



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.2. Recommendation: Add an exception to the prohibition against the unauthorized practice of law permitting State-certified/registered/approved entities to use technology-driven delivery systems to engage in authorized practice of law activities.

Recommendation approved by the Task Force: Add an exception to the prohibition against the unauthorized practice of law permitting State-certified/registered/approved entities to use technology-driven delivery systems to engage in authorized practice of law activities.

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

How the Recommendation Relates to the Charter: This recommendation addresses clause 2 of Task 1 of the Charter, and section 1.5 of the Henderson report (see, e.g. at pg. 12: “Rather than amend an ethics framework built for a bygone era, the public interest may be better served by a new regulatory structure that includes traditional lawyering side by side with one-to-many legal services, products and solutions created by a wide range of professionals from multiple disciplines.”)

- 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. . . .

Pros: There are several pros to this approach. 1) Members of the public have a way to identify providers who have been vetted by the regulating entity, removing their uncertainty in provider selection. 2) Providing an exception to the UPL statute or rules will provide commercial certainty, thereby incentivizing innovation to increase and improve services to clients who fall within the access to justice gap. 3) As proposed, this program will be self-funded and voluntary – thus, those who do not wish to participate and are comfortable operating under the existing definition of UPL without the safe harbor can continue to do so.

Cons: As with all technology, a new regulatory scheme will require development of new skill sets by the regulating entity that it may not currently possess, which will take time and money. The program will also require an initial set of seed funding in order to get the program up and running, so that the Bar is ready to go when the first wave of applicants submit their products.