



Update from CAOC
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New California law bans State Bar's pursuit of corporately owned law firms

THE STATE BAR'S ATTEMPT TO CHANGE THE PRACTICE OF LAW IN CALIFORNIA MEETS AN ABRUPT END – FOR NOW

The State Bar of California's main mission is to license and discipline attorneys, so you may have been surprised to hear of their escalating efforts to open the door for corporations and paraprofessionals to practice law. For the last four years, the State Bar has been taking increasingly aggressive steps to deregulate the practice of law under the guise of "closing the justice gap." Specifically, their proposals would authorize unsupervised non-lawyer paraprofessionals to offer certain legal services and allow corporations to own law firms, share legal fees, and even directly practice law under some circumstances.

In 2018, the State Bar formed a task force to study regulatory changes, then commissioned a misleading study that was released in 2019. That led to recommendations in 2020 to create two working groups: one to recommend parameters for a "regulatory sandbox" to permit the corporate practice of law, and the second to license unsupervised paraprofessionals. Unfortunately, both working groups were severely biased in their membership. The State Bar appointed people to these groups, including several academics from out of state and even out of the country, who were already unbending advocates for their point of view. This approach reflected a coordinated nationwide effort by a coterie of advocates, including in states such as Arizona which removed its rule barring fee-sharing between lawyers, and Utah, which also initiated a "sandbox" program regarding new legal ownership models. While a few bar organizations, including CAOC, were permitted to designate members of the working groups, those members were routinely outvoted in the stacked committees.

In September 2021, the paraprofessional working group released its report, recommending allowing non-lawyer paraprofessionals to practice law and split fees with attorneys. Despite receiving hundreds of letters in opposition from legal aid groups, bar associations, and individual attorneys, the State Bar continued to march forward with its recommendations and largely dismissed serious substantive concerns as protectionist.

Corporate ownership of law firms and splitting legal fees with non-lawyers has been banned by common law and statute, due to grave concerns that it could undermine consumer protection by creating inherent conflicts of interests that fundamentally infringe on the duties attorneys owe to their clients. Corporations are driven by profits and demands for returns to shareholders, and do not have the same ethical duties and are not subject to the same regulatory oversight as attorneys.

The Bar marched forward

The State Bar used questionable methods for the Closing the Justice Gap Working Group as well as the Paraprofessional Program Working Group. The Bar utilized hundreds of hours of staff time and a substantial amount of State Bar resources. Records obtained through the Public Records Act revealed that the Bar also signed contracts with outside consultants for over \$200,000, paid for lobbyists to advance its agenda, and even paid for online ads to try to attract more favorable public comment.

As it became clear that the State Bar could not be deterred from its push to

authorize non-lawyers to practice law and allow corporations to own law firms, the Legislature sought to stand up for consumer protection. First, Assembly Judiciary Chair Mark Stone and Senate Judiciary Chair Tom Umberg submitted an unprecedented joint letter in December 2021 urging the Bar to reconsider its efforts, particularly in light of the inherent conflicts of interest any corporation would have in serving shareholders rather than legal clients. The Chairs admonished the Bar to focus on their core mission of protecting the public and addressing critical issues in the discipline system.

The legislature acts, the governor agrees

When it became clear, yet again, that this warning would not deter the State Bar, Assemblymember Stone and Senator Umberg amended Assembly Bill 2958, the annual State Bar dues bill, to enact statutory limitations to ensure that the Bar correct its course. The amendments to AB 2958 require the State Bar to: (1) provide very specific information regarding the funding spent on these efforts since 2018; (2) prohibit efforts to pursue corporate ownership of law firms and splitting legal fees with non-lawyers; (3) require future activities prioritize increased access for low-income individuals, small businesses, and people eligible for representation from legal services organizations; and (4) explicitly prohibit any proposed changes to the restrictions on the unauthorized practice of law. This statutory language would permanently block the "sandbox" activities and would freeze any paraprofessional proposal until January

2025. In the intervening two years, the State Bar can discuss its paraprofessional ideas with legal services organizations that it has previously ignored or diminished.

The State Bar opposed these amendments, arguing that discipline is not its sole mission and that it is also charged with increasing access to the legal system. It advocated for a counter set of amendments, which were rejected by Chairs Stone and Umberg. Numerous legal services organizations, CAOC, California Employment Lawyers

Association, California Defense Counsel, and others supported the passage of AB 2958 with these important protections. We conveyed to legislators that there are approaches to increasing access to justice through better funding for legal services, better staffing for self-help centers and more utilization of pro-bono services that do not carry the risks inherent in allowing non-lawyers to represent clients in sensitive legal proceedings and allowing for corporate ownership of law firms.

AB 2958 as amended was approved overwhelmingly by both houses and was signed by Governor Newsom. The bill was passed as an urgency measure, so it went into effect immediately. This guarantees that the bar cannot precipitously submit its paraprofessional proposal to the California Supreme Court or the Legislature before the restrictions go into effect. While this is a great victory in the fight for consumer protection for vulnerable legal clients, the battle will continue.