



March 11, 2020

Alan Steinbrecher
Chair
State Bar of California Board of Trustees
The State Bar of California
180 Howard Street
San Francisco, CA
94105

Dear Members of the Board of Trustees:

On behalf of the National Center for Access to Justice at Fordham Law School, we are writing to urge you to adopt in full the recommendations put forward by the Task Force on Access Through Innovation of Legal Services (ATILS).

The scale of California's access to justice crisis cannot be meaningfully addressed without creating space for smart, carefully regulated new models of legal services delivery. The ATILS recommendations advance ideas that are ambitious enough to meet the moment, and also measured enough to responsibly answer concerns some members of the bar have articulated in recent months. If adopted, the recommendations will put California on the path towards creating a fairer and more equitable civil justice system, and show other states the right way forward.

The National Center for Access to Justice (NCAJ) is an independent, non-profit organization dedicated to making the justice system fairer and more accessible to everyone. We use research and data to identify and promote effective policy solutions to key access to justice problems.

We have followed ATILS' work with increasing optimism and excitement. In September of last year, we submitted a public comment in support of ATILS' recommendation 2.0 on non-lawyer providers.¹ We also made a serious effort to study the hundreds of public comments—most of them negative—that lawyers and bar associations put forward at that time. What we found was that much of the criticism reacted to reckless, radical visions of de-regulation that ATILS had not actually proposed and which have never been on the table. To the contrary, ATILS has consistently put forward ideas that represent a careful and measured path to create and responsibly regulate new modes of service delivery.²

None of that is to say that concern and caution are unwarranted. Care must be taken to ensure that reforms provide for robust regulations, protect consumers of legal services from harm and maintain the integrity and strength of the legal profession. ATILS' recommendations are careful to emphasize the need for study, deliberation, and responsible regulation. They reflect an appropriate balance between

¹ Our public comment is available at: <https://ncforaj.org/wp-content/uploads/2019/09/NCAJ-Final-Comment-on-California-Bar-Recommendation-2.0-pdf-as-submitted-9-23-19.pdf>

² See Chris Albin-Lackey, "California Should Embrace Non-Lawyer Providers," *Law 360*, October 20, 2019, <https://www.law360.com/articles/1211183/california-should-embrace-nonlawyer-providers>.

those imperatives and the need to move quickly and decisively to address inequities that deny equal justice to millions of ordinary people across California and the nation.

We are particularly eager to emphasize the importance of ATILS' recommendations Nos. 4 and 5, on licensing nonlawyer providers and on the possible creation of a "regulatory sandbox."

We believe strongly that all states should create programs that license non-JDs to provide legal services in areas of great need where alternative models of training and education can equip providers to deliver high-quality services. In Washington State, Limited License Legal Technicians (LLLTs) have delivered high-quality family law services for several years now, to people who might otherwise be priced out of the market for legal help. The only cautionary tale we see there, is that the state's extraordinarily rigorous credentialing requirements may have emerged as a barrier to entry that has throttled the program's growth and limited its potential reach.

In our view, ATILS' recommendation No. 4 articulates the right set of principles that should inform California's efforts to build a limited license model that strikes that right balance between consumer protection and a real expansion of access. We especially appreciate its emphasis on the idea that any new licensing model should leverage the existing skills and expertise of paralegals, document preparers and other professionals who could be well-positioned to join the ranks of any new profession.

ATILS' recommendation No. 5, to establish a working group that would explore the development of a regulatory sandbox, is particularly important. Limited license models are an important step forward, but in our view the solution to this country's access to justice crisis will be a multi-layered one that incorporates a range of different reforms and new models of service delivery. The simple truth is that we don't yet know what some of the best and most effective models will look like. The only way to find out is to allow space for innovation and experimentation that existing rules largely preclude. We believe that ATILS' vision of a regulatory sandbox model strikes the right balance between the imperative to allow space for new models for access to justice to develop, grow and improve, and the need for robust regulatory oversight to protect the public from harm.

As you consider ATILS' recommendations, we hope that you will consider as your primary metric the degree to which each proposal offers real opportunity to increase the fairness of our justice system.³ The status quo – in which millions of people are unable to secure legal assistance to meet the many legal challenges they face – is not merely less than ideal; it is injustice on a massive scale. The California Justice Gap study offers a vivid reminder of how deep the access to justice crisis runs and how devastating its consequences can be. The inescapable lesson from the study, and from all we have come to know about the justice gap through our work at NCAJ, is that the worst and most dangerous possible outcome is a maintenance of the status quo, or an unambitious tinkering around the edges of the problem.

Thank you for taking the time to consider our perspective. We are excited by the very real prospect of progress you have in front of you. If the recommendations are adopted, we look forward to participating in the robust processes of comment and deliberation they would set in motion.

³ See also NCAJ Public Comment at 5 (explaining in greater detail how a definition of access to justice should serve as a metric to guide reform), available at, <https://ncforaj.org/wp-content/uploads/2019/09/NCAJ-Final-Comment-on-California-Bar-Recommendation-2.0-pdf-as-submitted-9-23-19.pdf>.

Sincerely,

David Udell

Executive Director

Chris Albin-Lackey

Legal and Policy Director

CC: Donna Hershkowitz