



MEMORANDUM

TO: Task Force on Access Through Innovation of Legal Services

FROM: Mark L. Tuft

DATE: February 25, 2019

RE: Expanding Access to Legal Representation to Consumers in Civil Matters
Involving Critical Human Needs

As we pursue our charge of identifying possible regulatory changes to enhance access to legal services through the use of technology, including artificial intelligence and online legal services, our study should include nonprofit public benefit and advocacy organizations made up of lawyers and non-lawyers as a near-term model for enhancing the delivery of legal services to consumers in matters of critical need.

The law recognizes the right of a broad range of public interest and nonprofit advocacy organizations to provide legal services to individuals and groups in order to advance various social and political objectives (e.g., the ACLU, Natural Resources Defense Council; the Center for Biological Diversity, Disability Rights Advocates, Equal Rights Advocates). Members of these organizations and the governing boards are not limited to those licensed to practice law by the State Bar. Nor are they all required to be registered with the State Bar under the Nonprofit Public Benefit Corporation Law (Corporation Code §5110 et. seq.; §13406(b)). *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal. 4th 23, 28, 40. The constitutional limitations on the power of a state to exclude organizations that represent individuals and groups in litigation that involve matters of common interest or constitute a form of political expression is well

established. *NAACP v. Button* (1963) 371 U.S. 415; *United Mine Workers of America v. Illinois State Bar* (1967) 389 U.S. 217, 222; ABA Formal Op. 93-374 (1993). These practice settings are not hampered by issues of the unauthorized practice of law or non-lawyer involvement in the provision of legal services. The State Bar responded to the Supreme Court's directive in *Frye* to study whether additional regulation of this form of practice was necessary. To date, further regulation has not been considered necessary for purposes of public protection.

In 2016, the Legislature established a pilot program aimed at expanding access to legal representation for low-income parties in specified civil matters "involving critical issues affecting basic human needs." Government Code §68651 (e.g., housing-related matters, domestic violence and civil harassment restraining orders, probate conservatorships, guardianships; elder abuse; child custody proceedings). The pilot program is statutorily limited to "qualified legal projects" as defined under Business and Professions Code §6214 and is subject to funding restrictions which have rendered the program practically moribund. However, this legal services model could provide a framework for expanding the delivery of legal services in areas of critical need through artificial intelligence and on-line delivery systems that allow for greater efficiencies at an affordable cost to consumers. If viable, it could one of a series of recommendations that we provide to the Court.

Links:

[State Bar of California Report re Nonprofit Entity Legal Practice \(*Frye Report*\) \(2008\)](#)
[Corporation Code § 5110 et. seq](#)
[Corporation Code § 13406\(b\)](#)