

**ISSUES COMMITTEE  
SUBCOMMITTEE TO STUDY REGULATORY CHANGE**

North Carolina State Bar  
Zoom Conference Call  
December 15, 2021  
2:00pm to 4:00pm

**Ethics Act Statement**

It is the duty of Committee members to avoid conflicts of interest in performing the duties as a member of the Committee to Study Regulatory Change and the North Carolina State Bar. Any member of the Committee who is aware of any personal conflicts with respect to the matters before this Committee should disclose those at the meeting.

Agenda

- I. Welcome
- II. Approval of August 24, 2021, Minutes
- III. Discussion and Finalization of Recommendations
  - a. Proposal: Pursue Paraprofessional Limited License within Regulatory Sandbox
- IV. Next Steps and Concluding Remarks
- V. Adjourn

**Minutes of the Meeting of the Subcommittee to Study Regulatory Change  
August 24, 2021**

The Issues Committee's Subcommittee to Study Regulatory Change met by Zoom videoconference on August 24, 2021. Mark Henriques, the chair of the subcommittee, presided. The following members of the subcommittee were present: Heidi Bloom; A. Todd Brown; Warren Hodges; Jeff Kelly; S.M. Kernodle-Hodges; Joshua Malcolm; Alicia Mitchell-Mercer; Stephen Robertson; Camille Stell; and Jeff Summerlin-Long. The following State Bar officers were also present: President Barbara Christy, President-Elect Darrin Jordan, Vice President Marci Armstrong, and Past President Colon Willoughby. The following guests were also present: Mary Irvine, Executive Director of NC IOLTA; and Keith Porcaro, Duke Center on Law and Technology. The following members of the staff were in attendance: Alice Neece Mine, executive director; and Brian Oten, ethics counsel and director of special programs. Mr. Oten prepared these minutes.

At approximately 2:00pm, Mr. Henriques called the meeting to order. He advised the members of the subcommittee of their responsibilities under the State Government Ethics Act. No conflicts or potential conflicts of interest were noted.

The first order of business was the approval of the minutes from the subcommittee's prior meeting on July 27, 2021. Upon motion duly made and seconded, those minutes were approved.

Mr. Henriques stated that the focus of the meeting would be a presentation and discussion led by Mr. Kelly on the concept of implementing a regulatory sandbox in North Carolina. Mr. Henriques then called upon Mr. Kelly for his presentation (Mr. Kelly's presentation slides are attached to these minutes).

Mr. Kelly started by re-introducing the idea of a regulatory sandbox, namely, "a regulatory environment that permits the delivery of new models and services under careful oversight to test the interest, viability, and consumer impact and inform policy development." Mr. Kelly noted the ongoing sandboxes in Utah, British Columbia, and Ontario; and pointed out that a handful of other jurisdictions have studied the issue and have recommended implementation of a sandbox in their states, including California, Florida, and Washington. Mr. Kelly also noted that rather than proceeding with a sandbox, Arizona recently amended its rules to permit "alternative business structures" to operate within the state. Mr. Kelly explained that one goal of the sandbox was to allow legal service providers in North Carolina to explore "scalable" service delivery models; this concept was important in light of the various reports studied by this subcommittee that demonstrated a) that the legal needs of a significant portion of the population were unmet, and b) that increasing support to Legal Aid and/or increasing pro bono hours were insufficient remedies for meeting the public's legal needs. Mr. Kelly explained that a regulatory sandbox creates a structured environment that protects the public by evaluating real data while permitting innovation in the delivery of legal services, including increased access to legal services by all consumers. Mr. Kelly then reflected upon Utah's ongoing sandbox, describing its structure for evaluating applications to participate in the sandbox, risk levels assigned to the applicants operating in the sandbox, and its ongoing monitoring and data collecting process of participants to ensure public

protection while operating in the sandbox. Mr. Kelly pointed out specific examples of companies participating in the sandbox, including their risk levels and types of services offered.

Mr. Kelly opined that any regulatory sandbox in North Carolina would require new legislation. Mr. Kelly pointed out that the General Assembly was currently evaluating a bipartisan bill that creates a similar sandbox for financial services (FinTech), and that the bill was well-received. Mr. Kelly suggested amending the statute defining the practice of law to permit the State Bar to establish exemptions from the unauthorized practice of law as approved by the State Bar Council and the Supreme Court of North Carolina. With regard to funding, Mr. Kelly noted that Utah's sandbox was largely funded by grants from various organizations interested in legal regulatory innovation, and that the overall cost of the operation was relatively small (essentially two full-time employees). Mr. Kelly also noted that Duke University's Center on Law and Technology (with which Mr. Kelly serves as a fellow) was interested in assisting and/or partnering with the State Bar's pursuit of a regulatory sandbox. Mr. Kelly also noted that implementation of a sandbox in North Carolina could likely be streamlined and benefit from the efforts in other jurisdictions, as those jurisdictions are willing to share information.

With Mr. Kelly's presentation concluded, Mr. Henriques opened the floor for questions and discussion. The subcommittee discussed concerns about funding the sandbox, political difficulties and opportunities when pursuing a sandbox, the validity of comparing other jurisdictions' legal systems to North Carolina's, and staff considerations in facilitating a sandbox and a limited license (previously recommended by the subcommittee). Generally, the subcommittee expressed an interest in the idea of a regulatory sandbox, but observed a number of potential difficulties in pursuing the sandbox. Following lengthy discussion, Mr. Henriques asked members to vote on whether the subcommittee should recommend the pursuit of a regulatory sandbox to the State Bar Council. The subcommittee voted in favor of recommending a regulatory sandbox (10-1).

Mr. Henriques asked the subcommittee if there were any other regulatory innovation ideas that the subcommittee should discuss in future meetings. No additional ideas were suggested. Mr. Henriques also sought feedback on the structure and content of a final report by the subcommittee summarizing its recommendations. The subcommittee generally expressed support for a report that was not terribly lengthy, but instead was succinct and potent. Ms. Stell recommended a readable, shorter report that could be easily summarized for a Journal article or converted to a CLE presentation. Mr. Summerlin-Long suggested a brief report supported by appendices that would empower readers to review further information previously discussed by the subcommittee in-depth at its convenience. Ms. Bloom and Mr. Brown also agreed with a shorter report supplemented by appendices. Mr. Henriques concluded the meeting by thanking Mr. Kelly and the working group that studied and presented on the idea of a regulatory sandbox. Mr. Henriques also thanked the subcommittee members for their time and thoughtful participation in the subcommittee's work over the past year. The subcommittee thanked Mr. Henriques for his efforts in leading the subcommittee through the wide range of complex issues studied over the past year.

There being no further business to come before the subcommittee, the meeting was adjourned at approximately 4:00pm.

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Brian Oten, Subcommittee Staff Counsel

# Sandbox Overview



**What is a sandbox?** A regulatory environment that permits the delivery of new models and services under careful oversight to test the interest, viability, and consumer impact and inform policy development.

# Who is exploring legal sandboxes and laboratories for scalable solutions?

## Active

- **Utah:** In August 2020, the Utah Supreme Court issued a standing order, which launched the Office of Legal Services Innovation and the legal sandbox. The Utah Sandbox uses a risk-based model, and authorized entities are required to report data that is tailored to the legal services that they are offering.
- **British Columbia:** The Law Society of British Columbia approved its “Innovation Sandbox” in September 2020, and it approved its first round of applicants in June 2021. The Innovation Sandbox engages in a case-by-case assessment of risk, and approves innovation proposals through terms established in “No Action Letters.” (see materials.)
- **Ontario:** The Law Society of Ontario approved a five-year sandbox pilot for innovative legal technology services. Ontario is currently receiving applications for its pilot project through September 1, 2021 (rolling approval thereafter). Ontario requires a “technology” component.

## Under Consideration

- **California** (Report due September 2022)
- **Florida** (Report June 2021)
- **Washington** (Report June 2021)
- **Illinois** (Chicago Bar Foundation)
- **Connecticut** (Committees formed)
- **North Carolina** (Hi.)

## Honorable Mention

- **Arizona:** Arizona skipped the formation of a regulatory sandbox and, instead, eliminated Rule 5.4 last year. Arizona also established programs that will permit non-traditional legal service delivery.

# Why we need **scalable** delivery of legal services

The United States **dropped ten spots** in its global rankings for the Accessibility and Affordability of our Civil Justice System in the last year. We are now **109th out of 126** countries surveyed, and we are ranked as **dead last in our regional rankings and income rankings**.<sup>1</sup>



Accessibility has been a consistent problem; **86%** of the civil legal problems reported by low-income Americans in 2016-17 received **inadequate or no legal help**.<sup>2</sup>

**Legal Aid Funding Required (29x):** Providing even one hour of attorney time to every American household, facing a legal problem would cost on the order of **\$40 billion** total expenditures on legal aid, counting both public and private sources, are now just 3.5% of that amount.<sup>3</sup>

**Pro Bono Hours Required (5x):** Providing a single hour of pro bono time to these individuals would require **more than 200 hours of pro bono work per attorney**; the average is just over 42 hours.<sup>4</sup>

<sup>1</sup> Rule of Law Index 2020, World Justice Project, *data available at* <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2020>

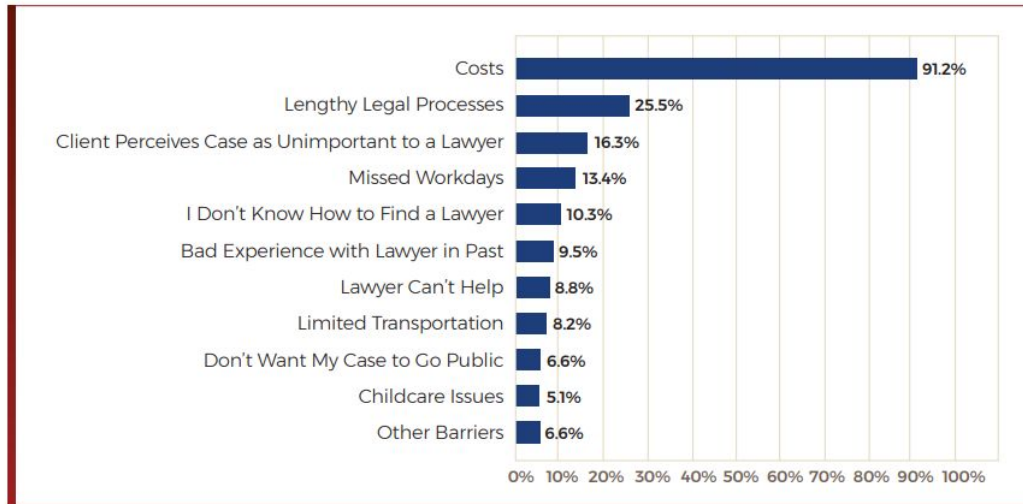
<sup>2</sup> The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans, Legal Services Corporation (June 2017)

<sup>3</sup> Gillian K. Hadfield and Deborah L. Rhode, "How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering," *Hastings Law Journal*, 2016, vol. 67, at 1191, 1193

<sup>4</sup> *Id.*

# Barriers Identified by the 2020 North Carolina Civil Legal Needs Assessment

**FIGURE 6:** Barriers to Seeking Assistance with Civil Legal Issues, Client Survey Respondents, 2020



The top three most frequently mentioned barriers noted in Figure 6 were consistent across race, income, and level of trust in lawyers. The professionals interviewed further identified the following barriers: lack of childcare, inability to get time off work, lack of transportation, limited language and literacy, lack of internet access, health issues, lack of trust, and lack of awareness.

# How do regulatory sandboxes help to increasing **access to legal services**?

Sandboxes are a **structured regulatory environment** that enable **risk-managed proposals** for **innovations that would otherwise be chilled or prohibited** by the Rules of Professional Conduct or other restrictions on the practice of law.

Sandboxes are a **middle-point** between the status quo and the abolition of restrictive Model Rules.

Common findings and theses in support of sandboxes:

- Allows for regulated experimentation through innovative business and service models that can immediately contribute to serving the public.
- Creates an opportunity to tailor consumer protection and risk management on a proposal-by-proposal basis.
- Prevents existing rules from unnecessarily chilling innovative services that are “close call” UPL.
- Generate new data about services models, legal needs, and regulations to inform future discussions.

## A familiar conclusion from Utah Supreme Court Standing Order 15:

“For years, the Utah Supreme Court has made combating the access-to-justice crisis confronting Utahns of all socioeconomic levels a top priority. To date, the Supreme Court, along with the Judicial Council and the Utah Bar Association, have worked ceaselessly to improve access to justice through many initiatives: the Utah Courts Self-Help Center, the Licensed Paralegal Practitioner Program, form reform, and the Online Dispute Resolution Program, to name but a few. **What has become clear during this time is that real change in Utahns’ access to legal services requires recognition that we will never volunteer ourselves across the access-to-justice divide and that what is needed is market-based, far-reaching reform focused on opening up the legal market to new providers, business models, and service options.**”



# Utah Process

Refresher from November 2020 Meeting.

- Risk-adjusted and outcome-based regulation
- Flexible on service models and structures
- Heavily data-focused oversight

Who CAN NOT participate?

- The Sandbox is not a vehicle for circumventing disciplinary actions (e.g., disbarred lawyers cannot own more than 10% of the entity)
- The Sandbox is not a vehicle for an out of state lawyer to practice in Utah.
- Persons with a felony criminal history must be disclosed, as the Utah Supreme Court found that such individuals may present an elevated risk of consumer harm.
- The Utah Supreme Court halted consideration of “bare referral fee arrangements” in December 10, 2020.

1. **Proposal Application:** Candidates submit a detailed application with their proposed business model or service offerings.
  - Disclosures related to proposed services, entity management, and target consumers.
  - Risk assessment; proposed method of identifying, tracking, and mitigating risk; consumer complaint process.
  - Assessment of benefits to Utah consumers.
  - Explanation of how the proposal will “provide higher quality, more cost effective, and more accessible legal services for your target consumers.”
  - Other disclosures regarding disbarred or suspended lawyers or managers with felony criminal history.
2. **Assessment and Recommendations by the Office:** The Office evaluates and recommends whether to permit the innovation; the Court is the decision-maker.
  - The Office has increased and lowered risk categories based on detailed review of the application.
3. **Approval by the Regulator (Supreme Court):** If the proposal is approved, the Office will tell the entity what data must provide and what consumer disclosures must be made.
4. **Ongoing Monitoring by the Office:** Authorized Entities provide monthly or quarterly reports (depending on risk levels), and the Office also monitors for complaints.

# Assessing Risk



Utah's Risk Categories

# From the Utah's Innovation Office Manual

Service Model	Risk
Lawyer employed or managed by a nonlawyer	Low
Less than 50% nonlawyer ownership	Low
Software provider with lawyer involvement - legal document completion	Low
Intermediary platform <sup>2</sup>	Low / Moderate
50% or more nonlawyer ownership	Low / Moderate
Lawyers sharing fees with nonlawyers	Moderate
Nonlawyer provider <sup>3</sup> with lawyer involvement <sup>4</sup>	Moderate
Software provider with lawyer involvement	Moderate
Nonlawyer provider without lawyer involvement <sup>5</sup>	High
Software provider without lawyer involvement	High

## Utah's Regulatory Approach

- The new regulatory body oversees new providers and methods of legal practice using an “objectives-based, risk-based” approach to regulation.
- Where the data shows that the risk of a particular service is too high (i.e., harm), the provider is fined, suspended, or terminated.

# Utah Authorized Entities



**Low Risk (4)**

May apply to exit the sandbox after 9 consecutive months of compliance

# Blue Bee Bankruptcy



Example of <50% Non-Lawyer Ownership & Management

# Blue Bee Bankruptcy

All of the “low risk” authorized entities are using business models with a combinations of <50% non-lawyer ownership or non-lawyer management.

The sole owner of Blue Bee Bankruptcy sought to give his **paralegal employee a 10% ownership interested in the firm** as a reward for her high quality work and commitment to the firm and as an incentive to remain with the firm.

Blue Bee’s proposal was approved to operate on the basis that “[r]etention of high quality nonlawyer support staff [was] likely to increase reach and quality of consumer service.”

Other low risk authorized entities increased access to legal services by:

- Facilitating innovation of service by **joint ownership between lawyers and nonlawyer tech and business experts.**
- Increasing consumers’ ability to initiate and complete their divorce **without needing to use full representation by a lawyer and at lower price point.**
- Increased efficiency of **services needed by dentists in purchasing or winding up dental practices.**

# Utah Authorized Entities



**Moderate Risk (19)**  
**(4 “Low-Moderate” and 15 “Moderate”)**

May apply to exit the sandbox after 12 consecutive months of compliance

# Holy Cross Ministries



Example of Non-lawyer provider with lawyer involvement



# Holy Cross Ministries

Application and website information:

- 501(c)(3) organization supported by multiple religious organizations.
- Currently provides health and immigration services, including an existing legal immigration program.
- Proposes offering legal services by non-lawyer “Community Health Workers.”
- Community Health Workers will “become bilingual medical debt legal advocates . . . to provide limited-scope legal assistance related to medical debt and its collateral issues.”

# Compare to...

## NORTH CAROLINA FAITH AND JUSTICE ALLIANCE

A PROGRAM OF THE NORTH CAROLINA EQUAL ACCESS TO JUSTICE COMMISSION  
CHIEF JUSTICE CHERI BEASLEY, CHAIR



### FJA FAITH-BASED REFERRAL MODEL

1. A community member brings a concern to the attention of a religious leader
2. The religious leader recognizes the legal issue implicated by community member's concerns and refers the community member to the Faith and Justice Alliance
3. The Alliance refers the community member to Legal Aid of North Carolina, the North Carolina Pro Bono Resource Center, or another local provider of pro bono services

### ISSUE

More than 1.5 million people live in poverty in North Carolina and millions more live paycheck to paycheck. In the past year, 71% of low-income households experienced at least one civil legal problem like custody disputes, denial of government benefits, driver's license revocation, landlord and tenant disputes, and drafting wills, among others.

### MISSION

The North Carolina Faith and Justice Alliance seeks to build a coalition of faith-based groups and legal practitioners to help meet the growing need for legal assistance for North Carolinians who lack the resources to access our courts and protect their legal rights.

### GOALS

1. Create partnerships among faith leaders and the legal community to improve access to the judicial system
2. Reduce the financial burden on counties by restoring driver's licenses that have been revoked due to the inability to pay court imposed fines and fees
3. Improve access to expunction relief

Community member with a legal issue

Clergy or religious leader

Faith and Justice Alliance

Attorney in the religious community  
(or at-large)

Outside attorney and resources,  
if necessary

### PRO BONO CLINIC MODEL

# Xira Connect



Example of Intermediary Platform

# Xira Connect

Xira Connect is a good example of an “intermediary platform,” which aims to **create a virtual marketplace to connect clients with lawyers.**

As part of its business model, **Xira provides lawyers with tools to help them maintain a virtual practice,** including providing virtual office tools and facilitating lawyers’ ability to provide legal services through the platform, including video conferencing capabilities, communications, and billing functions. Lawyers are not required to use Xira’s tools.

**Xira receives a referral fee** upon a successful engagement and payment of fees.

The goals served include facilitating consumers’ ability to find a lawyer (and LPPs) to represent them and also facilitates representation via a virtual platform.

This is different than a “**Bare Referral Fee**” Proposal.

Bare referral fee arrangements are those in which payment is made by the lawyer to the nonlawyer solely to compensate the nonlawyer for referring a potential client to the lawyer; there is no other business relationship between the lawyer and nonlawyer.

On December 8, 2020, the Supreme Court of Utah issued a statement that it was “**halting the consideration and authorization of bare referral fee arrangements** paid by lawyers to nonlawyers.”

# Utah Authorized Entities



**High Risk (1)**

May apply to exit the sandbox after 24 consecutive months of compliance

# AAA Fair Credit / People's Legal Aid



Non-lawyer provider without lawyer involvement

# AAA Fair Credit / People's Legal Aid

AAA Fair Credit and People's Legal Aid are working together to assist consumers facing **urgent medical debt collection litigation in Utah**, and they are specifically targeting consumers who otherwise are unlikely to engage with the civil legal system.

The nature of this resource is **similar to Holy Cross Ministries**, with one notable difference: AAA Fair Credit proposes **piloting a Medical Debt Legal Advocate program that will not be actively supervised by an attorney**.

The Medical Debt Legal Advocate Program curriculum is created by **i4j, a lab out of the University of Arizona**, in partnership with faculty at the University of Utah.

- The materials will be taught by **adjunct University of Utah faculty**.
- The program will take **approximately 70-80 hours to complete**.
- People's Legal Aid **attorneys will be available** to the MDLAs, but will **not be actively supervising** them.
- MDLA's have the ability to **flag "complex issues or cases"** for attorney review.

# Would the adoption of a regulatory sandbox require **new legislation**?

**Yes.** An amendment to Chapter 84 would be the clearest way to establish the sandbox.

We recommend considering a **narrow amendment, likely to N.C. Gen. Stat. § 84-2.1(b)**, permitting the State Bar to establish exemptions for innovative solutions under programs approved by the State Bar Council and Supreme Court.

The North Carolina General Assembly is **currently considering a bipartisan FinTech Sandbox Bill** (S470 / H624), which is receiving favorable treatment this session.

# How would the regulatory sandbox be funded?

We should not rely on registration fees to sustain the sandbox pilot program. Application fees, pilot fees, and licensing fees should still be considered.

Instead, the sandbox will initially require a **combination of public and private grant funding**. This is feasible, as the Utah sandbox is entirely funded by grants. (State Justice Institute & National Center for State Courts.)

We have options for funding in this state and potential partnerships.



## What **new technologies** do we hope the sandbox will permit us to explore?

We hope that the creation of the sandbox will encourage innovative proposals using new technology (or new to the profession), such as **cloud, mobile, natural language processing, and artificial intelligence applications.**

**However, we believe that the sandbox should be “technology neutral”** to avoid chilling or steering the types of proposals that we expect to receive.

To borrow a mantra from technology and design organizations: **People, Process, *then* Technology.**

# What can we **learn from** the process used by other states?

**Plenty.** All eyes are on Utah's regulatory sandbox, as they are collecting meaningful data about a growing number of non-traditional business and service models. **A few more points on Utah that we haven't already addressed:**

- **Lawyers and legal professionals are prevalent in the authorized entities:** Most applicants are owned in whole or in part by lawyers and are delivering services or providing software with lawyer involvement.
- **Promising reports on lack of consumer harm:** Utah's sample size is still small, but preliminary data shows a low occurrence of consumer complaints against authorized entities. The overall occurrence of complaints so far is 1 complaint per 800 services delivered; however, the **ratio of harm-related complaints to services was approximately 1 complaint per 1200 services provided.**
- **Diversity of substantive areas of law:** The authorized entities are offering a broad range of consumer legal services, rather than clustering solely in one or two areas of law.

Other states and provinces will be a good source of data that can inform the implementation of a sandbox in North Carolina. **Arizona** authorized several alternative business models, and the Law Societies of **British Columbia** and **Ontario** have active sandboxes that hope to foster innovative solutions that will increase access to legal services.

**Let's not forget Washington, D.C.:** In 1990, the D.C. Bar adopted a modified version of Rule 5.4 that permitted lawyers to practice in partnership with other professionals in certain circumstances. According to the ABA Profiles of the Legal Profession 2020, **D.C. has the third-lowest percentage of public discipline.**

## Should the sandbox invite national companies, NC companies, or both to participate?

We recommend allowing **both** national and North Carolina companies to participate, so long as the company is properly registered to conduct business.

The sandbox should, however, borrow certain consumer protection requirements from our Online Document Provider program, such as prohibiting requirements that the consumer agrees to a jurisdiction or venue in any state other than North Carolina for the resolution of disputes between the provider and the consumer.

# What type of **implementation timeframe** is realistic?

**Study Subcommittee** → State Bar Council (October) → Implementation Committee  
(We are here)

This is the quickest route from our subcommittee to the formation of an implementation committee.

Even then, we estimate that it will take at least 12 to 18 months from the formation of an implementation team to:

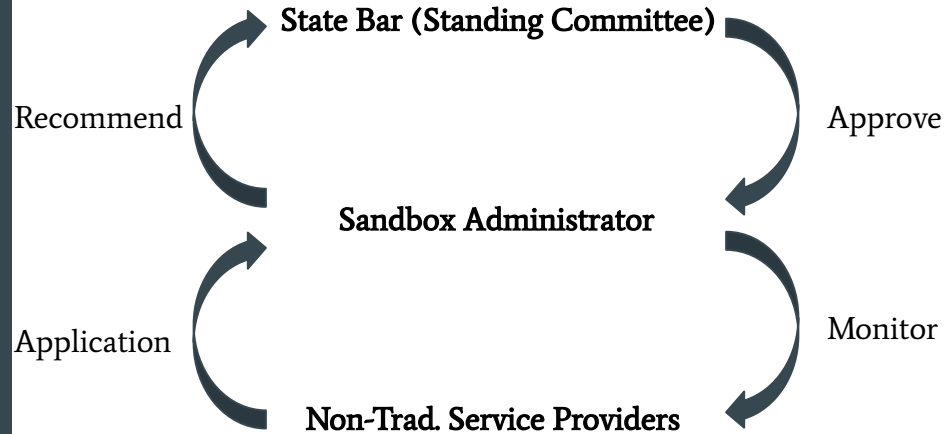
- (1) receive final approval for the scope of the sandbox, following a public comment period;
- (2) pursue a narrow statutory amendment; and
- (3) launch the initial pilot program.

For reference, it took approximately one year for Utah's implementation team to launch their initial pilot.

# What could this look like?

North Carolina State Bar Council  
↓  
Rules of Professional Conduct  
↓  
Lawyers & Traditional Law Firms

The traditional practice remains **unchanged.**



Instead, a sandbox administrator submits **recommendations** to the State Bar and **oversees approved entities.**

# Discussion