



The State Bar of California

**ATILS AGENDA ITEM D.2.
11-06-19 MEETING**

Task Force on Access Through Innovation of Legal Services

To: ATILS Task Force
From: Staff (includes October materials from Joyce Raby and Toby Rothschild)
Date: November 6, 2019
Re: D.2. Recommendation 1.3: The implementation body shall: (1) identify, develop, and/or commission objective and diverse methods, metrics, and empirical data sources to assess the impact of the ATILS reforms on the delivery of legal services, including access to justice; and (2) establish reporting requirements for ongoing monitoring and analysis.

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 1.3:

Recommendation 1.3 will be discussed with other related other proposals. Recommendation 1.3 has received a total of approximately 80 written comments, 49 in opposition, 29 in support, and 2 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:

- Data security and client consent is a key consideration.
- The data collected should include both qualitative and quantitative metrics.
- Collecting and evaluating data to assess the impact of reforms on access to legal services should be a given, especially in regards to technology-driven delivery systems where data collection is the norm.

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

Proposal 1.3	Total	Support	Oppose	SNP
Lawyer	64%	25%	73%	2%
Public Member	0%	0%	0%	0%
Lawyer Organization (bar association, law firm, legal aid)	18%	57%	43%	0%
Public Organization (insurance companies, non and for profit nonlawyer organization)	1%	100%	0%	0%
Unknown (not enough information)	18%	50%	43%	7%
Total	100%	36%	61%	3%

For the October meeting, the Task Force member(s) assigned to Recommendation 1.3 identified certain public comments for discussion. These comments are listed below together with each commenter's position on Recommendation 1.3. In addition to these public comments, staff has identified additional public comments and these are also included in the table below.

Oppose (1)	Support (3)	Support if Modified (2)	Support if Nonprofit (0)	Support if Sandbox/Pilot Program (2)	Support if Nonprofit Sandbox/Pilot Program (0)	Other Reform (0)
Public Law Center (Ferrin) [1213]	The Court Buddy Company (McGlone) [774e]	Consumer Attorneys of California (Serna) [1097d]		Los Angeles County Bar Association (Brot) [1355d]		
	State Bar of California COPRAC (Bomse) [1229a]	LACBA SFSP (Furman) [909d]		Passmore, Crispin [1031]		

Oppose (1)	Support (3)	Support if Modified (2)	Support if Nonprofit (0)	Support if Sandbox/Pilot Program (2)	Support if Nonprofit Sandbox/Pilot Program (0)	Other Reform (0)
	Association of Discipline Defense Counsel (Lear) [1364d]					

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 1.3 (Implementation to Include Metrics)[ATILS]	
Recurring Point	Possible Response
Studies, trials and on-going analysis are necessary. [NOTE: this comment is in support.]	The Task Force supports further study and this is anticipated for implementation of any policy reforms that are ultimately adopted by the State Bar. The Task Force supports rigorous data driven evaluation using both qualitative and quantitative metrics. The Task Force may also review and/or engage with current national evaluation efforts to understand and quantify the impact of any proposed changes.
The fact that California has a severe access to justice problem is already well established. The State Bar should focus its studies on measuring the effectiveness of newly-adopted reforms, not on assessing the need for change itself. [NOTE: this comment is in support.]	<p>The Task Force was given a specific charge to study AI, technology and online delivery systems with 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. The idea of studying existing adopted reforms will be included in this list.</p> <p>Possible other initiatives could include: Working with other organizations and courts to simplify court procedures, encouraging pro bono services through student loan forgiveness, providing State-sponsored educational programs to low or moderate income communities that are believed to be lacking in access, providing State-sponsored education to lawyers about accessing communities that are in need of legal services, and working with other organizations to support higher funding of court systems.</p>

Recommendation 1.3 (Implementation to Include Metrics)[ATILS]	
Recurring Point	Possible Response
<p>Part of the data to be collected needs to include the cost of going through the review process. How many FTE's does it take to produce whatever needs to be submitted to review? This would help groups figure out if they want to go through the process or not. It will also help monitor if the costs get to be too high an administrative burden--particularly for no non-profits in this real.</p> <p>(NOTE: this comment does not expressly support or oppose this recommendation.)</p>	<p>The Task Force supports the creation of a detailed implementation plan and process that will help not-for-profit and for-profit entities engage in a cost/benefit analysis of any costs associated with applying for and/or participating in the pilot program.</p>
<p>The practice of law has always been considered a profession and not a business. Once the State Bar allows outside business pressure to start influencing firms decisions then that will significantly affect how clients cases are handled. It will become more about profit then what is right for the clients.</p>	<p>The Task Force's proposal to change the rules would be to allow lawyers to share legal fees with nonlawyers with the goal of facilitating the ability of lawyers to enter into financial arrangements with nonlawyers to develop or administer cutting-edge legal technology or innovative delivery systems. The task force was informed from discussions with legal technologists on the task force and otherwise, that a primary impediment to such arrangements is the inability of lawyers to share with nonlawyers any portion of the legal fees paid by clients. The Task Force hopes that by expanding the kinds of situations under which nonlawyers can share in legal fees, this deterrent to collaboration will be minimized or completely alleviated, and innovation through technology or new delivery systems will be encouraged. Notwithstanding this rule change, a lawyer would remain bound by the duty of competence, the duty to supervise nonlawyers and the conflicts of interest restrictions.</p> <p>The illustration draft of the Alternative 1 fee sharing amendments to rule 5.4 would: (1) expand the existing exception for fee sharing with a nonlawyer that allows a lawyer to pay a court awarded legal fee to a nonprofit organization that employed, retained, recommended, or facilitated employment of the lawyer in the matter; and (2) add a new exception that a lawyer may be a part of a firm in which a nonlawyer holds a financial interest, provided that the lawyer or law firm complies with certain important public protection requirements including among other</p>

Recommendation 1.3 (Implementation to Include Metrics)[ATILS]	
Recurring Point	Possible Response
	requirements, that: the firm's sole purpose is providing legal services to clients (i.e., this change alone would not authorize multidisciplinary services (MDP), such as the provision of legal and accounting services to a client); the nonlawyers have no power to direct or control the professional judgment of a lawyer; and the nonlawyers state that they understand and will comply with the rules, the State Bar Act and other laws regulating lawyer conduct.
<p>1) This appears to be an effort by large Tech Companies to steal data from lawyers on their clients.</p> <p>2) If data is collected to judge the impact of these proposals, it should not be done by the implementing body.</p>	<p>1) The Task Force agrees that technology security especially as it pertains to client data is an important priority for technology-driven delivery systems. The Task Force is cognizant that securing data privacy can be a difficult task; it believes however that this is not an insurmountable task.</p> <p>2) The Task Force supports rigorous data driven evaluation using both qualitative and quantitative metrics. The Task Force may also review and/or engage with current national evaluation efforts to understand and quantify the impact of any proposed changes.</p>
The emphasis must be on ensuring that the system of providing legal services is structurally sound and adheres to the values of client loyalty, confidentiality, competence, and integrity. As with any analytic problem outside of mass market business, numbers only tell part of the story. Any monitoring regime must include qualitative evaluation of the conduct of and work product created by ALSPs, jointly owned firms, or any other resulting implementation	The Task Force supports rigorous data driven evaluation using both qualitative and quantitative metrics. The Task Force may also review and/or engage with current national evaluation efforts to understand and quantify the impact of any proposed changes.