

**II.A. Discussion and Possible Action on a Subcommittee Recommendation  
for the Structure and Governance of a Sandbox Regulatory Authority**

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**September 14, 2021 Crispin Passmore:**

I support the proposals in the paper.

**September 14, 2021 Jim Sandman:**

On agenda item II. A, paragraph 5 of the proposed resolution, what is a "public member"? The text suggests that all public members will be appointed by the Senate, the Assembly, and the Governor, and that the members appointed by the Supreme Court will *not* be public members. Does that mean that all of the Court's appointees must be lawyers, and that none of the appointees of the Senate, the Assembly, and the Governor may be lawyers?

**September 15, 2021 Wendy Musell:**

I request that we discuss each item of II A "Sandbox Regulatory Structure Memo" separately and not as a whole as proposed. There are a number of concerns I have related to the proposal.

Related to item three, this raises separation of powers issues between the legislature and the Court. It's true that the Supreme Court has sole authority over regulating *admission* to the practice of law and *discipline* of attorneys, but the line where the practice of law begins is not always clear. For example, the Legislature has created a 20 year-old regulatory scheme for persons who work as document assistants (which more recently was expanded to include unlawful detainer assistants). This is within the Legislature's power and purview because these individuals, assuming they abide by the statutory limits of their authority, do not engage in the practice of law. Here's an excerpt the Judiciary Committee's analysis of AB 1213 (Chen, 2019):

***The Legislature has maintained consistent oversight of legal document assistants.*** This bill is the latest in a series of legislation seeking to change the legal framework and statutory authority for legal document assistants. As noted above, the original authorization for legal document assistants was conducted on a trial basis. In 2002, the Legislature agreed to extend the program and remove the initial sunset. (AB 1698 (Committee on Judiciary) Chap. 1018, Stats 2002.) In 2015, seeking reforms to the legal document assistant program, AB 285 (Gallagher), Chap. 295, Stats. 2015, was enacted subject to a six-year sunset. Given that regulation of legal document assistants is conducted by both state and local authorities, with no one body serving to oversee legal document assistants, moving forward it may be prudent for the Legislature to reexamine the entire statutory framework regulating legal document assistants to determine if a singular oversight body is necessary for the industry. Similar inquiries may be necessary for other providers of self-help services for indigent litigants. Notably, however, the creation of a broader regulatory apparatus would generate significant cost pressures to

the state, and no evidence has been provided to this stematic issues within the legal document assistant profession, or the current regulatory structure.

Nonetheless, in the absence of a full-time regulatory body for legal document assistants, the Legislature must remain vigilant. In order to maintain the Legislature's continued oversight of legal document assistants, in lieu of repealing the sunset date, the author proposes extending the sunset date to January 1, 2024.

So while the Court has sole authority over the qualification of attorneys to practice law and the Legislature has authority over persons whose actions do not constitute the practice of law, the area where those issues abut or intersect is clearly of shared interest and authority of the two branches of government. The Legislature's continued exercise of its authority does not "defeat or materially impair" the court's authority over the practice of law by attorneys and the discipline of attorneys. The Court cannot unilaterally move the line of what constitutes the practice of law to encompass areas that are regulated by the Legislature without running afoul of legislative authority.

Presumably, the purpose of the Sandbox is to create a new category of persons who are *not attorneys* and who are *not independently engaged in the practice of law* but who work in the legal field with attorneys in some capacity. This seems to be a classic case of shared legislative and judicial authority and oversight. Therefore, here's how we suggest that the language of the memo might be changed to reflect the shared jurisdiction of issues in the grey area of what constitutes the practice of law.

"The Sandbox Regulator is subject to active supervision by the Supreme Court and must act pursuant to clearly articulated state policy. The Sandbox Regulator should make recommendations to the Supreme Court **and the Legislature** concerning the licensing and discipline of sandbox participants. However, as with attorneys, the Court should reserve to itself the primary authority over licensure of sandbox participants **who are engaged in the practice of law, while recognizing the Legislature's regulatory authority over nonattorneys enagqing in conduct that does not constitute the practice of law,** and **the shared responsibility of the two branches for** approval of any governing principles the Sandbox Regulator employs. The Supreme Court shall exercise ~~that its~~ authority **over licensed attorneys and others engaging in the practice of law** as it deems most efficient and appropriate. None of the foregoing is meant to alter the existing role of the Supreme Court and Legislature in regards to the regulation of the practice of law in California or the existing role of the Legislature regulation of conduct that does not constitute the practice of law."

I am requesting that this proposed language be considered and voted upon. I have also shared this language with Greg Fortescue and Justice Tucher in advance of my submitted comments.

For item 4, there has been discussion that this omits attorneys from the Sandbox Regulator Board, and that the definition of "moderate income" is not defined.

I continue to have concerns about funding.