



UTAH SUPREME COURT'S TASK FORCE ON REGULATORY REFORM

Agenda

Location: Cafe Meeting Room (Next to Cafeteria on First Floor)
Scott M. Matheson Courthouse, 450 S. State St., Salt Lake City, UT 84111

Date: January 22, 2020

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

Action: Welcome and approval of January 8, 2020 minutes	Tab 1	John Lund, Co-Chair
Discussion: Update on applicants/interest		Larissa Lee
Discussion: Grant proposal		Mike Harmond, Justice Himonas
Discussion: Minimum tech standards for sandbox participants and technical requirements	Tab 2	Tom Clarke, Lucy Ricca
Discussion: Revisions to data scope document	Tab 3	Tom Clarke

[Sandbox website](#)

[Committee website](#)

Meeting Schedule:

February 5, 2020
February 19, 2020
March 4, 2020
March 18, 2020
April 1, 2020
April 15, 2020
April 29, 2020
May 13, 2020

May 27, 2020
June 10, 2020
June 24, 2020
July 8, 2020
July 22, 2020
August 5, 2020
August 19, 2020
September 2, 2020

September 16, 2020
September 30, 2020
October 14, 2020
November 25, 2020
December 9, 2020
December 23, 2020

Tab 1



Utah Supreme Court's Task Force on Regulatory Reform

January 8, 2020

3:00–4:30 p.m.

Scott M. Matheson Courthouse
Judicial Council Room, Suite N31
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		√	
Heather Farnsworth	Member			√
Dean Gordon Smith	Member			√
Lucy Ricca	Member		√	
Gillian Hadfield	Member		√	
Margaret Hagan	Member		√	
Steven G. Johnson	Member			√
Larissa Lee	Member	√		
Marina Kelaidis	Staff, Recording Secretary	√		
Tyler Hubbard	Staff, Law Clerk	√		

Utah Supreme Court's Task Force on Regulatory Reform

Meeting Minutes DRAFT

January 8, 2020

Scott M. Matheson Courthouse
Judicial Council Room, Suite N31 450
S. State Street
Salt Lake City, Utah 84111
3:00 p.m.–4:30 p.m.

Attendees:

Justice Deno Himonas, Co-Chair
John Lund, Co-Chair
Justice Christine Durham (Ret.)
Lucy Ricca
Gillian Hadfield
Rebecca Sandefur
Thomas Clarke
Margaret Hagan
Larissa Lee

Excused:

Heather Farnsworth
Steven Johnson
Dean Gordon Smith

Staff:

Marina Kelaidis, Recording Secretary, Staff
Tyler Hubbard, Staff

Guests:

Mike Harmond, Law Clerk, Supreme Court
Jason Velez, 1LAW

1. Welcome and approval of December 18, 2019 minutes: (John Lund)

John Lund welcomed everyone to the meeting and asked for approval of the minutes.

Justice Himonas moved to approve the December 18, 2019 minutes. Justice Durham seconded the motion, and it passed unanimously.

2. Discussion – Update on applicants/interest: (Larissa Lee)

Larissa Lee reported that she has received a fair amount of interest from the Connect tab of the sandbox website since the website became live. She has received about 25 requests from individuals to receive updates and 10 parties have expressed interest in participating in the sandbox.

John Lund asked the committee about increasing marketing efforts for the sandbox and/or the website. Justice Durham proposed to continue to measure the amount of interest received from the website. If there is a noticeable decrease in interest received, she suggested increasing the marketing efforts at that time. Gillian Hadfield proposed for the committee to wait to increase active outreach efforts until after the sandbox itself has been launched. Considering the suggestions made, John Lund proposed for the committee to continue including a short reminder about the website at each of their upcoming speaking engagements/presentations and to encourage interested individuals to connect with the task force via the Connect tab as we approach the launch of the sandbox.

Justice Himonas reported that those who sign up for updates, express interest or submit general feedback and/or questions via the Connect tab of the website, now receive an automated response email as an acknowledgement that their connection has been received.

Justice Himonas, along with Lucy Ricca, proposed including some sort of reference to the Institute for Advancement of the American Legal System (IAALS) and the National Center for State Courts (NCSC) on the website for access to additional information on regulatory reform as well as a statement of gratitude to these organizations for their support of the Task Force. John Lund agreed that it is a good idea to acknowledge the support of these organizations. Larissa Lee and Lucy Ricca will construct the wording of this acknowledgement and placement on the website to be presented at the next meeting for approval.

Larissa Lee reported that since the last meeting, both approved documents, [Data Collection Requirements for Sandbox Participants](#) and [Scope of the Sandbox Project](#), have been added to the Home page of the website. In addition, a link has been included in the About tab for more information on Task Force meetings. This link provides access to the Task Force's meeting page on the court's website which includes the committee's 2020 meeting schedule, a list of members, a link to the Narrowing the Access-to-Justice Gap by Reimagining Regulation report, past meeting materials, and approved minutes.

Ms. Lee reported that she has drafted a memo to be sent out by the Chief Justice to all judicial members and staff with information on the website. Justice Himonas reported that the Chief Justice will be sending an email with information on the website to all judicial members and staff and will also discuss regulatory reform in his upcoming State of the Judiciary Address on January 27, 2020 at the Utah State Capitol. John Lund reported that he did connect with the Bar's Communications Director, Matthew Page, following the last committee meeting, but does not believe that an email has been sent out yet to members of the Bar. Ms. Lee suggested that the email push from the Bar should include language reiterating that the website can be

used for updates, submitting questions and feedback, as well as expressing interest. Lucy Ricca suggested for the date and scope of the first data workshop to also be included in the email to the members of the Bar. Mr. Lund will follow up with Mr. Page and ask that this reminder and the workshop information be included in the email push.

3. **Timeline for the implementation team:** (Justice Himonas, Tom Clarke, Lucy Ricca)

Justice Himonas reported that he and Mr. Lund met with the Chair of the Supreme Court's Advisory Committee on the Rules of Professional Conduct and the Chair of the subcommittee who will be redrafting Rule 5.4. The subcommittee will be meeting on Monday, January 13, 2020, to finalize their proposed changes to Rule 5.4. However, they will draft an alternative to Rule 5.4 that will address outside ownership. For example, the alternative Rule 5.4 will include language detailing the requirement for compliance with a new Supreme Court Standing Order (No. 15) for participation in the sandbox. Mr. Lund also included that the alternative Rule 5.4 will have a notation at the beginning of the document stating that the Rule is subject to approval in accordance with Standing Order No. 15. The new Standing Order will outline the scope of the activities of the implementation task force. Justice Himonas offered that once the changes to the Rule are adopted, they will allow for the regulator to perform a full evaluation and allow for sandbox participants to provide legal services under Rule 14-802 without risk of conflict with the prohibition against the unauthorized practice of law. Justice Himonas anticipates that the Rules of Professional Conduct Committee will vote on these rule changes at their next meeting in early February. The proposed changes would then likely go before the Supreme Court at their next conference on February 19, 2020, and then go out for public comment.

Justice Himonas reported that the Bar Commission submitted a request to the Supreme Court for a six month comment period for any rule changes that go out for public comment, which the Court has not yet reviewed. Justice Himonas offered that an elongated comment period may be necessary due to the importance of these rule changes to the Bar. Gillian Hadfield suggested that a prolonged comment period may potentially be a barrier to the continued momentum that the Task Force has created thus far. John Lund offered that the rulemaking piece of this reform process is critical to the overall success and viability of the Task Force. With this in mind, Mr. Lund asked the committee for ideas on how to continue the work of the Task Force while awaiting the various approval processes of each rule change, so that when the rules become effective, the Task Force is ready to act without further delay. Justice Himonas suggested that the Task Force can begin the preliminary work of overseeing sandbox applicants, with the understanding that the applications cannot be approved until after the rules are approved.

Lucy Ricca suggested that it would be in the Task Force's interest to address Standing Order 15 at the next few committee meetings so that it is ready to go out for public comment as a package along with the other changes to Rule 5.4. The committee created a subcommittee to initially draft proposed language for the Standing Order.

4. Discussion – Communications update: (Justice Himonas, John Lund, Lucy Ricca)

Lucy Ricca reported that she, Mr. Lund, and Justice Himonas have discussed that the Task Force needs a concerted communications education strategy. With this goal in mind, the Task Force has received the pro-bono assistance of Walter Montgomery, a strategic communications expert. Mr. Montgomery has provided a list of communication strategy recommendations for targeting specific groups in Utah, what materials will be needed, and detailing distribution efforts. They plan to move forward with Walter's recommendations while working alongside the court's Communications Director, Geoff Fattah. Justice Himonas recommended for the committee to review the communications strategy recommendations at a future meeting when Mr. Fattah can attend. John Lund expressed that the committee should address the communications strategy in a couple months' time when the Task Force will have more communications material to include and disseminate.

Justice Himonas asked Lucy Ricca if she could send the committee her report on The Corporate Legal Services Market in California. Justice Himonas offered that this report is a good example of legal regulatory reforms happening outside of Utah as well as how the definition of the practice of law is changing. Gillian Hadfield asked the committee if the Task Force should include a link this report, which is featured on the IAALS website. Justice Durham agreed that this report, as well as any other salient and informative reports should be linked on the Task Force's website for increased access to outside research. John Lund asked for the committee to clarify if they are interested in building their own knowledge base on the Task Force's website, or just a link to the IAALS knowledge base. Justice Himonas suggested only including only a small number of curated publications on the website with language directing viewers to IAALS and the Stanford Center on the Legal Profession websites for additional research publications on legal regulatory reform. Lucy Ricca echoed Justice Himonas' suggestion and added that Walter Montgomery can assist the committee in determining which publications to include on the website.

5. Discussion – Grant application update: (Larissa Lee)

Mike Harmond, law clerk for Chief Justice Durrant, will be assisting with writing the

grant proposal and grant application for the State Justice Institute. Justice Himonas suggested for Mr. Harmond to connect with Thomas Clarke and Lucy Ricca to work on the specific aspects of the grant application to include budget specifics, project management, etc. Mr. Harmond and Ms. Lee will present the grant proposal application at the next committee meeting.

6. Other business – (All members)

John Lund reminded the committee members to continue to send Ms. Lee their upcoming speaking engagements to be added to the Events tab of the website.

Larissa Lee reported that she has sent an email to all of the interested groups and individuals from the Task Force's website, which included the two recently approved documents and a link to the committee meeting page on the court's website. John Lund asked the committee to discuss how often or what materials should be sent out to those that have signed up for updates. Ms. Lee suggested to send an email update once the Events tab has been completed and proposed some sort of monthly update to send out each month.

Jason Velez suggested for the committee to consider imposing a technological standards requirement for sandbox participants. Mr. Clark agreed that this idea would be very beneficial for the Task Force to consider. Mr. Clark will present a technical standards document for sandbox participants document at the next meeting.

7. Adjournment and next meeting:

The meeting adjourned at 4:00 p.m. The next meeting will be held on January 22, 2020 from 3:00 – 4:30 p.m. in the Judicial Council Room at Matheson Courthouse.

Tab 2

**An Advisory Note
On
Technical Standards for the Legal Services Policy Sandbox**

What is Not In Scope

Government agencies typically want to dictate requirements for good design. Such requirements often include design characteristics like usability and accessibility. Trying to ensure consumer friendly designs by sandbox participants is not an appropriate function for a legal services sandbox administrator. Its scope should be restricted to assessing risks and harms—not reviewing designs for services.

What Is In Scope

What would be useful is technical standards for the data that sandbox participants are required to report and that the sandbox administrator must analyze. Both sandbox participants and the sandbox administrator could potentially lower the costs of providing and analyzing data by establishing technical standards for logical data elements (business definitions for data elements), technical data element definitions (that software can understand and process), and open interfaces for exporting and importing the data sets (by defining APIs or application programming interfaces).

If organizations knew ahead of time what the required data sets were and what technical standards needed to be complied with, they could design for those requirements. Much of this potential cost savings probably cannot be realized in the short-run, since most services for consumers do not include these types of interfaces in their designs and no industry-wide data standards currently exist (although several groups are working on pieces of the problem). Requiring compliance with such standards now could make participation in the sandbox too expensive for many potential innovators.

An Approach to Technical Standards

The best way to proceed is a phased approach:

1. Standardize the required data sets.
2. Create logical data definition standards.
3. Create technical data definition standards.
4. Create data exchange interface standards.

The data team is currently working on Step 1: standardizing the required data sets. It may be a while before we are able to productively proceed to Step 2, but we could perform an initial review of what existing logical data standards might be helpful.

Tab 3

Data Collection Requirements for Sandbox Participants

January 2020

Disclaimer: This document is subject to change.
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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
- Benchmarking data for proposed services¹

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

¹ Ideally, benchmarking data would closely match the Utah consumer subset affected and the service type being proposed. Because such data is scarce, applicants may utilize appropriate data sets from other states, national studies, and even international research. Examples include the annual assessments by the World Justice Project, legal need studies by the Legal Services Corporation, and legal need studies by state legal aid organizations and state courts.

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.