

Charter of the Working Group on Closing the Justice Gap

Purpose

The State Bar formed a Task Force on Access Through Innovation of Legal Services (ATILS) in 2018 to study online legal service delivery models and to determine if regulatory changes are needed to increase access to legal services through the use of technology. The Task Force submitted its final recommendations to the Board of Trustees in March of 2020. The recommendations included exploration of the development of a regulatory sandbox. This sandbox would be a temporary regulatory structure established to allow participants to test innovative business models, products, and services, in a supervised environment that ensures collection of data on benefits and/or risks of harm to consumers. In response, the State Bar's Board of Trustees directed the formation of a Working Group on Closing the Justice Gap.

Working Group Charter

The Working Group on Closing the Justice Gap is charged with exploring the development of a regulatory sandbox to evaluate possible changes to existing laws and rules that otherwise inhibit the development of innovative legal service delivery systems such as consumer facing technology that provides legal advice and services directly to clients at all income levels; and other new delivery systems created through the collaboration of lawyers, law firms, technologists, entrepreneurs, and others. The working group may consider relaxation of rules and laws regarding the unauthorized practice of law, fee sharing, and nonlawyer ownership. In addition, the working group is charged with assessing concepts for amendments to the California Rules of Professional Conduct governing lawyer advertising and solicitation and fee sharing with nonlawyers, and to the statutes and Rules of the State Bar governing Certified Lawyer Referral Services. The working group is also charged with evaluating the draft of a proposed new rule 5.7 of the California Rules of Professional Conduct that was included in the ATILS final report. As a guiding principle in carrying out all of these assignments, the working group must balance the dual goals of ensuring public protection and increasing access to legal services for all Californians.

The working group will develop specific recommendations regarding the following:

1. 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:
 - a. Scope and regulatory structure of a sandbox, including funding, staffing, and governance, and conflicts of interest issues for members of any governing body;

- b. Required changes to laws and rules, including practice of law statutes and attorney conduct rules;
 - c. Methods to apply to enter and processes governing entry into the sandbox, including eligibility criteria, approval processes, appeals processes for denied applicants, and possible reciprocity with sandbox participants in other jurisdictions;
 - d. Technology delivery system issues, including testing, accessibility, bias, confidentiality, privacy, dark patterns, and intellectual property rights of applicants;
 - e. Recordkeeping, reporting, data collection, and sandbox evaluation metrics;
 - f. 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
 - g. 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.
2. California's lawyer advertising and solicitation rules. In developing recommendations on this subject, the working group will evaluate California's and the American Bar Association's lawyer advertising and solicitation rules to determine whether and to what extent these rules inhibit or advance innovation and access to legal services;
 3. Lawyer Referral Service statutes and rules. In developing recommendations the working group will determine whether and to what extent the existing statutes and rules inhibit innovation and access to legal services;
 4. Amendments to rule 5.4 of the California Rules of Professional Conduct regarding attorney fee sharing with nonlawyers. The working group will specifically address the question of whether amendments to this rule are warranted independent of any temporary changes that might be evaluated in a sandbox; and
 5. Amendments to the California Rules of Professional Conduct regarding the delivery of nonlegal services by lawyers and businesses owned or affiliated with lawyers, including proposed rule 5.7 developed by the Task Force on Access Through Innovation of Legal Services.

The working group shall submit its recommendations to the Board of Trustees no later than September 2022.