UTAH SUPREME COURT'S
TASK FORCE ON REGULATORY REFORM

Agenda

Location: Webex (see calendar invite for details)

Date: April 15, 2020

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

Action: Welcome and approve April 1, 2020 minutes	Tab 1	John Lund, Co-Chair
Discussion: Update on standing order/ Rules		Justice Deno Himonas
Discussion & Action: Risk Measurement 1. Establishing Risk Thresholds for Legal Services 2. Risk Assessment Case #1 3. Risk Assessment Case #2 4. Risk Assessment Case #3	Tab 2	Lucy Ricca Tom Clarke Gillian Hadfield Rebecca Sandefur
Discussion: New applicants/interest and potential email updates		Larissa Lee Tyler Hubbard
Discussion: Update on outreach efforts		All
Discussion: Old business/new business		

Sandbox website   Committee website

Meeting Schedule:

April 29, 2020	July 22, 2020	October 14, 2020
May 13, 2020	August 5, 2020	November 25, 2020
May 27, 2020	August 19, 2020	December 9, 2020
June 10, 2020	September 2, 2020	December 23, 2020
June 24, 2020	September 16, 2020	
July 8, 2020	September 30, 2020	

Tab 1

Utah Supreme Court's
Task Force on Regulatory Reform

Draft Meeting Minutes
April 1, 2020
Webex Conference
3:00 p.m.–4:30 p.m.

Attendees:
Justice Deno Himonas, Co-Chair
John Lund, Co-Chair
Steven Johnson

Brody Arishita
Nathanael Player
Lucy Ricca
Gillian Hadfield
Larissa Lee

Heather Farnsworth
Dean Gordon Smith
Thomas Clarke
Rep. Brady Brammer

Excused:
Justice Christine Durham (Ret.)
Rebecca Sandefur
Heidi Anderson
Margaret Hagan

Staff:
Tyler Hubbard, Law Clerk, Supreme Court
Michaela Choppin, Recording Secretary

Guests:
Charley Moore, CEO, RocketLawyer
Mark Edwards, SVP EMEA, RocketLawyer
John Hyun, VP Finance, RocketLawyer
Erik Riegler, GC, RocketLawyer
Crispin Passmore, Passmore Consulting

1. **Welcome and approval of March 4, 2020 minutes:** (John Lund)

John Lund welcomed everyone to the meeting and asked for approval of the minutes. New member, Rep. Brady Brammer, was introduced as the newest member of the Task Force.

Justice Himonas moved to approve the March 4, 2020 minutes. Thomas Clarke seconded the motion, and it passed unanimously.

2. **Discussion—Guest Presentation:** (RocketLawyer)

Charley Moore presented on behalf of Rocket Lawyer. Rocket Lawyer has offered technology-based legal solutions for more than a decade. Their documentation and advice platform drives

down the cost of legal help to a point that is within reach for most individuals and organizations around the world. Rocket Lawyer has also begun offering free pandemic legal services. Thomas Clarke Rocket Lawyer has some promising ideas and that shifting their UK model could potentially work for the Sandbox. Automating dispute resolutions could also potentially fit within the Sandbox model.

3. **Discussion and action—Standing order:** (Justice Himonas)

Justice Himonas reported that the name of the Oversight Board has been renamed the "Office of Legal Services Innovation." Shorthand reference for the Board will be the Innovation Office. The proposed rules have been drafted and have gone to the Court for discussion previously and will go before the Court again for action. The draft Standing Order is also going to the Court for action.

Steve Johnson asked if a comment would be needed in 5.4B that says if you are going to use 5.4B, you need to refer to the Sandbox application. Justice Himonas clarified that 5.4B states that it is subject to the Standing Order.

Rep. Brady Brammer commented that there should be an enforcement mechanism relating to non-lawyers. In order to make this initiative work, it will require more than operational management from the judiciary. It will require some sort of legislation, and he would like to help facilitate that.

4. **Discussion—New applicants/interest and email updates**: (Tyler Hubbard, Larissa Lee)

Larissa Lee reported there are currently 98 individuals and/or groups who have signed up for updates and 34 who are interested in participating in the Sandbox. On March 2, Ms. Lee sent out the email that Tyler Hubbard drafted to all email subscribers, which included: (1) an introduction to the new members (Brody Arishita, Heidi Anderson, and Nathanael Player), (2) a summary and link to the Data and Assessment Workshop held on February 3, and (3) information about the next workshop on April 8, 2020.

Ms. Lee asked if another update should be sent out in the next few weeks. Lucy Ricca agreed that another email should be sent, noting that the April 8th workshop was tabled and then circle back once it has been rescheduled. Justice Himonas added that we should solicit more potential Sandbox participants for presentations just as Rocket Lawyer presented today. Ms. Lee proposed that an email could be sent in the next week saying the workshop was cancelled, interested participants are welcome to come and present, and the rules and Standing Order are out for public comment (once approved).

5. **Discussion—Update on outreach efforts:** (Lucy Ricca, John Lund)

John Lund reported that the FAQ packet, talking points piece, and FAQ sheet are almost complete with the new logo for the Task Force. Mr. Lund discussed the plan to reach out to Women Lawyers of Utah (WLU) and other organized Bar groups to get the message out. The

plan also extends to reaching out to a set of community leaders, court reporters, and both local and national newspaper reporters. Justice Himonas stated that it would be best if the Standing Order go out for public comment just like everything else rather than the Court issuing an order. Mr. Lund commented about the California Bar's recent deliberations that received a significant amount of pushback in the legal community.

Lucy Ricca reported that we can learn from what happened in California. Being prepared to effectively communicate what we are doing is critical. We are in a different position than California because we are much more solid in what is being proposed. Justice Himonas inquired about the status of the initiative in Arizona, and Ms. Ricca reported that after the first comment period expired, another short comment period will be added. Justice Himonas responded that formal action will not happen until August and they are looking to start up in the beginning of 2021.

Rep. Brammer commented that the Task Force should use caution with influence from monetized interests. The Task Force needs to make sure to filter out those who will only show interest if they see that there is a lot of money to be made. Justice Himonas agreed that the committee needs to filter out those interests, possibly through having more specific goals. Thomas Clarke agreed that the Task Force needs to have goals that are focused and data driven. Gillian Hadfield added that the access problem is so immense and covers a significant percentage of the population, as well as small- and medium-sized businesses. John Lund agreed that one of the things that the Sandbox is all about is incrementalism and taking advantage of isolated opportunities to experiment in a controlled way. Mr. Lund added that he wants the story to be that Utah was so well-positioned when COVID-19 hit, and had a structure in place where it could get on the phone with some large provider of retail legal services and deliver assistance to Utahns in their time of dire need. That would only be possible because we had this Task Force and Sandbox in place.

6. **Discussion—Old business / new business:** (all)

None to report.

7. **Adjournment and next meeting:**

The meeting adjourned at 4:40. The next meeting will be held on April 15, 2020 from 3:00–4:30 p.m. via Webex.

Tab 2

Establishing Risk Thresholds for Legal Services

Background

To assess the safety of legal services, the Utah Courts regulatory reform project estimates the risk and measures the occurrence of consumer harm. The legal services sandbox pilot will use evidence-based risk thresholds to assess whether a legal service is safe or not. Risk thresholds are statements about the likelihood of a consumer suffering a specific harm. Thresholds must be established for each type of harm and each type of consumer. The Office of Legal Services Innovation has identified three specific harms to be assessed:

1. **Consumer achieves an inaccurate or inappropriate legal result.**
2. **Consumer fails to exercise legal rights through ignorance or bad advice.**
3. **Consumer purchases an unnecessary or inappropriate legal service.**

Since the systemic goal is to improve the quality of legal services consumers receive, any acceptable risk threshold requires that new services equal or exceed the average quality of legal services that a given type of consumer receives now

Approach to Specification of Thresholds

A threshold is a statement of likelihood about the chance of experiencing harm while consuming a legal service; it is the upper limit of the risk of harm that the regulator will accept. The basic principle informing the construction of the thresholds is *do no harm*. Since new services must be at least as good (in the sense of quality) as existing services for the targeted group of consumers, the principle is really: *do less harm than consumers experience now*. In the Utah project, there are three types of consumer harm, so sandbox participants will need to provide information about the quality of their new services in three ways. Statements about quality take the form of:

For X type of consumer, there is a Y likelihood that Z type of harm will be experienced.

An actual threshold, reflecting the current market for legal services, might be:

For a specific group of consumers (i.e. low-income consumers), there is a currently a 50% chance of receiving an inappropriate legal service.

Applying this threshold to an existing or potential participant in the Utah sandbox would mean that the offered legal service must harm that type of consumer at a rate of 50% or lower to deliver an equal or improved quality of service.

Approach to Specification of Benchmarks

Robust data on the quality of legal services is hard to find. No regular data series in the United States collect that kind of data for legal services produced by traditional providers such as lawyers, let alone for other types of legal services providers such as paralegals or computer programs. No known data in the world does so using the categories of harm and types of consumer used in the Utah project.

In order to benchmark the current quality of legal services and establish acceptable risk thresholds, therefore, participants in the Utah sandbox will need to work with the regulator to identify proxy measures of quality. Those proxy measures may not be ideal, but initially there may be no other way to proceed. As data are collected from participants in the sandbox, the thresholds can be modified to reflect what we learn about the market for legal services.

Proxy measures should be sought wherever they can found. Not all of the data may come directly from Utah. Some measures may be based on data from other states or even other countries if necessary. Academic studies are another possible source of benchmarking data. In some instances, it may be possible to increase the validity of the risk measures by bundling proxy measures into indices where the weaknesses of one measure are offset by the strengths of another.

Requirements for Sandbox Participants

Potential sandbox participants will need to propose ways of collecting data to estimate two probabilities for each type of harm (as relevant):

1) The likelihood that the average person who might use their service will experience a harm without that service, and
2) The likelihood that the average person will experience harm using their service.

The Office of Legal Services Innovation understands that data collection costs money, so it will have to balance the costs and benefits of a proposed data collection regime in each instance. With reference to the Regulatory Objective,[1] the Office will establish a framework for evaluating the costs and benefits of a proposed data collection plan. The framework should not impose unreasonable costs nor should it accept unreasonable risks.

A reasonable standard for data collection is to demonstrate using the best reasonably available evidence that the probability of harm to consumers is not more than it would be without the new service. The quality of the data required should not exceed the level of what can

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[1] Regulatory Objective: To ensure consumers have access to a well-developed, high-quality, innovative, affordable, and competitive market for legal services.

reasonably be collected at the present time. As described above, the Innovation Office contemplates that many of the measures used during the pilot phase of the sandbox may be proxies for the specific consumer harm. The Office reserves the right to determine if the quality of the proposed data collection and assessment plan is sufficient or not. There may be cases where a proposed new service cannot be approved because proxies are not available to adequately evaluate risks to consumers.

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Utah Regulatory Sandbox Risk Assessment
Case Study 1: Automated Forms Completion

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LawSwoosh is an online legal information and document completion company focusing on individuals and small businesses. The company offers a variety of services including estate planning documents and family law documents. Customers purchase packages of these documents and complete them within the platform, guided by questionnaires. LawSwoosh is not owned by lawyers and is a privately-owned C corporation.

The company has developed software using NLP and machine-learning to guide and advise consumers as they complete their forms. Using question-and-answer processes with consumers, via chatbots for example, this software can help consumers apply legal principles to their facts in order to complete legal documents that accurately reflect their needs.

Sandbox Regulatory Request: The company wants to provide the automated document completion service, even though it is not owned by a lawyer and even though advice provided to customers comes from the software and not from lawyers directly.

Risk Assessment Strategy: LawSwoosh must demonstrate that it causes the three consumer harms of 1) inappropriate costs, 2) inappropriate services, or 3) unexercised legal rights less often than the average customers currently experiences. An average user of this service probably tries to complete forms without the advice of a lawyer, relying on public websites and the advice of friends and acquaintances. It would need to compare harm rates for those getting its service versus those doing it on their own.

Possible data collection strategies for the LawSwoosh service might include 1) error rates identified by the company, 2) document rejection rates by the courts, 3) reviews of company fee structures, and 4) alignment between desired legal actions and documents purchased. Possible data collection strategies for DIY approach might include 1) academic studies, 2) court document rejection rates, 3) consumer surveys, 4) secret shopper studies, and 5) external audits.

Examples of possible errors include failure to comply with the form and process requirements of a particular state or jurisdiction for completing a will or failing to comply with the procedural process for a divorce.

Utah Regulatory Sandbox Risk Assessment
Case Study 2: Automated Forms Completion & Advice

Housing Help is a for-profit legal services company that serves individuals and families dealing with housing issues, including eviction actions. The company would like to be able to use both technology and non-lawyers to significantly expand their impact. The staff at Housing Help believe they can offer more complete assistance to more people by leveraging the expertise of its non-lawyer staff, machine learning, and scale efficiencies to provide legal assistance directly to the clients for a very low cost.

The staff at the organization have developed significant subject matter expertise on housing law, both the process and the subject, including a technological platform to triage and assess incoming matters and to engage with clients at the outset of a case. Housing Help believes it can use technology to provide some of the more basic needs of clients (guided form completion, basic information and process advice).

Sandbox Regulatory Request: The company wants to provide the automated document completion service and basic legal advice, even though the advice provided to customers comes from either software or non-lawyer staff in most cases.

Risk Assessment Strategy: Housing Help must demonstrate that it causes the three consumer harms of 1) inappropriate costs, 2) inappropriate services, or 3) unexercised legal rights less often than the average customers currently experiences. An average user of this service probably tries to complete forms without the advice of a lawyer, relying on public websites and the advice of friends and acquaintances. It would need to compare harm rates for those getting its service versus those doing it on their own.

Possible data collection strategies for the Housing Help service might include 1) error rates identified by the company, 2) document rejection rates by the courts, 3) reviews of company fee structures, and 4) alignment between desired legal actions and documents purchased. Possible data collection strategies for DIY approach might include 1) academic studies, 2) court document rejection rates, 3) consumer surveys, 4) secret shopper studies, and 5) external audits.

Examples of a possible error is the AI-enabled software not consistently guiding qualified people to obtain a fee waiver application or not consistently guiding people through all of the possible affirmative defenses for the unlawful detainer.

Utah Regulatory Sandbox Risk Assessment
Case Study 3: Personal Injury

Jerome & Michael LLP is a plaintiff-side law firm. The firm has more than 300 attorneys and operates in all 50 states. The firm is primarily known for its personal injury practice. The firm grew under a marketing approach that focused on serving middle-class Americans. It offered free consultations and flat-fee services.

Sandbox Regulatory Request: The firm would like to bring in a capital investment from private equity firms. The funds will facilitate development of technical systems and geographical expansion. It is clear that increasing the volume of matters, as well as settlement, are important strategic goals for the firm and its investors. The firm needs significant capital investment to facilitate expansion, to advance its technological capacities, and to increase efficiency for its clients.

Risk Assessment Strategy: Jerome & Michael must demonstrate that it causes the three consumer harms of 1) inappropriate costs, 2) inappropriate services, or 3) unexercised legal rights less often than the average customers currently experiences. An average user of this service probably does not bring a personal injury case at all, since the process would be too daunting. It would need to compare harm rates for those getting its service versus not bringing a case at all.

Possible data collection strategies for the Jerome & Michael service might include 1) cases filed with little or no merit, 2) cases with merit that were lost or resulted in below average settlements, 3) settlements that were overturned upon review, and 4) fees that were inappropriately large. Possible data collection strategies for DIY approach might include 1) academic studies, 2) court document rejection rates, 3) consumer surveys, 4) secret shopper studies, and 5) outside audits.

An example of a possible error is bringing a case that on the facts would never result in a favorable award or settlement.