



The State Bar of California

**ATILS AGENDA ITEM A.4.
10-07-19 MEETING**

Task Force on Access Through Innovation of Legal Services

To: ATILS Task Force
From: Staff
Date: October 2, 2019
Re: Staff Summary of Outreach and Public Input

Public Comment:

A 60-day public comment period was authorized by the Board of Trustees at the Board's July 11, 2019 meeting. The public comment period closed on September 23, 2019. The public comment request, including the infographic, was posted at the State Bar's website in English, Spanish, Chinese and Tagalog. To facilitate participation in the public comment process by stakeholders who might offer a consumer perspective, staff sent email message invitations to comment to the following organizations and agencies:

- Northern and Southern California Association of Law Libraries
- National Consumer Law Center
- National Association of Consumer Advocates
- Consumer Federation of California
- State Department of Justice, Office of the Attorney General, Anti-trust Unit
- Federal Trade Commission
- Inequality.org

In addition, the consumer protection units of various news agencies were contacted and informed about the request for public comment.

A total of approximately 2,865 comments for all of the proposals combined have been received. There are approximately 1,386 individuals or organizations who submitted comments (this accounts for commenters who submitted comments on multiple recommendations). Not all comments have been logged yet as many were received on or after the deadline. About 73% of the comments indicated a position opposed to one or more of the proposals. About 18% of the comments indicated a position in support to one or more of the proposals. The remaining comments either stated no preference or did not indicate a position.

The proposal that received the most comments was the concept of an exception to UPL for regulated individual nonlawyers to provide specified legal services (Recommendation 2.0). This proposal received about 606 comments with 504 comments opposed. None of the individual proposals received a majority of comments in support. A table showing the distribution of comments received for each recommendation is provided as Attachment 1.¹ The full text of the public comments is available at the ATILS DropBox at: <http://bit.ly/ATILSDropBox>.

¹ There are about 175 comments that were submitted using the "other" category rather than one of the 16 specific recommendations. Staff is reviewing these comments and has found that some explicitly reference and discuss one or more of the 16 recommendations. These specific comments will be allocated to the relevant recommendation for inclusion in the correct master public comment synopsis table.

Public Hearing Held on August 10, 2019:

There were 21 speakers at the ATILS public hearing held on August 10th to coincide with the ABA Annual Meeting being held in San Francisco. The testimony received included comments in support and in opposition to the public comment proposals. Among the speakers were the following persons from other jurisdictions who are active in the ABA: Lynda Shely (ABA Standing Committee on Ethics and Professional Responsibility); Andrew Perlman (Special Advisor, ABA Center for Innovation); and Stephen Gillers (former member, ABA Commission on Ethics 20/20). A transcript of the hearing is available at the ATILS Dropbox in a subfolder named “8-10-19 Public Hearing.”

Town Hall Meetings with Local Bar Associations:

The following five outreach meetings were held with local bar associations.²

- San Diego County Bar Association (August 20, 2019)
- Los Angeles County Bar Association (August 27, 2019)
- Bar Association of San Francisco and the Alameda County Bar Association (co-hosted on September 9, 2019)
- Sacramento County Bar Association (September 10, 2019)
- Orange County Bar Association (September 18, 2019)

Much appreciation is owed to the following ATILS members who participated (in-person or remotely) at one or more of these meetings: Andrew Arruda; Abhijeet Chavan; Tara Burd; Judge Wendy Chang; Bridget Gramme; Andrew Kucera; Joyce Raby; Toby Rothschild; Dan Rubins; Joanna Mendoza; Kevin Mohr; Mark Tuft; and Joshua Walker.

While the format and length of individual meetings varied, in general representatives of ATILS began each meeting with a PowerPoint overview of the ATILS project. This was followed by short summaries of some of the major proposals, such as UPL exceptions, fee sharing and ABS. Local bar representatives then offered commentary and this was followed by audience Q&A. ATILS representatives urged attendees to submit input using the online public comment submission form. In-person attendance ranged from about 15 to 40 persons including speakers. The San Diego, Los Angeles and Orange County meetings were live streamed. The San Diego meeting included Q&A with the virtual audience attending via the live stream.

Some of the points raised by local bar representatives or audience members include the following:

- Harm to the immigrant community by “notario” fraud will be exacerbated if nonlawyers are allowed to practice immigration law. Deportation and other irreversible consequences can result from incompetent “cookie cutter” asylum petitions, as just one example.
- The composition of the task force omits true consumers of legal services or representation from consumer protection organizations.

² A separate panel presentation on ATILS’ proposed regulatory reforms was hosted by UC Hasting’s LexLab on September 19, 2019. Dan Rubins represented ATILS at this event.

- The task force proposals, such as allowing multidisciplinary practice, are not likely to address the access needs of indigent persons.
- Dispute resolution and court reform are needed as more providers of legal services will only increase the trial court backlog.
- Rather than allowing new, untested nonlawyer providers, there should be consideration of widening the scope of services permitted by established Legal Document Assistants and Unlawful Detainer Assistants.
- Technology solutions must be multilingual and usable by persons who are literacy challenged.
- There does not appear to be any financial responsibility requirement for nonlawyer providers – mandatory insurance should be considered.
- The task force proposals should be supported because it is the next generation of lawyers who will be the primary participants in any innovative delivery systems.
- An analogy to the multi-tiered levels of paraprofessionals in the medical industry suggests that the addition of new providers who are helping, but not replacing lawyers, could lower the costs of legal services.
- Estate planning is very complicated and elderly persons are an at risk population when it comes to fraud and trust mills.
- Given the types of legal services that are likely to be rendered by technology and/or nonlawyer providers, there will probably be little or no competition with the services presently provided by any typical large or mid-size law firm.
- The impact on certified lawyer referral services is not clear in the fee splitting proposals. Would these longstanding services co-exist with online matching services and with compensation being paid outright to any nonlawyer for a client referral?
- Reforming small claims court is a better alternative than the proposals.

Podcasts:

Podcasts addressing the ATILS project were posted during the public comment period, including the following:

- ZaviehLaw – Lawyers Gone Ethical (#72) (August 6, 2019)
- ZaviehLaw – Lawyers Gone Ethical (#74) (August 20, 2019)
- Legal Talk Network (August 26, 2019)
- High Tech Law Institute of Santa Clara Law School Withoutprecedent.com (September 11, 2019)

Medial Articles on ATILS:

See Attachment 2 for a list of selected articles (with links) that have been published on the ATILS project.

General Staff Observations:

Following a review of the public comments, the public hearing testimony, the comments made at the Town Hall meetings and many of the podcasts and articles, staff offers the following three general observations.

1. Perception of the Access to Justice Goal. Some comments seem to assume or impose certain limits on the ATILS objective to enhance access to justice, for example by limiting that objective to indigent persons or only to persons who lack assistance of counsel in court proceedings. When ATILS was formed

by the Board, the Board's strategic plan articulated Goal 4 as seeking to "[s]upport access to justice for *all* California residents. . . ." [[State Bar Strategic Plan 2017 – 2022](#), emphasis added.] Under the [current revised strategic plan](#), Goal 4 seeks to "[s]upport access to legal services for low - and moderate – income Californians. . . ." Under either formulation, Goal 4 is not limited to indigent persons or persons who lack assistance of counsel in court proceedings. Consistent with the strategic plan, staff observes that: (i) the ATILS recommendations may properly seek to enhance access for indigent persons and other Californians; and (ii) the need for a broad access objective has been confirmed by the data from the [2019 California Justice Gap Study](#) which indicates that almost 70% of all Californians do not receive assistance with their civil justice legal problem.³

2. Other Approaches to Addressing the Access Crisis. Some comments strongly recommend that ATILS consider other initiatives that are not viewed as disruptive as the concepts for possible regulatory reform that are under consideration by ATILS. These other initiatives include but are not limited to: court reform; court funding (including adding more judges); court-connected self-help programs, including online and technology based services; increasing the monetary jurisdiction of small claims court; mandating pro bono services by licensees or recent law school graduates; promoting greater volunteer pro bono services (for example, by student loan forgiveness programs); studying and improving existing access programs rather than exploring new ones (including increasing legal services program funding); increasing financial support to nonprofit legal foundations; providing State-sponsored educational programs to low or moderate income communities that are believed to be lacking in access; providing State-sponsored education to lawyers about accessing communities that are in need of legal services; enhancing the educational requirements for paralegals; improving ADR; expanding services that may be provided by a LDA or UDA; and removing barriers to entry to the profession, for example by altering the California Bar Examination (including lowering the passing score) or expanding MJP to implement reciprocity or admission on motion. While helpful, these suggestions do not directly align with the precise assignment to ATILS to explore improving access through innovative technology driven and online delivery systems. Staff recommends that all of these other suggested initiatives be compiled and listed in an appendix to the ATILS final report to give the Board an opportunity to consider whether any of these suggestions should be put into process with an appropriate subentity or State Bar department.

3. Lack of Enforcement of the Immigration Consultant Act. Particularly at the Town Hall meetings there were concerns expressed about the lack of enforcement of the [statutory immigration consultants act](#). Some comments indicated great doubt about the prospect for enforcement of any nonlawyer limited practice of law regulations. Others generally believed that UPL was rampant, especially the fraudulent acts by "notarios," and not effectively deterred by any existing UPL laws or prosecutions. Many of the lawyer commenters emphasized the great irreparable harm to vulnerable immigrants. Collectively it seemed that these commenters felt to varying degrees that the State Bar was the primary agency for directly enforcing the prescriptive compliance duties imposed by the immigration consultants act.

Staff observes that the State Bar is not an agency that registers immigration consultants or monitors compliance with regulatory requirements. For example, it is the Secretary of State that is able to verify whether an immigration consultant is in compliance with the statutory bonding requirement. However,

³ "Among Californians at or below 125% FPL who experienced at least one civil legal issue, 27% received legal help for at least one of their problems. More individuals above 125% FPL (34%) received legal help for at least one of their problems." (2019 California Justice Gap Study at p. 2.)

in general the State Bar receives and processes UPL complaints and has partnered with public prosecutors in the enforcement of the UPL and in [assisting victims](#). The State Bar has an online UPL complaint portal (in six languages). The State Bar also has utilized its statutory authority to assume jurisdiction of businesses engaging in UPL, including businesses that have defrauded immigrants who sought legal assistance from consultants. (For example, see:

<https://www.recordnet.com/news/20180222/state-bar-seizes-stockton-immigration-law-practice> .)

Regarding “notarios,” the State Bar offers online educational information in Spanish. (See: <http://www.calbar.ca.gov/Public/More-Languages/En-Espa%C3%B1ol/Folleto-Sobre-Notarios> .) In addition, the State Bar has conducted community outreach by:

- sending Enforcement staff to immigration detention centers to talk about immigration fraud and non-attorney fraud in order to help prevent harm to these vulnerable persons
- providing more than 20,000 informational posters about how to file a complaint against an attorney and the unauthorized practice of law to consulates, Centro Legal de la Raza, the ACLU, Public Defender’s offices, United Farm Workers, the California Immigrant Policy Center, California Rural Legal Assistance, and other legal aid organizations
- issuing [immigration fraud alerts](#) and press releases on nonlawyer UPL matters and attorney discipline matters involving a licensee who knowingly assists another person in the committing UPL

Future Opportunities for Outreach and Public Input:

Consistent with prior discussions about anticipated next-steps following the submission to the Board of a final ATILS report and recommendations, it is very likely that another group will need to conduct further study and work. Any such group would likely conduct more stakeholder and consumer outreach and would likely seek Board authorization to hold another public comment process. Accordingly, the completion of ATILS work should not be construed as an end to public participation in the consideration of these potential regulatory reforms.

ATTACHMENT 1
ACCESS THROUGH INNOVATION OF LEGAL SERVICES
PROPOSED REGULATORY REFORM OPTIONS – PUBLIC COMMENT FORM RESULTS
(as of October 2, 2019)

Reform Option	Position		
	Support	Oppose	State No Preference
1.0 - Redefining the “Practice of Law” is Not Recommended	82	184	10
1.1 - Entity Models Include Individuals and Entities Working For Profit and Non-Profit	11	103	3
1.2 - Affirm the Regulation of Lawyers under the Judicial Branch and Encourage the Use of Technology to Improve Access	21	73	14
1.3 - Develop Metrics for Measuring the Impact of Recommended Regulatory Changes	29	49	2
2.0 - UPL Exception for Individual Nonlawyers to Provide Specified Legal Services	92	504	10
2.1 - UPL Exception for Entities Composed of Lawyers, Nonlawyers or a Combination of the Two	52	220	7
2.2 - UPL Exception for Entities Composed Using Technology-Driven Legal Services Delivery Systems	15	172	3
2.3 - Defining “Artificial Intelligence” is Not Recommended	15	59	10
2.4 - Approved Entities Using Technology-Driven Legal Services Delivery Systems Must Establish Ethical Standards	32	57	1
2.5 - Client Communications with Technology-Driven Legal Services Delivery Systems Should Receive Equivalent Ethical Protections	29	50	2
2.6 - Regulatory Process of Approved Entities Should be Funded by Application and Renewal Fees	20	45	3
3.0 - Adopt a New Comment to Rule 1.1 Stating that Competence Includes a Duty to Keep Abreast of Changes in the Law and Technology	25	49	2
3.1 - Amend the Fee Sharing Rule to Expand Fee Sharing with Nonprofits and Allow Nonlawyer Ownership	44	252	6
3.2 - Amend the Fee Sharing Rule to Permit Fee Sharing with a Client’s Informed Consent	30	126	2
3.3 - Adopt a Version of ABA Model Rule 5.7 That Fosters Investment in and Development of Technology-Driven Delivery Systems	5	88	4
3.4 - Adopt Revised Rules 7.1-7.5 to Improve Communication Regarding Availability of Legal Services Using Technology	10	62	6
TOTAL BY POSITION	512	2093	85
Comments Designated as “Other”	175		
TOTAL NUMBER OF COMMENTS	2865		
TOTAL NUMBER OF COMMENTERS	1386		

Links to Media Articles Regarding ATILS

California Task Force To Vote This Week On Sweeping Changes To Legal Services Delivery

<https://abovethelaw.com/2019/06/california-task-force-to-vote-this-week-on-sweeping-changes-to-legal-services-delivery/>

State Bar explores path for tech companies to provide legal services (Subscription Required)

<https://www.dailyjournal.com/articles/353247-state-bar-explores-path-for-tech-companies-to-provide-legal-services>

California Opens Door to More Legal Tech, Non-Lawyer Roles (1)

<https://news.bloomberglaw.com/us-law-week/california-opens-door-to-more-non-lawyer-roles-tech-solutions>

The California State Bar Is Considering Allowing Non-Lawyers (And Skynet) To Practice Law

<https://abovethelaw.com/2019/07/the-california-state-bar-is-considering-allowing-non-lawyers-and-skynet-to-practice-law/>

Calif. Bar's Nonlawyer Reforms To Get Public Airing (Subscription Required)

<https://www.law360.com/california/articles/1177557/calif-bar-s-nonlawyer-reforms-to-get-public-airing>

State Bar to seek public comment on allowing non-lawyers to practice (Subscription Required)

<https://www.dailyjournal.com/articles/353486>

California Plan for Lawyer Fee-Sharing Picks Up Speed

<https://www.law.com/therecorder/2019/07/12/california-plan-for-lawyer-fee-sharing-picks-up-speed/>

Nonlawyers could offer legal advice and partly own law firms under these California proposals

<http://www.abajournal.com/news/article/california-bar-considers-legal-technicians-nonlawyer-ownership-of-law-firms>

California poised for long-awaited embrace of non-lawyers

<https://www.lawgazette.co.uk/news/california-poised-for-long-awaited-embrace-of-non-lawyers/5071104.article>

Solos & Smalls – Time to Weigh in On Changes to California

<https://myshingle.com/2019/07/articles/future-trends/solos-smalls-time-to-weigh-in-on-changes-to-california/>

Postcards from the legal edge

<http://www.globallegalpost.com/big-stories/postcards-from-the-legal-edge-42953634/#.XTnL08luUXo.mailto>

Technology, it is a-changin' (Subscription Required)

<https://www.dailyjournal.com/articles/353630>

Reform or Revolution? California's Bid for Nonlawyer Ownership Could Spread

<https://www.law.com/americanlawyer/2019/08/01/reform-or-revolution-californias-bid-for-nonlawyer-ownership-could-spread/>

Access-Driven Calif. Reforms Likely To Spur Big Pushback (Subscription Required)

<https://www.law360.com/articles/1183539/access-driven-calif-reforms-likely-to-spur-big-pushback>

California Bar Swamped by Comments Opposing Ethics Rule Changes

<https://news.bloomberglaw.com/us-law-week/california-bar-swamped-by-comments-opposing-ethics-rule-changes>

Changing Ethics Rules Is Key To Law Firm Innovation (Subscription Required)

<https://www.law360.com/trials/articles/1182253/changing-ethics-rules-is-key-to-law-firm-innovation>

Law Firm Ownership Rule Change Supporters Vocal at Calif. Forum

<https://news.bloomberglaw.com/us-law-week/advocates-for-law-firm-ownership-rule-change-vocal-at-ca-forum>

Pay attention to the rules when defending depositions (Subscription Required)

<https://www.dailyjournal.com/articles/353795>

Arizona Weighs Role of Non-Lawyers in Boosting Access to Justice

<https://biglawbusiness.com/arizona-weighs-role-of-non-lawyers-in-boosting-access-to-justice>

California bar proposes revolutionary changes to the legal market (Subscription Required)

<https://www.dailyjournal.com/articles/353940>

ATTACHMENT 2

Links to Media Articles Regarding ATILS

Proposed changes to bar's ethics rules get surly reaction (Subscription Required)

<https://www.dailyjournal.com/articles/353975>

Is nonlawyer ownership signaling the end for solo/small firms (Subscription Required)

<https://www.dailyjournal.com/articles/354025-is-nonlawyer-ownership-signaling-the-end-for-solo-small-firms>

Legal innovation report: part promising, part unexceptionable (Subscription Required)

<https://www.dailyjournal.com/articles/354026>

Give Non-Lawyers a Bigger Legal Role, Utah Report Proposes (1)

<https://news.bloomberglaw.com/white-collar-and-criminal-law/non-lawyers-should-have-bigger-legal-role-utah-report-proposes>

ABA Annual Meeting 2019: The Taskforce on Access Through Innovation of Legal Services (ATILS)

<https://legaltalknetwork.com/podcasts/special-reports/2019/08/aba-annual-meeting-2019-the-taskforce-on-access-through-innovation-of-legal-services-atils/>

Task force proposals could set back women lawyers in California (Subscription Required)

<https://www.dailyjournal.com/articles/354043>

Change Is Coming To The Profession — Get Ahead Of It Or Get Left Behind

<https://abovethelaw.com/2019/08/change-is-coming-to-the-profession-get-ahead-of-it-or-get-left-behind/>

Nonlawyers could invest in law firms and own legal businesses under Utah work group's proposal

<http://www.abajournal.com/news/article/nonlawyers-could-invest-in-law-firms-and-own-legal-businesses-under-utah-work-groups-proposal>

Rethinking Lawyer Regulation: The California Way

<https://www.law.com/newyorklawjournal/2019/08/30/rethinking-lawyer-regulation-the-california-way>

Nonlawyer ownership: The end of ethics and the profession as we know it (Subscription Required)

<https://www.dailyjournal.com/articles/354097>

The California Bar Is Still Clamping Down On Fee Splitting With Nonlawyers

<https://abovethelaw.com/2019/09/the-california-bar-is-still-clamping-down-on-fee-splitting-with-nonlawyers/>

Utah passes California, OKs nonlawyers giving legal advice (Subscription Required)

<https://www.dailyjournal.com/articles/354298>

A Momentous Change In The Legal Industry Garnering Little Attention

<https://www.forbes.com/sites/theyec/2019/09/18/a-momentous-change-in-the-legal-industry-garnering-little-attention/#3413c8934249>

Law as Big Business: State Bar Proposal Would Seriously Hurt Consumers (Subscription Required)

<https://www.law.com/therecorder/2019/09/18/law-as-big-business-state-bar-proposal-would-seriously-hurt-consumers/>

California's Indigent Are Not Finding Legal Help, Bar Study Says (Subscription Required)

<https://www.law.com/therecorder/2019/09/20/californias-indigent-are-not-finding-legal-help-bar-study-says/>

Like It Or Not, Law May Open Its Doors To Non-lawyers (Subscription Required)

<https://www.law360.com/articles/1201357/like-it-or-not-law-may-open-its-doors-to-nonlawyers>

State Bar plans to give task force more time (Subscription Required)

<https://www.dailyjournal.com/articles/354438>

California's Ethics Rules - Setting The Stage For Legal Technology

<https://www.jdsupra.com/legalnews/california-s-ethics-rules-setting-the-85053/>

California Report Identifies Large 'Justice Gap'

<https://abovethelaw.com/2019/09/california-report-identifies-large-justice-gap/>