



OFFICE OF LEGAL SERVICES INNOVATION
An Office of the Utah Supreme Court

Amended Sandbox Authorization Packet

Off the Record

August 10, 2022

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2. Innovation Office Recommendation to the Court

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In the Supreme Court of the State of Utah

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In re: Application of Off the Record

AMENDED ORDER FOR AUTHORIZATION TO PRACTICE LAW

Based upon the Utah Supreme Court's plenary and constitutionally granted authority to regulate the practice of law in Utah, and the tenets of Standing Order 15, the Utah Supreme Court orders that Off the Record is authorized to operate within the regulatory sandbox and subject to the restrictions outlined below.

The Court has reviewed the amended recommendation of the Office of Legal Services Innovation ("Innovation Office") dated March 2, 2021 for Off the Record to be authorized to operate within the legal regulatory sandbox.

Off the Record is an intermediary platform connecting consumers in need of legal assistance with traffic citations with lawyers. Off the Record does not practice law itself. Off the Record is currently operational in multiple states including Utah. Currently, consumers pay Off the Record the agreed upon fee for services up front. Off the Record transmits that payment directly to the lawyers. Lawyers provide the legal service. Off the Record provides the consumer with a money back guarantee.

Off the Record seeks authorization under Standing Order No. 15 to develop a new model of payment to the Utah lawyers on their platform. In the new model, Off the Record will retain 50% of the lawyers' fee until such time as the lawyer satisfactorily completes the agreed upon legal service. Once the legal service is satisfactorily completed, Off the Record will transmit the remaining 50% of the lawyers' fee.

The Innovation Office has assessed the risk of harm to Off the Record's targeted consumers relative to the risk of harm they currently face and has

determined that the risk of harm presented by Off the Record's services is Low.

In light of the Court's responsibility to the public to effectively regulate the practice of law in Utah and in keeping with the tenets of Standing Order 15, the Court now orders as follows:

1. Off the Record is authorized to offer legal services through the following models:
 - a. Intermediary software platform¹ connecting lawyers to consumers:
 - i. Client deposit feature:
 1. Fees deposited into Off the Record's account and held until client approves release of fees to lawyer on satisfactory completion of service.
 2. Off the Record is required to hold customer and/or client fees and/or expenses in an account that earns interest or dividends and remit the interest or dividends earned on those accounts, net any reasonable service fees or charges, to the Utah Bar Foundation.² Off the Record must remit the interest or dividend to the Foundation at least quarterly. Along with the remittance, Off the Record must provide the Foundation with a report stating the name of the entity (Off the Record), the amount of the remittance, the rate and type of interest or dividend applied, and the average monthly balance on the account or accounts.
2. Off the Record is authorized to provide legal services across the following legal service areas:
 - i. Traffic - Civil Actions / Citations / Misdemeanors.
3. Off the Record shall conform to the Low innovation reporting requirements imposed by the Innovation Office.

¹ "Intermediary platform" means an entity offering a software- or online-based platform to connect Utah lawyers with interested consumers. The platform may also offer other legal practice support services such as timekeeping, billing, video-conferencing, etc.

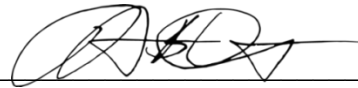
² This does not create a requirement that an entity must create separate accounts for each customer. The entity is free to aggregate funds as it sees fit but must remit the interest as required above.

4. Off the Record will prominently display the following disclosure requirements:
 - a. Innovation Office Badge
 - b. Nonlawyer ownership disclosure
5. Utah lawyers partnering with Off the Record remain otherwise subject to the Utah Rules of Professional Conduct. However, to the extent that Off the Record's business model could be found to implicate Utah Rule of Professional Conduct 1.15, the Court waives application of that Rule as to Utah lawyers' partnerships with Off the Record as described in the Innovation Office Recommendation.

If Off the Record wishes to alter the authorization terms, conditions, or requirements, it must submit any such change to the Innovation Office for further assessment. The Innovation Office will assess the proposed change and may permit the change if it deems the change does not materially increase the risks to consumers. If the Innovation Office finds a material increase in risk, then it will present the issue to the Court for further consideration.

This authorization is granted for the duration of the existence of the Sandbox, or until exit and permanent licensure at the discretion of the Court. Authorization is subject to Off the Record's compliance with the conditions and requirements set forth in the Innovation Office Manual and the Innovation Office Recommendation to the Court and to a verification by the Innovation Office that the company's services are not causing material harm to consumers.

DATED this 10th day of August, 2022.



Matthew B. Durrant
Chief Justice

Document 2



OFFICE OF LEGAL SERVICES INNOVATION

An Office of the Utah Supreme Court

RECOMMENDATION TO THE COURT

APP 0023 - OFF THE RECORD

ORIGINALLY AUTHORIZED DECEMBER 9, 2020

AMENDED RECOMMENDATION SUBMITTED MARCH 2, 2021

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EXECUTIVE SUMMARY

Recommendation: Authorize

Applicant: Off the Record

Proposed Services: Off the Record is a for-profit company currently operating in Utah. The company facilitates consumer resolution of traffic citations by connecting consumers to attorneys via software and mobile-based applications. Lawyers pay Off the Record a marketing fee. In Off the Record's current model, Off the Record facilitates payment of the lawyer's compensation through the software in advance of the legal service provision. Off the Record provides consumers a money-back guarantee.

Off the Record proposes a new payment structure in which the company advances the lawyer 50% of the agreed-upon compensation but retains 50% until the lawyer has satisfactorily completed the work. The company explains that lawyers absconding with the advanced compensation without performing the work has presented a significant challenge to their business model. By retaining 50% until the lawyer completes the work, the company is better able to incentivize good behavior on the part of the lawyer and increase protection for the consumer. The company's money-back guarantee for consumers remains in place.

The company notes that the proposed arrangement could violate some interpretations of Utah Rule of Professional Conduct 1.15: Safekeeping Client Property.

Proposed legal subject areas:

- Traffic - Civil Actions / Citations / Misdemeanors
-

Target Consumer Market Consumers not likely to otherwise engage a lawyer.

Sandbox Qualifiers: This business model/service qualifies for the Sandbox because it would feature the following characteristics:

- Intermediary Platform connecting Utah lawyers to consumers:
 - Client deposit feature
-

Regulatory Objective Qualifier:¹ The proposed service potentially increases consumers access to legal services through marketing and software engagement and potentially reduced cost. The proposed service also potentially increases the likelihood that consumers receive the service they purchase by disincentivizing lawyer malfeasance.

Utah Qualifier: Adapted for Utah requirements

Implementation Qualifier: Services ready for market now

RISK ASSESSMENT

Target Market: Consumers not accessing legal help.

General Assessment: LOW - MODERATE RISK

Specific Risks: Off the Record’s proposed fee structure diverges from the traditional client trust account model.

SANDBOX RECOMMENDATION

We recommend the Court authorize Off the Record to operate in the legal regulatory sandbox and offer legal services in the state of Utah, subject to such requirements as the Innovation Office may impose.

Scope of Recommended Authorization

Term of authorization The Innovation Office recommends that the authority be granted for an initial period of 24 months from the date of service launch with the possibility of extension or permanent authorization. Any such extension or permanent authorization would be subject to the applicant complying with the conditions and requirements set forth below and also to a verification by the Innovation Office that Off the Record has a record of compliance with all requirements and the company’s services are not causing harm to consumers.

Recommended legal service models 1. Intermediary platform connecting Utah lawyers with consumers

¹ Regulatory Objective: To ensure consumers have access to a well-developed, high-quality, innovative, affordable, and competitive market for legal services. (Standing Order No. 15)

- a. Client deposit feature for fees: Fees deposited into Off the Record's account and held until client approves release of fees to lawyer on satisfactory completion of service.

The Innovation Office does not believe that the proposed service should be considered to implicate Utah Rule of Professional Conduct 1.15. The Office notes that Off the Record consumers are purchasing a service at a flat fee. Once they purchase that service, the company guarantees them full reimbursement if they are not satisfied with the service. The consumer either gets the service or gets their money back. The model proposed by Off the Record is a back-end business arrangement between the company and the lawyer; it has no financial impact on the consumer and, in fact, serves to increase the consumer's protection from the lawyer's bad acts. The Office does not find the model to present a risk of increased consumer harm. However, the Office notes that it may be advisable for the Court to state in the Order that to the extent Off the Record's model could be found to implicate Rule 1.15, the rule is waived as to lawyers partnerships with Off the Record.

Under the traditional rules, lawyers holding client funds under Rule 1.15 are required to conform to IOLTA (Rule 14-1001) and remit the interest or dividends earned from accounts holding client funds to the Utah Bar Foundation. The waiver of Rule 1.15 may effect a diversion of IOLTA-qualified monies from the Utah Bar Foundation. The Office generally recommends that when Rule 1.15 is waived, the Court maintain the requirement that interest earned on these kinds of funds (fees, expenses, etc.) be committed to the Utah Bar Foundation. Therefore, the Office recommends that Off the Record be required to hold customer and/or client fees and/or expenses in an account or accounts that earns interest or dividends and remit the interest or dividends earned on those accounts, net any reasonable service fees or charges, to the Utah Bar Foundation.² Off the Record must remit the interest or dividend to the Foundation at least quarterly. Along with the remittance, Off the Record must provide the Foundation with a report stating the name of the entity (Off the Record), the amount of the remittance, the rate and type of interest or dividend applied, and

² This does not create a requirement that an entity must create separate accounts for each customer. The entity is free to aggregate funds as it sees fit but must remit the interest as required above.

the average monthly balance on the account or accounts.

The Innovation Office also does not believe that the proposed service is a fee-sharing arrangement. Off the Record does not keep 50% of the compensation permanently as a payment for referral. It simply holds 50% of the compensation until the lawyer satisfactorily completes the work. If the lawyer fails to complete the work, the money is used to help make the consumer financially whole.

Legal service models not recommended None

Recommended consumer service areas 1. Traffic - Civil Actions / Citations / Misdemeanors

Recommended waivers 1. Rule 1.15 (Safekeeping of client property)

The Innovation Office recommends waiver of the Rule 1.15 for Utah lawyers participating with Off the Record. However, the Office recommends that the Court qualify that waiver by requiring Off the Record to commit the interest or dividends from the account or accounts holding the fees/expenses to the Utah Bar Foundation as described above. The Office recommends the following language:

Utah lawyers partnering with Off the Record remain otherwise subject to the Utah Rules of Professional Conduct. However, to the extent that Off the Record’s business model could be found to implicate Utah Rule of Professional Conduct 1.15, the Court waives application of that Rule as to Utah lawyers’ partnerships with Off the Record as described in this Order.

Recommended qualitative compliance requirements Standardized disclosure statements on website and in mobile applications (see Manual):
 1. Badge
 2. Nonlawyer ownership disclosure requirement

Recommended data reporting requirements LOW - MODERATE risk data reporting requirements (see Manual)