

From: ATILS
Sent: Tuesday, February 26, 2019 2:34 PM
To: McCurdy, Lauren
Subject: ATILS: Email Comment on Model Rule 5.7 and Law Related Services

ATILS Task Force Members:

See email comment below from Crispin Passmore on the topic of Model Rule 5.7 and law related services, received and shared by Bridget Gramme.

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From: Bridget Gramme [mailto:bgramme@sandiego.edu]
Sent: Tuesday, February 26, 2019 11:39 AM
To: McCurdy, Lauren
Subject: Re: ATIL task force - Model Rule 5.7

"If I were at the meeting as a member of the public and allowed to speak (I like that you do that) the point I'd be making is that the paper is very focused on lawyers. It considers consumer protection only by saying that lawyers must in effect say to clients 'look, this service isn't ethical because I am not acting as a lawyer' but that isn't to my mind a real consideration of the consumer or public interest but one of dressing up protectionism as public interest/consumer protection; or suggesting that lawyers are the only ethical way to get law like service. It is almost designed to persuade clients not to go to a non lawyer service. To me a proper consideration of the consumer interest in this issue takes into account two different key points.

First is that too many individuals and small business don't get access to legal services. There is no point having perfect protection for those that make it if the unintended (or intended!) consequence is to keep the market small and exclude the majority of those that would benefit from advice and assistance. If a new rule encouraged as well as allowed firms to offer wider services then we might see new ways of reaching this currently excluded group. That is crucial to economic growth from small business as well as tackling poverty. There is great research in UK on small business legal need in particular. (see <https://research.legalservicesboard.org.uk/news/latest-research-18/> - The LSB commissioned research on small business legal need in 2013, then repeated in 2015 and 2017. This brings all of that together. The data is actually publicly available too but the reports are pretty comprehensive.)

Second is that it looks at MDPs only from the law firm end. Regulators and professions need to deal with whole market rather than just look at their narrow professional practice. So many businesses are in reality offering law like services in most of the

world. Accountancy firms, small business advisors and trade unions are just obvious examples: they find a way around the rules in most jurisdictions where there is money at stake. The effect of that is that innovation happens to benefit of big clients with money but is never available to poorer individuals and smallest business. One issue in the rule making is to think about how a non-law firm would be allowed to have solicitors added to their services - rather than just how are law like services added to regulated law firms."

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