

OPEN SESSION AGENDA ITEM 702 OCTOBER 2018

DATE: October 16, 2018

TO: **Members, Board of Trustees**

FROM: Randall Difuntorum, Program Manager, Office of Professional Competence

SUBJECT: Access Through Innovation of Legal Services Task Force: Recommendations for Appointment of New Members, Officers and Advisors

EXECUTIVE SUMMARY

At its July 20, 2018, meeting, the Board of Trustees ("Board") received a consultant's Legal Market Landscape Report and authorized formation of a Task Force to explore possible regulatory reforms to increase access to justice and improve public protection in the growing field of the online delivery of legal services. At its September 13, 2018 meeting, the Board adopted a charter for a new task force on Access Through Innovation of Legal Services ("ATILS") and directed staff to carry out an appointment outreach and application process. This memorandum presents two staff recommendations: (1) the appointment of nineteen members to the task force; and (2) the proposed candidates for appointment.

BACKGROUND

The ATILS charter,¹ in part, describes the planned study as follows:

The Task Force on Access Through Innovation of Legal Services ("ATILS") is charged with identifying possible regulatory changes to enhance the delivery of, and access to, legal services through the use of technology, including artificial intelligence and online legal service delivery models. A Task Force report setting forth recommendations will be submitted to the Board of Trustees no later than December 31, 2019. Each Task Force recommendation should include an explanatory rationale that reflects a balance of the dual goals of public protection and increased access to justice.

The study is anticipated to have three main components. First, the study will involve consideration of the public protection purposes of the prohibitions against unauthorized practice of law (UPL) including the definition of the practice of law and the impact of UPL on the use of artificial intelligence and other technology driven delivery systems that offer online consumer self-help legal research and information services, matching services, document production and dispute resolution.

¹ The full text of the ATILS charter is provided as Attachment A.

Second, the study will evaluate the Rules of Professional Conduct, statutes and ethics opinions on lawyer advertising and solicitation, partnerships with non-lawyers, fee splitting (including compensation for client referrals) and other relevant rules to determine whether and how changes in these laws might improve public protection and also foster innovation in the delivery of legal services.

Third, the study will examine the extent to which, if any, the State Bar should consider increasing access to legal services by individual consumers by implementing some form of entity regulation or other options for permitting non-lawyer ownership or investment in businesses engaged in the practice of law, including consideration of multidisciplinary practice models and alternative business structures.

For these three distinct areas of study, it is anticipated that the task force will form a subcommittee to focus on each respective topic.

At the September 13, 2018, meeting it was contemplated that ATILS should have fifteen members and that those members may be judges, lawyers and non-lawyers. Specifically, the Board expressed interest in striving to appoint a non-lawyer majority, if possible. The Board also agreed that the Assembly and Senate Judiciary Committees should each be invited to nominate an appointee to the Task Force.

Following the September meeting staff prepared a fact sheet to facilitate outreach and posted an online appointment application form with a deadline of October 10, 2018.

DISCUSSION

1. Applicant Pool

Completed appointment application forms were timely received from seventy-three applicants. Of these seventy-three, fifty-one were submitted by lawyers and twenty-two were submitted by non-lawyers.²

2. Legislative Stakeholder Nominees

Margie Estrada, Chief Counsel at California State Senate Committee on Judiciary has been nominated and Joanna Mendoza, member of the Board of Trustees, has been nominated by the Assembly Judiciary Committee.

3. Proposed Officers

Justice Lee Edmon, Presiding Justice, California Court of Appeal Second Appellate District, Division 3, is recommended for appointment as the task force chair. Justice Edmon previously served as the chair of the State Bar's Rules Revision Commission and is uniquely qualified to lead a study that will revisit the public protection afforded by the new rules.

² An applicant worksheet listing all applicants is provided as Attachment B. The applications and materials submitted by all applicants are on file with the Office of Professional Competence and are available upon request (contact: angela.marlaud@calbar.ca.gov). Although included in the worksheet and the total count of "applicants," five candidates are the result of either direct staff recruitment without submission of an application (Justice Edmon, Judge Wendy Chang, Kevin Mohr and Mark Tuft), or are the result of a legislative nomination (Margie Estrada). The other legislative nominee submitted an application prior to being nominated (Joanna Mendoza).

Two vice-chairs are recommended. Joyce Raby is a non-lawyer with expertise in the use of technology in non-profit corporations promoting access to justice and is recommended as one vice-chair. Toby Rothschild is a lawyer with expertise in both professional responsibility and management of legal aid organizations and is recommended as the second vice-chair. For each of the three anticipated task force subcommittees, these officers could serve as ex officio participants in guiding the subcommittees when the task force conducts separate, concurrent subcommittee meetings.

4. Proposed Members

If the Board agrees with the recommended appointment of task force officers and the nominees designated by the Assembly and Senate Judiciary Committees, then the remaining appointments are for the remaining lawyer and non-lawyer task force members. It was originally contemplated that there should be a total of fifteen members, including the officers; however, staff now recommends a total of nineteen members, including the officers. This nineteen member recommendation is comprised of the ten non-lawyers and nine lawyers set forth below.

No.	Attorney (Y/N)	Name	Location	Expertise
Officers				
1	N	Justice Lee Edmon Chair	Los Angeles	Former Chair, Rules Revision Commission
2	N	Joyce Raby Co-Vice-Chair	Almont, CO	AI/Tech, Legal Aid, Econ. Future
3	Y	Toby Rothschild Co-Vice-Chair	Los Angeles	Legal Aid, Consumer Protection
Members				
4	N	Andrew Arruda	San Francisco	AI/Tech, Legal Aid, Econ Future, LRS
5	Y	Tara Burd	San Diego	CLA, Solo Practitioner
6	N	Judge Wendy Chang	Los Angeles	Professional Responsibility (RRC)
7	N	Abhijeet Chavan	Los Angeles	AI/Tech, Economic Futurist
8	N	Valerie Dean	Tarzana	Legal Aid, LRS, Paralegal
9	Y	Margie Estrada	Sacramento	SJUD Appointee
10	N	Lori Gonzalez	Santa Rosa	Legal Aid, Paralegal, Doc Prep
11	Y	Bridget Gramme	San Diego	Consumer Protection, Int'l Tech Law
12	Y	Andrew Kucera	Clovis	Legal Aid, LRS, rural area
13	Y	Joanna Mendoza	Roseville	AJUD Appointee, Regulatory Lawyer
14	Y	Kevin Mohr	Irvine	Professional Responsibility (RRC)
15	N	Daniel Rice	Los Angeles	Consumer Protection, LRS, Doc. Prep.
16	N	Allen Rodriguez	Pasadena	Tech, LRS, ABS, Marketing
17	N	Daniel Rubins	Vallejo	AI/Tech
18	Y	Joshua Walker	Sunnyvale	AI/Tech
19	Y	Mark Tuft	San Francisco	Professional Responsibility (RRC)

5. The Recommended Increase from Fifteen to Nineteen Members

Generally, this increase in the members of the task force is recommended to assure the appropriate expertise and coverage for the three subcommittees. In particular, the above list includes former participants on the Rules Revision Commission. Given the recently approved new Rules of Professional Conduct, it is critical that the task force have access to experts who can provide the historical knowledge of the new and former rules. In consulting with the proposed task force chair, staff originally discussed the appointment of three task force advisors (one assigned to each of the three anticipated subcommittees) who would be non-voting participants and would be drawn from the members of the former Rules Revision Commission, which had four advisors. However, in further considering the role of the Rules Revision

Commission participants, staff recognized that these persons are not immersed in the use of technology for either profit or non-profit activities and they possess an important objective viewpoint on the issue of expanded use of technology that should be included among the voting members of the task force.

In addition, the list above includes an appointee from a rural geographic location. Staff sought input from the Board's Appointment Liaisons, Brandon Stallings and Mark Broughton. These Trustees observed that the task force should include a participant from a rural area because delivery of legal services and use of available technology is different in those communities.

6. Alternate Members

In the event that the Board does not concur in one or more of the recommended applicants for appointment, or should a vacancy occur on the task force before the sunset of the task force, staff has identified the two alternate members set forth in the table below.

No.	Attorney (Y/N)	Name	Location	Expertise
1	N	Jean Clauson	Des Moines, IA	LRS
2	Y	IV Ashton	Oak Park, IL	AI/Tech, Economic Futurist

FISCAL/PERSONNEL IMPACT

Task Force activities in 2018 will be limited and will be absorbed by the Office of Professional Competence's committee and commission budgets. Activities in 2019 will be provided for in the State Bar's 2019 budget.

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal 4: Support access to justice for all California residents and improvements to the state's justice system.

Objective d: Commencing in 2018 and concluding no later than December 31, 2019, study online legal service delivery models and determine if any regulatory changes are needed to better support and/or regulate the expansion of access through the use of technology in a manner that balances the dual goals of public protection and increased access to justice.

RECOMMENDATIONS

It is recommended that the Board of Trustees approve the following resolution on staff's recommendation for a nineteen member task force:

RESOLVED, that the Board of Trustees approve the establishment of a nineteen member task force on the Access Through Innovation of Legal Services.

It is recommended that the Board of Trustees approve the following resolution on staff's recommendation for the appointment of the officers and members of the task force:

RESOLVED, that the Board of Trustees approve the appointment of the following officers, members and advisors to serve on the Access Through Innovation of Legal Services task force, for a term expiring on December 31, 2020, unless earlier terminated or extended by subsequent Board action:

Officers

Justice Lee Edmon, Chair
Joyce Raby, Vice-Chair
Toby Rothschild, Vice-Chair

Member Appointments

- 1) Andrew Arruda
- 2) Tara Burd
- 3) Judge Wendy Chang
- 4) Abhijeet Chavan
- 5) Valerie Dean
- 6) Margie Estrada (Senate Judiciary Committee Nominee)
- 7) Lori Gonzalez
- 8) Bridget Gramme
- 9) Andrew Kucera
- 10) Joanna Mendoza (Assembly Judiciary Committee Nominee)
- 11) Kevin Mohr
- 12) Daniel Rice
- 13) Allen Rodriguez
- 14) Daniel Rubins
- 15) Mark Tuft
- 16) Joshua Walker

Alternate Member Appointments (in order of preference)

- 1) Jean Clauson
- 2) IV Ashton

ATTACHMENT(S) LIST

- A. ATILS Charter
- B. Applicant Worksheet



The State Bar of California

Task Force to Study Technology in the Delivery of Legal Services Charter

The Task Force Charter describes the study as follows:

The Task Force on Access Through Innovation of Legal Services ("ATILS") is charged with identifying possible regulatory changes to enhance the delivery of, and access to, legal services through the use of technology, including artificial intelligence and online legal service delivery models. A Task Force report setting forth recommendations will be submitted to the Board of Trustees no later than December 31, 2019. Each Task Force recommendation should include an explanatory rationale that reflects a balance of the dual goals of public protection and increased access to justice.

In carrying out this assignment, the Task Force should do the following:

- 1) Review the current consumer protection purposes of the prohibitions against unauthorized practice of law (UPL) as well as the impact of those prohibitions on access to legal services with the goal of identifying potential changes that might increase access while also protecting the public. In addition, assess the impact of the current definition of the practice of law on the use of artificial intelligence and other technology driven delivery systems, including online consumer self-help legal research and information services, matching services, document production and dispute resolution;
- 2) Evaluate existing rules, statutes and ethics opinions on lawyer advertising and solicitation, partnerships with non-lawyers, fee splitting (including compensation for client referrals) and other relevant rules in light of their longstanding public protection function with the goal of articulating a recommendation on whether and how changes in these laws might improve public protection while also fostering innovation in, and expansion of, the delivery of legal services and law related services especially in those areas of service where there is the greatest unmet need; and
- 3) With a focus on preserving the client protection afforded by the legal profession's core values of confidentiality, loyalty and independence of professional judgment, prepare a recommendation addressing the extent to which, if any, the State Bar should consider increasing access to legal services by individual consumers by implementing some form of entity regulation or other options for permitting non lawyer ownership or investment in businesses engaged in the practice of law, including consideration of multidisciplinary practice models and alternative business structures.

Attachment B - Applicant Worksheet

ATILS - ATTORNEY APPLICANTS

No.	Recommending Appointment	Last Name	First Name	District	Area of Expertise (check all that apply):								Age	Self-Identified Diversity Traits				
					AI/Tech	Consum. Protection	Legal Aid / Service	Economic Futurist	LRS, Directory	Paralegal, Doc Prep	Other	Other field		Gender	Race/Ethnicity	Non English Language	Veteran	Disability
1		Abhyanker	Raj	6	X	X	X	X	X	X	X	engineering, law, small business owner	43	M	O	Spanish	N	N
2		Armitage	Alice	1	X					X		Innovation and regulation	65	F	W		N	N
3		Ashton	IV	O/S, CO, IL	X		X		X				48	M	W		N	N
4		Babcock	Sarah	O/S, GA			X	X		X		Tech use in access to justice	40	F	W	Russ.	N	N
5		Baker	Jeffrey	2			X			X		nonprofits, NGOs	42	M	W		N	N
6		Baldwin	Merri	1		X	X		X				56	F	W		N	N
7		Balta	Antoinette	4			X						36	F	O	Arabic	N	N
8		Barnes	Scott	4		X	X	X	X				37	M	W		N	N
9		Blake	K. Stephen	4				X		X	X	Fin.Tech	54	M	W		N	N
10		Brown	Maeve	1		X	X										N	N
11	X	Burd	Tara	4						X		CLA, solo practitioner	34	F	W		N	N
12		Chandler	Cynthia	1	X		X	X		X		Legislation, marketing, law practice mgmnt	49	F	W		N	N
13		Cino	Jessica	O/S, GA	X			X		X			39	F	W		N	N
14		Cohen	Mark	O/S, MD	X		X			X	X	regulation	66	M	W	Spanish, French	N	N
15		Colantuono	Michael	3				X	X		X	local government and public law	56	M	W		N	N
16		Cottingham	Tucker	1	X		X			X			33	M			N	N
17		Dillinger	Carolyn	4	X			X		X	X	Law practice management	37	F	B/W		N	N
18	X	Estrada	Margie	3								SJUD nominee						
19		Gerstenzang	Erin	O/S, GA						X			40	F	W		N	N
20		Gordon	Tom	O/S, DC		X			X	X	X	Legal needs for small	47	M	W		N	N
21	X	Gramme	Bridget	4		X					X	liscencing, international tech law, APRL	42	F	W		N	N
22		Granat	Richard	O/S	X		X	X	X	X	X	On-line Legal services	77	M	W		N	N
23		Hall	Maria	2		X	X		X				48	F	L	Spanish	N	N

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					AI/Tech	Consum. Protection	Legal Aid / Service	Economic Futurist	LRS, Directory	Paralegal, Doc Prep	Other		Gender	Race/Ethnicity	Non English Language	Veteran	Disability
24		Hernandez	Cory	1		X		X		X	Legislation; Public Policy; Self-Help Services	26	Other	L/W	Spanish	N	N
25		Hu	Gavin	1		X			X			30	M	A	Cantonese	N	N
26		Jargiello	David	6		X		X	X	X	alternative legal practice models	68	M	W		N	N
27		Jones	James	1				X				39	M	B	Spanish	N	N
28		King	Joshua	O/S				X				60	M	W		N	N
29	X	Kucera	Andrew	5		X	X	X				42	M	W		N	N
30		Levine	Jaime	4		X	X					59	M	W	French	N	N
31		Long	Adam	2	X			X				51	M	W		N	N
32		Mangiliman	Roel	1		X				X	Design, Data Driven Inquiries, Testing	31	M	A		N	Y
33		Martin	Thomas	O/C, BC Canada	X		X		X	X	CEO at tech firm	47	M	AI,AN,L		N	N
34	X	Mendoza	Joanna	3						X	AJUD nominee, Regulatory Lawyer	54	F	W		N	N
35		Mitchell	Kevin	2		X						38	M	W		N	N
36	X	Mohr	Kevin	4							Former Rules Rev. Comm.						
37		Morris	Emilia	5		X				X		39	F	L	Spanish	N	N
38		Pansky	Ellen	2				X	X	X	State Bar litigation practice	65	F	W		N	N
39		Peters	James	O/S		X		X	X	X	legal services regulations, ABS (Legal Zoom)	43	M	W		N	N
40		Porcaro	Keith	O/S, MA	X		X		X	X	technology governance, software, design	31	M	W		N	N
41		Porter	Todd	2						X	Public Policy	53	M	W		N	N
42		Radogna	Anthony	4		X		X	X	X	Ethics, UPL	40	M	L/O	Italian	N	N
43		Ranasinghe	Kelly	O/S NV		X		X		X		35	M	A		N	Y
44	X	Rothschild	Toby	4		X	X					74	M	W		N	N
45		Schmid	Teresa	2				X		X	Lawyer regulation, access to justice	70	F	W		N	N

**Attachment B - Applicant Worksheet
ATILS - ATTORNEY APPLICANTS**

No.	Recommending Appointment	Last Name	First Name	District	Area of Expertise (check all that apply):								Age	Self-Identified Diversity Traits				
					AI/Tech	Consum. Protection	Legal Aid / Service	Economic Futurist	LRS, Directory	Paralegal, Doc Prep	Other	Other field		Gender	Race/Ethnicity	Non English Language	Veteran	Disability
46		Scott	Robert	4			X		X				68	M	W	Arm, Sp	N	N
47		Smith	Stephen	O/S, MA									40	M	W		N	N
48		Stern	Stephen	4		X	X		X		X	Mobile Law Center	57	M	W		N	N
49		Stockdale	Myrllys	3		X			X	X	X	Public Relations, Marketing	53	F	B		N	N
50	X	Tuft	Mark	1								Former Rules Rev. Comm.						
51	X	Walker	Joshua	6	X						X	REGTECH, Legal AI, Automation Platforms	44				N	N

**Attachment B - Applicant Worksheet
ATILS - NON ATTORNEY APPLICANTS**

No.	Recommending Appointment	Last Name	First Name	District	Area of Expertise (check all that apply):								Age	Self-Identified Diversity Traits				
					AI/Tech	Consum. Protection	Legal Aid / Service	Economic Futurist	LRS, Directory	Paralegal, Doc Prep	Other	Other field		Gender	Race/Ethnicity*	Non English Language	Veteran	Disability
1	X	Arruda	Andrew	1	X		X	X	X				29	M	L	Portugese	N	N
2		Arsedo	Barbara	1					X								N	N
3		Bibel	Samantha	3						X			54	F	W		N	N
4		Boehme	Simon	1	X	X	X						26	M	W		N	N
5	X	Chang	Wendy	2								Former Rules Rev. Comm.						
6	X	Chavan	Abhijeet	2	X			X			X	Web	50	M	A	O (Hindi)	N	N
7		Clausen	Jean	O/S, IA					X				47	F	W		N	N
8	X	Dean	Valarie	2			X		X	X	X			F	B		N	N
9		Drolshagen	Johann	2	X		X	X	X		X	ADR	48	M	W	O (German)	N	N
10	X	Edmon	Justice Lee	2								Former Rules Rev. Comm.						
11	X	Gonzalez	Lori	1			X			X	X	Administrative/ Operations	41	F	W	Spanish	N	N
12		Hill	Steve	2	X		X			X	X		48	M	W		N	N
13		Morse	Heather	2							X	Marketing, Business Development	53	F	W		N	N
14		Pereira	Linda	1			X			X			58	F	C/AI		N	N
15	X	Raby	Joyce	O/S, CO	X		X	X					54	F	W		N	N
16		Reardon	John	4							X	law student	47	M	W		N	N
17	X	Rice	Daniel	2	X	X	X		X	X	X		37	M	W		N	N
18	X	Rodriguez	Allen	2	X				X	X	X	marketing tech, alt. business models in law	47	M	L	Spanish	Y	N
19	X	Rubins	Daniel	1	X								34	M	W	Spanish	N	N
20		Simonsen	Spencer	1	X						X	consumer legal technology	28	M	A,W		N	Y
21		Tromans	Richard	O/C LONDON	X			X					54	M	W		N	N
22		Valverde	Angelina	6			X			X			38	F	L	Spanish	N	N