



# The State Bar of California

CLOSING

II.B. Proactive Regulation  
10-18-21 CTJG Meeting  
Open Session

WORKING GROUP

**DATE:** October 12, 2021

**TO:** CTJG Working Group

**FROM:** John Lund and Merri Baldwin, Co-Chairs, SAGE Subcommittee

**SUBJECT:** II.B. Recommendation for Proactive Regulation and Monitoring of Sandbox Providers

## INTRODUCTION

A regulatory sandbox is a temporary regulatory structure established to allow participants to test innovative business models, products, and services in a closely-monitored environment that ensures collection of data on benefits and/or risks of harm to consumers. Pursuant to the [CTJG charter](#), the Board of Trustees has charged the working group 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 . . . . 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.”

Relevant to this agenda item, the working group must provide recommendations to the Board regarding “Recordkeeping, reporting, data collection, and sandbox evaluation metrics” (see Charter ¶1.e).

Here, the SAGE subcommittee proposes two items for the working group’s consideration. The first is a Risk Assessment Process, which establishes criteria for the sandbox regulator to measure potential risk to consumers posed by each sandbox applicant, and a mechanism for assigning a level of risk. The second item pertains to the tools and interventions which the sandbox regulator, informed by the assigned risk level, may utilize to protect the public.

We ask that the working group members consider the recommended criteria for assessing risk, the proposed matrix and mechanism for assigning risk levels, and the list of tools and interventions, and be prepared to discuss with the group. **Please email your comments to [CTJG@calbar.ca.gov](mailto:CTJG@calbar.ca.gov), including any additional risk criteria or recommended tools, by October 15 at noon** so that the comments may be compiled and distributed to the working group in advance of the meeting.

## DISCUSSION

### RISK ASSESSMENT PROCESS

Once a complete application is received, the regulator must develop a process for evaluating the application and assigning a level of risk based on identified criteria.

The goal is to focus on assessing and measuring consumer risk relative to the risk of harm the target consumer population currently faces. The higher the level of risk, the more data the sandbox participant must agree to provide to the regulator to enable the regulator to monitor its activities. This method differs from traditional models of regulation, which applies formal rules in all cases and contexts without considering outcomes.

As discussed previously in Agenda Item II.A, SAGE has identified the following **risks of harm** to consumers that must be considered:

1. The consumer receives inaccurate or inappropriate legal services.
2. The consumer fails to exercise legal rights through bad advice or incomplete information within the scope of the agreed-upon services.
3. The consumer receives an unnecessary legal service or pays an inappropriate amount for legal services.
4. The consumer experiences fraud, theft, or abuse of trust by the service provider.

After studying and discussing various risk assessment models, including the [Utah Office of Legal Services Innovation](#) and the [Institute for the Advancement of the American Legal System](#) (IAALS), and drawing on suggestions from the group, SAGE identified the following **criteria for assessing the level of risk of harm** that an applicant might impose upon clients:

1. Level of lawyer ownership in the entity
2. Level of lawyer involvement in the product/service
3. Nature of service provided
4. Sophistication level of the consumer
5. Stakes of the legal services offered

### NONLAWYER OWNERSHIP/ LAWYER INVOLVEMENT

Utah's approach to risk assessment begins with the service model, and the levels of nonlawyer ownership/ lawyer involvement. See Attachment A (Excerpt of the Utah Innovation Manual).

The Utah Manual explains this risk categorization model as follows:

We have categorized the risk across these service models according to the lawyers' involvement in developing and overseeing the nonlawyer model. As a proposed model gets further from our historical norms, the risk level increases because we do not know much about how these models will work. We are relying on the assumption that lawyer involvement should mitigate some of the risks around poor advice or failure to identify issues. However, both moderate and high risk models are subject to robust data requirements giving us the ability to learn more about actual level, scope, and type of

risks as we move forward. In the future, as we learn more about the kinds of services offered and the potential risk of consumer harm, we hope to develop more finely tuned categories of risk according to the simplicity / complexity of more specific service offerings (e.g., completing legal documents, advising on process only, representing a consumer in negotiations with an opposing party, representing a consumer in court). Once an entity is authorized, reported data will be our primary tool to facilitate our regulatory objective while also focusing on consumer protection. As the risk of any proposed service increases, the frequency and scope of reporting increases. (Utah Manual at pp. 5–6.)

## **NATURE OF SERVICE PROVIDED**

SAGE also discussed the possibility of a model that assigns risk based on the level of legal sophistication the service provides. For example, basic legal information might be considered low risk, form completion assistance might be moderate, and discrete legal advice might be high risk.

In Utah, rather than apply a separate risk assessment for nature of service, they utilize each entity's authorization order to specify the precise practice areas and nature of service the sandbox participant may provide. See [Attachment B](#) (Authentication Packet for nonprofit entity utilizing nonlawyer medical debt collection advocates, assigning moderate risk, and limiting authorization to specific practice areas).<sup>1</sup>

SAGE committee member Eric Helland worked with staff to develop an alternative initial risk assessment categorization model which combines both the service model and the nature of services provided into a single matrix. See Attachment C. This is an alternative which could be the starting point for a risk level assignment.

## **CONSUMER SOPHISTICATION LEVEL/ STAKES OF THE LEGAL SERVICES**

The subcommittee also raised potential risk evaluation criteria based on the level of consumer sophistication, as contemplated by the IAALS model (see Attachment D). There, rather than start with the level of attorney involvement as a measure of risk, the inquiry is based on whether the consumer is an individual or a business, and whether they are low resourced.

Additionally, the group identified the stakes of the services delivered as a measure of risk. For example, services which might lead to a client's loss of custody over one's children might be assigned a higher risk level than services which might respond to a breach of contract.

## **RECOMMENDATIONS**

Although the subcommittee did not take a vote on these recommendations, the following represents the general sense of the discussion of the subcommittee.

1. Recommend that the sandbox regulator implement an initial risk assessment process based on the Utah Office of Legal Services Innovation's model of risk

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<sup>1</sup> Note this packet includes the complete manual as an attachment.

categorization (Attachment A) to evaluate a sandbox applicant's proposal and assign a risk level to each applicant based on identified criteria.\* In recommending this model for discussion, the working group is not recommending that each service model identified in the Utah model will qualify for admission into the sandbox; certain requirements for applicant participation, including the role of attorneys, will be decided at a future meeting.

Alternative. Recommend that the sandbox regulator implement an initial risk assessment process based on a combination of service model and nature of service model of risk categorization (Attachment C) to evaluate a sandbox applicant's proposal and assign a risk level to each applicant based on identified criteria.\* In recommending this model for discussion, the working group is not recommending that each service model identified in the proposed model will qualify for admission into the sandbox; certain requirements for applicant participation, including the role of attorneys will be made at a future meeting.

2. Recommend that the initial risk level assignment may be adjusted upon further consideration of level of consumer sophistication, nature of the services delivered, and the stakes of the services being delivered.

Alternative. Recommend that the initial risk level assignment may be adjusted upon further consideration of level of consumer sophistication and the stakes of the services being delivered.

3. Recommend that the level of data collection and monitoring of sandbox participants will be based on the assigned level of risk, with greater data collection and monitoring assigned to the projects assigned a higher risk.
4. Recommend that authorization orders permitting practice within the sandbox clearly set forth the authorized practice areas, service model, reporting requirements, and nature of service for each applicant.

## **PROACTIVE REGULATION TOOLS INCLUDING REPORTING, MONITORING, AND AUDITING**

Traditional regulation uses tools that are primarily reactive. These include discipline (including stipulated dispositions); fines; citations; warnings; admonishments; security for claims; and probationary restrictions and requirements.

The tools used for proactive regulation are different, although there may also be reactive forms of regulation that may be implemented. In a sandbox environment where the legal services might be provided under modified rules or by an entity that is not a law firm, proactive tools are implemented according to the level of risk in order to maximize consumer protection.

Proactive regulatory tools include:

1. **Risk Assessment** of applications for entry. (see above)
2. **Provider Reporting**

- Entrance into the sandbox would be conditioned on compliance with mandatory reporting requirements so that the regulator may assess the data and evaluate the success of the proposed service. The frequency (quarterly vs. monthly) would depend on the assigned risk. Data reported will also vary by risk but may include number of consumer complaints, people served, geographic information, revenue, and financial and substantive outcomes for clients.
- Annual reporting may also be required to confirm ownership and controlling financial interests in the entity as applicable.

### **3. Compliance Auditing**

- Audits can be utilized to test for legal quality and accuracy of the services provided by humans or software. The frequency and detail of the audits may be adjusted based on level of risk. The regulator may appoint a panel to review and consider the audits to ensure continued consumer protection.
- Expert review of redacted case files is one method that may be used during these audits.

### **4. Badge**

- Approved entities receive a digital “badge” from the regulator that they are required to display on their advertisements, social media, websites, service platforms, and physical locations to signify authorization to operate. The badge will contain information about how to file a consumer complaint and a link to the regulator’s website.

### **5. Disclosure Requirements**

- Depending on the service model, these may be imposed to advise consumers that the entity is not a law firm/ is owned by nonlawyers/ is not a lawyer. These would be required to be posted on the entity website, advertising, and service platform, and incorporated into terms of service or engagement letters.

### **6. Security for Claims Requirements**

- This might include bonding, insurance, or a common restitution fund, similar to the Client Security Fund, for clients who suffer financial loss due to the misconduct of their lawyers.

### **7. Secret Shopper Programs**

- Investigators would act as consumers to utilize the product/service and evaluate the quality of the service received.

### **8. Designation of a Compliance Attorney**

- The sandbox participant entity must designate a licensee of the bar to be personally accountable for the quality and accuracy of the service provided.

### **9. Communication**

- The regulator will be in regular communication with the sandbox participants to discuss trends in data reporting, complaints if any, etc. The frequency of data reporting and communication with the regulator will depend on the assigned risk level and the regulator’s observations over time.

### **10. Reporting between Regulator and Court/Legislature**

- Regular reporting to the Supreme Court and Legislature would keep these decisionmakers apprised of the sandbox activity including number of consumers served, consumer complaints, demographics, practice areas, outcomes, etc.

#### **11. Robust Consumer Complaint Mechanisms**

- The regulator would maintain a robust system of accepting and processing consumer complaints, including potentially an ombudsperson who would be assigned to walk complainants through the process, and identify areas for the regulator to proactively investigate to ensure consumer protection.
- Additionally, each sandbox participant would be required to maintain its own mechanism for tracking consumer complaints, and report complaints received to the regulator on a regular basis.

The full working group will consider whether these items should be utilized by the regulator, and whether there are additional tools that should be added to this list. Following discussion by the full group, SAGE will prepare a final recommendation for presentation at a future meeting.



OFFICE OF LEGAL SERVICES INNOVATION

An Office of the Utah Supreme Court

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# INNOVATION OFFICE MANUAL

Published March 22, 2021

## SERVICE MODEL RISK CATEGORY

The Office has developed a model of risk categorization based on the service model(s) proposed by the entity:

Service Model	Risk
Lawyer employed or managed by a nonlawyer	Low
Less than 50% nonlawyer ownership	Low
Software provider with lawyer involvement - legal document completion	Low
Intermediary platform <sup>2</sup>	Low / Moderate
50% or more nonlawyer ownership	Low / Moderate
Lawyers sharing fees with nonlawyers	Moderate
Nonlawyer provider <sup>3</sup> with lawyer involvement <sup>4</sup>	Moderate
Software provider with lawyer involvement	Moderate
Nonlawyer provider without lawyer involvement <sup>5</sup>	High
Software provider without lawyer involvement	High

We have categorized the risk across these service models according to the lawyers' involvement in developing and overseeing the nonlawyer model. As a proposed model gets further from our historical norms, the risk level increases because we do not know much about how these models will work. We are relying on the assumption that lawyer involvement should mitigate some of the risks around poor advice or failure to identify issues. However, both moderate and high risk models are subject to robust data requirements giving us the ability to learn more about actual level, scope, and type of risks as we move forward. In the future, as we learn more about the kinds of services offered and the potential risk of consumer harm, we hope to develop more finely tuned categories of risk according to the simplicity / complexity of more specific service offerings (e.g., completing legal documents, advising on process only, representing a consumer in negotiations with an opposing party, representing a consumer in court).

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<sup>2</sup> "Intermediary platform" means an entity offering a software- or online-based platform to connect Utah lawyers with interested consumers. The platform may also offer other legal practice support services such as timekeeping, billing, video-conferencing, etc.

<sup>3</sup> Provider means legal practitioner: a provider who or which is practicing law, including offering legal advice.

<sup>4</sup> "Lawyer involvement" means a Utah-licensed lawyer both (1) provides guidance and oversight of the provider at the front end, i.e. through developing training materials and overseeing training of providers and developing scripts and/or algorithms, and (2) performs regular spot checks of providers services for quality and accuracy.

<sup>5</sup> "Without lawyer involvement" means either (1) a Utah-licensed lawyer provides guidance and oversight at the front end of the development of the service model only but has no ongoing oversight, or (2) no Utah-licensed lawyer is involved in the development or provision of legal service at all.



Once an entity is authorized, reported data will be our primary tool to facilitate our regulatory objective while also focusing on consumer protection. As the risk of any proposed service increases, the frequency and scope of reporting increases.

## ADDITIONAL RISK DETAIL

The Innovation Office has identified some risks that repeat across entities. Those risks are discussed in detail at [Appendix D](#) but referred to by a shorthand designation in Office's recommendations to the Court. As we identify new repeating risks, we will add them to this manual. The Office may also identify risks outside or ancillary to the proposed service model. Applicants are encouraged to interrogate their own models for additional risks and discuss those with the Office.

## C. DENIAL OF RECOMMENDATION AND APPEAL

The Innovation Office may decline to recommend an application to the Court for authorization. Reasons for denial may include (list is not exclusive and may be expanded):

- Insufficiently clear proposal of business or service model
- Inability to report data as required by the Office
- Proposal not ready to implement
- Proposed model or service is already permitted under the traditional rules (Sandbox authorization is not needed)
- Disbarred lawyer owning more than 10% of entity
- Entity is merely a vehicle for an out of state lawyer to practice within Utah

The Office will send a Denial of Recommendation form to the entity.

Entities denied authorization may always reapply. Entities denied a recommendation for authorization may also appeal the denial by submitting an Request for Reconsideration form. The entity has 30 days from the date of the denial to submit the Request for Reconsideration form. Requests submitted past the 30 day window will not be considered.

If the Office denies the reconsideration (by issuing a Denial of Reconsideration form), the entity may appeal to the Court. The entity has 30 days from the date of the denial of reconsideration to submit an Appeal of Denial. On receipt of the Appeal of Denial, the Innovation Office will present the entity's appeal, including the entire application file, to the Court at the next scheduled Court conference.

The relevant forms may be found at [Appendix C](#).

## D. RECOMMENDATION OF AUTHORIZATION AND PARAMETERS

After conducting the risk assessment, the Innovation Office will develop the outline for its authorization recommendation, including risk category, service area(s), waivers, authorization term, and any additional requirements.

# APPENDIX D: REPEATING RISK DEFINITIONS

The following repeating risks are described in detail below:

- (1) nonlawyer investment / ownership;
- (2) intermediary platforms;
- (2) lawyers sharing fees with nonlawyers;
- (3) technology and nonlawyer providers;
- (4) user communication; and
- (4) ownership, investment, or management by disbarred lawyers or individuals with felony criminal histories.

## 1. NONLAWYER INVESTMENT / OWNERSHIP

Entities may propose taking on nonlawyer investment / ownership or lawyer employees.

Nonlawyer investment / ownership presents the potential risk that nonlawyer owners / investors, unfamiliar with and unlimited by the legal Rules of Professional Conduct, could undermine the legal services model to the consumer's detriment. It potentially increases the likelihood of implementing business practices that increase the consumer harm risk across all three risk areas. The potential negative impacts of nonlawyer investment / ownership are significantly lower if the nonlawyers have less than majority ownership.

While concern about this risk runs high among lawyers and others unsure about the impact of regulatory reform, data on this risk is relatively limited. Studies from the UK and Australia, each of which have allowed nonlawyer investment / ownership for some time, show no adverse impacts on consumers by legal service businesses with nonlawyer investment / ownership. Given that, we have assigned the following these models to the following risk categories:

Service Model	Risk
Lawyers employed or managed by a nonlawyer	Low
Less than 50% nonlawyer ownership	Low
50% or more nonlawyer ownership	Low / Moderate
Intermediary platform	Low / Moderate

There are several ways to address this risk:

- **Rules of Professional Conduct:** All lawyers participating in the sandbox, whether as owners, employees, independent contractors, or business partners, are required to maintain their professional duties, including loyalty to the client and confidentiality. Rule 5.4 both clearly states the lawyer's responsibilities.
- **Identification and Confirmation:** During the assessment process, the Innovation Office notes the lawyers' continuing duties of professional responsibility and independence and may ask the applicant to briefly describe the policies and procedures the applicant will put in place to ensure those duties are maintained.
- **Disclosure Requirements:** The Innovation Office has developed the following disclosure requirements for nonlawyer owned entities:
  - For nonlawyer-owned companies or firms with nonlawyer ownership or investment, including intermediary platforms:
    - This is not a law firm. / This law firm is owned by nonlawyers. Some of the people who own / manage this entity are not lawyers. This means that some services / protections, like attorney-client privilege, may be different from those you could get from a traditional law firm.

If you have questions, please contact us at \_\_\_\_\_.

- Data Reporting:
  - For less than 50% nonlawyer investment / ownership (low risk), without other risk factors, entities will have minimal reporting requirements. Those requirements include customer complaint data.
  - For more than 50% nonlawyer investment / ownership and intermediary platforms (low/moderate risk), entities will have more fulsome reporting requirements at the outset, to be reduced when [x happens].

## 2. INTERMEDIARY PLATFORMS

Intermediary platforms are corporate entities, usually for-profit and owned and managed by nonlawyers, offering a software based platform through which clients and individual lawyers can find each other and enter into engagements. They are widely available throughout the legal services market, targeting individual consumers, corporations and small businesses, and lawyers and law firms. They are not regulated. Lawyers are able to work with these platforms as long as the financial arrangements are structured so as to avoid the ban on lawyers sharing fees with nonlawyers. Generally these arrangements are structured as purchasing advertising or marketing services and/or other support services. Any payments to the intermediary platform tied to the amount of the lawyer's fee has come under scrutiny and often led to cease and desist letters, if not more, from the applicable state bar association.<sup>27</sup> Therefore, what is permitted in the unregulated legal services market today is a software platform connecting lawyers and consumers of legal services, including providing legal support services such as billing and communications through the platform, where the lawyer pays a set service or marketing fee to the platform. The platform can facilitate payments between client and lawyer but generally cannot hold any of those funds in the course of facilitating the transaction because Rule 1.15 requires lawyers to hold client property in client trust accounts with certain requirements and fees have been considered client property.

What is generally not permitted in the legal services market are intermediary platforms using the following kinds of business models:

- Sharing fees with the lawyers (i.e. taking a percentage of the fee paid by the consumer to the lawyer for legal work found through the platform).
- Fee schedules set by the intermediary platform.
- Billing systems run and managed by the intermediary platform which accept and hold client retainer fees or funds for legal expenses.

### *Intermediary platforms with innovative models (entering the Sandbox)*

Intermediary platforms will apply to the Innovation Office seeking authorization to offer one or more innovations to the basic model through the Sandbox. There are likely to be many other nuances presented by intermediary proposals not addressed in the above list. Each nuance may require a waiver of the Rules of Professional Conduct beyond that contemplated by the Standing Order and revised Rule 5.4 to permit Utah lawyers to participate with the platform.

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<sup>27</sup> Benjamin H. Barton and Deborah L. Rhode, Access to Justice and Routine Legal Services: New Technologies Meet Bar Regulators," 70 Hastings L. J. 955, 974 (2019).

Given the general and arm's length nature of the relationship between "lawyer partners" of the intermediary and the entity itself and the fact that the use of an intermediary platform changes very little about who provides the legal services or how they are provided, the intermediary platform model itself does not seem to present increased risk of consumer harm. The Office has categorized sandbox intermediary proposals as low - moderate risk and will tailor any necessary rule waivers carefully to enable the Office to track service innovations. This categorization also reflects the reality of the business model in which the platforms themselves are not the actual service provider and, therefore, are limited in their ability to report data such as legal or financial outcomes.

### *Intermediary Platforms Sandbox Known Models Risk Assessment*

#### 1. Fee sharing

- Unlike other 1:1 or "close" fee sharing relationships, including referral fees, the intermediary platform fee sharing model is simply an up front, generally established percentage to be paid by the lawyer for the networking, marketing, and other applicable services provided by the platform. It is difficult to see how this arrangement could increase the risk that a consumer receives poor quality legal services or overpays for legal services. Particularly because the lawyer participant remains, as always, subject to the duties of competency and reasonable fees and revised Rule 5.4 maintains the lawyer's independence of professional judgement.
- When an intermediary platform seeks to enter the sandbox with a proposal limited to the sharing of fees with lawyers through generally established percentages or shares (as distinguished from individually negotiated referral fees), the risk categorization will be LOW - MODERATE.

#### 2. Fee schedule set by intermediary platform

- There is little risk in this model beyond that already presented by the use of flat fees by lawyers, i.e. that the flat fee schedule inadequately prices the cost of providing the legal work leading to lawyers cutting corners in serving their clients. Lawyers participating with these platforms remain subject to the Rules of Professional Conduct. The risk categorization will be LOW - MODERATE.

#### 3. Financial conduit (including holding funds and transferring funds between clients and lawyers)

- The Office is likely to see variation across this model however the basic version would include use of the platform to facilitate the payment of legal fees, including up front deposits of retainer fees and client expenses.
- There is the potential for a consumer to deposit money through the platform and then not receive the service for which they paid. This harm is one of the three harms identified by the Office.
- Given the structure of an intermediary platform, in which the platform itself is not the actual service provider, these kinds of risks are best monitored through consumer complaints rather than legal or financial outcomes. Therefore, if an intermediary platform proposal includes a client deposit feature the Office will consider it LOW - MODERATE enabling us to have monthly insight into client complaints.
- Note: Client deposit features likely require the authorization to be accompanied by a waiver of Rule 1.15 for those lawyers participating with the entity and potentially impacts the IOLTA qualification of those fees. The Office therefore recommends that

when a platform seeks authorization for a client deposit feature and requires waiver of Rule 1.15, the Order impose the requirement that the entity hold the relevant funds in an account generating interest or dividends and remit the interest or dividends to the Utah Bar Foundation on at least a quarterly basis. Along with the remittance, these entities must provide the Foundation with a report stating the name of the entity, the amount of the remittance, the rate and type of interest or dividend applied, and the average monthly balance on the account or accounts.

### *Sandbox authorization*

Another issue raised by intermediary platforms is the nature of the authorization in the sandbox. Generally, we are authorizing entities in the sandbox with the language (in the Order) that they are authorized to practice law. However, intermediary platforms are not, in fact, practicing law but rather facilitating the practice of law by lawyers. To be clear on this point, the Office's recommended authorization language will read "authorized to operate in the Sandbox" to reflect that the entity has sandbox authorization and the model is permitted but not authorizing the practice of law.

## 3. LAWYERS SHARING FEES WITH NONLAWYERS<sup>28</sup>

Under revised Rule 5.4, lawyers proposing to share fees with nonlawyers must enter the Sandbox. The potential risks presented by fee sharing could include compromised lawyer independence and loyalty, conflicts issues, and increased likelihood of the lawyer advancing non-meritorious claims. Intermediary platforms often include a fee sharing component and this characteristic might be present across other business models in the Sandbox. There are several mechanisms to address these risks of consumer harm:

- **Rules of Professional Conduct:** All lawyers engaging in fee sharing relationships with nonlawyers are required to maintain their professional duties to their clients and to the court.
- **Disclosure Requirements:** Rule 5.4 requires all lawyers engaging in fee sharing relationships with nonlawyers to disclose the fact of the fee sharing relationship to the affected client. Depending on the model proposed, the Innovation Office may supplement those disclosure requirements or impose timing requirements.
- **Data Reporting:** The Innovation Office has categorized fee sharing models as MODERATE risk but created distinct reporting requirements focused on the particular harms presenting in these arrangements. Entities will be required to submit the following categories of case level data for those clients coming to the entity through a referral fee arrangement:
  - Number of consumers
  - Revenue / receipt
  - Geographic data (requested)
  - Consumer complaints
  - Nonfinancial (legal) outcome
  - Financial outcome

The Innovation Office has the discretion to require an external review of anonymized client files.

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<sup>28</sup> Please note this section is subject to the Court's December 10, 2020 statement on referral fees.

## 4. LEGAL PRACTICE THROUGH TECHNOLOGY AND NONLAWYER PROVIDERS

There are several mechanisms through which entities may propose to offer legal services through technology or nonlawyer human providers. We have identified the following models and risk categories:

Service Model	Risk
Software provider with lawyer involvement - legal document completion	Low
Nonlawyer provider with lawyer involvement	Moderate
Software provider with lawyer involvement	Moderate
Nonlawyer provider without lawyer involvement	High
Software provider without lawyer involvement	High

Basic automated form completion (software provision of legal forms and information) is already widely available on the market and has been categorized as providing legal information. The Utah Courts offer such a service through OPAC. Such services reach consumers who otherwise would not likely engage with legal rights or services and the relative risk of consumer harm appears low. These include consumers who cannot access lawyers or visit court-based, self-help services due to time or travel limitations (distance), as well as those who cannot afford a lawyer.

We foresee multiple applicants proposing to expand on this model by using tech platforms to provide legal advice and guidance to consumers (e.g., providing basic legal advice through a chatbot and enhancing the platform's ability to actively guide consumers to complete forms and other legal documents). We also foresee multiple applicants proposing to use nonlawyer providers (whether as advisors on legal processes and / or as subject matter experts) to provide basic legal advice and assistance to consumers.

These services will be new legal service models and potentially present risk of harm if the quality of the legal advice and guidance is poor. Potential concerns include failure to identify material factual or legal issues, mischaracterization of material factual or legal issues, inaccurate legal advice, etc. For this reason, we have categorized the risk of these services based on the extent of lawyer involvement in developing and managing the software or nonlawyer providers. Where lawyers are involved in the development and oversight of the service, the risk category will be lower.

We have developed data reporting requirements focused on surfacing data around the three consumer harms to enable the Office to identify, assess, and address evidence of harm.

These models also may present other risks to consumers based on the fact that these are not traditional lawyer/client engagements. To address that aspect of the risk, the Office will require providers with these service models to make the following consumer disclosure:

- This service is not a lawyer. The product / service you have selected is not a lawyer. This means:
  - Someone involved with you or with your legal issue, including people on the other side of this case, could be using this service as well.
  - We could be required to disclose your communications (such as questions and information submissions) to third parties.

If you have questions, please contact us at \_\_\_\_\_.

## 5. USER COMMUNICATIONS

We are developing a system of entity regulation in which the entity itself is given the authorization to practice law. This development may cause some tension with the traditional rules governing aspects of legal practice. In particular, communications between a user and licensed entities may present novel issues. As it stands, the attorney / client privilege applies only to communications between lawyers and their clients “for the purpose or in the course of obtaining or facilitating the rendition of legal services to the client.” This potential consumer vulnerability raises concerns about consumer harm from communication of sensitive information that is not protected from later discovery because the consumer did not make the disclosure to a lawyer within the definition of Rule 504. For example, a consumer communicating with a chatbot or with a nonlawyer legal advisor may believe their communications are protected because they assume they are getting legal help and find that sensitive information is now subject to disclosure. This concern also potentially applies to communications between consumers and nonlawyer service providers with referral fee relationships to lawyers.

There are currently many legal service options on the market which provide automated legal document completion on matters that do not reach attorney / client privilege. There are good reasons to think that consumers may not need or care about the application of the privilege to many types of legal services. Completing estate planning documents or drafting an employment contract template, for example, may not trigger consumer interest in the privilege. However, most consumers are not knowledgeable enough to draw distinctions around what is, essentially, a rule of evidence and this presents a potentially significant risk.

Further, lawyers practicing law as employees of a nonlawyer-owned entity raise novel issues around the nature of the client engagement, the status of the relationship between the lawyer and the entity, and protection of communications.

To address these issues and the resulting risk of consumer harm, we developed the following disclosure for authorized entities to place on their website, in their terms of service, and at the start of a consumer interaction / engagement:

- This is not a law firm. / This law firm is owned by nonlawyers. Some of the people who own / manage this entity are not lawyers. This means that some services / protections, like the attorney-client privilege, may be different from those you could get from a traditional law firm.

If you have questions, please contact us at \_\_\_\_\_.

- This service is not a lawyer. The product / service you have selected is not a lawyer. This means:
  - Someone involved with you or with your legal issue, including people on the other side of this case, could be using this service as well.



- We could be required to disclose your communications (such as questions and information submissions) to third parties.

If you have questions, please contact us at \_\_\_\_\_.

The Innovation Office also notes that lawyers involved in fee sharing ventures or working with or for nonlawyer-owned entities have distinct disclosure requirements under Rule 5.4.

## 6. OWNERSHIP, INVESTMENT, OR MANAGEMENT BY DISBARRED LAWYERS OR INDIVIDUALS WITH FELONY CRIMINAL HISTORIES.

In Standing Order No. 15, the court determined disbarred lawyers present a high risk of consumer harm and, therefore, found that disbarred lawyers may not own or have a financial interest of greater than 10% in any entity participating in the Sandbox. The court also found that individuals with felony criminal histories may present an elevated risk of consumer harm, depending on the nature of that criminal history and their position within the participating entity.

Applicants to the Sandbox must:

- Confirm that no disbarred lawyers own or control more than 10% interest in the entity.
- Disclose all persons or entities who wholly or partially direct the management or policies of the proposed entity, whether through ownership of securities, by contract, or otherwise ("controlling persons").
- List all persons or entities who will wholly or partially (>10%) finance the business of the proposed entity ("financing persons").
- List any of those controlling or financing persons with felony criminal histories.
- List any persons in a managerial role over the direct provision of legal services who is disbarred or who has a felony criminal history.
- Disclose whether the entity has a material corporate relationship and / or business partnership with either a disbarred lawyer or individual with a felony criminal history.

As per Standing Order No. 15, any false or misleading statements made by entities or their members in the application materials, whether discovered at the time or at any time afterward, will be independent grounds for regulatory enforcement, including termination of authorization, and an aggravating factor in any enforcement proceeding based on other conduct.

The Office will develop a list of specific criminal felonies that could impact its risk assessment of the entity and follow up on any relevant disclosures with a more detailed inquiry. The Office will also incorporate relevant information into its risk assessment and include it in its recommendation to the Court.



OFFICE OF LEGAL SERVICES INNOVATION

An Office of the Utah Supreme Court

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# SANDBOX AUTHORIZATION PACKET

HOLY CROSS MINISTRIES

MAY 7<sup>TH</sup>, 2021

## Contents

1. Utah Supreme Court Amended Order for Authorization to Practice Law
2. Innovation Office Recommendation to the Court
3. Innovation Office Manual
4. Consent Form to Share Contact with External Researchers

# DOCUMENT 1

# COURT ORDER

In the Supreme Court of the State of Utah

----oo0oo----

In re: Application of Holy Cross Ministries

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## ORDER FOR AUTHORIZATION TO PRACTICE LAW

*Based upon the Utah Supreme Court's plenary and constitutionally granted authority to regulate the practice of law in Utah, and the tenets of Standing Order 15, the Utah Supreme Court orders that Holy Cross Ministries is authorized to practice law within the regulatory sandbox and subject to the restrictions outlined below.*

The Court has reviewed the recommendation of the Office of Legal Services Innovation ("Innovation Office") dated May 6, 2021 for Holy Cross Ministries to be authorized to practice law.

Holy Cross Ministries is a 503(c)(3) nonprofit organization serving families in the Salt Lake City area. The organization is sponsored by the Sisters of the Holy Cross, a Roman Catholic women's religious order. Holy Cross Ministries proposes offering legal services alongside the health services it already offers. The legal services will be provided by nonlawyer Community Health Workers ("CHWs"), an established role within Holy Cross Ministries. Specifically, Holy Cross Ministries proposes training CHWs to become bilingual medical debt legal advocates ("MDLAs") to provide limited-scope legal assistance related to medical debt and its collateral issues.

CHWs within Holy Cross Ministries already provide holistic services related to the variety of issues arising within and related to health problems. Their role is to serve as a bridge between patients, health care providers, and social service providers. CHWs in the proposed pilot program will be able to offer limited-scope legal assistance as part of that holistic service offering and address medical debt legal issues immediately and comprehensively. The legal assistance offered by MDLAs includes legal advice on addressing medical debt, assistance in identifying, completing and filing relevant paperwork, and assistance in

negotiation with creditors.

The Innovation Office has assessed the risk of harm to Holy Cross Ministries' targeted consumers relative to the risk of harm they currently face and has determined that the risk of harm presented by Holy Cross Ministries' services is MODERATE.

In light of the Court's responsibility to the public to effectively regulate the practice of law in Utah and in keeping with the tenets of Standing Order 15, the Court now orders as follows:

1. Holy Cross Ministries is authorized to offer legal services through the following models:
  - a. Nonlawyer provider with lawyer involvement
    - i. Nonlawyer providers offering only:
      1. Legal information;
      2. Legal process assistance;
      3. Form completion assistance;
      4. Legal advice related to resolution of medical debt; and
      5. Negotiation on behalf of the consumer.
    - ii. Lawyer involvement including:
      1. Pre- and post- education and training assessment;
      2. Substantive and procedural curricular development;
      3. Training;
      4. Checklist development;
      5. Regular quality checks of services provided; and
      6. Ongoing availability for assistance to nonlawyers.
2. Holy Cross Ministries is authorized to provide legal services across the following legal service areas only:
  - a. Financial Issues
  - b. Immigration<sup>1</sup>
  - c. Healthcare
  - d. Public Benefits<sup>2</sup>

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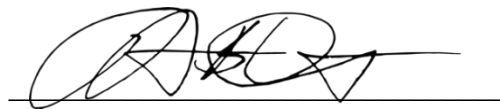
<sup>1</sup> Medical debt legal advocates may provide limited-scope legal advice about immigration insofar as the advice relates to its intersection with Medicaid, Medicare, and financial services available to people experiencing medical debt. Advice about immigration unrelated to Medicaid, Medicare, and financial services available to people experiencing medical debt, such as obtaining citizenship, asylum, or visas, will be outside the advocates' scope of service. If clients seek advice that falls outside the advocates' scope of service, advocates will refrain from providing such advice and instead refer clients to a licensed attorney.

3. To the extent that Holy Cross Ministries' service model could be found to implicate Utah Rule of Professional Conduct 5.3, the Court waives application of that rule as to lawyers overseeing MDLAs for Holy Cross Ministries.
4. Holy Cross Ministries shall conform to the MODERATE risk reporting requirements imposed by the Innovation Office.
5. Holy Cross Ministries will prominently display the following disclosure requirements:
  - a. Innovation Office Badge
  - b. Nonlawyer provider disclosure

If Holy Cross Ministries wishes to alter these conditions or requirements, it must submit any such change to the Innovation Office for further assessment. The Innovation Office will assess the proposed change and may permit the change if it deems the change does not materially increase the risks to consumers. If the Innovation Office finds a material increase in risk then it will present the issue to the Court for further consideration.

This authority is granted for an initial period of 24 months from the date of service launch as confirmed by the Innovation Office with the possibility of extension or permanent authorization. This authority and any such extension or permanent authorization is subject to Holy Cross Ministries' compliance with the conditions and requirements set forth in the Innovation Office Manual and the Innovation Office Recommendation to the Court and also to a verification by the Innovation Office that Holy Cross Ministries has a record of compliance with all requirements and the company's services are not causing harm to consumers.

DATED this 6th day of May, 2021.



Matthew B. Durrant  
Chief Justice

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<sup>2</sup> Medical debt legal advocates may provide limited-scope legal advice about public benefits insofar as the advice relates to medical insurance, bills, or debt. This may include advising a client about Medicaid, Medicare, and financial services available to people experiencing medical debt. Advice about public benefits unrelated to medical insurance, bills, or debt, such as social security or disability benefits, will be outside the advocates' scope of service. If clients seek advice that falls outside the advocates' scope of service, advocates will refrain from providing such advice and instead refer clients to a licensed attorney.

# DOCUMENT 2





OFFICE OF LEGAL SERVICES INNOVATION

An Office of the Utah Supreme Court

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# RECOMMENDATION TO THE COURT

## APP NO. 0045 - HOLY CROSS MINISTRIES

MAY 6, 2020

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## EXECUTIVE SUMMARY

Recommendation: Authorize

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Applicant: Holy Cross Ministries

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**Proposed Model/Service:** Holy Cross Ministries is a 503(c)(3) nonprofit organization serving families in the Salt Lake City area. The organization is sponsored by the Sisters of the Holy Cross, a Roman Catholic women's religious order. Holy Cross Ministries proposes offering legal services alongside the health services it already offers. The legal services will be provided by nonlawyer Community Health Workers ("CHWs"), an established role within Holy Cross Ministries. Specifically, Holy Cross Ministries proposes training CHWs to become bilingual medical debt legal advocates ("MDLAs") to provide limited-scope legal assistance related to medical debt and its collateral issues.

CHWs within Holy Cross Ministries already provide holistic services related to the variety of issues arising within and related to health problems. Their role is to serve as a bridge between patients, health care providers, and social service providers. CHWs in the proposed pilot program will be able to offer limited-scope legal assistance as part of that holistic service offering and address medical debt legal issues immediately and comprehensively. The legal assistance offered by MDLAs includes legal advice on addressing medical debt, assistance in identifying, completing and filing relevant paperwork, and assistance in negotiation with creditors.

Holy Cross Ministries, in partnership with the i4j Lab at the University of Arizona, will develop a comprehensive curriculum for training MDLAs, including training on substantive and procedural law and how to identify factual or legal issues beyond the scope of the MDLA legal assistance authorization. The program will also develop checklists and other tools to assist MDLAs in the provision of legal services and have attorneys available as resources. MDLAs will undergo both pre- and post-education assessment. Curricular development, assessment, and monitoring for quality and legal accuracy will be done by Utah lawyer staff at Holy Cross Ministries.

The proposed service model is:

- Nonlawyer provider with lawyer involvement

The proposed consumer service area is:

- Financial issues
  - Immigration
  - Healthcare
  - Public benefits
-

Waivers Sought	Holy Cross does not seek any waivers. However, in line with past recommendations related to nonlawyer service provision with lawyer involvement, the Innovation Office recommends waiver of Rule 5.3 as to those lawyers supervising the MDLAs within Holy Cross Ministries.
Target Consumer Market	Consumers facing medical debt problems in Utah; specifically, consumers who otherwise are unlikely to engage with the civil legal system.
Sandbox Qualifiers:	This business model/service qualifies for the Sandbox because it would feature the following characteristics: <ul style="list-style-type: none"> <li>• Nonlawyer provider with lawyer involvement</li> </ul>
Regulatory Objective Qualifier: <sup>1</sup>	This proposal targets consumers unlikely to engage with the civil legal system and will likely increase access for those consumers facing medical debt problems.
Utah Qualifier:	Adapted for Utah requirements.
Implementation Qualifier:	Ready for implementation upon securing of funding.

## RISK ASSESSMENT

Target Market:	Consumers engaged facing medical debt problems who are unlikely to engage with the civil legal system.
General Assessment:	MODERATE RISK
Specific Risks:	<ol style="list-style-type: none"> <li>1. Nonlawyer provider</li> <li>2. User communications</li> </ol>

## SANDBOX RECOMMENDATION

We recommend the Court authorize Holy Cross Ministries to practice law in the state of Utah, subject to such requirements as the Innovation Office may impose.

### Scope of Recommended Authorization

Term of authorization	The Innovation Office recommends that the authority be granted for an initial period of 24 months from the date of service launch with the
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<sup>1</sup> Regulatory Objective: To ensure consumers have access to a well-developed, high-quality, innovative, affordable, and competitive market for legal services. (Standing Order No. 15)

possibility of extension or permanent authorization. Any such extension or permanent authorization would be subject to the applicant complying with the conditions and requirements set forth below and also to Holy Cross Ministries has a record of compliance with all requirements and the company's services are not causing harm to consumers.

Recommended legal service models	<ol style="list-style-type: none"> <li>1. Nonlawyer provider with lawyer involvement               <ol style="list-style-type: none"> <li>a. Nonlawyer providers offering only:                   <ol style="list-style-type: none"> <li>i. Legal information;</li> <li>ii. Legal process assistance;</li> <li>iii. Form completion assistance;</li> <li>iv. Legal advice related to resolution of medical debt; and</li> <li>v. Negotiation on behalf of the consumer.</li> </ol> </li> <li>b. Lawyer involvement including:                   <ol style="list-style-type: none"> <li>i. Pre- and post- education and training assessment;</li> <li>ii. Substantive and procedural curricular development;</li> <li>iii. Training;</li> <li>iv. Checklist development;</li> <li>v. Regular quality checks of services provided; and</li> <li>vi. Ongoing availability for assistance to nonlawyers.</li> </ol> </li> </ol> </li> </ol>
Legal service models not recommended	None
Recommended consumer service areas	<ol style="list-style-type: none"> <li>1. Financial Issues</li> <li>2. Immigration<sup>2</sup></li> <li>3. Healthcare</li> </ol>

<sup>2</sup>Medical debt legal advocates may provide limited-scope legal advice about immigration insofar as the advice relates to its intersection with Medicaid, Medicare, and financial services available to people experiencing medical debt. Advice about immigration unrelated to Medicaid, Medicare, and financial services available to people experiencing medical debt, such as obtaining citizenship, asylum, or visas, will be outside the advocates' scope of service. If clients seek advice that falls outside the advocates' scope of service, advocates will refrain from providing such advice and instead refer clients to a licensed attorney. Such referrals may be to HCM's Legal Immigration Program, which is staffed by attorneys and provides free and low-cost immigration services to the community.

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#### 4. Public benefits<sup>3</sup>

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Recommended waivers	Rule 5.3 waiver: To the extent that Holy Cross Ministries' service model could be found to implicate Utah Rule of Professional Conduct 5.3, the Court waives application of that rule as to lawyers overseeing MDLAs for Holy Cross Ministries.
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Recommended qualitative compliance requirements	Standardized disclosure statements on website and in mobile applications (see Manual): <ol style="list-style-type: none"> <li>1. Badge</li> <li>2. Nonlawyer provider disclosures</li> </ol>
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Recommended data reporting requirements	MODERATE risk data reporting requirements (see Manual)
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<sup>3</sup> Medical debt legal advocates may provide limited-scope legal advice about public benefits insofar as the advice relates to medical insurance, bills, or debt. This may include advising a client about Medicaid, Medicare, and financial services available to people experiencing medical debt. Advice about public benefits unrelated to medical insurance, bills, or debt, such as social security or disability benefits, will be outside the advocates' scope of service. If clients seek advice that falls outside the advocates' scope of service, advocates will refrain from providing such advice and instead refer clients to a licensed attorney.

# DOCUMENT 3



OFFICE OF LEGAL SERVICES INNOVATION

An Office of the Utah Supreme Court

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# INNOVATION OFFICE MANUAL

Published March 22, 2021

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# INTRODUCTION

This manual seeks to establish the policies and processes by which the Office of Legal Services Innovation (“Innovation Office”) will execute the mandate of the Utah Supreme Court Standing Order 15: to oversee the nontraditional model of legal services, subject to the ultimate authority and control of the Utah Supreme Court. This manual will guide the Innovation Office, the Utah Supreme Court, Sandbox applicants and participants, and the public on the work of the Office.

This manual is a working document and will be regularly updated or revised according to need. Any decisions or actions by either the Innovation Office or the Utah Supreme Court, while informed by this document, are ultimately based on discretion guided by the Regulatory Objective and Regulatory Principles outlined in Standing Order 15.

## I. DECISION MAKING PRINCIPLES AND PROCESS

The regulatory actions of the Office will be limited to those that advance the Regulatory Objective: To ensure consumers have access to a well-developed, high-quality, innovative, affordable, and competitive market for legal services.

Ensuring consumer access as described in the Regulatory Objective is the primary criteria around which Innovation Office decision making takes place. In striving to answer the question of whether a given action furthers the Regulatory Objective, the Office balances the incremental costs of improved information and the benefits of efficient action.

As dictated by the Regulatory Objective and Regulatory Principles, the Office bases its decisions on empirical evidence whenever possible, using data and numbers to identify and understand the potential harm that consumers currently experience and are likely to be exposed to with new services.

Every risk of harm to consumers cannot currently be quantified. Assessments of risk are inherently imprecise, as knowledge of all the relevant variables is incomplete and any given outcome depends on multiple and complex considerations. The reliance on empirical evidence should not imply a false precision. Judgement must be used where relevant and reliable data are absent.

**Decision Process Objective:** Ensuring that any decisions made by the Office are unbiased and based on a proper and objective consideration of all facts, the Regulatory Objective, and the Regulatory Principles.

**Decision Process Principles:**

- **Equal Access:** All parties have the same opportunity to access decision makers.
- **Coherent:** Decisions and the reasons therefore are reasonably and clearly explained.
- **Transparent:** All parties know what information and arguments the Office is considering in rendering a decision.
- **Efficient:** Decisions will be made in a timely manner.

## Standard for sufficiency of data

The data considered alongside all associated information (about company, ownership, management, target population) must be of sufficient quality to inspire confidence in the regulatory action (authorization, licensing, enforcement).

### Operational Decision Criteria:

#### *For each identified risk of harm:*

1. Consumer achieves an inaccurate or inappropriate legal result.
2. Consumer fails to exercise legal rights through ignorance or bad advice.
3. Consumer purchases an unnecessary or inappropriate legal service.

#### *An applicant must show that:*

The likelihood that the average person will experience a harm using the applicant's service ***is not greater*** than the likelihood that the average person who might use their service will experience harm without the service.

## II. APPLYING TO THE SANDBOX

Qualification for the Sandbox is guided by Rule 5.4 and Standing Order No. 15, Section 3.3.2. The Sandbox is the mechanism by which business models or services that have not traditionally been permitted in the Utah legal system may provide legal services.

Such practices may include:

- traditional law firms taking on nonlawyer investment or ownership;
- traditional law firms and lawyers entering into fee sharing relationships with nonlawyers;<sup>1</sup>
- nonlawyer-owned or corporate entities employing Utah-licensed lawyers to practice law;
- firms or companies using technology platforms or nonlawyer service providers to practice law;
- or
- lawyers or firms entering joint ventures or other forms of business partnerships with nonlawyer entities or individuals to practice law.

There may be many other innovative models or services not permitted under the traditional rules that will apply to the Sandbox.

Any entity wishing to apply to the Sandbox must complete:

1. The Application Form;

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<sup>1</sup> Please note: as of the Court's December 10, 2020 statement on referral fees, the Innovation Office will not consider applications setting forth bare referral fee arrangements between lawyers and nonlawyers. Bare referral fees are compensation paid to nonlawyers for the sole purpose of ensuring the referral of legal work. The Innovation Office will continue to consider applications in which fee sharing is one component in a more comprehensive innovative proposal.

2. Disclosures around ownership, management, and significant financial investors / partners, including whether any of those controlling individuals are disbarred or have a felony criminal history;
3. Disclosure on whether the entity plans to share or sell consumer data to third parties; and
4. GRAMA confidentiality claim for information that is identified as trade secrets or confidential business information.

These materials may be found at [Appendix A](#). Applicants may also submit any other relevant supplemental materials.

As per Standing Order No. 15, any false or misleading statements made by entities or their members in the application materials, whether discovered at the time or at any time afterward, will be independent grounds for regulatory enforcement, including termination of authorization, and an aggravating factor in any enforcement proceeding based on other conduct.

The Innovation Office will review the application for completeness. The Office does not consider applications submitted until the Office determines the submission is sufficiently complete.

## A. ADDITIONAL WAIVERS

The Sandbox is a mechanism to permit innovative legal business and service models that would not have been possible under the broad traditional proscriptions on nonlawyer ownership and investment and nonlawyer legal practice. In the Sandbox, these entities are permitted to practice and Utah lawyers are permitted to own, be employed by, or partner with these entities. As a general rule, Utah lawyers working with or for Sandbox entities must maintain their compliance with the Utah Rules of Professional Conduct and remain subject to disciplinary action should they fail to comply.

The Court and the Innovation Office, however, recognize that there may be instances in which an entity might seek additional rule waivers to facilitate lawyers' participation with the business model. The Sandbox offers the opportunity to permit increased experimentation in a controlled environment. Entities may propose additional rule waivers in their application and the Office will consider them and whether the proposed waiver merits an adjustment to the risk categorization and make the appropriate recommendation to the Court.

## III. INNOVATION OFFICE REVIEW PROCESS

Once the application is determined complete, the Innovation Office will begin its review. The first level of review is performed by the Executive Committee. The second level of review is performed by the entire Office.

The review process is iterative and applicants are expected to be responsive and engaged with the Office. The Innovation Office will seek to understand the applicant's business model and potential consumer risks therein.

This section includes:

- Outlines the qualifiers the Office must confirm for each applicant
- Articulates common risk assessments

- Sets out and explains the core categories of:
  - Service model
  - Service area
  - Disclosure requirements
  - Data reporting requirements

## A. QUALIFIERS

The Innovation Office must confirm that each applicant meets the following qualifiers:

Sandbox Qualifier(s): What aspects of the proposed entity / service qualify for participation in the sandbox.

Utah Qualifier: Each entity must affirm that its service conforms to any applicable requirements of Utah law.

Implementation Qualifier: Each entity must affirm that it is ready or very close to ready to implement its proposed service.

Regulatory Objective Qualifier: Each entity must show that the proposed service will further the Regulatory Objective outlined in Standing Order No. 15: To ensure consumers have access to a well-developed, high-quality, innovative, affordable, and competitive market for legal services.

## B. RISK ASSESSMENT

The Risk Assessment section outlines the risks of consumer harm identified by the Innovation Office. The Innovation Office has grouped consumer risk of harm from legal services into three main areas:

- (1) inaccurate or inappropriate legal result,
- (2) failure to exercise legal rights through ignorance or bad advice, and
- (3) purchase of an unnecessary or inappropriate legal service.

It is the goal of the Office to work toward being able to both assess and measure consumer risk relative to the risk of harm the target consumer population currently faces. For example, suppose an entity is targeting consumers who do not generally access legal help from lawyers. In that case, the Risk Assessment of the proposed services should be against receiving no legal advice or using do-it-yourself tools on the market or from court websites.

## SERVICE MODEL RISK CATEGORY

The Office has developed a model of risk categorization based on the service model(s) proposed by the entity:

Service Model	Risk
Lawyer employed or managed by a nonlawyer	Low
Less than 50% nonlawyer ownership	Low
Software provider with lawyer involvement - legal document completion	Low
Intermediary platform <sup>2</sup>	Low / Moderate
50% or more nonlawyer ownership	Low / Moderate
Lawyers sharing fees with nonlawyers	Moderate
Nonlawyer provider <sup>3</sup> with lawyer involvement <sup>4</sup>	Moderate
Software provider with lawyer involvement	Moderate
Nonlawyer provider without lawyer involvement <sup>5</sup>	High
Software provider without lawyer involvement	High

We have categorized the risk across these service models according to the lawyers' involvement in developing and overseeing the nonlawyer model. As a proposed model gets further from our historical norms, the risk level increases because we do not know much about how these models will work. We are relying on the assumption that lawyer involvement should mitigate some of the risks around poor advice or failure to identify issues. However, both moderate and high risk models are subject to robust data requirements giving us the ability to learn more about actual level, scope, and type of risks as we move forward. In the future, as we learn more about the kinds of services offered and the potential risk of consumer harm, we hope to develop more finely tuned categories of risk according to the simplicity / complexity of more specific service offerings (e.g., completing legal documents, advising on process only, representing a consumer in negotiations with an opposing party, representing a consumer in court).

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<sup>2</sup> "Intermediary platform" means an entity offering a software- or online-based platform to connect Utah lawyers with interested consumers. The platform may also offer other legal practice support services such as timekeeping, billing, video-conferencing, etc.

<sup>3</sup> Provider means legal practitioner: a provider who or which is practicing law, including offering legal advice.

<sup>4</sup> "Lawyer involvement" means a Utah-licensed lawyer both (1) provides guidance and oversight of the provider at the front end, i.e. through developing training materials and overseeing training of providers and developing scripts and/or algorithms, and (2) performs regular spot checks of providers services for quality and accuracy.

<sup>5</sup> "Without lawyer involvement" means either (1) a Utah-licensed lawyer provides guidance and oversight at the front end of the development of the service model only but has no ongoing oversight, or (2) no Utah-licensed lawyer is involved in the development or provision of legal service at all.

Once an entity is authorized, reported data will be our primary tool to facilitate our regulatory objective while also focusing on consumer protection. As the risk of any proposed service increases, the frequency and scope of reporting increases.

## ADDITIONAL RISK DETAIL

The Innovation Office has identified some risks that repeat across entities. Those risks are discussed in detail at [Appendix D](#) but referred to by a shorthand designation in Office's recommendations to the Court. As we identify new repeating risks, we will add them to this manual. The Office may also identify risks outside or ancillary to the proposed service model. Applicants are encouraged to interrogate their own models for additional risks and discuss those with the Office.

## C. DENIAL OF RECOMMENDATION AND APPEAL

The Innovation Office may decline to recommend an application to the Court for authorization. Reasons for denial may include (list is not exclusive and may be expanded):

- Insufficiently clear proposal of business or service model
- Inability to report data as required by the Office
- Proposal not ready to implement
- Proposed model or service is already permitted under the traditional rules (Sandbox authorization is not needed)
- Disbarred lawyer owning more than 10% of entity
- Entity is merely a vehicle for an out of state lawyer to practice within Utah

The Office will send a Denial of Recommendation form to the entity.

Entities denied authorization may always reapply. Entities denied a recommendation for authorization may also appeal the denial by submitting an Request for Reconsideration form. The entity has 30 days from the date of the denial to submit the Request for Reconsideration form. Requests submitted past the 30 day window will not be considered.

If the Office denies the reconsideration (by issuing a Denial of Reconsideration form), the entity may appeal to the Court. The entity has 30 days from the date of the denial of reconsideration to submit an Appeal of Denial. On receipt of the Appeal of Denial, the Innovation Office will present the entity's appeal, including the entire application file, to the Court at the next scheduled Court conference.

The relevant forms may be found at [Appendix C](#).

## D. RECOMMENDATION OF AUTHORIZATION AND PARAMETERS

After conducting the risk assessment, the Innovation Office will develop the outline for its authorization recommendation, including risk category, service area(s), waivers, authorization term, and any additional requirements.

## 1. SERVICE MODELS

The Office will determine which service models it will recommend for Court review and approval. Entities will be authorized as one or multiple service model categories; entities may not offer services through a model for which they are not authorized. For example, if an entity is authorized as a “nonlawyer provider with lawyer involvement,” that entity may not offer a software platform or tool that practices law. If after authorization, if an applicant’s model changes to include a new model, the applicant must request additional assessment and authorization from the Innovation Office.

Service Model	Risk
Lawyer employed or managed by a nonlawyer	Low
Less than 50% nonlawyer ownership	Low
Software provider with lawyer involvement - legal document completion	Low
Intermediary platform	Low / Moderate
50% or more nonlawyer ownership	Low / Moderate
Fee sharing with nonlawyers	Moderate
Nonlawyer provider with lawyer involvement	Moderate
Software provider with lawyer involvement	Moderate
Nonlawyer provider without lawyer involvement	High
Software provider without lawyer involvement	High

## 2. SERVICE CATEGORIES

The applicant identifies the service areas in which they will be working. Even after authorization, if an applicant’s model changes to include a new model, the applicant must request additional assessment and authorization from the Innovation Office.

- Accident / Injury
- Adult Care
- Business
- Criminal (Expungement)<sup>6</sup>
- Criminal (Other)
- Discrimination
- Domestic Violence
- Education

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<sup>6</sup> Please note: Nonlawyer providers, whether software or human, are currently limited to providing expungement services only in the criminal field. Lawyers, in accordance with their law license and Rule 1.6, may offer all criminal services.

- Employment
- End of Life Planning
- Consumer Financial Issues
- Healthcare
- Housing (Rental)
- Immigration
- Marriage and Family
- Military
- Native American / Tribal Issues
- Public Benefits
- Real Estate
- Traffic - Civil Actions / Citations / Misdemeanors

### 3. WAIVERS

The Innovation Office will consider any additional rule waivers requested by the applicant entity. The Office may seek input from an ethics advisor to ensure adequate consideration of waiver implications. Any waiver will be carefully construed to permit Utah lawyers' participation in the proposed business or service model. Utah lawyers remain subject to all rules not explicitly waived.

### 4. CONSUMER DISCLOSURE REQUIREMENTS

#### REQUIRED FOR ALL AUTHORIZED ENTITIES

The Innovation Office "badge" is required for all authorized entities to display on their websites as well as brick-and-mortar offices. Failure to display the badge will be considered evidence of noncompliance and consumer harm.

This will facilitate consumer knowledge and confidence and will provide question / complaint information. Regulators in the UK have developed a similar "badge" for regulated legal service entities.



For more information or to file a complaint,  
please visit [sandbox.utcourts.gov](https://sandbox.utcourts.gov)



## REQUIRED AS APPLICABLE<sup>7</sup>

The following disclosures are required depending on the category of service model authorized. These disclosures must be communicated to each consumer in, for example, the terms of service or engagement letter. Failure to provide these disclosures will be considered noncompliance and considered evidence of consumer harm.

- This is not a law firm. / This law firm is owned by nonlawyers. Some of the people who own / manage this company are not lawyers. This means that some services / protections, like the attorney-client privilege, may be different from those you could get from a law firm.
  - If you have questions, please contact us at \_\_\_\_\_.
- This service is not a lawyer. The product / service you have selected is not a lawyer. This means:
  - Someone involved with you or with your legal issue, including people on the other side of this case, could be using this service as well.
  - We could be required to disclose your communications (such as questions and information submissions) to third parties.If you have questions, please contact us at \_\_\_\_\_.

## 5. ANNUAL ENTITY REPORTING

Authorized entities will have certain limited annual reporting / certification requirements, confirming the status of their controlling and financing persons and confirming that no disbarred lawyer owns or controls more than 10% financial stake

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<sup>7</sup> The Innovation Office notes that Rule 5.4 contains its own disclosure requirements applicable to lawyers in fee sharing arrangements and nonlawyer owned entities.

## 6. DATA REPORTING REQUIREMENTS

The Innovation Office will assign a risk categorization for each authorized entity according to the framework described above. For each approved service area, the entity will submit case level data as follows. The Innovation Office will provide the entity with a .csv template with specific data fields and corresponding operational and technical definitions (see [Appendix B](#)).

### Low Risk

1. NONLAWYER INVESTMENT / OWNERSHIP: LESS THAN 50%
2. SOFTWARE PROVIDER WITH LAWYER INVOLVEMENT - LEGAL DOCUMENT COMPLETION - LOW RISK

Consumer Service	Criteria of Assessment	Provider	Measure	Reporting
General	General	All services	Number of people served	Quarterly
			Geographic info (requested)	Quarterly
			Revenue / receipt info	Quarterly
			All consumer complaints	Quarterly

### Low to Moderate Risk

1. NONLAWYER INVESTMENT / OWNERSHIP: MORE THAN 50%
2. INTERMEDIARY PLATFORM

Consumer Service	Criteria of Assessment	Provider	Measure	Reporting
General	General	All services	Number of people served	Monthly
			Geographic info (requested)	Monthly
			Revenue / receipt info	Monthly
			All consumer complaints	Monthly

## MODERATE RISK

### 1. FEE SHARING WITH NONLAWYERS<sup>8</sup>

Consumer Service	Criteria of Assessment	Provider	Measure	Reporting
General	General	All services under the fee sharing model	Number of people served	Monthly
			Geographic info (requested)	Monthly
			Revenue / receipt info	Monthly
			All consumer complaints	Monthly
Specific consumer service	Consumer achieves an inaccurate or inappropriate legal result.	All services under the fee sharing model	Nonfinancial (legal) outcomes data (% customers that did / did not get the outcome they sought)	Monthly
	Consumer fails to exercise legal rights through ignorance or bad advice.		Financial outcome data (benefit obtained / loss prevented) broken down by outcome (verdict, settlement, etc.)	Monthly
	Consumer purchases an unnecessary or inappropriate legal service.		(Potential) Expert review of redacted case file	As determined

<sup>8</sup> This category addresses fee-sharing proposals other than intermediary platforms.

## 2. NONLAWYER PROVIDER WITH LAWYER INVOLVEMENT

## 3. SOFTWARE PROVIDER WITH LAWYER INVOLVEMENT

Consumer Service	Criteria of Assessment	Provider	Measure	Reporting
General	General	All services	Number of people served	Monthly
			Geographic info	Monthly
			Revenue / receipt info	Monthly
			All consumer complaints	Monthly
Specific consumer service	<p>Consumer achieves an inaccurate or inappropriate legal result.</p> <p>Consumer fails to exercise legal rights through ignorance or bad advice.</p> <p>Consumer purchases an unnecessary or inappropriate legal service.</p>	Nonlawyer	Satisfactory legal expert review of representative selection of work product for accuracy and quality.	<p>Nontraditional products / services: submit legal expert review of first 20 consumer services.</p> <p>Office may require additional reporting on review of n interactions selected at random.</p>
		Nonlawyer	Nonfinancial (legal) outcomes data (% customers that did / did not get the outcome they sought)	Monthly
		Nonlawyer	Track relevant outcomes across cases assisted by the new services and those not (e.g., was divorce achieved)	Monthly
		Nonlawyer	Track services provided across events with similar outcomes (e.g. what services were provided in this divorce)	Monthly
		Nonlawyer	Financial outcome ( benefit obtained or loss prevented) data broken down by outcome (divorce, custody).	Monthly

## HIGH RISK

1. NONLAWYER PROVIDER WITHOUT LAWYER INVOLVEMENT
2. SOFTWARE PROVIDER WITHOUT LAWYER INVOLVEMENT

Consumer Service	Criteria of Assessment	Provider	Measure	Reporting
General	General	All services	Number of people served	Monthly
			Geographic info	Monthly
			Revenue / receipt info	Monthly
			All consumer complaints	Monthly
Specific consumer service	<p>Consumer achieves an inaccurate or inappropriate legal result.</p> <p>Consumer fails to exercise legal rights through ignorance or bad advice.</p> <p>Consumer purchases an unnecessary or inappropriate legal service.</p>	Nonlawyer	Satisfactory legal expert review of representative selection of work product for accuracy and quality.	<p>Nontraditional products / services: first 20 consumer services to be reviewed by legal experts for accuracy and quality.</p> <p>Additional monthly reporting on <i>n</i> consumer services (to be determined by Office).</p>
		Nonlawyer	Nonfinancial outcomes data (% customers that did / did not get the outcome they sought)	Monthly
		Nonlawyer	Track relevant outcomes across cases assisted by the new services and those not (e.g., was divorce achieved)	Monthly
		Nonlawyer	Track services provided across events with similar outcomes (e.g. what services were provided in this divorce)	Monthly
		Nonlawyer	Financial outcome ( benefit obtained or loss prevented) data broken down by outcome (divorce, custody).	Monthly

## 7. AUTHORIZATION TERM

An entity's initial authorization term will usually be set at 24 months from date of service launch.

# IV. RECOMMENDATION TO THE COURT

The Court retains complete discretion to review and assess any recommended entity. The Office has developed a recommendation to the court focused identifying potential risks, assigning a general risk level to the entity, and recommending relevant requirements for authorization. The Innovation Office strives to avoid unnecessary verbiage and repetition so as to make the recommendations, application review, and authorization processes as efficient as possible. The individual recommendation documents and Proposed Orders submitted to the court will refer to this manual for the full discussion of risks unless the model proposed presents a unique and novel issue.

Should the Court vote to approve the recommended entity, it will enter the Proposed Order, subject to any changes requested by the court. The Proposed Order authorizes the entity as outlined and limited by the scope of the recommendation and the Innovation Office Manual. Once the Order is entered, the Innovation Office will make the recommendation and Order public on its website. Any confidential information will be redacted before these materials are released publicly.

Should the Court deny authorization, the Court will issue an Order denying recommendation. The entity may reapply.

## V. AUTHORIZATION

### A. AUTHORIZATION AND LAUNCH PROCESS

Once the Court issues an Order authorizing an entity to offer legal services in the Sandbox, the Innovation Office will notify the entity and provide them the following materials:

1. Order of authorization
2. Innovation Office recommendation
3. Innovation Office Manual
4. Applicable data reporting template and protocol
5. External researcher contact consent form
6. Any additional necessary materials

The Office will also set up an authorization meeting with the entity. Entities are not permitted to offer services to the public until this meeting is completed.

As noted above, entities are usually authorized for a period of 24 months from the date of service launch. Entities have six months from the date of the Authorization Order to begin implementation of the services for which they have been authorized. This means that the specific launch date can be no more than 180 days from the date of the Authorization Order. At the launch date, entities should be implementing legal services using methods and a scope that were described in the authorized application. During the period between the issuance of the authorization order and the launch of the provision of service by the entity, the entity will be considered in a Pending Period. This means that the entity is not cleared to offer legal services to the public and is not required to begin reporting data to the Office. An entity's clearance to offer services and duty to begin reporting data will start at its launch date. Entities must submit a specific launch date to the Office before the 180 day Pending Period has completed.

An entity may make a Request for Extension of the Pending Period (see [Appendix C](#)) if it is unable to launch within 180 days from authorization. The request must include an explanation of the circumstances leading to the need for an extension and a proposed implementation plan, which includes but is not limited to a revised launch date. The Office retains complete discretion to grant or deny that request. If the entity's request for extension is denied, the entity's authorization will be terminated by the Office or the entity may withdraw from the Sandbox. The entity is welcome to reapply to the Sandbox at a later date.

At launch, the entity must implement approved services that reasonably meet the scope authorized by the Court Order and the entity must collect and report data as required by the Office. -Note that low risk entities report on a quarterly basis, and all other entities submit monthly reports.

If 180 days after the date of authorization an entity has not been able to implement approved services and has not received an extension of the pending period or an entity cannot sufficiently provide required risk data to the Office by their first reporting period, the entity's authorization will be terminated for failure to launch and/or failure to report.

## B. DATA REPORTING AND MONITORING

Entities authorized to offer services in the Sandbox are subject to regular data reporting requirements. Continued authorization to offer services in the Sandbox is contingent upon compliance with the applicable data reporting requirements as prescribed by the Office. As per Standing Order No. 15, any false or misleading statements made by entities or their members in interactions with the Office, including reporting of data, whether discovered at the time or at any time afterward, will be independent grounds for regulatory enforcement, including termination of authorization, and an aggravating factor in any enforcement proceeding based on other conduct.

This reporting includes the following fields (subject to updating):

- ☐ Sandbox Participant Code
- ☐ Customer Number
- ☐ Service Provider
- ☐ Consumer Service Category
- ☐ Legal Problem / Matter
- ☐ Start Date
- ☐ Scope of Service Sought
- ☐ Scope of Service Received
- ☐ End Date
- ☐ Legal Outcome(s)
- ☐ Financial Outcome(s)
- ☐ Amount Customer Paid
- ☐ Customer Complaint
- ☐ Customer Geographical Data

The data reported to the Office are classified as “protected records” under the Utah Government Records and Management Act (“GRAMA”) Section 63G-2-305 (1) and (2). These data will not be released publicly although the Innovation Office will release reports including aggregated data as required by Standing Order No. 15.

Reports are due to the Office between the 5th and the 10th of the applicable month. Entities failing to report by the 10th of the month will be considered out of compliance (see Enforcement below).

The Innovation Office has developed detailed data reporting templates and protocols to facilitate entity reporting (see [Appendix B](#)). There is one template/protocol for LOW and LOW / MODERATE risk entities and one template/protocol for MODERATE and HIGH risk entities. Those templates include required codes for data entry across the above-listed fields. Entities must use the codes supplied by the Innovation Office to describe the legal services provided. Entities will report data at the level of legal services. Entities are not permitted to provide their own descriptions of the services provided. Failure to comply with the coding requirements is considered an indicator of increased risk of consumer harm and could result in suspension or termination of authorization.

These data will be reviewed and analyzed by the Office’s data analyst who will submit a risk analysis report to the Executive Committee and Innovation Office. The goal of the risk analysis report is to identify areas of actualized risk of consumer harm associated with Sandbox provision of legal services



within and across authorized entities. The Office has developed a threshold-based framework for rating the actualized risk (evidence of consumer harm) of each entity based on the analysis of the relevant reported data. As research/evaluation evidence emerges within or beyond the Sandbox, thresholds could be adjusted across time to better protect consumers from harm. This framework is discussed in more detail in the following Enforcement section.

## 1. AUDITS

Moderate and high risk entities are required to submit to auditing by the Innovation Office as follows:

- Moderate (nonlawyer or software providers only)
  - First 20 completed services in each authorized service area
  - The Office may require additional service audits to better understand potential harms, if original audits findings indicate a possible harm.
- High
  - First 20 completed services in each authorized service area
  - The Office may require additional service audits to better understand potential harms, if original audits findings indicate a possible harm.

The purpose of the audits is to test for the legal quality and accuracy of services provided by nonlawyer humans or software. The audit data will be incorporated into the overall actualized risk assessment conducted by the data analyst. The audit protocols and data are classified as “protected records” under the Utah Government Records and Management Act (“GRAMA”) Section 63G-2-305 (1), (2), and (10).

The Office will create an Audit Panel of Utah lawyers who are trained in using the audit protocol developed by the Office. Lawyer members of the Audit Panel will be compensated for the audit services. Each service file will be reviewed by two independent members of the Audit Panel. Auditors will not be informed of the identity of the entity for which they are conducting the audit and are required to maintain confidentiality of the audit protocol and data.

## C. CHANGING AUTHORIZATION SCOPE

An entity authorized in the Sandbox may seek to change the scope of its authorization to offer services. This could include changes to service models or changes to consumer services areas. In either case, the entity may move forward without first seeking authorization from the Office. The entity may submit a Request for Change of Authorization Scope (see [Appendix C](#)) for the consideration of the Office. If the change of scope increases the risk categorization of the entity, the Request will be submitted to the Court for approval.

## D. EXTENDING AUTHORIZATION TERM

The Office may decide to extend the authorization term of an entity in the Sandbox beyond the initial term of authorization.<sup>9</sup> An extension will have the effect of continuing the entity’s authorization within

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<sup>9</sup> The initial term of authorization is usually 24 months from the date of service launch.

the Sandbox framework without effectuating either exit or termination. An entity may also seek an extension of the authorization term by submitting a Request to Extend Authorization Term (see Appendix C).

## E. WITHDRAWAL FROM THE SANDBOX

An entity may decide to withdraw from the Sandbox. Withdrawal may be necessary if an entity decides to stop offering the services for which it sought entry into the Sandbox. Withdrawal will terminate the entity's authorization to offer those services. An entity may request withdrawal by submitting a Request to Withdraw form (see [Appendix C](#)). The Innovation Office will submit a proposed order to the Court terminating the entity's authorization.

## VI. ENFORCEMENT

The regulatory framework developed by the Innovation Office functions on evidence of consumer harm. Our approach is to be risk-based, proportionate and targeted in any enforcement action we take. Each report submitted by the authorized entities is analyzed to assess whether and to what extent the following three consumer harms are occurring through the services provided by each entity:

- Consumer receives an inaccurate or inappropriate legal result,
- Consumer fails to exercise legal rights through ignorance or bad advice, and
- Consumer purchases an unnecessary or inappropriate legal service.

The Office has developed a threshold-based framework for assessment and categorization of authorized entities based on the evidence of these three harms in the data reported to the Office. Evidence of consumer harm may be found in the actual data reported (inappropriate outcomes, for example).

The Office will also consider failure to comply with the required data reporting requirements as evidence of consumer harm. Where non-compliance represents a risk to the public or consumers or where the entity fails to cooperate effectively with the Office, the Office may take formal enforcement action (e.g., suspension or termination). Failure to comply includes failure to submit data reports in a timely manner, failure to report the data fields as required by the Office, or failure to correct data coding as required by the Office. The Office will also consider misrepresentations to the Office as evidence of consumer harm and grounds for enforcement action, including potentially suspension or termination of authorization.

The following is a general description of the consumer harm threshold framework:<sup>10</sup>

**GREEN (Satisfactory)** - Each entity is initially categorized as GREEN indicating little or no evidence of consumer harm.

**YELLOW (Under Watch)** - An entity will be moved into YELLOW on moderate evidence of consumer harm (including, as noted above, failure to comply with reporting requirements). The Office will engage with entities moved into YELLOW to discuss the evidence of consumer harm driving the assessment and determine a remediation plan. Entities in YELLOW do not have to stop offering services.

**RED (Suspended)** - An entity will be moved into the RED on substantial evidence of consumer harm or on failure to remediate previously discussed evidence. Entities in RED must suspend services in the consumer service area (s) affected or as otherwise required by the Office.

**BLACK (Terminated)** - An entity will be moved into BLACK for continued failure to remediate past evidence of consumer harm or for evidence of intentional bad acts (fraud, theft, etc.). When the Office determines that an entity must be moved into BLACK, the Office will present a recommendation to the

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<sup>10</sup> The Office's more detailed framework, including actual quantified threshold levels, will not be released publicly.

Court that the entity's authorization be terminated immediately. The recommendation will include a detailed description of the evidence supporting it.

The Office will determine an entity's status after reviewing its submitted data reports. The Office will communicate the entity's status to the entity itself. The status will also be reported to the Court in the Office's monthly activity report.

## VII. EXITING THE SANDBOX

Entities may apply to exit the Sandbox after a period of time showing no material consumer harm and strong compliance with all reporting and other regulatory requirements:

- For entities categorized as low or low-moderate risk, entities may apply to exit after they have remained in GREEN for 9 consecutive months and provided a minimum of 50 instances of legal service provision.
- For entities categorized as moderate risk, entities may apply to exit after they have remained in GREEN for 12 consecutive months and provided a minimum of 100 instances of legal service provision
- For entities categorized as high risk, entities may apply to exit after they have remained in GREEN for 24 consecutive months and provided a minimum of 250 instances of legal service provision.

To initiate the process for exiting the Sandbox, an entity must complete an Application to Exit the Sandbox (see [Appendix C](#)). The Innovation Office will review that application, the entity's history of reported data and compliance, and prepare a Recommendation on Application to Exit the Sandbox. If the Office is recommending exit, the Office will present that Recommendation, the entity's historical data, and compliance record to the Court.

If the Office denies the Application to Exit the Sandbox, the denial has the effect of keeping the entity in the Sandbox. The Office will issue a Denial of Application to Exit the Sandbox which will include the reasons for denial and a timeline for which the entity must remain in the Sandbox before it may resubmit its Application to Exit the Sandbox (i.e. 3 additional months in GREEN). Reasons for denial may include (list is not exclusive and may be expanded):

- Inadequate record on consumer harm
- Poor record of compliance with Innovation Office requirements

Entities denied exit may appeal the denial by submitting an Request for Reconsideration (Exit) form (see [Appendix C](#)). The entity has 30 days from the date of the denial to submit the Request for Reconsideration (Exit) form. Requests submitted past the 30 day window will not be considered.

If the Office denies the reconsideration, the entity may appeal to the Court. The entity has 30 days from the date of the denial of reconsideration to submit an Appeal of Denial (Sandbox Exit) (see [Appendix C](#)). On receipt of the Appeal of Denial (Sandbox Exit), the Innovation Office will present the entity's appeal, including all relevant data, to the Court at the next scheduled Court conference.

The Court retains complete discretion to approve or deny the entity's Application to Exit the Sandbox. Denial by the Court will return the entity to the Sandbox. The entity may reapply to exit at a later date.

Entities which have exited the Sandbox remain under the regulatory authority of the Innovation Office and will be titled Licensed Legal Service Entity. The entities' scope of authorization remains controlled by the Authorization Order. Entities will be required to submit quarterly reports on consumer complaints and updated annual disclosures on financial and controlling ownership. Entities may also be subject to licensing fees.

# APPENDIX A: APPLICATION MATERIALS

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## SANDBOX PARTICIPANT APPLICATION

The Sandbox is for innovative services models that cannot otherwise be offered under the present Rules of Professional Conduct or are considered the unauthorized practice of law. There are a few qualifications to this mandate:

1. The Sandbox is for all business and service models falling under Utah Rule of Professional Conduct 5.4 and Utah Supreme Court Standing Order No. 15. **\*\*PLEASE NOTE:** As of December 10, 2020, the Court has halted consideration of “bare referral fee arrangements” within the Sandbox. “Bare referral fee arrangements” are defined as “those in which payment is made by the lawyer to the nonlawyer solely to compensate the nonlawyer for referring a potential client to the lawyer; there is no other business relationship between the lawyer and nonlawyer.” Proposals other than bare referral fee arrangements will continue to be considered for authorization in the Sandbox.
2. Suspended or disbarred lawyers are barred from holding an ownership interest of greater than 10% in any Sandbox entity.
3. The Sandbox is not meant to be a mechanism by which out-of-state lawyers can practice in Utah without otherwise completing the requirements imposed by the Utah State Bar.
4. The Sandbox does not and cannot impact requirements imposed by other applicable Utah or federal laws, the laws or requirements imposed by other jurisdictions, or the requirements imposed by other regulatory bodies. Authorization to practice law in Utah through the Sandbox does not release any entity or individual therein from conforming to all other applicable laws and regulations.
5. As made clear in Rule 5.4 and Standing Order No. 15, lawyers working with or in entities participating in the Sandbox are required to maintain their duties under the Rules of Professional Conduct.

Your application will be made publicly available. You will have the opportunity to make a claim of business confidentiality for specific information that would qualify for protection under GRAMA Section 63G-2-305. Making false or materially misleading statements in this application is a basis for loss of authorization to practice within the Sandbox. Other criminal and civil sanctions may also apply.

Should your answers to any of the application questions change, you are responsible for updating the information with the Innovation Office. Failure to promptly update information will be considered relevant to your regulatory status.

If you have any questions, please contact the Innovation Office at [sandbox@utcourts.gov](mailto:sandbox@utcourts.gov).

## 1. APPLICANT INFO

- 1.1. Entity Name
- 1.2. Proposed Entity Website
- 1.3. Business Email
- 1.4. Business Phone Number
- 1.5. Business Address
- 1.6. Mailing Address
- 1.7. Sandbox Application Contact Name
- 1.8. Contact Title
- 1.9. Contact Phone Number
- 1.10. Additional Application Contact Name
- 1.11. Additional Contact Title
- 1.12. Additional Contact Phone Number
- 1.13. Additional Contact Email Address
- 1.14. Bar License No. (if applicable)

## 2. PROPOSED SERVICES

- 2.1. Describe your proposed legal services offering in detail.

Please include (i) who provides the legal services, (ii) how consumers will access/receive these services, and (iii) what your service will do for your customers.

- 2.2. Describe the entity business model you want authorized in the Sandbox, including the management structure which will oversee direct legal service providers.

- 2.3. Why is your proposal eligible to enter the Sandbox?

Identify the specific model, service or product innovations that are not permitted under the traditional rules governing the practice of law.

- 2.4. Describe your target consumer(s).

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.

2.5. Which service models are you seeking to use? Select all that apply.

- ☐ Lawyers employed or managed by a nonlawyer
- ☐ Less than 50% nonlawyer ownership
- ☐ More than 50% nonlawyer ownership
- ☐ Lawyers sharing fees with non lawyers
- ☐ Legal Services Platform
- ☐ Nonlawyer provider<sup>11</sup> with lawyer involvement<sup>12</sup>
- ☐ Nonlawyer provider without lawyer involvement<sup>13</sup>
- ☐ Software provider with lawyer involvement
- ☐ Software provider without lawyer involvement
- ☐ Other

2.6. Which legal service categories are you seeking to offer?

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Accident/Injury                           | <input type="checkbox"/> Education            | <input type="checkbox"/> Housing - Rental                    |
| <input type="checkbox"/> Adult Care                                | <input type="checkbox"/> Employment           | <input type="checkbox"/> Marriage and Family                 |
| <input type="checkbox"/> Business                                  | <input type="checkbox"/> End of Life Planning | <input type="checkbox"/> Military                            |
| <input type="checkbox"/> Criminal <sup>14</sup> - Expungement ONLY | <input type="checkbox"/> Financial Issues     | <input type="checkbox"/> Native American + Tribal Issues     |
| <input type="checkbox"/> Discrimination                            | <input type="checkbox"/> Immigration          | <input type="checkbox"/> Public Benefits                     |
| <input type="checkbox"/> Domestic Violence                         | <input type="checkbox"/> Healthcare           | <input type="checkbox"/> Real Estate                         |
|  |   | <input type="checkbox"/> Traffic - civil actions / citations |

2.7. If your proposed model includes either nonlawyer or software providers of legal services, please provide detail on

- 2.7.1. what legal services those providers will be offering consumers (e.g. legal information, legal process assistance, basic legal advice, etc.)
- 2.7.2. (b) how you plan to ensure the competency and quality of those legal services (e.g. education, types and duration of training, testing, lawyer review of services, auditing, etc.).

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<sup>11</sup> Provider means legal practitioner: a provider who or which is practicing law, including offering legal advice.

<sup>12</sup> Involvement denotes a range of activities, including guidance on initial development of forms, scripts, processes, software. It could mean a lawyer does sample reviews of product/service performance. It could mean a lawyer is available to advise the nonlawyer provider as needed - including via red flag trap doors in software.

<sup>13</sup> "Without lawyer involvement" means either (1) a Utah-licensed lawyer provides guidance and oversight at the front end of the development of the service model only but has no ongoing oversight, or (2) no Utah-licensed lawyer is involved in the development or provision of legal service at all.

<sup>14</sup> \*\*Please note\*\* At this time nontraditional service providers (nonlawyers or software providers) will only be authorized to provide expungement-related services. Lawyer employees can provide general criminal legal services.



### 3. RISK ASSESSMENT

The Innovation Office must assess whether new legal service models cause consumers to get inappropriate or otherwise flawed legal results, fail to exercise legal rights through ignorance or bad advice, or purchase an unnecessary or inappropriate legal service.

- 3.1. Fully and candidly discuss the risks your customers might face if they use your proposed model, including each of the risks described above.
- 3.2. Describe the specific ways you will identify, track, and mitigate the risks to consumers in your proposed model.  
These efforts could include quality control measures, training, provider testing.
- 3.3. Please describe your consumer complaint process.

### 4. BENEFITS TO UTAH CONSUMERS

The Innovation Office is assessing potential benefits of proposed offerings to the Utah legal market.

- 4.1. Describe how your model will provide higher quality, more cost effective, and more accessible legal services for your target consumers.
- 4.2. Does your proposal comply with applicable Utah legal requirements?  
For example: staffed by UT licensed attorneys, built to complete state legal forms.
- 4.3. Identify which of your service models are ready to immediately implement.  
The Office of Innovation is only authorized to consider proposals which are ready to begin offering legal services not currently authorized in Utah at the time of authorization.

### 5. CONFIRMATION OF ELIGIBILITY

- 5.1. List 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").
- 5.2. List all persons and entities who will wholly or partially (greater than 10%) finance the business of your proposed entity ("financing persons").
- 5.3. Please note that no financing person may be a disbarred or suspended lawyer. List all controlling persons who are disbarred or suspended lawyers.

- 5.4. List all controlling persons or financing persons of your proposed entity who have a felony criminal history.
- 5.5. List all persons who will be in a managerial role over the direct provision of legal services to consumers who are disbarred lawyers.
- 5.6. List all persons who will be in a managerial role over the direct provision of legal services to consumers who have a felony criminal history.
- 5.7. Please select the most accurate description: My proposed entity has a material corporate relationship and/or business partnership with:
- ☐ A disbarred or suspended lawyer
  - ☐ An individual with a felony criminal history
  - ☐ Neither a disbarred / suspended lawyer nor an individual with a felony criminal history
- 5.8. Disclose any history of state or federal criminal (misdemeanor or felony) conviction, state or federal consent decree, or state or federal enforcement action resulting in sanctions (disgorgement, civil penalties, and/or injunction) for the entity and, if applicable, its parent and other affiliated companies.
- 5.9. Disclose whether the entity, parent, and other affiliated companies are, to their knowledge, currently subject to a state or federal criminal investigation or state or federal enforcement action.

I confirm that no financing persons listed in this application are disbarred or suspended lawyers.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

## SELLING OF CONSUMER DATA DISCLOSURE

Please indicate whether your business model includes the sharing or selling of consumer data in any form to third parties.

- ☐ Yes
- ☐ No

## PUBLIC APPLICATION

Your application could be made publicly available. You will have the opportunity to make a claim of business confidentiality for specific information that would qualify for protection under GRAMA Section 63G-2-305. Making false or materially misleading statements in this application is a basis for loss of authorization to practice within the Sandbox. Other criminal and civil sanctions may also apply.

- ☐ I understand.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

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# SANDBOX PARTICIPANT GRAMA CLAIM OF BUSINESS CONFIDENTIALITY

Pursuant to Utah Code Section [63G-2-305\(1\) and \(2\)](#), and in accordance with Section [63G-2-309](#),  
\_\_\_\_\_ (company name) asserts a claim of business confidentiality  
to protect the following information submitted as part of an Application for authorization to offer legal  
services in the Sandbox.

- ☐ non-public financial statements
- ☐ specific employee name and contact information
- ☐ specific customer information, client lists, or subscription lists
- ☐ other (specify):

This claim is asserted because this information requires protection as it includes:

- ☐ trade secrets as defined in Utah Code Section [13-24-2](#) ("Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.)
- ☐ commercial information or non-individual financial information obtained from a person if:
  - (a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future; [and]
  - (b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access.

Following is a concise statement of reasons supporting the claim of business confidentiality:

Signed: \_\_\_\_\_

On behalf of (company): \_\_\_\_\_

Date: \_\_\_\_\_

# APPENDIX B:

## DATA REPORTING PROTOCOL AND TEMPLATES

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### RISK REPORTING PROTOCOL: LOW AND LOW/MODERATE RISK

(as of January 30, 2021)

[Data Reporting Template: Low and Low/Moderate Risk HERE](#)

#### Overview and Reporting Timeline

##### Timing:

- Low risk Utah Sandbox approved entities will report on a quarterly basis. Low/moderate risk Utah Sandbox approved entities will report on a monthly basis.
- Data reports must be submitted by the 5<sup>th</sup> of each applicable reporting month as an Excel file (.xlsx or .xls) via email.

##### Reporting Method:

- Data elements are described in the Office of Innovation's "Data Submission Template" Excel Workbook. An example of data reporting (3 clients and 5 services) can be found in the "Data Report Template" worksheet in the Data Submission Template Excel Workbook.
  - This template is emailed to each Sandbox entity on or around the time of approval. It is also available upon email request from the Office of Legal Services Innovation.
- Each Sandbox entity data report submission will cover active and completed services.
- Data elements are found in the columns of the Data Submission Template Excel Workbook.
  - Data elements are what entities must put in the Excel cells for each distinct service addressing a distinct legal matter. The Innovation Office has set these data elements, and they are listed in the Data Submission Template. Entities must select the appropriate value to reflect the consumer interaction from the prescribed values in the Data Submission Template.
  - Unless permitted (i.e., Column G describing complaints, which are open-ended response values), entities cannot create their own values when reporting data.
- Reporting is based on services used to address a legal problem and a client can seek/receive multiple legal services to address legal problems/matters across time.
  - Rows represent a distinct legal service to address a distinct legal problem/matter of a client, and columns represent required data elements per row.
  - Each row of the Data Report represents a distinct legal service to address a distinct legal problem/matter. This should be reflected in the entity reports – a new service is a new line for that customer ID.

- o Some services to address legal problems/matters will open and “complete” (close, loss to follow-up, or abandon) within the same reporting time period (i.e. during one month). However, some services will close in a subsequent time period (i.e. a service is started in September but not completed until December). To capture service progression across time, data submissions will include newly opened and previously opened services as described below.

## Reported Data Elements for Each Distinct Legal Service

Columns A-H are reported every reporting period for all open, closed, abandoned, and lost to follow-up services. Note that most of the information will remain static after first reporting (columns A-F and columns I-P).

Column G is reported on an ongoing basis from service start date through end date as well as after the service completes (to capture lagged complaints). Column H is reported between service start date and end date.

Columns I-P are only reported after a service completed (closed, lost to follow-up, or abandoned--after the service end date).

Table 1. Data collection timing for low and low/moderate risk entities.

	Collected at Service Start Date (orange columns)	Collected on an Ongoing Basis (and update as applicable) (blue columns)	Collected at the Service End Date (pink columns)
Column of Data	Columns A-F	Columns G-H	Columns I-M

### **Data Elements Established at Service Start Date**

- Columns A through F will be established and recorded at the time of service start date, after reasonable legal intake or triage. Entities must report Columns A through E for all services initiated during the relevant reporting month.
- Column A will be the “Provider Number.” The four-digit provider number is assigned by the Office of Legal Services Innovation at or around the time of Sandbox entity approval.
- Column B is the “Customer ID.” The Customer ID is a de-identified “client ID” that is uniquely associated with a specific client and does not change across time. It must be deidentified when reporting to the Office of Legal Services Innovation but also meaningful to the legal services provider. The legal provider should be able to re-link the deidentified Customer ID with client identifiable data to enable reporting on the provision of services to address legal problems/matters across time for the same client.

- Column C is the “Service ID.” The service ID is a de-identified alphanumeric field that is uniquely associated with a distinct service provided to resolve a distinct legal matter of a client. This ID remains attached to a service and does not change across time. The service ID is unique to a distinct service instance. No rows should have a duplicate Service ID. The legal provider/entity should create this de-identified value for each service. The deidentified service ID should be able to be reconnected to the identifiable data for monitoring and reporting across time. The unique value distinguishes instances of service and therefore each row. For example, a client could seek a service of legal advice regarding a will. However, later, a client could seek a distinct legal service of document preparation for the will. These would be two distinct services addressing a legal problem and therefore should be two distinct rows of data. Additionally, since a row represents a service, if a complaint is communicated regarding document preparation that complaint would be linked to the service of document preparation row but not the legal advice service row.
- Column D is the “Legal Category.” Legal category is defined under the “Office Defined Values” worksheet of the Data Submission Template Excel Workbook. The linkages of the legal category and subordinate legal problems/matters are also found in the “Legal Problem Category Outcome” worksheet. For each service, a valid legal category will be selected.
  - o A pull-down menu of valid Legal Categories is found in Column D in the Data Report Template Excel Worksheet. The service category should also match a Sandbox category of legal practice approved for the entity through the Office of Legal Services Innovation.
  - o There are currently 21 valid legal service category codes. 19 of the 21 service categories are permissible within the Sandbox as performed by a lawyer/lawyer employee, nonlawyer provider, or software provider of legal services.<sup>15</sup> Legal services provided for the remaining two legal service categories<sup>16</sup> can only be performed by a lawyer /lawyer employee, when Sandbox entity designation is based on nonlawyer entity ownership or fee sharing arrangements.
  - o Note in the data template that column D should be selected before column E to limit legal problem/matter options.
- Column E is the Legal Problem/Matter. Legal problems/matters are those listed under the “Legal Problem Category Outcome” worksheet found in the “Data Submission Template” Excel Workbook. The Legal Problem/Matter valid codes are prescribed by the Office of Legal Services Innovation and may be altered in the future by the office if an unanticipated matter/problem type increases in prevalence thereby justifying a specific code being developed or the permissible types of legal problems/matters allowable within the Sandbox expand. Each row in the data report must include an approved associated legal problem/matter code. The legal problem/matter must link to an applicable service category.
  - o A pull-down menu of valid Legal Problems/Matters is found in Column E in the Data Report Template Excel Worksheet.
  - o Columns D and E should be reported after the service start date (i.e., after legal triage/intake identified a client service).

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<sup>15</sup> viz., Accident/Injury; Adult Care; Business; Criminal - Expungement Only; Discrimination; Domestic Violence; Education; Employment; End of Life Planning; Financial Issues; Healthcare; Housing [Rental]; Immigration; Marriage and Family; Military; Native American and Tribal Issues; Public Benefits; Real Estate; Traffic Citation

<sup>16</sup> (Criminal – All Other [in this case all criminal beyond expungements] and Other [all other categories not covered in the other 20 categories])



- Column F is the legal service Start Date. The start date should be the day (in the format of month/day/year) that legal triage/intake identified a distinct client service to address a legal problem/matter.
  - o Note that some legal services or legal problems/matters may emerge after the originating service(s)/problem(s). The start date of a legal service should be the point in time of discovering a distinct service to address a distinct legal problem/matter, even if there is a pre-existing service/problem. For example, if legal advice to address a special education (IEP) problem begins on September 1, 2021 as an originating service for a new client, and, later, on November 18, 2021 an additional service (limited assistance-legal communication) related to a 504-accommodation problem emerges for this client, these would be two separate rows in the data report with different service start dates for the same client.

### **Data Elements Established on an Ongoing Basis**

- Column G is Complaints Between Start Date and Present and covers complaints beginning with the start of the legal service through present (including pertinent complaints after service completion).
  - o Complaints linked to a service to resolve a legal matter should be logged on an ongoing basis. Column G should include all accumulated complaints linked to a service across time. This column is intended to log complaints from service start date to present. Complaints related to a service can be made and must be logged if the complaint occurs during an open service (active) or after completion (closed, lost to follow-up, or abandoned).
  - o If no complaints have been made related to the service to resolve a legal matter, then note complaints as "none" for the complaints (column G) column.
  - o If a complaint has been made by a client related to a service, the complaint should be described in a manner that covers the substance of the complaint while not identifying a client with the content of the complaint. Note that a client could have a general complaint that applies to all or some of the client's services to address legal matters. Attach general complaints to all pertinent legal services provided to a complainant. A client could also have a specific complaint that only applies to a single service or matter, even if multiple services or matters were addressed. In the case of specific complaints, only attach those complaints to the pertinent service of a client.
- Column H is the Service Status. The Office defined service status options are Open, Closed, Abandoned, and Lost to Follow-up. Open services are those within a reporting period that are ongoing (active).
  - o Closed, abandoned, and lost to follow-up service status are options related to "completed" (no longer active) services.
    - Abandoned is a status in which the client service is no longer ongoing due to the legal provider intentionally relinquishing interest in a service due to issues such as conflicts, inadequate resources to provide a reasonable level of service, or generally giving up on the pursuit of the service due to legal provider prioritization.

- A service lost to follow-up is no longer ongoing due to the client's lack of engagement in a service regardless of reasonable outreach efforts by the legal provider.
- A closed service is one that is no longer ongoing for a reason other than abandonment or lost to follow-up, such as completion of legal advice, referral, document/form, court filing, settlement/negotiation, or service (brief or extensive).

### **Data Elements Established at Service End Date**

- Column I is the End Date, which is the day (in the format of day/month/year) that the service was designated as completed (abandoned, lost to follow-up, or closed).
- Columns J through K cover the Method of Service Delivery. Columns J through K are designed to capture if a particular method of service delivery was utilized to deliver the service to address a legal matter. There are six types of methods of service delivery within the Utah Sandbox.<sup>17</sup>
  - Note that a client could experience multiple methods of service delivery for one legal service addressing a legal problem/matter. When a method was used to deliver a service, select Yes to each applicable method of service delivery column and No for not applicable type(s) of legal service. If only one type of method of service delivery was used to resolve a legal problem/matter, add Yes to only the applicable column (Column J through K) and No to the remaining five columns.
- Column L describes the Amount Paid by a client for a distinct service. If a client paid for services to address a bundle of legal problems/matters, please reasonably spread that payment proportionally across applicable matters in a manner that, when summed, it would total to the amount paid by a client for services across all legal matters. Report the amount paid by a client from start to end of service (closed, abandoned, or lost to follow-up). If a client only has one service to address one legal problem/matter, then all of the amounts paid should be linked to the singular service. Column L should be the best estimate for the amount paid for the service to address a legal problem/matter. If a case is still open, then leave blank until the service completes (closes, abandons, or is lost to follow-up).
- Column M is the Geographic Location of the client that best represents the client's location while experiencing legal services. Geographic location should be noted as the representative city and state (in the format of city, state abbreviation) of the client. If a client has multiple distinct legal services across time, note the city, state most reasonably representative of the pertinent service.

In the data report, each row represents a distinct service to resolve a legal matter/problem and should include pertinent information for Columns A-M. Content of the report must follow the Risk Reporting Protocol and the supporting Data Submission Template Excel Workbook. Clients with multiple services

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<sup>17</sup> J) Lawyer/Lawyer Employee; K) Software Provider with Lawyer Involvement (legal document/ form completion only)

or legal problems/matters should have multiple rows documenting the unique progression of each distinct service. Note the service should be distinct in service offering, legal problem/matter addressed by a service, and/or distinct in time (meaning that a client with a previously completed service type could re-engage with the same service in the future for a different level of service, further assistance under the previous scope of service, or a different legal problem/matter).

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# RISK REPORTING PROTOCOL: MODERATE AND HIGH RISK

(as of January 30, 2021)

[Data Reporting Template: Moderate and High Risk HERE](#)

## Overview and Reporting Timeline

### Timing:

- Moderate and high risk Utah Sandbox approved entities will report on a monthly basis.
- Data reports must be submitted by the 5<sup>th</sup> of each applicable reporting month as an Excel file (.xlsx or .xls) via email.

### Reporting Method:

- Data elements are described in the Office of Innovation's "Data Submission Template" Excel Workbook. An example of data reporting (3 clients and 5 services) can be found in the "Data Report Template" worksheet in the Data Submission Template Excel Workbook.
  - This template is emailed to each Sandbox entity on or around the time of approval. It is also available upon email request from the Office of Legal Services Innovation.
- Each Sandbox entity data report submission will cover active and completed services.
- Data elements are found in the columns of the Data Submission Template Excel Workbook.
  - Data elements are what entities must put in the Excel cells for each distinct service addressing a distinct legal matter. The Innovation Office has set these data elements, and they are listed in the Data Submission Template. Entities must select the appropriate value to reflect the consumer interaction from the prescribed values in the Data Submission Template.
  - Unless permitted (i.e., Column H describing complaints, which are open-ended response values), entities cannot create their own values when reporting data.
- Reporting is based on services used to address a legal problem and a client can seek/receive multiple legal services to address legal problems/matters across time.
  - Rows represent a distinct legal service to address a distinct legal problem/matter of a client, and columns represent required data elements per row.
  - Each row of the Data Report represents a distinct legal service to address a distinct legal problem/matter. This should be reflected in the entity reports – a new service is a new line for that customer ID.
  - Some services to address legal problems/matters will open and "complete" (close, loss to follow-up, or abandon) within the same reporting time period (i.e. during one month). However, some services will close in a subsequent time period (i.e. a service is started in September but not completed until December). To capture service progression across time, data submissions will include newly opened and previously opened services as described below.

## Reported Data Elements for Each Distinct Legal Service

Columns A-I are reported every reporting period for all open, closed, abandoned, and lost to follow-up services. Note that most of the information will remain static after first reporting (columns A-G and columns J-U).

Column H is reported on an ongoing basis from service start date through end date as well as after the service completes (to capture lagged complaints). Column I is reported between service start date and end date.

Columns J-U are only reported after a service completed (closed, lost to follow-up, or abandoned--after the service end date).

Table 1. Data collection timing for moderate and high risk entities.

	Collected at Service Start Date (orange columns)	Collected on an Ongoing Basis (and update as applicable) (blue columns)	Collected at the Service End Date (pink columns)
Column of Data	Columns A-G	Columns H-I	Columns J-U

### **Data Elements Established at Service Start Date**

- Columns A through G will be established and recorded at the time of service start date, after reasonable legal intake or triage. Entities must report Columns A through G for all services initiated during the relevant reporting month.
- Column A will be the "Provider Number." The four-digit provider number is assigned by the Office of Legal Services Innovation at or around the time of Sandbox entity approval.
- Column B is the "Customer ID." The Customer ID is a de-identified "client ID" that is uniquely associated with a specific client and does not change across time. It must be deidentified when reporting to the Office of Legal Services Innovation but also meaningful to the legal services provider. The legal provider should be able to re-link the deidentified Customer ID with client identifiable data to enable reporting on the provision of services to address legal problems/matters across time for the same client.
- Column C is the "Service ID." The service ID is a de-identified alphanumeric field that is uniquely associated with a distinct service provided to resolve a distinct legal matter of a client. This ID remains attached to a service and does not change across time. The service ID is unique to a distinct service instance. No rows should have a duplicate Service ID. The legal provider/entity should create this de-identified value for each service. The deidentified service ID should be able to be reconnected to the identifiable data for monitoring and reporting across time. The unique value distinguishes instances of service and therefore each row. For example, a client could seek a service of legal advice regarding a will. However, later, a client could seek a distinct legal service of document preparation for the will. These would be two

distinct services addressing a legal problem and therefore should be two distinct rows of data. Additionally, since a row represents a service, if a complaint is communicated regarding document preparation that complaint would be linked to the service of document preparation row but not the legal advice service row. Corresponding service fees or charges would also be linked to the specific applicable service row. For instance, if advice is a client charge of \$10 and document preparation is \$120, then related service charges paid should be reported in service ID related rows (i.e., legal advice=\$10; document preparation=\$130). If another client is only charged one time for document preparation at \$130, then the legal advice row would be \$0 and document preparation would be \$130 for the corresponding service ID row for that client. Similarly, outcomes would be linked to the most appropriate service ID row. In the will example, the outcome of legal advice could be “significant outcome not on this list,” whereas document preparation would be the outcome of “end of life documented drafted.”

- Column D is the **Scope of Service Sought** by a client to resolve a legal problem/matter. The identification of scope of service sought should occur after reasonable legal triage/intake of the legal matter and the start of a legal service. Column D (scope of service sought) should be captured and reported at the time of the start of a service.
  - o There are 14 valid values of services sought.<sup>18</sup> There is a pull- down menu in the Data Report Template worksheet’s cells under column D to identify valid value.
- Column E is the **“Legal Category.”** Legal category is defined under the “Office Defined Values” worksheet of the Data Submission Template Excel Workbook. The linkages of the legal category and subordinate legal problems/matters are also found in the “Legal Problem Category Outcome” worksheet. For each service, a valid legal category will be selected.
  - o A pull-down menu of valid Legal Categories is found in Column E in the Data Report Template Excel Worksheet. The service category should also match a Sandbox category of legal practice approved for the entity through the Office of Legal Services Innovation.
  - o There are currently 21 valid legal service category codes. 19 of the 21 service categories are permissible within the Sandbox as performed by a lawyer/lawyer employee, nonlawyer provider, or software provider of legal services.<sup>19</sup> Legal services provided for the remaining two legal service categories<sup>20</sup> can only be performed by a lawyer /lawyer employee, when Sandbox entity designation is based on nonlawyer entity ownership or fee sharing arrangements.
  - o Note in the data template that column E should be selected before column F to limit legal problem/matter options.
- Column F is the **Legal Problem/Matter**. Legal problems/matters are those listed under the “Legal Problem Category Outcome” worksheet found in the “Data Submission Template” Excel Workbook. The Legal Problem/Matter valid codes are prescribed by the Office of Legal

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<sup>18</sup> Question answered – not legal advice nor legal assistance (legal information); Limited assistance - legal advice; Limited assistance – document/form completion; Limited assistance – legal communication; Limited assistance - filing court documents; Limited assistance – Client preparation; Limited assistance—Supported negotiation or transaction; Extensive assistance—Negotiated transaction; Extensive assistance – Negotiation of a settlement without litigation; Extensive assistance – Negotiating of a settlement with litigation; Extensive assistance – representation in an administrative or court decision; Extensive assistance – Other than settlement negotiation, litigation, or court/administrative decision; Full representation; Referral.

<sup>19</sup> viz., Accident/Injury; Adult Care; Business; Criminal - Expungement Only; Discrimination; Domestic Violence; Education; Employment; End of Life Planning; Financial Issues; Healthcare; Housing [Rental]; Immigration; Marriage and Family; Military; Native American and Tribal Issues; Public Benefits; Real Estate; Traffic Citation

<sup>20</sup> (Criminal – All Other [in this case all criminal beyond expungements] and Other [all other categories not covered in the other 20 categories])

Services Innovation and may be altered in the future by the office if an unanticipated matter/problem type increases in prevalence thereby justifying a specific code being developed or the permissible types of legal problems/matters allowable within the Sandbox expand. Each row in the data report must include an approved associated legal problem/matter code. The legal problem/matter must link to an applicable service category.

- o A pull-down menu of valid Legal Problems/Matters is found in Column F in the Data Report Template Excel Worksheet.
  - o Columns E and F should be reported after the service start date (i.e., after legal triage/intake identified a client service). Note that selection of a legal problem/matter in column F will limit legal outcomes (column T) to those pertinent to the legal category.
- Column G is the legal service Start Date. The start date should be the day (in the format of month/day/year) that legal triage/intake identified a distinct client service to address a legal problem/matter.
  - o Note that some legal services or legal problems/matters may emerge after the originating service(s)/problem(s). The start date of a legal service should be the point in time of discovering a distinct service to address a distinct legal problem/matter, even if there is a pre-existing service/problem. For example, if legal advice to address a special education (IEP) problem begins on September 1, 2021 as an originating service for a new client, and, later, on November 18, 2021 an additional service (limited assistance-legal communication) related to a 504-accommodation problem emerges for this client, these would be two separate rows in the data report with different service start dates for the same client.

### **Data Elements Established on an Ongoing Basis**

- Column H is Complaints Between Start Date and Present and covers complaints beginning with the start of the legal service through present (including pertinent complaints after service completion).
  - o Complaints linked to a service to resolve a legal matter should be logged on an ongoing basis. Column H should include all accumulated complaints linked to a service across time. This column is intended to log complaints from service start date to present. Complaints related to a service can be made and must be logged if the complaint occurs during an open service (active) or after completion (closed, lost to follow-up, or abandoned).
  - o If no complaints have been made related to the service to resolve a legal matter, then note complaints as "none" for the complaints (column H) column.
  - o If a complaint has been made by a client related to a service, the complaint should be described in a manner that covers the substance of the complaint while not identifying a client with the content of the complaint. Note that a client could have a general complaint that applies to all or some of the client's services to address legal matters. Attach general complaints to all pertinent legal services provided to a complainant. A client could also have a specific complaint that only applies to a single service or matter, even if multiple services or matters were addressed. In the case of specific complaints, only attach those complaints to the pertinent service of a client.

- Column I is the Service Status. The Office defined service status options are Open, Closed, Abandoned, and Lost to Follow-up. Open services are those within a reporting period that are ongoing (active).
  - Closed, abandoned, and lost to follow-up service status are options related to “completed” (no longer active) services.
    - Abandoned is a status in which the client service is no longer ongoing due to the legal provider intentionally relinquishing interest in a service due to issues such as conflicts, inadequate resources to provide a reasonable level of service, or generally giving up on the pursuit of the service due to legal provider prioritization.
    - A service lost to follow-up is no longer ongoing due to the client’s lack of engagement in a service regardless of reasonable outreach efforts by the legal provider.
    - A closed service is one that is no longer ongoing for a reason other than abandonment or lost to follow-up, such as completion of legal advice, referral, document/form, court filing, settlement/negotiation, or service (brief or extensive).

### **Data Elements Established at Service End Date**

- Column J is the End Date, which is the day (in the format of day/month/year) that the service was designated as completed (abandoned, lost to follow-up, or closed).
- Column K covers Scope of Service Received. The scope of service received selected should be the one used to complete the scope of service to address a legal problem/matter. Scope of service received is recorded at the end date of legal service (the date of service closure, abandonment, or lost to follow-up). If the service is still open (not completed), leave services received blank until the service completes (closes, abandons, or loss to follow-up).
  - There is a pull-down menu in the Data Report Template worksheet’s cells under column K to identify valid value. The valid values for services received are similar to those used to respond to column D, services sought.
    - Services received further breaks out referral as: Referral – self-help; Referral - legal aid/pro bono; and Referral – lawyer.
    - Services received also adds: No service received due to abandonment or lost to follow-up.
    - Note that the "no service" code should only be used when no service was provided to a client for a legal problem between the start and end date. Please select the most applicable scope of service provided.
- Columns L through Q cover the Method of Service Delivery. Columns L through Q are designed to capture if a particular method of service delivery was utilized to deliver the service to address a legal matter. There are six types of methods of service delivery within the Utah Sandbox.<sup>21</sup>

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<sup>21</sup> L) Lawyer/Lawyer Employee; M) Software Provider with Lawyer Involvement (legal document/ form completion only); N) Software Provider with Lawyer Involvement; O) Nonlawyer Provider with Lawyer Involvement; P) Software Provider without Lawyer Involvement; and Q) Nonlawyer Provider without Lawyer Involvement



- o Note that a client could experience multiple methods of service delivery for one legal service addressing a legal problem/matter. When a method was used to deliver a service, select Yes to each applicable method of service delivery column and No for not applicable type(s) of legal service. If only one type of method of service delivery was used to resolve a legal problem/matter, add Yes to only the applicable column (Column L through Q) and No to the remaining five columns.
- Column R describes the Amount Paid by a client for a distinct service. If a client paid for services to address a bundle of legal problems/matters, please reasonably spread that payment proportionally across applicable matters in a manner that, when summed, it would total to the amount paid by a client for services across all legal matters. Report the amount paid by a client from start to end of service (closed, abandoned, or lost to follow-up). If a client only has one service to address one legal problem/matter, then all of the amounts paid should be linked to the singular service. Column S should be the best estimate for the amount paid for the service to address a legal problem/matter. If a case is still open, then leave blank until the service completes (closes, abandons, or is lost to follow-up).
- Column S describes the Legal Outcome of a service. Valid legal outcomes are located in the “Legal Problem Category Outcome” worksheet in the Data Submission Template Excel Workbook. The valid Legal Outcome codes are prescribed by the Office of Legal Services Innovation but may be altered in the future by the Office if an accurate, useful, and meaningful legal outcome emerges and is justified.
  - o Legal outcomes vary by legal service category. Note that the data template also limits to valid value of legal outcomes after selecting Column F (legal problem/matter).
  - o When a service closes, use an applicable outcome code from column S of the Data Report Template (also found under column C of the Legal Problem Category Outcomes worksheet in the Data Submission Template Excel Workbook).
    - If a service completes/closes but an outcome is still ongoing/pending, use the code “outcome pending.” Outcome pending assumes that a service has closed/completed, and an outcome is potentially knowable but is not known at the end date.
      - If the outcome becomes known at some time after the end date, replace ‘outcome pending’ with an applicable outcome and notify the Office of Legal Services Innovation of the change to the outcome that replaces outcome pending.
    - If a service closes and the outcome is not known and is reasonably unknowable, then select “outcome unknown”. If a service ends in abandonment or loss to follow-up, then select “outcome unknown”.
- Column T reports any applicable Financial Outcome on a monetary scale. The financial outcome should be the direct sum of monetary losses or gains by a client linked to the provision of legal services.
  - o If a financial outcome was a result of a bundle of legal service or matters for a client, attach the monetary value to the most applicable service only one time. Do not count the same financial outcome multiple times across related services. For example, if a client received legal services for three legal problems (protective order, divorce, and support) and a client was awarded \$1,000 per month in child support, the \$1,000 per month gain would be linked to “support” even if the legal outcomes of support, divorce, and protective order resulted in outcomes sought by the client.

- o If a service is still open, then leave this cell blank until the service completes.
- o If a service is abandoned or lost to follow-up, then add "outcome unknown".
- o If a service closes but the financial outcome is currently unknown but is potentially knowable in the future, then add "outcome pending". If a financial outcome becomes known, the amount should be reported to the Office of Legal Services Innovation.
- o If a service closes but the legal matter type is not applicable to a financial outcome, then add "not applicable" (see Column F of the Office Defined Values Worksheet).
- Column U is the Geographic Location of the client that best represents the client's location while experiencing legal services. Geographic location should be noted as the representative city and state (in the format of city, state abbreviation) of the client. If a client has multiple distinct legal services across time, note the city, state most reasonably representative of the pertinent service.

In the data report, each row represents a distinct service to resolve a legal matter/problem and should include pertinent information for Columns A-U. Content of the report must follow the Risk Reporting Protocol and the supporting Data Submission Template Excel Workbook. Clients with multiple services or legal problems/matters should have multiple rows documenting the unique progression of each distinct service. Note the service should be distinct in service offering, legal problem/matter addressed by a service, and/or distinct in time (meaning that a client with a previously completed service type could re-engage with the same service in the future for a different level of service, further assistance under the previous scope of service, or a different legal problem/matter).

# APPENDIX C: PARTICIPANT REQUEST FORMS

## Contents

Request for Reconsideration

Appeal of Denial

Request for Extension of the Pending Period

Request for Extension of Sandbox Authorization Period

Request to Change Authorization Scope

Application to Exit the Sandbox

Request for Reconsideration (Sandbox Exit)

Appeal of Denial (Sandbox Exit)

Request to Withdraw

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# REQUEST FOR RECONSIDERATION

## I. PROVIDER INFORMATION

Entity Name	
Date of Application to Exit the Sandbox <sup>22</sup> :	
Date of Denial of Application to Exit the Sandbox by Innovation Office	
Stated Reason for Denial	<input type="checkbox"/> Inadequate record on consumer harm <input type="checkbox"/> Poor record of compliance with Innovation Office requirements <input type="checkbox"/> Other:

## II. REASON FOR REQUEST FOR RECONSIDERATION

Describe your reason for requesting the Innovation Office to reconsider its denial of your Application to Exit the Sandbox. Please directly address the reasons given by the Office for Denial.

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<sup>22</sup> Please note: As per the Innovation Office Manual, an entity has 30 days from the date of a Denial of Application to Exit the Sandbox issued by the Innovation Office to submit a Request for Reconsideration (Sandbox Exit) by the Office. Requests submitted past this 30 day window will not be considered.

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# APPEAL OF DENIAL

## I. PROVIDER INFORMATION

Entity Name	
Date of Initial Application	
Date of Initial Denial	
Date of Request for Reconsideration	
Date of Denial of Reconsideration <sup>23</sup>	
Reason(s) for Denial of Reconsideration	<ul style="list-style-type: none"><li><input type="checkbox"/> Insufficiently clear proposal of business or service model</li><li><input type="checkbox"/> Inability to report data as required by the Office</li><li><input type="checkbox"/> Proposal not ready to implement</li><li><input type="checkbox"/> Proposed model or service is already permitted under the traditional rules (Sandbox authorization is not needed)</li><li><input type="checkbox"/> Disbarred lawyer owning more than 10% of entity</li><li><input type="checkbox"/> Entity is merely a vehicle for an out of state lawyer to practice within Utah</li><li><input type="checkbox"/> Request for Reconsideration submitted after 30 day window for submission</li><li><input type="checkbox"/> Other:</li></ul>

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<sup>23</sup> Please note: As per the Innovation Office Manual, an entity has 30 days from the date of a Denial of Reconsideration by the Innovation Office to submit an Appeal of Denial. Appeals submitted outside this 30 day window will not be considered.

## II. REASON FOR APPEAL

Describe your reason for appealing the Innovation Office's Denial of Reconsideration. Please directly address the reasons given by the Office for Denial.

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# REQUEST FOR EXTENSION OF AUTHORIZATION TERM

## PROVIDER INFORMATION

Entity Name	
Request Date <sup>24</sup>	
Date of Authorization Order	
Launch Date	
Original Authorization Termination Date	
Length of Extension Request	

### I. REASON FOR REQUEST FOR EXTENSION AUTHORIZATION PERIOD

1. Please explain why you need the Office to extend the Authorization Period for your entity.

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<sup>24</sup> Please note: As per the Innovation Office Manual, entities are usually authorized for an initial term of 24 months in the Sandbox.

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# REQUEST FOR EXTENSION OF PENDING PERIOD

## I. PROVIDER INFORMATION

Entity Name	
Date of Authorization Order	
Original Date of Termination of Pending Period (180 days from Date of Authorization Order)	
Proposed New Launch Date	

## II. REASON FOR REQUEST FOR EXTENSION OF THE PENDING PERIOD

1. Please explain why you need the Office to extend the Pending Period for your entity.
2. Please describe your implementation plan to launch services by the proposed launch date stated above.



# REQUEST TO CHANGE AUTHORIZATION SCOPE

## I. PROVIDER INFORMATION

Entity Name	
Date of Authorization Order	
<p>Current Service Model Authorization</p> <p>(Please mark those service models for which you currently have Sandbox authorization)</p>	<input type="checkbox"/> Lawyer employed or managed by a nonlawyer <input type="checkbox"/> Less than 50% nonlawyer ownership <input type="checkbox"/> Software provider with lawyer involvement - legal document completion <input type="checkbox"/> Intermediary platform <input type="checkbox"/> 50% or more nonlawyer ownership <input type="checkbox"/> Fee sharing with nonlawyers <input type="checkbox"/> Nonlawyer provider with lawyer involvement <input type="checkbox"/> Software provider with lawyer involvement <input type="checkbox"/> Nonlawyer provider without lawyer involvement <input type="checkbox"/> Software provider without lawyer involvement
<p>Proposed Additional Service Model Authorization Sought</p> <p>(Please mark which additional service models for which you seek authorization. If none, then do not mark any.)</p>	<input type="checkbox"/> Lawyer employed or managed by a nonlawyer <input type="checkbox"/> Less than 50% nonlawyer ownership <input type="checkbox"/> Software provider with lawyer involvement - legal document completion <input type="checkbox"/> Intermediary platform <input type="checkbox"/> 50% or more nonlawyer ownership <input type="checkbox"/> Fee sharing with nonlawyers <input type="checkbox"/> Nonlawyer provider with lawyer involvement <input type="checkbox"/> Software provider with lawyer involvement <input type="checkbox"/> Nonlawyer provider without lawyer involvement <input type="checkbox"/> Software provider without lawyer involvement
<p>Current Service Area Authorization</p> <p>(Please mark those service areas for which you currently have Sandbox authorization)</p>	<input type="checkbox"/> Accident / Injury <input type="checkbox"/> Adult Care <input type="checkbox"/> Business <input type="checkbox"/> Criminal (Expungement) <sup>25</sup> <input type="checkbox"/> Criminal (Other) <input type="checkbox"/> Discrimination <input type="checkbox"/> Domestic Violence <input type="checkbox"/> Education <input type="checkbox"/> Employment <input type="checkbox"/> End of Life Planning

<sup>25</sup> Please note: Nonlawyer providers, whether software or human, are currently limited to providing expungement services only in the criminal field. Lawyers, in accordance with their law license and Rule 1.6, may offer all criminal services.

	<input type="checkbox"/> Consumer Financial Issues <input type="checkbox"/> Healthcare <input type="checkbox"/> Housing (Rental) <input type="checkbox"/> Immigration <input type="checkbox"/> Marriage and Family <input type="checkbox"/> Military <input type="checkbox"/> Native American / Tribal Issues <input type="checkbox"/> Public Benefits <input type="checkbox"/> Real Estate <input type="checkbox"/> Traffic - Civil Actions / Citations / Misdemeanors
Proposed Additional Service Area Authorization Sought (Please mark which additional service areas for which you seek authorization. If none, then do not mark any.)	<input type="checkbox"/> Accident / Injury <input type="checkbox"/> Adult Care <input type="checkbox"/> Business <input type="checkbox"/> Criminal (Expungement) <input type="checkbox"/> Criminal (Other) <input type="checkbox"/> Discrimination <input type="checkbox"/> Domestic Violence <input type="checkbox"/> Education <input type="checkbox"/> Employment <input type="checkbox"/> End of Life Planning <input type="checkbox"/> Consumer Financial Issues <input type="checkbox"/> Healthcare <input type="checkbox"/> Housing (Rental) <input type="checkbox"/> Immigration <input type="checkbox"/> Marriage and Family <input type="checkbox"/> Military <input type="checkbox"/> Native American / Tribal Issues <input type="checkbox"/> Public Benefits <input type="checkbox"/> Real Estate <input type="checkbox"/> Traffic - Civil Actions / Citations / Misdemeanors
Proposed launch date for new service model(s) and/or service area(s)	

## II. ADDITIONAL SERVICE MODEL AUTHORIZATION

1. Please explain why you seek authorization to offer an additional service model(s). Please clearly explain what you are proposing to do.

2. If you are proposing to introduce nonlawyer service providers, please address the following:
  - a. Human nonlawyer providers (if applicable):
    - i. How will you ensure minimum competence of human nonlawyer providers on the front end (i.e. how will human nonlawyer providers be trained, tested, and launched)?
    - ii. How will you ensure ongoing quality and accuracy of service provided by human nonlawyer providers (i.e. how will you check to ensure that the services provided are legally accurate on an ongoing basis)?
  - b. Software nonlawyer providers (if applicable):
    - i. How will you ensure minimum competence of the software provider on the front end (i.e. how will the algorithm be taught and trained and how will you test it on the front end)?
    - ii. How will you ensure ongoing quality and accuracy of service provided by the software (i.e. how will you check that the legal services provided by the software are accurate on an ongoing basis)?
3. Please describe your implementation plan to launch services by the proposed launch date stated above.

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# APPLICATION TO EXIT THE SANDBOX

Please note: As per Standing Order No. 15 and the Innovation Office Manual, entities may seek to exit the Sandbox after a period of time evidencing little or no material consumer harm. The required time periods are outlined below:

- For entities categorized as low or low-moderate risk, entities may apply to exit after they have remained in GREEN for 9 consecutive months.
- For entities categorized as moderate risk, entities may apply to exit after they have remained in GREEN for 12 consecutive months.
- For entities categorized as high risk, entities may apply to exit after they have remained in GREEN for 24 consecutive months.

In considering an Application to Exit the Sandbox, the Innovation Office will review this application, the entity's history of reported data and compliance, and prepare a Recommendation on Application to Exit the Sandbox. If the Office is recommending exit, the Office will present that Recommendation, the entity's historical data, and compliance record to the Court.

If the Office denies the Application to Exit the Sandbox, the denial has the effect of keeping the entity in the Sandbox. The Office will issue a Denial of Application to Exit the Sandbox which will include the reasons for denial and a timeline for which the entity must remain in the Sandbox before it may resubmit its Application to Exit the Sandbox (i.e. 3 additional months). Reasons for denial may include (list is not exclusive and may be expanded):

- Inadequate record on consumer harm
- Poor record of compliance with Innovation Office requirements

Entities denied exit may appeal the denial by submitting an Request for Reconsideration (Exit) form. The entity has 30 days from the date of the denial to submit the Request for Reconsideration (Exit) form. Requests submitted past the 30 day window will not be considered.

If the Office denies the reconsideration, the entity may appeal to the Court. The entity has 30 days from the date of the denial of reconsideration to submit an Appeal of Denial. On receipt of the Appeal of Denial, the Innovation Office will present the entity's appeal, including all relevant data, to the Court at the next scheduled Court conference.

The Court retains complete discretion to approve or deny the entity's Application to Exit the Sandbox. Denial by the Court will return the entity to the Sandbox. The entity may reapply to exit at a later date.

Entities which have exited the Sandbox remain under the regulatory authority of the Innovation Office and will be titled Licensed Legal Service Entity. The entities' scope of authorization remains controlled by the Authorization Order. Entities will be required to submit quarterly reports on consumer complaints and updated annual disclosures on financial and controlling ownership. Entities may also be subject to licensing fees.

All relevant forms may be found at [Appendix C](#) to the Innovation Office Manual.

## I. PROVIDER INFORMATION

Entity Name	
Date of Authorization Order	
Launch Date	
Risk Category	
Number of consecutive months in GREEN before seeking exit	

## II. SUPPLEMENTAL INFORMATION

Please provide any additional information you wish the office to consider with your application to exit the Sandbox.

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# REQUEST FOR RECONSIDERATION

## SANDBOX EXIT

### I. PROVIDER INFORMATION

Entity Name	
Date of Application to Exit the Sandbox	
Date of Denial of Application to Exit the Sandbox by Innovation Office	
Stated Reason for Denial	<input type="checkbox"/> Inadequate record on consumer harm <input type="checkbox"/> Poor record of compliance with Innovation Office requirements <input type="checkbox"/> Other:

### II. REASON FOR REQUEST FOR RECONSIDERATION

Describe your reason for requesting the Innovation Office to reconsider its denial of your Application to Exit the Sandbox. Please directly address the reasons given by the Office for Denial.

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# APPEAL OF DENIAL (SANDBOX EXIT)

## I. PROVIDER INFORMATION

Entity Name	
Date of Initial Application to Exit the Sandbox	
Date of Initial Denial to Exit the Sandbox	
Date of Request for Reconsideration (Sandbox Exit)	
Date of Denial of Reconsideration (Sandbox Exit) <sup>26</sup>	
Reason(s) for Denial of Reconsideration (Sandbox Exit)	<input type="checkbox"/> Inadequate record on consumer harm <input type="checkbox"/> Poor record of compliance with Innovation Office requirements <input type="checkbox"/> Request for Reconsideration (Sandbox Exit) submitted after 30 day window for submission <input type="checkbox"/> Other:

## II. REASON FOR APPEAL

Describe your reason for appealing the Innovation Office's Denial of Reconsideration (Sandbox Exit). Please directly address the reasons given by the Office for Denial.

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<sup>26</sup> Please note: As per the Innovation Office Manual, an entity has 30 days from the date of a Denial of Reconsideration (Sandbox Exit) by the Innovation Office to submit an Appeal of Denial (Sandbox Exit). Appeals submitted outside this 30 day window will not be considered.

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# REQUEST TO WITHDRAW

## I. PROVIDER INFORMATION

Entity Name	
Date of Authorization Order	

## I. REASON FOR REQUEST TO WITHDRAW

Briefly state your reason for withdrawing from the Sandbox.

Please note: Upon receipt of this Request, the Innovation Office will submit a proposed Order to the Utah Supreme Court. The Order will terminate your authorization to offer the services for which you are authorized in the Sandbox and you must stop offering those services immediately.



# APPENDIX D: REPEATING RISK DEFINITIONS

The following repeating risks are described in detail below:

- (1) nonlawyer investment / ownership;
- (2) intermediary platforms;
- (2) lawyers sharing fees with nonlawyers;
- (3) technology and nonlawyer providers;
- (4) user communication; and
- (4) ownership, investment, or management by disbarred lawyers or individuals with felony criminal histories.

## 1. NONLAWYER INVESTMENT / OWNERSHIP

Entities may propose taking on nonlawyer investment / ownership or lawyer employees.

Nonlawyer investment / ownership presents the potential risk that nonlawyer owners / investors, unfamiliar with and unlimited by the legal Rules of Professional Conduct, could undermine the legal services model to the consumer's detriment. It potentially increases the likelihood of implementing business practices that increase the consumer harm risk across all three risk areas. The potential negative impacts of nonlawyer investment / ownership are significantly lower if the nonlawyers have less than majority ownership.

While concern about this risk runs high among lawyers and others unsure about the impact of regulatory reform, data on this risk is relatively limited. Studies from the UK and Australia, each of which have allowed nonlawyer investment / ownership for some time, show no adverse impacts on consumers by legal service businesses with nonlawyer investment / ownership. Given that, we have assigned the following these models to the following risk categories:

Service Model	Risk
Lawyers employed or managed by a nonlawyer	Low
Less than 50% nonlawyer ownership	Low
50% or more nonlawyer ownership	Low / Moderate
Intermediary platform	Low / Moderate

There are several ways to address this risk:

- **Rules of Professional Conduct:** All lawyers participating in the sandbox, whether as owners, employees, independent contractors, or business partners, are required to maintain their professional duties, including loyalty to the client and confidentiality. Rule 5.4 both clearly states the lawyer's responsibilities.
- **Identification and Confirmation:** During the assessment process, the Innovation Office notes the lawyers' continuing duties of professional responsibility and independence and may ask the applicant to briefly describe the policies and procedures the applicant will put in place to ensure those duties are maintained.
- **Disclosure Requirements:** The Innovation Office has developed the following disclosure requirements for nonlawyer owned entities:
  - For nonlawyer-owned companies or firms with nonlawyer ownership or investment, including intermediary platforms:
    - This is not a law firm. / This law firm is owned by nonlawyers. Some of the people who own / manage this entity are not lawyers. This means that some services / protections, like attorney-client privilege, may be different from those you could get from a traditional law firm.

If you have questions, please contact us at \_\_\_\_\_.

- Data Reporting:
  - For less than 50% nonlawyer investment / ownership (low risk), without other risk factors, entities will have minimal reporting requirements. Those requirements include customer complaint data.
  - For more than 50% nonlawyer investment / ownership and intermediary platforms (low/moderate risk), entities will have more fulsome reporting requirements at the outset, to be reduced when [x happens].

## 2. INTERMEDIARY PLATFORMS

Intermediary platforms are corporate entities, usually for-profit and owned and managed by nonlawyers, offering a software based platform through which clients and individual lawyers can find each other and enter into engagements. They are widely available throughout the legal services market, targeting individual consumers, corporations and small businesses, and lawyers and law firms. They are not regulated. Lawyers are able to work with these platforms as long as the financial arrangements are structured so as to avoid the ban on lawyers sharing fees with nonlawyers. Generally these arrangements are structured as purchasing advertising or marketing services and/or other support services. Any payments to the intermediary platform tied to the amount of the lawyer's fee has come under scrutiny and often led to cease and desist letters, if not more, from the applicable state bar association.<sup>27</sup> Therefore, what is permitted in the unregulated legal services market today is a software platform connecting lawyers and consumers of legal services, including providing legal support services such as billing and communications through the platform, where the lawyer pays a set service or marketing fee to the platform. The platform can facilitate payments between client and lawyer but generally cannot hold any of those funds in the course of facilitating the transaction because Rule 1.15 requires lawyers to hold client property in client trust accounts with certain requirements and fees have been considered client property.

What is generally not permitted in the legal services market are intermediary platforms using the following kinds of business models:

- Sharing fees with the lawyers (i.e. taking a percentage of the fee paid by the consumer to the lawyer for legal work found through the platform).
- Fee schedules set by the intermediary platform.
- Billing systems run and managed by the intermediary platform which accept and hold client retainer fees or funds for legal expenses.

### *Intermediary platforms with innovative models (entering the Sandbox)*

Intermediary platforms will apply to the Innovation Office seeking authorization to offer one or more innovations to the basic model through the Sandbox. There are likely to be many other nuances presented by intermediary proposals not addressed in the above list. Each nuance may require a waiver of the Rules of Professional Conduct beyond that contemplated by the Standing Order and revised Rule 5.4 to permit Utah lawyers to participate with the platform.

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<sup>27</sup> Benjamin H. Barton and Deborah L. Rhode, Access to Justice and Routine Legal Services: New Technologies Meet Bar Regulators," 70 Hastings L. J. 955, 974 (2019).

Given the general and arm's length nature of the relationship between "lawyer partners" of the intermediary and the entity itself and the fact that the use of an intermediary platform changes very little about who provides the legal services or how they are provided, the intermediary platform model itself does not seem to present increased risk of consumer harm. The Office has categorized sandbox intermediary proposals as low - moderate risk and will tailor any necessary rule waivers carefully to enable the Office to track service innovations. This categorization also reflects the reality of the business model in which the platforms themselves are not the actual service provider and, therefore, are limited in their ability to report data such as legal or financial outcomes.

### *Intermediary Platforms Sandbox Known Models Risk Assessment*

#### 1. Fee sharing

- Unlike other 1:1 or "close" fee sharing relationships, including referral fees, the intermediary platform fee sharing model is simply an up front, generally established percentage to be paid by the lawyer for the networking, marketing, and other applicable services provided by the platform. It is difficult to see how this arrangement could increase the risk that a consumer receives poor quality legal services or overpays for legal services. Particularly because the lawyer participant remains, as always, subject to the duties of competency and reasonable fees and revised Rule 5.4 maintains the lawyer's independence of professional judgement.
- When an intermediary platform seeks to enter the sandbox with a proposal limited to the sharing of fees with lawyers through generally established percentages or shares (as distinguished from individually negotiated referral fees), the risk categorization will be LOW - MODERATE.

#### 2. Fee schedule set by intermediary platform

- There is little risk in this model beyond that already presented by the use of flat fees by lawyers, i.e. that the flat fee schedule inadequately prices the cost of providing the legal work leading to lawyers cutting corners in serving their clients. Lawyers participating with these platforms remain subject to the Rules of Professional Conduct. The risk categorization will be LOW - MODERATE.

#### 3. Financial conduit (including holding funds and transferring funds between clients and lawyers)

- The Office is likely to see variation across this model however the basic version would include use of the platform to facilitate the payment of legal fees, including up front deposits of retainer fees and client expenses.
- There is the potential for a consumer to deposit money through the platform and then not receive the service for which they paid. This harm is one of the three harms identified by the Office.
- Given the structure of an intermediary platform, in which the platform itself is not the actual service provider, these kinds of risks are best monitored through consumer complaints rather than legal or financial outcomes. Therefore, if an intermediary platform proposal includes a client deposit feature the Office will consider it LOW - MODERATE enabling us to have monthly insight into client complaints.
- Note: Client deposit features likely require the authorization to be accompanied by a waiver of Rule 1.15 for those lawyers participating with the entity and potentially impacts the IOLTA qualification of those fees. The Office therefore recommends that

when a platform seeks authorization for a client deposit feature and requires waiver of Rule 1.15, the Order impose the requirement that the entity hold the relevant funds in an account generating interest or dividends and remit the interest or dividends to the Utah Bar Foundation on at least a quarterly basis. Along with the remittance, these entities must provide the Foundation with a report stating the name of the entity, the amount of the remittance, the rate and type of interest or dividend applied, and the average monthly balance on the account or accounts.

### *Sandbox authorization*

Another issue raised by intermediary platforms is the nature of the authorization in the sandbox. Generally, we are authorizing entities in the sandbox with the language (in the Order) that they are authorized to practice law. However, intermediary platforms are not, in fact, practicing law but rather facilitating the practice of law by lawyers. To be clear on this point, the Office's recommended authorization language will read "authorized to operate in the Sandbox" to reflect that the entity has sandbox authorization and the model is permitted but not authorizing the practice of law.

## 3. LAWYERS SHARING FEES WITH NONLAWYERS<sup>28</sup>

Under revised Rule 5.4, lawyers proposing to share fees with nonlawyers must enter the Sandbox. The potential risks presented by fee sharing could include compromised lawyer independence and loyalty, conflicts issues, and increased likelihood of the lawyer advancing non-meritorious claims. Intermediary platforms often include a fee sharing component and this characteristic might be present across other business models in the Sandbox. There are several mechanisms to address these risks of consumer harm:

- **Rules of Professional Conduct:** All lawyers engaging in fee sharing relationships with nonlawyers are required to maintain their professional duties to their clients and to the court.
- **Disclosure Requirements:** Rule 5.4 requires all lawyers engaging in fee sharing relationships with nonlawyers to disclose the fact of the fee sharing relationship to the affected client. Depending on the model proposed, the Innovation Office may supplement those disclosure requirements or impose timing requirements.
- **Data Reporting:** The Innovation Office has categorized fee sharing models as MODERATE risk but created distinct reporting requirements focused on the particular harms presenting in these arrangements. Entities will be required to submit the following categories of case level data for those clients coming to the entity through a referral fee arrangement:
  - Number of consumers
  - Revenue / receipt
  - Geographic data (requested)
  - Consumer complaints
  - Nonfinancial (legal) outcome
  - Financial outcome

The Innovation Office has the discretion to require an external review of anonymized client files.

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<sup>28</sup> Please note this section is subject to the Court's December 10, 2020 statement on referral fees.

## 4. LEGAL PRACTICE THROUGH TECHNOLOGY AND NONLAWYER PROVIDERS

There are several mechanisms through which entities may propose to offer legal services through technology or nonlawyer human providers. We have identified the following models and risk categories:

Service Model	Risk
Software provider with lawyer involvement - legal document completion	Low
Nonlawyer provider with lawyer involvement	Moderate
Software provider with lawyer involvement	Moderate
Nonlawyer provider without lawyer involvement	High
Software provider without lawyer involvement	High

Basic automated form completion (software provision of legal forms and information) is already widely available on the market and has been categorized as providing legal information. The Utah Courts offer such a service through OPAC. Such services reach consumers who otherwise would not likely engage with legal rights or services and the relative risk of consumer harm appears low. These include consumers who cannot access lawyers or visit court-based, self-help services due to time or travel limitations (distance), as well as those who cannot afford a lawyer.

We foresee multiple applicants proposing to expand on this model by using tech platforms to provide legal advice and guidance to consumers (e.g., providing basic legal advice through a chatbot and enhancing the platform's ability to actively guide consumers to complete forms and other legal documents). We also foresee multiple applicants proposing to use nonlawyer providers (whether as advisors on legal processes and / or as subject matter experts) to provide basic legal advice and assistance to consumers.

These services will be new legal service models and potentially present risk of harm if the quality of the legal advice and guidance is poor. Potential concerns include failure to identify material factual or legal issues, mischaracterization of material factual or legal issues, inaccurate legal advice, etc. For this reason, we have categorized the risk of these services based on the extent of lawyer involvement in developing and managing the software or nonlawyer providers. Where lawyers are involved in the development and oversight of the service, the risk category will be lower.

We have developed data reporting requirements focused on surfacing data around the three consumer harms to enable the Office to identify, assess, and address evidence of harm.

These models also may present other risks to consumers based on the fact that these are not traditional lawyer/client engagements. To address that aspect of the risk, the Office will require providers with these service models to make the following consumer disclosure:

- This service is not a lawyer. The product / service you have selected is not a lawyer. This means:
  - Someone involved with you or with your legal issue, including people on the other side of this case, could be using this service as well.
  - We could be required to disclose your communications (such as questions and information submissions) to third parties.

If you have questions, please contact us at \_\_\_\_\_.

## 5. USER COMMUNICATIONS

We are developing a system of entity regulation in which the entity itself is given the authorization to practice law. This development may cause some tension with the traditional rules governing aspects of legal practice. In particular, communications between a user and licensed entities may present novel issues. As it stands, the attorney / client privilege applies only to communications between lawyers and their clients “for the purpose or in the course of obtaining or facilitating the rendition of legal services to the client.” This potential consumer vulnerability raises concerns about consumer harm from communication of sensitive information that is not protected from later discovery because the consumer did not make the disclosure to a lawyer within the definition of Rule 504. For example, a consumer communicating with a chatbot or with a nonlawyer legal advisor may believe their communications are protected because they assume they are getting legal help and find that sensitive information is now subject to disclosure. This concern also potentially applies to communications between consumers and nonlawyer service providers with referral fee relationships to lawyers.

There are currently many legal service options on the market which provide automated legal document completion on matters that do not reach attorney / client privilege. There are good reasons to think that consumers may not need or care about the application of the privilege to many types of legal services. Completing estate planning documents or drafting an employment contract template, for example, may not trigger consumer interest in the privilege. However, most consumers are not knowledgeable enough to draw distinctions around what is, essentially, a rule of evidence and this presents a potentially significant risk.

Further, lawyers practicing law as employees of a nonlawyer-owned entity raise novel issues around the nature of the client engagement, the status of the relationship between the lawyer and the entity, and protection of communications.

To address these issues and the resulting risk of consumer harm, we developed the following disclosure for authorized entities to place on their website, in their terms of service, and at the start of a consumer interaction / engagement:

- This is not a law firm. / This law firm is owned by nonlawyers. Some of the people who own / manage this entity are not lawyers. This means that some services / protections, like the attorney-client privilege, may be different from those you could get from a traditional law firm.

If you have questions, please contact us at \_\_\_\_\_.

- This service is not a lawyer. The product / service you have selected is not a lawyer. This means:
  - Someone involved with you or with your legal issue, including people on the other side of this case, could be using this service as well.

- We could be required to disclose your communications (such as questions and information submissions) to third parties.

If you have questions, please contact us at \_\_\_\_\_.

The Innovation Office also notes that lawyers involved in fee sharing ventures or working with or for nonlawyer-owned entities have distinct disclosure requirements under Rule 5.4.



## 6. OWNERSHIP, INVESTMENT, OR MANAGEMENT BY DISBARRED LAWYERS OR INDIVIDUALS WITH FELONY CRIMINAL HISTORIES.

In Standing Order No. 15, the court determined disbarred lawyers present a high risk of consumer harm and, therefore, found that disbarred lawyers may not own or have a financial interest of greater than 10% in any entity participating in the Sandbox. The court also found that individuals with felony criminal histories may present an elevated risk of consumer harm, depending on the nature of that criminal history and their position within the participating entity.

Applicants to the Sandbox must:

- Confirm that no disbarred lawyers own or control more than 10% interest in the entity.
- Disclose all persons or entities who wholly or partially direct the management or policies of the proposed entity, whether through ownership of securities, by contract, or otherwise ("controlling persons").
- List all persons or entities who will wholly or partially (>10%) finance the business of the proposed entity ("financing persons").
- List any of those controlling or financing persons with felony criminal histories.
- List any persons in a managerial role over the direct provision of legal services who is disbarred or who has a felony criminal history.
- Disclose whether the entity has a material corporate relationship and / or business partnership with either a disbarred lawyer or individual with a felony criminal history.

As per Standing Order No. 15, any false or misleading statements made by entities or their members in the application materials, whether discovered at the time or at any time afterward, will be independent grounds for regulatory enforcement, including termination of authorization, and an aggravating factor in any enforcement proceeding based on other conduct.

The Office will develop a list of specific criminal felonies that could impact its risk assessment of the entity and follow up on any relevant disclosures with a more detailed inquiry. The Office will also incorporate relevant information into its risk assessment and include it in its recommendation to the Court.

# DOCUMENT 4

Dear Sandbox Authorized Entities -

We would like to make you aware of the teams of external researchers which have registered with us to study the regulatory reform effort in Utah. Their research efforts are entirely independent from the Office of Legal Services Innovation.

We would like to share your contact information with these research teams. We hope that you will consider assisting them in their research efforts though the choice is completely yours and whether you participate or not will not affect your Sandbox authorization.

I am attaching a Consent form. We ask that you complete and return the form to us. If you consent to having your contact information shared, we will share it only with those research teams listed below.

Please feel free to contact us if you have any questions or concerns. Please return the form via email to Helen Lindamood.

Thank you,

Lucy Ricca



## ATTACHMENT C

[illegible]





INSTITUTE *for the* ADVANCEMENT  
of the AMERICAN LEGAL SYSTEM



UNIVERSITY of  
DENVER

**Risk Assessment:** Risk assessment requires measuring actual harm and likelihood of actual harm as the focus, rather than application of formal rules in all cases and contexts without considering outcomes.

**Proportionality:** Total elimination of risk may actually incur more systemic harm to consumers/people in need than good. To use proportionality requires considering evidence of risk, as opposed to concern in abstract about what may harm people, followed by prescriptive action. This helps us to establish probabilistic thresholds for acceptable levels of harm, which then in turn help us to understand how best to mitigate that harm. Thresholds inform appropriate regulation and prioritize effort in ensuring compliance. For example, in a medical context we don't forbid surgery because there are risks associated with general anesthesia. Instead, we work to minimize those risks as best we can.









**Next Best Alternative:** To understand whether a risk is outweighed by a benefit, we look at the next best alternative for the consumer, who is in the position of making a choice about exposure to a given risk relative to another option. For instance, in medicine, people routinely must compare the risk of general anesthesia against the risk of foregoing a surgery. In legal services, we often compare risks by comparing alternatives only to the use of conventional legal representation, but this doesn't accurately reflect the choices of most consumers. Most consumers cannot a full-service attorney, and under the current system the next best alternative them is often not getting any help at all because, depending on the service, usually the only option is an attorney.

**Key risks to the core objective:**

1. Worse legal result for consumer than they would have had they used the next best alternative (harm to consumer because of bad legal result)
2. Consumer fails to exercise a legal right because they did not know they possessed the right
3. Consumer overpays for legal service
4. Consumer purchases legal service not needed or not appropriate to legal issue
5. Consumer does not engage with the legal services market at all









**Objective:** *To ensure consumers access to a well-developed, high-quality, innovative, and competitive market for legal services in the US.*

## APPENDIX A – RISK MATRIX EXAMPLE

RISK	CONSUMER	LIKELIHOOD	IMPACT	METRICS (SYSTEMIC)	METRICS
Consumer overpays for a legal service.	Individuals (low resourced)			1. Pricing 2. Transparency of pricing 3. Competitiveness of market (data)	1. Pricing 2. Transparency of pricing 3. Consumer comprehension of pricing
	Individuals (high resourced)				
	Businesses (low resourced)				
	Businesses (high resourced)				
Consumer purchased a legal service not needed or not appropriate to their legal issue.	Individuals (low resourced)				
	Individuals (high resourced)				
	Businesses (low resourced)				
	Businesses (high resourced)				
Consumer does not engage with the legal services market at all.	Individuals (low resourced)				
	Individuals (high resourced)				
	Businesses (low resourced)				
	Businesses (high resourced)				



## APPENDIX A – RISK MATRIX EXAMPLE

RISK	CONSUMER	LIKELIHOOD	IMPACT	METRICS (SYSTEMIC)	METRICS
Consumer fails to exercise his/her legal rights because he/she did not know they possessed that right.	Individuals (low resourced)			1. Consumer satisfaction (surveys) 2. Consumer complaints 3. % of consumers without legal help 4. Consumer knowledge (surveys) 5. Competitiveness of market (market data)	1. Outcome along legal dimensions <ul style="list-style-type: none"> <li>• Quality of legal service (minimum quality standards)</li> <li>• Consumer satisfaction</li> </ul>
	Individuals (high resourced)				
	Businesses (low resourced)				
	Businesses (high resourced)				
Consumer achieves a worse legal result than they would have had they used the next best alternative.	Individuals (low resourced)				
	Individuals (high resourced)				
	Businesses (low resourced)				
	Businesses (high resourced)				