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**PERSPECTIVE** 

## Not so fast on California paralawyers

By Brandon V. Stracener and David A. Carrillo

'any Californians lack access to affordable legal services, and all signs point to this justice gap widening rather than narrowing. One solution is creating a new licensed legal paraprofessional for limited practice areas; the accounting and medical professions both have long used such tiered licensing systems. A paralawyer tier between a lawyer and a paralegal may be uniquely suited to opening more (and more affordable) services. Our only concern is that a seemingly good solution like this can turn into another problem if it is badly or hastily done. Rushing to implement a paralawyer program without public confidence that adequate oversight is ready could further degrade already-low confidence in legal discipline. This isn't a "don't fix it if it ain't broke" scenario — it's more don't make a bad situation worse.

A working group of the State Bar of California recently published alarming findings on the lack of attorney representation. For example, about 75% of all California civil cases have at least one unrepresented party. And a mere 10% of family law and eviction cases have attorneys on both sides. Not every dispute needs dueling lawyers, but it's usually a bad sign when one party is represented and the other appears pro per. Yet the high cost of professional legal services means many Californians have little choice but to walk into court alone and pray.

Experience in other states (and Ontario, Canada) suggests

that paralawyers can be a good solution to this problem. A trained-and-licensed professional between an attorney and a paralegal can complete, sign and file forms and make simple appearances in low-dollar-value matters at affordable rates. As things

success: education, credentialing and discipline. All three elements require striking the right balance. The education program must be rigorous enough to produce competent paralawyers, but not so protracted and expensive that it rivals law school. The cre-

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stand, most attorneys either won't take such small-margin work or price themselves out of that market, and paralegals are barred from doing those tasks. The need exists, and the solution is apparent — California only needs to be thoughtful about avoiding the pitfalls.

Those traps for the unwary became apparent in the states currently experimenting with paralawyers; Utah, Arizona and Minnesota all recently started pilot programs. Washington's rush to implement a flawed program is a cautionary tale. The Washington Supreme Court killed it early: The court first declined to expand the program, refused to establish a program fund, acted too late to reduce working hours requirements, and ultimately decided not to allow additional licensees. The program died before it could generate enough evidence of its benefits or deficiencies. The lessons from Washington are that acting too hastily in implementing and ending a program are both bad.

To avoid repeating Washington's mistakes, California should move forward deliberately, with three elements being key to dentialing process must filter out the unethical bumblers while being targeted to the specific tasks licensees will perform. (The notary public education and licensing requirements are one potential model here.) The discipline system should be what we would want from an attorney discipline system: adequate resources to investigate and address valid claims of misconduct, without devolving into a star chamber that serves neither the public nor the profession.

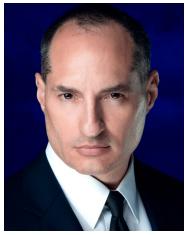
Finally, a messaging campaign will be important: to inform potential new paralawyers of the opportunity, to alert potential clients of the new service sector, and to instill public confidence that it will be protected from unethical and incompetent licensees.

Most critiques of this proposal are overblown. That lawyers already avoid the work paralawvers will perform negates the argument that attorneys will suffer from new competition, or that paralawyers will be bowled over by an opposing attorney. If anything, fear the reverse scenario: a general practitioner getting bulldozed by a subject-matter-expert paralawyer. And who cares if paralawyers own up to a 49% interest in a law firm? Everyone in that firm will still be regulated by the same State Bar.

The art of the possible is a factor here because other competing proposals are far less likely to happen. Achieving the same effect with legal aid programs would require 13,600 new attorneys—that's more than eight times the

**Brandon V. Stracener** is a senior research fellow at and **David A. Carrillo** is the executive director of the California Constitution Center at Berkeley Law.





current number of legal aid lawyers. If funding to subsidize such a dramatic expansion of legal aid existed, it would have already been appropriated. And such programs struggle to convince new lawyers with law school debts exceeding \$180,000 to accept salaries as low as \$50,000. Requiring additional pro bono hours is a non-starter — it would quintuple the current recommendation of 60 annual pro bono service hours to 250 hours. Contrast those expensive proposals with the low cost of funding a paralawyer program: in Washington it cost just \$7 per licensee per year.

A good job that helps the unneys each year.

derserved could also be an attractive option to the graduates of unaccredited law schools who historically struggle to pass the bar examination. Licensing restrictions can properly limit representation to suitable matters and leave more complex work to attorneys. For example, paralawyers could address expungement and conviction reclassification. They could handle infractions, small claims court, and uncontested dissolutions. A paralawyer program would provide more people to help Californians at a reasonable cost than trying to lower the bar exam cut score to admit an extra few dozen attor-

California needs to adopt a tried-and-true design strategy here: do it once, do it right. That requires moving deliberately and making concern for public protection the first priority. Prematurely launching a badly designed program will injure the public's interests, degrade the public's trust, and disserve the same public the program was intended to benefit. We have plenty of time to develop a good program — Assembly Judiciary Committee Chairman Mark Stone has already said that he will not include a paralawyer proposal in the 2023 fee bill. That gives stakeholders several years to clean house on discipline and draft a

well-considered pilot program. Otherwise this new program will be rightly attacked for only adding more unaddressed discipline complaints to an already jammed inbox.

Paralawyers present an opportunity to effect substantial positive change in the legal profession. A well-designed pilot program, built thoughtfully and in due time, can narrow the justice gap, provide more services, and improve public confidence. Let's watch and learn from the other state experiments as they work through the growing pains. If California does a paralawyer pilot program, let's take it slow and get it right the first time.