



The State Bar of California

**ATILS AGENDA ITEM B.6.
11-06-19 MEETING**

Task Force on Access Through Innovation of Legal Services

To: ATILS Task Force
From: Staff (includes October materials from Abhijeet Chavan and Heather Morse)
Date: November 6, 2019
Re: B.6. Recommendation 2.3: 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.

Meeting Plan:

For the November 6th meeting, there will not be any subcommittee break-out sessions. The Task Force will meet as a whole to discuss the various recommendations under the Task Force’s two broad concepts for regulatory reform. An outline of the plan is provided below and is consistent with the meeting agenda.

1. UPL Exceptions (Agenda Item B)
(Recommendations: 1.0; 1.1; 2.0; 2.1; 2.2; 2.3; 2.4 and 2.5)
 - Exceptions for Individuals
 - Exceptions for Entities/Organizations
2. Fee Sharing/Non-lawyer Ownership (Agenda Item C)
(Recommendations: 3.1; 3.2; and 3.3)
 - Compensation for Referrals, Including “Running and Capping” (CRPC 5.4 & 7.2(b))
 - Passive Investment
 - Protecting Independent Professional Judgment, Including Lawyer Majority Ownership (CRPC 5.4)
 - Provision of Law Related Services (ABA Model Rule 5.7)
3. Other Proposals (Agenda Item D)
(Recommendations: 1.2; 1.3; 2.6; 3.0; and 3.4)
 - Findings re Proposing Definitions of “AI” and the “Practice of Law”
 - Funding of Regulatory Programs and Data Collection/Success Metrics
 - Technology Competence (CRPC 1.1)
 - Advertising and Solicitation Rule Revisions (CRPC 7.1 – 7.5)

Recommendation 2.3:

Recommendation 2.3 will be discussed with other related UPL exception proposals. Recommendation 2.3 has received a total of approximately 84 written comments, 59 in opposition, 15 in support, and 10 with no stated position. Staff has completed processing of all written comments received and the public hearing testimony. Updated public comment synopsis tables and the full text of public comments are available at the ATILS DropBox.

Some of the general themes derived from the written public comments, the public hearing testimony, various articles, podcasts, social media posts and the oral input conveyed at the bar association Town Hall Outreach meetings include the following:

- Any definition of artificial intelligence would soon need to be updated as the concept continues to evolve and change.
- It is not clear what is meant by technology that “performs the analytical functions of an attorney.”

Percentages showing categories of commenters and the relative positions expressed by those commenters is summarized in the table provided below.

Proposal 2.3	Total	Support	Oppose	SNP
Lawyer	62%	8%	88%	4%
Public Member	1%	100%	0%	0%
Lawyer Organization (bar association, law firm, legal aid)	18%	33%	33%	33%
Public Organization (insurance companies, non and for profit nonlawyer organization)	1%	100%	0%	0%
Unknown (not enough information)	18%	27%	53%	20%
Total	100%	18%	70%	12%

For the October meeting, the Task Force member(s) assigned to Recommendation 2.3 identified certain public comments for discussion. These comments are listed below together with each commenter’s position on Recommendation 2.3. In addition to these public comments, staff has identified additional public comments and these are also included in the table below.

Oppose (3)	Support (5)	Support if Modified (4)	Support if Nonprofit (0)	Support if Sandbox/Pilot Program (1)	Support if Nonprofit Sandbox/Pilot Program (0)	Other Reform (0)
LACBA PREC (Krueger) [1063c]	Los Angeles County Bar Association (Brot) [1355h]	Orange County Bar Association [1134e]		Consumer Attorneys of California (Serna) [1097h]		
Bazikyan, Armine [606h]	Association of Discipline Defense Counsel (Lear) [1364h]	LACBA SFSP (Furman) [909h]				
Becerra, Alejandro [964e]	MyShingle.com (Elefant) [1202a]	The Court Buddy Company (McGlone) [774i]				

Oppose (3)	Support (5)	Support if Modified (4)	Support if Nonprofit (0)	Support if Sandbox/Pilot Program (1)	Support if Nonprofit Sandbox/Pilot Program (0)	Other Reform (0)
	State Bar of California COPRAC (Bomse) [1229f]	Responsive Law (Gordon) [1197a]				
	Moore, Jennifer [761e]					

The recurring points table circulated at the October meeting has been updated to accept the proposed responses provided by the members assigned to this recommendation. Any new recurring points found in public comments that were not considered at the October meeting have been added.

Recommendation 2.3 (Tech-Driven Entities Not Limited to AI)[UPL/AI]	
Recurring Point	Possible Response
AI is developing so fast that a definition of it may not be relevant in the future. A broader, less loaded term should be used. [NOTE: this comment is in support or does not state a position.]	The Task Force agrees that AI is developing fast and is difficult to be accurately described in a definition, which is why the Task Force has chosen to use the phrase “technology-driven delivery systems” instead of the ambiguous terms of “Artificial Intelligence” or “AI.”
It should be limited to regulating entities based on their function (i.e., whether they are providing legal services) not based on the manner in which they provide their services (e.g., via “artificial intelligence” or otherwise).	The Task Force is considering UPL reforms for both technology-driven delivery systems as well as other nonlawyer providers for defined legal services for which a licensed attorney is not necessarily needed. An analogy to this concept can be found with both the medical and accounting professions where specific activities can be performed by licensed and regulated individuals (e.g., nurses or physician assistants in lieu of a doctor, and accountant in lieu of a CPA).
This recommendation is too ambiguous and malformed to act upon. No technology performs the analytical functions of an attorney. The State Bar should not even consider the form of a technological solution until ethical rules are established, or it commits to holding any firm engaged in providing legal services to the full weight of the Rules of Professional Conduct and establishes that it is capable of disciplinary	In the state of California, 70% of its residents are not receiving legal services. The Task Force is not looking to replace attorneys, or all legal services. However, when a technology-driven solution is available to meet the needs of the people, with the proper rules in place, a properly registered, certified, and licensed company should be able to operate without fear of a UPL violation.

Recommendation 2.3 (Tech-Driven Entities Not Limited to AI)[UPL/AI]	
Recurring Point	Possible Response
<p>regulation of such firms.</p> <p>In the discussion of AI in the recommendations, the term “bias” comes up zero times. Many examples of where mixing algorithms and artificial intelligence and law can go wrong exist.</p>	