

# Utah Supreme Court Standing Order No. 15 (Amended)

(Amended September 21, 2022)

*This Standing Order establishes a pilot legal regulatory sandbox, an Office of Legal Services Innovation, and the Legal Services Innovation Committee of the Utah Supreme Court to assist with overseeing and regulating the practice of law by nontraditional legal service providers or by traditional providers offering nontraditional legal services. Unless otherwise provided, this Order shall expire on the seventh anniversary of its effective date.*

**The Standing Order is effective as of August 14, 2020 (Amended June 3, 2021) (Second Amendment September 21, 2022).**

## Background

The access-to-justice crisis across the globe, the United States, and Utah has reached the breaking point.<sup>1</sup> As to how affordable and accessible civil justice is to people, the 2021 World Justice Project Rules of Law Index ranks the United States 126th of 139 countries.<sup>2</sup> As to that same factor, out of the thirty-seven high-income countries, the United States ranks dead last.<sup>3</sup>

To put it into perspective, a recent study by the Legal Services Corporation found that 86 percent “of the civil legal problems reported by low-income Americans in [2016–17] received inadequate or no legal help.”<sup>4</sup> Similarly, a recently published study out of California “[m]odeled on the Legal Services” study, concluded that 60 percent of that state’s low-income citizens and 55 percent of its citizens “regardless of income experience at least one civil legal problem in their household each year.” The study also found that 85 percent of these legal problems “received no or inadequate legal help.”<sup>5</sup> Closer to home, an in-depth

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<sup>1</sup> Access to justice means the ability of citizens to meaningfully access solutions to their justice problems, which includes access to legal information, advice, and resources, as well as access to the courts. See Rebecca L. Sandefur, *Access to What?*, DAEDALUS, Winter 2019, 49.

<sup>2</sup> WORLD JUSTICE PROJECT, WORLD JUSTICE PROJECT RULE OF LAW INDEX 2021 <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2021>

<sup>3</sup> *Id.*

<sup>4</sup> LEGAL SERVICES CORPORATION, THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (2017).

<sup>5</sup> STATE BAR OF CALIFORNIA TASK FORCE ON ACCESS THROUGH INNOVATION OF LEGAL SERVICES, FINAL REPORT AND RECOMMENDATION 11–12 (2020) (emphasis

April 2020 analysis of the legal needs of Utahns living at 200 percent or less of the federal poverty guidelines found that their unmet legal needs stood at 82 percent.<sup>6</sup>

For years, the Utah Supreme Court has made combating the access- to-justice crisis confronting Utahns of all socioeconomic levels a top priority. To date, the Supreme Court, along with the Judicial Council and the Utah Bar Association, have worked ceaselessly to improve access to justice through many initiatives: the Utah Courts Self-Help Center, the Licensed Paralegal Practitioner Program, form reform, and the Online Dispute Resolution Program, to name but a few. What has become clear during this time is that real change in Utahns’ access to legal services requires recognition that we will never volunteer ourselves across the access-to-justice divide and that what is needed is market-based, far-reaching reform focused on opening the legal market to new providers, business models, and service options.

In its boldest 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 historically relied upon in governing the practice of law. This Standing Order and accompanying rule changes implement that effort. The Supreme Court believes that the regulatory reform set out in this Standing Order will shrink the access-to-justice gap by fostering innovation and harnessing market forces, all while protecting consumers of legal services from harm.<sup>7</sup>

## **1. General Provisions**

In accordance with its plenary and exclusive authority and responsibility under article VIII, section 4 of the Utah Constitution to govern the practice of law, the Utah Supreme Court establishes the *Office of Legal Services Innovation* (“Innovation Office”) and the *Legal Services Innovation Committee* (“LSI Committee”) of the Utah Supreme Court. The Innovation Office will operate under the direct auspices of the Supreme Court with LSI Committee oversight. Together, the

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added).

<sup>6</sup> UTAH FOUNDATION, THE JUSTICE GAP: ADDRESSING THE UNMET LEGAL NEEDS OF LOWER-INCOME UTAHNS 23 (2020).

<sup>7</sup> 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 necessary and appropriate protections that best serve clients and the public.”

Innovation Office and the LSI Committee will assist the Supreme Court in overseeing and regulating nontraditional legal services providers and the delivery of nontraditional legal services.<sup>8</sup>

The Innovation Office will be responsible for the operation of a pilot legal regulatory sandbox (Sandbox)<sup>9</sup> through which individuals and entities may be approved to offer nontraditional legal services to the public. Entities subject to regulation through the Innovation Office include entities using nontraditional business structures, including investment or ownership by nonlawyers, entities using nontraditional modalities for legal practice including through nonlawyer alternative legal providers and technology, and entities proposing other options not currently permitted by the Rules of Professional Conduct and other applicable rules [hereinafter “nontraditional legal service entities”].

The Supreme Court establishes the Office of Legal Services Innovation, the Legal Services Innovation Committee, and the Sandbox for a pilot phase of seven years from the original effective date of this Standing Order (August 14, 2020). At the end of that period, the Supreme Court will carefully evaluate the program as a whole, including the Sandbox, to determine if it should continue. Indeed, unless expressly authorized by the Supreme Court, the program will expire at the conclusion of the seven-year study period.

## **2. Innovation Office**

Subject to the limitations set forth in the Standing Order, the ultimate authority and control of the Utah Supreme Court, and the oversight of the LSI Committee, the Innovation Office will have the authority to regulate nontraditional legal service entities (*see* Sections 1, 4.3.2, and 5).

The Innovation Office is responsible for carrying out the day-to-day activities necessary for the regulatory oversight of nontraditional legal service entities authorized to offer legal services in Utah. This responsibility includes the administration of the legal regulatory Sandbox and regulation of entities approved for the general legal

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<sup>8</sup> In Utah, the practice of law is defined by Utah Supreme Court Rule of Professional Practice 14-802. This Standing Order incorporates that definition. For an understanding of “nontraditional legal services providers” and “nontraditional legal services,” please refer to Section 3.3 (Regulatory Scope).

<sup>9</sup> 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.

market (“exited the Sandbox”).<sup>10</sup> The Supreme Court grants the Innovation Office the authority to develop and propose 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 4.

In carrying out the responsibilities designated to it by the Utah Supreme Court, the Innovation Office, at all times, will remain subject to the Supreme Court’s direction and control, and the oversight of the LSI Committee. The Innovation Office must submit proposed processes, procedures, and fee schedules to the Supreme Court for approval as they are developed and before they take effect.

The Innovation Office will have no authority to regulate any individuals, entities, or activities that are beyond the Supreme Court’s constitutional scope and mandate to govern the practice of law.<sup>11</sup>

## **2.1 Responsibilities**

The following comprise the Innovation Office’s responsibilities:

- (1) effective administration and operation of the regulation of nontraditional legal service entities including but not limited to:
  - (a) intake, evaluation, and authorization recommendations to the LSI Committee for review and vote;
  - (b) ongoing monitoring and evaluation of entities authorized in the Sandbox and licensed in the general legal market, including assessment and evaluation of risk and informal engagement with entities to inform and mitigate compliance or harm concerns;
  - (c) initial determination of whether formal regulatory intervention is necessary to protect consumers (e.g., suspension or termination);

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<sup>10</sup> Innovation Office resources may limit the number of entities authorized within the regulatory Sandbox.

<sup>11</sup> By way of illustration, 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. *See* Rule of the Utah Supreme Court Rules of Professional Practice 14-802(c)(12)(A). 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 rests with the legislative and executive branches. By way of further illustration, some attorneys hold both J.D.s and M.D.s. The Supreme Court only governs the ability of these individuals to practice law. It has never interfered with their ability to practice medicine.

- (d) assessment and initial determination of whether an entity has met the criteria to exit the Sandbox and enter the general legal market; and
  - (e) collection and accounting for any regulatory fees that are imposed on entities;
- (2) communication with and coordination of the LSI Committee's review of applications and regulatory data;
  - (3) reporting to the Supreme Court, with members of the LSI Committee as needed, on the activities of regulated entities, recommendations for Sandbox authorization, entity exits, and other formal regulatory intervention as approved by the LSI Committee;
  - (4) assist the LSI Committee in policy, data framework, tracking, and evaluation process development as needed;
  - (5) timely communication and coordination with applicants, the public, external researchers, and other stakeholders;
  - (6) manage the Office including making recommendations to the LSI Committee on budget and staffing needs; and
  - (7) develop and maintain participant forms, educational materials, Office manual, entity and Office records, and communications materials.

### **3. Legal Services Innovation Committee**

#### **3.1 Composition**

The Utah Supreme Court shall appoint the members of the LSI Committee. The LSI Committee shall have no less than five and no more than seven members. The members shall serve up to two consecutive staggered three-year terms. The Court shall appoint a Chair of the LSI Committee from among the members. The Supreme Court can remove, in its sole discretion, an LSI Committee member, with or without cause and without notice. LSI Committee members serve as officers of the Court and not as representatives of any client, employer, or other organization or interest group. At the first meeting of the LSI Committee in any calendar year, each Committee member must briefly disclose the general nature of the member's employment.

The Executive Director of the Utah State Bar shall serve as an ex officio non-voting member to the LSI Committee. The Supreme Court will also appoint a Justice as a non-voting liaison to the LSI Committee.

#### **3.2 Meeting Schedule**

The LSI Committee will meet as often as necessary to effectively execute its purpose but at least monthly. The LSI Committee open meeting minutes will be made public after approval by the Committee.

### **3.3 Vacancies**

If there is an LSI Committee vacancy, the Supreme Court will appoint a new Committee member to serve the remainder of the unexpired term.

### **3.4 Absences**

In the event an LSI Committee member fails to attend two consecutive meetings, the Chair may notify the Supreme Court of the absences and may request that the Court appoint a new member.

### **3.5 Administrative and Financial Oversight**

The LSI Committee will be supported by both the Executive Director of the Innovation Office and the Appellate Court Administrator.

The Appellate Court Administrator, as an employee of the Court, will serve as the Budget Manager of the Office. As such, the Appellate Court Administrator will be responsible for managing Office Budget disbursements, reviewing, modifying, and approving budget requests, and communicating with the LSI Committee and Innovation Office to ensure proper administrative and financial oversight.

The LSI Committee will select two members to serve as Operational Monitors of the Innovation Office to liaise with the Budget Manager on administrative and financial decisions.

### **3.6 Purpose**

The LSI Committee's purpose is to provide oversight and assistance to the Office of Legal Services Innovation in the regulation of non-traditional legal services authorized by the Utah Supreme Court.

### **3.7 Responsibilities**

The following comprise the LSI Committee's responsibilities:

- (1) develop and oversee implementation of policies necessary to administer the regulation of non-traditional legal service entities according to the dictates of this Standing Order and the Court's ongoing discretion;
- (2) develop and recommend to the Court metrics for evaluating the conduct and impact of this regulatory reform pilot, including the effectiveness of the regulatory sandbox as a policy mechanism and on the services provided by non-traditional legal service entities authorized by the Court;

- (3) develop and recommend to the Court any rules necessary for the effective and efficient administration of the regulation of non-traditional legal service entities;
- (4) develop and recommend to the Court a fee schedule for the regulatory services being provided by the Innovation Office;
- (5) oversee the Office's regulation of non-traditional legal service entities authorized or licensed by the Court, including but not limited to:
  - (a) review and recommend applicants to the Supreme Court for authorization to provide legal services in the Sandbox according to its discretion;
  - (b) review authorized entity legal service data for material evidence of consumer harm and make recommendations to the Court for necessary regulatory action to be taken (e.g., suspension or termination of authorization); and
  - (c) review entity provided data and recommend entities to the Supreme Court for exit from the Sandbox and licensure as a legal service entity as supported by the evidence and at the Court's discretion.
- (6) approve the budget for the Innovation Office and annually submit the budget to the Supreme Court;
- (7) monitor the Innovation Office's workload and recommend to the Court any staffing needs and/or adjustments;
- (8) perform an annual review of the Innovation Office and consider any strategic planning necessary to achieve the Regulatory Objective;
- (9) annually, in conjunction with the Executive Director, report to the Court regarding the operations and policies of the Innovation Office;
- (10) review and consider any public input.

### **3.8 Conflicts of Interest**

The Utah Supreme Court acknowledges that instances may arise in which LSI Committee members may face conflicts of interest between their business or personal affairs and their member duties. A conflict of interest arises 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 LSI Committee in writing and recuse from any involvement regarding that particular Sandbox applicant or participant. The Innovation Office will maintain a record of all conflicts and recusals and make all records related to conflicts and recusals publicly available.

#### **4. Regulatory Approach**

There are three facets to the regulation of nontraditional legal services entities the Innovation Office will apply:

**Entity regulation:** the Office will regulate organizations rather than individuals.

**Objectives-based regulation:** Objectives-based regulation specifically and clearly articulates regulatory objectives to guide development and implementation of regulation.

**Risk-based regulation:** Risk-based regulation uses data-driven 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 Innovation Office to better prioritize its resources and manage risks in the Utah legal services market.

##### **4.1 Regulatory Objective**

The overarching goal of this reform is to improve access to justice. With this goal firmly in mind, the Innovation Office will be guided by a single regulatory objective:

**To ensure consumers have access to a well-developed, high-quality, innovative, affordable, and competitive market for legal services.**

The Utah Supreme Court's view is 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, advice, and other resources, as well as access to the courts.

##### **4.2 Regulatory Principles**

The Innovation Office will be guided by the following regulatory principles:

- (1) Regulation should be based on the evaluation of risk to the



consumer.<sup>12</sup>

- (2) Risk to the consumer should be evaluated relative to the current legal services options available.<sup>13</sup>
- (3) Regulation should establish probabilistic thresholds for acceptable levels of harm.<sup>14</sup>
- (4) Regulation should be empirically driven.<sup>15</sup>
- (5) Regulation should be guided by a market-based approach.<sup>16</sup>

### **4.3 Regulatory Scope**

As noted, under the auspices of the Utah Supreme Court and the LSI Committee, the Innovation Office will be responsible for developing, overseeing, and regulating nontraditional legal providers and services authorized in the Sandbox. Should the Supreme Court permit Sandbox participants to exit the Sandbox, the Innovation Office will be responsible for developing, overseeing, and regulating entities authorized to exit.

#### **4.3.1 Outside the Regulatory Scope**

Individuals and entities that carry out the following activities are outside the Innovation Office's regulatory scope, remain under the Supreme Court's traditional rules governing lawyer conduct and

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<sup>12</sup> The phrase "based on the evaluation of risk" means that regulatory intervention should be proportional and responsive to the actual risk of harm posed to the consumer, as supported by the evidence.

<sup>13</sup> 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.

<sup>14</sup> The phrase "probabilistic thresholds for acceptable levels of harm" (the chance a consumer is harmed) means the probability of a risk occurring and the magnitude of the harm should the risk occur. Based on this assessment, the Innovation Office will determine thresholds of acceptable risks for identified harms. Regulatory resources should be focused on areas in which, on balance, there is a high probability of harm or a significant impact from that harm on the consumer or the market.

<sup>15</sup> The phrase "empirically driven" means that the regulatory approach and actions must be supported, whenever possible, by data from the legal services market.

<sup>16</sup> 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.

discipline, and need not notify the Innovation Office:

Partnerships, corporations, and companies entirely owned and controlled by lawyers in good standing; individual lawyers with an active Utah Bar license; and legal services nonprofits:

- (1) offering traditional legal services as permitted under the Rules of Professional Conduct; or
- (2) using new advertising or solicitation approaches as contemplated by the Rules of Professional Conduct.

#### **4.3.2 Within the Innovation Office's Regulatory Scope**

Individuals and entities that carry out the following activities are within the scope of the Innovation Office's regulatory authority and are subject to this Standing Order's requirements:

- (1) any business entity that includes nonlawyers who have an economic interest, including profit sharing, or decision-making authority in the business and engages in the practice of law as defined in Utah Supreme Court Rule 14-802;
- (2) an entity, for profit or nonprofit, using nonlawyer alternative legal providers or technology platforms, tools, or applications to provide legal services constituting the practice of law as defined in Utah Supreme Court Rule 14-802; or
- (3) an entity, for profit or nonprofit, seeking a discrete waiver of the Rules of Professional Conduct to facilitate innovative legal service delivery.

#### **4.3.3 Disbarred Lawyers and Individuals with Criminal History**

**Disbarred Lawyers.** The Utah Supreme Court has determined that lawyers who have been disbarred present a significant risk of harm to consumers if in the position of ownership or control of an entity or individual providing legal services. Therefore, disbarred lawyers are not permitted to gain or hold an ownership interest of greater than 10 percent in any entity authorized to practice law under Rule 5.4B or this Standing Order.

In addition, any entity applying for authorization to offer services in the Sandbox must disclose the following:

- (1) whether the entity has any material corporate relationship and/or business partnership with a disbarred lawyer and
- (2) whether a disbarred lawyer works with or within the entity, in either an employment or contractual relationship, and is in a

managerial role in the direct provision of legal services to consumers.

**Criminal History.** The Supreme Court has determined that individuals with certain serious criminal histories may present an increased risk of harm to consumers if in the position of ownership or control of a legal service entity.

Any entity applying for authorization to offer services in the Sandbox must disclose the following:

- (1) whether any individual holding an ownership interest of greater than 10 percent in the entity has a felony criminal history;
- (2) whether the entity has any material corporate relationship or business partnership with an individual with a felony criminal history; and
- (3) whether an individual with a felony criminal history works with or within the entity, in either an employment or contractual relationship, and is in a managerial role in the direct provision of legal services to consumers.

The Innovation Office, on receipt of any disclosures required above, will incorporate the information into the risk assessment of the entity as appropriate. To the extent permitted by law, the Innovation Office may also conduct independent criminal history checks.

Falsifying any information, including lawyer status and individual criminal history, is a basis for dismissal from the Sandbox and in the event the entity or individual has exited the Sandbox, a basis for loss of licensure. Other criminal and civil sanctions may also apply.

## **5. Regulatory Structure**

### **5.1 Sandbox**

The Sandbox is a policy tool by which the Utah Supreme Court, through the Innovation Office, permits innovative legal services to be offered to the public in a controlled environment. The Innovation Office will develop, oversee, and regulate the Sandbox according to the guidance outlined in this Standing Order. Individuals and entities in the Sandbox will be subject to such data reporting requirements and ongoing supervision as the Innovation Office determines, so long as the requirements fall within its regulatory authority.

#### **5.1.1 Sandbox Application Process**

All individuals and entities that fall within the Regulatory Scope (Section 4.3.2) must apply to the Innovation Office for authorization to

enter the Sandbox.

The objective of the application process is for the Innovation Office to determine that the legal service proposed by the applicant furthers the Regulatory Objective and does not present unacceptable levels of risk of consumer harm. The Innovation Office will develop an efficient and responsive process for intake, review, assessment, and response to applications.

The Utah Supreme Court contemplates that the application process will be iterative and will include communications between the Innovation Office and the various applicants, as necessary.

The Innovation Office will determine whether an applicant's proposed legal service furthers the Regulatory Objective and does not present an unacceptable risk of consumer harm. The Innovation Office will recommend to the LSI Committee whether an applicant should be authorized and the associated requirements for the applicant (e.g., reporting, disclosure, audits, risk mitigation). Once approved by the LSI Committee, the Innovation Office will recommend the applicant to the Supreme Court. In developing these requirements, the Innovation Office will consider the Regulatory Objective and Regulatory Principles.

If the Innovation Office 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 Innovation Office will deny the proposed authorization, and will include a brief written explanation supporting the finding. The Innovation Office will develop a process for appeal of a denial of a proposed authorization to the Supreme Court.

### **5.1.2 Authorization**

As with the licensing of lawyers and Licensed Paralegal Practitioners, the Utah Supreme Court will ultimately be responsible for approving or denying authorization of nontraditional legal service entities.

An approved application means permission to offer the proposed legal service in the Sandbox as outlined in the authorization order and under the Innovation Office's authority. Authorized participants and services are deemed authorized to practice law or offer legal services in Utah, albeit on a limited and temporary basis, under Utah Supreme Court Rule of Professional Practice 14-802. Authorization is always contingent upon timely compliance with the requirements imposed by the Innovation Office and upon a showing that the entity is not causing material consumer harm.

Denial of authorization by the Supreme Court has the effect of returning the application to the Innovation Office. The Supreme Court may

include a brief written explanation of the reasons for its decision not to authorize the applicant. This information may guide the applicant in how to potentially resolve concerns and revise its application for reconsideration. However, authorization to enter the Sandbox or exit to the general legal market always remains subject to the Supreme Court's sole discretion and may not be granted.

Additionally, authorization within the Sandbox does not impact any of the other requirements that may be imposed upon an entity (*e.g.*, business license, tax commission registration, etc.).

### **5.1.3 Exiting the Sandbox**

If the Supreme Court decides to permit Sandbox participants to exit the Sandbox, entities that are able to demonstrate that their legal services are safe—*i.e.*, that maintain a satisfactory record of compliance and do not cause material consumer harm during their Sandbox term—may, at the Supreme Court's sole discretion, be approved to exit the Sandbox and may be granted the appropriate license to practice law or offer legal services by the Utah Supreme Court pursuant to Utah Supreme Court Rule of Professional Practice 14-802.

Exited entities will remain under the regulatory authority of the Supreme Court through the Innovation Office and are subject to such monitoring and reporting requirements as the terms of the license indicate and are subject to the enforcement authority of the Innovation Office. As above, license to practice law or offer legal services upon exit does not impact any of the other requirements that may be imposed upon an entity (*e.g.*, business license, tax commission registration, etc.).

The Innovation Office will develop the process (subject to Supreme Court approval) by which providers and services may exit the Sandbox, should the Court decide to allow such exits. It is anticipated that this process will generally follow that outlined for application approval, 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). Should the court decide to permit entities to exit the Sandbox, any such exit will always be at the sole discretion of the Supreme Court.

If the Innovation Office 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 Innovation Office will deny the proposed licensure, and will include a brief written explanation supporting the finding. The Innovation Office will develop and propose

the process for appeal of a denial of Sandbox exit to the Supreme Court.

## **5.2 Monitoring and Measuring Risk**

The Innovation Office has the authority to develop the measurements by which it assesses and manages risk. The Innovation Office will identify specific harms presenting the most significant risk to the Regulatory Objective. All regulated providers, whether in the Sandbox or in the general market, have a proactive duty to report any unforeseen risks or harms of which they become aware.

The Innovation Office has the authority to develop specific data reporting requirements to monitor consumer risk of harm as part of both Sandbox authorization and general licensing of nontraditional legal service entities. The Innovation Office 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 Innovation Office has the authority to increase or decrease reporting requirements as indicated by the provider's performance in the market and compliance with the Innovation Office's requirements.

The Innovation Office has 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, product walkthroughs, and "secret shopper" tests. The Innovation Office will also develop processes and procedures for intake, review, and assessment of information coming from sources such as media, other governmental or nongovernmental institutions, whistleblowers, and academia.

The Utah Supreme Court acknowledges that this regulatory approach does not remove all possibility of harm from the market and, in fact, contemplates that sometimes there may be no regulatory enforcement action even though some consumers may experience harm. Nevertheless, aggrieved consumers may seek relief and remedy through traditional channels of civil litigation or, if applicable, the criminal justice system.

## **5.3 Consumer Complaints**

The Innovation Office will develop a process by which consumers may directly complain to the Office. The Innovation Office will develop a process by which individual complaint information is fed into the larger data reporting system to contribute to the assessment of risk.

## **5.4 Enforcement**

The Innovation Office will develop standards for enforcement authority upon regulated providers in line with the Regulatory Objective and Regulatory Principles. The Innovation Office will also develop the range of enforcement mechanisms it deems appropriate, including but not limited to education, increased reporting requirements, fines, and suspension or termination of authorization or license. All enforcement processes and procedures, and all formal enforcement interventions (e.g., suspension and termination) will be reviewed and approved by the LSI Committee before submission to the Supreme Court for review and, if appropriate, approval.

Enforcement will generally be triggered when the evidence of consumer harm exceeds the applicable acceptable consumer harm threshold. Enforcement can also be triggered by failure to comply with the regulatory requirements imposed by the Innovation Office and for lack of responsiveness.

The Innovation Office will also develop a process for appealing enforcement decisions to the Innovation Office, and then to the Utah Supreme Court. The Innovation Office will strive to make the enforcement process as transparent, targeted, and responsive as possible.

### **5.5 Standards of Conduct**

As stated in Rule 5.4(B), lawyers engaging with the nontraditional provision of legal services, as owners, employees, contractors, or business partners with Sandbox participants or licensed providers are required to uphold their duties as required by the Rules of Professional Conduct.

### **5.6 Confidentiality**

The Innovation Office shall maintain a commitment to transparency in the execution of its mission. Identities of applicants to the Sandbox and the applications themselves are presumed to be public information. Data reported to the Office as part of an entity's regulatory requirements are presumed not be confidential business information under the Government Records and Access Management Act (GRAMA). *See* UTAH CODE § 63G-2-305(1)-(2).

Applicants may designate appropriate, specific information in the application or any supplemental materials or communications as confidential business information under the Government Records and Access Management Act (GRAMA). *See* UTAH CODE § 63G-2-305(1)-(2). The Innovation Office will maintain the confidentiality of such designated information and it will be redacted from the publicly

released documents.

Nothing, however, in this section limits the ability of the Innovation Office to provide aggregate and anonymized data sets to Court approved outside researchers, subject to a duly executed data sharing agreement with the Court.

## **6. Reporting Requirements**

The Innovation Office will be responsible for regular reporting to the Utah 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 monthly. Reports to the Supreme Court must include the following, at a minimum:

- (1) total number of regulated entities and number of entities within and outside the Sandbox
- (2) the number of applicants to the Sandbox
- (3) general information about applicants (e.g., type of legal entity, ownership makeup, target market, proposed type of service, legal need to be addressed, subject matter served)
- (4) numbers of (along with general information)
  - (a) applicants recommended for Sandbox entry
  - (b) applicants denied Sandbox entry
  - (c) sandbox applicants on hold
  - (d) applicants recommended to exit Sandbox
  - (e) applicants not recommended to exit Sandbox
- (5) numbers and demographic data (as available) on consumers served by the Sandbox and licensed providers
- (6) identification of risk trends and responses
- (7) consumer complaints, cumulative and for the applicable month, from both within and outside the Sandbox

The Innovation Office will, subject to existing law, have the authority to determine the nature and frequency of its reports to the public, but must, at a minimum, report the information identified above on an annual basis (keeping anonymity and confidentiality as required).

## **7. Jurisdiction**

Entities authorized to practice law within the Sandbox and licensed to practice law on exiting the Sandbox are subject to the jurisdiction of the



Utah Supreme Court. Any false or misleading statements made by entities or their members throughout the regulatory relationship, whether during application, authorization, reporting, monitoring, or enforcement, whether discovered at the time or at any time afterward, will be independent grounds for enforcement and an aggravating factor in any enforcement proceeding based on other conduct. Any fraudulent or materially misleading statements made by an entity or its members to the Innovation Office or the Court may result in revocation of the entity's authorization to practice law.


## **8. Termination of Pilot Phase**

The Sandbox is a policy tool, adopted by the Utah Supreme Court to develop a new regulatory approach to nontraditional legal services and to inform the Supreme Court's decision-making on rule changes necessary to support the expanded legal services market. The Supreme Court has set out a seven-year period of operation for this pilot phase of the Innovation Office and Sandbox.

At the end of the pilot phase, the Supreme Court will determine if and in what form the Innovation Office will continue. Sandbox participants authorized and in good standing at the end of the seven-year period and for whom there appears to be little risk of consumer harm may, at the discretion of the Court, be able to continue operations under the authority of the Innovation Office or other appropriate entity should the Innovation Office cease to exist. Entities that have successfully exited the Sandbox will be able to continue operations under the authority of the Innovation Office or other appropriate entity should the Innovation Office cease to exist.

September 21, 2021 \_\_\_\_\_

Date



Matthew B. Durrant  
Chief Justice