



**CLOSING THE JUSTICE GAP WORKING GROUP  
ACTION SUMMARY**

**Friday, September 17, 2021  
10:00 am – 4:30 pm**

**Teleconference**

**The State Bar of California**

Questions regarding any agenda item should be directed to the Committee Coordinator, Lauren McCurdy at 415-538-2107 or Chair, Justice Alison Tucher at 415-538-2116. Committee members are requested to notify the Committee Coordinator as early as possible in advance of the meeting if they wish to remove any item/s from the consent agenda.

**Committee Members Present:** Justice Alison Tucher (Chair), Andrew Arruda, Merri Baldwin, Judge Wendy Chang, David Engstrom, Thomas Greene, Eric Helland, Micha Liberty, John Lund, Kevin Mohr, Wendy Musell, Crispin Passmore, Toby Rothschild, Rebecca Sandefur, James Sandman, Patricia Squitiero, and Sacha Steinberger.

**Committee Members Not Present:** Marta Alcumbrac, Judge Irma Poole Asberry, Daniel Grunfeld, and Khathy Hoang.

**Others Present:** Neil Gupta, Greg Fortescue, Donna Hershkowitz, Randall Difuntorum, Mimi Lee, Andrew Tuft, Angela Marlaud, Lauren McCurdy, Melanie Lawrence, Mia Ellis, Brady Dewar, Leah Wilson, Bridget Gramme,

*The order of business is approximate and subject to change.*

**Members of the public may access this meeting as follows:**

Zoom Link: <https://calbar.zoom.us/j/98548962140>

Call-In Number: 1-669-900-9128

Webinar ID: 985 4896 2140

**OPEN SESSION**

**I. CHAIR'S REPORT**

**A. Roll Call**

- B. Public Comment  
*Mike Bracamontes, Whit Bertch, Andy Katz, Beth Mora, Genie Harrison, Danny Abir, Rhett Francisco, and Antonio Castillo gave public comment.*
- C. Announcements  
*Justice Tucher gave an overview of the order in which the agenda items will be addressed today.*
- D. Staff Report  
*Mr. Difuntorum reported that: (1) resources are available at the State Bar's website regarding the CTJG's work including the full text of the charter; and (2) the paraprofessional working group is presenting their report and recommendations to the Board of Trustees at their meeting on September 23, 2021 at approximately 1:30 p.m. and is requesting approval of the report and recommendation for a 60-day public comment circulation.*
- E. Approval of Open Session Action Summary from the August 11, 2021 Meeting  
*The Open Session Action Summary from the August 11, 2021 was approved (14-0-1).*

## II. BUSINESS

- A. Discussion and Possible Action on a Subcommittee Recommendation for the Structure and Governance of a Sandbox Regulatory Authority  
*Mr. Lund and Ms. Baldwin presented the subcommittee recommendations for the structure and governance of a sandbox regulatory authority and gave an oral report. Following discussion, the working group voted to approve recommendations 1–5 as revised below (10-3-1).*
  - 1. The Sandbox Regulator will be established by the Legislature as a public corporation or other appropriate entity within the judicial branch of government, serving as an arm of the California Supreme Court.
  - 2. Reliable funding will be necessary to ensure adequate resources for monitoring, data collection and analysis, and consumer protection.
  - 3. The Sandbox Regulator is subject to active supervision by the Supreme Court and must act pursuant to clearly articulated state policy. The Sandbox Regulator should make recommendations to the Supreme Court concerning the licensing and discipline of sandbox participants. However, as with attorneys, the Court should reserve to itself the authority over licensure of sandbox participants to the extent they are engaged in the practice of law, while recognizing the shared responsibility of the two branches for approval of any governing principles the Sandbox Regulator employs. The Supreme Court shall exercise its authority over licensed attorneys and others engaging in the practice of law as it deems most efficient and appropriate. None of the

foregoing is meant to alter the existing roles of the Supreme Court in regards to the practice of law in California or the existing role of the Legislature in regulating conduct that does not constitute the practice of law.

4. The Sandbox Regulator should have a volunteer board with responsibility for all operations of the office, including licensing and discipline recommendations made to the Supreme Court. The Sandbox Regulator should also have a staff which handles administrative operations, makes assessments, and monitors sandbox participants under the Board's supervision.
  5. The Sandbox Regulator board should consist of 7 public members with the Senate and Assembly each nominating one public member, the Governor nominating the remaining public members, and 6 members nominated by the Supreme Court. The Governor's nominees should include an economist, a technologist, and a nonlawyer provider of services to communities with significant unmet legal needs. The Supreme Court's nominees should include at least one each of individuals with experience with legal ethics, legal services for low or moderate income Californians, and regulation of legal services.
- B. Presentation: Arizona's Efforts on Legal Services Regulatory Reform and the Regulation of ABS Entities, and Amendments to Arizona's Rule of Professional Conduct 5.4. (Justice Ann Timmer, Arizona State Supreme Court Vice Chief Justice)  
*Justice Ann Timmer gave a presentation on Arizona's efforts on legal services regulatory reform and the regulation of ABS entities, and amendments to Arizona's Rule of Professional Conduct 5.4.*
- C. Discussion and Possible Action on Amendments to the Rules of Professional Conduct on Lawyer Advertising and Solicitation  
*Judge Chang and Mr. Rothschild presented the memo on potential amendments to the Rules of Professional Conduct on lawyer advertising and solicitation and gave an oral report.*
- D. Discussion and Possible Action on Amendments to the Certified Lawyer Referral Service Rules and Statutes  
*Ms. Baldwin and Mr. Lund presented the memo on potential amendments to the certified lawyer referral service rules and statutes and gave an oral report.*
- E. Discussion and Possible Action on Amendments to California Rule of Professional Conduct 5.4  
*Prof. Mohr presented a memo on potential amendments to Rule of Professional Conduct 5.4 and gave an oral report.*

- F. Discussion and Possible Action on a Proposed Rule of Professional Conduct 5.7 [Responsibilities Regarding Nonlegal Services]  
*Prof. Mohr presented a memo on a proposed Rule of Professional Conduct 5.7 and gave an oral report.*
- G. Discussion and Possible Action on a Subcommittee Recommendation for a Draft Sandbox Application  
*Ms. Sandefur presented the draft application and gave an oral report. Following discussion, the working group voted to adopt the draft sandbox application as a working draft that the subcommittee will continue to work on the policy considerations (14-0-0).*
- H. Discussion and Possible Action on a Subcommittee Recommendation for the Sandbox Application Criteria for Applicant Background Checks  
*This item was carried over.*
- I. Discussion and Possible Action on a Subcommittee Recommendation for the Sandbox Application Criteria Concerning Attorney-Client Privilege, Confidentiality, and Data Privacy  
*Mr. Engstrom presented a memo on recommendations on the sandbox application criteria concerning attorney-client privilege, confidentiality, and data privacy and gave an oral report. Following discussion, the working group voted to approve: recommendation 1 as revised below (14-0-0); and the recommendation below concerning the attorney-client privilege (14-0-0).*
  - 1. Recommend that rules 1.1(b) (competence), 1.6 (confidentiality), 1.8.2 (use of confidential information), 1.18 (duties to prospective client), and 1.9 (duties to former client), and Business and Professions Code section 6068(e), will apply in their then-current interpretation of the rules/statutes to all entrants to the sandbox. Sandbox participants who are ordinarily under the California Consumer Privacy Act (CCPA) would still be under CCPA.

*The working group also voted to approve the following recommendation.*

*Recommend that the legislature extend the protections of the attorney-client privilege to communications between the clients and sandbox participants in their provision of legal services.*

- J. Discussion of Assignments and Next Steps

## **CLOSED SESSION**

**NONE**

## **ADJOURN**

*In compliance with the American with Disabilities Act, those requiring modifications or accommodations to observe and address this meeting should notify Angela Marlaud at [Angela.Marlaud@calbar.ca.gov](mailto:Angela.Marlaud@calbar.ca.gov). Please provide at least 72 hours prior to the meeting to allow sufficient time to make arrangements for accommodations at this meeting.*

*The notice and agenda is available at <http://board.calbar.ca.gov/committees.aspx>.*