



To: CTJG Working Group  
From: Tom Greene and Becky Sandefur  
Date: April 2, 2021  
Re: Consideration of Recommendations from the Scope Subcommittee on the Scope of a Regulatory Sandbox

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The SCOPE Subcommittee met on March 26, 2021 to discuss the purpose of the Sandbox, public policy considerations for entry into the Sandbox and a potential application form to be used by Sandbox candidates. The discussions were spirited and productive. This memorandum reports on the two points that reflect the consensus of our group and also points about which we have not, as yet, reached consensus.

Where consensus was not reached on a topic, this is noted in the text.

**A. Purpose of the Sandbox**

The purpose of the sandbox is to monitor and assess whether modifying the rules concerning the practice of law facilitates innovation in the public interest. The public interest to be served is increasing access to justice by providing competent legal services to currently unserved and underserved residents of California. The sandbox is intended to identify objectively regulatory barriers that prohibit expanding such access and whether the potential benefits of any increased access to legal services afforded by the innovation(s) substantially outweigh any identifiable harm(s) to consumers.

**B. Public Protection Objectives**

**1. Competency**

Sandbox offerings should offer competent legal services.<sup>1</sup> Subject to the transparency requirement, noted below, Sandbox services may include unbundled elements of broader services usually offered by attorneys, e.g. completion of specific financial reports for a bankruptcy or divorce proceeding but no other service.

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<sup>1</sup> The group did not reach an agreement about how to define a standard of “competence.” Specifically, the group was not in agreement on the extent to which “competent legal services” creates a quality standard that is congruent with the competency requirements applicable to California lawyers. *See, e.g.* Cal. Rule of Prof. Conduct 1.1.

## **2. Transparency**

Sandbox candidates will provide timely, understandable information to potential consumers on the strengths, weaknesses and tradeoffs involved in their offerings. Where appropriate, candidates shall advise consumers when and under what circumstances their offerings may be inappropriate for their particular circumstances.

## **3. Privacy**

We debated the extent to which Sandbox candidates should be subject to an attorney's duty of confidentiality. Cal. R. Prof. Conduct 1.6, Cal. Bus. & Prof. Code § 6068(e).<sup>2</sup> There appeared to be substantial support for this requirement but the Subcommittee commissioned two members to review this duty as well as duties imposed by the California Consumer Privacy Act. Cal. Civ. Code §§ 1798.100 – 1798.199.100. We will report back to the Working Group at the next meeting.

## **4. Disbarred Attorneys**

The Subcommittee reached consensus that disbarred attorneys cannot either offer services for or have an ownership interest in a Sandbox candidate. Disciplined attorneys, however, may offer services subject to the conditions imposed on them by the California Bar.

## **C. Limits on Sandbox Offerings**

The Subcommittee appeared to reach consensus that Sandbox candidates can offer services to the unserved and underserved. Underserved includes members of the middle class and small businesses. This is consistent with academic research and the 2019 Justice Gap Report. California Bar, *California Justice Gap Study* (2019), <http://www.calbar.ca.gov/Access-to-Justice/Initiatives/California-Justice-Gap-Study>.<sup>3</sup>

There appeared to be support for limiting Sandbox candidates to firms that offered services to the unserved and underserved. However, a discussion of the circumstances, if any, when a firm that offered services to large corporations could participate in the Sandbox if it provided legal services to the unserved or underserved Californians was cut short by time. We will report back to the Working Group on this issue at a subsequent meeting.

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<sup>2</sup> It was noted that the Sandbox program will likely be subject to legislative review, so the obligation to keep client information confidential could be extended to non-lawyers or technology companies.

<sup>3</sup> The Justice Gap Study reports that an important element of the "Justice Gap" is a distinct "Knowledge Gap," which encompasses a lack of knowledge of when and under what circumstances legal services are necessary or desirable, as distinct from when such services are not available or not affordable. See, e.g. California Bar, *California Justice Gap Study: The Knowledge Gap-Findings and Recommendations* (2019), <http://www.calbar.ca.gov/Portals/0/documents/accessJustice/Justice-Gap-Fact-Sheet-Knowledge-Gap.pdf>.