

Los Angeles County Bar Association
Immigration and Nationality Law Section
September 19, 2019

To: Task Force on Access Through Innovation of Legal Services (ATILS)

Re: Public Comment on Options for Regulatory Reforms to Promote Access to Justice

To Whom It May Concern:

The Los Angeles County Bar Association (LACBA) is one of the largest voluntary metropolitan bar associations in the country and the largest in the State of California. The Immigration and Nationality Law Section of LACBA is made up of about 580 attorneys. Alarmed by the activities of the Task Force on Access Through Innovation of Legal Services (ATILS), the LACBA Immigration and Nationality Law Section provides the following public comment in response to the proposals raised by ATILS. The Immigration and Nationality Law Section is a section of the LACBA and is submitting these comments on its own behalf, and not on behalf of LACBA as a whole. LACBA will forward separate comments on behalf of the entire LACBA membership.

While the proposed changes would harm the entire legal tradition, and legal industry – the proposed changes in particular would harm the particularly vulnerable immigrant population. Please consider the following points:

Disastrous consequences for vulnerable populations

* Unlike other areas of law, the consequences of error in the practice of immigration law are disastrous. An error in analyzing the viability of a potential case, or presentation of a case for adjudication, may result in arrest and detention, deportation, and loss of life in the home country from which an alien fled. There have been countless reports in the media about immigrants deported to their home countries having died due to lack of medical care, attacks by criminal elements in the countries, and in some cases at the hands of the government. While AI technology and its creators resolve errors in programming, immigrants and their families will pay the ultimate price for being the test case for the technology. While the State Bar enforcement agency irons out kinks in the training and licensing of notarios and non-lawyers, immigrants and their families will pay with their lives for the loosening of protections. Something is not better than nothing – lifting restrictions on the practice of law by non-lawyers will result in life altering consequences for the most vulnerable populations.

* The State Bar should be applauded for their efforts to expand legal services to low-income clients and improve access to justice. However, Access to Justice for low-income clients is not the business model for the “artificial intelligence/tech” community. They will have invested millions of dollars and will be incentivized to deliver legal services to the paying consumer, not low-income clients. Allowing non-attorneys to practice law will not lower the cost and will not lead to greater access to legal help for the low income and disadvantaged public.

* Just having artificial intelligence and on-line legal service models available to the public does not mean there is access to justice. Having legal technicians give advice, consultation, and prepare forms does not mean there is access to justice. This is the veneer of access to justice. Through experience and knowledge, the Immigration Bar knows Access to Justice means creating a vibrant “attorney-client” relationship now and for the future. As laws become more complex, the need for an attorney that the consumer and the family can trust becomes more important.

* If AI is allowed to practice law, no one will be responsible if the case goes wrong because no human beings are involved. Omissions or incorrect representations in immigration law can lead to denial, and family separation. With no human or attorney involvement, who will be held accountable for failure to ask the right questions to elicit important information from the client for their case? Who will be held accountable for the 20 years that a deported family member must wait in a war torn country because of the online questionnaire’s failure to exercise due diligence in inquiring with other agencies – such as the District Attorney’s office or Customs and Border Protection – regarding incidents that a client has forgotten about? Lawyers are specially trained to obtain the facts and do a proper analysis of each case, and to engage in multi-level analysis of problems and investigation.

Fee sharing creates a conflict between the client’s best interest and the profit motive of its representative

* One of the goals of the state bar is consumer protection. If non-lawyers are allowed an ownership interest in legal services, a conflict will arise between what is best for the client and what is best for the financial health of the company. Allowing loyalty to the client to be balanced with loyalty to investors is contrary to the very essence of legal practice, where loyalty to the client is the top concern. The lifting of fee splitting restrictions is specifically geared to allow tech companies to reap a return on their investment in AI. There is no consumer protection element to this rule. On the other hand, the rule was specifically put in place to protect consumers from falling victim to profit-motivated decision making which is often in conflict with the best legal strategy for the client.

* The Immigration Bar has seen such conflicts and abuse for years due to the Immigration Consultant Act pursuant to the Business and Professional Code, Chapter 19.5. This law has allowed notarios, and immigration consultants, to practice immigration law with harmful consequences to the immigrant community. For example, Immigration Consultants regularly help clients in deportation proceedings and advise them to just ask the Immigration Judge for “voluntary departure” to go home. The Consultants make their “money” on volume. They don’t want to spend their time or resources informing clients (assuming they can do this) of all possible legal rights they may have in the proceedings, or help them prepare a complicated asylum application, or analyze the pitfalls or benefits of a particular course of action. It’s financially better for the consultants to just have clients leave and go home.

The LACBA Immigration Section urges ATILS members to limit the reach of the current proposals to protect the particularly vulnerable immigrant community that the Immigration Bar

seeks to protect on a daily basis. In its recommendations to the State Bar Board of Trustees, ATILS should make an exception for immigrant law practice to protect the immigrant community.

Respectfully Submitted,
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Chair, Immigration and Nationality Law Section
Los Angeles County Bar Association

DISCLAIMER: This letter is submitted only on behalf of the Immigration and Nationality Law Section of LACBA. It has not been endorsed by the LACBA Board of Trustees.