

## Comments on: Report and Recommendation of the ATILS Task Force

Tom Gordon  
Executive Director,  
**Responsive Law**

Responsive Law thanks the State Bar of California for the opportunity to present these comments. Responsive Law is a national nonprofit organization working to make the civil legal system more affordable, accessible, and accountable to its consumers. We advocate for policies that expand how and by whom legal services may be provided so that people of all income levels can get the legal help they need.

Submitted to the  
**State Bar of California  
Board of Trustees**  
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We have provided our input on numerous occasions to the Task Force on Access Through Innovation of Legal Services (“ATILS”). We do not wish to rehash those comments here, as they are already part of the Task Force record. Although we would have preferred a more aggressive set of recommendations for reform, **we support the recommendations of the Task Force and urge the Board of Trustees to approve them.**

### **Consumers at All Economic Levels Cannot Afford Legal Help**

The United States is facing an access to justice crisis. While many calculations of the extent of this crisis focus on the poorest Americans, the scope of the crisis extends all the way to Americans of modest means and beyond, to encompass most of the middle class.

The justice gap in the United States extends from the poorest Americans across the middle class. In the World Justice Project 2020 report, the United States ranks 109th out of 128 countries (tied with Honduras, Bangladesh, and Sri Lanka) in the affordability and accessibility of its civil justice system.<sup>1</sup> Americans cannot afford to pay lawyers for assistance with everyday legal needs even though

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<sup>1</sup> World Justice Project, *WJP Rule of Law Index 2020*, available at <https://worldjusticeproject.org/rule-of-law-index/factors/2020/United%20States/Civil%20Justice>

the average American household faces a significant legal problem every year.<sup>2</sup> More Americans do not address their legal problems due to lack of access to justice than their peers in countries such as England and the Netherlands, where there are fewer restrictions on how legal services can be offered.<sup>3</sup> Small businesses also struggle with the gap in access to justice, with over half facing legal problems without legal assistance.<sup>4</sup>

### **As a Regulatory Body, The Bar Should Act in the Public Interest by Collecting and Considering Evidence Regarding Regulatory Proposals**

Under the State Bar Act, “Protection of the public, which includes support for greater access to, and inclusion in, the legal system, shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions.”<sup>5</sup> As regulators, the SBC should not place the business interests of the profession ahead of the public interest. It is likely that the bar, like the ATILS Task Force will receive comments from lawyers and bar groups who oppose the Task Force’s recommendations. Those comments should be considered only to the extent they advance public protection arguments. Arguments about the impact that policies might have on lawyers’ financial well-being should have no bearing on the Board’s decision.

Part of the State Bar’s duty as a regulatory body is to collect and consider evidence about the impact of any proposed regulations. This duty has been reinforced by the recent adoption by the American Bar Association of Resolution 115, encouraging U.S. jurisdictions to “consider regulatory innovations that have the

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<sup>2</sup> Gillian K. Hadfield & Jamie Heine, *Life in the Law—Thick World: The Legal Resource Landscape for Ordinary Americans in Beyond Elite Law: Access to Civil Justice for Americans of Average Means* (Samuel Estreicher & Joy Radice eds., 2015) (observing that fifty to sixty percent of low- and moderate-income American households face an average of two legal problems annually).

<sup>3</sup> Id.

<sup>4</sup> LegalShield, *Decision Analyst Survey: The Legal Needs of Small Business* (2013), available at <https://www.legalshield.com/news/legal-needs-american-families-0>.

<sup>5</sup> State Bar Act, § 6001.1.

potential to improve the accessibility, affordability, and quality of civil legal services” and to “collect and assess data regarding regulatory innovations.”<sup>6</sup>

The ATILS Task Force isn’t recommending that the Board adopt any new rules. All of its recommendations call for the Board to either issue rules for public comment or to consider policy recommendations. This gathering of evidence and viewpoints is exactly what a regulator is supposed to do, and is consistent with the ABA’s recommendation in Resolution 115.

### Conclusion

As the ATILS Task Force has acknowledged, the access to justice crisis in America is growing and will not improve without some systemic changes to the way lawyers are regulated. **Merely studying possible changes to the way legal services are provided is literally the least that a regulator can do to address this crisis. We hope that the Board will approve the Task Force’s recommendation,** and look forward to being part of the discussion that will follow.

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<sup>6</sup> [https://www.americanbar.org/groups/centers\\_commissions/center-for-innovation/Resolution115/](https://www.americanbar.org/groups/centers_commissions/center-for-innovation/Resolution115/)