



The State Bar of California

Task Force on Access Through Innovation of Legal Services – Subcommittee on Alternative Business Structures / Multi-Disciplinary Practices

To: Subcommittee on Alternative Business Structures/Multi-Disciplinary Practices
From: Joanna Mendoza
Date: June 4, 2019
Re: B.2. Recommendation: Confirm that the scope of the Task Force's charter includes entities which may or may not have lawyer ownership or operational management and/or control

Recommendation: Confirm that the scope of the Task Force's charter includes entities which may or may not have lawyer ownership or operational management and/or control

How the Recommendation Relates to the Charter: Paragraph 3 of the charter specifically states that the Task Force should 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. The charter gives the example of multidisciplinary practice models and alternative business structures, but those are often used as terms of art in the industry for models that have lawyer owners. However, the charter does not limit the types of models to be considered and should be interpreted expansively.

Pros: This proposition is an outgrowth of the State Bar's [Legal Services Market Landscape report](#). In that report, Professor William Henderson observes that "ethics rules...and the unauthorized practice of law... are the primary determinants of how the current legal market is structured....¶ Under ethics rules, any business engaged in the practice of law must be owned and controlled by lawyers. This prohibition limits both the opportunity and incentive for nonlegal entrepreneurs to enter the legal market." (Legal Market Landscape Report at page 21.) In the report's conclusion, Professor Henderson states: "By modifying the ethics rules to facilitate this close collaboration [of lawyers and nonlawyers], the legal profession will accelerate the development of one-to-many productized legal solutions that will drive down overall costs; improve access for the poor, working and middle class; improve the predictability and transparency of legal services; aid the growth of new businesses; and elevate the stature and reputation of the legal profession as one serving the broader needs of society." (Legal Market Landscape Report at page 27.)

Provided that an entity authorized to practice law is subject to appropriate regulatory standards and can be held accountable by an effective enforcement system, requiring lawyer ownership or management would not necessarily add additional public protection. In jurisdictions where there are ABS reforms that involve some percentage combination of lawyer and nonlawyer ownership, the subcommittee is not aware of strong empirical evidence that legal tech for consumers has prospered. It might be that lawyer ownership or management requirements in those jurisdictions are hindering the ability of an entity to attract the broadest array of potential innovators and investors. Lastly, even in a 100% nonlawyer owned entity some lawyer participation would most likely be necessary because the entity's business objective is development of legal tech. Those lawyers would be subject to attorney conduct rules and State Bar

regulation, including professional conduct rules mandating competence and independence of professional judgment.

Cons: Some percentage of lawyer ownership and management is regarded as a key to assuring a minimum level of competence and independence of professional judgment in any context where legal services are being provided to clients. The demise of MDP proposals after the collapse of Enron and its accounting firm, Arthur Andersen, is a cautionary tale for business structures and government oversight that place limited value on the importance of independent legal advice at the control group level of a for-profit business. Further, in those jurisdictions where nonlawyer ownership and management of law firms is permitted, at least one researcher has found that there is a lack of empirical data indicating that access to justice has demonstrably increased. (See: Study by Jasminka Kalajdzic, Associate Professor, University of Windsor, "[Alternative Business Structures & Access to Justice](#)", Report commissioned by Ontario Trial Lawyers Association (Dec. 1, 2014).)