



The State Bar of California

CLOSING THE JUSTICE GAP WORKING GROUP

II.A. App Process/Criteria
07-16-21 Scope Meeting
Open Session

Date: July 12, 2021

To: Scope Subcommittee

From: Marta Alcumbrac and Kevin Mohr

Subject: II.A. Discussion of Sandbox Application

Marta and I were asked to draft a proposed application for discussion at the SCOPE subcommittee meeting this Friday, July 16, 2021. Rather than draft a "finished" application, we thought the working group would be better served if we were to provide a two-column table with a side-by-side comparison of the Utah application and key provisions of the Arizona application that we are recommending be incorporated into the Utah application. In most instances our proposed additions will increase the amount of information about not only the proposed Sandbox services, a focus of the Utah application, but also about the persons (whether individuals or entities) who will be involved in owning or operating the Sandbox entities, which is a particular focus of the Arizona application. We have also included "Drafters' Notes" to explain some of our inclusions in the table.

In addition to increasing the detailed information for Sandbox decision-makers, we believe that the working group should consider a reorganization of the Utah application more along the lines of the Arizona application. Specifically, we believe that the questions about the persons who will own or operate the Sandbox entities might be better placed up front in the application rather than in Part 4, the end of the application, as is true in the Utah approach.

The following documents were provided to staff in word format in order to facilitate copying and pasting during Friday's meeting in the event the discussion advances far enough to warrant drafting on the fly and are available at the CTJG One. Links provided below:

- Utah Application (<https://bit.ly/3hEgl6Y>)
- Arizona ABS Application for Initial License (<https://bit.ly/3ySdEKr>)
- Arizona Authorized Person (Individual) Application (<https://bit.ly/3i4xJqe>)

Other documents related to the Arizona ABS application process can be found at this [link](#).

**CTJG – SCOPE – Table Comparing Utah & Arizona Application Provisions
& Suggested Modifications to Utah Application**

| Utah Application <i>(Application)</i> | Arizona Application <i>(ABS Application) (Authorized Person Application)</i> |
|--|--|
| <p>1. Proposed Services</p> <p>1.1 Describe your proposed legal services offering in detail. Please include (i) who provides the legal services, (ii) how consumers will access/receive these services, and (iii) what your service will do for your customers.¹</p> | <p>III. Business Description (Arizona ABS Application)</p> <p>Provide a brief description of the general nature of the business.</p> <p>IV. Business Objectives (Arizona ABS Application)</p> <p>Describe how the business will advance one or more² of the following regulatory objectives:</p> <ul style="list-style-type: none"> • Protecting and promoting the public interest • Promoting access to legal services [include CTJG Purpose Statement, i.e., underserved & small businesses] • Advancing the administration of justice and rule of law • Encouraging an independent, strong, diverse, and effective legal profession • Promoting and maintaining adherence to professional principles <p>Anything else?</p> <p>VI. Non-legal Services Related Activities of the business if not listed in the Business Description.</p> |

¹ **Drafters' Note:** We recommend that application include the five bullet points in the Arizona application and that the applicant should address each of those bullet points.

² **Drafters' Note:** We recommend that instead of requesting “one or more” of the questions be addressed, applicant should be directed to respond to “each” of the bullet points in Part IV of the Arizona application.

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| <p>1.2 Describe the entity business model you want authorized in the Sandbox, including the management structure which will oversee direct legal service providers.³</p> | <p>V. Governance Structures and Policies (Arizona ABS Application)</p> <p>Describe how the governance structures and policies in place ensure:</p> <ul style="list-style-type: none"> • Lawyers providing legal services to consumers act with independence consistent with the lawyers' professional responsibilities; • The alternative business structure maintains proper standards of work; • The lawyer makes decisions in the best interest of clients; • Confidentiality consistent with Arizona Rule of Supreme Court 42 is maintained; and • Any other business policies or procedures that do not interfere with a lawyers' duties and responsibilities to clients. (Submit additional sheets or supporting documents if necessary.) |
| <p>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.⁴</p> | <p>No corresponding question in Arizona application.</p> <p><u>Possible Additional Language:</u> Be specific as to which statute or rule of professional conduct currently prohibits the kind of legal services you propose to provide to residents of California.</p> |

³ **Drafters' Note:** In our previous memo dated June 4, 2021 titled "Application Process, Section 1 (Proposed Services, Rules Changes, etc.),", we noted that this question is not sufficiently detailed. We suggest that this question include the five bullet points in the Arizona application, Part V.

⁴ **Drafters' Note:** As we noted in our previous memo, we recommend that 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.

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| <p>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.⁵</p> | <p>No corresponding question in Arizona application.</p> |
| <p>1.5. Which service models are you seeking to use? Select all that apply.⁶</p> <p><input type="checkbox"/> Lawyers employed or managed by a nonlawyer</p> <p><input type="checkbox"/> Less than 50% nonlawyer ownership</p> <p><input type="checkbox"/> More than 50% nonlawyer ownership</p> <p><input type="checkbox"/> Lawyers sharing fees with nonlawyers</p> <p><input type="checkbox"/> Nonlawyer provider⁷ with lawyer involvement⁸</p> <p><input type="checkbox"/> Nonlawyer provider without lawyer involvement⁹</p> <p><input type="checkbox"/> Software provider with lawyer involvement</p> <p><input type="checkbox"/> Software provider without lawyer involvement</p> <p><input type="checkbox"/> Other:</p> | <p>No corresponding question in Arizona application.</p> <p>However, the Arizona application seeks specific information about the persons who are involved in ownership and management of the proposed entity.</p> <p><i>See recommendations for additional questions below under 4.3.</i></p> |

⁵ **Drafters' Note:** We noted in our previous memo the following:

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.

⁶ **Drafters' Note:** In our previous memo we noted:

“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.”

⁷ Provider means legal practitioner: a provider who or which is practicing law, including offering legal advice.

⁸ 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.

⁹ -“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.

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| <p>1.6 Which legal service categories are you seeking to offer?¹⁰</p> <ul style="list-style-type: none"> • Accident/Injury • Adult Care • Business • Criminal¹¹ - Expungement ONLY • Discrimination • Domestic Violence • Education • Employment • End of Life Planning • Financial Issues • Immigration • Healthcare • Housing - Rental • Marriage and Family • Military • Native American + Tribal Issues • Public Benefits • Real Estate • Traffic - civil actions / citations | <p>No corresponding question in Arizona application.</p> |

¹⁰ **Drafters' Note:** In our previous memo we stated:

“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.”

¹¹ ****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.

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| <p>2. Risk Assessment¹²</p> <p>The Innovation Office must assess whether new legal service models cause consumers to get inappropriate or otherwise flawed legal results, fail to exercise legal rights through ignorance or bad advice, or purchase an unnecessary or inappropriate legal service.</p> | |
| | <p>I. Applicant Information (Arizona ABS Application)¹³</p> <p>II: Business Entity Authorized Person(s) Information (Arizona ABS Application)¹⁴</p> <p>VIII. Business Information (Arizona ABS Application)¹⁵</p> <p>Please answer all questions. Submit additional sheets if necessary.</p> <p>1. List (a) the states or countries in which your organization operates including whether the jurisdiction requires licensing, certification or registration and (b) for all jurisdictions requiring licensing, certification or registration list the address and telephone number of each entity.</p> <p>2. How long has your organization been operating in these states or countries?</p> |

¹² **Drafters’ Note:** The Utah risk assessment looks forward in an attempt to identify risks that might arise during the operation of the entity that is seeking entry to the Sandbox. Arizona inquires primarily into past conduct of entities and persons that are applying to operate as ABS for the delivery of legal services. We do not believe that one approach should necessarily exclude the other, i.e., both approaches can and should be utilized to reduce the risk of harm to consumers.

¹³ **Drafters’ Note:** See “4. Confirmation of Eligibility,” below, where this section is considered in more detail.

¹⁴ **Drafters’ Note:** See “4. Confirmation of Eligibility,” below, where this section is considered in more detail.

¹⁵ **Drafters’ Note:** In addition to requesting information about the business/entity that will provide the services, the Arizona application also seeks information about the specific individuals who will be involved in owning or managing the entity. See Arizona Application, sections I, II and VII. The latter section set out in 4.3, below.

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| | <p>3. List parent corporations, branch offices, or other entities that will perform, or assist in performing the work of the organization associated with legal services including addresses, contacts, and the functions to be performed:</p> <p>4. If applicable, submit a list of any individuals who may derive a profit (other than rental income at fair and reasonable market rates) from the operation of this business. <input type="checkbox"/> See Submitted list <input type="checkbox"/> None</p> <p>5. Will the Alternative Business Structure have professional liability insurance? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>6. Are there any shareholder agreements, voting agreements or restrictions or other agreements that restrict or affect decision making? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>7. Does the applicant use or intend to use sources of finance? If yes, provide type, name of the provider, amount of financing, and interest rate. <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>8. Has applicant or any Authorized Person¹⁶ been involved in a business that has declared bankruptcy? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>9. Will applicant share premises, staff or data with any other person or entity? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> |

¹⁶ **Drafters’ Note:** See note 23, below, for definition of “authorized person.”

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| | <p>10. Describe collection and disbursement of fees and the reports generated for compliance with Arizona Trust Account Rules.</p> <p>11. Describe how your business will comply with Arizona’s Rules of Professional Conduct for lawyers, Code of Conduct for Entities and for Owners and Managers. Submit additional sheets if necessary.</p> <p>12. Describe your policies and procedures for protecting client information and confidentiality.</p> <p>13. Describe policies and procedures for checking for conflicts of interest.</p> <p>14. Explain procedures developed to ensure confidentiality of client records.</p> <p>15. Describe your policies and procedures to ensure no inducements are offered to clients or potential clients for choosing the business’s course other than for the best interest of the client.</p> <p>If you answer “Yes” to any question in this section:</p> <ul style="list-style-type: none"> • You must submit a list of all incidents and complete a written explanation of the events for each. This includes incidents which may be pending and/or in litigation, and • You must submit any and all documentation which shows where the violation, finding, or conviction occurred, the nature and details of the case, case disposition, court, case number, and any other relevant information. <p>Submit additional sheets, if necessary.</p> |

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| 2.1. Fully and candidly discuss the risks your customers might face if they use your proposed model, including each of the risks described above.¹⁷ | No corresponding question in Arizona application. |
| 2.2. Describe the specific ways you will identify, track, and mitigate the risks to consumers in your proposed model. These efforts could include quality control measures, training, provider testing. ¹⁸ | No corresponding question in Arizona application. |
| 2.3. Please describe your consumer complaint process.¹⁹ | No corresponding question in Arizona application. |

¹⁷ See note 12.

¹⁸ See note 12.

¹⁹ See note 12.

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|--|--|
| 3. Benefits to Utah Customers | |
| 3.1. Describe how your model will provide higher quality, more cost effective, and more accessible legal services for your target consumers.²⁰ | <p>III. Business Description (Arizona ABS Application)</p> <p>Provide a brief description of the general nature of the business.</p> <p>IV. Business Objectives (Arizona ABS Application)</p> <p>Describe how the business will advance one or more of the following regulatory objectives:</p> <ul style="list-style-type: none"> • Protecting and promoting the public interest • Promoting access to legal services [include CTJG Purpose Statement, i.e., underserved & small businesses] • Advancing the administration of justice and rule of law • Encouraging an independent, strong, diverse, and effective legal profession • Promoting and maintaining adherence to professional principles <p>Anything else?</p> <p>VI. Non-legal Services Related Activities of the business if not listed in the Business Description.</p> |
| 3.2. Does your proposal comply with applicable Utah legal requirements?²¹ For example: staffed by UT licensed attorneys, built to complete state legal forms. | No corresponding question in Arizona application. |

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| 3.3. Identify which of your service models are ready to immediately implement. The Office of Innovation is only authorized to consider proposals which are ready to begin offering legal services not currently authorized in Utah at the time of authorization. | No corresponding question in Arizona application. |
| 4. Confirmation of Eligibility²² | |
| | I. Applicant Information (Arizona ABS Application) Organization Legal Name: List name of business to be certified with this application: List ALL assumed, DBA's or trade names: Business Address: Business Telephone Number: () Business Fax Number: () Business E-Mail Address: Date business formed: Federal Tax ID Number: State Tax ID Number: |

²⁰ **Drafters' Note:** As we observed in note 1 in relation to Question 1.1, we believe that this question can also be improved by including the five bullet points in the Arizona application, Part IV

²¹ **Drafters' Note:** Unless we have misinterpreted the information that Utah Question 1.3 is seeking, this question appears redundant.

²² **Drafters' Note:** Utah application, section 4, is the section that seeks specific information about the persons, whether individuals or entities, who will be involved in the Sandbox entity. Our preference is to use questions that are more similar to the more detailed questions in the Arizona application, which we've included below.

Specifically, we are referring to Sections I, II and VII of the Arizona application.

Further, as set forth below, the working group might consider whether to require each individual who is proposed to be involved separately submit an application. See note 25, which identifies separate Arizona applications for "Authorized Persons" (whether individual or entity) involved in operating the Sandbox entity. For a definition of "authorized person," see note 23.

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| | <p>Check appropriate business organization:</p> <p><input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Co. <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietorship</p> <p>Applicant is applying as a:</p> <p><input type="checkbox"/> Traditional Law Firm <input type="checkbox"/> Large non-law firm <input type="checkbox"/> Small non-law firm <input type="checkbox"/> Non-profit – Arizona <input type="checkbox"/> Non-profit – non-Arizona <input type="checkbox"/> International applicant</p> <p>Applicant is registered with the Arizona Corporate Commission or Secretary of State:</p> <p><input type="checkbox"/> Yes – If registered, applicant must submit copies of Articles of Incorporation/Organization or Partnership Agreements, and a Certificate of Good Standing. <input type="checkbox"/> No – If not registered, applicant must submit copies of draft Articles of Incorporation/Organization or Partnership Agreements and explain why entity is not registered. (See instructions for additional information)</p> <p>Statutory Agent’s Name: Statutory Agent’s Address (not a P.O. Box): Statutory Agent’s email address: Business and Home Telephone Number:</p> <p>Designated Principal’s Full Name: Designated Principal’s Business address: Designated Principal’s email address: Designated Principal’s Home address: Business and Home Telephone Number: Social Security Number:</p> |

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| | Compliance Lawyer’s Full Name: Compliance Lawyer’s Business address: Compliance Lawyer’s email address: Compliance Lawyer’s Home address: Business, and Home Telephone Number: Social Security Number: |
| 4.1. List all persons and entities who wholly or partially direct the management or policies of your proposed entity and/or the direct provision of legal services to consumers, whether through ownership of securities, by contract, or otherwise (“controlling persons”). | II: Business Entity Authorized Person(s) Information. List ALL Authorized Persons (add additional pages, if necessary). Each person listed below must complete and sign the Authorized Person ²³ Application. ²⁴ Authorized Person’s Full Name: Corporate Title/Position: Social Security Number: Email address: Does person have contract, voting, business operation negotiation authority? <input type="checkbox"/> Yes <input type="checkbox"/> No Does person have an economic interest in the alternative business structure equal to or more than 10 percent of all economic interests of the alternative business structure? <input type="checkbox"/> Yes <input type="checkbox"/> No |

²³ **Drafters’ Note:** Under Ariz. Code of Jud. Admin. § 2-709(A), an “authorized person” means a person possessing:

1. An economic interest in the alternative business structure equal to or more than 10 percent of all economic interests in the alternative business structure; or
2. The legal right to exercise decision-making authority on behalf of the alternative business structure. Examples may include: a sole proprietor of a sole proprietorship, a manager of a limited liability company, an officer of a corporation, a general partner of a general or limited partnership, or a person possessing comparable rights by operation of law or by agreement.

²⁴ **Drafters’ Note:** A copy of the Authorized Person Application (Individual) is provided with the meeting materials.

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| | <p>In the Authorized Person Application for an individual,²⁵ in addition to providing contact information, each person must answer the following questions:</p> <ol style="list-style-type: none"> 1. Committed material misrepresentation, omission, fraud, dishonesty, or corruption in applying for a certificate or on a certificate examination in this state or any other state? 2. Committed any act constituting material misrepresentation, omission, fraud, dishonesty or corruption in business or financial matters? 3. Had conduct showing incompetence or a source of injury and loss to the public? 4. Been convicted by final judgment of a felony, regardless of whether civil rights have been restored? 5. Been convicted by final judgment of a misdemeanor, regardless of whether civil rights have been restored? 6. Had a professional or occupational license or certificate denied, revoked, suspended or any disciplinary action taken? 7. Been terminated, suspended, placed on probation, or other disciplinary action taken in the course of employment since the age of 21? 8. Been found civilly liable in an action involving misrepresentation, material omission, fraud, misappropriation theft or conversion? 9. Been placed on probation or parole? 10. Violated any decision, order or rule issued by a professional regulatory entity? 11. Violated any order of a court, judicial officer, administrative tribunal, or the Board? |

²⁵ **Drafters' Note:** There is a separate application for an authorized person that is an entity.

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| | <p>12. Made a false or misleading statement or verification in support of an application for a certificate filed by another person?</p> <p>13. Made a false or misleading oral or written statement to division staff or the Board?</p> <p>14. Failed to respond or furnish information to the division staff or the Board when the information was requested and was reasonably available to you and pertains to certification or investigative inquiries?</p> <p>15. Been a party to or claimed an interest in any civil proceedings in the last ten years (including but not limited to orders of protection, dissolution of marriage/family matters, bankruptcy, law suits, debt collection, etc.)? If so, provide details, including the case name and number, a copy of the original complaint, and a copy of the final disposition with your application?</p> <p>Regarding criminal matters, the fact you entered into a plea bargain, or entered a “no contest” plea, or that a conviction has been vacated, pardoned, expunged, dismissed, or appealed does not mean that you can answer the question “No.” You must answer “Yes”.</p> <p>If you answer “Yes” to any question in this section:</p> <ul style="list-style-type: none"> • You must submit a list of all incidents and complete a written explanation of the events for each. This includes incidents which may be pending and/or in litigation, and • You must submit any and all documentation which shows where the violation, finding, or conviction occurred, the nature and details of the case, case disposition, court, case number, and any other relevant information. |

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| 4.2. List all persons and entities who will wholly or partially (greater than 10%) finance the business of your proposed entity (“financing persons”). | See Sections I and II of Arizona Application, above. |
| 4.3. Please note that no financing person may be a disbarred or suspended lawyer. List all controlling persons who are disbarred or suspended lawyers. | <p>For items 4.3 to 4.9, consider Arizona ABS Application, Section VII, and the separate applications required for each “authorized person,” whether an individual or an entity.²⁶</p> <p>VII: Applicant Background Information Note: Starting with this page, do not include personal identifying information (social security number, date of birth, home address, etc.) in the application or in any response to questions from this point forward</p> <p>Has the business entity, designated principal, compliance lawyer, or ANY authorized person:</p> <ol style="list-style-type: none"> 1. Ever been found guilty of any felony or misdemeanor? (The fact that the designated principal, compliance lawyer, or authorized person entered into a plea bargain or entered a “no contest” plea, or that the conviction has been vacated, pardoned, expunged, dismissed, or appealed, or that the civil rights have been restored does not mean that the question can be answered no. If the answer is yes, give details of the offense, and explain. Do not answer yes or give details if the offenses are minor civil traffic violations.) 2. Committed material misrepresentation, omission, fraud, dishonesty, or corruption in applying for a certificate or on a certificate examination in this state or any other state? |

²⁶ **Drafters’ Note:** See note 23, above, for a definition of “authorized person.”

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| | <ol style="list-style-type: none"> 3. Committed any act constituting material misrepresentation, omission, fraud, dishonesty or corruption in business or financial matters? 4. Had conduct showing incompetence or a source of injury and loss to the public? 5. Had a professional or occupational license or certificate denied revoked, suspended or any disciplinary action taken? 6. Had a professional or occupational license or certificate censured, placed on probation, or any disciplinary action taken? 7. Been terminated, suspended, placed on probation, or other disciplinary action taken in the course of employment since the age of 21 relating to dishonesty, misrepresentation, misappropriation, fraud, theft, moral turpitude, or the commission of a crime? 8. Been found civilly liable in an action involving misrepresentation, material omission, fraud, misappropriation, theft or conversion? 9. Had a record of conduct constituting or investigative inquiries regarding fraud on the part of an employee, board member, or the business? 10. Been a party to or claimed an interest in any civil proceedings in the last ten years (including but not limited to orders of protection, dissolution of marriage/family matters, bankruptcy, lawsuits, debt collection, etc.)? If so, provide details, including the case name and number, a copy of the original complaint, and a copy of the final disposition. 11. Been a party to any civil, criminal, administrative, judicial, or professional authority actions alleging fraud, deceit, misrepresentation, forgery or legal malpractice? 12. Been contacted by any court, state, or federal administrative or regulatory agency or professional association or the Better Business bureau regarding allegations of adversarial actions or complaints? |

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| | <p>13. Been the subject of a court sanction/order, a complaint to the State Attorney General or the Better Business Bureau, or been contacted by any prosecutorial, judicial, or administrative agency or association regarding business practices?</p> <p>14. Currently on probation or parole?</p> <p>15. Violated any decision, order, or rule issued by a professional regulatory entity?</p> <p>16. Violated any order of a court, judicial officer, administrative tribunal, or the Committee?</p> <p>17. Made a false or misleading statement or verification in support of an application for a certificate filed by another person?</p> <p>18. Made a false or misleading oral or written statement to division staff or the Committee?</p> <p>19. Failed to disclose information on the license application subsequently revealed through a background check?</p> <p>20. Failed to respond or furnish information to division staff or the Committee when the information is legally requested and is in your control or is reasonably available to you and pertains to certification or investigative inquiries?</p> |
| <p>4.4. List all controlling persons or financing persons of your proposed entity who have a felony criminal history.</p> | <p>See 4.3, above.</p> |
| <p>4.5. List all persons who will be in a managerial role over the direct provision of legal services to consumers who are disbarred lawyers.</p> | <p>See 4.3, above.</p> |

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| 4.6. List all persons who will be in a managerial role over the direct provision of legal services to consumers who have a felony criminal history. | See 4.3, above. |
| 4.7. Please select the most accurate description: My proposed entity has a material corporate relationship and/or business partnership with: <input type="checkbox"/> A disbarred or suspended lawyer <input type="checkbox"/> An individual with a felony criminal history <input type="checkbox"/> Neither a disbarred / suspended lawyer nor an individual with a felony criminal history | See 4.3, above. |
| 4.8. Disclose any history of state or federal criminal (misdemeanor or felony) conviction, state or federal consent decree, or state or federal enforcement action resulting in sanctions (disgorgement, civil penalties, and/or injunction) for the entity and, if applicable, its parent and other affiliated companies. | See 4.3, above. |
| 4.9. Disclose whether the entity, parent, and other affiliated companies are, to their knowledge, currently subject to a state or federal criminal investigation or state or federal enforcement action. | See 4.3, above. |
| I confirm that no financing persons listed in this application are disbarred or suspended lawyers. | |

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|---|--|
| <p align="center">SELLING OF CONSUMER DATA DISCLOSURE</p> <p>Please indicate whether your business model includes the sharing or selling of consumer data in any form to third parties.</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> | |
| <p align="center">PUBLIC APPLICATION</p> <p>Your application will be made publicly available. You will have the opportunity to make a claim of business confidentiality for specific information that would qualify for protection under GRAMA Section 63G-2-305. Making false or materially misleading statements in this application is a basis for loss of authorization to practice within the Sandbox. Other criminal and civil sanctions may also apply.</p> <p><input type="checkbox"/> I understand.</p> | |
| | <p>IX: ACKNOWLEDGMENT</p> <p>IX-a: Conflict of Interest Statement</p> <p>Pursuant to Arizona Code of Judicial Administration (ACJA) § 7-209(K)(1), I certify that the business entity named in this application and seeking a license to operate as an Alternative Business Structure in the state of Arizona, shall not take any action or engage in any activity that interferes with the professional independence of lawyers or others authorized to provide legal services, or allow the legal representation of clients, if the representation involves a conflict of interest as governed by Supreme Court Rule 42, ERs 1.7, 1.8, 1.9, 1.10, 1.11, 1.13 and 1.18.</p> |

**CTJG – SCOPE – Table Comparing Utah & Arizona Application Provisions
& Suggested Modifications to Utah Application**

| Utah Application <i>(Application)</i> | Arizona Application <i>(ABS Application) (Authorized Person Application)</i> |
|---|--|
| | <p>IX-b: Indemnification Statement</p> <p>Pursuant to ACJA § 7-209 (G), I certify that the business entity named in this application agrees to indemnify, defend, and hold harmless the Arizona Supreme Court, its Committees, Committee members, and employees from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description. This includes any reasonable attorney's fees and litigation expenses which may be brought or made against or incurred by the court, its Committees, Committee members, and employees on account of loss or damage arising out of, or contributed to, in whole or in part, by reason of the operation of the business entity.</p> |
| | <p>IX-c: Submission to Jurisdiction, Authorization, and Release</p> <p>I certify that the business entity named in this application submits to the exclusive jurisdiction of the Arizona Supreme Court and is subject to the regulatory and disciplinary authority of the Supreme Court and the State Bar of Arizona.</p> <p>I consent to having an investigation made of the businesses character, professional reputation, and fitness for Alternative Business Structure license. I agree to give any further information which may be required in reference to the past record of the business.</p> <p>I also authorize and request every person, firm, company, corporation, governmental agency, court, association, or institution having control of any documents, records, and other information including documents, records, charges or complaints filed against the business, formal or informal, pending or closed, or any other pertinent data, and to permit the Arizona Supreme Court, or any of its agents or representatives to inspect and make copies of such documents, records, and other information.</p> <p>I release, discharge, and exonerate the Arizona Supreme Court, its agents and representatives, the State of Arizona, and any person</p> |

CTJG – SCOPE – Table Comparing Utah & Arizona Application Provisions
& Suggested Modifications to Utah Application

| Utah Application (Application) | Arizona Application (ABS Application) (Authorized Person Application) |
|-----------------------------------|---|
| | <p>furnishing information pursuant to this Authorization and Release from all liability which may arise from the investigation made by the Arizona Supreme Court.</p> <p>I acknowledge that I have read this application form and that all statements are true and complete to the best of my knowledge and belief and that this Authorization and Release is freely given.</p> <p>I understand willful omission or misrepresentation of any fact required to be disclosed in this application, or any accompanying statement, is grounds for refusing to issue or renew a license or for revoking or suspending a license.</p> <p>I also declare under penalty of perjury under the laws of the State of Arizona that the foregoing is true and correct.</p> |



The State Bar *of California*

OFFICE OF
PROFESSIONAL COMPETENCE

Date: July 6, 2021

To: Scope Subcommittee Members

From: Toby Rothschild and Andrew Tuft

Subject: II.A. Policy Recommendation re Participation of a Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers, or Those Convicted of a Felony, in the Sandbox

POLICY RECOMMENDATION RE PARTICIPATION OF A DISBARRED, SUSPENDED, RESIGNED, OR INVOLUNTARILY INACTIVE LAWYERS, OR THOSE CONVICTED OF A FELONY, IN THE SANDBOX

FOR ATTORNEYS

Disbarred attorneys are prohibited from practicing law in California pursuant to both a Supreme Court order and state law unless and until they are reinstated by the Supreme Court (see, Bus. & Prof. Code § 6117). The sandbox should not create an alternative to the well-established standards and procedures for a disbarred attorney to seek reinstatement (including Rule 5.445 of the Rules of Procedure of the State Bar of California that states the burden of proof that a disbarred attorney must satisfy to become reinstated). The sandbox rules should match the current law regarding the practice of law by disbarred attorneys. Lawyers who are involuntarily inactive, or who resign with charges pending, are subject to the same restrictions as disbarred attorneys. The same should hold true in the sandbox.

Because the participants in the sandbox are involved in the practice of law, such attorneys should not be involved with a sandbox participant. The only exception to the complete ban would be to allow disbarred attorneys to participate under the supervision of an active attorney to perform those tasks permitted by California Rule of Professional Conduct 5.3.1(c).

Suspended attorneys present a different issue, as the suspension is temporary. The statutory and regulatory restrictions on disbarred attorneys also apply to suspended attorneys. The prohibition should apply only during the term of the suspension.

A felony conviction by an attorney should not be treated differently than for others. If the conviction results in a disbarment or suspension, the provisions governing those actions should apply. If the attorney is reinstated, the conviction should not be automatically disqualifying.

FOR NON-LAWYERS

A felony conviction of a participant in a sandbox entity should not automatically prohibit the applicant's participation. The nature and timing of the conviction should be considered as part of a background check/character and fitness review.



The State Bar *of California*

OFFICE OF PROFESSIONAL COMPETENCE

Date: May 21, 2021

To: Scope Subcommittee Members

From: Toby Rothschild and Andrew Tuft

Subject: II.A. Participation of a Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyer in the Sandbox

At the March 26, 2021 meeting, the Scope subcommittee considered whether, and to what extent, a disbarred lawyer may participate in the delivery of legal services provide by a sandbox entity. The subcommittee discussed the following options: (1) prohibit a disbarred lawyer from participating in any way in the sandbox; (2) prohibit a disbarred lawyer from providing legal services, managing the work of those providing legal services, or owning more than 10% of any sandbox entity; or (3) permit a disbarred, suspended, resigned, or involuntarily inactive lawyer to participate in a sandbox entity only if the participation is in compliance with Rule of Professional Conduct 5.3.1 [Employment of Disbarred, Suspended, Resigned,¹ or Involuntarily Inactive Lawyer].

The memo describes the regulatory structure of rule 5.3.1 and options for the subcommittee to consider concerning a disbarred, suspended, resigned, or involuntarily inactive lawyer participation with a sandbox entity.

RULE OF PROFESSIONAL CONDUCT 5.3.1 [EMPLOYMENT OF DISBARRED, SUSPENDED, RESIGNED, OR INVOLUNTARILY INACTIVE LAWYER]

In order to understand the regulatory structure of rule 5.3.1, it is helpful to briefly observe how California law differentiates between “active” and “inactive” licensees and the statutory

¹ Rule 5.3.1(a)(4) defines “resigned member” as “a member who has resigned from the State Bar while disciplinary charges are pending.”

requirement for attorneys or law firms to supervise attorneys who they employ that have resigned, or have been suspended or disbarred.

Under Business and Professions Code section 6125, “no person shall practice law in California unless the person is an active licensee of the State Bar.” Active licensees are “all persons admitted and licensed to practice law in (California) except justices and judges of courts of record during their continuance in office.” Bus. & Prof. Code § 6002. Every State Bar licensee is an “active” licensee unless they voluntarily or involuntarily become inactive, are suspended or disbarred, or resign (with or without disciplinary charges pending). See also, Business and Professions Code section 6133 which provides that a law firm employing an attorney who has resigned, or who is under actual suspension from the practice of law, or is disbarred, shall not permit that attorney to practice law or hold himself or herself out as being available to practice law, and shall supervise any other duties of the disciplined lawyer.

Based on the foregoing, if the Scope subcommittee recommends a policy on a “disbarred” attorney’s participation in the sandbox, then that recommendation should clarify whether “disbarred” is narrowly limited to the precise meaning of that term, or if it is intended to be broader and encompass other similarly situated attorneys. This might include: lawyers who are presently suspended;² lawyers who have been enrolled involuntarily inactive;³ and lawyers who have resigned from the State Bar with charges pending.⁴

Rule 5.3.1 imposes duties on lawyers who employ, associate in practice with, or assist a person the lawyer knows is “ineligible”⁵ to practice law. These duties include, prior to or at the time of employing the ineligible person, serving upon the State Bar written notice of the employment, including a full description of the ineligible person’s current status with the State Bar. In

² A lawyer may be suspended for a violation of the rules (see Bus. & Prof. Code § 6077 [For a willful breach of any of these rules, the State Bar has the power to . . . recommend to the Supreme Court the suspension from the practice of law . . .] or for other conduct (see, e.g., rule 9.22 of the Rules of Court [Under Family Code section 17520, the State Bar is authorized to transmit to the Supreme Court on an annual basis the names of those licensees listed by the State Department of Social Services as delinquent in their payments of court-ordered child or family support with a recommendation for their suspension from the practice of law.])).

³ See Bus. & Prof. Code § 6007 regarding the various circumstances that may give rise to an order enrolling a lawyer involuntarily inactive. For example, this section provides, in part, that: “The State Bar Court shall also enroll a licensee of the State Bar as an inactive licensee in each of the following cases: (1) A licensee asserts a claim of insanity or mental incompetence in any pending action or proceeding, alleging his or her inability to understand the nature of the action or proceeding or inability to assist counsel in representation of the licensee.”

⁴ See Bus. & Prof. Code § 6126(b) which, in part, provides that: “Any person who has . . . resigned from the State Bar with charges pending, and thereafter practices or attempts to practice law, advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime. . . .”

⁵ Rule 5.3.1(a)(5) defines “ineligible person” as “a member whose current status with the State Bar of California is disbarred, suspended, resigned, or involuntarily inactive.”

addition, the lawyer must serve written notice upon each client on whose specific matter the ineligible person will work. When the lawyer no longer employs the ineligible person, the lawyer must “promptly serve upon the State Bar written notice of the termination.”

PROHIBITED ACTIVITIES

A lawyer who is employing, associating in practice with, or assisting an eligible person shall not permit the ineligible person to perform certain activities. These activities include:

- Rendering legal consultation or advice to the client;
- Appearing on behalf of a client in a hearing or proceeding before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner or hearing officer;
- Appearing as a representative of the client at a deposition or other discovery matter;
- Negotiating or transacting any matter for or on behalf of the client with third parties;
- Receiving, disbursing or otherwise handling the client’s funds; or
- Engaging in activities that constitute the practice of law.

PERMITTED ACTIVITIES

A lawyer who is employing, associating in practice with, or assisting an eligible person may allow the ineligible person to perform research, drafting or clerical activities, as follows:

- Legal work of a preparatory nature, including legal research, assembling data and other necessary information, drafting pleadings, briefs and other similar documents;
- Communicating directly with clients or third parties regarding scheduling, billing, updates, sending or confirming receipt of correspondence and messages; or
- Attending a deposition or other discovery matter with an active lawyer for the limited purpose of providing clerical assistance to the active lawyer who is appearing on the client’s behalf.

The Rules Revision Commission believed that this rule serves a valuable public protection benefit as well as provides an opportunity for ineligible persons to work in a law office (within the parameters established by the rule) and to assist with their rehabilitation and potential reinstatement to active status. See, [Executive Summary](#) for Proposed Rule of Professional Conduct 5.3.1.

OPTIONS FOR THE SUBCOMMITTEE TO CONSIDER

At the last subcommittee meeting, it appeared consensus was reached that lawyers who are disbarred, suspended, resigned with charges pending, or are involuntarily inactive should be precluded from any ownership or managerial position with an approved sandbox entity. If the Scope Subcommittee desired to require compliance with rule 5.3.1 in order for a disbarred, suspended, resigned, or involuntarily inactive lawyer to participate in the sandbox as limited by the rule, one option could be to have the sandbox applicant answer whether they are employing such person. If the answer is yes, the applicant would have to attest to employing an active California licensee who would agree to comply with rule 5.3.1 for purposes of the ineligible person's employment with the sandbox entity. For the occurrence where a lawyer employed by an approved sandbox entity later becomes disbarred, suspended, resigns, or involuntarily inactive, consideration could be given to creating a supplemental report form where the sandbox entity would have to provide notice to the regulator of this occurrence and compliance with rule 5.3.1, if applicable.

Other options include: (1) prohibiting a disbarred, suspended, resigned, or involuntarily inactive lawyer from participating in any way in the sandbox; (2) prohibiting a disbarred, suspended, resigned, or involuntarily inactive lawyer from any ownership or managerial position in the sandbox; or, (3) prohibiting a disbarred, suspended, resigned, or involuntarily inactive lawyer from providing legal services, managing the work of those providing legal services, or owning more than 10%⁶ of any sandbox entity.

⁶ See Utah Office of Legal Services Innovation, Innovation Office Manual at page 9 stating, in part, that: "the [Utah Supreme Court] determined disbarred lawyers present a high degree of risk of consumer harm;" and that applicants to the Sandbox must confirm that no disbarred lawyers own or control "more than 10% interest in the entity."



Date: July 9, 2021

To: Scope Subcommittee

From: Micha Star Liberty

Subject: II.A. Policy Regarding the Assessment of Sandbox Applicants' Background and Moral Character

POLICY REGARDING THE ASSESSMENT OF SANDBOX APPLICANTS' BACKGROUND AND MORAL CHARACTER

APPLICANTS MUST FOCUS ON ACCESS TO JUSTICE FOR “THE UNSERVED AND UNDERSERVED.”

As California launches its exploratory phase of a regulatory sandbox program for legal services, which may allow businesses to apply for exemptions to California’s UPL regulation, it is vital that avenues for appropriately assessing an applicant’s background and moral character be assessed. A threshold question for assessing an applicant’s background shall be a thorough explanation of how they are purporting to help reach consumers in areas of unmet legal needs.

APPLICANTS SHALL DEMONSTRATE A COMMITMENT TO PROTECTING CONSUMERS

Applicants must ensure consumers have the same type of safeguards available to clients of attorneys: competent and ethical services, recourse when required, and the provision of relevant details enabling informed choices to be made about the non-lawyer providers of the service.

In order to be accepted into the sandbox program the governing body shall properly investigate the applicant’s financials, business interests, potential conflicts of interest and other pertinent background information. They should also explore proper insurance or bond requirements. Finally, any sandbox applicant must agree to allow consumers to bring grievances in open court, and forced arbitration waivers should be expressly prohibited.

APPLICANTS' MORAL CHARACTER SHALL BE EVALUATED PRIOR TO ACCEPTANCE TO THE SANDBOX

Applicants are required to meet the same general requirements as attorneys. This should at a minimum including a completed application, any applicable fees, a fingerprint requirement, and satisfy the same moral character test that attorneys are required to meet.¹

When considering whether an applicant has the good moral character required for admission to the sandbox, the governing body shall evaluate whether the applicant possesses the qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the law, and respect for the rights of others and for the judicial process by reviewing past conduct, if any. Similarly, applicants to the sandbox will have to meet these same requirements. Applicants will be screened for the following factors:

- Abuse of the Legal Process
- Academic Honor Code/Student Conduct Violations
- Community Supervision
- Criminal History
- Drug/Alcohol Abuse
- Fraudulent Activity
- Lack of Respect for the Rights of Others
- Past Due Debt/Financial Responsibility/Bankruptcy
- Prior Attorney License Denial
- Professional Obligations/Discipline
- Prior Unauthorized Practice of Law
- Violation of Court Orders/Respect for the Law

¹ <http://www.calbar.ca.gov/Admissions/Moral-Character/Factors-and-Conduct>.