



The State Bar of California

CLOSING

II.C. Complaint/Compliance
11-03-21 SAGE Meeting
Open Session

WORKING GROUP

DATE: November 2, 2021

TO: SAGE Subcommittee, Closing the Justice Gap Working Group

FROM: Bridget Gramme, Deputy Chief of Programs

SUBJECT: II.C. Recommendations for Complaints Processing and Compliance Enforcement

INTRODUCTION

The SAGE subcommittee is tasked with developing recommendations for a framework that the sandbox regulator should utilize to ensure that sandbox providers are compliant with the rules and regulations for operating within the sandbox. This should include a mechanism for receiving and processing complaints about sandbox providers as well as investigation, and potential discipline for violations.

As a starting point to facilitate the conversation for the subcommittee, this memo provides some suggestions from other jurisdictions and/or other programs within the State Bar.

Subcommittee members are asked to consider the items below in advance of the meeting and be prepared to discuss whether they should be included in the recommendation to the full working group, whether modifications to these suggestions should be made, and whether there are additional methods to be added to the framework.

ENFORCEMENT FRAMEWORK

Risk-based regulatory models are focused on evidence of consumer harm. Based on its regular review of participant data and reporting submissions, the regulator will assess whether and the extent to which each participant may be imposing any of the following harms on consumers:

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, loss of privacy, or abuse of trust by the service provider.

The regulator should establish thresholds to be utilized in enforcement, which correlate to the recommended consequence to an individual provider according to the evidence of harm. For example:

- Modest evidence of consumer complaints: the entity may continue offering services but increased monitoring and specified remediation plan
- Substantial evidence of harm/ failure to remediate: suspension of the entity's ability to offer services in the consumer service area affected
- Continued failure to remediate/ evidence of intentional bad acts (fraud, theft, etc), immediate termination of entity's authorization to operate in the sandbox
- Fines/sanctions can also be imposed at any of these levels depending on the evidence and nature of the harm

Attorneys and other licensed professionals operating in the sandbox may also be subject to discipline as individuals by their respective regulators.

Additional Questions for Discussion:

1. In addition to the risks of harm that may be revealed by the data reporting and monitoring, what other offenses may constitute evidence of harm? Failure to comply with authorization order requirements? Failure to provide complete data? A certain number of complaints received by the regulator about the entity?
2. Besides traditional enforcement such as discipline, suspension, termination, what other parallel programs might be implemented to bolster the regulator's ability to protect the public? Examples from State Bar:
 - [Client Security Fund](#): discretionary fund that can reimburse clients who have lost money or property due to theft or dishonest conduct by a California lawyer. Paid for as part of attorney licensing fees.
 - [Mandatory Fee Arbitration Program](#): informal, confidential, lower-cost forum for resolving fee disputes between lawyers and clients primarily through non-binding arbitration—operated through local bar associations, utilizing volunteer attorney and non-attorney arbitrators, as well as mediation.
3. How might complaints received be processed, prioritized and handled by the regulator?
 - The subcommittee may wish to replicate the administrative process for handling complaints recommended by the [California Paraprofessional Program Working Group](#) (see pages 64-66). Note that this proposal is currently out for public comment

and it may make sense to wait to hear feedback from the public and the Board of Trustees before mirroring that approach.