



To: Scope Subcommittee  
From: Marta Alcumbrac & Kevin Mohr  
Date: June 4, 2021  
Re: Application Process, Section 1 (Proposed Services, Rules Changes, etc.)

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Introduction & Summary. Our assignment was to review Section 1 of the Utah Sandbox application and make recommendations to the subcommittee regarding possible changes or additions to the application. Section 1 of the application directs applicants to include the following information: (1) describe the proposed legal services to be offered; (2) describe applicant's proposed business model, specifically its management structure for overseeing service providers; (3) explain why the proposal is not permitted under the current rules and statutes governing the practice of law; (4) identify the target consumer group or groups; (5) describe the "service models" applicant proposes to use (e.g., lawyers employed/managed by nonlawyers, less than/more than 50% nonlawyer, etc.); (6) identify legal service categories applicant intends to offer (e.g., education, employment, immigration, etc.). In considering the Utah application, we reviewed a number of applications that the Utah Office of Legal Services Innovation ("Innovation Office") has approved. We recommend a few changes to the Utah application, primarily to Part 1.3, where we identify possible changes to rules and statutes that might be appropriate for implementing a legal services sandbox.

Discussion. We address each part of section 1 of the Utah application.

**Part 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.)

Part 1.1 directs the applicant to (i) identify who (lawyer/nonlawyer?) will provide legal services, (ii) how consumers will receive services (e.g., through technological intermediary?), and (iii) what the service will do for the customers of applicant. Although items (i) and (ii) appear straightforward, item (iii) is somewhat vague. However, the [Innovation Office Manual](#) ("[Manual](#)") provides further guidance to applicants as does [Utah Supreme Court Standing Order 15](#) ("[SO-15](#)"). Of particular importance to applicants in the latter document is Section 3.3 of SO-15, which sets forth the regulatory scope of the Sandbox, including section 3.3.1, identifying who is outside the scope of the Sandbox (e.g., traditional law firms providing traditional legal services), section 3.3.2, identifying who is within the scope (e.g., nonlawyer-owned or part non-lawyer owned entities), and section 3.3.3, which identifies certain persons, including disbarred and suspended lawyers (the latter during their period of suspension) and individuals with certain serious criminal histories, who are deemed to present a serious risk to consumers and are limited in their participation (no more than a 10% ownership interest).

*Recommendation.* We do not recommend revising Part 1.1 of the application *so long as* documents similar to the Manual and SO-15 are available to applicants for guidance. However, with respect to SO-15, we have serious concerns about permitting disbarred/ suspended lawyers or persons w/ serious criminal histories to have an opportunity to participate in the Sandbox and identify this topic for discussion at our meeting.

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

The Manual provides the following table identifying potential “service models” and their associated risk:

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 (standard)	Low / Moderate
Fee sharing with nonlawyers (exceptional)	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

Unfortunately, the foregoing “service models” do not go into detail as to the relative management responsibilities of lawyers and nonlawyers in each. It is possible that some of the models assessed as low/moderate or moderate risk would be assessed as high risk depending on the management structure.

*Recommendation.* We do not think that the Utah question is sufficiently detailed. We believe that the question asked in Part 1.2 should be more specific as to what is required. At a minimum, the question should direct applicants to “Describe *in detail* the entity business model ...” and perhaps provide a reference to the section in the Manual (i.e., the California version) where the applicant can better understand what information is being sought.) Moreover, we believe it is important that an applicant describe in detail the management structure of the entity, particularly where there is nonlawyer ownership involved.

**Part 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.)

*Recommendation.* We believe this part of the application should be revised to direct the applicant to identify with specificity which rules and/or statutes they believe prohibit the kinds

of legal services that the applicant is seeking to provide. We note that the order approving one Utah Sandbox application, that of [Pearson Butler](#), provided for the suspension or waiver of certain Utah Rules of Professional Conduct, including rules 1.8(a) (business transactions with clients) and (f), 5.3 (supervision of nonlawyers), 5.7 (, and rules 1.7 to 1.10 (regarding conflicts of interest). The applicant should not only be required to explain what part of its proposal are not permitted under current rules and statutes governing the practice of law, but also to identify the specific rules and statutes the applicant believes are a barrier to delivering legal services.

In this regard, the traditional legal services regulatory framework in Utah is substantially different from the framework in California and this fact might need to be addressed at least to some extent on a global, rather than a case-by-case basis. We note in particular that lawyer conduct is governed in California not only by the Rules of Professional Conduct, which are promulgated by the Supreme Court (as is true in every other state including Utah), but also by the State Bar Act, Bus. & Prof. Code §§ 6000 et seq., and other statutory law (e.g., the Evidence and Probate Codes), which is passed by the Legislative branch and signed into law by the Executive branch.

*Possible changes to Rules of Professional Conduct.* With regard to a potential global approach to rule changes, Utah has made revisions to its Rule of Professional Conduct 5.4 to make specific reference to SO-15 (and by implication authorizes lawyers to participate in Sandbox entities where nonlawyers have managerial or financial interests.)<sup>1</sup> Given the extent to which our discussions have contemplated the delivery of legal services by non-traditional entities, the working group should also consider whether similar changes to California rule 5.4 might also be appropriate. Because we do not yet know what the authority will be that authorizes Sandbox entities, i.e., whether it would be a Supreme Court order, legislative enactment, or a combination of the two, we cannot at this time suggest specific language. It is also possible that [rule 7.2\(b\)](#), which concerns payments by a lawyer to others for referrals, should be revised to allow such referrals as might be authorized under the sandbox. Finally, we note that one approved Utah Sandbox participant's proposal, that of [Off the Record](#) (legal services regarding

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<sup>1</sup> Utah Rule 5.4(c) provides in relevant part:

(c) A lawyer or law firm may share legal fees with a nonlawyer if:

(1) the fee to be shared is reasonable and the fee-sharing arrangement has been authorized as required by Utah Supreme Court Standing Order No. 15; \* \* \*

Utah Rule 5.4(d) provides:

(d) A lawyer may practice law with nonlawyers, or in an organization, including a partnership, in which a financial interest is held or managerial authority is exercised by one or more persons who are nonlawyers, provided that the nonlawyers or the organization has been authorized as required by Utah Supreme Court Standing Order No. 15 and provided the lawyer shall:

(1) before accepting a representation, provide written notice to a prospective client that one or more nonlawyers holds a financial interest in the organization in which the lawyer practices or that one or more nonlawyers exercises managerial authority over the lawyer; and

(2) set forth in writing to a client the financial and managerial structure of the organization in which the lawyer practices.

traffic citations), provides that 50% payments by a client would be held by the nonlawyer entity, and made to a participating lawyer upon completion of the services. Any such provision might require a similar change to [rule 1.15](#) (client trust accounts) to permit lawyer participation in the business model.

We are less sanguine about making such global changes to other rules. We believe that in most instances such changes can and should be made on a *case-by-case* basis, as in the [Pearson Butler](#) proposal approved in Utah, discussed above.

*Possible changes to statutes governing lawyer conduct.* In addition to any changes to the Rules of Professional Conduct, we should also expect that certain amendments will need to be made to statutes governing lawyer conduct and the practice of law, particularly Bus. & Prof. Code §§ 6125 et seq., concerning the unauthorized practice of law. In addition to these sections, there are issues regarding privilege such as the attorney-client privilege, Evid. Code §§ 950-962, and confidentiality, Bus. & Prof. Code § 6068(e), which will need to be considered. There are also other sections we will probably need to consider, as are being reviewed by the State Bar in relation to the Paraprofessional Working Group.

**Part 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.)

*Recommendation.* This section of the application is straightforward. However, until we decide how or whether the Sandbox should be limited to certain areas of law (see Part 1.6, below), we cannot make recommendations regarding the parenthetical guidance provided for this part.

**Part 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 provider<sup>2</sup> with lawyer involvement<sup>3</sup>
- ☐ Nonlawyer provider without lawyer involvement<sup>4</sup>

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<sup>2</sup> Provider means legal practitioner: a provider who or which is practicing law, including offering legal advice.

<sup>3</sup> 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.

<sup>4</sup> "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.

- ☐ **Software provider with lawyer involvement**
- ☐ **Software provider without lawyer involvement**
- ☐ **Other:**

*Recommendation.* We do not believe that any changes need be made to this part of the application, though we question whether overlap between this part and Part 1.2, above, might cause confusion for applicants. If Parts 1.2 and 1.5 are viewed as related, then perhaps they should be located in proximity to each other in the application.

#### **Part 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 <sup>5</sup> - 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 |

*Recommendation.* We have no specific recommendation at this time. We note, however, that the working group has discussed recommending that the approved Sandbox legal services categories be identified to maximize the benefits to be provided to those persons who have been identified in the California Closing the Gap as unserved or underserved, or at least to be those persons whom we've discussed as being consumers we wish to see benefited by Sandbox proposals. The categories listed in this part of the application should reflect the final decision of the working group.

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<sup>5</sup> **\*\*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.