

Comments on: Paraprofessional Working Group Recommendations

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Responsive Law thanks the State Bar for the opportunity to present these comments. Responsive Law is a national nonprofit organization working to make the civil legal system more affordable, accessible, and accountable to its consumers. We advocate for policies that expand the range of legal services available to meet people's legal needs and that loosen protectionist restrictions on who may provide assistance on legal matters so that people of all income levels can get the reliable legal help they need.

Submitted to the
**State Bar of California
Board of Trustees**
January 12, 2022

Responsive Law has shared its views numerous times with the Working Group, both in oral public comments and in writing. Although we would have preferred that the Working Group had made some different decisions, we are generally pleased with its recommendations, and believe that they will provide consumers with a competent lower-cost alternative to hiring a lawyer. **We urge the Board of Trustees to approve the recommendations of the Working Group.**

A Broad Consensus Supports the Recommendation, While A Few Dissenters Align with Their Self-Interest

Rather than reiterate our previous comments about the public benefit of licensing paraprofessionals, we write today to urge the State Bar to examine the nature of the opposition to this proposal. While opponents of paraprofessional licensing have cloaked themselves in the mantle of consumer protection, it should be apparent that they are more motivated by protecting their own perceived economic interests.

The Working Group's recommendation is the result of 18 months of work from a group of "a broad array of stakeholder groups, including

legal consumers, legal services organizations, trial courts, law schools, and practicing attorneys, among others.”¹ The Working Group solicited the input of numerous outside parties, including other jurisdictions that have licensed paraprofessionals.

The overwhelming majority of the Working Group—15 of the 19 members—joined in the recommendation. This includes all of the judges, all of the public members, and six of the ten lawyers in the group. On the other hand, the four dissenters from the Working Group’s recommendation are all lawyers.

The dissent to the recommendation asserts public policy justifications for its opposition. Responsive Law and others have addressed these objections at length on other occasions. We ask the State Bar to consider why only these four members raise these objections. For all four dissenters, licensure of paraprofessionals presents a threat—or at least a perceived threat—to their economic status and that of the groups who nominated them to the Working Group.

Lawyers in Private Practice Fear Competition from Licensed Paraprofessionals

Three of the dissenters are lawyers in private practice and were nominated to the Working Group by private bar associations. Steven Fleischman is a lawyer in private practice, who was nominated by California Defense Counsel.² Stephen Hamilton is a family lawyer in private practice, who was nominated by the California Lawyers Association.³ Carolin Shining is a lawyer in private practice, who was nominated by the Consumer Attorneys of California.⁴

The private bar has long been opposed to allowing anyone but lawyers to provide legal help. It generally asserts this position on behalf of its clients, claiming their interests would not be well served by anyone other than a lawyer. Charitably, one might characterize this as a result of the limited vantage point of these bars and their

¹ Final Report and Recommendations of the California Paraprofessional Working Group (“Report”) at 4.

² <https://www.horvitzlevy.com/steven-fleischman>; Report at 4.

³ <https://www.hamiltonesq.com/stephen-hamilton>; Report at 4.

⁴ <https://www.linkedin.com/in/carolinshining/>; Report at 4.

members. After all, they see only the people they have helped and perhaps can't imagine that their problems could also have been solved by a licensed paralegal, rather than a lawyer. They also don't see all the people who can't afford their services, and are forced to solve their legal problems without any professional help.

More likely, though, the position of the private bar is primarily economic. Allowing another set of professionals to provide legal services creates competition for lawyers. Although most clients of paraprofessionals are likely to be people who couldn't afford a lawyer, some may also take their business away from lawyers because they would rather pay less for comparable service. The laws of supply and demand dictate that an increase in the supply of professional legal help will lower the price of legal help. That's good news for consumers, but a threat to lawyers who have benefited from being part of a government-sanctioned cartel.

It's also worth noting that many of the points in the dissent are echoed by the Consumer Attorneys of California in its comments to the State Bar.⁵ CAOC claims that it "represents the interests of 39 million Californians," but actually represents the attorneys who represent those Californians.⁶ When representing clients, a lawyer's interests will obviously coincide with their clients' interests. However, when addressing the regulations governing the legal industry, these interests diverge, since consumer lawyers as an industry have different economic interests from their customers. We've addressed some of these differences in previous comments to the Working Group and the State Bar. At this juncture, we just wish to remind the State Bar that a trade association for an industry group is not necessarily representative of the customers of that industry.

Legal Services Organizations, Already Underfunded, Don't Want Paraprofessionals to Be an Excuse for Further Funding Cuts

The other dissenter is Sharon Bashan, who was nominated by the legal services community. Although their clients do not generally pay

⁵ Letter from CAOC to State Bar of California, 12/9/21, available at www.caoc.org.

⁶ www.caoc.org/?pg=history. But see www.caoc.org/?pg=caocapps, limiting membership to lawyers, law firm employees, law students, and vendors.

them for their services, legal services organizations still have an economic motive for restricting paraprofessional services. If paraprofessionals are viewed as alleviating the need for legal aid lawyers, then the governments and foundations that fund legal aid organizations might be less inclined to provide funding in the future.

However, in the legal aid community, as in the private sector, paraprofessionals are more likely to supplement, rather than replace, lawyers. For the large number of people who make just enough to be ineligible for free legal help, paraprofessionals may provide a more affordable option. And legal aid organizations may be able to use paraprofessionals to provide more routine legal help while freeing up their overburdened lawyers to take on more complex matters.

Of course, the concerns of the legal aid community about protecting its funding are less self-interested than those of the private bar. Legal aid is horribly underfunded, and licensing a new class of legal service providers should not be used as an excuse to further cut funding to legal service organizations. But the lens of self-interest makes it much easier to see how organizations with a mission to provide legal services to those in the worst economic circumstances would be opposed to expanding access to legal help for those who are just slightly better off.

The Public Interest and Antitrust Concerns Require a Vote To Approve The Recommendation

The State Bar of California is a regulatory agency, and is obligated to act in the public interest. A vote for the Working Group's recommendation would be a vote to approve:

- a consensus of over three-quarters of Working Group members;
- the result of 18 months of study and deliberation;
- a recommendation supported by all judges on the Working Group;
- a recommendation supported by all public members of the Working Group;
- a recommendation supported by a majority of lawyers on Working Group, including members nominated by consumer interest organizations, access to justice organizations, and the Assembly Judiciary Committee

On the other hand, a vote against the recommendation would put the State Bar on the side of

- a dissent that mirrors the objections of a trade association for lawyers,
- supported by four lawyers, all of whom face a financial threat from licensed paraprofessionals, and three of whom were nominated by lawyer trade associations.

To side with the dissent in this matter is to side with protectionism and against consumer choice. There is simply no good public policy reason for the State Bar to reject such a broad, well-studied consensus in favor of the self-interested objections of certain segments of the bar. Lawyers on the State Bar voting against the recommendation would expose themselves as putting their economic interests ahead of the public interest. They would also expose themselves to potential antitrust actions under the U.S. Supreme Court's decision in *North Carolina Dental Examiners v. FTC*.⁷

In forming the Paraprofessional Working Group, the State Bar placed the public interest ahead of the financial interests of lawyers. But that decision would ring hollow if it were to reject the recommendation it charged the Working Group with making. **We urge the State Bar to continue its commitment to placing the public interest first by approving the recommendation of the Working Group.**

⁷ North Carolina State Board of Dental Examiners v. FTC, 574 U.S. 494 (2015).