

September 23, 2019

Presiding Justice Lee Smalley Edmon, Chair,  
Task Force on Access Through Innovation of Legal Services  
[atils-pc@calbar.ca.gov](mailto:atils-pc@calbar.ca.gov)

Re: Task Force on Access Through Innovation of Legal Services

Dear Justice Edmon:

This letter responds to the request of the Task Force on Access Through Innovation of Legal Services for comment on 16 proposals it has offered for increased access to legal services. The letter is written on behalf of Morrison & Foerster LLP, a law firm founded in California more than 130 years ago, and also on behalf of Baker McKenzie LLP, Cooley LLP, Dentons US LLP, Faegre Baker Daniels LLP, Fish & Richardson P.C., Pillsbury Winthrop Shaw Pittman LLP, Sheppard, Mullin, Richter & Hampton LLP, Sidley Austin LLP, and Wilson Sonsini Goodrich & Rosati, all law firms with a significant presence in California.

Our firms have a long and proud history of serving those who traditionally have been denied access to justice. Our decades of pro bono work have educated us to the gross inequities that exist in addressing the legal needs of vast numbers of Californians in many economic strata. We strongly support creative efforts to address the many underserved residents of California, and we agree that some careful liberalization of unauthorized practice laws could have a positive influence on that dynamic.

At the same time that this task force considers innovations that would aid the underserved in gaining access to justice, however, there is also a wider debate in progress between lawyers and non-lawyers over how legal services will be delivered to those who have no impediments to access. In particular, large accounting firms have long coveted the legal fees that lawyers in California and elsewhere receive for serving their best clients. Currently, the rules on unauthorized practice and on splitting legal fees with non-lawyers have been barriers to accounting firms entering into the legal services market in California and in most other American jurisdictions.

Many arguments could be made on both sides of that issue. Lawyers argue that the independence that results from these two rules serves clients as well as the legal system as a whole. Lawyers also argue that the global dominance of the accounting profession by a very small number of accounting firms is an anticompetitive model that should not be replicated in the legal profession. On the other hand, accounting firms argue that clients with complex business problems should have the benefit of obtaining unified advice on their business,

Justice Lee Edmon, Chair, Task Force on Access Through Innovation of Legal Services  
September 23, 2019  
Page Two

accounting, and legal problems from a single provider. The arguments on both sides go on and on.

The point of this letter is not to argue for or against allowing accounting firms to practice law, or for or against allowing non-lawyers to share legal fees. The point of this letter is to say that those are important discussions for another day that should occur when those issues have been specifically identified, researched, and vetted, and when comments on those topics have explicitly been requested. No doubt a vigorous discussion will ensue.

But changes of such a drastic nature on so important a topic should not be made, inadvertently or otherwise, via a vehicle designed to address expansion of access to the underserved residents of California. Instead, if such an action is to be considered, it should be undertaken by a task force chartered specifically to address that issue. Some of the suggestions of the task force, though surely not designed to allow accounting firms to practice law, could, depending upon how they are crafted or implemented, do exactly that. Specifically, recommendations 2.0, 2.1, and 3.1, which if implemented properly may well provide some benefits to the underserved, could also totally transform the organization of the legal profession in ways that have not been discussed in the materials circulated for public comment and that likely have not been considered by this task force.

As stated at the outset, we support innovations that will assist underserved Californians in gaining improved access to legal resources. But exceptional care should be taken to avoid unintended consequences that would implement sweeping changes to the legal profession without a full vetting of the complex issues and concerns involved.

Very truly yours,

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Justice Lee Edmon, Chair, Task Force on Access Through Innovation of Legal Services  
September 23, 2019  
Page Three

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