



The State Bar of California

**ATILS AGENDA ITEM D.5.
11-06-19 MEETING**

Task Force on Access Through Innovation of Legal Services

To: ATILS Task Force
From: Staff (includes October materials from Kevin Mohr)
Date: November 6, 2019
Re: D.5. Recommendation 3.4: Adoption of revised California Rules of Professional Conduct 7.1–7.5 to improve communication regarding availability of legal services using technology in consideration of: (1) the versions of Model Rules 7.1–7.3 adopted by the ABA in 2018; (2) the 2015 and 2016 Association of Professional Responsibility Lawyers reports on advertising rules; and (3) advertising rules adopted in other jurisdictions.

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 3.4:

Recommendation 3.4 will be discussed with other related other proposals. Recommendation 3.4 has received a total of approximately 79 written comments, 62 in opposition, 11 in support, and 6 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 advertising and solicitation CRPCs were revised recently (operative November 1, 2018) and it seems premature to proceed with the implementation of further changes to these rules.
- Allowing a lawyer's real-time electronic communication with a prospective client should be permitted, especially in the context of online delivery systems.

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

Proposal 3.4	Total	Support	Oppose	SNP
Lawyer	66%	6%	88%	6%
Public	0%	0%	0%	0%
Lawyer Organization (bar association, law firm, legal aid)	22%	29%	59%	12%
Public Organization (insurance companies, non and for profit nonlawyer organization)	1%	100%	0%	0%
Unknown (not enough information)	11%	22%	67%	11%
Total	100%	14%	78%	8%

For the October meeting, the Task Force member(s) assigned to Recommendation 3.4 identified certain public comments for discussion. These comments are listed below together with each commenter's position on Recommendation 3.4. In addition to these public comments, staff has identified additional public comments and these are also included in the table below.

Oppose (3)	Support (2)	Support if Modified (3)	Support if Nonprofit (0)	Support if Sandbox/Pilot Program (1)	Support if Nonprofit Sandbox/Pilot Program (0)	Other Reform (2)
Los Angeles County Bar Association (Brot) [1355p]	Association of Discipline Defense Counsel (Lear) [1364p]	LACBA PREC (Krueger) [1063j]		California Lawyers Association (Rosing) [1363g]		Consumer Attorneys of California (Serna) [1097p]
Orange County Bar Association [1134m]	The Court Buddy Company (McGlone) [774q]	State Bar of California COPRAC (Bomse) [1229n]				MyShingle.com (Elefant) [1202a]

Oppose (3)	Support (2)	Support if Modified (3)	Support if Nonprofit (0)	Support if Sandbox/Pilot Program (1)	Support if Nonprofit Sandbox/Pilot Program (0)	Other Reform (2)
LACBA SFSP (Furman) [909p]		Responsive Law (Gordon) [1197g]				

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 3.4 (Rules 7.1 – 7.5 Advertising & Solicitation) [Rules/Ethics Opns]	
Recurring Point	Possible Response
Authorizing non-lawyer legal practitioners will further clog the courts.	The comment does not appear to relate to this this proposal which pertains only to lawyer conduct rules on advertising and solicitation.
Non-lawyers will render less than competent legal services.	<p>The comment does not appear to relate to this this proposal which pertains only to lawyer conduct rules on advertising and solicitation.</p> <p>However, as to other Task Force proposals to relax UPL restrictions to permit regulated nonlawyers to provide specified legal services, imposing robust eligibility requirements could address the competence and quality of nonlawyer delivery of legal services. 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>
Improved funding to the courts will provide greater access to justice.	<p>The comment does not appear to relate to this this proposal which pertains only to lawyer conduct rules on advertising and solicitation.</p> <p>Nevertheless, in an attempt to address the comment, the Task Force notes that it was given a specific charge to study AI, technology and online legal service delivery systems with dual goals of increased access to legal services and public protection. A list of other potential different</p>

Recommendation 3.4 (Rules 7.1 – 7.5 Advertising & Solicitation) [Rules/Ethics Opns]	
Recurring Point	Possible Response
	<p>initiatives (i.e., not technology-driven initiatives) will be compiled as an appendix to the Task Force’s final report. The Task Force expects to include court funding in this list.</p>
<p>Implementation will cheapen the quality of legal services.</p>	<p>The comment does not appear to relate to this this proposal which pertains only to lawyer conduct rules on advertising and solicitation.</p> <p>However, as to other Task Force proposals to possibly relax UPL restrictions to permit regulated nonlawyers to provide specified legal services, imposing robust eligibility requirements could address competence issues with nonlawyer delivery of legal services. 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>Big businesses with revenue goals and “get-rich schemes’ are attempting to access the legal market – resulting in public harm.</p>	<p>In other jurisdictions, imposition of regulatory restraints are used to avoid misconduct by nonlawyer providers. As examples, this includes requirements for lawyer majority ownership of law practices (ABS in Italy) and fitness to own scrutiny for nonlawyers (in the U.K.). The Task Force’s proposals similarly contemplate the employment of rigorous regulatory measures to avert potential misconduct by nonlawyer providers.</p>