



SUPREME COURT OF THE STATE OF UTAH

HON. MATTHEW B. DURRANT
CHIEF JUSTICE

HON. JOHN A. PEARCE
ASSOCIATE CHIEF JUSTICE

HON. PAIGE PETERSEN
JUSTICE

HON. DIANA HAGEN
JUSTICE

HON. JILL M. POHLMAN
JUSTICE

September 5, 2024

Dear Legal Services Innovation Committee,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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