



The State Bar of California

OPEN SESSION AGENDA ITEM 702 MARCH 2020

DATE: March 12, 2020

TO: Members, Board of Trustees

FROM: Justice Lee Edmon, Chair, Task Force on Access Through Innovation of Legal Services
Randall Difuntorum, Program Director, Office of Professional Competence

SUBJECT: Report and Recommendations of the Task Force on Access Through Innovation of Legal Services

EXECUTIVE SUMMARY

The Board of Trustees (Board) authorized the formation of a Task Force on Access Through Innovation of Legal Services (ATILS) to identify options for enhancing the delivery of, and access to, legal services through the use of technology, including artificial intelligence and online legal service delivery models. In July 2019, the Board approved issuing for public comment 16 options for innovation in the delivery of legal services that had been developed by ATILS. The extensive input gathered pursuant to that public comment process, as outlined in the attached ATILS Final Report, informed the development of the recommendations being presented today for consideration by the Board.¹

These recommendations include issuing proposed amendments to the California Rules of Professional Conduct² for public comment and establishing a new working group to explore the viability of developing a regulatory sandbox as a means for evaluating possible changes to existing laws and rules that otherwise inhibit the development of innovative legal services delivery systems. Such an approach would provide data on any potential benefits to access to legal services and any possible consumer harm if prohibitions on unauthorized practice of law, fee sharing, nonlawyer ownership, and other legal restrictions are modified or completely suspended for authorized sandbox participants.

¹ The ATILS Final Report is provided as Attachment A.

² Unless otherwise indicated all rule references are to the California Rules of Professional Conduct.

The recommendations and corresponding resolutions included in the present agenda item reflect the consensus views of the members of ATILS. The Task Force appreciates the opportunity to present these recommendations and provide context for how ATILS believes they meet the goals set forth by the Board. The Task Force recognizes that the Board may choose to reject or modify proposed next steps, including as related to the proposal for establishment of a new working group charged with exploring a legal regulatory sandbox model, and the recommendation to circulate rules for public comment. Alternate approaches, including circulating the recommendation to establish a new working group itself out for public comment and/or sending the rules currently recommended to be issued for public comment to the Committee on Professional Responsibility and Conduct (COPRAC) for further study, might be appropriate for the Board to consider.

BACKGROUND

The Board established ATILS in July 2018³ pursuant to the Goal 4, Objective d., of the State Bar's 2017-2022 Strategic Plan:

Commencing in 2018 and concluding no later than March 31, 2020, 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.

Although completed subsequent to the Board's directive to form ATILS, the State Bar's 2019 California Justice Gap study illustrates the pressing need for innovative solutions to the access to legal services crisis that motivated the Task Force's work. Modeled on the 2017 Legal Services Corporation report "*Measuring the Civil Legal Needs of Low-income Americans*," the California Justice Gap Study measured the extent to which all Californians encounter and address civil legal problems. The study included a survey of nearly 4,000 Californians by NORC at the University of Chicago. Respondents were asked about the civil legal problems they faced in the past year and whether they sought legal help for those problems. The survey also included questions about the kinds of help respondents received or why they chose not to seek help, and the respondents' attitudes about the status or resolution of their legal issues. Based on this survey, the 2019 California Justice Gap Study generally finds that: "Many Californians, regardless of income, are navigating critical civil legal issues without legal representation or meaningful legal assistance." Specifically, the data reveals that:

- 55 percent of Californians regardless of income experience at least one civil legal problem in their household each year. Among Californians with low incomes, 60 percent experienced these problems.

³ At its July 20, 2018, meeting, the Board of Trustees (Board) received a consultant's [Legal Market Landscape Report](#) and the consideration of this report led to the Board's decision to form a special Task Force. Professor William Henderson prepared the report that, in part, observed that: "ethics rules...and the unauthorized practice of law... are the primary determinants of how the current legal market is structured...."

- Californians receive no or inadequate legal help for 85 percent of their problems. This is due in part to the fact that they seek help for fewer than one in three legal problems.
- Failure to access legal services is a result of both a service gap (supply) and a knowledge gap (demand); the primary reason Californians do not seek legal help is that they are unsure that the problem they are experiencing is a legal one.
- When Californians seek legal help for their problems, they get that help both offline and online.

This backdrop of a substantial need that is not being adequately addressed by current strategies informed the development of the ATILS charter. Approved by the Board in September of 2018, the charter below acknowledges the reality that something more than modest tweaks to the existing regulatory environment is needed:

The Task Force on Access Through Innovation of Legal Services (“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. A Task Force report setting forth recommendations will be submitted to the Board of Trustees no later than December 31, 2019.⁴ Each Task Force recommendation should include an explanatory rationale that reflects a balance of the dual goals of public protection and increased access to justice.

In carrying out this assignment, the Task Force should do the following:

1. Review the current consumer protection purposes of the prohibitions against unauthorized practice of law (UPL) as well as the impact of those prohibitions on access to legal services with the goal of identifying potential changes that might increase access while also protecting the public. In addition, assess the impact of the current definition of the practice of law on the use of artificial intelligence and other technology driven delivery systems, including online consumer self-help legal research and information services, matching services, document production and dispute resolution;
2. Evaluate existing rules, statutes and ethics opinions on lawyer advertising and solicitation, partnerships with nonlawyers, fee splitting (including compensation for client referrals) and other relevant rules in light of their longstanding public protection function with the goal of articulating a recommendation on whether and how changes in these laws might improve public protection while also fostering innovation in, and expansion of, the delivery of legal services and law related services especially in those areas of service where there is the greatest unmet need; and
3. With a focus on preserving the client protection afforded by the legal profession’s core values of confidentiality, loyalty and independence of professional judgment, prepare a recommendation addressing the extent to which, if any, the State Bar should consider increasing access to legal services by individual consumers by

⁴ By Board action on the Strategic Plan, this timeline was extended to March 31, 2020.

implementing some form of entity regulation or other options for permitting non lawyer ownership or investment in businesses engaged in the practice of law, including consideration of multidisciplinary practice models and alternative business structures.

To carry out its assignment ATILS held eleven meetings that included presentations from several experts and a significant amount of public input.⁵ Specifically, ATILS considered over 2,800 public comments on sixteen options for regulatory reform that the Board authorized for a 60-day comment period that ended on September 23, 2019.⁶ Although the ATILS request for public comment referred to the sixteen options as “recommendations,” the concepts actually represented innovative ideas that ATILS was exploring as part of its study. In the ATILS Final Report, these innovative ideas have been narrowed and refined to facilitate possible further study by the Board, for example, by considering the issuance of certain proposed rule amendments for public comment.

A public hearing was also held on August 10, 2019, an event that was scheduled to coincide with the 2019 American Bar Association (ABA) Annual Meeting; 21 speakers appeared at the hearing.⁷ Representatives of ATILS also participated in town hall meetings with local bar associations⁸ during the public comment period and after the close of public comment continued to meet with stakeholder groups through informal discussion forums.⁹

Most recently, the State Bar commissioned a survey by NORC at the University of Chicago to explore Californians’ access to the internet and public opinion regarding the use of online resources to identify and assist with civil legal problems.¹⁰ The NORC survey data indicates that a vast majority of Californians, regardless of age or income level, have access to the internet.

⁵ IV Ashton (Founder and president of Houston AI); Gillian Hadfield (Professor of Law and Professor of Strategic Management, University of Toronto); William D. Henderson (Professor of law, editor of Legal Evolution); Kevin E. Mohr (Professor of law, former COPRAC Chair); Rebecca L. Sandefur (Faculty fellow and founder of the Access to Justice Initiative at the American Bar Foundation); Alison Paul (Executive Director, Montana Legal Services Association); and Angie Wagenhals (Director of Pro Bono, Montana Legal Services Association).

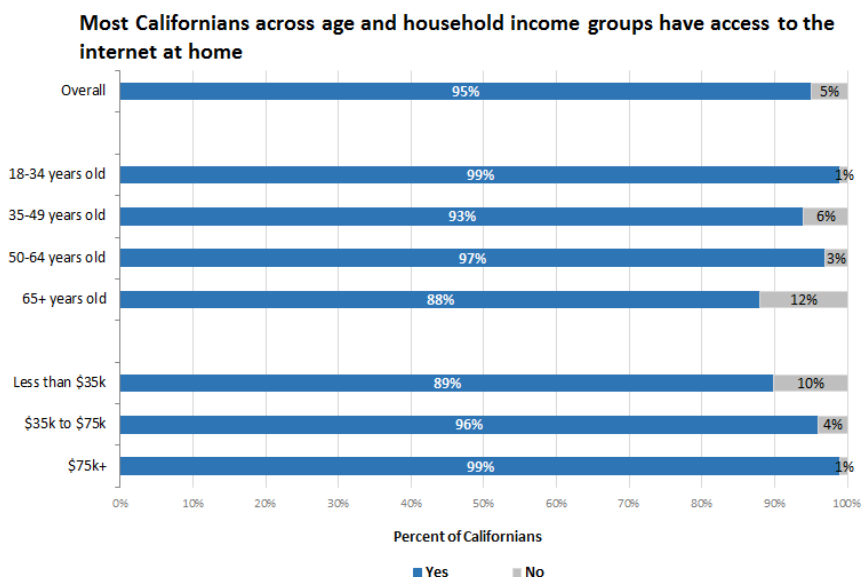
⁶ The public comment posting, including a complete list of the sixteen options, is found at: <http://www.calbar.ca.gov/About-Us/Our-Mission/Protecting-the-Public/Public-Comment/Public-Comment-Archives/2019-Public-Comment/Options-for-Regulatory-Reforms-to-Promote-Access-to-Justice>.

⁷ Among the speakers were the following persons from other jurisdictions who serve, or have served, on ABA committees: Lynda Shely (ABA Standing Committee on Ethics and Professional Responsibility); Andrew Perlman (Special Advisor, ABA Center for Innovation); and Stephen Gillers (former member, ABA Commission on Ethics 20/20).

⁸ Townhall meetings were held with the following groups: San Diego County Bar Association (August 20, 2019); Los Angeles County Bar Association (August 27, 2019); Bar Association of San Francisco and the Alameda County Bar Association (co-hosted on September 9, 2019); Sacramento County Bar Association (September 10, 2019); and Orange County Bar Association (September 18, 2019).

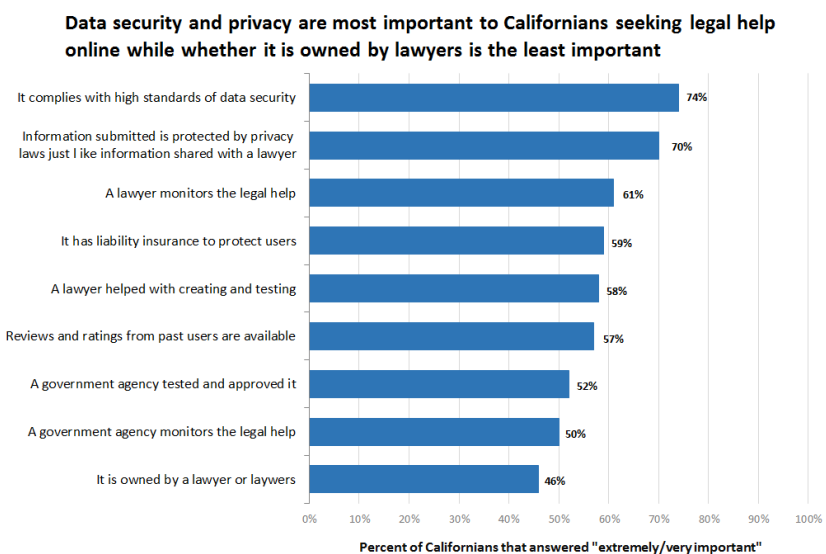
⁹ The informal discussion forums were held with the following groups: Consumer Attorneys of California (January 16, 2020); Law Enforcement and Legal Services Organization Representatives (January 27, 2020); and Legal Services Organization Representatives (February 2, 2020).

¹⁰ The NORC Survey Report is provided as Attachment B.



Question: Do you have access to the internet at home?
Source: State Bar of California survey conducted 1/22-2/4/2020 with 1,037 California adults, by NORC at the University of Chicago

The survey results also indicate that Californians place their highest priority on a legal-advice website having high standards of data security, confidentiality protections comparable to those for lawyers and clients offline, and involvement of a lawyer in the website's content. Lawyer ownership of a website is less critical when deciding whether to seek legal advice online with less than half saying this was extremely or very important.



Question: When deciding to use a website or application that offers legal help, how important is it to you that:
Source: State Bar of California survey conducted 1/22-2/4/2020 with 1,037 California adults, by NORC at the University of Chicago

A comprehensive overview of the work of ATILS is provided in the final report and includes a more extensive summary of outreach efforts and input received. At ATILS' final meeting on February 24, 2020, the Task Force voted to submit its Final Report and Recommendations to the Board.

DISCUSSION

Following study and in accordance with the Task Force charter, ATILS recommends that the Board:

1. Issue for public comment an amended rule 5.4 to expand the existing exception for fee sharing arrangements with a nonprofit organization, and continue to study other possible revisions to the rule.

Rule 5.4 generally prohibits fee sharing with a nonlawyer. One exception, paragraph (a)(5), permits sharing a court awarded fee with a nonprofit organization. ATILS' proposed amended rule would expand the ability of a lawyer to share fees with a nonprofit organization by adding an exception which provides that where the legal fee is not court awarded but arises from a settlement or other resolution of the claim or matter, the lawyer may share or pay the legal fee to the nonprofit organization, provided that the nonprofit organization qualifies under section 501(c)(3) of the Internal Revenue Code. This rule change is intended to directly enhance the ability of a nonprofit legal services organization to expand its activities and funding options through sharing in legal fees that are achieved through a settlement. This revision also adds the term "facilitate" to the language of the exception and this is intended to address incubator programs and other similar relationships with lawyers who are working through a nonprofit legal services organization administering an incubator or similar program. The recommendation to issue an amended rule 5.4 for public comment is discussed on pp. 17–19 of the ATILS Final Report.

2. Issue for public comment an amended rule 1.1 that would add a new Comment providing that a lawyer's duty of competence encompasses a duty to keep abreast of the changes in the law and law practice, including the benefits and risks associated with relevant technology.

Adding a comment to the competence rule that recognizes a lawyer's responsibility to be familiar with, and be competent in using, relevant technology will alert lawyers to that duty and should provide them with an incentive to adopt and incorporate useful technology in their practices. Such adoptions of relevant technology could have a beneficial effect on a law practice's efficiency, which can in turn lead to savings that can be passed on to clients. Although there are State Bar ethics opinions that have already embraced the substance of the proposed Comment, (see, e.g., State Bar Formal Opns. 2016-196; 2015-193; 2013-188; 2012-186; 2012-184; 2010-179), such opinions are merely persuasive while comments to the rules are Supreme Court approved guidance for "interpreting and practicing in compliance with the rules." (See rule 1.0(c) regarding the purpose of comments.). The recommendation to amend rule 1.1 is discussed on pp. 19–21 of the ATILS Final Report.

3. Issue for public comment a new rule 5.7 addressing the delivery of nonlegal services provided by lawyers and businesses owned or affiliated with lawyers.

ABA Model Rule 5.7 addresses a lawyer's provision of nonlegal services. It describes when a lawyer's provision of such services is subject to the rules and when it is not. California does not have a version of this rule but the issue is addressed in disciplinary common law, including Supreme Court precedent, and in advisory ethics opinions. Because there is no rule, lawyers may be uncertain about their duties and reluctant to explore innovative delivery systems for nonlegal services as well as combined nonlegal and legal services. ATILS recommends issuing a new rule, rule 5.7, for public comment to provide greater clarity about those duties and alleviate the obstacle of the uncertainty. ATILS' proposed rule would identify, in the comments section of the rule, significant disciplinary case law involving a lawyer's provision of nonlegal services and in the main text of the rule describe a new written disclosure protocol that would inform recipients of nonlegal services that the protections of the lawyer-client relationship do not apply. ATILS received a [Corporate Legal Market Report](#) finding, in part, that in the corporate sector legal work is being done in different ways, by different people, with new tools, and in many cases, corporate legal work is being provided by entities beyond the scope of traditional lawyer regulation. A California version of ABA Model Rule 5.7 would facilitate a similar level of innovative delivery systems in the PeopleLaw sector. The recommendation to issue for public comment a new rule on nonlegal services is discussed on pp. 21–24 of the ATILS Final Report.

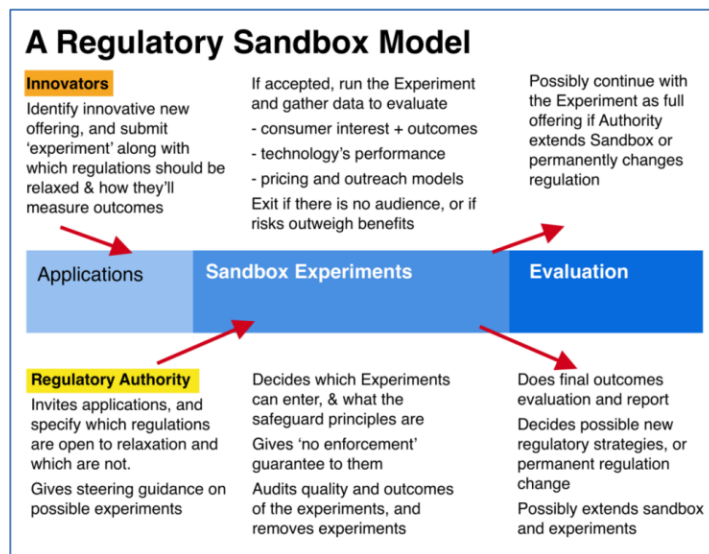
4. Include in the present effort to develop a licensing program for authorized eligible nonlawyers to provide limited legal services the key regulatory concepts and principles developed by ATILS in studying this topic.

With limited exceptions, existing California law restricts the practice of law to lawyers who are active licensees of the State Bar. Practice of law by nonlawyers is subject to UPL prosecution. Other jurisdictions have implemented, or are studying, programs that authorize limited practice of law by nonlawyer paraprofessionals.¹¹ The goal of these programs is to provide consumers with enhanced access to legal services. In studying innovative legal services delivery systems, ATILS received presentations from experts that included an observation that a paraprofessional program could serve as a component of a broader unauthorized practice of law reform that would serve the public interest. In discussing the regulatory issues presented by a paraprofessional program, ATILS has identified key principles and recommends that these key principles be referred to the anticipated State Bar paraprofessional working group that will be appointed to the Board pursuant to the Board's action at its January 24, 2020. The ATILS recommendation describing key regulatory principles in developing a paraprofessional program is discussed on pp. 24–31 of the ATILS Final Report.

¹¹ See, e.g., Arizona's pilot program for [Licensed Legal Advocates](#) that is being developed to close the justice gap for domestic violence survivors.

5. Form and appoint a new working group to explore the development of a regulatory sandbox that can provide data on any potential benefits to access to legal services as well as the potential for consumer harm if prohibitions on unauthorized practice of law, fee sharing, nonlawyer ownership, and other legal restrictions are modified or completely suspended for authorized sandbox participants.

To balance the twin goals of public protection and enhanced access to legal services the Task Force recommends that the Board establish a working group to explore development of a regulatory sandbox as a means for evaluating possible changes to existing laws and rules that otherwise inhibit the development of innovative legal services delivery systems, including: (i) consumer facing technology that provides legal advice and services directly to clients at all income levels; and (ii) other new delivery systems created through the collaboration of lawyers, law firms, technologists, entrepreneurs, paraprofessionals, legal services providers, and other persons or organizations. In this context, a sandbox is similar to pilot program methodology that makes temporary changes in laws, or the enforcement of laws, to establish a regulatory framework allowing legal services delivery systems that would otherwise be prohibited. The state of Utah has established [a similar sandbox](#) effort; a pictorial depiction of its functioning is provided below.



As indicated by the above depiction, a primary function of a sandbox would be to gather data on any potential benefits to accessing legal services and evaluate any consumer harm when existing restrictions on UPL, fee sharing with nonlawyers, and partnerships with nonlawyers are temporarily modified or suspended for sandbox participants. A key feature of the sandbox would be to give each applicant an opportunity at the outset to present a proposal for a new delivery system that demonstrates to the sandbox regulator that the proposal would satisfy the applicant's burden of proof that anticipated access to legal services benefits are likely to significantly outweigh the potential risks of harm. The recommendation to form a working group to explore a detailed sandbox proposal is discussed on pp. 31–42 of the ATILS Final Report.

Importantly, Board action to establish a new working group to explore and develop a more comprehensive sandbox proposal than that delineated in the ATILS Final Report does not equate to the Board establishing a regulatory sandbox; as outlined in the Final Report, there are numerous issues that need to be addressed in order to determine the viability of a California legal services sandbox. These issues include: what entity would regulate sandbox participants and how that entity would be funded both on short and long-term bases; how exactly the regulation of entities and technology products would be operationalized; what types of services and partnerships would be allowable even under the auspices of the sandbox, with the understanding that some ideas may be too risky even for a pilot environment; and whether and how the sandbox effort can be evaluated with respect to the goal motivating its establishment - increasing access to legal services without harm to the public. It is anticipated that, in exploring the development of a detailed sandbox proposal, the new working group will consider and weigh these issues.

6. Consider recommendations for amendments to the Certified Lawyer Referral Service statutes and Rules of the State Bar together with relevant rules to ensure that they properly balance public protection and innovation in light of access to justice needs and with a particular emphasis on ascertaining if existing laws impose unnecessary barriers to referral modalities (such as automated referrals or online matching services) that are in the public interest.

Current rules restrict a lawyer's ability to compensate a nonlawyer for referring a client (see rules 5.4 and 7.2). Lawyer referral services certified by the State Bar in accordance with applicable statutory law fall under an express exception to the prohibitions on compensation for referrals (see Bus. & Prof. Code § 6155 et seq., and rules 5.4(a)(4) and 7.2(b)(2)). The Task Force believes that innovative referral activity carries the potential of enhancing the ability of consumers to consult with a qualified lawyer, particularly on the basic issue of whether a consumer is facing a civil justice legal problem, and that existing laws should be reviewed for possible revisions that are in the public interest. The Task Force's recommendation to consider amendments to the Certified Lawyer Referral regulations is discussed on pp. 43–44 of the ATILS Final Report.

7. Consider recommendations for amendments to the rules governing advertising and solicitation informed by the current American Bar Association Model Rules of Professional Conduct and the proposed advertising and solicitation rules developed by the Association of Professional Responsibility Lawyers.

Lawyer advertising rules place restrictions on information regarding the marketing of legal services to protect consumers from lawyer communications that use false, deceptive, misleading or intrusive methods. The Association of Professional Responsibility Lawyers (APRL) and the ABA Standing Committee on Professional Responsibility (SCEPR) conducted studies of advertising rules and found that some of the rules were outdated and overly restrictive; and that a lack of uniformity and inconsistent enforcement was restricting the ability of the legal profession to provide useful and accurate information to consumers about the availability of legal services, particularly through the Internet, including social media, and other forms of electronic

media. For example, California’s existing advertising rules designate “real-time electronic contact” as a form of prohibited solicitation and the APRL and SCEPR reports support repeal of this restriction. The Task Force believes that the advertising and solicitation rules should be reviewed for possible revisions informed by the APRL and SCEPR reports. The Task Force’s recommendation to consider these revisions is discussed on pp. 45–48 of the ATILS Final Report.

FISCAL/PERSONNEL IMPACT

The majority of Task Force recommendations do not have fiscal or personnel impacts. The fiscal and personnel impact of the recommended formation of a new working group may not be insignificant. These impacts will ultimately be determined by the size and composition of the working group and the scope and timeline for completion of its work. Should the Board approve the idea of establishing a new working group consistent with the purposes outlined in the Recommendations section below, staff will return to the Board with a detailed cost proposal for the effort.

AMENDMENTS TO THE RULES OF THE STATE BAR

None. (This item includes recommendations to authorize public comment on proposed amendments to the California Rules of Professional Conduct.)¹²

AMENDMENTS TO THE 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: d. Commencing in 2018 and concluding no later than March 31, 2020, 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.

¹² California Business and Professions Code section 6076 provides that: “With the approval of the Supreme Court, the Board of Trustees may formulate and enforce rules of professional conduct for all licensees of the State Bar.” California Business and Professions Code section 6077 provides that: “The Rules of Professional Conduct adopted by the board, when approved by the Supreme Court, are binding upon all licensees of the State Bar.”

RECOMMENDATIONS

(1) Should the Board agree with the recommendation of ATILS to create a new working group to develop a regulatory sandbox approach that will provide data on any potential benefits to access to legal services and any possible consumer harm if prohibitions on unauthorized practice of law, fee sharing, nonlawyer ownership, and other legal restrictions are modified or completely suspended for authorized sandbox participants, it is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees directs staff to form a working group to explore the development of a regulatory sandbox as described in the Final Report and Recommendation of the Task Force on Access Through Innovation of Legal Services attached hereto as Attachment A, that includes consideration of unauthorized practice of law, fee sharing, nonlawyer ownership and other possible regulatory reforms; and it is

FURTHER RESOLVED, that staff is directed to prepare a proposed charter for the new working group that, in addition to the regulatory sandbox assignment, includes assignments to consider: (i) amendments to rule 5.4 of the California Rules of Professional Conduct; (ii) the concepts for proposed amendments to the California Rules of Professional Conduct governing lawyer advertising and solicitation; and (iii) amendments to the statutes and Rules of the State Bar governing Certified Lawyer Referral Services as described in the Final Report and Recommendation of the Task Force on Access Through Innovation of Legal Services attached hereto as Attachment A.

(2) Should the Board agree with the recommendation to authorize public comment on proposed amended rule 1.1 of the California Rules of Professional Conduct, it is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees hereby authorizes a 60-day public comment period on proposed amended rule 1.1 of the California Rules of Professional Conduct attached hereto as Attachment C; and it is

FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed changes.

(3) Should the Board agree with the recommendation to authorize public comment on proposed amended rule 5.4 of the California Rules of Professional Conduct, it is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees hereby authorizes a 60-day public comment period on proposed amended rule 5.4 of the California Rules of Professional Conduct attached hereto as Attachment D; and it is

FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed changes.

(4) Should the Board agree with the recommendation to authorize public comment on proposed new rule 5.7 of the California Rules of Professional Conduct, it is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees hereby authorizes a 60-day public comment period on proposed new rule 5.7 of the California Rules of Professional Conduct attached hereto as Attachment E; and it is

FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed changes.

(5) Should the Board agree with the recommendation to include the regulatory concepts and principles identified by ATILS' Final Report in the State Bar's present effort to develop a licensing program for authorized eligible nonlawyers to provide limited legal services, it is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees hereby refers to the paraprofessional working group the regulatory concepts and principles described in the Final Report and Recommendation of the Task Force on Access Through Innovation of Legal Services attached hereto as Attachment A.

ATTACHMENT(S) LIST

- A.** Final Report and Recommendation of the Task Force on Access Through Innovation of Legal Services
- B.** NORC ATILS Survey Report
- C.** Proposed Amended Rule 1.1 of the California Rules of Professional Conduct (Clean and Redline)
- D.** Proposed Amended Rule 5.4 of the California Rules of Professional Conduct (Clean and Redline)
- E.** Proposed New Rule 5.7 of the California Rules of Professional Conduct (Clean)



The State Bar of California

STATE BAR OF CALIFORNIA TASK FORCE ON ACCESS THROUGH INNOVATION OF LEGAL SERVICES

FINAL REPORT AND RECOMMENDATIONS

March 6, 2020

CONTENTS

I. EXECUTIVE SUMMARY	3
II. BACKGROUND AND PURPOSE OF THE TASK FORCE	7
III. OVERVIEW OF THE WORK OF THE TASK FORCE	9
IV. RECOMMENDATIONS	17
V. REFORM CONCEPTS BEYOND THE SCOPE OF THE TASK FORCE STUDY	48
VI. CONCLUSION.....	49

APPENDICES

Appendix 1: Roster of the Current Task Force Members	
Appendix 2: Schedule of Meetings	
Appendix 3: List of the 16 Concept Options for Regulatory Reform	
Appendix 4: Distribution of Comments Received for Each Public Comment Option	
Appendix 5: Report Tallying the Comments for Each Option	
Appendix 6: Comment Letter from the Legal Aid Foundation of Los Angeles	
Appendix 7: Proposed Amended Rule 5.4, Clean and Redline	
Appendix 8: Proposed Amended Rule 1.1, Clean and Redline	
Appendix 9: Proposed New Rule 5.7, Clean	
Appendix 10: ATILS Summary of Other Relevant Case Law Concerning the Provision of Nonlegal Services	
Appendix 11: Comparison Table of Authorized Law Related Service Providers Licensing Programs	
Appendix 12: ATILS Examples of Barriers to Entry	
Appendix 13: ATILS List of Advertising and Solicitation Rule Revisions for Consideration	

I. EXECUTIVE SUMMARY

The Task Force on Access Through Innovation of Legal Services (ATILS) was assigned to study possible regulatory changes for enhancing the delivery of, and access to, legal services through the use of technology, including artificial intelligence and online legal service delivery models. The work of ATILS was animated by the inescapable conclusion that nearly all Californians are facing severe challenges in obtaining access to legal services for commonly encountered legal problems. As one speaker¹ at the ATILS public hearing observed:

People will suggest we just need more pro bono work, we need increased funding for civil legal aid, or we need Civil Gideon rights. These are all terrific strategies, important strategies. But we all know they have been tried for decades, while the situation is growing direr. We need new strategies. We need to unlock new forms of legal services delivery, both by lawyers and other kinds of legal professionals if we hope to address the problems that exist.²

The ATILS effort was grounded in an extensive body of research and feedback including a legal market landscape analysis, the Justice Gap Report, and presentations from experts on regulatory reform, including Rebecca Sandefur who presented her 2019 report,³ *Legal Tech for Non-Lawyers: Report of the Survey of US Legal Technologies*. Other presentations addressed artificial intelligence and legal services programs that are experimenting with technology driven delivery systems.

In July 2019, the State Bar Board of Trustees issued for public comment the 16 options for innovation in the delivery of legal services that had been developed by ATILS. The purpose of soliciting comment on these options at the mid-point of ATILS' work was to seek broad public input to inform the Task Force's development of final recommendations. Over 2,800 public comments were received in response to the circulated options. In addition, the Task Force sought and received further input through public hearings, town hall meetings, and moderated stakeholder discussions.

¹ Testimony of Dean Andrew Pearlman, Suffolk University Law School, Prior Chief Reporter for ABA Commission on the Future of Legal Services and Inaugural chair of the ABA Center For Innovation.

² Regarding increased pro bono services by lawyers as a strategy for addressing the justice gap, the 2019 California Justice Gap Study Executive Report (Justice Gap Report) estimated that "an additional 8,961 full-time attorneys would be needed to resolve all the civil legal problems experienced each year by low-income Californians." The Justice Gap Report explained that: "Estimating the funding required at \$100,000 per year per attorney, inclusive of salary and administrative costs, an additional \$900 million in legal aid funding would be required each year 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, and leveraged 16,000 pro bono attorneys to provide services," or the equivalent of another 1500 full time equivalents. (Justice Gap Report, at p. 14.)

³ The report is posted online at: http://www.americanbarfoundation.org/uploads/cms/documents/report_us_digital_legal_tech_for_nonlawyers.pdf.

This report presents seven recommendations that are informed by this substantial input considered by the Task Force and which reflect the goals of the ATILS charter. The recommendations include proposals for: (1) issuance of amendments to the Rules of Professional Conduct for public comment;⁴ (2) formation of a new State Bar working group to explore development of a regulatory sandbox to test innovative delivery systems; and (3) key public protection, access, and regulatory principles for transmission to the State Bar's soon to be formed Paraprofessional Working Group. The recommendations also include proposals for studies of the regulation of Certified Lawyer Referral Services and of the rules governing lawyer advertising and solicitation in light of the changes made by the American Bar Association (ABA) to the Model Rules of Professional Conduct. The seven recommendations are set forth below.

ATILS recommends that the Board:

1. Issue for public comment an amended Rule of Professional Conduct 5.4 to expand the existing exception for fee sharing arrangements with a nonprofit organization, and continue to study other possible revisions to the rule.
2. Issue for public comment an amended Rule of Professional Conduct 1.1 that would add a new comment providing that a lawyer's duty of competence encompasses a duty to keep abreast of the changes in the law and law practice, including the benefits and risks associated with relevant technology.
3. Issue for public comment a new Rule of Professional Conduct 5.7 addressing the delivery of law related services provided by lawyers and businesses owned or affiliated with lawyers.
4. Direct the anticipated State Bar Paraprofessional Working Group to consider the key principles of a licensing program that authorizes eligible nonlawyers to provide limited legal services developed by the Task Force.
5. Form and appoint a new working group to explore the development of a regulatory sandbox that can provide data on any potential benefits to access to legal services as well as the potential for consumer harm if prohibitions on unauthorized practice of law, fee sharing, nonlawyer ownership, and other legal restrictions are modified or completely suspended for authorized sandbox participants.
6. Consider recommendations for amendments to the Certified Lawyer Referral Service rules and statutes with relevant Rules of Professional Conduct to ensure that they properly balance public protection and innovation in light of access to justice concerns and with a particular emphasis on ascertaining if existing laws impose unnecessary barriers to referral modalities (such as automated referrals or online matching services) that are in the public interest.

⁴ Unless otherwise noted all references are to the California Rules of Professional Conduct.

7. Consider recommendations for amendments to the Rules of Professional Conduct governing advertising and solicitation informed by the current American Bar Association Model Rules of Professional Conduct and the proposed advertising and solicitation rules developed by the Association of Professional Responsibility Lawyers.

Among these recommendations are proposals that narrow and refine some of the 16 options for regulatory reform that were issued for public comment. Other recommendations are intended to generate additional data and empirical evidence to enable the State Bar to continue the effort to evaluate regulatory reform options. To better understand the general scope and substance of the ATILS recommendations, two key questions and answers are set forth below.

1. Do the recommendations modify existing prohibitions against the unauthorized practice of law (UPL) by nonlawyers?

ANSWER: ATILS studied the issue of whether nonlawyer providers in the legal services market might enhance access to legal services and developed two recommendations that address this question, with neither suggesting that immediate changes to UPL restrictions are warranted.

First, as a short term objective, the Task Force agrees with the Board of Trustees' (Board) current steps to consider implementation of a new paraprofessional licensing program (such as a Limited License Legal Technicians program) that would allow nonlawyer individuals to render specified limited legal advice and services. To assist that initiative, the Task Force has articulated key public protection, access, and regulatory principles and recommends that these be conveyed to the State Bar's new paraprofessional working group. The principles include among others: (1) confidentiality/privilege protections for communications with nonlawyer licensees; (2) financial responsibility requirements; (3) and certification requirements, including background checks.

Second, as a longer term objective, the Task Force believes that beneficial UPL reforms might ultimately include changes to permit practice of law by entities using technology driven delivery systems. However, due to the unprecedented nature of such systems in the practice of law, the Task Force recommends that the Board explore the development of a regulatory sandbox or pilot program to evaluate these delivery systems. By creating a controlled regulatory environment that allows innovators to test these systems and demonstrate that access to legal services benefits substantially outweigh potential risks of consumer harm, the State Bar can secure experiential data upon which to base an informed decision as to whether, and if so, how permanent changes to UPL prohibitions should be pursued. The Task Force believes that a one-to-many model for delivery of legal services, a model made possible only through leveraging technology, poses a greater likelihood of increasing access than any options which rely on the traditional mode of one lawyer servicing one client to resolve one legal problem.

2. Do the recommendations modify restrictions on attorney fee sharing with nonlawyers and nonlawyer ownership of law practices?

ANSWER: The Task Force’s fee sharing recommendations are structured as short and long term proposals; in the immediate term, only fee sharing with non-profits is addressed.

As a short term objective, the Task Force has drafted a proposed amendment to rule 5.4, the lawyer disciplinary rule that restricts attorney fee sharing with a nonlawyer. The Task Force’s amendment would expand the existing exception for lawyers to share fees with certain nonprofit organizations. Currently, the exception only allows for the sharing of court awarded fees. The Task Force’s recommended revision would allow fee sharing with a nonprofit in the case of an out-of-court settlement or other resolution that does not involve court action to award attorney fees. If ultimately adopted by the Board and approved by the Supreme Court, this rule change would provide greater opportunities for legal services organizations to fund their programs through fee sharing arrangements with participating lawyers.

As a longer term objective, the Task Force recommends ongoing study of further revisions to rule 5.4. If, following study, a regulatory sandbox is developed, it is anticipated that applications for participation would be encouraged from law firms and from alternative legal services providers (ALSP) such as nonlawyer owned and operated technology firms, and business collaborations of lawyers and nonlawyers. On the one hand, the Task Force is well aware from public comments received and other input that the longstanding restrictions on fee sharing and nonlawyer ownership serve to protect an attorney’s exercise of independent professional judgment in providing legal advice and services. On the other hand, the Task Force regards rule 5.4 as central to advancing innovation in the delivery of legal services and has heard from technologists and others that this rule is a significant inhibitor of new delivery systems that might otherwise be brought to market by nonlawyer entities or co-owned collaborations of lawyers and nonlawyers. Once deployed, the data from sandbox trials, which would be conducted pursuant to Task Force recommendation #5 could inform whether, and to what extent compliance enforcement standards and risk based proactive auditing by a regulatory oversight body could balance consumer protection and access goals in the absence of a prophylactic ban on fee sharing and nonlawyer ownership. It is notable that the high value placed by ATILS on supporting innovation, including through the efforts of ALSPs, is mirrored in studies and reforms occurring in other U.S. jurisdictions and by recent resolutions of the ABA⁵ and the Conference of Chief Justices⁶ that focus on innovation as a strategy to increase access.

⁵ On February 17, 2020, the ABA House of Delegates passed Resolution 115 that encourages state regulators and state bar associations to explore regulatory innovations that could improve access to legal services, and to collect data on those programs. The is posted online at: <https://www.americanbar.org/content/dam/aba/administrative/news/2020/02/midyear2020resolutions/115.pdf>.

⁶ At its Midyear Meeting on February 5, 2020, the Conference of Chief Justices’ (CCJ) adopted Resolution 2 that “urges its members to consider regulatory innovations that have the potential to improve the accessibility, affordability and quality of civil legal services, while ensuring necessary and appropriate protections for the public.” The resolution is posted online at:

II. BACKGROUND AND PURPOSE OF THE TASK FORCE

The 2017-2022 State Bar Strategic Plan: The State Bar’s mission is to protect the public and includes the primary functions of licensing, regulation, and discipline of attorneys; the advancement of the ethical and competent practice of law; and support of efforts for greater access to, and inclusion in, the legal system. The State Bar operates under a five year strategic plan. Goal 4 of the strategic plan is to: “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 d, of this goal provides that: “Commencing in 2018 and concluding no later than March 31, 2020, 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.”

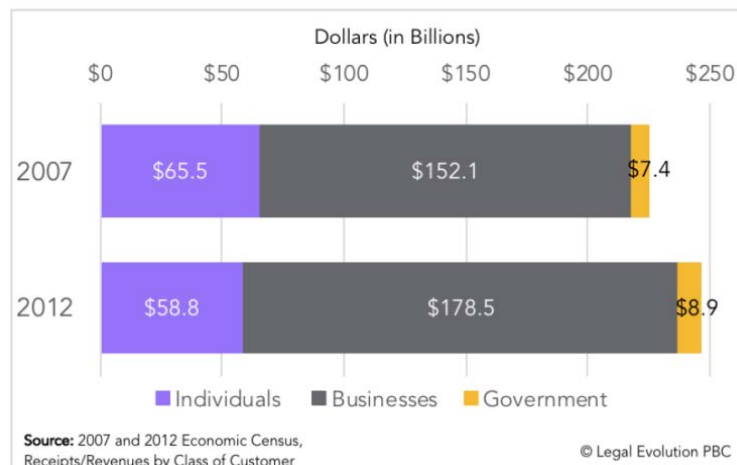
To advance this objective the State Bar commissioned Professor William Henderson,⁷ a national expert in the analysis of the legal profession, to conduct a legal market landscape report outlining the current availability and impact of online legal service delivery models.

Legal Market Landscape Report: The Board received Professor Henderson’s *Legal Market Landscape Report* (the Henderson Report) at its July 20, 2018, meeting. The Henderson Report surveys the landscape of the current and evolving state of the legal services market and identifies new business models developed for delivering legal services using methods that are distinct from traditional delivery systems, including online delivery systems. The report describes the two primary sectors of the market served by lawyers: the PeopleLaw sector in which lawyers serve individual clients; and the Organizational Client sector in which lawyers are focused on serving corporate clients. One key finding of the report is a growth trend in the Organizational Client sector and a sharp decline in the PeopleLaw sector. Professor Henderson provides a comparative analysis of the dollars spent on legal services by type of client for the years 2007 and 2012 and observes the most striking feature is that “over a five-year span, the total dollar amount for individual clients (PeopleLaw sector) declined by nearly \$7 billion. During the same time, the amount allocated to businesses (Organizational Client sector) increased by more than \$26 billion.”

<https://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/02052020-Urging-Consideration-Regulatory-Innovations.ashx>.

⁷ Professor William Henderson is on the faculty at Indiana University Maurer School of Law, where he holds the Stephen F. Burns Chair on the Legal Profession. Prof. Henderson focuses primarily on the empirical analysis of the legal profession and his work has appeared in leading legal journals, publications, and the mainstream press. Based on his research and public speaking, Prof. Henderson was included on the National Law Journal’s list of The 100 Most Influential Lawyers in America. In 2015 and 2016, he was named the Most Influential Person in Legal Education by The National Jurist magazine. In 2010, Prof. Henderson co-founded Lawyer Metrics, an applied research company that helps lawyers and law firms use data to make better operational and strategic decisions. In 2017, he founded Legal Evolution, an online publication that chronicles successful innovation within the legal industry.

Figure 5. Dollars Spent on Legal Services, 2007 and 2012, by Type of Client



Professor Henderson also explains that substitution is occurring in the market. He finds that: “The PeopleLaw sector is increasingly served by legal publishers such as LegalZoom, Rocket Lawyer and many others that provide access to tech-enabled forms. In effect, this creates a consumer DIY culture where it is difficult to combine high-quality, low-cost forms with legal advice.”

On the key issue of regulation, the Henderson Report ultimately finds that “ethics rules . . . and the unauthorized practice of law... are the primary determinants of how the current legal market is structured” Under ethics rules, any business engaged in the practice of law must be owned and controlled by lawyers. This prohibition limits both the opportunity and incentive for nonlegal entrepreneurs to enter the legal market.” Ultimately, the report’s conclusion states: “By modifying the ethics rules to facilitate this close collaboration [of lawyers and nonlawyers], the legal profession will accelerate the development of one-to-many productized legal solutions that will drive down overall costs; improve access for the poor, working and middle class; improve the predictability and transparency of legal services; aid the growth of new businesses; and elevate the stature and reputation of the legal profession as one serving the broader needs of society.” The full text of the Henderson Report is posted at: <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000022382.pdf>.

Following discussion of Professor Henderson’s report and presentation at the July 20, 2018, meeting, the Board adopted a resolution to form ATILS stating: “the Board of Trustees authorizes the formation of a Task Force to analyze the landscape report and conduct a study of possible regulatory reforms, including but not limited to the online delivery of legal services, that balance the State Bar’s dual goals of public protection and increased access to justice.” The Board’s action also directed staff to work with the Chair and Vice-Chair of the Programs Committee to draft a proposed Task Force charter.

The following ATILS charter was approved by the Board at its meeting on September 14, 2018:⁸

The Task Force on Access Through Innovation of Legal Services (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. A Task Force report setting forth recommendations will be submitted to the Board of Trustees no later than December 31, 2019. Each Task Force recommendation should include an explanatory rationale that reflects a balance of the dual goals of public protection and increased access to justice.

In carrying out this assignment, the Task Force should do the following:

1. Review the current consumer protection purposes of the prohibitions against unauthorized practice of law (UPL) as well as the impact of those prohibitions on access to legal services with the goal of identifying potential changes that might increase access while also protecting the public. In addition, assess the impact of the current definition of the practice of law on the use of artificial intelligence and other technology driven delivery systems, including online consumer self-help legal research and information services, matching services, document production and dispute resolution;
2. Evaluate existing rules, statutes and ethics opinions on lawyer advertising and solicitation, partnerships with nonlawyers, fee splitting (including compensation for client referrals) and other relevant rules in light of their longstanding public protection function with the goal of articulating a recommendation on whether and how changes in these laws might improve public protection while also fostering innovation in, and expansion of, the delivery of legal services and law related services especially in those areas of service where there is the greatest unmet need; and
3. With a focus on preserving the client protection afforded by the legal profession's core values of confidentiality, loyalty and independence of professional judgment, prepare a recommendation addressing the extent to which, if any, the State Bar should consider increasing access to legal services by individual consumers by implementing some form of entity regulation or other options for permitting nonlawyer ownership or investment in businesses engaged in the practice of law, including consideration of multidisciplinary practice models and alternative business structures.

(See Board Open Session Action Agenda Item No. [701 SEPTEMBER 2018](#).)

III. OVERVIEW OF THE WORK OF THE TASK FORCE

Members of the Task Force: ATILS was appointed as a twenty-three member Task Force that included 11 public members; ten lawyers; and 2 judges. Collectively, the expertise on ATILS

⁸ Subsequently, the charter was amended to extend the deadline for submission of a final report to March 31, 2020.

included knowledge and experience in: (1) legal services programs; (2) artificial intelligence and “big data;” (3) attorney professional responsibility and UPL; (4) lawyer referral services; (5) information technology and data security/privacy; (6) online provision of legal information, document preparation and law-related services; (7) paralegal and law office legal support services; (8) and online dispute resolution. Three officers were appointed: the Chair, the Honorable Lee Edmon, Presiding Justice, California Court of Appeal, Second Appellate District, Division 3; and two Co-Vice-Chairs, Toby Rothschild, Of Counsel, OneJustice, and Joyce Raby, Executive Director, Florida Justice Technology Center. A roster of the current Task Force members is provided as Appendix 1.⁹ Two members of the Task Force were appointees nominated by the Legislature. Additionally, liaisons from the staff of the Supreme Court of California regularly attended ATILS meetings. State Bar assistance was provided by staff from the Office of Access & Inclusion, the Office of Chief Trial Counsel, the Office of General Counsel, and the Office of Professional Competence.

Meetings of the Task Force: To carry out its assignment ATILS held eleven meetings.¹⁰ Consistent with the charter’s 3 enumerated assignments, ATILS formed 3 subcommittees: (1) Unauthorized Practice of Law-Artificial Intelligence subcommittee (UPL/AI subcommittee); (2) Rules and Ethics Opinions subcommittee (Rules subcommittee); and, (3) Alternative Business Structures-Multidisciplinary Practice subcommittee (ABS/MDP subcommittee). These subcommittees held several meetings separate from the plenary sessions of the Task Force. A schedule of the meetings held, including additional subcommittee meetings, is provided as Appendix 2.

Expert and Practitioner Input

At several meetings, ATILS received presentations from persons knowledgeable in legal technology and access to justice.¹¹

SPEAKER	BRIEF BIOGRAPHICAL INFORMATION	MEETING DATE
IV Ashton	Founder and president of Houston AI	12/5/2018
William D. Henderson	Professor of law, editor of Legal Evolution, author of the Legal Market Landscape Report presented to the Board on July 20, 2018	12/5/2018

⁹ Over the course of the task force’s work, there were some member resignations that were filled by alternate nominees. This is indicated in the provided roster.

¹⁰ The ATILS meetings were webcast, including presentations of speakers, and the archived streams are available at [the State Bar website](#).

¹¹ During the opportunity for public comment at the ATILS’ meetings the following persons appeared and provided oral comments: Drew Amerson and Jason Richmond (2/28/19 meeting); Mr. Kabateck, Ms. Shining, Mr. Bojeaux, Ms. Jensen, Ms. Sirkin, Mr. Losh, Mr. Seo, Mr. Cohen, Mr. Taillieu, Ms. Dijvre, Mr. Grinwald, Mr. Saadian, Mr. Kunstler, and Ms. Joyce (10/7/19 Meeting); Jason Solomon, Carolyn Shining, Grant Kennedy, and Andrew Sizer (11/6/19 Meeting); Ian Duncan, Jim Wilroy, Carolyn Shining, and Mark Lester (2/4/20); and, Christopher Sanchez and Brian Pangrle (2/24/20 meeting)

SPEAKER	BRIEF BIOGRAPHICAL INFORMATION	MEETING DATE
Kevin E. Mohr	Professor of law, former COPRAC Chair, former Rules Revision Commission consultant, member of ATILS	12/5/2018
Rebecca L. Sandefur	Faculty fellow and founder of the Access to Justice Initiative at the American Bar Foundation	4/8/2019
Alison Paul and Angie Wagenhals	Executive Director and Pro Bono Director, Montana Legal Services Association, LSC grant recipient for technology in legal aid	5/13/2019
Colleen Cotter	Legal Aid Society of Cleveland, LSC grant recipient for technology in legal aid	8/9/2019
Gillian Hadfield	Professor of Law and Professor of Strategic Management, University of Toronto	8/9/2019
Margaret Hagan	Director of the Legal Design Lab and a lecturer at Stanford University Institute of Design	8/9/2019

In addition, the Task Force was briefed on several occasions about the findings of the [Justice Gap Report](#) described below.

2019 California Justice Gap Study: Technical results from the 2019 California Justice Gap Study were issued in September of 2019. Modeled on the Legal Services Corporation 2017 study, *“Measuring the Civil Legal Needs of Low-income Americans,”* the California Justice Gap Study measured the extent to which all Californians encounter and address civil legal problems. The study included a survey of nearly 4,000 Californians by NORC at the University of Chicago. Respondents were asked about the civil legal problems they faced in the past year and whether they sought legal help for those problems.¹² The survey also included questions about the kinds of help respondents received or why they chose not to seek help, and the respondents’ attitudes about the status or resolution of their legal issues. Based on this survey, the Study generally finds that: “Many Californians, regardless of income, are navigating critical civil legal issues without legal representation or meaningful legal assistance.” Specifically, the data reveals that:

- 55 percent of Californians regardless of income experience at least one civil legal problem in their household each year. Among Californians with low incomes, 60 percent experienced these problems.
- Californians received no or inadequate legal help for 85 percent of their problems. This is due in part to the fact that they seek help for fewer than one in three legal problems.

¹² The NORC survey posed questions about respondents experience with problems that have a civil legal remedy. It is important to note that respondents were not asked to identify if they experienced “legal problems.” Respondents merely identified the existence of a problem and NORC identified the problem as being a legal problem.

- Failure to access legal services is a result of both a service gap (supply) and a knowledge gap (demand); the primary reason Californians do not seek legal help is that they are unsure that the problem they are experiencing is a legal one.
- When Californians seek legal help for their problems, they get that help both offline and online.



Public Comment and Other Outreach Activity

Public Comment

At its July 11, 2019, meeting, the Board of Trustees authorized a 60-day public comment period for the 16 options for regulatory reform that had been identified by ATILS. These options included: (1) general concepts regarding the advisability of defining “the practice of law” and “artificial intelligence;” (2) potential exceptions to UPL for both individual nonlawyers and technology driven delivery systems; (3) and concepts for amendments to the rules restricting fee sharing with nonlawyers and nonlawyer ownership of a law practice. A list of the 16 concept options for regulatory reform is provided as Appendix 3.

The public comment request, including an explanatory infographic, was posted at the State Bar’s website in English, Spanish, Chinese, and Tagalog. The public comment notice and materials are posted at: <http://www.calbar.ca.gov/About-Us/Our-Mission/Protecting-the-Public/Public-Comment/Public-Comment-Archives/2019-Public-Comment/Options-for-Regulatory-Reforms-to-Promote-Access-to-Justice>. To facilitate participation in the public comment process by stakeholders who might offer a consumer perspective, staff emailed invitations for comment to the following organizations and agencies:

- Northern and Southern California Association of Law Libraries
- National Consumer Law Center

- National Association of Consumer Advocates
- Consumer Federation of California
- State Department of Justice, Office of the Attorney General, Anti-trust Unit
- Federal Trade Commission
- Inequality.org

In addition, the consumer protection units of various news agencies were contacted and informed about the request for public comment.

A total of approximately 2,865 comments from over 1,300 distinct individuals or organizations were received. About 73 percent of the comments indicated a position opposed to one or more of the proposals. About 18 percent of the comments indicated a position in support of one or more of the proposals. The remaining comments either stated no preference or did not indicate a position.

The proposal that received the most comments was the concept of an exception to UPL for regulated individual nonlawyers to provide specified legal services. This proposal received about 610 comments with 506 of those opposed. None of the individual proposals received a majority of comments in support.

Many of the comments identified risks associated with the options for regulatory reform. The major themes of these comments include the following:

- There are insufficient limits on scope, regulation, or enforcement mechanisms for the provision of legal services by nonlawyers.
- There is no clear picture of how the competence of nonlawyer provided services will be assured – great risk of consumer fraud/harm.
- Nonlawyer ownership and fee sharing threaten the independence of professional judgment in the delivery of legal services – profit motives may overwhelm compliance with fiduciary duties.
- Other less radical initiatives for improving access to justice are preferred (such as more funding for legal services programs), but are not being adequately explored.

There were fewer comments expressing support. Some of the themes of supportive comments include the following:

- Other countries have already adopted similar reforms to the delivery of legal services without demonstrated harm to consumers of legal services.

- While more funding for pro bono work and civil legal aid are important strategies, they have been tried for decades and the access crisis continues to grow—new strategies are needed.
- The one-lawyer, one-client, one-case paradigm will continue to restrict access in the people-law sector until innovation is fostered in a way that produces a one-to-many delivery system.
- When such a high percentage of consumers do not have access to legal services, the goal of public protection is not met.

A table showing the distribution of comments received for each public comment option is provided as Appendix 4. The full text of the public comments is available at the ATILS DropBox at: <http://bit.ly/ATILSDropBox>. A report tallying the comments for each concept option is provided as Appendix 5.

Public Hearing

There were 21 speakers at the ATILS public hearing held on August 10 to coincide with the ABA Annual Meeting being held in San Francisco. The transcript of the public hearing is posted at: <http://bit.ly/3cGHHdY>. Selected excerpts are provided below.

Ralph Baxter (attorney)

“The rules of our law practice [ownership and UPL prohibitions] in California impede modernization . . . not letting other professionals participate makes legal service more expensive than it needs to be and it really makes the legal service less effective because it eliminates and excludes from the conversation about how to do it best, people with different perspectives, different training, different skills than those of people who went to law school There isn’t a business that’s successful in the United States that doesn’t want a workforce that consist of people with diverse training, diverse expertise, not just supporting the work of the business but doing the work of the business and our rules say we can’t have that. They all have to be from the same narrow training.”

Zachariah DeMeola (current manager at the Institute for the Advancement of the American Legal System (a.k.a., IAALS) and member of the Colorado Bar Association’s Communications & Technology Law Section)

“IAALS is an independent think tank at the University of Denver committed to improving the civil justice system. One of the problems that deeply concerns us is that the legal profession is not serving the needs of the vast majority of people with legal problems. . . The problem reaches far up the income scale. . . it reaches the middle-class and even small businesses Current rules prevent lawyers from sharing fees with others, so people with novel and potentially ground breaking solutions cannot partner directly with lawyers to develop new legal services. Innovators who would otherwise focus on how to meet consumer needs are spending dollars and energy

trying to maneuver around being seen as offering legal services in the first place, or they are just avoiding the market all together. One such entity recently told IAALS: “It’s expensive to operate in the grey. It severely cramps our capacity to innovate and serve the market.” So without change, access to justice is in danger of becoming just a catch phrase that doesn’t have much relevance to most Americans.”

Stephen Gillers (professor of law, New York University School of Law and former chair of the Policy Implementation Committee of the ABA’s Center for Professional Responsibility)

“More important is the fact that a revised rule [5.4 (re fee sharing)], coupled with present and future advances in artificial intelligence, can allow law offices to organize in new ways in order to serve clients who could not afford them, at all or easily. I am thinking of landlord tenant firms, personal injury firms, criminal defense firms, bankruptcy firms, firms representing debtors and consumers, family law firms, and firms that write wills and estate plans. Revising rule 5.4 as proposed in Option 1 can unleash creative approaches that will reduce the cost of legal services in ways we cannot today even imagine, ways that have never been explored, let alone tried, because of the rule’s absolute ban.”

Arthur Lachman (current Co-Chair of the APRL Future of Lawyering Committee and former APRL president)

“Reform is needed now to fill the wide gap in consumer need for legal services We are not just talking about access to courts. We are talking about affordable legal services by consumers at all levels of the income spectrum Many of the rules simply have a chilling effect on undertaking efforts that would aid consumers As shown in Professor Henderson’s report, restrictions on nonlawyer investment tend to discourage innovation.”

Town Hall Meetings with Local Bar Associations

During the public comment period, representatives of ATILS participated in the following five town hall meetings with local bar associations.

- San Diego County Bar Association (August 20, 2019)
- Los Angeles County Bar Association (August 27, 2019)
- Bar Association of San Francisco and the Alameda County Bar Association (co-hosted on September 9, 2019)
- Sacramento County Bar Association (September 10, 2019)
- Orange County Bar Association (September 18, 2019)

While the format and length of individual meetings varied, in general representatives of ATILS began each meeting with a PowerPoint overview describing the work of the Task Force. This was followed by short summaries of some of the major options for reform being studied including UPL exceptions, fee sharing, and ALSPs. Local bar representatives offered commentary followed by a question and answer session with the audience. ATILS representatives urged attendees to submit input regarding the recommendations that had been circulated for public comment using the online submission form. In-person attendance ranged from about ten to forty persons. The San Diego, Los Angeles, and Orange County meetings were live streamed.

Some of the points raised by local bar representatives or audience members include:

- Harm to the immigrant community by “notario” fraud will be exacerbated if nonlawyers are allowed to practice immigration law. Deportation and other irreversible consequences can result from incompetent “cookie cutter” asylum petitions, as just one example.
- Technology solutions must be multilingual and usable by persons who are literacy challenged.
- Estate planning is very complicated and elderly persons are an at risk population when it comes to fraud and trust mills.
- Given the types of legal services that are likely to be rendered by technology and/or nonlawyer providers, there will probably be little or no competition with the services presently provided by any typical large or mid-size law firm.

Moderated Stakeholder Discussion Forums

After the public comment deadline, ATILS outreach continued. Task Force members arranged for informal discussion sessions with various stakeholders. These sessions included a meeting that was conducted by a professional facilitator. Reports on these sessions were provided at ATILS meetings. The sessions held are listed below.

Stakeholder Group	ATILS Participants	MEETING DATE
Consumer Attorneys of California	Bridget Gramme Carl Luna (Facilitator)	1/16/20
Law Enforcement and Legal Services Organization Representatives	Bridget Gramme Toby Rothschild (by phone)	1/27/20
Legal Services Organization Representatives	Toby Rothschild Bridget Gramme (by phone)	2/19/20

Some of the questions or comments raised by stakeholder groups include the following:

- How would a newly created regulatory system for both a paraprofessional licensing program and for entity regulation be funded?
- How can the public be assured of the competence of the new regulators and their ability to weed out and discipline bad actors?
- The proposal would lead to a two-tiered system of justice—lawyers for those who can afford them, and nonlawyers or apps for those who can’t. Everyone deserves a lawyer.
- How will the new regulators assure that services are being competently delivered?

Following the session with legal services organization representatives, held on February 19, 2020, a written comment was submitted to ATILS by the Legal Aid Foundation of Los Angeles. The comment articulates a concern with proposals for technology driven delivery systems related to the potential reliance on machine translations for non-English speaking consumers that would have a discriminatory effect on linguistically marginalized communities. The full text of this comment letter is provided as Appendix 6.

IV. RECOMMENDATIONS

Recommendation No. 1:

Issue for Public Comment an Amended Rule of Professional Conduct 5.4 to Expand the Existing Exception for Fee Sharing Arrangements with a Nonprofit Organization, and Continue to Study other Possible Revisions to the Rule

Discussion: Rule 5.4 generally prohibits fee sharing with a nonlawyer. One current exception, paragraph (a)(5), permits sharing a court awarded fee with a nonprofit organization that employed, retained, or recommended the lawyer’s employment. ATILS’ proposed amended rule would expand the ability of a lawyer to share fees with a nonprofit organization by adding an exception which provides where the legal fee is not court awarded, but arises from a settlement or other resolution of the claim or matter, the lawyer may share or pay the legal fee to the nonprofit organization, provided that the nonprofit organization qualifies under section 501(c)(3) of the Internal Revenue Code. The broad public policy concerning permissible fee sharing with a nonprofit organization is set forth in *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]. A specific precedent for this proposed exception is found in the [District of Columbia’s version of rule 5.4](#).¹³ Regarding the comments to the proposed

¹³ D.C. Rule 5.4 includes Comment [11] which provides that:

[11] Subparagraph (a)(5) permits a lawyer to share legal fees with a nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter. A lawyer may decide to contribute all or part of legal fees recovered from the opposing party to a nonprofit organization. Such a contribution may or may not involve fee-splitting, but when it does, the prospect that the organization will obtain all or

amended rule, revisions include additional public protection by including a cross-reference to the client communication duty (see proposed Comment [4]) with a statement that in some instances a fee sharing arrangement with a nonprofit organization might constitute a significant development that must be communicated to the client whose representation the nonprofit had recommended or facilitated. A clean version of ATILS' proposed amended rule 5.4 and a redline/strikeout version showing changes to the current rule is provided as Appendix 7.

Further Study. Although ATILS is recommending the above amendment to rule 5.4, ATILS also generally recommends an ongoing study of other amendments to the rule that could promote collaboration, innovation, and investment in new delivery systems that lower costs and increase access to legal services. The members of the ATILS Task Force have identified revisions to rule 5.4 as being central to advancing innovation in the delivery of legal services. Rule 5.4 has been identified as a significant inhibitor of innovation that could be provided by nonlawyer entities, including individuals, organizations, and technologies. While the Task Force only approved a revision to the rule which will allow expanded fee sharing with nonprofit organizations, a substantial majority of the members agree that additional revisions may be warranted, but that further study and data informing the specifics of those revisions is needed. Some believe that, if created, a regulatory sandbox (see Recommendation No. 5) will provide informative data, while others believe that further changes to rule 5.4 may be studied regardless of the creation of a sandbox.

The Task Force members also recommend that the Board consider the experiences of other jurisdictions that are currently considering amendments to rule 5.4. In short, the Task Force encourages ongoing study of other potential changes to rule 5.4 that could facilitate the closure of the gap in legal services provided to individuals.

Relationship to the ATILS Charter: This recommendation responds to the charter by proposing a rule change that is intended to directly impact the ability of a nonprofit legal services organization to expand its activities through sharing in legal fees that are achieved through a settlement. This revision also adds the term “facilitate” to the language of the exception which is intended to address incubator programs and other similar relationships with lawyers who are working through a nonprofit legal services organization administering an incubator or similar program.

Public Comment: This proposal was included in ATILS' request for public comment on various options for regulatory reform, in particular as a part of one of two possible alternate revisions

part of the lawyer's fees does not inherently compromise the lawyer's professional independence, whether the lawyer is employed by the organization or was only retained or recommended by it. A lawyer who has agreed to share legal fees with such an organization remains obligated to exercise professional judgment solely in the client's best interests. Moreover, fee-splitting in these circumstances may promote the financial viability of such nonprofit organizations and facilitate their public interest mission. Unlike the corresponding provision of Model Rule 5.4(a)(5), this provision is not limited to sharing of fees awarded by a court because that restriction would significantly interfere with settlement of cases, without significantly advancing the purpose of the exception. To prevent abuse of this broader exception, it applies only if the nonprofit organization qualifies under section 501(c)(3) of the Internal Revenue Code.

to rule 5.4. It was issued as an aspect of Recommendation 3.1. However, Recommendation 3.1 included the concept of nonlawyer ownership of a law practice, while the current recommendation does not. Accordingly, most of the public comment on Recommendation 3.1 addresses nonlawyer ownership and is not responsive to the proposal for limited expansion of the existing exception for fee sharing with a nonprofit legal services organization. There were only a few comments that specifically addressed this expansion. One example is the Northern and Southern Chapters of the American Academy of Matrimonial Lawyers comment letter dated September 20, 2019, which states in part:

We fully support the first suggested change to Rule of Professional Conduct 5.4 to authorize nonprofits to share fees with attorneys who recommend them or otherwise facilitate their employment. Currently, these nonprofits can only share court awarded fees. To tackle the justice gap head on, greatly expanding the reach of Public Law Center, Legal Aid, and Neighborhood Legal Services, so that these nonprofits and others like them can provide legal services to underserved communities is the answer.

Conclusion and Next Steps: ATILS believes that the proposed expanded fee sharing exception described above will enhance access to legal services rendered by nonprofit legal services organizations. Should the Board agree with this proposal, it is anticipated that proposed amended rule 5.4 would be issued for a 60-day public comment period. If ultimately adopted by the Board, the proposed amendment would need to be submitted to the California Supreme Court for approval (see Bus. & Prof. Code, §§ 6076 & 6077).

Recommendation No. 2:

Issue for Public Comment an Amended Rule of Professional Conduct 1.1 that Would Add a New Comment Providing that a Lawyer’s Duty of Competence Encompasses a Duty to Keep Abreast of the Changes in the Law and Law Practice, including the Benefits and Risks Associated with Relevant Technology

Discussion: The Task Force recommends that the Board adopt a proposed amended rule 1.1 that would add a new Comment providing that a lawyer’s duty of competence encompasses a duty to keep abreast of the changes in the law and law practice, including the benefits and risks associated with relevant technology. This proposal is a variation of a similar Comment to ABA Model Rule 1.1 that expressly addresses a lawyer’s technology competence.¹⁴ A clean version of ATILS’ proposed amended rule 1.1 and a redline/strikeout version showing changes to the current rule are provided as Appendix 8.

¹⁴ Comment [8] to ABA Model Rule 1.1 provides that: “To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.”

Relationship to the ATILS Charter: Adding the Task Force’s proposed Comment to the competence rule responds to the charter by clarifying that a lawyer has a responsibility to be familiar with, and competent in, using relevant technology. By expressly addressing technology competence the rule would facilitate a lawyer’s or law firm’s implementation of technology in their practices in a professionally responsible manner. This responsible use of technology could have a beneficial effect on a law practice’s efficiency, which could in turn lead to savings that can be passed on to clients. Although there are State Bar ethics opinions that have already embraced the substance of the proposed Comment, (see, e.g., State Bar Formal Opns. 2016-196; 2015-193; 2013-188; 2012-186; 2012-184; 2010-179), such opinions are merely persuasive while Comments to the rules are Supreme Court approved guidance for “interpreting and practicing in compliance with the rules.” (See rule 1.0(c) regarding the purpose of Comments.) According to one legal journalist, 38 states have adopted a version of the ABA Model Rules Comment on technology competence (see, <https://www.lawsitesblog.com/tech-competence>).

Public Comment: This proposal was included in ATILS’ request for public comment on various options for regulatory reform, in particular as a part of several possible revisions to the Rules of Professional Conduct. It was issued as Recommendation 3.0 as set forth below.

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

Recommendation 3.0 received a total of approximately 76 written public comments, 49 in opposition, 25 in support, and two with no stated position. Public comment themes, along with the Task Force’s responses to each, are outlined below.

1. Requiring all lawyers to maintain competence in legal technology may unduly burden certain lawyers, such as elderly lawyers and solo practitioners.

Task Force Response: The inclusion of this concept in the Comment to rule 1.1 is consistent with the Comments to ABA Model Rule 3.0 as adopted by a majority of U.S. jurisdictions. (See: <https://www.lawsitesblog.com/tech-competence>.) It is also consistent with California ethics opinions. (See: State Bar Formal Op. Nos. 2010-179 and 2012-184.) No evidence was presented to the Task Force of any disparate impact on senior attorneys or solo practitioners arising from these existing authorities. Moreover, to the extent the Comment might be viewed as asserting that a lawyer should not be required to become an expert in relevant technology, that is not at all what is intended. The Comment merely recognizes that lawyers have a duty to provide their clients with competent legal services which, in some instances, would call for the lawyer to employ technology in the representation. The lawyer himself or herself would not be required to become expert in the particular technology, but instead might be expected to associate with someone else who is, which rules 1.1(c) and 5.3 explicitly recognize.

2. Given how quickly technology is changing, attorneys should keep up to date with how it affects legal practice.

Task Force Response: The Task Force agrees that competent use of technology in the practice of law should be encouraged as it can promote efficiencies that improve the quality of representation while lowering the cost of legal services.

3. A lawyer should not be disciplined for not understanding the benefits of a particular technology; instead, a lawyer should only be accountable for conduct when actually using technology in a client's representation.

Task Force Response: The inclusion of this concept in the Comment to rule 1.1 does not establish a disciplinable duty independent of the professional responsibilities imposed by the terms of the rule. Rule 1.1 only prohibits a lawyer from "intentionally, recklessly, with gross negligence, or repeatedly" failing to perform legal services with competence. Unless the lawyer's failure was intentional, reckless or grossly negligent, a single failure would not constitute grounds for discipline. This would appear to be a reasonable minimum public protection standard for a lawyer's familiarity with technology used in the practice of law.

Conclusion and Next Steps: ATILS believes that the proposed Comment will help lawyers appreciate the ever-increasing role that technology plays in the practice of law. Should the Board agree with this proposal, it is anticipated that proposed amended rule 1.1 would be issued for a 60-day public comment period. If ultimately adopted by the Board, the proposed amendment would need to be submitted to the California Supreme Court for approval (see Bus. & Prof. Code, §§ 6076 & 6077).

Recommendation No. 3

Issue for Public Comment a New Rule of Professional Conduct 5.7 Addressing the Delivery of Nonlegal Services Provided by Lawyers and Businesses Owned or Affiliated with Lawyers

Summary of the Recommendation: ABA Model Rule 5.7 addresses a lawyer's provision of law-related services. It describes when a lawyer's provision of such services would be subject to the rules and when it would not be. California does not have a version of Model Rule 5.7, but the issue of the Rules' application when lawyers provide nonlegal services has been addressed in disciplinary common law, including Supreme Court precedent, and in advisory ethics opinions. Because there is no rule, however, lawyers may be unsure of their duties in such situations and reluctant to explore innovative delivery systems for nonlegal services as well as combined nonlegal and legal services. ATILS recommends issuing a proposed rule 5.7 for public comment. Such a rule would provide greater clarity about those duties and alleviate the obstacle of the uncertainty in the provision of nonlegal services. ATILS received a *Corporate Legal Market Report* finding, in part, that in the corporate sector legal work is being delivered in different ways, by both lawyers and nonlawyers, using new tools, and, in many cases, the work is being provided by entities beyond the scope of traditional lawyer regulation. The *Corporate*

Legal Market Report is posted at: <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000025230.pdf>. As noted in the report, much of this innovative work is facilitated by each jurisdiction's rule 5.3 (Responsibilities Regarding Nonlawyer Assistance), which permits delivery of services by nonlawyers *to organizations* where the organization's lawyer supervises the services. Such an option is not available in the PeopleLaw sector. A California version of ABA Model Rule 5.7, however, might facilitate a similar level of innovative delivery systems in that sector. A clean version of ATILS' proposed new rule 5.7 is provided as Appendix 9.

Discussion: As stated above, proposed rule 5.7 is intended to provide clarity regarding the obligations attorneys owe when providing nonlegal services. Proposed rule 5.7, however, is not intended to change California law on the application of the Rules of Professional Conduct to a lawyer's provision these services, with one possible exception. The exception is that some interpret the case law as standing for the proposition that a lawyer cannot disclaim an attorney-client relationship. While that is generally true and is supported in cases such as *In the Matter of Gordon* (Rev. Dept. 2018) 5 Cal. State Bar Ct. Rptr. __ (2018 WL 5801485), lawyers should be permitted as a matter of public policy to engage in business with nonlawyers in the provision of innovative and cost efficient services to consumers outside the traditional attorney-client relationship where the services themselves are not governed by the Rules of Professional Conduct. Existing policy already permits a lawyer to clarify the scope of the lawyer's duty when the lawyer is engaged in conduct distinct from the practice of law, for example, in situations where a lawyer serves as a mediator or third party neutral. See rule 2.4. There is no reason why lawyers and nonlawyers should not be able to join forces in providing services to consumers outside the traditional attorney-client relationship with adequate notice and disclosures that the services are not legal and the protections of the attorney-client relationship are not available to the consumer. As provided in the proposed rule, lawyers would still continue to be held to a higher standard under the Rules and State Bar Act depending on the nature of the services being provided. Moreover, the rule also recognizes there may be ethical consequences to the lawyer in performing nonlegal services. These issues are appropriately addressed in comments to the rule.

Where a Lawyer's Provision of Nonlegal Services is governed by the Rules of Professional Conduct and the State Bar Act

Rule 5.7 is not intended to exclude a lawyer's conduct from the application of the Rules or the State Bar Act in circumstances that are not distinct from the lawyer or law firm's provision of legal services to clients. (Paragraph (a)(1)). Thus, a lawyer would still be subject to the rules and the State Bar Act where a lawyer or the lawyer's firm renders legal and nonlegal services to the same client or in the same matter, even if the nonlegal services might otherwise be performed by nonlawyers. *Layton v. State Bar* (1990) 50 Cal.3d 889, 904: "Where an attorney occupies a dual capacity, performing, for a single client or in a single matter, along with legal services, services that might otherwise be performed by laymen, the services that he renders in the dual capacity all involve the practice of law, and he must conform to the Rules of Professional Conduct in the provision of all of them;" *Alkow v. State Bar* (1952) 38 Cal. 2d 257, 263 – attorney provided collection services; *Libarian v. State Bar* (1944) 25 Cal. 2d 314, 317-18 – attorney provided services as tax preparer, notary and lawyer. See also proposed rule 5.7,

Comment [2]. (A summary of other relevant case law concerning the provision of nonlegal services is provided as Appendix 10.)

Where Lawyers May Otherwise Be Subject to Discipline in the Provision of Nonlegal Services

The question of whether a lawyer's conduct in rendering nonlegal services is governed by the rules is distinct from the question of whether the lawyer may be subject to discipline in performing nonlegal services. Lawyers are subject to discipline for conduct outside the practice of law even where the conduct is not governed by the Rules of Professional Conduct. Rule 1.0, Comment [2] – "While the rules are intended to regulate professional conduct of lawyers, a violation of a rule can occur when a lawyer is not practicing law or acting in a professional capacity;" and see rule 8.4(b) and (c) and Comment [1]. The same is true with respect to certain provisions of the State Bar Act (e.g., Bus. & Prof. Code, § 6106 – acts involving moral turpitude, dishonesty or corruption). State Bar Formal Opinions 1995-141, 1999-154.

Proposed rule 5.7 is not intended to change the law in these contexts and a comment to the rule is recommended to make this point clear. See proposed rule 5.7, Comment [3].

Other Consequences For Lawyers Providing Nonlegal Services to Clients and Other Persons

Lawyers may encounter conflicts of interest and other ethical consequences as a result of providing nonlegal services in a law firm or in an organization that is owned and operated with nonlawyers. Rule 5.7 is not intended to immunize lawyers from these consequences. A comment to this effect is included in the rule (see proposed rule 5.7, Comment [6]).

Relationship to the ATILS Charter: As explained above, this recommendation responds to the charter by proposing a new rule that would clarify a lawyer's duties in the provision of nonlegal services. California does not have a version of ABA Model Rule 5.7 and this may be a cause of uncertainty and reluctance for lawyers who might be interested in exploring innovative delivery systems for nonlegal services as well as combined nonlegal and legal services. The PeopleLaw sector would likely benefit from such innovation.

Public Comment: This proposal was included in ATILS' request for public comment on various options for regulatory reform, in particular as a part of several possible revisions to the Rules of Professional Conduct. It was issued as Recommendation 3.3 as set forth below.

Adoption of a version of ABA Model Rule 5.7 that fosters investment in, and development of, technology-driven delivery systems including associations with nonlawyers and nonlawyer entities.¹⁵

¹⁵ Recommendation 3.3 did not include proposed rule language but was presented as a concept for public consideration and comment.

Recommendation 3.3 received a total of approximately 98 written public comments, 89 in opposition, five in support, and four with no stated position. Public comment themes, along with the Task Force’s responses to each, are outlined below.

1. The need for this new Rule of Professional Conduct is unclear because the provision of law related services, including dual profession services, in the context of an attorney-client representation is already addressed in California case law and ethics opinions, and these authorities appear to offer better client protection than the terms of Model Rule 5.7.

Task Force Response: Case law and ethics opinions are not as accessible as the rules. As discussed above, a new rule offers the appeal of greater clarity in a lawyer’s duties and could facilitate innovative delivery of law related services.

2. Adding this new rule would encourage the provision of law related services and give law firms options to lower costs or provide added value.

Task Force Response: The Task Force agrees and has prepared a proposed rule that is recommended for public comment distribution by the Board.

Conclusion and Next Steps: Should the Board agree with this proposal, it is anticipated that the proposed new rule 5.7 would be issued for a 60-day public comment period. If ultimately adopted by the Board, the proposed amendment would need to be submitted to the California Supreme Court for approval (see Bus. & Prof. Code, §§ 6076 & 6077).

Recommendation No. 4

Commend to the Anticipated State Bar Paraprofessional Working Group the Key Principles Identified by ATILS in Studying the Concept of a Licensing Program that Authorizes Eligible Nonlawyers to Provide Limited Legal Services

Summary of the Recommendation: With limited exceptions, existing California law restricts the practice of law to lawyers who are active licensees of the State Bar. Practice of law by nonlawyers is subject to prosecution for UPL. Other jurisdictions have implemented, or are studying, programs that authorize limited practice of law by nonlawyer paraprofessionals. The goal of these programs is to provide consumers with enhanced access to legal services. In studying innovative legal services delivery systems, ATILS received presentations from experts that included an observation that a paraprofessional program could serve as a component of a broader unauthorized practice of law reform that would serve the public interest. In discussing the regulatory issues presented by a paraprofessional program, ATILS has identified key principles and recommends that these principles be referred for consideration by the anticipated State Bar paraprofessional working group.

Discussion: At its meeting on January 24, 2020, the Board adopted the following resolution regarding consideration of a paraprofessional program similar to existing Limited Licensed Legal Technician (LLLT) programs in other jurisdictions.

RESOLVED, that the Board of Trustees directs staff, in consultation with the Board's Access Liaisons, to take the following steps to form a working group to develop recommendations to the Board by the end of 2020 for a paraprofessional program (e.g., LLLT) in California:

- Develop a draft charter
- Identify the appropriate size and composition of the working group
- Solicit interest in participation in the working group

It is anticipated that the Board will adopt a working group charter and appoint members at its March meeting.

Based on the Task Force's discussions about a new UPL exception for a regulated nonlawyer provider, including consideration of public input and information learned from stakeholder outreach meetings, there are several key principles that the Task Force believes warrant further study by the new working group in developing an implementation plan. Included in these key principles are regulatory considerations that should have a significant positive impact on public protection. The key principles are listed below but they should not be regarded as a comprehensive list of all possible implementation issues and regulatory considerations.

1. Leveraging the Population of Existing Providers and Other Persons Who Have Relevant Education as Applicants for a Paraprofessional License

Existing providers include: paralegals; legal document assistants; unlawful detainer assistants; and immigration consultants. A comparison table showing the components of the respective licensing programs for these professionals is provided as Appendix 11. Other persons who have relevant education include: applicants possessing a juris doctorate degree or other law degree (but not yet admitted in any jurisdiction); law students at an ABA or State Bar-accredited law school who did not graduate and were not admitted in any jurisdiction; and law students who completed one year of law school at a State Bar-unaccredited registered law school or who attempted to learn the law through the Law Office Study Program, but did not complete their studies and did not become admitted, but in that process did successfully pass the First Year Law Student's Examination.¹⁶

Each of these categories of persons should be considered as potential applicants who could demonstrate knowledge and experience that might serve as a basis for modifying or waiving otherwise applicable eligibility criteria that would be developed for the

¹⁶ The Task Force discussed the issue of whether former lawyers (e.g., disbarred lawyers or lawyers who have resigned with disciplinary charges pending or have been placed on involuntary inactive status) should be eligible to apply to participate in the new program. This is an issue for the new paraprofessional working group to consider with input from the Office of the Chief Trial Counsel. ATILS does not take a position but offers the observation that the Rules of Professional Conduct (rule 5.3.1) and case law (e.g., *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61 [38 Cal.Rptr.3d 759]) impose special restrictions on former lawyers.

application process. The general principle here is that there should be flexibility in determining applicant eligibility and in assessing how an applicant satisfies education, experience, and other application requirements. For example, an applicant who holds a juris doctorate degree, has completed a professional responsibility course, and has passed the multistate professional responsibility examination, might be deemed as satisfying an otherwise applicable requirement to complete a course or training on legal ethics. In contrast, an applicant who is an experienced Legal Document Assistant but who has never had education or training in legal ethics would not be exempted from that application requirement.

2. Consumer Understanding and Outreach

Consumer understanding and outreach includes determining an appropriate name for the new providers, consideration of mandatory disclosures or a possible informed consent requirement, and the regulator's responsibility to educate the public regarding the availability and authority of the new class of licensees.

3. Protections Similar to those Afforded in an Attorney-Client Relationship

These protections would include concepts of confidentiality and privilege. An evidentiary privilege similar to the statutory privilege for communications with a Certified Lawyer Referral Service may also be considered. In addition, these protections should include compliance with anti-bias and anti-discrimination standards.

4. Selection of Areas of Law and Specific Legal Services/Tasks

Data from the Justice Gap Study and the California Attorney Practice Analysis (CAPA) study¹⁷ should be used to identify permissible practice areas and suitable tasks.¹⁸ In addition, another source would be the California Court's online Self-Help Center. This online information offers extensive user-friendly self-help information and guidance on use of approved forms by pro per litigants, such as a pro per litigant seeking a change in child support. The most frequently accessed pages at the Self-Help Center might help identify those areas of greatest need that could be appropriate for the contemplated paraprofessional program.

The paraprofessional working group should consider the possibility that areas of law not identified by any of the resources outlined above might also be areas of law in high

¹⁷ The CAPA study includes data on: the kinds of tasks performed and the depth of knowledge required for the proper performance of those tasks; the level of complexity of any given task; and the levels of criticality for the kinds of tasks performed by attorneys, as determined by the degree of potential harm to the client if the task is performed incorrectly. The CAPA fact sheet is posted online at: http://www.calbar.ca.gov/Portals/0/documents/Practice_Analysis_Fact_Sheet.pdf. See also CAPA EMS Survey Results posted at: <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000024865.pdf>.

¹⁸ In addition, the application process might require each applicant to specify the areas of law and/or specific tasks that they are seeking to be licensed to render to consumers.

demand by low income or otherwise vulnerable populations and are encouraged not to create an exclusive list. There are potentially areas not typically identified as critical access to justice issues which might – nevertheless – serve serious needs. For example, the transgender community suffers significant risk of harassment, violence, and even murder when government issued identification documents do not accurately reflect name and gender identity. Therefore, legal services that support streamlined and accurate name and gender changes are critically important for this community. However, given the relatively small population of the transgender community, a traditional approach to the identification of subject areas appropriate for inclusion in the paraprofessional program might overlook this type of service.

5. Background Check

Because the Task Force received public comment about nonlawyer fraud in connection with immigration services provided by nonlawyers (a.k.a., notario fraud), a background check that could involve a fingerprinting requirement for all applicants should be considered.

6. Financial Responsibility

Program participants might be required to carry professional liability insurance, maintain a bond, or otherwise comply with a financial responsibility requirement. Although attorneys generally are not required to carry professional liability insurance, they are required to contribute to a Client Security Fund. A similar requirement for program participants is also an option that could be studied.

7. Continuing Education

Program participants should be required to meet continuing legal education requirements, which might include a minimum number of legal ethics credits. Traditional paralegals who work under the supervision of a lawyer must complete continuing education (including legal ethics units). A similar requirement for paraprofessionals not under the direct supervision of a lawyer should also be a part of the regulatory framework.

8. Revisions to the California Rules of Professional Conduct

Clarification regarding fee sharing between lawyers and the new nonlawyer providers are among some of the Rule of Professional Conduct issues that would need to be considered.¹⁹ Additional revisions to the Rules of Professional Conduct and other

¹⁹ For example, the [Utah Rules of Professional Conduct](#) (as revised effective May 1, 2019) include a terminology rule clarifying that a “Legal Professional” in Utah includes nonlawyers who are authorized providers of legal services. See Utah rule 1.0 that in part provides:

(h) “Legal Professional” includes a lawyer and a licensed paralegal practitioner.

ancillary rules governing the provision of legal services beyond those delineated here should be considered by the paraprofessional working group.

9. Ethical Standards for Program Participants

Other jurisdictions that have allowed nonlawyers to provide legal services (e.g., Utah's Licensed Paralegal Practitioner program) require compliance with specially designed ethical conduct standards. For example, the issue of prohibiting "running" and "capping" can be addressed in these new conduct standards developed for the program. Provisions for safekeeping of funds and property entrusted by clients and others should also be developed.

10. [Risk-Based Proactive Regulation](#)

Auditing and other mandatory reporting should be explored as a means to reduce the cost of regulation and to ensure that the regulator's compliance activities are tailored to specific program risks and potential harms.

11. Compliance Enforcement

Although a new risk-based proactive system can be used to identify situations that would prompt the regulator to act to ensure compliance, ATILS believes that a traditional complaint driven system should also be implemented as an option for consumers. Both a risk-based system and a complaint driven system can lead to potential consequences such as license suspension/revocation, fines, civil liability, and criminal prosecution.

12. Cost of Regulation

It is very important that any regulatory framework have appropriate resources to enable the auditing/enforcement mechanisms that typically serve as key public protections. The Task Force recommends that the paraprofessional working group identify sources of program funding including application fees, continuing education fees, and potentially, grant funding.

13. Startup Costs of Establishing the Program

Additionally, the Task Force is aware that startup costs for establishing this paraprofessional program may be substantial. The Task Force discussed the possibility of exploring grant funding as one method for meeting startup costs. The following sources of grant funding have not been contacted by the Task Force but are listed below as examples of the types of grants that could be explored.

(i) "Licensed Paralegal Practitioner" denotes a person authorized by the Utah Supreme Court to provide legal representation under Rule 15-701 of the Supreme Court Rules of Professional Practice.

- National Center for State Courts – NCSC is contributing staff time to the creation of a regulatory body in Utah and may be willing to provide similar services to California.
- State Justice Institute – SJI is also a funding source for the creation of the Utah regulatory body.
- Public Welfare Foundation – PWF funded (in partnership with NCSC) a Justice for All initiative which demonstrates the foundation’s interest in creative ways to increase access to justice.
- Pew Charitable Trusts – recently launched a Civil Legal System Modernization project.
- Gates Foundation, Google.org, Chan Zuckerberg Initiative – While these organizations do not have civil justice specific grant making goals it is recommended that the paraprofessional working group explore potential funding opportunities with them.

14. Outreach

The Task Force recommends that the paraprofessional working group reach out to and engage with several existing educational resources and trade associations and secure input from these organizations as part of the development of this new program including:

- Educational resources – paralegal certification programs (at traditional colleges and universities, law schools, and community colleges).
- Trade Associations – California Alliance of Paralegal Associations, California Association of Legal Document Assistants, National Association of Immigration Consultants, and others as identified.

Relationship to the ATILS Charter: This recommendation responds to the charter as it is a proposal for a new exception to existing UPL restrictions. The purpose of the new exception is to increase effective and meaningful access to the justice system through greatly expanded resources. By expanding the pool of available legal expertise and at a cost presumably less than a fully licensed attorney, many more Californians in need of legal advice and assistance may be in a better position to secure that assistance.

In part, the progress and acceptance of limited scope legal services by attorneys has motivated the Task Force’s consideration of this concept. Under Rule of Professional Conduct 1.2(b), attorneys are able to unbundle any client case or matter provided it is reasonable under the circumstances, not otherwise prohibited by law, and the client gives informed consent.²⁰ The

²⁰ Another existing practice that informs this recommendation, in particular the key consideration of ethical standards for the licensees, is the provision of law related services by [court-connected family law facilitators](#). The

Task Force believes limited scope legal services by attorneys is helping address the access crisis and this recommendation would extend this practice to qualified nonlawyers who could be monitored by risk based proactive regulation.

Public Comment: A proposal to authorize nonlawyers to engage in limited practice of law was included in ATILS' request for public comment on various options for regulatory reform as set forth below. It was issued as Recommendation 2.0 as set forth below.

Nonlawyers will be authorized to provide specified legal advice and services as an exemption to UPL with appropriate regulation.

In response to this specific public comment proposal, a total of approximately 610 written public comments, 506 in opposition, 94 in support, and 10 with no stated position were received.

Public comment themes, along with the Task Force's responses to each, are outlined below.

1. Changing UPL protections will erode the legal profession and cause a loss of jobs for attorneys.

Task Force Response: Data from the Justice Gap Report makes clear that the existing system is not meeting the needs of individual consumers. The public is not being adequately protected when 70 percent of Californians are not receiving the legal services they need to address a civil legal problem. Consumers could benefit from the provision of limited, specified legal services rendered by regulated nonlawyer providers. In support of his public hearing testimony, Professor Stephen Gillers submitted a written comment to ATILS explaining that: "For example, in Washington State, LLLTs charge substantially less than lawyers for the services they are authorized to perform, about \$60 to \$120 hourly according to a 2018 article in the Seattle Times quoting a Washington State Bar officer." Lawyers also would have enhanced opportunities to structure the provision of discrete services by collaborating with the new authorized nonlawyer providers. This approach might render it possible for lawyers to serve clients who cannot afford to hire a lawyer for all aspects of their case.

2. Consumers will receive negligent services, or will be outright defrauded, and become victims of irreparable harm, such as deportation for persons who receive incompetent immigration services.

Task Force Response: This is not a deregulation proposal. As indicated by the key principles identified by the Task Force, regulation of the new nonlawyer providers will

attorney and nonattorney staff of these self-help centers do not represent pro se litigants and do not give legal advice but they do provide guidance on procedures and assist persons in completing and processing forms. Even though they do not represent parties as advocates before a tribunal and do not give legal advice, they must still comply with certain conduct standards. See: the ["Guidelines for the Operation of Family Law Information Centers and Family Law Facilitator Offices"](#) (Appendix C of the California Rules of Court).

be implemented to protect against consumer harm. Education criteria, financial responsibility requirements, and background checks are among the regulatory concepts that must be considered. In addition, risk based proactive regulation should be explored to use reporting and auditing as tools for identifying and addressing a potential for consumer harm.

3. How can confidentiality and privilege be assured if nonlawyers or technology are interfacing with clients?

Task Force Response: Similar to California’s experience in enacting an evidentiary privilege for certified lawyer referral service communications (Evid. Code § 965, et seq.), a change in the law can be considered for instituting confidentiality and privilege for communications with a regulated nonlawyer provider of legal services.

Conclusion and Next Steps: ATILS supports the State Bar’s effort to explore a paraprofessional licensing program as a UPL exception that balances public protection and enhanced access to legal services. Should the Board agree with this recommendation, it is anticipated that the key principles identified by ATILS will be referred to the State Bar’s new paraprofessional working group for due consideration and action.

Recommendation No. 5

Form and Appoint a New Working Group to Explore Development of a Regulatory Sandbox that Can Provide Data on Any Potential Benefits to Access to Legal Services and Any Possible Consumer Harm if Prohibitions on Unauthorized Practice of Law, Fee Sharing, Nonlawyer Ownership, and other Legal Restrictions are Relaxed or Completely Suspended for Authorized Sandbox Participants

Summary of the Recommendation:

To balance the twin goals of public protection and enhanced access to legal services, the Task Force recommends that the Board establish a working group to explore development of a regulatory sandbox as a means for evaluating changes to existing laws and rules that otherwise inhibit the development of innovative legal services delivery systems, including: (i) consumer facing technology that provides legal advice and services directly to clients at all income levels; and (ii) other new delivery systems created through the collaboration of lawyers, law firms, technologists, entrepreneurs, paraprofessionals, legal services providers, and other persons or organizations. A primary function of the sandbox would be to gather data on any potential benefits to accessing legal services, and any possible consumer harm when existing restrictions on the unauthorized practice of law (UPL), fee sharing with nonlawyers, and partnerships with nonlawyers are temporarily modified or suspended for sandbox participants. A key feature of the sandbox would be to give each applicant an opportunity at the outset to present a proposal for a new delivery system that demonstrates to the sandbox regulator that the proposal would satisfy the applicant’s burden of proof that the benefits of anticipated access to legal services are likely to substantially outweigh the potential risks of harm. If admitted into the program,

sandbox participants would be authorized to offer their new delivery system in a controlled environment in which the regulator collects data and monitors the new services to ensure that consumers are protected.

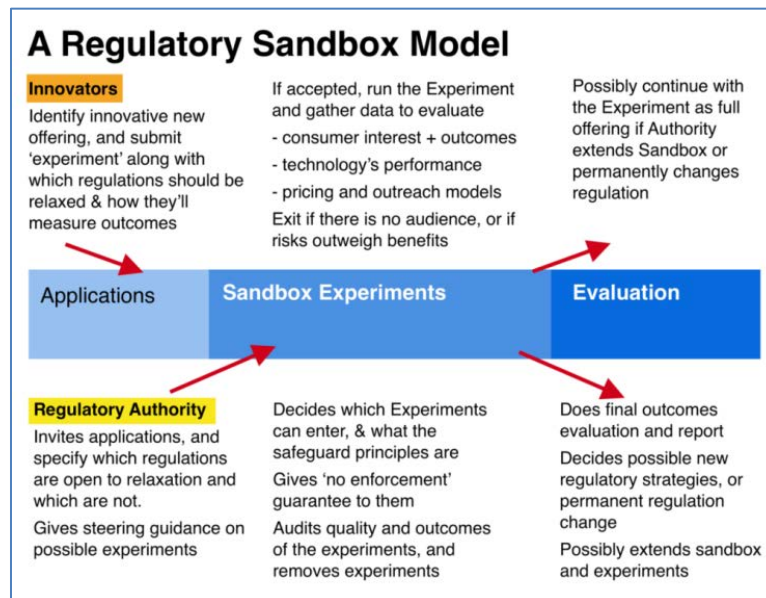
The Task Force's recommendation to explore development of a sandbox is grounded in a strong belief that the current regulatory framework impedes innovations that could meaningfully increase access to legal services. It is, of course, difficult to find examples of legal services and entity structures that are currently prohibited by the Rules of Professional Conduct and statutes because of those very prohibitions discouraging entry into the market. However, it is well documented that relaxing of nonlawyer ownership and fee sharing provisions in other markets (e.g. the United Kingdom (UK) and Australia) has not had any identifiable detrimental impact on consumers. In fact, since the UK began allowing nonlawyer ownership and fee sharing, the number of complaints against lawyers has actually decreased. Because the UK and Australia models were designed to increase competition in the legal services market, and were not specifically animated by a goal of increasing access to affordable legal services, there are no meaningful data regarding the impact of regulatory reform in those jurisdictions on this particular issue. If implemented, the California sandbox proposal, by contrast, is envisioned to ensure that the data needed to evaluate this critical access question is collected and analyzed from the outset. Despite the challenge of identifying examples that could positively impact access to legal services but are prevented from doing so under the current regulatory scheme, provided at Appendix 12 are examples of barriers to entry compiled by the Task Force.

The recommended new working group will have an opportunity to further consider the UK and Australian models, but if a sandbox is created then the ultimate goal is for the sandbox data to be collected and analyzed as the best evidence for evaluating potential benefits and risks. When the sandbox period of experimentation ends, if the regulator determines that the benefits of increased access to legal services afforded by the new delivery model substantially outweigh any identified harm, then the Task Force believes that permanent changes to existing law should be explored at that time. Under these circumstances, sandbox participants would be authorized to continue offering their new delivery systems, and the opportunity for other providers to enter to the legal services market by offering services using the same or a substantially similar delivery systems would be expanded.

Discussion: What is a Sandbox? A regulatory sandbox is a framework set up by a regulator that allows participants to test innovative business models or offer products and services in a controlled environment under a regulator's supervision. The sandbox model allows for the gathering of data to assess impact and protect against consumer harm. If the data is promising, changes to rules and statutes can then be considered more generally. Specific objective factors could be developed to guide the regulator's evaluation of risks.²¹

²¹ Utah's regulatory sandbox for considering possible regulatory reform in the delivery of legal services includes the following specific examples of factors to consider when assessing the experience of a new delivery system in the sandbox:

A regulatory sandbox could be designed to provide a regulatory platform to encourage innovation to enhance the delivery of, and access to, legal services through the use of technology, online legal service delivery models, and entities not currently allowed under the existing Rules of Professional Conduct and UPL statutes in California. A graphic model of the sandbox derived from the August 2019 Utah report is provided below:



I. Example of a Proposed California Sandbox Composition, Scope and Process

Among the issues to be explored is the possible use of rule-making power by the California State Bar and/or the California Supreme Court, in coordination with the California Legislature,²² to create an oversight body with regulatory authority. The regulatory authority over the

- What evidence do we see of consumer harm caused by improper influence by nonlawyer owners over legal decisions? What steps can we take to mitigate these risks in the market?
- What do the data tell us about the risks of consumer harm from software-enabled legal assistance in an area such as will writing? Are the actual risks of harm more likely or more significant than the risks of a consumer acting on their own or through a lawyer? How can the risks be mitigated?
- What do the data indicate about the risk of consumer harm from nonlawyers providing legal advice in the area of eviction defense? Is the risk of these kinds of harm more significant than the harm we currently see for pro se defendants? What steps should be required to ensure and maintain quality service?
- What are the data on the risks of cyber and data security to consumers of legal services? Where is the impact most likely and greatest, and what regulatory resources should be brought to bear?

(See, Utah's sandbox description on pages 16 – 17 of its report posted at: <https://www.utahbar.org/wp-content/uploads/2019/08/FINAL-Task-Force-Report.pdf>.)

²² California's Unauthorized Practice of Law statute, Business and Professions Code § 6125 et seq., would likely need amendments to reflect entities/services operating within a sandbox.

sandbox could include the ability to certify and decertify each entity/service and to impose the necessary certification and data collection requirements. The oversight body could have the authority to determine whether a proposed service/entity is currently allowed by existing laws and rules, or if admission into, and approval within, the sandbox is necessary to operate. The oversight body could also have the power of enforcement against entities on evidence of material consumer harm.

A. Oversight Body Composition and Functions

The appointed volunteer oversight body created under this proposal is another issue to explore. This body could operate as other professional licensing boards function, with the assistance of full time staff to support its work. The body should be limited in size as appropriate and should include, but not be limited to, the following types of individuals: (1) consumer representative; (2) economist; (3) legal ethics expert; (4) technology expert; (5) legal services organization administrator; (6) trial court judge; (7) court administrator; and (8) an academic with regulatory reform expertise.

1. Antitrust Considerations

When establishing the final composition and function of the oversight body, it is important that state and federal antitrust laws be considered. *See, North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 574 U.S. 494 (2015).²³ Such considerations include the Supreme Court’s role in overseeing the sandbox, and whether or not the members of the oversight body might be considered active market participants in the delivery of legal services.²⁴

2. Additional Measures to Safeguard Consumer Protection within the Sandbox

Additional consumer protection measures should be considered as part of the exploration of the establishment of an oversight body. For example, in the United Kingdom, the Legal Services Act of 2007 established a Legal Services Consumer Panel, an independent arm of the Legal Services Board, comprised of eight nonlawyers appointed by the government.²⁵ The panel provides evidenced-based advice to the Legal Services Board, in order to help them make decisions that are shaped around the needs of users. Consideration of such a model could be very useful to the oversight body in evaluating the utility and harm of the entities applying for and operating in the sandbox.

²³ *See also* the Federal Trade Commission’s Staff Guidance on Active Supervision of State Regulatory Board Controlled by Active Market Participants, https://www.ftc.gov/system/files/attachments/competition-policy-guidance/active_supervision_of_state_boards.pdf.

²⁴ Some jurisdictions view this concern as a basis for considering an “independent regulator.” But this is not regarded as independence from the authority of the state supreme court over the practice of law. *See* August 2019 Report and Recommendation of the Utah Work Group on Regulatory Reform, p. 21 at footnote no. 58.

<https://www.utahbar.org/wp-content/uploads/2019/08/FINAL-Task-Force-Report.pdf>

²⁵ <https://www.legalservicesconsumerpanel.org.uk/about-us>

3. Duty of Regulator to Provide Guidance

To promote access to legal services to those who are under-served by the legal system, the working group might conclude that an oversight body that should collaborate with technologists, people with disabilities, lawyers, language access advocates, low-income individuals and other stakeholders to provide guidance on technology and usability for technology-delivered legal services models.²⁶ For example, in order to further the regulator's goal of public protection and encourage compliance, a collaborative conference or working group could be called or organized by the regulator to produce best-practice guides to ensure that legal services technology providers understand how to implement the regulations.

In addition to providing guidance to technology delivered legal service providers, the regulator should support an access incubator/accelerator (a formalized network of funders, technologists, strategy, business, and marketing advisors that brings in classes each year to help them refine a concept and launch it). This could be a program run independently from the regulator, perhaps in partnership with universities.

B. Scope

A regulatory sandbox envisions that a business model, service, or product that cannot be offered under the current rules and statutes for providing legal services would be able to apply to and be considered by the oversight body. For the most part, if a service or entity cannot operate under the current rules and statutes then approval would be needed by the oversight body through the regulatory sandbox process. Actively licensed attorneys or law firms partnering with, contracting with, or employed by entities approved by the oversight body would not need to take any separate action for approval. However, those licensed attorneys who partner with nonapproved entities would need to seek approval by the oversight body with respect to that arrangement.

The following provides further detail and examples as to the types of services and entities that are likely to fall both outside and within a regulatory sandbox:

1. Entities and Services Outside of a Regulatory Sandbox

(a) Conventional, 100 percent lawyer-owned, managed, and financed law partnerships, professional law corporations, legal services nonprofits, or individual lawyers with an active California State Bar license:

(i) offering traditional legal services as permitted under the Rules of Professional Conduct and applicable statutes;

²⁶ As a potential template for the type and structure of materials, the United States Digital Service, or 18F, provides guides on Accessibility, Agile Development, Content, Design Methods, Engineering, and Product Management on its website: 18f.gsa.gov as well as the Digital Services Playbook available at playbook.cio.gov.

- (ii) offering nonlegal services as permitted under the Rules of Professional Conduct and applicable statutes;

- (iii) entering into employment, contract for services, joint venture, or other (fee-sharing) partnership with a nonlawyer-owned entity authorized or licensed to provide legal services by the sandbox oversight body.

- (b) Services performed by nonlawyers that do not constitute the practice of law including do-it-yourself consumer facing technology.²⁷

2. Entities and Services Requiring Sandbox Approval

- (a) Conventional, 100 percent lawyer-owned, managed, and financed law partnerships, professional law corporations, legal services nonprofits, or individual lawyers with an active California State Bar license:

- (i) offering legal services whether directly or by joint venture, subsidiary, or other corporate structure, not authorized under the Rules of Professional Conduct or applicable statutes; or

- (ii) partnering (fee-sharing) with a nonlawyer-owned entity not authorized or licensed to offer legal services by the sandbox oversight body.

- (b) Conventional law partnership or professional law corporation with less than 100 percent lawyer ownership, management, or financing.

- (c) Nonlawyer-owned legal services provider (for profit or nonprofit):

- (i) offering legal service options whether directly or by joint venture, subsidiary, or other corporate structure, not authorized under the Rules of Professional Conduct or applicable statutes; or

- (ii) practicing law through technology platforms or lawyer or nonlawyer staff or through purchase of a law firm.

C. Process and Participant Requirements

If an entity/service cannot provide legal services under the current rules and statutes, or if there is a material question as to whether the entity/service would be allowed, an application would be made to the oversight body for registration. The application process would provide an opportunity at the outset to present a proposal for a new delivery system that demonstrates to the sandbox regulator that the proposal would satisfy the applicant's burden of proof that anticipated access to legal services benefits are likely to substantially outweigh the potential

²⁷ Such entities and services would include websites where consumers can access legal information, forms, statutes, and/or template contracts.

risks of harm. Upon receipt of the application the oversight body could review the applicant's proposal and set requirements upon the applicant as deemed appropriate if the applicant is admitted to the sandbox. This is not intended to be a rigid or technical approach since objective-based regulation is meant to be flexible and responsive to evidence of risk. These and other process and participant requirements may be explored by the working group.

The oversight body should consider giving priority and a reduced fee structure to nonprofits as well as for-profit entities that propose providing services specifically designed to address areas of most need as identified by the 2019 California Justice Gap Report.

With an effort to ensure that the regulatory burdens are not too onerous, the working group might explore requirements for participation in the sandbox including, but not limited to, the following:

- Disclosure to consumers that the entity/service is part of the sandbox and referring consumers to the oversight body where they can learn more and provide feedback or complaints;
- Where applicable, informed consent by consumer acknowledging that service is not provided by a licensed attorney;
- Confidentiality, which shall include a prohibition against regulated entities sharing disaggregated consumer data with any outside third parties other than the oversight body;
- Data collection and reporting to the oversight body to determine if the entity/service is performing and being used by the public, as well as the scope of the impact on providing legal services to the public and whether there are unexpected harms (see below);
- Transparency, including credentials of service providers, and identification of individuals with more than a 10 percent ownership interest in the entity/service;
- Compliance with accessibility and usability standards to be set by the oversight body;
- Corporate entities and LLCs must be either a California entity or a registered foreign entity, requiring an annual statement of information that identifies officers and directors and registered agent for service of process. Partnerships would provide partner information and registered agent to the oversight body;
- Liability and Errors & Omissions insurance at levels to be set by the oversight body;
- Prohibit arbitration clauses or limitations of liability in the terms of service that will preclude consumer access to the oversight body's complaint and remedy system; and
- Training requirements to be determined by the oversight body.

D. Recommended Special Considerations for an Applicant’s Proposed Technology Driven Delivery System that Could be Explored by the Working Group

1. Legal service technology accessibility standards

Technology services must satisfy technical accessibility standards, such as WCAG 2.0 Level AA, to provide assurance of the widest availability of the services being offered. The specific standard(s) required may be changed by the oversight body as standards and technologies change.

2. Augmenting the user experience through accessible language and design

Legal services technology providers (LSTPs) must ensure that their technology meets or exceeds the utility of human-provided legal services. When technology providers deliver a legal service to the public, they should use plain language and accessible design patterns. Any technology should be subject to user experience testing before it is offered to the public. The pool of testers should be broad and include disabled people, low-income individuals, and others disparately impacted by the legal system.

3. Prohibition against use of “dark pattern” marketing

“Dark Patterns” are a broad class of technology language and design choices in marketing that when adopted tend to coerce people into actions against their will or self-interest, add unnecessary products or services, or have other negative effects. Legal service technology providers engaging in authorized practice of law activities within the sandbox must avoid employing dark patterns in their products (perhaps a ban on such behavior should include lawyers as well). To aid technology providers, the oversight body should publish, partner to distribute, or otherwise encourage education on dark patterns.

4. Careful implementation of algorithmic systems

LSTPs would be expected to take reasonable steps to identify and mitigate bias and other harmful effects of their technologies. If such effects cannot be mitigated with existing techniques, the technology should not be provided to the public.

E. Data Requirements and Analysis

The regulatory strategy of the sandbox oversight body should assess, at a minimum, the risk of three possible harms to consumers of the legal services provided by sandbox participants. The burden should be on an applicant to show that the benefit of its proposal substantially outweighs the potential harm, thereby causing an applicant to consider potential harms and build mechanisms to address those harms in its application materials. A risk assessment matrix should be adopted and used by the oversight body to facilitate this analysis.

The harms include:

- Receiving inaccurate or inappropriate legal services.

- Failing to exercise legal rights through ignorance or bad advice.
- Purchasing unnecessary or inappropriate legal services.

The oversight body would need several kinds of data on legal outcomes to assess the likelihood of consumers experiencing these harms. Sandbox participants could therefore raise their chances of approval and registration by providing as much of the required data as possible. A partial but suggestive list of data collection strategies and data sets include:

- Consumer complaints and corresponding resolution or disposition
- User surveys
- Rate of service error fixes
- Types/level/rates of services provided
- Legal and financial outcome data

Although the sandbox oversight body would likely be interested in the absolute absence of consumer harms by a sandbox participant, the Task Force has concluded that the more important criterion is the relative rate or risk of harm compared to the experience a consumer would have received absent the legal services provided. To make that comparison, information must be known about the consumers of the legal services provided by the sandbox participants. Some possible useful data for this purpose might include:

- Income level
- Education level
- Geographic location
- Race/ethnicity

While the oversight body would negotiate the actual data collection requirements individually with each sandbox participant, it should attempt to establish and maintain data sets consistent with the guidance above to the greatest extent possible.

No data provided by sandbox participants should be shared with any other organizations for any reason. Data provided by sandbox participants should be anonymized before submission to the sandbox oversight body. Data provided should be kept confidentially and deleted from the oversight body's databases after analysis, unless otherwise required by California law. The oversight body may choose to share provided data with independent evaluators of the sandbox after receiving permission by the data provider; if so, such evaluators should be contractually required to also keep the data confidential and delete it after the analysis is complete.

F. Removal from Sandbox

If an entity fails to comply with the requirements set by the oversight body, including a failure to provide appropriate supporting data with respect to the services provided, it would be subject to removal from the sandbox. If removed, an entity would lose its authority to operate with the protections of the sandbox rendering it subject to all existing rules and statutes regulating the practice of law. However, when possible, the entity should be given an opportunity to cure the issue of concern and become fully compliant.

G. Post Sandbox Activity

A sandbox is not set up as a permanent regulatory structure. It is intended to be a multi-year program (e.g., 2–3 years) through which evidence and data can be gathered to determine the appropriateness of changing rules and statutes that would otherwise prohibit the entities and services allowed by the sandbox. At the end of the sandbox period, there should be an opportunity for an entity to seek an extension.²⁸

The Task Force recognizes that any entity willing to participate in a sandbox might reasonably expect the sandbox to be structured and administered in a manner that facilitates a transition to a more permanent model under the oversight body, so long as it is performing as intended and not harming the public. While the mere fact of participation in the sandbox cannot be regarded as a guarantee of any permanent authority to operate it is understood that meaningful post sandbox protections are necessary to encourage interest and applications.

H. Funding

It is critically important to consumer protection that the administrator of the sandbox be appropriately resourced to effectively manage the applications, screen to ensure all requirements are met, monitor the progress and risks of harm, and remove any participant from the sandbox that is causing consumer harm as identified by the administrator. Ultimately this program would be funded by application and licensing fees each applicant pays to enter

²⁸ The Wyoming Medical Digital Innovation Sandbox Act (posted at: <https://www.wyoleg.gov/Legislation/2019/SF0156>) addresses this regulatory issue as follows:

40-28-107. Extension of sandbox period.

(a) A person granted authorization under W.S. 40-28-103(f) may apply for an extension of the initial sandbox period for not more than twelve (12) additional months. An application for an extension shall be made not later than sixty (60) days before the conclusion of the initial sandbox period specified by the department. The department shall approve or deny the application for extension in writing not later than thirty-five (35) days before the conclusion of the initial sandbox period. An application for extension by a person shall cite one (1) of the following reasons as the basis for the application and provide all relevant supporting information that:

(i) Statutory or rule amendments are necessary to conduct business in Wyoming on a permanent basis;

(ii) An application for a license or other authorization required to conduct business in Wyoming on a permanent basis has been filed with the appropriate office and approval is currently pending.

and maintain practice within the sandbox. In the United Kingdom, for example, licensing fees of regulated entities (there, “Alternative Business Structures,”) are calculated as a percentage of their total annual revenue. The oversight body is encouraged to consider a fee structure that takes into account similar revenue considerations while also incentivizing innovation in particular areas of need.

In order to establish a well-resourced regulatory structure from inception, however, grant funding will likely be needed. In Utah, for example, funds to start up and establish the sandbox have come from the Administrative Office of the Courts (via court staff time), the National Center for State Courts, and the Institute for the Advancement of the American Legal System. The Task Force recommends that the State Bar convene a funder’s summit to explore the feasibility of philanthropic start-up funding as well as to advocate for a streamlined and coordinated grant application and reporting process.

I. Reciprocity

It is anticipated that California’s regulatory sandbox for legal services will allow for reciprocity with other state, federal, and foreign jurisdictions to allow a product or service to be made available simultaneously in each jurisdiction.

A number of other jurisdictions, including Arizona, Utah, Wyoming, the United Kingdom and Singapore operate similar regulatory sandboxes. The oversight body in California should coordinate oversight with other jurisdictions to ensure an efficient regulatory approach.

Relationship to the ATILS Charter:

This recommendation responds to the charter as it is a proposal for exploring a regulation reform methodology that would allow the State Bar to evaluate potential new exceptions to existing UPL restrictions. A sandbox could, for example, serve as the testing ground for an exception to UPL for the provision of legal advice and other limited specified legal services by a technology driven delivery system owned and operated by a nonlawyer entity. ATILS believes that this regulatory sandbox proposal fulfills its charge to identify possible regulatory changes to remove barriers to innovation in the delivery of legal services by lawyers and others, and effectively balances our dual goals of consumer protection and increased access to legal services.

Public Comment: The concept of a regulatory sandbox was not presented among the recommendations that went out for public comment. However, many concerns raised during the public comment period with respect to allowing nonattorney ownership, fee sharing, and alternative business structures (ABS) can be addressed by using the regulatory sandbox approach to ensure that consumer protection is maintained and effectiveness is determined before adopting permanent changes to the Rules of Professional Conduct and UPL statutes.

One relevant comment received was from the Association of Discipline Defense Counsel (ADDC). Due to concerns about lack of professionalism and profit-driven motives of nonattorneys, ADDC commented to ATILS that California should consider a pilot program for a limited time period in order to test what impact the proposals will have to help bridge the

justice gap. In particular the ADDC recognized the potential value of providing one-to-many legal services via technology and online platforms. However, the ADDC believed the program should be limited to nonprofit entities. The ATILS Task Force discussed this issue extensively, and it was generally agreed that requiring nonprofit status would severely limit the ability to bring in needed capital and innovation. Furthermore, while lawyers similarly argued against the introduction of ABS in England claiming that only lawyers could be trusted to uphold high ethical standards and not be motivated by profit, none of the data gathered since ABS has been adopted has proven out this assertion. In fact, the data presented by Crispin Passmore on England and Wales specifically indicates that these concerns have not been borne out in practice. Instead, alternative business structures have proven to be more innovative, have dealt more effectively with complaints, and do not have regulatory action taken against them any more frequently than traditional lawyer-only practices.

Another example of a sandbox-related comment was that submitted by the Los Angeles County Bar Association (LACBA). LACBA was not in support of immediate changes to the regulations for many of the same reasons identified by ADDC and other lawyer commenters. Nevertheless, LACBA did express support for measuring and testing progress in the delivery of legal services, especially to underserved communities, under the ATILS' proposals in a limited market. LACBA also supported the idea of a pilot program for a limited time which would allow alternative business structures and technology based one-to-many services, including a stepped approach that begins with nonprofit entities before allowing for-profit entities to provide legal services in this manner.

Conclusion and Next Steps: The Task Force recognizes that sweeping regulatory reform is likely needed to see a significant reduction in the access to legal services gap. However, data, experience, and evidence should inform these reforms. Exploration of the development of a regulatory sandbox proposal could provide just that. A sandbox could provide information based on actual testing of new delivery systems in California. To generate the most helpful and persuasive sandbox data, an implementation study is needed that can focus on the data gathering and metrics used in foreign jurisdictions that have experience with permissive ALSP and fee sharing regulations. Evaluations of these other jurisdictions reviewed by ATILS appeared to be inconclusive in the short time that ATILS had to consider a sandbox concept. By conducting a focused implementation study, a California sandbox will be positioned to gather data that should answer key questions about the benefits and harms of contemplated reforms. Should the Board agree with this recommendation, it is anticipated that the Board would direct staff to form a working group to explore the development of a regulatory sandbox proposal as described in this report.

Recommendation No. 6

Consider Authorizing a Study of Potential Amendments to the Certified Lawyer Referral Service Rules and Statutes, and Amendments to Relevant Rules of Professional Conduct to Ensure that Together They Properly Balance Public Protection and Innovation in Light of Access to Justice Concerns and with a Particular Emphasis on Ascertaining if Existing Laws Impose Unnecessary Barriers to Referral Modalities (including Online Matching Services) that are in the Public Interest

Discussion: ATILS recommends that the Board consider authorizing a study of potential amendments to Certified Lawyer Referral Service (LRS) rules and statutes in light of a recent case²⁹ that has clarified the scope of what is considered to be referral activity. In addition, lawyer referral services regulations and advertising rules limiting compensation for referrals may not reflect modern expectations for how consumers will find a lawyer. Social media, search engines, and other technology-based marketing needs to be accounted for to avoid an unintended chilling effect on a lawyer's use of technology to provide information about the availability of legal services.

As the provisions of the rules governing lawyer advertising and compensation for referrals are related standards, they should also be addressed. Consideration of the LRS rules and statutes arose as a subtopic of the Task Force's discussion of possible lawyer advertising and solicitation amendments. The regulation of lawyer advertising and solicitation in the rules includes the issue of compensation paid by a lawyer for a client referral. Rule 7.2 in part provides that:

(b) A lawyer shall not compensate, promise or give anything of value to a person for the purpose of recommending or securing the services of the lawyer or the lawyer's law firm, except that a lawyer may:

* * * * *

(2) pay the usual charges of a legal services plan or a qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a Lawyer Referral Service in California;

Rule 5.4 in part provides that:

(a) A lawyer or law firm shall not share legal fees directly or indirectly with a nonlawyer or with an organization that is not authorized to practice law, except that:

* * * * *

²⁹ See, *Jackson v. Legalmatch.com* (2019) 42 Cal.App.5th 760 [255 Cal.Rptr.3d 741].

(4) a lawyer or law firm may pay a prescribed registration, referral, or other fee to a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for Lawyer Referral Services; or

* * * * *

The foregoing rules establish that a lawyer who pays compensation to an uncertified business or service engaged in a referral activity is subject to discipline. Recently, case law has clarified the scope of what is considered to be referral activity (see *Jackson v. Legalmatch.com* (2019) 42 Cal.App.5th 760 [255 Cal.Rptr.3d 741], petn. for review pending, petn. filed January 6, 2020). The Task Force believes that innovative referral systems, including online modalities, carry the potential of enhancing the ability of consumers to consult with a qualified lawyer, particularly on the basic issue of whether a consumer is facing a civil legal problem, and that existing laws should be reviewed for possible revisions that are in the public interest.

Relationship to the ATILS Charter:

This recommendation responds to the charter by proposing a study of statutory amendments and rule changes that could enhance access to legal services by expanding permissible lawyer referral activity.

Public Comment: An explicit proposal on LRS regulations was not included in ATILS' request for public comment on various options for regulatory reform.

Conclusion and Next Steps: ATILS recommends that a study of possible amendments to the lawyer referral service statutes and rules be undertaken to ensure there is a proper balance between public protection and innovation in light of access to justice concerns and the need of consumers for qualified legal services and to ascertain if existing law imposes unnecessary barriers to referral modalities including online matching services that are in the public interest. Similar to the Task Force's view of the existing lawyer advertising rules, ATILS believes that a study of the lawyer referral service regulations can lead to revisions that will balance public protection and the free flow of information about the availability of legal services. Should the Board of Trustees agree with this proposal, the next step would be referral of this issue to the anticipated working group that will continue the work of ATILS specifically as related to development of a sandbox proposal. Some members of ATILS believe that LRS reforms could be informed by data generated by the regulatory sandbox because participants could experiment with new delivery systems that might, for example, involve a business offering consumers a combination of online services that include an online matching service. Other members of ATILS believe that sandbox data is not likely to inform LRS reforms because LRS activity ordinarily does not raise UPL or nonlawyer ownership concerns. These differing views seem to presuppose the scope of the sandbox and the kinds of applicants who will be admitted, but these are open issues for the working group. As the precise parameters and timeframe of the anticipated working group have not been set, referring possible LRS changes to that body for consideration is recommended.

Recommendation No. 7

Consider Recommendations for Amendments to the Rules of Professional Conduct on Advertising and Solicitation Informed by the Current American Bar Association Model Rules, the Proposed Advertising and Solicitation Rules Developed by the Association of Professional Responsibility Lawyers, and Recent Amendments to the Advertising Rules in Other Jurisdictions. In Particular a Reconsideration of the Existing Designation of “Real-Time Electronic Contact” as Prohibited Solicitation

Discussion:

The regulation of lawyer advertising has traditionally placed restrictions on information regarding the availability of lawyers and legal services in an effort to protect consumers from lawyers actively soliciting business and promoting litigation, especially when consumers are particularly vulnerable. Based on an empirical study initiated by the Association of Professional Responsibility Lawyers (APRL) in 2014-2016 and a subsequent analysis of APRL’s reports and public hearings conducted by the ABA Standing Committee on Ethics Professional Responsibility (SCEPR), the advertising rules were found to be outdated and overly restrictive;³⁰ and the lack of uniformity and inconsistent enforcement unreasonably restrict the ability of the legal profession to provide useful and accurate information to consumers about the availability of legal services, particularly through the Internet and other forms of electronic media.³¹

The recent amendments to the ABA Model Rules on lawyer advertising streamline and simplify³² the rules that enable lawyers to use new technologies that can inform consumers accurately and efficiently about the availability of legal services while maintaining the prohibition against engaging in false or misleading communications and adhering to constitutional limitations on restricting commercial speech.

The advent of the Internet and social media has revolutionized the practice of law, including attorney advertising and client solicitation. The current California rules on lawyer advertising and solicitation were adopted before the recent amendments to the ABA Model Rules. Since then several states have or are in the process of modernizing their advertising rules based on APRL’s two reports and the ABA’s recent amendments. Attorneys are increasingly posting, blogging and tweeting more efficiently at minimal cost. Their presence on websites, Facebook, LinkedIn, Twitter, and blogs expands exponentially each year.³³ Under these recent amendments, the legal profession is better able to reach out to a public that has become savvy

³⁰ Association of Professional Responsibility Lawyers [2015 Report of the Regulation of Lawyer Advertising Committee](#), at pp. 20–25.

³¹ [Id. at p. 27.](#)

³² The ABA Standing Committee on Ethics and Professional Responsibility [Memorandum in Support of Proposed Amendments to ABA Model Rules of Professional Conduct on Lawyer Advertising](#), December 21, 2017, at p. 15.

³³ [Id. at p. 8.](#)

in the use of social media and the Internet and is in greater need of more, and not less, useful information regarding the availability of legal services. These trends suggest that traditional restrictions on the dissemination of accurate information about legal services hinder the public's access to useful information and may constitute an unconstitutional restraint of trade.

The Task Force believes that amending the lawyer advertising rules to conform to the recent amendments to the ABA Model Rules will better serve the public by expanding opportunities for lawyers to use modern communications technology to increase the public's awareness of and access to information about the availability of legal services, and protecting the public by focusing the State Bar's resources on content that is false or misleading. Consideration of such rule revisions would be complemented by the study of the LRS rules and statutes outlined in Recommendation #6 above as the topic of compensation paid for client referrals is included in the advertising rules.

Specific Changes to the Current Rules on Lawyer Advertising and Solicitation

The Task Force recommends that the Board of Trustees task the working group being recommended for establishment as related to the development of a sandbox proposal with a study of recent amendments to ABA Model Rules 7.1, 7.2 and 7.3, APRL's Report of the Regulation of Lawyer Advertising Committee (June 22, 2015) and APRL's Regulation of Lawyer Advertising Committee Supplemental Report (April 26, 2016), the changes to advertising rules currently under consideration by the State of Washington³⁴ and other jurisdictions, as well as the impact of the current advertising rules in Oregon, Virginia and the District of Columbia on access to justice and public protection.

The following issues are specific examples³⁵ of what could be studied:

- Whether provisions on false and misleading communications should be combined into rule 7.1 and its comments, including rule 7.5 [Firm Names and Trade Names] which largely relates to misleading communications.
- Whether specific rules on lawyer advertising should be consolidated into rule 7.2.
- Whether in rule 7.2(c), "office address" should be changed to "contact information" to address technological advances that influence how lawyers may be contacted and how advertising is presented.
- Whether the ban on direct solicitation in rule 7.3 should apply solely to live person-to-person contact, including in person, face-to-face, telephone, and real-time electronic or other communications such as Skype. It is recommended that the rule be changed to no longer prohibit solicitations such as chat rooms, text messages, or any other written communications to which recipients would not feel undue pressure to respond.

³⁴ See: <https://www.wsba.org/for-legal-professionals/rules-feedback>

³⁵ Additional examples are provided in Appendix 13.

Relationship to the Charter

This recommendation responds to the charter by proposing rule changes that could facilitate enhanced access to legal services by permitting the use of modern communication, including online marketing and social media, to provide truthful and nondeceptive information to consumers regarding the availability of lawyers and law firms to provide legal services. This is especially pertinent to potential innovative online delivery systems that might exclusively use electronic communication for interacting with potential clients.

Public Comment: This proposal was included in ATILS' request for public comment on various options for regulatory reform, in particular as a part of several possible revisions to the RPCs. It was issued as Recommendation 3.4 as set forth below.

Adoption of revised California Rules of Professional Conduct 7.1–7.5 to improve communication regarding availability of legal services using technology in consideration of: (1) the versions of Model Rules 7.1–7.3 adopted by the ABA in 2018; (2) the 2015 and 2016 Association of Professional Responsibility Lawyers reports on advertising rules; and (3) advertising rules adopted in other jurisdictions.

Recommendation 3.4 received a total of approximately 79 written public comments, 62 in opposition, 11 in support, and six with no stated position. Public comment themes, along with the Task Force's responses to each, are outlined below.

1. The advertising and solicitation rules were revised recently (operative November 1, 2018) and it seems premature to proceed with the implementation of further changes to these rules.

Task Force Response: The changes made by the ABA to the Model Rules that were initiated by the study and report of APRL occurred after the Rules Revision Commission's work on its new and amended advertising rules was completed. Other jurisdictions have or are presently considering the ABA's changes. Particularly in the area of online lawyer advertising and solicitation, uniformity among legal ethics standards in all United States jurisdictions is a meaningful goal that promotes lawyer compliance and public protection.

2. Allowing a lawyer's real-time electronic communication with a prospective client should be permitted, especially in the context of online delivery system.

Task Force Response: The Task Force agrees that the issue of real-time electronic contact with a potential client should be reconsidered. The existing rule's treatment of this conduct as a form of banned solicitation may be overbroad and an obstacle to the legal profession's interest in exploring innovative online delivery systems.

Conclusion and Next Steps: ATILS believes that updates to the lawyer advertising and solicitation rules described above strike the right balance of public protection and the free flow of information about the availability of legal services. This, in turn, can improve consumer

access to legal services as well as understanding about problems such as civil justice legal issues. Some members of ATILS believe that advertising rule amendments might be informed by data generated by a regulatory sandbox because participants could experiment with new marketing and communication methods, especially if a participant is a business that exists exclusively online. Other members of ATILS believe that sandbox data would not inform all of the rule amendments proposed because some changes are completely unrelated, such as the amendment to replace “office address” with “contact information.” However, the precise parameters and timeframe of the anticipated working group have not been set so it is uncertain whether the sandbox effort might inform these rule changes. Should the Board of Trustees consider adoption of these rule amendments, referring these rule amendments to that body for consideration is recommended.

V. REFORM CONCEPTS BEYOND THE SCOPE OF THE TASK FORCE STUDY

Some public comments urged that ATILS consider other initiatives that are not regarded by the opponents as disruptive as the concepts for regulatory reform being study by ATILS. These types of other initiatives recommended by commenters include but are not limited to:

- court reform
- court funding (including adding more judges)
- court-connected self-help programs, including online and technology based services
- increasing the monetary jurisdiction of small claims court
- mandating pro bono services by licensees or recent law school graduates
- promoting greater volunteer pro bono services (for example, by student loan forgiveness programs)
- studying and improving existing access programs rather than exploring new ones (including increasing legal services program funding)
- increasing financial support to nonprofit legal foundations
- providing State-sponsored educational programs to low or moderate income communities that are believed to be lacking in access
- providing State-sponsored education to lawyers about working in communities that are in need of legal services
- enhancing the educational requirements for paralegals
- improving ADR

- expanding services that may be provided by a Legal Document Assistant or an Unlawful Detainer Assistant
- creating a low fee marketplace for legal services by lawyers, like the health insurance exchanges that were envisioned by the Affordable Care Act
- removing barriers to entry to the profession, for example by altering the California Bar Examination (including lowering the passing score) or expanding MJP to implement reciprocity or admission on motion

While helpful, these suggestions do not directly align with the precise assignment to ATILS to explore improving access through innovative technology driven and online delivery systems. Although beyond the scope of the charter, ATILS has highlighted these suggestions to give the Board an opportunity to consider whether any of these suggestions should be referred for study to an appropriate State Bar subentity or office.

VI. CONCLUSION

There is a clear trend to leverage technology and innovative delivery systems to improve access to legal services. Changes to the regulation of the practice of law in other jurisdictions including other states and countries are proceeding. California is regarded as a center for technological innovation and given the critical lack of legal assistance experienced by so many Californians and the strong policy statements in support of innovation recently issued by the ABA and Conference of Chief Justices, California should take its place as a leader in exploring new options for the delivery of legal services including one-to-many models that can be authorized without an undue risk of harm to consumers or the administration of justice.

Appendix 1: Roster of the Current Task Force Members

ATILS TASK FORCE COMPOSITION*

ATILS Leadership

Justice Lee Edmon [J] (Chair)
Joyce Raby [P] (Co-Vice-Chair)
Toby Rothschild [L] (Co-Vice-Chair)

UPL/AI Subcommittee

Abhijeet Chavan [P] (Chair)
Hon. Wendy Chang [J] (Vice-Chair)
Simon Boehme [P]
Margie Estrada [L]
Heather Morse [P]
Daniel Rubins [P]
Joshua Walker [L]

Rules/Ethics Opinions Subcommittee

Tara Burd [L] (Chair)
Kevin Mohr [L] (Vice-Chair)
Johann Drolshagen [P]
Lori Gonzalez [P]
Andrew Kucera [L]
Daniel Rice [P]
Allen Rodriguez [P]

ABS/MDP Subcommittee

Andrew Arruda [L] (Chair)
Mark Tuft [L] (Vice-Chair)
Jean Clauson [P]
Bridget Gramme [L]
Joanna Mendoza [L]
Angelina Valverde [P]

State Bar Staff Liaisons

Brady Dewar (Office of General Counsel)
Randall Difuntorum (Office of Professional Competence)
Mia Ellis (Office of Chief Trial Counsel)
Donna Hershkowitz (Interim Executive Director)
Mimi Lee (Office of Professional Competence)
Doan Nguyen (Office of Access and Inclusion)
Andrew Tuft (Office of Professional Competence)
Leah Wilson (Consultant)

Supreme Court Liaison

Sunil Gupta (Supreme Court Liaison)

Board of Trustees Liaisons

Jason Lee (Chair, Board of Trustees)
Brandon Stallings and Debbie Manning
(Co-Chairs, BOT Programs Committee)

*The following persons appointed to the Task Force resigned during the pendency of the Task Force: Barbara Arsedo, Valarie Dean, Linda Pereira, and Daniel Rice. In addition, Greg Fortescue served as the Supreme Court Liaison until August 2019.

[J] = Judge

[L] = Lawyer

[P] = Public Member

Appendix 2: Schedule of Meetings

STATE BAR OF CALIFORNIA TASK FORCE ON ACCESS THROUGH INNOVATION OF LEGAL SERVICES

2018 – 2020 SCHEDULE OF MEETINGS

ATILS – Wednesday, December 5, 2018 (San Francisco)
ATILS and All Subcommittees – Friday, January 18, 2019 (Los Angeles)
ATILS and All Subcommittees – Thursday, February 28, 2019 (Los Angeles)
ATILS and All Subcommittees – Monday, April 8, 2019 (San Francisco)
ABS/MDP Subcommittee – Monday, April 29, 2019 (San Francisco)
ATILS and All Subcommittees – Monday, May 13, 2019 (Los Angeles)
Rules/Ethics Subcommittee – Tuesday, May 14, 2019 (Los Angeles)
Rules/Ethics Subcommittee – Monday, June 3, 2019 (Video Conference SF/LA)
UPL/AI Subcommittee – Friday, June 7, 2019 (Video Conference SF/LA)
ABS/MDP Subcommittee – Monday, June 10, 2019 (San Francisco)
ATILS and All Subcommittees – Friday, June 28, 2019 (San Francisco)
ATILS – Friday, August 9, 2019 (San Francisco)

List of Subcommittees:

ABS/MDP – Alternative Business Structures/Multidisciplinary Practices

UPL/AI – Unauthorized Practice of Law/Artificial Intelligence

Rules/Ethics – Rules and Ethics Opinions

Appendix 2: Schedule of Meetings

Public Hearing – Saturday, August 10, 2019 (San Francisco)
ATILS – Monday, October 7, 2019 (Los Angeles)
ATILS – Wednesday, November 6, 2019 (San Francisco)
ATILS – Thursday, December 12, 2019 (San Francisco)
ATILS – Friday, January 10, 2010 (San Francisco)
ATILS – Monday, February 24, 2020 (San Francisco)

List of Subcommittees:

ABS/MDP – Alternative Business Structures/Multidisciplinary Practices

UPL/AI – Unauthorized Practice of Law/Artificial Intelligence

Rules/Ethics – Rules and Ethics Opinions

Appendix 3: List of 16 Concept Options for Regulatory Reform

ATILS 16 Concept Options for Possible Regulatory Changes

ATILS developed 16 concept options for possible regulatory changes, and the Task Force sought public input to help evaluate these ideas with a 60-day public comment circulation ending on September 23, 2019.

(General Recommendations)

- 1.0** - The Task Force does not recommend defining the practice of law.
- 1.1** - The models being proposed would include individuals and entities working for profit and would not be limited to not for profits.
- 1.2** - Lawyers in traditional practice and law firms may perform legal and law-related services under the current regulatory framework but should strive to expand access to justice through innovation with the use of technology and modifications in relationships with nonlawyers.
- 1.3** - The implementation body shall: (1) identify, develop, and/or commission objective and diverse methods, metrics, and empirical data sources to assess the impact of the ATILS reforms on the delivery of legal services, including access to justice; and (2) establish reporting requirements for ongoing monitoring and analysis.

(Recommendations for Exceptions to UPL)

- 2.0** - Nonlawyers will be authorized to provide specified legal advice and services as an exemption to UPL with appropriate regulation.
- 2.1** - Entities that provide legal or law-related services can be composed of lawyers, nonlawyers or a combination of the two, however, regulation would be required and may differ depending on the structure of the entity.
- 2.2** - Add an exception to the prohibition against the unauthorized practice of law permitting State-certified/registered/approved entities to use technology-driven legal services delivery systems to engage in authorized practice of law activities.
- 2.3** - State-certified/registered/approved entities using technology-driven legal services delivery systems should not be limited or restrained by any concept or definition of “artificial intelligence.” Instead, regulation should be limited to technologies that perform the analytical functions of an attorney.
- 2.4** - The Regulator of State-certified/registered/approved entities using technology-driven legal services delivery systems must establish adequate ethical standards that regulate both the provider and the technology itself.
- 2.5** - Client communications with technology-driven legal services delivery systems that engage in authorized practice of law activities should receive equivalent protections afforded by the attorney-client privilege and a lawyer’s ethical duty of confidentiality.
- 2.6** - The regulatory process contemplated by Recommendation 2.2 should be funded by application and renewal fees. The fee structure may be scaled based on multiple factors.

Appendix 3: List of 16 Concept Options for Regulatory Reform

(Lawyer Disciplinary Rules Recommendations)

- 3.0** - Adoption of a new Comment [1] to rule 1.1 “Competence” stating that the duty of competence includes a duty to keep abreast of the changes in the law and its practice, including the benefits and risks associated with relevant technology.
- 3.1** - Adoption of a proposed amended rule 5.4 [Alternative 1] “Financial and Similar Arrangements with Nonlawyers” which imposes a general prohibition against forming a partnership with, or sharing a legal fee with, a nonlawyer. The Alternative 1 amendments would: (1) expand the existing exception for fee sharing with a nonlawyer that allows a lawyer to pay a court awarded legal fee to a nonprofit organization that employed, retained, recommended, or facilitated employment of the lawyer in the matter; and (2) add a new exception that a lawyer may be a part of a firm in which a nonlawyer holds a financial interest, provided that the lawyer or law firm complies with certain requirements including among other requirements, that: the firm’s sole purpose is providing legal services to clients; the nonlawyers provide services that assist the lawyer or law firm in providing legal services to clients; and the nonlawyers have no power to direct or control the professional judgment of a lawyer.
- 3.2** - Adoption of a proposed amended rule 5.4 [Alternative 2] “Financial and Similar Arrangements with Nonlawyers” which imposes a general prohibition against forming a partnership with, or sharing a legal fee with, a nonlawyer. Unlike the narrower Recommendation 3.1, the Alternative 2 approach would largely eliminate the longstanding general prohibition and substitute a permissive rule broadly permitting fee sharing with a nonlawyer provided that the lawyer or law firm complies with requirements intended to ensure that a client provides informed written consent to the lawyer’s fee sharing arrangement with a nonlawyer.
- 3.3** - Adoption of a version of ABA Model Rule 5.7 that fosters investment in, and development of, technology-driven delivery systems including associations with nonlawyers and nonlawyer entities.
- 3.4** - Adoption of revised California Rules of Professional Conduct 7.1–7.5 to improve communication regarding availability of legal services using technology in consideration of: (1) the versions of Model Rules 7.1–7.3 adopted by the ABA in 2018; (2) the 2015 and 2016 Association of Professional Responsibility Lawyers reports on advertising rules; and (3) advertising rules adopted in other jurisdictions.

Appendix 4: Distribution of Comments Received for Each Public Comment Option

POSITION TABLE BASED ON COMMENTER TYPE

Proposal 1.0	Support	Oppose	SNP	Total	Total	Support	Oppose	SNP
Lawyer	54	144	5	203	73%	27%	71%	2%
Public Member	0	1	0	1	0%	0%	100%	0%
Lawyer Organization (bar association, law firm, legal aid)	11	15	3	29	10%	38%	52%	10%
Public Organization (insurance companies, non and for profit nonlawyer organization)	0	1	1	2	1%	0%	50%	50%
Unknown (not enough information)	19	24	1	44	16%	43%	55%	2%
Total	84	185	10	279	100%	30%	66%	4%

Proposal 1.1	Support	Oppose	SNP	Total	Total	Support	Oppose	SNP
Lawyer	3	75	1	79	68%	4%	95%	1%
Public Member	3	0	0	3	3%	100%	0%	0%
Lawyer Organization (bar association, law firm, legal aid)	2	14	2	18	15%	11%	78%	11%
Public Organization (insurance companies, non and for profit nonlawyer organization)	1	0	0	1	1%	100%	0%	0%
Unknown (not enough information)	2	14	0	16	14%	13%	88%	0%
Total	11	103	3	117	100%	9%	88%	3%

Proposal 1.2	Support	Oppose	SNP	Total	Total	Support	Oppose	SNP
Lawyer	8	52	8	68	63%	12%	76%	12%
Public Member	0	0	0	0	0%	0%	0%	0%
Lawyer Organization (bar association, law firm, legal aid)	2	9	4	15	14%	13%	60%	27%
Public Organization (insurance companies, non and for profit nonlawyer organization)	1	0	0	1	1%	100%	0%	0%
Unknown (not enough information)	10	12	2	24	22%	42%	50%	8%
Total	21	73	14	108	100%	19%	68%	13%

Proposal 1.3	Support	Oppose	SNP	Total	Total	Support	Oppose	SNP
Lawyer	13	37	1	51	64%	25%	73%	2%
Public Member	0	0	0	0	0%	0%	0%	0%
Lawyer Organization (bar association, law firm, legal aid)	8	6	0	14	18%	57%	43%	0%
Public Organization (insurance companies, non and for profit nonlawyer organization)	1	0	0	1	1%	100%	0%	0%
Unknown (not enough information)	7	6	1	14	18%	50%	43%	7%
Total	29	49	2	80	100%	36%	61%	3%

Proposal 2.0	Support	Oppose	SNP	Total	Total	Support	Oppose	SNP
Lawyer	21	381	5	407	67%	5%	94%	1%
Public Member	13	3	1	17	3%	76%	18%	6%
Lawyer Organization (bar association, law firm, legal aid)	11	49	4	64	10%	17%	77%	6%
Public Organization (insurance companies, non and for profit nonlawyer organization)	3	3	0	6	1%	50%	50%	0%
Unknown (not enough information)	46	70	0	116	19%	40%	60%	0%
Total	94	506	10	610	100%	15%	83%	2%

Proposal 2.1	Support	Oppose	SNP	Total	Total	Support	Oppose	SNP
Lawyer	6	174	3	183	65%	3%	95%	2%
Public Member	3	1	0	4	1%	75%	25%	0%
Lawyer Organization (bar association, law firm, legal aid)	6	17	3	26	9%	23%	65%	12%
Public Organization (insurance companies, non and for profit nonlawyer organization)	3	1	0	4	1%	75%	25%	0%
Unknown (not enough information)	34	29	1	64	23%	53%	45%	2%
Total	52	222	7	281	100%	19%	79%	2%

Appendix 4: Distribution of Comments Received for Each Public Comment Option

POSITION TABLE BASED ON COMMENTER TYPE

Proposal 2.2	Support	Oppose	SNP	Total	Total	Support	Oppose	SNP
Lawyer	4	133	1	138	72%	3%	96%	1%
Public Member	1	3	0	4	2%	25%	75%	0%
Lawyer Organization (bar association, law firm, legal aid)	6	13	1	20	10%	30%	65%	5%
Public Organization (insurance companies, non and for profit nonlawyer organization)	2	0	0	2	1%	100%	0%	0%
Unknown (not enough information)	3	24	1	28	15%	11%	86%	4%
Total	16	173	3	192	100%	8%	90%	2%

Proposal 2.3	Support	Oppose	SNP	Total	Total	Support	Oppose	SNP
Lawyer	4	46	2	52	62%	8%	88%	4%
Public Member	1	0	0	1	1%	100%	0%	0%
Lawyer Organization (bar association, law firm, legal aid)	5	5	5	15	18%	33%	33%	33%
Public Organization (insurance companies, non and for profit nonlawyer organization)	1	0	0	1	1%	100%	0%	0%
Unknown (not enough information)	4	8	3	15	18%	27%	53%	20%
Total	15	59	10	84	100%	18%	70%	12%

Proposal 2.4	Support	Oppose	SNP	Total	Total	Support	Oppose	SNP
Lawyer	15	44	0	59	63%	25%	75%	0%
Public Member	1	0	0	1	1%	100%	0%	0%
Lawyer Organization (bar association, law firm, legal aid)	7	10	0	17	18%	41%	59%	0%
Public Organization (insurance companies, non and for profit nonlawyer organization)	0	1	0	1	1%	0%	100%	0%
Unknown (not enough information)	10	4	1	15	16%	67%	27%	7%
Total	33	59	1	93	100%	35%	63%	1%

Proposal 2.5	Support	Oppose	SNP	Total	Total	Support	Oppose	SNP
Lawyer	14	34	2	50	61%	28%	68%	4%
Public Member	2	0	0	2	2%	100%	0%	0%
Lawyer Organization (bar association, law firm, legal aid)	4	12	0	16	20%	25%	75%	0%
Public Organization (insurance companies, non and for profit nonlawyer organization)	1	0	0	1	1%	100%	0%	0%
Unknown (not enough information)	8	5	0	13	16%	62%	38%	0%
Total	29	51	2	82	100%	35%	62%	2%

Proposal 2.6	Support	Oppose	SNP	Total	Total	Support	Oppose	SNP
Lawyer	12	35	1	48	71%	25%	73%	2%
Public Member	0	0	0	0	0%	0%	0%	0%
Lawyer Organization (bar association, law firm, legal aid)	4	6	2	12	18%	33%	50%	17%
Public Organization (insurance companies, non and for profit nonlawyer organization)	0	1	0	1	1%	0%	100%	0%
Unknown (not enough information)	4	3	0	7	10%	57%	43%	0%
Total	20	45	3	68	100%	29%	66%	4%

Proposal 3.0	Support	Oppose	SNP	Total	Total	Support	Oppose	SNP
Lawyer	12	37	2	51	67%	24%	73%	4%
Public Member	1	0	0	1	1%	100%	0%	0%
Lawyer Organization (bar association, law firm, legal aid)	6	10	0	16	21%	38%	63%	0%
Public Organization (insurance companies, non and for profit nonlawyer organization)	1	0	0	1	1%	100%	0%	0%
Unknown (not enough information)	5	2	0	7	9%	71%	29%	0%
Total	25	49	2	76	100%	33%	64%	3%

Appendix 4: Distribution of Comments Received for Each Public Comment Option

POSITION TABLE BASED ON COMMENTER TYPE

Proposal 3.1	Support	Oppose	SNP	Total	Total	Support	Oppose	SNP
Lawyer	15	182	1	198	65%	8%	92%	1%
Public Member	4	2	0	6	2%	67%	33%	0%
Lawyer Organization (bar association, law firm, legal aid)	6	25	4	35	12%	17%	71%	11%
Public Organization (insurance companies, non and for profit nonlawyer organization)	0	5	0	5	2%	0%	100%	0%
Unknown (not enough information)	20	39	1	60	20%	33%	65%	2%
Total	45	253	6	304	100%	15%	83%	2%

Proposal 3.2	Support	Oppose	SNP	Total	Total	Support	Oppose	SNP
Lawyer	14	89	1	104	65%	13%	86%	1%
Public Member	1	1	0	2	1%	50%	50%	0%
Lawyer Organization (bar association, law firm, legal aid)	5	22	1	28	17%	18%	79%	4%
Public Organization (insurance companies, non and for profit nonlawyer organization)	3	2	0	5	3%	60%	40%	0%
Unknown (not enough information)	9	13	0	22	14%	41%	59%	0%
Total	32	127	2	161	100%	20%	79%	1%

Proposal 3.3	Support	Oppose	SNP	Total	Total	Support	Oppose	SNP
Lawyer	2	64	2	68	69%	3%	94%	3%
Public Member	0	0	0	0	0%	0%	0%	0%
Lawyer Organization (bar association, law firm, legal aid)	1	15	2	18	18%	6%	83%	11%
Public Organization (insurance companies, non and for profit nonlawyer organization)	1	0	0	1	1%	100%	0%	0%
Unknown (not enough information)	1	10	0	11	11%	9%	91%	0%
Total	5	89	4	98	100%	5%	91%	4%

Proposal 3.4	Support	Oppose	SNP	Total	Total	Support	Oppose	SNP
Lawyer	3	46	3	52	66%	6%	88%	6%
Public	0	0	0	0	0%	0%	0%	0%
Lawyer Organization (bar association, law firm, legal aid)	5	10	2	17	22%	29%	59%	12%
Public Organization (insurance companies, non and for profit nonlawyer organization)	1	0	0	1	1%	100%	0%	0%
Unknown (not enough information)	2	6	1	9	11%	22%	67%	11%
Total	11	62	6	79	100%	14%	78%	8%

Total Individual Commenters for All Comments Received	Total	Total
Lawyer	760	70%
Public	32	3%
Lawyer Organization (bar association, law firm, legal aid)	110	10%
Public Organization (insurance companies, non and for profit nonlawyer organization)	18	2%
Unknown (not enough information)	160	15%
Total	1080	100%

Total Commenters	1389
Total Individual Comments Received	2890

Appendix 5: Report Tallying the Comments for Each Option
ACCESS THROUGH INNOVATION OF LEGAL SERVICES
PROPOSED REGULATORY REFORM OPTIONS – PUBLIC COMMENT FORM RESULTS
(as of November 14, 2019)

Reform Option	Position			TOTAL
	Support	Oppose	State No Preference	
1.0 - Redefining the “Practice of Law” is Not Recommended	84	185	10	279
1.1 - Entity Models Include Individuals and Entities Working For Profit and Non-Profit	11	103	3	117
1.2 - Affirm the Regulation of Lawyers under the Judicial Branch and Encourage the Use of Technology to Improve Access	21	73	14	108
1.3 - Develop Metrics for Measuring the Impact of Recommended Regulatory Changes	29	49	2	80
2.0 - UPL Exception for Individual Nonlawyers to Provide Specified Legal Services	94	506	10	610
2.1 - UPL Exception for Entities Composed of Lawyers, Nonlawyers or a Combination of the Two	52	222	7	281
2.2 - UPL Exception for Entities Composed Using Technology-Driven Legal Services Delivery Systems	16	173	3	192
2.3 - Defining “Artificial Intelligence” is Not Recommended	15	59	10	84
2.4 - Approved Entities Using Technology-Driven Legal Services Delivery Systems Must Establish Ethical Standards	33	59	1	93
2.5 - Client Communications with Technology-Driven Legal Services Delivery Systems Should Receive Equivalent Ethical Protections	29	51	2	82
2.6 - Regulatory Process of Approved Entities Should be Funded by Application and Renewal Fees	20	45	3	68
3.0 - Adopt a New Comment to Rule 1.1 Stating that Competence Includes a Duty to Keep Abreast of Changes in the Law and Technology	25	49	2	76
3.1 - Amend the Fee Sharing Rule to Expand Fee Sharing with Nonprofits and Allow Nonlawyer Ownership	45	253	6	304
3.2 - Amend the Fee Sharing Rule to Permit Fee Sharing with a Client’s Informed Consent	32	127	2	161
3.3 - Adopt a Version of ABA Model Rule 5.7 That Fosters Investment in and Development of Technology-Driven Delivery Systems	5	89	4	98
3.4 - Adopt Revised Rules 7.1-7.5 to Improve Communication Regarding Availability of Legal Services Using Technology	11	62	6	79
TOTAL BY POSITION	522	2105	85	2712
Comments Designated as “Other”	178			
TOTAL NUMBER OF COMMENTS	2890			
TOTAL NUMBER OF COMMENTERS	1389			



1550 W. 8th Street
Los Angeles, CA 90017
323-801-7976
323-801-7921 fax
www.lafla.org

February 20, 2020

Task Force on Access Through Innovation of Legal Services (ATILS)
State Bar of California
180 Howard Street
San Francisco, CA 94105

**Re: Language Access Comments on Tentative Recommendations, State Bar
Task Force on Access Through Innovation of Legal Services (ATILS)**

Dear ATILS Task Force Members,

Legal Aid Foundation of Los Angeles (LAFLA) provides these written public comments on the Tentative Recommendations of the State Bar Task Force on Access Through Innovation of Legal Services (ATILS). Specifically, we address concerns related to services provided to those who do not speak English as their dominant language and to linguistically marginalized communities. We believe that strong standards, safeguards and protocols must be put in place to ensure that these vulnerable populations are not disproportionately harmed by the changes ATILS proposes.

LAFLA is a nonprofit law firm that protects and advances the rights of the most underserved – leveling the play field and ensuring equal access to the justice system. Every year, LAFLA helps more than 100,000 people in civil legal matters by providing direct legal representation and other legal assistance for low-income people across the Greater Los Angeles region. Its unique combination of neighborhood offices, self-help centers at courthouses, and domestic violence clinics puts LAFLA on the frontlines in communities at the forefront of change. LAFLA's Asian Pacific Islander (API) Community Outreach Project was founded in the 1990s in recognition of the great need for improved access to justice for API immigrant communities, particularly those who do not speak English as their dominant language.

LAFLA has conducted pioneering work to ensure language access to the critical services and government agencies. In 2010, LAFLA filed an administrative complaint against the Los Angeles Superior Court with the U.S. Department of Justice, alleging violations of Title VI of the Civil Rights Act of 1964, based on the failure to provide interpreters in civil proceedings. In response, the DOJ's Civil Rights Division and U.S. Attorney's Office launched a federal investigation of the entire California state court system. As a result, the California Judicial Council developed and adopted a Strategic Plan for Language Access in the California Courts, which provides for interpreters free-of-charge in all proceedings and at all points of contact throughout the judicial process. The plan called on the courts to provide free interpretation services for all court proceedings, provide language services outside the courtroom at counters and other public areas, translate court documents and other materials, post signs notifying litigants of the availability of interpretation, translate key pages on the

Other Office Locations:

East Los Angeles Office, 5228 Whittier Blvd., Los Angeles, CA 90022; 213-640-3883
Long Beach Office, 601 Pacific Ave., Long Beach, CA 90802; 562-435-3501
Santa Monica Office, 1640 5th St., Suite 124, Santa Monica, CA 90401; 310-899-6200
South Los Angeles Office, 7000 S. Broadway, Los Angeles, CA 90003; 213-640-3950

court website, provide training for court staff, and monitor complaints. We provide these public comments as an extension of our commitment to justice, which includes meaningful access in all contexts, including access to quality legal services, courts, and other government agencies.

Language Diversity in California & Los Angeles

California is one of the most diverse places in the world, with more than 200 languages and dialects spoken. Almost half of all Californians speak a language other than English at home and nearly seven million, almost one in five, report speaking English “less than very well.”¹ Los Angeles County has a total population of over 10 million,² making it larger than all but nine states,³ with over one third of the population being immigrants.⁴ Latinos make up over 48% of the county’s population, and APIs represent over 16%—the largest API population in the mainland U.S.⁵ Over 34% of those living in Los Angeles County are foreign-born, compared to nearly 13% nationally.⁶ In fact, 43% of Latinos⁷ and 70% of Asians⁸ in Los Angeles County are foreign-born. Californians speak over 200 languages,⁹ and 57% in Los Angeles County speak a language other than English at home.¹⁰

Individuals who primarily use non-dominant languages have historically faced challenges in seeking access to basic amenities, legal remedies and supportive services. Reports have found that limited English proficiency has impacted the “ability to access fundamental necessities such as employment, police protection, and health care.”¹¹ Unsurprisingly, access to justice has proven difficult for individuals who speak a language other than English at home, who have higher rates of poverty than the general population in Los Angeles County and California.¹² In fact, in Los Angeles County, 57% of foreign-born

¹ U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates.

² U.S. Census Bureau, 2018, found at:

<https://www.census.gov/quickfacts/fact/table/losangelescountycalifornia/PST045218>

³ U.S. Census Bureau, 2018, found at: <https://www2.census.gov/programs-surveys/popest/tables/2010-2018/state/totals/nst-est2018-03.xlsx>

⁴ U.S. Census Bureau, 2018, found at:

<https://www.census.gov/quickfacts/fact/table/losangelescountycalifornia/PST045218>

⁵ U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates, found at:

https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_5YR/DP05/0500000US06037

⁶ U.S. Census Bureau, 2018, found at:

<https://www.census.gov/quickfacts/fact/table/US,losangelescountycalifornia,CA/POP645217>

⁷ U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates, found at:

https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_5YR/B16005I/0500000US06037

⁸ U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates, found at:

https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_5YR/B16005D/0500000US06037

⁹ California Courts, Language Access, found at: <https://www.courts.ca.gov/languageaccess.htm>

¹⁰ U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates, found at:

https://factfinder.census.gov/bkmk/table/1.0/en/ACS/15_5YR/B16001/0500000US06037

¹¹ California Speaks, Asian Pacific American Legal Center; Asian & Pacific Islander American Health Forum;

found at: https://www.migrationpolicy.org/sites/default/files/language_portal/California%20Speaks%20-%20Language%20Diversity%20and%20English%20Proficiency%20by%20Legislative%20District_0.pdf

¹² U.S. Census Bureau, 2017 American Community Survey 1-Year Estimates, found at:

https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_1YR/S1603/0500000US06037

female head of households, who are not naturalized U.S. citizens, with children under 18 years old, live below the federal poverty line.¹³ These linguistically marginalized communities are often the most isolated and vulnerable, making quality legal services very difficult to access and obtain. As a result, these communities are prime targets for unlicensed notarios and brokers. Many will also experience challenges accessing technology-driven legal services.

ATILS Recommendations

Ethical Standards, Safeguards & Protocols Must Be Put in Place to Protect Linguistically Marginalized Communities

We appreciate that ATILS materials reference the State Bar of California's regulatory systems and standards that address ethics in the legal profession, as well as the American Bar Association's (ABA) guidance and model rules on related topics. Many of these implicate the importance of language access, and similar provisions should be developed and applied to the expanded services proposed by ATILS. These new standards should be more strenuously applied to the group of paraprofessionals under ATILS, as they are more likely to be unaware of and face lesser consequences based on rule violations. Several relevant provisions are discussed below.

American Bar Association (ABA) Standards and Model Rules

Under the ABA Standards for the Provision of Civil Legal Aid, Standard 4.6 states: "Communication should be in the Primary Languages of Persons Served. A provider should make sure that all language groups within its low income communities have access to services by assisting those using its services in their primary language."¹⁴ There is no threshold language requirement for this oral communication, and providers must have appropriate and meaningful protocols to accommodate clients' language needs. Relatedly, Standard 4.3 covers Protecting Client Confidences, which states: "Consistent with its ethical and legal responsibilities, a provider must protect information relating to the representation of a client from unauthorized disclosure." This is important to understand when working with interpreters to communicate with clients whose dominant languages are other than English. Providers must ensure that interpreters understand they must keep all information confidential.

The ABA also has model rules for professional conduct in the legal profession.¹⁵ Rule 1.4 on Communication states that attorneys must keep their clients promptly and reasonably

¹³ U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates, found at: https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_5YR/S0501/0500000US06037

¹⁴ American Bar Association Standards for the Provision of Civil Legal Aid (2006), found at: https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_civillegal_aidstds2007.authcheckdam.pdf

¹⁵ American Bar Association Model Rules of Professional Conduct (2019), found at: https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/

informed, obtain informed consent when needed, and consult with clients regularly regarding the direction and status of the case. This includes the duty to communicate with clients whose dominant language is other than English as often and regularly as with English speaking clients. If the provider does not speak the client's language, they must have interpreters and other language assistance resources readily available.

Rule 5.3 covers Responsibilities Regarding Nonlawyer Assistance. Attorneys must ensure that non-attorneys comply with rules of professional conduct. Interpreters are included in confidentiality protections if they are working under the purview of the attorney. Providers must ensure that interpreters understand these duties and obligations.

CA Rules of Professional Conduct

Under the California Rules of Professional Conduct, Rule 8.4.1. states that attorneys shall not discriminate on the basis of race, national origin, sex, sexual orientation, religion, age or disability. This applies to accepting or terminating representation of any client. This means that attorneys cannot turn away clients or terminate representation solely on the basis of one or more of these factors. National origin includes the language a person speaks. Again, it is important to note that there is no threshold requirement for the duty to provide language services. We are obligated to provide a way for the client to communicate with us and receive services.

Rule 1.1 on competence states that attorneys have an ethical duty to provide competent representation. This requires the learning and skill, as well as the mental, emotional, and physical ability reasonably necessary to represent clients. Rule 1.3 addresses diligence, requiring attorneys to have the commitment and dedication to clients' interests, providing services without neglect, disregard or undue delay. These rules on competence and diligence encompass ensuring that appropriate and meaningful language services are provided whether through a bilingual attorney or case handler or through qualified interpreters and translators. The interpreters and translators should be qualified and trained, and not friends or family members of the client. An important note about bilingual advocates is that they cannot represent their clients competently if they are actually interpreting for their clients outside the office setting, such as in an administrative setting or hearing. They must have a separate qualified interpreter with them when they are advocating for their clients at hearings and trials.

As with the ABA model rules, Rule 1.4 on communication requires that attorneys communicate regularly with their clients to keep them reasonably informed. Attorneys must respond promptly to requests for information and copies of documents. There cannot be any delay in communication with a client because there is no interpreter or language service readily available.

Rule 1.6 on confidentiality states that attorneys must keep all information related to client representation confidential and are ethically obligated to make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information

relating to the representation of the client. Providers must understand that the presence of a third party interpreter should not break this confidentiality. California Rules of Court Rule 2.890 states that “[a]n interpreter must not disclose privileged communications between counsel and client to any person.” Trained and qualified interpreters are aware of these requirements, and any competent provider must understand these nuances.

Rule 1.7 on conflicts of interest states that attorneys (and their agents, such as interpreters) must avoid concurrent conflicts of interest with a current client. This includes situations where legal, business, financial, professional or personal relationships exist outside of the attorney-client relationship. Providers must ensure that interpreters and translators serve as agents of the attorney, also should have not any biases or conflicts of interest with the client. A provider should always provide their own qualified interpreter and not use friends or family members of the client for this reason. Also, this is another reminder that bilingual attorney should not act as an interpreter outside the office setting, such as in an administrative setting or hearing.

Legal services providers should also be aware of ethical standards for interpreters, as laid out in the California Rules of Court Rule 2.890. These include giving an accurate representation of their qualifications and limitations; interpreting accurately and completely; being impartial, unbiased, and refraining from conduct that may give an appearance of bias; disclosing any conditions that may interfere with objectivity, such as familiarity with a party or witness; keeping all information confidential; refraining from providing legal advice; maintaining impartial professional relationships; pursuing continuing education and always striving to maintain and improve their skills; assessing and reporting impediments to performance; reporting ethical violations – this includes any factors that impede the interpreter's compliance with these requirements and ability to interpret effectively.

Use of Technology and Machine Translation

Many of the recommendations implicate and encourage the use of artificial intelligence and technology-driven legal services in various forms. It must be made clear that, under no circumstance, should the use of machine translation alone be permitted to facilitate communication, directly or artificially, with any consumer whose dominant language is not English. It is well-documented that even with the technological improvements to Google Translate and other machine translation programs, there are still serious inaccuracies in using machine translation solely without appropriate human review. In 2018, a federal court also rejected the use of Google Translate during a traffic stop, resulting in the granting of a motion to suppress in a criminal trial.¹⁶

Any use of machine translation must be reviewed by a qualified individual to ensure accuracy. This standard for use of machine translation has been well established by many entities, including the ABA. The ABA Standards for Language Access in the Courts

¹⁶ *United States v. Cruz-Zamora*, 318 F. Supp. 3d 1264 (D. Kan. 2018).

specifically lays out the dangers of machine translation.¹⁷ During the drafting of these standards, language access advocates reached consensus that machine translation is not a good option for courts. These standards represent a compromise reached over 1½ years of working together in a representative group. Any technological advancements that promote the use of machine translations as a component without human review, undoes this compromise. It will encourage a race to the bottom, with many providers using it as a green light to start providing bad translations to consumers, completely vitiating these standards.

As shown below, the advances to machine translation are not substantial enough to produce accessible language. Translations from the target languages also show that deficiencies still exist in using the Google Translate tool. For example, Community Legal Services in Arizona previously had this professionally translated disclaimer on their website in Spanish:

Ésta página y su contenido, cualquier sitio afiliado, incluyendo, pero no limitándose a la cuenta de Facebook de CLS, la página de Twitter de CLS, ni el uso de las mismas establecen una relación cliente-abogado entre CLS y quienes las visiten.

Using Google Translate, the translation into English states:

This page and its content, any affiliated site, including, but not limited to, the CLS Facebook account, the CLS Twitter page, or the use thereof, establish a client-attorney relationship between CLS and those who visit them.

The actual English version stated:

The site, its contents and any affiliated sites, including, but not limited to, CLS' Facebook page and Twitter page, are not intended to establish and their use does not establish an attorney-client relationship between CLS and any visitor.

As you can see, Google Translate provides the exact opposite message desired, indicating that a client-lawyer relationship is created between CLS and those who use the website.

Machine Translations Alone Create Mistrust, Confusion & Misrepresentation of Services

Inaccurate translations, like the example above, will create confusion and misrepresentation within linguistically marginalized communities regarding the services providers offer and other information critical to client needs, even if it is for simple content. Assuming such information is generally relayed, linguistically marginalized communities may view providers as lacking credibility and legitimacy because messages are portrayed with grammatical mistakes and tones that could be perceived as informal, offensive or childish.

¹⁷American Bar Association Standards for Language Access in the Courts, February 2012, at 86 (http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.authcheckdam.pdf).

The choice of terminology is also very important, and machine translation cannot differentiate the many nuances in our legal services vocabulary. It will affect the ability to establish trust in these communities, many of which are historically underserved and very difficult to reach. Inviting providers to use machines to provide wholesale translations without considering the needs of different communities and how information should be presented misses the point of truly enhancing accessibility for consumers who do not use English as their dominant language. As stated below, this will have a discriminatory impact on linguistically marginalized communities not having access to and receiving the same assistance as English speakers.

Discriminatory Effect on Linguistically Marginalized Communities

Our greatest concern is the message this policy sends to and about linguistically marginalized communities. It creates a substandard level of what is acceptable for English speakers versus non-English speakers. This is discriminatory and offensive to many of us who are serving and part of these very communities. They deserve the same respect, clarity, and lucidity that we provide to English speakers regarding critical services offered. With the current trends in legal services favoring the use of “plain language”, even materials in English go through multiple revisions and checks before being released to the public. To release information without any type of review is irresponsible and shows disrespect to linguistically marginalized communities. The inevitable result will be less access and fewer services provided to linguistically marginalized communities.

We would also like to suggest that any guidelines on technology and machine translations be opened up for additional community input. This is an extremely important issue with many stakeholders, including professional translator organizations and community groups on the ground serving linguistically marginalized communities. Having sufficient time to obtain appropriate feedback would benefit all those involved.

Thank you for the opportunity to provide these comments to the State Bar of California. In the public interest community, we continuously seek to identify, understand, and address the complexities of the barriers our communities face, to ensure that justice is still an option for all. If you have any questions or seek any further information, please contact Joann Lee at jlee@lafla.org or (323) 801-7976. Thank you.

Sincerely,



Joann H. Lee
Special Counsel

Appendix 6: Comment Letter from the Legal Aid Foundation of Los Angeles

LAFLA Language Access Comments to ATILS Task Force

February 20, 2020

Page 8

Appendix 7: Proposed Amended Rule 5.4, Clean and Redline

Rule 5.4 Financial and Similar Arrangements with Nonlawyers (Clean Version)

- (a) A lawyer or law firm* shall not share legal fees directly or indirectly with a nonlawyer or with an organization that is not authorized to practice law, except that:
 - (1) an agreement by a lawyer with the lawyer's firm,* partner,* or associate may provide for the payment of money or other consideration over a reasonable* period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;*
 - (2) a lawyer purchasing the practice of a deceased, disabled or disappeared lawyer may pay the agreed-upon purchase price, pursuant to rule 1.17, to the lawyer's estate or other representative;
 - (3) a lawyer or law firm* may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement, provided the plan does not otherwise violate these rules or the State Bar Act;
 - (4) a lawyer or law firm* may pay a prescribed registration, referral, or other fee to a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for Lawyer Referral Services; or
 - (5) where a nonprofit organization employs, retains , recommends, or facilitates employment of a lawyer in a matter, (i) the lawyer or law firm* may share with or pay a court-awarded legal fee to that nonprofit organization, and (ii) where the legal fee in the matter is not court awarded but arises from a settlement or other resolution of the matter, the lawyer or law firm may share or pay the legal fee to the nonprofit organization, provided that the nonprofit organization qualifies under Section 501(c)(3) of the Internal Revenue Code.
- (b) A lawyer shall not form a partnership or other organization with a nonlawyer if any of the activities of the partnership or other organization consist of the practice of law.
- (c) A lawyer shall not permit a person* who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's independent professional judgment or interfere with the lawyer-client relationship in rendering legal services.
- (d) A lawyer shall not practice with or in the form of a professional corporation or other organization authorized to practice law for a profit if:
 - (1) a nonlawyer owns any interest in it, except that a fiduciary representative of a lawyer's estate may hold the lawyer's stock or other interest for a reasonable* time during administration;

Appendix 7: Proposed Amended Rule 5.4, Clean and Redline

- (2) a nonlawyer is a director or officer of the corporation or occupies a position of similar responsibility in any other form of organization; or
 - (3) a nonlawyer has the right or authority to direct or control the lawyer's independent professional judgment.
- (e) The Board of Trustees of the State Bar shall formulate and adopt Minimum Standards for Lawyer Referral Services, which, as from time to time amended, shall be binding on lawyers. A lawyer shall not accept a referral from, or otherwise participate in, a lawyer referral service unless it complies with such Minimum Standards for Lawyer Referral Services.
- (f) A lawyer shall not practice with or in the form of a nonprofit legal aid, mutual benefit or advocacy group if the nonprofit organization allows any third person* to interfere with the lawyer's independent professional judgment, or with the lawyer-client relationship, or allows or aids any person* to practice law in violation of these rules or the State Bar Act.

Comment

[1] Paragraph (a) does not prohibit a lawyer or law firm* from paying a bonus to or otherwise compensating a nonlawyer employee from general revenues received for legal services, provided the arrangement does not interfere with the independent professional judgment of the lawyer or lawyers in the firm* and does not violate these rules or the State Bar Act. However, a nonlawyer employee's bonus or other form of compensation may not be based on a percentage or share of fees in specific cases or legal matters.

[2] Paragraph (a) also does not prohibit payment to a nonlawyer third-party for goods and services provided to a lawyer or law firm;* however, the compensation to a nonlawyer third-party may not be determined as a percentage or share of the lawyer's or law firm's overall revenues or tied to fees in particular cases or legal matters. A lawyer may pay to a nonlawyer third-party, such as a collection agency, a percentage of past due or delinquent fees in concluded matters that the third-party collects on the lawyer's behalf.

[3] Paragraph (a)(5), as just one example, permits a lawyer to share with or pay court-awarded legal fees to nonprofit legal aid, mutual benefit, and advocacy groups that are not engaged in the unauthorized practice of law. (See *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]; see also rule 6.3.) Regarding a lawyer's contribution of legal fees to a legal services organization, see rule 1.0, Comment [5] on financial support for programs providing pro bono legal services.

[4] Depending on the specific facts and circumstances, a lawyer's sharing of fees as permitted by paragraph (a)(5) might constitute a "significant development" that must be communicated to a client under rule 1.4 and Business and Professions Code section 6068(m).

[5] This rule is not intended to affect case law regarding the relationship between insurers and lawyers providing legal services to insureds. (See, e.g., *Gafcon, Inc. v. Ponsor Associates* (2002) 98 Cal.App.4th 1388 [120 Cal.Rptr.2d 392].)

Appendix 7: Proposed Amended Rule 5.4, Clean and Redline

[6] Paragraph (c) is not intended to alter or diminish a lawyer's obligations under rule 1.8.6 (Compensation from One Other than Client).

Appendix 7: Proposed Amended Rule 5.4, Clean and Redline

Rule 5.4 Financial and Similar Arrangements with Nonlawyers (Redline Version)

- (a) A lawyer or law firm* shall not share legal fees directly or indirectly with a nonlawyer or with an organization that is not authorized to practice law, except that:
- (1) an agreement by a lawyer with the lawyer's firm,* partner,* or associate may provide for the payment of money or other consideration over a reasonable* period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;*
 - (2) a lawyer purchasing the practice of a deceased, disabled or disappeared lawyer may pay the agreed-upon purchase price, pursuant to rule 1.17, to the lawyer's estate or other representative;
 - (3) a lawyer or law firm* may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement, provided the plan does not otherwise violate these rules or the State Bar Act;
 - (4) a lawyer or law firm* may pay a prescribed registration, referral, or other fee to a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for Lawyer Referral Services; or
 - ~~(5) a lawyer or law firm* may share with or pay a court awarded legal fee to a nonprofit organization that employed, retained or recommended employment of the lawyer or law firm* in the matter.~~
 - (5) where a nonprofit organization employs, retains , recommends, or facilitates employment of a lawyer in a matter, (i) the lawyer or law firm* may share with or pay a court-awarded legal fee to that nonprofit organization, and (ii) where the legal fee in the matter is not court awarded but arises from a settlement or other resolution of the matter, the lawyer or law firm may share or pay the legal fee to the nonprofit organization, provided that the nonprofit organization qualifies under Section 501(c)(3) of the Internal Revenue Code.
- (b) A lawyer shall not form a partnership or other organization with a nonlawyer if any of the activities of the partnership or other organization consist of the practice of law.
- (c) A lawyer shall not permit a person* who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's independent professional judgment or interfere with the lawyer-client relationship in rendering legal services.
- (d) A lawyer shall not practice with or in the form of a professional corporation or other organization authorized to practice law for a profit if:

Appendix 7: Proposed Amended Rule 5.4, Clean and Redline

- (1) a nonlawyer owns any interest in it, except that a fiduciary representative of a lawyer's estate may hold the lawyer's stock or other interest for a reasonable* time during administration;
 - (2) a nonlawyer is a director or officer of the corporation or occupies a position of similar responsibility in any other form of organization; or
 - (3) a nonlawyer has the right or authority to direct or control the lawyer's independent professional judgment.
- (e) The Board of Trustees of the State Bar shall formulate and adopt Minimum Standards for Lawyer Referral Services, which, as from time to time amended, shall be binding on lawyers. A lawyer shall not accept a referral from, or otherwise participate in, a lawyer referral service unless it complies with such Minimum Standards for Lawyer Referral Services.
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Comment

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Appendix 7: Proposed Amended Rule 5.4, Clean and Redline

[5] This rule is not intended to affect case law regarding the relationship between insurers and lawyers providing legal services to insureds. (See, e.g., *Gafcon, Inc. v. Ponsor Associates* (2002) 98 Cal.App.4th 1388 [120 Cal.Rptr.2d 392].)

[56] Paragraph (c) is not intended to alter or diminish a lawyer's obligations under rule 1.8.6 (Compensation from One Other than Client).

Appendix 8: Proposed Amended Rule 1.1, Clean and Redline

Rule 1.1 Competence (Clean Version)

- (a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- (b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably* necessary for the performance of such service.
- (c) If a lawyer does not have sufficient learning and skill when the legal services are undertaken, the lawyer nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyer whom the lawyer reasonably believes* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyer whom the lawyer reasonably believes* to be competent.
- (d) In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required if referral to, or association or consultation with, another lawyer would be impractical. Assistance in an emergency must be limited to that reasonably* necessary in the circumstances.

Comment

- [1] The duties set forth in this rule include the duty to keep abreast of the changes in the law and its practice, including the benefits and risks associated with relevant technology.
- [2] This rule addresses only a lawyer’s responsibility for his or her own professional competence. See rules 5.1 and 5.3 with respect to a lawyer’s disciplinary responsibility for supervising subordinate lawyers and nonlawyers.
- [3] See rule 1.3 with respect to a lawyer’s duty to act with reasonable* diligence.

Appendix 8: Proposed Amended Rule 1.1, Clean and Redline

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- (a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
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- (c) If a lawyer does not have sufficient learning and skill when the legal services are undertaken, the lawyer nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyer whom the lawyer reasonably believes* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyer whom the lawyer reasonably believes* to be competent.
- (d) In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required if referral to, or association or consultation with, another lawyer would be impractical. Assistance in an emergency must be limited to that reasonably* necessary in the circumstances.

Comment

[1] The duties set forth in this rule include the duty to keep abreast of the changes in the law and its practice, including the benefits and risks associated with relevant technology.

~~[1]~~2] This rule addresses only a lawyer’s responsibility for his or her own professional competence. See rules 5.1 and 5.3 with respect to a lawyer’s disciplinary responsibility for supervising subordinate lawyers and nonlawyers.

~~[2]~~3] See rule 1.3 with respect to a lawyer’s duty to act with reasonable* diligence.

Appendix 9: Proposed New Rule 5.7

Rule 5.7 Responsibilities Regarding Nonlegal Services

- (a) A lawyer is subject to these rules and the State Bar Act with respect to the provision of nonlegal services, as defined in paragraph (c)(1), if the nonlegal services are provided by the lawyer:
 - (1) in circumstances that are not distinct from the lawyer's provision of legal services to clients; or
 - (2) in other circumstances by an organization other than a law firm* that is (i) owned separately by the lawyer or (ii) owned with others unless written disclosure as defined in paragraph (c)(2) is provided to the recipient of the services that (i) the services are not legal services and (ii) that the protections of the lawyer-client relationship do not exist.
- (b) When a lawyer knows* or reasonably should know* that a recipient of nonlegal services provided pursuant to paragraph (a)(2) does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role with respect to the provision of nonlegal services and the lawyer's role as one who represents a client.
- (c) For purposes of this rule:
 - (1) "Nonlegal services" means services that might reasonably be performed in conjunction with the practice of law, including services that may be lawfully performed by a person who is not authorized to practice law.
 - (2) "Written disclosure" means advance written notice is communicated to the person receiving the services that explains that the services are not legal services and that the protections of a lawyer-client relationship do not exist with respect to the nonlegal services.

Comments

[1] Rule 5.7 applies to the provision of nonlegal services as defined in paragraph (c)(1) by a lawyer even when the lawyer does not provide legal services to the person for whom the nonlegal services are performed and whether the nonlegal services are performed through a law firm or a separate entity. The rule identifies the circumstances in which all of the Rules apply to the provision of nonlegal services. Even when those circumstances do not exist, the conduct of a lawyer involved in the provision of nonlegal services is subject to those rules and provisions of the State Bar Act that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. (see, e.g., Rule 8.4 and Business and Professions Code § 6106).

[2] When nonlegal services are provided by a lawyer under circumstances that are not distinct from the provision of legal services to clients, the lawyer involved in the provision of nonlegal services is subject to the Rules and the State Bar Act. For example, a lawyer must

Appendix 9: Proposed New Rule 5.7

conform to the Rules and the State Bar Act as to all nonlegal services the lawyer renders in a dual capacity along with legal services for a single client or in a single matter, even if the nonlegal services might otherwise be performed by nonlawyers. (See, e.g., *Layton v. State Bar* (1990) 50 Cal.3d 889, 904 [268 Cal.Rptr. 845] (serving as executor and lawyer for estate); *Kelly v. State Bar* (1991) 53 Cal.3d 509, 517 [280 Cal.Rptr. 298] (serving as lawyer and business agent).)

[3] A lawyer who assumes a fiduciary relationship in the provision of nonlegal services to a person who is not a client of the lawyer or the lawyer's firm and who violates a fiduciary duty in a manner that would justify disciplinary action if there was an lawyer-client relationship may be subject to discipline for the misconduct. (See, e.g., *Schneider v. State Bar* (1987) 43 Cal.3d 784, 796-797 [239 Cal.Rptr. 111] (lawyer acting as a trustee); *Worth v. State Bar* (1976) 17 Cal.3d 337, 341 [130 Cal.Rptr. 712] (lawyer acting as a real estate broker); *Sodikoff v. State Bar* (1975) 14 Cal.3d 422, 429 [121 Cal.Rptr. 467] (lawyer representing administrator of estate and acting as agent for estate beneficiary in sale of estate property held to be in fiduciary relationship with beneficiary); *Crooks v. State Bar* (1970) 3 Cal.3d 346, 355 [90 Cal.Rptr. 600] (lawyer acting as an escrow holder); *In the Matter of Schooler* (Rev. Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494 (lawyer acting as trustee).)

[4] When a lawyer-client relationship exists with a person and the lawyer refers that client to a separate organization owned by the lawyer individually or with others for the provision of nonlegal services, the lawyer must comply with rule 1.8.1. (See, e.g., *Beery v. State Bar* (1987) 43 Cal.3d 802, 811-813 [239 Cal.Rptr. 121].)

[5] Under some circumstances the legal and nonlegal services rendered in the same matter may be so closely entwined that they cannot be distinguished from each other, and the requirements of paragraph (a) cannot be met. In such a case, the lawyer is responsible for assuring that the lawyer's conduct, and to the extent required by rule 5.3, the conduct of non-lawyers in the firm or in separate organization complies with the rules.

[6] A lawyer who is obligated to accord recipients of nonlegal services the full protection of the rules and the State Bar Act must adhere to the requirements of the rules addressing conflicts of interest (rules 1.7 – 1.11), the requirements of rules 1.6 and 1.8.2 relating to the protection of client confidential information, and lawyer advertising rules (rules 7.1 – 7.5).

Appendix 10: ATILS Summary of Other Relevant Case Law Concerning the Provision of Nonlegal Services

Summary of Other Relevant Case Law Concerning Provision of Nonlegal Services

In *Kelly v. State Bar* (1991) 53 Cal.3d 509, the attorney had represented Smyth in various business matters for a number of years. Smyth loaned money to the owner of an airplane, the owner defaulted, and Smyth became the owner of the airplane. Smyth and Kelly agreed that Kelly would sell the plane and would receive 50 percent of the sale price as his compensation. Kelly sold the plane but did not deposit the net proceeds in his client trust account. The check Kelly gave Smyth was returned for insufficient funds. Although Kelly had represented Smyth as an attorney in various matters, the airplane sale was a straightforward business transaction, which did not involve the practice of law. This circumstance did not insulate Kelly from discipline. The Supreme Court held that “when an attorney serves a single client both as an attorney and as one who renders nonlegal services, he or she must conform to the Rules of Professional Conduct in the provision of all services,” citing Layton.

In the *Matter of Schooler* (Rev. Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494, the respondent in that matter violated her fiduciary duties as trustee of her parents’ trust and estate under the Probate Code and by making misrepresentations and misappropriating trust and estate assets. In affirming the findings that respondent committed multiple acts of moral turpitude in violation of section 6106 and failed to comply with the law in violation of section 6068(a), the Court stated:

“The law is clear that even if Schooler was not practicing law, she was required to conform to the ethical standards required of attorneys [*Crawford v. State Bar* (1960) 54 Cal.2d 659]. ‘Attorneys must conform to professional standards in whatever capacity they are acting in a particular matter. [Citations.]’ An attorney who breaches fiduciary duties that would justify discipline if there was an attorney-client relationship may be properly disciplined for the misconduct.”

In *Worth v. State Bar* (1976) 17 Cal.3d 337, 551, an attorney who was also a licensed real estate broker and a licensed contractor obtained money from his law partner’s elderly mother in connection with a real estate development scheme. Having accepted the woman’s investment, the lawyer was found to breach his fiduciary duties by failing to prepare an instrument setting forth the parties’ rights, by commingling funds, by failing to account and by misrepresenting the ownership of the property. The Court held: “[a]n attorney who breaches fiduciary duties that would justify discipline if there was an attorney-client relationship may be properly disciplined for the misconduct.”

In *Crooks v. State Bar* (1970) 3 Cal.3d 346, 475, a lawyer acting as escrow holder violated his fiduciary duties by willfully appropriated to his own use escrow proceeds held by him. The Court stated: “[w]hen an attorney receives money on behalf of a third party who is not his client, he nevertheless is a fiduciary as to such third party. . . . When an attorney assumes a fiduciary relationship and violates his duty in a manner that would justify disciplinary action if the relationship had been that of attorney and client, he may properly be disciplined for his misconduct.”

Appendix 10: ATILS Summary of Other Relevant Case Law Concerning the Provision of Nonlegal Services

Jacobs v. State Bar (1933) 219 Cal. 59, 63-64, is a similar case where the attorney claimed he was not acting as an attorney in the transaction, but merely as an escrow-holder. The Court held: "It may be assumed that he was acting merely as an escrow-holder in the transaction. It is the additional fact of his status as an attorney licensed to practice and member of The State Bar that brings him within its disciplinary reach whenever 'the commission of any act involving moral turpitude, dishonesty or corruption' is involved. [citation] In this connection we are constrained also to note the inconsistency between the petitioner's position that he acted as an escrow-holder merely and his reliance upon cases involving claims and liens as an attorney for services rendered as such pursuant to which he urges the right to retain moneys to satisfy his client's debt to him for services rendered."

Matter of Gordon (Rev. Dept. 2018) 5 Cal. State Bar Ct. Rptr. (2018 WL 5801485) involves an unsuccessful attempt to avoid the statutory prohibition against attorneys receiving advance fees for loan modification services prior to completion of the work. Respondent marketed his services nationwide using misleading, false advertising. To justify his advance fees, he characterized his work as "pre-litigation" activities and his loan modification work as "pro bono" services. Respondent claimed he was not engaging in the practice of law in providing loan modification assistance to homeowners as a part of the "custom products" he sold. However, the customers were told that they were getting the services of an attorney and that an attorney would handle the loan modifications "pro bono." The work of the non-lawyers was found to constitute the practice of law. The Court held that although certain services (such as loan modifications) might be performed by lay people, "it does not follow that when they are rendered by an attorney, or in his office, they do not involve the practice of law" (citing *Crawford*, (1960) 54 Cal.2d 659).

In *Clancy v. State Bar* (1969) 71 Cal. 2d 140, the attorney conceded that he represented the client when he obtained money to invest on her behalf. The facts showed that he concealed adverse and material facts when he obtained the money from his client.

In *Sodikoff v. State Bar* (1975) 14 Cal.3d 422, 429, a fiduciary relation was found to exist between an attorney while acting as counsel for the administrator of an estate and a beneficiary who lived abroad, where by means of misrepresentations, the attorney attempted to buy, for substantially less than its value, realty which had been held in joint tenancy by the beneficiary and the testator. The attorney's communications implied that the attorney or his firm either continue to manage the property for the beneficiary's account or act as his agent in finding a purchaser. Each service was often rendered by an attorney for a client and the beneficiary was aware that respondent was an attorney, and conversely, respondent knew the beneficiary was an elderly man living thousands of miles away. The Court held that even if no formal attorney-client relationship existed, the attorney voluntarily assumed a position of trust and confidence and should be held to similar high standards of conduct: "When an attorney assumes a fiduciary relationship and violates his duty in a manner that would justify disciplinary action if the relationship had been that of attorney and client, he may properly be disciplined for his misconduct" (citing *Clark v. State Bar* (1952) 39 Cal.2d 161, 166).

Appendix 10: ATILS Summary of Other Relevant Case Law Concerning the Provision of Nonlegal Services

Beery v. State Bar (1987) 43 Cal. 3d. 802, involved an attorney soliciting to invest settlement funds for a client the attorney represented in a serious personal injury case without complying with the conflict of interest and business transaction rules. The Court confirmed that an attorney's violation of the duty arising in a fiduciary or confidential relationship warrants discipline even in the absence of an attorney-client relationship, citing *Worth* and *Sodikoff*.

The Supreme Court held in *Guzzetta v. State Bar* (1987) 43 Cal. 3d. 962, 979 that the nature of an agreement to sell a family restaurant in a dissolution proceeding in which Guzzetta represented the husband and the sale proceeds were to be held in Guzzetta's client trust account imposed a duty to the husband's spouse as well as the husband to account for the funds. Rule 1.15 currently applies to funds held for the benefit of a third person to whom the lawyer owe a contractual, statutory or other duty.

The Review Department's recent decision in *Matter of Lingwood* (2019) 2019 WL 4046745 is similar to the Supreme Court decision in *Schneider v. State Bar* (1987) 43 Cal. 3d. 784, 796-797. Each case holds that an attorney who prepares a trust in which she is appointed as trustee and who later lends herself assets of trust must comply with the processor to Rule 1.8.1 (entering into a business transaction with a client) even though the trust powers authorize the trustee to borrow from the trust and the lawyer's fiduciary duties are owed to the beneficiaries. Lingwood was also found culpable under § 6068(a) for failure to comply with the applicable provisions of the Probate Code. The Review Department relies on *Layton* and *Guzzetta* as well as *Schneider* in holding that the Rules impose independent requirements on trustees when they are attorneys. For disciplinary purposes, Lingwood was required to treat the beneficiaries as "clients" for purposes of former rule 3-300 (rule 1.8.1).

Appendix 11: Comparison Table of Authorized Law Related Service Providers Licensing Programs

AUTHORIZED LAW RELATED SERVICES PROVIDERS					
		Paralegal	Legal Document Assistant (LDA)	Unlawful Detainer Assistant (UDA)	Immigration Consultant
Regulatory Body		No regulatory body, but a paralegal must be supervised by a lawyer and lawyers are regulated by the State Bar (see rule 5.3)	No regulatory body, but any person injured by the unlawful act of a LDA retains all rights and remedies available under the law, in addition to a misdemeanor punishable by a fine The county clerk must revoke the registration of a LDA under certain circumstances.	No regulatory body, but any person injured by the unlawful act of a UDA retains all rights and remedies available under the law, in addition to a misdemeanor punishable by a fine. The county clerk must revoke the registration of a UDA under certain circumstances.	The Secretary of State. In addition, any person claiming to be injured by an immigration consultant may bring a civil action for injunctive relief or damages, or both.
Authority		Bus. & Prof. Code, §§ 6450 et seq.	Bus. & Prof. Code, §§ 6400 et seq.	Bus. & Prof. Code, §§ 6400 et seq.	Bus. & Prof. Code, §§ 22440 et seq.
Qualification Requirements	Special Filing	None.	A LDA shall be registered by the county clerk in the county in which his or her principal place of business is located, and in which they maintain a branch office. Bus. & Prof. Code, § 6402.	A UDA shall be registered by the county clerk in the county in which his or her principal place of business is located, and in which they maintain a branch office. Bus. & Prof. Code, § 6402.	An immigration consultant shall file a disclosure form containing certain information with the Secretary of State. Bus. & Prof. Code, § 22443.1, subd. (c)(1)-(5).
	Background Check Requirement	None.	Yes. Bus. & Prof. Code, § 6406, subds. (b)(1)-(5).	Yes. Bus. & Prof. Code, § 6406, subds. (b)(1) - (5).	Yes. Bus. & Prof. Code, § 22441.1, subds. (a), (b)(1)-(3).
	Financial Responsibility	None.	Yes. Bond requirement. Bus. & Prof. Code, § 6405, subd. (a)(1).	Yes. Bond requirement. Bus. & Prof. Code, § 6405, subd. (a)(1).	Yes. Bond requirement. Bus. & Prof. Code, § 22443.1.
	Education/ Experience	Required for eligibility. Bus. & Prof. Code, § 6450, subds. (c)(1)-(4).	Required for eligibility. Bus. & Prof. Code, § 6402.1, subds. (a)-(d).	None. But see, Bus. & Prof. Code, § 6402.1, subds. (a)-(d).	Required for eligibility. Bus. & Prof. Code, § 22440.
Scope of Permissible Activity		A paralegal may perform a wide variety of legal services for a consumer under the supervision and direction of an attorney, law firm, corporation, government agency, or other entity that employs the paralegal. Bus. & Prof. Code, § 6450, subd. (a).	A legal document assistant may only provide "self-help service" assistance to a client. Bus. & Prof. Code, § 6400, subds. (d)(1)-(4).	An unlawful detainer assistant may render assistance or advice in the prosecution or defense of an unlawful detainer claim or action (this includes any bankruptcy petition that may affect the unlawful detainer claim or action). Bus. & Prof. Code, § 6400, subds. (a), (b).	An immigration consultant may only give nonlegal assistance or advice on an immigration matter. Bus. & Prof. Code, § 22441, subds. (a)(1)-(5).

Appendix 11: Comparison Table of Authorized Law Related Service Providers Licensing Programs

AUTHORIZED LAW RELATED SERVICES PROVIDERS					
		Paralegal	Legal Document Assistant (LDA)	Unlawful Detainer Assistant (UDA)	Immigration Consultant
Exclusions		<p>A paralegal is prohibited from engaging in certain conduct, including, but not limited to:</p> <ul style="list-style-type: none">• Providing legal advice;• Representing a client in court;• Selecting, explaining, drafting, or recommending the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal;• Acting as a runner or capper, as defined in Sections 6151 and 6152;• Engaging in conduct that constitutes the unlawful practice of law;• Contracting with, or being employed by, a natural person other than an attorney to perform paralegal services. <p>Bus. & Prof. Code, § 6450, subds. (b)(1)-(8).</p>	<p>A LDA is prohibited from engaging in certain conduct, including, but not limited to:</p> <ul style="list-style-type: none">• Making false or misleading statements;• Making any guarantee or promise to a consumer unless in writing and supported by a “factual basis” for the guarantee or promise;• Providing assistance or advice which constitutes the unauthorized practice of law;• Retaining original documents of a client unless authorized otherwise;• Accepting compensation or entering into a contract for services at time of first client contact without first making required disclosures;• For LDAs only: providing assistance to a client that exceeds the definition of “self-help” services. <p>Bus. & Prof. Code, §§ 6411, 6409, 6410.5, 6401.6.</p>	<p>A UDA is prohibited from engaging in certain conduct, including, but not limited to:</p> <ul style="list-style-type: none">• Making false or misleading statements;• Making any guarantee or promise to a consumer unless in writing and supported by a “factual basis” for the guarantee or promise;• Providing assistance or advice which constitutes the unauthorized practice of law;• Retaining original documents of a client unless authorized otherwise;• Accepting compensation or entering into a contract for services at time of first client contact without first making required disclosures. <p>Bus. & Prof. Code, §§ 6411, 6409, 6410.5.</p>	<p>An immigration consultant is prohibited from engaged in certain conduct, including, but not limited to:</p> <ul style="list-style-type: none">• Making false or misleading statements to a client;• Making any guarantee or promise to a client unless in writing and supported by “some basis in fact;”• Stating or implying that special favors can be obtained or that they have special influence with the applicable agency;• Charging the client a referral fee;• Using with the intent to mislead, translations of “notary public,” “notary,” “licensed,” “attorney,” “lawyer,” or any other term that implies the person is an attorney;• Stating or implying the person is an immigration consultant without having filed a bond with the Secretary of State that is maintained <p>Bus. & Prof. Code, §§ 22444, 22441, subd. (d).</p>
Ethical Obligations		<p>Duty of confidentiality and privilege.</p> <p>Bus. & Prof. Code, § 6453.</p>	<p>Duties relating to written contracts, disclosures, advertisements and solicitations, false and misleading statements, and waivers, but none relating to confidentiality or privilege.</p> <p>Bus. & Prof. Code, §§ 6408 et seq., 6409, 6410 et seq., 6411, 6412.5.</p>	<p>Duties relating to written contracts, disclosures, advertisements and solicitations, false and misleading statements, and waivers, but none relating to confidentiality or privilege.</p> <p>Bus. & Prof. Code, §§ 6408 et seq., 6409, 6410 et seq., 6411, 6412.5.</p>	<p>Duties relating to written contracts, disclosures, advertisements and solicitations, false and misleading statements, and accounting, but none related to confidentiality or privilege.</p> <p>Bus. & Prof. Code, §§ 22444, 22442 et seq.</p>
Continuing Education Requirements		<p>All paralegals must complete 4 hours of legal ethics and 4 hours in general or specialized area of law every 2 years.</p> <p>Bus. & Prof. Code, § 6450, subd. (d).</p>	<p>To be eligible to renew registration, a LDA must complete 15 hours of CLE every two-years.</p> <p>Bus. & Prof. Code, § 6402.2.</p>	<p>To be eligible to renew registration, a UDA must complete 15 hours of CLE every two-years.</p> <p>Bus. & Prof. Code, § 6402.2.</p>	<p>None.</p>

Appendix 11: Comparison Table of Authorized Law Related Service Providers Licensing Programs

AUTHORIZED LAW RELATED SERVICES PROVIDERS					
		Paralegal	Legal Document Assistant (LDA)	Unlawful Detainer Assistant (UDA)	Immigration Consultant
Compliance Enforcement	Financial Penalties	<p>A paralegal found guilty of violating Section 6451 or 6452 is subject to:</p> <ul style="list-style-type: none">• An infraction for the first violation, punishable by a fine of up to two thousand five hundred dollars (\$2,500) as to each affected consumer;• A misdemeanor for the second and each subsequent violation, punishable by a fine of two thousand five hundred dollars (\$2,500) as to each affected consumer, or by both that fine and imprisonment;• A paralegal convicted of a violation of this section shall pay restitution to the victim. <p>Bus. & Prof. Code, § 6455, subd. (b).</p>	<p>A failure to comply with the requirements of Section 6400 et seq. in acting as an LDA is a misdemeanor punishable by a fine of not less than one thousand dollars (\$1,000) or more than two thousand dollars (\$2,000), as to each affected client, or imprisonment for not more than one year, or by both.</p> <p>Bus. & Prof. Code, § 6415.</p>	<p>A failure to comply with the requirements of Section 6400 et seq. in acting as an UDA is a misdemeanor punishable by a fine of not less than one thousand dollars (\$1,000) or more than two thousand dollars (\$2,000), as to each affected client, or imprisonment for not more than one year, or by both.</p> <p>Bus. & Prof. Code, § 6415.</p>	<p>A person who violates this chapter shall be subject to a civil penalty not to exceed one hundred thousand dollars (\$100,000) for each violation, to be assessed and collected in a civil action brought by any person injured by the violation or in a civil action brought in the name of the people of the State of California by the Attorney General, a district attorney, or a city attorney.</p> <p>Bus. & Prof. Code, § 22445, subd. (a)(1).</p>
	Criminal Remedies	<p>As stated above, misdemeanor for the second and each subsequent violation, punishable by a fine of two thousand five hundred dollars (\$2,500) as to each affected consumer, or by both that fine and imprisonment.</p> <p>Bus. & Prof. Code, § 6455, subd. (b).</p>	<p>See above.</p> <p>Bus. & Prof. Code, § 6415.</p>	<p>See above.</p> <p>Bus. & Prof. Code, § 6415.</p>	<p>A violation of this chapter is also a misdemeanor punishable by a fine of not less than two thousand dollars (\$2,000) or more than ten thousand dollars (\$10,000), as to each affected client, or imprisonment in the county jail for not more than one year, or by both fine and imprisonment. A second or subsequent violation is a felony punishable by imprisonment in a state prison.</p> <p>Bus. & Prof. Code, § 22445, subds. (b), (c).</p>
	Consumer Redress	<p>Any consumer injured by a violation of Section 6450 may file a complaint and seek redress for injunctive relief, restitution, and damages. The prevailing plaintiff “shall be awarded” attorney fees.</p> <p>Bus. & Prof. Code, § 6455, subd. (a).</p>	<p>Any person injured by the unlawful act of a LDA shall retain all rights and remedies cognizable under the law. Any person injured by the unlawful act of a LDA may file a complaint and seek redress.</p> <p>Bus. & Prof. Code, § 6412.1, subds. (a), (b).</p>	<p>Any person injured by the unlawful act of a UDA shall retain all rights and remedies cognizable under the law. Any person injured by the unlawful act of a UDA may file a complaint and seek redress.</p> <p>Bus. & Prof. Code, § 6412.1, subds. (a), (b).</p>	<p>A person claiming to be aggrieved by a violation by an immigration consultant may bring a civil action for injunctive relief or damages, or both.</p> <p>Bus. & Prof. Code, § 22446.5, subd. (a).</p>
	Suspension & Revocation	<p>None.</p>	<p>The county clerk shall revoke the registration of a LDA when the LDA has been found guilty of UPL; a misdemeanor violation of applicable statutory chapter, has been found liable under Section 6126.6, or that a civil judgment has been entered against the registrant in an action arising out of the registrant's negligent, reckless, or willful failure to properly perform his or her obligation as an unlawful detainer assistant.</p> <p>Bus. & Prof. Code, § 6413.</p>	<p>The county clerk shall revoke the registration of a UDA when the UDA has been found guilty of UPL; a misdemeanor violation of applicable statutory chapter, has been found liable under Section 6126.6, or that a civil judgment has been entered against the registrant in an action arising out of the registrant's negligent, reckless, or willful failure to properly perform his or her obligation as an unlawful detainer assistant.</p> <p>Bus. & Prof. Code, § 6413.</p>	<p>The Secretary of State shall issue a cease and desist order to a person who has failed to comply with the bond requirements or does not pass a background check.</p> <p>Bus. & Prof. Code, § 22443.2.</p>

Appendix 12: ATILS Examples of Barriers to Entry

ATILS examples of how current barriers to entry and efficiency prevent innovation and expansion of legal services:

- One company that was founded in August 2017, Dupro, was aiming to help people understand complex legal documents for a flat rate. The company was targeting people who did not understand rental agreements, employment contracts and court documents, and if they needed more help it would direct them to a lawyer. Since the company was not owned 100 percent by lawyers, there were legal questions from the beginning as to whether the company would be subject to UPL statutory restrictions and fee-sharing prohibitions. The lawyer co-founder was worried about disbarment, and a backlash from other lawyers made it difficult to go beyond the early stages. The founders eventually closed the business down.
- Another company, Disputly, was created by a tech specialist and an experienced software engineer (neither of whom was a licensed attorney). They were passionate about helping people navigate small claims court, with an initial focus on helping people get their deposits back from landlords. The platform allows renters to log in, give a name and address, how much money is owed, and upload evidence such as emails and rental agreements. The platform then tells them how to make and generate a demand letter, help engage with mediation and, if those efforts fail, initiate the small claims process. It was California's first automated form filler for SC-100. The company struggled to gain traction because of the concern of UPL violations. It was also attempted in Oregon, and again the company was advised that they could not launch because the form filler would be offering legal advice. As a result, while the company has very useful and easy-to-use software that would help many Californians complete the SC-100 form, it is unavailable to the public due to regulatory and statutory restrictions. For more detail on how Disputly works, you can see [this article](#).
- One of the members of ATILS described how her law firm works with financial services companies who have routine and repetitive contract work involving consumer mortgages. The firm hired a programmer to assist in creating a software to assist the firm's attorneys with preparing these documents, saving tens of thousands of dollars a year in legal fees. The firm recognized that if they were able to expand the product to meet the needs of their clients in other states, they could then package it for use outside of the firm to sell to other law firms. However, the cost to develop the product and take it to market, in addition to the ongoing costs of maintaining it, would have required an investment of outside capital with equity ownership. Unfortunately, but the current rules prohibiting fee sharing make such an infusion of capital from an outside entity prohibitive. This example goes directly to the challenges faced by law firms when they attempt to innovate within the confines of the current rules of professional conduct and UPL statutes.
- A project in Arizona allows lay legal advocates at a domestic violence shelter to give limited legal advice beyond just legal information (which is all current UPL statutes would otherwise permit). This unique non-profit project is going live as a result of the Arizona Task Force and the project is part of their report [see <https://law.arizona.edu/i4J>]. This type of project is currently not allowed under the Rules of Professional Conduct and UPL statutes, but they

Appendix 12: ATILS Examples of Barriers to Entry

are hoping to open up similar projects in California, Utah and other jurisdictions creating a regulatory sandbox.

- One innovator interviewed by a Task Force member is in the process of developing a marketplace platform for small claims court that works like TurboTax. There are concerns that the statutes controlling Legal Document Assistants will severely restrict the services that can be offered and limits its usefulness. The availability of a regulatory sandbox would allow such a platform to assist many consumers with respect to small claims court.
- Avvo Advisor was a technology-enabled legal services offering that used an app to connect consumers to a local qualified lawyer for a fixed-fee of \$39 for 15 minutes over the phone. Studies at the time showed that Avvo Advisor offered discrete legal advice to consumers a savings of up to 71 percent over the average hourly fee for a lawyer. There was both statistical evidence - in the form of significant consumer demand for the service - and anecdotal evidence - in the form of stories from users who found and retained lawyers using Avvo Advisor - to demonstrate the need for and value of this product. Consumer reviews of the service were overwhelmingly positive. Lawyers also liked the service. However, several ethics opinions from state bars across the country condemned Avvo Legal Services, which used the same business model as Avvo Advisor. Nearly every opinion took issue with a slightly or completely different aspect of Avvo Advisor, which made responding to those concerns both difficult and costly from a business perspective, and from a technology perspective. The regulatory response suggests that regulation and ethics concerns remain a significant barrier to the development of innovative access services like these.
- Off The Record is a technology-based service that helps connect consumers looking to fight their traffic tickets with local qualified attorneys. Off The Record uses an algorithm that includes response time, customer service satisfaction, cost, and the ultimate legal outcome in order to select the appropriate lawyer for a given client. The Off The Record model does not charge ongoing subscription fees, memberships, or hourly rates - just one fee paid to the attorney to book a traffic matter. If the attorney is not able to get the ticket dismissed or reduced, Off The Record offers the client their money back. Founded in 2015, Off The Record now operates in over 35 states and has seen the cost to fight a ticket in a number of major cities in which it has entered decrease significantly. For example, the generally advertised price to fight a speeding ticket in greater Seattle when Off The Record launched was around \$400. Today, speeding ticket lawyers advertise \$200 or less to fight a ticket. This same thing has occurred in other geographies in which Off The Record has entered. Consumer reviews of Off The Record are overwhelmingly positive. The company now works with over 200 firms in more than 35 states. Some lawyers have even inquired about using the Off The Record service to book all of their cases given the efficiency of the service. Despite this success for both attorneys and consumers, grievances have been filed by competing attorneys not on the platform against participating attorneys in three states so far. Off The Record expects many more of these types of grievances before their model is fully blessed and accepted by local regulators. The company also cites existing fee sharing

Appendix 12: ATILS Examples of Barriers to Entry

prohibitions, and the objections raised by regulators to the Avvo Advisor business model, as inhibiting their ability to more effectively deal with unscrupulous attorneys who, despite the company's vetting process, have taken large sums of client money and then disappeared or refused to complete work assigned to them. The company believes they could stop this conduct if it was permitted to hold some portion of the legal fee until the completion of the legal service.

- Onlinesolutionattorney.be, an online service that allows users to consult with attorneys by email, skype, or phone, has been prevented from expanding into many jurisdictions on the basis of current rules of professional conduct, such as not allowing fee sharing with non-California lawyers.

Appendix 13: ATILS List of Advertising and Solicitation Rule Revisions for Consideration

Examples of Advertising and Solicitation Rule Revisions that Could be Studied

- Whether provisions on false and misleading communications should be combined into rule 7.1 and its comments, including current provisions of rule 7.5 [Firm Names and Trade Names], which largely relate to misleading communications.
- Whether specific rules on lawyer advertising should be consolidated into rule 7.2.
- Whether a new subdivision to rule 7.2(b) should be added as an exception to the general provision against paying for referrals that would permit nominal “thank you” gifts only, and contains other restrictions. ABA Model Rule 7.2 currently states that such a nominal gift is permissible only where not expected as payment for a recommendation of the lawyer’s services. Comment [4] of the Model Rule expands on what is considered nominal, including ordinary social hospitality. The comment clarifies that a gift may not be given based on an agreement to receive referrals or to make future referrals. The proposed additions acknowledge the reality that lawyers frequently give small tokens of appreciation after receiving a referral, and these tokens are neither intended to be a “payment” for the referral nor likely to induce future referrals. Although current California rule 7.2(b)(5) provides that a lawyer may “offer or give a gift or gratuity” to a person who has made a client recommendation, the ABA approach is materially different because it expressly limits this practice to a nominal gratuity.
- Whether in rule 7.2(c), “office address” should be changed to “contact information” to address technological advances that influence how lawyers may be contacted and how advertising is presented.
- Whether the ban on direct solicitation in rule 7.3 should apply solely to live person-to-person contact, including in person, face-to-face, telephone, and real-time electronic or other communications such as Skype. It is recommended that the rule be changed to no longer prohibit solicitations such as chat rooms, text messages, or any other written communications to which recipients would not feel undue pressure to respond.
- Whether the exceptions in rule 7.3(a)(2) should be broadened to permit live person-to-person solicitation of “experienced users of the type of legal services involved for business matters.” The potential for overreaching, that justifies the prohibition against in person solicitation, is unlikely to occur when the solicitation is directed toward experienced users of the legal services in a business matter. Conversely, the prohibition is justified, and a lawyer should not engage in live in person solicitation involving personal legal matters such as criminal defense, family law, or personal injury, even if the person has been represented multiple times.
- Whether the labeling requirement for targeted mailings should be eliminated, but continue to prohibit such mailings that are misleading, involve coercion, duress or harassment, or where the target of the solicitation has made known to the lawyer a desire not to be solicited. SCEPR concluded that the labeling requirement is no longer

Appendix 13: ATILS List of Advertising and Solicitation Rule Revisions for Consideration

necessary because consumers have become accustomed to receiving advertising material by print and electronic delivery. According to SCEPR's report, no evidence was produced showing that consumers are harmed by receiving unmarked written solicitations from lawyers, even if the solicitations are read by consumers. If the solicitation itself or its contents are misleading, the harm is believed to be adequately addressed by rule 7.1 [Communications Concerning a Lawyer's Services].

- Whether the definition of "solicitation" in rule 7.3 should be revised to conform to the definition in the Model Rule and the rule in Virginia; i.e., a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person known to be in need of legal services in a particular matter and that offers to provide, or can reasonably be understood as offering to provide, legal services for that matter.
- Whether rule 7.3 should exempt communications about legal services authorized by law or by court order (such as class action notices).



The State Bar of California



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EXECUTIVE SUMMARY

A key initiative for The State Bar of California is to improve access to and affordability of legal services. As part of this effort, The State Bar formed the [Task Force on Access Through Innovation of Legal Services](#) (ATILS). The goal of the ATILS task force is to recommend regulatory changes to increase access to legal services, including regulatory changes that might support the delivery of legal services through online modalities. To help inform this work, The State Bar engaged NORC at the University of Chicago to investigate the rates at which Californians have access to the internet and what barriers might exist to Californians' use of online legal services.

Lack of access to the internet is not a major barrier for using online legal services for most Californians. At least 88% of Californian adults across demographic groups report having access to the internet at home, either through a broadband subscription or via a cellular data plan with a smartphone.¹ Smartphone dependency – accessing the internet through a smartphone only, rather than with a broadband or satellite subscription – can have a major impact on how individuals interact with websites and the usability of website features. Few Californians, however, are smartphone dependent. Californians with less education are more likely to lack access to the internet via broadband; still, just 11% of those with a high school diploma or less are smartphone dependent.

Californians' personal confidence using the internet, as well as their attitudes about the reliability of legal services online, are barriers to increasing the use of legal websites. About a quarter of Californians lack a high degree of confidence in their own ability to use the internet, and only a third

¹ Any reported differences between subgroups have been confirmed as statistically significant differences at the $p < 0.05$ level in both multivariate regression and bivariate significance testing. In all models, multivariate significance testing controls for age, gender, race/ethnicity, education, income, and whether the respondent speaks Spanish at home.

believe online information about legal issues is accurate. While 75% of Californians have looked for legal information online – such as legal forms or advice – fewer have done so among those who are less confident in their own digital ability as well as those who have concerns about the reliability of online information. Given these barriers, Californians place highest priority on a legal-advice website having high standards of data security, privacy protections comparable to those for lawyers and clients offline, and involvement of a lawyer in the website’s content.

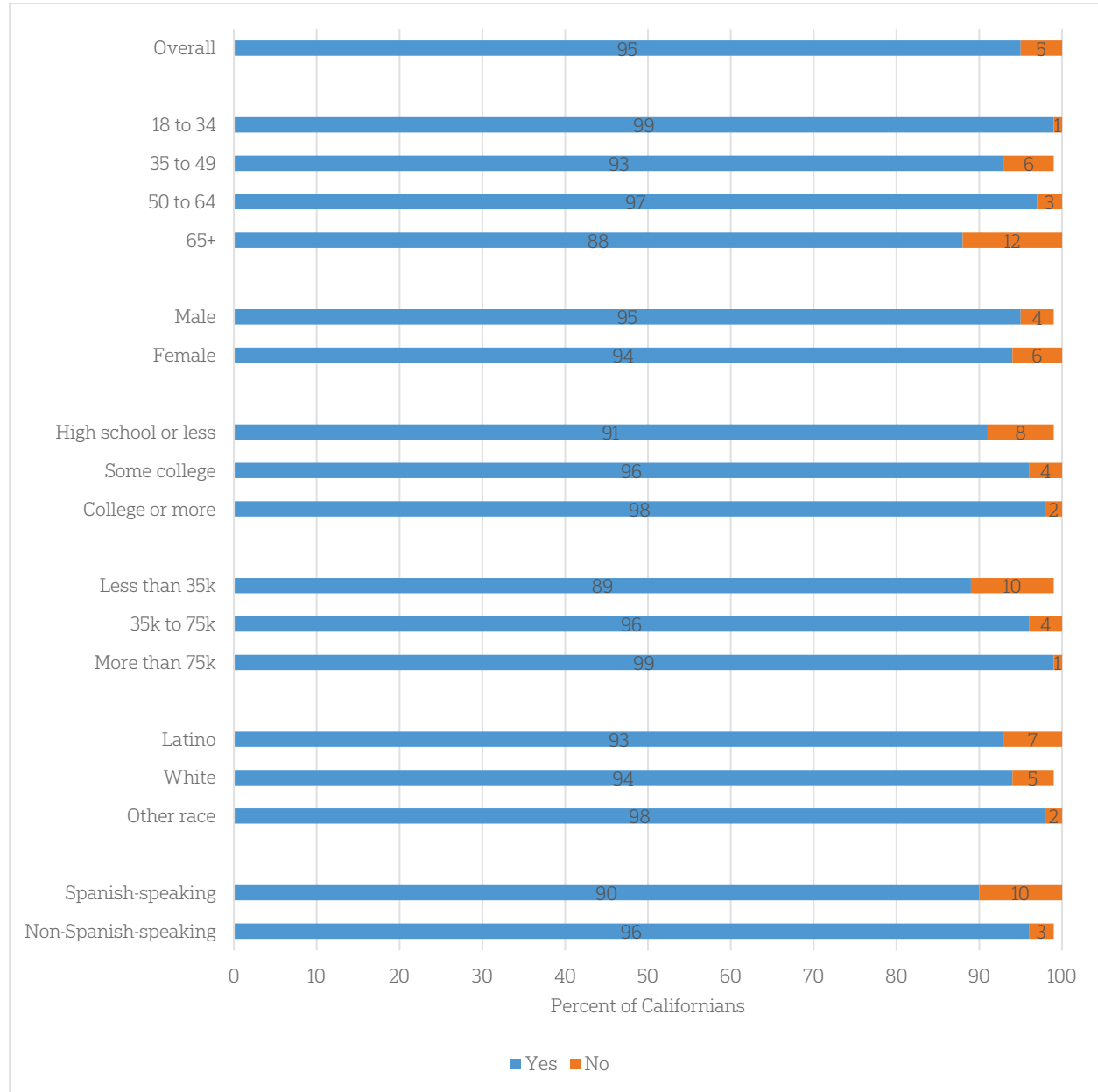
Other key findings:

- Californians place a higher priority on lawyers owning a law firm they are considering using (65% extremely or very important) than a legal-advice website they are deciding to use (46%).
- Older Californians and those with less education express lower levels of confidence in using the internet.
- Among those Californians that report seeking some form of online legal help, the most common legal issues they sought assistance for are money, debt, or tax issues, jobs and employment concerns, and health and medical benefits. As shown in the [2019 California Justice Gap Study](#), these are the most common civil legal issues Californians experience.

INTERNET ACCESS AND USAGE

A broad majority of Californians have internet access at home. Californians age 65 and older, those with lower household incomes and those who speak Spanish are somewhat less likely to have access. Still, at least 88% among these groups are able to get online at home. There are not significant differences among the other demographic groups.

Figure 1: Most Californians across demographic groups have access to internet at home.

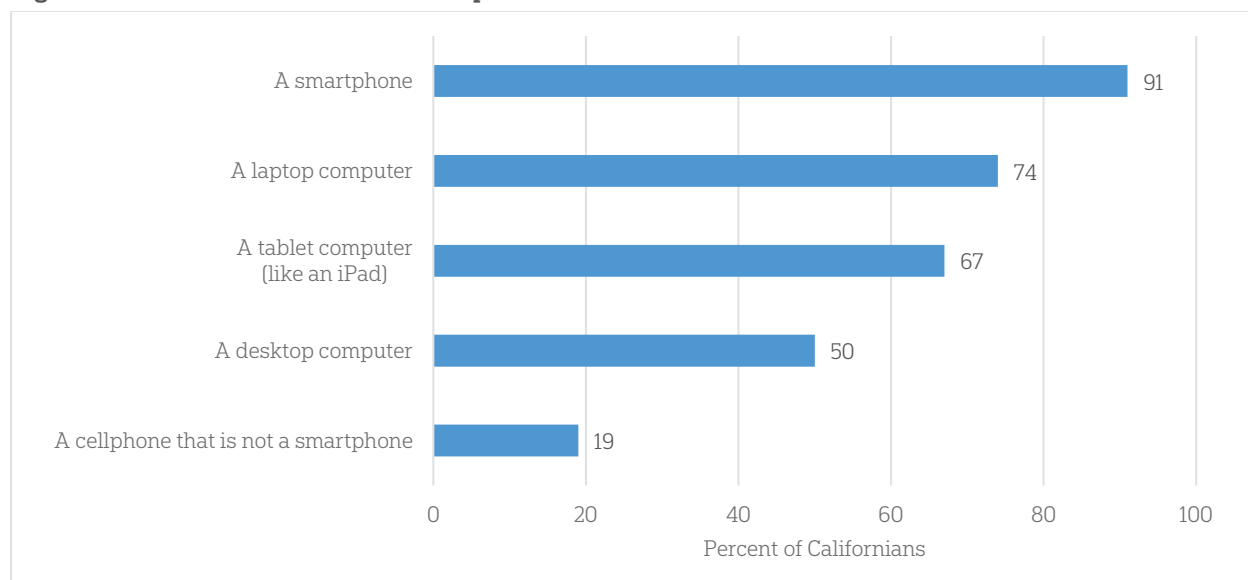


Question: Do you have access to the internet at home?

Source: State Bar of California survey conducted 1/22-2/4/2020 with 1,037 California adults, by NORC at the University of Chicago.

Californians have a variety of devices at home that could be used to access the internet. The most common is a smartphone, but half or more also have a laptop, tablet, or desktop computer. Few Californians report having a non-smartphone cellphone.

Figure 2: Most Californians have smartphones at home.

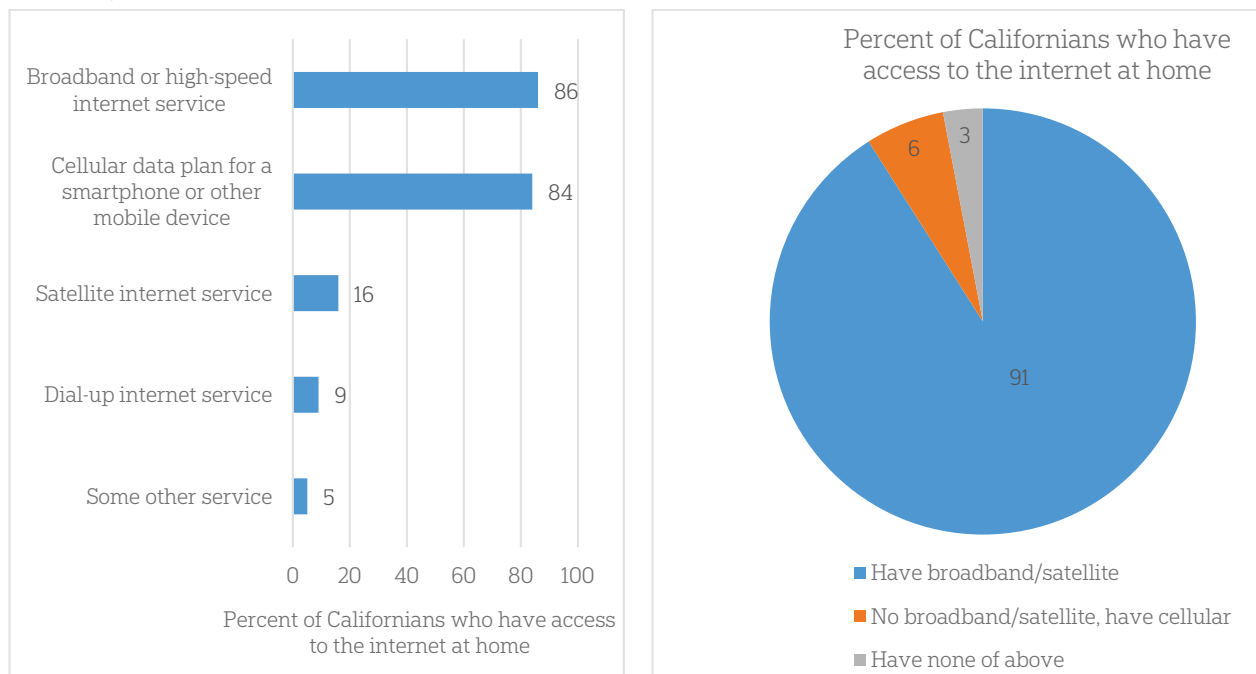


Question: Do you, personally, have access to each of the following at home, or not?

Source: State Bar of California survey conducted 1/22-2/4/2020 with 1,037 California adults, by NORC at the University of Chicago.

Among those Californians with access to the internet at home, the two most common ways to get online are through a broadband or a cellular data plan. Few have service through satellite or dial-up. Just 6% of those with internet access report being smartphone dependent – meaning they have access to the internet via a cellular data plan only and not through broadband or satellite service.

Figure 3: Broadband and cellular data are the most common ways that Californians access the internet at home; few have cellular and no broadband or satellite service



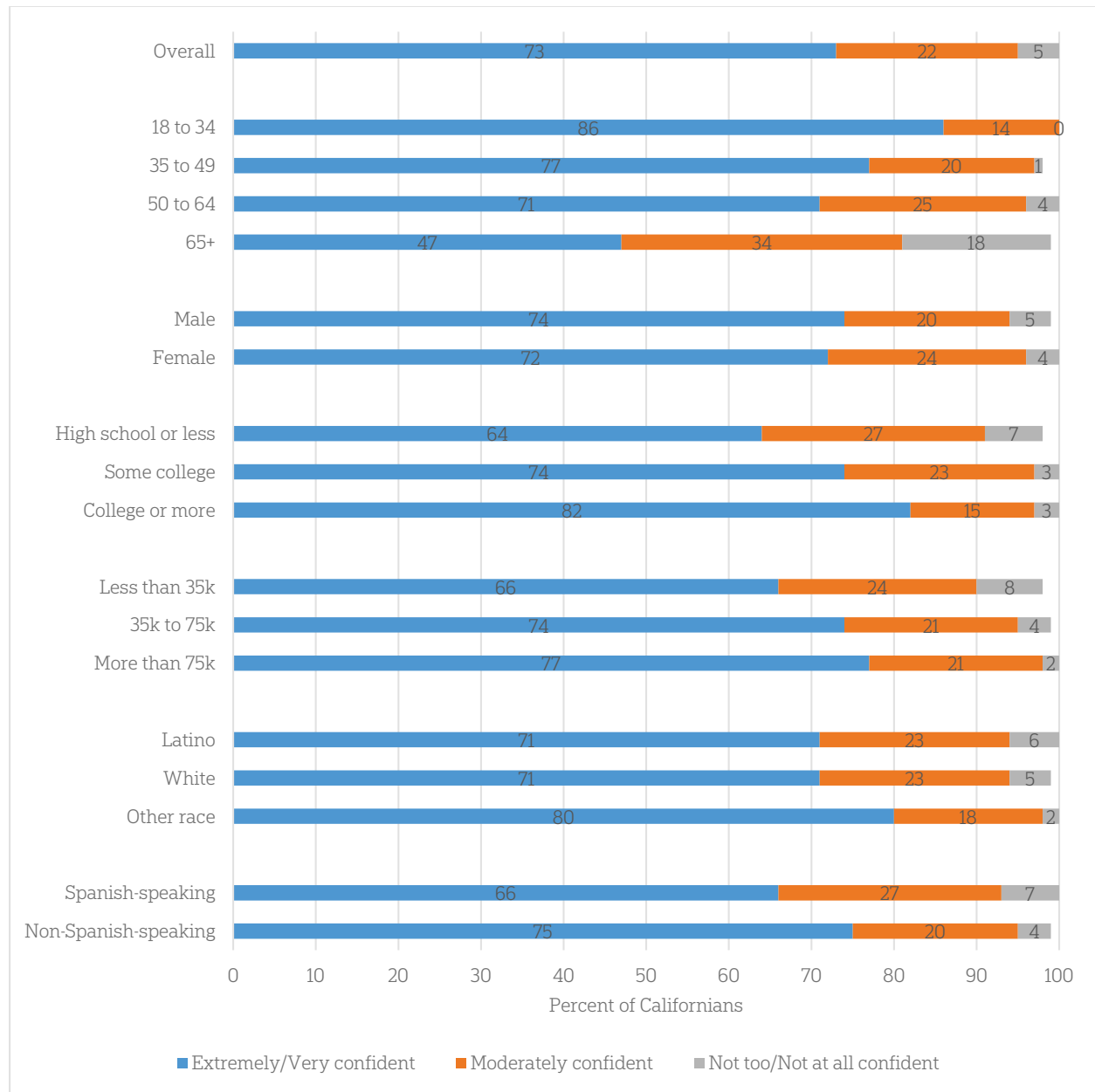
Question: Do you have access to the internet at home using a:

Source: State Bar of California survey conducted 1/22-2/4/2020 with 1,037 California adults, by NORC at the University of Chicago.

Californians use the internet often, and a majority is comfortable doing so. Ninety percent use it at least once a day, including 89% who go online several times a day. Just 9% do so less often than daily.

Nearly three-quarters of Californians are extremely or very confident using electronic devices to do things online, while 22% are moderately confident, and just 5% are not too or at all confident.

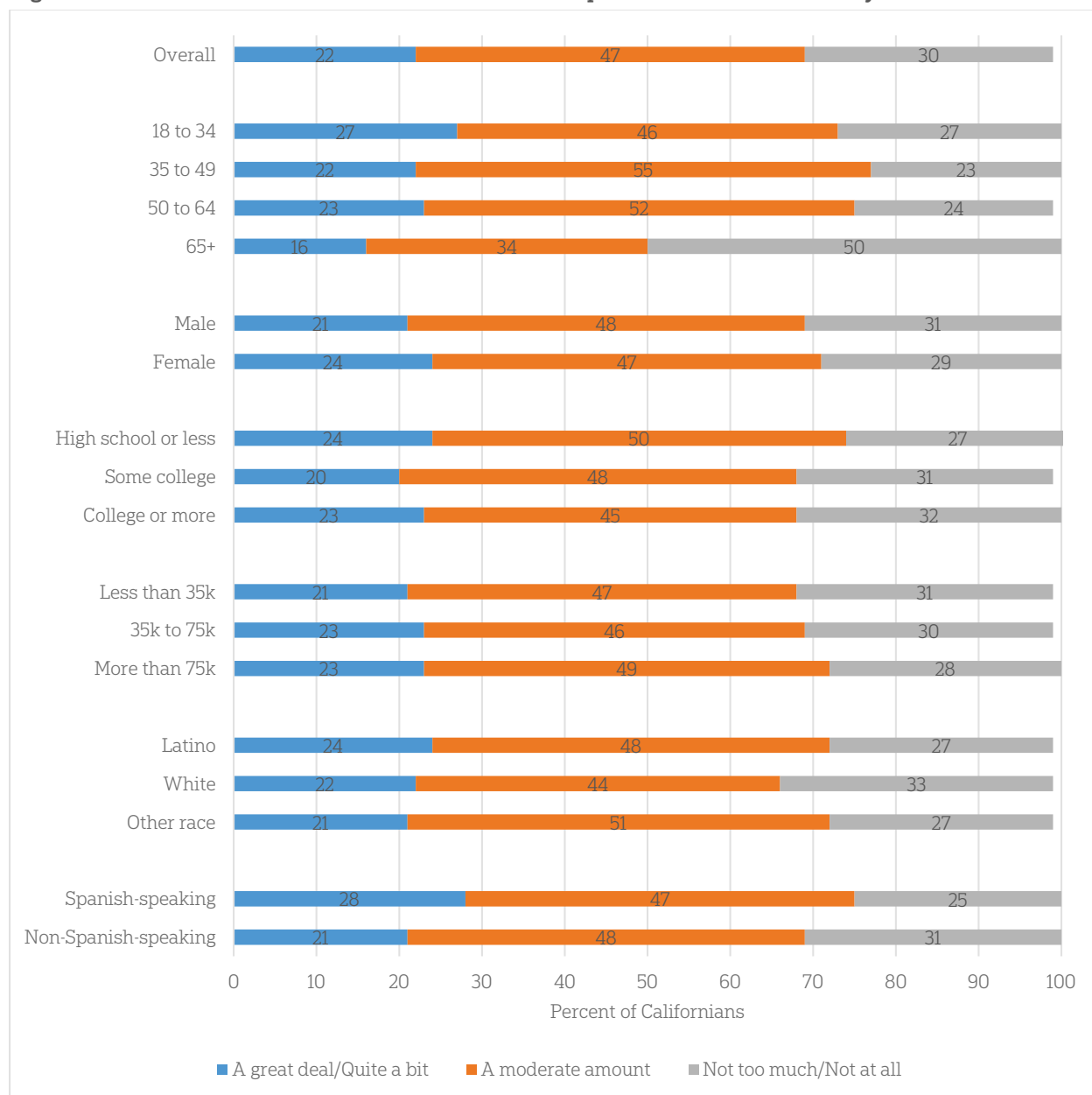
Californians who are older are less likely to access the internet daily and less likely to feel confident doing so. Adults with lower incomes are less likely to access the internet frequently, while adults with less education are less likely to feel confident using the internet. There are no significant differences by gender, race and ethnicity, or language on either of these questions.

Figure 4: Older Californians and those with less education are less confident using the internet.

Question: Overall, how confident do you feel using computers, smartphones, or other electronic devices to do things online?
Source: State Bar of California survey conducted 1/22-2/4/2020 with 1,037 California adults, by NORC at the University of Chicago.

Despite high levels of internet usage, most Californians have only a moderate amount of trust in the security of their information online. Older Californians are least likely to trust websites to secure their personal information. No significant differences emerge among other demographic groups.

Figure 5: Few Californians trust websites to store their personal information safely.



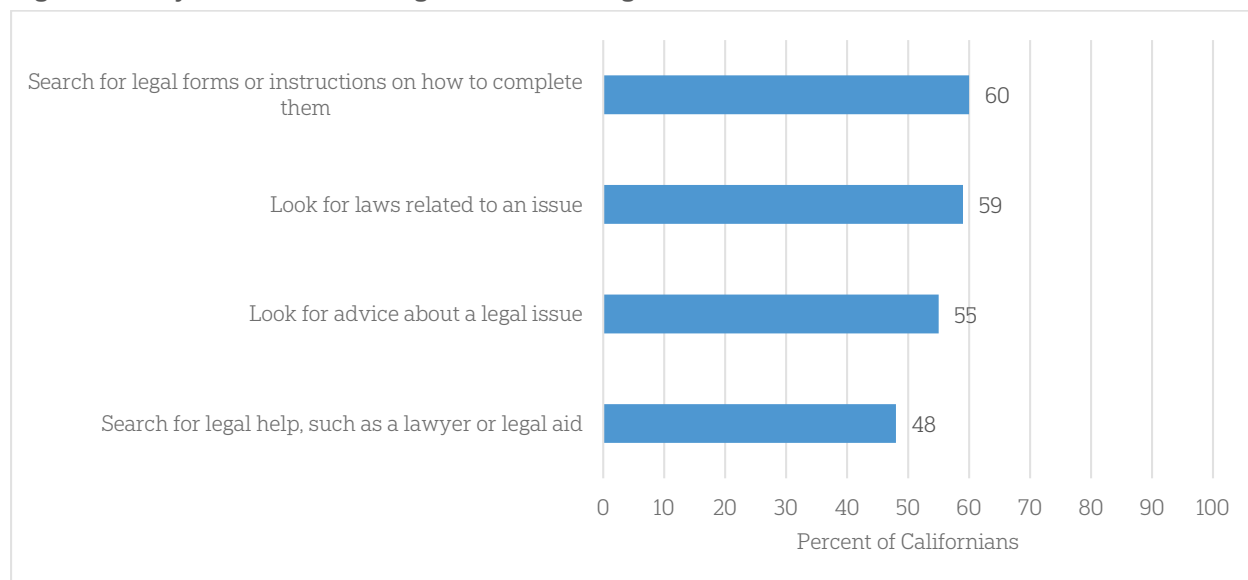
Question: How much do you trust websites to properly secure personal information that you share with them online?

Source: State Bar of California survey conducted 1/22-2/4/2020 with 1,037 California adults, by NORC at the University of Chicago.

ADDRESSING LEGAL ISSUES ONLINE

Many Californians have searched for some form of online help with legal issues. The most common activities are looking for legal forms or how to complete them, and researching laws related to an issue they are experiencing. Fewer Californians report searching for lawyers or legal aid offices online. Three-quarters of Californians have done at least one of these activities online.

Figure 6: Many Californians have gone online for legal advice.

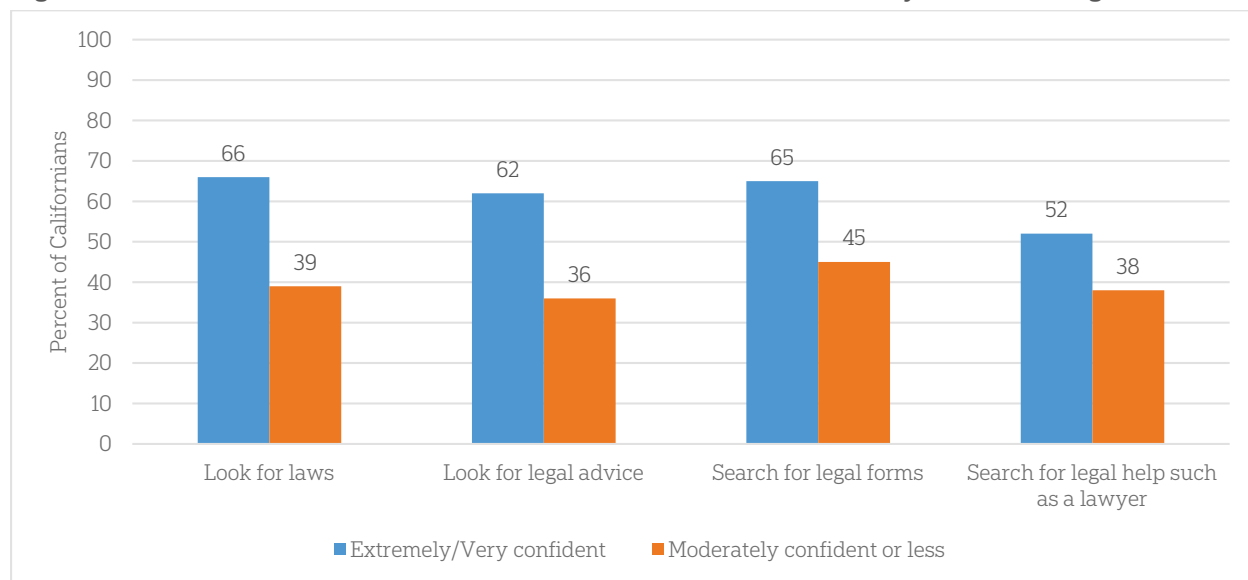


Question: Have you ever used the internet to do any of the following?

Source: State Bar of California survey conducted 1/22-2/4/2020 with 1,037 California adults, by NORC at the University of Chicago.

Californians who are confident using the internet are more likely to have gone online for legal help. For example, 66% of Californians who are comfortable with the internet say they have looked online for laws related to an issue they were experiencing, compared with just 39% of those who are less confident.

Figure 7: Californians who are comfortable with the internet are more likely to use it for legal advice.



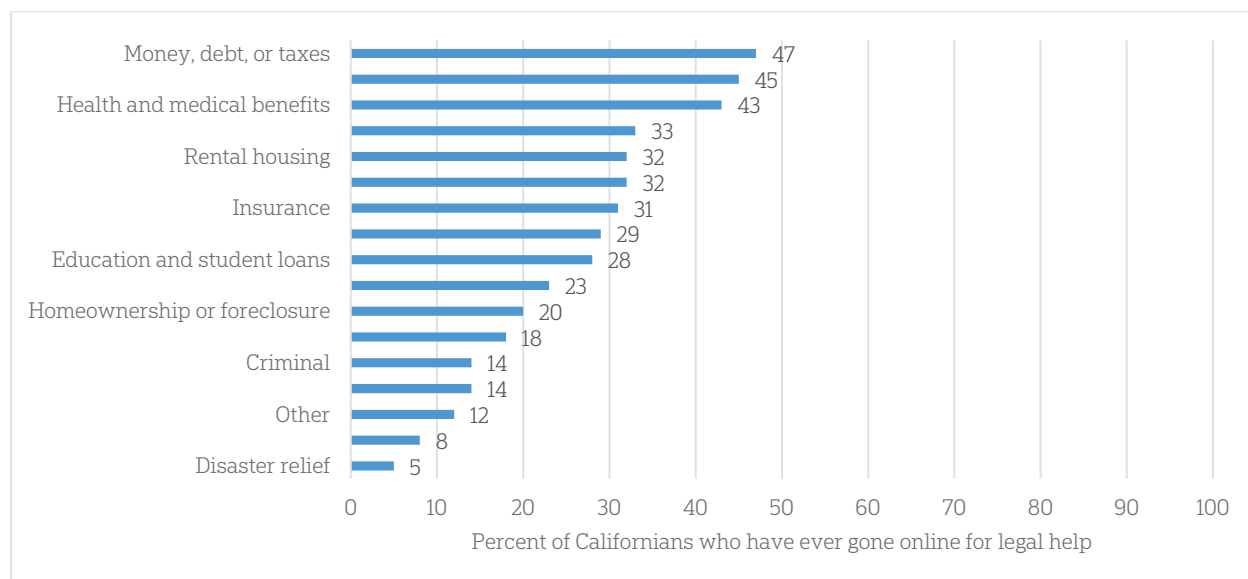
Questions: Overall, how confident do you feel using computers, smartphones, or other electronic devices to do things online? / Have you ever used the internet to do any of the following?

Source: State Bar of California survey conducted 1/22-2/4/2020 with 1,037 California adults, by NORC at the University of Chicago.

Californians age 65 and older and those with lower levels of education are less likely to have sought legal information online. For example, 39% of older adults have looked online for laws about an issue, compared with 63% of those age 18 to 34. Similarly, 45% of Californians with a high school degree or less have used the internet to look for laws, while 70% of college graduates have done this.

Among those Californians who report seeking some form of online legal help, the most common legal issues they sought assistance for are money, debt, or tax issues, jobs and employment concerns, and health and medical benefits. As noted in the 2019 California Justice Gap Study, these are the most common civil legal issues Californians face. Californians are least likely to go online for help with criminal issues, immigration issues, veteran's benefits, or disaster relief.

Figure 8: Californians are most likely to go online for legal help with finance, employment, or health issues.



Question: What types of legal issues did you seek help for online? Select all that apply.

Source: State Bar of California survey conducted 1/22-2/4/2020 with 1,037 California adults, by NORC at the University of Chicago.

There are some large demographic differences in the type of legal issues Californians investigate online. Among those who have gone online to seek help for legal issues, those age 18-34 are much more likely to look for help with education and student loan concerns than those age 65 or older (44% vs. 8%); conversely, older Californians are more focused on wills and estates (50% vs. 10%).

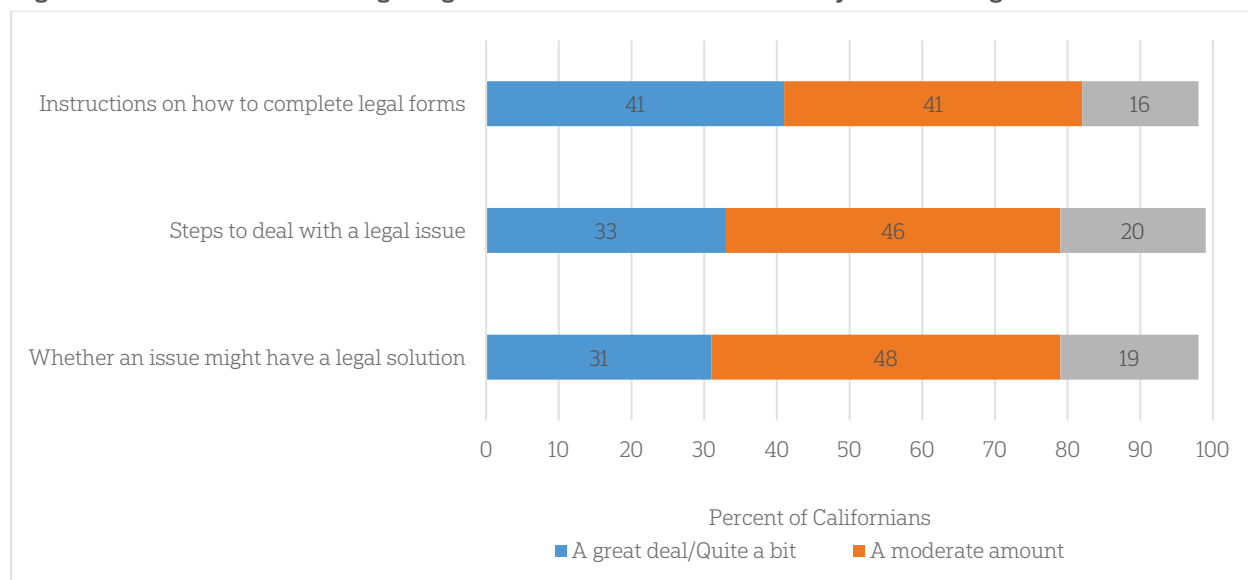
Men are much more likely than women to search for information related to money, debt, or taxes (57% vs. 38%), and less likely to seek help with family, children, or divorce issues (18% vs. 28%), as well as disability benefits (12% vs. 23%).

Californians with at least a college degree are more focused on education concerns (34% vs. 21%) than those with a high school diploma or less.

Californians with a household income below \$35,000 are more likely to have searched for legal information related to rental housing (44% vs. 23%), disability benefits (28% vs. 13%), and government benefits (39% vs. 26%) than those with household incomes of \$75,000 or more; those with higher incomes are more likely to seek help for wills and estates (38% vs. 19%).

When it comes to the accuracy of online legal information, Californians are most confident in information about how to complete legal forms. Fewer have a high degree of trust in online advice about legal steps to solve a particular problem or whether an issue might have a legal solution.

Figure 9: Californians lack a high degree of confidence in the accuracy of online legal information.



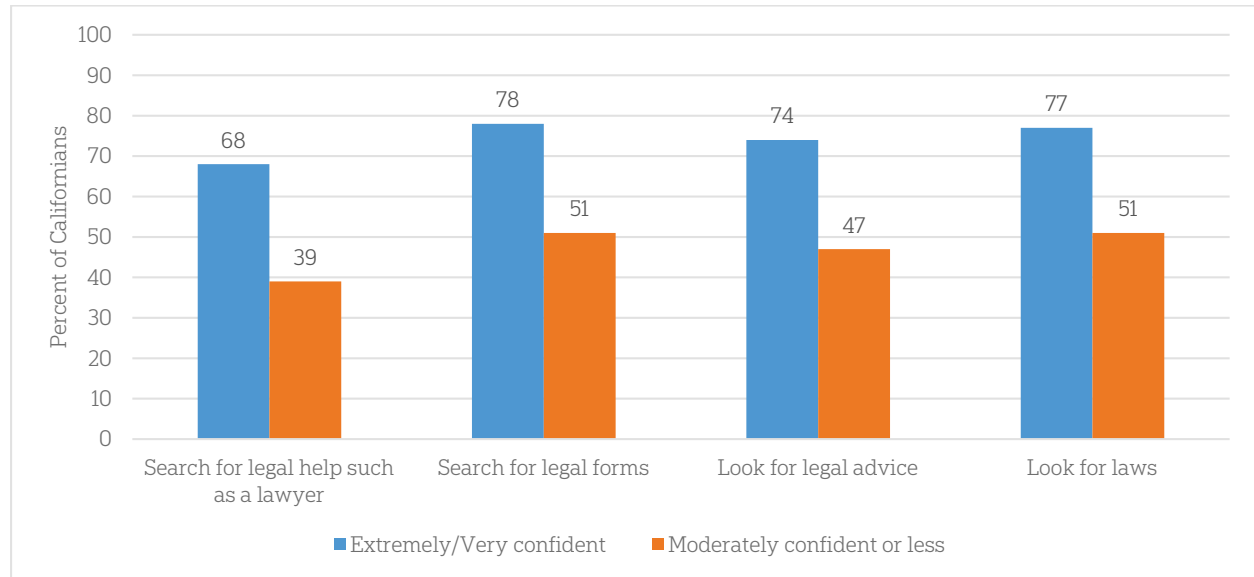
Question: How much confidence do you have in the accuracy of online information about:

Source: State Bar of California survey conducted 1/22-2/4/2020 with 1,037 California adults, by NORC at the University of Chicago.

Younger Californians are more confident about the accuracy of online information they encounter. For example, 46% of adults age 18-34 say they are confident in the accuracy of online instructions about legal forms compared with 34% of those age 65 or older.

Trust in the accuracy of online legal information is strongly related to whether Californians go online to get legal advice. For example, those who have a high degree of trust in online information about steps to deal with a legal issue are at least 26 percentage points more likely to turn to the internet to find legal help across the four items asked about.

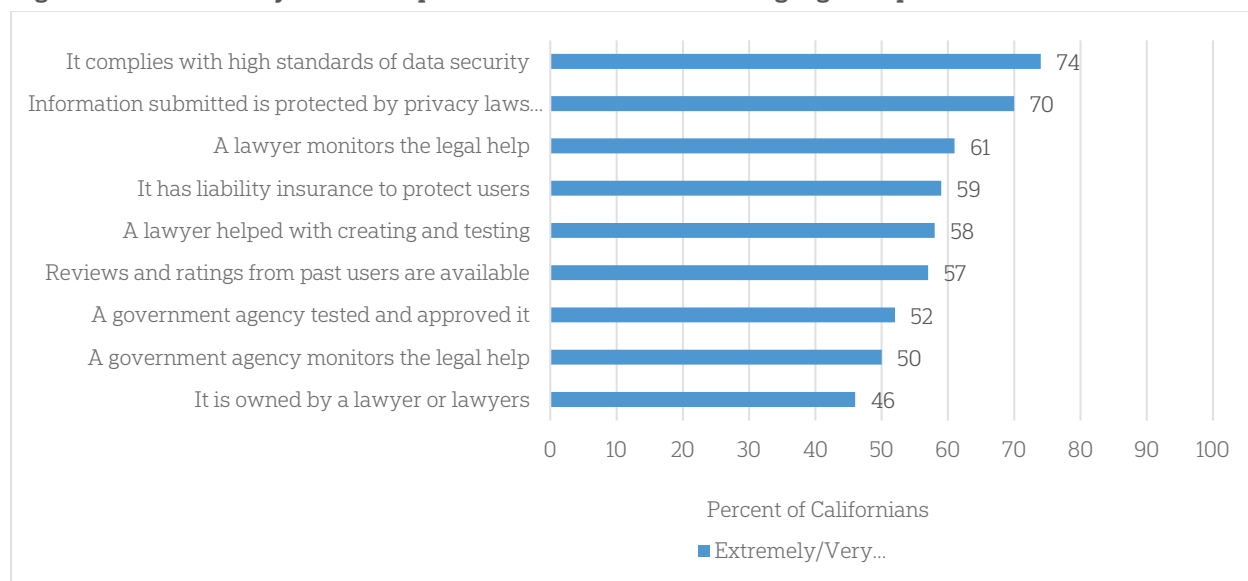
Figure 10: Californians who are confident in the accuracy of online legal information are more likely to go online for legal advice.



Questions: Overall, how much confidence do you have in the accuracy of online information about steps to deal with a legal issue you're experiencing? / Have you ever used the internet to do any of the following?

Source: State Bar of California survey conducted 1/22-2/4/2020 with 1,037 California adults, by NORC at the University of Chicago.

The key components to promoting the use of a legal website are strict security, protections for information shared just like meeting with a lawyer in person, and the involvement of lawyers in the website's content. Broad majorities of Californians say that high standards for data security and protections for privacy of information are extremely or very important to them when deciding to use a website that offers legal help. Lawyers monitoring the legal advice given and being involved with creating and testing the website or application are also top priorities.

Figure 11: Data security is most important to Californians seeking legal help online.

Question: When deciding to use a website or application that offers legal help, how important is it to you that:

Source: State Bar of California survey conducted 1/22-2/4/2020 with 1,037 California adults, by NORC at the University of Chicago.

Still, lawyers *owning* the website is less critical when it comes to getting online legal advice than when looking for a law firm. While 65% of Californians say that a law firm being owned by lawyers is extremely or very important to them when deciding to use it, just 46% say the same about using a website for legal advice.

Californians who primarily speak Spanish at home (58% vs. 43% of non-Spanish speakers) and women (53% vs. 39% of men) are more likely to value a website or application being owned by lawyers.

STUDY METHODOLOGY

This survey was conducted by NORC at the University of Chicago with funding from The State Bar of California.

Data were collected using the AmeriSpeak Panel, NORC's probability-based panel designed to be representative of the U.S. household population. During the initial recruitment phase of the panel, randomly selected U.S. households were sampled with a known, non-zero probability of selection from the NORC National Sample Frame and then contacted by U.S. mail, email, telephone, and field interviewers (face-to-face). The panel provides sample coverage of approximately 97% of the U.S. household population. Those excluded from the sample include people with P.O. Box only addresses, some addresses not listed in the USPS Delivery Sequence File, and some newly constructed dwellings.

Interviews for this survey were conducted between January 22 and February 4, 2020, with adults age 18 and over representing California. Panel members who reside in California were randomly drawn from AmeriSpeak, with their state of residence reconfirmed in field. A total of 1,037 completed the survey—955 via the web and 82 via telephone. Interviews were conducted in both English and Spanish, depending on respondent preference. The final stage completion rate is 25.5%, the weighted household panel response rate is 24.1%, and the weighted household panel retention rate is 85.6%, for a cumulative response rate of 5.26%. The overall margin of sampling error is +/-4.28 percentage points at the 95 percent confidence level, including the design effect. The margin of sampling error may be higher for subgroups. Below is a table of the major subgroups analyzed in this report, with unweighted n-sizes and percentages, as well as the final weighted percentage.

Once the sample has been selected and fielded, and all the study data have been collected and made final, a raking process is used to adjust for any survey nonresponse as well as any noncoverage or under- and oversampling resulting from the study-specific sample design. Weighting variables included age, gender, census division, race/ethnicity, internet access, and education. Weighting variables were obtained from the 2018 Current Population Survey and the 2018 American Community Survey. The weighted data reflect the California population of adults age 18 and over.

	Unweighted n	Percent (unweighted)	Percent (weighted)
Gender			
Men	502	48	49
Women	535	52	51
Age			
18-34	249	24	32
35-49	242	23	26
50-64	260	25	23
65+	286	28	19
Education			
High school or less	163	16	38
Some college	378	36	28
Bachelor's degree or more	496	48	34
Race/Ethnicity			
White (non-Latino)	538	52	41
Latino	289	28	35
Other non-Latino, non-white	210	20	24
Household income			
Less than \$35,000	285	27	33
\$35,000 to \$74,999	286	28	27
More than \$75,000	466	45	39
Language spoken at home			
Spanish	174	17	23
Not Spanish	863	83	77

For more information, please contact info@apnorc.org.

ABOUT THE STATE BAR OF CALIFORNIA

The State Bar of California's mission is to protect the public and includes the primary functions of licensing, regulation, and discipline of attorneys; the advancement of the ethical and competent practice of law; and support of efforts for greater access to, and inclusion in, the legal system.

The State Bar:

- Licenses attorneys and regulates the profession and practice of law in California
- Enforces Rules of Professional Conduct for attorneys
- Disciplines attorneys who violate rules and laws
- Administers the California Bar Exam
- Advances access to justice
- Promotes diversity and inclusion in the legal system

Created by the legislature in 1927, The State Bar is an arm of the California Supreme Court, protecting the public by licensing and regulating attorneys.

The State Bar licenses more than 250,000 attorneys, investigates approximately 16,000 complaints of attorney misconduct annually and distributes over \$30 million in grants to legal aid organizations.

The State Bar serves the people of California through careful oversight of the legal profession.

ABOUT NORC AT THE UNIVERSITY OF CHICAGO

NORC at the University of Chicago is an independent research institution that delivers reliable data and rigorous analysis to guide critical programmatic, business, and policy decisions. Since 1941, NORC has conducted groundbreaking studies, created and applied innovative methods and tools, and advanced principles of scientific integrity and collaboration. Today, government, corporate, and nonprofit clients around the world partner with NORC to transform increasingly complex information into useful knowledge.

NORC conducts research in five main areas: Economics, Markets and the Workforce; Education, Training, and Learning; Global Development; Health and Well-Being; and Society, Media, and Public Affairs.

For more information, visit www.norc.org

State Bar of California: Online Access Poll

Conducted by NORC at the University of Chicago

Interviews: 01/22-02/04/2020

1,037 adults

Margin of error: +/- 4.3 percentage points at the 95% confidence level among all adults

NOTE: All results show percentages among all respondents, unless otherwise labeled.

Attachment B: NORC ATILS Survey Report

State Bar of California: Online Access Poll

Q1. Do you, personally, have access to each of the following at home, or not?

AP-NORC 01/22-02/04/2020	Yes	No	DON'T KNOW	SKIPPED/ REFUSED
A smartphone	91	9	*	1
A cellphone that is not a smartphone	19	75	-	5
A desktop computer	50	48	-	2
A laptop computer	74	24	-	2
A tablet computer (like an iPad)	67	30	-	3

N = 1,037

Q2. Do you have access to the Internet at home?

	AP-NORC 01/22-02/04/2020
Yes	95
No	5
DON'T KNOW	-
SKIPPED/REFUSED	*

N =

1,037

Show if Yes in Q2.

Q3. Do you have access to the Internet at home using a:

AP-NORC 01/22-02/04/2020	Yes	No	DON'T KNOW	SKIPPED/ REFUSED
Cellular data plan for a smartphone or other mobile device	84	12	*	4
Broadband or high speed Internet service such as cable, fiber optic, or DSL service installed in your home	86	12	*	2
Satellite Internet service installed in your home	16	77	*	7
Dial-up Internet service installed in your home	9	85	1	6
Some other service	5	85	1	9

N = 1,002

Attachment B: NORC ATILS Survey Report

State Bar of California: Online Access Poll

Q4. How often do you use the Internet?

	AP-NORC 01/22-02/04/2020
Several times a day/Once a day NET	90
Several times a day	89
Once a day	2
Several times a week	4
Once a week/Less often NET	5
Once a week	1
Less often	4
DON'T KNOW	*
SKIPPED/REFUSED	*

N =

1,037

Q5. Overall, how confident do you feel using computers, smartphones, or other electronic devices to do things online?

	AP-NORC 01/22-02/04/2020
Extremely/Very confident NET	73
Extremely confident	44
Very confident	29
Moderately confident	22
Not too/Not confident at all NET	5
Not too confident	2
Not confident at all	3
DON'T KNOW	-
SKIPPED/REFUSED	1

N =

1,037

Attachment B: NORC ATILS Survey Report

State Bar of California: Online Access Poll

Q6. How much do you trust websites to properly secure personal information that you share with them online?

	AP-NORC 01/22-02/04/2020
A great deal/Quite a bit NET	22
A great deal	6
Quite a bit	17
A moderate amount	47
Not too much/Not at all NET	30
Not too much	25
Not at all	5
DON'T KNOW	-
SKIPPED/REFUSED	*

N =

1,037

Q7. Have you ever used the Internet to do any of the following?

AP-NORC 01/22-02/04/2020	Yes	No	DON'T KNOW	SKIPPED/ REFUSED
Look for advice about a legal issue you or someone in your household was experiencing	55	43	*	1
Search for legal help, such as a lawyer or legal aid	48	51	-	*
Look for laws related to an issue you or someone in your household was experiencing	59	40	-	1
Search for legal forms or instructions for completing legal forms	60	40	-	1

N = 1,037

Attachment B: NORC ATILS Survey Report

State Bar of California: Online Access Poll

Show if Yes to any in Q7.

Q8. What types of legal issues did you seek help for online? Select all that apply.

	AP-NORC 01/22-02/04/2020
Families, children, or divorce, including child support and custody	23
Health and medical benefits, including health insurance	43
Education and student loans	28
Rental housing, including eviction	32
Money, debt, or taxes	47
Disability benefits	18
Homeownership or foreclosure	20
Jobs and employment	45
Disaster relief	5
Veterans benefits	8
Wills and estates	29
Immigration	14
Criminal	14
Traffic	33
Insurance, other than health insurance	31
Government benefits, including social security and food stamps	32
Other	12
DON'T KNOW	-
SKIPPED/REFUSED	1

N =

808

Q9. How much confidence do you have in the accuracy of online information about:

AP-NORC 01/22-02/04/2020	A great deal/Quite a bit NET	A great deal	Quite a bit	A moderate amount	Not too much/None at all NET	Not too much	None at all	DK	SKP/REF
Whether an issue you're experiencing might have a legal solution	31	8	23	48	19	13	7	1	1
Steps to deal with a legal issue you're experiencing	33	8	25	46	20	12	8	*	1
Instructions to complete legal forms	41	10	31	41	16	9	7	1	1

N = 1,037

Attachment B: NORC ATILS Survey Report

State Bar of California: Online Access Poll

Q10. When deciding to use a website or application that offers legal help, how important is it to you that:

AP-NORC 01/22-02/04/2020	Extremely /Very imp. NET	Extremely imp.	Very imp.	Moderately imp.	Not too/Not imp. at all NET	Not too imp.	Not imp. at all	DK	SKP/ REF
A lawyer helped with the original creation and testing of it	58	25	33	27	13	9	5	*	2
A lawyer regularly monitors the legal help provided by it	61	28	33	28	10	6	3	*	1
It is owned by a lawyer or lawyers	46	17	29	32	20	14	6	1	1
A government agency tested and approved it	52	21	30	32	15	10	6	*	1
A government agency monitors the legal help provided by it	50	21	29	33	15	9	6	*	1
Reviews and ratings from past users are posted on it	57	26	31	32	9	5	3	*	1
It complies with high standards of data security	74	44	30	19	6	3	2	1	1
The information users submit to it is protected by confidentiality and privacy laws just like information shared with a lawyer	70	42	28	22	7	4	3	1	1
It has liability insurance that protects users	59	27	33	28	11	8	3	1	1

N = 1,037

Attachment B: NORC ATILS Survey Report

State Bar of California: Online Access Poll

Q11. When deciding to use a law firm, how important is it to you that it is owned by lawyers, rather than other types of professionals?

	AP-NORC 01/22-02/04/2020
Extremely/Very important NET	65
Extremely important	32
Very important	33
Moderately important	26
Not too/Not important at all NET	8
Not too important	6
Not important at all	2
DON'T KNOW	*
SKIPPED/REFUSED	1

N =

1,037

AGE.

	AP-NORC 01/22-02/04/2020
18-24	12
25-34	20
35-44	17
45-54	15
55-64	18
65-74	12
75+	7

N =

1,037

GENDER.

	AP-NORC 01/22-02/04/2020
Male	49
Female	51

N =

1,037

Attachment B: NORC ATILS Survey Report

State Bar of California: Online Access Poll

RACE.

	AP-NORC 01/22-02/04/2020
White	41
Black or African American	6
Hispanic	35
Other	19
N =	1,037

MARITALSTATUS.

	AP-NORC 01/22-02/04/2020
Married	41
Widowed	5
Divorced	12
Separated	3
Never married	28
Living with partner	10
N =	1,037

EMPLOYMENTSTATUS.

	AP-NORC 01/22-02/04/2020
Employed	57
Not employed	43
N =	1,037

EDUCATION.

	AP-NORC 01/22-02/04/2020
Less than a high school diploma	14
High school graduate or equivalent	23
Some college	28
College graduate or above	34
N =	1,037

Attachment B: NORC ATILS Survey Report

State Bar of California: Online Access Poll

INCOME.

	AP-NORC 01/22-02/04/2020
Under \$10,000	6
\$10,000 to under \$20,000	10
\$20,000 to under \$30,000	13
\$30,000 to under \$40,000	9
\$40,000 to under \$50,000	6
\$50,000 to under \$75,000	17
\$75,000 to under \$100,000	14
\$100,000 to under \$150,000	15
\$150,000 or more	11

N =

1,037

Attachment B: NORC ATILS Survey Report

State Bar of California: Online Access Poll

Study Methodology

This survey was conducted by the NORC at the University of Chicago with funding from the State Bar of California.

Data were collected using the AmeriSpeak Panel, NORC's probability-based panel designed to be representative of the U.S. household population. During the initial recruitment phase of the panel, randomly selected U.S. households were sampled with a known, non-zero probability of selection from the NORC National Sample Frame and then contacted by U.S. mail, email, telephone, and field interviewers (face-to-face). The panel provides sample coverage of approximately 97 percent of the U.S. household population. Those excluded from the sample include people with P.O. Box only addresses, some addresses not listed in the USPS Delivery Sequence File, and some newly constructed dwellings.

Interviews for this survey were conducted between January 22nd and February 4th, 2020, with adults age 18 and over representing California. Panel members who reside in California were randomly drawn from AmeriSpeak, with their state of residence reconfirmed in field. A total of 1,037 completed the survey—955 via the web and 82 via telephone. Interviews were conducted in both English and Spanish, depending on respondent preference. The final stage completion rate is 25.5 percent, the weighted household panel response rate is 24.1 percent, and the weighted household panel retention rate is 85.6 percent, for a cumulative response rate of 5.26 percent. The overall margin of sampling error is +/-4.28 percentage points at the 95 percent confidence level, including the design effect. The margin of sampling error may be higher for subgroups. Below is a table of the major subgroups analyzed in this report, with unweighted n-sizes and percentages, as well as the final weighted percentage.

Once the sample has been selected and fielded, and all the study data have been collected and made final, a raking process is used to adjust for any survey nonresponse as well as any noncoverage or under and oversampling resulting from the study specific sample design. Weighting variables included age, gender, census division, race/ethnicity, internet access, and education. Weighting variables were obtained from the 2018 Current Population Survey and the 2018 American Community Survey. The weighted data reflect the California population of adults age 18 and over.

For more information, please contact info@apnorc.org.

About the State Bar of California

The State Bar of California's mission is to protect the public and includes the primary functions of licensing, regulation and discipline of attorneys; the advancement of the ethical and competent practice of law; and support of efforts for greater access to, and inclusion in, the legal system.

The State Bar:

- Licenses attorneys and regulates the profession and practice of law in California
- Enforces Rules of Professional Conduct for attorneys
- Disciplines attorneys who violate rules and laws
- Administers the California Bar Exam

Attachment B: NORC ATILS Survey Report

State Bar of California: Online Access Poll

- Advances access to justice
- Promotes diversity and inclusion in the legal system

Created by the Legislature in 1927, the State Bar is an arm of the California Supreme Court, protecting the public by licensing and regulating attorneys.

The State Bar licenses more than 250,000 attorneys, investigates approximately 16,000 complaints of attorney misconduct annually and distributes over \$30 million in grants to legal aid organizations.

We serve the people of California through careful oversight of the legal profession.

About NORC at the University of Chicago

NORC at the University of Chicago is an independent research institution that delivers reliable data and rigorous analysis to guide critical programmatic, business, and policy decisions. Since 1941, NORC has conducted groundbreaking studies, created and applied innovative methods and tools, and advanced principles of scientific integrity and collaboration. Today, government, corporate, and nonprofit clients around the world partner with NORC to transform increasingly complex information into useful knowledge.

NORC conducts research in five main areas: Economics, Markets and the Workforce; Education, Training, and Learning; Global Development; Health and Well-Being; and Society, Media, and Public Affairs.

Attachment C: Proposed Amended Rule 1.1, Clean and Redline

Rule 1.1 Competence (Clean Version)

- (a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- (b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably* necessary for the performance of such service.
- (c) If a lawyer does not have sufficient learning and skill when the legal services are undertaken, the lawyer nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyer whom the lawyer reasonably believes* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyer whom the lawyer reasonably believes* to be competent.
- (d) In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required if referral to, or association or consultation with, another lawyer would be impractical. Assistance in an emergency must be limited to that reasonably* necessary in the circumstances.

Comment

- [1] The duties set forth in this rule include the duty to keep abreast of the changes in the law and its practice, including the benefits and risks associated with relevant technology.
- [2] This rule addresses only a lawyer’s responsibility for his or her own professional competence. See rules 5.1 and 5.3 with respect to a lawyer’s disciplinary responsibility for supervising subordinate lawyers and nonlawyers.
- [3] See rule 1.3 with respect to a lawyer’s duty to act with reasonable* diligence.

Attachment C: Proposed Amended Rule 1.1, Clean and Redline

Rule 1.1 Competence (Redline Version)

- (a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- (b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably* necessary for the performance of such service.
- (c) If a lawyer does not have sufficient learning and skill when the legal services are undertaken, the lawyer nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyer whom the lawyer reasonably believes* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyer whom the lawyer reasonably believes* to be competent.
- (d) In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required if referral to, or association or consultation with, another lawyer would be impractical. Assistance in an emergency must be limited to that reasonably* necessary in the circumstances.

Comment

[1] The duties set forth in this rule include the duty to keep abreast of the changes in the law and its practice, including the benefits and risks associated with relevant technology.

~~[1]~~2 This rule addresses only a lawyer’s responsibility for his or her own professional competence. See rules 5.1 and 5.3 with respect to a lawyer’s disciplinary responsibility for supervising subordinate lawyers and nonlawyers.

~~[2]~~3 See rule 1.3 with respect to a lawyer’s duty to act with reasonable* diligence.

Attachment D: Proposed Amended Rule 5.4, Clean and Redline

Rule 5.4 Financial and Similar Arrangements with Nonlawyers (Clean Version)

- (a) A lawyer or law firm* shall not share legal fees directly or indirectly with a nonlawyer or with an organization that is not authorized to practice law, except that:
 - (1) an agreement by a lawyer with the lawyer's firm,* partner,* or associate may provide for the payment of money or other consideration over a reasonable* period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;*
 - (2) a lawyer purchasing the practice of a deceased, disabled or disappeared lawyer may pay the agreed-upon purchase price, pursuant to rule 1.17, to the lawyer's estate or other representative;
 - (3) a lawyer or law firm* may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement, provided the plan does not otherwise violate these rules or the State Bar Act;
 - (4) a lawyer or law firm* may pay a prescribed registration, referral, or other fee to a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for Lawyer Referral Services; or
 - (5) where a nonprofit organization employs, retains , recommends, or facilitates employment of a lawyer in a matter, (i) the lawyer or law firm* may share with or pay a court-awarded legal fee to that nonprofit organization, and (ii) where the legal fee in the matter is not court awarded but arises from a settlement or other resolution of the matter, the lawyer or law firm may share or pay the legal fee to the nonprofit organization, provided that the nonprofit organization qualifies under Section 501(c)(3) of the Internal Revenue Code.
- (b) A lawyer shall not form a partnership or other organization with a nonlawyer if any of the activities of the partnership or other organization consist of the practice of law.
- (c) A lawyer shall not permit a person* who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's independent professional judgment or interfere with the lawyer-client relationship in rendering legal services.
- (d) A lawyer shall not practice with or in the form of a professional corporation or other organization authorized to practice law for a profit if:
 - (1) a nonlawyer owns any interest in it, except that a fiduciary representative of a lawyer's estate may hold the lawyer's stock or other interest for a reasonable* time during administration;

Attachment D: Proposed Amended Rule 5.4, Clean and Redline

- (2) a nonlawyer is a director or officer of the corporation or occupies a position of similar responsibility in any other form of organization; or
 - (3) a nonlawyer has the right or authority to direct or control the lawyer's independent professional judgment.
- (e) The Board of Trustees of the State Bar shall formulate and adopt Minimum Standards for Lawyer Referral Services, which, as from time to time amended, shall be binding on lawyers. A lawyer shall not accept a referral from, or otherwise participate in, a lawyer referral service unless it complies with such Minimum Standards for Lawyer Referral Services.
- (f) A lawyer shall not practice with or in the form of a nonprofit legal aid, mutual benefit or advocacy group if the nonprofit organization allows any third person* to interfere with the lawyer's independent professional judgment, or with the lawyer-client relationship, or allows or aids any person* to practice law in violation of these rules or the State Bar Act.

Comment

[1] Paragraph (a) does not prohibit a lawyer or law firm* from paying a bonus to or otherwise compensating a nonlawyer employee from general revenues received for legal services, provided the arrangement does not interfere with the independent professional judgment of the lawyer or lawyers in the firm* and does not violate these rules or the State Bar Act. However, a nonlawyer employee's bonus or other form of compensation may not be based on a percentage or share of fees in specific cases or legal matters.

[2] Paragraph (a) also does not prohibit payment to a nonlawyer third-party for goods and services provided to a lawyer or law firm;* however, the compensation to a nonlawyer third-party may not be determined as a percentage or share of the lawyer's or law firm's overall revenues or tied to fees in particular cases or legal matters. A lawyer may pay to a nonlawyer third-party, such as a collection agency, a percentage of past due or delinquent fees in concluded matters that the third-party collects on the lawyer's behalf.

[3] Paragraph (a)(5), as just one example, permits a lawyer to share with or pay court-awarded legal fees to nonprofit legal aid, mutual benefit, and advocacy groups that are not engaged in the unauthorized practice of law. (See *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]; see also rule 6.3.) Regarding a lawyer's contribution of legal fees to a legal services organization, see rule 1.0, Comment [5] on financial support for programs providing pro bono legal services.

[4] Depending on the specific facts and circumstances, a lawyer's sharing of fees as permitted by paragraph (a)(5) might constitute a "significant development" that must be communicated to a client under rule 1.4 and Business and Professions Code section 6068(m).

[5] This rule is not intended to affect case law regarding the relationship between insurers and lawyers providing legal services to insureds. (See, e.g., *Gafcon, Inc. v. Ponsor Associates* (2002) 98 Cal.App.4th 1388 [120 Cal.Rptr.2d 392].)

Attachment D: Proposed Amended Rule 5.4, Clean and Redline

[6] Paragraph (c) is not intended to alter or diminish a lawyer's obligations under rule 1.8.6 (Compensation from One Other than Client).

Attachment D: Proposed Amended Rule 5.4, Clean and Redline

Rule 5.4 Financial and Similar Arrangements with Nonlawyers (Redline Version)

- (a) A lawyer or law firm* shall not share legal fees directly or indirectly with a nonlawyer or with an organization that is not authorized to practice law, except that:
- (1) an agreement by a lawyer with the lawyer's firm,* partner,* or associate may provide for the payment of money or other consideration over a reasonable* period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;*
 - (2) a lawyer purchasing the practice of a deceased, disabled or disappeared lawyer may pay the agreed-upon purchase price, pursuant to rule 1.17, to the lawyer's estate or other representative;
 - (3) a lawyer or law firm* may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement, provided the plan does not otherwise violate these rules or the State Bar Act;
 - (4) a lawyer or law firm* may pay a prescribed registration, referral, or other fee to a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for Lawyer Referral Services; or
 - ~~(5) a lawyer or law firm* may share with or pay a court awarded legal fee to a nonprofit organization that employed, retained or recommended employment of the lawyer or law firm* in the matter.~~
 - (5) where a nonprofit organization employs, retains , recommends, or facilitates employment of a lawyer in a matter, (i) the lawyer or law firm* may share with or pay a court-awarded legal fee to that nonprofit organization, and (ii) where the legal fee in the matter is not court awarded but arises from a settlement or other resolution of the matter, the lawyer or law firm may share or pay the legal fee to the nonprofit organization, provided that the nonprofit organization qualifies under Section 501(c)(3) of the Internal Revenue Code.
- (b) A lawyer shall not form a partnership or other organization with a nonlawyer if any of the activities of the partnership or other organization consist of the practice of law.
- (c) A lawyer shall not permit a person* who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's independent professional judgment or interfere with the lawyer-client relationship in rendering legal services.
- (d) A lawyer shall not practice with or in the form of a professional corporation or other organization authorized to practice law for a profit if:

Attachment D: Proposed Amended Rule 5.4, Clean and Redline

- (1) a nonlawyer owns any interest in it, except that a fiduciary representative of a lawyer's estate may hold the lawyer's stock or other interest for a reasonable* time during administration;
 - (2) a nonlawyer is a director or officer of the corporation or occupies a position of similar responsibility in any other form of organization; or
 - (3) a nonlawyer has the right or authority to direct or control the lawyer's independent professional judgment.
- (e) The Board of Trustees of the State Bar shall formulate and adopt Minimum Standards for Lawyer Referral Services, which, as from time to time amended, shall be binding on lawyers. A lawyer shall not accept a referral from, or otherwise participate in, a lawyer referral service unless it complies with such Minimum Standards for Lawyer Referral Services.
- (f) A lawyer shall not practice with or in the form of a nonprofit legal aid, mutual benefit or advocacy group if the nonprofit organization allows any third person* to interfere with the lawyer's independent professional judgment, or with the lawyer-client relationship, or allows or aids any person* to practice law in violation of these rules or the State Bar Act.

Comment

[1] Paragraph (a) does not prohibit a lawyer or law firm* from paying a bonus to or otherwise compensating a nonlawyer employee from general revenues received for legal services, provided the arrangement does not interfere with the independent professional judgment of the lawyer or lawyers in the firm* and does not violate these rules or the State Bar Act. However, a nonlawyer employee's bonus or other form of compensation may not be based on a percentage or share of fees in specific cases or legal matters.

[2] Paragraph (a) also does not prohibit payment to a nonlawyer third-party for goods and services provided to a lawyer or law firm;* however, the compensation to a nonlawyer third-party may not be determined as a percentage or share of the lawyer's or law firm's overall revenues or tied to fees in particular cases or legal matters. A lawyer may pay to a nonlawyer third-party, such as a collection agency, a percentage of past due or delinquent fees in concluded matters that the third-party collects on the lawyer's behalf.

[3] Paragraph (a)(5), as just one example, permits a lawyer to share with or pay court-awarded legal fees to nonprofit legal aid, mutual benefit, and advocacy groups that are not engaged in the unauthorized practice of law. (See *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]; see also rule 6.3.) Regarding a lawyer's contribution of legal fees to a legal services organization, see rule 1.0, Comment [5] on financial support for programs providing pro bono legal services.

~~[4]~~[4] Depending on the specific facts and circumstances, a lawyer's sharing of fees as permitted by paragraph (a)(5) might constitute a "significant development" that must be communicated to a client under rule 1.4 and Business and Professions Code section 6068(m).

Attachment D: Proposed Amended Rule 5.4, Clean and Redline

[5] This rule is not intended to affect case law regarding the relationship between insurers and lawyers providing legal services to insureds. (See, e.g., *Gafcon, Inc. v. Ponsor Associates* (2002) 98 Cal.App.4th 1388 [120 Cal.Rptr.2d 392].)

[~~5~~6] Paragraph (c) is not intended to alter or diminish a lawyer's obligations under rule 1.8.6 (Compensation from One Other than Client).

Attachment E: Proposed New Rule 5.7

Rule 5.7 Responsibilities Regarding Nonlegal Services

- (a) A lawyer is subject to these rules and the State Bar Act with respect to the provision of nonlegal services, as defined in paragraph (c)(1), if the nonlegal services are provided by the lawyer:
 - (1) in circumstances that are not distinct from the lawyer's provision of legal services to clients; or
 - (2) in other circumstances by an organization other than a law firm* that is (i) owned separately by the lawyer or (ii) owned with others unless written disclosure as defined in paragraph (c)(2) is provided to the recipient of the services that (i) the services are not legal services and (ii) that the protections of the lawyer-client relationship do not exist.
- (b) When a lawyer knows* or reasonably should know* that a recipient of nonlegal services provided pursuant to paragraph (a)(2) does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role with respect to the provision of nonlegal services and the lawyer's role as one who represents a client.
- (c) For purposes of this rule:
 - (1) "Nonlegal services" means services that might reasonably be performed in conjunction with the practice of law, including services that may be lawfully performed by a person who is not authorized to practice law.
 - (2) "Written disclosure" means advance written notice is communicated to the person receiving the services that explains that the services are not legal services and that the protections of a lawyer-client relationship do not exist with respect to the nonlegal services.

Comments

[1] Rule 5.7 applies to the provision of nonlegal services as defined in paragraph (c)(1) by a lawyer even when the lawyer does not provide legal services to the person for whom the nonlegal services are performed and whether the nonlegal services are performed through a law firm or a separate entity. The rule identifies the circumstances in which all of the Rules apply to the provision of nonlegal services. Even when those circumstances do not exist, the conduct of a lawyer involved in the provision of nonlegal services is subject to those rules and provisions of the State Bar Act that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. (see, e.g., Rule 8.4 and Business and Professions Code § 6106).

[2] When nonlegal services are provided by a lawyer under circumstances that are not distinct from the provision of legal services to clients, the lawyer involved in the provision of nonlegal services is subject to the Rules and the State Bar Act. For example, a lawyer must

Attachment E: Proposed New Rule 5.7

conform to the Rules and the State Bar Act as to all nonlegal services the lawyer renders in a dual capacity along with legal services for a single client or in a single matter, even if the nonlegal services might otherwise be performed by nonlawyers. (See, e.g., *Layton v. State Bar* (1990) 50 Cal.3d 889, 904 [268 Cal.Rptr. 845] (serving as executor and lawyer for estate); *Kelly v. State Bar* (1991) 53 Cal.3d 509, 517 [280 Cal.Rptr. 298] (serving as lawyer and business agent).)

[3] A lawyer who assumes a fiduciary relationship in the provision of nonlegal services to a person who is not a client of the lawyer or the lawyer's firm and who violates a fiduciary duty in a manner that would justify disciplinary action if there was an lawyer-client relationship may be subject to discipline for the misconduct. (See, e.g., *Schneider v. State Bar* (1987) 43 Cal.3d 784, 796-797 [239 Cal.Rptr. 111] (lawyer acting as a trustee); *Worth v. State Bar* (1976) 17 Cal.3d 337, 341 [130 Cal.Rptr. 712] (lawyer acting as a real estate broker); *Sodikoff v. State Bar* (1975) 14 Cal.3d 422, 429 [121 Cal.Rptr. 467] (lawyer representing administrator of estate and acting as agent for estate beneficiary in sale of estate property held to be in fiduciary relationship with beneficiary); *Crooks v. State Bar* (1970) 3 Cal.3d 346, 355 [90 Cal.Rptr. 600] (lawyer acting as an escrow holder); *In the Matter of Schooler* (Rev. Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494 (lawyer acting as trustee).)

[4] When a lawyer-client relationship exists with a person and the lawyer refers that client to a separate organization owned by the lawyer individually or with others for the provision of nonlegal services, the lawyer must comply with rule 1.8.1. (See, e.g., *Beery v. State Bar* (1987) 43 Cal.3d 802, 811-813 [239 Cal.Rptr. 121].)

[5] Under some circumstances the legal and nonlegal services rendered in the same matter may be so closely entwined that they cannot be distinguished from each other, and the requirements of paragraph (a) cannot be met. In such a case, the lawyer is responsible for assuring that the lawyer's conduct, and to the extent required by rule 5.3, the conduct of non-lawyers in the firm or in separate organization complies with the rules.

[6] A lawyer who is obligated to accord recipients of nonlegal services the full protection of the rules and the State Bar Act must adhere to the requirements of the rules addressing conflicts of interest (rules 1.7 – 1.11), the requirements of rules 1.6 and 1.8.2 relating to the protection of client confidential information, and lawyer advertising rules (rules 7.1 – 7.5).