



# The State Bar of California

## Task Force on Access Through Innovation of Legal Services – Subcommittee on Unauthorized Practice of Law and Artificial Intelligence

To: ATILS Task Force  
From: Subcommittee on UPL and AI  
Date: June 28, 2019  
Re: B.1. Recommendation: The Task Force does not recommend defining the practice of law.

**Recommendation approved by the Task Force:** The Task Force does not recommend defining the practice of law.

*(Recommendation and Report approved by the Subcommittee – 5 yes, 0 no, 0 abstain)*

**Background:** California Business and Professions Code § 6125 prohibits the unauthorized practice of law in California. The statutory scheme, however, does not define “practice of law”. The common definition of the term can be originally found in *People v. Merchants Protective Corp.* (1922) 189 Cal. 531 as “the doing and performing of services in a court of justice in any matter depending therein throughout its various stages and in conformity with the adopted rules of procedure” and has been understood in practice to include legal advice and transactional legal services as well. *Birbower, Montalbano, Condon & Frank v. Sup. Ct.* (1998) 17 Cal.4th 119, 128. This definition has been applied in an individualized fact specific manner, giving it sufficient agility to address the numerous, and oftentimes ever changing, factual circumstances where attempts to bypass the UPL rules have resulted in actual harm, or the substantial potential for harm, to members of the California public.

The Task Force, in reviewing the above, agrees that the current approach is sound and in the public interest. Thus, the Task Force’s recommendations do not involve a change to existing rules or statutes as to the definition of UPL.

**How the Recommendation Relates to the Charter:** This recommendation addresses Task 1 of the Charter.

- 1) Review the current consumer protection purposes of the prohibitions against unauthorized practice of law (UPL) as well as the impact of those prohibitions on access to legal services with the goal of identifying potential changes that might increase access while also protecting the public. In addition, assess the impact of the current definition of the practice of law on the use of artificial intelligence and other technology driven delivery systems, including online consumer self-help legal research and information services, matching services, document production and dispute resolution . . .

**Pros:** This approach seeks to continue the current common law approach evidenced through a large body of case law going back almost a century, which demonstrate that protection of the public requires an agile definition to address numerous ways for actual and potential harm from UPL practitioners. Other attempts to codify the definition of the practice of law have not been successful. Attempting to codify the definition of the practice of law is not necessary to accomplish the Task Force’s goals.

**Cons:** The fact specific approach against a broadly interpreted definition creates uncertainty for anyone operating in factual scenarios that have not been interpreted by existing law to either constitute UPL or not. However, the safe harbor recommendation provides certainty for those meeting the criteria of the safe harbor.