



The State Bar of California

OPEN SESSION AGENDA ITEM 708 SEPTEMBER 2022

DATE: September 22, 2022

TO: Members, Board of Trustees

FROM: Bridget Gramme, Deputy Chief of Programs

SUBJECT: Closing the Justice Gap Working Group Dissolution

EXECUTIVE SUMMARY

The Board voted to form the Closing the Justice Gap Working Group (CTJG) in 2020 to further the State Bar's statutory mission to support greater access to the legal system in California and its strategic goal to study potential regulatory changes to expand access through the use of technology in a manner that balances the dual goals of public protection and increased access to justice. Under the [revised Charter](#), the working group is scheduled to submit its recommendations to the Board in May 2023.

On August 24, 2022, the California Legislature passed AB 2958 (Committee on Judiciary), the State Bar's annual fee bill, which placed significant limitations on the State Bar's work exploring a regulatory sandbox effective immediately upon the governor's signature. Given these limitations, staff recommends that the Board of Trustees thank the members of the CTJG for their work and formally dissolve the working group.

BACKGROUND

At its meeting on May 14, 2020, the Board of Trustees authorized the formation of the CTJG, primarily charged with "exploring the development of a regulatory sandbox to evaluate possible changes to existing laws and rules that otherwise inhibit the development of innovative legal service delivery systems such as consumer-facing technology that provides legal advice and services directly to clients at all income levels; and other new delivery systems created through the collaboration of lawyers, law firms, technologists, entrepreneurs, and

others.” The working group was specifically tasked with developing recommendations for consideration by the Board of Trustees.

Beginning with its meeting on January 14, 2021, the CTJG held eight meetings of the full working group and 14 subcommittee meetings before pausing its meetings when the State Bar received a December 7, 2021, letter from the chairs of the Senate and Assembly Judiciary Committees, outlining a number of concerns.

At its meeting on March 24, 2022, the Board revised the CTJG’s charter and streamlined its composition and work in response to concerns raised by the Legislature and other stakeholders. Since then, the working group held two more meetings, one in June, and one in August.

DISCUSSION

On August 24, 2022, the Legislature passed [AB 2958](#). Of relevance to this item,¹ the bill adds section 6034.1 to the Business and Professions Code as follows:

- (a) Any entity of the State Bar of California exploring a regulatory sandbox shall do all of the following:
 - (1) Prioritize protecting individuals, especially those in need of legal assistance, from unscrupulous actors, including those actors seeking to do business in the legal field, above all else.
 - (2) Prioritize increasing access to justice for persons who qualify for legal assistance from qualified legal services organizations or from State Department of Social Services-funded immigration legal services.
 - (3) Exclude corporate ownership of law firms and splitting legal fees with nonlawyers, which has historically been banned by common law and statute due to grave concerns that it could undermine consumer protection by creating conflicts of interests that are difficult to overcome and fundamentally infringe on the basic and paramount obligations of attorneys to their clients.
 - (4) Adhere to, and not propose any abrogation of, the restrictions on the unauthorized practice of law, including, but not limited to, Sections 13405 and 16951 of the Corporations Code.
- (b) This section does not limit the State Bar’s ability to provide limited practice licenses to law students and law graduates under certain conditions, and with the supervision of an active State Bar-licensed attorney.
- (c) This section does not limit the examination of the use of technology to increase access to justice for persons who qualify for legal assistance from qualified legal services organizations or from State Department of Social Services-funded immigration legal services, low-income individuals, and small businesses, so long as proposals adhere to,

¹ Section 3 of the bill imposes these restrictions on proposals regarding a paraprofessional program until 2025 as well. Section 4 removes the restrictions for a paraprofessional program after January 1, 2025, but maintains the same restrictions for any efforts to explore a regulatory sandbox.

and do not propose any abrogation of, the restrictions on the unauthorized practice of law, including, but not limited to, Sections 13405 and 16951 of the Corporations Code.

(d) This section does not preclude the State Bar from seeking feedback from legal services organizations, including organizations that provide legal services in family law and immigration law, community-based organizations, and consumers about options for increasing access to legal services.

(e) The State Bar shall not expend any funds, regardless of the source, on activities that do not meet the requirements of this section.

The governor may sign the bill into law anytime between now and September 30.

According to its new charter, the CTJG is expressly charged with “exploring the development of a regulatory sandbox to encourage the development of innovative legal service delivery models serving clients at all income levels through the collaboration of lawyers, law firms, technologists, entrepreneurs, and others.” The new statute, however, prohibits the working group from considering or recommending a proposal that would permit nonlawyer ownership or the sharing of fees with nonlawyers, and it also prohibits any proposed changes to the existing limitations on the unauthorized practice of law (UPL).

As this Board is aware, the purpose of the regulatory sandbox would be to test new legal services delivery models that might otherwise be prohibited by the existing rules and laws about UPL and law firm ownership. Simply put, with the new restrictions imposed by AB 2958, there would be nothing left to test in a sandbox.

Accordingly, with deep gratitude for the CTJG’s Chair, Justice Alison Tucher, Vice-Chairs Merri Baldwin and Rebecca Sandefur, and all of the working group members who volunteered their time, effort, and thoughtful insight to the CTJG, staff recommends that the Board formally dissolve the working group at this time.

AB 2958 does permit the State Bar to seek feedback from legal services organizations, community-based organizations, and consumers about options for increasing access to legal services. Staff will seek this feedback and report to the Board periodically on these efforts.

FISCAL/PERSONNEL IMPACT

The working group meets remotely so the dissolution of the working group would be relatively cost neutral. Staff who have been supporting the CTJG will be assigned to different projects within the Office of Professional Competence.

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None

RECOMMENDATIONS

RESOLVED, that the Board of Trustees expresses deep appreciation for the members of the Closing the Justice Gap Working Group; and it is

FURTHER RESOLVED, that, in light of the restrictions imposed by AB 2958, the Closing the Justice Gap Working Group is hereby dissolved.

ATTACHMENT LIST

None