



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.3. Recommendation: The Regulator of State-certified/registered/approved entities must establish adequate ethical standards that regulate both the provider and the technology itself.

Recommendation not yet voted on by the Task Force: The Regulator of State-certified/registered/approved entities must establish adequate ethical standards that regulate both the provider and the technology itself.

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

How the Recommendation Relates to the Charter: This recommendation addresses Task 3 of the Charter.

3) With a focus on preserving the client protection afforded by the legal profession's core values of confidentiality, loyalty and independence of professional judgment, 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, including consideration of multidisciplinary practice models and alternative business structures.

Pros: This recommendation protects the public by requiring equivalent protections across all legal services, whether delivered by technology or human. These ethical standards should enable exploration of technologies in all areas of law, with case-by-case review by an expert panel. The Regulator will be required to provide information and guidance to technology providers. Ethical uniformity of the standards will also avoid favoritism of one type of provider over another.

Cons: Establishing ethical standards may limit technology architectures and design patterns available to technology providers. (For example, a service could receive data from two parties in a matter who are adverse to each other and merge that data to create a mediation settlement. However, that utility would likely be precluded by the duty of loyalty to each party.) Additionally, these standards may also impose significant regulatory costs. Overregulation may stifle innovation. While the public protection functions remain paramount, due care should be given for reasonably applying these ethical duties to technology providers.