



The State Bar of California

Note: See additional background materials regarding California Consumer Privacy Act published by the California AG's Office (<https://oag.ca.gov/privacy/ccpa>)

Closing the Justice Gap
Working Group

To: Scope Subcommittee
From: Becky Sandefur and Tom Greene
Date: May 27, 2021
Re: Scope Subcommittee Assignments for the June 4, 2021 Meeting

For this meeting, the Scope Subcommittee has one agenda item and assignment. You are asked to work in two-person teams (assignments below) to prepare for a discussion at our June 4 meeting. Please prepare a brief presentation of your team's topic for discussion by the full group at that meeting. If you are unable to attend the meeting, we would appreciate receiving something written that we can read to the group by 12 noon on Thursday, June 3.

Meeting goals:

- Identify required elements for the sandbox application process and criteria
- Plan any follow-on study necessary to support (or flesh out) recommendations

The CTJG leadership team has modified the outline for this aspect of the working group's study to align with the anticipated organization of a comprehensive final report and recommendations. The core inquiry for this assignment remains: Who may apply for Sandbox authorization, and how? (See [CTJG Charter](#) part 1, subparts 3 and 4.) The specific issues to address are restated to include:

- What sorts of entities (or individuals) may apply, or not?
- What will an applicant be asked, and what must it show to be approved?
- Approval process and appeals?
- Will technology delivery systems be assessed for efficacy, accessibility, bias, confidentiality/privacy, and dark patterns? Do intellectual property rights pose issues?
- Reciprocity (e.g., if an applicant has been admitted in Utah)

Assignment: Prepare an Application Process and Criteria Document

For purposes of the subcommittee's discussion on June 4th, we will bracket the question of who may apply and focus our attention on the application itself and the application process. The Utah project provides one model for this; their application form is attached. We're asking each of you to work with a partner to prepare recommendations to our group about one element of the application (of course, you can have ideas about any aspect of the application --

we just want to make sure each element gets focused attention). You can recommend accepting the Utah model as is, with modifications, with dramatic transformations.

The group assignments are below:

Section 1 (what does the entity propose to do, how, and what rules does the entity think need to be waived to do this [aka, why does it need to be in the sandbox]): **Kevin, Marta**

Section 2 (risk assessment): **David, Micha**

Section 3 (benefits assessment): **Patricia, Toby**

Section 4 (confirmation of eligibility): **Becky, Tom**



OFFICE OF LEGAL SERVICES INNOVATION

An Office of the Utah Supreme Court

SANDBOX PARTICIPANT APPLICATION

The Sandbox is for innovative services models that cannot otherwise be offered under the present Rules of Professional Conduct or are considered the unauthorized practice of law. There are a few qualifications to this mandate:

1. The Sandbox is for all business and service models falling under Utah Rule of Professional Conduct 5.4 and Utah Supreme Court Standing Order No. 15. **PLEASE NOTE: As of December 10, 2020, the Court has halted consideration of "bare referral fee arrangements" within the Sandbox. "Bare referral fee arrangements" are defined as "those in which payment is made by the lawyer to the nonlawyer solely to compensate the nonlawyer for referring a potential client to the lawyer; there is no other business relationship between the lawyer and nonlawyer." Proposals other than bare referral fee arrangements will continue to be considered for authorization in the Sandbox.
2. Suspended or disbarred lawyers are barred from holding an ownership interest of greater than 10% in any Sandbox entity.
3. The Sandbox is not meant to be a mechanism by which out-of-state lawyers can practice in Utah without otherwise completing the requirements imposed by the Utah State Bar.
4. The Sandbox does not and cannot impact requirements imposed by other applicable Utah or federal laws, the laws or requirements imposed by other jurisdictions, or the requirements imposed by other regulatory bodies. Authorization to practice law in Utah through the Sandbox does not release any entity or individual therein from conforming to all other applicable laws and regulations.
5. As made clear in Rule 5.4 and Standing Order No. 15, lawyers working with or in entities participating in the Sandbox are required to maintain their duties under the Rules of Professional Conduct.

Your application will be made publicly available. You will have the opportunity to make a claim of business confidentiality for specific information that would qualify for protection under GRAMA Section 63G-2-305. Making false or materially misleading statements in this application is a basis for loss of authorization to practice within the Sandbox. Other criminal and civil sanctions may also apply.

Should your answers to any of the application questions change, you are responsible for updating the information with the Innovation Office. Failure to promptly update information will be considered relevant to your regulatory status.

If you have any questions, please contact the Innovation Office at sandbox@utcourts.gov.

1. PROPOSED SERVICES

1.1. Describe your proposed legal services offering in detail.

Please include (i) who provides the legal services, (ii) how consumers will access/receive these services, and (iii) what your service will do for your customers.

1.2. Describe the entity business model you want authorized in the Sandbox, including the management structure which will oversee direct legal service providers.

1.3. Why is your proposal eligible to enter the Sandbox?

Identify the specific model, service or product innovations that are not permitted under the traditional rules governing the practice of law.

1.4. Describe your target consumer(s).

For example: single parents making <\$50,000 in a custody dispute, first generation college students in a landlord-tenant dispute; renters 40+ years planning for retirement; college educated entrepreneurs seeking legal advice in starting a business.

1.5. Which service models are you seeking to use? Select all that apply.

- ☐ Lawyers employed or managed by a nonlawyer
 - ☐ Less than 50% nonlawyer ownership
 - ☐ More than 50% nonlawyer ownership
 - ☐ Lawyers sharing fees with non lawyers
 - ☐ Nonlawyer provider¹ with lawyer involvement²
 - ☐ Nonlawyer provider without lawyer involvement³
 - ☐ Software provider with lawyer involvement
 - ☐ Software provider without lawyer involvement
 - ☐ Other:
-

1.6. Which legal service categories are you seeking to offer?

- | | | |
|---|---|--|
| <input type="checkbox"/> Accident/Injury | <input type="checkbox"/> Education | <input type="checkbox"/> Housing - Rental |
| <input type="checkbox"/> Adult Care | <input type="checkbox"/> Employment | <input type="checkbox"/> Marriage and Family |
| <input type="checkbox"/> Business | <input type="checkbox"/> End of Life Planning | <input type="checkbox"/> Military |
| <input type="checkbox"/> Criminal ⁴ - Expungement ONLY | <input type="checkbox"/> Financial Issues | <input type="checkbox"/> Native American + Tribal Issues |
| <input type="checkbox"/> Discrimination | <input type="checkbox"/> Immigration | <input type="checkbox"/> Public Benefits |
| <input type="checkbox"/> Domestic Violence | <input type="checkbox"/> Healthcare | <input type="checkbox"/> Real Estate |
| | | <input type="checkbox"/> Traffic - civil actions / citations |

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

² Involvement denotes a range of activities, including guidance on initial development of forms, scripts, processes, software. It could mean a lawyer does sample reviews of product/service performance. It could mean a lawyer is available to advise the nonlawyer provider as needed - including via red flag trap doors in software.

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.

⁴ **Please note** At this time nontraditional service providers (nonlawyers or software providers) will only be authorized to provide expungement-related services. Lawyer employees can provide general criminal legal services.

2. RISK ASSESSMENT

The Innovation Office must assess whether new legal service models cause consumers to get inappropriate or otherwise flawed legal results, fail to exercise legal rights through ignorance or bad advice, or purchase an unnecessary or inappropriate legal service.

- 2.1. Fully and candidly discuss the risks your customers might face if they use your proposed model, including each of the risks described above.**

2.2. Describe the specific ways you will identify, track, and mitigate the risks to consumers in your proposed model.

These efforts could include quality control measures, training, provider testing.

2.3. Please describe your consumer complaint process.

3. BENEFITS TO UTAH CONSUMERS

The Innovation Office is assessing potential benefits of proposed offerings to the Utah legal market.

- 3.1. Describe how your model will provide higher quality, more cost effective, and more accessible legal services for your target consumers.**

3.2. Does your proposal comply with applicable Utah legal requirements?

For example: staffed by UT licensed attorneys, built to complete state legal forms.

3.3. Identify which of your service models are ready to immediately implement.

The Office of Innovation is only authorized to consider proposals which are ready to begin offering legal services not currently authorized in Utah at the time of authorization.

4. CONFIRMATION OF ELIGIBILITY

- 4.1. List all persons and entities who wholly or partially direct the management or policies of your proposed entity and/or the direct provision of legal services to consumers, whether through ownership of securities, by contract, or otherwise (“controlling persons”).**
- 4.2. List all persons and entities who will wholly or partially (greater than 10%) finance the business of your proposed entity (“financing persons”).**
- 4.3. Please note that no financing person may be a disbarred or suspended lawyer. List all controlling persons who are disbarred or suspended lawyers.**
- 4.4. List all controlling persons or financing persons of your proposed entity who have a felony criminal history.**

- 4.5. List all persons who will be in a managerial role over the direct provision of legal services to consumers who are disbarred lawyers.**
- 4.6. List all persons who will be in a managerial role over the direct provision of legal services to consumers who have a felony criminal history.**
- 4.7. Please select the most accurate description: My proposed entity has a material corporate relationship and/or business partnership with:**
- ☐ A disbarred or suspended lawyer
 - ☐ An individual with a felony criminal history
 - ☐ Neither a disbarred / suspended lawyer nor an individual with a felony criminal history
- 4.8. Disclose any history of state or federal criminal (misdemeanor or felony) conviction, state or federal consent decree, or state or federal enforcement action resulting in sanctions (disgorgement, civil penalties, and/or injunction) for the entity and, if applicable, its parent and other affiliated companies.**

4.9. Disclose whether the entity, parent, and other affiliated companies are, to their knowledge, currently subject to a state or federal criminal investigation or state or federal enforcement action.

I confirm that no financing persons listed in this application are disbarred or suspended lawyers.

Signature: _____

Printed Name: _____

Title: _____ Date: _____

SELLING OF CONSUMER DATA DISCLOSURE

Please indicate whether your business model includes the sharing or selling of consumer data in any form to third parties.

- ☐ Yes
- ☐ No

PUBLIC APPLICATION

Your application will be made publicly available. You will have the opportunity to make a claim of business confidentiality for specific information that would qualify for protection under GRAMA Section 63G-2-305. Making false or materially misleading statements in this application is a basis for loss of authorization to practice within the Sandbox. Other criminal and civil sanctions may also apply.

- ☐ I understand.

Signature: _____

Printed Name: _____

Title: _____ Date: _____