



**Los Angeles County Bar Association**

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**VIA EMAIL ONLY**

April 19, 2021

Hon. Ioana Petrou  
c/o State Bar of California  
Paraprofessional Working Group  
845 South Figueroa Street  
Los Angeles, California 90012

Dear Justice Petrou:

We are submitting this public comment on behalf of the Los Angeles County Bar Association. We fully understand that the April 19, 2021 meeting of the full Paraprofessional Working Group is not the final meeting, but we are concerned about the direction of the subcommittee meetings which took place in March and earlier in April, and want to ensure that our position is registered. LACBA is on the forefront of the access to justice challenge. LACBA Counsel for Justice operates several clinics which provide competent, free legal services to underserved communities through the Domestic Violence Legal Services Project, the Immigration Legal Assistance Project, the AIDS Legal Services Project, and the Veterans Legal Services Project. LACBA also operates two alternate public defender programs under contracts with the County of Los Angeles. So, we are keenly aware of the justice gap issues the Paraprofessional Working Group was established to address.

However, licensing non-attorney paraprofessional "specialists" to provide in-court representation up to (and for everything short of) a jury trial is not the answer. Law students must undergo a rigorous three-year curriculum in order to be properly educated to provide legal services to consumers. They then must demonstrate their learning by passing a challenging bar examination. Decisions over complicated legal strategy or waiving important rights need to be made with proper legal representation. The proposed non-attorney specialists will lack the necessary training to properly advise clients. Moreover, any consideration of allowing these non-attorneys to practice law would require wholesale changes to the Rules of Professional Conduct. Such rules revisions are not to be undertaken lightly. It took 25 years, and two Rules Revisions Committees, to consider and adopt the current Rules. It is precipitous and presumptively improper to have a working group consider and recommend sweeping changes to the rules in one meeting, with a single 45-day public comment period.

Our members are keenly aware of the narrow business interests that are driving these changes, which would upend the legal market. These proposed changes will not assist the poorest would-be litigants—those most in need—who wait in long lines at the self-help clinics or Public Counsel for help. We support greater funding for legal services for the poor, especially the Navigator Program developed by the Judicial Council and touted by the Chief Justice in her State of the Judiciary Address in 2019. We believe investing in computer software to help pro per litigants through the self-help clinics is a step in the right direction. A robust Navigator Program would directly help to narrow the justice gap. Sadly, the entire budget for the Navigator program was cut in 2020, an event which we hope reflects only the short-term realities of the current pandemic, rather than a deeper shift in budget priorities.

Proponents of paraprofessional licensing, the use of artificial intelligence (AI) for the delivery of legal services, and the abandonment of ethical rules forbidding non-attorney ownership of firms delivering legal services, argue that these changes are intended to close the so-called justice gap, as that term is used in the Access to Justice survey. Yet even the most enthusiastic proponents of these changes admit that the middle class and wealthy can afford most legal services. The poor, who really cannot afford legal services of any kind, will not benefit from the licensing of paraprofessionals or the relaxation of the Rules of Professional Conduct to allow non-attorney ownership of law firms. For them, there is no solution to the justice gap other than free legal aid.

Any real solution to the justice gap must necessarily include more low and no cost legal services for the poor. Some innovative ways to expand access to justice for the poor are to create loan forgiveness programs for those law students who undertake a career in public service law, and to mandate reporting of pro bono service hours by attorneys. It is undisputed that when pro bono hours are tracked and valued, the number of volunteers increases. These types of innovations will directly help to narrow the justice gap.

However, the proponents of licensing paraprofessionals and allowing non-attorney ownership and investment in law firms ostensibly to close the justice gap would discard the hard won consumer protections of the last century. Gone will be restrictions on non-attorneys owning firms providing legal services. Confidentiality of client information and rules against conflicts of interest between the firms and their clients would be discarded. These restrictions, which have been imposed to maintain standards of professionalism and to protect *clients'* fundamental interests, have been improperly deemed to be mere guild-like barriers to entry which must be dismantled in the goal of better serving the middle class and wealthy consumers who already can afford most legal services.

If the proposals now under consideration were to be adopted, we may also anticipate in contracts for legal services the same type of one-sided contracts of adhesion which characterize virtually all the use terms and conditions of corporate and technological products, the waivers of claims for damages or damages limitations so sweeping as to amount to the same thing, coupled no doubt with arbitration clauses requiring that any claims for negligence or breach of contract be heard before carefully selected arbitrators to ensure that any damages awards are limited. We have seen this in virtually all corporate and technological contracts in recent years, along with a concerted litigation effort to enhance the enforceability of those provisions, and there is no reason to suppose that such companies will act otherwise when allowed to provide legal services.

The implied promise underlying the proposals now under consideration is that by giving the new legal tech companies the right to practice law and obtain access to profitable, paying customers (ones who are already generally well served by the current system and protected by it), by stripping these consumers of the protections they enjoy under current law, and leaving them with few if any remedies for malpractice, the poor for whom a true justice gap does exist will ultimately benefit via the products and systems developed for those paying customers. But will they?

We understand that the Paraprofessional Working Group is considering allowing paraprofessionals to collect contingency fees. However, when cases have value, consumers are easily able to find competent attorneys to handle their cases on a contingency basis. There are no shortage of able personal injury and employment lawyers who can properly represent such clients. It is difficult to understand how the Paraprofessional Working Group considers that such cases need to be handled by non-attorneys.

The abandonment of current rules prohibiting non-attorney ownership of law firms and the limits on the practice of law to licensed attorneys is a form of bait and switch, in which Californians are being asked to give up substantial, well-established consumer protections in exchange for nothing more than the vague promise that, while gaining access to the wallets of the middle class and wealthy, something might spin off in order to close the justice gap for the poor. The assurances of the proponents of legal tech that, if we tear down the walls of legal ethics and consumer protection to give access to the middle-class legal market to non-attorneys, the poor might just benefit too are far too inchoate and speculative to justify making the sweeping rules and ethics changes being proposed.

What in fact is being promised for the very poor? There is little debate that their needs are primarily for representation in the courts, whether for family law matters, landlord-tenant issues, or criminal defense. Yet most would acknowledge that advocacy in the courts is the one service that AI cannot provide. And to allow untrained paraprofessional "specialists" to appear in court for consumers is not the answer.

Even if technological applications and services are developed for paying customers, what assurances and guarantees are there that those applications or services will be made available to the poor for free or at low cost, and that they will be adaptable to the areas where poor litigants need the most help? Or, if they are made available, what guarantee is there that those versions won't be truncated, minimally functional versions of that which is sold to those paying full freight? Certainly, the legal tech companies have no financial incentive to make available for free that which they hope to sell for a profit. By the time consumer protections have been scrapped and the legal tech companies are firmly in control of the delivery of legal services to the middle class and wealthy, the problems of the poor will remain the same. But with the consolidation of legal services for the middle-class market in the hands of a few large legal tech companies, the quality and cost of legal services will not likely improve.

The current proposals now under consideration by the Paraprofessional Committee are premature before the larger question is answered: What guarantees are there that those business interests seeking entry into the legal services market would not abuse their newfound access to the detriment of those truly in need of, but unable to afford, legal services? Companies seeking

such access should be prepared to put up substantial sums as collateral for their promise to close the justice gap, to be forfeited if they do not. Instead of the dubious bargain of something for nothing currently being proposed, the companies seeking access to the legal market ought to be required to pay a significant percentage of their pre-tax gross income to fund legal aid services for the poor and to fund meaningful oversight and enforcement of standards of practice and ethics as to paraprofessionals and the companies employing them.

We want to be part of this important conversation. We urge the Paraprofessional Committee to take no action on these proposals without due consideration for the voices of all Californians, who want to see the promise of equal justice under law fulfilled through the competent rendition of legal services.

Very truly yours,

A handwritten signature in cursive script that reads "Tamila C. Jensen". The signature is written in black ink and is positioned above the typed name.

Tamila C. Jensen  
President