



The State Bar of California

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

To: Subcommittee on Rules and Ethics Opinions
From: Lori Gonzalez
Date: March 14, 2019
Re: B.2. Adoption of a new Comment to Rules of Professional Conduct, rule 1.1,
regarding a lawyer's duty to be familiar with relevant technology

I am providing my comments both to the rules-based memo outline by Ms. Burd and the Assignment for a formal Motion for the Task Force to recommend adding a comment to CA Rules of Professional Conduct.

Response to "Revisions to the Rules Subcommittee's December 31, 2018 Memo" - The document submitted for comment, while containing an important perspective, appears to be written largely from an attorney risk-adverse position only. Many of the public policy concerns as identified in the Memo do not reflect the perspective of those who are not risk-adverse lawyers. I would submit that the public policy concerns appear to be more focused on attorney protectionism and less on protecting the public. A more intense discussion of whether the very protections designed to protect the public do more harm than good is necessary to come to a consensus before public policy concerns are identified by this Subcommittee. I am not confident that current data would support many of the suppositions or statements held within the document. The perspective provided within the document is one that is widely held in the legal field, and again, a very important perspective to consider. However, this task force contains individuals who do not hold these limiting views and a rewrite of the document in order to fully provide a well-rounded and complete discussion of public policy concerns could be beneficial (not only in providing a more complete picture of what is possible moving forward, but also to allow this committee to take advantage of the multidisciplinary experts within this Subcommittee). I have chosen not to comment specifically point by point, as I think the entire task force as a whole (and the public who continue to monitor our progress) could benefit more from a rewrite that provides alternate perspectives and perhaps a Subcommittee majority consensus than an overwhelming point by point dissension and discussion.

I would further caution our Subcommittee to be cautious when producing motions and documents. There is pressure to provide movement and action because of very tight deadlines and little to no communication or collaboration outside of our 1 day a month meetings. While transparency in the work of the #ATILS committee is vital and necessary, the effect of the many open meeting rules can lead to premature opinions, motions and discussions that are not ripe for dissemination. I believe our Subcommittee has much work to do on the document dated February 10, 2019. I would respectfully submit I do not believe it reflects the full discussions of the committee or the task force, nor do I believe the public policy concerns are accurately stated throughout the document from the perspective of the Subcommittee as a whole. I am grateful for the work performed on the document and think it is an important tool as we continue to discuss, debate and come to various conclusions so we can provide recommendations. Unfortunately, the extreme time and collaboration restraints make this process much more difficult. I would respectfully request this document become the main focus of our next meeting. While listed as our first agenda item at last month's meeting, we only had a few minutes to devote to this document, which was insufficient for true collaboration and discussion.

Another example of potential issues w/ the limited timeframes and lack of continued discussions outside of our meetings is our Subcommittee's assignment this month. We are tasked with preparing a formal motion to add a comment to the CA Rules of Professional Conduct. It was my understanding during our subcommittee discussions that we tabled the discussion on whether a rule change or comment would be more effective or if either was actually needed. Without first deciding this issue, our Subcommittee moved on to the discussion of whether we could agree on language of a comment if we as a Subcommittee believed a comment was more effective than a rule.

We did discuss and a majority agreed on language of a comment, but again, no decision was made as to whether a rule or comment would be more effective/necessary. Our discussion of the comment language was based on a hypothetical scenario. Thus as Subcommittee member, I am requesting we do not make a formal Motion to add a Comment until the Subcommittee has made a decision as whether a comment is the appropriate approach. Perhaps a more formal process for securing a consensus from our Subcommittee during our meetings would be useful in eliminating potential confusion of our formal recommendations. I recognize that I may simply be missing our informal consensus during the meetings as they are fast-paced and involve a lot of discussions. I appreciate the Subcommittee's understanding as we work towards a process that will inform each of us the steps we are taking together.

I want to thank each of the Subcommittee members and my dissension within these comments is largely based on the knowledge that we as individuals all have unique perspectives, experiences and opinions. The beauty of this task force is bringing those together to find recommendations that best serve the public. This Subcommittee and the #ATILS task force is comprised of individuals who are dedicated to the ultimate goal of providing recommendations that increase access to justice through innovation and I am honored to be a part of it. We may simply be jumping to solutions in our efforts to make things happen, before we have properly moved through identifying and clarifying the various problems, crowdsourcing unique and rarely heard perspectives, data and views and formalizing our actual recommendations from a majority or consensus.