



**UTAH SUPREME COURT'S
TASK FORCE ON REGULATORY REFORM**

Agenda

Location: Judicial Council Room
Scott M. Matheson Courthouse, 450 S. State St., Salt Lake City, UT 84111

Date: March 4, 2020

Time: 3:00 to 4:30 p.m.

Action: Welcome and approve February 19, 2020 minutes	Tab 1	John Lund, Co-Chair
Discussion: Website updates		
Discussion: New applicants/interest and potential email updates		Larissa Lee, Tyler Hubbard
Discussion & Action: Standing order	Tab 2	Justice Deno Himonas
Discussion: Update on outreach efforts		All
Discussion: Old business/new business		

[Sandbox website](#)

[Committee website](#)

Meeting Schedule:

March 18, 2020
April 1, 2020
April 15, 2020
April 29, 2020
May 13, 2020
May 27, 2020
June 10, 2020

June 24, 2020
July 8, 2020
July 22, 2020
August 5, 2020
August 19, 2020
September 2, 2020
September 16, 2020

September 30, 2020
October 14, 2020
November 25, 2020
December 9, 2020
December 23, 2020

Tab 1

Utah Supreme Court's Task Force on Regulatory Reform

Draft Meeting Minutes
February 19, 2020
Scott M. Matheson Courthouse
Judicial Council Room, Suite N31
450 S. State Street
Salt Lake City, UT 84111
3:00 p.m. – 4:00 p.m.

Attendees:

Justice Deno Himonas, Co-Chair
John Lund, Co-Chair
Justice Christine Durham (Ret.)
Steven Johnson
Heidi Anderson
Brody Arishita
Nathanael Player
Lucy Ricca
Rebecca Sandefur
Gillian Hadfield

Excused:

Larissa Lee
Margaret Hagan
Heather Farnsworth
Dean Gordon Smith
Thomas Clarke

Staff:

Tyler Hubbard, Law Clerk, Supreme Court
Marina Kelaidis, Recording Secretary

1. Welcome and approval of February 5, 2020 minutes: (John Lund)

John Lund welcomed everyone to the meeting and asked for approval of the minutes. Steven Johnson recommended a few minor word changes to the February 5, 2020 minutes.

Steven Johnson moved to approve the February 5, 2020 minutes with the recommended changes. Justice Himonas seconded the motion, and it passed unanimously.

2. Discussion – New applicants/interest and suggested email updates: (Tyler Hubbard, Marina Kelaidis)

Tyler Hubbard reported he has a draft email update ready to send out to those who have signed up for updates from the website. Mr. Hubbard is currently waiting for the biographies of the new Task Force members to be posted to the website as well as a link to the recording of the recent Data Workshop before he sends the update email to the subscribers. Mr. Hubbard will circulate the draft email update to the members of the Task Force for any feedback before it is sent out.

Marina Kelaidis reported that as of this morning there are 25 individuals and/or groups who have expressed interest in participating in the sandbox and 69 individuals and/or groups who have signed up for updates via the website.

John Lund asked the committee to discuss a comment that was submitted via the website expressing concern of the effect of regulatory reform in current legal practices, particularly for small or solo practitioners. Justice Himonas reiterated the need for the Bar's Task Force to help educate the members of the Bar of the ways in which regulatory reform can be beneficial to the current practice of law and current lawyers to help address some of these concerns. Steven Johnson suggested that after Standing Order 15 goes out for comment, there will likely be more comments like this one expressing concern over the potential loss of practice. Justice Himonas reported that that Task Force will be presenting at the Bar's upcoming spring and summer conventions. By the summer convention, the comment period for the Standing Order will be concluded and the Task Force will be able to address some of the concerns received. Heidi Anderson will confirm that the automatic replies to the submissions received on the Connect tab are being generated successfully.

In order to help small and solo practitioners see the potential opportunities provided by regulatory reform, Gillian Hadfield suggested for the Task Force to encourage the new non-lawyer providers in the sandbox to communicate upcoming opportunities for partnerships, hiring, and service networks. Justice Himonas agreed that this could be a successful way to present opportunities for lawyers to expand their services and introduce upcoming opportunities with providers to help alleviate a lot of the concern among lawyers. Ms. Hadfield recommended that this should not be implemented by the Task Force itself, but can be implemented by workshops or panels with the Bar and by advertising or outreach efforts of the providers themselves. Justice Himonas suggested cultivating a workshop focused on addressing how regulatory reform can be utilized by lawyers. John Lund will connect with Heather Farnsworth to see about scheduling this kind of workshop for the summer Bar convention.

Nathanael Player reported he has been researching how to implement useful focus groups. From his research, Mr. Player reported that small focus groups of individuals from diverse professional backgrounds that often overlap with the law may be useful groups for gathering data. Justice Himonas recommended for Mr. Player to work with John Lund, Lucy Ricca and Walter Montgomery to develop these focus groups. Mr. Lund suggested also including the Bar on the focus groups. Mr. Player will compose an outline of how these focus groups will be implemented to be presented at a future Task Force meeting.

3. **Discussion – Update on rules and standing order:** (Justice Himonas, Lucy Ricca)

Justice Himonas reported that he is continuing to work on the draft Standing Order and will present it at the next Task Force meeting. Justice Himonas also reported that the Supreme Court reviewed the rules today at the Supreme Court conference and the overall response was positive. The Standing Order, rules 5.4A and 5.4B will go before the Supreme Court at their next conference on March 4, 2020 and then will go out for public comment.

Justice Himonas reported the Conference of Chief Justices voted unanimously for the courts to approach regulatory reform. The ABA also approved a resolution on regulatory reform. Justice Durham expressed that with this support, there will be an increase in support from many areas. Justice Himonas reported that the Chief Justice of the Florida Supreme Court recently appointed the chair of their own regulatory task force and other states are continuing to move in this direction.

With this momentum and the support of the ABA and Chief Justices, John Lund suggested that it may be worth considering a way for all of these groups to work together, perhaps in a summit or coalition format. Mr. Lund reported that IAALS and the National Center for State Courts have expressed interest in collaborating on a broader scale. Lucy Ricca reported that IAALS has been discussing when and what sort of convening they could partake in that will add value to a joint effort. IAALS may participate in an add-on at the Portland Conference of Chief Justices for the states that are interested in engaging in reform. Justice Durham suggested the National Center for State Courts may be a good resource for organizing such a coalition in the fall. Mr. Lund recommended starting with organizing a teleconference or webinar with the leaders of all of the existing state's task forces and those interested in participating in reform in the fall, organized by IAALS. Following the teleconference, organize a summit or conference later on down the road. Justice Durham recommended for each state to present an outline of their current regulatory reform initiatives and what questions they have at the webinar forum, as this would also provide a planning template for the summit or conference to follow. Lucy Ricca will present this recommendation to her team at IAALS.

4. **Discussion – Update on outreach efforts:** (Lucy Ricca, John Lund)

Lucy Ricca reported that she has a working outline for the media responses for the Task Force and she is still working on developing a Q&A. She is working with John Lund, Walter Montgomery, and Jason Solomon from Stanford Law School to develop a 60- to 90-day strategic communications plan. Ms. Ricca asked the Task Force members on the ground in Utah to begin thinking about their abilities to participate in speaking engagements and outreach opportunities to implement the 60- to 90-day communications plan.

John Lund expressed concern that the voice of the consumer will not be heard when the Standing Order goes out for public comment and only voices of Bar members will be expressed. Mr. Lund asked the Task Force to consider who or what groups in the community may be reached to weigh in on the value of these changes and the increased access to justice. Ms. Ricca suggested for the focus groups to include potential consumers as well as service providers. In addition, Justice Durham will reach out to these groups through her role in the Bar's Access to Justice Commission, especially nonlawyer participants. Ms. Ricca also proposed organizing an interview with John Lund and the nonlawyer members of the Bar's Task Force that can be developed into a published writing piece. Heidi Anderson reported that she is a board member to AIM and she will draft an outreach piece to be sent to CIOs across Utah, to be circulated to the Task Force before distribution.

Justice Himonas reported on a recent Deseret News article featuring a case in which a client was represented by a Licensed Paralegal Practitioner. Justice Himonas expressed that more stories featuring these benefits of regulatory reform would be a good way to increase the voice of a consumer who has received increased access to justice through models of reform.

5. **Discussion – Old business / new business:** (all)

Heidi Anderson reported that she is working on developing a decision tree form for the lawyer and nonlawyer answer selections of the application form. Once completed, she will connect with Ms. Ricca to test the form.

6. **Adjournment and next meeting:**

The meeting adjourned at 4:00 p.m. The next meeting will be held on March 4, 2020 from 3:00 – 4:30 p.m. in the Judicial Council Room at Matheson Courthouse.

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Utah Supreme Court Standing Order No. _____

This Standing Order establishes a legal regulatory sandbox and an oversight body to assist the Utah Supreme Court with respect to overseeing and regulating the provision of legal services by nontraditional legal service providers operating in the sandbox.

Effective _____.

Background

The Utah Supreme Court recognizes and seeks to address the access-to-justice crisis confronting Utahns of all socioeconomic levels.¹ To date, the Supreme Court, along with the Judicial Council, have worked to improve access to justice through many initiatives: the Utah Courts Self-Help Center, the Licensed Paralegal Practitioner Program, and the Online Dispute Resolution Program, to name a few. In another 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 relied upon in governing the practice of law. This Standing Order, in connection with the rule changes accompanying it, implements that effort. The Supreme Court anticipates that the regulatory reform set out in this Standing Order will shrink the access-to-justice gap by fostering innovation and promoting market forces, all while protecting consumers of legal services from harm.²

¹ Access to justice means the ability of citizens to meaningfully access solutions to their justice problems, which includes access to legal information and resources, as well as access to the courts. *See* Rebecca L. Sandefur, *Access to What?*, 148(1) DAEDALUS 177, 186 (Winter 2019), https://www.amacad.org/sites/default/files/publication/downloads/19_Winter_Daedalus_Sandefur.pdf.

² 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

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1. General Provisions

In accordance with its exclusive authority and responsibility under Article VIII, Section 4 of the Utah Constitution to govern the practice of law, the Supreme Court establishes a Legal Service Provider Oversight Board (Oversight Board) to assist the Supreme Court in overseeing and regulating the nontraditional provision of legal services.³ The Oversight Board will be responsible for establishing and administering a legal regulatory sandbox⁴ through which individuals and entities may be approved to offer nontraditional legal services to the public, including options not permitted by the Rules of Professional Conduct and other applicable rules. This Standing Order establishes the Oversight Board and the Sandbox for a pilot phase of two years from the Effective Date.

2. Oversight Board

The Oversight Board will have responsibility with respect to the regulation of legal services provided by nontraditional legal providers, including those services offered within the Sandbox and those that have been approved for the general legal market. The Oversight Board will be responsible for developing, overseeing, and regulating the Sandbox, including the admission and monitoring of nontraditional legal providers and services therein. In carrying out its responsibilities, and notwithstanding any

necessary and appropriate protections that best serve clients and the public" See

<https://www.americanbar.org/content/dam/aba/administrative/news/2020/02/midyear2020resolutions/115.pdf>.

³ In Utah, the practice of law is defined by Supreme Court Rule of Professional Practice 14-802. This Standing Order incorporates that definition. For the definition of "nontraditional provision of legal services" please refer to Section 3.3 (Regulatory Scope).

⁴ 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.

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language in this Standing Order that may be to the contrary, the Oversight Board shall at all times be subject to the direction and control of the Supreme Court and shall have no authority to regulate any individuals or entities or activities that fall outside of the Supreme Court’s constitutional authority to govern the practice of law.⁵

2.1 Board Composition

The Supreme Court will appoint the members of the Oversight Board. The Oversight Board will consist of a Chair and eight additional members, all serving on a volunteer basis. The Supreme Court appoints _____ to serve as the Chair of the Board and _____, _____, _____, _____, _____, _____, _____, and _____ to serve as the remaining members of the Board. In the event of a vacancy, the Supreme Court will appoint a replacement member.

2.2 Conflicts of Interests

The Court acknowledges that instances may arise in which members of the Oversight Board may face conflicts of interest between their business or personal affairs and their member duties. A conflict of interest is defined as 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 Board in writing and recuse from any involvement regarding that particular Sandbox applicant or participant. The Oversight Board will maintain a record of all _____

⁵ By way of illustration, in Rule 14-802(c)(12)(A) of the Supreme Court Rules of Professional Practice, 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. 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 is the prerogative of the legislative and executive branches.

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conflicts and recusals and make all records related to conflicts and recusals publicly available.

2.3 Board Authority

The Oversight Board will have the authority to oversee the nontraditional provision of legal services (*see* Section 3.3 on Regulatory Scope) using an objectives-based and risk-based approach to regulation.

Objectives-based regulation uses specifically and clearly articulated regulatory objectives to guide the development and implementation of the system of regulation. Both the Oversight Board and the market participants will be guided in their actions by specific objectives.

Risk-based regulation uses empirical 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 Oversight Board to better prioritize its resources and manage risks in the Utah legal services market.

The Court grants the Oversight Board the authority to develop 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.

The Oversight Board must submit proposed processes and procedures—including processes for appealing decisions of the Oversight Board—and fee schedules to the Supreme Court for approval as they are developed and before they take effect. The Supreme Court will publish all processes and procedures for comment in keeping with its normal practice.

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 Oversight Board will be guided a single regulatory objective: To ensure consumers have access to a well-developed, high-quality, innovative, and competitive market

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for legal services. It is the view of the Supreme Court 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 and resources, as well as access to the courts.

3.2 Regulatory Principles

The Oversight Board will be guided by the following regulatory principles:

1. Regulation should be based on the evaluation of risk to the consumer.⁶
2. Risk to the consumer should be evaluated relative to the current legal services options available.⁷
3. Regulation should establish probabilistic thresholds for acceptable levels of harm.⁸

⁶ The phrase “based on the evaluation of risk” means that regulatory intervention should be proportionate and responsive to the actual risk of harm posed to the consumer, as supported by the evidence.

⁷ 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.

⁸ The phrase “probabilistic thresholds for acceptable levels of harm” means the probability of a risk occurring and the magnitude of the impact should the risk occur. Based on this assessment, the Oversight Board will determine thresholds of acceptable risks for identified harms. Regulatory resources should be focused on areas in which there is both a high probability of harm and a significant impact from that harm on the consumer or the market.

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4. Regulation should be empirically driven.⁹
5. Regulation should be guided by a market-based approach.¹⁰

3.3 Regulatory Scope

The Supreme Court offers the examples set forth below to help individual and entities understand the scope of the regulatory authority of the Oversight Board. 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 scope of the regulatory authority of the Oversight Board, remain under the authority of the Utah Bar, and need not notify the Oversight Board:

- (a) Conventional, 100 percent lawyer-owned, managed, and financed law partnerships, professional law corporations, legal services nonprofits, or individual lawyers with an active Utah Bar license using new advertising or solicitation approaches as contemplated by the revised Rules of Professional Conduct.
- (b) Conventional, 100 percent lawyer-owned, managed, and financed law partnerships, professional law corporations, legal services nonprofits, or individual lawyers with an active Utah Bar license:
 - (i) offering traditional legal services as permitted under the pre-revision Rules of Professional Conduct; or
 - (ii) entering into employment, contract for services, joint venture, or other (fee-sharing) partnership with a

⁹ The phrase “empirically driven” means that the regulatory approach and actions must be supported, whenever possible, by data from the legal services market.

¹⁰ 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.

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nonlawyer-owned entity authorized or licensed to provide legal services by the Utah Supreme Court.

3.3.2 Within the Regulatory Scope

Individuals and entities that carry out the following activities are within the scope of the regulatory authority of the Oversight Board and are subject to the requirements of this Order:

- (a) Conventional, 100 percent lawyer-owned, managed, and financed law partnerships, professional law corporations, legal services nonprofits, or individual lawyers with an active Utah law license:
 - (i) offering legal services whether directly or by joint venture, subsidiary, or other corporate structure, not authorized under the pre-revision Rules of Professional Conduct or under unauthorized-practice-of-law rules or doctrine.
 - (ii) partnering (fee-sharing) with a nonlawyer-owned entity not authorized or licensed to offer legal services by the Utah Supreme Court.
- (b) Conventional law partnership or professional law corporation with less than 100 percent lawyer ownership, management, or financing.
- (c) Nonlawyer-owned legal services provider (for profit or nonprofit):
 - (i) offering legal service options whether directly or by joint venture, subsidiary, or other corporate structure, not authorized under the pre-revision Rules of Professional Conduct or under the unauthorized-practice-of-law rules or doctrine.
 - (ii) practicing law through technology platforms or lawyer or nonlawyer staff or through purchase of a law firm.

4. The Sandbox

The Sandbox is a policy tool through which the Supreme Court, through the Oversight Board, can permit innovative legal services to be offered to the public in a controlled environment. The Oversight Board will develop, oversee, and regulate the Sandbox

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according to the guidance outlined in this Standing Order. Individuals and entities that want to offer nontraditional legal business models, services, or products to the public must notify the Oversight Board. Individuals and entities in the Sandbox will be subject to such data reporting requirements and ongoing supervision as determined necessary by the Oversight Board, so long as the requirements fall within its regulatory authority. (Please refer to section 2 and footnote 5.)

4.1 Notification

All individuals and entities that fall within the Regulatory Scope (Section 3.3) must notify the Oversight Board of their intent to offer legal service. Notification is a first-step, minimal requirement by which legal service providers initiate the process to enter the Sandbox. The Oversight Board will develop a notification form and process for intake, review, assessment, and response to notification.

4.2 Process Categories

The Court contemplates two categories of process, tied to the Oversight Board's determination of potential risk: a notification-only process and an application process. Providers and services for which the Oversight Board finds more than minimal risk must make application and engage in the Sandbox process.

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The following table compares the two processes:

Notification Only Process	Application Process
(1) Notification	(1) Notification
(2) Finding of no risk or minimal risk	(2) Finding of more than minimal risk
(3) Authorization (with minimal annual reporting requirements)	(3) Application
	(4) Authorization (with specific reporting requirements determined by Oversight Board)

4.3 Notification-Only Process

Providers or services for which the Oversight Board finds no risk or minimal risk of consumer harm will be permitted to go through the “notification only” process. Notification will lead quickly to authorization with minimum reporting requirements. The Oversight Board will develop minimum reporting requirements for no risk or minimum risk legal service providers and a process by which these providers are expeditiously submitted to the Supreme Court. Submission to the Supreme Court will include a written finding supporting the no-risk or minimum-risk designation and minimum reporting requirements. The Oversight Board must submit proposed no-risk or minimal-risk candidates to the Supreme Court for approval.

4.4 Application Process

The Oversight Board will require those individuals and entities determined to present more than minimal risk to enter the application process and present more detailed information on their business, ownership and investment structure (both existing and proposed), risk self-assessment, proposed mitigations of risk, and consumer complaint process. The objective of the application process is for the Oversight Board to determine that the legal service proposed by the applicant furthers the Regulatory Objective

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and does not present unacceptable levels of risk of consumer harm. The Oversight Board will develop a process for intake, review, assessment, and response to applications.

The Supreme Court contemplates that the application process will be iterative and will include communications between applicants, the Oversight Board, and independent researchers, as necessary. The Oversight Board will strive to develop a process that is efficient and responsive.

The Oversight Board will make a determination as to whether an applicant's proposed legal service furthers the Regulatory Objective and does not present unacceptable risk of consumer harm. The Oversight Board will have the authority to propose authorization and associated requirements for the provider (e.g., reporting, disclosure, risk mitigation, and insurance requirements) to the Court. In developing these requirements, the Oversight Board will consider the Regulatory Objective and Regulatory Principles.

If the Oversight Board 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 Oversight Board will deny the proposed authorization, and will include a brief written explanation supporting the finding.

The Oversight Board will develop a process for appeal of a denial of a proposed authorization to the Supreme Court.

4.5 Authorization

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

Approval of authorization effects permission to offer the proposed legal service in the Sandbox as outlined in the authorization and under the authority of the Oversight Board. Authorized providers and services are deemed not to violate the unauthorized-practice-of-law rules and doctrine in Utah.

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Denial of authorization by the Supreme Court has the effect of returning the applicant to the Oversight Board. The Supreme Court will include a brief written explanation of the reasons for its denial to aid the applicant and Oversight Board in potentially rectifying the issue and resubmitting the proposed authorization.

4.6 Licensing (Exiting the Sandbox)

Providers and services 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 Oversight Board – will be approved to exit the Sandbox and granted the appropriate license to practice law by the Supreme Court. Such providers and services will remain under the regulatory authority of the Oversight Board and subject to such monitoring and reporting requirements as the terms of the license indicate and subject to the enforcement authority of the Oversight Board.

The Oversight Board 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 authorization, 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 Oversight Board 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. The Oversight Board is also authorized to deny Sandbox exit when appropriate.

The Oversight Board will develop the process for appeal of a denial of Sandbox exit to the Court. Again, however, if the Oversight Board 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 Oversight Board will deny the proposed licensure, and will include a brief written explanation supporting the finding.

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4.7 Fees

The Oversight Board will have the authority to propose a fee schedule to the Supreme Court. Fees paid will go to fund the Oversight Board.

4.8 Monitoring

As noted, the Oversight Board will have the authority to develop specific data reporting requirements as part of both Sandbox authorization and general licensing of proposed legal services. The Oversight Board 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 Oversight Board will have the authority to increase or decrease reporting requirements as indicated by the provider's performance in the market and compliance with the Board.

The Oversight Board 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 Oversight Board will also develop processes and procedures for intake, review, and assessment of information coming from sources such as media, other government or nongovernmental institutions, whistleblowers, and academia.

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.

4.9 Measuring Risk

The Oversight Board will have the authority to develop the metrics and risk thresholds by which it assesses and manages risk. The Oversight Board will identify specific harms presenting the most significant risk to the achievement of the Regulatory Objective.

A risk threshold is a level-of-harm occurrence in a consumer population. A level of harm occurring over that threshold is found unacceptable by the regulator, triggering an enforcement response. The Supreme Court acknowledges that this approach does not remove all incidence of harm from the market and, in fact,

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contemplates that sometimes there will be no regulatory enforcement action even though some consumers experience harm.

4.10 Consumer Complaints

Consumer complaints require two distinct responses from the Oversight Board. First, individual consumer complaints need to be addressed individually; the Oversight Board will develop a process by which the complaint is investigated, mediated, and remedied as merited. Second, consumer complaints are a source of data about consumer harm; thus the Oversight Board will develop a process by which individual complaint information is fed into the larger data reporting system to contribute to assessment of risk.

4.11 Enforcement

The Oversight Board will have enforcement authority against regulated providers in line with the Regulatory Objective and Regulatory Principles. Enforcement authority is generally triggered when the evidence of consumer harm exceeds the applicable acceptable consumer harm threshold. The Oversight Board will determine the range of enforcement mechanisms it deems appropriate for the market, including but not limited to education, increased reporting requirements, fines, and suspension or termination of authorization or license.

The Oversight Board will develop processes and procedures to initiate enforcement, select the appropriate enforcement mechanism, and engage with the targeted provider. The Oversight Board will strive to make the enforcement process as transparent, targeted, and responsive as possible.

The Oversight Board will develop a process for appealing enforcement decisions to the Oversight Board, and then to the Supreme Court.

4.12 Standards of Conduct

Lawyers engaging with the nontraditional provision of legal services, whether as owners, employees, contractors, or business partners with Sandbox participants or licensed providers are required to maintain their professional duties and their law license in good standing. The Oversight Board will develop processes and

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procedures by which to keep abreast of all relevant information on licensing status.

The Oversight Board will have the discretion to develop standards of conduct if necessary to guide providers in applicable professional and ethical duties.

4.13 Confidentiality

Except as authorized in this Standing Order, the contents of statements, communications, or opinions made by any sandbox applicant, authorized participant, or licensed provider shall be kept confidential. The Oversight Board will have the authority to release relevant information about authorized participants and licensed providers as it deems necessary to advance the Regulatory Objective and to foster transparency and public confidence.

Aggregate and anonymized data sets may be provided to outside researchers.

4.14 Service Contract Arbitration Clause

Consumer-facing corporations frequently include binding or mandatory arbitration clauses in consumer service contracts. Such clauses require a consumer to agree to privately arbitrate any claims against the company or bring such claims in small claims court rather than a court of general jurisdiction. Sandbox participants may not apply such clauses to preclude consumers from making complaints to and engaging in the consumer complaints process developed by the Oversight Board. Mandatory or binding arbitration clauses will be invalid as applied to consumers of Sandbox participants seeking to file a complaint against a Sandbox participant with the Oversight Board.

4.15 Reporting Requirements

The Oversight Board will be responsible for regular reporting to the 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 quarterly. Reports to the Supreme Court must include:

- The number of Applicants

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- General information about Applicants (e.g., type of entity, ownership, target market, proposed type of service, legal need, subject matter served)
- Numbers of (along with general information)
 - Proposed authorizations
 - Denial of proposed authorizations
 - Authorizations
 - Denial of authorizations
 - Applications to exit
 - Licenses granted
- Numbers and demographic data on consumers served by the Sandbox and licensed providers
- Identification of risk trends and responses

The Oversight Board will, subject to existing law, have the authority to determine the nature and frequency of its reports to the public, but shall at a minimum make annual reports outlining the above information (keeping anonymity and confidentiality as required).

4.16 Termination of Pilot Phase

The Sandbox is a policy tool, used by this Supreme Court to develop a new regulatory approach to nontraditional legal services and inform the 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 Oversight Board and Sandbox. At the end of the pilot phase, the Supreme Court will determine if and in what form the Oversight Board 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 Oversight Board or other appropriate entity should the Oversight Board cease to exist. Entities that have successfully exited the Sandbox will be able to continue operations under the authority of the Oversight Board or other appropriate entity should the Oversight Board cease to exist.