



Utah Supreme Court's Task Force on Regulatory Reform

Approved Meeting Minutes
April 15, 2020
Webex Conference
3:00 p.m.–4:30 p.m.

Attendees:

Justice Deno Himonas, Co-Chair
John Lund, Co-Chair
Steven Johnson
Justice Christine Durham (Ret.)
Heidi Anderson
Nathanael Player
Lucy Ricca
Rep. Brady Brammer
Brody Arishita
Larissa Lee
Rebecca Sandefur
Heather Farnsworth
Margaret Hagan
Thomas Clarke

Excused:

Gillian Hadfield
Dean Gordon Smith

Staff:

Tyler Hubbard
Rob Jepson
Michaela Choppin, Recording Secretary

Guests:

Jason Velez, 1Law

1. Welcome and approval of April 1, 2020 minutes: (John Lund)

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

Justice Himonas moved to approve the April 1, 2020 minutes. Thomas Clarke seconded the motion, and it passed unanimously.

2. Discussion—Update on Standing Order/Rules (Justice Deno Himonas):

Justice Himonas reported that the Utah Supreme Court approved the Standing Order.

3. **Discussion**—Risk Measurement (Lucy Ricca, Tom Clarke, Gillian Hadfield, Rebecca Sandefur):

Lucy Ricca explained that this approach to risk management makes it clear that the Office of Legal Services Innovation (Innovation Office) will be laser-focused on consumer harm as its metric for the regulatory process. Ms. Ricca shared that this has been rephrased to put the responsibility on service providers by asking them to show how targeted consumers fare without their service, and, as numerically as possible, how they could fare with their product. The risk measurement group has worked to articulate a risk measurement approach that gives the regulator flexibility to use human assessment of risk along with data offered by providers.

Thomas Clarke added that this is the third iteration of proposed risk thresholds. In the first draft, the risk measurement group tried to identify specific consumer groups and establish numerical risk thresholds for each group. There is a lack of data and potential political pushback for that approach. Second, the risk measurement group tried to apply a universal threshold, and again found a lack of data to support any numerical value. Finally, the risk measurement group ultimately settled on the current proposal. Rebecca Sandefur added that the Innovation Office can choose to define how they will measure risk. By using a language of reasonableness, they can decide what is reasonable to ask of providers. Whoever is applying the rules will need to use their judgment, as definitions of reasonableness can vary between people.

John Lund asked specifically about Risk Assessment Case #1, where the applicant has to show that the consumer harms are going to occur less with their product or service than the average customer currently experiences. Mr. Lund inquired what it would look like to rely more on academic studies for that information. Ms. Sandefur replied that one could try to look at studies comparing solicitors, or office based will-writers, to specialized will-writers who do not have law degrees, and find that they make errors at the same rate. This study would provide a baseline error rate; however, this kind of study does not currently exist for other situations. Ms. Ricca agreed that approaching applicants and requesting data could provide the Task Force with information that would not be available publicly.

Rep. Brady Brammer asked if the Task Force had approached any malpractice insurers, who are deeply experienced in risk assessment. Ms. Ricca stated that the Task Force had not done so, but agreed that is a good idea.

John Lund inquired if the Risk Assessment Thresholds packet could be shared publicly. Justice Himonas agreed that they should be shared, as the examples described are very helpful.

Ms. Ricca explained that establishing a decision-making process for the Innovation Office would help to articulate a standard of reasonableness and to guide that decision-making process, making sure it is transparent and reasonably systematic.

Mr. Lund asked if someone could address Risk Assessment Case #3 and the idea that someone could buy unnecessary or inappropriate legal services. Ms. Ricca stated that harm was included in response to the concern of the upselling that occurs because of a knowledge gap between people and professionals. Ms. Ricca also indicated that it is important for the Innovation Office to make sure that there are checks and balances in place.

Nathanael Player inquired about how agile the regulator can be if things evolve and the Innovation Office realizes there are additional risks that were not considered. Ms. Ricca responded that the harms are not outlined in the Standing Order, so the Task Force can try to establish a structure around decision-making and build agility into that structure. Justice Durham added that it will be hard, until the Task Force has regulatory experience, to know what new risks will be encountered.

Heidi Anderson inquired about Risk Assessment Case #2. Ms. Anderson stated that while she likes machine learning, if the program has learned incorrect information, it will continue to provide incorrect information. Rebecca Sandefur responded that to prevent that from happening, the Innovation Office would need to require applicants to show how they would assess the accuracy of answers if they were to use machine learning. Ms. Ricca added that the Risk Assessments are only examples of things that could come before the Sandbox. The Innovation Office will have proactive regulatory tools such as the ability to conduct audits, secret shopper tests, and the experiences of institutions, like the Courts, in Utah.

Justice Himonas moved to formally adopt these risk thresholds and the case study examples as the risk thresholds that will be used by the Sandbox going forward. Heidi Anderson seconded the motion, and it passed unanimously.

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

Larissa Lee reported there are currently 113 individuals and/or groups who have signed up for updates and 36 interested in participating in the Sandbox.

5. **Discussion**—Update on outreach efforts

John Lund stated that the Task Force needs to step up their communication effort. Mr. Lund asked that everyone use the talking points that have been developed, as well as all of the materials that have been created. Justice Himonas added that it is important to reach out to everyone, not just lawyers, for public comment.

6. **Discussion**—Old business/new business

Justice Himonas introduced Jason Velez, who reported a short synopsis of the services offered by 1Law before their presentation tomorrow.

Justice Himonas explained that the Task Force wants to invite anyone interested to present their ideas and explain how the new rules and regulations may allow them to fill the gap in access to

legal services. Justice Himonas agreed with what was previously said by Justice Durham, that the Task Force will start to learn as it gets more involved with applicants. John Lund commented that the Task Force should make it clear that presenters should know that it would be an informational session, not an application.

Justice Himonas asked if it was possible to solicit early intervention from people who are offering services, at little to no cost, relating to COVID-19 on the Task Force's website. Larissa Lee replied that hiring a project manager may be beneficial in filling logistical and communications gaps with interested participants. Justice Himonas stated that the State Justice Institute is aware of the situation and will make funds available, if approved. Tom Clarke replied that there is money for a project manager and IT built into the grant. Heidi Anderson commented that she could reach out to a pre-approved provider for IT support and get more information about a bid.

7. Adjournment and next meeting:

The meeting adjourned at 4:02. The next meeting will be held on April 29, 2020 from 3:00–4:30 p.m. via Zoom.