

## **The California State Bar Paraprofessional Program by Rachael C. Kogen, Esq.**

There are many pros and cons surrounding the California State Bar's creation of a proposed new category of person who can practice law without a license, called a "paraprofessional." According to the State Bar website, "paraprofessionals would handle routine matters in specified practice areas, intended to support the vast majority of Californians who typically face these issues without legal help." The stated purpose for creating this category is to increase access to justice, and address California's justice gap, for the over 12 million Californians unable to afford legal services.

However, after public comment, 90% of attorneys who commented opposed this paraprofessional program proposal. This prompted the 19-member California Paraprofessional Program Working Group (CCPWG) of the State Bar to make changes to the initiative. These changes approved by CCPWG in May 2022 included: 1) Eliminating the ability of paraprofessionals to jointly own a firm with attorneys; 2) Requiring paraprofessionals to provide detailed disclosures on practice limits and alternate legal services resources, as well as contact information for alternate legal services; 3) Requiring paraprofessionals to provide contact information for those alternate legal services; 4) Excluding certain areas from paraprofessional practice, such as estate conservatorship and guardianship matters, and family law matters related to surrogate parentage; 5) Ensuring no funding for the new program comes from funds used to support the State Bar's discipline system; and 6) Requiring the State Bar to provide annual public disclosure of all entities funding the paraprofessional program.

The proposed paraprofessional program requires legislature approval, which is embodied through AB 2958, the 2023 annual dues bill, currently before the California legislature. As part of this process, amendments added in committee have placed several conditions on the State Bar's explorations into changes to the "licensing of non-attorneys as paraprofessionals."

The recent changes by the Senate Judiciary Committee for this bill: "Requires any committee or subcommittee of the State Bar exploring a regulatory sandbox or the licensing of non-attorneys as paraprofessionals to: a) Prioritize protecting individuals, especially those in need of legal assistance, from unscrupulous actors, including those actors seeking to do business in the legal field above all else; b) Prioritize increasing access to justice for indigent persons; c) Exclude corporate ownership of law firms and splitting legal fees with nonlawyers, which has historically been banned by common law and statute due to grave concerns that it could undermine consumer protection by creating conflicts of interests that are difficult to overcome and fundamentally infringe on the basic and paramount obligations of attorneys to their clients; d) Adhere to, and not propose any abrogation of, the restrictions on the unauthorized practice of law, including but not limited to, Corporations Code Section 13405 and Corporations Code Section 16951; and e) Not expend any funds, regardless of the source, on activities that do not meet these requirements."

Concerns with the paraprofessional program have been voiced by many lawyers and legal groups. One of these concerns has been the increased risk of consumer fraud, especially in the areas of immigration and housing. Also, many have voiced concerns over the need to increase discipline for the 195,000 attorneys who are already licensed. Currently, the State Bar receives,

on average, over 12,000 complaints each year regarding licensed California attorneys. A recent April 2022 Audit Report of the State Bar found that one particular attorney had 165 reported complaints to the State Bar over 7 years, with no discipline imposed. As a follow up to this Audit Report, the State Bar asserted it would need additional resources to implement recommendations for the handling of complaints against attorneys. There is real concern this backlog/inability to handle complaints will exponentially grow worse were the proposed paraprofessionals to suddenly materialize. Can the State Bar maintain oversight and discipline in the face of a dramatic increase in legal practitioners?

Alternatively, those in favor of the program note that while the State Bar Board of Trustees are focused on discipline, it must also be focused on increased access to legal services with a strong commitment to public protection. The paraprofessional would be a new license and a regulated legal services professional. Fourteen other states have, or are exploring, similar programs using paraprofessionals to assist in making legal services more accessible and affordable. Paraprofessionals would provide critical assistance by working in Family, Children and Custody practice areas (excluding conservatorship/guardianship matters or surrogate parentage). Also, those paraprofessionals seeking licensure in the Collateral Criminal practice area would be trained on potential immigration consequences for noncitizens. Future paraprofessional educational requirements will be developed in consultation with legal educational experts in relevant fields. Sufficient flexibility will be granted during that process to ensure meaningful public protection and to promote alignment with best practices in education.

AB 2958 passed the Senate Judiciary Committee on July 5, 2022. The Bill now continues through the legislative process. Additional amendments are possible before the Senate and Assembly vote on the final version. The next step in moving the plan forward involves development of a proposal to be approved by the State Bar Board later this year, for the California Supreme Court's review. Upon the Court's authorization, the State Bar would then submit the program to the Legislature for review and approval. Stay tuned.