



The State Bar of California

ATILS Agenda Item B.1.
[Regulatory Sandbox]
02-04-20 Meeting

Task Force on Access Through Innovation of Legal Services

To: ATILS Task Force
From: Joanna Mendoza
Date: January 31, 2020
Re: Regulatory Sandbox Recommendation

What is a Sandbox?

A regulatory sandbox is a framework set up by a regulator that allows participants to test innovative business models or offer products and services in a controlled environment under a regulator's supervision. The sandbox model allows for the gathering of data to assess impact and protect against consumer harm. If the data is promising, changes to rules and statutes will then be considered more generally.

The regulatory sandbox proposal addresses the ATILS charter insofar as it provides a regulatory platform to encourage innovation to enhance the delivery of, and access to, legal services through the use of technology, online legal service delivery models, and entities not currently allowed under the existing rules of professional conduct and UPL statutes in California.

Proposed California Sandbox Composition, Scope and Process

The California State Bar and/or the California Supreme Court shall use rule-making power to create an oversight body with regulatory authority. The regulatory authority over the sandbox would include the ability to certify and decertify each entity/service and to impose the necessary certification and data collection requirements. The oversight body would also have the power of enforcement against entities on evidence of material consumer harm.

A. Oversight Body Composition

The oversight body created under this proposal should be limited in size to no more than seven members to include, but not be limited to, the following types of individuals: 1) consumer protection advocate; 2) economist; 3) legal ethics expert; 4) technology expert; and 5) judicial branch officer (e.g. judge or court administrator).

B. Scope

Any business model, service or product that cannot be offered under the current rules and statutes for providing legal services will be able to apply and be considered by the oversight body. For the most part, if a service or entity cannot operate under the current rules and statutes then approval would be needed by the oversight body through the regulatory sandbox process. Actively licensed attorneys or law firms partnering with, contracting with, or employed by entities approved by the oversight body would not need to take any separate action for approval. However, those licensed attorneys who partner with non-approved entities will need to seek approval by the oversight body with respect to that arrangement. Such measures will allow for the necessary data collection and compliance oversight.

The following provides further detail and examples as to the types of services and entities that will fall both outside and within the regulatory sandbox:

1. Entities and Services Outside the Regulatory Sandbox

- a. Conventional 100% lawyer-owned, managed, and financed law partnerships, professional law corporations, and individual lawyers with an active California license using new advertising or solicitation approaches as contemplated by the Rules of Professional Conduct.
- b. Conventional 100% lawyer-owned, managed, and financed law partnerships, professional law corporations, and individual lawyers with an active California license:
 - i. Offering traditional legal services as permitted by the Rules of Professional Conduct;
 - ii. Entering into employment, contract for services, joint-venture, or other partnership (fee-sharing) with an entity or service that has been approved by the oversight body through the regulatory sandbox process.
 - 1. Example: A California lawyer is hired by an online legal platform offering services to the public. The lawyer is hired to be a staff attorney, providing legal services to that entity's customers. The online platform has been approved to offer legal services in California through the regulatory sandbox process. The lawyer does not need to seek separate approval from the oversight body.
 - 2. Example: A California lawyer is hired by a nationwide big box store chain to offer flat fee legal services to store customers via a small office or kiosk in the store. The store has sought and received approval by the oversight body to provide the particular legal services in its California stores. The lawyer does not need to seek separate approval from the oversight body.
 - 3. Example: A California lawyer is hired by a large accounting firm to provide mergers and acquisitions legal advice and strategy to its clients. The accounting firm has been approved to offer such legal services in California by the oversight body. The lawyer does not need to seek separate approval from the oversight body.
 - 4. Example: An attorney-owned law firm enters into a joint venture with an online legal platform offering services to the public through which the firm's attorneys offer legal advice and assistance to the online platform's customers. The online service has been approved through the regulatory sandbox to offer such legal services in California by the oversight body. The law firm does not need to seek separate approval from the oversight body.

2. Entities and Services Requiring Sandbox Approval

- a. Conventional 100% lawyer-owned, managed, and financed law partnerships, professional law corporations, and individual lawyers with an active California license:
 - i. Offering legal service options not previously authorized, whether directly or via a joint-venture, subsidiary, or other corporate structure.
 - 1. Example: An attorney-owned law firm offers an online tool providing information and guidance, including legal advice via chatbot or similar technology, around corporate formation.
 - 2. Example: An attorney-owned law firm decides to launch an online corporate formation tool as a subsidiary technology company.
 - 3. Example: A non-profit legal service entity offers an online tool providing guidance, form completion, and legal advice on eviction defense via its website. It also uses its non-licensed eviction defense experts to provide legal assistance, including advice, to supplement the online tool.
 - ii. Partnering (fee-sharing) with a non-lawyer owned entity that has not been approved by the oversight body to offer legal services through the regulatory sandbox process.
 - 1. Example: An attorney-owned law firm enters into a partnership with a bank to offer bundled legal and banking services. Fees are earned through engagement between the firm and the customer. The bank has not previously been approved to offer legal services through the regulatory sandbox process.
 - 2. Example: An attorney-owned law firm enters into an agreement with a big box chain store to offer legal services in their California stores. The agreement specifies that the firm will lease space from the store and pay it a certain percentage of revenue generated by in-store engagements. The firm advertises services leveraging the store's brand and the store advertises that legal services are available in the store from the firm. Fees are earned through engagement between the firm and the customer. The store has not previously been approved to offer legal services through the regulatory sandbox process.
- b. Conventional law partnerships, professional law corporations or joint ventures with less than 100% ownership, management or financing by lawyers with an active California license.
 - 1. Example: An attorney-owned law firm elevates its head of marketing (an individual without an active California law license) to a position that holds equity ownership in the firm.
 - 2. Example: An attorney-owned law firm takes on financing from a private equity firm.

3. Example: An attorney-owned law firm finances a technology subsidiary via venture capital funding or establishes a subsidiary managed and operated by professionals who are not actively licensed to practice law in California.
 4. Example: A global enterprise service company purchases a stake in an attorney-owned law firm.
- c. Legal service providers, for profit or not for profit, with no ownership held by any lawyer with an active California license:
- i. Practicing law via technology platforms (using AI, etc.) or lawyer and/or staff that does not have an active California law license, or through the purchase of a law firm.
 1. Example: An online legal platform which offers services to the public, including legal assistance from actively licensed California lawyers, experts in the field who are not actively licensed California lawyers, and technology platforms.
 2. Example: A big box retailer offering flat fee legal services for consumers via actively licensed California lawyers, experts in the field who are not actively licensed California lawyers, and technology platforms in its stores and online.
 3. Example: An online legal network connecting consumers to actively licensed California lawyers and offering flat fee legal services.
 4. Example: A large consulting firm purchases an attorney-owned law firm to operate the firm as its legal service division in California.
 5. Example: A large consulting firm hires an actively licensed California attorney to provide legal advice on California business entity creation and maintenance to its clients.
 6. Example: A non-profit entity that focuses on addressing domestic violence offers legal assistance to its clients through its staff (who are not actively licensed California attorneys), including assistance completing protection orders, divorce, and custody proceedings.
 - ii. Practicing law through business partnership or contract with individual lawyers or firms in which the services are advertised as part of the provider's brand and in which the contract for services is between the entity (not the lawyer or the firm) and the consumer.
 1. Example: A bank enters into a business partnership with an attorney-owned law firm or individual lawyer in which the bank thereby advertises legal help as part of its services/products. Fees are earned through a contract for services between the bank and the customer.

2. Example: A big box retailer enters into a joint-venture with an attorney-owned law firm through which the firm's attorneys offer legal services to the store's California customers, either in their stores or via online platforms. The services are advertised under the store's brand and fees are earned through a contract for services between the store and the consumer.

C. Process and Participant Requirements

If an entity/service cannot provide legal services under the current rules and statutes, or if there is a material question whether the entity/service would be allowed, an application must be made to the oversight body for registration. Upon receipt of the application the oversight body shall determine the relative risk to the consumer and set requirements upon the applicant as deemed appropriate. This is not intended to be a rigid or technical approach since objective-based regulation is meant to be flexible and responsive to evidence of risk.

The oversight body will give priority and a reduced fee structure to non-profits as well as for-profit entities that propose providing services specifically designed to address areas of most need as identified by the 2019 California Justice Gap Study. Other entities/services may be considered by the oversight body as well, but the priority and fee structure preference shall be with the formerly mentioned entities/services.

With an effort to ensure that the regulatory burdens are not too onerous, requirements for participation in the sandbox should include, but not be limited to, the following:

- Disclosure to consumers that the entity/service is part of the sandbox and referring consumers to the oversight body where they can learn more and provide feedback or complaints;
- Where applicable, informed consent by consumer acknowledging that service is not provided by a licensed attorney;
- Confidentiality, which shall include a prohibition against regulated entities sharing disaggregated consumer data with any outside third parties other than the oversight body;
- Data collection and reporting to the oversight body to determine if the entity/service is performing and being used by the public, as well as the scope of the impact on providing legal services to the public and whether there are unexpected harms (see below);
- Transparency, including credentials of service providers;
- Compliance with accessibility and usability standards to be set by the oversight body;
- Mitigation of bias and other negative effects when deploying algorithmic systems, as well as "dark patterns," with respect to technology services;
- Corporate entities and LLCs must be either a California entity or registered foreign entity, requiring an annual statement of information that identifies officers and directors and registered agent for service of process. Partnerships would provide partner information and registered agent to the oversight body;

- Liability insurance at levels to be set by the oversight body;
- Prohibit arbitration clauses or limitations of liability in the terms of service that will preclude consumer access to the oversight body's complaint and remedy system;
- Training requirements to be determined by the oversight body.

Data Requirements and Analysis

The regulatory strategy of the sandbox oversight body is to assess the risk of three possible harms to consumers of the legal services provided by sandbox participants.

The harms are:

- Receiving inaccurate or inappropriate legal services.
- Failing to exercise legal rights through ignorance or bad advice.
- Purchasing unnecessary or inappropriate legal services.

The oversight body will need several kinds of data on legal outcomes to assess the likelihood of consumers experiencing these harms. Sandbox participants can therefore raise their chances of approval and registration by providing as much of the required data as possible. A partial but suggestive list of data collection strategies and data sets include:

- Consumer complaints
- User surveys
- Rate of service error fixes
- Level/rates of services provided
- Legal and financial outcome data

Although the sandbox oversight body would be interested in the absolute absence of consumer harms by a sandbox participant, the more important criterion is the relative rate or risk of harm compared to the experience a consumer would have received absent the legal services provided. To make that comparison, information must be known about the consumers of the legal services provided by the sandbox participants. Some possible useful data for this purpose might include:

- Income level
- Education level
- Geographical location
- Race/ethnicity

The oversight body will negotiate the actual data collection requirements individually with each sandbox participant, but the oversight body will attempt to establish and maintain data sets as consistent with

the guidance above to the greatest extent possible. Because the oversight body has limited resources to separately collect such data, applicants to the sandbox shall be advised to provide as much of the required data as possible.

No data provided by sandbox participants may be shared with any other organizations for any reason. Data provided by sandbox participants should be anonymized before submission to the sandbox oversight body. Data provided will be kept confidentially and deleted from the oversight body's databases after analysis, unless otherwise required by California law. The oversight body may choose to share provided data to independent evaluators of the sandbox after receiving permission by the data provider; If so, such evaluators will be contractually required to also keep the data confidential and delete it after the analysis is complete.

Removal from Sandbox

If an entity/service fails to comply with the requirements set by the oversight body, including providing appropriate supporting data with respect to the services provided, it will lose its authority to operate within the sandbox structure and, as a result, will be subject to all existing rules and statutes regulating the practice of law. However, so long as the value of the service outweighs any risk of harm to consumers, the entity/service shall be allowed to continue operating.

Post Sandbox Activity

A sandbox is not set up as a permanent regulatory structure. It is intended to be a 2-3 year program through which evidence and data can be gathered to determine the appropriateness of changing rules and statutes that would otherwise prohibit the entities and services allowed by the sandbox. No permanent regulatory structure or rule changes are proposed at this time as any such proposals will need to be informed by the sandbox experience and data derived therefrom.

Nevertheless, critical to entities/services that would participate in a sandbox is that they be allowed to continue providing their services so long as it is performing as intended and not harming the public. Therefore, a crucial condition of the sandbox model is that a structure is set up after the sandbox is concluded that will allow the services to continue under those conditions. Ideally, the sandbox participants would transition to a more permanent model under the oversight body.

Funding

This Program would be entirely funded by licensing fees each applicant pays to enter the sandbox. The fees will be set to ensure sufficient resources for the administrator of the sandbox to effectively manage the applications, screen to ensure all requirements are met, monitor the progress, and remove any applicant from the sandbox that is causing consumer harm as identified by the administrator. To the extent additional funding may be required, the oversight body would have the authority to seek grants.

Reciprocity

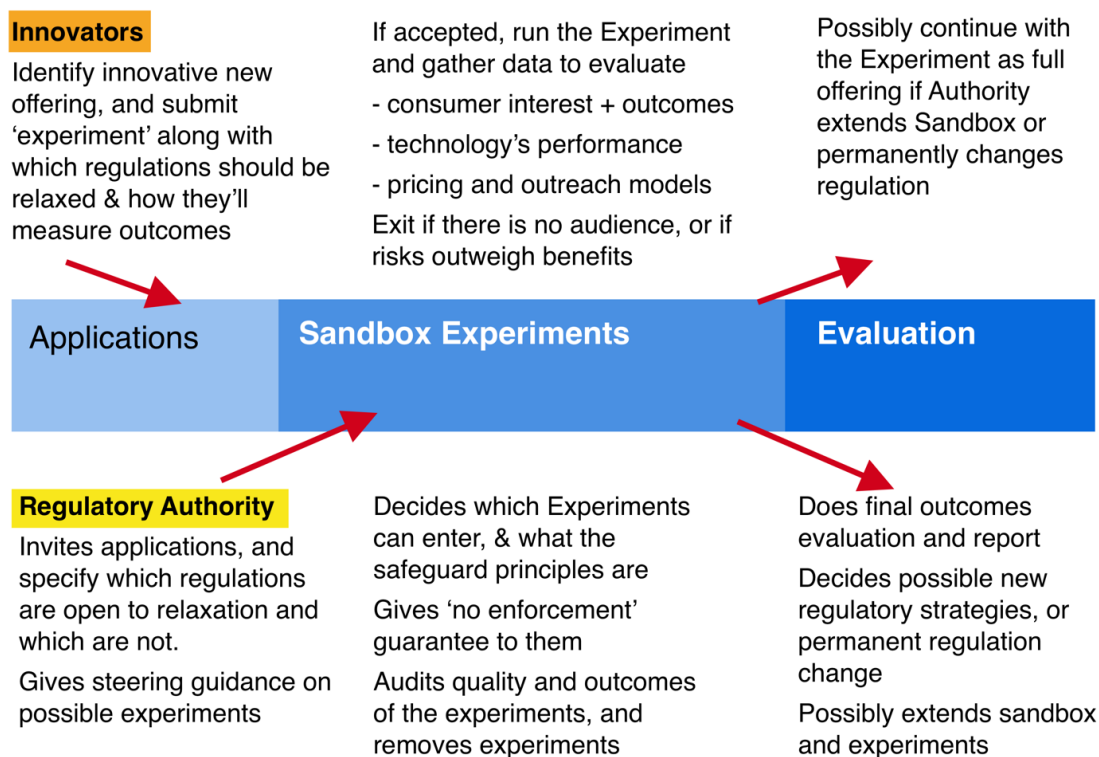
It is anticipated that California's regulatory sandbox for legal services will allow for reciprocity with other state, federal and foreign jurisdictions to allow a product or service to be made available simultaneously in each jurisdiction.

A number of other jurisdictions, including Arizona, Utah, Wyoming, the United Kingdom and Singapore operate similar regulatory sandboxes. The oversight body in California shall coordinate oversight with other jurisdictions to ensure an efficient regulatory approach.

Regulatory Sandbox Model Diagram

Below is a diagram of a regulatory sandbox model as presented within the Utah Task Force report from August 2019.

A Regulatory Sandbox Model



Ensuring Access to Justice

ATILS believes that this regulatory sandbox proposal fulfills its charge to identify possible regulatory changes to remove barriers to innovation in the delivery of legal services by lawyers and others, and effectively balances our dual goals of consumer protection and increased access to legal services.

In order to ensure that the proposed loosening of existing restrictions will actually impact California's justice gap, we recommend the following incentives to encourage applicants to innovatively develop systems to target the areas of greatest need:

- Discounted licensing fees (possibly on a sliding scale depending on the size and expected revenue of the applicant) as discussed above
- An access incubator/accelerator (a formalized network of funders, technologists, strategy, business, and marketing advisors that brings in classes each year to help them refine concept

and launch). This could be a program run independently from the regulator-- perhaps in partnership with universities.

Examples of How Current Rules and Statutes Prohibit Innovative Legal Services

It is, of course, difficult to find examples of legal services and entity structures that are currently prohibited by the rules of professional conduct and statutes because of those very prohibition discouraging entry into the market. We do know that relaxing of non-lawyer ownership and fee sharing provisions in other markets (e.g. U.K. and Australia), have not had any identifiable dilatory impact on consumers, but those changes were not made for the purpose of increasing access to legal services. As a result, any such changes have not been measured. We have learned, however, that since the UK has allowed non-attorney ownership and fee sharing the number of complaints against lawyers has actually decreased.

We will not know the extent of improvement to access to legal services until new entities and services are allowed into the market and proper data is kept and measured. What we do know is that the justice gap continues to grow at an alarming rate with the status quo, and that there simply is not enough lawyers to provide free/low cost legal services to have a meaningful impact of the problem our society faces.

Despite the challenge of identifying examples that could impact access to legal services but remain prevented from doing so under the current regulatory scheme, we can nevertheless present some for consideration.

The following are examples of how current barriers to entry and efficiency prevent innovation and expansion of legal services:

- One company that was founded in August 2017, Dupro, was aiming to help people understand complex legal documents for a flat rate. The company was targeting people who did not understand rental agreements, employment contracts and court documents, and if they needed more help it would direct them to a lawyer. Since the company was not owned 100% by lawyers, there were legal questions from the beginning as to whether the company would be subject to UPL statutory restrictions and fee-sharing prohibitions. The lawyer co-founder was worried about disbarment, and a backlash from other lawyers made it difficult to go beyond the early stages. The founders eventually closed the business down.
- Another company, Disputly, was created by a tech specialist and experienced software engineer (neither of whom was a licensed attorney). They were passionate about helping people navigate small claims court, with an initial focus on helping people get their deposits back from landlords. The platform allows renters to log in, give a name and address, how much money is owed, and upload evidence such as emails and rental agreements. The platform then tells them how to make and generate a demand letter, help engage with mediation and, if those efforts fail, initiate the small claims process. It was California's first automated form filler for SC-100. The company struggled to gain traction because of the concern of UPL violations. It was also attempted in Oregon, and again the company was advised that they could not launch because the form filler would be offering legal advice. As a result, while the company has very useful and easy to use software that would help many Californians complete the SC-100 form, it is unavailable to the public due to regulatory and statutory restrictions. For more detail on how Disputly works, you can see [this article on Disputly](#).

- One of the members of ATILS described how her law firm works with financial services companies who have routine and repetitive contract work involving consumer mortgages. The firm hired a programmer to assist in creating a software to assist the firm's attorneys with preparing these documents, saving tens of thousands of dollars a year in legal fees. The firm recognized that if they were able to expand the product to meet the needs of their clients in other states, they could then package it for use outside of the firm to sell to other law firms. However, the cost to develop the product and take it to market, in addition to the on-going costs of maintaining it, would have required an investment of outside capital with equity ownership, but the current rules prohibiting fee sharing make such an infusion of capital from an outside entity prohibitive. This example goes directly to the challenges faced by law firms when they attempt to innovate within the confines of the current rules of professional conduct and UPL statutes.
- A project in Arizona allows lay legal advocates at a domestic violence shelter to give limited legal advice beyond just legal information (which is all current UPL statutes would otherwise permit). This unique non-profit project is going live as a result of the Arizona Task Force and the project is part of their report. [see <https://law.arizona.edu/i4J>]. This type of project is currently not allowed under the Rules of Professional Conduct and UPL statutes, but they are hoping to open up similar projects in California, Utah and other jurisdictions creating a regulatory sandbox.
- One innovator recently spoken to is in the process of developing a marketplace platform for small claims court that works like TurboTax. There are concerns that the statutes controlling LDAs will severely restrict the services that can be offered and limits its usefulness. The availability of a regulatory sandbox would allow such a platform to assist many consumers with respect to small claims court.
- Avvo Advisor was a technology-enabled legal services offering that used an app to connect consumers to a local qualified lawyer for a fixed-fee of \$39 for 15 minutes over the phone. Studies at the time showed that Avvo Advisor offered discrete legal advice to consumers a savings of up to 71% over the average hourly fee for a lawyer. There was both statistical evidence - in the form of significant consumer demand for the service - and anecdotal evidence - in the form of stories from users who found and retained lawyers using Avvo Advisor - to demonstrate the need for and value of this product. Consumer reviews of the service were overwhelmingly positive. Lawyers also liked the service. However, the ethics opinions that condemned Avvo Legal Services, which used the same business model as Avvo Advisor, were many. Nearly every opinion took issue with a slightly or completely different aspect of Avvo Advisor, which made responding to those concerns both difficult and costly from a business perspective and from a technology perspective. The regulatory response suggests that regulation and ethics concerns remain a significant barrier to the development of innovative access services like these.
- Off The Record is an innovative technology-based service that helps connect consumers looking to fight their traffic tickets with local qualified attorneys. Off The Record uses an algorithm that includes response time, customer service satisfaction, cost, and the ultimate legal outcome in order to select the appropriate lawyer for a given client. The Off The Record model is simple: no ongoing subscription fees, no memberships, no hourly rates - just one fee paid to the attorney to book a traffic matter. If the attorney is not able to get the ticket dismissed or reduced, Off The Record offers the client their money back. Founded in 2015, Off The Record now operates in

over 35 states and has seen the cost to fight a ticket in a number of major metros in which it has entered decrease significantly. As just one example, the generally advertised price to fight a speeding ticket in greater Seattle when Off The Record launched was around \$400. Today, speeding ticket lawyers advertise \$200 or less to fight a ticket. This same thing has occurred in other geographies in which Off The Record has entered. Consumer reviews of Off The Record are overwhelmingly positive. The company now works with over 200 firms in more than 35 states. Some lawyers have inquired about using the Off The Record service to book all of their cases because Off The Record makes everything so easy. Despite this success for both attorneys and consumers, grievances have been filed (by competing attorneys not on the platform) against participating attorneys in three states so far. Off The Record expects many more of these types of grievances before their model is fully blessed and accepted by local regulators and anti-competitive attorneys alike. Those regulators who have investigated Off The Record thoroughly have found nothing that conflicts with the rules of professional conduct, saying that the Off The Record model created no “specific evidence of client/consumer harm, or a business model that on its face appears to pose a substantial likelihood of such harm” Moreover, in more than one occasion and despite Off The Record’s vetting process, unscrupulous attorneys using the Off The Record platform have taken large sums of client money and then disappeared or refused to complete work assigned to them. In such cases Off The Record has stepped in and made the clients whole without the need to involve local regulators. Problems like these could be avoided if Off The Record were able to do things like hold some portion of the legal fee until the completion of the legal service, but this exact type of activity by a third party non-lawyer was one of the major objections raised by regulators to the Avvo Advisor business model.

- Onlinesolutionattorney.be, an online service that allows users to consult with attorneys by email, skype, or phone has been prevented from expanding into many jurisdictions on the basis of current rules of professional conduct, such as not allowing fee sharing with non-California lawyers.

Pros and Cons of a Regulatory Sandbox

Pros:

Allows for new forms of legal services in a controlled environment in order to determine whether the rules of professional conduct and statutes should be changed and to what extent.

May allow for greater access to legal services to consumers than otherwise allowed by the current market as experienced in those jurisdictions which have implemented such changes.

Risk-based approach helps ensure regulation does not overburden the ability to innovate.

Data collection assists in determining the impact of services on the consumers and justice gap.

Cons:

Only a few U.S. jurisdictions are currently allowing this approach, thereby limiting likely participation until critical mass is reached.

Some risk to consumers who use these services when they should be seeking one-to-one legal advice and assistance from a licensed attorney.

Major Themes in Public Comments Received

The concept of a regulatory sandbox was not presented among the recommendations that went out for public comment. However, many concerns raised during the public comment period with respect to allowing non-attorney ownership, fee sharing and alternative business structures (ABS) can be addressed by using the regulatory sandbox approach to ensure that consumer protection is maintained and effectiveness is determined before adopting permanent changes to the rules of professional conduct and UPL statutes.

A. Concerns Raised in Many Public Comments Are Not Borne Out in Practice Where Similar Reforms Have Already Been Implemented

Crispin Passmore, a noted expert on legal regulation within England and Wales, provided public comment to ATILS which included research on the impact of the regulatory changes in those jurisdictions. He pointed out that it was unequivocal that the impact of liberalization of the regulations, while gradual and incremental, presented evidence that the users of legal services were beginning to see the benefits. Introducing alternative business structures, multi-disciplinary practices, and removing restrictions on firm ownership has resulted in improved access, choice and quality of service and innovations in the provision thereof. More importantly, however, there was no evidence to suggest that the reforms have detrimentally impacted, or resulted in greater risk to, users of legal services.

In his public comment letter to ATILS, Crispin Passmore specified that it is the economic rules that England, Wales, and other regulators around the world have focused upon for reform. In fact, no identifiable regulator, in an effort to modernize the regulatory environment, is seeking to reduce or remove the ethics rules such as duties to the client and court and confidentiality. The aim is to tackle economic rules, whether within the ethics rules or statutes, that serve little or no ethical purpose but undermine an innovative, competitive and consumer focused legal market. This economic analysis is well-presented by the international Organization for Economic Cooperation and Development (OECD) in its recent report and recommendation for reforms for self-regulated professions, including lawyers, intended to better serve consumers of those services by increasing competition and innovation. See <https://www.oecd.org/daf/competition/Portugal-OECD-Competition-Assessment-Review-Vol2-Professions-preliminary-version.pdf>

Research from the liberalization of legal regulations in England was presented which established that ABS entities 1) were more open to new ideas than non-ABS entities, 2) had higher levels of investment in research and development, 3) generated a higher proportion of turnover from new services than non-ABS entities, 4) are innovating across more aspects of their activities than non-ABS entities, 5) spend on average more than twice as much of their turnover on reputation and branding than do non-ABS entities, and 6) are nearly three times as likely to be using some form of intellectual property protection.

Ultimately, in England and Wales they have made reforms that do not result in regulating less or lowering standards. Rather, they have shifted their energy from writing rules that are intended to “keep out” businesses not run by lawyers toward supervising regulated legal business and lawyers against a clear idea of public expectation and protection. All evidence to date suggests increased legal services available to the consumers without any additional harms. Consumer expectations and needs have been placed above protectionism as the formative basis for ethical standards.

Crispin Passmore’s comments to ATILS recognized that each jurisdiction is different, and on this basis he offered proposed steps towards reform in California. Among those recommendations was the

suggestion to explore a less prescriptive approach to rule making that would be part of a shift toward a risk-based model that is nimble enough to cope with innovation. Risk-based approaches are being considered among many jurisdictions and is being studied for consideration by the California State Bar Board of Trustees.

He further encouraged the use of a regulatory sandbox for supporting development of the next stage of proposed reforms. This will allow detailed rules to be written in a manner to ensure that the reforms work as intended and the risks around different practices are identified early. It will also allow an assessment of the appetite for change and will thereby allow consumers and providers both to better understand how regulatory changes will serve all going forward.

Some of the public commenters did, however, suggest a level of openness to the regulatory sandbox type approach to determine the value of regulatory changes.

B. Even Some Critics of the Reforms Indicated Openness to the Idea of Using a Regulatory Sandbox Approach

The Association of Discipline Defense Counsel (ADDC), while often critical of immediate reform based upon concerns of lack of professionalism and profit-driven motives of non-attorneys, wrote in its comment to ATILS that California should consider a pilot program for a limited time period in order to test what impact the proposals will have to help bridge the justice gap. In particular the ADDC recognized the potential value of providing one-to-many legal services via technology and online platforms. However, the ADDC believed the program should be limited to non-profit entities. The ATILS task force discussed this issue extensively, and it was generally agreed that requiring non-profit status will severely limit the ability to bring in needed capital and innovation in order to provide the services required. Furthermore, while lawyers similarly argued against the introduction of ABS in England claiming that only lawyers could be trusted to uphold high ethical standards and not be motivated by profit, none of the data gathered since ABS has been adopted has proven out this assertion. In fact, the data presented by Crispin Passmore on England and Wales specifically indicates that these concerns have not been borne out in practice. Instead, alternative business structures have proven to be more innovative, have dealt more effectively with complaints, and do not have regulatory action taken against them any more frequently than traditional lawyer-only practices.

Another example is the Los Angeles County Bar Association which was not in support of immediate changes to the regulations for many of the same reasons identified by ADDC and other lawyer commenters. Nevertheless, LACBA did express support of measuring and testing progress in the delivery of legal services, especially to underserved communities, under the ATILS' proposals in a limited market. LACBA also supported the idea of a pilot program for a limited time which would allow alternative business structures and technology based one-to-many services, including a stepped approach that begins with non-profit entities before including for-profit entities to provide legal services in this space. This proposal by LACBA was based on the assumption that non-profit entities pose less public protection danger than for-profit entities. However, there is no data that supports this assumption. To the contrary, the data from those foreign jurisdictions that allow for-profit entities to provide legal services suggest that there is no greater risk to public protection.

The conclusion to be drawn from these well-considered comments is that a pilot project like the regulatory sandbox proposal will receive less resistance and opposition than immediate change to the current regulatory structure. It will allow data and experience drive the changes that are ultimately made. In order for the sandbox proposal to be accepted and received better within the existing legal

community, however, the data from foreign jurisdictions that contradict the negative assumptions regarding for-profit entity participation will need to be more clearly presented to allay fears. It will ultimately be observing the implementation and how it impacts the crisis in access to legal services, and the harm or lack thereof to the consumers of those legal services, which will address the concerns regarding the impact of reform.