



## 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,<sup>1</sup> 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

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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),<sup>2</sup>

- 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.”<sup>3</sup> (*Id.*)

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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.

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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 form<sup>4</sup> 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.

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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.

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Chief Justice Matthew B. Durrant

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Associate Chief Justice John A. Pearce

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Justice Paige Petersen

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Justice Diana Hagen

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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