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REPLY TO:

Justin O'Connell
justin@cavassaoconnell.com
(831) 655-6868

January 10, 2022

The State Bar of California Board of Trustees

Re: California Paraprofessional Program Working Group
Report and Recommendations dated September 23, 2021

To whom it may concern,

On behalf of the California Association of Certified Family Law Specialists (ACFLS), a non-profit organization with 713 members who are certified family law specialists by the State Bar of California, Board of Legal Specialization, I write in response to the invitation for public comment to the California Paraprofessional Program Working Group Report and Recommendations dated September 23, 2021 (the Report).

The ACFLS Board of Directors opposes the creation of a paraprofessional licensure program, for a variety of reasons including those outlined in the Dissenting Opinions. Despite same, the Board has taken the time to review the Report, and consider the policy considerations and program design, along with the proposed rules, standards, and other recommendations. In doing so, the Board applied its expertise and experience in family law to develop responses to the Report. Those responses are set forth below.

EDUCATIONAL REQUIREMENTS

The educational requirements for all paraprofessional applicants is 13 units in general coursework. In addition, paraprofessional applicants must select a specialty and have completed specific coursework in that specialty. For the Family, Children, and Custody specialization, 13 units are required. (See Report, p. 47 at Table 30, also Appendix A, Table 3.)

The Report does not provide an alternative to meet the educational requirements if the academic program the applicant attended did not provide the required courses. For example, family law courses are not offered at all law schools, academic programs, or educational institutions. This will limit the ability for people to obtain a paraprofessional license in the Family, Children, Custody practice area.

The most important consideration in the educational requirements is that the practice of family law touches on a broad range of issues that affect not only the parties but also their children. Litigation of, and decisions made in, a family law case have long term impacts on the parties and their children. Issues include child custody, child support, spousal support, property division, retirement benefits, tax issues, bankruptcy issues, estate planning and probate issues. Many cases require consultation with experts, such as in the fields of tax law and retirement benefits. Family law is one of the certified specialties in California, and many attorneys focus on particular areas family law in their practices. This level of complexity is recognized in the Report and addressed below in discussing areas of practice for a paraprofessional. Such complexity must be at the forefront of planning the family law educational requirements for paraprofessionals.

The Report (at p. 47-48) proposes 13 units of education in family law (a unit defined as a unit of college credit). ACFLS observes that of those units, only 6 are for “family law and procedure.” The remaining topics are on collateral issues of “adoption” (2 units), “violence prevention” (2 units), and “conservatorship and guardianship” (3 units). The substance of family law cannot be boiled down into 6 college units of study.¹ The other class topics would not delve into the myriad of issues identified above (additionally, conservatorships are not family law cases to begin with, and guardianships touch on some family law issues but in probate court).

If the required courses were not a part of the applicant’s academic program, then the applicant should be allowed to obtain the courses through MCLE credits, certified by the State Bar Board of Legal Specialization as specialization credits in that subject. Also, the rules should require applicants to obtain a total of 26 credits that include coursework in general dissolution, child custody, support, and property issues.

¹ ACFLS notes that Cal. Code Regs. Title 5 § 55002.5, which is cited in the Report as defining units of study, does not equate units to in-class learning, but also include study time, e.g., reading material before class. The Academic Senate for California Community Colleges has advised that 1 unit equals 1 hour of class time per week in a semester coupled with 3 hours of study time in a week. (See www.asccc.org/sites/default/files/Level%20III%20Hours%20to%20Units.pdf) Thus, 6 units could equate to only 3 hours of class time a week, for two semesters.

As to continuing education, the Report provides (at pp. 54-55) that paraprofessionals are required to complete a total of 36 hours of CLE every 3 years. Specifically, 28 of those hours must be in the paraprofessional's practice areas; 4 hours of legal ethics; 1 hour on competence; 1 hour of recognition and elimination of bias in the legal profession and society; 1 hour of trauma-informed practice; and 1 hour of practice management and running a business. However, the proposed rules do not state that paraprofessionals must obtain MCLE and LSCLE credits that are approved by the State Bar. Similarly to certified specialist lawyers, paraprofessionals should be required to obtain MCLE credits as well as LSCLE credits approved by the State Bar in order to maintain their licensure.

As to CLE credit for lawyers to supervise paraprofessionals in training, the Report provides (at p. 49, Table 31) that paraprofessionals are required to partake in 1,000 hours of practical experiential training. As an incentive to get lawyers in private practice and legal services organizations to supervise paraprofessionals while doing their practical experiential training, the proposed rules allot 1 hour of CLE per 125 hours of supervision provided (see Report at p. 49, Table 32). The ratio of 1 hour of CLE per 125 hours of supervision provided is too low. A higher number of CLE credits should be offered to lawyers to incentivize lawyers and legal services organizations to provide practical/experiential training and supervision of paraprofessionals.

As to testing requirements, the Report (at p. 50) proposes that applicants take a paraprofessional licensing exam in the following subjects: court procedure and advocacy, discovery and evidence, and professional responsibility. Also, a separate exam is required for each practice area in which the paraprofessional seeks licensure. The content and format of the exam is not included in the proposed rules. The rules in final form should state the topics that the separate exam will cover and whether the exam will include essays, multiple choice, and/or practical testing.

IN COURT REPRESENTATION

ACFLS gave consideration of the multiple objectives sought to be achieved through allowing paraprofessionals to participate in court proceedings. The underserved members of a community could obtain better results in their cases if they had a well-trained paraprofessional guiding them in court. Likewise, ACFLS is aware that the judiciary may see in court representation as a significant aid to otherwise in pro per litigants in confusing court processes. These and other considerations should be balanced against the overarching interest in ensuring that whatever representation a paraprofessional can provide in court is beneficial to the client. As noted in the Report (at p. 41), whether to allow in court representation was one of the most difficult issues addressed.

It is not clear from the Report as to whether any other jurisdiction has implemented in court representation by non-attorneys (other than certified law student programs). Careful consideration should be made as to whether California will be the first state to adopt widespread changes to in court representation by allowing paraprofessionals to appear, argue, examine witnesses, introduce evidence, and otherwise conduct in court litigation. Based on the Report and its accompanying documentation, this was strongly debated withing the Working Group, and it is reasonable to expect such debate would be equally strong within the broader legal community.

Assuming some form of in court representation by paraprofessionals will be allowed, a different starting point should be utilized. Unlike general litigation, a single family law case can be filled with many different forms of court hearings, ranging from simple procedural ones (e.g., case management hearings) to more complex ones (e.g., a law and motion hearing), to very complex ones (e.g., a trial with expert testimony). So, when considering a case of a particular litigant, the progress of the case and the differing types of hearings that might arise must also be considered. One can imagine what might seem like a simple case evolving in complexity, so at what point may a paraprofessional provide in court representation and at what point must a paraprofessional withdraw because of practice limitations?

The Report takes a default approach in that all in court representation is allowed unless excluded. This has the potential of creating a confusing quagmire as issues in a case develop and included versus excluded areas are not easily discernible. A better approach would be to exclude all in court representation and have a list of discrete, identifiable exceptions. This will provide for a better-informed consumer, and a better-informed judiciary.

The list of included areas for in court representation should be limited in scope in the initial roll out of this program. The vision of this program should be for long term success, and not on an immediate, radical departure from past practices that could jeopardize the program. Public perception of the program will depend largely on the in-court component, and that perception will quickly become unfavorable if paraprofessionals are thrown into litigation without those waters first being tested. For that reason and others, in court representation should be limited to truly procedural matters at the outset of the program to give time to develop a sense of whether paraprofessionals are living up to the expectation that they provide great services to underrepresented members of the community.

PRACTICE AREAS

Similar to the in court representation considerations above, areas of practice in family law should be limited in scope initially as the program is implemented. A concern is that the members of the community the program seeks to help may suffer the opposite result if paraprofessionals are initially able to practice in broad areas of family law. Nearly all aspects of the law touch and concern families, from bankruptcy law to tax law, immigration law to real property law. As with in court representation, a “walk-before-run” approach will best serve the community while preserving a long term goal of expanding areas of practice.

Some areas of limited practice for consideration in the initial phase of the program should be:

- Preparing, filing and serving the Petition, Summons, and Response
- Processing judgment packets, including applying for and filing default judgment papers
- Handling summary dissolution proceedings
- Simple, uncontested settlement agreements using only Judicial Council forms (no drafting of marital settlement agreements)
- Joinder of pension plans
- Status-only dissolution papers
- Preparing financial disclosures.
- Propounding Judicial Council form discovery and responding to discovery
- Default judgments
- Collection claims including setting arrears on past due support.

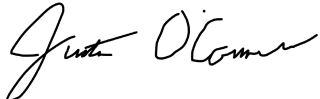
ALTERNATIVE / SUPPLEMENTAL APPROACHES

The Report reflects the Working Group’s consideration that there are other resources available to provide services to the underrepresented members of the community, but that those resources might not be robust enough or are otherwise not meeting needs. The Report does not appear to reflect consideration of a hybrid approach whereby potential paraprofessionals would be recruited from existing resources (e.g., legal aid centers), and those resources be provided the funding for the training and employment of paraprofessionals. This approach would ensure existing resources are strengthened – not abandoned for a new model – and that the paraprofessional is employed by existing resources that are dialed into the needs of the underrepresented community.

Alternatively, money that would otherwise be used to fund and manage the paraprofessional program could be directed at bolstering existing resources, e.g. court self-help services with infrastructure already in place (LA County, Orange County, etc.), legal aid groups, self help legal justice centers, and family law facilitators. The State Bar funds legal aid groups and its website provides additional information regarding eligible organizations

that provide free legal services to clients, provided by licensed attorneys or others supervised by licensed attorneys. LawHelpCA.org. provides services of courts and legal organizations for many matters including dissolution matters (in a search for dissolution matters in Los Angeles County, 22 legal aid facilities were referenced on the website).

Respectfully submitted,



JUSTIN O'CONNELL, CFLS
Legislative Director, ACFLS