



# The State Bar of California

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## Task Force on Access Through Innovation of Legal Services

Friday, June 28, 2019

10:00 a.m. – 10:30 a.m.

Resumes at: 12:30 p.m. – 5:00 p.m.

The State Bar of California

180 Howard Street

Board Room, 4th Floor

San Francisco, CA 94105

(415) 538-2116

**Members Present:** Justice Lee Edmon (Chair), Andrew Arruda, Simon Boehme (by telephone), Tara Burd, Abhijeet Chavan (by telephone), Jean Clauson, Johann Drolshagen (by telephone), Lori Gonzalez, Bridget Gramme, Andrew Kucera, Joanna Mendoza, Kevin Mohr (by telephone), Heather Morse, Daniel Rice, Allen Rodriguez, Toby Rothschild, Daniel Rubins, Mark Tuft, and Joshua Walker.

**Not Present:** Hon. Wendy Chang, Margie Estrada, Joyce Raby, and Angelina Valverde.

**Others Present:** Brady Dewar, Randall Difuntorum, Eli Edwards (Santa Clara University), Mia Ellis, Greg Fortescue, Mimi Lee, Lauren McCurdy, Andrew Tuft, and Leah Wilson.

### Additional Location

1 Terry Spinks Place, London E16 1YH, UK  
4134 Del Rey Avenue, Marina Del Rey, CA 90292  
421 West B Street, San Diego, CA 92101  
845 S. Figueroa Street, Los Angeles, CA 90017

### To Join by Conference Call

Toll-Free Dial-In Number: 1-855-520-7605  
Conference Code: 253-541-0212#

## ACTION SUMMARY

### A. Chair's Report

#### 1. **Roll Call**

The Chair called the meeting to order and asked staff to take a roll call of the task force members.

#### 2. **Call for Public Comment**

The Chair inquired but there was no one present in-person who wished to provide public comment.

**3. Chair's Report**

The Chair reported that a public comment letter from Genie Doi, an immigration attorney, has been received and included in the agenda materials.

**4. Staff Report**

The Chair recognized Mr. Difuntorum who reported that: (1) on July 11<sup>th</sup>, the Board will consider the Task Force's recommendations for a 60-day public comment circulation; (2) at the August 9<sup>th</sup> ATILS meeting, there will be 3 guest speakers: Jillian Hadfield from University of Chicago, Margaret Hagan from the Stanford Design Lab, and Colleen Cotter from Legal Aid of Cleveland; and (3) on August 10<sup>th</sup>, a public hearing is tentatively scheduled in San Francisco.

**5. Approval of Action Summary from the May 13, 2019 Meeting**

The Action Summary of the May 13, 2019 meeting was approved as amended (18 yes, 0 no, 0 abstain).

**B. Approval of Unauthorized Practice of Law/Artificial Intelligence Subcommittee Reports and Recommendations for Public Comment Circulation**

- 1. Recommendation:** The Task Force does not recommend defining the practice of law.  
*Motion: Approve recommendation and report.*

*Mr. Walker moved, and Mr. Rubins seconded. The Motion was approved by a roll call vote (17 yes, 0 no, 1 abstain.)*

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

*Motion: Approve recommendation as amended.*

*Mr. Rubins moved, and Mr. Walker seconded. The Motion was approved by a roll call vote (16 yes, 0 no, 2 abstain.)*

*Motion: Approve report as amended.*

*Mr. Rubins moved, and Mr. Walker seconded. The Motion was approved by a roll call vote (14 yes, 1 no, 3 abstain.)*

- 3. Recommendation:** The Regulator of State-certified/registered/approved entities using technology-driven legal services delivery systems must establish adequate ethical standards that regulate both the provider and the technology itself.

*Motion: Approve recommendation and report as amended.*

*Mr. Walker moved, and Mr. Rubins seconded. The Motion was approved by a roll call vote (12 yes, 4 no, 2 abstain).*

- 4. Recommendation:** ~~Communications~~ Client communications with technology-driven legal services delivery systems that engage in authorized practice of law activities under an approved program should receive the same or equivalent protections afforded by the attorney-client privilege and a lawyer's ethical duty of confidentiality.

*Motion: Approve recommendation and report as amended.*

*Mr. Rubins moved, and Mr. Walker seconded. The Motion was approved by a roll call vote (14 yes, 1 no, 3 abstain.)*

5. **Recommendation:** ~~Regulated~~ State-certified/registered/approved entities using technology-driven legal services delivery systems should be required to provide enhanced privacy and data security protections, scalable to consumer risk. At a minimum, they should also be required to comply with the equivalent ethical standards required of lawyers.

*Motion: Approve recommendation and report as amended.*

*Mr. Rubins moved, and Mr. Walker seconded. The Motion failed by a roll call vote (7 yes, 8 no, 3 abstain).*

6. **Recommendation:** The regulatory process contemplated by recommendation numbers X,X, and X, should be funded by application and renewal fees. The fee structure ~~should~~ may be scaled based on multiple factors such as non-profit status, revenues/profits, and/or how much the product addresses the access to justice gap.

*Motion: Approve recommendation and report as amended.*

*Mr. Rubins moved, and Mr. Walker seconded. The Motion was approved by a roll call vote (9 yes, 7 no, 2 abstain).*

7. **Recommendation:** State-certified/registered/approved ~~Regulated~~ entities using technology-driven legal services delivery systems should not be limited or restrained by any concept or definition of “artificial intelligence.” Instead, regulation ~~regulated entities~~ should be limited to technologies that perform the analytical functions of an attorney by the concept of “legal technology,” which is defined as a technologically mediated solution (i.e., entailing substantial use of software data platforms) that embodies the traditional analytic function, understanding, and/or insight of an expert attorney or member of the judiciary. This may include the technologically mediated application of law to a specific case.

*Motion: Approve recommendation and report as amended.*

*Mr. Rubins moved, and Mr. Walker seconded. The Motion was approved by a roll call vote (9 yes, 2 no, 6 abstain).*

C. **Approval of Rules and Ethics Opinions Subcommittee Reports and Recommendations for Public Comment Circulation**

1. **Recommendation:** Adoption of a new Comment [1] to Rule of Professional Conduct 1.1.

*Motion: Approve recommendation and report.*

*Mr. Rodriguez moved, and Ms. Burd seconded. The Motion was approved by a roll call vote (17 yes, 0 no, 1 abstain.)*

2. **Recommendation:** Adoption of Proposed Rule 5.4 [Alternative 1].  
*Motion: Approve recommendation and report as amended.*  
*Ms. Burd moved, and Mr. Rothschild seconded. The Motion was approved by a roll call vote (16 yes, 1 no, 0 abstain.)*
3. **Recommendation:** Adoption of Proposed Rule 5.4 [Alternative 2].  
*Motion: Approve recommendation and report as amended.*  
*Ms. Gonzalez moved, and Mr. Rodriguez seconded. The Motion was approved by a roll call vote (14 yes, 0 no, 3 abstain.)*
4. **Recommendation:** ~~Adoption of Proposed Rule 5.7~~ Consider adoption of a version of ABA Model Rule 5.7 that fosters investment and development in technology-driven delivery systems including associations with non-lawyers and non-lawyer entities.  
*Motion: Approve recommendation as amended.*  
*Ms. Gonzalez moved, and Mr. Rodriguez seconded. The Motion was approved by a roll call vote (14 yes, 0 no, 3 abstain.)*  
  
*Motion: Authorize Mr. Difuntorum and Prof. Mohr to revise the report in accordance with the recommendation as amended.*  
*Ms. Mendoza moved, and Mr. Rothschild seconded. The Motion was approved by a roll call vote (18 yes, 0 no, 0 abstain.)*
5. **Recommendation:** ~~Adoption of amendments to California Rules 7.1-7.5 that conform to ABA Model Rule counterparts 7.1-7.3~~ Consider revising California Rules of Professional Conduct 7.1-7.5 to improve communication regarding availability of legal services using technology in consideration of: (1) ABA Model Rules 7.1-7.3, (2) 2015 and 2016 APRL reports, and (3) rules adopted in other jurisdictions.  
*Motion: Approve recommendation as amended.*  
*Mr. Rothschild moved, and Mr. Tuft seconded. The Motion was approved by a roll call vote (18 yes, 0 no, 0 abstain.)*  
  
*Motion: Authorize staff to revise the report in accordance with the recommendation as amended.*  
*Ms. Mendoza moved, and Mr. Rothschild seconded. The Motion was approved by a roll call vote (18 yes, 0 no, 0 abstain.)*

**D. Approval of Alternative Business Structures/Multi-Disciplinary Practice Subcommittee Reports and Recommendations for Public Comment Circulation**

1. **Recommendation:** Confirm that the scope of the Task Force's charter includes entities which may or may not have lawyer ownership or operational management and/or control.  
*Motion: Adopt the recommendation to be included in the final report.*  
*Ms. Mendoza moved, and Mr. Tuft seconded. The Motion was approved by a roll call vote (17 yes, 0 no, 1 abstain.)*

2. **Recommendation:** Entities that provide legal or law-related services can be composed of lawyers, non-lawyers or a combination of the two, however, regulation would be required and may differ depending on the structure of the entity.  
*Motion: Approve recommendation and report as amended.*  
*Mr. Arruda moved, and Ms. Mendoza seconded. The Motion was approved by a roll call vote (14 yes, 0 no, 4 abstain.)*
3. **Recommendation:** Non-lawyers will be authorized to provide specified legal advice and services as an exemption to UPL with appropriate regulation.  
*Motion: Approve recommendation and report as amended.*  
*Ms. Gramme moved, and Ms. Mendoza seconded. The Motion was approved by a roll call vote (15 yes, 0 no, 3 abstain.)*
4. **Recommendation:** The models being proposed would include individuals and entities working for-profit and would not be limited to not for profits.  
*Motion: Approve recommendation.*  
*Ms. Clauson moved, and Ms. Gonzalez seconded. The Motion was approved by a roll call vote (18 yes, 0 no, 0 abstain.)*  
*Motion: Approve report as amended.*  
*Ms. Clauson moved, and Mr. Arruda seconded. The Motion was approved by a roll call vote (18 yes, 0 no, 0 abstain.)*
5. **Recommendation:** 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.  
*Motion: Approve recommendation as amended.*  
*Mr. Tuft moved, and Mr. Arruda seconded. The Motion was approved by a roll call vote (18 yes, 0 no, 0 abstain.)*  
*Motion: Approve report.*  
*Mr. Tuft moved, and Ms. Mendoza seconded. The Motion was approved by a roll call vote (18 yes, 0 no, 0 abstain.)*

**E. Approval of General Recommendations Not Addressed by the Subcommittees**

1. **Recommendation:** ~~That the~~ The implementation body be assigned to identify metrics designed shall: (1) identify, develop, and/or commission objective and diverse methods, metrics, and empirical data sources to assess the impact of the ATILS reforms on the delivery of legal services, including access to justice; and (2) establish reporting requirements for ongoing monitoring and analysis justice gap in California.  
*Motion: Approve recommendation as amended.*  
*Mr. Rothschild moved, and Mr. Tuft seconded. The Motion was approved by a roll call vote (17 yes, 1 no, 0 abstain.)*  
*Motion: Authorize staff to revise the report in accordance with the recommendation as amended.*

*Mr. Arruda moved, and Mr. Kucera seconded. The Motion was approved by a roll call vote (17 yes, 0 no, 1 abstain.)*

2. Other recommendations needed to clarify or enhance subcommittee proposals.  
*None.*

## **ADJOURN**

In compliance with the Americans with Disabilities Act, those requiring accommodations at this meeting should notify Lauren McCurdy at (415) 538-2107. Please provide notification at least 72 hours prior to the meeting to allow sufficient time to make arrangements for accommodations at this meeting.

The notice and agenda is available at: <http://board.calbar.ca.gov/Committees.aspx>.

## **RECOMMENDATIONS APPROVED AT THE MEETING (CLEAN)**

### **Unauthorized Practice of Law / Artificial Intelligence Recommendations**

- B.1.** The Task Force does not recommend defining the practice of law.
- B.2.** Add an exception to the prohibition against the unauthorized practice of law permitting State-certified/registered/approved entities to use technology-driven legal services delivery systems to engage in authorized practice of law activities.
- B.3.** The Regulator of State-certified/registered/approved entities using technology-driven legal services delivery systems must establish adequate ethical standards that regulate both the provider and the technology itself.
- B.4.** Client communications with technology-driven legal services delivery systems that engage in authorized practice of law activities should receive equivalent protections afforded by the attorney-client privilege and a lawyer's ethical duty of confidentiality.
- B.5.** [NOT APPROVED]
- B.6.** The regulatory process contemplated by Recommendation 2.2 should be funded by application and renewal fees. The fee structure may be scaled based on multiple factors.
- B.7.** State-certified/registered/approved entities using technology-driven legal services delivery systems should not be limited or restrained by any concept or definition of "artificial intelligence." Instead, regulation should be limited to technologies that perform the analytical functions of an attorney.

### **Rules of Professional Conduct Recommendations**

- C.1.** Adoption of a new Comment [1] to Rule of Professional Conduct 1.1
- C.2.** Adoption of a proposed amended rule 5.4 [Alternative 1]
- C.3.** Adoption of a proposed amended rule 5.4 [Alternative 2]
- C.4.** Consider adoption of a version of ABA Model Rule 5.7 that fosters investment in, and development of, technology driven delivery systems including associations with non-lawyers and non-lawyer entities.
- C.5.** Consider revising California Rules of Professional Conduct 7.1-7.5 to improve communication regarding availability of legal services using technology in consideration of: (1) ABA Model Rules 7.1-7.3, (2) 2015 and 2016 APRL reports, and (3) rules adopted in other jurisdictions.

## **Alternative Business Structures / Multi-Disciplinary Practice Recommendations**

- C.1.** Confirm that the scope of the Task Force's charter includes entities which may or may not have lawyer ownership or operational management and/or control.
- C.2.** Entities that provide legal or law-related services can be composed of lawyers, nonlawyers or a combination of the two, however, regulation would be required and may differ depending on the structure of the entity.
- C.3.** Nonlawyers will be authorized to provide specified legal advice and services as an exemption to UPL with appropriate regulation.
- C.4.** The models being proposed would include individuals and entities working for profit and would not be limited to not for profits.
- C.5.** Lawyers in traditional practice and law firms may perform legal and law-related services under the current regulatory framework but should strive to expand access to justice through innovation with the use of technology and modifications in relationships with nonlawyers.

## **General Recommendations**

- E.1.** The implementation body shall: (1) identify, develop, and/or commission objective and diverse methods, metrics, and empirical data sources to assess the impact of the ATILS reforms on the delivery of legal services, including access to justice; and (2) establish reporting requirements for ongoing monitoring and analysis.