



The State Bar *of California*

OPEN SESSION AGENDA ITEM 707 MAY 2021

DATE: May 13, 2021

TO: Members, Board of Trustees

FROM: Donna S. Hershkowitz, Interim Executive Director

SUBJECT: Closing the Justice Gap Working Group: Addition of Members

EXECUTIVE SUMMARY

At its meeting on November 2, 2020, the Board Executive Committee appointed the members of the Closing the Justice Gap Working Group (CTJG). This item requests that the Board authorize the expansion of CTJG with the addition of up to five new slots, and delegate to the CTJG chair the authority to appoint these members in consultation with the Board appointment liaisons.

BACKGROUND

At its meeting on May 14, 2020, the Board authorized the formation of CTJG in response to the report and recommendations of the Task Force on Access Through Innovation of Legal Services (ATILS). (The CTJG Fact Sheet is provided as Attachment A.) At its meeting on July 16, 2020, the Board approved the working group charter and the general makeup of the working group. An initial discussion of appointments was conducted at the Board's meeting on September 24, 2020, followed by the appointment of the members by the Board Executive Committee at its meeting on November 2, 2020.

DISCUSSION

The lawyers, judges, and consumers of legal services appointed to CTJG include experts in technology, legal ethics, regulatory reform, and legal services programs. Other members include representatives from: ATILS, the California Lawyers Association, the Consumer Attorneys of California, the California Defense Counsel, and the Utah Regulatory Reform Task Force.

After holding three meetings of the entire working group and four subcommittee meetings, CTJG staff and leadership met to assess and refine its project plan and, in that process, determined that the project would be enhanced by expanding the working group by up to five members. Specifically, the addition of: (1) a representative from a community based organization, domestic violence shelter, or social services organization or similar professional who provides guidance in legal matters, social services to persons whose needs involve legal issues, or whose clients could benefit from innovations to expand access to legal services; (2) a representative from a court-based self-help center; and (3) trial judges (including retired judicial officers) with experience in non-criminal proceedings. The addition of members from these categories will improve the deliberations of the working group by adding front-line knowledge concerning consumers who are likely to be beneficiaries of innovations to expand legal services.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES OF THE STATE BAR

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

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

Objective: 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.

RECOMMENDATIONS

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

RESOLVED, that the Board of Trustees authorizes the expansion of the Closing the Justice Gap Working Group with the addition of up to five new slots, and delegates to the chair

of the working group the authority to appoint up to five additional members, in consultation with the Board appointment liaisons

ATTACHMENT(S) LIST

- A.** Fact Sheet: Closing the Justice Gap Working Group



The State Bar of California

Closing the Justice Gap Working Group

Closing the justice gap for Californians by developing a controlled environment for testing innovative systems for delivering legal services

Background

The State Bar Board of Trustees established the [Task Force on Access Through Innovation of Legal Services](#) (ATILS) in July 2018 to develop recommendations for 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. That effort culminated in a series of actions in early 2020, including the establishment of the [Closing the Justice Gap Working Group](#). The working group is charged with addressing the following:

1. Exploring the development of a regulatory sandbox.
2. Considering amendments to rule 5.4 regarding fee sharing.
3. Issuing for public comment a new rule 5.7 addressing the delivery of nonlegal services provided by lawyers and businesses owned or affiliated with lawyers.
4. Considering recommendations for amendments to the Certified Lawyer Referral Service statutes and Rules of the State Bar.
5. Considering recommendations for amendments to the rules governing advertising and solicitation.

The Board directed the working group to address these recommendations with a primary focus on exploring the development of a regulatory sandbox in order to:

- Foster experimentation with innovative legal services delivery systems in a manner that both protects the public and yields data to assess the impact on access to legal services of possible changes in the laws and rules regulating the practice of law in California;
- Evaluate possible changes to existing laws and rules that otherwise inhibit the development of innovative legal service delivery systems, such as consumer-facing technology that provides legal advice and services directly to clients at all income levels; and
- Evaluate changes to laws and rules that inhibit the formation and continuation of delivery systems created through the collaboration of lawyers, law firms, technologists, entrepreneurs, and others.

Working Group Charter

The working group will develop specific recommendations regarding the following:

1. **A regulatory sandbox.** Related recommendations will include an assessment of the pros and cons of a sandbox as a way to foster experimentation with innovative legal services delivery systems in a manner that protects the public and allows for the collection of data to assess the impact on access to legal services of possible changes in the laws and rules regulating the practice of law in California. Sandbox recommendations should specifically address:

- a. Scope and regulatory structure of a sandbox, including funding, staffing, and governance, and conflicts of interest issues for members of any governing body;
 - b. Required changes to laws and rules, including practice of law statutes and attorney conduct rules;
 - c. Methods to apply to enter and processes governing entry into the sandbox, including eligibility criteria, approval processes, appeals processes for denied applicants, and possible reciprocity with sandbox participants in other jurisdictions;
 - d. Technology delivery system issues, including testing, accessibility, bias, confidentiality, privacy, dark patterns, and intellectual property rights of applicants;
 - e. Recordkeeping, reporting, data collection, and sandbox evaluation metrics;
 - f. Program oversight for persons and entities accepted for participation in the sandbox including standards of conduct, processing of client complaints, and enforcement through suspension or removal from the sandbox or other remedies; and
 - g. Termination of the sandbox, including participant exit/extensions and post-termination assessment of any permanent changes to laws and rules that might be considered as a result of the sandbox.
2. **California’s lawyer advertising and solicitation rules.** In developing recommendations on this subject the working group will evaluate California’s and the American Bar Association’s lawyer advertising and solicitation rules to determine whether and to what extent these rules inhibit or advance innovation and access to legal services;
 3. **Lawyer Referral Service statutes and rules.** In developing recommendations the working group will determine whether and to what extent the existing statutes and rules inhibit innovation and access to legal services;
 4. **Amendments to rule 5.4 of the California Rules of Professional Conduct regarding attorney fee sharing with nonlawyers.** The working group will specifically address the question of whether amendments to this rule are warranted independent of any temporary changes that might be evaluated in a sandbox; and
 5. **Amendments to the California Rules of Professional Conduct regarding the delivery of nonlegal services by lawyers and businesses owned or affiliated with lawyers,** including proposed rule 5.7 developed by the Task Force on Access Through Innovation of Legal Services.

The working group begins its work in January 2021 and is directed to submit its recommendations to the Board of Trustees no later than September 2022.

Working Group Composition

The [working group’s members](#) were selected and appointed to ensure that a wide variety of perspectives are fully and thoughtfully considered in this exploration of fundamental shifts to the traditional practice of law. Chaired by Justice Alison M. Tucher, the working group includes state, national, and international experts whose work focuses on the nexus of legal services, technology, and regulatory reform. It also includes members from important practitioner groups as well as members continuing from ATILS—who bring deep experience in California’s legal services community and expertise in legal ethics—to provide continuity with that foundational effort.

To follow the activities of the working group, including meeting notices and information about public comment opportunities, those interested can subscribe to the working group’s e-list. The signup form is available at the bottom of this [webpage](#).