



# The State Bar of California

**ATILS AGENDA ITEM D.2.  
10-07-19 MEETING**

## Task Force on Access Through Innovation of Legal Services

To: ATILS Task Force  
From: Bridget Gramme and Mark Tuft  
Date: October 7, 2019  
Re: D.2. Recommendation 2.0: Nonlawyers will be authorized to provide specified legal advice and services as an exemption to UPL with appropriate regulation.

*Recommendation 2.0 has received a total of approx. 595 comments, 503 in opposition, 92 in support, and 10 with no stated position.*

Recommendation 2.0 (UPL Exception for Nonlawyers) [ABS/MDP]	
Recurring Point	Possible Response
This will result in erosion of the legal profession loss of jobs for attorneys.	<p>U.S. Census data suggests that there are segments of the people-law sector that are presently underserved by traditional law firm providers.</p> <p>The Henderson Study found that access to legal services in California may be greatly improved by entering the "gig economy." Innovation through collaboration with nonlawyers has the potential for creating opportunities for lawyers, including recent law school graduates, to practice law in new delivery systems, such as online matching services for limited scope representation that might be developed and operated by nonlawyers.</p> <p>Underserved consumers might benefit from the provision of limited, specified legal services rendered by regulated nonlawyer providers. Prof. Stephen Gillers submitted comment to ATILS that: "For example, in Washington State, LLLTs charge substantially less than lawyers for the services they are authorized to perform, about \$60 to \$120 hourly according to a 2018 article in the Seattle Times quoting a Washington State Bar officer.</p>
Lawyers have incurred substantial law school-related debt, student loans.	<p>The Henderson Study found that access to legal services in California may be greatly improved by entering the "gig economy." Innovation has the potential for creating opportunities for lawyers, including recent law school graduates, to practice law in new delivery systems, such as online matching services for limited scope</p>

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	<p>representation.</p> <p>This recommendation is not intended to replace legal services provided by lawyers and law firms.</p>
An already overburdened Court/Judicial system will be further overwhelmed (by frivolous actions and incompetence).	The “appropriately regulated” language in the recommendation envisions a proactive risk-based regulation of the competence of nonlawyer providers that relies on auditing and monitoring rather than complaint-driven enforcement may help prevent frivolous actions.
Non-lawyers do not have the requisite education to give legal advice (potential for malpractice)	<p>Regarding UPL exceptions for regulated individual nonlawyers, the “appropriately regulated” language in this recommendation envisions that eligibility requirements would be established and met before nonlawyers would be authorized to deliver the specific legal services defined under the regulatory scheme.</p> <p>The implementation of this recommendation could also require specified disclosures in this context with respect the scope of the authorized legal advice and services so that consumers may make an informed decision about the services they are seeking.</p>
Non-lawyers will offer subpar services resulting in public confusion, fraud by con artists and irreparable public harm.	<p>Eligibility standards, proactive risk-based regulation and a broad public education strategy can address public confusion and help avoid public harm.</p> <p>[Same comment as above]</p>
Non-lawyers will not adhere to the ethical standards of a lawyer (increase in Runners/Cappers).	Amendments to the fee sharing rule (5.4) and the advertising rules (7.1 – 7.5) are only conceptual proposals. In The “appropriately regulated” language in this recommendation envisions that nonlawyers will be required to adhere to certain ethical standards commensurate with the scope of services provided. =In addition, an implementation body could consider certain limitations that would preserve the statutory prohibitions against running and capping.

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The legal system already utilizes the services of non-lawyers (document processors, immigration consultants, etc. . . .).	<p>The existing system is simply not meeting the needs of individual consumers. The public is not being adequately protected when 70% of Californians are not receiving the legal services they need to address a civil legal problem. [CITE TO HENDERSON OR MOST RECENT JUSTICE GAP SURVEY].</p> <p>There are individuals outside these specific regulated functions that are not being regulated at all. This recommendation envisions the regulation of nonlawyers in a way that serves and protects the public while balancing the need to expand the range of legal services currently offered to individuals.</p>
Large non-legal corporations and insurance companies will corrupt the legal profession.	This recommendation currently does not specify the specific setting under which individual nonlawyers would be authorized to deliver limited legal services with appropriate regulation. Under this recommendation, individual nonlawyers would be subject to the same regulatory framework regardless of practice setting, and would include appropriate ethical standards to guard against corruption and conflicts of interest.
What happens to Attorney-Client privilege?	<p>This proposal does not envision a change in the attorney client privilege, and the privilege would remain intact.</p> <p>Similar to California's experience in enacting an evidentiary privilege for certified lawyer referral service communications (Evid. Code § 965, et. seq.), a change in the law can be considered for instituting confidentiality and privilege for communications with a regulated nonlawyer provider of legal services.</p> <p>In any event, appropriate disclosure and informed client consent could be included in the regulatory framework to ensure that clients understand the limitations of engaging with a nonlawyer.</p>

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Non-lawyers cannot be effectively regulated by the State Bar	<p>This Recommendation does not address which entity will regulate the nonlawyers, and does not predetermine whether the State Bar or another regulatory agency will be the regulator.</p> <p>The “appropriately regulated” language of the recommendation envisions the proactive, risk-based regulation of nonlawyer providers that relies on auditing and monitoring rather than complaint-driven enforcement, which may be an effective public protection system for the State Bar or another regulator of nonlawyer providers.</p>
Rather than permit nonlawyer providers consider the following reforms: mandatory pro bono hours for licensed attorneys (with MCLE); making law school more affordable; requiring pro bono for law school grads; increasing financial support to nonprofit legal foundations; and increasing educational requirements for paralegals	