



The State Bar of California

II.B. Scope Recommendation
02-19-21 Meeting
Open Session

Closing the Justice Gap
Working Group

To: Closing the Justice Gap Working Group
From: Scope Subcommittee
Date: February 12, 2021
Re: Scope Subcommittee – Initial List of Issues for Meeting 2/19/21

Some of the issues that emerged were:

1. Should all segments of the market be targeted, and should all be treated in the same way?
2. If the purpose of the sandbox were to be to work toward bridging the justice gap, where is that gap?
3. How should the analyses of (1) and (2) be reflected in the rules of eligibility for entry?
4. If consumer protection is a purpose of the sandbox, how should we think about the issue of the quality of services offered?
5. A framework for thinking about types of upfront prescriptions/proscriptions
6. Other considerations

1. Segmentation of the Legal Market

One way of framing the task is to think about a 3-tiered legal market: (1) a Corporate market that includes Big Law serving large corporations; (2) a Mainstreet market that includes middle income people and small businesses; and (3) a low income market that consists of people who cannot pay for legal services and face limited options from legal aid.

2. Where is the Gap?

There appeared to be general agreement that the Corporate market is well served so if we are focusing on a “gap,” the focus should be on the Mainstreet and low income markets. Within these two broad markets, there appear to be submarkets of acute need. These include:

- Eviction proceedings
- Child custody proceedings
- Debt collection proceedings
- Immigration proceedings
- Many specialized administrative proceedings where benefits like wage and hour claims, Social Security and Veterans’ benefits are determined
- Other proceedings where the consequences are severe but in which large numbers of people are unserved by any legal expert

3. What Areas of the Market Should be Served by Sandbox Candidates?

This was more of a mix. Some suggested focus on the Mainstreet and low-income markets because that is where the need is most acute. Some suggested that service providers for the Corporate Market should also be candidates for the sandbox. One participant suggested that if the candidate was going to focus on the Corporate Market, it should also provide some services to the underserved markets as a condition of entry into the sandbox.

4. How/Should the Quality of Expected Services Be a Criterion for Entry?

Several members argued that sandbox candidates should be accountable for providing quality services (undefined) to those they serve in the sandbox. There appeared to be support for asking candidates to provide information on how they will assure quality services as a condition of entry into the sandbox.

Others raised the issue of the baseline to which “quality” might be compared. For example, currently, at least some people in the Mainstreet market and most people in the low-income markets get no service of any kind for their civil justice issues. Should the appropriate standard of quality be “anything is better than nothing”?

It was further suggested that for truly innovative services, quality could be difficult to demonstrate up front so quality should not be a criterion for entry into the sandbox. The argument was that market forces would protect consumers, while giving consumers more services at lower cost.

5. Types of Up-front Restrictions

One participant offered a framework for thinking about different ways of establishing upfront restrictions, while remaining agnostics on whether such restrictions were the right way to structure the sandbox. These included restrictions based on:

- who is being served (e.g., which segment of consumers); OR,
- who is the provider of the service (e.g., only CA attorneys); OR,
- the type of service/task to be provided (e.g., unbundled v. full- service assistance); OR,
- the type of lawyer regulation to be relaxed (e.g., fee sharing or UPL); OR
- the area of law (e.g., consumer bankruptcy).

6. Other Potential Considerations

A number of other considerations were also articulated as important. These included the duties of competence, loyalty and confidentiality. Should these be imposed on sandbox candidates? How might these requirements work when non-lawyers are owners or co-owners of new legal service providers?

If sandbox candidates cannot meet these standards, can the lack of these traditional protections be addressed with specific disclosures?

Would the assessment burdens be the same or different for different types of entities? For example, would the assessments for nonprofits be less burdensome than for better-resource entities?

Would the sandbox prioritize some applicants for entry over others, whether in support of regulatory objectives or in recognition of limited resources to regulate?

February 1, 2021 Crispin Passmore to SCOPE Subcommittee:

I make this submission based on having set up probably the world's first regulatory sandbox in the legal market - [SRA innovate](#) - back in 2014.

The SRA had at that time a set of rules that were partially reformed to allow ABS (non lawyer ownership) but remained overly prescriptive and prevented all sorts of innovation. It was felt that the reforms to that date allowed specific models but were still a permissions based approach that hindered new ideas. It also created a culture of 'the regulator will not allow this' rather than a more engaged discussions based on what is best for the public.

By permissions based I mean that lawyers were only able to do the things, work in the ways, be in the sorts of businesses that the regulator had specifically allowed. That is a very restrictive way of thinking. We decided to shift our way of thinking so that lawyers could work in any sort of model that the general law allowed unless we could justify restricting it. None of this changes the ethical standards - in fact we committed to strengthening them, more of which later.

The advantage of this approach is that it means that lawyers and businesses can innovate more freely, and regulators still have the power to restrict models or practices that are unsafe. None of the innovation sought is about loosening ethical behaviour - ie acting in best interests of client, supporting the rule of law etc are non negotiable. The innovation is about how businesses are organised or structured, how they use technology and capital to leverage lawyers knowledge and ethical practice and how they work with adjacent services to meet customers needs.

Clients, lawyers, other professions and businesses are best placed to innovate. Regulators will always have a partial or incomplete view. They will always be behind the curve. They will therefore always need to be convinced about changes that are commonplace beyond their remit and much needed by clients. witness how long regulatory reform has taken so far and how many Californian citizens and small business do not get access to legal services each and every day. It is not regulators that pay the price of their caution: it is real people.

The SRA innovate sandbox was very simple and based on the above approach. Rather than write complex rules about which innovations we would sanction we placed the responsibility to convince the regulator that an innovation was appropriate on the applicant firm/lawyer. Thus the SRA innovate was simply the use of the general power the regulator had to waive any of its rules. So applicants were invited to say what service they wanted to deliver or how they wanted to be structured, what rules inhibited that and then we would work with them to consider if the rule(s) could be waived in their circumstances.

This is a very flexible approach for a sandbox. It allows you to be cautious and targeted. For example you might allow a specific model but put in place a condition that the service is not offered to vulnerable consumers. That might allow the regulator to learn about the effect of delivery gradually before setting it free upon all consumers.

Subcommittee: Greene (Co-Chair), Sandefur (Co-Chair), Alcumbrac, Engstrom, Mohr, Rothschild, Squitiero

A similar condition might be that additional supervision is put in place (either on all work or on a sample of work) so that extra quality control is in place. Other conditions might be about approval of specific people informed in the business, cooperation with other regulators (where an applicant is also regulated by another jurisdiction's legal regulator or another professional regulator). Conceivably a sandbox set up in this way could also require an applicant to place a bond with the regulator to cover redress if consumer harms are subsequently discovered.

Any attempt to preempt innovation and write detailed rules will fail. Regulators that try this end up gradually reducing the real focus on innovation with so many conditions and rules baked into the sandbox that serious businesses walk away.

It is important to remember that applicant firms have a choice. Many already exist, solving clients' problems adjacent to the legal market without breaching UPL. They are successful businesses that have been around for more than 20 years. They do not need to be regulated and are competing with attorneys - seizing market share consistently across the whole legal market.

The challenge for a regulator is to face up to the innovation that is already happening rather than to close their eyes and ignore it. By bringing it into its regulatory world it can raise standards by applying ethical standards to legal business owners, ensure a level playing field for attorneys and their firms to compete upon and ensure that consumers decide what they want rather than patrician lawyers. The reality is that these new businesses emerge and thrive because they meet needs that regulated attorneys are not meeting.

So I urge the working group not to get sucked into trying to forecast, predict or guess what sorts of innovation will emerge. It is better to build the capability and capacity of the state bar to assess applicants and identify appropriate conditions. And it is even more important to build the regulator's capacity to spot misconduct or consumer harm (across the whole market, not just new entrants) than it is to pretend that once in every business and attorney is safe and ethical for life. A more flexible regime is the most effective way to both encourage innovation, exercise constraint/target regulatory control, and raise standards more generally.

Detailed and prescriptive rules will not deliver a sandbox. They will create a quiksand.

February 1, 2021 Rebecca Sandefur to SCOPE Subcommittee:

Here are my contributions to the issues discussion for the scope committee:

1. What up-front screens will limit eligibility and how can these be constructed so that they are tightly focused on consumer protection and do not have discriminatory impact by race, gender or other traits? For example, will we ask people to disclose felony history? If so, we won't want an automatic exclusion for felons, because that will disproportionately affect people of color. What about disbarred lawyers in front-line service roles, or management roles? Disbarred lawyers are just a type of nonlawyer, but they are a particular type of nonlawyer.

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2. Will lawyers licensed in other states but not California be permitted to practice as lawyers in a CA sandbox?
3. How can we minimize regulatory replication and conflict? Consumer protection law already exists for many issues; various types of providers (e.g., financial services of various sorts) are already regulated by existing regulators; etc. And of course lawyers are already regulated by the bar, though many will apply to enter the sandbox to offer nontraditional services or offer services through nontraditional organizations. What are the activities a sandbox would actually have to be responsible for, and what are already taken care of elsewhere?
4. How can we avoid just replicating the front-loaded, tradition-bound model of lawyer regulation? Can we start with what we want to achieve -- e.g., consumer protection -- and design a scheme and system that regulate to achieve those goals? And that don't regulate for any other purposes. This will require some hard, open-minded re-thinking.
5. How can we design an application process that is minimally burdensome but manages to elicit the same kind of information from all applicants? There will be many service models and business models that we cannot foresee up front, and some of this information a sandbox would not need, but some it will. For example, let's say my service model is to offer people free legal services via software and make my money by selling information I collect from the process of offering the service to third parties. In this example, the high level issues are what services are offered and what uses the clients' information are put to. Can we identify a core of these high-level issues that we then ask each entity about? Can we work to limit this core to only those pieces of information that a necessary to support the regulatory objective?

February 2, 2021 Thomas Greene to SCOPE Subcommittee:

This is a quick note on some of the issues I see ahead, primarily through the lens of the SCOPE Subcommittee:

- Think about the end at the beginning: I think it is important to look at what the end product for the sandbox will be. The major takeaways for me from our charter are that we come up with information on new structures that can be introduced into the market under circumstances that “protect the public” and generate “data to assess the impact on access to legal services.” To these ends, we need to provide entry conditions that will assure the public is protected and that we get sufficient information so we can tell the Bar and the public that these new practice models (or at least some of them) are safe and effective.
- This may mean that we impose entry conditions that allow us to get information from the innovative firms and potentially their clients/customers (presumably in anonymized form) sufficient to assess both effectiveness and quality. Entry conditions might include review of algorithms used to provide guidance to customers or data from the experience of the sandbox candidate in other jurisdictions including in the UK.

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- SCOPE and entry conditions should be understood as part of the larger goals of the sandbox. To effectively assess and regulate innovative firms may require them to agree to provide information at the beginning that will be important during the time these firms are in the sandbox and later when we make our report. Bottomline, the SCOPE subcommittee is part of the broader enterprise and should be understood as such.
- The charter seems broader than the name of the task force. I think we should focus on improving access to services to populations that are currently underserved, but that is not clearly the charge given to our group. On who is underserved, I would include middle class individuals and special needs populations like veterans.
- We should think through our relationship with the Paraprofessional Working Group. This was another spin off from the ATILS task force. We should consider whether our group should leave paraprofessional issues to that group, even though our charter does not clearly preclude more work by us in this space.
- We should not exclude lawyers from the mix. One of the sad realities is that many graduates of law schools cannot find legal jobs. This wasted supply stands in sharp contrast to the lack of services available to many people in California. We should consider incubators or business models that would allow these wasted resources to be put to use.
- Potentially, older lawyers who want to reduce their hours but still want to contribute their time and talents may be another resource. We should explore how new practice models might work to take advantage of this hitherto unused resource.
- Complaints from client/customers will not necessarily provide sufficient information to be able to address the two commands of our charter. One is tempted to suggest that regulation by Yelp review should be a non-starter. The extent to which sandbox participants may be audited or their work reviewed (potentially on a sample basis) should be disclosed at the point of entry into the sandbox
- Privacy is important. Attorneys are bound by a duty of confidentiality. Firms not run by attorneys are not so limited. This may lead to abuse of private information for gain. However, the California Consumer Privacy Act does provide for some privacy protections in non-legal settings. We need to sort out privacy rules for innovative providers. This is important to know generally but also for us to assess any disclosures firms should make to their clients/customers.



The State Bar of California

Closing the Justice Gap
Working Group

To: SCOPE Subcommittee
From: State Bar Staff
Date: January 22, 2021
Re: Scope Subcommittee Assignments for the February 19, 2021 Meeting

Assignment: The SCOPE subcommittee is assigned to prepare a Scope Recommendation Document which should include identification of the types of innovative legal services delivery systems that should be permitted to participate in the regulatory sandbox.

The subcommittee members should consider the following attached assignment materials:

- CTJG Feb 2021 Assignment Materials for a Scope Document
 - CTJG Charter Excerpt
 - ATILS Final Report Excerpt
 - Utah Agenda Materials Excerpt
 - Utah Supreme Court Standing Order No. 15 Excerpt
- Utah Supreme Court Innovation Office Manual
- Daily Journal Article: California to create its own Consumer Financial Protection

Following your review of the attached assignment materials, please submit to staff your input and recommendations for the issues that ought to be considered by the working group in developing a scope recommendation document. Please also share any preliminary thoughts you have on these issues. You may email your submission to: CTJG@calbar.ca.gov.

Staff will compile all submissions for consideration by the subcommittee co-chairs. The co-chairs will be asked to review and consolidate the responses to generate a single memorandum with an issues outline to present to the entire working group at the February meeting. The memorandum will be posted with the online meeting agenda and all CTJG members will be encouraged to comment on that memorandum by sending email messages to staff prior to the meeting. An email compilation will be created for consideration at the February meeting.

Deadlines: The deadline for subcommittee members to submit their input to staff is **Tuesday, February 2 at 5:00 pm**. The deadline for co-chairs to submit a memorandum to staff for the February meeting agenda posting is **Friday, February 12 at 12:00 pm**.

CTJG JANUARY 14, 2021 MEETING – ASSIGNMENT MATERIALS FOR SCOPE DOCUMENT

- **CTJG Charter Excerpt**
- **ATILS Final Report Excerpt**
- **Utah Agenda Materials Excerpt**
- **Utah Supreme Court Standing Order No. 15 Excerpt**
- **Utah Supreme Court Innovation Office Manual**
- **Daily Journal Article: California to create its own Consumer Financial Protection**

CTJG Charter Excerpt

The working group will develop specific recommendations regarding the following:

1. A regulatory sandbox. Related recommendations will include an assessment of the pros and cons of a sandbox as a way to foster experimentation with innovative legal services delivery systems in a manner that protects the public and allows for the collection of data to assess the impact on access to legal services of possible changes in the laws and rules regulating the practice of law in California. Sandbox recommendations should specifically address:

(1) Scope and regulatory structure of a sandbox, including funding, staffing, and governance, and conflicts of interest issues for members of any governing body;

[END OF EXCERPT]

ATILS Final Report Excerpt (pp. 35 – 36)

A. Scope

A regulatory sandbox envisions that a business model, service, or product that cannot be offered under the current rules and statutes for providing legal services would be able to apply to 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 nonapproved entities would need to seek approval by the oversight body with respect to that arrangement.

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

1. Entities and Services Outside of a Regulatory Sandbox
 - (a) Conventional, 100 percent lawyer-owned, managed, and financed law partnerships, professional law corporations, legal services nonprofits, or individual lawyers with an active California State Bar license:
 - (i) offering traditional legal services as permitted under the Rules of Professional Conduct and applicable statutes;

(ii) offering nonlegal services as permitted under the Rules of Professional Conduct and applicable statutes;

(iii) entering into employment, contract for services, joint venture, or other (fee-sharing) partnership with a nonlawyer-owned entity authorized or licensed to provide legal services by the sandbox oversight body.

(b) Services performed by nonlawyers that do not constitute the practice of law including do-it-yourself consumer facing technology.²⁷

2. Entities and Services Requiring Sandbox Approval

(a) Conventional, 100 percent lawyer-owned, managed, and financed law partnerships, professional law corporations, legal services nonprofits, or individual lawyers with an active California State Bar license:

(i) offering legal services whether directly or by joint venture, subsidiary, or other corporate structure, not authorized under the Rules of Professional Conduct or applicable statutes; or

(ii) partnering (fee-sharing) with a nonlawyer-owned entity not authorized or licensed to offer legal services by the sandbox oversight body.

(b) Conventional law partnership or professional law corporation with less than 100 percent lawyer ownership, management, or financing.

(c) Nonlawyer-owned legal services provider (for profit or nonprofit):

(i) offering legal service options whether directly or by joint venture, subsidiary, or other corporate structure, not authorized under the Rules of Professional Conduct or applicable statutes; or

(ii) practicing law through technology platforms or lawyer or nonlawyer staff or through purchase of a law firm.

²⁷Such entities and services would include websites where consumers can access legal information, forms, statutes, and/or template contracts.

[END OF EXCERPT]

Utah agenda materials for 12/18/19 meeting at Tab 2

Proposed Regulatory Scope for Task Force on Regulatory Reform and Sandbox December 2019

This pilot is focused on allowing and encouraging new ways of practicing law while protecting consumers. The Task Force on Regulatory Reform seeks to make a careful assessment of innovative business models, products, or services, whether proposed by lawyers or others, to insure that overall consumer risk is not increased.¹ The regulatory sandbox allows us to do this in a relatively controlled environment. The principles and examples below, outline our approach to what kinds of models, products, and services will be within the scope of the sandbox and thus required to register with the sandbox. This is not a rigid or technical approach. Objectives-based regulation is meant to be flexible and responsive to evidence of risk. Thus, the initial requirement is a minimal one – simply notifying the Task Force about what the provider is proposing to do in general terms. What happens after notification will depend on the Task Force’s determination of relative risk to the consumer. If you, as a provider, are unsure, then you should notify the Task Force.

Working Principles:

(1) If you could not do it under the current Rules of Professional Conduct (a few exceptions described below), then you need to notify the Task Force. Depending on what you are proposing, you may be required to register as part of the sandbox.²

(2) Lawyers or firms partnering with, contracting with, or employed by Task Force approved entities do not have to separately take any action, including notification. Those who partner with non- approved entities need to notify the Task Force of the arrangement. Notification is how we keep track of what is happening under the new system.

Details:

Outside the regulatory regime (these individuals/entities do not need to do anything):

1. Conventional 100% lawyer-owned, managed, and financed law partnerships, professional law corporations, and individual lawyers with an active Utah license using new advertising or solicitation approaches as contemplated by the revised Rules of Professional Conduct.
2. Conventional 100% lawyer-owned, managed, and financed law partnerships, professional law corporations, and individual lawyers with an active Utah license:
 - a. Offering traditional legal services as permitted under the old Rules of Professional Conduct.
 - b. Entering into employment, contract for services, joint-venture, or other partnership (fee-sharing) with a **Task Force-approved** non-lawyer owned entity to offer legal services.

¹ For purposes of this document, the term “lawyer” includes Licensed Paralegal Practitioners (“LPPs”).

² Those services currently authorized under Rule 5.3 such as legal support services and legal practice outsourcing offered to lawyers are outside the scope of the Task Force.

- i. Example: Lawyer Larry is hired by LawSwoosh, an online legal platform offering services to the public. Larry is hired to be a staff attorney, providing legal services to LawSwoosh customers. LawSwoosh has been approved to offer legal services in Utah by the Task Force. Larry does not need to notify.
- ii. Example: Amy Attorney is hired by SavMart, a big box store chain, to offer flat fee legal services to customers of the store via a small office or kiosk. SavMart has been approved to offer legal services in Utah by the Task Force. Amy does not need to notify.
- iii. Example: Lawyer Larry is hired by BigAccountingFirm to provide mergers and acquisitions legal advice and strategy to its clients. BigAccountingFirm has been approved to offer legal services in Utah by the Task Force. Larry does not need to notify.
- iv. Example: Attorneys at Law LLP enters into a joint venture with LawSwoosh, an online legal platform offering services to the public, through which its attorneys offer legal assistance and advice to LawSwoosh customers. LawSwoosh has been approved to offer legal services in Utah by the Task Force. Attorneys at Law LLP does not need to notify.

Required to notify the Utah Supreme Court Task Force:

1. Conventional 100% lawyer-owned, managed, and financed law partnerships, professional law corporations, legal services non-profits, or individual lawyers with an active UT law license:
 - a. Offering legal service options not previously authorized, whether directly or via a joint-venture, subsidiary, or other corporate structure.
 - i. Example: Attorneys-at-Law LLP, an old Salt Lake firm, offers an online tool providing information and guidance, including legal advice via chatbot or similar technology, around corporate formation.
 - ii. Example: Attorneys-at-Law LLP decides to launch the online corporate formation tool as a subsidiary technology company.
 - iii. Example: HousingHelp, a legal services non-profit, offers an online tool providing guidance, form completion, and legal advice on eviction defense via its website. It also uses its non-lawyer eviction defense experts to provide legal assistance, including advice, to supplement the online tool.
 - b. Partnering (fee-sharing) with a non-lawyer owned entity that has ***not been approved to offer legal services by the Task Force.***
 - i. Example: Attorneys-at-Law LLP enters into a partnership with Bank to offer bundled legal and banking services. Fees are earned through engagement

between firm and customer. Bank has not been approved to offer legal services by the Task Force.

- ii. Example: Attorneys at Law LLP enters into an agreement with SavMart Big Box Store to offer legal services in their stores. The agreement specifies that firm will lease space and pay a certain percent of revenue generated by in store engagements to SavMart. Firm advertises services leveraging SavMart's brand and SavMart advertises that legal services are available in the store from firm. Fees are earned through engagement between firm and customer. SavMart has not been approved to offer legal services by the Task Force.

2. Conventional law partnership or professional law corporation with less than 100% lawyer ownership, management, or financing.

- i. Example: Attorneys-at-Law LLP elevates to equity partnership its head of marketing.
- ii. Example: Attorneys-at-Law LLP takes on financing from private equity firm.
- iii. Example: Attorneys-at-Law LLP finances tech subsidiary via venture capital funding or establishes sub managed and operated by non-lawyers.
- iv. Example: BigConsulting, a global enterprise services company, purchases a stake in Attorneys-at-Law LLP.

3. Non-lawyer owned legal services provider (for profit or non-profit):

- a. Practicing law via technology platforms (using AI etc.) or lawyer and/or non-lawyer staff or through purchase of a law firm.
 - i. Example: LawSwoosh, an online legal platform offering services to the public, including legal assistance from lawyers, non-lawyer experts, and technology platforms.
 - ii. Example: SavMart, big box retailer offering flat fee legal services for consumers via lawyers, non-lawyer experts, and technology platforms in its stores and online.
 - iii. Example: LawNetwork, an online legal network connecting consumers to lawyers and offering flat fee legal services.
 - iv. Example: BigConsulting purchases Attorneys at Law LLP to operate the firm as its legal service arm in Utah.
 - v. Example: BigConsulting hires Amy Attorney to provide legal advice on Utah incorporation law to its clients.
 - vi. Example: Women's Shelter, a domestic violence non-profit, offers legal assistance to its clients through its non-lawyer staff, including assistance completing protection orders, divorce, and custody proceedings.
- b. 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.

- i. Example: Bank enters into business partnership with Attorneys-at-Law LLP or individual lawyer in which Bank advertises legal help as part of its services/products. Fees are earned through a contract for services between Bank and customer.
- ii. Example: SavMart enters into a joint-venture with Attorneys-at-Law, LLP through which the firm's attorneys offer legal services to SavMart's customers, either in their stores or via online platforms. The services are advertised under SavMart's brand and fees are earned through a contract for services between SavMart and the consumer.

[END OF EXCERPT]

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3. Regulatory Objective, Principles, and Scope

3.1 Regulatory Objective

The overarching goal of this reform is to improve access to justice. With this goal firmly in mind, the Innovation Office will be guided by a single regulatory objective: To ensure consumers have access to a well-developed, high-quality, innovative, affordable, and competitive market for legal services. The Utah Supreme Court's view is that adherence to this objective will improve access to justice by improving the ability of Utahns to meaningfully access solutions to their justice problems, including access to legal information, advice, and other resources, as well as access to the courts.

¹³ The Implementation Task Force on Regulatory Reform has already established an Innovation Office Manual. A copy of that manual may be viewed at sandbox.utcourt.gov.

3.2 Regulatory Principles

The Innovation Office will be guided by the following regulatory principles:

1. Regulation should be based on the evaluation of risk to the consumer.¹⁴
2. Risk to the consumer should be evaluated relative to the current legal services options available.¹⁵
3. Regulation should establish probabilistic thresholds for acceptable levels of harm.¹⁶
4. Regulation should be empirically driven.¹⁷
5. Regulation should be guided by a market-based approach.¹⁸

¹⁴ The phrase “based on the evaluation of risk” means that regulatory intervention should be proportional and responsive to the actual risk of harm posed to the consumer, as supported by the evidence.

¹⁵ The phrase “relative to the current legal service options available” means that risk should not be evaluated as against an ideal of perfect legal representation by a lawyer. Risk should rather be measured as against the reality of current market options for consumers. In many cases, that means no access to legal representation or legal resources at all.

¹⁶ The phrase “probabilistic thresholds for acceptable levels of harm” (the chance a consumer is harmed) means the probability of a risk occurring and the magnitude of the harm should the risk occur. Based on this assessment, the Innovation Office will determine thresholds of acceptable risks for identified harms. Regulatory resources should be focused on areas in which, on balance, there is a high probability of harm or a significant impact from that harm on the consumer or the market.

¹⁷ The phrase “empirically driven” means that the regulatory approach and actions must be supported, whenever possible, by data from the legal services market.

¹⁸ The phrase “market-based approach” means that regulatory tactics should seek to align regulatory incentives with increased revenue or decreased costs for market participants in order to encourage desired behavior or outcomes.

3.3 Regulatory Scope

As noted, under the auspices of the Utah Supreme Court, the Innovation Office will be responsible for developing, overseeing, and regulating the Sandbox, including the oversight of nontraditional legal providers and services therein. The Supreme Court offers the following examples to help individuals and entities, lawyers and nonlawyers alike, understand the Innovation Office's regulatory scope. These examples are just that and the list is not intended to be exhaustive.

3.3.1 Outside the Regulatory Scope

Individuals and entities that carry out the following activities are outside the Innovation Office's regulatory scope, remain under the Utah Bar's authority, and need not notify the Innovation Office:

Partnerships, corporations, and companies entirely owned and controlled by lawyers in good standing; individual lawyers with an active Utah Bar license; and legal services nonprofits:

- (i) offering traditional legal services as permitted under the Rules of Professional Conduct; or
- (ii) using new advertising, solicitation, fee-sharing, or fee-splitting approaches as contemplated by the Rules of Professional Conduct.¹⁹

¹⁹ Partnerships, corporations, and companies entirely owned and controlled by lawyers; individual lawyers with an active Utah Bar license; and legal services nonprofits may not, however, engage in fee-splitting or fee-sharing in an effort to avoid the prohibition against outside ownership set forth in rule 5.4A of the Utah Rules of Professional Conduct.

3.3.2 Within the Innovation Office's Regulatory Scope

Individuals and entities that carry out the following activities are within the scope of the Innovation Office's regulatory authority and are subject to this Standing Order's requirements:²⁰

- (a) Partnerships, corporations, and companies entirely owned and controlled by lawyers; individual lawyers with an active Utah Bar license; and legal services nonprofits partnering with a nonlawyer-owned entity to offer legal services as contemplated by Rule 5.4B;
- (b) Nonlawyer owned entities, or legal entities in which nonlawyers are partial owners (for profit or nonprofit):
 - (i) offering legal practice options whether directly or by partnership, joint venture, subsidiary, franchise, or other corporate structure or business arrangement, not authorized under the Rules of Professional Conduct in effect prior to [Month] [Date], 2020, or under Utah Supreme Court Rule of Professional Practice 14-802; or
 - (ii) practicing law through technology platforms, or lawyer or nonlawyer staff, or through an acquired law firm.

3.3.3 Disbarred Lawyers and Individuals with Criminal History

Disbarred Lawyers. The Utah Supreme Court has determined that lawyers who have been disbarred²¹ present a significant risk of harm to consumers if in the position of ownership or control of

²⁰ This list is not meant to be exclusive or exhaustive. There may be business arrangements, models, products, or services not contemplated in Section 3.3.2, which are welcome and should come through the Sandbox. The Sandbox is not, however, meant to enable lawyers not licensed in Utah to practice in Utah without authorization from the Utah State Bar.

²¹ For purposes of this Standing Order, a lawyer whose license has been suspended qualifies as a disbarred lawyer during the period of suspension.

an entity or individual providing legal services. Therefore, disbarred lawyers are not permitted to gain or hold an ownership interest of greater than 10 percent in any entity authorized to practice law under Rule 5.4B or this Standing Order.

In addition, any entity applying for authorization to offer services in the Sandbox must disclose the following:

- (a) whether the entity has any material corporate relationship and/or business partnership with a disbarred lawyer, and
- (b) whether a disbarred lawyer works with or within the entity, in either an employment or contractual relationship, and is in a managerial role in the direct provision of legal services to consumers.

Criminal History. The Supreme Court has determined that individuals with certain serious criminal histories may present an increased risk of harm to consumers if in the position of ownership or control of a legal service entity.

Any entity applying for authorization to offer services in the Sandbox must disclose the following:

- (a) whether any individual holding an ownership interest of greater than 10 percent in the entity has a felony criminal history,
- (b) whether the entity has any material corporate relationship or business partnership with an individual with a felony criminal history, and
- (c) whether an individual with a felony criminal history works with or within the entity, in either an employment or contractual relationship, and is in a managerial role in the direct provision of legal services to consumers.

The Innovation Office, on receipt of any disclosures required above, will incorporate the information into the risk assessment of the entity as appropriate. To the extent permitted by law, the Innovation Office may also conduct independent criminal history checks.

Falsifying any information, including lawyer status and individual criminal history, is a basis for dismissal from the Sandbox and in the event the entity or individual has exited the Sandbox, a basis for loss of licensure. Other criminal and civil sanctions may also apply.

* * * * *

[END OF EXCERPT]



OFFICE OF LEGAL SERVICES INNOVATION

An Office of the Utah Supreme Court

INNOVATION OFFICE MANUAL

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I. INTRODUCTION

This manual seeks to establish the policies and processes by which the Office of Legal Services Innovation (“Innovation Office”) will execute the mandate of the Utah Supreme Court Standing Order 15: to oversee the nontraditional model of legal services, subject to the ultimate authority and control of the Utah Supreme Court. This manual will guide the Innovation Office, the Utah Supreme Court, Sandbox applicants and participants, and the public on the work of the Office.

This manual is a working document and will be regularly updated or revised according to need. Any decisions or actions by either the Innovation Office or the Utah Supreme Court, while informed by this document, are ultimately based on discretion guided by the Regulatory Objective and Regulatory Principles outlined in Standing Order 15.

II. APPLYING TO THE SANDBOX

Qualification for the Sandbox is guided by Rule 5.4 and Standing Order No. 15, Section 3.3.2. The Sandbox is the mechanism by which business models or services that have not traditionally been permitted in the Utah legal system may provide legal services.

Such practices may include:

- traditional law firms taking on nonlawyer investment or ownership;
- traditional law firms and lawyers entering into fee sharing relationships with nonlawyers;
- nonlawyer-owned or corporate entities employing Utah-licensed lawyers to practice law;
- firms or companies using technology platforms or nonlawyer service providers to practice law; or
- lawyers or firms entering joint ventures or other forms of business partnerships with nonlawyer entities or individuals to practice law.

There may be many other innovative models or services not permitted under the traditional rules that will apply to the Sandbox.

Any entity wishing to apply to the Sandbox must complete:

1. The Application Form
2. Disclosures around ownership, management, and significant financial investors / partners, including whether any of those controlling individuals are disbarred or have a felony criminal history;
3. Disclosure on whether the entity plans to share or sell consumer data to third parties;

4. GRAMA confidentiality claim for information that is identified as trade secrets or confidential business information.

Applicants may also submit any other relevant supplemental materials.

The Innovation Office will review the application for completeness. The Office does not consider applications submitted until the Office determines the submission is sufficiently complete.

III. INNOVATION OFFICE REVIEW PROCESS

Once the application is determined complete, the Innovation Office will begin its review. The first level of review is performed by the Executive Committee. The second level of review is performed by the entire Office.

The review process is iterative and applicants are expected to be responsive and engaged with the Office. The Innovation Office will seek to understand the applicant's business model and potential consumer risks therein.

This section includes:

- Outlines the qualifiers the Office must confirm for each applicant
- Articulates common risk assessments
- Sets out and explains the core categories of:
 - Service model
 - Service area
 - Disclosure requirements
 - Data reporting requirements

A. QUALIFIERS

The Innovation Office must confirm that each applicant meets the following qualifiers:

Sandbox Qualifier(s): What aspects of the proposed entity / service qualify for participation in the sandbox.

Utah Qualifier: Each entity must affirm that its service conforms to any applicable requirements of Utah law.

Implementation Qualifier: Each entity must affirm that it is ready or very close to ready to implement its proposed service.

Regulatory Objective Qualifier: Each entity must show that the proposed service will further the Regulatory Objective outlined in Standing Order No. 15: To ensure consumers have access to a well-developed, high-quality, innovative, affordable, and competitive market for legal services.

B. RISK ASSESSMENT

The Risk Assessment section outlines the risks of consumer harm identified by the Innovation Office. The Innovation Office has grouped consumer risk of harm from legal services into three main areas:

- (1) inaccurate or inappropriate legal result,
- (2) failure to exercise legal rights through ignorance or bad advice, and
- (3) purchase of an unnecessary or inappropriate legal service.

It is the goal of the Office to work toward being able to both assess and measure consumer risk relative to the risk of harm the target consumer population currently faces. For example, suppose an entity is targeting consumers who do not generally access legal help from lawyers. In that case, the Risk Assessment of the proposed services should be against receiving no legal advice or using do-it-yourself tools on the market or from court websites.

SERVICE MODEL RISK CATEGORY

The Office has developed a model of risk categorization based on the service model(s) proposed by the entity:

Service Model	Risk
Lawyer employed or managed by a nonlawyer	Low
Less than 50% nonlawyer ownership	Low
Software provider ¹ with lawyer involvement ² - legal document completion	Low
50% or more nonlawyer ownership	Low / Moderate
Lawyers sharing fees with nonlawyers	Moderate
Nonlawyer provider with lawyer involvement	Moderate
Software provider with lawyer involvement	Moderate
Nonlawyer provider without lawyer involvement ³	High
Software provider without lawyer involvement	High

We have categorized the risk across these service models according to the lawyers' involvement in developing and overseeing the nonlawyer

¹ Provider means legal practitioner: a provider who or which is practicing law, including offering legal advice.

² "Lawyer involvement" means a Utah-licensed lawyer both (1) provides guidance and oversight of the provider at the front end, i.e. through developing training materials and overseeing training of providers and developing scripts and/or algorithms, and (2) performs regular spot checks of providers services for quality and accuracy.

³ "Without lawyer involvement" means either (1) a Utah-licensed lawyer provides guidance and oversight at the front end of the development of the service model only but has no ongoing oversight, or (2) no Utah-licensed lawyer is involved in the development or provision of legal service at all.

model. Essentially, as we get further from our historical norms, the risk level increases because we do not know much about how these models will work. We are relying on the assumption that lawyer involvement should mitigate some of the risks around poor advice or failure to identify issues. However, both moderate and high risk models are subject to robust data requirements giving us the ability to learn more about actual level, scope, and type of risks as we move forward. In the future, as we learn more about the kinds of services offered and the potential risk of consumer harm, we hope to develop more finely tuned categories of risk according to the simplicity / complexity of more specific service offerings (e.g., completing legal documents, advising on process only, representing a consumer in negotiations with an opposing party, representing a consumer in court).

Once an entity is authorized, reported data will be our primary tool to facilitate our regulatory objective while also focusing on consumer protection. As the risk of any proposed service increases, the frequency and scope of reporting increases.

ADDITIONAL RISK DETAIL

The Innovation Office has identified some risks that repeat across entities. Those risks are discussed in detail in this manual but referred to by a shorthand designation in the recommendation to the Court. As we identify new repeating risks, we will add them to this manual. The Office may also identify risks outside or ancillary to the proposed service model. Applicants are encouraged to interrogate their own models for additional risks and discuss those with the Office.

The following repeating risks are described in detail below:

- (1) nonlawyer investment / ownership,
- (2) lawyers sharing fees with nonlawyers,
- (3) technology and nonlawyer providers,
- (4) user communication, and
- (4) ownership, investment, or management by disbarred lawyers or individuals with felony criminal histories.

1. NONLAWYER INVESTMENT / OWNERSHIP

Entities may propose taking on nonlawyer investment / ownership or lawyer employees.

Nonlawyer investment / ownership presents the potential risk that nonlawyer owners / investors, unfamiliar with and unlimited by the legal Rules of Professional Conduct, could undermine the legal services model to the consumer's detriment. It potentially increases the likelihood of implementing business practices that increase the consumer harm risk across all three risk areas. The potential negative impacts of nonlawyer investment / ownership are significantly lower if the nonlawyers have less than majority ownership.

While concern about this risk runs high among lawyers and others unsure about the impact of regulatory reform, data on this risk is relatively limited. Studies from the UK and Australia, each of which have allowed nonlawyer investment / ownership for some time, show no adverse impacts on consumers by legal service businesses with nonlawyer investment / ownership. Given that, we have assigned the following these models to the following risk categories:

Service Model	Risk
Lawyers employed or managed by a nonlawyer	Low
Less than 50% nonlawyer ownership	Low
50% or more nonlawyer ownership	Low / Moderate

There are several ways to address this risk:

- **Rules of Professional Conduct:** All lawyers participating in the sandbox, whether as owners, employees, independent contractors, or business partners, are required to maintain their professional duties, including loyalty to the client and confidentiality. Rule 5.4 both clearly states the lawyer's responsibilities.
- **Identification and Confirmation:** During the assessment process, the Innovation Office notes the lawyers' continuing duties of professional responsibility and independence and may ask the applicant to briefly describe the policies and procedures the applicant will put in place to ensure those duties are maintained.
- **Disclosure Requirements:** The Innovation Office has developed the following disclosure requirements for nonlawyer owned entities:
 - For nonlawyer-owned companies or firms with nonlawyer ownership or investment:
 - **This is not a law firm. / This law firm is owned by nonlawyers.** Some of the people who own / manage this entity are not lawyers. This means that some services / protections, like attorney-client privilege, may be different from those you could get from a traditional law firm.

If you have questions, please contact us at

_____.

- **Data Reporting:**

- For less than 50% nonlawyer investment / ownership (low risk), without other risk factors, entities will have minimal reporting requirements. Those requirements include customer complaint data.
- For more than 50% nonlawyer investment / ownership (low/moderate risk), entities will have more fulsome reporting requirements at the outset, to be reduced when [x happens].

2. LAWYERS SHARING FEES WITH NONLAWYERS

Under revised Rule 5.4, lawyers proposing to share fees with nonlawyers, whether through basic arms length referral fee transactions or some other model, must enter the Sandbox. The potential risks presented by fee sharing could include compromised lawyer independence and loyalty, conflicts issues, and increased likelihood of the lawyer advancing nonmeritorious claims. There are several mechanisms to address these risks of consumer harm:

- **Rules of Professional Conduct:** All lawyers engaging in fee sharing relationships with nonlawyers are required to maintain their professional duties to their clients and to the court.
- **Disclosure Requirements:** Rule 5.4 requires all lawyers engaging in fee sharing relationships with nonlawyers to disclose the fact of the fee sharing relationship to the affected client. Depending on the model proposed, the Innovation Office may supplement those disclosure requirements or impose timing requirements.
- **Data Reporting:** The Innovation Office has categorized fee sharing models as MODERATE risk but created distinct reporting requirements focused on the particular harms presenting in these arrangements. Entities will be required to submit the following categories of case level data for those clients coming to the entity through a referral fee arrangement:
 - Number of consumers
 - Revenue / receipt
 - Geographic data (requested)
 - Consumer complaints
 - Nonfinancial (legal) outcome
 - Financial outcome

The Innovation Office has the discretion to require an external review of anonymized client files.

3. LEGAL PRACTICE THROUGH TECHNOLOGY AND NONLAWYER PROVIDERS

There are several mechanisms through which entities may propose to offer legal services through technology or nonlawyer human providers. We have identified the following models and risk categories:

Service Model	Risk
Software provider with lawyer involvement - legal document completion	Low
Nonlawyer provider with lawyer involvement	Moderate
Software provider with lawyer involvement	Moderate
Nonlawyer provider without lawyer involvement	High
Software provider without lawyer involvement	High

Basic automated form completion (software provision of legal forms and information) is already widely available on the market and has been categorized as providing legal information. The Utah Courts offer such a service through OPAC. Such services reach consumers who otherwise would not likely engage with legal rights or services and the relative risk of consumer harm appears low. These include consumers who cannot access lawyers or visit court-based, self-help services due to time or travel limitations (distance), as well as those who cannot afford a lawyer.

We foresee multiple applicants proposing to expand on this model by using tech platforms to provide legal advice and guidance to consumers (e.g., providing basic legal advice through a chatbot and enhancing the platform's ability to actively guide consumers to complete forms and other legal documents). We also foresee multiple applicants proposing to use nonlawyer providers (whether as advisors on legal processes and / or

as subject matter experts) to provide basic legal advice and assistance to consumers.

These services will be new legal service models and potentially present risk of harm if the quality of the legal advice and guidance is poor. Potential concerns include failure to identify material factual or legal issues, mischaracterization of material factual or legal issues, inaccurate legal advice, etc. For this reason, we have categorized the risk of these services based on the extent of lawyer involvement in developing and managing the software or nonlawyer providers. Where lawyers are involved in the development and oversight of the service, the risk category will be lower.

We have developed data reporting requirements focused on surfacing data around the three consumer harms to enable the Office to identify, assess, and address evidence of harm.

These models also may present other risks to consumers based on the fact that these are not traditional lawyer/client engagements. To address that aspect of the risk, the Office will require providers with these service models to make the following consumer disclosure:

- **This service is not a lawyer.** The product / service you have selected is not a lawyer. This means:
 - Someone involved with you or with your legal issue, including people on the other side of this case, could be using this service as well.
 - We could be required to disclose your communications (such as questions and information submissions) to third parties.

If you have questions, please contact us at _____.

4. USER COMMUNICATIONS

We are developing a system of entity regulation in which the entity itself is given the authorization to practice law. This development may cause some tension with the traditional rules governing aspects of legal practice. In particular, communications between a user and licensed entities may present novel issues. As it stands, the attorney / client privilege applies only to communications between lawyers and their clients “for the purpose or in the course of obtaining or facilitating the rendition of legal services to the client.” This potential consumer vulnerability raises concerns about consumer harm from communication of sensitive information that is not protected from later discovery because the consumer did not make the disclosure to a lawyer within the definition of Rule 504. For example, a consumer communicating with a chatbot or with a nonlawyer legal advisor may believe their communications are protected because they assume they are getting legal help and find that sensitive information is now subject to disclosure. This concern also potentially applies to communications between consumers and nonlawyer service providers with referral fee relationships to lawyers.

There are currently many legal service options on the market which provide automated legal document completion on matters that do not reach attorney / client privilege. There are good reasons to think that consumers may not need or care about the application of the privilege to many types of legal services. Completing estate planning documents or drafting an employment contract template, for example, may not trigger consumer interest in the privilege. However, most consumers are not knowledgeable enough to draw distinctions around what is, essentially, a rule of evidence and this presents a potentially significant risk.

Further, lawyers practicing law as employees of a nonlawyer-owned entity raise novel issues around the nature of the client engagement, the status of the relationship between the lawyer and the entity, and protection of communications.

To address these issues and the resulting risk of consumer harm, we developed the following disclosure for authorized entities to place on their website, in their terms of service, and at the start of a consumer interaction / engagement:

- **This is not a law firm. / This law firm is owned by nonlawyers.** Some of the people who own / manage this entity are not lawyers. This means that some services / protections, like the attorney-client privilege, may be different from those you could get from a traditional law firm.

If you have questions, please contact us at _____.

- **This service is not a lawyer.** The product / service you have selected is not a lawyer. This means:
 - Someone involved with you or with your legal issue, including people on the other side of this case, could be using this service as well.
 - We could be required to disclose your communications (such as questions and information submissions) to third parties.

If you have questions, please contact us at _____.

The Innovation Office also notes that lawyers involved in fee sharing ventures or working with or for nonlawyer-owned entities have distinct disclosure requirements under Rule 5.4.

5. OWNERSHIP, INVESTMENT, OR MANAGEMENT BY DISBARRED LAWYERS OR INDIVIDUALS WITH FELONY CRIMINAL HISTORIES.

In Standing Order No. 15, the court determined disbarred lawyers present a high risk of consumer harm and, therefore, found that disbarred lawyers may not own or have a financial interest of greater than 10% in any entity participating in the Sandbox. The court also found that individuals with felony criminal histories may present an elevated risk of consumer harm, depending on the nature of that criminal history and their position within the participating entity.

Applicants to the Sandbox must:

- Confirm that no disbarred lawyers owners or controls more than 10% interest in the entity.
- Disclose all persons or entities who wholly or partially direct the management or policies of the proposed entity, whether through ownership of securities, by contract, or otherwise (“controlling persons”).
- List all persons or entities who will wholly or partially (>10%) finance the business of the proposed entity (“financing persons”).
- List any of those controlling or financing persons with felony criminal histories.
- List any persons in a managerial role over the direct provision of legal services who is disbarred or who has a felony criminal history.
- Disclose whether the entity material corporate relationship and / or business partnership with either a disbarred lawyer or individual with a felony criminal history.

The Office will develop a list of specific criminal felonies that could impact its risk assessment of the entity and follow up on any relevant disclosures with a more detailed inquiry. The Office will also incorporate relevant information into its risk assessment and include it in its recommendation to the Court.

C. AUTHORIZATION PARAMETERS

After conducting the risk assessment, the Innovation Office will develop the outline for its authorization recommendation, including risk category, service area(s), and any additional requirements.

1. SERVICE MODELS

The Office will determine which service models it will recommend for Court review and approval. Even after authorization, if an applicant's model changes to include a new model, the applicant must request additional assessment and authorization from the Innovation Office.

Service Model	Risk
Lawyer employed or managed by a nonlawyer	Low
Less than 50% nonlawyer ownership	Low
Software provider with lawyer involvement - legal document completion	Low
50% or more nonlawyer ownership	Low / Moderate
Fee sharing with nonlawyers	Moderate
Nonlawyer provider with lawyer involvement	Moderate
Software provider with lawyer involvement	Moderate
Nonlawyer provider without lawyer involvement	High
Software provider without lawyer involvement	High

2. SERVICE CATEGORIES

The applicant identifies the service areas in which they will be working. Even after authorization, if an applicant's model changes to include a new model, the applicant must request additional assessment and authorization from the Innovation Office.

- Accident / Injury
- Adult Care
- Business
- Criminal Expungement
- Discrimination
- Domestic Violence
- Education
- Employment
- End of Life Planning
- Financial Issues
- Healthcare
- Housing (Rental)
- Immigration
- Marriage and Family
- Military
- Native American / Tribal Issues
- Public Benefits
- Real Estate
- Traffic - Civil Actions / Citations

3. CONSUMER DISCLOSURE REQUIREMENTS

REQUIRED FOR ALL AUTHORIZED ENTITIES

The Innovation Office “badge” is required for all authorized entities to display on their websites as well as brick-and-mortar offices. This will facilitate consumer knowledge and confidence and will provide question / complaint information. Regulators in the UK have developed a similar “badge” for regulated legal service entities.



For more information or to file a complaint,
please visit sandbox.utcourts.gov

REQUIRED AS APPLICABLE⁴

- **This is not a law firm. / This law firm is owned by nonlawyers.** Some of the people who own / manage this company are not lawyers. This means that some services / protections, like the attorney-client privilege, may be different from those you could get from a law firm.
 - If you have questions, please contact us at _____.
- **This service is not a lawyer.** The product / service you have selected is not a lawyer. This means:
 - Someone involved with you or with your legal issue, including people on the other side of this case, could be using this service as well.
 - We could be required to disclose your communications (such as questions and information submissions) to third parties.

If you have questions, please contact us at _____.

4. ANNUAL ENTITY REPORTING

Authorized entities will have certain limited annual reporting / certification requirements, confirming the status of their controlling and financing persons and confirming that no disbarred lawyer owns or controls more than 10% financial stake.

⁴ The Innovation Office notes that Rule 5.4 contains its own disclosure requirements applicable to lawyers in fee sharing arrangements and nonlawyer owned entities.

DATA REPORTING REQUIREMENTS

For each approved service area, the entity will submit case level data as follows. The Innovation Office will provide the entity with a .csv template with specific data fields and corresponding operational and technical definitions.

NONLAWYER INVESTMENT / OWNERSHIP: LESS THAN 50% - LOW RISK

Consumer Service	Criteria of Assessment	Provider	Measure	Reporting
General	General	All services	Number of people served	Quarterly
			Geographic info (requested)	Quarterly
			Revenue / receipt info	Quarterly
			All consumer complaints	Quarterly

SOFTWARE PROVIDER WITH LAWYER INVOLVEMENT - LEGAL DOCUMENT COMPLETION - LOW RISK

Consumer Service	Criteria of Assessment	Provider	Measure	Reporting
General	General	All services	Number of people served	Quarterly
			Geographic info (requested)	Quarterly
			Revenue / receipt info	Quarterly
			All consumer complaints	Quarterly

NONLAWYER INVESTMENT / OWNERSHIP: MORE THAN 50% - LOW TO MODERATE RISK

Consumer Service	Criteria of Assessment	Provider	Measure	Reporting
General	General	All services	Number of people served	Monthly
			Geographic info (requested)	Monthly
			Revenue / receipt info	Monthly
			All consumer complaints	Monthly

FEE SHARING WITH NONLAWYERS - MODERATE RISK

Consumer Service	Criteria of Assessment	Provider	Measure	Reporting
General	General	All services under the fee sharing model	Number of people served	Monthly
			Geographic info (requested)	Monthly
			Revenue / receipt info	Monthly
			All consumer complaints	Monthly
Specific consumer service	Consumer achieves an inaccurate or inappropriate legal result.	All services under the fee sharing model	Nonfinancial (legal) outcomes data (% customers that did / did not get the outcome they sought)	Monthly
	Consumer fails to exercise legal rights through ignorance or bad advice.		Financial outcome data (benefit obtained / loss prevented) broken down by outcome (verdict, settlement, etc.)	Monthly
	Consumer purchases an unnecessary or inappropriate legal service.		(Potential) Expert review of redacted case file	As determined

NONLAWYER PROVIDER WITH LAWYER INVOLVEMENT, SOFTWARE PROVIDER WITH LAWYER INVOLVEMENT - MODERATE RISK

Consumer Service	Criteria of Assessment	Provider	Measure	Reporting
General	General	All services	Number of people served	Monthly
			Geographic info	Monthly
			Revenue / receipt info	Monthly
			All consumer complaints	Monthly
Specific consumer service	Consumer achieves an inaccurate or inappropriate legal result.	Nonlawyer	Satisfactory legal expert review of representative selection of work product for accuracy and quality.	Nontraditional products / services: submit legal expert review of first 20 consumer interactions. Office may require additional reporting on review of n interactions selected at random.
	Consumer fails to exercise legal rights through ignorance or bad advice.	Nonlawyer	Nonfinancial (legal) outcomes data (% customers that did / did not get the outcome they sought)	Monthly
	Consumer purchases an unnecessary or inappropriate legal service.	Nonlawyer	Track relevant outcomes across cases assisted by the new services and those not (e.g., was divorce achieved)	Monthly
		Nonlawyer	Track services provided across events with similar outcomes (e.g. what services were provided in this divorce)	Monthly
		Nonlawyer	Financial outcome (benefit obtained or loss prevented) data broken down by outcome (divorce, custody).	Monthly

NONLAWYER PROVIDER WITHOUT LAWYER INVOLVEMENT & SOFTWARE PROVIDER WITHOUT LAWYER INVOLVEMENT - HIGH RISK

Consumer Service	Criteria of Assessment	Provider	Measure	Reporting
General	General	All services	Number of people served	Monthly
			Geographic info	Monthly
			Revenue / receipt info	Monthly
			All consumer complaints	Monthly
Specific consumer service	Consumer achieves an inaccurate or inappropriate legal result.	Nonlawyer	Satisfactory legal expert review of representative selection of work product for accuracy and quality.	Nontraditional products / services: first 20 consumer interactions to be reviewed by legal experts for accuracy and quality. Additional monthly reporting on <i>n</i> consumer interactions (to be determined by Office).
	Consumer fails to exercise legal rights through ignorance or bad advice.	Nonlawyer	Nonfinancial outcomes data (% customers that did / did not get the outcome they sought)	Monthly
	Consumer purchases an unnecessary or inappropriate legal service.	Nonlawyer	Track relevant outcomes across cases assisted by the new services and those not (e.g., was divorce achieved)	Monthly
		Nonlawyer	Data on returns for error fixes.	Monthly
		Nonlawyer	Track services provided across events with similar outcomes (e.g. what services were provided in this divorce)	Monthly
		Nonlawyer	Financial outcome (benefit obtained or loss prevented) data broken down by outcome (divorce, custody).	Monthly

IV. RECOMMENDATION TO THE COURT

The Court retains complete discretion to review and assess any recommended entity. The Office has developed a recommendation to the court focused identifying potential risks, assigning a general risk level to the entity, and recommending relevant requirements for authorization. The Innovation Office strives to avoid unnecessary verbiage and repetition so as to make the recommendations, application review, and authorization processes as efficient as possible. The individual recommendation documents and Proposed Orders submitted to the court will refer to this manual for the full discussion of risks unless the model proposed presents a unique and novel issue.

Should the court vote to approve the recommended entity, it will enter the Proposed Order, subject to any changes requested by the court. The Proposed Order authorizes the entity as outlined and limited by the scope of the recommendation and the Innovation Office Manual. Once the Order is entered, the Innovation Office will make the application, recommendation, and Order public on its website. Any confidential information will be redacted before these materials are released publicly.

V. DATA REPORTING AND MONITORING

In addition to providing initial quality review reports and annual confirmation, the Innovation Office will receive regular reporting from participating entities as outlined above. This reporting includes the following fields (subject to updating):

- ☐ Sandbox Participant Code
- ☐ Customer Number
- ☐ Service Provider
- ☐ Consumer Service Category
- ☐ Legal Problem / Matter
- ☐ Start Date
- ☐ Scope of Service Sought
- ☐ Scope of Service Received
- ☐ End Date
- ☐ Legal Outcomes(s)
- ☐ Amount Customer Paid
- ☐ Customer Complaint
- ☐ Customer Geographical Data

California To Create Its Own Consumer Financial Protection Bureau

By Stella Padilla Ilan Isaacs | Feb. 10, 2020

Administrative/Regulatory

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Feb. 10, 2020

California to create its own Consumer Financial Protection Bureau

With Gov. Gavin Newsom's view that "California's economy and its people thrive when predatory business practices are policed," California now joins the growing list of states opting to create what have recently been dubbed, "mini-CFPBs."



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[See more...](#)

It comes as no surprise that as the idea has taken hold that (under the Trump administration) the Consumer Financial Protection Bureau has rolled back its regulation of consumer financial services, a growing number of states have opted to expand their own regulatory reach within state lines. These states have been motivated by a particular emphasis on consumer financial services providers that have, until recently, gone unregulated or have been viewed as being underregulated by these individual states. With Gov. Gavin Newsom's view that "California's economy and its people thrive when predatory business practices are policed," California now joins the growing list of states opting to create what have recently been dubbed, "mini-CFPBs."

At the start of this new year, California's Newsom proposed expansions to the State's regulatory oversight of consumer financial services in his 2020-21 Budget Summary. Given Newsom's reasoning -- a belief that "[t]he federal government's rollback of the CFPB leaves Californians vulnerable to predatory businesses and leaves companies without the clarity they need to innovate" -- it is not surprising that California has decided to join the wave of expanded regulation at the state level via its own mini-CFPB. This proposed mini-CFPB includes several notable changes to California's regulation of consumer financial services providers, including a renewed focus on not only currently unregulated consumer financial services providers, but also on industries which California (and other states, for that matter) has had a hard time regulating.

Currently, California's Department of Business Oversight is the state department tasked with the job of licensing and regulating traditional financial services providers, including securities brokers and dealers, investment advisers, payday lenders, mortgage lenders, escrow agents, student loan servicers, and other commercial and consumer lenders. The Department of Business Oversight also regulates state-licensed financial institutions, banks, credit unions and money transmitters. The Department of Business Oversight currently does not regulate debt collectors, credit reporting agencies or many types of Financial Technology companies. And in actuality, the Department of Business Oversight has struggled to fit innovative financial

California To Create Its Own Consumer Financial Protection Bureau

By Stella Padilla Ilan Isaacs | Feb. 10, 2020

services providers within its regulatory framework, particularly with regard to fintech companies, which offer products and direct services to assist consumers with new market needs. Because fintech companies provide financial products which, until very recently, have not existed, finding where to fit these products into its regulatory framework has proven to be a convoluted process for California, just like it has proven to be hard for many individual states -- with many states attempting to lump fintech consumer financial services providers along with payday lenders, money transmitters or other regulated industries which are inapplicable to the products offered. Given the view that the CFPB is backtracking on its regulation of debt collectors and credit reporting agencies, and that there is a necessary under-regulation of fintech companies created by outdated frameworks, it is not shocking that California wants to "expand[] the [DBO]'s authority to pursue unlicensed financial services providers not currently subject to regulatory oversight," including those very debt collectors, credit reporting agencies and fintech companies that can foster "predatory business practices" when unregulated.

California's proposed mini-CFPB would expand the Department of Business Oversight's authority by renaming the Department of Business Oversight and converting it into the new Department of Financial Protection and Innovation. Working in conjunction with a new implementing regulation -- the California Consumer Financial Protection Law, or "CCFPB," which has not yet been administered or otherwise established by the legislature -- the Department of Financial Protection and Innovation would have regulatory powers and responsibilities the current Department of Business Oversight does not.

Specifically, the new Department of Financial Protection and Innovation would be responsible for:

- (1) the implementation of "services" to "empower and educate consumers, especially older Americans, students, military service members, and recent immigrants" against unfair, deceptive and abusive practices "when accessing financial services and products";
- (2) the licensing and examination of "new industries that are currently under-regulated," including, as mentioned above, debt collectors, credit reporting agencies and fintech companies;
- (3) the explicit expanded authority for the enforcement against unfair, deceptive and abusive practices;
- (4) the "[a]nalyz[ation] [of] patterns and developments in the market to inform evidence-based policies and enforcement";
- (5) the establishment of a new Financial Technology Innovation Office that would assist in the "responsible development" of new consumer financial products; and
- (6) offering legal support for the administration and implementation of the CCFPB, which is meant to "provide consumers with more protection against unfair and deceptive practices" as to consumer financial services products.

Of course, this ambitious re-working of the state's consumer financial services regulatory framework must have a cost. So, in order to overhaul the Department of Business Oversight and turn it into the Department of Financial Protection and Innovation, Newsom's budget includes a \$10.2 million "Financial Protection Fund" and the addition of 44 positions in the department in the 2020-21 fiscal year, with the Financial Protection Fund growing to \$19.3 million within the following two fiscal years, inclusive of the addition of 90 positions to the department. Initial costs for the new Department of Financial Protection and Innovation, and its implementing

Daily Journal Article: California to Create Its Own Consumer Financial Protection Bureau

regulation -- the CCFPB -- would be covered by "available settlement proceeds in the State Corporations and Financial Institutions Funds." Future costs would be covered by fees paid by the "newly covered industries" (debt collectors, credit reporting agencies and mostly likely a notable portion of fintech companies) and increased fees on "existing licensees" (securities brokers and dealers, investment advisers, payday lenders, mortgage lenders, escrow agents, student loan servicers, and other currently state-licensed commercial and consumer lenders).

Given that California is the most populous state in the nation and is also, more recently, in the forefront of progressive legislation, its self-inclusion in the recent push for expanded state-level regulation of consumer financial services providers is of particular significance. California's decision to implement its own mini-CFPB will likely impact other states' decisions in joining the bandwagon. This could have significant impact on banks, debt collectors, fintech companies and other consumer financial services providers. Governor Newsom's proposal, which has been submitted to California's legislature, is currently being promoted by former CFPB Director Richard Cordray, as well as many other former CFPB officials. The legislature has until June 15, 2020, to pass, or decline to pass, the proposed creation of the California CCFPB. □