



The State Bar of California

Task Force on Access Through Innovation of Legal Services – Subcommittee on Alternative Business Structures / Multi-Disciplinary Practices

To: ATILS Task Force
From: Subcommittee on ABS and MDP
Date: June 10, 2019
Re: B.3. Recommendation: Lawyers in traditional practice and law firms perform legal and law related services under the current regulatory framework with the intention of expanding access to justice through innovation with the use of technology and modifications in relationships with non-lawyers.

Recommendation for Re-Consideration by the Task Force: Lawyers in traditional practice and law firms may perform legal and law related services under the current regulatory framework but should strive to expand ~~with the intention of expanding~~ access to justice through innovation with the use of technology and modifications in relationships with non-lawyers.

(This recommendation was previously approved by the Task Force, however, the Subcommittee approved additional revisions to the recommendation language and the report for consideration by the full Task Force at the June 10, 2019 meeting (4-0-0).)

How the Recommendation Relates to the Charter: The recommendation furthers consumer protection in the provision of legal and law related services to the public while enhancing access to justice through the use of artificial intelligence and other technologies in association with non-lawyer vendors and service providers. The recommendation promotes a timely expansion of legal services and law related services without undue delay, especially in the most pressing areas of critical need, while preserving the client protection afforded by the core principals of confidentiality, the attorney-client privilege, loyalty, competence and independence of professional judgment.

Pros: The primacy of the judicial branch's regulation over the practice of law and the administration of justice militate in favor of retaining the current regulatory paradigm of a lawyer as client representative and advocate, as an officer of the legal system and as a person having special responsibilities for the quality of justice. Lawyers, both as individuals and as members of law firms (defined in Rule 1.0.1(c) to include an association authorized to practice law) are obligated to increase public access to legal services through innovation and technology (see Persky, *Home Grown* (June 2019) ABA Journal) in the same manner that lawyers and law firms are encouraged to increase access to justice, directly and in association with non-lawyers, through voluntary pro bono public services (see Rule of Professional Conduct 1.0, Comment [5]), through projects for the appointment of legal counsel to represent low-income persons in identified areas of critical need (See Government Code §68651) and through non-profit public benefit and advocacy corporations (See Corporations Code §13406(b) and *Frye v. Tenderloin Housing Clinic Inc.* (2006) 38 Cal. 4th 23). This recommendation is intended to enhance lawyers working in association with non-lawyers in the provision of cost-efficient legal and non-legal services either under a modified rule patterned after ABA Model Rule 5.7 or other regulatory model that fosters investment and development in technology driven delivery systems, including but not limited to on-line legal services, Alternative Legal Service Providers (ALSPs) and an expanded role for paraprofessionals and non-lawyer specialists. (see Rule 5.3). This recommendation complements consideration of any potential reforms that might involve new regulatory models, such as an entity regulation model where a corporation or other organization, rather

than an individual, is authorized to practice law under adequate public protection requirements, with the goal to increase access to justice.

Cons: Traditional lawyer regulation has not proven to foster innovation in the delivery of legal services, especially the types of innovative delivery models that might flow from enhanced competition. The slow evolution of the rules governing lawyers, including, but not limited to, lawyer advertising and solicitation, fee sharing/fee splitting, and UPL, are examples of regulatory reforms failing to keep pace with changes in the legal services market, including changes in the market driven by evolving innovation and technology and related consumer behavior and preferences.