



The State Bar of California

Task Force on Access Through Innovation of Legal Services – Subcommittee on Rules and Ethics Opinions

To: Rules and Ethics Opinions Subcommittee
From: Allen Rodriguez and Lori Gonzalez; Kevin Mohr
Date: December 31, 2018

QUESTION: How could we improve access to justice through innovation *if there were no rules*? As we previously discussed, please identify categories of services. For each category, please add specific examples of products that either *do* exist but can be improved, or completely new ideas. Each idea should be easy enough for a non-tech person to understand all the steps in the proposed process so that each step can be independently analyzed under the rules. An easy-to-follow outline format is preferred.

INTRODUCTION

This seemingly simple question was actually very challenging. Narrowing it down to a few categories/suggestions is quite difficult as innovation is unleashed and not necessarily planned. Currently the legal system prohibits a lawyer (i) from sharing profits received from practicing law, (see California Rule of Professional Conduct (“CRPC”) 5.4(a)), (ii) from permitting a person who employs the lawyer to provide legal services to a third person to “direct or regulate” the lawyer’s independent professional judgment, (CRPC 5.4(c)), or (iii) from working in an organization with nonlawyer ownership interests, (CRPC 5.4(d)). Entrepreneurs are eager to find innovative solutions to problems, including those in the legal industry – and are often the life-blood to real innovation in any industry. However, entrepreneurs often find after reviewing the rules as they are written today, the risks outweigh the potential rewards for solving the problems in access to justice.

This memo takes a small cross-section of ideas from differing disciplines and individuals who are familiar with the current system and its rules. Redesigning the closed system of today and opening it up to other disciplines with differing skills sets can create an environment more conducive to unleashing innovation. True innovation does not happen without true diversity. A perfect example of a closed system that was later opened for the good of all is the internet itself. When the internet was freed from overregulation, it inspired many of the innovations that we enjoy today. By creating more open and freer environment, entrepreneurs and lawyers together can create all the services imagined below - and an infinite number of those not yet imagined. To clarify, it is not contemplated that the environment for increasing access to justice should be unregulated. In making recommendations, the Task Force is charged with evaluating how changes in certain rules, including those governing partnerships or fee sharing with nonlawyers, “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.”

A reoccurring theme of issues identified in creating this list of potential improvements to access to justice include unauthorized practice of law concerns, fee splitting, law firm ownership, and how we define the practice of law and professional independence.

DISCUSSION

I. EVALUATION/INFORMATION GATHERING.

- a. The subcommittee individuals who approached this question gathered information from a variety of sources. These included:
 - i. Personal interviews

- ii. Social media polls/questions
 - iii. Previous experiences and discussions
 - iv. Online research and information related to the topic
- b. The type of individuals who responded with suggestions/ideas included:
 - i. Law Professors
 - ii. CEOs of legal tech companies
 - iii. In house counsel of legal tech companies
 - iv. Lawyers
 - v. Entrepreneurs
 - vi. Law librarians
 - vii. Law management professionals

II. CATEGORIES OF SERVICES.

A breakdown of different categories of services which could have an impact on access to justice through innovation are listed below. These categories include paraprofessionals, software services, lawyer referral services, alternative business models for the delivery of legal services, limited scope representation, and court-based services. Specific examples of existing or potential services are also included.

a. Paraprofessionals

- i. Limited scope family law services – As noted in Marsha M. Mansfield, *Litigants Without Lawyers: Measuring Success in Family Court*, 67 [Hastings Law Journal](#) 1389 (2016), family law is an area where 80% of litigants are unrepresented and have little to no other options for nonlegal means to resolve their disputes. Offering to these individuals lower cost assistance by persons who may be less skilled than a lawyer (but more knowledgeable than a DIY solution) could greatly improve the pro se individual's experience in the legal system. Additionally, the courts could find the time spent on cases is lessened if pro se individuals have knowledge and assistance to maneuver complicated – but mainly procedural – questions and needs.

- 1. Washington Limited License Legal Technicians (“LLLTs”) – in Washington, LLLTs are authorized to provide advice, complete and file court documents, assist with court scheduling, and support clients in traversing the legal system.
 - a. There is a defined list of services the LLLTs can provide and requirements in order to obtain a LLLT license. (See [Wash. APR 28F](#), defining scope of practice authorized by LLLT Rules)
 - b. These individuals can offer assistance at a cheaper rate than lawyers.
 - c. There are currently 39 listed LLLTs in the program.

2. Form specific or process specific certification – Paraprofessionals are often responsible for the drafting and completion of many forms on behalf of lawyers. Creating an appropriate process to allow paraprofessionals to be licensed for form specific advice and completion could provide many more options than legal aid/self-help centers.
 - a. Paraprofessionals could possibly work under specific licensing requirements or there could be one lawyer supervising many paraprofessionals (similar to a nurse practitioner in the medical field). (See [CRPC 5.3 \(Responsibilities Regarding Nonlawyer Assistants\)](#))
 - b. For insights into how this may work more broadly across other legal services, we can look to programs for [social security advocates](#) and [immigration accredited representatives](#) (see more information on this below).
- ii. Immigration – Accredited Representatives –
 1. A list of [organizations](#) and [representatives](#) who can assist individuals with immigration issues is maintained by the Department of Justice. These accredited individuals/organizations are not licensed to practice law but are licensed to assist aliens before DHS and the Executive Office for Immigration Review (“EOIR”) which includes the immigration courts and the Board of Immigration Appeals.
 2. Immigration law is one area that remains very complicated, even for those in the legal profession who practice it regularly.
 3. Reviewing the government’s programs/requirements to help individuals navigate one of the most confusing areas of law would be an effective model for doing the same in state law for less complicated areas of practice.
- iii. Welfare Benefits assistance – Pro se individuals have a variety of needs that need addressing that may end with legal assistance, but often start with issues surrounding job placement, monetary concerns/needs, etc.
 1. Creating a specific area of paraprofessionals who were familiar with navigating welfare benefits and providing those for low cost could ease the need for legal services for these individuals who may face eviction, garnishments, bankruptcy, etc. because of unmet monetary needs.
- iv. Other areas paraprofessionals could be trained for specific needs:
 1. Veteran benefits – Some preliminary research suggested 75% of initial applications for veteran benefits are denied.
 - a. Often when re-applying the approval rate is much higher because the denials are often based on small issues of noncompliance with information gathering.
 - b. Attorneys regularly take these cases on appeal but not during the initial application.

- c. Having a paraprofessional trained to provide low cost assistance with the initial applications would save the need for complicated and costly appeals.
 - 2. School discipline/individual education plan (IEP) – This is an area where lawyers are difficult to obtain and may not be affordable for low to moderate means clients.
 - a. Allowing paraprofessionals to work directly with the school system to assist parents in navigating school needs would be a cheaper alternative to hiring a lawyer who may be hard to find.
 - b. Additionally, a lawyer could create a network of paraprofessionals that the lawyer could supervise in this area to ease the burdens in rural areas where lawyers may be even harder to obtain. (CRPC [5.3 \(Responsibilities Regarding Nonlawyer Assistants\)](#).)
 - 3. Disputes Involving Administrative Discretion – Any area where administrative discretion is allowed could benefit from accredited representatives such as those found in the immigration system.
 - 4. Minors in group homes - Social workers are often charged with caring for many children in group homes and may find themselves filling out legal forms to assist minors with receiving various benefits.
 - a. Paraprofessionals with legal training could assist as child advocates to serve this role instead.
 - b. This increases the social worker's capacity to focus on child welfare in general and not on specific problems related to benefits or other administrative issues.
- b. Software Services
- i. Fastcase BK (formerly TopForms) – This is a bankruptcy form subscription model sold to lawyers.
 - 1. The software intakes basic information from the clients, conducts an interview to determine which specific forms and documents are needed and then provides the lawyers with completed forms.
 - 2. Attorneys resell the form generation service to the general public at a markup.
 - 3. Software like this could be made available to the public directly, with appropriate warnings and suggestions for seeking assistance from a lawyer, for the more complicated issues/concerns. (CRPC 5.5 (Unauthorized Practice of Law); [Bus. & Prof. Code §§ 6125 et seq.](#))
 - ii. WealthCounsel - like Fastcase BK, WealthCounsel provides document automation for estate planning documents to lawyers.
 - 1. Again, solutions like these can be made available to the public so that more pro se individuals could generate a will and take care of other routine estate planning related matters (medical and financial POAs).

2. With proper partnerships between these providers and the legal field, many consumers who get zero assistance with these types of documents could be provided with intelligently designed interviews. ([CRPC 5.3 \(Responsibilities Regarding Nonlawyer Assistants\)](#); [CRPC 5.4\(a\), \(c\), \(d\) \(Financial and Similar Arrangements with Nonlawyers\)](#); [CRPC 5.5 \(Unauthorized Practice of Law\)](#); [Bus. & Prof. Code §§ 6125 et seq.](#)) Those interviews would identify those who need simple solutions and provide those solutions for a fraction of the cost but could also steer those who might have more complicated issues to lawyers.
- iii. Simple Will Online Service Providers – The current state of online will preparation providers such as LegalZoom offers these services like a scrivener might offer services - simply capturing what information the user intends to document.
1. Using LegalZoom’s system, a user who inputs gross assets of \$1,500,000 would simply get a will generated from a very basic form that lists these types of assets.
 - a. The system is not designed (because of UPL concerns) to identify potential issues or alternative suggestions for estate planning in this scenario. [CRPC 5.5 \(Unauthorized Practice of Law\)](#); [Bus. & Prof. Code §§ 6125 et seq.](#))
 2. A lawyer may advise this individual that a living trust or other legal instrument is more appropriate.
 3. It would be a very simple solution to have this same type of software provide an alert that identifies additional options for this user (such as “based on your assets of \$1,500,000 you may be better served by a living trust which will also include a will. Are you sure you wish to continue, or would you prefer to learn more about a living trust now?”)
 4. Currently, all online will-generating software sold directly to consumers does not provide such alerts though beneficial because of UPL concerns. [CRPC 5.5 \(Unauthorized Practice of Law\)](#); [Bus. & Prof. Code §§ 6125 et seq.](#))
- iv. LegalInc - Business formation services sold directly to lawyers.
1. Ironically, the service itself handles setup of the entity including obtaining EIN numbers and many other services law firms may not offer as part of the formation process, they sell. The model is designed to allow attorneys to spend a small amount of time providing real legal consultation and the software provides the bulk of the form generation and documentation work. The form generation and services provided by LegalInc. are then sold to the public at a markup by the lawyers.
 2. A software wizard could guide a pro se user (just like it does for lawyers) through the pros and cons for most formation questions and make specific recommendation if not for concerns over UPL. [CRPC 5.5 \(Unauthorized Practice of Law\)](#); [Bus. & Prof. Code §§ 6125 et seq.](#))

3. Additionally, CPAs are often required for anyone needing assistance in forming a business.
 - a. More so than potential liability issues, tax consequences of entity formation cause more monetary concerns for new businesses than those of potential liability.
 - b. Small businesses may make poor choices related to entity formation if they seek a lawyer's assistance only because of liability concerns with no knowledge of the actual monetary tax consequences they will face during tax season.
- v. [SmartLien](#) – This service assists construction professionals with filing a lien for unpaid services.
 1. The company is owned and operated by attorneys, so while providing legal services, the funding options for this startup - which is consumer facing - is limited and affected by ethical rules around fee sharing. ([CRPC 5.4\(a\), \(c\), \(d\).](#)) Construction professionals to pay \$250 to file a lien for unpaid amounts owed under \$5,000 and \$500 for amounts owed to them over \$5,000. As a law firm owned service, SmartLien cannot seek venture capital to scale growth.
 2. By contrast, [Zlien.com](#) is a very well-funded legal tech company that provides similar services related to the generation of liens but cannot provide legal advice. UPL restrictions limit the ability of both consumer facing solutions in ways that minimize their effect on access to justice for these smaller construction claims. ([CRPC 5.5 \(Unauthorized Practice of Law\)](#); [Bus. & Prof. Code §§ 6125 et seq.](#))
 3. A hybrid of these two models would greatly improve the quality and accessibility of these specific services.
- vi. [AI Powered Website Bots](#) –AI powered chatbots could be built that help people navigate and prepare various claims in areas such as family law, consumer debt, small claims courts or claims under certain amounts for which getting legal assistance may not be cost effective.
 1. It was noted by the individual offering this as a suggestion that most lawyers have no ability to create such automated bots.
 2. Relevant regulations. [CRPC 5.5 \(Unauthorized Practice of Law\)](#); [Bus. & Prof. Code §§ 6125 et seq](#)
- vii. [Models like tax preparation software](#) (such as Turbo Tax) could be created for the legal field.
 1. In most models, for very small basic tax needs, free or very affordable pricing is available to individuals who need to perform routine tax preparation. Interviews are designed to “catch” potential items that would typically need a CPA or accountant to review and the consumer is warned (and sometimes required) to contact a tax professional.

2. There are endless areas in legal where similar types of software could greatly reduce the confusion surrounding the legal field.
3. For now, the only options that are consumer facing are fill-in-the-blank forms that can be rejected by courts.
 - a. Additionally, lawyers have warned the public against the use of these forms causing a lack of consumer confidence.
- c. Lawyer Referral Services - Currently, the California State Bar rules governing Lawyer Referral Services (LRS) prohibit these services from providing referrals to clients solely through the use of AI and/or electronic/digital/online referrals. A referral service must currently make personal contact with a client, at some time during the referral, as per the following Rules:
 - i. Lawyer Referral Service Rules (Effective January 1, 1997) Excerpt From Rules Of The State Bar Title 3. Programs and Services Division 5. Providers of Programs and Services, Referral Procedures
 1. Chapter 3. Lawyer Referral Services 13.5 A Lawyer Referral Service shall not be principally operated by a telephone answering service or device.
 2. This restriction limits these services when offering referrals to clients outside of business hours.
 - ii. Previous attempts at using “outside” services, i.e. AVVO, etc. did not meet the regulation guidelines as set forth by the California State Bar.
 - iii. Regulatory Hurdles. Current regulations require an attorney must be in good standing with both state and local bars, carry legal malpractice insurance and meet Experience Panel requirements for their specific areas of practice. The conditions must be verified every year. Outside services that provide referrals or lists of attorneys to clients were not meeting these standards.
 - iv. Statewide vs. County Certification. Additionally, lawyer referral service must be certified on a per county basis - which with today’s technology really offers no benefit to the consumers. A statewide certification should be implemented so that lawyer referral services can expand referral opportunities for anyone that calls a service.
 - v. Relevant Regulations. See [Bus. & Prof. Code § 6155](#); [Rules and Regulations of the State Bar of California Pertaining to Lawyer Referral Services Including Minimum Standards for a Lawyer Referral Service in California](#); [CRPC 1.15 \(Trust Account Requirements\)](#); [CRPC 1.16 \(Terminating Representation\)](#); [CRPC 7.3 \(Solicitation of Clients\)](#).
- d. Partnerships between lawyers/law firms and other professionals
 - i. Full Service Professional Firms – Allowing partnerships between a group of professionals who could assist the client with many needs – all under the umbrella of one convenient entity so clients paid one invoice to one entity vs finding several differing professionals.
 1. The Big Four accounting firms are already doing this ([see this article](#)) but smaller law firms that serve small or medium-sized businesses and

consumers can also provide significant value to their client base under this model.

2. Approaching the needs of clients from a systems perspective– not just the clients’ legal needs. (E.g. – tax needs, estate planning legal needs, counseling, financial planning, mortgage brokers, etc.) This approach could significantly improve overall solutions for clients.
 3. Systems-based provider groups could also help attorneys charged in disciplinary matters who may need attorney discipline firms – (defense of discipline, counseling, tech assistance for better efficiency, trust accounting professionals).
 4. Relevant regulations. [Bus. & Prof. Code § 6068\(e\)](#) (duties of confidentiality and loyalty); [CRPC 1.6 \(Confidentiality\)](#); [CRPC 1.7, 1.9, 1.10](#) (Conflicts of Interest); [CRPC 2.1 \(Advisor – duty to exercise independent professional judgment\)](#); [CRPC 5.3 \(Responsibilities Regarding Nonlawyer Assistants\)](#); [CRPC 5.4 \(Financial and Similar Arrangements with Nonlawyers\)](#); [CRPC 5.5 \(Unauthorized Practice of Law\)](#); [CRPC 7.3 \(Solicitation of Clients\)](#).
- ii. Investment / fundraising for lawyers – Currently the pool of potential investors in law firms/lawyers is simply other lawyers/law firms.
1. Having shareholders that could contribute case and share in equity would greatly improve the legal field’s options for acceleration and innovation. (see a specific example in our description of SmartLien, at II.b.v,above).
 2. Relevant regulations. [CRPC 5.4\(a\), \(b\), \(d\)](#).
- iii. Incubator models built by those outside of the legal field. There are administrative and managerial entities that could create franchise style law firms wherein less experienced lawyers could gain access to these pre-built systems for a portion of their profits in lieu of expensive front-end costs.
1. In this instance, lawyers could gain access to proper management, accounting, form creation, software customization and a variety of other back office assistance in exchange for a portion of the profits they make moving forward.
 2. This model would allow the lawyers to focus on practicing law, finding and assisting clients and reduce some of the “solo” impediments to practicing law.
 3. This model is subject to numerous restrictions, including those on fee sharing with nonlawyers, forming a partnership or other organization with nonlawyers, practicing in an organization in which a nonlawyer has an ownership interest, and the potential for a nonlawyer to direct or regulate the lawyer’s independent professional judgment or interfere with the lawyer-client relationship. [See CRPC 5.4\(a\), \(b\), \(c\), \(d\)\(1\)](#). In addition, there could be issues involving a lawyer’s duty of confidentiality, conflicts of interest, and the supervision of nonlawyer

assistants. See [Bus. & Prof. Code 6068\(e\)](#); [CRPC 1.6 \(disclosure of confidential information\)](#); [CRPC 1.8.2 \(use of confidential information\)](#); [CRPC 1.7 \(current client conflicts\)](#); [CRPC 1.9 \(former client conflicts\)](#); [CRPC 5.3 \(responsibilities regarding nonlawyer assistants\)](#).

- iv. Marketing based referral partnerships – marketing within the legal field is still a growing industry that was taboo for many years. Other industries are far ahead in marketing expertise because they embraced marketing as a field much earlier than the legal field. Allowing marketing experts to partner with law firms and lawyers to build effective client retention products would provide more effective matching services for clients and lawyers.
- e. Limited Scope Representation – There is substantial opportunity to help middle- and lower-income consumers and businesses by providing clarity around how lawyers may provide limited scope services.
 - i. Clarity about limited scope services can also inspire more predictability in attorney’s fees for consumers.
 - ii. Attorneys (even ones in our committee) have voiced concerns over such arrangements because judges may not release attorneys who have initiated some work with a client involved a family law matter even if a limited scope arrangement was made.
 - iii. Additionally, entrepreneurs and legal tech companies could create systems and processes with lawyers to improve limited scope services for both the consumers and lawyers.
 - iv. Relevant regulations. [CRPC 1.1 \(Failing to Act Competently\)](#); [1.2 \(Scope of representation and Allocation of Authority\)](#); [1.16\(c\) & cmt. \[4\] \(Declining or Terminating Representation\)](#); [4.2, cmt. \[4\] \(Communication with Represented Person\)](#); [6.5, cmt. \[2\] \(Limited Legal Services Programs\)](#); [8.4.1, cmt. \[3\] \(Prohibited Discrimination, Harassment and Retaliation\)](#); [Cal. Rules of Court, rules 3.35 – 3.37, 5.425 \(Limited Scope Representation\)](#).
- f. Partnerships between courts and other professionals:
 - i. Referral networks that allow fee sharing with nonlawyers so that lawyers could build an effective networking referral.
 - 1. The current rules in many states are limiting and may discourage effective referral building. (E.g., [CRPC 5.4\(a\)](#); but compare [CRPC 7.2\(b\)\(1\), \(2\)](#).)
 - 2. This should not be confused with existing rules prohibiting paying fees to runners and cappers.
 - ii. Subcontracted legal advice services for the courts – in China there is a legal services plan - [Bestone](#).
 - 1. Bestone is the largest legal plan in China (and possibly the world) with over 5000 lawyers participating in their network and answering approximately 6000 calls a day.

2. The courts in China subcontract advice calls to the legal plan so that all unrepresented parties in China obtain legal advice when needed. This not only helps pro se individuals involved in legal issues make more informed decisions, it also helps the court close matters for unrepresented parties more quickly.
3. Compare [California Family Law Facilitators](#).
- iii. Subcontracted form systems – Self-help kiosks are being used to assist pro se individuals in maneuvering court systems.
 1. By partnering with entrepreneurs, courts could fund solutions that were designed to create better legal assistance, thus minimizing the time spent assisting individuals.
 2. The funds saved by cutting down on questions from consumers, improper filings, improper forms, etc. could then be used to continue to fund even better offerings.

III. NOTATIONS / ITEMS FOR DISCUSSION CONTRIBUTED DURING EVALUATION:

- a. Potential Legal Liability. Many concerns heard during the various interviews with lawyers is that they are not willing to build form generation software products for fear that they would be sued or face disciplinary action if a consumer had issues related to the form.
 - i. This fear, while credible, means many lawyers are not willing to build and offer low cost options to their clients.
 - ii. Lawyers are by design more risk adverse so while their concerns are understandable, consumers have limited options. Entrepreneurs are by design willing to take more risks.
 - iii. Rethinking the ethics around fee sharing and ownership could provide balance in an area that would have an impact on access to justice on a large scale.
- b. Tension between Access to Justice & Public Protection. The rules are designed to ensure that the public is protected from harmful legal advice and information. One of the most interesting comments/questions during our initial evaluation is the discussion around the 77% - 80% of unmet legal needs that remain in the legal field. It would seem the first question to ask is whether the legal field (which is self-regulating) believes most consumers (whose needs remain unmet) are better protected by having no options. In protecting the public from potential bad actors or harmful advice, we have left the majority of consumers with no viable options.
- c. Transparency of nonlawyer's products and services – requiring transparency in products/services offered by those without a law license would be a necessary part of any potential new service/product offered.
 - i. Allowing consumers to make a choice between more expensive, but better-quality legal services directly from lawyers, vs products developed by others would provide choices in a market where there are few now.
 - ii. Many of the legal tech startups and professionals would welcome effective disclosure and transparency rules.

- d. The effect of UPL enforcement on tech startups – The fear of potential UPL actions has been cited by legal tech startups as the reason smaller investors are unwilling to provide funds during the early days of the business.
 - i. This lack of funding for smaller legal tech startups affects both lawyers and the consumers who could be helped – even if those products are working with the current ethical rules.

IV. **POTENTIAL TOPICS FOR DISCUSSION MOVING FORWARD.**

- a. Definition (or lack of definition of UPL)
- b. Fee sharing between lawyers and nonlawyers
- c. Ethical rules vs legislation
- d. Professional independence

CONCLUSION

This memo does not contain all the possibilities that are available. Innovation can only truly be accomplished once other disciplines and professionals are invited into the field to assist with the overwhelming issue of access to justice. Rewards for entrepreneurs and tech companies must be enticing enough to risk the time and effort it takes to create new ideas and services. Our current ethical rules are designed to only allow the hiring of these professionals as outside vendors – not the inviting of them to create new solutions.

If innovation is to be unleashed the system must be accessible to entrepreneurs and other disciplines to assist lawyers with finding solutions. Consumers and small businesses will benefit from even small changes as they are improved and perfected. This can be accomplished by creating core protections for the public and eliminating as many constraints as possible. Some suggested protections discussed during the evaluation/information gathering process are discussed below:

- Honesty/transparency/disclosure – All legal services (attorney and non-attorney) providers must disclose their certifications, qualifications, and any other information that indicates the qualifications that assists the consumer with making an informed decision on the type of service they are purchasing. Our current rules/ethics assume only lawyers can decide what legal services a consumer should have. Informed consent is at the heart of ethics when hiring lawyers. It should also be the guide for creating legal services by those who don't have a law degree.
- Source of recovery – A member of the public should have an avenue to recover losses from a legal services provider. Rules could be imposed that require all legal services providers (including attorneys, entrepreneurs or paraprofessionals) maintain sufficient insurance so that the member of the public has a source of recovery if a judgment or settlement is reached against a provider.
- Fiduciary duty – Restrictions could be imposed that require a legal services provider to work in the best interest of their client just as a lawyer is obligated to. An attorney's professional and fiduciary obligation should not change whether they own the service they provide or are an employee of another. This is a common practice in the healthcare industry where patient advocates, though employed by the hospital in which they work, often help patients navigate policies and take advantage of benefits owed to them even when it's not in the best of their employer's profits to have the patient do so.

From: Tara Burd
Date: December 10, 2018
Re: Questions for Consideration

Please consider the following two points: 1) (same as above) what ideas do you have for innovation to improve access to justice; and also 2) what need do you see that you believe technology and innovation can help with? Please be as specific as possible. (e.g. greater access to lawyers for rural communities because rural communities have complete lack of attorney services; or better guidance for small claims and limited jurisdiction matters for pro pers.)

Please submit your ideas to staff as early as possible so that Lori and Allen can consider your contributions for purposes of preparing their portion of the memo, and try to do so no later than December 21, 2018 so that it may be considered for Part 2. However, if you think of something later, please feel free to offer ideas on these two points at any time through January 7, 2019, so that it can be included in the next meeting's materials.

From: Barbara Arsedo
Date: December 27, 2018
Re: Response to Questions for Consideration

Currently, the California State Bar rules governing Lawyer Referral Services (LRS) prohibit these services to providing referrals to clients solely through the use of AI and/or electronic/digital/online referrals.

A referral service must currently make some type of personal contact with a client, at some time during the referral, as per the following Rules:

LAWYER REFERRAL SERVICE RULES (Effective January 1, 1997) EXCERPT FROM RULES OF THE STATE BAR TITLE 3. PROGRAMS AND SERVICES Division 5. Providers of Programs and Services

Chapter 3. Lawyer Referral Services

13.5 A Lawyer Referral Service shall not be principally operated by a telephone answering service or device.

This limits these services when offering referrals to clients outside of business hours.

Previous attempts at using “outside” services, i.e. AVVO, etc. did not meet the regulation guidelines as set forth by the California State Bar.

Current regulations state that an attorney must be in good standing with both State and Local bars, carry Legal Malpractice Insurance and meet Experience Panel requirements for their specific areas of practice. The conditions must be verified every year. Outside services that provide referrals or lists of attorneys to clients were not meeting these standards.

State Bar regulations need to be amended to allow them to vet the individual panel members as required yet use automated or AI programs to provide those clients who are not able to contact the LRS during normal business hours to somehow receive referrals to qualified LRIS attorneys.

Some type of regulations would need to be placed on these businesses using these automated systems to coordinate with the LRS while maintaining current standards and qualifications.

From: Dan Rice
Date: December 27, 2018
Re: Response to Questions for Consideration

1) (same as above) what ideas do you have for innovation to improve access to justice;

deregulate certain aspects of legal services; incentivize legal innovation in the private sector (i.e. through funding or incubator programs); regulatory sandbox for legaltech; evolve lawyer compensation laws to encourage use of efficient technology.

2) what need do you see that you believe technology and innovation can help with? Please be as specific as possible. (e.g. greater access to lawyers for rural communities because rural communities have complete lack of attorney services; or better guidance for small claims and limited jurisdiction matters for pro pers.)

Technology can decrease the cost of legal services by automation of repetitive tasks like paralegal work, and reduce court caseload by handling disputes through other channels, even automated channels. Technology can also decrease disputes by helping lawyers complete work faster with increased quality.

From: Andrew Kurcera
Date: January 2, 2019
Re: Response to Questions for Consideration

What ideas do you have for innovation to improve access to justice?

What need do you see that you believe technology and innovation can help with?

- I think a good approach to these questions is that if there were no CRPCs, what would we do? Logically, then, we would look at what CRPCs that conduct would violate and reevaluate those CRPCs. For example, from my perspective as a lawyer/entrepreneur, I would like to increase access to legal representation for modest means consumers and residents of rural areas. I have some expertise and experience with delivering legal services to these groups, but very little expertise or experience with innovative technology that could be used to accomplish this. So, I would look to partner with someone who can bring this to the table. Collaboratively, we could tackle the problem and come up with possible solutions that would be both a profitable business opportunity and a driver of social good. To do this, the right incentives need to be in place. I see that co-ownership of the entity would create the greatest incentives for all parties. However, this would violate CRPC 5.4(a), (b), and (d). This is just an example, and I think CRPC 5.4 is already under consideration by the Subcommittee on Rules & Ethics.

- I also think it's worth noting that the link between technology/innovation and access to justice is often indirect. For example, we might look at improving access to legal representation for low- and moderate-income residents of rural areas. If these residents don't have direct access to technology (i.e. a computer, internet service, or even a phone with a data plan), then technology can't help them directly. What technology can and should do, is make it less expensive and more efficient for lawyers to

serve these consumers. So, innovation and technology assist the lawyer, and the lawyer serves these clients. The range of innovation and technology that can lower expenses and increase efficiency of lawyers is very broad, and does not even have to relate to the ultimate objective – to increase access to legal services for rural consumers. For example, the introduction of cloud-based practice management platforms about 10 years ago was a huge step forward. The platforms, hosted remotely and billed on monthly subscriptions (essentially SAAS), allowed solo and small-firm lawyers to manage their practice more efficiently, at a much lower cost. These efficiency gains could be (and are being) passed on to consumers in the form of the lawyer being able to accept more clients at reduced fees. So, to think of innovation and technology as assisting lawyers to close the access to justice gap, the innovation and technology don't have to be specifically A2J related.

Some more specific answers to the questions:

What ideas do you have for innovation to improve access to justice?

- Again, anything that allows lawyers to practice more efficiently, providing a market-based approach to closing the A2J gap.
- Looking at low-bono and rural consumers of legal services, often they have little or no technology, but they are likely to have a phone with data service. What types of legal services could we simplify to be accessed with just a phone? Likely:
 - Basic estate planning
 - Basic family law
 - Small civil claims

What need do you see that you believe technology and innovation can help with?

- Looking again at modest means and rural consumers, they have a need for basic legal services that aren't available at an affordable price (or any price in some areas). So they rely on family, friends, or quasi-legal service providers like Notarios. I think technology & innovation can help provide basic legal services to these consumers. Again:
 - Basic estate planning
 - Basic family law
 - Small civil claims