



To: ATILS Task Force
From: Abhijeet Chavan and Heather Morse
Date: October 7, 2019
Re: B.4. Recommendation 2.5: 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.

Recommendation 2.5 has received a total of approx. 80 comments, 49 in opposition, 29 in support, and 2 with no stated position.

Recommendation 2.5 (Equivalent Protection of Confidentiality & Privilege)[UPL/AI]	
Recurring Point	Possible Response
The attorney-client privilege is just that: between an attorney and a client. AI is not an attorney, therefore, it should not be afforded the protections of the a/c privilege.	The Task Force believes that potential UPL regulatory reforms should involve the extension of ethical standards to nonlawyer providers, including those that use technology-driven delivery systems in order to afford the same protections to the client.. This includes a recognition that communications with nonlawyers or technology call for special confidentiality laws. [Abhijeet comment: Does this mean we need new laws? Or is there an existing law that covers this? Please clarify.] There is precedent for this in the statutory privilege for a client's communications with a certified lawyer referral service. (See Evid. Code sec. 965 – 968.)
The State Bar has not been successful in regulating non-lawyers. Immigration consultants are an example. That law allows immigration consultants to do certain non-legal work while prohibiting them from giving advice to clients. The original purpose of the Immigration Consultant statute was to regulate notarios to prevent them from harming the public. However, there has been no enforcement of the statute against the immigration consultants.	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 verifies whether an immigration consultant is in compliance with the statutory bonding requirement.) However, in general the State Bar receives and processes UPL complaints and has partnered with public prosecutors in the enforcement of the UPL. 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 a business engaging in UPL. (See:

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	<p>https://www.recordnet.com/news/20180222/state-bar-seizes-stockton-immigration-law-practice.)</p> <p>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:</p> <ul style="list-style-type: none"> ▪ sending Enforcement staff to immigration detentions center 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 aiding in UPL licensees.
Client communication should not be done via non-lawyer technologies as this would result in a loss of the atty-client privilege.	<p>The Task Force believes that potential UPL regulatory reforms should involve the imposition extension of ethical standards to nonlawyer providers, including those that use technology-driven delivery systems in order to afford the same protections to the client..Use of technology in innovative delivery systems, including those involving nonlawyer providers, may create efficiencies and lower the cost of legal services, thereby aiding in the access crisis. There is precedent for this in the statutory privilege for a client’s communications with a certified lawyer referral service. (See Evid. Code sec. 965 – 968.)</p>

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Extremely important to use the same standards for attorney-client privilege & confidentiality, particularly confidentiality issues related to technology (such as protection from hacking.) [NOTE: this comment is in support.]	The Task Force agrees that confidentiality and privilege help promote the level of trust necessary for a provider to obtain a client's sensitive information and to render competent legal services. There is precedent for special categories of evidentiary privileges in the statutory privilege for a client's communications with a certified lawyer referral service. (See Evid. Code sec. 965 – 968.)
[1059c, Sedy, Margaret (9-19-19) Employees of technology companies have live access to communications between users of any platform. There is no way to create any confidentiality here. There is an infinitive number of people, third party applications and the like that will have live and archived access to all such communications. And the client, the person/entity we have the utmost duty to protect, will be unaware of this. So will most attorneys that interact with such technology.	Why we selected this: Argues that tech companies will not be able to provide protections because they employ non-lawyers with access to communications. Response: But current law firms and general counsel office also employ non-lawyers with access to communications.
[1212h, Murphy, Donald (9-22-19)] I own a small business - a contingent fee based personal injury law firm that exclusively represents injured people and their families. I am entirely opposed to the present options being considered by the State Bar due to the lack of any empirical data to support or explain how these recommendations may impact small law firms like my own. I envision the entire bodily injury legal landscape will be taken over by large corporations and Wall Street types who will control legal advertising with "big money." I provide good paying jobs for seven individuals and their families, including health Insurance benefits. If the present recommendations are approved, I see these jobs going away. I also expect I will have no choice but to sell out to some large corporation, or close my doors And take a job with some insurance company.	Why we selected this: Argues that this will result in loss of jobs. Response: But could create new or different jobs while expanding market and addressing access to justice gap.

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<p>[761g, Moores, Jennifer (9-12-19)] When an industry doesn't keep up with technology, they fall behind other industries, and put a burden on clients to pay more than needed because of a lack of innovation, which displays a lack of customer focus (that is a client focus). Technologically speaking many aspects of the legal industry are behind when it comes to technology. The most probable reason for this lag is based on Rule 5.4, and in some ways Rule 5.5 which prohibits non-lawyers from becoming business partners with lawyers, and thus keeps many advances in technology and industry from benefiting the law industry, and the clients that firms would be better able to serve. I am writing to urge the State Bar of California to approve the proposed changes and amend Rule 5.4 to include the technological advances that partnerships with innovators outside the legal industry can provide by allowing non-lawyers to own parts of a law firm; to share legal fees with non-lawyers; and for non-lawyers to provide legal advice within the constraints to be provided by the State Bar of California.</p>	<p>We agree. We cannot hope that technology will not impact this sector. It will. We need to be prepared for it.</p>
<p>Over my years of helping hundreds of consumers deal with debt collection lawsuits and unpaid credit card debts, which began during the downturn known as the "Great Recession," I have found that in almost all cases, consumers are not equipped to deal with court procedures and may often end up owing more than they would have had to pay in a default judgment by fighting a case in pro per. If the bar rules are changed as proposed, then (even if given "written disclosures") most Consumers will not be aware that they need an attorney to represent them, if the case goes to trial or their are any motions. I oppose changing the definition of the practice of law. I oppose the other changes by this task force. Certainly, I oppose it in conjunction with</p>	<p>Why we selected this: Argues that this will cause people not to use a lawyer.</p> <p>Response: This is already happening with 75% of civil cases in courts having at least one self-represented litigant.</p>

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<p>the other proposed changes to turn the practice of law into a "legal marketplace" to be leveraged by venture capitalists. Using "legal technicians" to try to help consumers in this state, in my opinion, turns the practice of law into a "Legal Zoom," "Court Buddy," or some other catchy website name and interface or an 800 phone number that poorly trained, unsupervised "non-lawyers" answer 24/7. After which, consumers will be under the mistaken belief that they don't need a live attorney, because they are getting "certified" "legal assistance" when really they are getting computer-generated forms. I predict that these proposals will result in more consumers losing their cases and possibly having their wages garnished and a lien against their homes for the other side's costs and perhaps attorney's fees. I oppose these changes. I also object to the way in which these massive changes to the practice of law have not been adequately disclosed to the public and to members of the Bar and the short time that they have been made known to us. I also object that filing objections requires the user to respond to each of the proposals and there is not a way to object to all of these related proposals.</p>	