

## Office of Legal Services Innovation, Utah Supreme Court Frequently Asked Questions

### 1. What is the Sandbox?

The Sandbox is a mechanism by which the Utah Supreme Court permits entities to offer new and innovative ideas, methods, and models of legal practice. Although not a literal sandbox, the legal regulatory Sandbox creates a limited and controlled space outside of the traditional rules governing legal practice. It is overseen by the Office of Legal Services Innovation, an office created by the Court to assess, recommend, and monitor entities seeking to try new approaches to legal practice.

### 2. What are the requirements / qualifications to apply to the Sandbox?

The Sandbox is open to legal business models and services that would not have been permitted under the traditional rules of professional conduct and unauthorized practice of law doctrine. Specifically, under revised [Rule 5.4](#) and the Utah Supreme Court's [Standing Order No. 15](#), the following kinds of business models and services must apply for authorization in the Sandbox:

- Lawyers sharing fees with nonlawyers (if those nonlawyers or nonlawyer entity are not in the sandbox themselves) [**\*\*As of Dec. 10, 2020, the Court has halted authorization of bare referral fee arrangements pending review\*\***]
- Legal practice entities which are owned by lawyers and nonlawyers jointly, in whole or in part by nonlawyers, or in which nonlawyers have financial investments
- Lawyers or law firms or any other kind of entity using nonlawyer practitioners (whether human or software) to provide legal advice and other practice services

There are likely models and services that are not identified in the above list. The rule of thumb is: if you don't think you can do it under the rules, come into the sandbox.

We also require that your model/service be ready to implement. This means that you have a clear plan and path to launch that you can implement upon authorization and that you will be able to launch soon thereafter.

### 3. Are there any bars to offering services in the sandbox?

There are two basic bars:

- A disbarred/suspended lawyer may not own more than 10% of any entity offering services in the sandbox.

- Out of state lawyers cannot use the sandbox to circumvent multijurisdictional practice rules.
- As of the Court's Dec. 10, 2020 statement, bare referral fee arrangements will not be processed.

#### **4. What kind of information does the application require?**

The application is short and simple. You can preview it [here](#). The goal is to help us understand the details of what you are proposing to do, how it differs from traditional legal services, and how it might present risks of harm to consumers. We encourage you to be detailed and transparent in the application - it will help make the process more smooth and more efficient if we don't have to circle back to you with questions.

We also ask for a series of disclosures which further help us assess potential risk. They are:

- Identification of individuals with controlling financial or managerial interest in the entity, including those who have managerial control over the direct provision of legal services to the public.
- Disclosing whether any of those individuals are either disbarred/suspended lawyers or have a felony criminal history.
- Disclosing whether the entity itself (or parent or affiliated companies) has a history of either state or federal misdemeanor or felony conviction, consent decree, or enforcement action resulting in sanctions.
- Disclosing whether the entity itself (or parent or affiliated companies) is, to your knowledge, under state or federal criminal investigation or enforcement action investigation.
- Disclosing whether the entity's business model includes the plan to share or sell consumer data.

#### **5. Will applications be confidential?**

Applications will not be made public until they have been acted upon by the Court. While the application is being assessed and deliberated over, the Innovation Office takes no steps to publish the application and the application remains confidential, with only those involved in the process aware of the details. There has been some evolution in the Court's view of this process and the need for transparency has been emphasized. Thus, the current application process requires an applicant to designate any part of their application that they consider to be confidential business information. If the Innovation Office sees a need to make public some

information the applicant had designated as confidential, it would notify the applicant and work through that issue with them.

Since the process is being conducted by a governmental entity, i.e. the Utah Supreme Court, the files are subject to GRAMA (Government Records Access and Meetings Act). So, if someone were to request access to the office's records as to a certain application, that law would govern. In that event, if there were a challenge to an applicant's assertions of confidentiality, it would fall to the applicant to defend that position.

## **6. I put my application in. Now what?**

Our project manager will review your application to make sure it is complete. She will contact you if it is not. Once she has determined it is complete, your application will be added to the review queue. The process is as follows:

- Review by the Executive Committee.
  - The Committee meets once per week and reviews between 3 and 5 applications. If the Committee has additional questions about your application, you will be contacted by the Executive Director to discuss those questions. If the Committee determines that it is necessary, then we will ask you to join the Committee to discuss your application.
  - The Executive Committee will assign your entity to a risk category that will generally dictate the scope of your recommendation and potential disclosure, reporting, and any other authorization requirements.
- Initial recommendation from the Executive Committee to the Innovation Office Board.
  - The Innovation Office Board meets every other week to review applications recommended by the Executive Committee. The Office will vote to either recommend your application to the Supreme Court or it will vote to table or deny the application.
  - A vote to table usually means additional questions or issues have been raised and the Executive Director will likely reach out to you for follow up.
  - A vote to deny means that your application is inappropriate for the Sandbox at this time (e.g. not ready to implement, not compliant with Utah or federal requirements, out of state lawyer, or excessively high risk). You will have an opportunity to challenge that denial.
- Recommendation to the Supreme Court.
  - The Executive Committee presents the recommended applications to the Supreme Court at the Court's regularly scheduled conference (approximately every two weeks).
  - The Court has full discretion on the question of whether and with what scope to authorize the recommended entity.

- Authorization.
  - If the Court's votes to authorize your entity, then it will issue an order of authorization and you will receive an authorization packet from the Innovation Office detailing your authorization, disclosure requirements, and reporting requirements.
  - The Court's Order will set your risk category. The [Innovation Office Manual](#) provides the detail of what that risk categorization entails for your authorization requirements.
  - The Innovation Office will contact you to set an authorization call to go over your authorization, disclosure, and reporting requirements.

**7. Our entity has been authorized to offer legal services in the Sandbox. That means I am immune from investigation, enforcement, or prosecution by any agency right?**

Absolutely not. The Sandbox authorizes you to practice law through a nontraditional service model without being subjected to discipline by the Utah State Bar for that particular form of legal practice. If your entity violates state or federal law (consumer protection, disclosure, securities, etc.), you can absolutely be investigated and prosecuted for those violations. You can also be sued by consumers for any torts your entity commits. Lawyers working with your entity can be disciplined if they violate the Rules of Professional Conduct. Any other licensed professionals in your entity (accountants, medical providers, social workers, etc. can be subject to their professional discipline if they violate their rules.

**8. I'm a Utah lawyer and I've been approached by an entity that has been authorized in the Sandbox. They want to hire me! Can I work for them?**

Yes! Utah lawyers can practice law in these new entities (whether nonlawyer owned firms, for-profit companies, or anything else). However, you need to know that your professional responsibility requirements and compliances with the Rules of Professional Conduct remain intact. Therefore, you need to make sure that you are able to maintain compliance with the Rules (confidentiality, conflicts, etc.) in the new entity. You need to be clear about this with your potential employer. If you have questions about your professional responsibility duties, you should contact the Ethics Advisory Opinion Committee of the Bar.

**9. I'm a Utah lawyer and I want to share fees with nonlawyers (e.g. pay referral fees). Do I need to come into the sandbox?**

[Rule 5.4](#) currently states that lawyers may share fees with nonlawyers if:

- (1) The fee to be shared is reasonable, and

- (2) The arrangement has been authorized by the Innovation Office for offer in the Sandbox (as per Standing Order No. 15).

This would indicate that any fee sharing arrangements between lawyers and nonlawyers must be considered and authorized through the Innovation Office process for offer within the Sandbox.

However, on December 10, 2020, the Court issued a [statement](#) noting that it is halting consideration of “bare referral fee arrangements,” “those in which payment is made by the lawyer to the nonlawyer solely to compensate the nonlawyer for referring a potential client to the lawyer; there is no other business relationship between the lawyer and nonlawyer,” until the potential ethical issues can be given further consideration. Thus, the Innovation Office will not consider proposals for bare referral fee arrangements until further notice from the Court. The Court stated, “The Court will, however, continue to consider and, as appropriate, authorize, other innovative business arrangements and service models involving lawyers and nonlawyers that incorporate innovations beyond bare referral fee arrangements.” Thus, if your proposal includes fee sharing with nonlawyers as part of a more comprehensive business relationship, the Office does have the discretion to consider the proposal.

**10. I’m a Utah lawyer and I want to share fees with other lawyers. Do I have to come into the Sandbox?**

No. [Rule 5.4](#) only applies to lawyers sharing fees with nonlawyers.

**11. I’m a lawyer from California (or any other state). I’m not licensed in Utah. Can I come into the Sandbox to practice in Utah?**

No. The Sandbox is not a mechanism to circumvent multijurisdictional practice rules.

**12. I’ve been admitted to the Sandbox. Now what happens?**

You will have an authorization meeting with the Executive Director to discuss the scope of your authorization, review disclosure and data reporting requirements, and answer any questions you might have. You should be prepared to identify your launch date at that meeting.

**13. Is it possible to exit the Sandbox? How does that work?**

Yes! The Sandbox is a mechanism through which the Court permits new and innovative ideas and models for legal practice. The focus is on whether consumers are harmed by these new ideas and models. The Innovation Office sets data reporting requirements for authorized

entities that are focused on identifying whether consumer harm is occurring (e.g. legal outcomes, financial outcomes, amount the consumer paid for the service, what the consumer asked for, what the consumer received, consumer complaints). As consumers engage with these new services, the Innovation Office analyzes the data to watch for consumer harm. If an entity is serving consumers well and not causing significant harm, then the entity may apply to exit the Sandbox. The approval of that application to exit is made by the Supreme Court.

**14. How long does the Sandbox last? What happens at the end?**

The Court has given us initial authorization to work for two years (starting September 1, 2020). At the end of the two years, the Court will review the Sandbox experience and determine next steps. This could include extending the Sandbox period, allowing the Sandbox to become permanent, or terminating the Sandbox.

**15. If the Sandbox ends in two years, what happens to my business?**

Entities that have exited the Sandbox have essentially permanent authorization (contingent upon a continuing showing of low consumer harm) and that authorization will continue. Entities still in the Sandbox at that time will be considered on an individual entity basis.

**16. I am a consumer and I want to make a complaint about services I received from a provider in the sandbox. Can you help me?**

Our new website will have a fillable form for communicating complaints or concerns about legal services directly to the Innovation Office. Until that website is launched, please email the Office directly at [sandbox@utcourts.gov](mailto:sandbox@utcourts.gov). Please include the following information:

1. Which company provided the service;
2. When and where you received the service; and
3. A short description of your complaint.