



The State Bar of California

CLOSING

II.A. Draft Application
09-03-21 Scope Meeting
Open Session

WORKING GROUP

DATE: August 30, 2020

TO: Scope Subcommittee, Closing the Justice Gap Working Group

FROM: Tom Greene and Becky Sandefur, Subcommittee Co-Chairs

SUBJECT: II.A. Draft Application for Entities Applying to a CA Sandbox

One goal of today's subcommittee meeting is to finalize an application to propose to the broader group at the next full Task Force meeting. The purpose of the application is to collect information from the applicant necessary to determine whether the applicant is eligible to be in the sandbox, to make a decision about admission, and to appropriately classify the organization for future monitoring (e.g., assign a risk level, if that model is pursued).

Some specifics of the application cannot be finalized at this time, because they await the groups' views on other policy recommendations, such as those concerning what activity would be admitted to a sandbox. Those specifics are noted below in the draft application. The group will consider some of these policy questions in item E on the September 3 subcommittee agenda.

CALIFORNIA DRAFT APPLICATION

1. Applicant information

1.1 Applicant Entity (from AZ)

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:

Type of organization:

- ☐ Corporation ☐ Limited Liability Co. ☐ Partnership
☐ Sole Proprietorship ☐ 501c3 ☐ Other

Applicant is applying as a:

- ☐ Traditional Law Firm ☐ Large non-law firm ☐ Small non-law firm ☐ Non-profit – California ☐ Non-profit – non-California
☐ International applicant

Applicant is registered with <<THOSE AGENCIES APPROPRIATE FOR CA>>:

- ☐ Yes – If registered, applicant must submit copies of Articles of Incorporation/Organization or Partnership Agreements, and a Certificate of Good Standing.
- ☐ 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)

Authorized Person's¹ Full Name:

¹ Under Arizona Code of Judicial Administration, § 2-709(A), an "authorized person" possesses:

- An economic interest in the entity equal to or more than 10%; or,
- The legal right to exercise decision-making authority on behalf of the entity. Examples may include: the 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 agreement.

Authorized Person's Business address:
Authorized Person's email address:
Authorized Person's Home address:
Business and Home Telephone Number:

Disclosure obligations. The SCOPE Subcommittee is considering limiting which owners, officers and employees may most appropriately be required to make required disclosures as part of the application process.

Also, possibly: Registered Agent

Service of Process

1.2 List and provide full contact information for 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").

1.3 List and provide full contact information for all persons and entities who will wholly or partially (greater than 10%) finance the business of your proposed entity ("financing persons").

2 Description of Proposed Legal Services Offering

2.1 Describe your proposed legal services offering in detail. (1.1 from UT), including

- Who provides the legal services
- How consumers will access/receive these services
- What your service will do for your customers

2.2 Describe your target consumer(s). (UT 1.4)

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.

2.3 What types of legal issues do you propose to serve (e.g., end of life planning, rental housing, health care)? (UT 1.6)

<<PERMITTED CATEGORIES TO BE DECIDED. THE CATEGORIES BELOW ARE
EXAMPLES TAKEN FROM THE UTAH APPLICATION.>>

Accident/injury
Adult care
Business
Criminal – 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
Workers' compensation

2.4 Describe the entity business model you want authorized in the Sandbox, including the management structure that will oversee direct service provision. Describe how the governance structures and policies in place ensure that: (UT 1.2, AZ V)

- <<Lawyers, others -- TBD>> providing legal services to consumers act with independence consistent with <<TO BE DETERMINED STANDARD>>;
- The entity provides competent legal services;
- The provider makes decisions in the best interest of clients;
- Confidentiality consistent with <<TO BE DETERMINED STANDARD>> is maintained;
- Any other business policies or procedures do not interfere with a lawyers' duties and responsibilities to clients.²

2.5 Describe how the business will advance one or more of the following regulatory objectives: (AZ IV)

<<TBD from mission statement>>

2.6. Consumer Data

2.6.1 Does your business model include the sharing or selling of consumer data in any form to third parties.

☐ Yes

☐ No

If yes, describe.

² This item comes from the Arizona ABS application. Note that "independence" of attorneys in the Arizona application arises from the specific provisions of the Arizona ABS regulations, which provide that lawyers embedded within an ABS must comply with Arizona ethics rules for lawyers. See AZ Code Jud. Admin § 7-209(G)(3)(b).

2.6.2 Describe your policies and procedures regarding the use of clients' confidential information.

2.6.3 Describe how you will

- protect consumers' privacy and confidentiality, including records and communications with clients
- protect consumer data from unauthorized disclosure.

3 Why is your proposal eligible to enter the Sandbox? Identify the specific models, services, or product innovations that are not permitted under the current rules governing the practice of law. What rules that currently prohibit the kind of legal services you propose to provide to residents of California are you asking to have waived?

4 Risk assessment

4.1 Fully and candidly discuss the risks your customers might face if they use your proposed model, including, but not limited to

Risks that algorithms or other technical means are either (i) not effective for the purpose or purposes for which they are proposed to be used or (ii) contain prompts or standards that are unfair or discriminatory

4.3 Describe the specific ways you will

- Identify risks to consumers in your proposed model
- Monitor risks to consumers in your proposed model
- Mitigate the risks to consumers in your proposed model.

These efforts could include, for example, quality control measures, training, provider testing.

4.3 Describe your consumer complaint process, including how consumers will become aware of it.

5 Confirmation of Eligibility

5.1 Does your proposed offering comply with California sandbox rules? (UT 3.2)

5.2 For each controlling person or entity and financing person or entity, answer the following: Has this person or entity: (AZ)

- 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 <<THIS OFFICE>>?
- 12) Made a false or misleading statement or verification in support of an application for a certificate filed by another person?
- 13) Made a false or misleading oral or written statement to division staff or <<this Office>>?
- 14) Failed to respond or furnish information to the division staff or <<this Office>> when the information was requested and was reasonably available to you and pertains to certification or investigative inquiries?
- 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.
- 16) Been contacted by any court, state, or federal administrative or regulatory agency or professional association regarding allegations of adversarial actions or complaints?
- 17) Been the subject of a court sanction/order, a complaint to the State Attorney General, or been contacted by any prosecutorial, judicial, or administrative agency or association regarding business practices?
- 18) Currently on probation or parole?
- 19) Violated any decision, order, or rule issued by a professional regulatory entity?
- 20) Violated any order of a court, judicial officer, administrative tribunal, or the <<OFFICE TO WHICH YOU ARE MAKING THIS APPLICATION>>?
- 21) Made a false or misleading statement or verification in support of an application for a certificate filed by another person?
- 22) Made a false or misleading oral or written statement to <<THE OFFICE TO WHICH YOU ARE MAKING THIS APPLICATION>>?
- 23) Failed to disclose information on the license application subsequently revealed through a background check?
- 24) Failed to respond or furnish information to <<THE OFFICE TO WHICH YOU ARE MAKING THIS APPLICATION>> when the information is legally requested and is in your control or is reasonably available to you and pertains to certification or investigative inquiries?

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”.

If you answer “Yes” to any question in this section:

- 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.

5.3 List the states or countries in which your organization offers legal services. Include the following information for each jurisdiction:

- **Whether the jurisdiction requires licensing, certification or registration.**
- **If licensing, certification or registration is required, list the address and telephone number of the relevant regulator**
- **The length of time your organization has been operating in each such jurisdiction**

Draft Definition of Authorized Person

X. Definitions

1. The term “Authorized Person” means a person:
 - (a) Possessing an economic interest in the sandbox entity equal to or more than 10 percent of all economic interests in the sandbox entity,
 - (b) The legal right to exercise decision-making authority on behalf of the sandbox entity.
 - (c) Functioning as a Compliance Lawyer for the sandbox entity
2. The term “Compliance Lawyer” means an active member of the State Bar of California in good standing who, pursuant to the rules applicable to sandbox applicants, may be responsible for ensuring compliance with all applicable laws and rules governing sandbox entities and lawyers in California.¹ A Compliance Lawyer may be designated by the sandbox regulator as the person responsible for promptly responding to requests from the sandbox regulator to the sandbox entity for documents and other information.
3. 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;
 - iv. Make day-to-day or long-term decisions on matters of management policy, and operations of the sandbox entity.;² or
 - v. Supervise five or more persons providing sandbox entity services directly to consumers³

¹ Cross-reference AZ Code Jud. Admin. § 7-209A.

² Cross-reference AZ Code Jud. Admin. § 7-209A

³ New language in this definition to cover direct supervisors of service providers.