



# The State Bar of California

CLOSING

II.H. Sandbox Criteria  
08-11-21 CTJG Meeting  
Open Session

WORKING GROUP

**DATE:** August 4, 2021

**TO:** Closing the Justice Gap Working Group

**FROM:** Scope Subcommittee Co-Chairs

**SUBJECT:** II.H. Discussion of the Sandbox Application Criteria for Applicant Background Checks – Proposed Resolution for Sandbox Applicant Disclosures

For Closing the Justice Gap Working Group August 11, 2021 meeting agenda item II.H. – Discussion of the Sandbox Application Criteria for Applicant Background Checks, the Scope Subcommittee Co-Chairs present the following proposed recommendation concerning who should be required to provide the disclosures to the sandbox regulator, for your consideration.

## Resolution Concerning the Individuals or Entities that Must Provide Disclosures

Be it resolved that:

- (a) The persons that are required to make disclosures in the application for admission to the California sandbox are:
  - a. Authorized Persons
  - b. Compliance lawyers, if such persons are mandated by the sandbox laws or regulations
  - c. Managerial Persons
  - d. Principal Persons
- (b) Definitions. For purposes of this requirement,
  - a. The term “Authorized Person” means a person possessing:
    - i. An economic interest in the alternate business structure equal to or more than 10 percent of all economic interests in the sandbox entity, or

- ii. The legal right to exercise decision-making authority on behalf of the sandbox entity. [California examples to be provided.]<sup>1</sup>
- b. The term “Compliance lawyer,” if such a role is included in these regulations, means an active member of the State Bar of California in good standing who, pursuant to the rules applicable to sandbox applicants, shall be responsible for ensuring compliance with all applicable laws and rules governing sandbox entities and lawyers in California.<sup>2</sup>
- c. The term “Decision-Making Authority” means the authority, by operation of law or by agreement, to directly or indirectly:
  - i. Legally bind the sandbox entity;
  - ii. Control or participate in the management or affairs of the sandbox entity;
  - iii. Direct or cause the direction of the management and policies of the sandbox entity; or
  - iv. Make day-to-day or long-term decisions on matters of management policy, and operations of the sandbox entity.<sup>3</sup>
- d. The term “Principal” means a person with whom the staff of the sandbox regulatory entity may communicate on any administrative, procedural or operational issues.<sup>4</sup>
- e. The term “Managerial person” means any person who manages or supervises the direct provision of legal services.<sup>5</sup>

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<sup>1</sup> Cross-reference AZ Code Jud. Admin. § 7-209A. Note this section reference Alternate Business Structures. This nomenclature may or may not be appropriate in California so the term “sandbox entity” is substituted as a placeholder.

<sup>2</sup> Cross-reference AZ Code Jud. Admin. § 7-209A.

<sup>3</sup> Cross-reference AZ Code Jud. Admin. § 7-209A.

<sup>4</sup> Cross-reference AZ Code Jud. Admin. § 7-209G(1)(f).

<sup>5</sup> Cross-reference Utah application at § 4.5.



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

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## **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.<sup>1</sup>

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

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