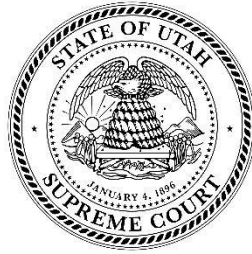


UTAH SUPREME COURT AD HOC COMMITTEE



REGULATORY REFORM

Nick Stiles, Co-Chair
Maryt Fredrickson, Co-Chair

May 23, 2025

12:00 – 1:00

Judicial Council Room – Matheson Courthouse

Public Virtual Link to Join Meeting

<https://utcourts.webex.com/utcourts/j.php?MTID=m358b82c7db5ba8d5af49f314cf11bb3b>

1. Welcome and Introductions
2. Innovation Office and Sandbox Refresher
 - Standing Order 15 (TAB 1)
 - Letter to Utah State Bar (TAB 2)
 - Phase 2 Letter (TAB 3)
3. Ad Hoc Committee on Regulatory Reform Charge (TAB 4)
4. Four Workgroups
5. Schedule/Timeline

TAB 1

Utah Supreme Court Standing Order No. 15

This Standing Order establishes a pilot legal regulatory sandbox and an Office of Legal Services Innovation to assist the Utah Supreme Court with overseeing and regulating the practice of law by nontraditional legal service providers or by traditional providers offering nontraditional legal services. Unless otherwise provided, this Order shall expire on the second anniversary of its effective date.

The Standing Order is effective as of August 14, 2020.

Background

The access-to-justice crisis across the globe, the United States, and Utah has reached the breaking point.¹ As to how affordable and accessible civil justice is to people, the 2020 World Justice Project Rules of Law Index ranks the United States 109th of 128 countries.² As to that same factor, out of the thirty-seven high-income countries, the United States ranks dead last.³

To put it into perspective, a recent study by the Legal Services Corporation found that 86 percent “of the civil legal problems reported by low-income Americans in [2016–17] received inadequate or no legal help.”⁴ Similarly, a recently published study out of California “[m]odeled on the Legal Services” study, concluded that 60 percent of that state’s low-income citizens and 55 percent of its citizens “regardless of income experience at least

¹ Access to justice means the ability of citizens to meaningfully access solutions to their justice problems, which includes access to legal information, advice, and resources, as well as access to the courts. See Rebecca L. Sandefur, *Access to What?*, DAEDALUS, Winter 2019, 49.

² WORLD JUSTICE PROJECT, WORLD JUSTICE PROJECT RULE OF LAW INDEX 2020 14, https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf.

³ *Id.*

⁴ LEGAL SERVICES CORPORATION, THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (2017).

one civil legal problem in their household each year.” The study also found that 85 percent of these legal problems “received no or inadequate legal help.”⁵ Closer to home, an in-depth April 2020 analysis of the legal needs of Utahns living at 200 percent or less of the federal poverty guidelines found that their unmet legal needs stood at 82 percent.⁶

For years, the Utah Supreme Court has made combating the access-to-justice crisis confronting Utahns of all socioeconomic levels a top priority. To date, the Supreme Court, along with the Judicial Council and the Utah Bar Association, have worked ceaselessly to improve access to justice through many initiatives: the Utah Courts Self-Help Center, the Licensed Paralegal Practitioner Program, form reform, and the Online Dispute Resolution Program, to name but a few. What has become clear during this time is that real change in Utahns’ access to legal services requires recognition that we will never volunteer ourselves across the access-to-justice divide and that what is needed is market-based, far-reaching reform focused on opening up the legal market to new providers, business models, and service options.

In its boldest step toward bridging the access-to-justice gap, the Supreme Court has undertaken an effort to reevaluate and amend several of the regulations it has historically relied upon in governing the practice of law. This Standing Order and accompanying rule changes implement that effort. The Supreme Court believes that the regulatory reform set out in this Standing Order will shrink the access-to-justice gap by fostering innovation

⁵ STATE BAR OF CALIFORNIA TASK FORCE ON ACCESS THROUGH INNOVATION OF LEGAL SERVICES, FINAL REPORT AND RECOMMENDATION 11–12 (2020) (emphasis added).

⁶ UTAH FOUNDATION, THE JUSTICE GAP: ADDRESSING THE UNMET LEGAL NEEDS OF LOWER-INCOME UTAHNS 23 (2020).

and harnessing market forces, all while protecting consumers of legal services from harm.⁷

1. General Provisions

In accordance with its plenary and exclusive authority and responsibility under article VIII, section 4 of the Utah Constitution to govern the practice of law, the Utah Supreme Court establishes the *Office of Legal Services Innovation* (Innovation Office). The Innovation Office will operate under the direct auspices of the Supreme Court and its purpose will be to assist the Supreme Court in overseeing and regulating nontraditional legal services providers and the delivery of nontraditional legal services.⁸ To this end, and subject to Supreme Court oversight, the Innovation Office will establish and administer a pilot legal regulatory sandbox (Sandbox)⁹ through which individuals and entities may be approved to offer nontraditional legal services to the public through nontraditional providers or traditional providers using novel approaches and means, including options not permitted by the Rules of Professional Conduct and other applicable rules. The Supreme Court establishes the Innovation Office and the Sandbox

⁷ The Supreme Court's decision to pursue changes regarding its governance of the practice of law is in keeping with (1) the Resolution of the Conference of Chief Justices and (2) the Resolution of the American Bar Association's House of Delegates "to consider regulatory innovations that have the potential to improve the accessibility, affordability, and quality of civil legal services, while also ensuring necessary and appropriate protections that best serve clients and the public"

⁸ In Utah, the practice of law is defined by Utah Supreme Court Rule of Professional Practice 14-802. This Standing Order incorporates that definition. For an understanding of "nontraditional legal services providers" and "nontraditional legal services," please refer to Section 3.3 (Regulatory Scope).

⁹ A regulatory sandbox is a policy tool through which a government or regulatory body permits limited relaxation of applicable rules to facilitate the development and testing of innovative business models, products, or services by sandbox participants.

for a pilot phase of two years from the effective date of this Standing Order. At the end of that period, the Supreme Court will carefully evaluate the program as a whole, including the Sandbox, to determine if it should continue. Indeed, unless expressly authorized by the Supreme Court, the program will expire at the conclusion of the two-year study period.

2. Innovation Office

In carrying out the responsibilities designated to it by the Utah Supreme Court, the Innovation Office, at all times, will be subject to the Supreme Court's direction and control. Furthermore, the Innovation Office will have no authority to regulate any individuals, entities, or activities that are beyond the Supreme Court's constitutional scope and mandate to govern the practice of law.¹⁰ With these overarching restrictions firmly in mind, the Innovation Office will have responsibility with respect to the regulation of non-traditional legal services provided by traditional legal providers and non-traditional and traditional legal services provided by non-traditional legal providers, including those services offered within the Sandbox and those that have been approved for the general legal market ("exit or exited the Sandbox"). The Innovation Office will be responsible for (1) evaluating potential entrants to the Sandbox and recommending to the Supreme Court which entrants should be admitted; (2) developing, overseeing, and regulating the Sandbox, including establishing protocols and monitoring nontraditional legal providers and services therein, as well as terminating an

¹⁰ By way of illustration, the Supreme Court has authorized real estate agents to advise their customers with respect to, and to complete, state-approved forms directly related to the sale of real estate. *See* Rule of the Utah Supreme Court Rules of Professional Practice 14-802(c)(12)(A). Outside of this grant, and the ability to modify it, the Supreme Court has no authority with respect to regulating real estate agents. That authority rests with the legislative and executive branches. By way of further illustration, some attorneys hold both J.D.s and M.D.s. The Supreme Court only governs the ability of these individuals to practice law. It has never interfered with their ability to practice medicine.

entrant's participation in the Sandbox where deemed appropriate and in keeping with the regulatory principles set forth below; and (3) recommending to the Supreme Court which entrants be permitted to exit the Sandbox and enter the general legal market.¹¹

The Innovation Office will be funded initially by a grant from the State Justice Institute and in-kind contributions from the National Center for State Courts and the Institute for the Advancement of the American Legal System. The Innovation Office will have the authority to seek additional grant funding and may also be supported through licensing fees as noted in Section 4.9.

The Innovation Office will meet regularly and at least monthly, on a day and at a time and place of its convenience. It will also report monthly to the Supreme Court during one of the Court's regularly scheduled meetings.

2.1 Office Composition

The Utah Supreme Court will appoint the members of the Innovation Office.¹² The Innovation Office will consist of a Chair, Vice-Chair, and nine additional members, all serving on a volunteer basis. Five of the members shall serve as the Executive Committee of the Innovation Office. The Executive Committee shall be composed of the Chair, Vice-Chair, Executive Director, and two additional members appointed by the Court. The Executive Committee will be responsible for setting the Agenda for each meeting of the Innovation Office and for making initial recommendations to the Innovation Office regarding applicants.

In the event of a vacancy, or on its own motion, the Supreme Court will appoint, depending on the vacancy, a new Chair, Vice-Chair, or member. The Court will strive to appoint nonlawyers

¹¹ Innovation Office resources may limit the number of Sandbox entrants.

¹² The Supreme Court Task Force on Regulatory Reform shall continue to operate pending the appointment of the members of the Innovation Office. Upon appointment of the members of the Innovation Office, Utah Supreme Court Standing Order 14 shall be vacated in accordance with the terms of that Standing Order.

(public members) as at least five of the members and will prioritize a membership body diverse across gender, race, ethnicity, sexual orientation, socioeconomic background, and professional expertise.

Innovation Office actions will be taken by majority vote by a quorum of the members.

2.2 Conflicts of Interests

The Utah Supreme Court acknowledges that instances may arise in which Innovation Office members may face conflicts of interest between their business or personal affairs and their member duties. A conflict of interest arises when members—or a member of their immediate family—have a financial interest in a Sandbox applicant or participant or in an entity that has successfully exited the Sandbox. For example, a member’s firm may apply to offer services as part of the Sandbox. Recognizing that transparency and public confidence are paramount concerns, the Supreme Court requires that in cases of conflict, the implicated member(s) disclose the conflict to the Innovation Office in writing and recuse from any involvement regarding that particular Sandbox applicant or participant. The Innovation Office will maintain a record of all conflicts and recusals and make all records related to conflicts and recusals publicly available.

2.3 Office Authority

Subject to the limitations set forth in the Standing Order and the ultimate authority and control of the Utah Supreme Court, the Innovation Office will have the authority to oversee the nontraditional provision of legal services (*see* Section 3.3.2 on Regulatory Scope) using an objectives-based and risk-based approach to regulation.

Objectives-based regulation specifically and clearly articulates regulatory objectives to guide development and implementation. Both the Innovation Office and the Sandbox participants will be guided in their actions by specific objectives.

Risk-based regulation uses data-driven assessments of market activities to target regulatory resources to those entities and

activities presenting the highest risk to the regulatory objectives and consumer well-being. Using risk-based regulation enables the Innovation Office to better prioritize its resources and manage risks in the Utah legal services market.

The Supreme Court grants the Innovation Office the authority to develop and propose processes and procedures around licensing, monitoring, and enforcement to carry out its mission in light of the Regulatory Objective and Regulatory Principles outlined in Section 3.¹³

The Innovation Office must submit proposed processes, procedures, and fee schedules to the Supreme Court for approval as they are developed and before they take effect.

3. Regulatory Objective, Principles, and Scope

3.1 Regulatory Objective

The overarching goal of this reform is to improve access to justice. With this goal firmly in mind, the Innovation Office will be guided by a single regulatory objective: To ensure consumers have access to a well-developed, high-quality, innovative, affordable, and competitive market for legal services. The Utah Supreme Court's view is that adherence to this objective will improve access to justice by improving the ability of Utahns to meaningfully access solutions to their justice problems, including access to legal information, advice, and other resources, as well as access to the courts.

¹³ The Implementation Task Force on Regulatory Reform has already established an Innovation Office Manual. A copy of that manual may be viewed at sandbox.utcourt.gov.

3.2 Regulatory Principles

The Innovation Office will be guided by the following regulatory principles:

1. Regulation should be based on the evaluation of risk to the consumer.¹⁴
2. Risk to the consumer should be evaluated relative to the current legal services options available.¹⁵
3. Regulation should establish probabilistic thresholds for acceptable levels of harm.¹⁶
4. Regulation should be empirically driven.¹⁷
5. Regulation should be guided by a market-based approach.¹⁸

¹⁴ The phrase “based on the evaluation of risk” means that regulatory intervention should be proportional and responsive to the actual risk of harm posed to the consumer, as supported by the evidence.

¹⁵ The phrase “relative to the current legal service options available” means that risk should not be evaluated as against an ideal of perfect legal representation by a lawyer. Risk should rather be measured as against the reality of current market options for consumers. In many cases, that means no access to legal representation or legal resources at all.

¹⁶ The phrase “probabilistic thresholds for acceptable levels of harm” (the chance a consumer is harmed) means the probability of a risk occurring and the magnitude of the harm should the risk occur. Based on this assessment, the Innovation Office will determine thresholds of acceptable risks for identified harms. Regulatory resources should be focused on areas in which, on balance, there is a high probability of harm or a significant impact from that harm on the consumer or the market.

¹⁷ The phrase “empirically driven” means that the regulatory approach and actions must be supported, whenever possible, by data from the legal services market.

¹⁸ The phrase “market-based approach” means that regulatory tactics should seek to align regulatory incentives with increased revenue or decreased costs for market participants in order to encourage desired behavior or outcomes.

3.3 Regulatory Scope

As noted, under the auspices of the Utah Supreme Court, the Innovation Office will be responsible for developing, overseeing, and regulating the Sandbox, including the oversight of nontraditional legal providers and services therein. The Supreme Court offers the following examples to help individuals and entities, lawyers and nonlawyers alike, understand the Innovation Office's regulatory scope. These examples are just that and the list is not intended to be exhaustive.

3.3.1 Outside the Regulatory Scope

Individuals and entities that carry out the following activities are outside the Innovation Office's regulatory scope, remain under the Utah Bar's authority, and need not notify the Innovation Office:

Partnerships, corporations, and companies entirely owned and controlled by lawyers in good standing; individual lawyers with an active Utah Bar license; and legal services nonprofits:

- (i) offering traditional legal services as permitted under the Rules of Professional Conduct; or
- (ii) using new advertising, solicitation, fee-sharing, or fee-splitting approaches as contemplated by the Rules of Professional Conduct.¹⁹

¹⁹ Partnerships, corporations, and companies entirely owned and controlled by lawyers; individual lawyers with an active Utah Bar license; and legal services nonprofits may not, however, engage in fee-splitting or fee-sharing in an effort to avoid the prohibition against outside ownership set forth in rule 5.4A of the Utah Rules of Professional Conduct.

3.3.2 Within the Innovation Office's Regulatory Scope

Individuals and entities that carry out the following activities are within the scope of the Innovation Office's regulatory authority and are subject to this Standing Order's requirements:²⁰

- (a) Partnerships, corporations, and companies entirely owned and controlled by lawyers; individual lawyers with an active Utah Bar license; and legal services nonprofits partnering with a nonlawyer-owned entity to offer legal services as contemplated by Rule 5.4B;
- (b) Nonlawyer owned entities, or legal entities in which nonlawyers are partial owners (for profit or nonprofit):
 - (i) offering legal practice options whether directly or by partnership, joint venture, subsidiary, franchise, or other corporate structure or business arrangement, not authorized under the Rules of Professional Conduct in effect prior to [Month] [Date], 2020, or under Utah Supreme Court Rule of Professional Practice 14-802; or
 - (ii) practicing law through technology platforms, or lawyer or nonlawyer staff, or through an acquired law firm.

3.3.3 Disbarred Lawyers and Individuals with Criminal History

Disbarred Lawyers. The Utah Supreme Court has determined that lawyers who have been disbarred²¹ present a significant risk of harm to consumers if in the position of ownership or control of

²⁰ This list is not meant to be exclusive or exhaustive. There may be business arrangements, models, products, or services not contemplated in Section 3.3.2, which are welcome and should come through the Sandbox. The Sandbox is not, however, meant to enable lawyers not licensed in Utah to practice in Utah without authorization from the Utah State Bar.

²¹ For purposes of this Standing Order, a lawyer whose license has been suspended qualifies as a disbarred lawyer during the period of suspension.

an entity or individual providing legal services. Therefore, disbarred lawyers are not permitted to gain or hold an ownership interest of greater than 10 percent in any entity authorized to practice law under Rule 5.4B or this Standing Order.

In addition, any entity applying for authorization to offer services in the Sandbox must disclose the following:

- (a) whether the entity has any material corporate relationship and/or business partnership with a disbarred lawyer, and
- (b) whether a disbarred lawyer works with or within the entity, in either an employment or contractual relationship, and is in a managerial role in the direct provision of legal services to consumers.

Criminal History. The Supreme Court has determined that individuals with certain serious criminal histories may present an increased risk of harm to consumers if in the position of ownership or control of a legal service entity.

Any entity applying for authorization to offer services in the Sandbox must disclose the following:

- (a) whether any individual holding an ownership interest of greater than 10 percent in the entity has a felony criminal history,
- (b) whether the entity has any material corporate relationship or business partnership with an individual with a felony criminal history, and
- (c) whether an individual with a felony criminal history works with or within the entity, in either an employment or contractual relationship, and is in a managerial role in the direct provision of legal services to consumers.

The Innovation Office, on receipt of any disclosures required above, will incorporate the information into the risk assessment of the entity as appropriate. To the extent permitted by law, the Innovation Office may also conduct independent criminal history checks.

Falsifying any information, including lawyer status and individual criminal history, is a basis for dismissal from the Sandbox and in the event the entity or individual has exited the Sandbox, a basis for loss of licensure. Other criminal and civil sanctions may also apply.

4. The Sandbox

The Sandbox is a policy tool by which the Utah Supreme Court, through the Innovation Office, can permit innovative legal services to be offered to the public in a controlled environment. The Innovation Office will develop, oversee, and regulate the Sandbox according to the guidance outlined in this Standing Order. Individuals and entities wanting to offer the public nontraditional legal business models, services, or products must notify the Innovation Office. Individuals and entities in the Sandbox will be subject to such data reporting requirements and ongoing supervision as the Innovation Office determines, so long as the requirements fall within its regulatory authority.

4.1 Application

All individuals and entities that fall within the Regulatory Scope (Section 3.3.2) must apply to the Innovation Office for authorization to enter the Sandbox.

4.2 Application Process

The objective of the application process is for the Innovation Office to determine that the legal service proposed by the applicant furthers the Regulatory Objective and does not present unacceptable levels of risk of consumer harm. The Innovation Office will develop an efficient and responsive process for intake, review, assessment, and response to applications.

The Utah Supreme Court contemplates that the application process will be iterative and will include communications between the Innovation Office and the various applicants, as necessary.

The Innovation Office will make a determination as to whether an applicant's proposed legal service furthers the Regulatory Objective and does not present an unacceptable risk of consumer

harm. The Innovation Office will make recommendations to the Supreme Court regarding whether an applicant should be authorized and the associated requirements for the applicant (e.g., reporting, disclosure, risk mitigation, insurance requirements). In developing these requirements, the Innovation Office will consider the Regulatory Objective and Regulatory Principles.

If the Innovation Office does not find that an applicant's proposed legal service furthers the Regulatory Objective or finds that it presents an unacceptable risk of consumer harm, the Innovation Office will deny the proposed authorization, and will include a brief written explanation supporting the finding. The Innovation Office will develop a process for appeal of a denial of a proposed authorization to the Supreme Court.

4.3 Authorization

As with the licensing of lawyers and Licensed Paralegal Practitioners, the Utah Supreme Court will ultimately be responsible for approving or denying authorization to nontraditional legal service providers.

An approved application means permission to offer the proposed legal service in the Sandbox as outlined in the approval and under the Innovation Office's authority. Authorized participants and services are deemed authorized to practice law in Utah, albeit on a limited and temporary basis, under Utah Supreme Court Rule of Professional Practice 14-802.

Denial of authorization by the Supreme Court has the effect of returning the application to the Innovation Office. The Supreme Court may include a brief written explanation of the reasons for its decision not to authorize the applicant. This information may guide the applicant in how to potentially resolve concerns and revise its application for reconsideration for authorization. However, to be clear, some (perhaps many) applicants may not be approved to enter or exit the Sandbox.

Additionally, and to be clear, authorization to practice law does not impact any of the other requirements that may be imposed upon an entity (e.g., business license, tax commission registration, etc.).

4.4 Licensing (Exiting the Sandbox)

Sandbox participants that are able to demonstrate that their legal services are safe—i.e., that they do not cause levels of consumer harm above threshold levels established by the Innovation Office—may be approved to exit the Sandbox and may be granted the appropriate license to practice law by the Utah Supreme Court pursuant to Utah Supreme Court Rule of Professional Practice 14-802. Such providers and services will remain under the regulatory authority of the Supreme Court, through the Innovation Office and subject to such monitoring and reporting requirements as the terms of the license indicate and subject to the enforcement authority of the Innovation Office.

The Innovation Office will develop the process (subject to Supreme Court approval) by which providers and services exit the Sandbox. It is anticipated that this process will generally follow that outlined for application approval, including an assessment of the provider or service, a finding on the consumer safety of the provider or service, and a recommendation to the Supreme Court as to the scope of the license and associated requirements (e.g., reporting). The Innovation Office is authorized to make the licensing assessment, findings, and recommendations at both the individual or entity level and a more categorical level—i.e., to recommend that a category of legal service providers be licensed to practice law in Utah.

If the Innovation Office does not find that a participant's proposed legal service furthers the Regulatory Objective or finds that it presents an unacceptable risk of consumer harm, the Innovation Office will deny the proposed licensure, and will include a brief written explanation supporting the finding. The Innovation Office will develop and propose the process for appeal of a denial of Sandbox exit to the Supreme Court.

4.5 Fees

The Innovation Office will have the authority to propose a fee schedule to the Utah Supreme Court. Unless otherwise required, fees paid will be used to fund the Innovation Office.

4.6 Monitoring and Measuring Risk

The Innovation Office will have the authority to develop the measurements by which it assesses and manages risk. The Innovation Office will identify specific harms presenting the most significant risk to the Regulatory Objective. All regulated providers, whether in the Sandbox or after exiting, have a proactive duty to report any unforeseen risks or harms of which they become aware.

As noted, the Innovation Office will have the authority to develop specific data reporting requirements to monitor consumer risk of harm as part of both Sandbox authorization and general licensing of proposed legal services. The Innovation Office will develop processes and procedures for intake, review, and assessment of incoming data at an individual provider level, across different market sectors, and across the market as a whole. The Innovation Office will have the authority to increase or decrease reporting requirements as indicated by the provider's performance in the market and compliance with the Innovation Office's requirements.

The Innovation Office will have the authority to take proactive actions to effect monitoring of providers and the market as a whole, including but not limited to market surveys, expert audits, anonymous testing, and "secret shopper" tests. The Innovation Office will also develop processes and procedures for intake, review, and assessment of information coming from sources such as media, other governmental or nongovernmental institutions, whistleblowers, and academia.

The Utah Supreme Court acknowledges that this regulatory approach does not remove all possibility of harm from the market and, in fact, contemplates that sometimes there may be no regulatory enforcement action even though some consumers may experience harm. Nevertheless, aggrieved consumers may seek relief and remedy through traditional channels of civil litigation or, if applicable, the criminal justice system.

4.7 Consumer Complaints

The Innovation Office will develop a process by which consumers may directly complain to the Office. The Innovation Office will

develop a process by which individual complaint information is fed into the larger data reporting system to contribute to the assessment of risk.

4.8 Enforcement

The Innovation Office will develop standards for enforcement authority upon regulated providers in line with the Regulatory Objective and Regulatory Principles. Enforcement will generally be triggered when the evidence of consumer harm exceeds the applicable acceptable consumer harm threshold. The Innovation Office will also develop the range of enforcement mechanisms it deems appropriate, including but not limited to education, increased reporting requirements, fines, and suspension or termination of authorization or license. Last, the Innovation Office will develop a process for appealing enforcement decisions to the Innovation Office, and then to the Utah Supreme Court.

Once the Innovation Office has developed these various processes and procedures, they will be submitted to the Supreme Court for review and, if appropriate, approval. Both the Supreme Court and the Innovation Office will strive to make the enforcement process as transparent, targeted, and responsive as possible.

4.9 Standards of Conduct

As stated in Rule 5.4(B), lawyers engaging with the nontraditional provision of legal services, as owners, employees, contractors, or business partners with Sandbox participants or licensed providers are required to uphold their duties as required by the Rules of Professional Conduct.

4.10 Confidentiality

The Innovation Office shall maintain a commitment to transparency in the execution of its mission. Identities of applicants to the Sandbox and the applications themselves are presumed to be public information and will be shared via the Innovation Office website.

Applicants may designate appropriate, specific information in the application and/or in any data reported as required by the Innovation Office as confidential business information under the

Government Records and Access Management Act (GRAMA). *See* UTAH CODE § 63G-2-305(1)-(2). The Innovation Office will maintain the confidentiality of such designated information and it will be redacted from the publicly released documents. Nothing, however, in this paragraph limits the ability of the Innovation Office to provide aggregate and anonymized data sets to outside researchers, subject to a duly executed data sharing agreement with the Court.

4.11 Reporting Requirements

The Innovation Office will be responsible for regular reporting to the Utah Supreme Court and the public on the status of the Sandbox, the Sandbox participants, licensed providers, and consumers.

The reports to the Supreme Court must be monthly. Reports to the Supreme Court must include the following:

- The number of applicants
- General information about applicants (e.g., type of legal entity, ownership makeup, target market, proposed type of service, legal need to be addressed, subject matter served)
- Numbers of (along with general information)
 - Applicants recommended for Sandbox entry
 - Applicants denied Sandbox entry
 - Sandbox applicants on hold
 - Applicants recommended to exit Sandbox
 - Applicants not recommended to exit Sandbox
- Numbers and demographic data (as available) on consumers served by the Sandbox and licensed providers
- Identification of risk trends and responses

The Innovation Office will, subject to existing law, have the authority to determine the nature and frequency of its reports to the public, but must, at a minimum, report the information identified above on an annual basis (keeping anonymity and confidentiality as required).

4.12 Jurisdiction

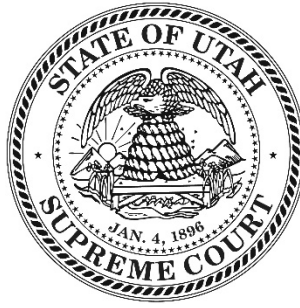
Entities authorized to practice law within the Sandbox and licensed to practice law on exiting the Sandbox are subject to the jurisdiction of this Court. Any false or misleading statements made by entities or their members throughout the regulatory relationship, whether during application, authorization, reporting, monitoring, or enforcement, whether discovered at the time or at any time afterward, will be independent grounds for enforcement and an aggravating factor in any enforcement proceeding based on other conduct. Any fraudulent or materially misleading statements made by an entity or its members to the Innovation Office or the Court may result in revocation of the entity's authorization to practice law.

4.13 Termination of Pilot Phase

The Sandbox is a policy tool, adopted by the Utah Supreme Court to develop a new regulatory approach to nontraditional legal services and to inform the Supreme Court's decision-making on rule changes necessary to support the expanded legal services market. The Supreme Court has set out a two-year period of operation for this pilot phase of the Innovation Office and Sandbox.

At the end of the pilot phase, the Supreme Court will determine if and in what form the Innovation Office will continue. Sandbox participants authorized and in good standing at the end of the two-year period and for whom there appears to be little risk of consumer harm will be able to continue operations under the authority of the Innovation Office or other appropriate entity should the Innovation Office cease to exist. Entities that have successfully exited the Sandbox will be able to continue operations under the authority of the Innovation Office or other appropriate entity should the Innovation Office cease to exist.

TAB 2



SUPREME COURT OF THE STATE OF UTAH

HON. MATTHEW B. DURRANT
CHIEF JUSTICE

HON. JOHN A. PEARCE
ASSOCIATE CHIEF JUSTICE

HON. PAIGE PETERSEN
JUSTICE

HON. DIANA HAGEN
JUSTICE

HON. JILL M. POHLMAN
JUSTICE

March 28, 2023

Kristen K. Woods, President
Utah State Bar
645 South 200 East
Salt Lake City, UT 84111

Re: The Future of Utah's Legal Regulatory Sandbox

Dear Katie,

Over the past several months, we have been gathering information and input from multiple stakeholders in order to make informed decisions about the future of Utah's Legal Regulatory Sandbox. We launched the Sandbox by issuing Standing Order No. 15 and created the Legal Services Innovation Committee (LSI Committee) and Office of Legal Services Innovation (Innovation Office or IO) to carry out the objectives and principles in that order. To date, the Court has authorized 49 Sandbox entities that use some novel approach to the business or service of law. Those entities are providing innovative services to individuals and small businesses in Utah, employing new business structures (including non-lawyer ownership) and new kinds of service providers (both non-lawyer providers and software).

The Sandbox is a well-regulated, data-driven experiment that relies on an ex post evaluation of consumer harm. Consumer harm is measured in three ways. First, Sandbox entities must regularly report detailed data to the Innovation Office. This data includes the type of services sought, the service dates, the scope of services provided, the amount paid for each distinct service, the legal and/or financial outcomes

experienced by the client, and any client complaints. The data is compiled and analyzed each month for evidence of consumer harm, such as a mismatch between services sought and services provided, poor outcomes, or disproportionate cost. Second, the IO solicits consumer complaints directly through a link that must be conspicuously posted on each entity's website and at brick-and-mortar locations. Third, the IO assesses the quality of the services provided by entities using software or nonlawyer service providers by employing Utah-licensed lawyers with relevant expertise to audit case files. So far, three audits have been completed and a fourth is underway, and the audit process, reports, and results have been both thorough and positive. Each month, the Court reviews a detailed report on all entities authorized in the Sandbox, and the IO releases a public report that excludes proprietary information. The IO also has a robust public-facing website with a sortable database of all authorized entities and their authorization materials as well as the public facing monthly reports.

The results have been promising. Sandbox entities have served 24,000 unduplicated consumers and provided over 40,000 legal services. Most of those services (87%) have been provided by lawyers working as employees within new legal businesses. Thirteen percent of services have been provided by nonlawyers. Sandbox entities are primarily serving individual consumers and small businesses with an average cost of service of \$162. Small business services make up the majority delivered to date (40%). Military benefits (21%), immigration (13%), end of life planning (6%), and accident/injury (6%) round out the top five areas of service. There have been fourteen total complaints reported to the IO about services received from a Sandbox entity. Seven have been identified by the IO as related to potential consumer harm caused by a legal service. The IO investigated each of those complaints and determined that each one was resolved by the relevant entity to the satisfaction of all parties.

We believe that this regulatory framework has been successful. But the Sandbox is an experiment, and the Court is committed to refining our approach to this project as we gather more information. In addition to the data described above, the Court has met with and gathered input from Bar leadership, lawyer legislators, the Utah Association for Justice, the Arizona Supreme Court, national experts in legal regulation, Utah lawyers, and members of the public. Based on that input, the Court plans to make the following changes to the Sandbox to ensure its viability, respond to criticisms and concerns, and to ensure that Sandbox entities do not present an undue risk to the public while still retaining the basic framework of regulating based on an ex post evaluation of consumer harm.

We appreciate the Bar's willingness to engage with the Court and provide feedback on the Sandbox. And we believe that these adjustments are responsive to the concerns that the Bar Commission and others have raised. We value the Bar's partnership and hope to benefit from the Bar's support and active participation in this project going forward.

1. Structure

Beginning July 1, 2023, we would like to move part of the IO's operations to the Utah State Bar. The Sandbox will remain a seven-year pilot project under the supervision and control of the Utah Supreme Court.

Locating part of the IO in the Bar is consistent with how the Court delegates its other regulatory functions. The Bar operates relatively autonomously in carrying out its other admissions and licensing functions because it is administering established rules approved by the Court. But because the Sandbox is a pilot project, the Court needs to retain more control over its operations so that it can make ongoing policy adjustments as needed. For that reason, the Court envisions that the IO, under the direction of the Bar's Executive Director, will carry out the administrative functions of operating the Sandbox, while the LSI Committee will be responsible for making recommendations to the Court on regulatory actions, such as entity authorizations and enforcement. The Court will continue to vote on all authorizations and any changes to our policies and procedures.

Under this plan, the Court would pay for and provide a data analyst, and the LSI Committee would continue to operate on a volunteer basis. The Bar would be responsible for funding one FTE for a program director housed at the Bar, plus any associated administrative support and overhead costs for the IO and LSI Committee.

Program Director

The Bar will recruit and hire a full-time employee as a program director to manage the operations of the IO for the remainder of the seven-year pilot project. Ideally, the program director should be a licensed attorney. A hiring committee (consisting of an elected Bar Commission representative, the Bar's Executive Director, the Chair of the LSI Committee, the Appellate Court Administrator, and a member of the Utah Supreme Court) will select the most qualified applicant and submit the recommendation to the full Court for approval. The program director's salary will be competitive with the salaries of similarly qualified people employed by the Bar.

The program director will carry out the IO's day-to-day operations in accordance with the policies and procedures in the IO Manual approved by the Court. In fulfilling these duties, the program director will report directly to the Bar's Executive Director. The Executive Director may allocate additional staff or resources to the IO as needed to effectively carry out the duties of the office, subject to the Bar's regular budgeting process. The program director will also staff the LSI Committee. Staffing the committee entails drafting the monthly report, preparing applications for the committee's review, notifying the committee of any complaints or compliance violations, preparing and distributing committee agendas and minutes, hosting monthly meetings, and other duties as directed by the Chair of the LSI Committee.

Data Analyst

Data analysis is an essential part of the Sandbox. The data we collect aids the Court in regulating Sandbox entities and in assessing the success of this evidence-based experiment, which will inform future policy decisions. To perform this function, the Court has employed a qualified data analyst as an independent contractor. The Court will explore ways to continue funding this position, rather than asking the Bar to hire a data analyst as part of the IO's operations.

LSI Committee

The LSI Committee assists the Utah Supreme Court in regulating entities authorized to provide legal services pursuant to Standing Order 15. The committee is responsible for taking immediate action on complaints and violations in accordance with the approved enforcement policy, reviewing all Sandbox applications and making approval recommendations to Court, recommending ongoing policy and procedure changes for Court approval, reviewing data and audit results, and reporting monthly to the Court on the status of the Sandbox.

As a Supreme Court advisory committee, the LSI Committee's members are appointed by and serve at the pleasure of the Court. The membership currently consists of Chair John Lund, a Utah attorney and past president of the Utah Bar; Vice Chair Nathaniel Player, a Utah attorney and Director of the Utah State Court's Self Help Center; Dr. Rebecca Sandefur, an expert on access to justice and consumer legal needs; Dr. Thomas Clarke, an expert on court policies, technology, and regulation; and Lucy Ricca, an expert on legal services regulation and policy.

The Bar Commission and others have “encourage[d] the Court to diversify the voices leading and evaluating” the Sandbox. (Memorandum, The Utah State Bar Board of Bar Commissioners, December 16, 2022). In order to incorporate more stakeholder voices, the Court will expand the LSI Committee to include at least:

- one elected Bar Commissioner,
- one member of the Bar’s Access to Justice Commission,
- two Utah attorneys experienced in areas of law directly serving consumers,
- one Utah licensed paralegal practitioner, and
- one non-attorney member experienced in working with traditionally underserved communities.

The Court encourages the LSI Committee to create subcommittees – policy, applications, compliance, data review, audits, etc. – so long as subcommittee membership is open to all committee members who would like to participate.

2. Funding

The first two years of Sandbox operations were funded entirely by grants. Those grants covered the initial ramp up costs of the project, including the creation of a database and an application portal. Now that those initial expenses are behind us, the costs of operating the Innovation Office will likely change. Currently, the annual cost of operating the IO is approximately \$384,000. We anticipate those costs will be reduced by taking advantage of the Bar’s existing administrative infrastructure, converting the program director from a contractor to a full-time employee, and relying on additional lawyer and non-lawyer volunteers.

The Bar has questioned whether the ongoing expenses of the IO should be subsidized by the Bar’s budget, which is largely composed of the mandatory lawyer licensing fees that the Court has authorized the Bar to collect. These criticisms have been two-fold. Some have argued that the legislature has made a policy decision that people are entitled to legal services if their liberty or parental rights are threatened. “But free or discounted legal services (whether by lawyers or algorithms) in commercial contexts hasn’t yet become a priority that taxpayers, or lawyers for that matter, should fund.” (“An Apology for Lawyers,” Mark O. Morris, Utah Bar Journal, Jan/Feb 2023.) This criticism misunderstands the purpose of the Sandbox. The Sandbox does not fund free or discounted legal services. Rather, it permits private enterprise and market forces

to meet consumers' needs. All expenses associated with operating the Sandbox are for the purpose of *regulating* – not subsidizing – these entities. And the regulation of the practice of law is the exclusive constitutional responsibility of the Utah Supreme Court. Because the Court has authorized the Utah State Bar to administer its regulatory functions, the operation of the IO fits squarely in the Bar's wheelhouse.

The second criticism carries more weight. Lawyers and paralegal practitioners fund the cost of their own regulation by paying Court-assessed licensing fees that the Bar collects. Why shouldn't non-traditional legal providers in the Sandbox do the same? We believe they should. This is particularly true of the for-profit businesses that make up the majority of Sandbox entities. "If someone has a business model to serve unmet legal needs in a way that can turn a profit for them, then they should have that opportunity if they are willing to fund that risk, and at the same time risk failure along with any other new business enterprise." ("An Apology for Lawyers," Mark O. Morris, Utah Bar Journal, Jan/Feb 2023.) Part of funding that risk entails paying for the costs of the regulation required to make sure that innovative service models do not harm consumers.

The Court has developed a two-part approach to funding the IO going forward. We have authorized a fee policy for Sandbox entities with the intent that the project will eventually become fully self-funded, just as the regulation of lawyers is self-funded. Although we intend to implement the fee policy on July 1st, the Court recognizes that there will be a lag before the IO is self-sustaining. During that time, the IO's operating expenses will require some Bar resources. To reduce the impact on the Bar's budget, the Court will provide additional start-up funds. Both parts of this approach are explained in detail below.

Fee Policy

The Bar Commission has encouraged the Court to make the IO "fully self-funded by charging fees to applicants and participants." (Memorandum, The Utah State Bar Board of Bar Commissioners, December 16, 2022). To that end, the Court has approved a fee policy developed by the LSI Committee through which Sandbox entities will defray the cost of their own regulation. The fee policy, which will be implemented beginning on July 1, 2023, consists of three parts: (1) an application fee, (2) a fee for the costs of any required audit or prelaunch assessment, and (3) an annual fee based on revenue.

1. **Application Fee:** Each entity will be required to pay an application fee of \$250 at the time the application is submitted. The Court may authorize additional fees to cover the cost of any required background checks.
2. **Audit Costs:** For-profit entities must cover the cost of any required pre-launch assessment (\$1,000) or post-launch audit (\$2,000). Volunteer lawyers with expertise in the relevant area of the law will be recruited to conduct pre-launch assessments and audits of non-profit entities.
3. **Annual Fee:** Once an entity successfully completes the 12-month pilot phase, the entity may apply for an annual license. Issuance of the annual license is conditioned on the recommendation of the LSI Committee and subject to the discretion of the Court. Qualifying entities seeking annual licensing will be required to pay an annual licensing fee as follows:
 - a. Base fee of \$250.
 - b. Additional fee of 0.5% of revenue resulting from authorized services reported for the prior calendar year. If an entity has operated for less than a full calendar year, then the revenue-based fee amount will be prorated.

Annual fee statements will be distributed after the close of the calendar year and fees are due the last business day in January. Entities failing to submit fees due by the relevant date will incur late fees.

Our best estimate is that Sandbox fees will generate approximately \$25,000 in FY24. Assuming the historical rate of forty to fifty applications per year continues, application fees would be expected to generate \$10,000 to \$12,500 per year. There are twelve entities who have successfully completed the pilot phase and would be eligible for annual licensing, generating base licensing fees of \$3,000. Based on the gross revenue reported by those entities, we estimate approximately \$12,000 in revenue-based licensing fees for FY24. As more entities enter the Sandbox and grow their businesses, we expect the percentage-based revenue will trend upward over time.

All fees will be collected by the Bar and used to fund the operating costs of the IO going forward. If the current fee schedule does not sufficiently cover the IO's operating costs within two years, the Court will reassess the schedule.

Start Up Funds

In addition to the fees detailed above, the Court anticipates that it will be able to provide the Bar with a substantial sum to cover the IO's initial operating costs. The Judicial Council previously allocated \$324,000 in federal American Rescue Plan Act funds to the Sandbox. Based on our current projections, we will have approximately \$100,000 of those funds remaining on July 1st. We have confirmed with our general counsel's office, our finance department, and the Governor's Office of Planning and Budget, that the Court can transfer those remaining funds to the Bar under an agreement to use the funds for their intended purposes and in accordance with federal regulations.

The Court recognizes that at least some of the initial cost of operating the IO within the Bar will come from lawyer licensing fees, but we view that as an appropriate use of those fees that is wholly consistent with the Bar's mandate. The Sandbox offers opportunities for enterprising Utah lawyers to expand their practices to fulfill unmet market demand. Utah-licensed lawyers have been involved in every authorized Sandbox entity. Regulating these new business models to ensure that they do not pose a risk to the public is fully within our delegation of regulatory authority to the Bar. The Court believes that it is fair to use a portion of its lawyer licensing fees to test this regulatory model, so long as Sandbox entities also contribute to the cost of regulation. And, unlike lawyer licensing fees, the revenue-based fee structure ties the amount of that contribution to the profits generated by virtue of participating in the Sandbox. This funding mechanism allows the Court to continue to carry out our constitutional regulatory responsibilities through the Bar in a way that is fair and equitable to all participants.

3. Narrowing the Scope of the Sandbox

From the beginning, the stated purpose of this project has been to "shrink the access-to-justice gap by fostering innovation and harnessing market forces, all while protecting consumers of legal services from harm." (Utah Supreme Court Standing Order No. 15, August 14, 2020.) Some have suggested that "access to *justice* is very different from access to *legal advice*, or *legal services*," because "[n]ot having enough money to pay a lawyer for a range of traditional legal services . . . does not necessarily imply injustices are being perpetrated." ("An Apology for Lawyers," Mark O. Morris, Utah Bar Journal, Jan/Feb 2023.) And the Bar Commission defines "access to justice" initiatives as those "that aim[] to improve legal services to those citizens of limited or meager financial means." (Memorandum, The Utah State Bar Board of Bar

Commissioners, December 16, 2022). The Court, on the other hand, defines the access-to-justice gap broadly to include unmet legal needs of all kinds and across all socio-demographic groups.

But even under this broad definition, the purpose of this pilot project is to address unmet consumer needs. Specifically, we are testing whether some of our own rules are preventing the market from meeting those needs, and we are doing so in a way that carefully assesses whether the public is being harmed. Because we wanted to allow the market to innovate, we did not pre-judge which models would ultimately result in a benefit to consumers. But we have listened closely to feedback from the Bar and others who believe that Sandbox participation should be limited to entities that are “furthering access to justice in some meaningful and helpful way within the State of Utah.” (Memorandum, The Utah State Bar Board of Bar Commissioners, December 16, 2022). Although we define access to justice broadly, we agree that narrowing the scope of the Sandbox will better advance our core goal of addressing unmet consumer needs.

In doing so, we are guided by the successes we have seen in the two-and-half years of Sandbox operations. In particular, the vast majority of services provided in the Sandbox are to individual consumers and small businesses, two groups that have been identified as key components of the justice gap. Multiple entities are using capital to develop new tiers of service using either technology or nonlawyer providers to decrease cost and/or increase accessibility. Finally, the Court is pleased to have multiple nonprofits within the Sandbox, using nonlawyers to provide targeted free legal services to Utah communities in need.

The Court intends to narrow the scope of the Sandbox to these types of innovative models that are designed to benefit consumers. This will allow the IO to direct its limited resources toward those entities with the potential to reach consumers currently underserved by the legal market.

Beginning July 1, 2023,¹ the LSI Committee will require all new applicants to demonstrate that their proposal meets an “**innovation requirement**,” meaning that Sandbox authorization will allow the entity to reach consumers currently underserved by the market. An applicant may make this showing in several ways, including but not limited to, reducing the cost of legal services, making legal services more accessible, or developing a new business or service model. Examples might include using non-lawyer providers to deliver free or low-cost services, creating a one-stop-shop for consumers to

1. To implement the changes outlined in this letter, the Court has temporarily paused accepting new applications.

obtain related legal and non-legal services, or taking on outside investment to fund software development.

Importantly, non-attorney investment or ownership arrangements which do nothing more than supply capital for advertising and/or marketing of existing legal services will *not* meet the innovation requirement.

4. Reducing Risk to Consumers

By design, the Sandbox's regulatory model differs from the traditional regulation of the practice of law. The traditional model licenses individual lawyers and paralegals who meet specified qualifications to practice as they see fit so long as they adhere to the Rules of Professional Conduct. The Sandbox authorizes entities, not individuals, to function in a highly regulated environment and regulates based on an ex post evaluation of consumer experience, rather than by rule.

While the Court wants to preserve the basic regulatory structure of the Sandbox, we see the wisdom in adding more front-end controls to ensure, at the outset, that new providers do not present an undue risk to the public. The Court has heard from many stakeholders who have suggested we test an entity's ability to competently deliver the proposed legal services, that we improve the vetting process to exclude "bad actors" from the Sandbox, and that we impose fiduciary duties on non-lawyers in the Sandbox. The following changes respond to those concerns.

Ensuring Competence

Although the Sandbox uses an ex post regulation model, the Court seeks some additional pre-launch assurance that the entity will be able to competently offer legal services to the public. To address the Court's concern, the LSI Committee has proposed a new policy relating to moderate- and high-risk entities. The Court believes this policy strikes the right balance in allowing innovation while protecting the public.

We begin with the assumption that Utah-licensed lawyers are competent to provide legal services and will do so only if they have "the legal knowledge, skills, thoroughness, and preparation reasonably necessary for the representation." Utah R. Prof'l Cond. 1.1. Based on that assumption, an entity's level of innovation, and potential risk, corresponds to the degree of licensed lawyer involvement—the less lawyer involvement, the more potential risk. Under the following framework, higher innovation entities must demonstrate that they are capable of competently providing the legal service they seek to offer:

- **Low Innovation Entities:** An entity is categorized as low innovation, and thus low risk, when it uses an alternative business structure involving non-lawyer ownership (ABS) to deliver legal services through licensed lawyers or paralegal practitioners. Because all services are provided by Bar licensees subject to admission standards and the Rules of Professional Conduct, existing safeguards are sufficient to ensure competence.
- **Moderate Innovation Entities:** Moderate innovation entities deliver legal services using non-lawyer alternative legal providers (ALPs), including trained non-lawyers or computer software with the ongoing involvement of a licensed lawyer. To ensure that the legal services provided by these entities are of an appropriate quality, the following safeguards are required:
 - The entity's quality assurance process must be directed by a Utah-licensed lawyer who:
 - oversees the development of the service method, such as by developing training materials, supervising education and training, developing scripts, algorithmic models, templates and/or checklists, and
 - plays an ongoing quality assurance role, by directing regular reviews of providers' services for quality and accuracy.
 - The entity is subject to consumer disclosure and Innovation Office badge display requirements, monthly data reporting, and may be subjected to an audit of services for quality at the discretion of the Innovation Office.
- **High Innovation Entities:** High innovation entities also deliver legal services using ALPs, but they have no consistent, ongoing involvement of a Utah-licensed lawyer. To ensure that these entities are competent to provide legal services, the following safeguards are required:
 - the entity must identify the specific, limited service that it intends to offer (e.g., responding to a notice of eviction, filing for an

uncontested divorce, expunging criminal records, seeking a domestic violence protective order, petitioning for a name change),²

- before offering services to the public, the entity must satisfactorily complete a pre-launch service assessment conducted by two independent attorneys with relevant expertise, and
- the entity is subject to consumer disclosure and Innovation Office badge requirements, monthly data reporting, and may be subjected to an audit of services for quality at the discretion of the Innovation Office.

Additional Vetting of Participants

The Court also wishes to see additional vetting of Sandbox participants, similar to Arizona’s requirements for ABSs. Currently, a Sandbox application requires identification of all “controlling persons” and “financing persons” involved in the entity. Controlling persons are “all persons and entities who wholly or partially direct the management or policies of [the] proposed entity and/or the direct provision of legal services to consumers, whether through ownership of securities, by contract, or otherwise.” (Innovation Office Manual, updated September 29, 2022.) Financing persons are “all persons and entities who will wholly or partially (greater than 10%) finance the business of your proposed entity.”³ (*Id.*)

2. The Court acknowledges that a particular entity seeking to build a viable product or service may need authorization for additional related activities. For example, Rasa, an entity offering criminal expungement services in the Sandbox, also needed the authorization to respond to Rule 402 Motions. Timpanogos, an entity assisting survivors of domestic violence with getting protective orders, also needed authorization to assist with stalking injunctions. The key principle here is that the entity must be clear and specific in their application and that the authorization must, at least initially, be tailored to a specific identified legal need or bundle of related legal needs. Over time, an entity may seek to expand its authorization into additional identified legal needs or bundles of legal needs.

3. These categories are similar to Arizona’s definition of “Authorized Persons” (ACJA § 7-209):
“Authorized person” means a person possessing:

1. An economic interest in the alternative business structure equal to or more than 10 percent of all economic interests in the alternative business structure; or
2. The legal right to exercise decision-making authority on behalf of the alternative business structure. Examples may include: a sole proprietor of a sole proprietorship, a manager of a limited liability company, an officer of a

The applicant is required to disclose whether any controlling or financing persons have been disbarred or suspended from the practice of law or have a felony criminal history. The applicant is also required to disclose whether “the entity and, if applicable, its parent and other affiliated companies” have any history of a state or federal criminal (misdemeanor or felony) conviction, a state or federal consent decree, a state or federal enforcement action resulting in sanctions (disgorgement, civil penalties, and/or injunction), or a current state or federal criminal investigation or state or federal enforcement action.

Although false or incomplete disclosures are grounds for revoking the entity’s Sandbox authorization, there is currently no mechanism for the IO to independently verify these disclosures. In addition, because applications are not currently posted on the IO’s website, the public does not have an opportunity to review these disclosures without making a public records request.

To ensure that the individuals and entities operating in the Sandbox do not pose an undue risk of harm to consumers, we propose the following additional safeguards:

1. The IO will verify that the entity authorized to provide Sandbox qualifying services is registered and in good standing with the Utah Department of Commerce.
2. All financing and controlling persons must consent to and pay the cost of a background check by the Utah Bureau of Criminal Identification at the time the application is filed. A background check will be performed before the application is recommended to the Court. All financing and controlling persons must further consent to a credit history check and, if required by the Innovation Office or the Court, to submit fingerprint cards.
3. All financing and controlling persons must disclose if they are an attorney, licensed paralegal practitioner, or otherwise required to maintain a professional license (e.g., social worker, accountants, mental health providers). The IO will verify that all such persons are in good standing with the applicable licensing agency.

corporation, a general partner of a general or limited partnership, or a person possessing comparable rights by operation of law or by agreement.

4. All financing and controlling persons must sign a form⁴ under penalty of perjury that asks whether the person or the entity applicant itself:
- a. has committed any act constituting material misrepresentation, omission, fraud, dishonesty, or corruption in business or financial matters,
 - b. has engaged in conduct showing incompetence or a source of injury and loss to the public,
 - c. has been convicted by final judgment of a felony, regardless of whether civil rights have been restored,
 - d. has been convicted by final judgment of a misdemeanor, regardless of whether civil rights have been restored,
 - e. has had a professional or occupational license or certificate denied, revoked, suspended, or any other disciplinary action taken,
 - f. has been terminated, suspended, placed on probation, or other disciplinary action taken in the course of employment since the age of 21,
 - g. has been found civilly liable in an action involving misrepresentation, material omission, fraud, misappropriation theft or conversion,
 - h. has been placed on probation or parole,
 - i. has violated any decision, order, or rule issued by a professional regulatory entity,
 - j. has violated any order of a court, judicial officer, or administrative tribunal, or
 - k. to the best of their knowledge, is the subject of any pending criminal or administrative investigations relating to professional competency, unauthorized practice of law, or material misrepresentation, omission, fraud, dishonesty, or corruption in business or financial matters.

4. The form should be substantially similar to Arizona's "Authorized Person Application," from which questions (a) through (j) are taken largely verbatim.

5. All approved Sandbox applications will be publicly available on the IO's website.
 - a. Before posting an application, the IO will redact all personally identifying information other than the names of all financing and controlling persons.
 - b. If the applicant has asserted a GRAMA confidentiality claim for information identified as trade secrets or confidential business information, those portions (other than the names of all financing or controlling persons) will also be redacted.

Fiduciary Duties

The Bar Commission and other stakeholders have asked the Court to hold Sandbox participants “to the same fiduciary and professional responsibility requirements to which lawyers are held.” (Memorandum, The Utah State Bar Board of Bar Commissioners, December 16, 2022). All licensed attorneys and paralegal practitioners operating in the Sandbox continue to be governed by the Rules of Professional Conduct and are subject to lawyer discipline. But non-lawyer managers and owners do not owe similar duties to clients, and many stakeholders worry that those non-lawyers may be incentivized to prioritize profits over a client's best interests. Additionally, although rule 5.4 requires lawyers to prevent others from interfering with their professional independence and judgment, non-lawyer owners or managers may not understand this limitation.

To address these concerns, the Court will require all financing and controlling persons to adhere to the same core fiduciary duties that lawyers owe to their clients: loyalty, confidentiality, diligence, and candor. In addition, all licensing or controlling persons must also agree not to interfere with the lawyer's professional judgment as a condition of authorization.

To participate in the Sandbox, all financing and controlling persons must agree to the following duties:

1. Must act in good faith to further a client's best interests.
2. Must not allow economic or other conflicts of interests to adversely affect the legal services rendered to a client.
3. Must ensure that legal services are delivered with reasonable diligence and promptness.

4. Must not reveal confidential information pertaining to the representation of a client without the client's consent or as allowed or required by law.
5. Must not engage in or allow any activity that misleads or attempts to mislead a client, a court, or others.
6. Must not take any action or engage in activity that interferes with the professional independence of lawyers or others authorized to provide legal services.
7. Must develop systems and processes within the entity applicant to ensure that each of the above duties are met and satisfied.

If the application is approved, these duties will be set forth as a condition of authorization in an order signed by the Court. In addition, as part of the on-boarding process, all financing and controlling persons must complete a one-hour ethics training approved by the LSI Committee that explains these obligations.

Compliance will be monitored through client complaints, data reporting, and exit surveys (see below). A violation of these duties will result in the suspension or revocation of the entity's authorization to practice in the Sandbox, disqualification of financing and controlling persons from submitting future Sandbox applications, and possible sanctions for violating a Court order.

5. Measuring Consumer Harms and Benefits

The purpose of this pilot project is to gather information to better inform the Court's future policy decisions. Although we are gathering promising data that suggests a lack of consumer harm, we have very little data on whether and how these reforms may be benefitting consumers. Benefit to consumers can take many forms, including increased access to legal advice or services, lower cost, increased information, greater knowledge, and improved control and choice. The Court needs evidence of consumer benefit to weigh against the potential risks of changing the way we regulate the practice of law. That evidence is also crucial to building and sustaining public support for this project.

In terms of consumer harm, some stakeholders have expressed concern that the current method of soliciting complaints is too passive. Although we require entities to conspicuously post a link for reporting complaints, asking consumers more direct

questions about the services they received and providing another opportunity to submit a complaint may generate more complete data on consumer harm as well.

To provide additional data on consumer benefits and harms, entities will be required to send clients a link to an exit survey. Because these types of consumer surveys have a low response rate, we believe it is important to keep the questionnaire simple. A Net Promoter Score survey is a simple questionnaire designed to measure consumer experience and satisfaction. This type of survey produces significantly higher response rates than other formats, which generates more reliable data. The first part of the questionnaire asks consumers to rate the legal service on a scale of 0 to 10, depending on how likely they would be to recommend the service to others. The second part is an open-ended question asking the consumer to explain their rating. Because we are specifically interested in measuring consumer benefit, we have tailored the open-ended question accordingly.

Each client who receives an authorized Sandbox service will receive a SurveyMonkey email along these lines:

The legal services you received from [Sandbox Entity] were made possible by a Utah Supreme Court pilot project that seeks to increase the availability of legal services. Your feedback is important to help the Court assess whether this project is benefiting consumers.

- On a scale of 1 to 10, how likely are you to recommend this legal service to someone with similar needs?
- How did you benefit from using this legal service?

If you have any concerns or complaints about the service you received, please click this [link](#) to contact the Utah Supreme Court's Office of Legal Services Innovation.

The results of the survey would be sent directly to the data analyst to compile for review by the LSI Committee and the Court. Any complaints related to regulatory harms would be reported to the LSI Committee immediately. The aggregate data would be included in the publicly available portion of the IO's monthly report.

6. Increasing Transparency

Although the IO maintains a robust public website with information about the Sandbox, the Court wishes to provide even more transparency into Sandbox operations to increase public confidence. The Court believes many of the changes detailed above – such as posting applications on the IO’s website and publishing data on consumer benefits – will further that goal and promote a better understanding and appreciation for the work being done in the Sandbox.

In addition, the Court has also adopted a rule requiring Supreme Court advisory committees, including the LSI Committee, to conduct open and public meetings. Effective February 22, 2023, Rule 11-107 of the Code of Judicial Administration requires all committees to:

- Publicly post its meeting dates,
- Post an agenda at least 24 hours before a meeting, and
- Post the location of the meeting or provide a link to join the meeting virtually.

The LSI Committee may close a portion of the meeting to discuss applications containing private personal or confidential business information or other matters permitted by the rule, but it must take any vote in a public meeting. Written minutes of the public portions of its meetings will be posted on the IO’s website after the minutes are approved.

The LSI Committee must promptly respond to public records requests. The Court is considering an additional rule to formalize that process.

We appreciate the Bar's willingness to engage in productive conversations about the future of the Sandbox. Your feedback has been very valuable, and we hope that our efforts to respond to your concerns will strengthen our partnership on this important project going forward. We will reach out to schedule a meeting with Bar leadership where the Court can address any questions or concerns you may have.

Chief Justice Matthew B. Durrant

Associate Chief Justice John A. Pearce

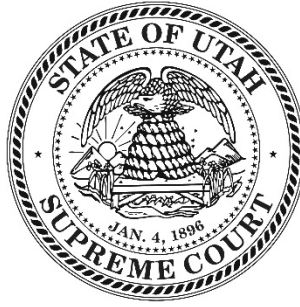
Justice Paige Petersen

Justice Diana Hagen

Justice Jill M. Pohlman

cc: Utah Judicial Council
Utah State Bar Commission
Utah State Bar Executive Director Elizabeth Wright
Utah Association for Justice
Utah State Senator Michael K. McKell
Utah State Representative Nelson T. Abbott

TAB 3



SUPREME COURT OF THE STATE OF UTAH

HON. MATTHEW B. DURRANT
CHIEF JUSTICE

HON. JOHN A. PEARCE
ASSOCIATE CHIEF JUSTICE

HON. PAIGE PETERSEN
JUSTICE

HON. DIANA HAGEN
JUSTICE

HON. JILL M. POHLMAN
JUSTICE

September 5, 2024

Dear Legal Services Innovation Committee,

Thank you for assisting the Court in evaluating how the Sandbox is functioning and what adjustments need to be made to better achieve our goals. As you know, the Sandbox is a pilot project designed to test whether changing the way we regulate the practice of law can increase access to legal services without increasing consumer harm. The results of this experiment will inform the Court's future decisions governing the practice of law in Utah. Because the Sandbox is a first-of-its-kind experiment, it will inevitably require fine-tuning to ensure that we are effectively testing the service models within the Sandbox and generating the kind of data that can meaningfully inform future policy decisions. We appreciate the Committee's commitment to working with the Court to refine the project as we learn more information.

Based on your feedback, we have decided to continue with the existing Sandbox model. We are also adopting the following recommendations made by the Committee:

- **Restart the audit process immediately.** We agree that audits of mid- to high-innovation entities are the most valuable source of information on consumer harm. We have also reconsidered our prior decision to employ volunteer attorneys as auditors. The Court is hoping to reduce operating costs, but we take the Committee's point that the entities themselves are responsible for audit fees that cover the cost of paid auditors. We agree that the audit process developed by the Committee has been successful and should not be modified.

- **Retire the badge and in its place require entities to prominently display language to solicit complaints or feedback.** We appreciate the Committee's recommendation to address the Court's growing concern that the badge has been misused or misconstrued as an endorsement by the Court. This recommendation also furthers the Court's interest in soliciting not just complaints, but feedback on benefits to consumers. We would like to implement this recommendation as soon as possible.
- **Reject applications from for-profit entities solely or primarily offering immigration-related services.** We appreciate the Committee's thoughtful memorandum detailing the reasons for this recommendation. We agree that these entities offer little potential for consumer-friendly innovations and pose an outsized risk of consumer harm. We adopt the Committee's recommendation to no longer authorize prospective for-profit immigration service providers.
- **Continue processing applications for new Sandbox entities.** We agree with the Committee that once the for-profit immigration service entities are removed from the application pool, we should promptly move forward with the remaining applications that are currently pending and continue to accept and process new applications. Admitting new entities to the Sandbox will allow us to test more service models and will better inform future policy decisions.

The Court defers consideration of the Committee's remaining recommendations until two additional policy changes are implemented.

Last year, the Court made several changes to the Sandbox to promote our objective of increasing access to legal services without increasing the risk of consumer harm. To mitigate consumer harm, we introduced a series of front-end controls: additional vetting of participants, pre-launch audits for high-innovation entities, and the requirement that financing and controlling persons adhere to the same core fiduciary duties that lawyers owe to their clients. To promote increased access to legal services, we imposed an innovation requirement for new applicants to the Sandbox. We explained that the change would "allow us to use our limited resources to regulate only those entities with potential to shrink the access-to-justice gap by increasing the availability of legal services." However, previously authorized entities with a satisfactory compliance record were allowed to continue to operate within the Sandbox regardless of whether they met the innovation requirement.

Since those policy decisions were made eighteen months ago, we have faced new challenges with entities currently in the Sandbox. A number of low-innovation entities have consumed a disproportionate amount of Innovation Office resources that could be better spent processing applications and regulating entities with more potential to benefit consumers. Some ABS entities appear to have misused their Sandbox authorization to bolster their credibility or gain access to restricted advertising markets by suggesting that their services have been endorsed by this Court. And many ABS entities appear to have misconstrued their authorizations as permitting them to offer legal services provided by non-Utah-licensed attorneys. While attempting to correct this misconception, we discovered that a sizeable group has no meaningful presence in the Utah legal market. Finally, we learned from our data team that the number and variety of entities in the Sandbox poses significant challenges for collecting and analyzing data in a meaningful way.

At the end of this month, the Sandbox will have been in operation for four years. Based on the information gathered so far, the Court has decided that further narrowing the scope of the Sandbox will better promote its objectives and align with our jurisdiction over the practice of law in Utah. To that end, we are adopting two policy changes:

1. The innovation requirement will be modified to include a Utah nexus.

- a. To meet the innovation requirement, an entity must demonstrate that a Sandbox authorization will allow it to reach Utah consumers currently underserved by the legal market. We will refer to this as “the Utah innovation requirement.”
- b. The Utah innovation requirement is intended to act as a fairly high bar for participation in the Sandbox. Only applications that present an innovative service model with the potential to expand access to legal services in Utah should be submitted for Court approval.
- c. The impact on Utah consumers must be substantial relative to the entity’s overall reach. National and international companies that expect to serve only an incidental number of Utah clients will not qualify. A small entity that principally serves Utah consumers will satisfy the Utah nexus even if it reaches a modest number of clients.
- d. To implement this policy, the Committee should recommend changes to the Innovation Office manual and, if necessary, Standing Order 15.

2. All previously authorized entities that do not meet the Utah innovation requirement will exit the Sandbox.

- a. The Committee will determine whether each existing Sandbox entity is currently providing authorized legal services using a model that meets the Utah innovation requirement.
 - i. This assessment should be limited to the service model on which the authorization was based. Entities wishing to propose a new service model meeting the Utah innovation requirement must re-apply to the Sandbox.
 - ii. Low-innovation entities will not meet the Utah innovation requirement unless the non-lawyer ownership structure is designed to facilitate an innovative service model with a substantial impact on the Utah market, such as providing a one-stop-shop or intermediary platform for Utah consumers.
 - iii. Mid- to high-level innovation entities will generally meet the Utah innovation requirement, so long as the entity's service model is designed to reach a substantial number of Utah consumers.
 - iv. The Innovation Office will gather the necessary information about each entity to present to the Committee, including whether the entity is actively employing the authorized service model. This will require individualized follow up with each entity.
- b. The Committee will provide the Court with a list of current Sandbox entities that do not meet the Utah innovation requirement. For each entity, the Committee should recommend one of three options:
 - i. Terminate Sandbox Authorization. We suspect that there are some low-innovation entities that will be unaffected by their removal because they have no need of a Sandbox authorization. Entities that do not provide legal services in Utah or who do not employ or partner with a Utah lawyer are outside the scope of our jurisdiction, meaning their Sandbox authorization has no effect. Entities that offer only legal information or scrivener services are likely not engaged in the practice of law and do not need special authorization to operate in Utah, especially if they operate using the same model in other

states. There may also be non-lawyer owned entities in the Sandbox that employ or contract with Utah lawyers in a way that does not constitute fee sharing and/or does not require a IOLTA waiver. These entities need no accommodation to continue operating when their authorization ends.

- ii. Terminate Sandbox Authorization with Accommodation. On the other hand, without the Sandbox authorization, the lawyers of some ABS-only entities would be subject to discipline for violating the Court's rules of professional conduct. We are willing to work with those lawyers to ensure that they are not subject to professional discipline if they continue to operate within the business arrangements entered into pursuant to a Sandbox authorization. That exemption will be non-transferable to other Utah attorneys and limited to the existing ownership structure and/or business model. If appropriate, the Committee should recommend that the Court grant such an accommodation in conjunction with terminating the entity's Sandbox authorization.
- iii. Change Authorization to Provisional Status. If the authorized service model meets the Utah innovation requirement but the entity has not yet launched that service model, the Committee may recommend that the entity's authorization be changed to a provisional status.

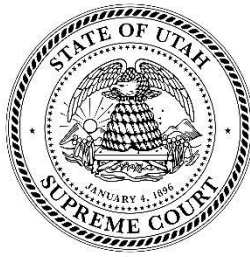
We anticipate that these two policy changes will vastly reduce the number of entities in the Sandbox. Currently, three-fourths of the Sandbox consists of low-innovation, ABS-only entities. Eliminating these entities from the Sandbox will allow us to focus our limited resources on regulating mid- and high-innovation entities with the greatest potential to shrink the access-to-justice gap.

After we narrow the scope of the Sandbox, we will be prepared to tackle the Committee's other recommendations. A rubric for classifying and handling complaints will be more helpful if it is tailored to the more limited variety of entities that will remain in the Sandbox. Similarly, any changes to the way we collect and analyze data will be informed by the type of entities being regulated, recognizing that the most useful data concerning mid- to high-level entities will come from pre- and post-launch audits.

We are excited by the prospect of focusing the energy of the Committee, the Innovation Office, and the Court on those models that have the greatest potential to meaningfully address the access to justice crisis in Utah. We believe these changes will avoid wasting time and resources on efforts that do not move the needle. We look forward to working with the Committee to further refine and implement these policies.

TAB 4

UTAH SUPREME COURT AD HOC COMMITTEE



REGULATORY REFORM

Nick Stiles, Co-Chair
Maryt Fredrickson, Co-Chair

Charge to Ad Hoc Committee on Regulatory Reform

In August 2020, the Utah Supreme Court launched the Regulatory Sandbox to study innovative and non-traditional models for the provision of legal services in a well-regulated experimental sandbox. As we approach the five-year mark of the experiment, we now have the data and experience to design long-term, post-Sandbox solutions to sustain and expand access to justice.

Just over two years from now, in August 2027, the Regulatory Sandbox is set to conclude. This Ad Hoc Committee will study the first five years of the experiment and lessons learned from similar reform efforts across the country and recommend to the Supreme Court permanent rule changes to institutionalize the Sandbox's successes. This Committee will include four multi-stakeholder working groups, each focused on a key area: Rule 5.4; Licensed Paralegal Practitioners; Community Justice Advocates; and Artificial Intelligence and Legal Technology.

Each working group will have about six months to prepare a preliminary report and recommendations (Nov. 2025), followed by about six months to refine and finalize that report and recommendations (Summer 2026). Then the committee will consolidate the four workgroup reports and submit a unified, omnibus report to the Utah Supreme Court.

Rule 5.4 Workgroup	
<ul style="list-style-type: none">• Research pros and cons of allowing lawyers to partner or share fees with nonlawyers, including any multijurisdictional implications.• Analyze lesson learned from Sandbox ABS entities as well as Arizona's ABS program.• Consider recommendations from experts on legal regulation.	<ul style="list-style-type: none">• Examine rule 5.4 language from other states.• Develop a recommendation on whether rule 5.4 should be amended.• Draft proposed rule changes, if any.

Licensed Paralegal Practitioners

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| <ul style="list-style-type: none">• Research other states' successful LPP programs and identify best practices.• Identify barriers to entry (time and cost, dearth of available training, absence of alternative paths to qualify for exam, lack of awareness of the program, etc.)• Identify barriers to practice (rule limitations on the scope of practice, challenges establishing or running a practice, public mistrust, competition in the Sandbox, etc.). | <ul style="list-style-type: none">• Develop a recommendation for:<ol style="list-style-type: none">1. increasing the number of LPPs who have the training and skills to provide competent representation, and2. expanding the number of consumers served by LPPs.• Draft proposed rule changes, if any. |
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Community Justice Advocates

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| <ul style="list-style-type: none">• Analyze current Sandbox entities training nonlawyers to offer free legal advice on specific topics to the communities they serve.• Examine community justice advocates models from other states and recommendations from access-to-justices experts.• Design a model that reflects best practices. | <ul style="list-style-type: none">• Identify the steps needed to implement the model, including whether additional collaboration with other entities or stakeholder is needed.• Draft proposed rule amendments, if any. |
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Artificial Intelligence and Legal Technology

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| <ul style="list-style-type: none">• Identify current and emerging trends in legal technology.• Research recommendations from legal regulatory reform experts on how to adapt to advancing technology.• Examine other states' approaches to regulating or carving out legal technology, including how they define the practice of law and deal with multijurisdictional issues.• Draft proposed rule changes, if any. | <ul style="list-style-type: none">• Develop a recommendation:<ol style="list-style-type: none">1. delineating between legal technology that should and should not be regulated as the practice of law,2. identifying any additional rules or enforcement mechanisms needed to properly regulate technology-aided legal practice.• Identify whether collaboration with other branches of government or other stakeholders will be needed to implement recommendations. |
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