



# The State Bar of California

ATILS Agenda Item A.5.  
January 2020 Action Summary  
02-04-20 Meeting

## Task Force on Access Through Innovation of Legal Services

Friday, January 10, 2020

10:00 a.m. – 4:00 p.m.

The State Bar of California

180 Howard Street

Board Room, 4A-C

San Francisco, CA 94105

**Members Present:** Justice Lee Edmon, Andrew Arruda, Simon Boehme, Tara Burd, Hon. Wendy Chang, Johann Drolshagen, Bridget Gramme, Andrew Kucera, Joanna Mendoza, Kevin Mohr, Heather Morse, Allen Rodriguez, Joyce Raby, Toby Rothschild, Daniel Rubins, and Mark Tuft.

**Not Present:** Abhijeet Chavan, Jean Clauson, Margie Estrada, Lori Gonzalez, Angelina Valverde, and Joshua Walker.

**Others Present:** Lawrence Colleti, Brady Dewar, Randall Difuntorum, Mia Ellis, Sunil Gupta, Donna Hershkowitz, Mimi Lee, Zach Newman, Doan Nguyen, Carol Shining, Andrew Tuft, and Leah Wilson.

### 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 but there was no one present in-person who wished to provide public comment.

#### 3. **Chair's Report**

The Chair wished the Task Force members a Happy New Year and congratulated Ms. Wilson on her departure as State Bar Executive Director. It was noted that Ms. Wilson will continue to work with the State Bar as a consultant and that ATILS would be one of her assignments. The Chair also recognized Ms. Hershkowitz as the interim Executive Director. Regarding ATILS' remaining meetings, the Chair reminded the Task Force members that the next ATILS' meetings are scheduled for February 4<sup>th</sup> and 24<sup>th</sup> in Los Angeles. After ATILS' last meeting on the 24<sup>th</sup>, the Board of Trustees is scheduled to meet on March 12<sup>th</sup> and if no specially set meeting is added, then the ATILS' report and recommendations would be presented to the Board at the March 12<sup>th</sup> meeting. If there is a specially set meeting added later in March for the ATILS report, then ATILS' February 24<sup>th</sup> meeting might be moved to a later date.

**4. Staff Report**

Mr. Difuntorum reported that: (1) on January 8th the *Artificial Lawyer* published an article on *California Taskforce Warns of Legal Tech 'Dark Pattern' Marketing and Considers Regulatory Sandbox*; (2) the draft reports and recommendations for rule 1.1, UPL exceptions for humans and technology, non-lawyer ownership, rule 5.7, and advertising rules should be prepared for the February 4<sup>th</sup> and 24<sup>th</sup> meeting; (3) at the February 24<sup>th</sup> meeting, the Task Force should plan to discuss the structure of the report and strategy for presentation to the Board; (4) at the January 23<sup>rd</sup> planning session meeting of the Board, there will be a discussion on LLLTs; (5) the rough draft of the results of the State Bar's survey of the public on access and use of technology should be available by the February 24<sup>th</sup> meeting; and (6) there is a plan to hold an informal forum for discussion amongst stakeholders and member(s) of the Task Force and recognized Ms. Gramme who gave a brief oral report on a meeting scheduled with legal services organization stakeholders and plans for a meeting with technology and other stakeholders.

**5. Approval of Action Summary from the December 12, 2019 Meeting**

The Action Summary of the December 12, 2019 meeting was approved (15 yes, 0 no, 1 abstain).

**B. Discussion and Possible Action on**

**1. Recommendations Issued for Public Comment Concerning Exceptions to the Unauthorized Practice of Law, including Consideration of Concepts for Regulation (Recommendations 1.0, 1.1, 2.0, 2.1, 2.2, 2.3, 2.4 and 2.5.)**

Mr. Arruda made a motion to recommend to the Board the consideration of innovative legal services delivery systems, including technology driven legal advice and services, within the constraints of a regulatory sandbox that will provide data on any potential benefits to access to legal services and any possible consumer harm when restrictions on UPL, fee sharing and nonlawyer ownership are relaxed or completely suspended for sandbox participants. Following discussion by the Task Force, the Task Force voted to approve the motion (14-0-2).

**2. Recommendations Issued for Public Comment Concerning Fee Sharing and Non-Lawyer Ownership, including Consideration of Concepts for Regulation (Recommendations 3.1, 3.2, and 3.3.)**

Prof. Mohr made a motion to recommend to the Board the consideration of adoption of proposed amended: CRPC 5.4(a)(5); Comment [2], and new comment language regarding communication of fee sharing arrangements to a client when such sharing constitutes a "significant development" under the CRPCs and the State Bar Act. Following discussion by the Task Force, the Task Force voted to approve the motion (13-3-0).

The revised 5.4 comment language was not finalized and will be presented at the February 4th meeting. Also discussed and expected for the February 4th meeting was a proposal to include language in the ATILS final report and recommendation clarify that the Task Force supports a continued study of changes to CRPC 5.4, including but not limited to the concepts reflected in the public comment illustration drafts designated as ALT-1 and ALT-2.

Mr. Tuft made a motion to recommend to the Board the consideration of adoption of a new CRPC similar in concept to ABA Model Rule 5.7 and appoint a working group to draft a proposed rule that addresses potential access to justice benefits to the PeopleLaw sector from innovative delivery of law related services provided by lawyers and law firms and businesses owned or affiliated with lawyers and law firms. Following discussion by the Task Force, the Task Force voted to approve the motion (13-0-3).

**3. General Recommendations Issues for Public Comment  
(Recommendations 1.2, 1.3, 2.6, 3.0, and 3.4.)**

Mr. Tuft made a motion to recommend that the Board consider initiating a study of the regulatory Certified Lawyer Referral Service rules and statutes together with relevant CRPCs to assure that they properly balance public protection and innovation in light of access to justice concerns with a particular emphasis on ascertaining if the existing law imposes unnecessary barriers to referral activities (including online matching services) that are in the public interest. Following discussion by the Task Force, the Task Force voted to approve the motion (13-0-2).

**C. Discussion of Other Concepts Raised by the Public Comments Received and the Testimony from the August 10, 2019 Public Hearing**

- 1. Comments received on concepts not considered by the Task Force.**  
This item was not discussed.

**D. Discussion of Further Outreach to Consumers and Other Stakeholders**

- 1. Survey of the public**  
This item was covered in the Staff Report.
- 2. Informal forum for discussion amongst stakeholders and member of the Task Force**  
This item was covered in the Staff Report.

**ADJOURN**

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