

December 17, 2021

Senator Tom Umberg
Chair, Senate Committee on Judiciary
Via email

Assemblymember Mark Stone
Chair, Assembly Committee on Judiciary
Via email

Re: Legislative Concerns Regarding the Closing the Justice Gap Working Group

Dear Senator Umberg and Assemblymember Stone:

As volunteer members of the Closing the Justice Gap Working Group (hereinafter CTJG), we write in response to the recent letter sent to the chair of the State Bar and the chair and vice-chairs of the CTJG. The CTJG seeks to promote Californians' access to legal services. As the Bar's own 2019 Justice Gap study showed, 85 percent of Californians—many of them your constituents—get no help or plainly inadequate help for their legal problems. The same is true for the thousands of small businesses that make do without legal help while trying to contribute to the economy of this great state. This is a crisis which directly implicates the core mission of the California State Bar to protect the public, a charge which explicitly includes “support of efforts for greater access to, and inclusion in, the legal system.” Californians who lack access to legal help are not protected. To the contrary, they suffer substantial and even life-altering harm.

We welcome the opportunity to address your questions and concerns in detail so that you can have a more complete understanding of our work.

As members of the CTJG, we have voluntarily engaged for nearly a year in this important public policy effort to increase access to legal services for those who most need them. Our efforts build on the two years of work already conducted by the Task Force on Access Through Innovation of Legal Services (ATILS). We have been working hard on a series of complex issues—including consumer protection mechanisms, conflict of interest concerns, maintenance of the attorney-client relationship, and compliance control—to ensure that the ultimate report properly addresses the significant policy issues at stake. The group is composed of judges, lawyers, experts, and other stakeholders, each of whom has generously given of their time and talent, to attend working group and subcommittee meetings; research, draft, and analyze proposals and recommendations; solicit views from a diverse group of stakeholders; and review and discuss all materials.

Our understanding is that you were consulted on the formation of the CTJG, and that you and your staff have been kept updated along the way. The working group's charter intentionally established slots on the group for representatives from each of your offices. The appointed Assembly liaison has actively participated in, and contributed to, group discussion. Furthermore, as you recognize, the CTJG's work,

while crucial, will hardly be the last word. Our task is simply to produce recommendations that will go first to the State Bar Board of Trustees, then to the Supreme Court, and then to the Legislature. Along the way, there will be plenty of opportunities for meaningful input on any proposal. The CTJG's process reflects the importance of these policy questions and respects the separation of powers between the California State Legislature and the California Supreme Court.

Your letter expresses concern about harm to consumers that might result from services provided through the kind of regulatory sandbox CTJG is exploring. We too are carefully attuned to consumer welfare and committed to consumer protection. But we are also attuned to the fact there is real harm being caused right now, every day, because consumers cannot find the legal help they need at a price they can afford. As the Judicial Council indicated: "The caseload of most California judges now consists primarily of cases in which at least one party is self-represented." Both California judges and California consumers need help.

Meanwhile, there are real California lawyers and businesses who want to serve people who need legal help. The CTJG has heard from several of these individuals and entities. We have heard from lawyers like Erin Levine from Emeryville, a family lawyer who realized she could help more people get affordable assistance through technology, but is prohibited from charging a flat, affordable fee for both access to the resources in her tech platform and help from a lawyer. We have heard from businesses like Rocket Lawyer, whose CEO, Charley Moore, explained that being unable to partner with lawyers increases costs for consumers and reduces the likelihood that consumers will get services from a lawyer as opposed to going it alone. And we have heard from nonprofit leaders, including Rohan Pavaluri, the founder of the successful bankruptcy nonprofit Upsolve. Pavaluri wants to work with California community leaders and organizers to help the millions of Californians crippled by consumer debt and dragged into court to face lawyers for debt collection companies.

These are real solutions that could be available to California consumers but are not available now—solutions that could help millions of people with family problems, end-of-life planning, small business needs, and financial issues. And they are "one to many" solutions that use technology and business expertise to reach more people, at lower cost, than an individual lawyer could alone. A sandbox could allow such companies to provide approved services to consumers under regulatory oversight, and it is an idea that we believe is worth exploring through the work of the CTJG.

Our working group is tasked with making a recommendation on how a regulatory sandbox might be designed to allow providers like Hello Divorce, Rocket Lawyer, and Upsolve better serve individuals and small businesses, while also protecting consumers from harm. We have been working to frame a cautious and incremental approach to a sandbox—a pilot program where entrants would be carefully screened and subject to significantly more robust oversight than lawyers are, including, for example, ongoing detailed data reporting on consumer services, audits of entities authorized in the sandbox, and robust consumer disclosures. It would decidedly not be, as your letter suggests, an open invitation to an unregulated Wild West of legal services.

In developing ideas on what a California sandbox could look like, we are not necessarily breaking new ground. These kinds of reforms have happened and are happening overseas in the UK, Australia, and Canada, and also close to home, including in Utah and Arizona. A growing number of other states, among them North Carolina, Michigan, and Washington, are also recognizing the need for reform and the potential of a regulatory sandbox approach. The CTJG seeks to learn from these models. In Utah, the sandbox has been operational for over a year and has authorized entities offering a range of

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consumer services, including end-of-life planning, real estate, veterans' benefits, medical debt assistance, domestic violence help, tech-based family law and expungement services, and small business services. Many of these entities are led by lawyers and, critically, consumer complaints have been negligible.

We share your concern about the lawyer discipline system in California. But efforts to address that separate issue should not preclude work to address the access-to-justice crisis for millions of Californians. That crisis is simply too urgent to put on the back burner. We too have, for decades, pursued hopes for legal aid (through year after year of budget cuts), court-sponsored self-help, and pro bono. Many of us have worked directly to provide assistance to consumers through these means. These programs do outstanding work for the people they are able to serve. But the numbers of people being turned away and turning away from the civil legal system simply grows. We will never subsidize or volunteer our way out of the access-to-justice problem.

Finally, there are millions of Californians with modest incomes who make too much money to qualify for legal aid or pro bono help, but cannot afford the \$200 or \$300 an hour that California lawyers charge their clients. Right now, Californians can get a lawyer if they suffer a serious personal injury but not if they need help with child custody, eviction from their home, or negotiation with a debt collector. Many of these Californians who cannot get help are the "essential workers" we have rightly honored during the pandemic, including teachers, nurses and grocery store workers. We dishonor them if we say that their justice needs are not worthy of our attention. We hope that you will commit to prioritizing their legal needs as well.

We propose a meeting in early January 2022 at which we can directly address your questions and concerns, along with one or more of the pioneering legal service providers we referenced above. We hope that you will welcome this opportunity to learn more about the details of our effort and how it aligns with our common goal of protecting the citizens of California.

Sincerely,

David Freeman Engstrom

LSVF Professor in Law, Co-Director Stanford Center on the Legal Profession, Stanford Law School

Eric Helland

William F. Podlich Professor of Economics and George R. Roberts Fellow, Claremont McKenna College

Lucy Ricca

Director, Policy and Programs, Stanford Center on the Legal Profession, Stanford Law School

Andrew Arruda

CEO and Co-Founder, Automate Medical; CEO and Co-Founder (Former), Ross Intelligence

Sacha Steinberger

Founder and Co-Executive Director, Legal Link

Khathy Hoang

Senior Director, Data, Evaluation, and Development, YMCA of Los Angeles

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Rebecca Sandefur

Professor, Arizona State University; Fellow, American Bar Foundation

Jim Sandman

Distinguished Lecturer and Senior Consultant to the Future of the Profession Initiative at the University of Pennsylvania Carey Law School; President Emeritus of the Legal Services Corporation

John Lund

Chair, Utah Office of Legal Services Innovation; Of Counsel, Parsons, Behle, & Latimer LLP

Crispin Passmore

Founder and Principal, Passmore Consulting; Executive Director (Former), Solicitors Regulation Authority, United Kingdom

cc:

Hon. Alison M. Tucher

Leah Wilson

Ruben Duran