

## Utah Regulatory Reform Frequently Asked Questions

### I. The Need for Reform

#### Who is driving this reform movement?

- The Utah Supreme Court is driving this reform. Galvanized by concerns around the access to justice gap in Utah and throughout the country, the Court has taken on multiple projects to increase people’s ability to get innovative, high quality, affordable resolution to their legal problems: online dispute resolution for small claims, licensed paralegal practitioners, and regulatory reform.
- In fall 2018, the Court established a joint task force with the Utah State Bar to assess the potential of regulatory reform, loosening restrictions around the practice of law to open up the market for legal services. The task force was led by Justice Deno Himonas and former President of the Utah State Bar and Parsons Behle partner John Lund.
- The task force submitted a report to the Supreme Court in August 2019 (Narrowing the Access to Justice Gap by Reimagining Regulation). The report was approved and the Court established an Implementation Task Force, including most of the initial members and adding several more leaders of the Utah legal profession, including former Chief Justice Christine Durham.
- This Standing Order to establish an Oversight Board for the regulatory sandbox is a result of the Implementation Task Force’s work.

#### Why do we need such dramatic changes to how law is practiced?

- These are not such dramatic changes. It is simply allowing different kinds of organizations, other than 100% lawyer-owned firms, to provide legal services – much like has happened for decades in other professions like medicine and accounting, and in law in the U.K. and Australia.
- The need for legal help is great: Each year thousands of Utahns face problems like employment disputes, divorce or custody proceedings, small business matters, wage theft, eviction, or consumer debt without any help at all. In Utah’s largest district, in 93% of all family and civil law disputes, one party did not have a lawyer.
- Legal aid and pro bono legal help will never be able to meet the need. We need to change the rules controlling who can offer legal help and how law is practiced and so that people are able to get help in more ways when they need it.

#### Is this going to completely devalue my degree and my career? What does this mean for lawyers, particularly as we enter another recession?

- These changes will open up new opportunities for lawyers to practice law in new ways, in new business models, and with new colleagues.



- Fewer people are using lawyers' services already – lawyers are too expensive and cannot meet people where and when they need help. We need new models for legal services, including technology, to increase consumer engagement and demand.
- Currently, 33% of attorney time is spent on business development and 48% is spent on administrative tasks. That leaves only 2.2 hours of billable time per 8 hour work day. By partnering with other professionals, lawyers will not have to bear the entire risk and responsibility of running a legal practice business, and can focus on practicing law.

**But isn't this effort just a way to open up the market for the Big Four or legal tech companies?**

- No. The Big Four accounting firms already work with lawyers to provide multidisciplinary services in the U.S., and legal tech companies like Legal Zoom and Rocket Lawyer already serve thousands of Utahns in the context of the existing regulatory structure. Certainly they will be permitted to offer new services in the sandbox, including partnering with Utah lawyers, like anyone else.
- But the sandbox will allow for innovative services from a range of entities -- including multi-professional firms and retail businesses or online tools with lawyer staff. One potential example is the company EstateGuru, founded by Utah native Jon Chichoni, which offers a tech platform to facilitate and scale individual lawyers' ability to offer estate planning services to consumers.

**How are you going to ensure lawyers' professional independence?**

- Nothing in the proposed reforms removes a lawyer's duties to his/her client under Utah's Rules of Professional Conduct including those of competence, diligence, loyalty, and independence of judgement.
- To the extent any proposed business model could implicate a challenge to a lawyer's independence in a way that could harm a consumer, the new regulator will address this as a potential risk to be identified, mitigated, and monitored.
- In jurisdictions that have permitted outside ownership or investment in legal practices, such as the UK and Australia, no evidence has emerged of consumer harm caused by compromised independence.

II. Regulatory Sandbox

**What is being proposed and how are things going to change?**

- The task force has made two major proposals focused on a careful and controlled approach to opening up the market for legal services:
  - (1) Changes to a number of the Utah Rules of Professional Conduct as follows:
    - Rule 5.4 will allow fee-sharing with nonlawyers.
    - Rule 5.4 will allow nonlawyer ownership investment, or partnership in law firms or other entities providing legal practice



- services provided such entities are authorized by the Supreme Court.
- Rule 1.5(e) will be removed to permit fee-splitting among lawyers in the same office.
  - Rule 7.1 and the comments will be strengthened and clarified to focus on false and/or misleading communications and the prohibition on interactions of coercion, duress, or harassment.
  - Rules 7.2, 7.3, 7.4, and 7.5 will be removed and referral fees will be permitted, subject to Rule 7.1.
- (2) Establishment of a pilot of a new regulatory body under the authority and oversight of the Supreme Court to regulate (license, oversee, and, as necessary, enforce against) new legal providers and services within a structure called a regulatory sandbox.
- Under the new regulator, we hope to see new kinds of opportunities for lawyers and new kinds of legal services for consumers. This could include:
    - Lawyers in partnership with other professionals such as accountants or social workers.
    - Lawyers working as staff attorneys for companies offering legal services to the public. Such companies could include legal technology companies, consumer focused companies such as banks or retail establishments.
    - Legal services, including legal advice, facilitated by technology or by nonlawyer experts.

### What is a sandbox anyway?

- The Sandbox is a policy tool used to develop a new regulatory approach. It is akin to a pilot program, where a government body can change the rules in a very controlled and time-limited way, monitor how things go, collect data, and analyze the results. The “sandbox” metaphor is meant to convey a safe and bounded space for experimentation.

### How are you going to protect consumers from bad legal help offered by unqualified providers? How are you going to protect the most vulnerable from being exploited?

- Nontraditional sandbox applicants will provide a self-assessment of the risk of consumer harm from their services, proposed actions to mitigate risk, and a consumer complaint process. If these are not satisfactory, then the applicant will not be able to enter.
- New providers will be required to submit regular reports to the new regulator, providing data on consumer complaints and satisfaction, and the regulator will also conduct audits, expert testing, and secret shopper actions to independently test quality -- with special attention to the most vulnerable populations.



- If any of these new providers cause material harm to consumers, they will receive sanctions (loss of license, fines, etc.)

#### **Why isn't the State Bar overseeing the sandbox?**

- In consultation with leaders of the State Bar, we decided it made sense to have a mix of lawyers and other professionals with expertise in providing services to consumers guide this process. The State Bar is well-equipped to oversee the licensing and ongoing oversight of individual lawyers. Overseeing entities requires different expertise, including staff with backgrounds in economics and data analysis to understand the impact on the legal services market.

#### **So why would anyone enter the sandbox if they don't know whether their model will be allowed after the sandbox?**

- Any organization that enters the sandbox will be able to continue operating in Utah afterwards if they are able to demonstrate that their legal services are safe—i.e., that they do not cause levels of consumer harm above threshold levels established by the Innovation Office.

#### **Isn't the sandbox just a back-door way of doing deregulation?**

- No. That's why the sandbox is not just "we're relaxing the rules for a while." It says: "You need to apply to offer services under these new rules," and nontraditional applicants will need to provide a self-assessment of the risk of consumer harm from their services, proposed actions to mitigate risk, and a consumer complaint process. If these are not satisfactory, they will not be approved.
- Moreover, the Innovation Office will collect data and monitor how these services are being provided in order to make sure that consumers are protected -- and have the authority to impose sanctions if there is too much risk, or harm is caused. This is a more proactive approach to consumer protection than how we generally regulate legal services, relying on complaints about lawyers after harm has occurred.

#### **Is there any evidence that allowing corporations to practice law will actually increase access to justice?**

- Yes. The U.K. and Australia have allowed these kinds of organizations, and it has led to more choices and better services for individuals and small businesses like fixed fees for divorce or help with child custody issues; affordable help drafting wills; and advice on employment matters.
- Today, there are too few options for people who aren't poor enough to qualify for legal aid, but also can't pay upwards of \$200/hour to for legal help. These reforms will help change that.

#### **Are the organizations that enter the sandbox subject to ethics rules?**



- Lawyers working in the sandbox have all the same duties to their clients under the ethics rules like confidentiality, loyalty, independence of judgment, and conflicts. The sandbox relaxes the rules around the economic or business-model aspects (not ethics) of the Rules of Professional Conduct.
- The Innovation Office has the discretion to develop standards of conduct if necessary to guide providers in applicable professional and ethical duties.

**It sounds like this is opening the door to the MBAs taking over the way they have in medicine. How is that going to be good for the profession?**

- We see from medicine that allowing physicians to partner with professionals in other fields enables them to benefit from the best expertise on how to deliver great services in an efficient and effective way, and allows physicians to focus on delivering medical care. Major Utah health providers like Intermountain help demonstrate how this kind of approach can lead to the delivery of high-quality affordable care for consumers, and satisfied physicians who can focus on practicing medicine.

**What do you mean by “nontraditional provision of legal services”?**

- This refers to legal services that would not be permitted under the Rules of Professional Conduct for lawyers, which are not only ethics rules but also limits on the permissible economic or business models for legal services.
- So in the sandbox, under the authority of the Innovation Office and Supreme Court:
  - entities owned (in whole or in part) by people who are not lawyers can provide legal services;
  - law firms and other entities can enter into revenue and profit-sharing agreements with other professionals; and
  - organizations can use technology and people who aren’t lawyers to provide legal advice to consumers.
- In the U.K., where similar reforms were enacted, innovative firms and services have emerged such as: a firm in London that employs architects, accountants and solicitors, and serves as a “one stop shop” for design planning, architecture, tax and legal; Parental Choice, which helps parents find a nanny or au pair and also helps them understand their legal obligations as employers; and Co-Op Legal Services, owned by a well-established consumer-owned grocery chain that has used its brand and consumer-facing expertise to provide will-writing, family, employment and other consumer legal services at affordable prices.

**Why is it a good idea to allow people who aren’t lawyers to provide legal advice?**

- There are many areas – including housing, family law, and debt collection – where the legal issues are fairly routine, but someone with experience in that area (even if not a lawyer) can make a difference for individuals.



- Studies on the use of such specialists in other countries, and in certain areas of federal practice in the U.S., show they are as effective if not more so than lawyers.
- The choice in these areas is not between a lawyer or other professional; it is between some help or no help at all.

### III. Office of Legal Services Innovation

#### **So what is this Innovation Office anyway: is it a new government agency, or is it a part of the Utah Supreme Court?**

- It is an office under the authority of the Supreme Court, to which the Supreme Court has delegated the authority to oversee nontraditional providers of legal services. This is similar to the Court's delegation of authority to the State Bar to regulate lawyers.
- Just like in medicine, there are licensing boards that regulate individual physicians, and other regulatory bodies that regulate hospitals and other health care organizations.

#### **Can the Supreme Court create a new government agency without an act of the legislature? Have other state Supreme Courts created new agencies like this before?**

- This is not a new government agency. It is an office under the authority of the Supreme Court. The Supreme Court has broad constitutional powers to oversee the provision of legal services, and this is within its authority to do that.
- New York and New Jersey both have the authority to regulate entities that provide legal services, but this is the first regulatory body, independent of the Bar, set up to do so in the U.S. A similar regulatory body exists in the U.K., where allowing these kinds of entities to deliver legal services has led to more choices and better services for consumers, particularly in areas like family law.

#### **How were the Innovation Office members chosen?**

- The Supreme Court looked for a range of community leaders with diverse skillsets and expertise. Some are lawyers, some are other professionals. It was important to have both experience in providing legal services, but also others who could think about providing services to consumers in ways that were different than traditional legal practice.
- Traditional legal practice and business models have failed to reach the majority of individuals and small businesses in Utah with pressing legal needs. We need new ideas.

#### **Will the Innovation Office meetings be public?**

- Yes. We want this to be as transparent as possible so all stakeholders can understand what is happening, and provide input on the process that is used.

#### **Will the applications be publicly available?**

- No. The organizations entering the sandbox need to have the confidence that their plans to provide legal services are not handed over to potential



competitors before they even open their doors in Utah. Otherwise, they will not have sufficient incentive to enter the market in the first place.

**How will this Innovation Office be funded?**

- It will eventually be funded by fees from the providers who enter the sandbox. The startup costs will be borne by the Supreme Court which may seek external funding as well.

