

September 23, 2019

Angela Marlaud
Office of Professional Competence, Planning and Development
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Comments on Tentative Recommendations for Regulatory Reforms to Promote
Access to Justice Options

Dear Ms. Marlaud and distinguished members of the Task Force,

I am writing on behalf of OneJustice in regards to the proposed changes provided by the Access Through Innovation of Legal Services (“ATILS”) Task Force.

OneJustice works to bring life-changing legal help to those in need by transforming the legal aid system and increasing the supply of legal help for low-income Californians. We are an innovation lab for legal aid, working at multiple levels to advance the impact of the legal aid sector by designing and implementing programs focused on achieving systemic change.

Given OneJustice’s unique position in the legal aid system, we are uniquely situated to evaluate changes that strive to close the justice gap through innovative and safe practices. California has the largest number of people living in poverty in the United States. Many of these people have life-altering problems with legal solutions but are never able to enter the legal system and seek justice. This is due, in part, to the high-barrier of entry into the civil legal system that is caused by under-funding, complex systems and processes, and lack of accessible and affordable full-scope legal assistance.

The changes proposed by this Task Force have the potential of lowering the justice gap and opening the legal system to individuals that previously would have lived with no solution to their legal issues. However, these changes, if improperly designed and implemented, also have the potential of widening the justice gap and opening the legal aid system to corporations and tech conglomerates, with a focus other than public protection, while having little positive impact on increasing access to justice for low-income Californians. OneJustice believes that if the legal community works together to develop these regulations and changes, society can benefit greatly, but that development must be done with all Californians in mind and with participation from everyone who will be impacted by these proposed changes. If these proposals are truly meant to have an impact on access to justice issues, we must see proper

support systems in place to ensure that low-income Californians are protected, and that the proposals do not unduly burden those providing the services.

General Recommendations (1.0 to 1.3)

Changing existing rules to include utilizing new technological components in the legal sector allows the growth and expansion of the entire profession. It is long overdue for the legal sector to innovate and develop new and effective ways of serving clients. As the Task Force has seen through presentations by field experts such as Margaret Hagan, different legal areas like traffic court can be expedited through technological legal services. If a low-income person is able to open an app or an easily accessible website to answer their legal questions, they stand a greater chance of having their problem resolved positively. As it stands now, it is often the case that low-income Californians must solve their legal problems largely on their own, which amplifies the chance of their resolution being negative.

However, without proper oversight this idea can become problematic. The current systemic problem that legal representation is only possible for individuals with sufficient means to pay for it can remain, but just shift to a situation where people with means have legal representation plus technological supports, while poor people are limited to technological resources without any access to legal representation. In addition, the availability of representation for low-income individuals might be negatively impacted if the nonprofits providing those services are required to focus a significant amount of resources on maintaining awareness of changes in technology, instead of on the high-quality legal services that they already provide. Legal aid organizations providing these services do not have equal resources to for-profit firms. Legal aid organizations that work within their mission to help low-income Californians could be required to use their precious resources on updating their technology, while for-profit firms will have more resources to quickly do so, with little to no impact on their clients. By establishing similar requirements between nonprofit corporations and for-profit entities providing legal services, there is a risk that resources will be taken away from those low-income individuals the regulations are designed to protect. With the goal of expanding access to justice, the implementation of these proposals must ensure that the technology is properly regulated, such that the end results increase resources available for low-income communities, rather than furthering the large divide already existing between non-profit and for-profit offices.

Recommendations for Exceptions to UPL (2.0 to 2.6)

Allowing paraprofessionals to practice in limited areas of the law can result in increased assistance for low-income individuals with legal needs who cannot easily access an attorney. With proper regulations, this approach can help to provide low-income Californians support with questions and forms that is currently unavailable to them through other services.

However, this opening of the profession could also allow organizations and for-profit entities into the courthouse and areas where they have not previously been allowed. There is also a risk that the primary benefit of these changes would occur in larger cities and not in rural communities, where the greatest need already exists.

In addition, opening certain areas of the law to paraprofessionals creates additional risk of fraud, similar to existing unauthorized notarios. Without proper regulations to protect those already at risk, these recommendations could expose Californians to persistent bad actors. Further, to combat the potential for fraud and other bad practices, those that seek legal assistance must have legal recourse against those bad actors. This recourse may take the shape of malpractice claims like those that can be made against attorneys who fail to adequately act within their ethical and fiduciary duties. In any area of practice, there is potential for people to take advantage of others, and in these circumstances, low-income Californians are the most vulnerable group that must be protected. The Task Force must remain aware of the potential for malicious activity and design the regulations with consumer protection as a top priority.

Lawyer Disciplinary Rules Recommendations (3.0 to 3.4)

The differing sets of recommendations provided opens up the possibility of innovation in the legal sector to legal professionals and other professionals that strive to create a more just system for all. As with any changes, and as discussed above, without proper regulations, the market is open for bad actors to take advantage of the changes to prey on Californians who are in need of legal assistance and do not know how to navigate the complex systems required to enforce and defend their rights. At the design phase of these proposals, it is imperative for there to be a protection that non-lawyer entities have no power to direct or control the professional judgment of the lawyer in the provision of services to clients. As in any profession, attorneys' ethical and fiduciary obligations must be prioritized, and the attorney must retain full decision-making power, despite any business agreements with non-lawyer entities.

Innovation in the profession is inevitable, and OneJustice understands the need to create access to justice reforms. We also understand that these proposals are not final and will require significant development before implementation begins. We are thankful for the opportunity to discuss innovation in such a significant way, and we would add the theme that any proposed change must be considered through the lens of the needs and realities of low-income Californians. Any changes done in the name of promoting access to justice must have a meaningful impact on their well-being, and anything short of that would be a great injustice. Additionally, it is imperative the legal aid nonprofits, which are already doing the work of expanding access to justice and ensuring public protection, be seated at the table through every process of these changes. It is through their expertise that the legal community can most greatly benefit when determining what recommendations are most effective in combatting

access to justice issues that everyday Californians face. We urge the Task Force to keep both low-income Californians and the legal aid community involved as these rules and policies continue to develop.

Please do not hesitate to contact me if you have questions or wish to discuss these recommendations further. Thank you for your commitment to equity and supporting access to justice for all Californians.

Sincerely,



Julia R. Wilson
Chief Executive Officer