



To: CTJG Members
From: SCOPE Subcommittee
Date: June 15, 2021
Re: II.A. – Scope Subcommittee Report on Design of the Application
and Application Process

The SCOPE Subcommittee met for two hours on the afternoon of Friday, June 4, to discuss the design of a sandbox application and application process. This memo describes the current thinking of the group.

I. Current thinking about the application

The subcommittee took the Utah application as a model for consideration. While they found much to like about it, they also suggested changes:

- More detailed instructions
 - For example, it should break out separately each element for which information is requested.
 - For description of services: what legal services are you proposing to provide; what do you intend your services will do for your customers/what problem are you solving for the customers; who will provide these legal services; how will customers access or receive the legal services;
 - For risks: what risks do you foresee to consumers; describe your procedures and protocols for preventing harms, recognizing harms, and responding to harms; and
 - For benefits: ask about each (cost effectiveness, higher quality, more accessible) separately to make sure each is addressed. Describe what you are doing that you think will lead to these benefits.
- Encourage and require more detail in responses
 - Ask for more detail about ownership, form of incorporation, agent for service of process, business structure and management. All owners should be listed, and specific information about each.
 - Ask how the business objectives advance one or more of the regulatory objectives (cf. Arizona application: 1) protecting and promoting the public interest; 2) promoting access to legal services; 3) advancing the administration of justice and rule of law; 4) encouraging an independent, strong, diverse and

effective legal profession; and, 5) promoting and maintaining adherence to professional principles).

- Require disclosure of whether the entity has insurance to cover losses experienced by clients.
- Require the entity to describe its complaint process.
- Include links to the rules that new forms of practice may potentially be violating.
- Ask applicants how much time it will take after approval for the entity to begin delivering services, and what needs to happen during that time.
- Should not require empirical proof of concept, but should ask applicants to explain how their model could be effective.

II. Application review process

The consensus of the group is that review should be wholistic, weighing the various factors together in considering approval. If a project and project team are formally eligible for the sandbox, no single factor should be determinative in the decision to affirm or deny the application.

The design of the review process was discussed. One idea was that the process could have two parts: first, the evaluation of what the entity proposes to do and how. Then, if the service/business model was approved, the process would move to an evaluation of the background of the applicants.

Whatever the process, it's steps, decision points, and timing should be disclosed up front so that applicants know what to expect.

III. Open Questions

The subcommittee discussed but did not arrive at any conclusions about a series of currently open questions:

- a. Which information provided by applicants will the regulator attempt to independently verify (e.g., moral character disclosures)?
- b. What kind of background/character check should the application require?
- c. In the benefits section of the Utah application, the framing is comparative asking entities to describe how their offerings would increase or improve things. What are the proposed impacts of the new entity being compared to?
- d. Rule 5.4 will need to be changed. What other rules (e.g., statutes about UPL) will need to be addressed? Which are legislative?

IV. Requests for more information

To inform its deliberations, the subcommittee would like more information about the following:

- [Arizona's application for ABS's](#). We request a speaker from Arizona to talk about their application process and how applications are evaluated
- Speakers to describe California's moral character evaluation process for lawyers. The purpose of this process is to provide assurances that people are relatively honest. What are different models for achieving this goal? Input is requested from:
 - the California office that administers this process
 - lawyers who represent those who are alleged to have run afoul of these requirements
 - Someone who can describe how the UK handles this for ABS's