



The State Bar of California

Closing the Justice Gap Working Group

To: CTJG Members
From: SAGE Co-Chairs
Date: June 15, 2021
Re: II.D. – Risk-based Approach to Regulation of a Sandbox

To facilitate the discussion of Closing the Justice Gap Working Group June 18, 2021 agenda item II.D – Discussion and Possible Action on a SAGE Subcommittee Recommendation for a Risk-Based Approach to Regulation for a Sandbox – the following materials are provided by the SAGE co-chairs to help you prepare for the meeting:

- SAGE Co-Chairs' outline of discussion topics prepared for May 19, 2021 SAGE meeting
- May 11, 2021 SAGE assignment memo, section “II. Risk-based Approach to Sandbox Regulation” (page 2 of memo), discussed at the SAGE May 19, 2021 meeting
- ATILS Final Report Excerpts
- Utah Innovation Office Manual pp. 1 to 13 (Risk Assessment)
- Utah Innovation Office Manual Appendix D (Repeating Risk Definitions)

DISCUSSION OUTLINE FOR SAGE MAY 19, 2021 MEETING

CTJG Charter (6): Program oversight for persons and entities accepted for participation in the sandbox including standards of conduct, processing of client complaints, and enforcement through suspension or removal from the sandbox or other remedies

1. Program Oversight Goals: To best ensure participants act in a manner designed to minimize risk of identified possible harms.
 - a. ATILS identified possible harms:
 - i. Receiving inaccurate or inappropriate legal services.
 - ii. Failing to exercise legal rights through ignorance or bad advice.
 - iii. Purchasing unnecessary or inappropriate legal services.
2. Program Oversight Tools: To oversee compliance, specific tools may include any of the following: processing complaints, conducting periodic audits, formal and informal investigations, monitoring, surveying consumers who utilize services offered by sandbox participants, suspending or removing participants, and/or resolving suspension appeals, and evaluating participants, including recognition for safe, effective services.
3. Who should be responsible for Program Oversight: options include the staff; the governing board; or third party participants including volunteers (along the lines of the Attorney-Client Fee Dispute Arbitrators, who are volunteers in local bar association MFAA programs). Different functions may be assigned to different oversight groups.
4. Standards of Conduct: The standards participants must adhere to in order to maintain program eligibility must be defined. This may involve any of the following:
 - a. Attorney participants: Attorney participants may continue to be held to the Rules of Professional Conduct, potentially as modified; discipline to be administered by the State Bar.
 - b. Nonattorney participants: Individual nonattorney participants may be required to meet certain standards, such as adherence to duties of confidentiality, compliance with the conflicts rules, and any other defined standards. Example: Professional conduct rules being developed by the California Bar Paraprofessional Working Group.
 - c. Entity regulation: the participant entities may be held to meet certain standards of conduct, which may include adherence to defined rules governing financial relationship with clients, conflicts, cooperation with sandbox reporting obligations and others.
5. Suspension or Removal:
 - a. Need to determine what conduct will subject a participant to removal from the sandbox. Degrees of noncompliance/breach may have different outcomes:

short-term suspension versus permanent removal. Should there be a financial penalty/remedy for actual harm caused?

- b. From the ATILS Report: “If an entity fails to comply with the requirements set by the oversight body, including a failure to provide appropriate supporting data with respect to the services provided, it would be subject to removal from the sandbox. If removed, an entity would lose its authority to operate with the protections of the sandbox rendering it subject to all existing rules and statutes regulating the practice of law. However, when possible, the entity should be given an opportunity to cure the issue of concern and become fully compliant.”
- c. Should there be a means of appeal from suspension or removal, and if so, who would oversee?



The State Bar of California

Note: There is one assignment memo for both agenda items II.A. and II.B.

Closing the Justice Gap Working Group

Date: May 11, 2021
To: SAGE Subcommittee Members
From: Co-Chairs Merri Baldwin and John Lund
Re: SAGE Subcommittee – Assignments for May 19, 2021 Subcommittee Meeting

The SAGE committee's (Structure and Governance, Evaluation/Enforcement) first assignment was to prepare a recommendation for the structure of a sandbox regulatory authority, including funding, staffing, and governance, and conflicts of interest for members of any governing body. Work on that assignment is progressing.

For its second assignment, SAGE is now asked to prepare a recommendation for a risk-based approach to regulation for a sandbox that will address the sandbox's approach to collecting information from participants and how that information will be analyzed.

I. Structure and Governance Assignment

At the April 9, 2021 CTJG meeting, SAGE presented: (i) overarching principles for considering the governance of a sandbox; (ii) possible options for a regulatory entity structure; and (iii) a recommendation that CTJG obtain legal assistance from OGC and possibly pro bono attorneys who have expertise on certain complex legal issues. (See attached April 2, 2021 memo to CTJG.)

Regarding the overarching principles, there were no comments or discussion that questioned the principles articulated by SAGE.

Regarding the possible options for a regulatory entity structure, upon motion made and seconded, the following resolution was adopted by CTJG:

RESOLVED, that the working group supports for purposes of further research and consideration of options A1, A2, and B, as set forth in the SAGE subcommittee memo dated April 2, 2021, and recommends legal analysis of the constitutional and legal feasibility of the proposals to be provided by the Office of the General Counsel or appropriate pro bono counsel, as needed.

Consistent with the foregoing resolution, SAGE does need to proceed with further developing options A1, A2 and B. However, before doing so, the subcommittee will await the results of the legal analysis of options A1, A2 and B which is being prepared by OGC staff in coordination with the SAGE leaders. Further consideration of issues such as funding, staffing, and resources, "borrowing" staff and the ability and impact of receiving grants, will be considered further by the subcommittee after the legal analysis has been provided. It is anticipated that a status report on this aspect of SAGE's work will be provided at the May 19th subcommittee meeting.

However, for the May 19 meeting SAGE members should consider and be prepared to discuss conflict of interest and disclosure issues for the regulatory body. Information about possible recommendations on these topics can be found at: <https://www.fppc.ca.gov/learn/rules-on-conflict-of-interest-codes.html>.

SAGE members are asked to provide any comments on these issues as they are anticipated to be a discussion point at the May 19th meeting.

II. Risk-based Approach to Sandbox Regulation

The CTJG Charter, in part, provides that:

The working group will develop specific recommendations regarding the following:

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:

* * * * *

(5) Recordkeeping, reporting, data collection, and sandbox evaluation metrics;

(6) Program oversight for persons and entities accepted for participation in the sandbox including standards of conduct, processing of client complaints, and enforcement through suspension or removal from the sandbox or other remedies; and

(7) Termination of the sandbox, including participant exit/extensions and post-termination assessment of any permanent changes to laws and rules that might be considered as a result of the sandbox.

SAGE members are assigned to review the attached background materials and provide initial thoughts on this topic for discussion at the May 19th subcommittee meeting. Some of the specific issues to be addressed include the following:

- What risks does Sandbox seek to mitigate?
- How does this approach work, including tools the Sandbox should employ (audits, badges, complaints data, disclosures, secret shoppers, insurance or bonding requirements, etc.)
- How will the Sandbox screen different kinds of applicants for risk?
- How will the Sandbox monitor and enforce acceptable performance (e.g., by recordkeeping and reporting by participants or other methods)?
- What metrics or standards will the Sandbox measure entrants against?
- What information, if any, should be collected from consumers who receive services from sandbox providers?
- Should information and data collected by the sandbox be available to interested persons, such as persons or organizations that conduct research?
- What would cause a Sandbox entrant to be suspended, terminated, or perhaps “graduated out” of Sandbox supervision, and what would be the process for these changes in participant status?

For this assignment, the following background materials are attached:

- April 2, 2021 Memo to CTJG
- ATILS Final Report Excerpts
- Utah Innovation Office Manual pp. 1 to 13 (Risk Assessment)
- Utah Innovation Office Manual Appendix D (Repeating Risk Definitions)

Please send your comments by email to staff at: CTJG@calbar.ca.gov.

Thank you.

MEMORANDUM

To: Closing the Justice Gap Working Group

From: Bridget Gramme and Dan Grunfeld

Date: April 2, 2021

Re: Possible Options for Governance Structure of the Sandbox

At the SAGE committee's March 24, 2021 meeting, we considered a series of possible options for the high-level structure and oversight of the sandbox, and a non-exhaustive list of the pros and cons for each option. This document reflects the SAGE committee's discussion and further refinement of the possible options for the full Working Group to consider.

I. Overarching Principles

From the outset, we believe it is important for this group to discuss and clarify three principles:

- 1) The options below are focused only on the governance of the sandbox. It is not assumed that the governance structure of the sandbox will necessarily apply to what may emerge from the sandbox. However, the sandbox may provide an opportunity to gain information about how best to structure what may follow.
- 2) Whichever governance structure is eventually adopted for the sandbox, it is important that both conflicts of interest, and the appearance of conflicts of interest, be avoided and strictly monitored.
- 3) Careful consideration will need to be given to the term of the sandbox. It should be long enough that applicants are able to develop a model, establish their businesses in the legal market, and provide the sandbox regulator a meaningful opportunity to assess results. Utah has recently extended the term of its sandbox. The choice of the options discussed below may have an impact on the ultimate term of the sandbox.

II. Possible Options

The Committee's preferred options (A.1 or A.2):

- A. **Entity under the supervision of the Supreme Court:** Under this model, the regulator would be an entity under the judiciary branch, reporting directly to the Supreme Court.

The Committee considered two different options under this category:

1. The regulator would be its own **governmental entity** with its own board, created by the Legislature, and serving as an arm of the Supreme Court with respect to the licensing and regulation of entities in the sandbox. Under this option the regulator

would be a “sister entity” to the State Bar, independent of the Bar, and reporting directly to the Supreme Court.

a. ***Pros:***

1. Operates directly under the auspices of the Court, with its inherent gravitas, competence, independence, and impartiality.
2. Communicates clearly to the public and lawyers that the sandbox is under the supervision of the Court.
3. The State Bar can serve as an existing model for establishing the entity such as formation and reporting infrastructure to the Court.
4. As a stand-alone entity, the regulator would be free to establish innovative regulatory models and less hindered by existing regulatory structures.

b. ***Cons/ Areas for Further Study:***

1. Is the Court interested in serving as the ultimate regulator of the business of law?
2. Presents complex legal and possibly constitutional issues with respect to entity formation that may require specialized legal expertise.
3. Imposes additional costs and oversight on the Court (although presumably less than option A.2 below).
4. May create potential conflicts around both funding from outside sources and potential liability resulting from sandbox operations (but more removed and therefore less so than option A.2 below).

2. The regulator would be an **office of the Court**/Judicial Council. This is the model Utah is using for its sandbox. Its [Office of Legal Services Innovation](#) is a division of the Utah Supreme Court, authorized to oversee the Sandbox. It accepts and reviews applicants to the Sandbox, and makes recommendations to the Supreme Court as to those applicants to be approved to offer legal services within the Sandbox.

a. ***Pros:***

1. Operates directly under the auspices of the Court, with its inherent gravitas, competence, independence, and impartiality.
2. Some operational infrastructure and expertise is already place, such as IT, HR, etc.
3. May render it easier to establish consistent policies with respect to overlapping issues, particularly if attorneys (licensed by the Bar) are also applicants of the sandbox.
4. Communicates clearly to the public and lawyers that the sandbox is under the supervision of the Court.

b. ***Cons/Areas for Further Study:***

1. Imposes additional costs and oversight on the Court.
2. The Court's operations systems are already under strain, and the Court may lack capacity or interest in doing this work.
3. Would create potential conflicts around both funding from outside sources and potential liability resulting from sandbox operations.
4. Is the Court really best equipped to serve as a regulator of the business of law?

The committee believes the following two options (B. and C.), or elements thereof, should be, as necessary, further discussed and considered by the full Working Group:

B. Independent Nonprofit Organization: Under this model, the Supreme Court could either delegate entirely its authority to regulate the delivery of legal services to an independent 501(c)(3) or, as it does with the State Bar, retain the ultimate authority, but task the nonprofit organization with serving as the administrative arm of the Court with respect to entity regulation (similar to option A.1 above, but not a governmental entity).

1. ***Pros:***

- a. The leadership of the nonprofit will owe their fiduciary duties to that organization; therefore, the organization is likely to be, and to be perceived as, independent and a "fair broker."
- b. Setting up and applying to become a 501(c)(3) organization is relatively straightforward; the prospective 501(c)(3) organization could operate while its application is being considered by the Office of the Attorney General of California.
- c. The entity could seek funding from various philanthropic sources, including government bodies, without conflict concerns.
- d. Under the "Member Model" of a nonprofit organization, organizations such the Supreme Court, the State Bar, and others could appoint certain members.
- e. The organization could retain/utilize the services of individuals who are expert in the subject areas most important to the operation of the sandbox, including, for example, regulating the business of law, entrepreneurship, evaluation of results, etc.

2. ***Cons/ Areas for Further Study***

- a. Additional expenses may be incurred in setting up and staffing a new organization.
- b. Nonprofits are required to comply with additional independent obligations, such as audits, filing Form 990s, adhering to their bylaws, etc.
- c. The nonprofit would not automatically cease to exist at the conclusion of the work of the sandbox and would therefore have to be dissolved.

- d. There may be some constitutional and other legal issues in establishing the nonprofit. For example, would the Supreme Court need to formally delegate authority in some way to this entity? How does the Supreme Court retain ultimate authority while maintaining the independence and authority of the nonprofit?
- e. As a non-governmental entity, transparency/rulemaking procedures and requirements to ensure public protection/oversight would need to be incorporated into the formation documents, and adhered to thereafter.

C. Entity operated by the State Bar, with separate leadership, reporting directly to the Supreme Court:

1. *Pros:*

- a. Should create efficiencies because State Bar operations/staff expertise already in place.
- b. May render it easier to establish consistent policies with respect to overlapping issues, particularly if attorneys (licensed by the Bar) are also applicants of the sandbox.
- c. Direct reporting to the Court would alleviate actual/impression of undue influence of practicing attorneys over operations of the sandbox.
- d. Transparency/rulemaking procedures are already in place.

2. *Cons:*

- a. Actual/perceived issues with Bar's ability to take on additional enforcement responsibilities.
- b. Operations/staff traditionally focused on prosecutorial model of discipline/discipline of individuals vs. risk-based regulation of entities.
- c. Potential antitrust concerns will need to be addressed.
- d. The funding model is uncertain.
- e. Possible disincentive to innovators who may view the Bar as stifling to new market entrants, and believe that it will act in attorneys' interests.

The committee considered the following two options (D. and E.), but ultimately concluded that they should not be pursued at this time as the cons appear to outweigh the pros.

D. Entity operated by the State Bar, with separate leadership, reporting to the Bar's Board of Trustees:

1. *Pros:*

- a. Should create efficiencies because State Bar operations/staff already in place.
- b. May render it easier to establish consistent policies with respect to overlapping issues, particularly if attorneys (licensed by the Bar) are also applicants of the sandbox.

- c. Transparency/rulemaking procedures are already in place.

2. Cons:

- a. Actual/perceived issues with Bar's ability to take on additional enforcement responsibilities.
- b. Actual/perceived issues of undue influence of practicing attorneys over regulation of the sandbox.
- c. Potential antitrust concerns will need to be addressed.
- d. Operations/staff traditionally focused on prosecutorial model of discipline/discipline of individuals vs. risk-based regulation of entities.
- e. The funding model is uncertain.
- f. Possible disincentive to innovators who may view the Bar as stifling to new market entrants, and believe that it will act in attorneys' interests.

E. Agency of the Executive Branch: Under this option, an entity would be established under the "innovation" wing of the newly-reorganized Department of Financial Protection and Innovation, or the Department of Consumer Affairs, which houses most other occupational licensing boards.

1. Pros:

- a. Staff/infrastructure with expertise in consumer protection/occupational licensing and regulation.
- b. Subject to transparency/rulemaking procedures.
- c. A partial funding structure may be available.

2. Cons:

- a. Presents complex issues regarding constitutional authority, separation of powers, and jurisdiction over the delivery of legal services industry.
- b. Resolution of the issues described in "a" above, would be time-consuming and potentially subject to litigation.
- c. There is a threat of possible inconsistencies between regulation of individuals by the Bar/Judicial Branch and regulation of entities by the Executive Branch.

III. Recommendation to seek *pro bono* legal assistance

Establishing the sandbox may involve complex and/or cutting edge issues. The SAGE Committee recommends that, working with the State Bar's General Counsel's Office, we retain, on a *pro bono* basis, law firm(s) to assist with the analysis and establishment of the sandbox. Broadly speaking, the *pro bono* law firm(s) will have expertise in the intersection of California's laws and practices in corporate governance, state regulatory practice, administrative law, and constitutional issues.

Attachment No. 2

ATILS Final Report Excerpts

C. Process and Participant Requirements

If an entity/service cannot provide legal services under the current rules and statutes, or if there is a material question as to whether the entity/service would be allowed, an application would be made to the oversight body for registration. The application process would provide an opportunity at the outset to present a proposal for a new delivery system that demonstrates to the sandbox regulator that the proposal would satisfy the applicant's burden of proof that anticipated access to legal services benefits are likely to substantially outweigh the potential risks of harm. Upon receipt of the application the oversight body could review the applicant's proposal and set requirements upon the applicant as deemed appropriate if the applicant is admitted to the sandbox. This is not intended to be a rigid or technical approach since objective-based regulation is meant to be flexible and responsive to evidence of risk. These and other process and participant requirements may be explored by the working group.

The oversight body should consider giving priority and a reduced fee structure to nonprofits as well as for-profit entities that propose providing services specifically designed to address areas of most need as identified by the 2019 California Justice Gap Report.

With an effort to ensure that the regulatory burdens are not too onerous, the working group might explore requirements for participation in the sandbox including, but not limited to, the following:

- Disclosure to consumers that the entity/service is part of the sandbox and referring consumers to the oversight body where they can learn more and provide feedback or complaints;
- Where applicable, informed consent by consumer acknowledging that service is not provided by a licensed attorney;
- Confidentiality, which shall include a prohibition against regulated entities sharing disaggregated consumer data with any outside third parties other than the oversight body;
- Data collection and reporting to the oversight body to determine if the entity/service is performing and being used by the public, as well as the scope of the impact on providing legal services to the public and whether there are unexpected harms (see below);
- Transparency, including credentials of service providers, and identification of individuals with more than a 10 percent ownership interest in the entity/service;
- Compliance with accessibility and usability standards to be set by the oversight body;
- Corporate entities and LLCs must be either a California entity or a registered foreign entity, requiring an annual statement of information that identifies officers and directors and registered agent for service of process. Partnerships would provide partner information and registered agent to the oversight body;
- Liability and Errors & Omissions insurance at levels to be set by the oversight body;

- Prohibit arbitration clauses or limitations of liability in the terms of service that will preclude consumer access to the oversight body's complaint and remedy system; and
- Training requirements to be determined by the oversight body.

* * * * *

E. Data Requirements and Analysis

The regulatory strategy of the sandbox oversight body should assess, at a minimum, the risk of three possible harms to consumers of the legal services provided by sandbox participants. The burden should be on an applicant to show that the benefit of its proposal substantially outweighs the potential harm, thereby causing an applicant to consider potential harms and build mechanisms to address those harms in its application materials. A risk assessment matrix should be adopted and used by the oversight body to facilitate this analysis.

The harms include:

- Receiving inaccurate or inappropriate legal services.
- Failing to exercise legal rights through ignorance or bad advice.
- Purchasing unnecessary or inappropriate legal services.

The oversight body would need several kinds of data on legal outcomes to assess the likelihood of consumers experiencing these harms. Sandbox participants could therefore raise their chances of approval and registration by providing as much of the required data as possible. A partial but suggestive list of data collection strategies and data sets include:

- Consumer complaints and corresponding resolution or disposition
- User surveys
- Rate of service error fixes
- Types/level/rates of services provided
- Legal and financial outcome data

Although the sandbox oversight body would likely be interested in the absolute absence of consumer harms by a sandbox participant, the Task Force has concluded that the more important criterion is the relative rate or risk of harm compared to the experience a consumer would have received absent the legal services provided. To make that comparison, information must be known about the consumers of the legal services provided by the sandbox participants. Some possible useful data for this purpose might include:

- Income level
- Education level
- Geographic location
- Race/ethnicity

While the oversight body would negotiate the actual data collection requirements individually with each sandbox participant, it should attempt to establish and maintain data sets consistent with the guidance above to the greatest extent possible.

No data provided by sandbox participants should be shared with any other organizations for any reason. Data provided by sandbox participants should be anonymized before submission to the sandbox oversight body. Data provided should be kept confidentially and deleted from the oversight body's databases after analysis, unless otherwise required by California law. The oversight body may choose to share provided data with independent evaluators of the sandbox after receiving permission by the data provider; if so, such evaluators should be contractually required to also keep the data confidential and delete it after the analysis is complete.

F. Removal from Sandbox

If an entity fails to comply with the requirements set by the oversight body, including a failure to provide appropriate supporting data with respect to the services provided, it would be subject to removal from the sandbox. If removed, an entity would lose its authority to operate with the protections of the sandbox rendering it subject to all existing rules and statutes regulating the practice of law. However, when possible, the entity should be given an opportunity to cure the issue of concern and become fully compliant.

G. Post Sandbox Activity

A sandbox is not set up as a permanent regulatory structure. It is intended to be a multi-year program (e.g., 2–3 years) through which evidence and data can be gathered to determine the appropriateness of changing rules and statutes that would otherwise prohibit the entities and services allowed by the sandbox. At the end of the sandbox period, there should be an opportunity for an entity to seek an extension.²⁸

The Task Force recognizes that any entity willing to participate in a sandbox might reasonably expect the sandbox to be structured and administered in a manner that facilitates a transition to a more permanent model under the oversight body, so long as it is performing as intended and not harming the public. While the mere fact of participation in the sandbox cannot be regarded as a guarantee of any permanent authority to operate it is understood that meaningful post sandbox protections are necessary to encourage interest and applications.

* * * * *

²⁸ The Wyoming Medical Digital Innovation Sandbox Act (posted at: <https://www.wyoleg.gov/Legislation/2019/SF0156>) addresses this regulatory issue as follows:

40-28-107. Extension of sandbox period.

(a) A person granted authorization under W.S. 40-28-103(f) may apply for an extension of the initial sandbox period for not more than twelve (12) additional months. An application for an extension shall be made not later than sixty (60) days before the conclusion of the initial sandbox period specified by the department. The department shall approve or deny the application for extension in writing not later than thirty-five (35) days before the conclusion of the initial sandbox period. An application for extension by a person shall cite one (1) of the following reasons as the basis for the application and provide all relevant supporting information that:

(i) Statutory or rule amendments are necessary to conduct business in Wyoming on a permanent basis;

(ii) An application for a license or other authorization required to conduct business in Wyoming on a permanent basis has been filed with the appropriate office and approval is currently pending.



OFFICE OF LEGAL SERVICES INNOVATION

An Office of the Utah Supreme Court

INNOVATION OFFICE MANUAL

Published March 22, 2021

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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.

I. DECISION MAKING PRINCIPLES AND PROCESS

The regulatory actions of the Office will be limited to those that advance the Regulatory Objective: To ensure consumers have access to a well-developed, high-quality, innovative, affordable, and competitive market for legal services.

Ensuring consumer access as described in the Regulatory Objective is the primary criteria around which Innovation Office decision making takes place. In striving to answer the question of whether a given action furthers the Regulatory Objective, the Office balances the incremental costs of improved information and the benefits of efficient action.

As dictated by the Regulatory Objective and Regulatory Principles, the Office bases its decisions on empirical evidence whenever possible, using data and numbers to identify and understand the potential harm that consumers currently experience and are likely to be exposed to with new services.

Every risk of harm to consumers cannot currently be quantified. Assessments of risk are inherently imprecise, as knowledge of all the relevant variables is incomplete and any given outcome depends on multiple and complex considerations. The reliance on empirical evidence should not imply a false precision. Judgement must be used where relevant and reliable data are absent.

Decision Process Objective: Ensuring that any decisions made by the Office are unbiased and based on a proper and objective consideration of all facts, the Regulatory Objective, and the Regulatory Principles.

Decision Process Principles:

- **Equal Access:** All parties have the same opportunity to access decision makers.
- **Coherent:** Decisions and the reasons therefore are reasonably and clearly explained.
- **Transparent:** All parties know what information and arguments the Office is considering in rendering a decision.
- **Efficient:** Decisions will be made in a timely manner.

Standard for sufficiency of data

The data considered alongside all associated information (about company, ownership, management, target population) must be of sufficient quality to inspire confidence in the regulatory action (authorization, licensing, enforcement).

Operational Decision Criteria:

For each identified risk of harm:

1. Consumer achieves an inaccurate or inappropriate legal result.
2. Consumer fails to exercise legal rights through ignorance or bad advice.
3. Consumer purchases an unnecessary or inappropriate legal service.

An applicant must show that:

The likelihood that the average person will experience a harm using the applicant's service ***is not greater*** than the likelihood that the average person who might use their service will experience harm without the service.

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;¹
- 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;

¹ Please note: as of the Court's December 10, 2020 statement on referral fees, the Innovation Office will not consider applications setting forth bare referral fee arrangements between lawyers and nonlawyers. Bare referral fees are compensation paid to nonlawyers for the sole purpose of ensuring the referral of legal work. The Innovation Office will continue to consider applications in which fee sharing is one component in a more comprehensive innovative proposal.

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

These materials may be found at [Appendix A](#). Applicants may also submit any other relevant supplemental materials.

As per Standing Order No. 15, any false or misleading statements made by entities or their members in the application materials, whether discovered at the time or at any time afterward, will be independent grounds for regulatory enforcement, including termination of authorization, and an aggravating factor in any enforcement proceeding based on other conduct.

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.

A. ADDITIONAL WAIVERS

The Sandbox is a mechanism to permit innovative legal business and service models that would not have been possible under the broad traditional proscriptions on nonlawyer ownership and investment and nonlawyer legal practice. In the Sandbox, these entities are permitted to practice and Utah lawyers are permitted to own, be employed by, or partner with these entities. As a general rule, Utah lawyers working with or for Sandbox entities must maintain their compliance with the Utah Rules of Professional Conduct and remain subject to disciplinary action should they fail to comply.

The Court and the Innovation Office, however, recognize that there may be instances in which an entity might seek additional rule waivers to facilitate lawyers' participation with the business model. The Sandbox offers the opportunity to permit increased experimentation in a controlled environment. Entities may propose additional rule waivers in their application and the Office will consider them and whether the proposed waiver merits an adjustment to the risk categorization and make the appropriate recommendation to the Court.

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 with lawyer involvement - legal document completion	Low
Intermediary platform ²	Low / Moderate
50% or more nonlawyer ownership	Low / Moderate
Lawyers sharing fees with nonlawyers	Moderate
Nonlawyer provider ³ with lawyer involvement ⁴	Moderate
Software provider with lawyer involvement	Moderate
Nonlawyer provider without lawyer involvement ⁵	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 model. As a proposed model gets 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).

² "Intermediary platform" means an entity offering a software- or online-based platform to connect Utah lawyers with interested consumers. The platform may also offer other legal practice support services such as timekeeping, billing, video-conferencing, etc.

³ Provider means legal practitioner: a provider who or which is practicing law, including offering legal advice.

⁴ "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.

⁵ "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.

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 at [Appendix D](#) but referred to by a shorthand designation in Office's recommendations 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.

C. DENIAL OF RECOMMENDATION AND APPEAL

The Innovation Office may decline to recommend an application to the Court for authorization. Reasons for denial may include (list is not exclusive and may be expanded):

- Insufficiently clear proposal of business or service model
- Inability to report data as required by the Office
- Proposal not ready to implement
- Proposed model or service is already permitted under the traditional rules (Sandbox authorization is not needed)
- Disbarred lawyer owning more than 10% of entity
- Entity is merely a vehicle for an out of state lawyer to practice within Utah

The Office will send a Denial of Recommendation form to the entity.

Entities denied authorization may always reapply. Entities denied a recommendation for authorization may also appeal the denial by submitting an Request for Reconsideration form. The entity has 30 days from the date of the denial to submit the Request for Reconsideration form. Requests submitted past the 30 day window will not be considered.

If the Office denies the reconsideration (by issuing a Denial of Reconsideration form), the entity may appeal to the Court. The entity has 30 days from the date of the denial of reconsideration to submit an Appeal of Denial. On receipt of the Appeal of Denial, the Innovation Office will present the entity's appeal, including the entire application file, to the Court at the next scheduled Court conference.

The relevant forms may be found at [Appendix C](#).

D. RECOMMENDATION OF AUTHORIZATION AND PARAMETERS

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

1. SERVICE MODELS

The Office will determine which service models it will recommend for Court review and approval. Entities will be authorized as one or multiple service model categories; entities may not offer services through a model for which they are not authorized. For example, if an entity is authorized as a “nonlawyer provider with lawyer involvement,” that entity may not offer a software platform or tool that practices law. If 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
Intermediary platform	Low / Moderate
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)⁶
- Criminal (Other)
- Discrimination
- Domestic Violence
- Education

⁶ Please note: Nonlawyer providers, whether software or human, are currently limited to providing expungement services only in the criminal field. Lawyers, in accordance with their law license and Rule 1.6, may offer all criminal services.

- Employment
- End of Life Planning
- Consumer Financial Issues
- Healthcare
- Housing (Rental)
- Immigration
- Marriage and Family
- Military
- Native American / Tribal Issues
- Public Benefits
- Real Estate
- Traffic - Civil Actions / Citations / Misdemeanors

3. WAIVERS

The Innovation Office will consider any additional rule waivers requested by the applicant entity. The Office may seek input from an ethics advisor to ensure adequate consideration of waiver implications. Any waiver will be carefully construed to permit Utah lawyers' participation in the proposed business or service model. Utah lawyers remain subject to all rules not explicitly waived.

4. 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. Failure to display the badge will be considered evidence of noncompliance and consumer harm.

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 APPLICABLE⁷

The following disclosures are required depending on the category of service model authorized. These disclosures must be communicated to each consumer in, for example, the terms of service or engagement letter. Failure to provide these disclosures will be considered noncompliance and considered evidence of consumer harm.

- 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 _____.

5. 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

⁷ The Innovation Office notes that Rule 5.4 contains its own disclosure requirements applicable to lawyers in fee sharing arrangements and nonlawyer owned entities.

6. DATA REPORTING REQUIREMENTS

The Innovation Office will assign a risk categorization for each authorized entity according to the framework described above. 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 (see [Appendix B](#)).

Low Risk

1. NONLAWYER INVESTMENT / OWNERSHIP: LESS THAN 50%
2. 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

Low to Moderate Risk

1. NONLAWYER INVESTMENT / OWNERSHIP: MORE THAN 50%
2. INTERMEDIARY PLATFORM

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

MODERATE RISK

1. FEE SHARING WITH NONLAWYERS⁸

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

⁸ This category addresses fee-sharing proposals other than intermediary platforms.

2. NONLAWYER PROVIDER WITH LAWYER INVOLVEMENT

3. SOFTWARE PROVIDER WITH LAWYER INVOLVEMENT

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	<p>Consumer achieves an inaccurate or inappropriate legal result.</p> <p>Consumer fails to exercise legal rights through ignorance or bad advice.</p> <p>Consumer purchases an unnecessary or inappropriate legal service.</p>	Nonlawyer	Satisfactory legal expert review of representative selection of work product for accuracy and quality.	<p>Nontraditional products / services: submit legal expert review of first 20 consumer services.</p> <p>Office may require additional reporting on review of n interactions selected at random.</p>
		Nonlawyer	Nonfinancial (legal) outcomes data (% customers that did / did not get the outcome they sought)	Monthly
		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

HIGH RISK

1. NONLAWYER PROVIDER WITHOUT LAWYER INVOLVEMENT
2. SOFTWARE PROVIDER WITHOUT LAWYER INVOLVEMENT

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	<p>Consumer achieves an inaccurate or inappropriate legal result.</p> <p>Consumer fails to exercise legal rights through ignorance or bad advice.</p> <p>Consumer purchases an unnecessary or inappropriate legal service.</p>	Nonlawyer	Satisfactory legal expert review of representative selection of work product for accuracy and quality.	<p>Nontraditional products / services: first 20 consumer services to be reviewed by legal experts for accuracy and quality.</p> <p>Additional monthly reporting on <i>n</i> consumer services (to be determined by Office).</p>
		Nonlawyer	Nonfinancial outcomes data (% customers that did / did not get the outcome they sought)	Monthly
		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

APPENDIX D: REPEATING RISK DEFINITIONS

The following repeating risks are described in detail below:

- (1) nonlawyer investment / ownership;
- (2) intermediary platforms;
- (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
Intermediary platform	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, including intermediary platforms:
 - 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 and intermediary platforms (low/moderate risk), entities will have more fulsome reporting requirements at the outset, to be reduced when [x happens].

2. INTERMEDIARY PLATFORMS

Intermediary platforms are corporate entities, usually for-profit and owned and managed by nonlawyers, offering a software based platform through which clients and individual lawyers can find each other and enter into engagements. They are widely available throughout the legal services market, targeting individual consumers, corporations and small businesses, and lawyers and law firms. They are not regulated. Lawyers are able to work with these platforms as long as the financial arrangements are structured so as to avoid the ban on lawyers sharing fees with nonlawyers. Generally these arrangements are structured as purchasing advertising or marketing services and/or other support services. Any payments to the intermediary platform tied to the amount of the lawyer's fee has come under scrutiny and often led to cease and desist letters, if not more, from the applicable state bar association.²⁷ Therefore, what is permitted in the unregulated legal services market today is a software platform connecting lawyers and consumers of legal services, including providing legal support services such as billing and communications through the platform, where the lawyer pays a set service or marketing fee to the platform. The platform can facilitate payments between client and lawyer but generally cannot hold any of those funds in the course of facilitating the transaction because Rule 1.15 requires lawyers to hold client property in client trust accounts with certain requirements and fees have been considered client property.

What is generally not permitted in the legal services market are intermediary platforms using the following kinds of business models:

- Sharing fees with the lawyers (i.e. taking a percentage of the fee paid by the consumer to the lawyer for legal work found through the platform).
- Fee schedules set by the intermediary platform.
- Billing systems run and managed by the intermediary platform which accept and hold client retainer fees or funds for legal expenses.

Intermediary platforms with innovative models (entering the Sandbox)

Intermediary platforms will apply to the Innovation Office seeking authorization to offer one or more innovations to the basic model through the Sandbox. There are likely to be many other nuances presented by intermediary proposals not addressed in the above list. Each nuance may require a waiver of the Rules of Professional Conduct beyond that contemplated by the Standing Order and revised Rule 5.4 to permit Utah lawyers to participate with the platform.

²⁷ Benjamin H. Barton and Deborah L. Rhode, Access to Justice and Routine Legal Services: New Technologies Meet Bar Regulators," 70 Hastings L. J. 955, 974 (2019).

Given the general and arm's length nature of the relationship between "lawyer partners" of the intermediary and the entity itself and the fact that the use of an intermediary platform changes very little about who provides the legal services or how they are provided, the intermediary platform model itself does not seem to present increased risk of consumer harm. The Office has categorized sandbox intermediary proposals as low - moderate risk and will tailor any necessary rule waivers carefully to enable the Office to track service innovations. This categorization also reflects the reality of the business model in which the platforms themselves are not the actual service provider and, therefore, are limited in their ability to report data such as legal or financial outcomes.

Intermediary Platforms Sandbox Known Models Risk Assessment

1. Fee sharing

- Unlike other 1:1 or "close" fee sharing relationships, including referral fees, the intermediary platform fee sharing model is simply an up front, generally established percentage to be paid by the lawyer for the networking, marketing, and other applicable services provided by the platform. It is difficult to see how this arrangement could increase the risk that a consumer receives poor quality legal services or overpays for legal services. Particularly because the lawyer participant remains, as always, subject to the duties of competency and reasonable fees and revised Rule 5.4 maintains the lawyer's independence of professional judgement.
- When an intermediary platform seeks to enter the sandbox with a proposal limited to the sharing of fees with lawyers through generally established percentages or shares (as distinguished from individually negotiated referral fees), the risk categorization will be LOW - MODERATE.

2. Fee schedule set by intermediary platform

- There is little risk in this model beyond that already presented by the use of flat fees by lawyers, i.e. that the flat fee schedule inadequately prices the cost of providing the legal work leading to lawyers cutting corners in serving their clients. Lawyers participating with these platforms remain subject to the Rules of Professional Conduct. The risk categorization will be LOW - MODERATE.

3. Financial conduit (including holding funds and transferring funds between clients and lawyers)

- The Office is likely to see variation across this model however the basic version would include use of the platform to facilitate the payment of legal fees, including up front deposits of retainer fees and client expenses.
- There is the potential for a consumer to deposit money through the platform and then not receive the service for which they paid. This harm is one of the three harms identified by the Office.
- Given the structure of an intermediary platform, in which the platform itself is not the actual service provider, these kinds of risks are best monitored through consumer complaints rather than legal or financial outcomes. Therefore, if an intermediary platform proposal includes a client deposit feature the Office will consider it LOW - MODERATE enabling us to have monthly insight into client complaints.
- Note: Client deposit features likely require the authorization to be accompanied by a waiver of Rule 1.15 for those lawyers participating with the entity and potentially impacts the IOLTA qualification of those fees. The Office therefore recommends that

when a platform seeks authorization for a client deposit feature and requires waiver of Rule 1.15, the Order impose the requirement that the entity hold the relevant funds in an account generating interest or dividends and remit the interest or dividends to the Utah Bar Foundation on at least a quarterly basis. Along with the remittance, these entities must provide the Foundation with a report stating the name of the entity, the amount of the remittance, the rate and type of interest or dividend applied, and the average monthly balance on the account or accounts.

Sandbox authorization

Another issue raised by intermediary platforms is the nature of the authorization in the sandbox. Generally, we are authorizing entities in the sandbox with the language (in the Order) that they are authorized to practice law. However, intermediary platforms are not, in fact, practicing law but rather facilitating the practice of law by lawyers. To be clear on this point, the Office's recommended authorization language will read "authorized to operate in the Sandbox" to reflect that the entity has sandbox authorization and the model is permitted but not authorizing the practice of law.

3. LAWYERS SHARING FEES WITH NONLAWYERS²⁸

Under revised Rule 5.4, lawyers proposing to share fees with nonlawyers 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 non-meritorious claims. Intermediary platforms often include a fee sharing component and this characteristic might be present across other business models in the Sandbox. 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.

²⁸ Please note this section is subject to the Court's December 10, 2020 statement on referral fees.

4. 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 _____.

5. 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.

6. 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 own or control 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 has a material corporate relationship and / or business partnership with either a disbarred lawyer or individual with a felony criminal history.

As per Standing Order No. 15, any false or misleading statements made by entities or their members in the application materials, whether discovered at the time or at any time afterward, will be independent grounds for regulatory enforcement, including termination of authorization, and an aggravating factor in any enforcement proceeding based on other conduct.

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.