



The State Bar of California

CLOSING

II.A. Risk-Based Regulation
10-18-21 CTJG Meeting
Open Session

DATE: October 12, 2021

TO: CTJG Working Group

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

SUBJECT: II.A. Recommendation for a Risk-Based Approach to Regulation for a Sandbox

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 “Program oversight for persons and entities accepted for participation in the sandbox including standards of conduct, processing of client complaints, and enforcement through suspension or removal from the sandbox or other remedies” (¶ 1.f).

Here, the SAGE subcommittee recommends a general framework for a risk-based regulatory approach for oversight within the sandbox for the full working group’s consideration. This regulatory approach is designed to demonstrate the operation of the sandbox and the overarching principles that will guide the regulator in balancing public protection and increasing access.

Specifically, it sets forth the possible harms that may arise when a consumer obtains legal services from a sandbox provider, the standard for measuring the risk, and the expectations for providers’ conduct while participating in the sandbox. Once finalized, this approach will inform the next step in the process, as the working group considers the specific tools for proactively regulating sandbox applicants and ensuring consumer protection (Item II. B).

The SAGE subcommittee will consider and present recommendations for enforcement and compliance, exiting the sandbox, and the recommended term of the sandbox at future meetings.

RECOMMENDATION

1. For the purpose of admission to the sandbox, sandbox regulation should assess the risk of the following harms to consumers:
 - a. The consumer receives inaccurate or inappropriate legal services.
 - b. The consumer fails to exercise legal rights through bad advice or incomplete information within the scope of the agreed-upon services.
 - c. The consumer receives an unnecessary legal service or pays an inappropriate amount for legal services.
 - d. The consumer experiences fraud, theft, or abuse of trust by the service provider.
2. For the purpose of admission to the sandbox, the risk of harm to consumers should be measured relative to the experience the consumer would have had absent the legal services provided.¹
3. Lawyers participating in sandbox entities should remain subject to the same rules and laws governing other licensees of the State Bar except to the extent that compliance with specified rules is waived as a condition of entry into the sandbox.
4. Entities participating in the sandbox should be subject to the rules and laws governing licensees of the State Bar except to the extent that compliance with specified rules is waived as a condition of entry into the sandbox.²
5. The working group will separately consider the scope and mechanism of possible rule and/or statutory waivers.³

¹ During the SAGE subcommittee meeting, the members clarified that this is a measure of risk for purposes of admission; it is not a measure of the standards of competence once operating in the sandbox, nor is it a measure of professional liability.

² See e.g. Business and Prof. Code § 6167 (requiring law corporations to “observe and be bound by such statutes, rules, and regulations to the same extent as if specifically designated therein as a licensee of the State Bar.”)

³ As was discussed at the subcommittee meeting, the ability of the sandbox regulator to recommend waiver of any statutory requirements would exist only to the extent the Legislature makes statutory amendments expressly authorizing the waiver of such laws.