

UTAH SUPREME COURT'S TASK FORCE ON REGULATORY REFORM

Agenda

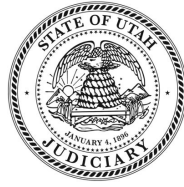
Location: Judicial Council Room
Scott M. Matheson Courthouse, 450 S. State St., Salt Lake City, UT 84111

Date: December 18, 2019

Time: 3:00 to 4:30 p.m.

Action: Welcome and approval of December 4, 2019 minutes	Tab 1	John Lund, Co-Chair
Discussion: Review website		Justice Deno Himonas
Action: Final approval of regulatory scope document	Tab 2	All
Action: Final approval of data collection document	Tab 3	All
Discussion: Funding updates		All

Tab 1



Utah Supreme Court's Task Force on Regulatory Reform

December 4, 2019

3:00 - 4:30 p.m.

Judicial Council Room, Second Floor

Scott M. Matheson Courthouse

450 South State Street

Salt Lake City, UT 84111

ATTENDANCE

Name	Position	Present	By Phone	Excused
John Lund	Co-chair	√		
Justice Deno Himonas	Co-chair	√		
Justice Christine Durham (Ret.)	Member			√
Thomas Clarke	Member		√	
Rebecca Sandefur	Member		√	
Larissa Lee	Member	√		
Heather Farnsworth	Member		√	
Dean Gordon Smith	Member		√	
Lucy Ricca	Member		√	
Gillian Hadfield	Member			√
Margaret Hagan	Member		√	
Steven G. Johnson	Member	√		
Rob Jepson	Staff, Utah State Bar	√		

MINUTES

(DRAFT AS OF DEC. 6, 2019)

1. Call to Order

- John Lund called the meeting to order.

2. Regulatory Scope Document

- Discussed specific language surrounding whether attorneys would need to notify the Bar and/or Task Force when engaging in practices that are currently prohibited
- Discussed whether the Utah State Bar or the Task Force should receive notice from said attorneys
- Made revisions as a group and emailed the revisions to the group to review and approve
- Agreed that Task Force members would review the updated language and vote their approval or dissent by email

3. Data Collection Document

- Reviewed most up-to-date document, which was sent out via email prior
- Voted to approve the document
 - An updated document was emailed to the group following the meeting.

4. Website update

- Discussed language tweaks on website
- Settled on URL: sandbox.utcourts.gov
- Stanford team will finalize development of site before turning the code over to the Utah Courts for hosting
- Agreed there is no need to comply with General Data Protection Regulation (GDPR) for the moment
- Anticipated that the website will be transferred and made live within one week.

5. Public feedback

- Justice Himonas proposed sending out a statewide survey to gauge the general public's opinion of the current legal system and the need for reform
- Nathanael Player agreed to reach out to Kai Wilson to see whether this survey could be attached to the Utah Bar Foundation's "Legal Needs Study," scheduled to begin in the coming weeks.

Tab 2

Regulatory Scope:

Clean Copy

Proposed Regulatory Scope for Task Force on Regulatory Reform and Sandbox December 2019

This pilot is focused on allowing and encouraging new ways of practicing law while protecting consumers. The Task Force on Regulatory Reform seeks to make a careful assessment of innovative business models, products, or services, whether proposed by lawyers or others, to insure that overall consumer risk is not increased.¹ The regulatory sandbox allows us to do this in a relatively controlled environment. The principles and examples below, outline our approach to what kinds of models, products, and services will be within the scope of the sandbox and thus required to register with the sandbox. This is not a rigid or technical approach. Objectives-based regulation is meant to be flexible and responsive to evidence of risk. Thus, the initial requirement is a minimal one – simply notifying the Task Force about what the provider is proposing to do in general terms. What happens after notification will depend on the Task Force’s determination of relative risk to the consumer. If you, as a provider, are unsure, then you should notify the Task Force.

Working Principles:

- (1) If you could not do it under the current Rules of Professional Conduct (a few exceptions described below), then you need to notify the Task Force. Depending on what you are proposing, you may be required to register as part of the sandbox.²
- (2) Lawyers or firms partnering with, contracting with, or employed by Task Force approved entities do not have to separately take any action, including notification. Those who partner with non-approved entities need to notify the Task Force of the arrangement. Notification is how we keep track of what is happening under the new system.

Details:

Outside the regulatory regime (these individuals/entities do not need to do anything):

1. Conventional 100% lawyer-owned, managed, and financed law partnerships, professional law corporations, and individual lawyers with an active Utah license using new advertising or solicitation approaches as contemplated by the revised Rules of Professional Conduct.
2. Conventional 100% lawyer-owned, managed, and financed law partnerships, professional law corporations, and individual lawyers with an active Utah license:
 - a. Offering traditional legal services as permitted under the old Rules of Professional Conduct.

¹ For purposes of this document, the term “lawyer” includes Licensed Paralegal Practitioners (“LPPs”).

² Those services currently authorized under Rule 5.3 such as legal support services and legal practice outsourcing offered to lawyers are outside the scope of the Task Force.

- b. Entering into employment, contract for services, joint-venture, or other partnership (fee-sharing) with a **Task Force-approved** non-lawyer owned entity to offer legal services.
 - i. Example: Lawyer Larry is hired by LawSwoosh, an online legal platform offering services to the public. Larry is hired to be a staff attorney, providing legal services to LawSwoosh customers. LawSwoosh has been approved to offer legal services in Utah by the Task Force. Larry does not need to notify.
 - ii. Example: Amy Attorney is hired by SavMart, a big box store chain, to offer flat fee legal services to customers of the store via a small office or kiosk. SavMart has been approved to offer legal services in Utah by the Task Force. Amy does not need to notify.
 - iii. Example: Lawyer Larry is hired by BigAccountingFirm to provide mergers and acquisitions legal advice and strategy to its clients. BigAccountingFirm has been approved to offer legal services in Utah by the Task Force. Larry does not need to notify.
 - iv. Example: Attorneys at Law LLP enters into a joint venture with LawSwoosh, an online legal platform offering services to the public, through which its attorneys offer legal assistance and advice to LawSwoosh customers. LawSwoosh has been approved to offer legal services in Utah by the Task Force. Attorneys at Law LLP does not need to notify.

Required to notify the Utah Supreme Court Task Force:

- 1. Conventional 100% lawyer-owned, managed, and financed law partnerships, professional law corporations, legal services non-profits, or individual lawyers with an active UT law license:
 - a. Offering legal service options not previously authorized, whether directly or via a joint-venture, subsidiary, or other corporate structure.
 - i. Example: Attorneys-at-Law LLP, an old Salt Lake firm, offers an online tool providing information and guidance, including legal advice via chatbot or similar technology, around corporate formation.
 - ii. Example: Attorneys-at-Law LLP decides to launch the online corporate formation tool as a subsidiary technology company.
 - iii. Example: HousingHelp, a legal services non-profit, offers an online tool providing guidance, form completion, and legal advice on eviction defense via its website. It also uses its non-lawyer eviction defense experts to provide legal assistance, including advice, to supplement the online tool.

b. Partnering (fee-sharing) with a non-lawyer owned entity that has ***not been approved to offer legal services by the Task Force.***

- i. Example: Attorneys-at-Law LLP enters into a partnership with Bank to offer bundled legal and banking services. Fees are earned through engagement between firm and customer. Bank has not been approved to offer legal services by the Task Force.
- ii. Example: Attorneys at Law LLP enters into an agreement with SavMart Big Box Store to offer legal services in their stores. The agreement specifies that firm will lease space and pay a certain percent of revenue generated by in store engagements to SavMart. Firm advertises services leveraging SavMart's brand and SavMart advertises that legal services are available in the store from firm. Fees are earned through engagement between firm and customer. SavMart has not been approved to offer legal services by the Task Force.

2. Conventional law partnership or professional law corporation with less than 100% lawyer ownership, management, or financing.

- i. Example: Attorneys-at-Law LLP elevates to equity partnership its head of marketing.
- ii. Example: Attorneys-at-Law LLP takes on financing from private equity firm.
- iii. Example: Attorneys-at-Law LLP finances tech subsidiary via venture capital funding or establishes sub managed and operated by non-lawyers.
- iv. Example: BigConsulting, a global enterprise services company, purchases a stake in Attorneys-at-Law LLP.

3. Non-lawyer owned legal services provider (for profit or non-profit):

- a. Practicing law via technology platforms (using AI etc.) or lawyer and/or non-lawyer staff or through purchase of a law firm.
 - i. Example: LawSwoosh, an online legal platform offering services to the public, including legal assistance from lawyers, non-lawyer experts, and technology platforms.
 - ii. Example: SavMart, big box retailer offering flat fee legal services for consumers via lawyers, non-lawyer experts, and technology platforms in its stores and online.
 - iii. Example: LawNetwork, an online legal network connecting consumers to lawyers and offering flat fee legal services.
 - iv. Example: BigConsulting purchases Attorneys at Law LLP to operate the firm as its legal service arm in Utah.
 - v. Example: BigConsulting hires Amy Attorney to provide legal advice on Utah incorporation law to its clients.

- vi. Example: Women's Shelter, a domestic violence non-profit, offers legal assistance to its clients through its non-lawyer staff, including assistance completing protection orders, divorce, and custody proceedings.
- b. Practicing law through business partnership or contract with individual lawyers or firms in which the services are advertised as part of the provider's brand and in which the contract for services is between the entity (not the lawyer or the firm) and the consumer.
 - i. Example: Bank enters into business partnership with Attorneys-at-Law LLP or individual lawyer in which Bank advertises legal help as part of its services/products. Fees are earned through a contract for services between Bank and customer.
 - ii. Example: SavMart enters into a joint-venture with Attorneys-at-Law, LLP through which the firm's attorneys offer legal services to SavMart's customers, either in their stores or via online platforms. The services are advertised under SavMart's brand and fees are earned through a contract for services between SavMart and the consumer.

Regulatory Scope: Redline Copy

Proposed Regulatory Scope for Task Force on Regulatory Reform and Sandbox

~~November~~December 2019

This pilot is focused on allowing and encouraging new ways of practicing law while protecting consumers. -The Task Force on Regulatory Reform seeks to make a careful assessment of innovative business models, products, or services, whether proposed by lawyers or others, to insure that overall consumer risk is not increased.¹ The regulatory sandbox allows us to do this in a relatively controlled environment. The principles and examples below, outline our approach to what kinds of models, products, and services will be within the scope of the sandbox: and thus required to register with the sandbox. This is not a rigid or technical approach. Objectives-based regulation is meant to be flexible and responsive to evidence of risk. -Thus, the initial ~~notification~~ requirement is a minimal one – simply ~~alerting~~ notifying the Task Force ~~of~~ about what the provider is proposing to do in general terms. What happens after notification will depend on the Task Force’s determination of relative risk to the consumer. If you, as a provider, are unsure, then you should notify the Task Force.

Working Principles:

- (1) If you could not do it under the current Rules of Professional Conduct (~~subject to the a few exceptions described below~~), then you need to notify the Task Force. -Depending on what you are proposing, you may be required to register as part of the sandbox.²
- ~~(2) If you are a 100% lawyer-owned firm~~ Lawyers or firms partnering with, contracting with, or employed by individual lawyer³ ~~offering a legal service option not previously authorized to consumers, then you need to notify the~~ Task Force-
- ~~(2) If you are not 100% lawyer owned AND you are offering legal services to consumers (not lawyers), then you~~ approved entities do not have to separately take any action, including notification. Those who partner with non-approved entities need to notify the Task Force and likely register as part of the sandbox arrangement. Notification is how we keep track of what is happening under the new system.
- ~~(3)~~

Details:

Outside the regulatory regime (these individuals/entities do not need to do anything):

1. Conventional 100% lawyer-owned, managed, and financed law ~~partnership or partnerships,~~ professional law ~~corporation offering traditional legal services~~ corporations, and individual

¹ For purposes of this document, the term “lawyer” includes Licensed Paralegal Practitioners (“LPPs”).

² Those services currently authorized under Rule 5.3 such as legal support services and legal practice outsourcing offered to lawyers are outside the scope of the Task Force.

³ ~~For purposes of this scope document, the term “lawyer” includes a Licensed Paralegal Practitioner.~~

lawyers with an active Utah license using new advertising or solicitation approaches as ~~permitted under~~contemplated by the ~~old~~revised Rules of Professional Conduct.

2. ~~Individual~~Conventional 100% lawyer-owned, managed, and financed law partnerships, professional law corporations, and individual lawyers with an active ~~UT law~~Utah license:

~~a. Operating as a solo or as part of a conventional firm or professional corporation.~~

a. Offering traditional legal services as permitted under the old Rules of Professional Conduct.

- b. Entering into employment~~-or,~~ contract for services, joint-venture, or other partnership (fee-sharing) ~~to offer legal services to consumers~~ with a **Task Force-approved** non-lawyer owned ~~consumer-facing~~entity to offer legal ~~service-provider~~services.

Ex

- i. Example: Lawyer Larry is hired by LawSwoosh, an online legal platform offering services to the public. Larry is hired to be a staff attorney, providing legal services to LawSwoosh customers. LawSwoosh has been approved to offer legal services in Utah by the ~~new regulator,~~Task Force. Larry does not need to ~~register~~notify.

- ii. ~~Ex~~Example: Amy Attorney is hired by SavMart, a big box store chain, to offer flat fee legal services to customers of the store via a small office or kiosk. SavMart has been approved to offer legal services in Utah by the Task Force. Amy does not need to notify.

- iii. ~~Ex~~Example: Lawyer Larry is hired by BigAccountingFirm to provide mergers and acquisitions legal advice and strategy to its clients. BigAccountingFirm has been approved to offer legal services in Utah by the Task Force. Larry does not need to notify.

~~c. Entering~~Example: Attorneys at Law LLP enters into ~~employment or contract for services a joint venture~~ with LawSwoosh, an ~~entity providing legal services (legal support services, legal process outsourcing)~~ as currently authorized via Rule 5.3 (e.g. ALSP, LPO, Big Four, or consulting firm).

- ~~3. Entities providing legal services (legal support services, legal process outsourcing) currently authorized via Rule 5.3 (e.g. ALSP, LPO, Big Four, or consulting firm).~~

- ~~i. Ex: EDiscovery Vendor~~online legal platform offering ~~a variety of solutions services~~ to ~~law firms~~the public, through which its attorneys offer legal assistance and ~~in-house counsel such as predictive coding software tools, document review staffing, and document production.~~

- ~~ii. Ex: New Law Company offering legal process solutions, staffing, consulting, technological products~~advice to ~~law firms and in-house counsel.~~

iii. ~~Ex: BigConsulting, a global enterprise service provider offering a variety of legal service solutions~~LawSwoosh customers. LawSwoosh has been approved to firms and in-house counsel.

iv. ~~Conventional 100% lawyer-owned entities required to notify~~offer legal services in Utah by the Task Force. Attorneys at Law LLP does not need to notify.

Required to notify the Utah State Bar Task Force:

1. Conventional 100% lawyer-owned, managed, and financed law ~~partnership or~~partnerships, professional law ~~corporation~~corporations, legal services non-profits, or individual lawyers with an active UT law license:
 - a. Offering legal service options not previously authorized, whether directly or via a joint-venture, subsidiary, or other corporate structure.
 - i. ~~ExExample~~: Attorneys-at-Law LLP, an old Salt Lake firm, offers an online tool providing information and guidance, including legal advice via chatbot or similar technology, around corporate formation.
 - ii. ~~ExExample~~: Attorneys-at-Law LLP decides to launch the online corporate formation tool as a subsidiary technology company.
 1. ~~If the sub is 100% lawyer owned and managed, then notification to the Task Force is required.~~
 2. ~~If the sub is less than 100% lawyer owned and managed (i.e. if it is financed with outside investment or if non-lawyers are running the show), then notification to the Task Force is required.~~
 - iii. Example: HousingHelp, a legal services non-profit, offers an online tool providing guidance, form completion, and legal advice on eviction defense via its website. It also uses its non-lawyer eviction defense experts to provide legal assistance, including advice, to supplement the online tool.
 - b. Partnering (fee-sharing) with a non-~~firm/pe~~lawyer owned entity ~~where engagement is between law firm/lawyer and consumer that has~~ not been approved to offer legal services by the Task Force.
 - i. ~~ExExample~~: Attorneys-at-Law LLP enters into a partnership with Bank to offer bundled legal and banking services ~~alongside each other. Attorney at Law does not have to do anything. Bank does not have to do anything IF the agreement is a simple referral agreement and/or engagement agreement is between law~~

~~firm/lawyer.~~ Fees are earned through engagement between firm and customer.
Bank has not been approved to offer legal services by the Task Force.

- ii. ~~ExExample:~~ Attorneys at Law LLP enters into an agreement with SavMart Big Box Store to offer legal services in their stores. The agreement specifies that firm will lease space and pay a certain percent of revenue generated by in store engagements to SavMart. Firm ~~may advertise~~advertises services leveraging SavMart's brand and SavMart ~~may advertise~~advertises that legal services are available in the store from firm. Fees are earned through engagement between firm and customer. SavMart has not been approved to offer legal services by the Task Force.

~~<100% lawyer owned entities required to notify Task Force:~~

1. ~~Conventional law partnership or professional law corporation~~

a. ~~2. With~~ with less than 100% lawyer ownership, management, or financing.

- i. ~~ExExample:~~ Attorneys ~~at~~ Law LLP elevates to equity partnership its head of marketing.
- ii. ~~ExExample:~~ Attorneys ~~at~~ Law LLP takes on financing from private equity firm.
- iii. ~~ExExample:~~ Attorneys ~~at~~ Law LLP finances tech subsidiary via venture capital funding ~~OR~~or establishes sub managed and operated by non-lawyers: ~~sub must register.~~
- iv. ~~ExExample:~~ BigConsulting, a global enterprise services company, purchases a stake in Attorneys ~~at~~ Law LLP.

2. 3. Non-lawyer owned ~~consumer facing~~ legal services provider (for profit or non-profit):

- a. ~~Offering legal services~~Practicing law via technology platforms (using AI etc.) or lawyer and/or non-lawyer staff or through purchase of a law firm.

- i. ~~ExExample:~~ LawSwoosh, an online legal platform offering services to the public, including legal assistance from lawyers, non-lawyer experts, and technology platforms.
- ii. ~~ExExample:~~ SavMart, big box retailer offering flat fee legal services for consumers via lawyers, non-lawyer experts, and technology platforms in its stores and online.
- iii. ~~ExExample:~~ LawNetwork, an online legal network connecting consumers to lawyers and offering flat fee legal services.

~~iv. Ex:HousingHelp, a housing legal services non-profit, develops an eviction-defense online tool guiding users through the eviction-defense process, using non-lawyer expertise and lawyer advice at key points as necessary.~~

~~b. Offering legal services to the public via business partnership or contract with individual lawyers or firms in which the services are advertised as part of the provider's brand and in which the engagement is between the entity (not the lawyer or the firm) and the consumer.~~

~~i. Ex: Bank enters into business partnership with Attorneys at Law LLP or individual lawyer in which Bank advertises legal help as part of its services/products, engagement is between Bank and customer.~~

~~c. If purchasing a law firm or hiring lawyers to practice law for consumers (i.e. not work for other lawyers).~~

~~i.iv. Ex~~Example: BigConsulting purchases Attorneys at Law LLP to operate the firm as its legal service arm in Utah.

~~ii.v. Ex~~Example: BigConsulting hires Amy Attorney to provide legal advice on Utah incorporation law to its clients.

vi. Example: Women's Shelter, a domestic violence non-profit, offers legal assistance to its clients through its non-lawyer staff, including assistance completing protection orders, divorce, and custody proceedings.

~~iii. Practicing law through Ex: New Law Company hires Lawyer Larry as a contract lawyer, advising its clients on contract formation, negotiation, and other matters.~~

~~d.b. Offering legal services to the public via~~ business partnership or contract with individual lawyers or firms in which the services are advertised as part of the provider's brand and in which the ~~engagement~~contract for services is between the entity ~~and the consumer~~ and the consumer (not the lawyer or the firm).

i. Example: Bank enters into business partnership with Attorneys-at-Law LLP or individual lawyer in which Bank advertises legal help as part of its services/products. Fees are earned through a contract for services between Bank and customer.

~~i.ii. Example~~Ex: SavMart enters into a joint-venture with Attorneys-at-Law, LLP through which the firm's attorneys offer legal services to SavMart's customers, either in their stores or via online platforms. -The services are advertised under SavMart's brand and ~~the engagement~~fees are earned through a contract is for services between SavMart and the consumer.

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Tab 3

Data Collection Requirements for Sandbox Participants

The regulatory strategy of the sandbox administrator is to assess the risk of three possible harms to consumers of the legal services provided by sandbox participants. The harms are:

- Receiving inaccurate or inappropriate legal services.
- Failing to exercise legal rights through ignorance or bad advice.
- Purchasing unnecessary or inappropriate legal services.

The sandbox administrator needs several kinds of data on legal outcomes to assess the likelihood of consumers experiencing these harms. Sandbox participants can raise their chances of admittance into the sandbox by providing as much of the required data as possible. A partial but suggestive list of data collection strategies and data sets are:

- Consumer complaints
- User surveys
- Rate of service error fixes
- Level/rates of services provided
- Legal and financial outcome data

Although the sandbox administrator is interested in the absolute incidence of consumer harms by a sandbox participant, the more important criterion is the relative rate or risk of harm compared to the experience a consumer would have received absent the legal services provided. To make that comparison, information must be known about the consumers of the legal services provided in the sandbox. This kind of demographic data is again most easily provided by sandbox participants. Some possible useful data for this purpose might be:

- Income level
- Education level
- Geographical location
- Race/ethnicity

The sandbox administrator will negotiate the actual data collection requirements individually with each sandbox participant, but the administrator will attempt to establish and maintain data sets as consistent with the guidance above as possible. Because the administrator has limited resources to separately collect such data, applicants to the sandbox are advised to provide as much of the required data as possible.

Data Policies

No data provided by sandbox participants will be shared with any other organizations for any reason. Data provided by sandbox participants should be anonymized before submission to the sandbox administrator. Data provided will be kept confidentially and deleted from

administrator databases after analysis. The administrator may choose to share provided data to independent evaluators of the sandbox pilot after receiving permission by the data provider. If so, such evaluators will be contractually required to also keep the data confidentially and delete it after analysis is completed.