



**CLOSING THE JUSTICE GAP WORKING GROUP -
SUBCOMMITTEE ON THE SCOPE OF A REGULATORY SANDBOX
ACTION SUMMARY**

**Friday, September 3, 2021
1:00 p.m.–3:00 p.m.**

Teleconference

The State Bar of California

Questions regarding any agenda item should be directed to the Committee Coordinator, Lauren McCurdy at 415-538-2107, 180 Howard Street, San Francisco, CA 94105, or Co-Chairs Thomas Greene and Rebecca Sandefur at 415-538-2116. Working Group members are requested to notify the Committee Coordinator as early as possible in advance of the meeting if they wish to remove any item/s from any consent agenda.

Subcommittee Members: David Freeman Engstrom; Thomas Greene (Co-Chair); Kevin Mohr; Toby Rothschild; Rebecca Sandefur (Co-Chair); and Patricia Squitiero.

Subcommittee Members Not Present: Marta Alcumbrac; Judge Irma Asberry, and Micha Star Liberty.

Others Present: Mimi Lee, Andrew Tuft, Randall Difuntorum, Lauren McCurdy, Bridget Gramme, Neil Gupta, Leah Wilson, Tom Gordon, Alison, Anthony Sipp, Jason Solomon, Ira Spiro, Bob, Jennifer Ostertag, Michele Colucci, Mir Tariq, and Zach Newman.

The order of business is approximate and subject to change.

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OPEN SESSION

I. CO-CHAIRS' REPORT

A. Roll Call

B. Public Comment

Tom Gordon of Responsive Law gave public comment.

- C. Announcements
- D. Staff Report
Mr. Difuntorum reported that at the September 17th meeting the members can anticipate presentations from: (1) Justice Ann Timmer of the Arizona State Supreme Court on regulatory reform activity in Arizona; and (2) the four rule revision drafting teams who will be giving an introductory presentation on possible rule revisions that might be considered independent of any implementation of sandbox.
- E. Approval of Open Session Action Summary from the July 16, 2021 Meeting
The open session action summary from the July 16, 2021 meeting was approved unanimously (5-0-0).

II. DISCUSSION

- A. Discussion and Possible Action on a Draft Sandbox Application
Mr. Greene presented a revised draft application and the definition of authorized person document. Following discussion, the subcommittee voted to approve the draft application form as revised during the meeting, to be submitted to the working group for consideration (5-0-0). In addition, the subcommittee voted to include the subcommittee's definition of "authorized person" (6-0-0).
- B. Discussion and Possible Action on a Subcommittee Recommendation for a Sandbox Application Criteria, including Consideration of Background, Character, and Fitness Checks
The subcommittee voted to recommend to the working group that any sandbox application process requirements to submit to a background check and to make disclosures will apply only to each applicant's authorized person or persons as defined in the sandbox application form (6-0-0).
- C. Discussion and Possible Action on the Drafting of the Closing the Justice Gap Report on the Participation of Disbarred Lawyers
Mr. Greene asked Mr. Rothschild and Mr. Tuft to volunteer to work on the report that would accompany the recommendation regarding participation of disbarred lawyers.
- D. Discussion and Possible Action on a Subcommittee Recommendation Concerning Application Process Issues, including Attorney-Client Privilege, Confidentiality, and Data Privacy
Mr. Engstrom and Kevin Mohr presented the recommendation concerning the application process issues and gave an oral report. Following discussion, the subcommittee voted to approve the following recommendation (6-0-0).

Recommend that rules 1.1(b) (competence), 1.6 (confidentiality), 1.8.2 (use of confidential information), 1.18 (duties to prospective client), and 1.9 (duties to

former client), Business and Professions Code section 6068(e), will apply in their then current interpretation of the rules/statutes to all entrants to the sandbox. Sandbox participants who are ordinarily under the California Consumer Privacy Act (CCPA) would still be under CCPA.

In addition, the subcommittee voted to approve the following recommendation (6-0-0).

Recommend that the regulatory entity have the ability to pierce confidentiality and privilege in order to regulate the sandbox participants.

- E. Discussion and Possible Action on a Subcommittee Recommendation for the Scope of a Regulatory Sandbox, including a Sandbox Mission Statement and the Kinds of Innovations to Encourage

Mr. Engstrom presented a recommendation on the scope of a regulatory sandbox and gave an oral report. Following discussion, Mr. Engstrom, Mr. Mohr, and Mr. Greene volunteered to prepare a recommendation for the scope of a regulatory sandbox for the October 8 subcommittee meeting.

CLOSED SESSION

NONE

ADJOURN

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