

January 7, 2022

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

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

Dear Trustees of the State Bar of California:

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

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

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

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

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

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

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

Justice Gap Study

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

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

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

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

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

For-profit Model

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

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

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

Input from Legal Services

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

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

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

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

Possible Alternatives

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

Court Navigators (New York)

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

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

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

Community Navigators (Legal Link, Oakland, California)

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

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

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

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

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

Expansion of Provisionally Licensed Lawyer program and/or Support for Low Bono Services

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

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

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

² A list of some low bono organizations across the country is *available at* https://www.americanbar.org/groups/delivery_legal_services/reinventing_the_practice_of_law/topics/non-profit_co-pay_clinics/. One addition not listed is the Elder Law and Disability Rights Center in Orange

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

Funding/Support for Legal Services

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

New Licensee with Attorney Supervision

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

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

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

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

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

Race Equity

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

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

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

Program Evaluation

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

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

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

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

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

In-Court Representation

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

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

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

Enforcement

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

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

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

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

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

Other Considerations

Waiver of Federal Law Claims

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

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

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

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

Governance of the program

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

Fee Caps

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

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

Name of program

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

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

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

Practice Area Educational Requirements

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

Amending California Law

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

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

Substantive Issues

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

Consumer Law

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

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

Family Law

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

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

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

Housing Law

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

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

Sincerely,

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