



# The State Bar of California

---

## **OPEN SESSION AGENDA ITEM 703 FEBRUARY 2022**

**DATE:** February 25, 2022

**TO:** Members, Board of Trustees

**FROM:** Donna Hershkowitz, Chief of Programs  
Bridget Gramme, Deputy Chief of Programs

**SUBJECT:** Board Response to Communications with Legislature about the Closing the Justice Gap Working Group and Regulatory Reform

---

### **EXECUTIVE SUMMARY**

At its meeting on May 14, 2020, the Board of Trustees authorized the formation of the Working Group on Closing the Justice Gap (CTJG), primarily charged with “exploring the development of a regulatory sandbox to evaluate possible changes to existing laws and rules that otherwise inhibit the development of innovative legal service delivery systems such as consumer facing technology that provides legal advice and services directly to clients at all income levels; and other new delivery systems created through the collaboration of lawyers, law firms, technologists, entrepreneurs, and others.” The group held the first of eight full working group meetings on January 14, 2021. CTJG is specifically tasked with developing recommendations for consideration by the Board of Trustees. Prior to implementation of any of these recommendations, Board, Supreme Court, and legislative approval must be granted.

On December 7, 2021, the State Bar received a letter from the chairs of the Senate and Assembly Judiciary Committees identifying a list of concerns about the working group, including that by continuing this work the State Bar is diverting attention from improving the attorney discipline system, and that proposals to permit individuals and corporations that are not licensed attorneys to participate in the sandbox pose a risk to consumers. The letter concludes by urging the State Bar to “redouble its efforts to focus on the core mission of policing attorney misconduct and supporting proven programs offering access to justice and legal services.”

Board Chair Ruben Duran replied on December 14, affirming the State Bar’s commitment to work with members of the Legislature to address their concerns and ensure that the State Bar

effectively fulfills all aspects of its statutory mission. After consultation with Board leadership and the CTJG chair, staff canceled working group meetings in the months following receipt of the letter to assess the situation and present the Board with potential options for moving forward. This item documents CTJG's progress to date and presents recommendations for continuing its work.

---

## **BACKGROUND**

The Board voted to form CTJG in 2020 to further the State Bar's statutory mission to support greater access to the legal system in California, and its strategic goal to study potential regulatory changes to expand access through the use of technology in a manner that balances the dual goals of public protection and increased access to justice.<sup>1</sup>

CTJG is [charged](#) with the following specific tasks: An assessment of the pros and cons of a sandbox as a way to foster experimentation with innovative legal services delivery systems in a manner that protects the public and allows for the collection of data to assess the impact on access to legal services of possible changes in the laws and rules regulating the practice of law in California; consideration of amendments to rule 5.4<sup>2</sup> regarding fee sharing; issuing for public comment a new rule 5.7 addressing the delivery of nonlegal services provided by lawyers and businesses owned or affiliated with lawyers; consideration of recommendations for amendments to the Certified Lawyer Referral Service statutes and Rules of the State Bar; and consideration of recommendations for amendments to the rules governing lawyer advertising and solicitation.

Currently, 21 members serve on CTJG. The members include judicial officers, legal ethics experts, legal services organization experts, and representatives from organized bar groups (the California Lawyers Association, Consumer Attorneys of California, and the California Defense Counsel), as well as an appointee from the Legislature.<sup>3</sup> CTJG also includes staff liaisons from the Supreme Court.<sup>4</sup>

Beginning with its meeting on January 14, 2021, CTJG has held eight meetings of the full working group. In addition, CTJG formed two subcommittees<sup>5</sup> that have held an additional fourteen meetings collectively. During this time, the working group heard 15 planned presentations to inform its work,<sup>6</sup> and public comment from 68 speakers.<sup>7</sup>

---

<sup>1</sup> See Business and Professions Code section 6001.1; Goal 4, objective d of the State Bar's 2017–2022 Strategic Plan

<sup>2</sup> Unless otherwise indicated, all rule references are to the California Rules of Professional Conduct.

<sup>3</sup> The working group's composition as approved by the Board includes slots for representatives from both the Senate and Assembly Judiciary Committees. To date, only the Assembly Judiciary Committee has appointed a representative.

<sup>4</sup> Attachment A provides a roster of CTJG members, liaisons, and staff.

<sup>5</sup> The two subcommittee are: a Scope Subcommittee that was formed to focus on issues pertaining to the general scope of a regulatory sandbox as a pilot program methodology that should encourage experimentation; and a Structure and Governance, Evaluation/Enforcement subcommittee that was formed to consider certain implementation issues for establishing a sandbox regulator.

<sup>6</sup> Attachment B provides a comprehensive list of the presentations.

<sup>7</sup> Attachment C provides a list of the public commenters and written comments received to date.

The charter directs CTJG to present recommendations to the Board at its September 2022 meeting. Over the course of the CTJG effort, it has become clear that some important stakeholders have significant concerns about the concept of a legal regulatory sandbox in California; those concerns most visibly manifested in a December 2021 letter from the chairs of the Assembly and Senate Judiciary Committees.

## **DISCUSSION**

### **I. JUDICIARY COMMITTEES' AND OTHER STAKEHOLDERS' CONCERNS**

On December 7, 2021, the chairs of the Senate and Assembly Judiciary Committees sent a letter to the Board Chair<sup>8</sup> expressing a number of concerns about CTJG, including:

1. The State Bar is diverting its attention from its core mission of protecting the public by devoting a substantial amount of staff time and resources for CTJG, as well as the California Paraprofessional Program Working Group;
2. Corporate ownership of law firms and splitting legal fees with nonlawyers has been banned by common law and statute due to grave concerns that it could undermine consumer protection by creating conflicts of interest that are difficult to overcome;
3. Corporations are driven by profits and demands for returns to shareholder and do not have the same ethical duties and are not subject to the same regulatory oversight as attorneys; and
4. The regulatory sandbox could become an open invitation for profit-driven corporations, hedge funds, or others to offer legal services or directly practice law without appropriate legal training, regulatory oversight protections inherent in the attorney-client relationship, or adequate discipline to the detriment of Californians in need of legal assistance.

The committee chairs advised that “any proposal that would materially change current consumer protections for clients receiving legal services and fundamentally alter the sacrosanct principles of the attorney-client relationship would be heavily scrutinized by our committees.” Chair Duran replied on December 14, 2021, affirming the State Bar’s commitment to work with members of the Legislature to address their concerns and ensure that the State Bar effectively fulfills all aspects of its statutory mission.<sup>9</sup> In the interim, working group meetings were not held while staff gathered further information for the Board’s consideration at its February 25, 2022, meeting.

As part of that information gathering, staff has identified additional issues for the Board to consider in relation to CTJG. Specifically, they have heard concerns about the composition of the working group, particularly with respect to the number of individuals who lack experience litigating cases in California. In addition, several stakeholders have also sought clarity as to the

---

<sup>8</sup> Attachment D provides the letter from the Senate and Assembly Judiciary Committee chairs to the State Bar Chair dated December 7, 2021.

<sup>9</sup> Attachment E provides the letter from the State Bar Board chair to the Senate and Assembly Judiciary Committee chairs dated December 14, 2021.

role of the Legislature in setting the parameters for and/or approving the types of entities that would be permitted to operate in the sandbox, and the application (or exemption) of existing statutes as they relate to sandbox participants.

## **II. STAFF RECOMMENDATIONS**

Staff continues to believe that CTJG's work is a key component of the State Bar's overall commitment to improving access to legal services for Californians of all income levels. It is also important to remember that CTJG's ultimate recommendations must still be adopted by the Board, and any implementation of a sandbox will only occur upon approval by the Supreme Court and the Legislature. However, the concerns raised are serious and warrant modifications going forward.

Accordingly, to streamline the working group's processes to efficiently reach a well-formulated set of recommendations for the Board's consideration, staff recommends that the Board do the following:

- 1. Adjust the composition of CTJG:** In order to address the perceived imbalance of members who lack California-specific experience, staff recommends that the Board revise the membership of the working group so as to limit it to those with California-specific experience. Those members who live and work outside of California have dedicated a tremendous amount of time and effort in assisting CTJG with its work, and the State Bar is grateful for their expertise and contributions to date. Staff fully understands, however, the desire to have those with California experience drive the recommendations of the group. In addition, the Board should fill the vacant judicial officer slot on CTJG and encourage the Senate Judiciary Committee to appoint its representative to the working group.
- 2. Streamline Meeting Processes:** Although the State Bar staff who primarily support CTJG work in the Office of Professional Competence and would not be otherwise working on attorney discipline, the observation of some that the process is utilizing significant State Bar resources is not entirely unwarranted. The current structure, which includes multiple subcommittees that meet monthly, in addition to monthly meetings of the CTJG, generates a significant amount of work for both staff and volunteers, as well as members of the public who are trying to stay abreast of the goings on of the effort. Further, the process has not resulted in the timely consideration and resolution of issues, with some members expressing frustration with meeting pace and processes. As a result, staff recommends that the structure and functioning of CTJG be reconsidered. Accordingly, staff recommends eliminating the subcommittees at this time. Staff will also work with the chair on strategies to prepare and present materials in a way that would maximize productive outcomes at working group meetings.

- 3. Revise the CTJG Charter:** Staff also recommends that the Board revise the CTJG charter to, at a minimum, do the following:
- a. Direct CTJG to specify the roles that they seek the Legislature and the Supreme Court to fulfill in setting the parameters for and/or approving the types of entities that would be permitted to operate in the sandbox, and the application (or exemption) of existing statutes and rules as they relate to sandbox participants;
  - b. Direct CTJG to adopt screening and monitoring procedures for the regulator to reduce the risk that corporate interests will unduly influence or compromise professional judgment and objectivity in the delivery of legal services;
  - c. Relieve the working group from its additional rule revision assignments to permit them to focus on the sandbox recommendation only;<sup>10</sup>
  - d. Extend the deadline for CTJG's report; and
  - e. Make any other revisions that are necessary to be responsive to the concerns raised.

To facilitate the resumption of meetings and update the Board on the working group's progress, a summary of the recommendations adopted by CTJG to date is provided in Attachment F, followed by a comprehensive list of all recommendations adopted by CTJG is provided in Attachment G, and the subcommittees work under consideration but not yet adopted by CTJG is provided in Attachments H and I.

### **FISCAL/PERSONNEL IMPACT**

None

### **AMENDMENTS TO RULES**

None

### **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

### **STRATEGIC PLAN GOALS & OBJECTIVES**

Goal: 4. Support access to legal services for low- and moderate-income Californians and promote policies and programs to eliminate bias and promote an inclusive environment in the legal system and for the public it serves, and strive to achieve a statewide attorney population that reflects the rich demographics of the state's population.

---

<sup>10</sup> Staff may still be directed to propose revisions to the Lawyer Referral Service rule and advertising rules.

Objective: d. Commencing in 2018 and concluding no later than March 31, 2020, study online legal service delivery models and determine if any regulatory changes are needed to better support and/or regulate the expansion of access through the use of technology in a manner that balances the dual goals of public protection and increased access to justice.

## **RECOMMENDATIONS**

**RESOLVED**, that the Board of Trustees revises the membership of the Closing the Justice Gap Working Group so as to limit it to those with California-specific experience, and discharges the members of the working group without California-specific experience with the Board's appreciation for their work; and it is

**FURTHER RESOLVED**, that the Board of Trustees directs staff to work with the chair of the Closing the Justice Gap Working Group to recommend amendments to the charter to, at a minimum, do the following:

1. Direct CTJG to specify the roles that they seek the Legislature and the Supreme Court to fulfill in setting the parameters for and/or approving the types of entities that would be permitted to operate in the sandbox, and the application (or exemption) of existing statutes and rules as they relate to sandbox participants;
2. Direct CTJG to adopt screening and monitoring procedures for the regulator to reduce the risk that corporate interests will unduly influence or compromise professional judgment and objectivity in the delivery of legal services;
3. Relieve the working group from its additional rule revision assignments to permit them to focus on the sandbox recommendation only;
4. Extend the deadline for CTJG's report to the Board of Trustees; and
5. Make any other revisions that are necessary to be responsive to the concerns raised.

## **ATTACHMENT(S) LIST**

- A. Roster of Members, Liaisons and Staff
- B. List of Presentations
- C. List of Public Commenters and Written Comment Letters Received
- D. Letter from Senate and Assembly Judiciary Committee Chairs to State Bar Chair Dated December 7, 2021
- E. Letter from State Bar Chair to Senate and Assembly Judiciary Committee Chairs Dated December 14, 2021
- F. Summary of Sandbox-Related Recommendations Adopted by CTJG
- G. List of All Recommendations Adopted by CTJG
- H. List of Subcommittee Recommendations Adopted by the Subcommittees but Not Yet Considered by the Full Working Group
- I. List of Subcommittee Recommendations Developed but Not Yet Voted On

**STATE BAR OF CALIFORNIA  
CLOSING THE JUSTICE GAP WORKING GROUP**

**Roster of Members, Staff & Liaisons**

**OFFICERS**

**Justice Alison M. Tucher**  
Chair  
San Francisco, CA

**Merri Baldwin**  
Co-Vice-Chair  
San Francisco, CA

**Prof. Rebecca Sandefur**  
Co-Vice-Chair  
Fountain Hills, AZ

**MEMBERS**

**Marta Alcumbrac**  
Los Angeles, CA

**Andrew Arruda**  
San Francisco, CA

**Hon. Wendy Chang**  
Lancaster, CA

**Prof. David Freeman Engstrom**  
Stanford, CA

**Thomas Greene**  
San Francisco, CA

**Daniel Grunfeld**  
Los Angeles, CA

**Eric Helland**  
Claremont, CA

**Khathy Hoang**  
West Toluca Lake, CA

**Micha Star Liberty**  
Oakland, CA

**John Lund**  
Salt Lake City, UT

**Prof. Kevin Mohr**  
Irvine, CA

**Wendy Musell**  
Oakland, CA

**Crispin Passmore**  
Kenilworth, United Kingdom

**Lucy Ricca**  
Stanford, CA

**Toby Rothschild**  
Westminster, CA

**Prof. James Sandman**  
Washington, DC

**Patricia Squitiero**  
Fremont, CA

**Sacha Steinberger**  
Oakland, CA

**SUPREME COURT LIAISONS**

**Sunil "Neal" Gupta**  
*and*  
**Greg Fortescue**  
Supreme Court of California  
San Francisco, CA

**STATE BAR STAFF**

**Leah Wilson**  
Executive Director

**Donna Hershkowitz**  
Chief of Programs

**Randall Difuntorum**  
Director, Professional Competence

**Andrew Tuft**  
Supervising Attorney, Prof. Competence

**Lauren McCurdy**  
Program Supervisor, Prof. Competence

**Mimi Lee**  
Sr. Program Analyst, Prof. Competence

**Angela Marlaud**  
Program Coordinator, Prof. Competence

**STATE BAR STAFF LIAISONS**

**Melanie Lawrence**  
Interim Chief Trial Counsel, OCTC

**Mia Ellis**  
Assistant Chief Trial Counsel, OCTC

**Brady Dewar**  
Attorney III, Office of General Counsel

**WORKING GROUP SUBCOMMITTEES**

**Structure and Governance,  
Evaluation/Enforcement  
Subcommittee (SAGE)**

Merri Baldwin, Co-Vice-Chair  
John Lund, Co-Vice-Chair  
Andrew Arruda  
Judge Wendy Chang  
Daniel Grunfeld  
Eric Helland  
Wendy Musell  
Lucy Ricca  
James Sandman

**Scope of a Regulatory Sandbox  
Subcommittee (Scope)**

Rebecca Sandefur, Co-Vice-Chair  
Thomas Greene, Co-Vice-Chair  
Marta Alcumbrac  
David Engstrom  
Micha Star Liberty  
Kevin Mohr  
Toby Rothschild  
Patricia Squitiero

**STATE BAR OF CALIFORNIA  
CLOSING THE JUSTICE GAP WORKING GROUP**

**List of Presentations Held at Meetings**

MEETING DATE	PRESENTATIONS
<a href="#">January 14, 2021</a>	<ul style="list-style-type: none"> <li>• Rebecca Sandefur: Access to Justice and Innovation (How Consumers Approach a Civil Legal Problem) (<i>timestamp: 2:44:26</i>)</li> <li>• John Lund: Utah Regulatory Sandbox Overview and Update (<i>timestamp: 3:28:25</i>)</li> <li>• Crispin Passmore: Explanation of the United Kingdom’s System and ABS Regulation (<i>timestamp: 1:49:20</i>)</li> <li>• Kevin Mohr: Regulation of Nonlegal Services, Lawyer Advertising, and Lawyer Referral Services (<i>timestamp: 4:27:20</i>)</li> </ul>
<a href="#">February 19, 2021</a>	<ul style="list-style-type: none"> <li>• Crispin Passmore: Concrete Examples of What Forms of Legal Services are being Offered in Non-California Jurisdictions and the Regulatory Safeguards that Accompany these Legal Services (<i>timestamp: 00:21:01</i>)</li> <li>• Justice Ioana Petrou: The California Paraprofessional Program Working Group (<i>timestamp: 2:26:44</i>)</li> </ul>
<a href="#">April 9, 2021</a>	<ul style="list-style-type: none"> <li>• Lucy Ricca and Dr. James Teufel: Data-Driven Assessments of New Legal Services Delivery Systems—Insights from the Utah Sandbox Experience (<i>timestamp: 1:41:44</i>)</li> </ul>
<a href="#">June 18, 2021</a>	<ul style="list-style-type: none"> <li>• Gillian Hadfield: Proactive Risk-based Regulation of Legal Services (<i>timestamp: 1:00:16</i>)</li> <li>• Steven Moawad and Jennifer Kishimizu-Pinney: Attorney Discipline &amp; Non-Attorney Unauthorized Practice of Law Enforcement in California (<i>timestamp: 2:02:22</i>)</li> </ul>
<a href="#">August 11, 2021</a>	<ul style="list-style-type: none"> <li>• Mihir Kshirsagar: Technology Driven Legal Services Delivery Systems Including the Issues of: Dark Patterns; the Need for Scale in Algorithmic Systems; and the Current Limits of Such Systems (<i>timestamp: 2:17:40</i>)</li> </ul>
<a href="#">September 17, 2021</a>	<ul style="list-style-type: none"> <li>• Justice Ann Timmer: Arizona’s Efforts on Legal Services Regulatory Reform and the Regulation of ABS Entities, and Amendments to Arizona’s Rule of Professional Conduct 5.4 (<i>timestamp: 3:27:10</i>)</li> </ul>
<a href="#">October 18, 2021</a>	<ul style="list-style-type: none"> <li>• Prof. Stacy Butler: Director, Innovation for Justice, Univ. of Arizona School of Law, and Univ. of Utah School of Business (Discussing her work with an entity authorized to operate in the Utah regulatory sandbox as approved by the Utah Office of Legal Services and Innovation.) (<i>timestamp: 1:44:45</i>)</li> <li>• Charley Moore: Founder and Chief Executive Officer, Rocket Lawyer (This is an entity authorized to operate in the Utah regulatory sandbox as approved by the Utah Office of Legal Services and Innovation.) (<i>timestamp: 2:33:44</i>)</li> </ul>
<a href="#">December 1, 2021</a>	<ul style="list-style-type: none"> <li>• Rohan Pavuluri: CEO and Co-founder of Upsolve, the largest bankruptcy nonprofit in America (<i>timestamp: 00:27:12</i>)</li> <li>• Erin Levine: CEO and founder of Hello Divorce, an entity authorized to operate in the Utah regulatory sandbox as approved by the Utah Office of Legal Services and Innovation (<i>timestamp: 1:02:53</i>)</li> </ul>



**STATE BAR OF CALIFORNIA  
CLOSING THE JUSTICE GAP WORKING GROUP**

**Public Speakers**

1. Angela Grijalva
2. Annette Morasch
3. Antonio Castillo
4. Arash
5. Beth Mora
6. Charles Gillig
7. Daniel Forouzan
8. Daniel Geoulla
9. Daniel Ghyczy
10. Danny Abir
11. Donna Dishbak
12. Ebby Bakhtiar
13. Eliza Ghanoon
14. Genie Harrison
15. Abraham Niman
16. Andy Katz
17. Glenn Kenna
18. Ira Spiro
19. James Lewis
20. Jason Solomon
21. Jennifer Kramer
22. Jennifer Ostertag
23. Kevin Murphy
24. Laura Horton
25. Lawrence Knapp
26. Leonard Sansanowicz
27. Linda Spiegel
28. Marjorie Wallace
29. Mark Russakow
30. Melissa Johnson
31. Mike Bracamontes
32. Mitchel Winick
33. Noemi Esparza
34. Olivier Tailieu
35. Randy Johnson
36. Rhett Francisco
37. Richard Koss
38. Robert Bale
39. Scot Bernstein
40. Stephanie Bond
41. Tiffany Howard
42. Tom Gordon
43. Whit Bertch

**STATE BAR OF CALIFORNIA  
CLOSING THE JUSTICE GAP WORKING GROUP**

**Written Public Comment Letters Submitted**

1. Mora Employment Law – Beth Mora (9/21/21)
2. Beverly Hills Bar Foundation – Linda Spiegel, President (10/13/21)
3. Consumer Attorneys of California (CAOC), Consumer Attorneys of Los Angeles (CALA), California Employment Lawyers Association (CELA) (9/20/21)
4. Consumer Attorneys of California (CAOC) (10/6/21)
5. Consumer Attorneys of California, Public Counsel, California Employment Lawyers Association, Consumer Attorneys Association of Los Angeles (10/15/21)
6. Institute for the Advancement of the American Legal System (IAALS), University of Denver (4/8/21)
7. Wendy Musell, Law Offices of Wendy Musell (10/15/21)
8. Responsive Law, Tom Gordon, Executive Director (6/18/21)
9. Responsive Law, Tom Gordon, Executive Director (9/3/21)
10. Lucy Ricca, Executive Director, Utah Office of Legal Services Innovation (6/17/21)
11. Stanford Law School, Jason Solomon (6/17/21)

STATE CAPITOL  
P.O. BOX 942849  
SACRAMENTO, CA 94249-0115



December 7, 2021

Ruben Duran  
Chair, Board of Trustees, State Bar of California  
180 Howard St.  
San Francisco, CA 94105  
(by electronic mail)

Re: Legislative Concerns Regarding the Closing the Justice Gap Working Group

Dear Chair Duran:

We are writing to express concern with the California State Bar's Closing the Justice Gap Working Group (CTJG). As Chairs of the Assembly and Senate Judiciary Committees, we have repeatedly urged the State Bar to focus on its core mission of protecting the public by correcting the delays and defects in the attorney discipline system. That focus remains urgent and must be prioritized.

Unfortunately, it appears that the State Bar has chosen to divert its attention from its core mission of protecting the public and addressing the critical issues affecting the discipline system. Instead, the State Bar has used a substantial amount of its resources for the CTJG, as well as the Paraprofessional Program Working Group, apparently utilizing hundreds of hours of staff time and an unknown amount of other State Bar resources. This is very disconcerting given the recent State Auditor's report noting that the State Bar's backlog of discipline cases grew by 87 percent since December 2015 and that recent changes to the system have significantly reduced its efficiency.

The CTJG has been exploring a proposed regulatory sandbox and proposals that would recommend allowing a participant in the sandbox who is not a licensed attorney to be exempt from existing statutory laws regarding the practice of law and rules of professional conduct. Our Committees have prioritized protecting consumers from unscrupulous actors, including those seeking to do business in the legal field. Corporate ownership of law firms and splitting legal fees with non-lawyers has been banned by common law and statute due to grave concerns that it could undermine consumer protection by creating conflicts of interests that are difficult to overcome and fundamentally infringe on the basic and paramount obligations of attorneys to their clients.

Corporations are driven by profits and demands for returns to shareholders, and do not have the same ethical duties and are not subject to the same regulatory oversight as attorneys. The regulatory sandbox could become an open invitation for profit-driven corporations, hedge funds,

December 7, 2021

Page 2 of 2

or others to offer legal services or directly practice law without appropriate legal training, regulatory oversight, protections inherent in the attorney-client relationship, or adequate discipline to the detriment of Californians in need of legal assistance. Any proposal that would materially change current consumer protections for clients receiving legal services and fundamentally alter the sacrosanct principles of the attorney-client relationship would be heavily scrutinized by our Committees.

We reiterate our call for the State Bar to redouble its efforts to focus on the core mission of policing attorney misconduct and supporting proven programs offering access to justice and legal services such as legal aid, court-sponsored self-help, and pro-bono assistance, as well as innovative approaches to increasing the number of attorneys who are licensed in California. These are tangible and existing problems that need your immediate and sustained attention, especially as our courts struggle to get through the COVID-19-induced backlog of cases.

Sincerely,

A handwritten signature in blue ink that reads "Mark Stone". The signature is fluid and cursive, with a long horizontal stroke at the end.

Assemblymember Mark Stone  
CHAIR, Assembly Committee on Judiciary

A handwritten signature in black ink that reads "Tom Umberg". The signature is cursive and somewhat stylized, with a prominent loop at the end.

Senator Tom Umberg  
CHAIR, Senate Committee on Judiciary

Cc:

Leah Wilson, Executive Director, State Bar of California  
Justice Alison M. Tucher, CTJG Chair  
Merri Baldwin, CTJG Co-Chair  
Rebecca Sandefur, CTJG Co-Chair



# The State Bar of California

---

BOARD OF TRUSTEES

December 14, 2021

Senator Tom Umberg  
Chair, Senate Committee on the Judiciary  
*Sent via email*

Assemblymember Mark Stone  
Chair, Assembly Committee on the Judiciary  
*Sent via email*

RE: Legislative Concerns Regarding Closing the Justice Gap Working Group

Dear Chairs Umberg and Stone:

I write in response to your letter dated December 7, 2021, expressing concern about the State Bar's Closing the Justice Gap Working Group (CTJG). I want to assure you that the State Bar is fully committed to carrying out its statutory mission to protect the public, which expressly includes "support for greater access to, and inclusion in, the legal system." While it is my sincere belief that the CTJG has been diligently working with this mission firmly in mind, I appreciate your taking the time to share your concerns with me. I take your perspectives very seriously, as do my fellow Trustees on the Board.

Although your letter does not expressly direct the State Bar to put a stop to the efforts of the Closing the Justice Gap Working Group, disbanding or suspending the CTJG would be the logical result of the concerns you have expressed. Because the CTJG was created, and its charter adopted, by vote of the Board of Trustees, a decision of this type must be undertaken by action of the Board. Accordingly, I commit to promptly bringing the issue to the full Board for its consideration.

State Bar leadership and I share your concerns about improving the State Bar's discipline system. We have a great deal of work to do in this regard, but I do think it important to acknowledge recent efforts, which include appointing a highly qualified and motivated Chief Trial Counsel, Mr. George Cardona; Mr. Cardona has already brought a renewed focus on case processing efficiency and transparency to the role. In addition, we conducted a first-of-its kind analysis of racial disparities in the attorney discipline system and implemented a corresponding

Page 2

remediation plan, adopted recommendations to establish a Client Trust Account Protection Program, which, if authorized by the Legislature, would represent the first California effort to comprehensively and proactively regulate all attorney client trust accounts. Additionally, we established an Ad Hoc Commission on the Discipline System, which has a broad charge to recommend changes to increase the fairness and effectiveness of our discipline system. As directed in Senate Bill 211, we are also working to completely overhaul case processing standards, and we have engaged some of the State Bar discipline system's most vocal critics to inform this process. We know more is needed, and we look forward to continuing to partner with you in this work.

The State Bar is also working hard to improve access to justice in California and has been tackling this issue on a number of fronts, including, among other things: continued support for legal services; drafting new rules designed to expand California's Pro Bono Practice Program and developing a comprehensive strategy to encourage greater participation in pro bono work; implementing the California Strategies and Stories program to assist applicants improve their chances of passing the Bar Exam; re-evaluating the manner in which we determine minimum competence to practice law in California; publishing the 2019 Justice Gap study to help provide context and understanding for the ways in which legal services are not accessible to millions of Californians; and helping law schools to retain students of color—to name a few. But even as we continue with these efforts, given the Justice Gap Study's findings that 55 percent of Californians, at all income levels, experienced at least one civil legal need within one year but received inadequate or no legal help at all for 85 percent of these problems, we do not believe that the public can be being served sufficiently with our existing approaches to closing this access to legal services chasm.

We look forward to demonstrating our resolve both to improve the attorney discipline system and explore any and all solutions to the pervasive legal services access challenges we face.

In closing, thank you again for taking the time to share your concerns. I will ensure the Board considers your letter and its impact on the CTJG. I will be sure to keep you updated as we move through this process.

Sincerely,



Ruben Duran  
Chair, State Bar Board of Trustees

**Summary of Sandbox Recommendations Adopted by  
the Closing the Justice Gap Working Group  
(January – December 2021)**

Summary of Adopted Recommendations	
<b>General Principles</b>	The sandbox shall be established only if authorized by both the Supreme Court and the Legislature. A key function of any sandbox project is to collect evidence to inform decisions about legal services regulation policies. Funding should be provided for a rigorous, independent, and impartial evaluation, to be conducted at appropriate intervals, of the sandbox and how well it achieves its goals.
<b>Structure</b>	The sandbox should be governed and administered by a Sandbox Regulator, established by the Legislature within the judicial branch of government, serving as an arm of the California Supreme Court as a “sister agency” to the State Bar. It should have a volunteer board, appointed by the Legislature and the Supreme Court, with responsibility for all operations of the office, including licensing and discipline recommendations made to the Supreme Court. The Sandbox Regulator should also have a staff which handles administrative operations, makes assessments, and monitors sandbox participants under the Board’s supervision.
<b>Eligibility</b>	Disbarred, suspended, resigned, or involuntarily inactive lawyers from any jurisdiction should be ineligible to participate in the sandbox. In addition, applicants must demonstrate the capacity to provide competent legal service.
<b>Conduct</b>	The protections of the attorney client privilege should extend to communications between clients and sandbox participants in their provision of legal services, and Rules 1.1(b) (competence), 1.6 (confidentiality), 1.8.2 (use of confidential information), 1.18 (duties to prospective client), and 1.9 (duties to former client), Business and Professions Code §6068(e), and the California Consumer Privacy Act should apply to all entrants to the sandbox.
<b>Risk-Based Regulation</b>	<p>The Regulator will implement policies and procedures to minimize the risk of harm to consumers through proactive risk-based regulation that uses a range of regulatory tools, including risk assessments, detailed authorization orders, regular reporting and monitoring, audits, disclosure requirements, and additional security measures that would be used depending on the level of assigned risk.</p> <p>For purposes of admission to the sandbox, the Regulator should assess the risk of the following harms to consumers relative to the experience the consumer would have had absent the legal services provided:</p> <ol style="list-style-type: none"> <li>a. The consumer receives inaccurate or inappropriate legal services.</li> <li>b. The consumer fails to exercise legal rights through bad advice or incomplete information within the scope of the agreed-upon services.</li> <li>c. The consumer receives an unnecessary legal service or pays an inappropriate amount for legal services.</li> <li>d. The consumer experiences fraud, theft, loss of privacy, or abuse of trust by the service provider.</li> </ol>

### Recommendations Adopted by CTJG Working Group

CTJG Meeting Date (Vote)	Adopted Recommendations
8/11/2021 (18-0-0)	Anyone who is an ineligible person under the definition of rule 5.3.1 of the California Rules of Professional Conduct, in any state or jurisdiction, is ineligible to participate in the sandbox in any form.
9/17/2021 (10-3-1)	The Sandbox Regulator will be established by the Legislature as a public corporation or other appropriate entity within the judicial branch of government, serving as an arm of the California Supreme Court.
9/17/2021 (10-3-1)	Reliable funding will be necessary to ensure adequate resources for monitoring, data collection and analysis, and consumer protection.
9/17/2021 (10-3-1)	The Sandbox Regulator is subject to active supervision by the Supreme Court and must act pursuant to clearly articulated state policy. The Sandbox Regulator should make recommendations to the Supreme Court concerning the licensing and discipline of sandbox participants. However, as with attorneys, the Court should reserve to itself the authority over licensure of sandbox participants to the extent they are engaged in the practice of law, while recognizing the shared responsibility of the two branches for approval of any governing principles the Sandbox Regulator employs. The Supreme Court shall exercise its authority over licensed attorneys and others engaging in the practice of law as it deems most efficient and appropriate. None of the foregoing is meant to alter the existing roles of the Supreme Court in regards to the practice of law in California or the existing role of the Legislature in regulating conduct that does not constitute the practice of law.
9/17/2021 (10-3-1)	The Sandbox Regulator should have a volunteer board with responsibility for all operations of the office, including licensing and discipline recommendations made to the Supreme Court. The Sandbox Regulator should also have a staff which handles administrative operations, makes assessments, and monitors sandbox participants under the Board's supervision.
9/17/2021 (10-3-1)	The Sandbox Regulator board should consist of 7 public members with the Senate and Assembly each nominating one public member, the Governor nominating the remaining public members, and 6 members nominated by the Supreme Court. The Governor's nominees should include an economist, a technologist, and a nonlawyer provider of services to communities with significant unmet legal needs. The Supreme Court's nominees should include at least one each of individuals with experience with legal ethics, legal services for low or moderate income Californians, and regulation of legal services.
9/17/2021 (14-0-0)	Recommend that rules 1.1(b) (competence), 1.6 (confidentiality), 1.8.2 (use of confidential information), 1.18 (duties to prospective client), and 1.9 (duties to former client), and Business and Professions Code section 6068(e), will apply in their then-current interpretation of the rules/statutes to all entrants to the sandbox. Sandbox participants who are ordinarily under the California Consumer Privacy Act (CCPA) would still be under CCPA.
9/17/2021 (14-0-0)	Recommend that the legislature extend the protections of the attorney-client privilege to communications between the clients and sandbox participants in their provision of legal services.



## Recommendations Approved by CTJG Working Group

CTJG Meeting Date (Vote)	Adopted Recommendations
10/18/2021 (14-2-0)	<p>Rec. 1 (Risk Based Regulatory Approach to Regulation) For the purpose of admission to the sandbox, sandbox regulation should assess the risk of the following harms to consumers:</p> <ul style="list-style-type: none"> <li>a. The consumer receives inaccurate or inappropriate legal services.</li> <li>b. The consumer fails to exercise legal rights through bad advice or incomplete information within the scope of the agreed-upon services.</li> <li>c. The consumer receives an unnecessary legal service or pays an inappropriate amount for legal services.</li> <li>d. The consumer experiences fraud, theft, loss of privacy, or abuse of trust by the service provider.</li> </ul>
10/18/2021 (13-4-0)	<p>Rec. 2 (Risk Based Regulatory Approach to Regulation) For the purpose of admission to the sandbox, the risk of harm to consumers should be measured relative to the experience the consumer would have had absent the legal services provided.</p> <p>In addition, the applicant must demonstrate the capacity to provide competent legal service.</p>
12/1/2021 (14-0-0)	<p>Rec. 1 (Assumption and Empirical Questions) A key function of any sandbox project is to collect evidence to inform decisions about legal services regulation policies.</p>
12/1/2021 (13-0-0)	<p>Rec. 2 (Assumption and Empirical Questions) Funding should be provided for a rigorous, independent, and impartial evaluation, to be conducted at appropriate intervals, of the sandbox and how well it achieves its goals.</p>
12/1/2021 (13-0-0)	<p>Rec. 3 (Assumption and Empirical Questions) The sandbox should consider how to balance the need for data from participating entities and clients with the regulatory burden placed on both by data requirements.</p> <p>[Footnote: For example, commercial vendors of digital legal services such as wills may be unable to collect or unwilling to ask for identity markers, such as race, ethnicity or disability status, that are not relevant to providing the offered service. Consumers may wonder why they are required to provide such information in order to purchase sandbox legal services when it is not required for most other transactions, whether on-line or on-ground, or of legal services or other types of products or services. To take another example, for profit and nonprofit providers may have different financial resources to do the data collection.]</p>
12/1/2021 (15-0-1)	<p>The working group recommends that the sandbox shall be established only if authorized by both the Supreme Court and the Legislature.</p>

## Recommendations Approved by CTJG Working Group

CTJG Meeting Date (Vote)	Adopted Recommendations
12/1/2021 (15-0-0)	Recommend that the regulator implement policies and procedures to minimize the risk of harm to consumers through proactive risk-based regulation that uses regulatory tools including, but not limited to, the tools described and illustrated in the November 24, 2021 memorandum to the working group for agenda item II.D. Recommendation re Proactive Regulation and Monitoring of Sandbox Providers, including Reporting, Monitoring, and Audits as amended.

## Other Recommendations Developed and Discussed by CTJG Subcommittees

CTJG Subcommittee Meeting Date	Recommendations Under Consideration
[NOTE: Revised and was discussed at 11/3/21 SAGE meeting.]	<p>Rec. 1 (Risk Assessment Process)</p> <p>Recommend that the sandbox regulator implement an initial risk assessment process based on a combination of service model and nature of service model of risk categorization to evaluate a sandbox applicant’s proposal and assign a risk level to each applicant based on identified criteria.</p>
[NOTE: Revised and was discussed at 11/3/21 SAGE meeting.]	<p>Rec. 2 (Risk Assessment Process)</p> <p>Recommend that the initial risk level assignment may be adjusted upon further consideration of level of consumer sophistication and the stakes of the services being delivered.</p>
[NOTE: Revised and was discussed at 11/3/21 SAGE meeting.]	<p>Rec. 3 (Risk Assessment Process)</p> <p>Recommend that the level of data collection and monitoring of sandbox participants will be based on the assigned level of risk, with greater data collection and monitoring assigned to the projects assigned a higher risk.</p>
[NOTE: Revised and was discussed at 11/3/21 SAGE meeting.]	<p>Rec. 4 (Proactive Regulation Tools)</p> <p>Recommend that authorization orders permitting practice within the sandbox clearly set forth the authorized practice areas, service model, reporting requirements, and nature of service for each applicant.</p>
[NOTE: Revised and was discussed at 11/3/21 SAGE meeting.]	<p>Recommendation (Enforcement)</p> <p>The regulator should establish thresholds to be utilized in enforcement, which correlate to the recommended consequence to an individual provider according to the evidence of harm.</p>
[NOTE: Revised and was discussed at 11/3/21 SAGE meeting.]	<p>Recommendation (Enforcement)</p> <p>In addition to traditional enforcement such as discipline, suspension, termination, other parallel programs can be implemented to protect the public including: MFA and CSF.</p>
[NOTE: This was discussed at the 11/5/21 Scope meeting.]	<p>Rec. 1 (Scope of a Regulatory Sandbox)</p> <p>The sandbox is open to entities offering legal practice services through “nontraditional” business or service models. Nontraditional means business or service models that are:</p> <ul style="list-style-type: none"> <li>• not permitted by California Rule of Professional Conduct 5.4 (i.e., entities using business models in which nonlawyers hold an economic interest or managerial role or through which lawyers otherwise share revenue with nonlawyers);</li> <li>• not permitted by California Bus. &amp; Prof. Code Section 6125 et seq. (i.e., entities using service models potentially violating the proscription on practice of law by unlicensed nonlawyers, whether software or human);</li> <li>• or otherwise not permitted by the California Rules of Professional Conduct.</li> </ul>

## Other Recommendations Developed and Discussed by CTJG Subcommittees

CTJG Subcommittee Meeting Date	Recommendations Under Consideration
[NOTE: This was discussed at the 11/5/21 Scope meeting.]	Rec. 2 (Scope of a Regulatory Sandbox) Applicants who credibly demonstrate that their proposed legal services model will predominantly serve low- and moderate-income Californians will be prioritized for expedited assessment and authorization over those entities which do not. The sandbox process will not be “first in, first out.”
[NOTE: This was discussed at the 11/5/21 Scope meeting.]	Rec. 3 (Scope of a Regulatory Sandbox) Applicants who credibly demonstrate that their proposed legal services model will predominantly serve low- and moderate-income Californians do not pay application fees. All others will pay application fees in the amount of [X].
[NOTE: This was discussed at the 11/5/21 Scope meeting.]	Rec. 4 (Scope of a Regulatory Sandbox) Once admitted to the sandbox, sandbox participants will pay semi-annual user fees, with the fee amount to be based on a tiered schedule keyed to an entity’s revenue during the previous 6 months.
[NOTE: This was discussed at the 11/5/21 Scope meeting.]	Rec. 5 (Scope of a Regulatory Sandbox) No sandbox application will be considered where a lawyer who has been disbarred, suspended, resigned with charges pending or involuntarily inactive from the State Bar of California, or the attorney licensing agency of another state or US territory, or otherwise declared ineligible to practice law by the regulatory authority in a foreign country is either a provider of legal services, a manager of legal service provision, or an equity owner.
[NOTE: This was discussed at the 11/5/21 Scope meeting.]	Rec. 6 (Scope of a Regulatory Sandbox) No sandbox application will be considered where attorneys who are not authorized to practice law by the State Bar of California are providing legal services or managing legal service provision.
[NOTE: This was discussed at the 11/5/21 Scope meeting.]	Rec. 7 (Scope of a Regulatory Sandbox) Unless a specific rule has been waived in whole or in part in the entity’s scope of sandbox authorization, any lawyer practicing law within a sandbox entity, whether as an employee, contractor, partner, shareholder or otherwise, must comply with the California Rules of Professional Conduct and statutes governing lawyer conduct at all times, including the lawyer’s duty to supervise subordinate lawyers and nonlawyers under rules 5.1 and 5.3, and the duty to comply, pursuant to rule 5.2, with the rules and statutes notwithstanding that the lawyer acts at the direction of another.

## Other Recommendations Developed and Discussed by CTJG Subcommittees

CTJG Subcommittee Meeting Date	Recommendations Under Consideration
<p>[NOTE: Revised and was discussed at 11/3/21 SAGE meeting.]</p>	<p>Rec. 8 (Scope of a Regulatory Sandbox)                      Nonlawyer sandbox participants are subject to specific duties of care and fiduciary obligations as set forth in the California Rules of Professional Conduct and statutes governing lawyer conduct only to the extent those rules have been specifically applied to them under the sandbox rules. For instance, per the full working group vote at our 9/17 meeting, all sandbox participants must comply with duties of confidentiality and competence. Note that a sandbox participant’s obligations will also include whatever duties of care and fiduciary obligations, reporting requirements and other requirements relating to regulatory oversight that the full working group decides, upon the recommendation of the SAGE subcommittee, will also apply to sandbox participants. This will also likely include a system for adjudicating alleged violations and meting out sanctions. In addition, to the extent a sandbox participant employs a lawyer, that lawyer will be subject to rules 5.1 and 5.3. See Principle #7.</p>
<p>[NOTE: This was discussed at the 11/5/21 Scope meeting.]</p>	<p>Rec. 9 (Scope of a Regulatory Sandbox)                      All sandbox participants must maintain a statutory agent in California.</p>

## Recommendations Adopted by CTJG Subcommittees

CTJG Subcommittee Meeting Date (Vote)	Adopted Recommendations
<p>10/6/2021 (7-1-0)</p> <p><i>[Discussed at CTJG 10/18/21 mtg but tabled. Waiting for OGC advice.]</i></p>	<p>Rec. 3 (Risk Based Regulatory Approach to Regulation) Lawyers participating in sandbox entities should remain subject to the same rules and laws governing other licensees of the State Bar except to the extent that compliance with specified rules is waived as a condition of entry into the sandbox.</p>
<p>10/6/2021 (7-1-0)</p> <p><i>[Discussed at CTJG 10/18/21 mtg but tabled. Waiting for OGC advice.]</i></p>	<p>Rec. 4 (Risk Based Regulatory Approach to Regulation) Entities participating in the sandbox should be subject to the rules and laws governing licensees of the State Bar except to the extent that compliance with specified rules is waived as a condition of entry into the sandbox.</p>
<p>10/6/2021 (7-1-0)</p> <p><i>[Discussed at CTJG 10/18/21 mtg but tabled. Waiting for OGC advice.]</i></p>	<p>Rec. 5 (Risk Based Regulatory Approach to Regulation) The working group will separately consider the scope and mechanism of possible rule and/or statutory waivers.</p>