



# 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: Andrew Arruda  
Date: May 13, 2019  
Re: B.3. Recommendation: Entities can be composed of lawyers, non-lawyers or a combination of the two however, regulation would be required and may differ depending on the structure of the entity.

**Recommendation: Entities can be composed of lawyers, non-lawyers or a combination of the two however, regulation would be required and may differ depending on the structure of the entity.**

*(Motion to submit recommendation for consideration by the full Task Force was approved by the subcommittee on May 13, 2019 (4-0-0).)*

**Pros:** In the legal industry, there is no existing definitive structure that has demonstrated an ability to spark technology-based innovation in delivering legal services to consumers. Experimentation with all options seems important for a thorough assessment, and regulatory reform methods, such as a regulatory sandbox or another controlled environment, may be considered. Different strategies for balancing public protection and innovation should be tailored to different structures. While a tech entity comprised of a majority of lawyer owners might be conducive to modest reforms that are similar to the regulation of a certified professional law corporation, that should not be considered as a “one-size fits all” paradigm for all possible structures and combinations.

**Cons:** A multiplicity of structures for different new providers that each have their own rules and regulations may result in consumer confusion and stifle consumer adoption of any one of those new market participants. Robust consumer education and outreach would be needed to help consumers, as well as lawyers, understand the new regulatory structures and the public protection consequences of a consumer using, or a lawyer participating in, one or more of the new legal services providers.

To: Subcommittee on Alternative Business Structures/Multi-Disciplinary Practices  
From: Joanna Mendoza  
Date: May 6, 2019  
Re: B.3.a. Parameters under which these entities will be permitted to operate  
B.3.b. Regulatory schema

**What exactly will be regulated, including what are the important aspects of that regulation?**

Recommendation for hybrid individual and entity regulatory model: The subcommittee engaged in an in-depth discussion about the type of legal service providers that would be regulated under the proposal and came to agree on many aspects. Consensus was reached that the subcommittee is recommending a hybrid model that will allow individual licensing/registration/certification as appropriate (e.g., lawyers, LLLTs, paralegals, etc.) but will also allow for entity regulation. Entity regulation would encompass all forms of entities with regulation to be adjusted accordingly depending upon the scope of attorney involvement: a) attorney-only entities that include passive outside investment; b) entities owned/operated by a combination of attorneys and non-attorneys; and c) entities owned/operated by non-attorneys.

Recommendation for aspects to require under new regulatory scheme: Much of the discussion was focused upon important aspects of regulating the entities and individuals under this regulatory scheme. Under the proposal, attorneys would continue under the existing regulatory scheme with rules changes as necessary to allow for implementation of the proposed structure.

Aspects applicable to all regulated entities and non-attorney individuals:

- 1) Create registration/certification structure/rules under the regulatory agency required in order to do business and be an exception to the UPL statute.
- 2) Incentivize specific types of legal services identified as most needed by the California Justice Gap Study. May include different fee structure for regulated entities and individuals, limiting registration/certification to those areas, and/or requiring a certain percentage of regulatory fees to be earmarked for legal services to help close the justice gap.
- 3) Require specific disclosures to consumers if services are not provided by licensed attorney (ensured informed consent).
- 4) Extend attorney/client confidentiality requirement to entities and other individuals delivering legal services (incl. prohibition against data sharing/selling).
- 5) Require data collection and reporting to regulatory agency (including specific data tracking impact on access to justice).
- 6) Require transparency (incl. providing credentials of service providers and pricing).
- 7) Require attorney sign-off/approval of law applied to service (e.g., ensuring that technology/AI apply law correctly).
- 8) Create a code of conduct and best practices applicable to regulated entities and non-attorney individuals.
- 9) Do not allow representation in court unless by attorney (current exceptions remain).
- 10) Each regulated entity and non-attorney individual would be given a number (like State Bar number) to allow consumers to know about validity of registration/certification.

11) Enforcement of regulations would be in form proposed by IAALS white paper.

Aspects applicable to regulated entities in particular:

- 1) Outside shareholders/owners allowed (including passive investment) but consumer interest shall remain paramount.
- 2) Attorney owners can be disciplined individually for violations of entity regulations and any applicable rules violations.
- 3) Corporate entities and LLCs must be a California entity or registered foreign entity in CA with annual statement of information identifying officers and directors and registered agent for service of process. Partnerships would need to identify all partners with the regulatory agency and identify a registered agent for service.

To: Subcommittee on Alternative Business Structures/Multi-Disciplinary Practices  
From: Joanna Mendoza, Bridget Gramme, Andrew Arruda, and Jean Clausen  
Date: June 4, 2019  
Re: B.3.c. Organization which will be responsible for regulating these individuals or entities

**What organization(s) will regulate these individuals or entities?**

**Option 1: State Bar to Regulate (Mendoza)**

- a) Scope of regulation would broaden to include all entities/individuals providing legal services. This could include a name change for the agency allowing consumers to more easily identify it as a regulatory agency for anything falling under the umbrella of legal services.
- b) Regulation would continue to fall under the Judicial Branch with oversight by the California Supreme Court.
- c) The regulatory Board would have one or more commissions/committees under its oversight (similar to Committee of Bar Examiners and Board of Legal Specialization) which would propose policies and regulation for the different forms of legal services (e.g., entities, LLLTs, paralegals, document preparers, etc.).
- d) The regulatory fees charged for registration/certification of each form of legal service provider would cover the cost of regulation and discipline.

**Option 2: State Bar and an Independent 3rd Party Agency to Regulate Individuals and Entities (Gramme/Arruda/Passmore)**

**Recommendation Option #2:** State Bar and an Independent 3rd Party Agency to Regulate Individuals and Entities (Gramme/Arruda/Passmore)

**Pros:** An independent body can ensure that consumer needs – and not attorney self-interests—are at the heart of the regulatory scheme. It may also be more innovative and creative in its regulatory approach as opposed to being limited by the existing framework.

**Cons:** It might be challenging (and potentially confusing to consumers) to have one entity—the State Bar—regulating individual lawyers, and a wholly separate entity regulating entities.

**Option 3: State Bar and Federal Body to Regulate (Clausen)**