



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.D. Report on Recommendations Previously Adopted or Considered by the Former Subcommittees Not Yet Approved by the Working Group

The following table provides the full text of each recommendation that has been previously adopted or considered by the former subcommittees, the meeting date at which it was last discussed, and a subcommittee vote (if any). These recommendations have not yet been approved by the working group. The recommendation designation serves as a link to the related agenda materials that are posted on the State Bar's website.

Table 1. Full Text of Proposed Recommendations

Topic	Full Text of Proposed Recommendations
Risk Based Regulatory Approach to Regulation	<p>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. (Rec. A)</p> <p>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. (Rec. B)</p> <p>The working group will separately consider the scope and mechanism of possible rule and/or statutory waivers. (Rec. C) <i>(This recommendation was drafted and voted on during the meeting and therefore does not appear in the agenda materials.)</i></p>
Risk Assessment Process	<p>Recommend that the sandbox regulator implement an initial risk assessment process based on a combination of service model and nature of service model of risk categorization to evaluate a sandbox applicant's proposal and assign a risk level to each applicant based on identified criteria. (Rec. D)</p> <p>Recommend that the initial risk level assignment may be adjusted upon further consideration of level of consumer sophistication and the stakes of the services being delivered. (Rec. E)</p> <p>Recommend that the level of data collection and monitoring of sandbox participants will be based on the assigned level of risk, with greater data collection and monitoring assigned to the projects assigned a higher risk. (Rec. F)</p> <p>Recommend that authorization orders permitting practice within the sandbox clearly set forth the authorized practice areas, service model, reporting requirements, and nature of service for each applicant. (Rec. G)</p>

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Enforcement	<p>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. (Rec. H)</p> <p>In addition to traditional enforcement such as discipline, suspension, termination, other parallel programs can be implemented to protect the public including: MFA and CSF. (Rec. I)</p>

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Scope of a Regulatory Sandbox	<p>The sandbox is open to entities offering legal practice services through “nontraditional” business or service models. Nontraditional means business or service models that are:</p> <ul style="list-style-type: none"> • not permitted by California Rule of Professional Conduct 5.4 (i.e., entities using business models in which nonlawyers hold an economic interest or managerial role or through which lawyers otherwise share revenue with nonlawyers); • not permitted by California Bus. & Prof. Code Section 6125 et seq. (i.e., entities using service models potentially violating the proscription on practice of law by unlicensed nonlawyers, whether software or human); or otherwise not permitted by the California Rules of Professional Conduct. (Rec. J) <p>Applicants who credibly demonstrate that their proposed legal services model will predominantly serve low- and moderate-income Californians will be prioritized for expedited assessment and authorization over those entities which do not. The sandbox process will not be “first in, first out.” (Rec. K)</p> <p>Applicants who credibly demonstrate that their proposed legal services model will predominantly serve low- and moderate-income Californians do not pay application fees. All others will pay application fees in the amount of [X]. (Rec. L)</p> <p>Once admitted to the sandbox, sandbox participants will pay semi-annual user fees, with the fee amount to be based on a tiered schedule keyed to an entity’s revenue during the previous 6 months. (Rec. M)</p> <p>No sandbox application will be considered where a lawyer who has been disbarred, suspended, resigned with charges pending or involuntarily inactive from the State Bar of California, or the attorney licensing agency of another state or US territory, or otherwise declared ineligible to practice law by the regulatory authority in a foreign country is either a provider of legal services, a manager of legal service provision, or an equity owner. (Rec. N)</p>

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Scope of a Regulatory Sandbox (continued)	<p>No sandbox application will be considered where attorneys who are not authorized to practice law by the State Bar of California are providing legal services or managing legal service provision. (Rec. Q)</p> <p>Unless a specific rule has been waived in whole or in part in the entity’s scope of sandbox authorization, any lawyer practicing law within a sandbox entity, whether as an employee, contractor, partner, shareholder or otherwise, must comply with the California Rules of Professional Conduct and statutes governing lawyer conduct at all times, including the lawyer’s duty to supervise subordinate lawyers and nonlawyers under rules 5.1 and 5.3, and the duty to comply, pursuant to rule 5.2, with the rules and statutes notwithstanding that the lawyer acts at the direction of another. (Rec. P)</p> <p>Nonlawyer sandbox participants are subject to specific duties of care and fiduciary obligations as set forth in the California Rules of Professional Conduct and statutes governing lawyer conduct only to the extent those rules have been specifically applied to them under the sandbox rules. For instance, per the full working group vote at our 9/17 meeting, all sandbox participants must comply with duties of confidentiality and competence. Note that a sandbox participant’s obligations will also include whatever duties of care and fiduciary obligations, reporting requirements and other requirements relating to regulatory oversight that the full working group decides, upon the recommendation of the SAGE subcommittee, will also apply to sandbox participants. This will also likely include a system for adjudicating alleged violations and meting out sanctions. In addition, to the extent a sandbox participant employs a lawyer, that lawyer will be subject to rules 5.1 and 5.3. (Rec. Q)</p> <p>All sandbox participants must maintain a statutory agent in California. (Rec. R)</p>