



Nonlawyers practicing law

THE STATE BAR IS BACK AT IT WITH A BLUE RIBBON COMMISSION, AND THE “ACCESS TO JUSTICE” THEY SEEK WOULD LIKELY GET MESSY FOR THE LEGAL PROFESSION

Just two short years ago the State Bar of California’s Paraprofessional Program Working Group was created to promote the idea of non-lawyer ownership of law firms and non-lawyer representation in certain instances in court and during negotiations. The State Bar not only attempted to allow non-lawyers to practice law, but also attempted to allow software companies to market tech platforms for “self-resolution of legal disputes.”

Though offering greater access to justice is a noble idea we all believe in, good intentions and innovation for innovation’s sake will not provide consumers and the public with the adequate representation they deserve. The concept would allow those who have not passed the bar to represent Californians in civil matters. A broader risk is that non-lawyers and/or companies could own and operate law firms and offer legal services. This would allow corporations to be able to capitalize on their own interests and, potentially, play both sides.

Although defeated and pushed back by our Governor and state legislature, deregulatory efforts have reemerged, and lawyers who truly want to protect people — well as the integrity of the profession — need to be on guard. Let’s discuss the recurring push for non-lawyer ownership of law firms and why such a move could wreak havoc on the courts and the legal profession.

Deregulation’s recent history

The Working Group was formed to solve a challenge faced by Californians, many of whom expressed an inability to access or afford quality representation. In 2019, the State Bar’s report, *California Justice Gap Study: Measuring the Unmet Civil Legal Needs of Californians*, found that 55% of Californians experience at least one civil legal problem in their household each year, and Californians either received no help or inadequate legal help for 85% of these problems.

But to accept this data as the ultimate authority is a mistake. The study did not expand any further on whether the Californians who sought legal assistance ultimately had their cases rejected. Furthermore, the State Bar of California admitted to the “logistical limitations” of the questions posed to the sample group of 3,885 residents.

There was another key flaw in the study that pointed to an education gap, rather than inaccessibility, among Californians. This was most prevalent when considering affordability. Most lawyers who handle injury, employment and workers’ compensation matters offer their clients contingency-fee arrangements, where the plaintiffs typically do not need to pay any upfront fees or expenses. Instead, the lawyer or firm will receive a percentage of a favorable resolution. People may simply not have known that when they hire a personal injury or plaintiff firm, we charge no up-front fees.

The Paraprofessional Program Working Group still sought to present a solution over the issue of greater access to justice, however, which was known as “the Sandbox.” The Sandbox proposal included deregulatory efforts that would allow non-lawyers to practice law, authorize non-lawyer ownership of law firms, and open the way for Big Tech to take the concept of a concierge service to a new (low) level, where it would likely degrade the profession. By deregulating the legal field and lowering the standards, the Bar would fail to efficiently resolve cases and fulfill its mandate to protect the public.

Legal groups like the Consumer Attorneys Association of Los Angeles (CAALA) were vocal in their opposition to the sandbox, which they said, “has the potential to cause irreparable harm to consumers and damage public trust in the legal system.” In fact, attorneys statewide are fighting against this move, including attorneys from the Western Center on

Law and Poverty, the Public Law Center, and the Legal Aid Foundation of Los Angeles, all of which represent the very disenfranchised people the State Bar is allegedly attempting to help.

In assessing the viability of paraprofessional programs, my colleague Genie Harrison wrote a piece and cited a Boston Consulting Group analysis of a similar program in England and Wales that found “arguments, such as lower prices and better quality of legal services, cannot be proven to have materialized based on the data and evidence.”

Thanks to the efforts of CAALA and the Consumer Attorneys of California (“CAOC”), state lawmakers heeded such warnings by opting not to play in the sandbox and moved to preserve the status quo on lawyer regulation. State lawmakers in August 2022 passed a bill that halted these projects by the State Bar of California. Former State Assemblymember Mark Stone (D-29) co-sponsored the bill, and at the time said that lawmakers were “very concerned” about lapses in the state bar’s attorney discipline system.

In September 2022, Gov. Gavin Newsom signed A.B. 2958 which authorized the bar’s funding. Newsom noted that any pending on the regulatory sandbox will require lawmakers’ approval.

The bill addresses the sandbox:
(3) Existing law prohibits the practice of law unless the person is an active licensee of the State Bar.

This bill would require an entity of the State Bar exploring a regulatory sandbox or the licensing of non-attorneys as paraprofessionals to take specified actions, including prioritizing protecting individuals, especially those in need of legal assistance, from unscrupulous actors, including those actors seeking to do business in the legal field, above all else. The bill would require the State Bar to provide to the Senate and Assembly Committees on Judiciary by January 15, 2023, a report containing specified information relating to funding spent since 2018 to study the creation of a regulatory

sandbox or the licensing of non-attorneys as paraprofessionals.

Among its many provisions, it restricted the operation of “paraprofessionals” practicing law. However, this is not the end of the story. The bill sunsets in 2025, meaning the California State Bar had the option to take this issue up again. And, of course, it has done just that.

They’re back

The California State Bar has again pursued this course of action, and its proposal is again disguised as an attempt to provide greater “access to justice,” forming a “Blue Ribbon Commission.” But, upon closer reflection, the startling truth becomes apparent. This Blue Ribbon Commission has *zero* practicing attorneys and is preparing a proposal allowing paraprofessionals to circumvent the bar exam. This non-exam pathway is a shameful attempt to turn the legal profession over to untrained individuals who will likely provide poor service without the skilled hand or even oversight of a proper attorney.

Catching up with the present

A.B. 2958 was welcome news a year ago. However, speculation has resurfaced for various reasons – from developments in other states to media coverage, to the inevitable passage of time.

The (limited) viability of other states’ paraprofessional programs

Arizona, Minnesota, Oregon, and Utah offer sandbox-style programs featuring limited licenses that allow non-lawyers to provide alternatives to hiring a lawyer for their legal needs. Oregon, for example, created a new type of legal licensure in 2023 to help meet the civil legal needs of its residents.

According to the Oregon State Bar: “Similar to Nurse Practitioners in the medical profession, Licensed Paralegals (LPs) will be authorized to perform some limited-scope legal tasks previously available only from lawyers. The license is for designated legal work in housing and family law, the two areas of greatest unmet need by Oregonians.”

This comparison of Nurse Practitioners to Licensed Paralegals is like comparing apples to oranges. When

mistakes are made, or if clients feel they were not ably represented before a judge by a paraprofessional, a new dimension of professional malpractice suits could arise.

Proponents for the access-to-justice programs continue to receive coverage for their vocal advocacy

In July 2022, former Chief Justice of the California Supreme Court Tani Gorre Cantil-Sakauye said that the state legislature is at fault for stalling regulatory reforms meant to address the state’s gap in access to justice.

Legal groups that have cloaked themselves in forward-looking initiatives, such as the Institute for the Advancement of the American Legal System (IAALS), have oversimplified the issue by assuming all would-be legal consumers are facing a justice gap. Furthermore, the leadership of this group has vested interests in deregulation, as some of its board members are lawyers at corporate defense firms and one is a vice-president and counsel at State Farm. These ulterior motives deserve an equal amount of media coverage.

An executive order recently signed by Newsom regarding AI

The rapid advancement of AI cannot be ignored. As with other emerging technologies, it is better to cautiously lean in rather than procrastinate or avoid entirely. Though A.B. 2958 severely limits AI’s influence on the legal profession, it will still impact California. In September 2023, Gov. Newsom also issued an executive order laying out California’s “measured approach” and how state government will focus on shaping the future of ethical, transparent, and trustworthy AI, while remaining the world’s AI leader. If successful, one can expect it to be referenced in future sandbox discussions.

An additional detail mentioned at the end of A.B. 2958’s language

On Jan. 1, 2025, a sunset provision will end and the sandbox can be reintroduced to the state. “*The bill, on January 1, 2025, would repeal the reporting requirement and would limit the application of the other requirements described above to an entity of the State Bar exploring a regulatory sandbox.*”

Looming dangers to the legal profession

Of the many concerns every lawyer has, the biggest is that the California State Bar is refusing to listen to its member attorneys. Plaintiff associations, prominent non-profit legal organizations, and the California Lawyers Association have all questioned the wisdom (or lack thereof) for the State Bar’s pursuit of this measure.

A memo from the Los Angeles County Bar Association says the State Bar is attempting to allow individuals to bypass the Bar Exam by completing a certain amount of “experiential” internship hours and turning in a “portfolio” of work. This is problematic in several ways. For example, how will the Bar define experiential internship? Will they be interning with reputable law firms or large corporate legal departments? Or, as is more likely, will these non-attorneys have minimal supervision in programs designed to teach them very little, if anything, about the law and how it works?

As to the portfolio, this will likely be loosely defined as well. What if some large insurance corporation hires paraprofessionals to spend hours hard at work denying claims and turning in a large collection of denials as their “portfolio?”

And, possibly the worst option, for how long will this paraprofessional program be restricted to humans before it is turned over to Artificial intelligence (AI). This science fiction approach is creeping into every profession, and while we’d like to think it can never replace attorneys, that’s likely a head-in-the-sand notion. What happens when these paraprofessionals are hired to use AI to do legal work, undercutting firms and churning out substandard work that damages the profession? That could put attorneys in the unemployment line and ruin the lives of clients who need a real attorney to represent them.

Serious problems for lower-income individuals

Should the State Bar succeed in its efforts, there is a serious side effect that will likely create an even bigger divide between

rich and poor. If paraprofessionals are the more affordable route, what happens when their inexpensive paraprofessional has to go toe-to-toe with a real lawyer? In a family dispute, if one party has an attorney and the other does not, there's a serious imbalance at play. If someone on a reduced income gets into a car crash and hires a paraprofessional to litigate a case against an insurance company's lawyers and law firms, it won't be much of a fight. While the current proposal is only suggesting the paraprofessional program for certain disputes, it's easy to see this divide happening even in those cases.

All in the name of access to justice

While there may be issues with access to justice in certain areas of law such as immigration, housing, family law and

bankruptcy – all of which would require a potential client to advance attorney fees for the representation, those issues are not present when it comes to areas where clients can retain counsel on a contingency basis. Furthermore, how would allowing corporate ownership of law firms address access to justice in areas of law where there are no access issues by definition?

Plaintiffs' lawyers rely on the contingency model, as it helps ensure that injured Americans can hold corporate wrongdoers and well-funded entities accountable for their actions. Where exactly is the "access to justice" issue when it comes to attorneys who can be retained without the payment of an upfront fee? Will Google Law, Amazon Law, Costco and Walmart Law be the answer to the access of justice issue?

The emergence of AI is likely to dramatically change the practice of law in the next couple of years – some changes for good and some not so much! There is nothing good however, that can come out of allowing law firms to be owned and operated by non-lawyers. But unless we stay alert and proactive, this is the future reality we face -- and it's not one to look forward to!

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