



The State Bar of California

**ATILS AGENDA ITEM C.3.
11-06-19 MEETING**

Task Force on Access Through Innovation of Legal Services

To: ATILS Task Force
From: Staff (includes October materials from Johann Drolshagen and Andrew Kucera)
Date: November 6, 2019
Re: C.3. Recommendation 3.3: Adoption of a version of ABA Model Rule 5.7 that fosters investment in, and development of, technology-driven delivery systems including associations with nonlawyers and nonlawyer entities.

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)

Below is the ABA Model Rule 5.7, as provided and without edit.

ABA Model Rule 5.7: Responsibilities Regarding Law-Related Services

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

***It is important to note:** Recommendation 3.3 was conceptual [not specific] and would presumably begin with the ABA Model Rule 5.7 with adjustments to come later intended to "promote broad flexibility in the financial arrangements among lawyers and nonlawyers in innovating the delivery of law related services through technology...." The adjustments would come in the form of providing a safe harbor for legal practitioners.*

Recommendation 3.3:

Recommendation 3.3 will be discussed with other related Fee Sharing/Non-lawyer Ownership proposals. Recommendation 3.3 has received a total of approximately 98 written comments, 89 in opposition, 5 in support, and 4 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:

- The need for this new CRPC is unclear because the provision of law related services, including dual profession services, in the context of an attorney-client representation is already addressed in California case law and ethics opinions, and these authorities appear to offer better client protection than the terms of Model Rule 5.7.
- Adding this new rule would encourage the provision of law related services and give law firms options to lower costs or provide added value.

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

Proposal 3.3	Total	Support	Oppose	SNP
Lawyer	69%	3%	94%	3%
Public Member	0%	0%	0%	0%
Lawyer Organization (bar association, law firm, legal aid)	18%	6%	83%	11%
Public Organization (insurance companies, non and for profit nonlawyer organization)	1%	100%	0%	0%
Unknown (not enough information)	11%	9%	91%	0%
Total	100%	5%	91%	4%

For the October meeting, the Task Force member(s) assigned to Recommendation 3.3 identified certain public comments for discussion. These comments are listed below together with each commenter's position on Recommendation 3.3. In addition to these public comments, staff has identified additional public comments and these are also included in the table below.

Oppose (8)	Support (4)	Support if Modified (1)	Support if Nonprofit (0)	Support if Sandbox/Pilot Program (0)	Support if Nonprofit Sandbox/Pilot Program (0)	Other Reform (1)
Los Angeles County Bar Association (Brot) [1355o]	Multiple San Diego Attorneys (McIntyre) [1062i]	LACBA PREC (Krueger) [1063i]				Consumer Attorneys Association of Los Angeles (Zanville) [1339g]
Orange County Bar Association [1134i]	State Bar of California COPRAC (Bomse) [1229m]					
Association of Discipline Defense Counsel (Lear) [1364o]	The Court Buddy Company (McGlone) [774p]					

Oppose (8)	Support (4)	Support if Modified (1)	Support if Nonprofit (0)	Support if Sandbox/Pilot Program (0)	Support if Nonprofit Sandbox/Pilot Program (0)	Other Reform (1)
Consumer Attorneys of California (Serna) [1097o]	Legal Value Firm (Donini) [626]					
de Lira Matthew [536h]						
Illinois State Bar Association (Sosin) [1133a]						
LACBA SFSP (Furman) [909o]						
Public Law Center (Ferrin) [1233j]						

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 3.3 (Rule 5.7 Law-Related Services) [Rules/Ethics Opns.]	
Recurring Point	Possible Response
California case law already provides the parameters of when an attorney providing non-legal services to a client may be subject to the Rules of Professional Conduct.	<p>This point is accurate unless, or until, a change is made to Model Rule 5.7; or, adjacent changes would be made to UPL, ABS, Rule 5.4 Fee Sharing, etc.</p> <p>Adoption of a version of ABA Model Rule 5.7 is intended to enhance the scale and scope of services provided to clients by a lawyer or a law firm as well as codify a safe harbor for those practitioners. This model does not directly involve any relaxation of prohibitions against UPL.</p>