



# The State Bar of California

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

## Task Force on Access Through Innovation of Legal Services

To: ATILS Task Force  
From: Staff (includes October materials from Jean Clauson)  
Date: November 6, 2019  
Re: D.3. Recommendation 2.6: The regulatory process contemplated by Recommendation 2.2 should be funded by application and renewal fees. The fee structure may be scaled based on multiple factors.

### **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 2.6:**

Recommendation 2.6 will be discussed with other related other proposals. Recommendation 2.6 has received a total of approximately 68 written comments, 45 in opposition, 20 in support, and 3 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:

- Bar licensing fees are already high and the cost of regulating nonlawyer individuals and entities as new providers of legal services will be an expensive regulatory expansion.
- Practicing lawyers should not have to pay for the regulation of nonlawyer competitors.
- Activities by legal services organizations should be entitled to fee scaling .
- Because California would be one of the first U.S. jurisdictions to implement these regulatory reforms, it might be difficult to accurately estimate the costs for purposes of setting application and renewal fees.
- The cost of enforcing regulatory compliance must be accounted for as it might include costly litigation in addition to administrative actions.
- A client security fund, mandatory insurance, and bonding or some other financial responsibility requirement should be considered in the discussion of revenue neutral funding of new regulatory functions.

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

| <b>Proposal 2.6</b>  | <b>Total</b> | <b>Support</b> | <b>Oppose</b> | <b>SNP</b> |
|--|--------------|----------------|---------------|------------|
| Lawyer   | 71%          | 25%            | 73%           | 2%         |
| Public Member  | 0%           | 0%             | 0%            | 0%         |
| Lawyer Organization (bar association, law firm, legal aid)                           | 18%          | 33%            | 50%           | 17%        |
| Public Organization (insurance companies, non and for profit nonlawyer organization) | 1%           | 0%             | 100%          | 0%         |
| Unknown (not enough information)   | 10%          | 57%            | 43%           | 0%         |
| <b>Total</b>   | <b>100%</b>  | <b>29%</b>     | <b>66%</b>    | <b>4%</b>  |

For the October meeting, the Task Force member(s) assigned to Recommendation 2.6 identified certain public comments for discussion. These comments are listed below together with each commenter's position on Recommendation 2.6. In addition to these public comments, staff has identified additional public comments and these are also included in the table below.

| Oppose<br>(1)  | Support<br>(1)             | Support if<br>Modified<br>(1)                  | Support if<br>Nonprofit<br>(0) | Support if<br>Sandbox/Pilot<br>Program<br>(1)             | Support if<br>Nonprofit<br>Sandbox/Pilot<br>Program<br>(2)           | Other<br>Reform<br>(0) |
|--|----------------------------|--|--------------------------------|---|--|------------------------|
| The Court<br>Buddy<br>Company<br>(McGlone)<br>[774l] | Moore's<br>Jennifer [761h] | Orange<br>County Bar<br>Association<br>[1134h] |                                | Consumer<br>Attorneys of<br>California<br>(Serna) [1097k] | Los Angeles<br>County Bar<br>Association<br>(Brot) [1355k]           |                        |
|  |                            |  |                                |   | Association of<br>Discipline<br>Defense<br>Counsel (Lear)<br>[1364k] |                        |

*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 2.6 (Regulatory Process Funded by Application/Renewal Fees)[ABS/MDP]  |  |
|--|--|
| Recurring Point  | Possible Response  |
| If the state bar is to allow non-attorneys to practice law, and then spend the time/effort/money to regulate those parties, then those parties should fund the cost of their efforts, not practicing attorneys.  | This recommendation would require regulated entities to pay a registration or certification fee to fund the regulatory agency tasked with oversight, including the concept of fee scaling. There is precedent for this approach in the State Bar's regulation of registered law corporations and limited liability partnerships. |
| I completely support the changes to the ethics rule on the lawyers for more consultants to have access to work on legal cases where high costs of a lawyer are can be saved. [NOTE: this comment is in support.] | In general, the Task Force's recommendations are based on the premise that innovative delivery systems can create efficiencies and lower the cost of legal services.   |

| <b>Recommendation 2.6 (Regulatory Process Funded by Application/Renewal Fees)[ABS/MDP]</b>  |  |
|---|--|
| <b>Recurring Point</b>  | <b>Possible Response</b>   |
| This would water down actual legal services. The process of obtaining a juris doctor eliminates people unfit to be lawyers, and now this would simply allow unfit persons to service the public and cheapen the value of real lawyers.  | Proactive risk-based regulation of the competence of nonlawyer providers that relies on auditing and monitoring rather than complaint-driven enforcement may help mitigate or prevent client harm. Regarding possible UPL reforms that would permit individual nonlawyers to render limited, specified legal services, imposing robust eligibility requirements also can address competence issues. 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. |
| It makes sense for those wishing to qualify as regulated entities to pay some kind of fee. I strongly support fee scaling to make the application available to non-profits & individuals who may have a more limited income than many practicing lawyers. [NOTE: this comment is in support.] | The Task Force agrees that regulated nonlawyer entities and individuals should pay a registration or certification fee to fund the regulatory agency tasked with oversight, including the concept of fee scaling. There is precedent for fee scaling in the annual fees paid to the State Bar to be a licensed attorney.   |