



The State Bar *of California*

CLOSING THE JUSTICE GAP WORKING GROUP

DATE: May 26, 2022

TO: Closing the Justice Gap Working Group

FROM: Mimi Lee, Lead Program Analyst

SUBJECT: II.C. Discussion and Possible Action on Recommendations Previously Adopted by the Working Group

Attached you will find 2 tables.

The first table provides a summary of recommendations that were previously adopted by the working group. Each recommendation summary is followed by a link(s) to the full text of the corresponding recommendation(s) which appears in the second table.

The second table provides the full text of each recommendation, the meeting date at which it was approved, and the vote. The meeting date serves as a link to the related agenda materials that are posted on the State Bar's website.

Table 1. Summary of the Adopted Recommendations

Topic	Summary of the Adopted Recommendations
General Principles	<p>The sandbox shall be established only if authorized by both the Supreme Court and the Legislature. (Rec. 15)</p> <p>A key function of any sandbox project is to collect targeted evidence to inform decisions about legal services regulation policies, while balancing the need for data collection with the potential burden on participating entities. (Rec. 11) (Rec. 13) (Rec. 14)</p> <p>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. (Rec. 3) (Rec. 12) (Rec. 14)</p>
Structure	<p>The sandbox should be governed and administered by a Sandbox Regulator, established by the Legislature within the judicial branch of government, serving as an arm of the California Supreme Court as a “sister agency” to the State Bar. (Rec. 2) (Rec. 4)</p> <p>It should have a volunteer board, appointed by the Legislature and the Supreme Court, 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. (Rec. 5) (Rec. 6)</p>
Eligibility	<p>Disbarred, suspended, resigned, or involuntarily inactive lawyers from any jurisdiction should be ineligible to participate in the sandbox. (Rec. 1)</p> <p>In addition, applicants must demonstrate the capacity to provide competent legal service. (Rec. 10B)</p>
Conduct	<p>The protections of the attorney client privilege should extend to communications between clients and sandbox participants in their provision of legal services, and 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), Business and Professions Code § 6068(e), and the California Consumer Privacy Act should apply to all entrants to the sandbox. (Rec. 7) (Rec. 8)</p>

Table 1. Summary of the Adopted Recommendations

Topic	Summary of the Adopted Recommendations
Risk-Based Regulation	<p>The Regulator will implement policies and procedures to minimize the risk of harm to consumers through proactive risk-based regulation that uses a range of regulatory tools, including risk assessments, detailed authorization orders, regular reporting and monitoring, audits, disclosure requirements, and additional security measures that would be used depending on the level of assigned risk. (Rec. 16)</p> <p>For purposes of admission to the sandbox, the Regulator should assess the risk of the following harms to consumers relative to the experience the consumer would have had absent the legal services provided:</p> <ul style="list-style-type: none"> 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, loss of privacy, or abuse of trust by the service provider. (Rec. 9) (Rec. 10A)

Table 2. Full Text of the Adopted Recommendation

CTJG Meeting Date (Vote)	Rec. No.	Full Text of the Adopted Recommendation
<u>8/11/2021</u> (18-0-0)	1	Anyone who is an ineligible person under the definition of rule 5.3.1 of the California Rules of Professional Conduct, in any state or jurisdiction, is ineligible to participate in the sandbox in any form.
<u>9/17/2021</u> (10-3-1)	2	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.
<u>9/17/2021</u> (10-3-1)	3	Reliable funding will be necessary to ensure adequate resources for monitoring, data collection and analysis, and consumer protection.
<u>9/17/2021</u> (10-3-1)	4	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.
<u>9/17/2021</u> (10-3-1)	5	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.
<u>9/17/2021</u> (10-3-1)	6	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.II.B./

Table 2. Full Text of the Adopted Recommendation

CTJG Meeting Date (Vote)	Rec. No.	Full Text of the Adopted Recommendation
9/17/2021 (14-0-0)	7	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.
9/17/2021 (14-0-0)	8	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. <i>(This recommendation was drafted and voted on during the meeting and therefore does not appear in the agenda materials. Background materials on this proposal, see 9/3/21 Scope memo.)</i>
10/18/2021 (14-2-0)	9	For the purpose of admission to the sandbox, sandbox regulation should assess the risk of the following harms to consumers: <ul style="list-style-type: none"> 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, loss of privacy, or abuse of trust by the service provider.
10/18/2021 (13-4-0)	10A	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.
	10B	In addition, the applicant must demonstrate the capacity to provide competent legal service. <i>(This part of the recommendation was drafted and voted on during the meeting and therefore does not appear in the agenda materials.)</i>
12/1/2021 (14-0-0)	11	A key function of any sandbox project is to collect evidence to inform decisions about legal services regulation policies.
12/1/2021 (13-0-0)	12	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.

Table 2. Full Text of the Adopted Recommendation

CTJG Meeting Date (Vote)	Rec. No.	Full Text of the Adopted Recommendation
12/1/2021 (13-0-0)	13	<p>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.</p> <p><u>[Footnote:</u> 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.]</p>
12/1/2021 (15-0-0) (13-0-0)	14	<p>The activities described in Recommendation 11 and 12 should, taken together, address the following questions:</p> <ul style="list-style-type: none"> • Consumer Protection <ul style="list-style-type: none"> ○ 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 <ul style="list-style-type: none"> ○ 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)?

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CTJG Meeting Date (Vote)	Rec. No.	Full Text of the Adopted Recommendation
		<ul style="list-style-type: none"> ○ What regulatory strategies, if any, should be considered for non-profit entities? • Impact on Lawyers and Legal Services Markets <ul style="list-style-type: none"> ○ 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 <ul style="list-style-type: none"> ○ 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? • Impact on Court System <ul style="list-style-type: none"> ○ 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)
12/1/2021 (15-0-1)	15	The working group recommends that the sandbox shall be established only if authorized by both the Supreme Court and the Legislature.
12/1/2021 (15-0-0)	16	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 amended.