



The State Bar of California

OPEN SESSION AGENDA ITEM 701 MARCH 2020

DATE: March 12, 2020

TO: Members, Board of Trustees

FROM: Hellen Hong, Director, Office of Access & Inclusion

SUBJECT: Adoption of Strategic Plan Access Objectives

EXECUTIVE SUMMARY

The State Bar published the California Justice Gap Study in January 2020, which marks the completion of Goal 4 objective (e) of the Strategic Plan. The California Justice Gap Study is modeled on the 2017 Legal Services Corporation (LSC) Justice Gap Study, and also included an evaluation of the costs of legal education in California and the impact of those costs on access to justice, as well as possible approaches to addressing the costs of legal education, including loan forgiveness programs or other means.

This agenda item recommends the adoption of three new access to justice objectives for the State Bar Strategic Plan, in light of the findings from the California Justice Gap Study and feedback from partners and external stakeholders.

BACKGROUND

CALIFORNIA JUSTICE GAP STUDY

The California Justice Gap Study found that 55 percent of Californians experienced at least one civil legal issue in their household in the past year, and 13 percent experienced six or more. The rate was higher for those living in households with incomes at or below 125 percent of the Federal Poverty Level (FPL). Approximately 85 percent of all Californians received either no legal help or inadequate legal help for the civil legal problems they experienced. A significant justice gap persists even at higher levels of income: Californians between 501 and 600 percent of FPL received no legal help or inadequate legal help for 74 percent of their civil legal

problems; those above 601 percent of FPL received no or inadequate legal help for 78 percent of their problems.

There are two components to the justice gap: a knowledge gap and a service gap. For many problems, Californians simply do not know that the problem they experience has a legal component or remedy, and/or do not know where to look for legal help—this is the knowledge gap. The service gap refers to the fact that the resources are insufficient to meet the needs of the significant percentages of Californians who seek legal help.

The most common types of civil legal problems experienced by Californians overall—regardless of income—included issues related to health, finance, and employment. While the prevalence of specific types of problems was similar regardless of income, the types of problems for which Californians sought legal help varied based on income. Californians of all income levels sought legal help more often for problems they reported as having a severe impact on their lives. For low-income Californians, the most prevalent problems for which they sought and received legal help were children and custody, homeownership, and immigration. For Californians above 125 percent of FPL, the problems for which legal help was sought most often were wills and estates, family, and children and custody.

Knowledge Gap

The California Justice Gap Survey revealed that a significant portion of the justice gap in California is caused by a lack of knowledge about the civil legal system. Although more than half of Californians experience at least one actionable civil legal problem in a given year, they seek legal help for only 32 percent of them. Most do not recognize the legal aspects of these problems; if they do recognize those aspects, many do not know how to access the appropriate resources to address them.

Californians who seek legal help for their problems get that help both online and offline. Legal aid organizations are the most common source for those with incomes at or below 125 percent of FPL, while paid private attorneys are the most common source of legal help for Californians overall and for those with higher incomes.

Service Gap

The service gap occurs when the available legal services are insufficient to meet the needs of Californians who seek legal help for their problems. The Justice Gap Study's findings regarding the service gap was derived from an Intake Census of State Bar-funded legal aid organizations about the individuals who contacted them for legal help and the ability of those organizations to serve them.

Legal aid organizations are the most common source of legal help for those with incomes at or below 125 percent of FPL. Reports from State Bar-funded legal aid organizations indicate they can fully resolve only 30 percent of the problems reported, and will provide partial help for approximately another one-third of the problems reported. A lack of resources prevents legal aid organizations from fully resolving another one-third of the problems. The reasons why legal

aid organizations may not be able to assist with a problem include insufficient resources, conflicts of interest, and the problem type not aligning with an organization's mission or priorities.

Extrapolating the findings of the California Justice Gap study based on census data, an additional 8,961 full-time attorneys would be needed to resolve all the civil legal problems experienced each year by low-income Californians. Estimating the funding required at \$100,000 per year per attorney, inclusive of salary and administrative costs, an additional \$900 million in annual legal aid funding would be required to meet the legal needs of low-income Californians eligible for legal aid. For comparison, the State Bar-funded legal aid organizations cumulatively employed approximately 1,500 attorneys in 2018.

Legal Aid Recruitment and Retention

Despite increased funding for legal aid in recent years from the State Bar and other funders, recruitment and retention of attorneys has become an acute issue for legal aid organizations in California. A 2010 survey by the Legal Aid Association of California (LAAC) found that over one-third of attorneys working in legal aid left within three years of being hired. This trend appears to be accelerating, with legal aid organizations reporting in LAAC's most recent 2019 survey that one-third of their attorneys left within two years.

This problem is compounded by recent difficulties in recruiting, with smaller pools of applicants being reported for open positions. Between October and November 2019, almost 60 legal aid attorney positions had been posted throughout California in the preceding two months.

According to LAAC's most recent study, the primary factors impacting recruitment and retention are low salaries, few career advancement opportunities, and burnout. Salaries at legal aid organizations are drastically lower than their equivalents in private practice, and even in government. The average statewide salary for a legal aid staff attorney is \$67,600.

Coupled with unprecedented levels of educational debt, low salaries pressure legal aid attorneys to seek other employment opportunities. Educational debt in particular has become a major barrier to long-term career prospects in legal aid.

Impact of the Cost of Education

Addressing the pipeline of attorneys to legal aid is critical to reducing the justice gap. The California Justice Gap Study included an examination of career decisions among law students to examine the status of the pipeline into public interest and legal aid careers.

The State Bar surveyed 2,476 law students enrolled in California law schools during fall 2019. The survey asked students about their past and current career plans, their law school and total educational debt levels, their primary motivating factors in choosing their first job after law school, their familiarity with and rating of current loan repayment programs, their internship experiences, and their demographic characteristics. The State Bar partnered with LAAC to

conduct 14 law student focus groups across the state to validate and contextualize the survey results.

Research on the pipeline to a public interest career has examined what has been called “public interest drift,” the trend among law students to veer away from public interest careers despite previous motivation to pursue such careers. According to the survey results, California law students enrolled in California ABA and California Accredited Law Schools (CALS) experienced a cumulative drift rate of 49 percent. Given that only a fraction of students enrolled in California law schools ever express an interest in a public interest career, this level of drift is particularly problematic.

Among students at California ABA law schools and CALS who drifted, the most widely cited reason was the need to repay educational debt. Among students enrolled in California ABA law schools, 80 percent expect to graduate with law school loans, with a median estimated debt load of \$147,000. Students who experienced public interest drift had a median law school debt load 40 percent higher than those who did not.

As currently structured, law school Loan Repayment Assistance Programs (LRAPs) and the federal government’s Public Service Loan Forgiveness Program (PSLF) have provided limited results in reducing public interest drift. Only 27 percent of survey respondents enrolled in California ABA schools and CALS with current or prior interest in public interest careers were aware of their school’s LRAP; 68 percent were aware of PSLF. When asked to rate these programs, respondents on average did not agree that the programs increased their feelings of financial security, nor were they confident that they would receive funds from the programs or have their loans forgiven. Law students commented that existing programs were ineffective due to low-income ceiling requirements, inadequate funding, overly complicated terms, and influence over potential marriage decisions. For example, the LRAP program at one California ABA-approved law school requires applicants to resubmit forms every six months, work in a nonprofit or government agency, and maintain a total income of less than \$60,000. If the graduate is married, income is calculated based on either the highest partner’s income or one-half of their joint income, whichever is greater. Such requirements are typical of LRAP programs at law schools throughout the state.

Requirements for maintaining PSLF eligibility are also burdensome. Those applying for PSLF must provide proof of ten years of full-time employment at a qualified workplace, as well as 120 loan payments on qualified loans. As of June 30, 2019, only 1,216 out of 102,051 applications have been approved by the U.S. Department of Education, with missing qualifying payments serving as the most common reason for rejection.

Based on the information gathered in the law student survey, a California law student with no debt is 10 percentage points less likely to drift than an identical law student with the average amount of law school debt. Other factors, such as internship experience and ratings of existing loan repayment programs, also play important roles in determining the likelihood of public interest drift among law students. Holding all factors equal, students at California ABA schools and CALS who intern at a public interest firm the prior summer were 34 percentage points less likely to drift than those who do not. This analysis suggests that experience interning at a public

interest organization is the strongest predictor of a student maintaining their plans to pursue a public interest career after graduation.

This finding may be the result of self-selection, in which public interest-minded students who intern at public interest organizations are more committed to public interest careers than those who do not. However, the results from the focus groups administered by LAAC indicate an alternative explanation. In the focus groups, students intending to work in the public interest field reported obstacles to interning at public interest organizations due to a lack of funding for such internships.

DISCUSSION

The California Justice Gap Executive Report included a broad array of recommendations to address the various components of the justice gap, included as Attachment A. The recommendations were a means of getting the conversation started. Some of the recommendations are appropriately within the purview and/or capabilities of the State Bar; for others, entities other than the State Bar are better suited to take the lead.

To help inform the Board's decision-making about how best to advance the important recommendations in the Justice Gap Study, staff sought input from the California Commission on Access to Justice (CCAJ), Judicial Council staff, LAAC, the Council on Access and Fairness, the Legal Services Trust Fund Commission, State Bar-supported legal aid organizations, and the Legal Services Funders Network. Formal feedback from CCAJ and LAAC are included as Attachments A and B, respectively, and discussed below.

In addition, the State Bar presented key findings at an informational hearing conducted jointly by the Assembly Committee on Judiciary and Assembly Budget Subcommittee No. 5 on Public Safety, on "How Can California Improve Access to Justice for Unpresented Litigants." The staff of the Assembly Committee on Judiciary provided a Background Paper¹ that presented possible options to improve access to justice for all Californians, which included several of the California Justice Gap Executive Report recommendations.

Additionally, as one of the required deliverables in the contract between the State Bar and CCAJ, CCAJ submitted recommendations "regarding specific objectives that, subject to State Bar decisions regarding feasibility, timing, and prioritization, could be added to the 2017-2022 State Bar Strategic Plan to further the State Bar's goal of supporting access to justice for all California residents and improvements to the state's justice system." These recommendations are included as Attachment D. In summary, CCAJ suggested the following, which aligns with the recommendations of the Justice Gap Study:

1. Support and participate in public education about problems not recognized as legal;
2. Cooperate with well-considered innovations aimed at lowering the cost of competent, effective, and available legal services;
3. Support well-considered measures to attract and retain lawyers in legal aid and similar organizations; and

¹ Available at <https://ajud.assembly.ca.gov/sites/ajud.assembly.ca.gov/files/Background%20Paper.pdf>.

4. Support and collaborate with other access to justice organizations.

Based on the California Justice Gap Study findings, CCAJ's strategic plan recommendations, and feedback from key external stakeholders and partners, staff recommend that the Board amend the Strategic Plan to include the following objectives to increase access to justice in California. These recommendations have consensus from the stakeholders listed above.

Addressing the Knowledge Gap

For many problems, Californians simply do not know that the problem they experience has a legal component or remedy, and/or do not know where to look for legal help—this is the knowledge gap.

Recommendation 1: Support public education about key problems not recognized as legal issues.

This recommendation was suggested by CCAJ in light of the California Justice Gap Study findings, and the California Justice Gap Executive Report included a similar recommendation targeted to legal service providers. The State Bar can help identify which key problems are not typically recognized as legal issues and target efforts to support resources in those areas.

Using the Justice Gap Study data, the State Bar can provide more analysis on which types of problems Californians identify as having a severe or substantial impact on their lives, and where the data also suggests Californians did not recognize the problem as legal or did not know where to look for help. The State Bar can develop a communications strategy to raise awareness that those types of problems are legal and highlight available resources in collaboration with partners. For example, the Judicial Council's online Self-Help Center provides a great deal of information on a number of topics and resources. The California Lawyers Association (CLA) is interested and excited to collaborate in this work. CLA Sections have developed useful videos on specific topics, and they are interested in expanding materials and videos for wider distribution to the public.

In addition to mining the justice gap study to explore the experiences and behavior of Californians, the State Bar will continue to study the experiences of limited English proficient Californians. The State Bar recognizes the rich diversity of the state. Although the first phase of the California Justice Gap survey was very robust, limitations did not allow conducting the survey to limited English proficient Californians. This second phase of the study will provide greater insight on the justice gap specifically for Californians who are limited English speakers. The State Bar is planning on deploying the survey in languages such as Spanish, Mandarin, Korean, Vietnamese, and Farsi.

Addressing the Service Gap

Approximately 85 percent of all Californians received no legal help, or inadequate legal help, for the civil legal problems they experienced.

Recruitment and retention of attorneys has become an acute issue for legal aid organizations in California. The data from the Law Student Survey tells us that experience interning at a public interest organization is the strongest predictor of a student maintaining their plans to pursue a public interest career after graduation. The State Bar also confirmed that for most legal aid internships, students need to find their own funding for these opportunities or receive a modest stipend for the summer, which make them more difficult for students with high educational debt loads. In addition, legal aid organizations are experiencing an accelerated attrition rate due to financial pressures related to low salaries and high educational debt loads, leading one-third of all legal aid attorneys to leave within two years, impacting client services and institutional stability.

Recommendation 2: Support efforts to attract and retain lawyers in legal aid organizations.

This is a recommendation that is aligned with CCAJ's access to justice recommendations and LAAC's feedback. The State Bar could operationalize this objective in three main areas. First, the State Bar could examine funding opportunities for paid law student internships at State Bar funded legal aid organizations. State Bar staff began to socialize the question of whether the annual voluntary donations for the Justice Gap Fund (historically raising approximately \$1.25 million annually and distributed by IOLTA formula) might be redirected for paid internships for IOLTA programs. The goal would be to increase the number of potential future legal aid attorneys and combat public interest drift in law school. The feedback from executive directors of legal aid organizations and LAAC was positive. Although further exploration and discussion is needed with these stakeholders and others, it is possible that focusing the Justice Gap Fund in this manner may increase donations. This issue should be a key part of the discussion of the task force that will be convened under the auspices of Business and Professions Code section 6033² to examine approaches for the collection and distribution of donations to the Justice Gap Fund.

Second, the State Bar should also examine proposals for a State-funded attorney Loan Repayment Assistance Program (LRAP) to improve recruitment and retention for legal aid attorneys, particularly in areas facing recruitment or retention challenges, such as rural areas. CCAJ and LAAC are strong advocates for funding for a state-supported LRAP and will be important partners in such an effort.

Third, the State Bar can harness its role with law schools to promote legal aid careers by coordinating efforts between law schools and access to justice organizations. As an entity that engages with law schools and nearly one hundred legal aid organizations, the State Bar is uniquely positioned to coordinate with key stakeholders like law school administrators, LAAC, CCAJ, and others to share and distribute materials and best practices on supporting students toward careers in legal aid.

² In consultation with the Chief Justice of California, the statute calls for the State Bar to appoint a task force of key stakeholders to propose an appropriate method for facilitating the collection and distribution of voluntary contributions that is best calculated to generate the greatest level of financial support and participation from State Bar licensees, taking into account such issues as the justice-gap between the legal needs of low-income people in California and the legal resources available to assist them.

The justice gap is not limited to low-income Californians. A significant justice gap persists even at higher levels of income: Californians between 501 and 600 percent of FPL received no legal help or inadequate legal help for 74 percent of their civil legal problems; those above 601 percent of FPL received no or inadequate legal help for 78 percent of their problems. The State Bar is in the midst of exploring opportunities for addressing the service gap to moderate-income Californians through the work of the Task Force on Access Through Innovation of Legal Services, which will present its recommendations to the Board at this same meeting, as well as through the creation of the California Paraprofessionals Working Group at Board direction following the January 2020 Planning Session.

The State Bar recognizes that these recommendations require a collaborative approach with stakeholders to improve access to justice and will specifically define the State Bar's role in decreasing the justice gap. Staff recommend these objectives because there is consensus on these priorities with our stakeholders and partners.

As noted above, CCAJ had other recommendations for the State Bar's access objectives. In addition, LAAC and other key stakeholders suggested that the State Bar assist legal aid in developing technological solutions to amplify services and encourage more pro bono volunteering by California attorneys. Staff is not recommending to add Strategic Plan objectives to address these suggestions at this time, because they would require additional funding that does not exist or are existing activities that the State Bar already performs.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES OF THE STATE BAR

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 4. Support access to legal services for low- and moderate-income Californians and promote policies and programs to eliminate bias and promote an inclusive environment in the legal system and for the public it serves, and strive to achieve a statewide attorney population that reflects the rich demographics of the state's population.

Objective: b. Study and implement improved programmatic approaches to increasing access to justice.

Objective: e. No later than December 31, 2020, complete a California Justice Gap Study. The Justice Gap Study will be modeled on the 2017 Legal Services Corporation Justice Gap Study, but will also include an evaluation of the costs of legal education in California and the impact of those costs on access to justice, as well as possible approaches to addressing the costs of legal education including loan forgiveness programs or other means.

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees approve updating the 2017-2022 Strategic Plan to include additional Access to Justice objectives in light of the California Justice Gap Study; and it is

FURTHER RESOLVED, that the following objectives are added to Goal 4 of the Strategic Plan:

- Support public education about key problems not recognized as legal issues.
- Support efforts to attract and retain lawyers in legal aid organizations.

ATTACHMENT(S) LIST

- A. Recommendations From the Justice Gap Study Executive Report
- B. California Access to Justice Commission Feedback on Recommendations in the Justice Gap Study Executive Report
- C. Legal Aid Association of California Feedback on Recommendations in the Justice Gap Study Executive Report
- D. California Access to Justice Commission Recommendations and Advice on the State Bar's Strategic Plan

2019

CALIFORNIA JUSTICE GAP STUDY

EXECUTIVE REPORT



The State Bar
of California



RECOMMENDATIONS

Most Californians do not seek or receive legal help because they do not know that the problems they face are legal, and if they do, they are uncertain as to how to access legal help. Even when Californians do seek and receive legal help for their problems, that help is insufficient to fully resolve a majority of those problems. The recommendations that follow address the two primary components of the justice gap as identified by the data collection and analysis that formed the basis for the California Justice Gap Study: the Knowledge Gap and the Service Gap. In addition to the present recommendations, the State Bar has identified a number of areas requiring further study including:

- The legal services needs and corresponding resources of tribal communities and Californians with limited proficiency in English,
- The legal help-seeking behavior of Californians and the factors that keep them from seeking legal help,
- Recruitment and retention challenges that legal aid organizations face and further data-gathering on staff turnover, and
- The public interest career pipeline, with a focus on diversity in the legal profession.

KNOWLEDGE GAP

Strategic efforts to educate the public about the civil legal system can help reduce the knowledge gap.

Targeted outreach to Californians based on the specific types of problems most commonly experienced may increase the likelihood that the legal aspects of those problems are diagnosed.

Technology can be leveraged to help Californians more easily diagnose legal problems and navigate the civil legal system. A 2019 study of legal technology for nonlawyers by Rebecca Sandefur found that there are currently hundreds of legal tools for nonlawyers on the market, but those tools are limited, often poorly designed, and not accessible to those who would benefit from them the most.⁴² This study also found that most legal tools focus on providing information or assistance that is only helpful once an individual has recognized that their problem has a legal aspect and is ready to take action. Unfortunately, these tools are of little use for the majority of Californians who experience legal problems but do not seek legal help due to the knowledge gap.

Recommendation: Increase the availability of accessible, engaging, and reliable legal information and tools to help diagnose legal problems.

- Optimize search engine results, to ensure that Californians are directed to reputable sources of information and assistance. Provide online legal information about the most common types of problems faced by Californians: health, finance, employment, and income maintenance. Regularly

Strategic efforts to **educate the public** about the civil legal system can **help reduce the knowledge gap**.

update websites to ensure that information is current, digestible, and easy to find.

- Explore regulatory reforms designed to encourage technological innovation in the legal sector and remove obstacles to the development of useful diagnostic legal tools.
- The private sector should partner with legal service providers to develop intuitive tools that can help Californians diagnose legal problems and navigate the civil legal system.
- Legal aid funding should address the need for help in diagnosing the legal aspects of problems.
- Legal service providers should deliver “know your rights” trainings online and develop content to distribute at nonlegal entities such as schools, social services organizations, and community centers, to educate the public about the most common types of legal problems.

SERVICE GAP

The current legal services delivery system is unable to meet the legal needs of Californians. The service gap leaves millions of Californians, across all income levels, without access to adequate legal help to fully resolve their civil legal problems. Funding for legal services is a key component to reduce the justice gap, but funding alone will not be enough.

Recommendation: Modify legal aid funding requirements to improve organizational efficiency and sustainability.

- Adopt uniform income eligibility limits and other funding requirements to decrease administrative burdens on legal aid organizations.
- Extend funding cycles beyond 12 months to support long-term planning and provide a consistent funding base for legal aid.
- Provide unrestricted multiyear grants for general operating costs and consider raising income eligibility limits for free civil legal aid to support Californians whose incomes are above 125 percent of FPL.⁴³

Recommendation: Remove barriers to recruitment and retention of legal aid attorneys.

- Fund paid law student summer internship opportunities, which increase the pipeline of legal aid attorneys.
- Incorporate flexible hours and remote work options, career advancement opportunities, and support for self-care and wellness into legal aid recruitment and retention strategies.
- Promote legal aid careers through law school career centers, at campus events, and on job boards.
- Fund paid internships at legal aid organizations.
- Increase law school support to those navigating loan repayment programs.

Funding for legal services is a key component to reduce the justice gap, but **funding alone will not be enough.**

The State Bar of California recognizes the **need for legal innovation and regulatory reform** that could stimulate the creation of new legal service models designed to **reduce the justice gap in California.**

- Pilot LRAPs that target areas of greatest legal need, based on problem types and geographic regions.
- Pilot tuition assistance programs contingent on public interest work to determine impact on public interest drift.

Recommendation: Increase the availability of legal services and address the areas of greatest legal need.

- Identify technology and nontechnology based approaches to create more affordable legal services for those who will not qualify for legal aid, but who cannot pay the current market rate for attorney services.
- Fund projects addressing the most common types of problems faced by Californians: health, finance, employment, and income maintenance.
- Address, through funding and services, the regional disparities identified in the California Justice Gap Study (see the technical report at www.calbar.org/CAJusticeGap).
- Collect more robust data on self-represented litigants so that approaches to addressing the needs of this population can be informed by current and comprehensive data.

As a regulatory agency with a mission to protect the public and increase access to justice, the State Bar of

California recognizes the need for legal innovation and regulatory reform that could stimulate the creation of new legal service models in order to reduce the justice gap in California. In 2018, the State Bar's Board of Trustees created the Task Force on Access Through Innovation of Legal Services (ATILS). ATILS is charged with identifying possible regulatory changes to enhance the delivery of, and access to, legal services through the use of technology, including artificial intelligence and online legal service delivery models. Since its inception, ATILS has expanded its focus to include nontechnology based solutions, including the Limited License Legal Technicians model, adoption of which in California could increase access to legal services by expanding the universe of people eligible to give legal advice.

Final recommendations from the ATILS Task Force will be submitted to the State Bar Board of Trustees in Spring 2020. As highlighted in the recommendations listed above, responsible regulatory reform is likely one part of the solution to closing the justice gap; given the magnitude of the problem and the diversity of California's population, no single intervention alone will be enough to close it. The California Justice Gap Study findings present opportunities for legal services providers, courts, funders, and other stakeholders to help increase access to the legal system for all Californians.

CALIFORNIA COMMISSION ON ACCESS TO JUSTICE

350 Frank Ogawa Plaza, Suite 701, Oakland, CA 94612 · (510) 893-3000

HON. MARK A. JUHAS,
Chair
Los Angeles County Superior Court
Los Angeles

CATHERINE J. BLAKEMORE,
Vice Chair
Sacramento

JOHN W. ADKINS
San Diego Law Library
San Diego

A. BEVERLY COLE
Cole Renwick, LLC
Palm Desert

DAVID R. DANIELS
Public Counsel
Los Angeles

HON. TIMOTHY P. DILLON
Los Angeles County Superior Court
Alhambra

ERIKA C. FRANK
California Chamber of Commerce
Sacramento

ROSA M. FREGOSO
Velasco Law Group
Downey

JUAN JOSE GUTIERREZ
One Stop Immigration and Educational Center
Los Angeles

AMOS E. HARTSTON
California Department of Justice
Los Angeles

HON. JAMES E. HERMAN
Superior Court of Santa Barbara County
Santa Barbara

JANIS R. HIROHAMA
League of Women Voters of California
Manhattan Beach

HON. LISA R. JASKOL
Los Angeles Superior Court
Los Angeles

HON. VICTORIA S. KOLAKOWSKI
Alameda County Superior Court
Oakland

MICHAEL J. LEVY
California Department of Insurance
Sacramento

JAMES W. MEEKER
University of California, Irvine
Irvine

ANNE MARIE MURPHY
Cotchett, Pitre & McCarthy
Burlingame

PANIDA M. RZONCA
Thai Community Development Center
Los Angeles

JOHANNA VALLE SOBALVARRO
Interpreters Guild of America
San Francisco

SHUMIKA T. R. SOOKDEO
Robinson Sookdeo Law
Riverside

ELICA VAFIAE
Lawyers' Committee for Civil Rights
San Francisco

HON. ERICA R. YEW
Santa Clara County Superior Court
San Jose

JACK W. LONDEN
Executive Director
San Francisco

February 21, 2019

Via Email

Hellen Hong
State Bar of California
180 Howard Street
San Francisco, CA 94104

Re: Recommendations in the Justice Gap Executive Summary

Dear Hellen:

At your request, the Commission on Access to Justice provides the following written comments on the recommendations in the Executive Summary to the Justice Gap study:

Recommendation: Increase the availability of accessible, engaging, and reliable legal information and tools to help diagnose legal problems.

Comment: The Justice Gap survey confirms an insight: A primary obstacle facing people who need legal help is their lack of public awareness of the legal aspects of their problems. Effective measures to overcome this obstacle are as important as they are challenging to accomplish.

- *Optimize search engine results to ensure that Californians are directed to reputable sources of information and assistance. Provide online legal information about the most common types of problems faced by Californians: health, finance, employment, and income maintenance. Regularly update websites to ensure that information is current, digestible, and easy to find.*

Comment: In alignment with Professor Rebecca Sandefur's research—which is corroborated by this report—we know that the access to justice crisis has two equally important aspects: one, that people do not think their problems are legal problems and therefore do not seek legal advice and, two, they do not have access to the services they need to resolve those issues once they seek help. Developing online legal information helps with the latter, by providing accurate and digestible information to assist them in reaching the assistance they need in a centralized platform. One example, as referenced elsewhere here, is online

portals, such as in the collaboration between Microsoft and Pro Bono Net. The Judicial Council's online Self-Help Center (<https://www.courts.ca.gov/selfhelp.htm>) provides many other examples.

Additionally, the Legal Aid Association of California, with funding from the State Bar, runs the official statewide legal resource and referral website, LawHelpCA.org. There are difficulties that LAAC and other nonprofits face with search engine optimization as they cannot afford to purchase the “ad words” used, especially in important matters like disaster legal assistance. The Bar should explore whether there are opportunities to encourage corporations like Google and Microsoft/Bing to prioritize certain search terms for legal nonprofit results.

- *Explore regulatory reforms designed to encourage tech innovation in the legal sector and remove obstacles to the development of useful diagnostic legal tools.*

Comment: Regulatory changes aimed specifically at legal needs of underserved persons and groups may help to increase access, especially for those who cannot qualify for legal aid but still need low-cost legal services. Removing obstacles to technologies that streamline legal services such as document assembly and other tasks could allow lawyers who serve low and moderate income clients to practice “at the top” of their license. Regulatory change should be careful, however, to avoid opening doors to low quality, fee-bearing products that can walk unrepresented persons into situations in which they need, but may not realize they need, situation-specific help from a trained advisor.

Technology is not a panacea, and must be considered as one piece in the spectrum of access to justice solutions — along with unbundling, incubators, court navigators, and traditional, full-scope legal aid. It may be appropriate to explore careful regulatory change to facilitate new forms of help with legal problems. However, the lack of regulatory change is not necessarily an obstacle to the availability and improvement of diagnostic legal tools. Many such tools exist now, and others are possible without regulatory change.

- *The private sector should partner with legal services to develop intuitive tools that can help Californians diagnose legal problems and navigate the civil legal system.*

Comment: Delivering legal services more efficiently, and at lower cost, is critical to better serving moderate-income people who are not, and probably cannot be, subsidized by other demographic groups. Private sector entities may be well-situated to develop innovations to increase cost-effectiveness of legal products and services. As noted above, care is required because self-help aided by technology most often still requires a skilled person's involvement. Thus, most tools must include red flags for occasions when hands-on help from a skilled person

is essential and, ideally, the capacity to make referrals in those situations to legal aid programs or affordable help for people not eligible for legal aid.

By developing partnerships between for-profit companies and nonprofits like legal aid offices, we can bring much-needed financial and technological resources and expertise to those who work every day to increase access by providing high-quality services to clients.

- *Legal aid funding should address the need for help in diagnosing the legal aspects of problems.*

Comment: To narrow the knowledge gap about what problems have a legal aspect, the involvement of legal aid organizations is crucial. They know the relevant law, including the difference between situations suitable for trained and supported self-help and situations where clients need an attorney's help. Technology Innovation Grants (TIG) from LSC have provided legal aid offices with knowledge, funding, and resources to build-out technologically innovative projects, whether diagnostic, navigational, or otherwise. Without additional, targeted funding, legal aid programs are already overstretched. They require new funding sources to take on new projects. Collaboration among the private sector, legal aid, the State Bar, and others to provide funds for diagnosis of legal problems could help people to recognize when their problems are legal, and to find solutions.

- *Legal service providers should deliver "know your rights" trainings online and develop content to distribute to non-legal entities such as schools, social services organizations, and community centers to educate the public about the most common types of legal problems.*

Comment: Increasing the availability of knowledge at different spaces that low- and moderate-income people frequent is important. While legal services providers should be partners in this effort, the State Bar, the Courts, the State government and others should also participate and provide support.

Additionally, because of the knowledge gap, more can be done to reach people who are the "helpers." This is more efficient than trying to reach only the broader public. This includes work that nonprofits do to provide materials to public librarians, employees of houses of worship, and employees at community and cultural centers. More can be done to increase know your rights presentations and to provide brief advice clinics at secondary schools and community colleges. For example, immigration nonprofits and immigration attorneys provide services and information at CSU locations. Those attorneys are able to triage and refer people for additional help if non-immigration matters are identified as part of intake.

Recommendation: Modify legal aid funding requirements to improve organizational efficiency and sustainability.

Comment: Funding requirements should encourage, not hamper, the delivery of the legal services that eligible clients need.

- *Adopt uniform income eligibility limits and other funding requirements to decrease administrative burdens on legal aid organizations.*

Comment: In theory, uniform income eligibility would be positive for legal aid because it could open legal services up to more clients. But achieving uniformity at a lower limit would not be an improvement. Legal aid and pro bono organizations currently assist pro bono clients at 125-200% of poverty (i.e. above legal aid eligibility). Uniformity at lower limits should not bar them from continuing to do so. Funding is already available at higher thresholds, such the income eligibility for the Sargent Shriver Civil Counsel Act project. Nothing should be done to lower those thresholds for the sake of uniformity.

A uniform, higher income eligibility threshold would be a boon if funding also increases. But more clients eligible for free legal aid without more funding would simply mean more clients rejected due to resource shortages, rather than rejection because they are ineligible for income requirements.

We encourage the Bar and others to seek additional funding as a prerequisite to raising the eligibility thresholds that are low.

- *Extend funding cycles beyond 12 months to support long-term planning and provide a consistent funding base for legal aid.*

Comment: While in theory this would also be positive for legal aid — because it would provide greater stability (e.g. able to hire attorneys if certain about future funding) — this is complicated. The structure of IOLTA funding is county-based and proportionate to an organization's other spending. Each organization's annual share of its county's funding is determined based on the qualified expenditures of that organization in the prior year. Hence, while extended funding cycles would be positive, it would require careful implementation.

- *Provide unrestricted multiyear grants for general operating costs and consider raising income eligibility limits for free civil legal aid to support Californians whose incomes are above 125 percent of FPL.*

Comment: As with the first and second sub-recommendations in this section, increasing the income eligibility threshold would mean more clients receiving services — an undeniable positive. This could — in theory — be done through multiyear grants allowing organizations to expand operations and hire more attorneys. As with the first two comments, this will require examining (1) how this could affect organizations already providing pro bono services at above 125% and (2) how this would interact with IOLTA and other funding systems (i.e. county-based, proportionate).

If done appropriately, this could increase the number of people who actually receive free legal services by increasing the capacity of legal aid organizations to provide such services through longer-term funding.

Allowing organizations to allocate more of their IOLTA grants to overhead and administrative costs would allow programs to cover the unfunded overhead costs of government contracts and foundation grants. This would have important benefits. It is well known in the nonprofit community that nonprofits starve themselves (or are forced to starve themselves by contract requirements) by not allocating enough administrative costs to government contracts and foundation grants. By allowing flexibility to cover overhead from grant funding, there could be a multiplier effect on the value from IOLTA funding.

Recommendation: Remove barriers to recruitment and retention of legal aid attorneys.

Comment: Some legal aid programs now need to replace retiring staff lawyers at a time when fewer lawyers can afford to apply. The Justice Gap’s findings about reasons for retaining legal aid attorneys — in particular, the importance of internships — provide a basis for targeted action at a critical time.

- *Fund paid law student summer internship opportunities, which increase the pipeline of legal aid attorneys.*

Comment: Paid internships are a crucial part of maintaining student interest and preventing drift, thereby strengthening the pipeline of legal aid attorneys. Paid internships can be funded by an array of stakeholders, like law firms, law schools, and the State Bar. Existing models such as Equal Justice Works and other internship programs should be promoted, celebrated, supported, and multiplied.

- *Incorporate flexible hours and remote work options, career advancement opportunities, and support for self-care and wellness into legal aid recruitment and retention strategies.*

Comment: In addition to salaries, these kinds of incentives can promote recruitment and retention of attorneys. The Legal Aid Association of California recently surveyed current legal aid attorneys about ways to prevent burnout, and those recommendations merit implementation. LAAC's Recruitment and Retention report, which was released this month, has other specific recommendations about career advancement, flexible hours, and remote work — in addition to the fundamental recommendation to raise salaries.

- *Promote legal aid careers through law school career centers, at campus events and on job boards.*

Comment: Legal aid programs have long collaborated with law schools to promote legal aid and other public interest careers. While there is an insufficient emphasis at many law schools on promoting public interest careers, it is not clear that a new program or more effort from outside the law schools can change this. Existing collaboration between stakeholders including the Bar, LAAC, and the schools should continue. But the Justice Gap study suggests that internships (discussed below) are the most effective way to use our resources. As we note in the next comment, Loan Repayment Assistance Programs are also key to reducing one of the biggest obstacles to a legal aid career.

- *Increase law school support to those navigating loan repayment programs.*

Comment: We should ensure that law students considering public interest have what they need to stick with it. This should include abundant promotion of LRAP programs as a key element in maintaining interest and preventing drift. Both awareness of and funding for LRAPs should increase. Most students at schools with LRAP programs (even robust and well-funded programs) do not understand the mechanics of how LRAP works while still in school. Many may have “sticker shock” as they see their loans grow and understandably avoid public interest work because of uncertainty about how LRAP will pay off their loans. Law students and graduates need clearer explanations and improvements to LRAP programs.

- *Pilot LRAPs that target areas of greatest legal need, based on problem types and geographic regions.*

Comment: Targeting areas of greatest need allows tailoring by place-specific issue. As discussed below, however, this ought not diminish resources for other issue areas. Developing a pilot—with data and evaluation—that utilizes an LRAP to incentivize new lawyers to develop and use their skills in underserved areas, while focusing on a high-impact issue, will both help those in need receive those services and will diminish the lawyer's debt burden. Former Access Commissioner Lisa Pruitt, along with her co-Rural Access Committee Co-Chair Salena Copeland,

presented several models for this idea at a 2018 State Bar Board of Trustees presentation. Many other states have considered this idea.

- *Pilot tuition assistance programs contingent on public interest work to determine impact on public interest drift.*

Comment: Tuition assistance versus LRAP is a complex debate. The risk of the former is always that the student will still drift away from public interest and not end up becoming a public interest attorney (and thereby not increase access by increasing attorney supply). The issue with LRAP is that it is mainly after-the-fact, and does not provide up-front cost reduction. Notwithstanding their limitations, both are valuable strategies for drawing students to public interest work and keeping them there. Each approach can be studied in pilot projects to determine how they affect student decision-making, and how much they enhance the number of attorneys in a target area.

Another approach is to pursue the recommendation above by robustly funding summer internships at legal aid organizations. That would both reduce debt burden and increase the likelihood that a student will continue in a career in legal aid because of the internship experience.

Recommendation: Increase the availability of legal services and address the areas of greatest legal need.

- *Identify technology and nontechnology based approaches to create more affordable legal services for those who will not qualify for legal aid, but who cannot pay the current market rate for attorney services.*

Comment: Persons who are not eligible for legal aid but often cannot pay for an attorney make up the majority of our population. They are too numerous to be subsidized by others. Serving them better requires more cost-effective, but still high-quality delivery methods for legal help. This includes nontechnology approaches— like assisted self-help programs and court navigators—as well as technology, such as applications that assist with document assembly.

There is room for new attempts to combine existing approaches in new ways, seeking to reduce the cost of legal help to an affordable level. Pure technology solutions are not as promising as approaches that use technology, limited scope representation, subject-matter specific referrals, work-product libraries and mentoring to support lawyers who are willing to charge less to moderate-income clients.

It is crucial that such approaches be developed in ways that do not undercut legal aid programs and pro bono legal work. Indeed, there may be a pivotal role for legal aid programs to serve as the portals to low cost assistance for people who are not eligible for service provided by legal aid.

Legal problems that moderate-income people cannot solve are as serious an injustice as those facing the poor. Serving moderate-income people who need legal help poses daunting problems. That must not cause us to ignore the need.

- *Fund projects addressing the most common types of problems faced by Californians: health, finance, employment, and income maintenance.*

Comment: Ideally, we should use data to focus funding on projects based on demonstrated need, geographically and by subject matter so that more Californians will receive the services they most need. To this end, the Access Commission and LAAC have committed to develop a Justice Map intended to reflect these data. We must take care, however, not to create a zero-sum game in which programs supporting other needs lose resources.

- *Address, through funding and services, the regional disparities identified in Justice Gap Study.*

Comment: Funding streams ought to aim to provide rural residents with access to legal services funded on par with services available to people in cities. A blanket amount of funding per county resident living in poverty (the IOLTA and EAF model) fails to take into account how many other resources are available for each person. Increased funding and more geographically equitable allocation of funding need not decrease funding for urban or suburban civil legal aid. Instead, it means building a more equitable and robustly funded system equipped to deliver adequate legal aid to all Californians, wherever they reside. Additionally, we should identify and improve collaborations between urban and rural programs to increase access, whether through legal aid or pro bono attorneys. For example, using technology for lawyers in cities to help clients in rural communities can level some of the disparities. The Access Commission is actively working on encouraging and propagating such programs now.

- *Collect more robust data on self-represented litigants so that approaches to addressing the needs of this population can be informed by current and comprehensive data.*

Comment: While such a study could be helpful, it is essential to consult with Bonnie Hough (Judicial Council), Katherine Alteneder (Self-Represented Litigants Network), and others already involved in such efforts to avoid redundancy.

We would be happy to participate in in-person presentations to the Board of Trustees on these topics if that would be helpful.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mark A. Juhas', is written over a light gray rectangular background.

Judge Mark A. Juhas
Chair

LAAC Response to the State Bar’s Justice Gap Report Recommendations

SB overarching recommendation	SB sub-recommendation	LAAC comment
Increase the availability of accessible, engaging, and reliable legal information and tools to help diagnose legal problems	<i>Optimize search engine results to ensure that Californians are directed to reputable sources of information and assistance. Provide online legal information about the most common types of problems faced by Californians: health, finance, employment, and income maintenance. Regularly update websites to ensure that information is current, digestible, and easy to find.</i>	In alignment with Professor Rebecca Sandefur’s research—which is corroborated by this report—we know that the access to justice crisis has two equally important aspects: one, that people do not think their problems are legal problems and therefore do not seek legal advice and, two, they do not have access to the services they need to resolve those issues once they seek help. Developing online legal information helps with the former by providing accurate and digestible information to assist them in reaching the assistance they need in a centralized platform. However, getting people in front of that legal information starts with their search engine results. This has two facets: One being Search Engine Optimization (SEO) by the organization or information source (e.g., court) to ensure that their resource pops up high within the results. There are so many resources, and in the context of ATILS and UPL shifts, there may soon be many more, and those we know are legitimate and helpful should be prioritized through State Bar or other action.
	<i>Explore regulatory reforms designed to encourage tech innovation in the legal sector and remove obstacles to the development of useful diagnostic legal tools.</i>	By refining the regulatory structure, we can open up the legal market in unprecedented and positive ways to increase access, especially for those who cannot qualify for legal aid but still need low-cost legal services. Regulating the legal market in new ways can be done in controlled, empirical experiments (e.g. sandbox) to minimize consumer risk. Above all, technology is not a panacea, however, and must be considered as one piece in the spectrum of access to justice solutions, along with unbundling, incubators, court navigators, right to counsel, and traditional, full-scope legal aid. Still, removing obstacles to technologies that streamline legal services is critical, such as document assembly and other tasks that inhibit lawyers from practicing “at the top” of their license. We must ensure that we do not open the market up in a way that ends up inhibiting access or unnecessarily upending the legal market. We encourage the State Bar, foundations, and others to assist legal aid in developing technological solutions to move from one-to-one to one-to-many where possible, as LSC has done through TIG.
	<i>The private sector should partner with legal services to develop intuitive tools that can help Californians diagnose legal problems and navigate the civil legal system.</i>	As referenced in the prior comment, the private sector is particularly well-situated to develop innovations that can streamline and increase effectiveness of legal products and services. However, the danger is that for-profit companies could come in under the banner of access without really doing anything to increase it. By developing partnerships and collaborative projects between for-profit companies and nonprofits (like legal aid offices), we can bring much-needed financial and technological resources and expertise to those who work every day to increase access by providing high-quality services to clients. As we have seen with the TIG program from LSC, legal aid offices are prime recipients of knowledge, funding, and resources to build-out technologically-innovative projects, whether diagnostic, navigational, or otherwise. One example, again, is that between Microsoft and Pro Bono Net, but there are many successful legal aid-initiated projects funded by TIG that could be funded through a similar mechanism by private, for-profit companies, especially those looking to enter the legal marketplace. The most important component of this is outreach. As technology tools are created, we have to ensure that there is an adequate campaign to educate the public, perhaps focused on community colleges and the CSUs as a first pilot. This would be very similar to the grant proposal for the “Justice for All” grant that the Bar, when housing the Access Commission, co-applied for with the Judicial Council and LAAC.
	<i>Legal aid funding should address the need for help in diagnosing the legal aspects of problems .</i>	In the effort of diminishing the knowledge gap around what a legal issue is and whether help should be sought, it will be critical to assist people in diagnosing that they are facing something that a lawyer or other advocate could help with. A collaboration between the private sector, legal aid, the State Bar, and others that funds and develops systems—such as online portals—that assist in helping clients reach the services they need could make a big impact in increasing the accessibility of the legal system, and thereby the public’s confidence in it as well. Increasing the ability of legal aid to provide navigational assistance is an important part of this.
	<i>Legal service providers should deliver “know your rights” trainings online and develop content to distribute to non-legal entities such as schools, social services organizations, and community centers to educate the public about the most common types of legal problems.</i>	Increasing the availability of knowledge at different spaces that both low- and moderate-income people frequent is an important strategy. While legal services providers should be part of a partnership to effectuate this, the State Bar and others should also have a role in funding this sort of project to increase the availability and accessibility of resources. Not all legal services providers are appropriate for this work, and we are concerned about duplicated or wasted efforts, so this must be very well-coordinated.

Modify legal aid funding requirements to improve organizational efficiency and sustainability	<i>Adopt uniform income eligibility limits and other funding requirements to decrease administrative burdens on legal aid organizations.</i>	<p>In theory, uniform income eligibility would be positive for legal aid because it could open legal services up to more clients, but one downside to uniform limits is that organizations that currently provide assistance to pro bono clients at 125-200% of poverty (i.e. above legal aid eligibility) could be precluded from doing so if the income threshold is less than this. Additionally, if the income threshold is increased, this will necessitate increasing the ability for legal aid organizations to provide services to these new clients in this income bracket.</p> <p>A connection to increased funding is important – if we agree, in essence, to increasing the pool of clients, we must not be turning away even more people as we do so.</p>
	<i>Extend funding cycles beyond 12 months to support long-term planning and provide a consistent funding base for legal aid.</i>	<p>While in theory also positive for legal aid because it would provide greater stability (e.g. able to hire attorneys if certain about future funding), this is complicated, given the structure of IOLTA as being county-based and proportionate to other spending. Hence, while this would be positive, it would require thoughtfulness around how exactly to do this.</p>
	<i>Provide unrestricted multiyear grants for general operating costs and consider raising income eligibility limits for free civil legal aid to support Californians whose incomes are above 125 percent of FPL.</i>	<p>Like the first and second sub-recommendations in this section, increasing the income eligibility would mean more clients receiving services, an undeniable positive, and this could—in theory—be done through multiyear grants that will allow organizations to expand operating costs and hire more attorneys to serve this greater population. Like the first two comments, this will require examining (1) how this could impact organizations already providing pro bono services at above 125% and (2) how this would interact with IOLTA and other funding systems (i.e. county-based, proportionate). However, if done appropriately, this could increase who can access free legal services by increasing the capacity of legal aid organizations to provide such services through longer-term funding.</p>
Remove barriers to recruitment and retention of legal aid attorneys	<i>Fund paid law student summer internship opportunities, which increase the pipeline of legal aid attorneys.</i>	<p>Paid internships can be funded by an array of stakeholders, like law firms, law schools, the State Bar, etc. Paid internships are a crucial part of maintaining student interest and preventing drift, whereby we can strengthen the pipeline of legal aid attorneys. For example, Chicago has “investing in justice” program where firms hosting summer associates can fund paid summer internships at legal aid and other public interest employers. This could be facilitated in California between the State Bar, local bar associations, and firms so that they set aside some of the money they would pay their associates to fund this program. Altogether, the State Bar could play a primary role in increasing the prevalence of paid internships, which are a central solution to public interest drift.</p>
	<i>Incorporate flexible hours and remote work options, career advancement opportunities, and support for self-care and wellness into legal aid recruitment and retention strategies.</i>	<p>In addition to salaries, other substantive shifts—in both recruiting and retaining attorneys—include these suggestions, in terms of what would help attract lawyers to legal aid by making the field more desirable as well as keep lawyers who join legal aid by preventing burnout and providing clear advancement pathways.</p>
	<i>Promote legal aid careers through law school career centers, at campus events and on job boards.</i>	<p>Partnerships and collaboration with law schools to promote legal aid and other public interest careers. There is an insufficient emphasis at law schools on promoting public interest careers. Could engage a collaboration between various stakeholders—like the Bar, CalATJ, and LAAC—in building out robust relationships that ensure students get what they need to avoid drift (i.e. promotion of career opportunities, resources like LRAP and paid internships, etc.).</p> <p>The State Bar can play a critical role in working with law schools and the legal aid community to promote careers that close the justice gap, such as by promoting LRAPs, paid internships and fellowships, and increasing knowledge dispersion through events, panels, and job boards.</p>
	<i>Increase law school support to those navigating loan repayment programs.</i>	<p>Ensure that both students considering as well as students following through and entering into public interest careers while in law school have what they need to stick with it. This must include abundant promotion of LRAP programs as a key element in maintaining interest and preventing drift. LRAPs need to be increased, but they also must be promoted, in terms of decreasing the lack of knowledge and increasing their perceived viability.</p> <p>By focusing on supporting law schools in providing assistance in navigating loan repayment programs, the State Bar can facilitate increased clarity and usage of LRAPs, whether state-based, employer-based, or law school-based.</p>
	<i>Pilot LRAPs that target areas of greatest legal need, based on problem types and geographic regions.</i>	<p>Targeting areas of greatest need allows tailoring by place-specific issue. As discussed below, this ought not to diminish resources for other issue areas. As we know from LAAC’s R&R study, LRAPs are incredibly important to increasing the supply of legal aid lawyers, and can be helpful for getting more lawyers to rural areas. Developing a pilot—with data and evaluation—that utilizes an LRAP to incentivize new lawyers to develop and use their skills in under-served areas, while focusing on a high-impact issue, will both help those in need receive those services will also diminishing the lawyer’s debt burden.</p>
	<i>Pilot tuition assistance programs contingent on public interest work to determine impact on public interest drift.</i>	<p>Tuition assistance versus LRAP is a complex debate. The risk of the former is always that the student will still drift away from public interest and not end up becoming a public interest attorney (and thereby not increase access by increasing attorney supply). The issue with LRAP is that it is after-the-fact to a degree, such that it does not provide up-front cost reduction. However, even with limitations, both are valuable strategies for (1) drawing students to public interest work and (2) keeping them there. Both can be piloted in different ways to maximize efficacy and studied to determine how they impact student decision-making and ultimate effectiveness in increasing public interest attorney supply.</p>

Increase the availability of legal services and address the areas of greatest legal need.	<i>Identify technology and nontechnology based approaches to create more affordable legal services for those who will not qualify for legal aid, but who cannot pay the current market rate for attorney services.</i>	In alignment with the work of ATILS, we must continue to research and develop strategies to implement a system to provide services to those who cannot access legal aid but nonetheless cannot pay for an attorney. This includes nontechnology approaches—like LLLTs and court navigators—as well as technology—like applications that assist with document assembly. It is crucial that these other aspects of the access to justice spectrum do not interfere with or subvert the ability of traditional access to justice stakeholders—like legal aid—to provide services. While innovation and technology are important, we must be wary of technology and other solutions, and ensure they are maximized in their efficacy for access purposes, including for vulnerable populations who already face preexisting barriers (e.g., those with disabilities, English-language learners). Regulatory reforms should only be supported if they demonstratively will increase access. Finally, this access spectrum must also acknowledge the importance of other solutions, like unbundling and incubators.
	<i>Fund projects addressing the most common types of problems faced by Californians: health, finance, employment, and income maintenance.</i>	Funding projects based on geographic and substantive need will ensure that, based on data, Californians will receive the services they most need. Additionally, CalATJ intends to develop a Justice Map that will likely reflect these data. We must guarantee, however, that programs supporting other needs are not diminished, such that we can highlight and lift up specific issues without reducing the support of others.
	<i>Address, through funding and services, the regional disparities identified in Justice Gap Study.</i>	Funding streams ought to ensure, on a per capita basis, that each rural resident has access to legal services funded on par with services available to urban residents. A blanket amount of funding per county fails to take into account how many resources are allocated for each person. Increased funding and more geographically equitable allocation of funding need not decrease funding for urban or suburban civil legal aid. Instead, it means building a more equitable and robustly funded system equipped to deliver adequate legal aid to all Californians, wherever they reside. Additionally, identify collaborations between urban and rural programs to increase access, whether through legal aid or pro bono attorneys.
	<i>Collect more robust data on self-represented litigants so that approaches to addressing the needs of this population can be informed by current and comprehensive data.</i>	While a separate study would be helpful, connect with Bonnie Hough (Judicial Council), Katherine Alteneader (Self-Represented Litigants Network), and others to avoid redundancy. That being said, more data is often helpful, even if similar data has already been produced, so commissioning an SRL data collection project would certainly be positive.

CALIFORNIA COMMISSION ON ACCESS TO JUSTICE

350 Frank Ogawa Plaza, Suite 701, Oakland, CA 94612 · (510) 893-3000

HON. MARK A. JUHAS,
Chair
Los Angeles County Superior Court
Los Angeles

CATHERINE J. BLAKEMORE,
Vice Chair
Disability Rights California
Sacramento

JOHN W. ADKINS
San Diego Law Library
San Diego

A. BEVERLY COLE
Cole Renwick, LLC
Palm Desert

DAVID R. DANIELS
Public Counsel
Los Angeles

HON. TIMOTHY P. DILLON
Los Angeles County Superior Court
Alhambra

ERIKA C. FRANK
California Chamber of Commerce
Sacramento

ROSA M. FREGOSO
Velasco Law Group
Downey

JUAN JOSE GUTIERREZ
One Stop Immigration and Educational Center
Los Angeles

AMOS E. HARTSTON
California Department of Justice
Los Angeles

HON. JAMES E. HERMAN
Superior Court of Santa Barbara County
Santa Barbara

JANIS R. HIROHAMA
League of Women Voters of California
Manhattan Beach

HON. LISA R. JASKOL
Los Angeles Superior Court
Los Angeles

HON. VICTORIA S. KOLAKOWSKI
Alameda County Superior Court
Oakland

MICHAEL J. LEVY
California Department of Insurance Sacramento

ANNE MARIE MURPHY
Cotchett, Pitre & McCarthy
Burlingame

LISA R. PRUITT
University of California, Davis, School of Law
Davis

PANIDA M. RZONCA
Thai Community Development Center
Los Angeles

JOHANNA VALLE SOBALVARRO
San Francisco

SHUMIKA T. R. SOOKDEO
Robinson Sookdeo Law
Riverside

HON. ERICA R. YEW
Santa Clara County Superior Court
San Jose

JACK W. LONDEN
Executive Director
San Francisco

December 13, 2019

Via Email

Donna Hershkowitz
Chief of Programs
State Bar of California
845 South Figueroa Street
Los Angeles, CA 90017-2515

Re: Recommendations and Advice on the State Bar's Strategic Plan

Donna,

As you know, in the Independent Contractor Agreement between the State Bar and the California Commission on Access to Justice, the Commission undertook "by no later than December 16, 2019, [to] provide the State Bar with written recommendations and advice regarding specific objectives that, subject to State Bar decisions regarding feasibility, timing, and prioritization, could be added to the 2017-2022 State Bar Strategic Plan for the 2020 calendar year to further the State Bar's goal of supporting access to justice for all California residents and improvements to the state's justice system."

The Commission's staff and leadership prepared a draft that was discussed during the Executive Committee's meeting on December 4 and during the meeting of the full Commission on December 5, 2019. With revisions to the draft suggested by the Commission, this letter provides recommendations and advice regarding objectives that could be added to the State Bar Strategic Plan. (A copy of Goal 4 of the Strategic Plan and the Access to Justice Objectives as they stand now is attached at the end of this letter.)

Existing Access to Justice Objectives a and b continue to be of vital importance, and other objectives are being implemented by significant effort. However, our task is to recommend additions that we consider important and worthwhile. The Commission understands from our discussions with the State Bar that the Board of Trustees must determine whether proposed Access to Justice Objectives are within its current mission and purview, and whether its priorities allow undertaking the objectives we discuss. We also know that the State Bar is dedicated to doing the utmost, within the bounds of its mission, to create and sustain practices and institutions so that California's attorneys provide competent, effective help to all those in our State who face legal problems. Please consider the following recommended additions to the Strategic Plan:

First Proposed Added Objective: Support and Participate in Public Education About Problems Not Recognized as Legal.

The State Bar’s Justice Gap study, which carries out Access to Justice Objective e, has added empirical confirmation to recent scholarly views that a significant cause of the lack of legal help for problems faced by low and moderate income Californians is a “knowledge gap.” (See the section on “Gap in Knowledge” in the California Justice Gap Study Executive Report.) Many people do not know that the problems they face have a legal aspect. Our justice system provides rights, obligations, remedies, and applicable procedures for people in circumstances involving housing, health care, work, public education, disabilities, civil disputes, and interactions with the government at all levels. But these may be ephemeral for people who have no idea that they exist.

In the words of Professor Rebecca L. Sandefur:

The most common way in which people described their actionable civil justice problems is that it's either bad luck or God's will for them. ... If I think something has just happened to me in my life because of forces outside my control, I'm probably not going to go down to the local legal office and ask for legal help with a problem that I don't understand is legal.¹

The knowledge gap is a fundamental problem, and not easily solved. But ways of addressing it can include improving civics education to identify civil justice problems and solutions and special purpose instruction for high schools and adult education; looking for opportunities to support public service announcements and programs online, on television, radio, and via other media. The State Bar’s media relations personnel should be aware of this issue and alert to opportunities to raise awareness that legal aspects of common problems are as important as, and more controllable than, bad luck or fate.

Work alongside other organizations — the Judicial Council, California Lawyers Association, California Change Lawyers, the Legal Aid Association of California, the Access Commission, among many others — will be necessary for an effective approach. We leave it to the Board of Trustees to decide priorities and purview. But we have no doubt that its mission to “support efforts for greater access to, and inclusion in, the legal system” can be advanced by addressing this proposed added objective.

¹ Quoted from Robert v. Wolf, “How the Law Intersects with Everyday Life: Promoting Access to Civil Justice,” Center for Court Innovation (2018) at <https://www.courtinnovation.org/publications/how-law-intersects-everyday-life-promoting-access-civil-justice>

Second Proposed Added Objective: Cooperate With Well-Considered Innovations Aimed at Lowering the Cost of Competent, Effective, and Available Help With Legal Needs.

Providing more funding to pay for legal services for underserved people — Access to Justice Objective a — is crucial. But a significant increase in public funding would be necessary to approach meeting the needs of low-income people alone. To improve significantly in helping moderate income people with underserved legal needs, the delivery of services needs to be done more efficiently.

The Modest Income Committee of the Access Commission will soon publish a practice guide for lawyers who serve moderate income clients. The guide contains citations and discussions of the many rules of professional conduct that are involved in doing so ethically and competently. Forms and templates are provided for rules compliance. We do not suggest that rules of professional conduct should be relaxed for the sake of imagined cost savings. But as the body responsible for enforcement of the rules, the State Bar might consider whether lawyers can be assisted by training and standardized forms to be able to comply with the rules and practice ethically in the most efficient ways. It is vital to provide practical education and support for lawyers whose fees must be affordable for most people. The Modest Income Committee's practice guide is an example. Training lawyers is a large part of the mission of California Lawyers Association; but in this area, the State Bar's role at least as a partner is important and potentially of great benefit. In addition, there may be ways in which the rules of professional conduct and the procedures for their application can be modified to accomplish the public-protection and ethical-practice purposes of the rules in ways that impose less burden and require less time from conscientious lawyers.

A past example of improved efficiency and lowered cost is limited scope legal assistance, which the Access Commission pioneered. Despite widespread beliefs that ethical rules would not permit this innovation, no rules of professional conduct were required to be changed. Acceptance of the practices, however, required the participation of the State Bar and the Judiciary in blessing them. The same may well be required for other beneficial innovations.

Another example could be support for innovations to deliver legal services for a charge, but in more efficient ways. One of the objectives of the Incubators pilot program was to create law practices capable of delivering affordable service to people of moderate means. In other places, such as the State of New Mexico and clinics in Washington, D.C., legal aid programs provide an entry point for persons who are not eligible for a legal aid lawyer. Instead, the legal aid program evaluates a prospective client's problem and, for those who have needs of the types for which referrals are available, the client is sent to a lawyer who charges low — below market rate — fees or a flat rate. Participating lawyers may get access to work product and other efficiencies in return for charging less. The attention that the State Bar has devoted to Lawyer Referral Services (Access to Justice Objective c) could well include ways in which they could expand the delivery of low-cost and limited scope legal services.

Facilitating a continuum of services also would increase efficiency and lower the cost of legal assistance and other justice-related services. A broad range of meaningful and appropriate services and delivery models could supplement full-scope representation in some cases or contexts. Legal clinics, law libraries, self-help, alternative dispute resolution, lawyer-referral services and private attorney referrals, and other services and delivery models can help efficiently address the justice gap. Having a broader focus on ways to address the justice gap acknowledges both the needs of moderate income people who are not eligible for traditional free legal assistance and cannot afford a private full-scope lawyer as well as those interested in resolving their issues outside of the court system.

The State Bar will participate in enhancing access to justice if it participates in supporting these kinds of innovations — by voicing encouragement and approval, providing guidance, and perhaps in other ways. As in the case of the Limited Scope innovation, this may not require an investment of money or a change in the formal rules.

Third Proposed Added Objective: Support Well-Considered Measures to Attract and Retain Lawyers in Legal Aid and Similar Organizations.

Legal aid and similar organizations play an indispensable role in our justice system. The State Bar’s Justice Gap study confirms that such organizations lack the resources to meet all the existing needs (the “service gap”). But when people with income below 125% of the Federal Poverty Level of income do receive help, 39% of the time it comes from legal aid. (Justice Gap Executive Report, Figure 10.) This understates the importance of legal aid programs because they also make it possible for low income people to connect with pro bono lawyers in private practice, who provide another 19% of the help. (*Id.*) The capacity of legal aid programs to continue at even this level faces a serious threat.

Several converging trends and developments are obstructing efforts by legal aid organizations to hire and retain lawyers. Cost is a major factor. For most people, becoming a lawyer requires going deeply into debt. Prevailing salary levels in legal aid programs are low enough that they simply are not an option for many qualified and motivated lawyers because they would not be able to repay their student loans. The economic obstacles are all the greater in many areas of California where the cost of housing precludes many who earn what legal aid pays. Plainly, if legal aid programs must pay more to staff themselves, their financial constraints will multiply.

Demographic change deepens the need. A generation of legal aid lawyers are coming to the end of their careers. Whether they can be replaced with a new generation is an open, and vital, question. Anecdotal reports from many programs indicate that a job opening that, years ago, would have attracted hundreds of applicants may provoke only a handful today.

This is a difficult problem. Some impediments — such as recalcitrance and possible mishandling on the part of the United States Department of Education and its loan servicers of public interest loan forgiveness applications — compound the problem further. The State Bar should support State legislative and policy measures to accomplish the same results. Solutions could include a state-funded law school loan repayment program that provides repayment from the beginning

of the attorney's tenure in a legal aid program. The State Bar could also work with the Legal Aid Association of California to identify other ways to lower barriers to legal aid hiring and retention. The State Bar is the appropriate entity to decide whether the process of admission to the bar might be made more hospitable to new legal aid practitioners. One way to do so could be to eliminate the cap on the number of years a Registered Legal Services attorney can practice law in a qualified legal services program.

Fourth Proposed Added Objective: Support and Collaborate With Other Access to Justice Organizations.

The State Bar has for decades been a key supporter of measures to enhance access to justice. Its Strategic Plan should explicitly reflect a continuing commitment to collaborate with the Judicial Council, the California Lawyers Association, local bar associations, California Change Lawyers, the Legal Aid Association of California, the Access Commission, and other organizations that are involved in providing more help in new ways to people who have legal problems but are not in a position to hire a private lawyer. Examples of ongoing work by these organizations are: improving self-help programs; developing programs with roles for non-lawyers as "navigators" in the courts to assist self-represented people and other possible roles for non-lawyers, including multilingual paraprofessionals to enhance language access; and implementing ways to bring the supply of urban lawyers willing to do pro bono work together with the demand for help among rural clients.

We recognize that the new role of the State Bar must be guided by the Board of Trustees. Some of the work of other organizations may be outside the scope that the State Bar could undertake on its own. But to the greatest extent possible within its proper scope, we urge the State Bar to express its support for the good work of other organizations to enhance access to justice in California.

We understand that the State Bar will seriously address the Access to Justice Objectives in its Strategic Plan. With that in mind, as well as the short time period we have been in operation as an independent entity, since October 1, we have chosen to be selective in the presentation of recommended additions in this report. We look forward to significant interactions with the State Bar on its Access to Justice Objectives between now and the time when we provide recommendations and advice on the Strategic Plan at the end of 2020. In that report, we may propose even more ambitious recommendations. If the State Bar undertakes what is proposed above, however, it can provide essential help for many Californians and further the performance of its mission.

Sincerely,



Judge Mark A. Juhas
Chair

[From the State Bar of California 2017–2022 Strategic Plan (Updated March 2019)]

GOAL 4: Support access to legal services for low- and moderate-income Californians and promote policies and programs to eliminate bias and promote an inclusive environment in the legal system and for the public it serves, and strive to achieve a statewide attorney population that reflects the rich demographics of the state’s population.

ACCESS TO JUSTICE OBJECTIVES

- a. Support increased funding and enhanced outcome measures for Legal Services.
- b. Study and implement improved programmatic approaches to increasing access to justice.
- c. By December 31, 2018, review Lawyer Referral Services certification rules with a goal of increasing access to justice.
- d. Commencing in 2018 and concluding no later than December 31, 2019, study online legal service delivery models and determine if any regulatory changes are needed to better support and/or regulate the expansion of access through the use of technology in a manner that balances the dual goals of public protection and increased access to justice.
- e. No later than December 31, 2019, complete a California Justice Gap Study. The Justice Gap Study will be modeled on the 2017 Legal Services Corporation Justice Gap Study but will also include an evaluation of the costs of legal education in California and the impact of those costs on access to justice, as well as possible approaches to addressing the costs of legal education including loan forgiveness programs or other means.
- f. No later than December 31, 2020, explore options to increase access through licensing of paraprofessionals, limited license legal technicians, and other paraprofessionals.