



The State Bar of California

**ATILS AGENDA ITEM A.5.
12-12-19 MEETING**

Task Force on Access Through Innovation of Legal Services
Wednesday, November 6, 2019
10:00 a.m. – 4:00 p.m.

The State Bar of California
180 Howard Street
Board Room, 4A-C
San Francisco, CA 94105
(415) 538-2116

Members Present: Simon Boehme, Tara Burd, Johann Drolshagen, Lori Gonzalez, Bridget Gramme, Andrew Kucera, Kevin Mohr, Joyce Raby, Toby Rothschild, Daniel Rubins, Mark Tuft, and Joshua Walker.

Not Present: Justice Lee Edmon, Andrew Arruda, Hon. Wendy Chang, Abhijeet Chavan, Jean Clauson, Margie Estrada, Joanna Mendoza, Allen Rodriguez, and Angelina Valverde.

Others Present: Brady Dewar, Randall Difuntorum, Mia Ellis, Sunil Gupta, Grant Kennedy, Mimi Lee, Heather Morse, Zach Newman, Doan Nguyen, Carolyn Shining, Andrew Sitzter, Jason Solomon, and Andrew Tuft.

To Join by Conference Call
Toll-Free Dial-In Number: 1-855-520-7605
Conference Code: 253-541-0212#

ACTION SUMMARY

A. Chair's Report

1. Roll Call

The Chair called the meeting to order and asked staff to take a roll call of the task force members.

2. Call for Public Comment

The Chair called for public comment. Jason Solomon, Carolyn Shining, Grant Kennedy, and Andrew Sizer gave oral testimony.

3. Chair's Report

Mr. Rothschild, co-vice chair of the Task Force, announced that Task Force Chair Justice Edmon was unable to attend the meeting and that he would preside as acting chair for the morning portion of the meeting and that Ms. Raby, co-vice chair of the Task Force, would preside during the afternoon portion of the meeting.

Mr. Rothschild reported that the Board of Trustees would be considering a staff recommendation to extend the deadline for the submission of an ATILS report from December 31, 2019 to March 31, 2020. The Task Force members concurred with

staff's observation that due to the voluminous public input the extra time for additional study would be beneficial.

4. **Staff Report**

The Chair recognized Mr. Difuntorum who provided a brief slide presentation identifying main themes in the public input and describing the meeting plan for addressing those themes under the key categories of regulatory reform that encompass the sixteen individual options that were issued for public comment. Mr. Difuntorum also observed that due to the low attendance at the meeting, it might be prudent to postpone until the December meeting any votes to finalize proposed revised recommendations.

5. **Approval of Action Summary from the October 7, 2019 Meeting**

The Action Summary of the October 7, 2019 meeting was approved (11 yes, 0 no, 1 abstain).

B. Discussion and Possible Action on Recommendations Issued for Public Comment Concerning Exceptions to the Unauthorized Practice of Law, including Consideration of Concepts for Regulation Discussion and Possible Action on Recommendations Issued for Public Comment Concerning Exceptions to the Unauthorized Practice of Law, including Consideration of Concepts for Regulation

1. Recommendation 1.0: The Task Force does not recommend defining the practice of law.
No action was taken.
2. Recommendation 1.1: The models being proposed would include individuals and entities working for profit and would not be limited to not for profits.
No action was taken.
3. Recommendation 2.0: Nonlawyers will be authorized to provide specified legal advice and services as an exemption to UPL with appropriate regulation.
No action was taken.
4. Recommendation 2.1: Entities that provide legal or law-related services can be composed of lawyers, nonlawyers or a combination of the two, however, regulation would be required and may differ depending on the structure of the entity.
No action was taken.
5. Recommendation 2.2: Add an exception to the prohibition against the unauthorized practice of law permitting State-certified/registered/approved entities to use technology-driven legal services delivery systems to engage in authorized practice of law activities.
No action was taken.

6. Recommendation 2.3: State-certified/registered/approved entities using technology-driven legal services delivery systems should not be limited or restrained by any concept or definition of “artificial intelligence.” Instead, regulation should be limited to technologies that perform the analytical functions of an attorney.
No action was taken.
7. Recommendation 2.4: The Regulator of State-certified/registered/approved entities using technology-driven legal services delivery systems must establish adequate ethical standards that regulate both the provider and the technology itself.
No action was taken.
8. Recommendation 2.5: Client communications with technology-driven legal services delivery systems that engage in authorized practice of law activities should receive equivalent protections afforded by the attorney-client privilege and a lawyer’s ethical duty of confidentiality.
No action was taken.

C. Discussion and Possible Action on Recommendations Issued for Public Comment Concerning Fee Sharing and Non-Lawyer Ownership, including Consideration of Concepts for Regulation

1. Recommendation 3.1: Adoption of Proposed Rule 5.4 [Alternative 1]
No action was taken.
2. Recommendation 3.2: Adoption of Proposed Rule 5.4 [Alternative 2]
No action was taken.
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
No action was taken.

D. Discussion and Possible Action on General Recommendations Issued for Public Comment and Other Concepts Raised by the Public Comments Received and the Testimony from the August 10, 2019 Public Hearing

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.
No action was taken.
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.

No action was taken.

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.

No action was taken.

4. Recommendation 3.0: Adoption of a new Comment [1] to rule 1.1 “Competence” stating that the duty of competence includes a duty to keep abreast of the changes in the law and its practice, including the benefits and risks associated with relevant technology

No action was taken.

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.

No action was taken.

6. Comments received on concepts not considered by the Task Force.

No action was taken.

ADJOURN

In compliance with the Americans with Disabilities Act, those requiring accommodations at this meeting should notify Lauren McCurdy at (415) 538-2107. Please provide notification at least 72 hours prior to the meeting to allow sufficient time to make arrangements for accommodations at this meeting.

The notice and agenda is available at: <http://board.calbar.ca.gov/Committees.aspx>.