



The State Bar of California

CLOSING THE JUSTICE GAP WORKING GROUP ACTION SUMMARY

Wednesday, December 1, 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: Marta Alcumbrac, Andrew Arruda, Merri Baldwin, Judge Wendy Chang, Thomas Greene, Daniel Grunfeld, Eric Helland, Khathy Hoang, Micha Liberty, John Lund, Kevin Mohr, Crispin Passmore, Lucy Ricca, Toby Rothschild, Rebecca Sandefur, James Sandman, Patricia Squitiero, and Sacha Steinberger.

Committee Members Not Present: David Engstrom and Wendy Musell.

Others Present: Martin Bambanian, Stephanie Bond, Brady Dewar, Jon Dieringer, Randall Difuntorum, Greg Fortescue, Charlie Gillig, Tom Gordon, Bridget Gramme, Neal Gupta, Genie Harrison, Bruno Huizar, Natalie Knowlton, Art Lachman, Melanie Lawrence, Mimi Lee, Erin Levine, Jim Lites, Lauren McCurdy, Elizabeth Alexandra McGaughan, Irene Mo, Zach Newman, Jennifer Ostertag, Rohan Pavuluri, Dana Marquez Richardson, Jacquie Serna, Jason Solomon, Andrew Tuft, Kathy Vu, Jennifer Wada, Ken Wang, and Leah Wilson.

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/96488731023>

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

Webinar ID: 964 8873 1023

OPEN SESSION

I. CHAIR'S REPORT

A. Roll Call

- B. Public Comment
Stephanie Bond gave public comment.
- C. Announcements
The Chair reported that the 2022 meeting schedule has been circulated by email.
- D. Staff Report
- E. Approval of Open Session Action Summary from the October 18, 2021 Meeting

II. BUSINESS

- A. Presentations:
 - Rohan Pavuluri, Upsolve
 - Erin Levine, Hello Divorce
- B. Discussion and Possible Action on Recommendations on Assumptions and Empirical Questions to Test in the Regulatory Sandbox
Ms. Sandefur presented the recommendations and gave an oral report on assumptions and empirical questions to test in the regulatory sandbox. Following discussion, the working group voted to approve the following recommendations.

Recommendation 1 (14-0-0)

A key function of any sandbox project is to collect evidence to inform decisions about legal services regulation policies.

Recommendation 2 (13-0-0)

Funding should be provided for a rigorous, independent, and impartial evaluation, to be conducted at appropriate intervals, of the sandbox and how well it achieves its goals.

Recommendation 3 (13-0-0)

The sandbox should consider how to balance the need for data from participating entities and clients with the regulatory burden placed on both by data requirements.¹

¹ For example, commercial vendors of digital legal services such as wills may be unable to collect or unwilling to ask for identity markers, such as race, ethnicity or disability status, that are not relevant to providing the offered service. Consumers may wonder why they are required to provide such information in order to purchase sandbox legal services when it is not required for most other transactions, whether on-line or on-ground, or of legal services or other types of products or services. To take another example, for profit and nonprofit providers may have different financial resources to do the data collection.

Recommendation 4 (15-0-0)

The activities described in 1 and 2 should, taken together, address the following questions:

CONSUMER PROTECTION

- How many consumer complaints against sandbox entities, about what kinds of practices?
- How many malpractice filings against sandbox entities, for what kinds of behavior?
- How many violations of ethical rules by sandbox entities, of what types?
- What services offered by sandbox entities are effective, competent? What are ineffective, not competent?
- Cost effectiveness to consumers

ACCESS TO JUSTICE

- How much service to currently underserved populations is delivered by sandbox entities?
- How accessible are the services offered by sandbox entities?
- What kinds of entities serve the underserved?
- How do sandbox activities affect equity in access to services along the lines of race, gender, disability, and language access?
- What are the substantive outcomes achieved for consumers?
- What kinds of rules are entities asking be waived, and with what impact on consumer protection and access to justice?
- Are sandbox entities reducing the knowledge gap (i.e., the degree to which people do not recognize that their justice problems have legal aspects and could benefit from legal help)?
- What regulatory strategies, if any, should be considered for non-profit entities?

IMPACT ON LAWYERS AND LEGAL SERVICES MARKETS

- Is trust and confidence in lawyers affected? How?
- Is the size of the legal profession affected? How?
- Are the types of law/justice issues served by lawyers affected? How?
- Are lawyers' incomes affected? How?

EFFICACY OF A SANDBOX

- Is the sandbox operating on a reasonable budget, and is it on a path toward financial self-sufficiency?
- Would other activities, such as more work on court form simplification and more investment in court-based self-help, be as or more effective than a sandbox in providing service to underserved Californians?

In addition, the working group voted to add the following to the list of assumptions and questions (13-0-0).

IMPACT ON COURT SYSTEM

- What impact has the sandbox had on the court system, including, but not limited to, funding and the increase or decrease in the number of self-represented litigants, defaults, filings, and dispositions?
- Collect data from other sources (such as court proceeding results)

C. Discussion and Possible Action on Separation of Powers Issues Regarding Sandbox Oversight

Mr. Dewar presented the separation of powers issues regarding sandbox oversight memo and gave an oral report. Following discussion, the working group voted to approve the following recommendation (15-0-1).

The working group recommends that the sandbox shall be established only if authorized by both the Supreme Court and the Legislature.

D. Discussion and Possible Action on a Subcommittee Recommendation for Proactive Regulation and Monitoring of Sandbox Providers, including Reporting, Monitoring, and Audits

Ms. Baldwin presented the proactive regulation and monitoring of sandbox providers memo and gave an oral report. Following discussion, the working group voted to approve the following recommendation (15-0-0).

Recommend that the regulator implement policies and procedures to minimize the risk of harm to consumers through proactive risk-based regulation that uses regulatory tools including, but not limited to, the tools described and illustrated in the November 24, 2021 memorandum to the working group for agenda item II.D. Recommendation re Proactive Regulation and Monitoring of Sandbox Providers, including Reporting, Monitoring, and Audits as revised.

E. Discussion of Assignments and Next Steps

The Chair gave an oral report and led a discussion on future assignments for the subcommittees.

Staff to send paraprofessional research on bonding requirements.

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. Please provide at least 72 hours prior to the meeting to allow sufficient time to make arrangements for accommodations at this meeting.

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