



# The State Bar of California

**ATILS AGENDA ITEM D.1.  
11-06-19 MEETING**

## Task Force on Access Through Innovation of Legal Services

To: ATILS Task Force  
From: Staff (includes October materials from Mark Tuft)  
Date: November 6, 2019  
Re: D.1. Recommendation 1.2: Lawyers in traditional practice and law firms may perform legal and law-related services under the current regulatory framework but should strive to expand access to justice through innovation with the use of technology and modifications in relationships with nonlawyers.

### **Meeting Plan:**

For the November 6<sup>th</sup> 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 1.2:**

Recommendation 1.2 will be discussed with other related other proposals. Recommendation 1.2 has received a total of approximately 108 written comments, 73 in opposition, 21 in support, and 14 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 authority of the Judicial Branch extends to any person or entity engaging in an activity that constitutes the practice of law in California and that authority is not limited to lawyers who are State Bar licensees.

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

<b>Proposal 1.2</b>	<b>Total</b>	<b>Support</b>	<b>Oppose</b>	<b>SNP</b>
Lawyer	63%	12%	76%	12%
Public Member	0%	0%	0%	0%
Lawyer Organization (bar association, law firm, legal aid)	14%	13%	60%	27%
Public Organization (insurance companies, non and for profit nonlawyer organization)	1%	100%	0%	0%
Unknown (not enough information)	22%	42%	50%	8%
<b>Total</b>	<b>100%</b>	<b>19%</b>	<b>68%</b>	<b>13%</b>

For the October meeting, the Task Force member(s) assigned to Recommendation 1.2 identified certain public comments for discussion. These comments are listed below together with each commenter's position on Recommendation 1.2. In addition to these public comments, staff has identified additional public comments and these are also included in the table below.

<b>Oppose (6)</b>	<b>Support (2)</b>	<b>Support if Modified (4)</b>	<b>Support if Nonprofit (0)</b>	<b>Support if Sandbox/ Pilot Program (1)</b>	<b>Support if Nonprofit Sandbox/Pilot Program (0)</b>	<b>Other Reform (2)</b>
Los Angeles County Bar Association (Brot) <a href="#">[1355c]</a>	The Court Buddy Company (McGlone) <a href="#">[774d]</a>	Association of Corporate Counsel (Blatch) <a href="#">[1357b]</a>		Passmore, Crispin <a href="#">[1031]</a>		Judicial Council of California <a href="#">[1386]</a>
Association of Discipline Defense Counsel (Lear) <a href="#">[1364c]</a>	State Bar of California COPRAC (Bomse) <a href="#">[1229o]</a>	Consumer Attorneys of California (Serna) <a href="#">[1097c]</a>				MyShingle.com (Elefant) <a href="#">[1202a]</a>

Oppose (6)	Support (2)	Support if Modified (4)	Support if Nonprofit (0)	Support if Sandbox/ Pilot Program (1)	Support if Nonprofit Sandbox/Pilot Program (0)	Other Reform (2)
Consumer Attorneys Association of Los Angeles (Zanville) <a href="#">[1339a]</a>		LACBA SFSP (Furman) <a href="#">[909c]</a>				
de Lira, Matthew <a href="#">[536h]</a>		Multiple San Diego Attorneys (McIntyre) <a href="#">[1062c]</a>				
Public Law Center (Ferrin) <a href="#">[1213]</a>						
Becerra, Alejandro <a href="#">[964e]</a>						

*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 1.2 (Traditional Practice Should Strive for Innovation)[ABS/MDP]	
Recurring Point	Possible Response
This is a terrible idea and is a blatant attempt to open the industry for the Big 4 [accounting firms] and huge corporations to come in and disrupt the legal industry.	The public is not being adequately protected where approximately 70% of all Californians are not receiving legal services to address a civil justice legal problem. The Task Force's reform concepts seek to increase access to justice and enhance public protection while protecting the integrity of the legal system and promoting the administration of justice. Recommendation 1.2 strives to balance these dual goals of public protection and increased access to justice through the use of technology and modifications in relationships with nonlawyers. For example, under this proposal lawyers and nonlawyers might be allowed to engage in the delivery of legal and law-related services through law firms and other organizations, such as Alternative Legal Services

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<b>Recurring Point</b>	<b>Possible Response</b>
	<p>Providers (ALSPs), while preserving client protection afforded by the legal profession's core principles of loyalty and independent professional judgment as well as confidentiality and the attorney-client privilege. The goal would be to facilitate the ability of lawyers to enter into professional and financial arrangements with nonlawyers to develop or administer cutting-edge legal technology or innovative delivery systems.</p> <p>In addition, U.S. Census data suggests that there are segments of the people-law sector that are presently underserved by traditional law firm providers. These consumers might benefit from the provision of limited, specified legal services rendered by regulated nonlawyer providers. Prof. Stephen Gillers submitted a 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> <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 to practice law in new delivery systems, such as online matching services for limited scope representation.</p>
This will lead to business decisions controlling the practice of law.	Under this proposal, lawyers in traditional practice and law firms would be able to provide more affordable legal services through increased use of artificial intelligence and other emerging technologies and through modifications in relationships with nonlawyers, without compromising core principles of client loyalty and professional independence necessary to protect the public and the integrity of the legal system.

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The practice of law required considerable knowledge and skill to not only know the law but understand it and its application. That is the very reason why lawyers require such stringent education and testing before one is allowed to practice law. Those that have not put in the work to learn and demonstrate competency should not be permitted to endanger the public by engaging in the practice of law.	<p>The Task Force agrees. This recommendation would not compromise the public protection need for lawyers to have the requisite learning and skill to perform legal services with competence and diligence. Lawyers would also continue to have managerial and supervisory responsibilities over nonlawyer service providers.</p> <p>Regarding individual nonlawyer providers, imposing robust eligibility requirements can address issues of competence. In Washington State, for example, among the eligibility requirements to be a LLLT are: 45 hours of paralegal studies; 15 hours of family-law-specific course work from a law school, ABA approved paralegal program, or LLLT Board; and 3,000 hours of law-related work experienced supervised by an attorney.</p>
Los Angeles is rife with notarios and other low cost legal help businesses who target the lower income market. More of them will just cause more confusion about who and what are actual lawyers	<p>Regarding individual nonlawyer providers, , imposing robust eligibility requirements can be considered. In Washington State, for example, among the eligibility requirements to be a LLLT are: 45 hours of paralegal studies; 15 hours of family-law-specific course work from a law school, ABA approved paralegal program, or LLLT Board; and 3,000 hours of law-related work experienced supervised by an attorney.</p> <p>On the specific issue of notario fraud, an implementation of UPL reforms could include consideration of whether certain services and consumer populations (such as immigration services for immigrants who are at risk of deportation) should be excluded and reserved for possible reform action at a future time after consideration of public protection data is gathered through a regulatory sandbox or an initial pilot program that does not involve the at risk immigrant population.</p>
The practice of law should continue to be limited to licensed attorneys. If the qualifications required to practice law currently do not do a good job of assuring minimum skills and knowledge to enter the profession, reforms concerning the qualification process should be made.	Recommendation 1.2 strives to balance the dual goals of public protection and increased access to justice through the use of technology and modifications in relationships with nonlawyers. This recommendation would not compromise the public protection need for lawyers to have the

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	<p>requisite learning and skill to perform legal services with competence and diligence. Lawyers would also continue to have managerial and supervisory responsibilities in relationships with nonlawyer service providers.</p> <p>The Task Force was given a specific charge to study AI, technology and online delivery systems with the dual goals of increased access to legal services and public protection. A list of other potential different initiatives (i.e., not technology-driven initiatives) will be compiled as an appendix to the Task Force’s final report. Studying the minimum knowledge and skills to become licensed as an attorney will be included in this list.</p>
<p>Law school teaches you to think like a lawyer, which is critical to the practice of law. The proposal is a catastrophe waiting to happen intended to line the pockets of those who wish to exploit those most in need of legal services.</p>	<p>The public is not being adequately protected where approximately 70% of all Californians are not receiving legal services to address a civil justice legal problem. The Task Force’s reform concepts seek to increase access to justice and enhance public protection while protecting the integrity of the legal system and promoting the administration of justice. Recommendation 1.2 strives to balance these dual goals of public protection and increased access to justice through the use of technology and modifications in relationships with nonlawyers. The goal would be to facilitate the ability of lawyers to enter into professional and financial arrangements with nonlawyers to develop or administer cutting-edge legal technology or innovative delivery systems.</p> <p>In addition, U.S. Census data suggests that there are segments of the people-law sector that are presently underserved by traditional law firm providers. These consumers might benefit from the provision of limited, specified legal services rendered by regulated nonlawyer providers. Prof. Stephen Gillers submitted a 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>

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	<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 to practice law in new delivery systems, such as online matching services for limited scope representation.</p> <p>In general, proactive risk based regulation of nonlawyer providers that relies on auditing and monitoring rather than complaint driven enforcement may afford effective public protection by the State Bar or another regulator of nonlawyer providers.</p> <p>In addition, imposing robust eligibility requirements can be considered. In Washington State, for example, among the eligibility requirements to be a LLLT are: 45 hours of paralegal studies; 15 hours of family-law-specific course work from a law school, ABA approved paralegal program, or LLLT Board; and 3,000 hours of law-related work experienced supervised by an attorney.</p>
Generally I am in favor of these changes. Reducing regulation around who can provide legal services would work in theory. The key will be to provide extra badging for accredited lawyers do that consumers understand if they are working with someone who is approved by the bar association or not. It should be up to the individual to decide what level of quality services they want to utilize. [NOTE: this comment is in support.]	The Task Force agrees that appropriate qualifications and regulation of nonlawyer service providers and modifications to the UPL prohibitions and attorney conduct rules might lead to beneficial collaboration, innovation and increased access to legal services.
New technology can save a lot of money in legal and law-related services [NOTE: this comment is in support]	The Task Force agrees that with appropriate qualifications and regulation of nonlawyer service providers and modification of UPL prohibitions and attorney conduct rules might lead to beneficial collaboration, innovation and increased access to legal services.

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This deserves further study. I support the thoughtful use of technology in the delivery of legal services to the public and our members already strive to increase access to justice through the contingency fee system. However, striving for "modifications in relationships with nonlawyers" is broad and ambiguous.	The Task Force agrees that this deserves further study. Appropriate regulation, modifications of the UPL prohibitions and attorney conduct rules may lead to beneficial collaboration with nonlawyers, innovation and increased access to legal services through expanded use of technology in the practice of law while maintaining public protection and preserving the integrity of the legal system