



The State Bar of California

CLOSING THE JUSTICE GAP WORKING GROUP

Date: August 5, 2022

To: Closing the Justice Gap Working Group

From: Merri Baldwin, Vice Chair
Bridget Gramme, Deputy Chief of Programs

Subject: Options for Attorney Involvement for Sandbox Entrants

At its October meeting, the working group considered various models for attorney involvement within entities providing services in a sandbox. The center of the discussion within the working group setting, and in discussions with stakeholders in recent months, has been the need to ensure a level of accountability for sandbox entities consistent with the type of accountability lawyers and law firms are required to meet. This memo provides a brief summary of the models from other jurisdictions that we have considered, a summary of the discussions, and a recommendation for a resolution based on these discussion for the working group's decision.

MODELS

- **Utah:** Does not require providers within the sandbox to designate responsible attorney but does require applicants to disclose the following for purposes of risk assessment: Identification of individuals with controlling financial or managerial interest in the entity, including those who have managerial control over the direct provision of legal services to the public; whether any of those individuals are either disbarred/suspended lawyers or have a felony criminal history; whether the entity itself (or parent or affiliated companies) has a history of state or federal misdemeanor or felony convictions, consent decrees, or enforcement actions resulting in sanctions; whether the entity itself (or parent or affiliated companies) is under state or federal criminal investigation or enforcement action investigation; whether the entity's business model includes the plan to share or sell consumer data.¹

¹ Office of Legal Services Innovation, Utah Supreme Court, [Frequently Asked Questions](#)

- **Arizona:**² Each ABS must designate a “**compliance lawyer**” who must: 1) be authorized to practice law in Arizona per Supreme Court rule 31 (a) and (b); 2) be a manager or employee of the ABS; 3) consent to the designation; 4) not have been subject to discipline in any jurisdiction for the past 10 years; and 5) “possess credentials and experience in the legal field to ensure that ethical obligations, protection of the public, and standards of professionalism are adhered to.” The compliance lawyer is responsible for ensuring that lawyers, authorized persons, employees, and anyone associated with the ABS are complying with ethical and professional obligations of lawyers and must promptly report any identified potential breaches to the state bar.
- **England/Wales (Solicitors Regulation Authority):** Requires an ABS to have 1) at least one manager who is regulated by an approved legal services regulator (solicitor, barrister, etc.); 2) a supervisory lawyer who has practiced as a lawyer for a minimum of three years, to supervise its regulated work (foreign lawyers can meet this criteria if registered); 3) designate an individual as the “**Compliance Officer for Legal Practice (COLP)**” who is responsible for ensuring that the firm complies with regulatory requirements and reports any serious breaches to the SRA; and 4) designate an individual as a “Compliance Officer for Finance and Administration (COFA).” Both COLPs and COFAs must be approved by the SRA, and must be a manager or senior level employee of the ABS, consent to the designation, not be disqualified, and for the COLP, must be authorized practice law by an approved legal services regulator.³ COLPS and COFAs are also be subject to the SRA’s Character and Suitability rules.⁴
- **Victoria, Australia (Victorian Legal Services Board + Commissioner):** Requires an ABS to designate at least one “**authorised principal**” who is licensed to practice law.⁵ An authorised principal must ensure compliance with the Uniform Law and Rules.⁶
- **Canada:** In surveying regulators, staff has learned that British Columbia recently established a sandbox but as of the date of this writing has not yet had an ABS applicant and therefore has not considered whether they would require a “responsible attorney” to be designated.⁷ Ontario anticipates rolling out its sandbox and rules very soon but so far has not yet publicly posted the requirements for sandbox entry.

² See Arizona Code of Judicial Administration [§ 7-209](#) (G (3)) (“Role and Responsibilities of Licensed Alternative Business Structures and Compliance Lawyers”) (p.16)

³ [SRA Authorisation of Firms Rules, 1.1, 8, and 9](#)

⁴ [SRA Character and Suitability Rules](#)

⁵ See [Part 3.7 of the Uniform Law](#), s.105.

⁶ See [Part 3.2 of the Uniform Law](#)

⁷ BC does permit Multi-Disciplinary Practice (MDP) and has specific requirements for attorneys, including that they have “actual control” over the delivery of legal services in the MDP. See [Law Society Rules Rule 2-39](#)

Note that those jurisdictions that require a responsible attorney are not operating a sandbox, but rather operate an ABS model and authorize and regulate ABS entities outright. Utah does not require the designation of responsible attorney and instead utilizes the level of lawyer involvement as part of its risk assessment.⁸

SUMMARY OF DISCUSSION

Many members of the working group, and stakeholders including members of the Legislature, have commented that the benefit of requiring at least one senior-level employee to be designated as a responsible attorney is that that would likely serve as a mechanism to ensure compliance with the rules of professional conduct.

Others have commented on the downside to such a requirement, particularly in the sandbox environment; it may deter organizations from applying to the sandbox if they do not have an attorney on staff, or do not have an attorney employee willing to take on this level of responsibility.

The group also discussed whether, rather than requiring a prescribed level of involvement, the level of attorney involvement be recognized and handled through the risk assessment and monitoring/reporting process. For example, in Utah, the regulator assigns a higher level of risk to applicants that do not have supervising attorneys, and increasing reporting, monitoring, and auditing requirements.

Finally, there was discussion as to whether compliance goals could be met through the designation of an “authorized person” whether or not that individual is an attorney. While there was some support for this, the consensus of the group and further discussions with stakeholders is that having licensed attorneys perform this function would provide a higher level of accountability.

PROPOSED RECOMMENDATION 20:

Option 1: The working group recommends that all sandbox applicants be required to identify a responsible attorney throughout its participation in the sandbox, who will have the following responsibilities: 1) verify that the model for the provision of legal services in the sandbox complies with California law and the rules established by the Sandbox Regulator; 2) establish appropriate training and updates for those who are delivering legal advice and services to the public on behalf of the sandbox applicant; and 3) serve as a resource for those providers to

⁸ Both the SRA and the Victorian Legal Services Board maintain “innovation” projects where applicants can apply to waive certain rules but do not have a formal sand box. But the requirements to designate responsible attorneys for an ABS are statutory in both jurisdictions and cannot be waived. See [Innovation in Legal Practice](#) (Victoria); [SRA Innovate Program](#) (England/Wales)

provide legal counsel where appropriate. This attorney may, but is not required to, be a manager or employee of the provider.⁹

Option 2: The working group recommends that the level of attorney involvement be included in the risk assessment calculation for all sandbox applicants. The Sandbox Regulator should assign a higher level of risk to applicants that do not have supervising attorneys, and increased reporting, monitoring, and auditing requirements.

Option 3: The working group recommends that all providers admitted into the sandbox be at least 50% owned by, and therefore controlled by, attorneys.¹⁰

⁹ The working group recommends that the State Bar's Office of the Chief Trial Counsel participate in drafting guidelines for sandbox entities' responsible attorneys so that the entities and attorneys understand their obligation as well as the disciplinary oversight that will apply to this role.

¹⁰ This option is provided in response to the State Bar's July 13, 2022 letter to the Senate and Assembly Judiciary Committee Chairs regarding proposed amendments to AB 2958, the State Bar's annual fee bill.