



To: ATILS Task Force
From: Johann Drolshagen, Lori Gonzalez, Toby Rothschild, Kevin Mohr and Randall Difuntorum
Date: February 19, 2020
Re: B.2. Clarifying Study re Further Study of Rule 5.4 (Financial and Similar Arrangements with Nonlawyers)

PROPOSED LANGUAGE SUMMARIZING ATILS INTENT CONCERNING FURTHER STATE BAR STUDY OF AMENDMENTS TO RULE 5.4

The members of the ATILS Task Force have identified revisions to Rule 5.4 as being central to advancing innovation in the delivery of legal services. Rule 5.4 has been identified as a significant inhibitor of innovation that could be provided by non-lawyer entities, including individuals, organizations, and technologies. The members, however, could only reach consensus regarding a modest revision to the rule which will allow expanded fee sharing with nonprofit organizations. Although the members agree that additional revisions are warranted, they believe further study and data informing the specifics of those revisions, is needed. They believe that within a regulatory sandbox, an environment in which fee-sharing and non-lawyer ownership models could be tested and permitted to operate, such data can be obtained.

The Task Force members also recommend that the Board of Trustees consider the experiences of other jurisdictions that are currently undertaking study of the legal services environment with an eye to amending Rule 5.4 as well. In short, the Task Force encourages ongoing study of other potential changes to Rule 5.4 that could facilitate the closure of the gap in legal services provided to individuals.

The Task Force also believes that while some changes will benefit from anticipated California sandbox data and the experience of other jurisdictions (including some proposed changes that could effectively repeal Rule 5.4), other changes could be considered now (e.g., changes to the modest expanded nonprofit fee sharing exception that is currently proposed to be limited to fee sharing arrangements with nonprofit organizations that qualify for tax exempt status under Section 501(c)(3)). In addition, if a paraprofessional (LLLT) program is implemented then that UPL reform would prompt consideration of changes to Rule 5.4 to permit lawyers to have fee sharing arrangements with those new authorized providers. Accordingly, study of revisions to Rule 5.4 should not end with the rule amendment proposed by ATILS.

Main document comments

Comment [JD1] Johann Drolshagen 2/10/2020 1:22:00 PM

The Rule 5.4 statement should NOT be linked to the sandbox. The sandbox recommendation could surely contain 5.4, but the changes necessary to 5.4 need not wait 5 years [minimum] for their introduction.