



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: Bridget Gramme
Date: June 13, 2019
Re: D.3. Recommendation: Non-lawyers will be authorized to provide the limited delivery of legal services as an exemption to UPL with appropriate regulation.

Recommendation approved by the Task Force: Non-lawyers will be authorized to provide legal advice and services as an exemption to UPL with appropriate regulation

How the Recommendation Relates to the Charter: The Charter specifically charges this Task Force with identifying possible regulatory changes to enhance the delivery of, and access to, legal services through the use of technology, including artificial intelligence and online legal service delivery models. This recommendation seeks to clarify that, to the extent non-lawyers will be permitted to deliver limited advice and services, the subcommittee recommends that they be appropriately regulated to ensure public protection and access to justice through the use of technology.

Pros: Expanding the number of individuals who may deliver certain legal services may increase access to those services by increasing supply, and also decreasing the price of those services. This recommendation would also balance that increased access with public protection by establishing a mechanism for regulating these non-lawyers that would ensure they are minimally competent to provide the services, and are accountable to consumers if they fall below established standards. Finally, having some clarity in the role non-lawyers may permissibly play will enable entities to more efficiently and certainly deliver legal services to consumers.

Cons: This type of regulation requires a very delicate balance. Defining the permissible scope of practice for limited legal services delivered by non-lawyers may be tedious and could also lead to “overregulation.” Entities may be discouraged from employing non-lawyers to perform these tasks, or individuals may be hesitant to seek permission to deliver the limited services, if it is perceived that the qualifications are too onerous. On the other hand, if regulations are too lax, critical aspects of public protection, including the maintenance of client confidentiality and the avoidance of conflicts may be compromised.

B.2 ATT 1. Points Discussed by the Subcommittee re: How will non-lawyers be regulated?

The subcommittee engaged in an in-depth discussion about the ways in which individual non-lawyers who offer certain types of legal services might be regulated in order to ensure public protection. According to the research Professor Rebecca Sandefur presented to ATILS, members of society are faced with a growing number of legal problems, some with severe adverse legal consequences to their livelihood and well-being without even knowing they have a legal problem or that they may have legal recourse in the civil justice system. Her report shows that statistically middle income persons often turn to family members or to non-lawyers in their network of acquaintances for advice. They seldom involve lawyers or they do nothing and accept the consequences as bad luck or part of life. Lawyers are believed to be out of reach to many mainly because of cost. See

http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf

In light of this, the subcommittee reached a general consensus that allowing qualified non-lawyers to advise consumers on the existence of solutions for resolving legal problems in areas of critical need (e.g., housing, health and social services, domestic relations, domestic violence) could be justified as a limited exception to UPL. In light of this, the subcommittee considered the following structural options for permitting non-lawyers to provide legal advice and services to consumers:

Option 1: Entity Regulation only

Under this option, if the Task Force (and ultimately the Court) were to implement an entity regulation model for the provision of legal services, quality control over non-lawyer individuals serving as employees of the regulated entities would be handled through the entity itself. The entity would be responsible for ensuring that its employees were complying with established standards for the provision of legal advice and services, and there would not be a parallel individual licensing scheme for non-lawyers. Under this option, non-lawyer individuals who seek to deliver limited legal services would have to establish an entity for this purpose.

Option 2: Hybrid Entity/Individual Regulation

Under this option, a separate licensing scheme for non-lawyer individuals would be established, and non-lawyer individuals delivering the limited legal services under the regulatory scheme would be individually licensed under a separate licensing category from attorneys (like the nurse practitioner model). This could be administered by the State Bar, or another separate Board could be created to regulate these individuals. To the extent these new licensees also work for regulated entities, both the entity and the licensees would be separately regulated.

Option 3: Certification of Paraprofessionals/Exemption from UPL

Under this option, individuals who wish to serve as paraprofessionals could be certified upon a showing that they have met standards for training and qualification in the particular field. Once certified, these individuals would be permitted to provide limited legal advice and assistance as an exemption from the UPL statutes.