fact that DA Offices are limited to misdemeanor charges even when dealing with repeat UPL offenders. She suggested that statutory changes are needed to authorize felony charges in certain circumstances.

<sup>4</sup> The Discipline Subcommittee has not yet addressed agreements in lieu of discipline, a nondisciplinary outcome available in the attorney discipline system.

- Enhancements/improvements to the existing UPL enforcement structure;
- Public records; and
- Standards of discipline.



\*Panels will be appointed for a limited term, and will hear all cases during their term. Panel members will receive extensive training, and be paid for hearing cases.

\*\*OCTC to prosecute cases at hearing and appeal.

California Professional License Discipline  
Public Records Designation

ATTACHMENT B

Intervention or Disciplinary Outcome	Attorneys	Doctors	Paraprofessionals Private or Public?	If Public: On Website or On Request	Finite or Indefinite Retention?
Warning Letter	Private	Usually called an educational letter and it's Private	Private		TBD
Citation & Fine	N/A	Public 30 days after issuance unless an appeal is received and available for three years from the date the citation is resolved by payment of the administrative fine or compliance with the order of abatement.	Public for 3 years from date of resolution	<ul style="list-style-type: none"> <li>• Website for 3 years unless withdrawn or dismissed</li> <li>• After 3 years transition to Private</li> </ul>	Indefinite
Notice of Disciplinary Charges	Public on website unless withdrawn or dismissed	Public on the website, unless withdrawn or dismissed. If withdrawn, public upon request for one year and if dismissed public upon request indefinitely.	Public unless w/drawn or dismissed	On website for duration that discipline itself on website	For duration of period that underlying discipline is public
Public Reproval	Public	Public indefinitely, but only listed on the website for 10 years from the effective date	Could be issued before an NDC filed or after (akin to public letter of reprimand)	<ul style="list-style-type: none"> <li>• Website for 10 years</li> <li>• After 10 years transitions to public on request</li> </ul>	Indefinitely
Probation	Public	Public	Public	Website	Indefinite
Interim Suspension	Unclear	Public indefinitely, but only listed on the website while in place	Public	Website	Finite: duration of interim suspension

Intervention or Disciplinary Outcome	Attorneys	Doctors	Paraprofessionals Private or Public?	If Public: On Website or On Request	Finite or Indefinite Retention?
Suspension	Public	Public <ul style="list-style-type: none"> <li>If the suspension is part of an interim suspension order or similar order, public indefinitely but only posted on the website while in place</li> </ul>	Public	Website: Suspensions pursuant to discipline/probation	Indefinite
Disbarment	Public	Public	Public	Website	Indefinite
Convictions/Consumer Alerts	Unclear	Available indefinitely on the website <ul style="list-style-type: none"> <li>Misdemeanor convictions are only listed on the website if an accusation (NDC) is filed or if a decision related to the misdemeanor conviction is issued</li> </ul>	TBD		



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: August 31, 2021

To: California Paraprofessional Program Working Group

From: Julia Brynerson, Stephen Hamilton, Judge Michael Harper, and Claudia Torres-Ambriz

Subject: Recommendations for Paraprofessional Practice Area Educational Requirements

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the requirements for paraprofessional licensing.

### DISCUSSION

At its February 26, 2021, meeting, the California Paraprofessional Program Working Group (CPPWG) adopted the Licensing Subcommittee's recommendations for paraprofessional licensing requirements that include, among other requirements, 1,000 hours of practical training completed under attorney supervision, with a minimum of 500 hours in the licensed practice area. Recommendations also included a set of core educational requirements, as well as preliminary subject matter requirements for the family law practice area. The CPPWG agreed that each practice area subcommittee would recommend subject matter-specific educational requirements. Table 1 provides a summary of educational requirements adopted at the February 26, 2021 meeting.

Table 1. Educational Requirements Adopted on February 26, 2021

Practice Area	Course	Units <sup>1</sup>
All Practice Areas	Ethics and Professional Responsibility	3
	Pretrial Discovery and Evidence	3
	Court Procedure	3
	Court Advocacy	3
	Trauma-informed representation	1
	<b>Total</b>	<b>13</b>
Family Law	Family Law and Procedure	3
	Advanced Family Law and Procedure	3
	<b>Total</b>	<b>6</b>

At its June 29, 2021, meeting, the Family, Children, and Custody Subcommittee developed additional recommendations that included requirements for adoption, violence prevention, and conservatorships and guardianships. Final recommendations from the Family, Children, and Custody Subcommittee are provided in table 2.

Table 2. Family, Children, and Custody Educational Requirements

Course	Units
Family Law and Procedure	6
Adoption	2
Violence Prevention	2
Conservatorship/Guardianship	3
<b>Total</b>	<b>13</b>

There was not time to schedule formal meetings of the other practice area subcommittees in advance of the Licensing Subcommittee meeting scheduled for August 6. In the alternative, staff recommendations were sent electronically for consideration by each subcommittee; these recommendations were benchmarked to the family law requirements, since family law is generally acknowledged to be the most complex of the areas included in the paraprofessional program.

Staff recommendations were distributed to the Collateral Criminal, Consumer Debt & General Civil, Employment & Income Maintenance, and Housing Subcommittees; members of each subcommittee were asked to review the recommendations and provide their feedback. A memo providing a summary of the staff recommendations and feedback from the subcommittees was posted to the agenda for the August 6 Licensing Subcommittee meeting,

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<sup>1</sup> One unit is defined as one hour of classroom instruction and a minimum of two hours of out of class student work each week. Based on a 15-week semester, each unit reflects 45 hours of student engagement; a 3-unit course is equal to 135 hours.

and was distributed to members of the practice area subcommittees in advance of the meeting. Members of those subcommittees were invited to attend the August 6 Licensing Subcommittee meeting to provide information and answer questions about their recommendations. The August 6 staff memo to the Licensing Subcommittee is provided as Attachment A.

At its August 6 meeting, the Licensing Subcommittee considered the recommendations included in the memo, as well as feedback provided by members of the practice area subcommittees who were not available to attend the meeting. Following are the recommendations adopted by the Licensing Subcommittee:

**Collateral Criminal**

The Licensing Subcommittee recommends adoption of the educational requirements included in table 3, which reflect the staff recommendation and agreement by the Collateral Criminal Subcommittee.

Table 3. Collateral Criminal Educational Requirements

Course	Units
Expungement, Reclassification, and Infractions	3

**Consumer Debt & General Civil**

The Licensing Subcommittee recommends adoption of the educational requirements included in table 4, which reflects feedback from one member of the Consumer Debt & General Civil Subcommittee to the staff recommendation. The subcommittee member recommended changing the course name from “Collections” to “Debt Collection and Consumer Harassment” and to increase the required number of hours for this course from 3 to 6, due to concerns that this area is complex and involves several state and federal consumer protection statutes. The Licensing Subcommittee agreed with the recommendation regarding the course name, but believe that a 3-hour course would be sufficient to cover the necessary information.

Table 4. Consumer Debt & General Civil Educational Requirements

Course	Units
Debt Collection and creditor harassment	3
Enforcement of Judgments [including wage and hour]	3
Name and Gender Change	0.5
<b>Total</b>	<b>6.5</b>

**Family Law**

The Licensing Subcommittee recommends adoption of the educational requirements included in table 2 on the previous page, which reflect the recommendations proposed by the Family Law Subcommittee.

**Employment & Income Maintenance**

The Licensing Subcommittee recommends adoption of the educational requirements included in table 5, which reflect the staff recommendation; no feedback was provided by the Employment & Income Maintenance Subcommittee.

Table 5. Employment & Income Maintenance Educational Requirements

Course	Units
Administrative Agency Procedure	3

**Housing**

The Licensing Subcommittee recommends adoption of the educational requirements included in table 6, which reflects feedback from two member of the Housing Subcommittee to the staff recommendation. Although two members of the Housing Subcommittee agreed with the staff recommendation for a 3-hour landlord-tenant course, one member recommended a 13-hour course on this topic, while another recommended a 6-unit course on unlawful detainer and a separate 3-hour landlord-tenant course. Both members specified content that should be included in these courses. The Licensing Subcommittee agreed that the course content for this practice area should be specified, but that the total number of hours should not exceed the requirements for the family law practice area.

Table 6. Housing Educational Requirements

Course	Units
Landlord-Tenant <ul style="list-style-type: none"> <li>• Leases/rental agreements</li> <li>• Security deposits</li> <li>• Types of tenancies</li> <li>• Tenant Protections</li> <li>• Housing discrimination and landlord retaliation</li> <li>• Warranty of habitability</li> <li>• Rent control and eviction control</li> <li>• Ground and procedures for nonjudicial termination of tenancies</li> <li>• Unlawful detainer procedure</li> <li>• COVID-19 tenant protection laws and tenant assistance (until such laws expire)</li> <li>• Rental assistance programs</li> </ul>	10

Course	Units
<ul style="list-style-type: none"> <li>• Benefits and risks of demanding a jury trial</li> <li>• Small claims court actions</li> <li>• Subsidized Housing and Mobilehomes</li> </ul>	
Lien clearing	1
<b>Total</b>	<b>11</b>

The Licensing Subcommittee recommends that adopted educational requirements should be considered minimum requirement. Staff should be directed to work with subject matter experts and education providers to develop the content and adopt statewide educational requirements for licensed paraprofessionals.

### PROPOSED RESOLUTION

**RESOLVED**, that the California Paraprofessional Program Working Group recommends adoption of the following minimum practice area educational requirements for licensed paraprofessionals, in addition to the core educational requirements adopted at the February 26, 2021, meeting:

Practice Area	Course	Units
Collateral Criminal	Expungement, Reclassification, and Infractions	3
Consumer Debt & General Civil	Debt Collection and creditor harassment	3
	Enforcement of Judgments [including wage and hour]	3
	Name and Gender Change	0.5
	<b>Total</b>	<b>6.5</b>
Family, Children, and Custody	Family Law and Procedure	6
	Adoption	2
	Violence Prevention	2
	Conservatorship/Guardianship	3
	<b>Total</b>	<b>13</b>
Employment & Income Maintenance	Administrative Agency Procedure	3
Housing	Landlord-Tenant	10
	<ul style="list-style-type: none"> <li>• Leases/rental agreements</li> <li>• Security deposits</li> <li>• Types of tenancies</li> <li>• Tenant Protections</li> <li>• Housing discrimination and landlord retaliation</li> <li>• Warranty of habitability</li> <li>• Rent control and eviction control</li> <li>• Ground and procedures for nonjudicial termination of tenancies</li> </ul>	

Recommendations for Paraprofessional Practice Area Educational Requirements

August 31, 2021

Page 6

Practice Area	Course	Units
	<ul style="list-style-type: none"><li>• Unlawful detainer procedure</li><li>• COVID-19 tenant protection laws and tenant assistance (until such laws expire)</li><li>• Rental assistance programs</li><li>• Benefits and risks of demanding a jury trial</li><li>• Small claims court actions</li></ul>	
	Subsidized Housing and Mobilehomes	
	Lien clearing	1
	<b>Total</b>	<b>11</b>



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

Date: August 6, 2021

To: Licensing Subcommittee

From: State Bar Staff

Subject: Practice Area Educational Requirements for the Paraprofessional Program

At its February 26, 2021, meeting, the California Paraprofessional Program Working Group (CPPWG) adopted the Licensing Subcommittee's recommendations for paraprofessional licensing requirements that include, among other requirements, 1,000 hours of practical training completed under attorney supervision, with a minimum of 500 hours in the licensed practice area. Recommendations also included a set of core educational requirements, as well as preliminary subject matter requirements for the family law practice area; educational requirements for the family law practice area were subsequently expanded to include requirements for adoption, violence prevention, and conservatorships and guardianships. Table 1 provides a summary of educational requirements developed to date:

Table 1. Educational Requirements Summary

Practice Area	Course	Units <sup>1</sup>
All Practice Areas	Ethics and Professional Responsibility	3
	Pretrial Discovery and Evidence	3
	Court Procedure	3
	Court Advocacy	3
	Trauma-informed representation	1
	<b>Total</b>	<b>13</b>
Family Law	Family Law and Procedure	6
	Adoption	2
	Violence Prevention	2
	Conservatorship/Guardianship	3
	<b>Total</b>	<b>13</b>

<sup>1</sup> One unit is defined as one hour of classroom instruction and a minimum of two hours of out of class student work each week. Based on a 15-week semester, each unit reflects 45 hours of student engagement; a 3-unit course is equal to 135 hours.

The CPPWG agreed that each practice area subcommittee would provide subject matter-specific requirements for consideration by the Licensing Subcommittee in advance of its recommendation to the full Working Group. To inform the Licensing Subcommittee's deliberations, staff developed preliminary recommendations for educational requirements, for consideration by the practice area subcommittees; these recommendations were benchmarked to the family law requirements, since family law is generally acknowledged to be the most complex of the areas included in the paraprofessional program.

Staff recommendations were distributed to the Collateral Criminal, Consumer Debt & General Civil, Employment & Income Maintenance, and Housing Subcommittees; members of each subcommittee were asked to review the recommendations and provide their feedback. Staff recommendations and subcommittee responses are provided below:

### **Collateral Criminal**

#### *Staff recommendation*

Course	Units
Expungement, Reclassification, and Infractions	3

#### *Subcommittee recommendation*

The Collateral Criminal Subcommittee agreed with the staff recommendation.

### **Consumer Debt & General Civil**

#### *Staff recommendation*

Course	Units
Collections	3
Enforcement of Judgments [including wage and hour]	3
Name and Gender Change	0.5
<b>Total</b>	<b>6.5</b>

#### *Subcommittee recommendation*

Responses were not received from all members of the Consumer Debt & General Civil Subcommittee. One member agreed with the recommendation, while another provided the following recommendation:

Course	Units
Debt Collection and creditor harassment	6
Enforcement of Judgments [including wage and hour]	3
Name and Gender Change	0.5
<b>Total</b>	<b>9.5</b>

The recommendation for increased hours and expanded course title was based on concerns that the area of debt collection and creditor harassment was complex, and involved several state and federal consumer protection statutes.

**Housing**

*Staff recommendation*

Course	Units
Landlord-Tenant	4
Lien clearing	1
<b>Total</b>	<b>5</b>

*Subcommittee recommendations*

While some members of the Housing Subcommittee agreed with staff recommendations, two members provided alternative recommendations, and also specified content for the required coursework.

Recommendation 1

Course	Units
Landlord-Tenant <ul style="list-style-type: none"> <li>• Leases/rental agreements</li> <li>• Security deposits</li> <li>• Types of tenancies</li> <li>• Housing discrimination and landlord retaliation</li> <li>• Warranty of habitability</li> <li>• Rent control and eviction control</li> <li>• Ground and procedures for nonjudicial termination of tenancies</li> <li>• Unlawful detainer procedure</li> <li>• COVID-19 tenant protection laws and tenant assistance (until such laws expire)</li> </ul>	13
Lien clearing	1
<b>Total</b>	<b>14</b>

Recommendation 2

Course	Units
Unlawful Detainer <ul style="list-style-type: none"> <li>• Rent control issues</li> <li>• Habitability</li> <li>• Benefits of demanding a jury trial</li> </ul>	6
Landlord-Tenant <ul style="list-style-type: none"> <li>• Security deposits</li> <li>• Rental assistance programs</li> <li>• Tenant protections</li> <li>• Small claims court actions</li> </ul>	3
Subsidized Housing and Mobilehomes	1
Lien clearing	1
<b>Total</b>	<b>11</b>

**Employment & Income Maintenance**

*Staff recommendation*

Course	Units
Administrative Agency Procedure	3

*Subcommittee recommendation*

The Employment & Income Maintenance Subcommittee did not respond to the staff request for feedback.

At its August 6, 2021, meeting, the Licensing Subcommittee will finalize educational requirements for recommendation to the CPPWG at its August 31 meeting. Members of the practice area subcommittees will be invited to the August 6 Licensing Subcommittee meeting, to present information and answer questions.



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: August 31, 2021

To: California Paraprofessional Program Working

From: California Paraprofessional Program Working Group Staff

Subject: Proposed Program Evaluation Metrics

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG or Working Group) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services \(ATILS\)](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include proposed metrics for program evaluation.

### BACKGROUND

The CPPWG charter, adopted by the Board of Trustees at its March 12, 2020, meeting, directs the Working Group to develop specific recommendations that include metrics and data collection methods to enable assessment of the program's effectiveness and to facilitate possible auditing and other proactive risk-based regulation. Proactive risk-based regulation is separately addressed in recommendations from the Regulation Subcommittee. This memo provides recommendations for metrics and data collection methods to enable assessment of the program's effectiveness.

### DISCUSSION

The Working Group has engaged in discussions regarding program evaluation with a number of subject matter experts. At its December 17, 2020, meeting, Mr. Zachariah DeMeola from the University of Denver's Institute for the Advancement of the American Legal System led the

CPPWG in exercises intended to identify the goals and potential risks of the paraprofessional program, and how to measure whether the program meets those goals and protects against risks. Goals and objectives of the program were identified as follows:

- Reducing the justice gap
  - Giving consumers a viable choice/alternative
  - Affordability
  - Public education on available services
  - Promoting trust in the program
- Consumer protection
  - Competency of services - ensuring only qualified persons provide services
  - Creating protections and regulation over unregulated services, including the unauthorized practice of law

In addition to identifying program goals and risks, the Working Group discussed the data that would be required to assess whether the goals were being met. A summary of the December 17 workshop discussion is provided as Attachment A.

At its July 26, 2021, meeting, the CPPWG was joined by Professor Anna Carpenter from the University of Utah College of Law, Assistant Professor Alxy Mark from Wesleyan University, who provided information about their approach to evaluating recently implemented paraprofessional program in Utah. They emphasized the distinction between research and program evaluation: research is intended to create new knowledge that can be generalized and applied in other areas; program evaluation is intended to determine whether a specific program is meeting its goals and objectives.

The Working Group was also joined by Ms. Paula Hannaford-Agor, Principal Court Researcher from the National Center for State Courts (NCSC), who provided an overview of the framework developed by NCSC, as discussed in *An Evaluation Framework for Allied Legal Professional Programs: Assessing Improvements in Access to Justice*.<sup>1</sup> She explained that NCSC's metrics for program evaluation were designated as either fundamental or supplemental. Fundamental measures rely on courts' collection of data, and allow for cross-state comparisons. Fundamental measures distinguish between a program that is succeeding and one that is failing to meet its goals. Supplemental measures may require more challenging data collection, including surveys of court personnel, clients, and allied legal professionals.

All three presenters agreed that program evaluation is costly, in terms of both financial and human resources. The cost of evaluation and available resources are factors for consideration in developing a program evaluation design. They also emphasized the value of using an outside organization to conduct program evaluation, to ensure independence and instill confidence in the results.

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<sup>1</sup> National Center for State Courts, *An Evaluation Framework for Allied Legal Professional Programs: Assessing Improvements in Access to Justice* (May 2021). [https://www.ncsc.org/\\_data/assets/pdf\\_file/0028/64468/ALP-Evaluation-Framework.pdf](https://www.ncsc.org/_data/assets/pdf_file/0028/64468/ALP-Evaluation-Framework.pdf)

In developing proposed evaluation metrics staff considered program goals and objectives identified by the Working Group, metrics that had been identified by the Working Group as part of its discussion of overall program goals, subject matter expert input, and the value of interstate comparisons of paraprofessional program impact. With this latter concern in mind, staff attempted to overlay Working Group identified metrics with the NCSC’s fundamental measures.

Attachment B reflects the results of this effort. As noted in the attachment, in some instances, collection of a fundamental metric would not be feasible. However, for the most part, staff’s recommendations for program evaluation metrics, summarized in table 1 below, should enable interstate comparisons across key measurement domains.

**Table 1. Recommended Program Evaluation Metrics**

Metric	Data Points	Data Source
Program Viability	Number of licensees/market coverage	Internal data
	Volume of use	Survey
	Stable and sufficient regulatory funding source	Internal data
	Sufficient income potential for licensees to stay in business	Survey
Equity and Access	Demographics of paraprofessionals and their clients	Survey
	Number of self-represented litigants (reduced?)	CMS/JBSIS
	Justice Gap (reduced?)	Survey
Case Outcomes/ Client Satisfaction	Overall satisfaction	Survey
	Procedural satisfaction	Survey
Legitimacy/ Political Sustainability	Lawyer, judicial officer, and general public sentiment about the program	Survey
Affordability	Fee structure transparency: consumer understanding of service offerings and price points	Survey
	Hourly rates	
	Per case/event rates	
	Number of hours to complete services	
Efficiency in Paraprofessional Training	Cost of education	Survey

Staff recommends that evaluation of the paraprofessional program be conducted between three and five years after program implementation, depending on the status of program

rollout. The evaluation should be conducted by an independent organization with experience in evaluating similar programs. Staff recommends that the metrics identified by the Working Group should be adopted as the minimum data to be collected during evaluation of the program; additional metrics and data may be included, as determined by the Oversight Committee, the Board of Trustees, program staff, and the organization engaged to conduct the evaluation.

## **PROPOSED RESOLUTIONS**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends adoption the metrics identified in table 1 of this memo as minimum data and metrics to be included in an evaluation of the effectiveness of the program.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that program evaluation be conducted between three and five years after program implementation.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that program evaluation be conducted by an independent organization with experience in evaluating similar programs.

Proactive Regulation and Program Evaluation: Risk Assessment Workshop  
December 17, 2020

**What should be the objective of regulating legal services?**

- Promoting trust in the program
- Giving consumer a viable choice/alternative
- Consumer protection
- Creating protection/regulation over unregulated services
- Competency of services - ensuring only qualified persons may provide services
- Reducing the justice gap (making services available)
- Affordability of cost of program
- Public education on available services: how to seek paraprofessional
- Impact on courts/administration of justice

**How is the current regulatory system meeting those objectives, and how is it falling short of meeting those objectives?**

Meeting Objectives	Falling Short
<ul style="list-style-type: none"> <li>➤ Protection from poor services (harm to consumers)                             <ul style="list-style-type: none"> <li>✓ CLE</li> </ul> </li> <li>➤ Impact on the courts taken into consideration</li> </ul>	<ul style="list-style-type: none"> <li>➤ Disciplinary system lacks ability and/or resources to be proactive/preventative (reliance on malpractice claims)</li> <li>➤ Lack of resources to make harmed consumers whole (no malpractice insurance requirement; premiums are costly under today's framework)</li> <li>➤ Lack of protection when it comes to access to services needed</li> <li>➤ Not enough resources to provide services for people in need (funding, legal aid, etc.)</li> <li>➤ Knowledge gap - lack of information to recognize whether a problem is legal in nature</li> <li>➤ Regulations that pertain to closing the justice gap: lack of alternatives for services</li> <li>➤ Unregulated services that open consumers to harm</li> <li>➤ Self-represented litigant trends are increasing despite unbundled and limited scope services</li> <li>➤ Public trust and confidence at risk</li> </ul>

**Key Risk #1: Worse legal result for consumer than they would have, had they used the next best alternative**

Key Factors for Identifying Risk Level	Individual or Entity Data Needed
<ul style="list-style-type: none"> <li>➤ Outcomes for people who went through the court system</li> <li>➤ Amount of need for legal services</li> </ul>	<ul style="list-style-type: none"> <li>➤ Survey:               <ul style="list-style-type: none"> <li>✓ Consumers for client satisfaction: compare relative satisfaction among lawyer, SRL, paralegal based services</li> <li>✓ Capture data relevant to the knowledge gap/legal understanding that may not be collected by looking only at court outcomes</li> <li>✓ Judges to understand impact of services on court</li> <li>✓ Request/information to litigants to get them to participate</li> <li>✓ Reviews on Yelp, Google, etc. for consumer feedback</li> </ul> </li> <li>➤ Court records:               <ul style="list-style-type: none"> <li>✓ Good or bad results from specific court outcomes</li> <li>✓ How long it takes people to get through the system based on court records                   <ul style="list-style-type: none"> <li>▪ Need to compare similar cases even if different originating points</li> <li>▪ Lacks ability to measure interactions that don't go through court system</li> </ul> </li> </ul> </li> <li>➤ Work Product               <ul style="list-style-type: none"> <li>✓ Sampling of work product from lawyers and paraprofessionals, and have people in the field compare their work</li> </ul> </li> <li>➤ Malpractice cases               <ul style="list-style-type: none"> <li>✓ Data with regard to quality of service</li> </ul> </li> </ul>

**Key Risk #2: Consumer overpays for legal service**

Key Factors for Identifying Risk Level	Individual or Entity Data Needed
<ul style="list-style-type: none"> <li>➤ Whether consumer is paying for service that is otherwise free</li> <li>➤ Whether consumers are being overcharged for value of services</li> <li>➤ Foundational question: who are the consumers the program is intended to serve?</li> <li>➤ What are the needed services?               <ul style="list-style-type: none"> <li>▪ Related to how best to close the justice gap &amp; what services a paraprofessional may be allowed to provide</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>➤ Price lists for specific services               <ul style="list-style-type: none"> <li>✓ Court fee schedules (starting place)</li> <li>✓ Statutory fees, as in probate</li> <li>✓ Factor in market rates for different counties</li> <li>✓ Hourly rates for attorneys (perhaps not as helpful because measuring full service attorneys in major firms)                   <ul style="list-style-type: none"> <li>▪ Laffer Index - major international firms</li> </ul> </li> </ul> </li> <li>➤ Number of hours to complete the service (to understand the value of the service)</li> <li>➤ Survey to assess whether consumer is informed of different services and price points</li> <li>➤ Market data for people who cannot afford lawyers who go to people who aren't attorneys               <ul style="list-style-type: none"> <li>✓ Criminal cases</li> <li>✓ Immigration consultants</li> </ul> </li> </ul>

**Risk #3: Consumer Receives Incompetent Legal Services**

Key Factors for Identifying Risk Level	Individual or Entity Data Needed
<ul style="list-style-type: none"> <li>▪</li> </ul>	

**Risk #4: Consumer Receives Unregulated Legal Services**

Key Factors for Identifying Risk Level	Individual or Entity Data Needed
<ul style="list-style-type: none"> <li>▪</li> </ul>	

**Risk Analysis Matrix**

Risk	Consumer	Likelihood	Impact	Key Factors/Data	Intervention or Mitigation
Consumer achieves a worse legal result than they would have had they used the next best alternative	Individual (low resourced)				
	Individual (high resourced)				
	Businesses (low resourced)				
	Businesses (high resourced)				
Consumer overpays for legal services	Individual (low resourced)				
	Individual (high resourced)				
	Businesses (low resourced)				
	Businesses (high resourced)				

Metric	Program Objective/ Potential Risk	Data Points	Data Source	Recommendation
<b>Program Viability</b>	Increased access/ Justice Gap reduced	Sufficient income potential for licensees to stay in business	Survey	Include
<b>Equity and Access</b>	Increased access/ Justice Gap reduced	Demographics of paraprofessionals and their clients	Survey	Include
		Number of self-represented litigants (reduced?)*	CMS/JBSIS	
		Justice Gap (reduced?)	Survey	
<b>Case Outcomes/ Client Satisfaction</b>	Consumer receives incompetent legal services	Overall satisfaction	Survey	Include
		Procedural satisfaction	Survey	
		Time to process cases	CMS/JBSIS	Do not collect: burdensome
<b>Legitimacy/Political Sustainability</b>	Increased access/ Justice Gap reduced	Lawyer, judicial officer, and general public sentiment about the program	Survey	Include
<b>Manner of Disposition</b>	Consumer receives incompetent legal services	Disposed on merits of case/mediation/settlement vs. administratively dismissed for failure to prosecute/default judgment: comparison of paraprofessional clients vs. SRLs	Court CMS/JBSIS	Do not collect: burdensome
<b>Public Trust in the Legal System</b>	Increased access/ Justice Gap reduced	Compliance with Court Orders: comparison of non-compliance events among paraprofessional clients vs. SRLs	Court CMS/JBSIS	Do not collect: infeasible
<b>Efficiency in Case Processing</b>	Consumer receives incompetent legal services	Time to disposition	Court CMS/JBSIS	Do not collect: burdensome/infeasible
<b>Efficiency in Paraprofessional Training</b>	Consumer receives incompetent legal services	Consistency between training and practice	Survey	Do not collect: infeasible
<b>Access, Equity and Market Effects</b>	Increased access/ Justice Gap reduced	Percentage of litigants who would have otherwise gone unrepresented	Survey	Do not collect: burdensome/infeasible
		Percentage of low-income or rural litigants after program implementation, compared to the percentages before program implementation*	CMS/JBSIS	

\* Requires collection of baseline data prior to program implementation.

Key: Metric identified by CPPWG Metric identified by NCSC



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: August 31, 2021

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Julianne Fellmeth, Amos Hartston, Kim Kirchmeyer, Fariba Soroosh, and Ira Spiro

Subject: Regulation and Discipline Subcommittees Recommendations Regarding Disciplinary Standards and Related Disciplinary Provisions

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the requirements for paraprofessional discipline. This memorandum reflects recommendations for CPPWG review and approval in regard to disciplinary standards for paraprofessionals, as well as related recommendations regarding disciplinary provisions for paraprofessionals.

### BACKGROUND

Following the adoption of Recommended Rules of Professional Conduct for Licensed Paraprofessionals, State Bar staff developed and proposed draft disciplinary standards that would address violations of the rules of conduct and identified several related issues for the subcommittees' consideration. This process resulted in the proposed resolutions set forth in this memorandum.

## **DISCUSSION**

### **Disciplinary Standards**

Imposition of attorney discipline is guided by the Standards for Attorney Sanctions for Professional Misconduct, which set forth presumed sanctions for various types of misconduct as well as aggravating and mitigating circumstances that may be considered in determining the appropriate level of discipline in a particular case.

For paraprofessional discipline, staff developed the proposed Standards for Licensed Paraprofessional Sanctions for Professional Misconduct, which are set forth in Attachment A (showing changes from the attorney standards in redline). These standards are based on assumed enactment of Rules of Professional Conduct for Licensed Paraprofessionals. These standards closely track the standards for attorneys and cover all types of substantive misconduct. Like the attorney standards, they are designed to enhance the primary purposes of discipline, which include: protection of the public, the courts, and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. Certain standards for attorneys based on specific statutory prohibitions that may or may not be enacted for paraprofessionals (in particular, the specific standards for attorney oath violations) were not included. A new provision was added to address practice of law by paraprofessionals outside of the scope permitted by the paraprofessional license (an issue not present for attorneys); for this violation, the presumed sanction is license revocation or actual suspension.

The Regulation and Discipline Subcommittees recommend that the Working Group recommend adoption of standards for discipline parallel to that for attorneys, as set forth in Attachment A.

### **Monetary Sanctions for Misconduct**

For attorneys, pursuant to Business & Professions Code section 6086.13, where there is a Supreme Court order of discipline against an attorney imposing suspension or disbarment, or accepting a resignation with charges pending, the order may include an order for a monetary sanction not to exceed \$5,000 for each violation, subject to a total limit of \$50,000. Any sanctions collected are deposited into the Client Security Fund.

As a deterrent to misconduct and to protect the public, the Regulation and Discipline Subcommittees recommend that the Working Group recommend adoption of a monetary sanctions provision parallel to that for attorneys, in particular, that monetary sanctions not to exceed \$5,000 for each violation, subject to a total limit of \$50,000, be permitted against paraprofessionals who have been suspended, subject to license revocation, or who have resigned with charges pending.

### **Costs Assessments & Awards**

For attorneys, pursuant to Business & Professions Code section 6086.10, disciplinary orders imposing public reproof or a greater level of discipline shall include a direction that the attorney shall pay costs. These costs include the actual expenses incurred by the State Bar for transcripts and reporter services, expenses that would qualify as taxable costs recoverable in civil proceedings, and charges determined by the State Bar to be reasonable costs of investigation, hearing, and review. Additionally, an attorney exonerated of all charges following hearing is entitled to reimbursement for reasonable expenses.

As a deterrent to misconduct and to protect the public, the Regulation and Discipline Subcommittees recommend that the Working Group similarly recommend that costs be assessed against paraprofessionals who are subject to discipline. However, to avoid chilling the right of paraprofessionals to seek a hearing on disciplinary charges against them and to avoid potential due process issues, the Regulation and Discipline Subcommittees recommend that cost recovery be permitted for pre-hearing costs only. This approach is followed by many licensing boards. *See* Cal. Bus. & Prof. Code § 125.3(c) (“The costs shall include the amount of investigative and enforcement costs up to the date of the hearing ....”); *see also Zuckerman v. State Board of Chiropractic Examiners*, 29 Cal. 4th 32, 38-41 (2002) (upholding provision imposing prehearing costs on licensee). However, the Subcommittees were not unanimous on whether cost awards against paraprofessionals should be limited to all costs incurred prior to the date of a disciplinary hearing (which would include costs incurred by the State Bar in preparing for a hearing) or whether the costs should be more strictly limited to costs of investigation. Accordingly, the Subcommittees have presented two alternative proposed resolutions for consideration.

### **Conviction Proceedings**

Pursuant to Business & Professions Code sections 6101 and 6102, and California Rule of Court 9.10(a), the State Bar has developed special proceedings for attorneys in State Bar Court for matters resulting from an attorney’s criminal conviction or sentence of incarceration for 90 days or more. Section 6101 provides that an attorney’s conviction of a felony or misdemeanor, involving moral turpitude, constitutes cause for disbarment or suspension. In such matters, the record of conviction is conclusive evidence of guilt of the crime of which the attorney has been convicted. The statute requires the prosecutor to notify the Office of Chief Trial Counsel (OCTC) of the pendency of any criminal action against an attorney, and requires the clerk of the court to transmit the record of conviction. Section 6102 provides that an attorney shall be suspended upon conviction of such crime until the time for appeal has elapsed, but allows the court to decline to impose or set aside any such suspension in the interest of justice. Subdivision (c) provides for summary disbarment of the attorney following certain felony convictions.

Conviction proceedings are initiated in the Review Department when OCTC files a certified copy of the record of conviction or sentence of incarceration for 90 days or more.

As a deterrent to misconduct, to protect the public, and for administrative efficiency, the Regulation and Discipline Subcommittees recommend that the Working Group recommend that procedures be adopted providing for the immediate suspension of paraprofessionals who are convicted of felonies or misdemeanors involving moral turpitude and summary license revocation upon final conviction of same, with such procedures mirroring those applicable to attorneys.

### **Subsequent Arrest Notification**

Pursuant to Business & Professions Code section 6054, attorney applicants are required to submit fingerprints for the purpose of determining whether the applicant has a criminal record, and such fingerprints are retained and used to provide the State Bar with subsequent arrest notifications for all licensed attorneys.

The Regulation and Discipline Subcommittees recommend that the Working Group recommend that the State Bar should receive subsequent arrest notifications for paraprofessionals and that paraprofessional applicants be required to submit fingerprints, pursuant to a procedure mirroring that for attorneys.

### **Involuntary Inactive Enrollment**

Pursuant to Business & Professions Code section 6007, attorneys are subject to involuntary inactive enrollment under certain circumstances, including when they undergo involuntary treatment pursuant to specified provisions of the Welfare and Institutions Code, where the attorney asserts a claim of insanity or mental incompetence in any pending action or proceeding, where a court makes an order assuming jurisdiction over the attorney's law practice pursuant to statute, where the attorney, due to mental infirmity/illness/use of intoxicants is unable or habitually fails to perform duties competently, or is unable to practice law without threat of harm to the interests of clients or the public, or where the attorney has caused or is causing substantial harm to clients or the public and there is a reasonable probability that the State Bar will prevail on the merits of an underlying disciplinary matter and the attorney will be disbarred.

To protect the public from the consequences of a paraprofessional continuing to practice under these enumerated circumstances, the Regulation and Discipline Subcommittees recommend that the Working Group recommend that procedures be adopted providing for the involuntary inactive enrollment of paraprofessionals mirroring the procedures applicable to attorneys.

### **Misconduct in Another Jurisdiction**

For attorneys, pursuant to Business & Professions Code section 6049.1(b), with certain exceptions, a final order of discipline in another U.S. jurisdiction is conclusive evidence that an attorney is culpable of misconduct in California. The State Bar has developed special expedited proceedings in State Bar Court to determine the degree of discipline to impose, whether the conduct does not warrant discipline in California, and whether the proceedings in the other jurisdiction lack required protections. See State Bar Rules of Procedure, Title 5, Division 6, Chapter 3.

To protect the public, the Regulation and Discipline Subcommittees recommend that the Working Group recommend paraprofessionals be subject to discipline based on discipline imposed in other U.S. jurisdictions under terms mirroring those applicable to attorneys.

### **Rule of Limitations**

Pursuant to State Bar Rules of Procedure, rule 5.21, when attorney disciplinary proceedings are based solely on a complainant's allegation of misconduct, the proceedings must begin within five years from the date of the alleged violation, subject to enumerated tolling provisions, including the pendency of the attorney's representation of the client and periods of active concealment by the attorney. This limitations provision helps avoid issues that arise from disciplinary charges based on complaints of misconduct that allegedly occurred many years ago (e.g., memory issues, witness availability, destruction/loss of records).

To encourage timely complaints and avoid issues inherent in pursuing discipline based on complaints based on years-old misconduct, the Regulation and Discipline Subcommittees recommend that the Working Group recommend that disciplinary proceedings against paraprofessionals based on public complaints be subject to a limitations period mirroring that for attorneys. However, to protect the public and avoid the risk that consumers lose the right to pursue misconduct they did not know occurred, the Regulation and Discipline Subcommittees recommend that the Working Group recommend that any such limitations period be tolled during any period the complainant did not know of the misconduct with such tolling to end at the time when the client becomes aware or should have become aware of the misconduct (a discovery rule).

### **"Second Look" at Closed Complaints**

Pursuant to State Bar Rule of Procedure 2603(b), when the OCTC closes a complaint against an attorney without pursuing discipline, the complainant may request that the Office of General Counsel review the complaint closure. After review, the Office of General Counsel will either recommend that the OCTC reopen the complaint for further investigation or to pursue

discipline, or it may determine that the matter should remain closed. In the event the matter remains closed, the complainant is informed of their right to seek further review by the California Supreme Court.

To protect the public and afford those who make complaints against paraprofessionals the right to a substantive review of decisions by OCTC to close complaints without pursuing discipline, the Regulation and Discipline Subcommittees recommend that the Working Group recommend that decisions by OCTC to close complaints against paraprofessionals be subject to review by the Office of General Counsel under terms mirroring those applicable to complaints against attorneys.

## **RECOMMENDATION AND PROPOSED RESOLUTIONS**

The Regulation and Discipline Subcommittees recommend that the Working Group adopt the following resolutions:

**RESOLVED**, that the California Paraprofessional Program Working Group recommends adoption of Standards for Licensed Paraprofessional Sanctions for Professional Misconduct as set forth in Attachment A.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that monetary sanctions not to exceed \$5,000 for each violation, subject to a total limit of \$50,000, be permitted against paraprofessionals who have been suspended, subject to license revocation, or who have resigned with charges pending.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals against whom discipline is imposed be subject to an assessment of costs to be limited to costs incurred before the date of the disciplinary hearing. [Alternative: **FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals against whom discipline is imposed be subject to an assessment of costs to be limited to costs incurred before the disciplinary hearing, with costs further limited to costs of investigation and excluding costs of hearing preparation.]

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that suspension and summary license revocation procedures be adopted for paraprofessionals convicted of crimes involving moral turpitude, with such procedures to mirror those applicable to attorneys.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that the State Bar should receive subsequent arrest notifications for paraprofessionals and that paraprofessional applicants be required to submit fingerprints for the purpose of subsequent arrest notification, pursuant to a procedure mirroring that for attorneys.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that procedures be adopted providing for the involuntary inactive enrollment of paraprofessionals mirroring the procedures applicable to attorneys.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be subject to discipline based on discipline imposed in other U.S. jurisdictions under terms mirroring those applicable to attorneys.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that disciplinary proceedings against paraprofessionals based solely on a complainant's allegations of misconduct be subject to a tolling period mirroring that for disciplinary proceedings for attorneys, except that any such limitations period also be tolled during any period the complainant did not know of the misconduct, with such tolling to end at the time when the client becomes aware or should have become aware of the misconduct (a discovery rule).

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that decisions by the Office of Chief Trial Counsel to close complaints against paraprofessionals be subject to review by the Office of General Counsel under terms mirroring those applicable to complaints against attorneys.

## **ATTACHMENTS**

- A. Draft Disciplinary Standards
- B. Parallel Provisions For Attorneys

~~FILE IV.~~ STANDARDS FOR ATTORNEY LICENSED PARAPROFESSIONAL SANCTIONS FOR  
PROFESSIONAL MISCONDUCT

PART A. STANDARDS IN GENERAL

1.1 PURPOSES AND SCOPE OF STANDARDS

The Standards For Attorney Licensed paraprofessional Sanctions For Professional Misconduct (the “Standards”) are adopted by the Board of Trustees to set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances. The Standards help fulfill the primary purposes of discipline, which include:

- (a) protection of the public, the courts and the legal profession;
- (b) maintenance of the highest professional standards; and
- (c) preservation of public confidence in the legal profession.

Rehabilitation can also be an objective in determining the appropriate sanction in a particular case, so long as it is consistent with the primary purposes of discipline.

The Standards are ~~based on the State Bar Act, modeled from the Standards for Attorney Sanctions for Professional Misconduct and based on attorney disciplinary decisional law including~~ the published opinions of the Review Department of the State Bar Court, and the longstanding decisions of the California Supreme Court, which maintains inherent and plenary authority over the practice of law in California. Although not binding, the Standards are afforded great weight by the Supreme Court and should be followed whenever possible. The Supreme Court will accept a disciplinary recommendation that is consistent with the Standards unless it has grave doubts about the propriety of the recommended sanction. If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.

The Standards do not apply to: non-disciplinary dispositions such as admonitions, citations and fines; ~~and agreements in lieu of discipline;~~ resignations; involuntary inactive enrollments; interim suspensions after conviction of a crime; or suspensions for nonpayment of State Bar fees, failure to comply with child support orders, or tax delinquencies.

~~Eff. January 1, 1986. Revised: January 1, 2007; January 1, 2014; July 1, 2015.~~

1.2 DEFINITIONS

- ~~(a) “Lawyer” means a licensee of the California Supreme Court, the State Bar of California, or a person who is admitted in good standing and eligible to practice before the bar of any United States court or the highest court of the District of Columbia or any state, territory,~~

~~or insular possession of the United States, or is licensed to practice law in, or is admitted in good standing and eligible to practice before the bar of the highest court of, a foreign country or any political subdivision thereof and includes any agent of the lawyer, law firm, or law corporation doing business in the state.~~

(a) “Licensed paraprofessional” means a person licensed to engage in the limited practice of law pursuant to [rule or statute] and includes any agent of the licensed paraprofessional.

~~(a)~~(b) “Disbarment License Revocation” is termination from the practice of law and from holding oneself out as entitled to practice law. The license issued by the Supreme Court or State Bar ceases and the licensee’s name is stricken from the roll of attorneys licensed paraprofessionals.

~~(b)~~(c) “Suspension” can include a period of actual suspension, stayed suspension, or both:

(1) “Actual suspension” is a disqualification from the limited practice of law and from holding oneself out as ~~entitled to practice law~~ licensed paraprofessional, subject to probation and attached conditions. Actual suspension is generally for a period of thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, three years, or ~~until specific conditions are met.~~ Actual suspension for two years or more requires proof, satisfactory to the ~~State Bar Court~~ Licensing Board, of rehabilitation, fitness to practice, and present learning and ability in the general law before a lawyer licensed paraprofessional may be relieved of the actual suspension. The ~~State Bar Court~~ Licensing Board can require this showing in other appropriate cases as well.

(2) “Stayed suspension” is a stay of all or part of a suspension. Stayed suspension is generally for a period of at least one year. A suspension can be stayed only if it is consistent with the primary purposes of discipline.

~~(c)~~(d) “Public Reproval” is a public censure or reprimand. A public reproval may include conditions.

~~(b)~~ “Private Reproval” is a censure or reprimand that is not a matter of public record unless imposed after the initiation of formal disciplinary proceedings. A private reproval may include conditions.

~~(d)~~(e) “Interim Remedies” are temporary restrictions imposed by the ~~State Bar Court~~ Hearing Panel or Licensing Board on a lawyer’s licensed paraprofessional’s ability to practice law. They are imposed in order to protect the public, the courts, and the legal profession until such time as the issues can be resolved through formal proceedings.

~~(e)~~(f) “Prior record of discipline” is a previous imposition or recommendation of discipline. It includes all charges, stipulations, findings and decisions (final or not) reflecting or recommending discipline, including from another jurisdiction. It can be discipline imposed for a violation of a term of probation or a violation of a Supreme Court order requiring compliance with rule 9.20 of the California Rules of Court.

~~(f)~~(g) “Aggravating circumstances” are factors surrounding a lawyer’s licensed paraprofessional’s misconduct that demonstrate that the primary purposes of discipline warrant a greater sanction than what is otherwise specified in a given Standard.

~~(g)~~(h) “Mitigating circumstances” are factors surrounding a lawyer’s licensed paraprofessional’s misconduct that demonstrate that the primary purposes of discipline warrant a more lenient sanction than what is otherwise specified in a given Standard.

~~(h)~~(i) “Probation” is a period of time under which a lawyer licensed paraprofessional is subject to State Bar supervision. Probation may include conditions that further the primary purposes of discipline.

~~(i)~~(j) “Conditions” are terms with which a lawyer licensed paraprofessional must comply as part of a disciplinary sanction. They relate to a lawyer’s licensed paraprofessional’s misconduct and the facts and circumstances surrounding the misconduct and serve the primary purposes of discipline.

~~(j)~~(k) “Tribunal” means: (i) a court, an arbitrator, an administrative law judge, or an administrative body acting in an adjudicative capacity and authorized to make a decision that can be binding on the parties involved; or (ii) a special master or other person to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

~~(l)~~ Eff. January 1, 1986. Revised: January 1, 2007; January 1, 2014; July 1, 2015; January 25, 2019. “Rules of Professional Conduct” refers to the California Rules of Professional Conduct for Licensed Paraprofessionals.

### 1.3 DEGREES OF SANCTIONS

Subject to these Standards and the laws and rules governing the conduct of disciplinary proceedings, the following sanctions may be imposed upon a finding of misconduct:

(a) ~~Disbarment~~license revocation;

(b) actual suspension;

(c) stayed suspension;

(d) public reproof; or

~~(a) private reproof; or~~

~~(b) any interim remedies or other final discipline authorized by the Business and Professions Code.~~

(e) ~~Eff. January 1, 1986. Revised: January 1, 2014; July 1, 2015~~statute.

#### 1.4 CONDITIONS ATTACHED TO SANCTIONS

Conditions attached to a reproof or probation may require a lawyer licensed paraprofessional to:

- (a) make specific restitution or file a satisfaction of judgment;
- (b) take and pass a professional responsibility examination;
- (c) undergo treatment, at the lawyer's licensed paraprofessional's expense, for medical, psychological, or psychiatric conditions or for problems related to alcohol or substance abuse;
- (d) complete, at the lawyer's licensed paraprofessional's expense, educational or rehabilitative work regarding substantive law, ethics, or law office management;
- (e) complete probation, subject to reporting requirements;
- (f) give notice to affected parties, including clients, ~~co-counsel~~, opposing counsel, courts or other tribunals; or
- (g) comply with any other conditions consistent with the primary purposes of discipline.

~~Eff. January 1, 1986. Revised: January 1, 2014; July 1, 2015; January 25, 2019.~~

#### 1.5 AGGRAVATING CIRCUMSTANCES

The State Bar must establish aggravating circumstances by clear and convincing evidence. Aggravating circumstances may include:

- (a) a prior record of discipline;
- (b) multiple acts of wrongdoing;
- (c) a pattern of misconduct;
- (d) intentional misconduct, bad faith or dishonesty;
- (e) misrepresentation;
- (f) concealment;
- (g) overreaching;

- (h) uncharged violations of the ~~Business and Professions Code or the~~ California Rules of Professional Conduct for Licensed Paraprofessionals;
- (i) refusal or inability to account for entrusted funds or property;
- (j) significant harm to the client, the public, or the administration of justice;
- (k) indifference toward rectification or atonement for the consequences of the misconduct;
- (l) lack of candor and cooperation to the victims of the misconduct or to the State Bar during disciplinary investigations or proceedings;
- (m) failure to make restitution; or
- (n) high level of vulnerability of the victim.

~~Eff. January 1, 1986. Revised: January 1, 2007; January 1, 2014; July 1, 2015.~~

#### **1.6 MITIGATING –CIRCUMSTANCES**

~~A lawyer~~ A licensed paraprofessional must establish mitigating circumstances by clear and convincing evidence. Mitigating circumstances may include:

- (a) absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not likely to recur;
- (b) good faith belief that is honestly held and objectively reasonable;
- (c) lack of harm to the client, the public, or the administration of justice;
- (d) extreme emotional difficulties or physical or mental disabilities suffered by the ~~lawyer~~ licensed paraprofessional at the time of the misconduct and established by expert testimony as directly responsible for the misconduct, provided that such difficulties or disabilities were not the product of any illegal conduct by the ~~lawyer~~ licensed paraprofessional, such as illegal drug or substance abuse, and the ~~lawyer~~ licensed paraprofessional established by clear and convincing evidence that the difficulties or disabilities no longer pose a risk that the ~~lawyer~~ licensed paraprofessional will commit misconduct;
- (e) spontaneous candor and cooperation displayed to the victims of the misconduct or to the State Bar;
- (f) extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct;

- (g) prompt objective steps, demonstrating spontaneous remorse and recognition of the wrongdoing and timely atonement;
- (h) remoteness in time of the misconduct and subsequent rehabilitation;
- (i) excessive delay by the State Bar in conducting disciplinary proceedings causing prejudice to the lawyerlicensed paraprofessional; or
- (j) restitution was made without the threat or force of administrative, disciplinary, civil or criminal proceedings.

~~Eff. January 1, 1986. Revised: January 1, 2014; July 1, 2015; January 25, 2019.~~

### 1.7 DETERMINATION OF APPROPRIATE SANCTIONS

- (a) If a lawyerlicensed paraprofessional commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.
- (b) If aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given Standard. On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record demonstrates that the lawyerlicensed paraprofessional is unwilling or unable to conform to ethical responsibilities.
- (c) If mitigating circumstances are found, they should be considered alone and in balance with any aggravating circumstances, and if the net effect demonstrates that a lesser sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a lesser sanction than what is otherwise specified in a given Standard. On balance, a lesser sanction is appropriate in cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession and where the record demonstrates that the lawyerlicensed paraprofessional is willing and has the ability to conform to ethical responsibilities in the future.

~~Eff. January 1, 1986. Revised: January 1, 2014; January 25, 2019.~~

### 1.8 EFFECT OF PRIOR DISCIPLINE

- (a) If a lawyerlicensed paraprofessional has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing

greater discipline would be manifestly unjust.

- (b) If a lawyer licensed paraprofessional has two or more prior records of discipline, disbarment license revocation is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct:
1. Actual suspension was ordered in any one of the prior disciplinary matters;
  2. The prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; or
  3. The prior disciplinary matters coupled with the current record demonstrate the lawyer's licensed paraprofessional's unwillingness or inability to conform to ethical responsibilities.
- (c) Sanctions may be imposed, including disbarment license revocation, even if a lawyer licensed paraprofessional has no prior record of discipline.

~~Eff. January 1, 2014; Revised: January 25, 2019.~~

## **PART B. SANCTIONS FOR SPECIFIC MISCONDUCT <sup>‡</sup>**

The presumed sanction for any specific act of misconduct is a starting point for the imposition of discipline, but can be adjusted up or down depending on the application of mitigating and aggravating circumstances set forth in Standards 1.5 and 1.6, and the balancing of these circumstances as described in Standard 1.7(b) and (c). For any specific act of misconduct not listed in Part B, please refer to Standards 2.18 and 2.19.

~~Eff. July 1, 2015~~

### **2.1. MISAPPROPRIATION**

- (a) Disbarment License revocation is the presumed sanction for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate.
- (b) Actual suspension is the presumed sanction for misappropriation involving gross negligence.
- (c) Suspension or reproof is the presumed sanction for misappropriation that does not involve intentional misconduct or gross negligence.

~~Eff. January 1, 1986. Revised: January 1, 2014; July 1, 2015.~~

## 2.2 COMMINGLING AND OTHER TRUST ACCOUNT VIOLATIONS

- (a) Actual suspension of three months is the presumed sanction for (1) commingling, (2) failure to deposit funds received for a client or other person to whom the lawyer licensed paraprofessional owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, in a client trust account when that conduct does not involve misappropriation, or (3) failure to promptly pay out entrusted funds.
- (b) Suspension or reproof is the presumed sanction for any other violation of rule 1.15 of the Rules of Professional Conduct including, but not limited to violations of 1.15(~~ec~~).

~~Eff. January 1, 1986. Revised: January 1, 2001; January 1, 2014; July 1, 2015; May 17, 2019.~~

## 2.3 ILLEGAL OR UNCONSCIONABLE FEE

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~~†The term “reproof” includes public or private reproof.~~

- (a) Actual suspension of at least six months is the presumed sanction for entering into an agreement for, charging, or collecting an unconscionable fee for legal services.
- (b) Suspension or reproof is the presumed sanction for entering into an agreement for, charging, or collecting an illegal fee for legal services, or other violations of rule 1.5
- (c)
  - (e) of the Rules of Professional Conduct.

~~Eff. January 1, 1986. Revised: January 1, 2014; July 1, 2015; January 25, 2019.~~

## 2.4 BUSINESS TRANSACTIONS, PECUNIARY INTERESTS ADVERSE TO A CLIENT

Suspension is the presumed sanction for improperly entering into a business transaction with a client or knowingly acquiring a pecuniary interest adverse to a client, unless the extent of the misconduct and any harm it caused to the client are minimal, in which case reproof is appropriate. If the transaction or acquisition and its terms are unfair or unreasonable to the client, then ~~disbarment~~ license revocation or actual suspension is appropriate.

~~Eff. January 1, 1986. Revised: January 1, 2014; July 1, 2015.~~

## 2.5 REPRESENTATION OF ADVERSE INTERESTS AND CONFLICTS OF INTEREST

- (a) Actual suspension is the presumed sanction when a lawyer licensed paraprofessional violates rule 1.7, subparagraphs (a), (b), and (d) of the Rules of Professional Conduct, or other law prohibiting ~~an attorney~~ a licensed paraprofessional from simultaneously representing conflicting interests and causes significant harm to any of the clients.

- (b) Actual suspension is the presumed sanction when a lawyer licensed paraprofessional either violates rule 1.9(a) or 1.9(b) of the Rules of Professional Conduct and causes significant harm to the former client.
- (c) Suspension or reproof is the presumed sanction for all other conflicts of interest violations or breaches of the duty of loyalty not covered by other subparagraphs of this Standard, depending on the magnitude of the violation and the harm to the client or clients. This includes, but is not limited to rules 1.7(c), 1.8.2, 1.8.6, 1.10, 1.11, 1.12, and 1.18(c) and (d) of the Rules of Professional Conduct. Actual suspension is the presumed sanction if there is harm.

~~(a) Actual suspension is the presumed sanction for a violation of the former rules addressing conflicts, including, but not limited to rules 3-310, 3-320, and 3-600 of the former Rules of Professional Conduct, where the lawyer causes significant harm to the client or former client.~~

~~Eff. July 1, 2015. Revised: May 17, 2019.~~

## 2.6 BREACH OF CONFIDENTIALITY OR MISUSE OF CONFIDENTIAL INFORMATION

- (a) Suspension is the presumed sanction when a lawyer licensed paraprofessional intentionally reveals information protected by rule 1.6 of the Rules of Professional Conduct - confidences or secrets, or uses a current, former, or prospective client's information to the disadvantage of the client, depending on the harm to the current, former, or prospective client or clients.
- (b) Reproof is the presumed sanction when a lawyer licensed paraprofessional recklessly or through gross negligence reveals information relating to the representation of a client - confidences secrets, or uses a current, former, or prospective client's information to the disadvantage of the client, depending on the harm to the current, former, or prospective client or clients
- (c) Suspension or reproof is the presumed sanction when a lawyer licensed paraprofessional violates rule 4.4 of the Rules of Professional Conduct regarding a lawyer's licensed paraprofessional's duties concerning inadvertently transmitted writings depending on the harm to the party whose information is inadvertently disclosed.

~~Eff. July 1, 2015. Revised: January 25, 2019; May 17, 2019.~~

## 2.7 PERFORMANCE, COMMUNICATION OR WITHDRAWAL VIOLATIONS

- (a) License revocation Disbarment is the presumed sanction for performance, communication, or withdrawal violations demonstrating habitual disregard of client interests.
- (b) Actual suspension is the presumed sanction for performance, communication, or withdrawal violations in multiple client matters, not demonstrating habitual disregard

of client interests.

- (c) Suspension or reproof is the presumed sanction for performance, communication, or withdrawal violations, which are limited in scope or time. The degree of sanction depends on the extent of the misconduct and the degree of harm to the client or clients.

~~(a)~~ Performance in this Standard includes, but is not limited to, any of the following: the duties of diligence; competence; supervision; duties regarding disbarred, suspended, resigned or involuntary inactive attorneys; duties licensees of subordinate attorneys the State Bar or those whose licenses have been revoked; and duties ~~to an organization of subordinate licensed paraprofessionals~~. This includes, but is not limited to rules 1.1, 1.3, ~~1.13~~, 5.1, 5.2, 5.3, and

- (d) 5.3.1 of the Rules of Professional Conduct. Communication in this Standard includes, but is not limited to of any of the following: communications with clients, communications of settlement offers, disclosure of professional liability insurance, communications with prospective clients, communications with unrepresented persons, and communications with represented persons. This includes, but is not limited to, ~~Business and Professions Code section 6068, subdivision (m), and~~ rules 1.2, 1.4, 1.4.1, 1.4.2, 1.4.3, 2.1, 4.2, and 4.3 of the Rules of Professional Conduct.

~~Eff. January 1, 1986. Revised: January 1, 2014; July 1, 2015; January 25, 2019.~~

## **2.8 PARTNERSHIP OR FEE-~~SPLITTING~~ SHARING WITH NONLAWYERS AND NON-LAWYERS LICENSEES PERSONS WHO ARE NOT LAWYERS OR LICENSED PARAPROFESSIONALS**

Actual suspension is the presumed sanction when a lawyer licensed paraprofessional enters into a partnership or other organization that practices law with a person who is not a lawyer or licensed paraprofessional nonlawyer or non-lawyer licensee, allows a person who is not a lawyer or licensed paraprofessional nonlawyer or non-lawyer licensee to own, direct, or control a professional corporation or other organization that practices law, shares legal fees with a person who is not a lawyer or licensed paraprofessional nonlawyer or non-lawyer licensee, or any other violation of rule 5.4 of the Rules of Professional Conduct. The degree of sanction depends upon the extent to which the misconduct interfered with ~~an attorney~~ a licensed paraprofessional-client relationship and the extent to which the lawyer licensed paraprofessional failed to perform legal services for which he or she was employed.

~~Eff. July 1, 2015. Revised and retitled: January 25, 2019.~~

## **2.9 FRIVOLOUS LITIGATION**

- (a) Actual suspension is the presumed sanction when a lawyer licensed paraprofessional counsels or ~~maintains~~ assists with bringing or continuing a frivolous claim or action for an improper purpose or uses means that have no substantial purpose other than to delay or prolong the proceeding or cause needless expense, resulting in significant harm to an individual or the administration of justice. License revocation Disbarment is appropriate if the misconduct demonstrates a pattern.

- (b) Suspension or reproof is the presumed sanction when a lawyer-licensed paraprofessional counsels or ~~maintains~~ assists with bringing or continuing a frivolous claim or action for an improper purpose or uses means that have no substantial purpose other than to delay or prolong the proceeding or cause needless expense resulting in harm to an individual or the administration of justice.

~~Eff. July 1, 2015. Revised: January 25, 2019.~~

## 2.10 UNAUTHORIZED PRACTICE OF LAW

(a) License revocation or actual suspension is the presumed sanction when a licensed paraprofessional engages in the practice of law beyond the scope permitted by the licensed paraprofessional's license, and the paraprofessional knew or should have known that he or she was practicing beyond the scope permitted by his or her license.

~~(a)~~ (b) License revocation ~~Disbarment~~ or actual suspension is the presumed sanction when a lawyer-licensed paraprofessional engages in the unauthorized practice of law or unlawfully holds himself or herself out as entitled to practice law while he or she is on actual suspension for disciplinary reasons in the jurisdiction where the lawyer-licensed paraprofessional practices or holds himself or herself out as entitled to practice law [or is on involuntary inactive enrollment under Business and Professions Code section 6007 or other law in the relevant jurisdiction.] The degree of sanction depends on whether the lawyer-licensed paraprofessional knew he or she was not entitled to practice law.

(c) Suspension or reproof is the presumed sanction when a lawyer-licensed paraprofessional engages in the unauthorized practice of law or unlawfully holds himself or herself out as entitled to practice law while he or she is not licensed to practice law in that jurisdiction, is on voluntary inactive status, or on suspension for non-disciplinary reasons (including, but not limited to non-payment of fees or non-compliance with legal education requirements) in the jurisdiction where the lawyer-licensed paraprofessional practices or holds himself or herself out as entitled to practice law. The degree of sanction depends on whether the lawyer-licensed paraprofessional knew he or she was not entitled to practice law.

~~Eff. January 1, 1986. Revised: January 1, 2014; Renumbered & Revised July 1, 2015. Revised: January 25, 2019.~~

## 2.11 MORAL TURPITUDE, DISHONESTY, FRAUD, CORRUPTION, OR CONCEALMENT

License revocation ~~Disbarment~~ or actual suspension is the presumed sanction for an act of ~~moral~~ turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the practice of law.

~~Eff. January 1, 1986. Revised: January 1, 2001; January 1, 2014; Renumbered & Revised: July 1, 2015; January 25, 2019.~~

## ~~2.12 VIOLATION OF OATH OR DUTIES OF AN ATTORNEY LICENSED PARAPROFESSIONAL~~

- ~~(a) Disbarment or actual suspension is the presumed sanction for disobedience or violation of a court or tribunal order related to the lawyer's licensed paraprofessional's practice of law, the attorney's licensed paraprofessional's oath, or the duties required of an attorney licensed paraprofessional under Business and Professions Code section 6068, subdivisions (a)(b)(d)(e)(f), or (h), and rule 3.4(f) of the Rules of Professional Conduct.~~
- ~~(b) Reproval is the presumed sanction for a violation of the duties required of an attorney licensed paraprofessional under Business and Professions Code section 6068, subdivisions (i),(j),(l) or (o).~~
- ~~(c) Violations of the duties required of an attorney licensed paraprofessional under Business and Professions Code section 6068, subdivisions (m) or (n), are covered in Standard 2.7.~~
- ~~(d) Violations of the duties required of an attorney licensed paraprofessional under Business and Professions Code section 6068, subdivisions (c) or (g), are covered in Standard 2.9.~~

~~Eff. January 1, 1986. Revised: January 1, 2001; January 1, 2014; Renumbered & Revised: July 1, 2015; January 25, 2019.~~

## 2.13 SEXUAL RELATIONS WITH CLIENTS

- (a) Disbarment-Licenses revocation is the presumed sanction when a lawyer licensed paraprofessional expressly or impliedly conditions the performance of legal services for a current or prospective client upon the client's willingness to engage in sexual relations with the attorney licensed paraprofessional or employs coercion, intimidation, or undue influence in entering into sexual relations with a client.
- (b) Suspension or reproval is the presumed sanction for any other violation of rule 1.8.10 of the Rules of Professional Conduct, [ or Business and Professions Code section 6106.9].

~~Eff. January 1, 1986. Revised: January 1, 2001; January 1, 2014; Renumbered & Revised: July 1, 2015. Revised: May 17, 2019.~~

## 2.14 VIOLATION OF CONDITIONS ATTACHED TO DISCIPLINE

Actual suspension is the presumed sanction for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the lawyer's licensed paraprofessional's unwillingness or inability to comply with disciplinary orders.

~~Eff. January 1, 1986. Revised: January 1, 2014; July 1, 2015; January 25, 2019.~~

## **2.15 CRIMINAL CONVICTIONS INVOLVING MORAL TURPITUDE**

- (a) ~~Summary disbarment is the sanction for final conviction of a felony under the laws of California, the United States, or any state or territory thereof, and either: (1) an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involved moral turpitude, or (2) the facts and circumstances of the offense involved moral turpitude.~~
- (b) [License revocation](#) ~~Disbarment~~ or actual suspension is the presumed sanction for final conviction of a ~~felony or~~ misdemeanor involving moral turpitude.

~~Eff. January 1, 2014. Renumbered & Revised July 1, 2015. Revised: May 17, 2019.~~

## **2.16 CRIMINAL CONVICTIONS NOT INVOLVING MORAL TURPITUDE**

- (a) Actual suspension is the presumed sanction for final conviction of a felony not involving moral turpitude, but involving other misconduct warranting discipline.
- (b) Suspension or reproof is the presumed sanction for final conviction of a misdemeanor not involving moral turpitude but involving other misconduct warranting discipline.

~~Eff. July 1, 2014. Renumbered & Revised July 1, 2015.~~

## **2.17 CRIMINAL CONVICTION FOR SPECIFIC MISDEMEANORS**

- (a) Disbarment is the presumed sanction for final conviction of a misdemeanor specified in Business and Professions Code section 6131, where a public prosecutor aids in the defense of a defendant.
- (b) Disbarment or actual suspension is the presumed sanction for final conviction of a misdemeanor specified in Business and Professions Code sections 6128-6129 and 6153.

~~Eff. July 1, 2014. Renumbered & Revised July 1, 2015.~~

## **2.18 VIOLATION OF OTHER ARTICLE 6 STATUTES**

~~Disbarment or actual suspension is the presumed sanction for any violation of a provision of Article 6 of the Business and Professions Code, not otherwise specified in these Standards.~~

~~Eff. July 1, 2014. Renumbered & Revised July 1, 2015.~~

## **2.19 VIOLATION OF RULES IN GENERAL**

Suspension not to exceed three years or reproof is the presumed sanction for a violation of a

provision of the Rules of Professional Conduct not specified in these Standards.

~~Eff. July 1, 2014. Renumbered & Revised July 1, 2015.~~

**2.20 VIOLATION OF A CRIMINAL ACT THAT REFLECTS ADVERSELY ON THE  
~~LAWYER'S~~LICENSED PARAPROFESSIONAL'S HONESTY OR FITNESS AS A  
~~LAWYER~~LICENSED PARAPROFESSIONAL IN OTHER RESPECTS**

- (a) ~~Disbarment is the presumed sanction for violation of Business and Professions Code section 6131 even if the violation does not result in a conviction.~~
- (b) License revocation~~Disbarment~~ or actual suspension is the presumed sanction for a criminal act that reflects on the ~~lawyer's~~licensed paraprofessional's honesty if Standards 2.15, 2.16, or 2.17 do not apply.
- (c) Suspension or reproof is the presumed sanction for a criminal act that does not reflect on the ~~lawyer's~~licensed paraprofessional's honesty, but reflects on the ~~lawyer's~~licensed paraprofessional's fitness as a ~~lawyer~~licensed paraprofessional, if Standards 2.15, 2.16, or 2.17 do not apply.

~~Eff. January 25, 2019.~~

**2.21 CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE**

License revocation~~Disbarment~~ or actual suspension is the presumed sanction for conduct that is prejudicial to the administration of justice in violation of rule 8.4(d) of the Rules of Professional Conduct. The degree of sanction depends on the magnitude of the misconduct, the extent to which the misconduct harmed the victim or the administration of justice, and the extent to which the misconduct related to the ~~lawyer's~~licensed paraprofessional's practice of law.

~~Eff. May 17, 2019.~~

## Parallel Provisions for Attorneys

### Cal. Bus. & Prof. Code § 6086.13. Disciplinary order of Supreme Court; monetary sanctions

- (a) Any order of the Supreme Court imposing suspension or disbarment of a licensee of the State Bar, or accepting a resignation with a disciplinary matter pending may include an order that the licensee pay a monetary sanction not to exceed five thousand dollars (\$5,000) for each violation, subject to a total limit of fifty thousand dollars (\$50,000).
- (b) Monetary sanctions collected under subdivision (a) shall be deposited into the Client Security Fund.
- (c) The State Bar shall, with the approval of the Supreme Court, adopt rules setting forth guidelines for the imposition and collection of monetary sanctions under this section.
- (d) The authority granted under this section is in addition to the provisions of Section 6086.10 and any other authority to impose costs or monetary sanctions.
- (e) Monetary sanctions imposed under this section shall not be collected to the extent that the collection would impair the collection of criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney. In the event monetary sanctions are collected under this section and criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney are otherwise uncollectible, those penalties or judgments may be reimbursed from the Client Security Fund to the extent of the monetary sanctions collected under this section.

### Cal. Bus. & Prof. Code § 6086.10. Order imposing public reproof or discipline on licensee of State Bar or accepting resignation with disciplinary matter pending; costs to be directed toward licensee; relief from order or extension of time; reimbursement; nature of costs

- (a) Any order imposing a public reproof on a licensee of the State Bar shall include a direction that the licensee shall pay costs. In any order imposing discipline, or accepting a resignation with a disciplinary matter pending, the Supreme Court shall include a direction that the licensee shall pay costs. An order imposing costs pursuant to this subdivision is enforceable both as provided in Section 6140.7 and as a money judgment. The State Bar may collect these costs through any means provided by law.
- (b) The costs required to be imposed pursuant to this section include all of the following:
- (1) The actual expense incurred by the State Bar for the original and copies of any reporter's transcript of the State Bar proceedings, and any fee paid for the services of the reporter.
  - (2) All expenses paid by the State Bar which would qualify as taxable costs recoverable in civil proceedings.

(3) The charges determined by the State Bar to be “reasonable costs” of investigation, hearing, and review. These amounts shall serve to defray the costs, other than fees for the services of attorneys or experts, of the State Bar in the preparation or hearing of disciplinary proceedings, and costs incurred in the administrative processing of the disciplinary proceeding and in the administration of the Client Security Fund.

(c) A licensee may be granted relief, in whole or in part, from an order assessing costs under this section, or may be granted an extension of time to pay these costs, in the discretion of the State Bar, upon grounds of hardship, special circumstances, or other good cause.

(d) If an attorney is exonerated of all charges following a formal hearing, the attorney is entitled to reimbursement from the State Bar in an amount determined by the State Bar to be the reasonable expenses, other than fees for attorneys or experts, of preparation for the hearing.

(e) In addition to other monetary sanctions as may be ordered by the Supreme Court pursuant to Section 6086.13, costs imposed pursuant to this section are penalties, payable to and for the benefit of the State Bar of California, a public corporation created pursuant to Article VI of the California Constitution, to promote rehabilitation and to protect the public. This subdivision is declaratory of existing law.

§ 6101. Conviction of crime; notice of pendency of action; record of conviction; proceedings

(a) Conviction of a felony or misdemeanor, involving moral turpitude, constitutes a cause for disbarment or suspension.

In any proceeding, whether under this article or otherwise, to disbar or suspend an attorney on account of that conviction, the record of conviction shall be conclusive evidence of guilt of the crime of which they have been convicted.

(b) The district attorney, city attorney, or other prosecuting agency shall notify the State Bar of California's Office of Chief Trial Counsel of the pendency of an action against an attorney charging a felony or misdemeanor immediately upon obtaining information that the defendant is an attorney. The notice shall identify the attorney and describe the crimes charged and the alleged facts. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is an attorney, and the clerk shall record prominently in the file that the defendant is an attorney.

(c) The clerk of the court in which an attorney is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the Office of Chief Trial Counsel. Within 30 days of receipt, the Office of the Chief Trial Counsel shall transmit the record of any conviction which involves or may involve moral turpitude to the Supreme Court with such other records and information as may be appropriate to establish the Supreme Court's jurisdiction. The Office of Chief Trial Counsel may procure and transmit the record of

conviction to the Supreme Court when the clerk has not done so or when the conviction was had in a court other than a court of this state.

(d) The proceedings to disbar or suspend an attorney on account of such a conviction shall be undertaken by the Supreme Court pursuant to the procedure provided in this section and Section 6102, upon the receipt of the certified copy of the record of conviction.

(e) A plea or verdict of guilty, an acceptance of a nolo contendere plea, or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of those sections.

Cal. Bus. & Prof. Code § 6102. Immediate suspension and subsequent disbarment upon conviction of crime; crimes involving moral turpitude or felonies; procedure

(a) Upon the receipt of the certified copy of the record of conviction, if it appears therefrom that the crime of which the attorney was convicted involved, or that there is probable cause to believe that it involved, moral turpitude or is a felony under the laws of California, the United States, or any state or territory thereof, the Supreme Court shall suspend the attorney until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal, or has otherwise become final, and until the further order of the court. Upon its own motion or upon good cause shown, the court may decline to impose, or may set aside, the suspension when it appears to be in the interest of justice to do so, with due regard being given to maintaining the integrity of, and confidence in, the profession.

(b) For the purposes of this section, a crime is a felony under the law of California if it is declared to be so specifically or by subdivision (a) of Section 17 of the Penal Code, unless it is charged as a misdemeanor pursuant to paragraph (4) or (5) of subdivision (b) of Section 17 of the Penal Code, irrespective of whether in a particular case the crime may be considered a misdemeanor as a result of postconviction proceedings, including proceedings resulting in punishment or probation set forth in paragraph (1) or (3) of subdivision (b) of Section 17 of the Penal Code.

(c) After the judgment of conviction of an offense specified in subdivision (a) has become final or, irrespective of any subsequent order under Section 1203.4 of the Penal Code or similar statutory provision, an order granting probation has been made suspending the imposition of sentence, the Supreme Court shall summarily disbar the attorney if the offense is a felony under the laws of California, the United States, or any state or territory thereof, and either: (1) an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involved moral turpitude, or (2) the facts and circumstances of the offense involved moral turpitude.

(d) For purposes of this section, a conviction under the laws of another state or territory of the United States shall be deemed a felony if:

- (1) The judgment or conviction was entered as a felony irrespective of any subsequent order suspending sentence or granting probation and irrespective of whether the crime may be considered a misdemeanor as a result of postconviction proceedings.
- (2) The elements of the offense for which the licensee was convicted would constitute a felony under the laws of the State of California at the time the offense was committed.
- (e) Except as provided in subdivision (c), if after adequate notice and opportunity to be heard (which hearing shall not be had until the judgment of conviction has become final or, irrespective of any subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence), the court finds that the crime of which the attorney was convicted, or the circumstances of its commission, involved moral turpitude, it shall enter an order disbarring the attorney or suspending him or her from practice for a limited time, according to the gravity of the crime and the circumstances of the case; otherwise it shall dismiss the proceedings. In determining the extent of the discipline to be imposed in a proceeding pursuant to this article, any prior discipline imposed upon the attorney may be considered.
- (f) The court may refer the proceedings or any part thereof or issue therein, including the nature or extent of discipline, to the State Bar for hearing, report, and recommendation.
- (g) The record of the proceedings resulting in the conviction, including a transcript of the testimony therein, may be received in evidence.
- (h) The Supreme Court shall prescribe rules for the practice and procedure in proceedings conducted pursuant to this section and Section 6101.
- (i) The other provisions of this article providing a procedure for the disbarment or suspension of an attorney do not apply to proceedings pursuant to this section and Section 6101, unless expressly made applicable.

#### Cal. R. Ct., Rule 9.10. Authority of the State Bar Court

##### (a) Conviction proceedings

The State Bar Court exercises statutory powers under Business and Professions Code sections 6101 and 6102 with respect to the discipline of attorneys convicted of crimes. (See Bus. & Prof. Code §6087.) For purposes of this rule, a judgment of conviction is deemed final when the availability of appeal has been exhausted and the time for filing a petition for certiorari in the United States Supreme Court on direct review of the judgment of conviction has elapsed and no petition has been filed, or if filed the petition has been denied or the judgment of conviction has been affirmed. The State Bar Court must impose or recommend discipline in conviction matters as in other disciplinary proceedings. The power conferred upon the State Bar Court by this rule includes the power to place attorneys on interim suspension under subdivisions (a) and

(b) of section 6102, and the power to vacate, delay the effective date of, and temporarily stay the effect of such orders.

....

Cal. Bus. & Prof. Code § 6054. Summary criminal history information; submission of fingerprints; subsequent arrest notification service

(a) State and local law enforcement and licensing bodies and departments, officers and employees thereof, and officials and attachés of the courts of this state shall cooperate with and give reasonable assistance and information, including the providing of state summary criminal history information and local summary criminal history information, to the State Bar of California or any authorized representative thereof, in connection with any investigation or proceeding within the jurisdiction of the State Bar of California, regarding the admission to the practice of law or discipline of attorneys or their reinstatement to the practice of law.

(b) The State Bar of California shall require that an applicant for admission or reinstatement to the practice of law in California, or may require a licensee to submit or resubmit fingerprints to the Department of Justice in order to establish the identity of the applicant and in order to determine whether the applicant or licensee has a record of criminal conviction in this state or in other states. The information obtained as a result of the fingerprinting of an applicant or licensee shall be limited to the official use of the State Bar in establishing the identity of the applicant and in determining the character and fitness of the applicant for admission or reinstatement, and in discovering prior and subsequent criminal arrests of an applicant, licensee, or applicant for reinstatement. The State Bar shall notify the Department of Justice about individuals who are no longer licensees and applicants who are denied admission to the State Bar within 30 days of any change in status of a licensee or denial of admission. All fingerprint records of applicants admitted or licensees reinstated, or provided by a licensee, shall be retained thereafter by the Department of Justice for the limited purpose of criminal arrest notification to the State Bar.

(c) The State Bar shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for applicants to, and licensees of, the State Bar.

(d) If required to be fingerprinted pursuant to this section, a licensee of the State Bar who fails to be fingerprinted may be enrolled as an inactive licensee pursuant to rules adopted by the board of trustees.

(e) The State Bar shall report to the Supreme Court and the Legislature by March 15, 2018, regarding its compliance with the requirements of this section.

Cal. Bus. & Prof. Code § 6007. Involuntary treatment or confinement; involuntary inactive enrollment; restoration to capacity; effect on disciplinary investigations or proceedings; license fees not to accrue; interim remedies

(a) When a licensee requires involuntary treatment pursuant to Article 6 (commencing with Section 5300) of Chapter 2 of Division 5 of, or Part 2 (commencing with Section 6250) of Division 6 of the Welfare and Institutions Code, or when under an order pursuant to Section 3051, 3106.5, or 3152 of the Welfare and Institutions Code he or she has been placed in or returned to inpatient status at the California Rehabilitation Center or its branches, or when he or she has been determined insane or mentally incompetent and is confined for treatment or placed on outpatient status pursuant to the Penal Code, or on account of his or her mental condition a guardian or conservator, for his or her estate or person or both, has been appointed, the Board of Trustees or an officer of the State Bar shall enroll the licensee as an inactive licensee.

The clerk of any court making an order containing any of the determinations or adjudications referred to in the immediately preceding paragraph shall send a certified copy of that order to the State Bar at the same time that the order is entered.

The clerk of any court with which is filed a notice of certification for intensive treatment pursuant to Article 4 (commencing with Section 5250) of Chapter 2 of Division 5 of the Welfare and Institutions Code, upon receipt of the notice, shall transmit a certified copy of it to the State Bar.

The State Bar may procure a certified copy of any determination, order, adjudication, appointment, or notice when the clerk concerned has failed to transmit one or when the proceeding was had in a court other than a court of this state.

In the case of an enrollment pursuant to this subdivision, the State Bar shall terminate the enrollment when the licensee has had the fact of his or her restoration to capacity judicially determined, upon the licensee's release from inpatient status at the California Rehabilitation Center or its branches pursuant to Section 3053, 3109, or 3151 of the Welfare and Institutions Code, or upon the licensee's unconditional release from the medical facility pursuant to Section 5304 or 5305 of the Welfare and Institutions Code; and on payment of all fees required.

When a licensee is placed in, returned to, or released from inpatient status at the California Rehabilitation Center or its branches, or discharged from the narcotics treatment program, the Director of Corrections or his or her designee shall transmit to the State Bar a certified notice attesting to that fact.

(b) The State Bar Court shall also enroll a licensee of the State Bar as an inactive licensee in each of the following cases:

(1) A licensee asserts a claim of insanity or mental incompetence in any pending action or proceeding, alleging his or her inability to understand the nature of the action or proceeding or inability to assist counsel in representation of the licensee.

(2) The court makes an order assuming jurisdiction over the licensee's law practice, pursuant to Section 6180.5 or 6190.3.

(3) After notice and opportunity to be heard before the State Bar Court, the State Bar Court finds that the licensee, because of mental infirmity or illness, or because of the habitual use of intoxicants or drugs, is (i) unable or habitually fails to perform his or her duties or undertakings competently, or (ii) unable to practice law without substantial threat of harm to the interests of his or her clients or the public. No proceeding pursuant to this paragraph shall be instituted unless the State Bar Court finds, after preliminary investigation, or during the course of a disciplinary proceeding, that probable cause exists therefor. The determination of probable cause is administrative in character and no notice or hearing is required.

In the case of an enrollment pursuant to this subdivision, the State Bar Court shall terminate the enrollment upon proof that the facts found as to the licensee's disability no longer exist and on payment of all fees required.

(c)(1) The State Bar Court may order the involuntary inactive enrollment of an attorney upon a finding based on all the available evidence, including affidavits, that the attorney has not complied with Section 6002.1 and cannot be located after reasonable investigation.

(2) The State Bar Court may order the involuntary inactive enrollment of an attorney if it finds, based on all the available evidence, including affidavits:

(A) The attorney has caused or is causing substantial harm to the attorney's clients or the public.

(B) There is a reasonable probability that the chief trial counsel will prevail on the merits of the underlying disciplinary matter, and that the attorney will be disbarred.

(3) In the case of an enrollment under paragraph (2), the underlying matter shall proceed on an expedited basis.

(4) The State Bar Court shall order the involuntary inactive enrollment of an attorney upon the filing of a recommendation of disbarment after hearing or default. For purposes of this section, that attorney shall be placed on involuntary inactive enrollment regardless of the license status of the attorney at the time.

(5) The State Bar Court shall order the involuntary inactive enrollment of an attorney who is sentenced to incarceration for 90 days or more as a result of a criminal conviction for at least the period of time in which the attorney is incarcerated.

(6) The State Bar Court shall order attorneys who are placed on inactive enrollment pursuant to this subdivision to comply with Rule 9.20 of the California Rules of Court.

(7) The board shall formulate and adopt rules of procedure to implement this subdivision.

In the case of an enrollment pursuant to this subdivision, the State Bar Court shall terminate the involuntary inactive enrollment upon proof that the attorney's conduct no longer poses a substantial threat of harm to the interests of the attorney's clients or the public or where an attorney who could not be located proves compliance with Section 6002.1.

(d)(1) The State Bar Court may order the involuntary inactive enrollment of an attorney for violation of probation upon the occurrence of all of the following:

(A) The attorney is under a suspension order any portion of which has been stayed during a period of probation.

(B) The State Bar Court finds that probation has been violated.

(C) The State Bar Court recommends to the Supreme Court that the attorney receive an actual suspension on account of the probation violation or other disciplinary matter.

(2) The State Bar Court shall terminate an enrollment under this subdivision upon expiration of a period equal to the period of stayed suspension in the probation matter, or until the State Bar Court makes an order regarding the recommended actual suspension in the probation matter, whichever occurs first.

(3) If the Supreme Court orders a period of actual suspension in the probation matter, any period of involuntary inactive enrollment pursuant to this subdivision shall be credited against the period of actual suspension ordered.

(e)(1) The State Bar Court shall order the involuntary, inactive enrollment of a licensee whose default has been entered pursuant to the State Bar Rules of Procedure if both of the following conditions are met:

(A) The notice was duly served pursuant to subdivision (c) of Section 6002.1.

(B) The notice contained the following language at or near the beginning of the notice, in capital letters:

IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN INVOLUNTARY INACTIVE LICENSEE OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO PARTICIPATE FURTHER

IN THESE PROCEEDINGS UNLESS YOUR DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.

(2) The State Bar Court shall terminate the involuntary inactive enrollment of a licensee under this subdivision when the licensee's default is set aside on motion timely made under the State Bar Rules of Procedure or the disciplinary proceedings are completed.

(3) The enrollment under this subdivision is administrative in character and no hearing is required.

(4) Upon the involuntary inactive enrollment of a licensee under this subdivision, the notice required by subdivision (b) of Section 6092.5 shall be promptly given.

(f) The pendency or determination of a proceeding or investigation provided for by this section shall not abate or terminate a disciplinary investigation or proceeding except as required by the facts and law in a particular case.

(g) No license fees shall accrue against the licensee during the period he or she is enrolled as an inactive licensee pursuant to this section.

(h) The State Bar Court may order a full range of interim remedies or final discipline short of involuntary inactive enrollment, including, but not limited to, conditions of probation following final discipline, or directly ordered interim remedies, to restrict or supervise an attorney's practice of law, as well as proceedings under subdivision (a), (b), (c), or (d), or under Section 6102 or 6190. They may include restrictions as to scope of practice, monetary accounting procedures, review of performance by probation or other monitors appointed by the board, or such other measures as may be determined, after hearing, to protect present and future clients from likely substantial harm. These restrictions may be imposed upon a showing as provided in subdivision (c).

6049.1. Certified copy of final order determining professional misconduct; evidence; expedited disciplinary proceeding; issues; discovery; proceedings in other jurisdictions

(a) In any disciplinary proceeding under this chapter, a certified copy of a final order made by any court of record or any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys, of the United States or of any state or territory of the United States or of the District of Columbia, determining that a licensee of the State Bar committed professional misconduct in such other jurisdiction shall be conclusive evidence that the licensee is culpable of professional misconduct in this state, subject only to the exceptions set forth in subdivision (b).

(b) The board may provide by rule for procedures for the conduct of an expedited disciplinary proceeding against a licensee of the State Bar upon receipt by the State Bar of a certified copy of a final order determining that the licensee has been found culpable of professional

misconduct in a proceeding in another jurisdiction conducted as specified in subdivision (a). The issues in the expedited proceeding shall be limited to the following:

(1) The degree of discipline to impose.

(2) Whether, as a matter of law, the licensee's culpability determined in the proceeding in the other jurisdiction would not warrant the imposition of discipline in the State of California under the laws or rules binding upon licensees of the State Bar at the time the licensee committed misconduct in such other jurisdiction, as determined by the proceedings specified in subdivision (a).

(3) Whether the proceedings of the other jurisdiction lacked fundamental constitutional protection.

The licensee of the State Bar subject to the proceeding under this section shall bear the burden of establishing that the issues in paragraphs (2) and (3) do not warrant the imposition of discipline in this state.

(c) In proceedings conducted under subdivision (b), the parties need not be afforded an opportunity for discovery unless the State Bar Court department or panel having jurisdiction so orders upon a showing of good cause.

(d) In any proceedings conducted under this chapter, a duly certified copy of any portion of the record of disciplinary proceedings of another jurisdiction conducted as specified in subdivision (a) may be received in evidence.

(e) This section shall not prohibit the institution of proceedings under Section 6044, 6101, or 6102, as may be appropriate, concerning any licensee of the State Bar based upon the licensee's conduct in another jurisdiction, whether or not licensed as an attorney in the other jurisdiction.

#### State Bar Rules of Procedure, Rule 5.21 - Limitations Period

(A) Time Limit for Complaint. If a disciplinary proceeding is based solely on a complainant's allegations of a violation of the State Bar Act or Rules of Professional Conduct, the proceeding must begin within five years from the date of the violation.

(B) When Violation Occurs. The State Bar Act or a Rule of Professional Conduct is violated when every element of a violation has occurred. But if the violation is a continuing offense, the violation occurs when the offensive conduct ends.

(C) Tolling. The five-year limit is tolled:

(1) while the attorney represents the complainant, the complainant's family member, or the complainant's business or employer;

- (2) while the complainant is a minor, insane, or physically or mentally incapacitated;
  - (3) while civil, criminal, or administrative investigations or proceedings based on the same acts or circumstances as the violation are pending with any governmental agency, court, or tribunal;
  - (4) from the time the attorney conceals facts about the violation until the State Bar or the victim discovers the true facts;
  - (5) from the time the attorney fails to cooperate with an investigation of the violation until the attorney provides substantial cooperation;
  - (6) from the time the attorney makes false or misleading statements to the State Bar concerning the violation until the State Bar discovers the true facts;
  - (7) while the disciplinary investigation or proceeding is abated under rule 5.50;
  - (8) while the attorney is participating in an Alternative Dispute Resolution Mediation Discipline program, Agreement in Lieu of Discipline Prosecution program, or other authorized diversion program;
  - (9) while the investigation is ended by admonition; or
  - (10) while the complaint or investigation is pending before the Office of General Counsel Complaint Review Unit; or
  - (11) while the attorney is on inactive status pursuant to Business and Professions Code section 6007, subdivision (a) or (b).
- (D) Authorized Diversion Program. If the attorney successfully completes an Alternative Dispute Resolution Mediation Discipline program, Agreement in Lieu of Discipline Prosecution program, or other authorized diversion program, the underlying allegations are barred.
- (E) Office of General Counsel Complaint Review Unit. The State Bar must begin disciplinary proceedings within two years after proceedings before the Complaint Review Unit concludes.
- (F) Death of Complainant. If a prospective complainant dies before the time to begin a disciplinary procedure expires, a surviving family member or the estate's executor or administrator may file a complaint with the State Bar within two years after the complainant's death.
- (G) Independent Source. The five-year limit does not apply to disciplinary proceedings that were investigated and initiated by the State Bar based on information received from an independent source other than a complainant.
- (H) Waiver. The attorney and State Bar may agree in writing to waive or extend the limitations in this rule.
- (I) Reinstatement Proceedings. This rule does not apply to reinstatement proceedings.

State Bar Rules of Procedure, Rule 2603(b) – “Second Look” Review

(b) Notwithstanding the Office of Chief Trial Counsel’s exclusive jurisdiction over disciplinary matters as expressed in Rule 2101, the Board of Trustees of the State Bar delegates to the Office of General Counsel the authority to review closures of inquiries, investigations and complaints upon request by complainants. Upon recommendation by the Office of General Counsel following review of a request by a complainant to review closure of an inquiry, investigation or complaint, the Office of Chief Trial Counsel may reopen the case for investigation.



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: August 31, 2021

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Julianne Fellmeth, Amos Hartston, Kim Kirchmeyer, Fariba Soroosh, and Ira Spiro

Subject: Regulation and Discipline Subcommittees Recommendations Regarding Statutory Changes and Increased Law Enforcement Resources to Address the Unauthorized Practice of Law

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, recommendations regarding changes to statutes and increased resources to support the identification, investigation, and prosecution of the unauthorized practice of law.

### BACKGROUND

The CPPWG charter, adopted by the Board of Trustees at its March 12, 2020, meeting, directs the Working Group to consider and propose any requisite changes to the rules and statutes governing the unauthorized practice of law (UPL). The CPPWG identified the need to recommend enhanced enforcement for violations of statutes governing UPL, to counteract the potential risk of increased UPL that may arise from implementation of the paraprofessional program.

## DISCUSSION

An increase in the unauthorized practice of law has been identified as one of the potential risks of the creation of a new paraprofessional program. Nonlicensed individuals may hold themselves out as licensed under the new program, creating a new method to defraud the public. Law enforcement, State Bar staff, legal services, and other consumer advocates raised concerns, particularly in light of the currently underfunded system to address the unauthorized practice of law.

At its December 17, 2020, meeting, Mr. Zachariah DeMeola from the University of Denver's Institute for the Advancement of the American Legal System led the CPPWG in exercises intended to identify the goals and potential risks of the paraprofessional program, and how to measure whether the program meets those goals and protects against risks. Among the potential risks identified by the Working Group was that consumers would receive unregulated services. At subsequent, independent, meetings of their subcommittees, both the Regulation and Discipline Subcommittees heard public comments and presentations about the potential risk that licensing paraprofessionals might lead to consumer confusion, providing unscrupulous people the opportunity to prey upon vulnerable communities by engaging in UPL by holding themselves out as paraprofessionals.

At its December 7, 2020, meeting, the Discipline Subcommittee was joined by Ms. Ryann Jorban of the Los Angeles District Attorney's Notario Fraud Unit, Steve Moawad of the State Bar Office of Chief Trial Counsel (OCTC), and Gus Hernandez, supervisor of the OCTC Nonattorney UPL team. Mr. Hernandez described the limited tools and remedies available to OCTC regarding the investigation and prosecution of UPL cases, and the relationship between OCTC and law enforcement in these matters. He explained that OCTC sends violators cease and desist letters and, if they continue to practice in violation of the law, can petition the court to assume jurisdiction over the illegal practice. When a petition is granted, OCTC seizes the files and bank accounts of the practice, and contacts clients to return their files and any funds that have been seized. OCTC does not have jurisdiction to criminally prosecute violators of UPL statutes, but it refers cases to prosecutors, and provides information to assist in their investigations.

Ms. Jorban expressed concern that, if a new group of practitioners is licensed to practice law, it might be more difficult to control those who commit fraud. She stated that it would be important to ensure proper protections are in place prior to the implementation of this program. Ms. Jorban identified the following limitations on the ability to prosecute UPL:

- District Attorneys' offices do not have enough resources to prosecute all cases;
- The State Bar has no jurisdiction to prosecute cases, and is unable to assist victims; and
- In most cases, UPL can only be prosecuted as a misdemeanor.<sup>1</sup>

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<sup>1</sup> See [Business and Professions Code § 6126](#).

Regulation and Discipline Subcommittees Recommendations Regarding Enhanced Enforcement of the Unauthorized Practice of Law

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With regard to the limitation of prosecution of UPL cases as misdemeanors, Ms. Jorban explained that misdemeanor convictions do not serve as sufficient deterrent. In her experience, violators who are convicted of misdemeanors continue to violate UPL statutes, often by reopening their illegal firm under a different name.

At a joint meeting of the Regulation and Discipline Subcommittees on May 5, 2021, convened to further investigate this issue, Ms. Jorban, Mr. Moawad, and Mr. Hernandez further discussed challenges faced by prosecutors in enforcing UPL within current statutory and resource limitations. At an August 12 joint meeting, the subcommittees considered those recommendations and adopted the following resolutions for consideration by the CPPWG at its August 31, 2021, meeting:

**RESOLVED**, that the California Paraprofessional Program Working Group has heard that increases in the unauthorized practice of law and fraud by non-licensees is one of the potential risks of the creation of a new paraprofessional program.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that additional laws, enforcement, and resources addressing the unauthorized practice of law and fraud by non-licensees be considered as an essential part of a proposed paraprofessional program in light of the goal to protect the public in connection with the Working Group's recommendations.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group's investigation has identified that the existing framework for the investigation and prosecution of the unauthorized practice of law suffers from a pervasive lack of resources, with respect to both District Attorney's Offices, which are the primary enforcers, as well as the State Bar Office of Chief Trial Counsel. New laws and increased resources are needed, potentially including:

- Changes to statutes and available remedies, including harsher criminal penalties and specifically including making felonies available even without priors;
- Additional funding and resources for law enforcement to investigate and prosecute UPL and fraud by non-licensees;
- Additional statutory changes, funding, and resources for the State Bar's Office of Chief Trial Counsel to investigate and address UPL and fraud by non-licensees, including potentially providing or coordinating legal services for victims, and allowing for citation and fines for UPL;
- Additional funding for legal services programs that provide legal services for victims;
- Creation of a victim fund for UPL victims;
- Extension of the statute of limitations; and
- Creation of record keeping requirements for Paraprofessionals.

Regulation and Discipline Subcommittees Recommendations Regarding Enhanced Enforcement of the Unauthorized Practice of Law

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**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that sufficient resources be devoted by the State Bar to consumer education to ensure that the public is aware of the scope of the paraprofessional license, as well as how to identify whether a service provider is appropriately licensed.

At and subsequent to the August 12 meeting, State Bar staff indicated that without specific direction from the Working Group, specific proposed statutory changes and increased resources addressing UPL would not be included in the initial Working Group proposals and would need to await further action and direction from the Board of Trustees at a later time. Mr. Hartston proposed the following additional resolution for consideration by the CPPWG:

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that State Bar staff be directed to propose appropriate changes in law and additional resources for law enforcement related to the Unlicensed Practice of Law to be included in the proposed statutory amendments section of the Working Group's report presented to the Board of Trustees, and in connection with the State Bar proposing legislation necessary and important in the initial implementation of the Paraprofessional program.



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: August 31, 2021

To: California Paraprofessional Program Working Group

From: Amos Hartston, Kim Kirchmeyer and Fariba Soroosh

Subject: Regulation Subcommittee Recommendations Regarding Proactive Regulation

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the requirements for paraprofessional regulation.

The Regulation Subcommittee (Subcommittee) of the CPPWG has a broad charge including the development of recommendations in the areas of continuing education, financial responsibility, ethical rules governing paraprofessional conduct, and proactive/risk-based regulation. The CPPWG has previously adopted the Subcommittee's recommendations on most of these topics. This memo present recommendations for proactive regulation.

### BACKGROUND

Table 1 provides a summary of the Regulation Subcommittee's recommendations that have been adopted by the Working Group.

Table 1. Adopted Regulation Recommendations

Regulation	Recommendation	Date Adopted
Financial Responsibility	<ul style="list-style-type: none"> <li>• \$100,000 Surety Bond</li> <li>• Client Security Fund</li> </ul>	March 18, 2021
Minimum Continuing Legal Education	36 hours every 3 years, as follows: <ul style="list-style-type: none"> <li>• 28 hours in the paraprofessional’s practice areas</li> <li>• 4 hours on legal ethics</li> <li>• 1 hour on competence issues</li> <li>• 1 hour on recognition and elimination of bias in the legal profession and society</li> <li>• 1 hour of trauma-informed practice</li> <li>• 1 hour of practice management/running a business</li> </ul>	March 18, 2021
Ethics and Professional Conduct	Paraprofessional Rules of Professional Conduct	July 26 and August 16, 2021

The remaining issue for the Regulation Subcommittee is that of proactive regulation.

## DISCUSSION

Proactive, or risk-based, regulation is intended to identify potential risks of harm to consumers and take steps to prevent that harm. In developing recommendations for proactive regulation, the Regulation Subcommittee reviewed information from a number of subject matter experts, as well as information about proactive regulation in other jurisdictions.

At the December 17, 2020, CPPWG meeting, Mr. Zachariah DeMeola from the University of Denver’s Institute for the Advancement of the American Legal System led the CPPWG in an exercise that helped the Working Group to identify potential risks of the paraprofessional program. Potential risks identified by the Working Group include the following:

1. Worse legal result for consumers than they would have, if they had used the next best alternative
2. Consumer overpays for legal services
3. Consumer receives incompetent legal services
4. Consumer receives unregulated/unlicensed services (increase in unauthorized practice of law)

At its January 26, 2021, meeting the Regulation Subcommittee heard from Tom Clarke with the National Center for State Courts. During this meeting, the Subcommittee reviewed the risks identified at the December 17, 2020, meeting, and determined that collecting data to evaluate the first of the above identified risks was infeasible. They also determined that, while the fourth risk identified above was significant, proactive regulation of paraprofessionals was not the appropriate means to address the prevention of this risk. Instead, the Regulation Subcommittee

addresses the risk of UPL through concurrent recommendations, provided jointly with the Discipline Subcommittee, regarding increased resources and harsher penalties for the unauthorized practice of law. With respect to the second risk, the Regulation Subcommittee determined it could not address the risk of excessive fees because the Working Group voted in May to not cap or otherwise regulate fees charged by Paraprofessionals.

For proactive regulation, therefore, the Subcommittee focused on the risk of incompetent legal services. At the Regulation Subcommittee's February 11, 2021, meeting, Professor Tara Sklar of the University of Arizona discussed the application of risk-based regulation to paraprofessionals. She explained that risk-based regulation provides a framework to examine allegations of potential misconduct and develop targeted interventions. This approach relies on the collection and analysis of a significant amount of data in order to develop interventions and evaluate their effectiveness. She warned that this could create a significant burden on paraprofessional, particularly if done in parallel with data collection for program evaluation.

Both Mr. Clarke and Professor Sklar emphasized the need to distinguish between proactive regulation and program evaluation. Program evaluation is intended to evaluate whether a program meets its intended objectives, and to identify changes that will lead to program improvement. Proactive regulation is intended to identify areas of potential misconduct and employ interventions to help practitioners avoid them.

At its July 29, 2021, meeting, the Regulation Subcommittee considered the following options for proactive regulation:

- MCLE
- Toolkits
- Self-Assessment
- Ethics Hotline
- Online Resources
- Case File Review
- Client Surveys

It was suggested that data collected in the course of program evaluation would provide information that could be used to develop and modify proactive regulation measures, and that overlap between proactive regulation and program evaluation should be avoided. The Regulation Subcommittee articulated a need to identify program evaluation metrics prior to developing recommendations for proactive regulation.

At its August 19, 2021, meeting, the Regulation Subcommittee reviewed a summary of evaluation metrics that had been considered by the CPPWG, as well as metrics identified by the National Center for State Courts in *An Evaluation Framework for Allied Legal Professional*

*Programs: Assessing Improvements in Access to Justice.*<sup>1</sup> They also reviewed information about self-assessment programs in selected jurisdictions. The August 19 staff memo with this information is provided as Attachment 1.

After considering the input of subject matter experts, reviewing samples of proactive regulation tools, and understanding the potential parameters of the Paraprofessional Program evaluation, the Regulation Subcommittee determined that a full array of supportive tools for paraprofessionals, such as CLE offerings, toolkits, an ethics hotline, and online resources, should be developed as proactive regulation measures to support Paraprofessionals in providing competent legal services.

The Regulation Subcommittee recommends avoiding measures that would be burdensome to paraprofessionals and costly to administer. A mandatory self-assessment was rejected for a number of reasons with these considerations in mind. Specifically, mandatory self-assessments were determined to be burdensome for the practitioner; and, if the information collected through an assessment were to be used for regulatory or disciplinary purposes, the practitioner could not be relied upon to complete it accurately. However, the Subcommittee believes that offered as a voluntary, confidential tool, interactive tool, with MCLE credit for completion, a self-assessment could be a valuable support for paraprofessionals.

The Regulation Subcommittee was advised that the State Bar will be implementing a self-assessment for attorneys. In its initial implementation, the self-assessment will be voluntary; in the future, it may become mandatory under specified circumstances. The Regulation Subcommittee agreed that the implementation of mandatory self-assessments for paraprofessionals should be reconsidered if and when there is a similar requirement for attorneys.

The Subcommittee also recommends requiring paraprofessionals to report certain, limited information related to fees charged and to solicit suggestions for additional Paraprofessional trainings and resources as part of their annual license renewal to assist the State Bar in supporting Paraprofessionals in providing competent legal services, and to gather information about fees.

Ms. Soroosh suggested an additional requirement of a mandatory client satisfaction survey providing clients with the opportunity to give feedback (positive and negative) separate from the complaint process. She suggested that the State Bar could monitor survey responses and, in cases where a significant number of negative responses is received, either initiate an investigation or provide the paraprofessional with information and resources to address potential problems.

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<sup>1</sup> National Center for State Courts, *An Evaluation Framework for Allied Legal Professional Programs: Assessing Improvements in Access to Justice* (May 2021). [https://www.ncsc.org/\\_data/assets/pdf\\_file/0020/64352/APL-Evaluation.pdf](https://www.ncsc.org/_data/assets/pdf_file/0020/64352/APL-Evaluation.pdf)

Mr. Hartston and Ms. Kirchmeyer disagreed with this recommendation. Both Mr. Hartston and Ms. Kirchmeyer are supportive of paraprofessionals voluntarily offering their clients the opportunity to provide feedback, but objected to a mandatory requirement of a survey or requiring this information to be submitted to the State Bar for disciplinary purposes. Ms. Kirchmeyer further expressed concern that having a client survey process through the State Bar outside of the traditional avenues for submitting complaints could create confusion among clients, who might not distinguish between submitting a negative survey and filing a complaint.

Case file reviews were rejected as a proactive regulation measure due to such reviews being burdensome to paraprofessionals and costly to the regulator, as well as expected privilege issues.

The Subcommittee's recommended resolutions regarding proactive regulation measures are provided below.

## **PROPOSED RESOLUTIONS**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends adoption of the following proactive regulation measures:

- Continuing legal education programs and toolkits that support the paraprofessional's practice, which will include a voluntary, interactive self-assessment
- Ethics hotline
- Online resources
- Annual reporting requirements
  - Fees charged to clients
  - Suggestions for additional trainings and resources to further support competent legal services by Paraprofessionals

**OR**

**RESOLVED**, that the California Paraprofessional Program Working Group recommends adoption of the following proactive regulation measures:

- Continuing legal education programs and toolkits that support the paraprofessional's practice, which will include a voluntary, interactive self-assessment
- Ethics hotline
- Online resources
- Requirement to provide link to client survey, with responses to be reviewed by State Bar
- Annual reporting requirements
  - Fees charged to clients
  - Adequacy of training requirements and MCLE offerings
  - Additional resource requests



Date: August 31, 2021

To: California Paraprofessional Program Working Group

From: California Paraprofessional Program Working Group Staff

Subject: Paraprofessional Program Governance Structure and Functions

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## EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services \(ATILS\)](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the regulatory structure for paraprofessionals. This memo provides recommendations detailing a proposed governance structure and functions for the CPPWG's consideration.

## BACKGROUND

At its December 17, 2020, meeting the CPPWG considered staff recommendations regarding the composition and structure of the paraprofessional regulatory board. During that meeting, the Working Group provided feedback regarding the size, composition, and appointing authority of the governing board. At its June 25, 2021, meeting, the CPPWG considered revised staff recommendations and provided additional feedback. This memo provides further revised recommendations incorporating that feedback as well as feedback provided by the Regulation Subcommittee.

## DISCUSSION

The CPPWG report to the Board of Trustees will include recommendations regarding the name of the paraprofessional oversight body, and its composition and scope of authority. Staff presented initial recommendations on these topics at the December 17, 2020, CPPWG meeting. The CPPWG provided feedback on those recommendations; staff provided revised recommendations that reflected that feedback at the June 25, 2021, CPPWG meeting. The June 25 staff memo, which includes the December 17 staff memo as an attachment, is provided as Attachment A.

At the June 25 meeting, the CPPWG provided additional feedback, and directed staff to discuss final recommendations with the Regulation Subcommittee prior to providing them to the CPPWG for approval. At its June 22, 2021, meeting, the Regulation Subcommittee reviewed and approved the proposed revisions to the governance structure and functions provided in table 1 and table 2, respectively.

Table 1. Composition and Appointing Authority

Member Type	Appointing Authority <sup>1</sup>
Judge	Supreme Court
2 Attorneys*	Board of Trustees
3 Paraprofessionals <sup>2,*</sup> <ul style="list-style-type: none"> <li>• Northern California</li> <li>• Central</li> <li>• Southern California</li> </ul>	Nonlawyer professional organization (e.g., CALDA or CAPA, until a paraprofessional organization is created)
2 Public (non-licensee)*	Governor
2 Public (non-licensee)*	State Assembly
2 Public (non-licensee)*	State Senate
Paraprofessional Educator	Appointing authority to alternate between California Board of Community Colleges and California Law Schools with Paraprofessional Program

Table 2. Governance Functions

POLICY	Committee	Board of Trustees	Supreme Court	Legislature
Keep abreast of national and international developments in paraprofessional licensing	Implement	Receive updates	—	—
Program evaluation metrics and assessment	Approve	Receive updates	—	—
Consumer and prospective licensee outreach and education	Implement	Receive updates	—	—

<sup>1</sup> Appointing authorities should be encouraged to consider diversity of practice areas in their appointments.

<sup>2</sup> Consider appointment of paraprofessionals licensed in another state until licenses are granted in California.

\* Indicates revision to June 25, 2021, recommendation.

Paraprofessional Program Governance Structure and Functions

August 31, 2021

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LICENSURE	Committee	Board of Trustees	Supreme Court	Legislature
<b>Eligibility</b>				
Appeals of staff denial of eligibility	Approve	—	Discretionary Review	—
<b>Education</b>				
Establish educational requirements	Recommend	Recommend	Approve	Provide input
Approve learning objectives	Approve		—	—
<b>Experiential Training</b>				
Establish experiential requirements	Recommend	Recommend	Approve	Provide input
Establish attorney supervision requirements	Approve		Approve	Provide input
Establish incentives for attorney supervision	Recommend	Approve	—	—
<b>Waivers</b>				
Appeal of staff denial of waiver of educational or experiential hours	Approve	—	—	—
<b>Moral Character</b>				
Reviews & Informal Conferences	Approve	—	—	—
Review appeal of staff decision	Approve	—	Discretionary Review	
Set Fees	Recommend	Approve	—	—
<b>Exam Development</b>				
Develop questions	Approve	—	—	—
Review of questions	Approve	—	—	—
Evaluate grading	Approve	—	—	—
Sampling plan	Approve	—	—	—
Challenges to exam questions	Approve	—	Discretionary Review	—
Set exam fee	Recommend	Approve	—	—
<b>Testing Accommodations</b>				
Policy development	Approve	—	—	—
Review petitions	Approve	—	—	—
Review appeals	Approve	—	Discretionary Review	—
<b>Eligibility &amp; Enforcement of Exam Rules</b>				
Policy development	Approve	—	—	—
Enforcement	Approve	—	—	—
Appeals	Approve	—	Discretionary Review	—
<b>Exam Analysis &amp; Review</b>				
Design standard setting study	Recommend	Approve	—	—
Design content validation study	Recommend	Approve	—	—
Design job analysis	Recommend	Approve	—	—
<b>Paraprofessional Educational Institutions</b>				
Certification	Approve		—	—
<b>REGULATION</b>				
<b>MCLE</b>				
MCLE Provider certification criteria	Approve	—	—	—
MCLE Requirements	Approve	—	Final Decision	Provide Input

Paraprofessional Program Governance Structure and Functions

August 31, 2021

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REGULATION	Committee	Board of Trustees	Supreme Court	Legislature
<b>Financial Responsibility</b>				
Establish requirements	Approve	—	Final Decision	Provide Input
<b>Rules of Professional Conduct</b>				
Establish and modify	Recommend	Approve	Final Decision	—
<b>State Bar Rules<sup>3</sup></b>				
Establish and modify	Recommend	Approve	Final Decision	—
<b>State Bar Rules of Procedure</b>				
Establish and modify	Recommend	Approve	—	—
<b>California Rules of Court</b>				
Establish and modify	Recommend	Recommend	Final Decision	—
<b>Statutes (State Bar Act, other statutes)</b>				
Establish and modify	Recommend	Recommend	Provide input	Final Decision
<b>DISCIPLINE</b>	<b>Committee</b>	<b>Board of Trustees</b>	<b>Supreme Court</b>	<b>Legislature</b>
Compensation for hearing officers	Approve			
Hearing panel selection	Approve*		—	—
Settlement	Approve	—	—	—
License Suspension/Revocation	Recommend	—	Final Decision	—
Other Discipline	Approve	—	—	—

## PROPOSED RESOLUTIONS

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that the program’s Licensing and Oversight Committee reflect the following composition and appointing authority provided in table 1 of this memo.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that the governance functions for the paraprofessional program reflect the authority provided in table 2 of this memo.

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<sup>3</sup> Some State Bar Rules are statutorily subject to approval by the Supreme Court (e.g., Minimum Standards for Lawyer Referral Services).



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: June 25, 2021

To: California Paraprofessional Program Working Group

From: Linda Katz, Principal Program Analyst

Subject: Paraprofessional Program Governance Structure and Functions

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services \(ATILS\)](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the regulatory structure for paraprofessionals. This memo provides recommendations detailing a proposed governance structure and functions for the CPPWG's consideration.

### BACKGROUND

At its December 17, 2020, meeting the CPPWG considered staff recommendations regarding the composition and structure of the paraprofessional regulatory board. The December 17 memo is provided as Attachment 1. During that meeting, the Working Group provided feedback regarding the size, composition, and appointing authority of the governing board. This memo provides revised recommendations incorporating feedback received from the CPPWG, State Bar leadership, and the Supreme Court.

### DISCUSSION

The CPPWG report to the Board of Trustees will include recommendations regarding the name of the paraprofessional oversight body, and its composition and scope of authority. This memo provides recommendations in all of these areas.

### Licensing Board Name

Staff consulted with State Bar leadership regarding the name of the paraprofessional oversight body and, based on feedback received, recommends the name [Paraprofessional]<sup>1</sup> Licensing and Oversight Committee (PLOC). The recommendation to title the oversight body a committee versus a board stems from the fact that the State Bar itself is governed by a board, the Board of Trustees; all subentities that report to or are governed by the Board are titled committees or commissions.

### Composition and Appointing Authority

Recommendations included in the December 17 staff memo were informed by the following sources of information:

- A 2018 report on the State Bar’s board, commissions, committees, and councils (collectively referred to as committees), *Opportunities for Improving Governance and Service Delivery*;<sup>2</sup>
- A review of the size and composition of paraprofessional licensing boards in other states; and
- A review of the size and composition of licensing boards for nonlegal professions in California.

Table 1 provides the recommendations for the size, composition, and appointing authority for the PLOC included in the December 17 memo, alongside revised recommendations based on feedback provided by the CPPWG at its December 2020 meeting.

Table 1. Composition and Appointing Authority

December 17, 2020 Recommendation		Revised Recommendation	
Member Type	Appointing Authority	Member Type	Appointing Authority
3 Paraprofessionals	Supreme Court	Judge	Supreme Court
2 Paraprofessionals	Legislature	Attorney	Board of Trustees
2 Attorneys	Supreme Court	Paraprofessional <sup>3</sup>	Board of Trustees
4 Public (non-licensee)	Governor	Public (non-licensee)	Governor
2 Public (non-licensee)	Legislature	Public (non-licensee)	State Assembly
*Committee to include one representative of an educational institution that provides training for paraprofessionals; this member may be a paraprofessional, attorney, or public member.		Public (non-licensee)	State Senate
		Paraprofessional Educator	California Board of Community Colleges or California Law School with Paraprofessional Program

<sup>1</sup> Name will reflect the license name that is selected.

<sup>2</sup> Schauffler, Richard. *Opportunities for Improving Governance and Service Delivery: A report and Recommendations Regarding the State Bar of California’s Boards, Commissions, Committees, and Councils*. September 13, 2018. <http://board.calbar.ca.gov/Agenda.aspx?id=14901&tid=0&show=100019508&s=true#10027325>

<sup>3</sup> When available.

As shown in table 1, the recommended size of the PLOC has been reduced from 13 to 7 members, reflecting the CPPWG’s recommendation of a reduction; this size also conforms to the policy adopted by the Board of Trustees at its September 13, 2018 meeting. The CPPWG also suggested that the committee include a judge, and that attorney and paraprofessional members be appointed by the Board of Trustees.

**Governance Functions and Authority**

Authority for oversight of the paraprofessional program will ultimately rest with the Supreme Court, which has the authority to license individuals to practice law. As with the licensure of attorneys, the Supreme Court delegates the responsibility for licensing, regulation, and discipline to the State Bar, and limits its direct involvement to matters requiring adjudication by the Supreme Court. Functional oversight will be provided by the Paraprofessional Licensing and Oversight Committee, the Board of Trustees, and the Legislature. Recommendations for the authority for each specific function were informed by a review of State Bar operations, including existing attorney Admissions and Attorney Regulation functions and relevant decision-making authority, as well as by paraprofessional disciplinary recommendations previously adopted by the CPPWG. In addition, staff consulted State Bar leadership and Supreme Court staff in developing the recommendations provided in table 2.

Table 2. Governance Functions

<b>POLICY</b>	<b>Committee</b>	<b>Board of Trustees</b>	<b>Supreme Court</b>	<b>Legislature</b>
Keep abreast of national and international developments in paraprofessional licensing	Implement	Receive updates	—	—
Program evaluation metrics and assessment	Approve	Receive updates	—	—
Consumer and prospective licensee outreach and education	Implement	Receive updates	—	—
<b>LICENSURE</b>	<b>Committee</b>	<b>Board of Trustees</b>	<b>Supreme Court</b>	<b>Legislature</b>
<b>Eligibility</b>				
Appeals of staff denial of eligibility	Approve	—	Discretionary Review	—
<b>Education</b>				
Establish educational requirements	Recommend	Recommend	Approve	Provide input
Approve learning objectives	Approve		—	—
<b>Experiential Training</b>				
Establish experiential requirements	Recommend	Recommend	Approve	Provide input
Establish attorney supervision requirements	Approve		Approve	Provide input
Establish incentives for attorney supervision	Recommend	Approve	—	—
<b>Waivers</b>				
Appeal of staff denial of waiver of educational or experiential hours	Approve	—	—	—
<b>Moral Character</b>				
Reviews & Informal Conferences	Approve	—	—	—
Review appeal of staff decision	Approve	—	Discretionary Review	
Set Fees	Recommend	Approve	—	—

Paraprofessional Program Governance Structure and Functions

June 25, 2021

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LICENSURE	Committee	Board of Trustees	Supreme Court	Legislature
<b>Exam Development</b>				
Develop questions	Approve	—	—	—
Review of questions	Approve	—	—	—
Evaluate grading	Approve	—	—	—
Sampling plan	Approve	—	—	—
Challenges to exam questions	Approve	—	Discretionary Review	—
Set exam fee	Recommend	Approve	—	—
<b>Testing Accommodations</b>				
Policy development	Approve	—	—	—
Review petitions	Approve	—	—	—
Review appeals	Approve	—	Discretionary Review	—
<b>Eligibility &amp; Enforcement of Exam Rules</b>				
Policy development	Approve	—	—	—
Enforcement	Approve	—	—	—
Appeals	Approve	—	Discretionary Review	—
<b>Exam Analysis &amp; Review</b>				
Design standard setting study	Recommend	Approve	—	—
Design content validation study	Recommend	Approve	—	—
Design job analysis	Recommend	Approve	—	—
<b>Paraprofessional Educational Institutions</b>				
Certification	Approve	—	—	—
REGULATION	Committee	Board of Trustees	Supreme Court	Legislature
<b>MCLE</b>				
MCLE Provider certification criteria	Approve	—	—	—
MCLE Requirements	Approve	—	Final Decision	Provide Input
<b>Financial Responsibility</b>				
Establish requirements	Approve	—	Final Decision	Provide Input
<b>Rules of Professional Conduct</b>				
Establish and modify	Recommend	Approve	Final Decision	—
<b>State Bar Rules<sup>4</sup></b>				
Establish and modify	Recommend	Approve	Final Decision	—
<b>State Bar Rules of Procedure</b>				
Establish and modify	Recommend	Approve	—	—
<b>California Rules of Court</b>				
Establish and modify	Recommend	Recommend	Final Decision	—
<b>Statutes (State Bar Act, other statutes)</b>				
Establish and modify	Recommend	Recommend	Provide input	Final Decision

<sup>4</sup> Some State Bar Rules are statutorily subject to approval by the Supreme Court (e.g., Minimum Standards for Lawyer Referral Services).

DISCIPLINE	Committee	Board of Trustees	Supreme Court	Legislature
Compensation for hearing officers	Approve			
Hearing panel selection	Recommend	Approve	—	—
Settlement	Approve	—	—	—
License Suspension/Revocation	Recommend	—	Final Decision	—
Other Discipline	Approve	—	—	—

## PROPOSED RESOLUTIONS

RESOLVED, that the California Paraprofessional Program Working Group recommends that the program’s Licensing and Oversight Committee reflect the following composition and appointing authority:

Member Type	Appointing Authority
Judge	Supreme Court
Attorney	Board of Trustees
Paraprofessional <sup>5</sup>	Board of Trustees
Public (non-licensee)	Governor
Public (non-licensee)	State Assembly
Public (non-licensee)	State Senate
Paraprofessional Educator	California Board of Community Colleges or California Law School with Paraprofessional Program

RESOLVED, that the California Paraprofessional Program Working Group recommends that the governance functions for the paraprofessional program reflect the authority provided in table 2 of this memo.

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<sup>5</sup> When available.



# The State Bar of California

## MISSION ADVANCEMENT AND ACCOUNTABILITY DIVISION

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Date: December 17, 2020

To: California Paraprofessional Program Working Group

From: Linda Katz, Principal Program Analyst

Subject: Paraprofessional Program Regulatory Structure and Board Composition

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services \(ATILS\)](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the regulatory structure for paraprofessionals. This memo outlines options for an overarching regulatory structure, namely a regulatory board, for the CPPWG's consideration.

### BACKGROUND

At its August 25, 2020, meeting, the CPPWG determined that subcommittees should be created to develop requirements for paraprofessional licensing, regulation, and discipline. These subcommittees were appointed subsequent to that meeting, and each met several times to review and consider information about their assigned topics. At its October 29, 2020, meeting, the Working Group reviewed the status reports from each of these subcommittees and provided feedback on the subcommittees' preliminary recommendations and proposals. These subcommittees have continued to meet and have provided updated reports and recommendations for the December 17 CPPWG meeting.

During the course of their discussions, the Licensing, Regulation, and Discipline Subcommittees have each identified roles and responsibilities for a paraprofessional licensing board (hereinafter referred to as the Board). This has brought to the fore the question of how this Board will be constituted and what it will be required and authorized to do.

## DISCUSSION

In developing recommendations for the Board, I reviewed the size and composition of paraprofessional licensing boards in other states, as well as the licensing boards for nonlegal professions in California. Attachment A provides a summary of this information.

In addition, I reviewed the factors that should be considered in determining Board size, structure, and composition as outlined in a 2018 report on the State Bar's board, commissions, committees, and councils (collectively referred to as committees), *Opportunities for Improving Governance and Service Delivery*.<sup>1</sup> This report emphasizes that decisions about size, structure, and composition should be driven by the purpose of the committee itself.

The Licensing, Regulation, and Discipline Subcommittees have to date identified a number of roles and responsibilities for the Board, including:

- Licensing: establishing licensing requirements and ensuring that they remain relevant; decisions regarding the addition of new practice areas.
- Regulation: responsibility for program rules, MCLE requirements, proactive regulation policies, and program evaluation.
- Discipline: potentially hearing appeals and approving certain disciplinary recommendations.

With these functions in mind, this memo considers the following issues with regard to a Board: size, composition, appointing authority, term of membership, functional (committee) structure, and reporting authority. These recommendations are presented as a starting point for CPPWG deliberation and are not intended to be conclusory.

## BOARD SIZE

At its September 13, 2018, meeting, the State Bar Board of Trustees adopted a policy to limit the size of State Bar committees to 7 or fewer members, absent a justification of the need for more members based on workload or the need for additional expertise or perspectives to carry out the work. This policy is based on research that found that larger boards are less effective in the decision-making process.

Given the broad set of responsibilities envisioned for this Board, as well as its potential role in discipline adjudication, a larger size is warranted. As reflected in the tables in Attachment A, California's professional licensing boards range in size from 9 to 15, and other states' paraprofessional licensing boards range from 11 to 15. I recommend that the Board be comprised of 13 members, which is an average of the sizes of other states' paraprofessional licensing boards and is the same size as the State Bar Board of Trustees.

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<sup>1</sup> Schauffler, Richard. *Opportunities for Improving Governance and Service Delivery: A report and Recommendations Regarding the State Bar of California's Boards, Commissions, Committees, and Councils*. September 13, 2018. <http://board.calbar.ca.gov/Agenda.aspx?id=14901&tid=0&show=100019508&s=true#10027325>

### **BOARD COMPOSITION AND APPOINTING AUTHORITY**

The composition of the Board should reflect its purpose and functions. Its purpose is to ensure that the paraprofessional program improves access to legal services while maintaining public protection. The fulfillment of that purpose is achieved through licensing, regulation, and discipline of licensees.

As reflected in Attachment A, both California's professional licensing boards and other jurisdictions' paraprofessional licensing boards include a balance of licensed professionals and public members, with Department of Consumer Affairs (DCA) boards having more public members than their paraprofessional counterparts. I recommend that the Board conform to the standards of California licensing boards in this regard. Following the model for California licensing boards, the Board composition should ensure that expertise is available that informs its work, by including members who represent the consumers that paraprofessionals will serve, as well as those who can inform the specific topics of licensing, regulation, and discipline. A balance of attorneys, licensed paraprofessionals, legal educators, and public members is recommended.

The Governor and Legislature are vested with authority to appoint members to boards that fall under the jurisdiction of the DCA, as well as some members of the State Bar Board of Trustees. The Supreme Court is vested with appointing authority for the attorney members of the State Bar Board of Trustees. The appointing authority structure for the paraprofessional Board should mirror that of the State Bar Board of Trustees.

The combined recommendations regarding Board size, composition, and appointing authority are thus as follows:

- 3 paraprofessionals appointed by the Supreme Court
  - 2 paraprofessionals appointed by the Legislature
  - 2 attorneys appointed by the Supreme Court
  - 4 public members appointed by the Governor
  - 2 public members appointed by the Legislature
- \*Board to include one representative of an educational institution that provides training for paraprofessionals; this member may be a paraprofessional, attorney, or public member.

### **BOARD TERM LIMITS**

Terms should be established that allow members enough time to learn the work of the Board and carry out its work effectively. A lack of term limits may result in a Board that stagnates, which prevents new perspectives from being introduced. Staggered terms allow for continuity by providing overlap among members. Following the model of California's professional licensing boards, which provide for longer terms than the paraprofessional licensing boards in other states, Board members should be appointed to 4-year staggered terms.

### **BOARD STRUCTURE: COMMITTEES**

The Board's structure should reflect its oversight functions. Committees might be established with oversight authority for Licensing, Regulation, and Discipline. Under this approach, each committee would make recommendations to the full Board regarding issues that fall within their respective areas of purview. Where appropriate, membership on these committees should rotate on a regular basis. This recommended committee structure mirrors that of the State Bar Board of Trustees.

### **REPORTING AUTHORITY**

As a Board under the authority of the State Bar, decisions of the Board would be subject to authorization of the State Bar Board of Trustees. The Board of Trustees may determine that it is appropriate to delegate final decision-making authority to the Board with regard to certain topics (e.g., educational and training requirements, licensee discipline, etc.). However, it is likely that requests for changes to Rules of Professional Conduct or requests for statutory changes would require approval by the Board of Trustees.

## Paraprofessional Licensing Boards

	License	Regulatory Board	Board Size, Composition, and Appointing Authority	Term
<b>Arizona</b>	Legal Paraprofessional (LP)	Board of Nonlawyer Legal Service Providers	11 members appointed by Chief Justice <ul style="list-style-type: none"> <li>• 2 Certified Legal Document Preparers</li> <li>• 2 Legal Paraprofessionals</li> <li>• 1 Judge or Court Commissioner</li> <li>• 1 Clerk of the Superior Court</li> <li>• 1 Attorney</li> <li>• 2 Public Members</li> <li>• 2 Additional Members</li> </ul>	3 years
<b>Utah</b>	Licensed Paralegal Practitioner (LPP)	Board of Bar Commissioners	13-15 Members <ul style="list-style-type: none"> <li>• 11 Elected Lawyers</li> <li>• 2 Nonlawyers appointed by Supreme Court</li> </ul>	3 years
<b>Washington</b>	Limited License Legal Technician (LLLT)	Limited License Legal Technician Board	15 voting members appointed by Supreme Court <ul style="list-style-type: none"> <li>• ≥ 11 Lawyers, LLLTs, or Limited Practice Officers (LPO) <ul style="list-style-type: none"> <li>○ ≥ 9 Active Lawyers or LLLTs</li> <li>○ ≤ 2 LPO, Judicial, or Emeritus Pro Bono Lawyers</li> </ul> </li> <li>• 4 Nonlawyers</li> </ul> 1 Ex Officio Nonvoting Representative of State Board of Community and Technical Colleges	3 years

## California Licensing Boards

	License	Regulatory Board	Board Size, Composition, and Appointing Authority	Term
	<b>Attorney</b>	State Bar Board of Trustees	13 Members <ul style="list-style-type: none"> <li>• 5 Attorneys appointed by Supreme Court</li> <li>• 2 Attorneys appointed by Legislature</li> <li>• 4 Public Members appointed by Governor</li> <li>• 2 Public Members appointed by Legislature</li> </ul>	4 years
	<b>Physician</b>	Medical Board of California	15 members <ul style="list-style-type: none"> <li>• 8 Physicians appointed by Governor</li> <li>• 5 Public Members appointed by Governor</li> <li>• 2 Public Members appointed by Legislature</li> </ul>	4 years

License	Regulatory Board	Board Size, Composition, and Appointing Authority	Term
<b>Architect</b>	Architects Board of California	10 members <ul style="list-style-type: none"> <li>• 5 Architects appointed by Governor</li> <li>• 3 Public Members appointed by Governor</li> <li>• 2 Public Members appointed by Legislature</li> </ul>	4 years
<b>Dentist (DDS)</b> Certifications: <ul style="list-style-type: none"> <li>• Dental Assistant</li> <li>• Dental Assistant in Extended Functions</li> </ul>	Dental Board of California	15 members <ul style="list-style-type: none"> <li>• 8 Dentists appointed by Governor</li> <li>• 1 Dental Hygienist appointed by Governor</li> <li>• 1 Dental Assistant appointed by Governor</li> <li>• 3 Public Members appointed by Governor</li> <li>• 2 Public Members appointed by Legislature</li> </ul>	4 years
<b>Registered Nurse</b> Certifications: <ul style="list-style-type: none"> <li>• Nurse Anesthetist</li> <li>• Nurse Midwife</li> <li>• Nurse Practitioner</li> <li>• Psychiatric/Mental Health Nurse</li> <li>• Public Health Nurse</li> </ul>	Board of Registered Nursing	9 members <ul style="list-style-type: none"> <li>• 5 Registered Nurses appointed by Governor <ul style="list-style-type: none"> <li>○ 2 Engaged in Direct Patient Care</li> <li>○ 1 Advanced Practice</li> <li>○ 1 Educator or Administrator in nurse training program</li> <li>○ 1 Administrator of a Nursing Service</li> </ul> </li> <li>• 2 Public Members appointed by Governor</li> <li>• 2 Public Members appointed by Legislature</li> </ul>	4 years



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: August 31, 2021

To: California Paraprofessional Program Working Group

From: Brady R. Dewar, Assistant General Counsel, Office of General Counsel

Subject: Statutory and Rule Changes Recommended for Program Implementation

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (Working Group) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the Working Group must balance the dual goals of ensuring public protection and increasing access to legal services.

This memorandum reflects recommendations for Working Group review and approval in regard to recommended statutory and rule changes for implementation of the program.

### BACKGROUND

At the June 25, 2021 meeting of the Working Group, the Office of General Counsel (OGC) discussed its review of statutes and regulations that will need to be changed or adapted to effectuate the recommendations of this Working Group. As discussed at that meeting, the majority of the statutes and rules identified did not present any open policy issues requiring further Working Group recommendations. (For instance, numerous provisions of the Code of Civil Procedure require service of documents on "attorneys" or require payment of "attorney fees" in certain instances. Statutory changes to apply these provisions to paraprofessionals who are permitted to practice law will be necessary to effectuate these provisions in instances where paraprofessionals are permitted to practice.) Should the paraprofessional program be authorized, State Bar staff will work with the Legislature to address these implementation issues.

However, as previewed at the June 25 meeting, a handful of the statutes and rules identified potentially presented open policy questions for Working Group consideration. After the June 25 meeting, the Regulation Subcommittee considered these issues. The staff recommendations that follow were supported by the Regulation Subcommittee during these discussions.

## **DISCUSSION**

### **A. IOLTA Statute**

The IOLTA (Interest on Lawyers Trust Accounts) program is established by California Business & Professions Code sections 6210 – 6228 (see Attachment A at 1-11). Pursuant to these provisions, any attorney who holds client funds is required to establish an IOLTA account and place client funds in the pooled account when the funds will be held for a short duration or are of a small enough amount such that it would be impracticable to collect interest and pay it to the client. Interest on funds in IOLTA accounts are paid to the State Bar, which distributes the funds to legal services organizations to fund civil legal services for the indigent.

The Regulation Subcommittee discussed requiring paraprofessionals who hold client funds in trust to place them in IOLTA accounts pursuant to the same terms applicable to attorneys. Such a requirement would treat paraprofessionals (and their clients) the same as attorneys (and their clients), and would support access to justice by providing funds for civil legal services to the indigent. Neither staff nor the Regulation Subcommittee identified any reasons not to require paraprofessionals who hold client funds in trust to participate in the IOLTA program on the same terms as attorneys.

Thus, it is recommended that paraprofessionals be required to open IOLTA accounts and place client funds in them pursuant to the same terms applicable to attorneys.

### **B. Continuing Education**

The Working Group has recommended establishment of continuing education requirements for paraprofessionals. During OGC's review of parallel rules for continuing legal education for attorneys, it identified three rules presenting policy issues for the Working Group to consider in making recommendations for continuing education requirements for paraprofessionals.

First, for attorneys, State Bar Rule 2.81 permits attorneys who present at approved continuing education courses to receive continuing education credit in the amount of up to four times the time they spend presenting. (See Attachment A at 11.) This rule recognizes that teaching continuing education courses often involves particular mastery of the material and significant preparation time, and encourages attorney participation as presenters.

The Regulation Subcommittee discussed allowing paraprofessionals to receive continuing education credit for speaking at continuing education courses on the same terms as attorneys, and agreed that paraprofessionals should be granted such credit because teaching requires preparation and mastery, and because offering credit will incentivize paraprofessionals to present at such courses.

The Regulation Subcommittee also considered whether paraprofessionals should receive continuing education credit for teaching law school courses (or paraprofessional school courses) on the terms applicable to attorneys under State Bar Rule 2.82. (See [Attachment A](#) at 12.) The Regulation Subcommittee agreed that a parallel rule for paraprofessionals should not be recommended at this time, as there is no current anticipated need for paraprofessionals (who do not yet exist) to teach at law schools or paraprofessional schools. Rather, the continuing education requirements should be fulfilled through approved continuing education courses.

Finally, the Regulation Subcommittee considered whether paraprofessionals should be permitted to seek credit for attending *unapproved* continuing education courses, as attorneys are permitted to do pursuant to State Bar Rule 2.86. (See [Attachment A](#) at 12.) Staff confirmed that the rule for attorneys is primarily used by attorneys who have practices requiring specialized training in non-legal fields (such as medical billing or accounting). Because paraprofessionals will practice only in defined fields, the Regulation Subcommittee agreed that such a rule should not be adopted for paraprofessionals, who should be required to obtain continuing education in courses specifically approved for paraprofessionals.

Thus, it is recommended that paraprofessionals be permitted to receive continuing education credit for speaking at paraprofessional continuing education courses on terms mirroring those applicable to attorneys, and that paraprofessionals not be permitted to receive continuing education credit for teaching at law schools or paraprofessional schools or for taking unapproved courses.

### **C. Duties to Cooperate in Discipline Proceedings, Update Licensee Records, and Self-Report Adverse Events**

The State Bar Act subjects attorneys to statutory duties to cooperate with disciplinary proceedings (Bus. & Prof. Code § 6068(i); see [Attachment A](#) at 12), maintain up-to-date licensee records with the State Bar (e.g., current contact information; Bus. & Prof. Code § 6068(j); see [Attachment A](#) at 13), and self-report enumerated adverse events (e.g., sanctions awards, lawsuits, and convictions; Bus. & Prof. Code § 6068(o); see [Attachment A](#) at 13).

The Regulation Subcommittee considered these items and agreed that parallel requirements are necessary for the proper functioning of the paraprofessional program. No policy reasons for not applying parallel requirements were identified.

Thus, it is recommended that paraprofessionals be subject to provisions mirroring those for attorneys set forth in Business & Professions Code sections 6068(i), 6068(j), and 6068(o).

#### **D. Attorney-Client Privilege**

The attorney-client privilege, or in the words of the statute, “lawyer-client privilege,” is established by Evidence Code sections 912(c), 917, 950, 951, 952, 954, 955, 956, 956.5, 958, 959, and 962. (See Attachment A at 14-17.)

Confidential communications between paraprofessionals and their clients would most likely be protected by the attorney-client privilege without any change to the existing statute, as Evidence Code section 950 defines “lawyer” for purposes of the privilege as “a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.” The paraprofessionals contemplated by this program would be authorized to practice law.

However, the Regulation Subcommittee agrees that the statute should be amended to make explicit that communications between paraprofessionals and clients are privileged on the same terms as communications between attorneys and clients. This is consistent with the “fundamental purpose” of the privilege, which “is to safeguard the confidential relationship between clients and their attorneys so as to promote full and open discussion of the facts and tactics surrounding individual legal matters.” *Costco Wholesale Corp. v. Superior Ct.*, 47 Cal. 4th 725, 732 (2009) (internal quotations omitted). Applying the privilege to paraprofessionals will encourage their clients to be candid and make full disclosures to the paraprofessionals. This will help ensure that paraprofessionals have all necessary facts, not only to represent their clients but to refer them to an attorney in the event that the client needs legal services that can only be performed by an attorney. The Regulation Subcommittee did not identify any policy reasons for not applying the attorney-client privilege to paraprofessionals.

Thus, it is recommended that the statutory provisions establishing the lawyer-client privilege make explicit that the privilege applies to communications between paraprofessionals and their clients on the same terms applicable to communications between attorneys and clients.

#### **E. Attorney Work Product Doctrine**

The attorney work product doctrine is set forth at Code of Civil Procedure sections 2018.010 – 2018.080. (See Attachment A at 17-19.) These statutes have the purposes of “[p]reserv[ing] the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of those cases” and “[p]reventing attorneys from taking undue advantage of their adversary’s industry and efforts.” These rationales apply equally to paraprofessionals practicing law.

The Regulation Subcommittee agrees that the same rationales supporting the work product doctrine for attorneys apply to paraprofessionals. Further, not applying the work product doctrine to paraprofessionals could place their clients at a disadvantage in disputes with parties represented by attorneys, because the work of the attorney would be protected by the work product doctrine while the work of the paraprofessional could be subject to discovery by the opposing party. The Regulation Subcommittee did not identify any policy reasons for not extending the attorney work product doctrine to paraprofessionals.

Thus, it is recommended that the statutory provisions establishing the attorney work product doctrine be extended to apply to the work product of paraprofessionals.

#### **F. Statute of Limitations**

Pursuant to Code of Civil Procedure section 340.6, claims against an attorney “for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services” are subject to a statute of limitations of “one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first.” (See [Attachment A](#) at 19-20.) The statute provides for tolling, including during the pendency of the representation and when the attorney willfully conceals the facts constituting the wrongful act or omission. This statute was enacted in response to rising malpractice insurance rates for attorneys and because, in the absence of this statute, the statute of limitations applicable to claims by clients against their attorneys depended on how the claim was pleaded; generally, a statute of limitations of two years (if pleaded as breach of an oral contract or tort affecting intangible property) or four years (if pleaded as a breach of written agreement) applied. See *Lee v. Hanley*, 61 Cal. 4th 1225, 1234 (2015) (discussing history of Code of Civil Procedure section 340.6).

The Regulation Subcommittee agreed that the Legislature should enact a specific statute of limitations for claims for wrongful acts or omissions by paraprofessionals in the performance of professional services in order to provide clarity to clients. Several members of the Regulation Subcommittee opined that, to promote public protection, a longer statute of limitations should apply to paraprofessionals than applies to attorneys or that claims against both attorneys and paraprofessionals should be subject to a longer statute of limitations than is set forth in Code of Civil Procedure section 340.6. Some members also suggested that a discovery rule apply to all limitation’s periods for claims against paraprofessionals.

Thus, it is recommended a specific statute of limitations be established for claims against paraprofessionals for wrongful acts or omissions, other than for actual fraud, arising in the performance of professional services. The Working Group may also wish to recommend that such claims be subject to the same limitations period as claims against attorneys, or that different limitation periods apply.

### **G. Complaints Alleging Civil Conspiracy Between Attorneys and Clients**

Civil Code section 1714.10 requires a court determination that a plaintiff has shown a reasonable probability of prevailing before a plaintiff may file a complaint alleging a cause of action against an attorney for a civil conspiracy with and his or her client arising from an attempt to contest or compromise a claim or dispute based on the attorney's representation of the client. (See Attachment A at 20-21.) This pre-filing requirement protects attorneys against baseless claims of civil conspiracy, but adds procedural requirements for plaintiffs pursuing such claims.

The Regulation Subcommittee did not take a position on whether this statute should be extended to paraprofessionals. Given the anticipated limited scope of paraprofessionals' practice, it is not clear how often a paraprofessional would be subject to civil conspiracy claims of the sort addressed by this statute.

Staff does not recommend a particular Working Group action on this issue.

### **H. Running and Capping**

Rule 7.4(d) of the Rules of Professional Conduct for Licensed Paraprofessionals approved by the Working Group bars the use of runners and cappers by paraprofessionals. However, the Working Group has not yet recommended that the Legislature enact a statute barring running and capping for paraprofessionals. For attorneys, running and capping is prohibited by Business & Professions Code sections 6151 – 6154. (See Attachment A at 21-23.)

The Regulation Subcommittee agrees that the Working Group should recommend that the Legislature enact a statutory ban on running and capping by and for paraprofessionals mirroring the provisions for attorneys set forth in Business & Professions Code sections 6151 – 6154.

Thus, it is recommended that a statutory ban on running and capping by and for paraprofessionals mirroring the provisions for attorneys set forth in Business & Professions Code sections 6151 – 6154 be enacted.

### **I. Voidability of Fee Agreements for Failure to Comply With Rule 1.5.2 of Professional Conduct for Licensed Paraprofessionals**

Rule 1.5.2 of the Rules of Professional Conduct for Licensed Paraprofessionals approved by the Working Group requires paraprofessionals to enter into written agreements with their clients making specified disclosures. Business & Professions Code sections 6147 and 6148 impose written fee agreement requirements for attorneys and impose certain requirements for such

agreements. (See Attachment A at 23-25.) The statutes further provide that “[f]ailure to comply with any provision of this section renders the agreement voidable at the option of the plaintiff, and the attorney shall thereupon be entitled to collect a reasonable fee.” Bus. & Prof. § 6147(b); *see also* Bus. & Prof. § 6148(c).

The Regulation Subcommittee agrees that, should paraprofessionals violate Rule 1.5.2 of the Rules of Professional Conduct for Licensed Paraprofessionals by failing to enter into a written agreement with a client that complies with the rule, the paraprofessional’s agreement with the client shall be voidable at the option of the client, and the paraprofessional shall be entitled to collect a reasonable fee.

Thus, it is recommended that a statutory provision be enacted providing that when a paraprofessional fails to enter into a written agreement with a client that complies with Rule 1.5.2 of the Rules of Professional Conduct for Licensed Paraprofessionals, the paraprofessional’s agreement with the client shall be voidable at the option of the client, with the paraprofessional entitled to collect a reasonable fee.

## **RECOMMENDATION AND PROPOSED RESOLUTIONS**

Staff recommends that the Working Group adopt the following resolutions:

**RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be required to open IOLTA accounts and place client funds therein pursuant to the same terms applicable to attorneys.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that that paraprofessionals be permitted to receive continuing education credit for speaking at paraprofessional continuing education courses on terms mirroring those applicable to attorneys, and that paraprofessionals not be permitted to receive continuing education credit for teaching at law schools or paraprofessional schools or for taking unapproved courses.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals be subject to provisions mirroring those for attorneys set forth in Business & Professions Code sections 6068(i), 6068(j), and 6068(o).

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that the statutory provisions establishing the lawyer-client privilege expressly provide that the privilege applies to communications between paraprofessionals and their clients on the same terms applicable to communications between attorneys and clients.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that the statutory provisions establishing the attorney work product doctrine be extended to apply to the work product of paraprofessionals.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that a specific statute of limitations be established for claims against paraprofessionals for wrongful acts or omissions, other than for actual fraud, arising in the performance of professional services. [POTENTIAL ADDITIONAL RESOLUTION: **FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that claims against paraprofessionals for wrongful acts or omissions arising in the performance of professional services be subject to [the same limitations periods applicable to claims against attorneys] [a statute of limitations that mirrors the statute of limitations applicable to attorneys, except that the one-year period applicable to claims against attorneys shall be two years for claims against paraprofessionals].]

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that a statutory ban on running and capping by and for paraprofessionals mirroring the provisions for attorneys set forth in Business & Professions Code sections 6151 – 6154 be enacted.

**FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that a statutory provision be enacted providing that when a paraprofessional fails to enter into a written agreement with a client that complies with Rule 1.5.2 of the Rules of Professional Conduct for Licensed Paraprofessionals, the paraprofessional's agreement with the client shall be voidable at the option of the client, with the paraprofessional entitled to collect a reasonable fee.

## **ATTACHMENTS**

### A. Parallel Provisions For Attorneys

PARALLEL ATTORNEY PROVISIONS

Open Issue	Attorney Provisions
<p><b>A. IOLTA Statute</b></p>	<p>Bus. &amp; Prof. Code § 6210. Legislative findings; purpose  The Legislature finds that, due to insufficient funding, existing programs providing free legal services in civil matters to indigent persons, especially underserved client groups, such as the elderly, the disabled, juveniles, and non-English-speaking persons, do not adequately meet the needs of these persons. It is the purpose of this article to expand the availability and improve the quality of existing free legal services in civil matters to indigent persons, and to initiate new programs that will provide services to them. The Legislature finds that the use of funds collected by the State Bar pursuant to this article for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes in the judicial branch of government. The Legislature further finds that the expansion, improvement, and initiation of legal services to indigent persons will aid in the advancement of the science of jurisprudence and the improvement of the administration of justice.</p> <p>Bus. &amp; Prof. Code § 6211. Establishment by attorney of IOLTA account; interest and dividends earned to be paid to State Bar; other accounts not prohibited; rules of professional conduct; authority of Supreme Court or State Bar not affected  (a) An attorney or law firm that, in the course of the practice of law, receives or disburses trust funds shall establish and maintain an IOLTA account in which the attorney or law firm shall deposit or invest all client deposits or funds that are nominal in amount or are on deposit or invested for a short period of time. All such client funds may be deposited or invested in a single unsegregated account. The interest and dividends earned on all those accounts shall be paid to the State Bar of California to be used for the purposes set forth in this article.  (b) Nothing in this article shall be construed to prohibit an attorney or law firm from establishing one or more interest bearing bank trust deposit accounts or dividend-paying trust investment accounts as may be permitted by the Supreme Court, with the interest or dividends earned on the accounts payable to clients for trust funds not deposited or invested in accordance with subdivision (a).  (c) With the approval of the Supreme Court, the State Bar may formulate and enforce rules of professional conduct pertaining to the use by attorneys or law firms of an IOLTA account for unsegregated client funds pursuant to this article.</p>

(d) Nothing in this article shall be construed as affecting or impairing the disciplinary powers and authority of the Supreme Court or of the State Bar or as modifying the statutes and rules governing the conduct of licensees of the State Bar.

Bus. & Prof. Code § 6212. Establishment by attorney of IOLTA account; amount of interest; remittance to State Bar; reporting of IOLTA account compliance and other information; statements and reports

An attorney who, or a law firm that, establishes an IOLTA account pursuant to subdivision (a) of Section 6211 shall comply with all of the following provisions:

(a) The IOLTA account shall be established and maintained with an eligible institution offering or making available an IOLTA account that meets the requirements of this article. The IOLTA account shall be established and maintained consistent with the attorney's or law firm's duties of professional responsibility. An eligible financial institution shall have no responsibility for selecting the deposit or investment product chosen for the IOLTA account.

(b) Except as provided in subdivision (f), the rate of interest or dividends payable on any IOLTA account shall not be less than the interest rate or dividends generally paid by the eligible institution to nonattorney customers on accounts of the same type meeting the same minimum balance and other eligibility requirements as the IOLTA account. In determining the interest rate or dividend payable on any IOLTA account, an eligible institution may consider, in addition to the balance in the IOLTA account, risk or other factors customarily considered by the eligible institution when setting the interest rate or dividends for its non-IOLTA accounts, provided that the factors do not discriminate between IOLTA customers and non-IOLTA customers and that these factors do not include the fact that the account is an IOLTA account. The eligible institution shall calculate interest and dividends in accordance with its standard practice for non-IOLTA customers. Nothing in this article shall preclude an eligible institution from paying a higher interest rate or dividend on an IOLTA account or from electing to waive any fees and service charges on an IOLTA account.

(c) Reasonable fees may be deducted from the interest or dividends remitted on an IOLTA account only at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. No other fees or service charges may be deducted from the interest or dividends earned on an IOLTA account. Unless and until the State Bar enacts regulations exempting from compliance with subdivision (a) of Section 6211 those accounts for which maintenance fees exceed the interest or dividends paid, an eligible institution may deduct the fees and service charges in excess of the interest or dividends paid on an IOLTA account from the aggregate interest and dividends remitted to the State Bar. Fees and service charges other than reasonable fees shall be the sole responsibility of, and may only be charged to, the attorney or law firm maintaining the IOLTA account. Fees and charges shall not be assessed against or

deducted from the principal of any IOLTA account. It is the intent of the Legislature that the State Bar develop policies so that eligible institutions do not incur uncompensated administrative costs in adapting their systems to comply with the provisions of Chapter 422 of the Statutes of 2007 or in making investment products available to IOLTA members.

(d) The attorney or law firm shall report IOLTA account compliance and all other IOLTA account information required by the State Bar in the manner specified by the State Bar.

(e) The eligible institution shall be directed to do all of the following:

(1) To remit interest or dividends on the IOLTA account, less reasonable fees, to the State Bar, at least quarterly.

(2) To transmit to the State Bar with each remittance a statement showing the name of the attorney or law firm for which the remittance is sent, for each account the rate of interest applied or dividend paid, the amount and type of fees deducted, if any, and the average balance for each account for each month of the period for which the report is made.

(3) To transmit to the attorney or law firm customer at the same time a report showing the amount paid to the State Bar for that period, the rate of interest or dividend applied, the amount of fees and service charges deducted, if any, and the average daily account balance for each month of the period for which the report is made.

(f) An eligible institution has no affirmative duty to offer or make investment products available to IOLTA customers. However, if an eligible institution offers or makes investment products available to non-IOLTA customers, in order to remain an IOLTA-eligible institution, it shall make those products available to IOLTA customers or pay an interest rate on the IOLTA deposit account that is comparable to the rate of return or the dividends generally paid on that investment product for similar customers meeting the same minimum balance and other requirements applicable to the investment product. If the eligible institution elects to pay that higher interest rate, the eligible institution may subject the IOLTA deposit account to equivalent fees and charges assessable against the investment product.

Bus. & Prof. Code § 6213. Definitions

As used in this article:

(a) "Qualified legal services project" means either of the following:

(1) A nonprofit project incorporated and operated exclusively in California that provides as its primary purpose and function legal services without charge to indigent persons and that has quality control procedures approved by the State Bar of California.

(2) A program operated exclusively in California by a nonprofit law school accredited by the State Bar of California that meets the requirements of subparagraphs (A) and (B).

- (A) The program shall have operated for at least two years at a cost of at least twenty thousand dollars (\$20,000) per year as an identifiable law school unit with a primary purpose and function of providing legal services without charge to indigent persons.
- (B) The program shall have quality control procedures approved by the State Bar of California.
- (b) "Qualified support center" means an incorporated nonprofit legal services center that has as its primary purpose and function the provision of legal training, legal technical assistance, or advocacy support without charge and which actually provides through an office in California a significant level of legal training, legal technical assistance, or advocacy support without charge to qualified legal services projects on a statewide basis in California.
- (c) "Recipient" means a qualified legal services project or support center receiving financial assistance under this article.
- (d) "Indigent person" means a person whose income is (1) 125 percent or less of the current poverty threshold established by the United States Office of Management and Budget, or (2) who is eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act. With regard to a project that provides free services of attorneys in private practice without compensation, "indigent person" also means a person whose income is 75 percent or less of the maximum levels of income for lower income households as defined in Section 50079.5 of the Health and Safety Code. For the purpose of this subdivision, the income of a person who is disabled shall be determined after deducting the costs of medical and other disability-related special expenses.
- (e) "Fee generating case" means a case or matter that, if undertaken on behalf of an indigent person by an attorney in private practice, reasonably may be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from the opposing party. A case shall not be considered fee generating if adequate representation is unavailable and any of the following circumstances exist:
- (1) The recipient has determined that free referral is not possible because of any of the following reasons:
    - (A) The case has been rejected by the local lawyer referral service, or if there is no such service, by two attorneys in private practice who have experience in the subject matter of the case.
    - (B) Neither the referral service nor any attorney will consider the case without payment of a consultation fee.
    - (C) The case is of the type that attorneys in private practice in the area ordinarily do not accept, or do not accept without prepayment of a fee.
    - (D) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.

- (2) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims.
- (3) A court has appointed a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.
- (4) The case involves the rights of a claimant under a publicly supported benefit program for which entitlement to benefit is based on need.
- (f) "Legal Services Corporation" means the Legal Services Corporation established under the Legal Services Corporation Act of 1974 (P.L. 93-355; 42 U.S.C. Sec. 2996 et seq.).
- (g) "Older Americans Act" means the Older Americans Act of 1965, as amended (P.L. 89-73; 42 U.S.C. Sec. 3001 et seq.).
- (h) "Developmentally Disabled Assistance Act" means the Developmentally Disabled Assistance and Bill of Rights Act, as amended (P.L. 94-103; 42 U.S.C. Sec. 6001 et seq.).
- (i) "Supplemental security income recipient" means an individual receiving or eligible to receive payments under Title XVI of the federal Social Security Act, or payments under Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code.
- (j) "IOLTA account" means an account or investment product established and maintained pursuant to subdivision (a) of Section 6211 that is any of the following:
- (1) An interest-bearing checking account.
  - (2) An investment sweep product that is a daily (overnight) financial institution repurchase agreement or an open-end money market fund.
  - (3) An investment product authorized by California Supreme Court rule or order.
- A daily financial institution repurchase agreement shall be fully collateralized by United States Government Securities or other comparably conservative debt securities, and may be established only with any eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money market fund shall be invested solely in United States Government Securities or repurchase agreements fully collateralized by United States Government Securities or other comparably conservative debt securities, shall hold itself out as a "money market fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars (\$250,000,000).
- (k) "Eligible institution" means either of the following:

- (1) A bank, savings and loan, or other financial institution regulated by a federal or state agency that pays interest or dividends in the IOLTA account and carries deposit insurance from an agency of the federal government.
- (2) Any other type of financial institution authorized by the California Supreme Court.

Bus. & Prof. Code § 6214. Qualified legal service projects

(a) Projects meeting the requirements of subdivision (a) of Section 6213 which are funded either in whole or part by the Legal Services Corporation or with Older American Act funds shall be presumed qualified legal services projects for the purpose of this article.

(b) Projects meeting the requirements of subdivision (a) of Section 6213 but not qualifying under the presumption specified in subdivision (a) shall qualify for funds under this article if they meet all of the following additional criteria:

(1) They receive cash funds from other sources in the amount of at least twenty thousand dollars (\$20,000) per year to support free legal representation to indigent persons.

(2) They have demonstrated community support for the operation of a viable ongoing program.

(3) They provide one or both of the following special services:

(A) The coordination of the recruitment of substantial numbers of attorneys in private practice to provide free legal representation to indigent persons or to qualified legal services projects in California.

(B) The provision of legal representation, training, or technical assistance on matters concerning special client groups, including the elderly, the disabled, juveniles, and non-English-speaking groups, or on matters of specialized substantive law important to the special client groups.

Bus. & Prof. Code § 6214.5. Qualified legal services projects; eligibility for distributions of funds

A law school program that meets the definition of a “qualified legal services project” as defined in paragraph (2) of subdivision (a) of Section 6213, and that applied to the State Bar for funding under this article not later than February 17, 1984, shall be deemed eligible for all distributions of funds made under Section 6216.

Bus. & Prof. Code § 6215. Qualified support centers

(a) Support centers satisfying the qualifications specified in subdivision (b) of Section 6213 which were operating an office and providing services in California on December 31, 1980, shall be presumed to be qualified support centers for the purposes of this article.

(b) Support centers not qualifying under the presumption specified in subdivision (a) may qualify as a support center by meeting both of the following additional criteria:

(1) Meeting quality control standards established by the State Bar.

(2) Being deemed to be of special need by a majority of the qualified legal services projects.

Bus. & Prof. Code § 6216. Distribution of funds

The State Bar shall distribute all moneys received under the program established by this article for the provision of civil legal services to indigent persons. The funds first shall be distributed 18 months from the effective date of this article, or upon such a date, as shall be determined by the State Bar, that adequate funds are available to initiate the program. Thereafter, the funds shall be distributed on an annual basis. All distributions of funds shall be made in the following order and in the following manner:

(a) To pay the actual administrative costs of the program, including any costs incurred after the adoption of this article and a reasonable reserve therefor.

(b) Eighty-five percent of the funds remaining after payment of administrative costs allocated pursuant to this article shall be distributed to qualified legal services projects. Distribution shall be by a pro rata county-by-county formula based upon the number of persons whose income is 125 percent or less of the current poverty threshold per county. For the purposes of this section, the source of data identifying the number of persons per county shall be the latest available figures from the United States Department of Commerce, Bureau of the Census. Projects from more than one county may pool their funds to operate a joint, multicounty legal services project serving each of their respective counties.

(1)(A) In any county which is served by more than one qualified legal services project, the State Bar shall distribute funds for the county to those projects which apply on a pro rata basis, based upon the amount of their total budget expended in the prior year for legal services in that county as compared to the total expended in the prior year for legal services by all qualified legal services projects applying therefor in the county. In determining the amount of funds to be allocated to a qualified legal services project specified in paragraph (2) of subdivision (a) of Section 6213, the State Bar shall recognize only expenditures attributable to the representation of indigent persons as constituting the budget of the program.

(B) The State Bar shall reserve 10 percent of the funds allocated to the county for distribution to programs meeting the standards of subparagraph (A) of paragraph (3) and paragraphs (1) and (2) of subdivision (b) of Section 6214 and which perform the services described in subparagraph (A) of paragraph (3) of Section 6214 as their principal means of delivering legal services. The State Bar shall distribute the funds for that county to those programs which apply on a pro rata basis, based upon the amount of their total budget expended for free legal services in that county as compared to

the total expended for free legal services by all programs meeting the standards of subparagraph (A) of paragraph (3) and paragraphs (1) and (2) of subdivision (b) of Section 6214 in that county. The State Bar shall distribute any funds for which no program has qualified pursuant hereto, in accordance with the provisions of subparagraph (A) of paragraph (1) of this subdivision.

(2) In any county in which there is no qualified legal services projects providing services, the State Bar shall reserve for the remainder of the fiscal year for distribution the pro rata share of funds as provided for by this article. Upon application of a qualified legal services project proposing to provide legal services to the indigent of the county, the State Bar shall distribute the funds to the project. Any funds not so distributed shall be added to the funds to be distributed the following year.

(c) Fifteen percent of the funds remaining after payment of administrative costs allocated for the purposes of this article shall be distributed equally by the State Bar to qualified support centers which apply for the funds. The funds provided to support centers shall be used only for the provision of legal services within California. Qualified support centers that receive funds to provide services to qualified legal services projects from sources other than this article, shall submit and shall have approved by the State Bar a plan assuring that the services funded under this article are in addition to those already funded for qualified legal services projects by other sources.

Bus. & Prof. Code § 6217. Maintenance of quality services, professional standards, attorney-client privilege; funds to be expended in accordance with article; interference with attorney prohibited

With respect to the provision of legal assistance under this article, each recipient shall ensure all of the following:

(a) The maintenance of quality service and professional standards.

(b) The expenditure of funds received in accordance with the provisions of this article.

(c) The preservation of the attorney-client privilege in any case, and the protection of the integrity of the adversary process from any impairment in furnishing legal assistance to indigent persons.

(d) That no one shall interfere with any attorney funded in whole or in part by this article in carrying out his or her professional responsibility to his or her client as established by the rules of professional responsibility and this chapter.

Bus. & Prof. Code § 6218. Eligibility for services; establishment of guidelines; funds to be expended in accordance with article

All legal services projects and support centers receiving funds pursuant to this article shall adopt financial eligibility guidelines for indigent persons.

(a) Qualified legal services programs shall ensure that funds appropriated pursuant to this article shall be used solely to defray the costs of providing legal services to indigent persons or for such other purposes as set forth in this article.  
(b) Funds received pursuant to this article by support centers shall only be used to provide services to qualified legal services projects as defined in subdivision (a) of Section 6213 which are used pursuant to a plan as required by subdivision (c) of Section 6216, or as permitted by Section 6219.

Bus. & Prof. Code § 6219. Provision of work opportunities and scholarships for disadvantaged law students  
Qualified legal services projects and support centers may use funds provided under this article to provide work opportunities with pay, and where feasible, scholarships for disadvantaged law students to help defray their law school expenses.

Bus. & Prof. Code § 6220. Private attorneys providing legal services without charge; support center services  
Attorneys in private practice who are providing legal services without charge to indigent persons shall not be disqualified from receiving the services of the qualified support centers.

Bus. & Prof. Code § 6221. Services for indigent members of disadvantaged and underserved groups  
Qualified legal services projects shall make significant efforts to utilize 20 percent of the funds allocated under this article for increasing the availability of services to the elderly, the disabled, juveniles, or other indigent persons who are members of disadvantaged and underserved groups within their service area.

Bus. & Prof. Code § 6222. Recipients of funds to submit annual financial statements; information included in annual report of State Bar receipts and expenditures  
A recipient of funds allocated pursuant to this article annually shall submit a financial statement to the State Bar, including an audit of the funds by a certified public accountant or a fiscal review approved by the State Bar, a report demonstrating the programs on which they were expended, a report on the recipient's compliance with the requirements of Section 6217, and progress in meeting the service expansion requirements of Section 6221. The Board of Trustees of the State Bar shall include a report of receipts of funds under this article, expenditures for administrative costs, and disbursements of the funds, on a county-by-county basis, in the annual report of State Bar receipts and expenditures required pursuant to Section 6145.

<p>Bus. &amp; Prof. Code § 6223. Expenditure of funds; prohibitions No funds allocated by the State Bar pursuant to this article shall be used for any of the following purposes: (a) The provision of legal assistance with respect to any fee generating case, except in accordance with guidelines which shall be promulgated by the State Bar. (b) The provision of legal assistance with respect to any criminal proceeding. (c) The provision of legal assistance, except to indigent persons or except to provide support services to qualified legal services projects as defined by this article.</p> <p>Bus. &amp; Prof. Code § 6224. State bar; powers; determination of qualifications to receive funds; denial of funds; termination; procedures The State Bar shall have the power to determine that an applicant for funding is not qualified to receive funding, to deny future funding, or to terminate existing funding because the recipient is not operating in compliance with the requirements or restrictions of this article. A denial of an application for funding or for future funding or an action by the State Bar to terminate an existing grant of funds under this article shall not become final until the applicant or recipient has been afforded reasonable notice and an opportunity for a timely and fair hearing. Pending final determination of any hearing held with reference to termination of funding, financial assistance shall be continued at its existing level on a month-to-month basis. Hearings for denial shall be conducted by an impartial hearing officer whose decision shall be final. The hearing officer shall render a decision no later than 30 days after the conclusion of the hearing. Specific procedures governing the conduct of the hearings of this section shall be determined by the State Bar pursuant to Section 6225.</p> <p>Bus. &amp; Prof. Code § 6225. Implementation of article; adoption of rules and regulations; procedures The Board of Trustees of the State Bar shall adopt the regulations and procedures necessary to implement this article and to ensure that the funds allocated herein are utilized to provide civil legal services to indigent persons, especially underserved client groups such as but not limited to the elderly, the disabled, juveniles, and non-English-speaking persons. In adopting the regulations the Board of Trustees shall comply with the following procedures:</p>
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	<p>(a) The board shall publish a preliminary draft of the regulations and procedures, which shall be distributed, together with notice of the hearings required by subdivision (b), to commercial banking institutions, to licensees of the State Bar, and to potential recipients of funds.</p> <p>(b) The board shall hold at least two public hearings, one in southern California and one in northern California where affected and interested parties shall be afforded an opportunity to present oral and written testimony regarding the proposed regulations and procedures.</p> <p>Bus. &amp; Prof. Code § 6226. Implementation of article; resolution The program authorized by this article shall become operative only upon the adoption of a resolution by the Board of Trustees of the State Bar stating that regulations have been adopted pursuant to Section 6225 which conform the program to all applicable tax and banking statutes, regulations, and rulings.</p> <p>Bus. &amp; Prof. Code § 6227. Credit of state not pledged Nothing in this article shall create an obligation or pledge of the credit of the State of California or of the State Bar of California. Claims arising by reason of acts done pursuant to this article shall be limited to the moneys generated hereunder.</p> <p>Bus. &amp; Prof. Code § 6228. Severability If any provision of this article or the application thereof to any group or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.</p>
<p><b>B. MCLE Provisions</b></p>	<p>State Bar Rule 2.81 Speaking</p> <p>A licensee may claim participatory MCLE credit for speaking at an approved MCLE activity.</p> <p>(A) A principal speaker, who is responsible for preparing and delivering a program or class and its related materials, may claim</p> <p>(1) actual speaking time multiplied by four for the first presentation; or</p>

(2) actual speaking time only for each time a presentation is repeated without significant change.

(B) A panelist may claim

(1) either of the following for the first panel presentation: (a) scheduled individual speaking time multiplied by four, plus the actual time spent in attendance at the remainder of the presentation; or (b) when times have not been scheduled for individual speakers, an equal share of the total time for all speakers multiplied by four plus the actual time spent in attendance at the remainder of the presentation.

(2) actual speaking time only for each time a presentation is repeated without significant change.

(C) A licensee who introduces speakers or serves as a moderator may claim only the MCLE credit available to any attendee.

#### State Bar Rule 2.82 Teaching

A licensee may claim participatory MCLE credit for teaching a law school course.

(A) A licensee assigned to teach a course may claim no more than the credit hours granted by the law school multiplied by twelve or actual speaking time for required MCLE in legal ethics, elimination of bias, or competence issues.

(B) A guest lecturer or substitute teacher may claim

(1) actual speaking time multiplied by four for the first presentation; or

(2) actual speaking time only for each time a presentation is repeated without significant change.

#### State Bar Rule 2.86 Licensee credit request

	<p>A licensee may apply for MCLE credit for an educational activity directly relevant to the licensee’s practice but not otherwise approved if the activity substantially meets State Bar standards. The application must be submitted with the appropriate fee.</p>
<p><b>C. Duties to Cooperate in Discipline Proceedings, Update Licensee Records, and Self-Report Adverse Events</b></p>	<p>Bus. &amp; Prof. Code § 6068(i)          “It is the duty of an attorney to ... cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself. However, this subdivision shall not be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subdivision shall not be construed to require an attorney to cooperate with a request that requires him or her to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the attorney's practice. Any exercise by an attorney of any constitutional or statutory privilege shall not be used against the attorney in a regulatory or disciplinary proceeding against him or her.”</p> <p>Bus. &amp; Prof. Code § 6068(j)          “It is the duty of an attorney to ... comply with the requirements of Section 6002.1.”<sup>1</sup></p> <p>Bus. &amp; Prof. Code § 6068(o)          “It is the duty of an attorney to ... report to the State Bar, in writing, within 30 days of the time the attorney has knowledge of any of the following:          (1) The filing of three or more lawsuits in a 12-month period against the attorney for malpractice or other wrongful conduct committed in a professional capacity.          (2) The entry of judgment against the attorney in a civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity.</p>

<sup>1</sup> The referenced section enumerates contact and practice information that attorneys must keep up-to-date with the State Bar. It is anticipated that specific requirements for paralegals will be developed based on operational needs.

	<p>(3) The imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000).</p> <p>(4) The bringing of an indictment or information charging a felony against the attorney.</p> <p>(5) The conviction of the attorney, including any verdict of guilty, or plea of guilty or no contest, of a felony, or a misdemeanor committed in the course of the practice of law, or in a manner in which a client of the attorney was the victim, or a necessary element of which, as determined by the statutory or common law definition of the misdemeanor, involves improper conduct of an attorney, including dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or a misdemeanor of that type.</p> <p>(6) The imposition of discipline against the attorney by a professional or occupational disciplinary agency or licensing board, whether in California or elsewhere.</p> <p>(7) Reversal of judgment in a proceeding based in whole or in part upon misconduct, grossly incompetent representation, or willful misrepresentation by an attorney.</p> <p>(8) As used in this subdivision, “against the attorney” includes claims and proceedings against any firm of attorneys for the practice of law in which the attorney was a partner at the time of the conduct complained of and any law corporation in which the attorney was a shareholder at the time of the conduct complained of unless the matter has to the attorney's knowledge already been reported by the law firm or corporation.</p> <p>(9) The State Bar may develop a prescribed form for the making of reports required by this section, usage of which it may require by rule or regulation.</p> <p>(10) This subdivision is only intended to provide that the failure to report as required herein may serve as a basis of discipline.</p>
<p><b>D. Attorney-Client Privilege</b></p>	<p>Evid. Code § 912. Waiver of privilege</p> <p>(a) Except as otherwise provided in this section, the right of any person to claim a privilege provided by Section 954 (lawyer-client privilege) ... is waived with respect to a communication protected by the privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone. Consent to disclosure is manifested by any statement or other conduct of the holder of the privilege indicating consent to the disclosure, including failure to claim the privilege in any proceeding in which the holder has legal standing and the opportunity to claim the privilege.</p>

- (b) Where two or more persons are joint holders of a privilege provided by Section 954 (lawyer-client privilege)... a waiver of the right of a particular joint holder of the privilege to claim the privilege does not affect the right of another joint holder to claim the privilege....
- (c) A disclosure that is itself privileged is not a waiver of any privilege.

A disclosure in confidence of a communication that is protected by a privilege provided by Section 954 (lawyer-client privilege), ..., when disclosure is reasonably necessary for the accomplishment of the purpose for which the lawyer... was consulted, is not a waiver of the privilege.

Evid. Code § 917. Presumption that certain communications are confidential; privileged character of electronic communications

- (a) If a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of the lawyer-client... relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential.
- (b) A communication between persons in a relationship listed in subdivision (a) does not lose its privileged character for the sole reason that it is communicated by electronic means or because persons involved in the delivery, facilitation, or storage of electronic communication may have access to the content of the communication.
- (c) For purposes of this section, "electronic" has the same meaning provided in Section 1633.2 of the Civil Code.

Evid. Code § 950. Lawyer

As used in this article, "lawyer" means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

Evid. Code § 951. Client

As used in this article, "client" means a person who, directly or through an authorized representative, consults a lawyer for the purpose of retaining the lawyer or securing legal service or advice from him in his professional capacity, and includes an incompetent (a) who himself so consults the lawyer or (b) whose guardian or conservator so consults the lawyer in behalf of the incompetent.

Evid. Code § 952. Confidential communication between client and lawyer

As used in this article, “confidential communication between client and lawyer” means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.

Evid. Code § 954. Lawyer-client privilege

Subject to Section 912 and except as otherwise provided in this article, the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer if the privilege is claimed by:

- (a) The holder of the privilege;
- (b) A person who is authorized to claim the privilege by the holder of the privilege; or
- (c) The person who was the lawyer at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.

The relationship of attorney and client shall exist between a law corporation as defined in Article 10 (commencing with Section 6160) of Chapter 4 of Division 3 of the Business and Professions Code and the persons to whom it renders professional services, as well as between such persons and members of the State Bar employed by such corporation to render services to such persons. The word “persons” as used in this subdivision includes partnerships, corporations, limited liability companies, associations and other groups and entities.

Evid. Code § 955. When lawyer required to claim privilege

	<p>The lawyer who received or made a communication subject to the privilege under this article shall claim the privilege whenever he is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) of Section 954.</p> <p>Evid. Code § 956. Exception: Crime or fraud; applicability to legal services for lawful cannabis-related activities  (a) There is no privilege under this article if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.</p> <p>This exception to the privilege granted by this article shall not apply to legal services rendered in compliance with state and local laws on medicinal cannabis or adult-use cannabis, and confidential communications provided for the purpose of rendering those services are confidential communications between client and lawyer, as defined in Section 952, provided the lawyer also advises the client on conflicts with respect to federal law.</p> <p>Evid. Code § 956.5. Exception: Prevention of criminal act likely to result in death or substantial bodily harm  There is no privilege under this article if the lawyer reasonably believes that disclosure of any confidential communication relating to representation of a client is necessary to prevent a criminal act that the lawyer reasonably believes is likely to result in the death of, or substantial bodily harm to, an individual.</p> <p>Evid. Code § 958. Exception: Breach of duty arising out of lawyer-client relationship  There is no privilege under this article as to a communication relevant to an issue of breach, by the lawyer or by the client, of a duty arising out of the lawyer-client relationship.</p> <p>Evid. Code § 959. Exception: Lawyer as attesting witness  There is no privilege under this article as to a communication relevant to an issue concerning the intention or competence of a client executing an attested document of which the lawyer is an attesting witness, or concerning the execution or attestation of such a document.</p> <p>Evid. Code § 962. Exception: Joint clients  Where two or more clients have retained or consulted a lawyer upon a matter of common interest, none of them, nor the successor in interest of any of them, may claim a privilege under this article as to a communication made in the</p>
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	<p>course of that relationship when such communication is offered in a civil proceeding between one of such clients (or his successor in interest) and another of such clients (or his successor in interest).</p>
<p><b>E. Attorney Work Product Doctrine</b></p>	<p>Civ. Proc. Code § 2018.010. “Client” defined  For purposes of this chapter, “client” means a “client” as defined in Section 951 of the Evidence Code.</p> <p>Civ. Proc. Code § 2018.020. Policy of the state</p> <p>It is the policy of the state to do both of the following:</p> <ul style="list-style-type: none"> <li>(a) Preserve the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of those cases.</li> <li>(b) Prevent attorneys from taking undue advantage of their adversary's industry and efforts.</li> </ul> <p>Civ. Proc. Code § 2018.030. Writings and written documentation</p> <ul style="list-style-type: none"> <li>(a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.</li> <li>(b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.</li> </ul> <p>Civ. Proc. Code § 2018.040. Restatement of existing law  This chapter is intended to be a restatement of existing law relating to protection of work product. It is not intended to expand or reduce the extent to which work product is discoverable under existing law in any action.</p> <p>Civ. Proc. Code § 2018.050. Participation in crime or fraud  Notwithstanding Section 2018.040, when a lawyer is suspected of knowingly participating in a crime or fraud, there is no protection of work product under this chapter in any official investigation by a law enforcement agency or proceeding or</p>

	<p>action brought by a public prosecutor in the name of the people of the State of California if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or fraud.</p> <p>Civ. Proc. Code § 2018.060. In camera hearings Nothing in this chapter is intended to limit an attorney's ability to request an in camera hearing as provided for in <i>People v. Superior Court (Laff)</i> (2001) 25 Cal.4th 703.1</p> <p>Civ. Proc. Code § 2018.070. Disciplinary proceedings</p> <ul style="list-style-type: none"> <li>(a) The State Bar may discover the work product of an attorney against whom disciplinary charges are pending when it is relevant to issues of breach of duty by the lawyer and requisite client approval has been granted.</li> <li>(b) Where requested and for good cause, discovery under this section shall be subject to a protective order to ensure the confidentiality of the work product except for its use by the State Bar in disciplinary investigations and its consideration under seal in State Bar Court proceedings.</li> <li>(c) For purposes of this chapter, whenever a client has initiated a complaint against an attorney, the requisite client approval shall be deemed to have been granted.</li> </ul> <p>Civ. Proc. Code § 2018.080. Breach of duty; actions against attorney by client or former client</p> <p>In an action between an attorney and a client or a former client of the attorney, no work product privilege under this chapter exists if the work product is relevant to an issue of breach by the attorney of a duty to the client arising out of the attorney-client relationship.</p>
<p><b>F. Statute of Limitations</b></p>	<p>Civ. Proc. Code § 340.6. Attorneys; wrongful professional act or omission; tolling of period</p> <ul style="list-style-type: none"> <li>(a) An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first. If the plaintiff is required to establish the plaintiff's factual innocence for an underlying criminal charge as an element of the plaintiff's claim,</li> </ul>

	<p>the action shall be commenced within two years after the plaintiff achieves postconviction exoneration in the form of a final judicial disposition of the criminal case. Except for a claim for which the plaintiff is required to establish the plaintiff's factual innocence, the time for commencement of legal action shall not exceed four years except that the period shall be tolled during the time that any of the following exist:</p> <p>(1) The plaintiff has not sustained actual injury.</p> <p>(2) The attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred.</p> <p>(3) The attorney willfully conceals the facts constituting the wrongful act or omission when those facts are known to the attorney, except that this subdivision shall toll only the four-year limitation.</p> <p>(4) The plaintiff is under a legal or physical disability that restricts the plaintiff's ability to commence legal action.</p> <p>(5) A dispute between the lawyer and client concerning fees, costs, or both is pending resolution under Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code. As used in this paragraph, "pending" means from the date a request for arbitration is filed until 30 days after receipt of notice of the award of the arbitrators, or receipt of notice that the arbitration is otherwise terminated, whichever occurs first.</p> <p>(b) In an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, the period of limitations provided for by this section shall commence to run upon the occurrence of that act or event.</p>
<p><b>G. Complaints Alleging Civil Conspiracy Between Attorneys and Clients</b></p>	<p>Civ. Code § 1714.10. Attorney client civil conspiracy; proof and court determination prior to pleading; defense; limitations; appeal</p> <p>(a) No cause of action against an attorney for a civil conspiracy with his or her client arising from any attempt to contest or compromise a claim or dispute, and which is based upon the attorney's representation of the client, shall be included in a complaint or other pleading unless the court enters an order allowing the pleading that includes the claim for civil conspiracy to be filed after the court determines that the party seeking to file the pleading has established that there is a reasonable probability that the party will prevail in the action. The court may allow the filing of a pleading claiming liability based upon such a civil conspiracy following the filing of a verified petition therefor accompanied by the proposed pleading and supporting affidavits stating the facts upon which the liability is based. The court shall order</p>

	<p>service of the petition upon the party against whom the action is proposed to be filed and permit that party to submit opposing affidavits prior to making its determination. The filing of the petition, proposed pleading, and accompanying affidavits shall toll the running of any applicable statute of limitations until the final determination of the matter, which ruling, if favorable to the petitioning party, shall permit the proposed pleading to be filed.</p> <p>(b) Failure to obtain a court order where required by subdivision (a) shall be a defense to any action for civil conspiracy filed in violation thereof. The defense shall be raised by the attorney charged with civil conspiracy upon that attorney's first appearance by demurrer, motion to strike, or such other motion or application as may be appropriate. Failure to timely raise the defense shall constitute a waiver thereof.</p> <p>(c) This section shall not apply to a cause of action against an attorney for a civil conspiracy with his or her client, where (1) the attorney has an independent legal duty to the plaintiff, or (2) the attorney's acts go beyond the performance of a professional duty to serve the client and involve a conspiracy to violate a legal duty in furtherance of the attorney's financial gain.</p> <p>(d) This section establishes a special proceeding of a civil nature. Any order made under subdivision (a), (b), or (c) which determines the rights of a petitioner or an attorney against whom a pleading has been or is proposed to be filed, shall be appealable as a final judgment in a civil action.</p> <p>(e) Subdivision (d) does not constitute a change in, but is declaratory of, the existing law.</p>
<p><b>H. Running and Capping</b></p>	<p>Bus. &amp; Prof. Code § 6151. As used in this article:</p> <p>(a) A runner or capper is any person, firm, association or corporation acting for consideration in any manner or in any capacity as an agent for an attorney at law or law firm, whether the attorney or any member of the law firm is admitted in California or any other jurisdiction, in the solicitation or procurement of business for the attorney at law or law firm as provided in this article.</p> <p>(b) An agent is one who represents another in dealings with one or more third persons.</p> <p>Bus. &amp; Prof. Code § 6152.</p>

(a) It is unlawful for:

(1) Any person, in an individual capacity or in a capacity as a public or private employee, or for any firm, corporation, partnership or association to act as a runner or capper for any attorneys or to solicit any business for any attorneys in and about the state prisons, county jails, city jails, city prisons, or other places of detention of persons, city receiving hospitals, city and county receiving hospitals, county hospitals, superior courts, or in any public institution or in any public place or upon any public street or highway or in and about private hospitals, sanitariums or in and about any private institution or upon private property of any character whatsoever.

(2) Any person to solicit another person to commit or join in the commission of a violation of subdivision (a).

(b) A general release from a liability claim obtained from any person during the period of the first physical confinement, whether as an inpatient or outpatient, in a clinic or health facility, as defined in Sections 1203 and 1250 of the Health and Safety Code, as a result of the injury alleged to have given rise to the claim and primarily for treatment of the injury, is presumed fraudulent if the release is executed within 15 days after the commencement of confinement or prior to release from confinement, whichever occurs first.

(c) Nothing in this section shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by the Rules of Professional Conduct of the State Bar of California.

(d) Nothing in this section shall be construed to mean that a public defender or assigned counsel may not make known his or her services as a criminal defense attorney to persons unable to afford legal counsel whether those persons are in custody or otherwise.

Bus. & Prof. § 6153

Any person, firm, partnership, association, or corporation violating subdivision (a) of Section 6152 is punishable, upon a first conviction, by imprisonment in a county jail for not more than one year or by a fine not exceeding fifteen thousand dollars (\$15,000), or by both that imprisonment and fine. Upon a second or subsequent conviction, a person, firm, partnership, association, or corporation is punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years, or by a fine not exceeding fifteen thousand dollars (\$15,000), or by both that imprisonment and fine.

Any person employed either as an officer, director, trustee, clerk, servant or agent of this state or of any county or other municipal corporation or subdivision thereof, who is found guilty of violating any of the provisions of this article, shall forfeit the right to his office and employment in addition to any other penalty provided in this article.

	<p>Bus. &amp; Prof. Code § 6154.</p> <p>(a) Any contract for professional services secured by any attorney at law or law firm in this state through the services of a runner or capper is void. In any action against any attorney or law firm under the Unfair Practices Act, Chapter 4 (commencing with Section 17000) of Division 7, or Chapter 5 (commencing with Section 17200) of Division 7, any judgment shall include an order divesting the attorney or law firm of any fees and other compensation received pursuant to any such void contract. Those fees and compensation shall be recoverable as additional civil penalties under Chapter 4 (commencing with Section 17000) or Chapter 5 (commencing with Section 17200) of Division 7.</p> <p>(b) Notwithstanding Section 17206 or any other provision of law, any fees recovered pursuant to subdivision (a) in an action involving professional services related to the provision of workers' compensation shall be allocated as follows: if the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the State General Fund, and one-half of the penalty collected shall be paid to the Workers' Compensation Fraud Account in the Insurance Fund; if the action is brought by a district attorney, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half of the penalty collected shall be paid to the Workers' Compensation Fraud Account in the Insurance Fund; if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half of the penalty collected shall be paid to the Workers' Compensation Fraud Account in the Insurance Fund. Moneys deposited into the Workers' Compensation Fraud Account pursuant to this subdivision shall be used in the investigation and prosecution of workers' compensation fraud, as appropriated by the Legislature.</p>
<p><b>I. Voidability of Fee Agreements for Failure to Comply With Rule 1.5.2 of Professional Conduct for Licensed Paraprofessionals</b></p>	<p>Bus. &amp; Prof. Code § 6147. Contingency fee contracts; duplicate copy; contents; effect of noncompliance; recovery of workers' compensation benefits</p> <p>(a) An attorney who contracts to represent a client on a contingency fee basis shall, at the time the contract is entered into, provide a duplicate copy of the contract, signed by both the attorney and the client, or the client's guardian or representative, to the plaintiff, or to the client's guardian or representative. The contract shall be in writing and shall include, but is not limited to, all of the following:</p> <p>(1) A statement of the contingency fee rate that the client and attorney have agreed upon.</p> <p>(2) A statement as to how disbursements and costs incurred in connection with the prosecution or settlement of the claim will affect the contingency fee and the client's recovery.</p>

- (3) A statement as to what extent, if any, the client could be required to pay any compensation to the attorney for related matters that arise out of their relationship not covered by their contingency fee contract. This may include any amounts collected for the plaintiff by the attorney.
- (4) Unless the claim is subject to the provisions of Section 6146, a statement that the fee is not set by law but is negotiable between attorney and client.
- (5) If the claim is subject to the provisions of Section 6146, a statement that the rates set forth in that section are the maximum limits for the contingency fee agreement, and that the attorney and client may negotiate a lower rate.
- (b) Failure to comply with any provision of this section renders the agreement voidable at the option of the plaintiff, and the attorney shall thereupon be entitled to collect a reasonable fee.
- (c) This section shall not apply to contingency fee contracts for the recovery of workers' compensation benefits.
- (d) This section shall become operative on January 1, 2000.

Bus. & Prof. Code § 6148. Contracts for services in cases not coming within § 6147; bills rendered by attorney; contents; failure to comply

- (a) In any case not coming within Section 6147 in which it is reasonably foreseeable that total expense to a client, including attorney fees, will exceed one thousand dollars (\$1,000), the contract for services in the case shall be in writing. At the time the contract is entered into, the attorney shall provide a duplicate copy of the contract signed by both the attorney and the client, or the client's guardian or representative, to the client or to the client's guardian or representative. The written contract shall contain all of the following:
  - (1) Any basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the case.
  - (2) The general nature of the legal services to be provided to the client.
  - (3) The respective responsibilities of the attorney and the client as to the performance of the contract.
- (b) All bills rendered by an attorney to a client shall clearly state the basis thereof. Bills for the fee portion of the bill shall include the amount, rate, basis for calculation, or other method of determination of the attorney's fees and costs. Bills for the cost and expense portion of the bill shall clearly identify the costs and expenses incurred and the amount of the costs and expenses. Upon request by the client, the attorney shall provide a bill to the client no later than 10 days following the request unless the attorney has provided a bill to the client within 31 days prior to the request, in which case the attorney may provide a bill to the client no later than 31 days following the date the most recent bill was

	<p>provided. The client is entitled to make similar requests at intervals of no less than 30 days following the initial request. In providing responses to client requests for billing information, the attorney may use billing data that is currently effective on the date of the request, or, if any fees or costs to that date cannot be accurately determined, they shall be described and estimated.</p> <p>(c) Failure to comply with any provision of this section renders the agreement voidable at the option of the client, and the attorney shall, upon the agreement being voided, be entitled to collect a reasonable fee.</p> <p>(d) This section shall not apply to any of the following:</p> <ol style="list-style-type: none"><li>(1) Services rendered in an emergency to avoid foreseeable prejudice to the rights or interests of the client or where a writing is otherwise impractical.</li><li>(2) An arrangement as to the fee implied by the fact that the attorney's services are of the same general kind as previously rendered to and paid for by the client.</li><li>(3) If the client knowingly states in writing, after full disclosure of this section, that a writing concerning fees is not required.</li><li>(4) If the client is a corporation.</li></ol> <p>(e) This section applies prospectively only to fee agreements following its operative date.</p> <p>(f) This section shall become operative on January 1, 2000</p>
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The comments included in Table 1 on the following pages were received via email after the message below was sent by the Los Angeles County Bar Association to its membership. Additional written comments are provided after Table 1.

Dear Members:

Further to the Call to Action issued to all Los Angeles County Bar Association members in April 2021, LACBA is deeply concerned by the recent vote of the California State Bar's Paraprofessionals Program Working Group (PPWG). On August 16, by a vote of nine to five, the PPWG approved for presentation to the State Bar's Board of Trustees a new rule of professional conduct for non-lawyer paraprofessionals that would allow such persons to own a substantial minority equity interest—up to 49 percent—of a law firm.

The proposed rule contravenes existing Rule 5.4 of the California Rules of Professional Conduct—for attorneys—which expressly prohibits a lawyer from forming a partnership, corporation, or other organization with a non-attorney for the purpose of practicing law. (Cal. Rules Prof. Cond., rule 5.4(b), (d).) That rule also bars a lawyer from sharing legal fees directly or indirectly with persons who are not lawyers. (*Id.*, subd. (a).) This rule is designed to protect the integrity of the attorney-client relationship, to prevent lay persons from exercising control over an attorney's professional judgment and services, and to ensure that in rendering legal services, the client's best interests remain paramount. (*Gassman v. State Bar* (1976) 18 Cal.3d 125, 132; Los Angeles County Bar Assn., Formal Opinion No. 510 (2003).)

This proposed rule change and a number of other new rules relating to the practice of law by non-attorney paraprofessionals will be presented to the State Bar's Board of Trustees at its September 23-24 meeting and published for public comment. We urge all LACBA members to voice their concerns about these proposals, which threaten to harm California consumers and undermine the administration of justice. Comments from LACBA members on the proposed rule changes should be directed to the State Bar. Linda Katz ([linda.katz@calbar.ca.gov](mailto:linda.katz@calbar.ca.gov)) is the State Bar staff contact for the PPWG.

Sincerely,

Brad Pauley  
LACBA President

**Table 1. Comments Received via Email**

Date Received	Name	Comments Received via Email
8/20/2021	Paul Eisner	<p>Law is a profession, not a business. Non lawyers should not be partners with attorneys In the practice of law. Allowing nonlawyer to own part of a law practice eould turn the practice of law from a profession to a business.</p> <p>The proposed rule change to allow nonlawyers to an interest in a lawfurn should not be adopted.</p>
8/20/2021	Eli Melamed	<p>I am in my 7th year of practice as a solo practitioner, and have been working hard for years to develop my skills as a lawyer, and build a practice I can be proud of and benefit from. I am extremely concerned and discouraged by the Paraprofessionals Program Working Group's vote to present a new rule to the Board of Trustees concerning ownership of law firms by non-lawyer paraprofessionals.</p> <p>The proposed new rule raises obvious and serious concerns regarding protecting the integrity of the attorney-client relationship, preventing non-lawyers from exercising control or influence over a lawyer's professional judgment and services, and ensuring all actions and decisions are in a client's best interest. In addition to these concerns, however, are concerns of my own, shared by dozens of other lawyers I have spoken to about this matter, about how this proposed rule will affect us, our practices, and our livelihoods.</p> <p>If this rule is passed, there will likely be a number of undesirable outcomes, many of which are plainly foreseeable.</p> <p>First, and most importantly, with non-lawyers being entitled to potentially perform legal services, it is likely that the overall quality of services performed will decrease significantly. There must be, after all, a reason that lawyers go through 3 years of law school and have to take the bar exam. If these steps are not necessary for one to render competent legal services and representation, then the entire framework of the State Bar is a sham and a fraud perpetrated on tens of thousands, if not millions of people.</p> <p>Second, the sudden influx of thousands of non-lawyers into the market for legal services will confuse consumers and likely create an environment under which people are overcharged for lower quality services by non-lawyers, while actual competent lawyers lose business because they can't compete economically with these non-lawyer dominant firms. If anything, this will have the effect of creating a market consisting primarily (or almost entirely) of low quality, lower cost pool of services and high cost services, favorable to big firms, and will squeeze solos and small firms out of business (particularly considering the overhead needed to run a small-medium firm). Driving lawyers out of business is not a way to expand access to quality legal services and justice.</p> <p>Third, implementing such a rule is likely to see a significant decrease in the number of active lawyers and future lawyers. Lawyers are not stupid. Spending hundreds of thousands of dollars and 3+ years of one's life is a good risk if there is a</p>

Date Received	Name	Comments Received via Email
		<p>reasonable opportunity to benefit significantly, but, in view of the two prior points above, I imagine a significant number of active lawyers and potential future lawyers will weigh the costs and benefits and decide against practicing or even pursuing a legal career. This will, in the long term, lead to further decreases in availability of quality legal services and, as discussed above, place consumers in a situation where they either pay for lower-quality representation or are forced to pay extreme sums for big firms to represent them. Any reasonable person should agree that this runs counter to the intent of the proposed rule change.</p> <p>For the foregoing reasons, I strongly oppose the implementation of the proposed rule.</p> <p>However, I agree with the State Bar's overall intention, as it relates to expanding access to lower-cost services and justice for the underserved, and I hereby propose the following as an alternative to the contemplated new rule:</p> <ul style="list-style-type: none"> <li>- No ownership of law firms by non-lawyers;</li> <li>- Certified paralegals who are employed by a firm should be entitled to an internal fee-splitting arrangement with their supervising lawyers with respect to clients they bring to the firm;</li> <li>- Non-lawyers who are certified paralegals should be entitled to perform certain legal services, subject to oversight by a licensed attorney, provided, however, that those services are limited to those services most commonly sought by those lacking access to justice and legal resources (i.e., representation for traffic matters, misdemeanors or even mere citations, limited family matters, etc.), the scope of which can be determined later; and</li> <li>- an obligation of any non-lawyer to provide no less than 10 hours of pro-bono services annually.</li> </ul> <p>I believe the foregoing proposal is a good starting place to expand access to services and justice without marginalizing lawyers and dis-incentivizing the practice of law. I stand prepared to further discuss the foregoing with you and the Paraprofessionals Program Working Group in order to achieve better outcomes which will, quite frankly, not alienate a significant portion (if not a majority) of the lawyers in the State of California.</p>
8/20/2021	Debra Korduner	<p>We should not have the legal profession or the sanctity of the lawyer-client relationship "diluted" and if you allow non-lawyer paraprofessionals to become owners, what is next, just non-lawyers? I also don't see why a paraprofessional would want or need to own an interest in a law firm. It seems it could be opening the door for those people to be doing more than they should as far as providing legal services. If a law firm wants to hire a non-lawyer paraprofessional and properly supervise hm or her and pay him or her well, that is fine, but a non-lawyer should not be an owner of a law firm.</p>
8/20/2021	Robert A. Cohen	<p>I just received notification from the LA County Bar Association that there is a proposed change to the Rules of Professional Conduct that would permit non-lawyers paraprofessionals to own a substantial minority equity interest in a law firm. I think that this new proposed rule is preposterous and should be rejected along with all of the other proposed rules that would allow non-attorney paraprofessionals to practice law. I allow non-attorney paraprofessionals to practice law undermines the</p>

Date Received	Name	Comments Received via Email
8/20/2021	Andrew J. Thomas	<p>integrity of the practice, the honor and discipline of the members of the Bar, and, more importantly, the level of expertise and education that members of the Bar bring to every client they service.</p> <p>I am writing this email concerning the proposed changes to the Rules of Professional Conduct concerning paraprofessionals and the proposal to allow paraprofessional non-lawyers to own up to 49% of a law firm. My personal opinion is that the proposed changes would harm the legal profession and harm consumers of legal services.</p> <p>Regardless of how lofty sounding or well intentioned the proposed changes are in the abstract, in the real world they would result in abuses.</p> <p>For example, my entire 30-year career I have seen paralegals blur the distinction between practicing and not practicing law. Whether through online advertising or word of mouth, paraprofessionals seek out consumers as clients and do much more than fill out legal forms for them. They provide what can only be called legal advice. Also, they sometimes take cases from inception through trial (particularly in unlawful detainer cases) by not only assisting clients with forms, but in ghost writing motions and in preparing trial briefs, trial exhibits, and writing trial witness examinations for pro per clients to use in court. Sometimes they even go to court with “clients” and offer advice on what to say. Many times, the documents they prepare have no basis in law given the facts of the case and accomplish little more than causing delays. Another area replete with problems is estate planning. Paralegals sometimes use “one size fits all” forms to draft wills and trusts that do not take into account a particular client’s situation. I am sure trauma and operating room nurses have seen and assisted in many surgeries, but I doubt anyone wants a nurse to operate on them.</p> <p>Turning to the proposal that would allow non-lawyer paraprofessionals to own even a minority interest in law firms, the real world abuses would in all likelihood undermine and damage the integrity of the legal profession and the administration of justice.</p> <p>In all likelihood, a rule allowing paraprofessionals to own a minority interest in law firms will result in legalizing “cappers,” i.e., non-lawyer “paraprofessionals” whose real job is to find clients for law firms in exchange for a share of legal fees that would be disguised as a “minority partner’s profit distribution” from the lawyer or law firm. One might also see well-funded “paraprofessionals” start providing the financing to open a law firm and to advance the costs incurred in funding a contingent fee case. The very notion of a law firm “partnership meeting” that includes non-lawyers who never attended law school, are not fully educated in the fields of professional ethics, the standard of care to practice law, or in the ability to substantively discern between a client’s claim or defense that has merit under statutes and caselaw versus those that do not have merit, would be a very sad day for the legal profession not to mention create the real risk of making the work of judges much harder than it already is. Indeed, allowing non-lawyer paraprofessionals to own an interest in law firms may well result in nonlawyers</p>

Date Received	Name	Comments Received via Email
		<p>who have funding and who'd like to get into the business of law for nothing more than a profit motive go out and get their paraprofessional credentials solely for that purpose.</p> <p>For these reasons, and related ones, I strongly object to the proposed changes. Paraprofessionals, similar to how nurses work for doctors, should perform their services at the direction of and under the supervision of lawyers who are ultimately responsible. Under no circumstances should paraprofessionals be allowed into the ranks of law firm partnerships.</p>
8/20/2021	Barbara Kogen	<p>I object to the new rules proposed by the PPWG. They have no business having any ownership interest in any law firm or legal practice. Such ownership threatens harm to California consumers and undermines the administration of justice. These proposed rules MUST BE completely &amp; fully rejected. These paraprofessionals are truly only administrative personnel. I worked hard to pass the Bar &amp; become an attorney. These paraprofessionals have no right whatsoever to enjoy any benefits of law firm ownership.</p>
8/20/2021	Kevin L. Von Tungeln	<p>I am urging the State Bar to reject any rule allowing non-lawyers to own interests in a law firm. Allowing lay persons to own an interest will be allowing non-lawyers to exercise influence and control over an attorney's professional judgment and services. This will result in a serious degradation of the field of law and consumers will be harmed.</p>
8/20/2021	Robert H. Somers	<p>I've been practicing law for more than 50/years and believe strongly in the sanctity of law firms operating as "law firms" by members who are in fact licensed to practice law, which means trained in the law and available to represent clients, or potential clients. A prospective client should not have to guess just who is properly qualified to handle their legal affairs once in the law office. If the paralegals want to open their own "paralegal business" without rendering legal advice, and properly advising the public as to limitations on their services, they should be free to do so, without conducting business as a affiliate or associated with <u>real lawyers</u>. Since when do paralegals get to decide the rules and regulations of our association.</p>
8/20/2021	Keith T. Kirk	<p>The below outlines some serious issues being raised related to certain aspects of the Paraprofessionals Program Working Group's (PPWG) efforts. [Reference is to email sent by LACBA to its membership.]</p> <p>While I support easier access to basic legal services for all, such efforts should not be at the cost of creating conflicts for attorneys, or eliminating or reducing the effectiveness of laws or rules governing the legal profession.</p> <p>The PPWG should be cautious about what rules or laws it strives to change, lest it lead to greater harm to the very people that it is trying to help.</p>
8/20/2021	Jerry Unis	<p>I have retired but strongly oppose this. Talk to a physician re this issue which led to insurance companies making medical decisions for doctors.</p> <p>This is horrible for law. Stop it at all costs unless you want to eliminate doing that which is in the interest of justice or fairness.</p> <p>Please contact me to work with you and the bar.</p>

Date Received	Name	Comments Received via Email
8/20/2021	Mike Richter	<p>I received notice that there is a rule proposing non attorneys, non members of the California State Bar should be allowed to own up to 49% interest in a law firm.</p> <p>The concern is that allowing a non-attorney to own part of a law firm directly contradicts the existing Rule 5.4 of the California Rules of Professional Conduct.. I shall quote the concern for you.</p> <p>I have no plans of sharing any of my fees with non-attorneys, but this proposed rule stinks of payola to people who voted in favor of it. How can they support a rule that violates a professional rule of conduct? Are they all non-attorneys who don't have to worry about getting sued by clients when they find out their fees are going to non-attorneys?</p> <p><i>The proposed rule contravenes existing Rule 5.4 of the California Rules of Professional Conduct—for attorneys—which expressly prohibits a lawyer from forming a partnership, corporation, or other organization with a non-attorney for the purpose of practicing law. (Cal. Rules Prof. Cond., rule 5.4(b), (d).) That rule also bars a lawyer from sharing legal fees directly or indirectly with persons who are not lawyers. (Id., subd. (a).) This rule is designed to protect the integrity of the attorney-client relationship, to prevent lay persons from exercising control over an attorney’s professional judgment and services, and to ensure that in rendering legal services, the client’s best interests remain paramount. (Gassman v. State Bar (1976) 18 Cal.3d 125, 132; Los Angeles County Bar Assn., Formal Opinion No. 510 (2003).)</i></p>
8/20/2021	Annette Morasch	<p>I voice my great opposition to non attorneys practicing law and owning any portion of a lawfirm. It will do the exact OPPOSITE of create justice to the underserved. For instance have four cases against a supposed billion-dollar “nonprofit” for serious habitability and negligence against extremely low income and disabled tenants. It is already difficult to compel these nonprofits and private companies to comply with the law. So what happens when the AIDS Healthcare Foundation, Amazon, or ANY company invests in a law firm? ALL consumers will suffer.</p>
8/21/2021	Juan Dotson	<p>I oppose the proposed rule to allow a non attorney to own up to 49% interest in a law firm. If that rule passes, might as well let attorneys pay non attorneys referral fees.</p> <p>The rule would face less resistance if the ownership maximum was 10% for non lawyers.</p>
8/21/2021	Erin K. Tenner	<p>As I watch professional responsibility becoming less and less important to the makers of the rules governing professional responsibility, I am once again finding myself perplexed by a proposed rule - this one to allow non-lawyers to own up to 49% of a law corporation. If the reasons for the rule not allowing non-lawyers to own an interest in a law corporation are not enough, then imagine this scenario. I am the owner of a law corporation. I have a law corporation in which my husband, who is not a lawyer, is a minority owner. I die. Now my husband, who knows nothing about the law, about trust accounting, and who only cares about making sure the money is moved into accounts not in the law corporation, transfers all the money into his own accounts. Or imagine this scenario, I own a law corporation in which an accountant is a parther (this seems the most</p>

Date Received	Name	Comments Received via Email
		<p>obvious direction in which this will go.) My accountant partner is now bringing in business for my law practice and I am bringing in business for his accounting practice. My partner, the accountant, takes a large commission (as accountants often do) on a transaction - let's say \$250,000 (I see this all the time in case you are thinking this is not a likely scenario). It just so happens that it is a transaction I am handling so, because he is a partner, I share indirectly in the commission. It is illegal for my client to pay a commission to my partner, so we call it a "finder's fee." Now it is ok, except for the fact that there is a huge conflict of interest - which is no longer a conflict under the rules because of recent changes. What is the conflict? It is that I am negotiating a deal on which my partner is being paid a fee that we stand to lose if the deal falls through. I could easily rationalize this, as lawyers often do, and say this is not a conflict because now our interests are aligned in making sure the deal gets done - which is not a conflict under the rules. I "think" I can still do a great job for my client, and an even better job than I would do without the incentive, as my client sees it, to get the deal done. However, the reality of negotiations is very different. As a transactional attorney for 30+ years I can tell you that when you are unwilling to stand firm in your positions and instead give and give and give because you are afraid of losing the deal you are far more likely to lose the deal than if you have nothing to lose by holding firm on your position. What attorney will give the correct advice to a client when they could lose over \$100,000 if the deal is killed by the advice? The truth is, the advice that might seem like it could kill a deal is exactly the kind of advice that is often required to keep the deal alive and get it closed. The biggest problem is the client will never know what really killed the deal. I see it all too often already with accountants who are willing to sacrifice one client to serve the best interests of the one who pays them the most when they put clients together to buy and sell auto dealerships and then try to negotiate the deal to justify their exorbitant commissions. They don't even try to call them finder's fees because it is only their client who is breaking the law, not them. These are two simple and obvious issues with the proposed rules that I came up with in two minutes without even giving it much thought. I am certain a more thoughtful consideration, which the State Bar owes to our profession, will be given to this rule change before it is passed and creates a whole host of new issues to undermine the credibility of the profession and our members</p>
8/21/2021	Barry Edwards	<p>I am a lawyer in California practicing for almost 50 years. I oppose the proposed changes to the Rule 5.4 of the Professional Code of Ethics because it would adversely affect the sanctity of the attorney client privilege; one of most important aspects of the practice of law. The public must be assured that this privilege remains pure and guaranteed. Furthermore with non-lawyers owning portions of law firms the need to be profitable would outweigh the ethical duty to protect client rights and benefits. Please think seriously about approving the proposed changes because much is at stake for the future of the legal profession and our legal system in its aftermath.</p>
8/21/2021	Jonathan Bakhsheshian	<p>Simply put - "I solemnly swear (or affirm) <b>that I will support the Constitution of the United States and the Constitution of the State of California</b>, and that I will faithfully discharge the duties of an attorney and counselor at law to the best of my knowledge and ability."</p>

Date Received	Name	Comments Received via Email
		<p>This is the oath taken by ALL licensed attorneys after 4 years of college, the LSATs, 3 years of law school, moot court, trial team, endless all nighters, many sacrifices, passing the bar, and 250k in debt.</p> <p>I've taken this oath to heart since the day I become a lawyer. It has guided me in all my decisions both at work and outside of work. My advocacy for my clients are propelled by this oath.</p> <p>Allowing non-lawyers to take control, even 1%, would make this oath useless if the practice of law is motivated by money instead of passion and zealous advocacy. It would cause bidding wars between attorneys for client, deteriorate zealous advocacy, and cause a destruction in our legal field. There is absolutely no benefit to this proposal.</p> <p>Instead, the State Bar should mandate 20-40 hours a year of public service or Pro Bono for each attorney. That would solve the State Bars concerns for absence of legal representation for those who can't afford it.</p> <p>Do not be the person who destroys our legal community we worked so hard to create. This proposition cannot pass.</p>
8/21/2021	Irwin Monroe	<p>I have been practicing law for over 60 years and have come up against a lot of attorneys who don't know what they are doing. What they do do is cause additional work and cost to the client and in many instances not in the client's best interest. Now you want to add paralegals to the group. When I first became an attorney, the opinion was that one was not worth his/her weight or what the charged until he/she had been practicing for at least 3-5 years. California has a lot of attorneys looking for work (whether a job or as an individual practitioner) and will, in the future, have a lot more.</p> <p>It's my understanding that the program will limit the paralegal to certain areas of the law. If the Bar thinks that the paralegal will do so, it has "its head in the sand". I have already had incidents where the proposed client tells me that the previous advice received was from a paralegal and it was the opposite of what my advice would have been.</p> <p>Don't do it. It will not be in the client's best interest and will harm the consumer.</p>
8/21/2021	Byron J. Abron	<p>I am emailing with deep concern regarding the proposed rule change. There are a number of significant concerns with this potential change. First, it completely undermines the purpose of the rule to assure that attorneys actions are not compromised by non-attorney influences for financial gain. In the wake of everything that has transpired with Tom Girardi, you would think people would have a deep interest in protecting the rights of consumers. If this rule changes there will undoubtedly will be more, and likely significantly worse situations that arise because non-lawyers do not have the same ethic requirements as lawyers. They will be driven solely by profit and will compromise the well being of consumers and their cases for profit.</p> <p>Second, as a minority who grew up in a low income area, I was not fortunate enough to have much assistance to pay for my education. I was forced to accumulate hundreds of thousands of dollars in debt for an opportunity to pursue my dream of</p>

Date Received	Name	Comments Received via Email
		<p>owning my own law firm. Despite the many financial hurdles and rigors with becoming an attorney I triumphed. Of course like others it took years of sacrifice and hard work. Allowing those who were not required to take the LSAT, go through a vigorous three years of law school, study for, take and pass the state bar to now become owners of a law firm is nothing less than a slap in the face to the time, money, and sacrifice that I and countless others have spent to be in the position we are in today. I am wholeheartedly against this proposed change.</p>
8/22/2021	Hugh John Gibson	<p>I have been informed that certain proposals are being considered that would result in laymen having a high degree of influence over lawyers handling cases. I strongly oppose any such "reform".</p> <p>It's important to protect the integrity of the attorney-client relationship, to prevent lay persons from exercising control over an attorney's professional judgment and services, and to ensure that in rendering legal services, the client's best interests remain paramount.</p>
8/22/2021	Gregory J. Smith	<p>I understand that on August 16, by a vote of nine to five, the California State Bar's Paraprofessionals Program Working Group approved for presentation to the State Bar's Board of Trustees a new rule of professional conduct for non-lawyer paraprofessionals that would allow such persons to own a substantial minority equity interest—up to 49 percent—of a law firm. This is making further inroads to the status of our profession as being made up of "professionals." I completely oppose this kind of change. I focus on employment law in my practice and I "compete" with businesses who describe themselves as "human resource professionals" who prepare employee handbooks, provide employment law advice, and never get in trouble for practicing law without a license. These purported human resource "professionals" could not hire an attorney into their practice, give the attorney a controlling interest (even though he does no work and does not oversee their work), and that can then call themselves a "law firm."</p> <p>It sounds to me like the California State Bar's Paraprofessionals Program Working Group is biased and did not think this through.</p> <p>Please share my opinions with the Board of Trustees. I hope this proposal is not approved!</p>
8/23/2021	Julie Birkel	<p>I have been a member of the California State Bar since 1984, am active in the Los Angeles County Bar Association, and I am currently on the Board of Trustees of LACBA's Counsel for Justice, which offers free legal services for immigrants, veterans, victims of domestic violence, and those with AIDS/HIV. I am well aware of the need for the underserved to have quality representation, and strongly support members of the Bar filling those needs. I believe the State Bar's plans to open up the practice of law to non-lawyers will directly harm consumers by providing inadequate services for goals other than the client's best interests, and will result in exploitation and a parade of horrors when clients receive inadequate representation.</p> <p>I am accordingly one of the members of the Los Angeles County Bar Association who is deeply concerned by the recent vote of the California State Bar's Paraprofessionals Program Working to present a new rule of professional conduct for non-lawyer</p>

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		<p>paraprofessionals that would allow such persons to own a substantial minority equity interest—up to 49 percent—of a law firm. The proposed rule is a direct assault on the integrity of the attorney-client relationship, and is a threat to the best interests of California’s consumers. Please do not let special interest groups pull the wool over the California State Bar’s eyes.</p>
8/23/2021	Alexandra Leichter	<p>I am thoroughly opposed to nonlawyer involvement in owning portions of law firms, and even more importantly, I am vehemently opposed to nonlawyers providing legal advice to the public. This is one of the worst ideas the Stat Bar has come up with. If you people believe that more of the public will be helped who couldn’t otherwise access legal help financially, you are doing nothing but implementing a pending disaster. Family law, for example, one of the areas in which you are attempting to implement this non-lawyer legal advice idea, is one of the most complex area of law. We as family lawyers must know not only the Family Code, but also the Code of Civil Procedure, not to mention areas of law such as criminal law, probate law, landlord tenant law, ERISA laws, Social security laws, employment law, and a whole host of other legal areas. It is naïve and dangerous for the State Bar to authorize legal representation in Family law by non-lawyers who are not even subject to the authority of the State Bar for discipline. (And, by the way, if you cannot even police members of the bar, such as Tom Girardi, who has damaged a lot of lives, how do you expect to protect the public against the non-lawyer practitioners). Whoever came up with this idea is totally clueless s to what goes on in the practice of law.</p>
8/25/2021	Irving Estrada	<p>I am sending this email to express my stringent objection to any rule that allows for a Non-lawyer paraprofessionals to own a substantial minority equity interest—up to 49 percent—of a law firm. There should be no change to our current California Rules of Professional Conduct—for attorneys—which expressly prohibits a lawyer from forming a partnership. We must maintain the integrity of the attorney-client relationship.</p>
8/29/2021	Jeffrey Rabin	<p>I’m writing to express my objection to the proposed rule that would allow non-lawyer para-professionals to own interests in law firms (I understand the proposal is for up to 49%).</p> <p>I have watched with growing dismay the move to lower the standards of law practice in California. Non-lawyer ownership of law firms, the lowering of the cut score for the bar, and limited license programs, are among these.</p> <p>My concern is that the public will be susceptible to a lot of bad lawyering. California does not lack for lawyers; there are probably 100,000 to 200,000 active lawyers in California. Notwithstanding, I encounter a lot of bad lawyers; lawyers who can’t draft clear agreements, or give bad advice to their clients. We are one of very few states that allows people who attend unaccredited law schools (or no law school) to sit for the bar, so practicing law is not closed to those who cannot get accepted to an accredited law school. Lowering the cut score has already diluted the quality of lawyers available to the public.</p> <p>I have seen many times agreements and wills and trusts drafted non-lawyers (folks who advertise that they don’t write the agreements but provide “assistance” to the client, doing so without being under the supervision of a lawyer). The stuff is terrible, and dangerous to the client. It makes my job harder having to clean up their messes.</p>

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		<p>Folks are not aware of how many affordable options really exist: brokers write hundreds of thousands of real estate purchase agreements (that were prepared by lawyers), escrows prepare deeds, LegalZoom and Nolo provide attorney drafted forms; there are Statutory Will forms promulgated by the State of California. But, once a nonlawyer is approved for drafting agreements that have legal import without being under the supervision of a lawyer, the public is going to be in trouble due to a lot of bad lawyering.</p> <p>I'm 64 years old; I'm in the last lap of my career, whether there are more lawyers, or now, will not affect my practice. I won't be adversely affected by this. I do fear for unleashing a lot of bad lawyering onto the public.</p>
8/30/2021	Lawrence Knapp	<p>I have been following the State Bar Paraprofessionals Working Group's work and recommendations. This is my public comment.</p> <p>There is insufficient data to support the recommendations. Washington's Supreme Court shut down their similar LLLT program just last year, stating: "[A]fter careful consideration of the overall costs of sustaining the program and the small number of interested individuals, a majority of the court determined that the LLLT program is not an effective way to meet these needs, and voted to sunset the program."</p> <p>The money would be better spent on self-help centers, legal aid programs, etc. Why set up an entirely new for-profit business structure with these paraprofessionals, who may do real harm to people, when the State Bar has not adequately considered alternative proposals within their existing authority?</p> <p>Moreover, the Group has ignored the attorneys who represent the consumer and the real concerns of accountability and damage that could be done by paraprofessional's inadequate representation. I oppose this proposal and ask you to reconsider this rash course.</p>
8/30/2021	Spencer J. Pahlke	<p>I write regarding the State Bar Paraprofessionals Working Group, and the consideration it is giving to its Paraprofessionals Proposal.</p> <p>There are a host of problems with the Proposal—including lack of accountability, failure to adequately consider alternatives, and a lack of data to prove it will work—but the greatest problem is that the Proposal is considering a for-profit solution that is an invitation to the corporate practice of law.</p> <p>Consider the host of law-adjacent "services" currently provided by corporations, who are working to maximize shareholder returns, and not according to any code of ethics. They include offers to "fix" a credit history for \$99, offers to negotiate with the IRS on a taxpayers' behalf, and any number of predatory loans that have long targeted the unwary.</p>

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		<p>Why exactly do we not expect the same behavior—especially in this new green pasture it’s being offered—with this Proposal? I fear you a creating a far larger problem than could ever be solved here.</p>
8/31/2021	Craig Peters	<p>I write to support the comments of those who have spoken against this proposal at today’s meeting. This isn’t a solution that solves the identified problems, but instead acts to erode the protections that are available to those who already have access to justice, while not solving the “underserved” issue. The State Bar has viable potential solutions available to them, but has instead made the curious decision that somehow a profit motive will solve the problem. This will hurt consumers and do nothing to shrink the justice gap. Please change course and look for solutions that solve the identified problem of closing the justice gap, and prevent this unleashing of corporate interests on consumers that are already hurting.</p>
8/31/2021	Michael K. Teiman	<p>I am a licensed attorney in California and am deeply concerned about the new State Bar rules concerning paraprofessionals and allowing non-attorney ownership in law firms.</p> <p>As I am sure that you have been and are being inundated with concerns like mine, I will be brief.</p> <p>In short, other options are better suited to address the needs of a shortage of legal aid. The proposed courses of action will have significant detrimental effects on the practice of law and how it is viewed by the public (while attorneys are certainly respected, they are also portrayed as greedy and uncaring). Diluting the requirements (in particular ethical and legal knowledge) to practice law and injecting a corporate (uncaring, beholden to investors, etc.) mentality and structure into the legal field will not benefit people the State Bar is intending to serve with these changes and will certainly not benefit the profession (which will in turn be detrimental to those in need of legal assistance). As attorneys are seen as part and parcel of the justice system, a long-term (or potential quick) result will be an increasing distrust in that system, which now more than ever needs to be bolstered. Instead of opening the flood gate to less experienced “professionals” and to greedy corporations, the State Bar should (among other things) have a pro se hours requirement for members, provide funding and incentives for high need practice areas, and create and nurture partnerships (e.g., between local bar associations and the communities of need) that can accomplish goals at a grassroots level.</p> <p>Thank you for your time, and please contact me should you wish.</p>
9/10/2021	John S. Hinman	<p>I have been following with serious concern the proposals to allow non-attorney ownership of law firms and to allow "paraprofessionals" to provide substantial legal services (while potentially capping their fees). The purported motivation behind these is to close the "justice gap", which I take to mean the lack of access to legal services for those who can afford them. I strongly oppose these suggestions. I have read the letter from LACBA, which to my understanding is if not the largest one of the largest and most respected bar associations in the State of California and would endorse their opposition to each of the suggestions and the reasoning therein.</p>

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		<p>Further, I would like to point out that as a Plaintiff's attorney, I serve people everyday who are unable to afford to pay for an attorney but for a contingency fee arrangement. So, I directly serve the populations I believe these recommendations are designed to touch. I am proud to do so and believe deeply in my mission. If I thought that any of these proposals would reasonably assist people in the "justice gap" I would gladly endorse them, despite any impact it might have on my practice. I would simply adapt and continue forward.</p> <p>The stark reality is we do not have a "justice gap" limited to the field of law, instead we have a much larger justice gap across society that is in large part created by the giant wealth disparities in our country. Allowing big business to seep into the law through direct ownership of firms will not help that problem, instead it will hurt. It will significantly increase the already existing barriers to entry for the little guy/gal lawyers, like myself, who hung a shingle and have eked out a living through talent, hard work, dedication and a whole lot of luck. This, in turn, will reduce the number of attorneys willing to provide services to the lower socioeconomic classes.</p> <p>The other reality is that, whether an attorney or non-attorney, working professionals need to make money to survive and thrive just like the rest of us. I have yet to see any real analysis of how allowing paraprofessionals to perform significant legal tasks will actually drop the prices or availability of legal services significantly such that it will allow access to more people. I believe that instead the reality is that the only way to substantially drop the prices for these services is to have a well funded major corporation drop prices well below the break even point of that service, drive out the competition, and thereafter raise prices again in a landscape with less competition (see ridesharing prices lately for a great case study). The reality is, all legal marketplaces already have significant competition (and pricing differences based on the level and quality of service provided) that is being driven by marketplace considerations. On the lowest end, those considerations are largely driven by the lowest possible price point wherein the services can still be rendered with some profit which is already very low. Adding unsupervised paraprofessionals to that mix will do nothing to lower that price point and allowing large corporate interests into the sandbox will in the long run only serve to consolidate the profits from the legal marketplace in the hands of a few without actually improving the cost or access to those services.</p> <p>I can think of several alternatives to the suggestions, starting with:</p> <ol style="list-style-type: none"> <li>1) Identifying ways to better fund legal aid services so that they may hire more lawyers and provide services to more people.</li> <li>2) Better funding self-help services and providing more robust self-help manuals for routine issues that may be addressed.</li> <li>3) Addressing the deep issues our state faces with admission to the bar, in particular by creating a different avenue for admission then passing a bar exam that bears little relation to the actual practice of law. I have personally known several</li> </ol>

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		<p>would be attorneys, who in the actual practice of law would have made great attorneys and who had the highest ethical standards, but who could not get past the bar exam.</p> <p>4) Better protecting the practice of law, and thereby the public, from bad actor attorneys who have no respect for the rules of professional conduct through enforcement.</p> <p>5) Allowing paraprofessionals to provide legal services with the direct supervision of attorneys and in more limited settings than is currently described.</p> <p>I urge you to reconsider and to think about the long term consequences, including the erosion of strength of the ethical rules applying to the practice of law, the erosion of the quality of legal services, and the harm to the lower socioeconomic populations (that these measures are supposedly designed to help), that will be caused by your suggested rule changes.</p> <p>Lastly, I would also urge that the State Bar not ignore the overwhelming response from its constituency that it has received. To my understanding, every major bar association, representing all areas of practice of law, has come down in strong opposition to these measures and the State Bar has received a landslide of negative feedback regarding these measures. I hope that the State Bar does not ignore these voices in coming to its conclusions.</p>
9/10/2021	Maria Guzman	<p>My name is Marcia Guzman, and I am a licensed attorney in California exclusively practicing employment law. Victoria Tokar, my partner, and I opened the law firm <i>Attorneys for Workers' Rights</i> to serve employees who have been wrongfully terminated or have wage and hour claims. We proudly serve and help the underrepresented minority populations in California.</p> <p>I urge the committee to reject proposed Rule 5.4. At one point, there had been a proposal to authorize fee sharing only with non-profits, however, instead the Working Groups is proposing a for profit model. This proposal is about incentivizing for-profit tech investors to form law firms with hopes that they will keep costs low. That is simply not going to happen. The whole reason for prohibiting attorneys to share fees with a non-attorney is to prevent motives other than providing the best legal services to the client from becoming the purpose of the representation. There is no reason to believe allowing non-attorneys in general to share fees with attorneys will do anything to bridge the justice gap. What that proposal is certain to do is undermine the independent professional judgment of the attorney. An attorney's primary duty is to their client, with the understanding that they owe a duty to the system of justice as well. Allowing non-attorneys to share fees will result in other interests separate and apart from the clients' interests to shape the course of the clients' legal matters. This will not likely result in lower overall attorney fees, but it is sure to mean much lower quality legal services for consumers. We must take steps to ensure that the professional judgment of the attorney is not compromised.</p>

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		<p>The idea of authorizing fee caps (or to allow non-attorneys to enter contingency fee agreements at all) is antithetical to both public protection and closing the justice gap. Contingency fees are allowed to ensure that those with valuable legal rights can seek redress without having to pay up-front legal fees. There is no shortage of attorneys willing to work on a contingency fee basis in this State. The fact the Paraprofessional Working Group is considering caps for contingency fees makes it clear these proposals are not about serving those communities in need of legal help.</p> <p>A key threshold issue has never been adequately addressed by the Paraprofessional committee and those pushing these proposals--- Why set up an entirely new for- profit business structure with these paraprofessionals, who may do real harm to people, when the State Bar has not adequately considered alternative proposals within their existing authority:</p> <p>There are already attorneys licensed and ready to help consumers in many of the areas identified in the Justice Gap Study.</p> <ul style="list-style-type: none"> <li>• Consumers need greater access to free legal services, nonprofit services and contingency fee attorneys.</li> <li>• Unfortunately, the State Bar has created the hurdles for more attorneys to practice law in California – why not address those hurdles before creating a whole new cottage industry of paraprofessionals?</li> <li>• Why not do a good job at ensuring we have adequate numbers of attorneys able to meet this justice gap?</li> </ul> <p>The State Bar has chosen to limit the availability of attorneys and made their degrees incredibly difficult to obtain and costly.</p> <p>The State Bar has not proven this will work, and is taking a dangerous and costly gamble. This proposal is premised on the idea that for-profit tech companies, tech venture capitalist and other non-lawyer investors are the answer to protecting the public access to justice, particularly with respect to underserved and vulnerable populations. But that has not been proven nor shown. In fact, there has been no data from other jurisdictions that have opened equity to non-lawyers in the places that have allowed it (Great Britain, New Zealand and Australia) that “access to justice” has improved or become less costly.</p> <p>Washington’s Supreme Court shut down their similar LLLT program just last year, stating: “[A]fter careful consideration of the overall costs of sustaining the program and the small number of interested individuals, a majority of the court determined that the LLLT program is not an effective way to meet these needs, and voted to sunset the program.” Even though the Washington program was much narrower- limited to family law- it still failed.</p> <p>We understand there are a lot of pro se parties bundled in areas such as housing and family law, yet why are you not funding court assistance programs for pro se litigants? Why not adopt technology there? Make forms easier to understand? Cut down on wait times and provide more staff support? Instead, this whole proposal refuses to focus on the pro se problem.</p> <p>Once again, I urge the committee to reject proposed Rule 5.4, thank you.</p>

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9/10/2021	Peter M. Kuntsler	<p>The notion of inadequate “access to justice” amounts to creation of a “problem” or an “issue” out of whole cloth, and then providing a “solution” that will wreak havoc on the entire legal profession, first, as usual, taking aim at the lawyers that represent consumers. The committees charged with examining this “problem” have studiously ignored the fact that California has myriads of lawyers ready and willing to represent the consumers that supposedly are the victims of the “justice gap,” and that these lawyers represent clients, often indigent ones, on a contingent basis which is designed to resolve the problem of access—assuming the problem exists.</p> <p>The committees have also carefully talked around other, much less invasive, measures to improve access in areas where contingent fees may not apply: family law, probate law, and so on. These measures include broad improvements of pro bono procedures, public support of legal aid, and reducing the massive and confusing amount of paperwork involved in litigation.</p> <p>The committee studying the use of paraprofessionals to take on a number of legal tasks has overridden consideration of a number of ill effects of their proposals, a significant issue being discipline. As a certified specialist in legal malpractice law, I unfortunately hear from potential clients about fully admitted <i>lawyers</i> that have been negligent or have breached their fiduciary duties toward their clients—but already, the State Bar’s disciplinary system has proved woefully inadequate even to accept, let alone resolve, disciplinary cases. So the creation of another disciplinary system for “paraprofessionals” will simply divert resources from the existing system, thereby ensuring less, not more, “access to justice.”</p> <p>Moreover, the further step of allowing paraprofessionals to own minority shares up to 49% in law firms, likely without regard to whether the paraprofessionals even practice in the same area on which the firm focuses, will give these paraprofessionals significant control over the activities of the firm, over hiring, over case selection and over fees. Furthermore, as has already been pointed out, this is a “slippery slope,” that will lead to third parties like Amazon and Google to position themselves in providing legal services: “McLaw, Inc.” As a colleague of mine has said, this also creates the ability to increase the use of “capping” as a means of obtaining clientele—when capping is already insufficiently controlled.</p> <p>A couple of additional comments. First, caps on contingent fees have been proposed—making it harder for consumer counsel to afford representing clients in difficult or problematic cases, and exacerbating, not curing the “justice gap.” Second, by making this entire structural change the province of the State Bar and the Supreme Court, these committees are circumventing true public debate and consideration of these serious issues by the State Legislature—which actually represents the consumers that the “Access to Justice” committees purport to be helping.</p>
9/10/2021	Michael Jeandron	<p>I’m writing in opposition to proposed rule 5.4.</p> <p>As a partner at a small personal injury law firm in my 8<sup>th</sup> year of practice, I have dedicated my career to helping victims in obtain access to justice. I serve as the Parliamentarian for the Orange County Trial Lawyers Association and have been an active member of the Southern California legal community since becoming licensed as a California attorney.</p>

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		<p>I help clients from the beginning of their claim through the end of trial. I have learned that to succeed in trial, there are an infinite number of strategic decisions that must have taken place prior to trial. If mistakes were made early on, you are often times stuck with those mistakes at trial. Putting on a good trial starts from the initial pleading stage, not the first day of trial.</p> <p>The idea that paraprofessionals can be involved in certain decision about a legal issue early on in a case leaving the trials to the licensed lawyers is absurd. The trial necessarily relies upon the right decisions being made early on. Even the best trial lawyer in the world can't go back in time and redo the pleadings and discovery. The best trial lawyer is stuck with what was given to her. This is the problem with the concept of paraprofessionals handling the "easy" tasks before handing them off to the licensed lawyers.</p> <p>Additionally, this plan does little to provide access to justice. In my firm, we don't care about the wealth of a client. We have represented homeless people to CEOs. Our contingency fee model allows anyone from any walk of life to access our services.</p> <p>This proposal will not result in increased access to the legal system for the poor. This proposal will result in access to the legal system for the rich. For profit tech-investors with access to huge amounts of capital are to benefit from being allow to own law firms. They will be interested only in profit and return on investment. The rich will become richer, the poor will remain underserved.</p> <p>The State Bar should be discussing increasing pro bono legal services to the community. Our firm donates our time to a non-profit free legal clinic here in Orange County. We do so gladly and like the idea that we can provide high level services to clients that could not otherwise afford a lawyer. For profit tech groups investing in law firms will not be entering the legal field to donate their time to free legal clinics. They will be concerned about profit and their professional judgment will be compromised.</p> <p>This plan does not help the poor get access to high quality lawyers. This plan prevents the poor from having access to high quality lawyers. Rule 5.4 was undoubtably well intended, but it must not be approved. The consequences will be disastrous for the citizens of our state in need of legal services.</p>
9/10/2010	Whit Bertch	<p>I am unable to attend the zoom call this morning at 10am. However, I want to communicate my opposition to the proposal to expand the practice of law to non-lawyers and/or the ownership of law firms to such individuals. I <b>STRONGLY OPPOSE</b> proposed Rule 5.4. I am a personal injury trial attorney representing clients throughout California, and I spend nearly 100% of my time in litigation, either preparing for trial or in trial. Many of the cases I work on are referred to our firm by other lawyers, who candidly and openly acknowledge that they lack the knowledge, skill and experience to represent their clients through litigation and trial. Indeed, <i>many</i> lawyers lack the knowledge, skill, experience, or frankly, the desire or interest, to provide competent representation to their clients through litigation and trial. I can only imagine the <u>decrease</u> in the quality of</p>

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		<p>representation that would come from expanding the practice of law to non-lawyers, especially when such individuals have not shown the interest, dedication or commitment to the practice of law by attending college, law school, completing internships and judicial clerkships, studying for the bar exam, sitting for the bar exam, or in any other appreciable manner demonstrating a firm commitment to further the cause of justice in the State of California.</p> <p>Additionally, I am the 2<sup>nd</sup> Vice-President of the Orange County Trial Lawyers Association. As a leader in the Orange County legal community, and as an active litigator, I have seen the harm that befalls clients who do not receive quality representation from day 1. Too often, I am tasked with salvaging a case from another lawyer’s blunders, oversight, or neglect. The thought of non-lawyers practicing law literally keeps my up at night.</p> <p>Quite simply, I do not see proposed Rule 5.4 as expanding access to justice. Rather, it is expanding access to poor legal representation. It is increasing the likelihood of clients being taken advantage of. There are so many foreseeable (and unforeseeable) unintended negative consequences that will come from adopting this rule. Over-commercialization or over-capitalization of any industry has always decreased, not reduced, quality of services or products to consumers. Not to mention the conscience-shocking conflicts of interest that could arise between clients and their legal representatives. The California legal industry is already hampered by inadequate legal representation and the recent trend of <i>lowering</i> the standards for admission to the bar is alarming. First, it was reducing the pass score for bar takers, then it was reducing the length of the bar exam from three days to two days, and now its expanding the practice of law to non-lawyers. At some point, the mantra “raise your standards, not lower the bar” must be adopted, embraced and defended by the State Bar of California.</p> <p>I strongly opposed the adoption of proposed Rule 5.4.</p>