

**WASHINGTON STATE**  
**BAR ASSOCIATION**

# **Entity Regulation Pilot Project Participant Manual**

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**WASHINGTON STATE BAR ASSOCIATION**

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# Pilot Project For Entity Regulation: AN OVERVIEW


The Washington Supreme Court adopted the Washington State Pilot Project for Entity Regulation to test and evaluate innovative legal service models and alternative business structures for delivering legal and law-related services. See [Appendix A](#) (court order establishing Pilot Project) and [Appendix B](#) (A Framework for Data-Driven Legal Regulatory Reform). The Pilot Project is authorized to run for ten years.

The Pilot Project serves as a mechanism to encourage legal professionals, entrepreneurs, law firms, corporations, nonprofits, technology experts, and others to experiment with innovative business models for delivering legal and law-related services. The Pilot Project authorizes entities to provide legal and law-related services in Washington through a monitored, data-driven, and regulated experimental environment.

The goal of the Pilot Project is to evaluate if entity regulation combined with regulatory reform and innovative service models will increase the accessibility of quality legal assistance to Washington consumers without exposure to undue risk or harm.

 **Washington State Bar Association (WSBA):** The WSBA administers all aspects of the Pilot Project including, reviewing applications, conducting background investigations, collecting fees, and referring qualified applications to the Practice of Law Board. All communications about the Pilot Project must go through the WSBA.

 **Practice of Law Board:** The Board reviews the WSBA's recommendations and makes recommendations for participation in the Pilot Project to the Washington Supreme Court. The Board also collaborates with the WSBA in monitoring participating entities and evaluating the performance and outcome of the Pilot Project overall.

 **Washington Supreme Court:** The Court has inherent and plenary authority to regulate the practice of law, including determining which entities are authorized to participate in the Pilot Project and determining whether to continue entity regulation and implement regulatory reform at the close of the Pilot Project.



**The Pilot Project authorizes entities to provide legal and law-related services in Washington through a monitored, data-driven, and regulated experimental environment.**

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## **ELIGIBILITY FOR PARTICIPATION**

### **Eligible applicants include, but are not limited to:**

- Licensed legal professionals and law firms exploring alternative business structures
- Legal tech businesses and startups with innovative legal services delivery models
- Law firms exploring new legal services delivery models
- Businesses seeking to enter the legal services market
- Nonprofits and social services organizations wanting to provide limited legal assistance

### **Ineligible applicants:**

- Entities employing, or owned in part by, disbarred or suspended licensed legal professionals
- Entities that cannot ensure licensed legal professionals comply with their rules of professional conduct
- Entities without sufficient risk mitigation and public protection strategies
- Entities violating consumer protection laws

## **AN EXPERIMENT TO TEST REGULATORY REFORM: YOU DECIDE**

The Pilot Project is an experiment to test regulatory reform. It is an opportunity for YOU to rethink how legal and law-related services can be delivered, create a business model to test it and shape it, and build the evidence for what a more accessible legal system could look like in Washington state. Other than having sufficient consumer protection measures in place to mitigate the identified risk of harm to consumers, the Washington Supreme Court has not imposed categorical prohibitions on applicants based on organization type, delivery model, or area of practice.

### **This means:**

**YOU** propose a legal services delivery model or new business model for providing legal services

**YOU** propose the fee structure, fee-sharing model, or investment model

**YOU** identify which laws, rules, and regulations governing the practice of law you need to be exempted from or which need to be modified so your delivery model can operate as designed

**YOU** identify possible risks to consumers and the public



**The Pilot Project is an experiment to test regulatory reform. It is an opportunity for YOU to rethink how legal and law-related services can be delivered.**

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**YOU** implement appropriate measures and safeguards to mitigate those risks

**YOU** describe the impact your “test” will have on the accessibility of legal services in Washington

The WSBA, Practice of Law Board, and Washington Supreme Court will evaluate applications and will consider approving applications with proposals that appear to adequately safeguard against any potential risks to consumers or clients and have the potential of increasing accessibility of quality legal services to all persons, including low- and moderate-income Washingtonians, and others who experience barriers in accessing legal services.

## **MULTI-JURISDICTIONAL PRACTICE**

The Washington Supreme Court has the authority to regulate the practice of law in Washington state only. Entities authorized to provide legal services as part of the Pilot Project are authorized to practice law in Washington only. Whether an entity can provide the same legal services in another jurisdiction will depend on the laws and rules of the other jurisdiction.

## **CLIENT CONFIDENTIALITY, DATA SECURITY, AND CYBERSECURITY**

It is the responsibility of each entity to have in place systems and safeguards for ensuring the confidentiality and integrity of its client information and data consistent with the Washington Rules of Professional Conduct. Otherwise, the Court does not have any specific technical requirements that need to be met.

Each entity should demonstrate in its application that cybersecurity systems and other safeguards are sufficient for its proposed delivery model.

## **DEFINITION OF THE PRACTICE OF LAW**

**Rule 24 of the General Rules** defines and identifies what is considered the practice of law in Washington.

# **Preparing For Your Application**

## **COMPLIANCE OFFICER**

An entity must designate a person to act as a compliance officer who will be the primary contact person for the entity. The compliance officer will be responsible

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**Entities  
authorized to  
provide legal  
services as  
part of the Pilot  
Project are  
authorized to  
practice law in  
Washington only.**

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for completing and submitting the application, ensuring the entity's compliance with the authorizing order and ethical rules, and reporting data to the WSBA during the Pilot Project.

The compliance officer can be any qualified person within the entity. The Court's order provides that the compliance officer must be "a person authorized to practice law or other suitable person within the entity..." See [Appendix A](#) at p. 4.

The compliance officer does not need to be a lawyer but should be someone within the entity who understands the rules, laws, and regulations regarding the practice of law and who can use that knowledge to identify which rules, laws, and regulations need to be modified or waived for a successful business model in the Pilot Project.

## ENTITY INFORMATION

The application will gather information about your entity including where it is operating, business structure, and any criminal or enforcement actions. You must also disclose information about persons who can make decisions on behalf of the entity, have a financial interest in the entity, and will be participating in the provision of legal services.

Please review the sample application online so you can gather all necessary information prior to completing the application. <https://admissions.wsba.org>.

## CONTROLLING PERSON

A "controlling person" means a person possessing the legal right to exercise decision-making authority on behalf of the entity. Examples may include: a sole proprietor of a sole proprietorship, a manager of a limited liability company, an officer of a corporation, a general partner of a general or limited partnership, individuals listed as "governors" with the Secretary of State, or a person possessing comparable rights by operation of law or by agreement.

## FINANCING PERSON OR ENTITY

A "financing person" or "financing entity" is a person or entity possessing an economic interest in the entity equal to or more than 10 percent of all economic interests in the entity.



**Please review  
the sample  
application  
online so you  
can gather  
all necessary  
information prior  
to completing the  
application.**



**[https://  
admissions.  
wsba.org](https://admissions.wsba.org)**

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## INDIVIDUAL CHARACTER AND FITNESS APPLICATIONS

Each individual identified as a compliance officer, controlling person, financing person, and/or key decision-maker for the entity will be required to complete and submit a separate character and fitness application **after** the compliance officer submits the entity application.

## PUBLIC RECORD

Your application, any supporting materials, any communications, and any information submitted as part of your periodic reporting as a participant in the Pilot Project are subject to a public records request. Should there be a public records request, the WSBA will notify you and give you the opportunity to request redaction of specific information in the application or records requested. See [rule 12.4 of the General Rules \(GR\)](#) for additional information about WSBA public records.

## Proposed Business Model and Regulatory Reform

You will be asked to include a detailed description of your proposed service model. The application will ask for details as separate questions in order to make sure your application captures all required information.

The application will ask you to identify the regulatory rules your entity wants to modify or be exempt from as part of the Pilot Project that will allow the entity to operate under the proposed service model. You will be asked to explain why the exemptions or modifications to the regulatory rules during the Pilot Project are needed to provide the legal services.

## ACCESSIBILITY OF LEGAL SERVICES/ACCESS TO JUSTICE

The Court will be looking at whether your proposed reform and service model “will increase access to justice by enhancing access to affordable and reliable legal and law-related services.” Be sure this is addressed in full, particularly how it will improve accessibility to legal services for low- and moderate-income Washingtonians and others who experience barriers in accessing legal services.

The application will also ask you about the types of information you will be able to



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participant in  
the Pilot Project  
are subject to a  
public records  
request.**

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provide to the WSBA as part of your reporting requirements to assist the WSBA, Board, and Court with measuring the impact of regulatory reform on access to justice in Washington.

## RISK ASSESSMENT

Another goal of the Pilot Project is to determine if there are any barriers to regulatory reform, and if so, how those barriers could be mitigated to nevertheless allow for continued regulatory reform at the conclusion of the Pilot Project.

The WSBA and Board will be using a matrix (see *below*) to determine a value for the estimation of risk for each type of risk for harm you have identified — both current and future risks.

For each risk you identify, the application will ask you to identify and describe the likelihood of harm and the impact or level of potential harm. The risk score will be used to ensure sufficient consumer and public protection measures are in place to mitigate against the risk for harm.

## PILOT PROJECT RISK MATRIX

LIKELIHOOD OF HARM >	LEVEL OF POTENTIAL HARM		
	Negligible (1)	Manageable (2)	Catastrophic (3)
Almost Certain (3)	3	6	9
Possible (2)	2	4	6
Very Unlikely (1)	1	2	3

- *Risk Score = Likelihood of Harm x Level of Potential harm*
- *A high-risk score (6 or higher) does not mean the risk is too high, but rather, it means more and stronger risk mitigation may be needed.*
- *Your mitigation measures in place for public protection should offset the identified level of risk.*



The WSBA and Board will be using a matrix to determine a value for the estimation of risk for each type of risk for harm you have identified — both current and future risks.

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## Application Process

### APPLY ONLINE

A designated compliance officer will complete the application and submit it online using the WSBA online admissions site at <https://admissions.wsba.org>.

### COMMUNICATION

The WSBA's primary communication method will be the Online Admissions Site and email to the designated compliance officer. It is your responsibility to ensure emails from the WSBA with the domain names of @admissions.wsba.org and @wsba.org are not blocked by a firewall or filtered as spam or junk.

You are expected to regularly check for and read all emails from the WSBA and to visit your home page on the Online Admissions Site to review correspondence, messages, and announcements.

Communication to the WSBA about the entity regulation Pilot Project should be directed to [entityregulationpilot@wsba.org](mailto:entityregulationpilot@wsba.org). You can also call the WSBA at 206-733-5941.

### SUBMIT YOUR APPLICATION

- Use the WSBA online admissions site at <https://admissions.wsba.org>.
- Complete the Application
- If there are any fields that do not apply to the entity, enter N/A
- Upload all required documents including:
  - Authorization and Release
  - Entity Formation Documents
  - Secretary of State Registration
  - Good standing certificate or letter from other jurisdictions where entity authorized to practice law

### APPLICATION FEES

When you submit your application online, you will be required to pay a nonrefundable application fee of \$2,000. The application fee is reduced to \$1,000 for ATJ Mission-Focused Entities that meet the following definition:



**The WSBA's  
primary  
communication  
method will  
be the Online  
Admissions Site  
and email to  
the designated  
compliance  
officer.**

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*An “ATJ Mission-Focused Entity” is an entity with a stated primary mission of providing legal and law-related services to low income or low- and moderate-income individuals or households.*

## APPLICATION REVIEW PROCESS

- The WSBA will review, analyze, and verify the information provided in the application. The WSBA will contact you with any questions or if any additional information is required.
- The WSBA, or its agent, will conduct background investigations into the entity and the individuals required to submit a character and fitness application. See Character and Fitness below.
- All applications will be referred to the Practice of Law Board.
- The Practice of Law Board will make a recommendation on the application to the Washington Supreme Court.
- The Washington Supreme Court will issue an authorizing order if approved.
- At any point in the review process the WSBA, Board, or Court may recommend or require changes to the proposed regulatory reform and/or additional measures to protect the public.
- If your application is not approved at any of the levels above, you may revise and submit a new application with an application fee.
- The full review and approval process will take three to six months.

## CHARACTER AND FITNESS

The factors identified in Rule 21 of the Admission and Practice Rules (APR) will be considered when determining character and fitness.

Any entity or individual with an application that raises a substantial question whether the applicant possesses the requisite good moral character and fitness to practice law will be referred to the Practice of Law Board. If the Board finds an applicant does not possess the requisite standard, then the entity, depending on the situation, will be provided an opportunity to supplement the information or application, substitute an alternative person, and/or design a process to isolate an individual from the Pilot Project. The Board may deny an application if a character and fitness issue cannot be resolved.



**After all the steps are complete, the recommendation with the application and all supporting materials will be delivered to the Court for consideration.**

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## Final Steps Prior to Recommendation to Court

After the Practice of Law Board approves the recommendation for your entity's participation in the Pilot Project, and prior to submitting the recommendation to the Court, you will be required to complete the final "Required Authorization Steps."

You will receive notification through the online admissions site and will complete the following steps online:

- Annual Fee
- Trust Account Declaration
- Professional Liability Insurance Disclosure
- Verification of Contact Information

After these steps are complete, the recommendation with the application and all supporting materials will be delivered to the Court for consideration.

### ANNUAL FEE

Prior to submitting your application to the Court, the WSBA will ask your entity to pay the initial annual fee of \$5,000. The annual fee will be due February 1 each year thereafter. This fee is not prorated and is nonrefundable (unless the Court rejects the application). The annual fee is \$2,500 for ATJ Mission-Focused Entities who meet the following definition:

*An "ATJ Mission-Focused Entity" is an entity with a stated primary mission of providing legal and law-related services to low income or low- and moderate-income individuals or households.*

**Note:** Annual fees are for a calendar year and are not prorated. For example, if you pay the annual fee in November and are approved by the Court prior to the end of the year then your next annual fee will be due the following February 1. Entities may defer submitting the recommendation to the Court by waiting to pay the annual fee until December 20 in which case the annual fee will be applied to the upcoming calendar year.

### TRUST ACCOUNT DECLARATION

An entity participating in the Pilot Project must comply with the trust account



**An entity participating in the Pilot Project must comply with the trust account rules for the handling of client funds and property.**

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rules for the handling of client funds and property. All entities, regardless of how the legal services are provided, or by whom the legal services are provided, must comply with Rules 1.15A and 1.15B of the Washington Rules of Professional Conduct (RPC) (relating to lawyers). All Washington licensed legal professionals individually will continue to be responsible for their own annual trust account declarations.

The compliance officer will need to complete the trust account declaration.

## **PROFESSIONAL LIABILITY INSURANCE AND FINANCIAL RESPONSIBILITY**

All entities, regardless of how the legal services are provided, or by whom the legal services are provided, must disclose whether the entity maintains professional liability insurance. All Washington licensed legal professionals individually will continue to be responsible for insurance disclosures or financial responsibility as required under APR 26 (lawyers), APR 28.I(2) (LLLTs), and APR 12(f)(2) (LPOs).

In addition, if an entity does not maintain professional liability insurance or maintains it below the minimum levels of \$100,00 per occurrence and \$300,000 for all claims, then the entity must inform the client under the same conditions and in the same manner as a lawyer would under RPC 1.4(c).

The compliance officer will need to complete the professional liability insurance disclosure.

## **VERIFICATION OF CONTACT INFORMATION**

The compliance officer will verify and edit as necessary the contact information for the entity. This contact information will be displayed on the WSBA online legal directory.

## **Authorizing Order and Participation in the Pilot Project**

If the Court approves your proposal, you will receive an order authorizing your entity to practice law according to the terms in the order. An authorizing order template is attached as [Appendix C](#).



**All entities, regardless of how the legal services are provided, or by whom the legal services are provided, must disclose whether the entity maintains professional liability insurance.**

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The Supreme Court order will outline:

- **Regulatory Reforms Allowed.** The order will specify all regulatory rules that were waived and/or modified to allow your entity to practice law.
- **Restrictions on Legal Services.** The order will identify any restrictions on the authorization to practice law and any prohibited legal services.
- **Consumer Protection Requirements.** The order will specify required mitigation measures to have in place in order to protect the public from harm.

## COMPLY WITH ALL EXISTING LAWS AND RULES

Your entity will be required to comply with all existing laws and regulations governing the operation of a business in Washington state and all existing laws and rules governing the practice of law in Washington including but not limited to:

- **Consumer protection laws (RCW 19.86);**
- **All rules of professional conduct (RPC, LLLT RPC, LPORPC) not explicitly waived or modified in the authorizing order;**
- **Admission and Practice Rules (APR);**
- **All licensed legal professional disciplinary rules (ELC, ELLTLC, ELPOC).**

## PUBLIC PROTECTION & DISCLOSURES

- You must make the following separate and conspicuous disclosure to all clients and in all advertising for legal services you provide as part of the Pilot Project:
  - The legal services we offer are provided under the authorization of the Washington Supreme Court as a participant in the Washington Pilot Project for Entity Regulation, and may include legal services that are either (1) not provided by a lawyer, (2) not able to be provided by a lawyer without participation in the Pilot Project, or (3) provided by a law firm that is owned in whole or in part by persons not licensed to practice law. For additional information about the Pilot Project for Entity Regulation or to file a complaint, please visit [www.wsba.org/entityreg](http://www.wsba.org/entityreg).
- After services have been provided, you will be required to provide each client with a link to a survey. Survey responses will be directed to and collected by the WSBA. The data from the client surveys will be used to assess whether the Pilot Project is meeting the goals outlined in the Court's order establishing the Pilot Project. The content of the survey is attached as [\*Appendix D\*](#).



**Your entity will be required to comply with all existing laws and regulations governing the operation of a business in Washington state.**

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- You must monitor for harm or risk of harm and adjust your public protection measures and/or services accordingly.
- You must have a consumer complaint process and you must respond promptly to any and all complaints.

## PROHIBITED CONDUCT

- Offering to provide legal services outside the scope of the authorizing order when not otherwise licensed or authorized to do so.
- Promoting legal services with misleading advertising or omissions.

## Operational Reporting Requirements

The WSBA will inform you how often you will be required to submit a periodic operational report to the WSBA. The purpose of this report is to evaluate performance and progress in the Pilot Project and to gather data to assist with measuring the impact of the Pilot Project overall on the accessibility of legal services to Washingtonians. Inquiries and data gathering may vary for each entity; however, all entities will be required to provide the information found in [Appendix E](#).

Specific reporting requirements will be communicated to you and may include but are not limited to any or all of the following:

- **Number of consumers served**
- **Service success/failure rates**
- **Impact on access to justice**
- **Consumer complaints and resolutions**
- **Response time, legal outcomes, and cost metrics**
- **Any significant changes to the information provided on your application**

The compliance officer will be able to submit the periodic report and all required data through an online application.

All entities will be required to provide the following information for each client/consumer served during the reporting period (a template spreadsheet will be available for download to easily upload the required data):

- **Client ID No.** – a unique de-identified alphanumeric number you assign to each client



**The WSBA  
will inform  
you how often  
you will be  
required to  
submit a periodic  
operational  
report to the  
WSBA.**

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- **Legal Issue** – we will provide you with a list of codes to categorize the practice area or subject area
- **Services Received** – general type of services received; we will provide you with a list of categories such as legal advice, legal document completion, negotiation, etc.
- **Amount Paid** – the amount paid by the consumer for the services received
- **Complaints** – whether this consumer or client made any complaints

At any point during the Pilot Project the Court can modify the parameters of the test including aspects of the rules that were modified or waived, public protection measures, and service model.

At the conclusion of the reporting period, not to exceed seven years, the Court will decide whether your entity can continue to provide legal services until rules implementing entity regulation are in place or a decision is made not to implement entity regulation.

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## Changes to Your Service Model

You must submit a modification request to the WSBA for any changes to your service model including:

- **Additional new services**
- **Changes to the delivery model**
- **Altering the business ownership or structure**

The WSBA will contact you regarding the procedure and timeline for any modifications.

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## Early Removal and Disqualification

**Your entity may be removed from the Pilot Project for:**

- Noncompliance with requirements of the Washington Supreme Court's Pilot Project Order No. 25700-B-721 or with the requirements of the entity's authorizing order.
- Violation of limitations on authorized practice (including but not limited to providing services outside of authorization, misrepresentation of services,

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**At the conclusion of the reporting period, not to exceed seven years, the Court will decide whether your entity can continue to provide legal services.**

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or assisting in the unauthorized practice of law by an unapproved entity or individual).

- Misrepresentation in application or failure to timely update information in application (including but not limited to undisclosed ownership, disciplinary sanctions against involved licensed legal service providers, or regulatory enforcement actions against the entity).
- Failure to comply with reporting requirements (including but not limited to reports that are untimely, incomplete, or inaccurate).
- Failure to pay an annual fee.
- Misrepresentation in reporting (including but not limited to misreporting consumer complaints or other data).
- Failure to cooperate with an investigation or requests for information under these Enforcement Procedures.
- Failure to self-report an actionable violation.
- Violation of applicable Rules of Professional Conduct (RPC) (i.e., any RPC from which the entity has not been specifically excepted by the entity's authorizing order).
- Consumer harms (including but not limited to wrongful disclosure of confidential consumer information, misuse of consumer data, inappropriate services sold to consumer, error in services provided, or inappropriate billing and refunding practices).
- Any other conduct demonstrating unfitness to continue participating in the pilot project.

## Complaints, Investigation, and Enforcement

Your entity and its staff are subject to the WSBA's enforcement procedures for the Pilot Project. See [Appendix F](#).

You must comply with reporting requirements and cooperate with the WSBA's review and investigation of complaints and any compliance reviews conducted by the WSBA. You may not use the status of information as confidential client information or trade secret as a basis for not providing it to the WSBA or otherwise complying with requests for information and documents under the WSBA's enforcement procedures for the Pilot Project.



**You must comply with reporting requirements and cooperate with the WSBA's review and investigation of complaints and any compliance reviews conducted by the WSBA.**

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The WSBA will report to the Board any findings of failure to comply, noncooperation, or violation of an authorizing order or applicable rule of ethics by a participating entity or its staff and may make recommendations to the Board regarding any additional public protection measures that may be necessary, up to and including removal from the Pilot Project. The Board may request further inquiry by the WSBA or may make a recommendation to the Court as appropriate.

The entity may be responsible for the costs of such an investigation as ordered by the Court upon recommendation of the Board.

## Appendices

**Appendix A:** Washington Supreme Court Order No. 25700-B-721 dated December 5, 2024 (establishing Pilot Project for Entity Regulation)

**Appendix B:** Cherry, Michael (2024) “A Framework for Data-Driven Legal Regulatory Reform,” Seattle Journal of Technology, Environmental & Innovation Law: Vol. 14: Iss. 2, Article 2.

**Appendix C:** Template for Authorizing Order

**Appendix D:** Entity Reporting – Standard Data and Questions

**Appendix E:** Client Survey Questions

**Appendix F:** WSBA Enforcement Procedures



### SCAN QR CODE

*Keep up to date about  
the Entity Regulation  
Pilot Project online*

### CONTACT US

**[entityregulationpilot@wsba.org](mailto:entityregulationpilot@wsba.org)**

**206-733-5941**

# THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF A PILOT  
PROJECT TO TEST ENTITY REGULATION USING  
THE PRACTICE OF LAW BOARD'S FRAMEWORK  
FOR LEGAL REGULATORY REFORM

## ORDER

NO. 25700-B-721

General Rule (GR) 24 defines the practice of law in Washington and provides for its exceptions and exclusions, including an exception for those activities which have been permitted under a regulatory system established by the Washington Supreme Court; and

The Admission and Practice Rules (APR) provide the requirements regarding who may be authorized to practice law in Washington and the means by which individuals may be authorized to do so; and

RCW 2.48.180, other statutes governing entity formation, and rule 5.4 of both the Washington Rules of Professional Conduct (RPC) and the LLLT Rules of Professional Conduct (LLLT RPC) limit the circumstances under which individuals may form entities for the purpose of practicing law in Washington; and

These rules and statutes generally prohibit the practice of law and provision of legal services by entities unless the entity providing those legal services is owned and operated by, and fees are shared only among, those individuals authorized to practice law; and

This Court has determined that while serving important public protection purposes, these court rules and statutes serve as barriers to the exploration, and data-driven testing, of legal regulatory reforms that would permit entities to provide legal and law-related services to consumers in Washington, whether or not the provision of those services would constitute the practice of law; and

As one of its mandates under GR 25, the Washington Supreme Court's Practice of Law Board (Board) is authorized to recommend new avenues for persons not currently authorized to practice law to provide legal and law-related services in Washington; and

Pursuant to its mandate, the Board has proposed a Framework for Data-Driven Legal Regulatory Reform<sup>1</sup> (Framework) that provides a methodology to allow those proposing a legal regulatory reform to use a consistent set of processes for designing, maintaining, and participating in a test of that reform while ensuring adequate guardrails are in place to protect the public and others while the reforms are tested and relevant data is collected;

The Framework provides a mechanism to pilot test authorizing entities to provide legal and law-related services in Washington under limited exemptions from the otherwise applicable rules and statutes that prohibit entities from practicing law (hereinafter entity regulation); and

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<sup>1</sup> Practice of Law Board, *A Framework for Data-Driven Legal Regulatory Reform*, 14.2 Seattle J. Tech., Env't & Innovation L. 1 (2024), <https://digitalcommons.law.seattleu.edu/sjteil/vol14/iss2/2/>.

In September 2023, the Washington State Bar Association (WSBA) Board of Governors adopted as a strategic priority assessing technology-related opportunities and threats, and determining the WSBA's role vis-à-vis regulation, consumer protection, and support to legal professionals; and

In furtherance of that priority, in November 2023, the WSBA Board of Governors voted to support conducting a test of entity regulation using the Framework and in collaboration with the Board; and

The Board and the WSBA agree that conducting a pilot project to test entity regulation using the Board's Framework will best protect the public while ensuring that the Court has adequate data and information to make an informed decision regarding whether to implement entity regulation as an exercise of its plenary authority over the practice of law; and

This Court has determined that a pilot project to test entity regulation under the proposed Framework will assist the Board, the WSBA, and this Court in determining whether entity regulation will increase access to justice<sup>2</sup> by enhancing access to affordable and reliable legal and law-related services consistent with protection of the public, and whether entity regulation will

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<sup>2</sup> For purposes of this Order, "access to justice" means increasing the accessibility of quality legal services to all persons, including low- and moderate-income Washingtonians, and others who experience barriers in accessing legal services.

create risks of consumer harm, regulatory challenges, or other risks that would serve as barriers to implementing reform;

NOW, THEREFORE, pursuant to this Court's inherent power to regulate the practice of law, it is hereby

ORDERED:

Using the Board's Framework, the Board and the WSBA shall in collaboration conduct a pilot project of entity regulation (hereinafter pilot project) to test reforming the activities prohibited in RCW 2.48.180, RPC 5.4, and LLLT RPC 5.4. Each beta-test applicant shall propose (1) a specific hypothesis relating to (a) reforming one or more regulatory rules governing entities practicing law and, if applicable, other related rules and (b) that reform's impact on the accessibility of legal services in Washington and (2) a study to test that reform.

Each applicant must identify a person authorized to practice law or other suitable person within the entity to act as a compliance officer who shall be tasked with ensuring the entity's compliance with the Court authorizing order and ethical rules that apply to the entity, reporting data to the WSBA, and serving as the main point of contact during the pilot project.

The purpose and focus of this pilot project are to collect data and information to inform reform efforts related to the regulation of the practice of law, and more specifically, to rules and regulations governing entities engaging in activities whether or not they constitute the practice of



law.<sup>3</sup> Except for those activities specifically excepted in any authorizing order or law, applicants participating in the pilot project must comply with all other statutes and regulations related to incorporation and conducting business operations in the state of Washington. If circumstances warrant referral, the WSBA or the Board may refer a participant to an appropriate enforcement agency for any alleged noncompliance.

Together, the WSBA with the assistance of the Board shall perform monitoring and oversight of each entity to ensure compliance with its authorizing order and any applicable rules of ethics. Participants shall pay reasonable application and participation fees in amounts to be recommended by the WSBA Board of Governors and approved by the Court. The WSBA shall appropriately fund, administer, and staff the pilot project in accordance with GR 12.3 and GR 25(c).

### **I. APPLICATION PROCESS**

The WSBA shall develop an application process for entities to participate in the pilot project and shall receive and evaluate such applications. The WSBA shall make recommendations to the Board regarding which applicants should be authorized to participate in the pilot project, and shall recommend which reforms to regulatory rules should be tested, the data to be collected

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<sup>3</sup> Secondly, the purpose of the pilot project is to assess the effectiveness of the Framework, generally, in testing legal regulatory reforms.

and analyzed by each entity, any public protection measures to be imposed, and any limitations or conditions on the entity's authority to practice law during the pilot project.

The Board shall then recommend to the Court applicants to participate in the pilot project. For each participant, the Board shall recommend a timebound authorization to practice law that includes appropriate limitations and conditions on that authorization. The Court shall then enter individual orders as appropriate.

## **II. ONGOING MONITORING AND OVERSIGHT**

Each participating entity shall undergo ongoing monitoring and oversight and shall have a duty to comply with procedures, instructions, and requests or directives from the WSBA and the Board.

### **A. ENTITY REPORTING PROCEDURES**

The WSBA shall develop a reporting process and schedule for each entity for a period of time not to exceed seven years. Entities shall report data and information regarding their provision of legal services, their compliance with their authorizing orders, and their adherence to the rules of ethics. The WSBA shall accept and conduct data analysis and review of those reports. The WSBA shall securely maintain and safeguard against the unauthorized disclosure of confidential client information or trade secrets collected through reports or by other means.

Following each entity's report, the WSBA shall advise the Board regarding its review of that report and its data analysis and related findings. If through the reporting process, the WSBA identifies any concern that an entity is not complying with its authorizing order or has violated a

rule of ethics, the WSBA shall report that information to the Board. At the Board's request, the WSBA may investigate the matter as outlined in Section II.B. of this Order.

As appropriate, the WSBA may make recommendations to the Board regarding any need to refine the parameters of the test being conducted by a particular entity or any additional measures that may be necessary to protect the public, which may include removal from the pilot project. The WSBA or the Board may then recommend to the Court any modifications to an entity's authorizing order or appropriate public protection measures, which the Court will act on as appropriate.

Following an entity's final report under the WSBA's reporting schedule, the WSBA shall recommend to the Board whether the entity should continue to be authorized to provide legal and law-related services after the pilot project concludes and until such time as rules implementing entity regulation are in place or a decision is made not to implement entity regulation. As appropriate, the Board shall then make a recommendation to the Court regarding the same.

## **B. COMPLAINT AND INVESTIGATION PROCEDURES**

The WSBA shall develop complaint procedures for the public to report an alleged violation by an entity or its staff of an authorizing order or an applicable rule of ethics. The WSBA shall review and may investigate the complaint. The WSBA shall report the results of its review and, if applicable, its investigation to the Board, and may make recommendations to the Board regarding any additional public protection measures that may be necessary, up to and including removal from the pilot project. The Board may request further inquiry by the WSBA or may make a

recommendation to the Court as appropriate. The applicant may be responsible for the costs of such an investigation as ordered by the Court upon recommendation of the Board.

### **III. BOARD REPORTING PROCEDURES**

The WSBA and the Board shall report to the Court at least quarterly, regarding the pilot project's operation, including the ongoing monitoring and evaluation of participants, aggregate data and information and related data analysis and findings, and other relevant information related to the beta test.

### **IV. THE CONCLUSION OF THE PILOT PROJECT**

The pilot project shall conclude when the Board and the WSBA have sufficient data and information to determine how to proceed with respect to studying entity regulation and other regulatory innovations. In any event, the pilot project shall end 10 years after the date that the first entity is granted authority by the Court to participate in the pilot project, unless extended by the Court.

At the end of the pilot project, the Board and WSBA shall make recommendations to the Court as to whether the applicants shall be permitted to continue to provide legal services under court orders detailing accompanying rules and regulations, and the Board and the WSBA will make specific, data-driven recommendations to the Court regarding whether to implement any additional entity regulation or to continue testing the concept using the Framework.

DATED at Olympia, Washington this 5<sup>th</sup> day of December, 2024

  
CHIEF JUSTICE

5-18-2024

## A Framework for Data-Driven Legal Regulatory Reform

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### Recommended Citation

Cherry, Michael (2024) "A Framework for Data-Driven Legal Regulatory Reform," *Seattle Journal of Technology, Environmental & Innovation Law*. Vol. 14: Iss. 2, Article 2.  
Available at: <https://digitalcommons.law.seattleu.edu/sjteil/vol14/iss2/2>

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# **A Framework for Data-Driven Legal Regulatory Reform**

## **Washington Supreme Court Practice of Law Board<sup>1</sup>**

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<sup>1</sup> The Practice of Law Board is a Washington Supreme Court board administrated by the Washington State Bar Association (WSBA). This paper reflects the Board's work for the Court to provide new avenues for the authorized practice of law. The Chair of the Board is Lesli Ashley. Michael Cherry is the Chair Emeritus. Public members of the Board who worked on this innovation include Pearl Gipson-Collier, Brooks Goode, Dr. David Sattler, Ellen Reed, Mir Tariq, and Dr. Joseph Williams. Legal professional members of the Board who worked on this innovation include Sarah Bove, Jeremy Burke, Michele Carney, Kristina Larry, Craig Shank, Drew Simshaw, Gary Swearington, and Michael Terasaki. The Board would like to also acknowledge the support of the WSBA staff including Kyla Reynolds, Thea Jennings, Julie Shankland, and Renata de Carvalho Garcia, and our liasions with the WSBA Board of Governors Sunitha Anjilvel and Jordan Couch.

## I. INTRODUCTION

Under Washington Courts General Rule (GR) 25, the Washington Supreme Court charges its Practice of Law Board (POLB) with three key responsibilities: to educate the public, innovate, and coordinate allegations of the unauthorized practice of law.<sup>2</sup>

This paper focuses on the POLB's efforts under the responsibility to innovate by creating a framework for legal regulatory reform that is data-driven and based on the scientific method. The POLB developed the framework for data-driven legal regulatory reform as part of that GR 25 responsibility to innovate. This innovation responsibility calls for the POLB to "[c]onsider and recommend to the Supreme Court new avenues for persons not currently authorized to practice law to provide legal and law-related services that might otherwise constitute the practice of law as defined in General Rule 24."<sup>3</sup> Previously, this innovation role led the POLB and the Washington State Bar Association (WSBA) to propose the Washington Supreme Court's Admission and Practice Rule (APR) 28 and the Limited License Legal Technician (LLLT) licensure, which was adopted by the Washington Supreme Court in 2012.<sup>4</sup>

A. *A Framework for Data-driven Legal Regulatory Reform*

In January 2022, the POLB began developing a framework to leverage the scientific method for data-driven legal regulatory reform, which would thereby provide more timely innovation under GR 25. A "framework" is a basic conceptional structure.<sup>5</sup> Application developers use frameworks so they do not start each project from scratch; they can reuse components that are already tested and known to work, avoid duplicating work, and focus on what is unique about their project.<sup>6</sup> The POLB wanted to design a regulatory reform framework to see if the same goals of efficiency and consistency could be achieved while reforming legal rules and regulations.

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<sup>2</sup> See *GR 25 Practice of Law Board*, WASH. COURTS, [https://www.courts.wa.gov/court\\_rules/pdf/GR/GA\\_GR\\_25\\_00\\_00.pdf](https://www.courts.wa.gov/court_rules/pdf/GR/GA_GR_25_00_00.pdf) [<https://perma.cc/93B3-WMB8>] (last visited May 10, 2024) (which outlines the Practice of Law Board responsibilities to innovate as well as to "educate the public about how to receive competent legal assistance" and to "receive complaints alleging the unauthorized practice of law in Washington" and where complaints allege "harm to the public interest," refer such complaints "to appropriate enforcement agencies.).

<sup>3</sup> *Id.* at (b)(2).

<sup>4</sup> Thomas Clarke & Rebecca L. Sandefur, *Preliminary Evaluation of the Washington State Limited Legal Technician Program*, NAT'L CTR. FOR STATE CTS., AM. BAR FOUND. & PUB. WELFARE FUND, (Mar. 2017), [https://papers.ssm.com/sol3/papers.cfm?abstract\\_id=2949042](https://papers.ssm.com/sol3/papers.cfm?abstract_id=2949042) [<https://perma.cc/D7J8-KWXG>] (Note that while the Practice of Law Board was involved in initial work on this program, a peer Supreme Court Board was formed to develop and manage the program.).

<sup>5</sup> *Framework*, MERRIAM-WEBSTER.COM DICTIONARY, <https://www.merriam-webster.com/dictionary/framework> [<https://perma.cc/C4HM-7KWX>] (last visited Mar. 16, 2024).

<sup>6</sup> *What is a Framework?*, CODECADEMY, (Sept. 23, 2021), <https://www.codecademy.com/resources/blog/what-is-a-framework/> [<https://perma.cc/YY5A-WCNT>].



Data about reform of legal regulations and the impact of such reform is scarce. It is not clear why, but it likely reflects, at least in part, legal professionals' responsibility of confidentiality. Moreover, determining what data should be collected to prove whether a regulatory reform has had the desired effect—that it improved access-to-justice—often proves difficult. In contrast to the world of big data, where large amounts of data are available to analyze, the scarce data about legal services means legal reform occurs in a small-data world. Nonetheless, “[c]orrelations are useful in a small data world.”<sup>7</sup>

“A correlation quantifies the statistical relationship between two data values. A strong correlation means that when one of the data values changes, the other is highly likely to change as well.”<sup>8</sup> In a small-data world, “statisticians often choose a proxy, then collect relevant data and run correlation analysis to find out how good the proxy was.”<sup>9</sup> This leads to the use of “[h]ypothesis driven by theories—abstract ideas about how something works.”<sup>10</sup> This connection between being in a small-data world and using hypotheses to test proxies led the POLB to examine whether hypotheses and the scientific method could be used to get to a big-data world and whether the Board could use a data-driven approach to legal regulatory reform.

The scientific method consists of “principles and procedures for the systematic pursuit of knowledge involving the recognition and formulation of a problem, the collection of data through observation and experimentation, and the formulation and testing of hypotheses.”<sup>11</sup> One key advantage of the scientific method is that a different group, following the same hypothesis and study, should be able to produce similar data to further validate the hypothesis.<sup>12</sup>

In the framework for data-driven legal regulatory reform, the hypothesis is the proposed legal reform. For example, the POLB might consider a hypothesis such as: “Consumers would benefit from the unauthorized practice of law being a per se violation of the Washington Consumer Protection Act.” It is a testable statement about the relationship between the reform and the intended outcome. To examine the hypothesis, the proposers of the reform design and conduct a study, including data collection, to examine the potential impact of the reform. The study should be conducted in a safe and managed environment, such

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<sup>7</sup> VICTOR MAYER-SCHÖNBERGER & KENNETH CUKIER, *BIG DATA: A REVOLUTION THAT WILL TRANSFORM HOW WE LIVE, WORK, AND THINK* 52 (2014).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Scientific Method*, MERRIAM WEBSTER.COM DICTIONARY, <https://www.merriam-webster.com/dictionary/scientific%20method#:~:text=Medical%20Definition-,scientific%20method,formulation%20and%20testing%20of%20hypotheses> [https://perma.cc/Q25Z-HS5D] (last visited Mar. 16, 2024).

<sup>12</sup> COMMITTEE ON REPRODUCIBILITY AND REPLICABILITY IN SCIENCE, *REPRODUCIBILITY AND REPLICABILITY IN SCIENCE* 6 (National Academic Press, 2019), <https://nap.nationalacademies.org/catalog/25303/reproducibility-and-replicability-in-science> [https://perma.cc/HJM6-L8PF].

as a “sandbox” or “regulatory lab,” to ensure no one is harmed or any harms are quickly mitigated. A sandbox or lab is a method of putting appropriate processes around the framework to manage its use.

In the context of legal regulatory reform, the findings, as evidence, can inform whether the proposed legal reform warrants approval by the Washington Supreme Court, other high courts, or regulatory authority such as a bar association depending upon the jurisdiction. Using the scientific method in conjunction with the framework also allows for incremental changes to hypotheses and the study, and it allows reformers to refine the approach to ensure a full examination of the hypotheses and to provide tested evidentiary support for the reform.

The POLB acknowledges it began this work by attempting to model its laboratory based on the sandbox being implemented by the Utah Office of Legal Services Innovation. Utah’s sandbox is operating under an order from the Utah Supreme Court.<sup>13</sup> The first iteration of the POLB’s framework was introduced as a “Blueprint for a Legal Regulatory Sandbox in Washington State” in June 2021.<sup>14</sup> The blueprint began to follow the iterative approach of the scientific process, which resulted in a second version, entitled “Blueprint for a Legal Regulatory Lab in Washington State,” which was published in February 2022.<sup>15</sup> Even though this version included substantial process improvements, many critics focused on the change in framing from a “sandbox” to a “lab.” The term lab was substituted for sandbox after the POLB presented the original blueprint to the Supreme Court, and a lab appeared to resonate with some of the Justices as more serious—and therefore, more secure and safer—than a sandbox.<sup>16</sup> But, regardless of the name, a lab (or a sandbox) is nothing more than a safe environment or a set of guardrails consisting of protocols or rules for managing the use of the framework.

The number and extent of protocols that make up the lab will vary based on the type of reform being tested, the amount of data that needs to be collected, and any risk of harm to participants while the innovative service and data-driven legal regulatory reform is being evaluated in the safe environment. Lab protocols will also ensure that

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<sup>13</sup> UTAH SUPREME COURT ORDER NO. 15 (Amended Sept. 21, 2022), <https://legacy.utcourts.gov/rules/urapdocs/15.pdf> [<https://perma.cc/P6UF-JFED>].

<sup>14</sup> Practice of Law Board, *Blueprint for a Legal Regulatory Sandbox in Washington State*, WASH. STATE BAR ASS’N (Jun. 2021) [https://wsba.org/docs/default-source/legal-community/committees/practice-of-law-board/polb\\_legal-regulatory-lab\\_1.7\\_06-2021\\_superseded.pdf](https://wsba.org/docs/default-source/legal-community/committees/practice-of-law-board/polb_legal-regulatory-lab_1.7_06-2021_superseded.pdf) [<https://perma.cc/ZL5U-L8GP>].

<sup>15</sup> Practice of Law Board, *Blueprint for a Legal Regulatory Lab in Washington State*, WASH. STATE BAR ASS’N (Feb. 2022), [https://wsba.org/docs/default-source/legal-community/committees/practice-of-law-board/polb\\_legal-regulatory-lab\\_2.0\\_02-2022.pdf](https://wsba.org/docs/default-source/legal-community/committees/practice-of-law-board/polb_legal-regulatory-lab_2.0_02-2022.pdf) [<https://perma.cc/4VUB-JVZP>].

<sup>16</sup> See Washington Supreme Court and the Practice of Law Board, *New Avenues for Legal Services Progress Meeting*, TVW (Jul. 1, 2020, at 45:39), <https://tvw.org/video/washington-state-supreme-court-practice-of-law-board-2021071018/> [<https://perma.cc/G37W-6NP3>].

evaluation is conducted in an ethical manner; that testing protocols respect current statutes, court rules and regulations; and that there is appropriate oversight by the supervising authority.

### *B. Why a Framework for Data-driven Legal Regulatory Reform is Needed*

Under the status quo, legal regulatory reform takes too long to accomplish, is too bespoke, is rarely evaluated to ensure that the reform meets the desired goals of the reformation effort, and rarely involves the public (nonlegal professionals).

There are several possible reasons why legal regulatory reform currently takes too long. Although the legal profession often sees itself as socially progressive, it is generally conservative when it comes to fiscal and regulatory matters, especially with regards to changing processes by which the profession regulates itself. It is a profession that often defends the status quo by stating, “We have always done it this way.” Legal professionals may be predisposed to conservativeness and preservation of the status quo because “[a]s lawyers, we are trained to question facts and hunt for the negative to protect our clients. We need to be skeptical of facts, look for fault, and question what could go wrong.”<sup>17</sup>

How long does reform take? Consider the case of the relatively modest reform to the Washington Rules of Professional Conduct (RPC) that regulate how lawyers advertise their services. One of the most recent reforms to these rules arose because the rules in effect when reformation began dated back to an era when lawyers advertised on bus benches, billboards, and in the Yellow Pages.<sup>18</sup>

These rules were ripe for reform because legal professionals were asking bar association ethics professionals how to ethically advertise on the internet. Suggested reforms from various sources, mostly state bar associations, eventually made it to the American Bar Association (ABA) Standing Committee on Ethics and Professional Responsibility. Following the work of the Committee, the ABA approved new model advertising rules in 2018.<sup>19</sup>

After the Association of Professional Responsibility Lawyers (APRL) issued its report in 2015 regarding the advertising rules for lawyers, state bar associations, including WSBA, used the APRL report as the basis for amending their state rules using their amendment processes.<sup>20</sup> In Washington, it was not until 2021 that rule amendments

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<sup>17</sup> Reid Trautz, *If Times They are a Changing, Why Aren't Lawyers Too?*, LAW PRAC. TODAY, (Dec. 14, 2016), <https://www.lawpracticetoday.org/article/times-are-changing-why-arent-lawyers/> [https://perma.cc/5KF2-Q36R].

<sup>18</sup> *Explained: Update to Advertising Rules*, AM. BAR ASS'N (Jul. 2019), <https://www.americanbar.org/news/abanews/publications/youraba/2019/july-2019/explained--update-to-advertising--marketing-rules/> [https://perma.cc/WJ5C-R3DV].

<sup>19</sup> *Id.*

<sup>20</sup> See *GR 9 Cover Sheet*, WASH. COURTS, [https://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.proposedRuleDisplay&ruleId=2698](https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=2698) [https://perma.cc/452P-JZXV] (last visited Mar. 5, 2024).

were adopted reforming the advertising rules for Washington authorized legal professionals.<sup>21</sup>

Therefore, from the time the ABA proposed model rules to the time when the Washington Supreme Court approved the amendments to the relevant Washington rules approximately three years had past, and if measured from the APRL report six years had passed.

This long timeline often means that by the time regulatory reform is enacted, the problem the reform was intended to solve is no longer the only problem that needs reformation. In the case of these advertising rules, lawyers, law firms, and other entities were moving beyond simple internet-based ads on websites to targeted social media platform-based ads by the time the updated rules went into effect.

Another reason legal regulatory reform takes a long time is that most regulatory reform is bespoke because the process for creating regulatory reform is not well understood. This is not to say it is bespoke because there is no process. Washington Court GR 9 outlines a process for reforming Washington's court rules.<sup>22</sup> Under GR 9, regulatory reform to a court rule can be initiated by a variety of different agencies or entities, including bar associations, the courts, and individuals (legal professionals or members of the public). However, most legal regulatory reform begins when a group of legal professionals concerned with a particular rule or regulation gets together, discusses the merits of the reform, and drafts a suggested court rule or amendment proposing the reform. Although GR 9 outlines some basic formatting and submission instructions, people proposing the reform are left to determine the best way to make a case for any reform.

As illustrated above, this process can take several months or years. It is hard to track actual times because the specific time the work originally begins is rarely noted.

Nothing in GR 9 addresses what evidence or data the court requires to decide about any reform, whether or how the effects of the reform will be measured, or whether the reform advances the goals of the judiciary in key areas, such as reducing the access-to-justice gap in Washington.

Another long-running regulatory reform effort involves WSBA's exploration of whether to require lawyers to hold lawyer liability

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<sup>21</sup> See *Washington Supreme Court Order No. 25700-A-1333*, WASH. STATE BAR ASS'N (Jan. 8, 2021) [https://www.wsba.org/docs/default-source/about-wsba/25700-a-1333\\_rpcs-7-1-7-5-and-5-5.pdf?sfvrsn=94d515f1\\_7](https://www.wsba.org/docs/default-source/about-wsba/25700-a-1333_rpcs-7-1-7-5-and-5-5.pdf?sfvrsn=94d515f1_7) [https://perma.cc/3ZJN-T3Y6].

<sup>22</sup> *GR 9 Supreme Court Rulemaking*, WASH. COURTS, [https://www.courts.wa.gov/court\\_rules/pdf/GR/GA\\_GR\\_09\\_00\\_00.pdf](https://www.courts.wa.gov/court_rules/pdf/GR/GA_GR_09_00_00.pdf) [https://perma.cc/D8DQ-TWTS] (last visited May 10, 2024).

(malpractice) insurance. Whether such insurance should be mandatory has been an ongoing debate among Washington’s lawyers since at least 1986.<sup>23</sup> This example illustrates the problem with the current lack of data during and after a regulatory reform.

In September 2017, WSBA formed the Mandatory Malpractice Insurance Task Force to examine the issue. After studying the problem, the task force released its recommendation in March 2019. After consideration, in May 2019, the WSBA Board of Governors voted not to recommend to the Supreme Court a requirement that lawyers maintain malpractice insurance.

In January 2020, the Ad Hoc Committee to Investigate Alternatives to Mandatory Malpractice Insurance was formed to examine viable alternatives to mandatory malpractice insurance. The committee decided to recommend reformation of the rule of professional conduct regarding communication to ensure lawyers disclose to clients their insurance status (uninsured or underinsured). This reform was approved by the Washington Supreme Court, and a reformed RPC 1.4(c) became effective in September 2021.

This reform occurred faster than the advertising rules reform, but it is important to note that although the insurance rule was widely and actively debated, the debate was not data-driven. This is not to say there was no data, but it was hard to extrapolate claim rates, sources, and other data from jurisdictions in the United States and Canada to Washington State. Even authors of one of the best sources of data about lawyer malpractice at the time noted, “It is important to understand the limits of the data sources described above and those that we will describe in later chapters. We have nothing clearly representative of the entire legal profession or the entire universe of LPL claims.”<sup>24</sup>

There is guidance that could help address these challenges. For instance, there are studies that focus on collecting data on specific issues. Examples of such studies include the “Washington State Civil Legal Needs Study” from 2003<sup>25</sup> and its subsequent update in 2015.<sup>26</sup> But two possible reasons for the persisting lack of data include the cost of conducting these studies and the overarching reluctance to collect data in case such collection violates RPC 1.6(a) regarding client confidentiality: “A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is

<sup>23</sup> Hugh Spitzer, *Put it in Writing, Washington Supreme Court Enhances Malpractice Insurance Disclosure to Clients*, 75 WASH. ST. B. NEWS 35, 36 (2021).

<sup>24</sup> HERBERT M. KRITZER & NEIL VIDMAR, WHEN LAWYERS SCREW UP: IMPROVING ACCESS TO JUSTICE FOR LEGAL MALPRACTICE VICTIMS 68 (2018).

<sup>25</sup> Task Force on Civil Equal Just. Funding, *Washington State Civil Legal Needs Study*, WASH. STATE SUP. CT. (Sept. 2003), <https://www.courts.wa.gov/newsinfo/content/taskforce/civillegalneeds.pdf> [<https://perma.cc/GG4F-N4NB>].

<sup>26</sup> Civ. Legal Needs Study Update Comm., *Civil Legal Needs Study Update*, WASH. STATE SUP. CT. (2015), [https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy\\_October2015\\_V21\\_Final10\\_14\\_15.pdf](https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf) [<https://perma.cc/7G26-E5EG>].

impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).”<sup>27</sup>

Even when a reform is implemented, the opportunity to examine the impact of the change is often missed. Rarely does anyone question or attempt to measure whether the regulatory reform or change had the desired effect. Since Washington RPC 1.4(c) was changed to require lawyers to disclose their insurance status to their clients, no study has been conducted as to whether more lawyers report and disclose. Did the reform affect the numbers of lawyers who had malpractice insurance, and if so, does this now better protect the public?

The POLB was also interested in whether anyone thought about how to measure whether a change impacted the access-to-justice gap. Here, the POLB observed a perception among many that measuring such data was too expensive and too hard. But the POLB felt any framework for reform would have to address this, as there had to be some effort to ensure the change’s results were as intended.

This is also true of various efforts that have as an underlying goal reducing the access-to-justice gap. Many groups are working hard to make affordable legal services available. Often, as appears to be the case with the LLLT licensure in Washington State, concerns about client confidentiality and the difficulty and costs of collecting and analyzing data continue to be obstacles to measuring program effectiveness.

Finally, while the regulatory reform process under GR 9 allows for public comment, and even for the public to appear at hearings, generally the role of the public is passive rather than active. They may be members of committees and voice concerns at any public forum about the reform, but they are seldom listened to in drafting or evaluating the regulatory reform—that work remains most impacted by the voice of legal professionals.

## II. THE NEED FOR INNOVATION IN THE MARKET FOR LEGAL SERVICES

In 2017, the POLB began thinking about the total market for legal services in Washington State to determine whether that market is being effectively regulated. The POLB was seeking an algorithm that could define the market. An algorithm is “a procedure for solving a mathematical problem (as of finding the greatest common divisor) in a

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<sup>27</sup> *RPC 1.6 Confidentiality of Information*, WASH. COURTS, [https://www.courts.wa.gov/court\\_rules/pdf/RPC/GA\\_RPC\\_01\\_06\\_00.pdf](https://www.courts.wa.gov/court_rules/pdf/RPC/GA_RPC_01_06_00.pdf) [<https://perma.cc/C9GY-MR95>] (last visited May 10, 2024).

finite number of steps that frequently involves repetition of an operation.”<sup>28</sup>

Here, the POLB realized it could not survey the market and would have to use a trial-and-error algorithm. In trial-and-error algorithms, the “amount by which a current approximation fails to satisfy the problem” is used to determine the next approximation.<sup>29</sup>

So, as a starting point, the POLB began to think of the total legal services market in Washington State as follows:

$$\begin{aligned} & \textit{Legal services market} \\ &= \sum \textit{auth. providers} + \textit{unauth. providers} \\ &+ \textit{unmet needs} \end{aligned}$$

*Fig. 1 An Algorithm for The Legal Services Market in Washington*

That is, the legal services market in Washington State is equal to the summation of all the authorized legal service providers, plus all of the unauthorized legal service providers (the met needs) plus the unmet needs of the public for legal services.<sup>30</sup>

#### *A. Authorized Legal Service Providers*

Authorized legal service providers in Washington State include Attorneys and Counselors at Law (lawyers), LLLTs, and Limited Practice Offices (LPOs). The Supreme Court authorizes these legal service providers to practice law under its plenary authority to regulate the practice of law in Washington, and it delegates some of its responsibility for administering their admission, licensing, and discipline to WSBA under GR 12.2.<sup>31</sup> Generally, the Supreme Court does not authorize entities to practice law in Washington.<sup>32</sup>

WSBA provides only limited demographic information about authorized legal service providers. For example, such statistics show the numbers of lawyers who work in solo practices or small firms versus

<sup>28</sup> *Algorithm*, MERRIAM WEBSTER.COM DICTIONARY, [https://www.merriam-webster.com/dictionary/algorithm#:~:text=Kids%20Definition-,algorithm,divisor\)%20or%20accomplishing%20a%20goal](https://www.merriam-webster.com/dictionary/algorithm#:~:text=Kids%20Definition-,algorithm,divisor)%20or%20accomplishing%20a%20goal) [https://perma.cc/3GEC-HLB2] (last visited Mar. 16, 2024).

<sup>29</sup> FRANCIS G. GUSTAVSON & C. WILLIAM GEAR, *ALGORITHMS IN BUSINESS A5*, (Robert L. Safran, Jay Schauer & Stephen B. Chernicoff eds., 1978).

<sup>30</sup> *See Summation Notation*, KHAN ACADEMEY, <https://www.khanacademy.org/math/ap-calculus-ab/ab-integration-new/ab-6-3/a/review-summation-notation> [https://perma.cc/P37U-CN9X] (last visited Mar. 16, 2024) (Describing how summation notation allows for the writing of a long sum of numbers in a simple expression. Here summation is useful as the total number of things to be added is difficult to measure or potentially infinite.).

<sup>31</sup> *GR 12 Regulation of the Practice of Law*, WASH. COURTS, [https://www.courts.wa.gov/court\\_rules/pdf/GR/GA\\_GR\\_12\\_00\\_00.pdf](https://www.courts.wa.gov/court_rules/pdf/GR/GA_GR_12_00_00.pdf) [https://perma.cc/2EFL-VQ6Q] (last visited May 10, 2024).

<sup>32</sup> *See Assurance of Discontinuance for LegalZoom.com*, THURSTON CNTY SUPER. CT., [https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/News/Press\\_Releases/2010/LegalZoomAOD.pdf](https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/News/Press_Releases/2010/LegalZoomAOD.pdf) [https://perma.cc/R62S-WNXU] (last visited Mar. 16, 2024).



large firms.<sup>33</sup> However, legal professionals are not mandated to provide such data, so the demographic data does not represent the entire universe of authorized practitioners in Washington State.

Under common law, an individual is also authorized to practice law on their own behalf as a pro se litigant. “A person ‘may appear and act in any court as his own attorney without threat of sanction for the unauthorized practice’ ... but a layperson’s right of self-representation applies ‘only if the layperson is acting solely on his own behalf’ with respect to his own legal rights and obligations.”<sup>34</sup> “However, a limited liability company (LLC) must be represented by a lawyer to litigate.”<sup>35</sup>

Pro se litigants introduce an interesting question when attempting to measure the market for legal services. Although they can be counted as authorized by common law, should they be counted as authorized or as unmet needs? Did they choose to represent themselves because they felt they were competent to do so, or were they effectively forced to represent themselves because they could not afford or find an authorized legal service provider willing to take their case?

### *B. Unauthorized Legal Service Providers*

It is harder to quantify the unauthorized legal service providers in Washington State. The unauthorized practice of law in Washington is defined by statute and court rules. The Revised Code of Washington (RCW) §2.48.180 defines the unlawful practice of law as a gross misdemeanor.<sup>36</sup> However, one has to look to Washington GR 24 for a definition of the practice of law, as well as a series of exceptions permitted by the Washington Supreme Court.<sup>37</sup> For example, under GR 24(b)(8), the “[s]ale of legal forms in any format” is not the unauthorized practice of law.<sup>38</sup> Nor, per GR 24(d), does anything in the rule “affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.”<sup>39</sup>

Each year, approximately 20 to 25 allegations of the unauthorized practice of law are reported to the POLB. Such reports detail the activities of paralegals, formerly authorized legal service

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<sup>33</sup> *WSBA Member Licensing Counts*, WASH. STATE BAR ASS’N (Mar. 4, 2024), [https://www.wsba.org/docs/default-source/licensing/membership-info-data/countdemo\\_20190801.pdf](https://www.wsba.org/docs/default-source/licensing/membership-info-data/countdemo_20190801.pdf) [https://perma.cc/TM7B-NLE4].

<sup>34</sup> *Dutch Vill. Mall v. Pelletti*, 162 Wn.2d 531, 536, 256 P.3d, 1251, 1253 (2011).

<sup>35</sup> *Id.* at 534.

<sup>36</sup> RCW 2.48.180.

<sup>37</sup> *GR 24 Definition of the Practice of Law*, WASH. COURTS, [https://www.courts.wa.gov/court\\_rules/pdf/GR/GA\\_GR\\_24\\_00\\_00.pdf](https://www.courts.wa.gov/court_rules/pdf/GR/GA_GR_24_00_00.pdf) [https://perma.cc/P45H-XZQ9] (last visited May 10, 2024).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

providers, Notario Publicos,<sup>40</sup> and other people who have allegedly provided legal advice pertaining to another individual's legal rights, responsibilities, and the facts of a situation that may constitute contravention of Washington unlawful practice of law statute and General Rule 24. Approximately half of the reports are forwarded by the POLB to county sheriffs, prosecutors, the Attorney General Office, and other enforcement agencies for further investigation.

However, the POLB has also observed a significant number of entities providing legal services to legal professionals and consumers, generally as online legal service providers. The POLB has chosen to divide these legal service providers into three categories: services targeting people authorized to provide legal services, services targeting consumers, and services targeting both.

For example, the POLB categorized online legal service providers targeting products to people authorized to provide legal services as including traditional providers such as Thomson Reuters Westlaw and LexisNexis. They also include newcomers to this market such as Microsoft, which offers eDiscovery as part of its Microsoft 365 online services.<sup>41</sup> The POLB does not actively monitor such legal services as it presumes such tools are used by trained legal professionals, who must supervise their use under the RPCs. However, recent cases of lawyers filing briefs citing non-existent cases recommended by large-language model AI tools such as Chat-GPT may indicate a need for closer observation of how lawyers use such services.<sup>42</sup>

Online legal services that appear to target consumers—although not limited specifically to consumers in Washington State—include services that offer consumers assistance with divorce, immigration, handling of misdemeanors, and even filing of arbitration cases. The POLB does not have any information or data regarding the extent to which Washingtonians use such online legal services for their legal matters, whether these services are covered by an exemption to GR 24, or whether consumers are harmed by such services. The internet, which is the basic underlying platform for the delivery of these services, provides such services to people irrespective of state lines.

Some online legal service providers deliver services to both legal professionals and consumers. For example, many online legal service directories, provide services to lawyers to advertise and promote their services, and services to consumers to help them find legal help and

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<sup>40</sup> Marcy Tiberio, *What is a Notario Publico?*, AMERICAN ASS'N OF NOTARIES (Aug. 22, 2016), <https://www.notarypublicstamps.com/articles/what-is-a-notario-publico/> [<https://perma.cc/ZV7S-YLF6>].

<sup>41</sup> *Microsoft Purview eDiscovery Solutions*, MICROSOFT PURVIEW (Sept. 14 2023), <https://learn.microsoft.com/en-us/purview/ediscovery> [<https://perma.cc/WNP9-B4QH>].

<sup>42</sup> See generally Dan Mangan, *Judge Sanctions Lawyers for Brief Written by A.I with Fake Citations*, CNBC (Jun. 22, 2023, 2:34 PM) <https://www.cnbc.com/2023/06/22/judge-sanctions-lawyers-whose-ai-written-filing-contained-fake-citations.html#:~:text=A%20New%20York%20federal%20judge%20on%20Thursday%20sanctioned%20lawyers%20who,court%20opinions%20and%20fake%20quotes> [<https://perma.cc/Z3HC-LY6B>].

obtain general information about the law (the last of which could be a valid exception to the practice of law under GR 24(d)).

### C. *Unmet Legal Needs*

The POLB proposes that any attempt to provide a complete summation of the legal services market must account for not only the authorized and unauthorized legal service providers, but also those people who are unable to get their legal needs met. For example, this group could include individuals who choose to represent themselves as pro se litigants, whether or not their efforts achieve justice, and many more individuals who receive no assistance whatsoever for their legal needs.<sup>43</sup>

### D. *Spontaneous Deregulation*

Apart from looking at the players in the market of legal services in Washington State, the POLB has observed that this market has an interesting anomaly. On the one hand, there are consumers who do not appear to be able to find the legal services they need at a price they are willing or able to pay. Again, this is evidenced by the Washington Courts Civil Legal Needs study.<sup>44</sup>

On the other hand, many authorized legal professionals are not fully utilized. A legal professional's utilization rate calculates or measures how many hours an individual legal professional puts towards revenue-generating work.<sup>45</sup> "The utilization rate for Washington law firms (which includes both lawyers and non-lawyers) is 34%."<sup>46</sup> In contrast, "[m]ost consultancies will expect you to bill 70-95% of your 40 hours per week, depending upon the industry and your level of seniority."<sup>47</sup> This likely means that Washington legal professionals either are extremely inefficient or cannot find consumers willing to pay the price the legal professional is charging for their services.

This type of market mismatch, where consumers cannot find a service of a suitable quality, price, or time is an attribute of a market that is ripe for spontaneous disruption. According to authors of a Harvard Business Review article, spontaneous disruption occurs when "[m]any successful platform businesses—think Airbnb, Uber, and YouTube—

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<sup>43</sup> Civ. Legal Needs Study Update Comm., *supra* note 26.

<sup>44</sup> KRITZER & VIDMAR, *supra* Note 24; Task Force on Civ. Equal Just. Funding, *supra* note 25.

<sup>45</sup> "How Much Should I Charge as a Lawyer in Washington?", CLIO, <https://www.clio.com/resources/legal-trends/compare-lawyer-rates/wa/> [<https://perma.cc/P4C6-XQXF>] (last visited Mar. 16, 2024).

<sup>46</sup> *Id.*

<sup>47</sup> *Employee Billable Utilization at Professional Services Organizations Worldwide from 2020 to 2021, by Industry Segment*, STATISTA (Sept. 5, 2022), <https://www.statista.com/statistics/1013412/employable-billable-utilization-professional-services-organizations-industry-segment/> [<https://perma.cc/JS5Y-YRRK>].

ignore laws and regulations that appear to preclude their approach.”<sup>48</sup> According to the authors of an article on spontaneous deregulation in the Harvard Business Review, “[a] striking variety of firms face potential threats from spontaneous private deregulation. For example, many lawyers perform services that don’t really require the personal engagement of an expensive trained professional. Consider routine real estate transactions, uncontested divorces, and small-business contracts.”<sup>49</sup>

This examination of the market for legal services led the POLB to begin to think about how a framework for timely legal regulatory reform might complement the sandboxes being proposed in other jurisdictions.

#### *E. How Much Regulation is Enough Regulation?*

When it comes to the regulation of legal services in Washington State, the Washington Constitution, Article 4, § 1 provides “The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide.”<sup>50</sup> This judicial power vests in the Washington Supreme Court “an exclusive, inherent power to admit, enroll, discipline, and disbar attorneys.”<sup>51</sup> This exclusive power over legal professionals is necessary “for the protection of the court, the proper administration of justice, the dignity and purity of the profession, and for the public good and the protection of clients”<sup>52</sup>

The practice of law has long recognized legal professionals, in particular lawyers, as members of one of the “learned” professions. Practicing such learned professions generally requires a license or authorization from a state’s executive branch or the courts. It has been considered necessary to limit membership in learned professions to protect the public because “[w]hen a person engages the services of a doctor, a dentist, or an optometrist, he is entering a realm of which he knows practically nothing. Of necessity, he must rely upon the skill and training of the expert to whom he goes.”<sup>53</sup> This public policy originated in an earlier time, as evidenced by the gendered language such as “he,” and long before the internet when knowledge about medicine or the law for example, was tightly held within the profession. This raises the question as to whether in today’s online world consumers need the same degree of protection, or whether the specialized treatment of these learned professions has become too patronizing, paternalistic, and condescending.

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<sup>48</sup> Benjamin Edelman & Damien Geradin, *Spontaneous Deregulation: How to Compete with Platforms That Ignore the Rules*, HARV. BUS. REV. (Apr. 2016), <https://hbr.org/2016/04/spontaneous-deregulation> [<https://prema.cc/9RSU-PUGL>].

<sup>49</sup> *Id.*

<sup>50</sup> WASH. CONST. art. § 1.

<sup>51</sup> Short v. Demopolis, 103 Wn.2d 52, 62, 691 P.2d 163, 169 (1984).

<sup>52</sup> *Id.*

<sup>53</sup> State v. Boren, 36 Wn.2d 522, 525, 219 P.2d 566, 568 (1950).

The Washington Supreme Court has also held that “[t]he practice of the law is not a business that is open to a commercial corporation.”<sup>54</sup> This sentiment continues to be reflected in statutes<sup>55</sup> and RPC 5.4 and 5.5<sup>56</sup> that prohibit non-lawyer investment in a law firm or splitting fees for legal services with non-lawyers. Many of these prohibitions have been subject to study for reform under the concept of alternative business structures, with the Arizona Supreme Court having decided to strike its RPC 5.4 so that “[n]onlawyers may partner with lawyers, “[n]onlawyers may own, have an economic interest in, manage, or make decisions in, an Alternative Business Structure that provides legal services,” and “[l]awyers will be permitted to split fees.”<sup>57</sup> Similarly, Utah has amended several of its RPCs for lawyers associated with approved entities participating in its sandbox.<sup>58</sup>

To answer the question of how much regulation is enough, the POLB conceived a framework to help people promoting legal regulatory reform focus on truly protecting the public with just enough regulation at the right time, versus over-defining how legal professionals do their work.

#### *F. Protecting the four C’s + IOLTA*

Although many regulations and rules may be ripe for reform, the POLB heard from many stakeholders that there is a core set of RPCs that should only be changed—if ever—after the highest level of scrutiny and evaluation. The POLB came to refer to these core rules as the four C’s + IOLTA. The four Cs are: competence, conflicts, confidentiality, and communication. IOLTA refers to an interest in lawyers' trust accounts, and in this case, it is a proxy for the requirement to protect and hold

<sup>54</sup> *State v. Merchants' Protective Corp.*, 105 Wash. 12, 17, 177 P. 694 696 (1919).

<sup>55</sup> RCW 2.48.180(2).

<sup>56</sup> See generally *RPC 5.4 Professional Independence of a Lawyer*, WASH. COURTS, [https://www.courts.wa.gov/court\\_rules/pdf/RPC/GA\\_RPC\\_05\\_04\\_00.pdf](https://www.courts.wa.gov/court_rules/pdf/RPC/GA_RPC_05_04_00.pdf) [https://perma.cc/7CUC-4R4Q] (last visited May 10, 2024) (RPC 5.4(a) prohibiting fee-splitting with a non-attorney and 5.4(b) prohibiting formation of a partnership with a nonlawyer); *RPC 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law*, WASH. COURTS, [https://www.courts.wa.gov/court\\_rules/pdf/RPC/GA\\_RPC\\_05\\_05\\_00.pdf](https://www.courts.wa.gov/court_rules/pdf/RPC/GA_RPC_05_05_00.pdf) [https://perma.cc/YSW5-ANFM] (last visited May 10, 2024) (5.5(a) prohibiting a lawyer from helping a nonlawyer practice law), and *RPC 1.5 Fees*, WASH. COURTS, [HTTPS://WWW.COURTS.WA.GOV/COURT\\_RULES/PDF/RPC/GA\\_RPC\\_01\\_05\\_00.PDF](https://www.courts.wa.gov/court_rules/pdf/RPC/GA_RPC_01_05_00.pdf) [HTTPS://PERMA.CC/6A2J-2LJN] (1.5(e) on fee splitting between lawyers in different firms).

<sup>57</sup> *Alternative Business Structures (ABS) Questions & Answers*, ARIZ. JUDICIAL BRANCH, <https://www.azcourts.gov/accesstolegalservices/Questions-and-Answers/abs> [https://perma.cc/MM43-5FZS] (last visited Mar. 16, 2024) (quote under “The Court unanimously adopted the elimination of Rule 5.4 What does this allow?”).

<sup>58</sup> See, e.g., *Rule 5.4. Professional Independence of a Lawyer*, UTAH STATE COURTS, [https://legacy.utcourts.gov/rules/view.php?type=ucja&rule=13-5.4#:~:text=Rule%205.4.,Professional%20Independence%20of%20a%20Lawyer.&text=\(b\)A%20lawyer%20may%20permit,render%20legal%20services%20for%20another.&text=\(4\)%20the%20lawyer%20or%20law,fees%20from%20an%20existing%20client.](https://legacy.utcourts.gov/rules/view.php?type=ucja&rule=13-5.4#:~:text=Rule%205.4.,Professional%20Independence%20of%20a%20Lawyer.&text=(b)A%20lawyer%20may%20permit,render%20legal%20services%20for%20another.&text=(4)%20the%20lawyer%20or%20law,fees%20from%20an%20existing%20client.) [https://perma.cc/DZ4T-FGKP] (Rule 5.4B); see also *Utah Court Rules Approved*, UTAH COURTS (Jan. 28, 2021), <https://legacy.utcourts.gov/utc/rules-approved/category/rpc05-04/> [https://perma.cc/7PTM-KHLM].

client assets and property separately from a legal professional's own property.

Of course, any legal service should be performed competently. All legal service providers should apply the correct legal principles and laws to the facts and circumstances in a timely manner. As stated in the current Washington RPC regarding competency, “[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”<sup>59</sup> Comment 8 to this rule speaks to the need to stay abreast of technological changes to remain competent. Therefore, any framework should ensure that a rule or regulation being reformed still results in competent legal services.

As important as competency is the need to consider conflicts, although conflicts in the eyes of the public may be more nuanced. Here, the Washington RPC regarding conflicts states in part: “[a] lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client.”<sup>60</sup> Conflicts arise in many matters, such as with a legal service designed to help people obtain a divorce. Although both parties might want the divorce and want to keep it as amicable as possible, the reality is that the parties in a divorce may not share the same interests. Without realizing it, they may be the very definition of adverse parties. So, should a legal service provider be able to represent both parties even with a waiver of the conflict? And what constitutes an informed waiver ensuring the parties understand the conflict and the potential consequences of the conflict? Any framework should ensure that a rule or regulation being reformed using the framework must result in a legal service that does not create or ignore impermissible conflicts of interest.

Confidentiality may be the C of most concern. It has been argued that data is the new oil. Information is driving a rush to monetize information as organizations learn to leverage data.<sup>61</sup> Organizations are utilizing data to know more about who their customers are and what they need. For example, a data analyst at Target Corporation analyzed data in a manner that allowed assignment of “a ‘pregnancy prediction’ score. More important, he could also estimate her due date to within a small

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<sup>59</sup> *RPC 1.1 Competence*, WASH. COURTS, [https://www.courts.wa.gov/court\\_rules/pdf/RPC/GA\\_RPC\\_01\\_01\\_00.pdf](https://www.courts.wa.gov/court_rules/pdf/RPC/GA_RPC_01_01_00.pdf) [https://perma.cc/JUJ9-MGZ9] (last visited Mar. 16, 2024).

<sup>60</sup> *RPC 1.7 Conflict of Interest: Current Clients*, WASH. COURTS, [https://www.courts.wa.gov/court\\_rules/pdf/RPC/GA\\_RPC\\_01\\_07\\_00.pdf](https://www.courts.wa.gov/court_rules/pdf/RPC/GA_RPC_01_07_00.pdf) [https://perma.cc/RVP5-4V2D] (last visited Mar. 16, 2024).

<sup>61</sup> *The World's Most Valuable Resource is No Longer Oil, But Data*, THE ECONOMIST (May 6, 2017), [https://www.economist.com/leaders/2017/05/06/the-worlds-most-valuable-resource-is-no-longer-oil-but-data?utm\\_medium=cpc.adword.pd&utm\\_source=google&ppccampaignID=17210591673&ppcadID=&utm\\_campaign=a.22brand\\_pmax&utm\\_content=conversion.direct-response.anonymous&gad\\_source=1&gclid=EAIaIQobChMIvOzplavJgwMVKR-tBh08XwB1EAAAYASAAEgLIwPD\\_BwE&gclsrc=aw.ds](https://www.economist.com/leaders/2017/05/06/the-worlds-most-valuable-resource-is-no-longer-oil-but-data?utm_medium=cpc.adword.pd&utm_source=google&ppccampaignID=17210591673&ppcadID=&utm_campaign=a.22brand_pmax&utm_content=conversion.direct-response.anonymous&gad_source=1&gclid=EAIaIQobChMIvOzplavJgwMVKR-tBh08XwB1EAAAYASAAEgLIwPD_BwE&gclsrc=aw.ds) [https://perma.cc/AW6Z-VEUS].

window, so that Target could send coupons timed to very specific stages of the pregnancy.”<sup>62</sup>

Compared to most other service providers, legal service providers are stuck in the world of small data. This is likely due to the rule of professional conduct on confidentiality, which states: “A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).”<sup>63</sup> Paragraph (b) includes eight instances where a lawyer might reasonably believe they must break the bond of confidentiality, such as “to prevent reasonably certain death or substantial bodily harm”; “to prevent the client from committing a crime”; “or to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client’s commission of a crime or fraud in furtherance of which the client has used the lawyer’s services.”<sup>64</sup> Nothing in this rule, including paragraph (b) would appear to allow a legal service provider to sell or share data with a third-party who would mine such data in a manner similar to Target to discover other legal or non-legal services the client might need.

Anonymizing, or removing personally identifiable information from the data, may be a partial solution. However, there are problems with anonymizing data. For example, thoughtless anonymization can be easily undone.<sup>65</sup> Nevertheless, legal service providers are likely starting to think about how to preserve client confidentiality and attorney client privilege while extracting data to provide better representation. And others may be looking at ways to monetize data to reduce the costs of legal service.

The fourth C is communication. Lack of communication is an extremely common RPC violation for legal professionals in Washington.<sup>66</sup> Under Washington’s RPC regarding communications:

A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client’s informed consent, as defined in Rule 1.0A(e), is required by these Rules; (2) reasonably

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<sup>62</sup> Charles Duhigg, *How Companies Learn Your Secrets*, NEW YORK TIMES (Feb. 16, 2012), <https://www.nytimes.com/2012/02/19/magazine/shopping-habits.html>.

<sup>63</sup> *RPC 1.6 Confidentiality of Information*, WASH. COURTS, [https://www.courts.wa.gov/court\\_rules/pdf/RPC/GA\\_RPC\\_01\\_06\\_00.pdf](https://www.courts.wa.gov/court_rules/pdf/RPC/GA_RPC_01_06_00.pdf) [https://perma.cc/F63E-5989] (last visited May 10, 2024).

<sup>64</sup> *Id.*

<sup>65</sup> Bruce Schneier, *Why ‘Anonymous’ Data Sometimes Isn’t*, WIRED (Dec. 12, 2007, 9:00 PM), <https://www.wired.com/2007/12/why-anonymous-data-sometimes-isnt/> [https://perma.cc/UN5U-TALS].

<sup>66</sup> *Washington Discipline System 2022 Annual Report* 18, WASH. STATE BAR ASS’N (2022), <https://www.wsba.org/docs/default-source/licensing/discipline/2022-discipline-system-annual-report.pdf?sfvrsn=2d3b12f1> [https://perma.cc/DN4N-P7AH].

consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.<sup>67</sup>

Lack of communication may result from heavy workloads, difficulty explaining complex legal matters in an understandable way, or the fear of presenting bad news to the client. Legal service providers must overcome these issues to ensure clients are aware of the state of their matters, and adequately informed to make all the key decisions.

Finally, legal professionals must safeguard clients' property.<sup>68</sup> This includes the duty to hold money or funds that belong to the client and third parties in a trust account.<sup>69</sup> A governing principle of the IOLTA trust-account ethics rules is legal professionals must segregate and protect "client and third-person funds and property."<sup>70</sup> Problems with lawyer trust accounts make up the third most common violation found in legal professional discipline in Washington.<sup>71</sup>

In designing the framework, and even with focusing on the four C's + IOLTA, the POLB is not implying a hierarchy of RPCs. Rather, it is attempting to make a framework that might allow for new types of legal services, while at the same time attempting to ensure a level playing field. Rules that apply to people providing legal services should generally apply to other forms of legal services, including online legal service providers. So, if a rule was found to be necessary for protection of the public if provided by a person, the rule would necessarily apply when the service is provided by another legal service provider, including online service providers. And vice versa for a rule that is found to be unnecessary. This is why the POLB began to keep the Four Cs and IOLTA in mind with the framework. This is not to say that these rules can never be reformed using the framework, it is just that such reformation will require more stringent examination and testing, with truly, valid data-backed tests to ensure reform accomplishes the intended goals while protecting the public.

### III. THE FRAMEWORK

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<sup>67</sup>*RPC 1.4 Communication*, WASH. COURTS, [https://www.courts.wa.gov/court\\_rules/pdf/RPC/GA\\_RPC\\_01\\_04\\_00.pdf](https://www.courts.wa.gov/court_rules/pdf/RPC/GA_RPC_01_04_00.pdf) [<https://perma.cc/9VNA-VTPL>] (last visited Mar. 16, 2024).

<sup>68</sup>*RPC 1.15A Safeguarding Property*, WASH. COURTS, [https://www.courts.wa.gov/court\\_rules/pdf/RPC/GA\\_RPC\\_01\\_15A\\_00.pdf](https://www.courts.wa.gov/court_rules/pdf/RPC/GA_RPC_01_15A_00.pdf) [<https://perma.cc/5R4D-6X9A>] (last visited Mar. 16, 2024).

<sup>69</sup>*RPC 1.15B Required Trust Account Records*, WASH. COURTS, [https://www.courts.wa.gov/court\\_rules/pdf/RPC/GA\\_RPC\\_01\\_15B\\_00.pdf](https://www.courts.wa.gov/court_rules/pdf/RPC/GA_RPC_01_15B_00.pdf) [<https://perma.cc/AY6Q-2WPA>] (last visited Mar. 16, 2024).

<sup>70</sup>TOM ANDREWS ET. AL., *THE LAW OF LAWYERING IN WASHINGTON* 9-27 (2012).

<sup>71</sup>RPC 1.1, *supra* note 59.



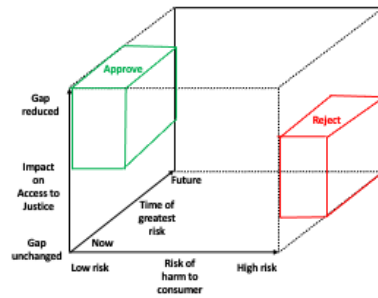
### *A. Data-driven Regulatory Reform*

The POLB was looking for a way to move from reforming legal regulations and rules based on expert but largely anecdotal data, to an expert but largely data-driven model. Such a model would also focus on measuring the risk to the public from potential unintended consequences of the reformed rule and the benefits.

Considering ways to measure both risks and benefits originally led to a two-dimensional model for the framework. It compared risk on the x-axis, and benefits on the y-axis. Having watched its sibling LLLT Board struggle to quantitatively measure and convincingly communicate to program opponents the objective benefits of its innovative program, the POLB decided to measure benefits based on whether the change reduced the access-to-justice gap. So, the next change to the model was making the y-axis a measurement of impact (positive, negative, or none) on the access-to-justice gap rather than a generic benefit.

Observations of and discussions with the Utah Office of Legal Services Innovation, which was implementing its sandbox for legal regulatory reform, showed that risk occurred and had to be measured not only in the present but also in the future. Consider for example, a legal service that drafts a will. A will is drafted, reviewed with the client, and signed in the present, allowing for an estimation of the risks at the time of drafting. However, the will is likely put in a place for safekeeping and not thought about for some time. During that time, laws and the client's situation may change. The will, though, remains as originally written. All the while, there is a growing risk that this document no longer adequately represents the situation and wishes of the client for their estate. It is not until such a will is probated that these new risks come to light or fruition.

This led the POLB to add a third z-axis to the model. This axis is to remind users of the framework to estimate the risk into the future. This three-dimensional model is shown in Fig. 2.



*Fig. 2 The 3-D Regulatory Reform Framework*

Before using the framework, it is necessary to use the scientific method to create a hypothesis about the desired reform to the legal regulation or rule. From this hypothesis, tests are designed to measure risks, costs, and benefits (in the POLB proposed framework this would be access-to-justice impact). Depending on the type of regulation being reformed, processes that create the appropriate guardrails (a lab or sandbox) should be built around the framework to monitor the process and collect data on an ongoing basis. This leads to the next problem the framework must address: how to adequately estimate risk.

### *B. Measuring Risk Generally*

Risk is generally defined as, “merely the chance of incurring an injury or a loss, like the chances a passenger will die when flying in a plane or that a homemaker will lose a home in a fire.”<sup>72</sup> Since many of the legal services that might be evaluated using the framework would likely be technology-based, the framework must be capable of estimating technological risks, which are risks that “arise specifically from the use and operation of human-made instruments or systems.”<sup>73</sup>

In measuring risk, the POLB was aware of a bias in favor of change that can affect these processes. “[E]xpert risk assessment tends to value change more than continuity, short-term safety over persistent, longer-term impacts on environment and quality of life, and economic benefits to developers more than justice to other members of society.”<sup>74</sup> This bias will need to be guarded against.

It is quite feasible that there are different models to estimate risk. For example, the Utah Office of Legal Innovation’s sandbox identified

<sup>72</sup> SHIELA JASANOFF, *THE ETHICS OF INVENTION: TECHNOLOGY AND THE HUMAN FUTURE* 33 (Kwame Anthony Appiah ed., 2016).

<sup>73</sup> *Id.* at 34.

<sup>74</sup> *Id.* at 36.

three categories of consumer harm: the consumer achieves an inaccurate or inappropriate legal result, the consumer fails to exercise legal rights through ignorance or bad advice, or the consumer purchases an unnecessary or inappropriate legal service.<sup>75</sup>

Wanting to assign more precise values to risk, the POLB found a model for evaluating legal risk in a publication from Boise State on Business Law.<sup>76</sup> This model creates a matrix comparing the likelihood of an event, categorized as low, medium, or high, against the severity of outcome measured as slight, manageable, or severe.<sup>77</sup> The POLB cannot state who invented this matrix. It may have started in the U.S. Airforce, but many people and organizations have adapted this matrix, by extending the number of cells in the matrix or assigning numbers and colors to help assess risk.<sup>78</sup>

The POLB felt a 3x3 matrix would be sufficient and added values and colors to its risk matrix to help assign a data value to the estimation of risk. The resulting matrix is shown in Fig. 3.

		Harm		
		Negligible (1)	Manageable (2)	Catastrophic (3)
Likelihood	All most certain (3)	3	6	9
	Possible (2)	2	4	6
	Very Unlikely (1)	1	2	3

*Fig. 3 A 3x3Risk Analysis Matrix*

A low score (1, 2 green) does not necessarily mean no- or low-risk, but rather, that only a few risk mitigations might be needed to manage the risk. Similarly, a high-risk score (6, 9 red) does not mean the

<sup>75</sup> *What We Do*, UTAH OFFICE OF LEGAL SERVICES INNOVATIONS, <https://utahinnovationoffice.org/what-we-do/> [https://perma.cc/8ZND-BHZY] (last visited Mar. 7, 2024).

<sup>76</sup> JEFF LINGWALL, BUSINESS LAW: A RISK MANAGEMENT APPROACH 5-14 (Boise State University, 2022).

<sup>77</sup> *Id.*

<sup>78</sup> Patricia Guevara, *A Guide to Understanding 5X5 Risk Matrix*, SAFETYCULTURE (Feb. 29, 2024), <https://safetyculture.com/topics/risk-assessment/5x5-risk-matrix/> [perma.cc/XQ8R-KMCQ].

risk is too high, but rather, it means that more and stronger risk mitigation may be needed.

### C. *Measuring Current Risks*

It will be hard, if not impossible to build a single matrix to assess the risk for the proposed reform. Instead, the framework will work best when first, a list of risks is compiled; second, each risk is scored separately; third, a summation of all the risks is calculated; and lastly the sum or estimate of total risk is applied to the framework. There is a benefit here of forcing the reform proposers to determine a complete picture of the current risks.

$$\sum_{i=1}^n \text{current risk } i = \text{current risk } 1 + \text{current risk } 2 + \dots + \text{current risk } n$$

*Fig. 4 Summation of all the current risks*

Current risks in regulatory reform evaluation could include a breach of confidential information, applying the wrong law, or missing a court date or statutorily imposed deadline. Some individual risks may be common to many regulatory reform efforts. Others will be unique. The value of the framework and the risk matrix is that it forces people proposing the reform to evaluate the impact and unintended consequences and think about what mitigations can help manage the risk, particularly the risk of harm to consumers of the legal service.

### D. *Measuring Future Risks*

“As we know, there are known knowns; there are things we know we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns—the ones we don’t know we don’t know.”<sup>79</sup>

In general, the longer a developer waits to fix a problem in software, the costlier in time and money it is to fix.<sup>80</sup> The POLB believes this is true with harms that arise in regulatory reform, and that mitigating the harm in the future may be significantly harder and more expensive than mitigating it today. Therefore, the framework provides the opportunity to try to identify future harms—the unknown unknowns—as soon as possible in the reform process. The summation algorithm for future risk remains fundamentally the same as present risk and is shown in Fig. 5.

<sup>79</sup> David A. Graham, *Rumsfeld's Knowns and Unknowns: The Intellectual History of a Quip*, THE ATLANTIC (Mar. 27, 2014), <https://www.theatlantic.com/politics/archive/2014/03/rumsfelds-knowns-and-unknowns-the-intellectual-history-of-a-quip/359719> [perma.cc//2AU3-8NFA].

<sup>80</sup> JOEL SPOLSKY, JOEL ON SOFTWARE: AND ON DIVERSE AND OCCAISIONALLY RELATED MATTERS THAT WILL PROVE OF INTEREST TO SOFTWARE DEVELOPERS, DESIGNERS, AND MANAGERS, AND TO THOSE WHO, WHETHER BY GOOD FORTUNE OR ILL LUCK, WORK WITH THEM IN SOME CAPACITY 22 (Apress, 2004).

$$\sum_{i=1}^n \text{future risk } i = \text{future risk } 1 + \text{future risk } 2 + \dots + \text{future risk } n$$

*Fig. 5 Summation of the future risks*

Here, while the exercise is fundamentally the same, it is also harder. The considerations will be about trying to convert the unknown unknowns to known unknowns. Risks may include unforeseen changes in statutes or other laws, changed social norms, and changed client circumstances, as well as technological obsolescence and the introduction of new technologies.

Consider again the case of a will for a client drafted with the current statutes in mind. The will is drafted based on the individual's situation including health and finances at a particular point in time. It attempts to anticipate what might be in the future. But hopefully it does not come into effect until sometime in the future when any or all such considerations may have changed or unanticipated events may have occurred. The risk that something about the will could be problematic in the future is high. It is uncertain that mitigations can be created now for future risks or that a legal service be designed to monitor for such changes and redraft proposed changes to improve the will over time and ensure it remains a competent document.

#### IV. MEASURING BENEFITS

While designing the framework for data-driven legal regulatory reform, the POLB was consumed with the challenge of measuring benefits. The POLB did not want to use the “if you build it they will come” approach to measure reform benefits, and the POLB was also wary of assuming benefits exist in the absence of harm.<sup>81</sup> Perhaps this was because the POLB was aware of continued and growing pushback against the LLLT licensure, with opponents pointing out the costs of the program versus its numeric results (number of technicians), combined with the lack of a metric to determine the impact of the LLLT license. The POLB felt the need to build into its model a method to measure benefits.

The most interesting and valuable regulatory reform projects in the POLB's opinion would be those that reduce the access-to-justice gap. It is arguable that the LLLT licensure reduces the access to justice gap in Washington because it increased the number of legal service providers,

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<sup>81</sup> Martin Lassen, *If You Build It, They Will Come – Meaning, Origin & Usage (10+ Examples)*, GRAMMARHOW, <https://grammarhow.com/if-you-build-it-they-will-come-meaning/> [https://perma.cc/BGN7-UUTL] (last visited February 27, 2024).

and such providers may charge less for their services and work with low- and moderate-income communities most impacted by the gap. However, this argument is largely anecdotal as it does not address whether there is data to prove such an assertion.<sup>82</sup>

Here, the POLB punted when creating the framework. It did not try to develop its own instrument to measure changes to the access to justice gap. It chose to simply incorporate a tool developed for the National Center for State Courts to:

(1) assess the magnitude of an access problem that could be solved by a specific capability; (2) identify strategic planning about hurdles and barriers that must be surmounted or reduced to achieve program objectives; and (3) prioritize the tasks that must be performed and the capabilities that must be implemented to close the targeted gaps.<sup>83</sup>

The tool works by essentially filtering down data from the target population for the reform to attempt to calculate the number of people helped by the reform.

### *Targeted | Accessible | Found | Recieved Benefits | Had Positive Outcome*

*Fig. 6 A tool for accessing Access to Justice impact.*

The targeted population might start with the Washington State census data of people over 18 who might benefit from the regulatory reform. This could be filtered down to the number of people who can access the reform, such as the number of the target population with broadband, then further filtered down to the number of people with broadband who find the reform, then those who use the reform, and, finally, the number who benefited from the reform.

As alluded to earlier, in this framework the use of this tool is not mandatory. What is mandatory is that if the proposers of a regulatory reform do not use this algorithm for measuring access-to-justice, they substitute their own methodology or data, with the point being that some analysis of benefits needs to be performed before and after the regulatory reform is enacted. For example, a 3x3 matrix could also be adapted to attempt to measure the impact of access-to-justice by comparing the

<sup>82</sup> The National Center of State Courts “was in the midst of a full-scale evaluation of the [Limited License Legal Technician] program..., but that evaluation came to a halt with the sunseting” of the program by the Washington Supreme Court. See Jason Solomon & Noelle Smith, *The Surprising Success of Washington State’s Limited License Legal Technician Program*, STANFORD CENTER ON THE LEGAL PROFESSION (Apr. 2021) <https://law.stanford.edu/publications/the-surprising-success-of-washington-states-limited-license-legal-technician-program/> [https://perma.cc/8QFJ-NEPQ].

<sup>83</sup> Thomas M. Clarke & Paula Hannaford-Agor, *Measuring the Impact of Access to Justice Programs: An Assessment Tool for Funders and Policy Makers*, NATIONAL CENTER FOR STATE COURTS (2020), <https://nsc.contentdm.oclc.org/digital/collection/accessfair/id/859> [https://perma.cc/3CAV-S5E3].

probability of an effect on a particular group (either above or below the poverty line), with the degree of such an impact.

## V. CONCLUSION

The POLB hopes that people and organizations involved in legal reform will examine this data-driven reform framework and consider adopting and adapting it to help with their regulatory reform efforts. Additionally, the POLB hopes that such reformers will appreciate that the goal of the framework is not to regulate how reform is enacted, but rather, the goal is a flexible approach that will be modified and improved as it is used, and the improvements will be turned back to the community of reform advocates to benefit future reform efforts. It is also hoped that the use of this, and additional frameworks, will lead to collection of data about reforms and whether they achieve the intended goals with minimal unintended consequences, as well as more timely reforms that improve access-to-justice.

# THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE RECOMMENDATION OF  
THE PRACTICE OF LAW BOARD OF [ENTITY] FOR  
PARTICIPATION IN THE PILOT PROJECT FOR  
ENTITY REGULATION

ORDER FOR AUTHORIZATION TO  
PRACTICE LAW

No.

WHEREAS, Pursuant to this Court's Order No. 25700-B-721, the Washington State Bar Association (WSBA) and the Practice of Law Board (Board) have filed a recommendation for [ENTITY] to participate in the Pilot Project for Entity Regulation and be authorized to practice law subject to certain restrictions;

WHEREAS, [ENTITY] [INSERT BRIEF BACKGROUND INFORMATION ABOUT ENTITY'S SERVICE MODEL]

WHEREAS, [ENTITY] proposes modifications or exemptions to the following regulatory rules governing the practice of law: [INSERT RULES AND REGULATORY REFORM MODEL].

WHEREAS, The WSBA and the Board have assessed the risk of harm [ENTITY] presented by [ENTITY]'s services and have determined that the public protection measures [ENTITY] will have in place are sufficient to mitigate the risk of harm.

NOW, THEREFORE, pursuant to this Court's inherent power to regulate the practice of law and consistent with Order 25700-B-721, it is hereby ORDERED:

[ENTITY] is authorized to temporarily practice law within the pilot project for entity regulation (hereinafter "pilot project") subject to the restrictions outlined below:

- 1. Authority to Offer Legal Services:** [ENTITY] is authorized to provide legal services through the following models:



[Insert business models, *i.e.*, nonlawyer ownership of entity, profit sharing with nonlawyers, software platform, etc.]

- 2. Limited Regulatory Reform:** The following rules and laws governing the practice of law are modified for [ENTITY]'s test of regulatory reform and such modifications apply only to the legal services provided under the authority of this order:

[list rule modifications and exemptions]

- 3. Consumer Protection Measures:** [ENTITY] shall have the following measures in place for protection of the public:

[list measures]

- 4. Permitted Legal Service Areas:** [ENTITY] may provide legal services under this authorization order only in the following areas:

[List all service areas, *i.e.*, expungement, employment, immigration, public benefits, etc.]

- 5. Handling of Client Funds and Property:** [ENTITY] shall safeguard and handle funds and property of clients or third persons, and maintain trust account records, in the same manner and under the same conditions as a lawyer would under Rules 1.15A & B of the Washington Rules of Professional Conduct for lawyers regardless of how or by whom the legal services are provided. Individual licensed legal professionals employed by the [ENTITY] shall continue to comply with client trust account requirements under existing rules of professional conduct and disciplinary rules applicable to the licensed legal professional. .

- 6. Compliance Officer:** [NAME] shall be [ENTITY]'s compliance officer and primary contact. [NAME] shall ensure [ENTITY]'s compliance with this Order, Order No. 25700-B-721, the WSBA Pilot Project for Entity Regulation Participant Manual, the WSBA's Enforcement Procedures and all ethical rules that apply to the entity and report data to the WSBA during the pilot project.

**7. Reporting Requirements:** [ENTITY] shall comply with the periodic reporting and monitoring requirements established by the WSBA.

**8. Consumer Disclosures:** [ENTITY] shall prominently display the following disclosure in all public-facing materials and platforms:

The legal services we offer are provided under the authorization of the Washington Supreme Court as a participant in the Washington Pilot Project for Entity Regulation, and may include legal services that are either (1) not provided by a lawyer, (2) not able to be provided by a lawyer without participation in the Pilot Project, or (3) provided by a law firm that is owned in whole or in part by persons not licensed to practice law. For additional information about the Pilot Project for Entity Regulation or to file a complaint, please visit [www.wsba.org/entityreg](http://www.wsba.org/entityreg).

**9. Applicability of Existing Rules and Laws:** [ENTITY] shall comply with all existing laws and rules governing the practice of law in Washington except as provided in number 2 above. Washington lawyers, limited practice officers, or limited license legal technicians [ENTITY] remain individually subject to and shall comply with the applicable Washington rules of professional conduct and disciplinary rules except as provided in number 2 above.

**10. Enforcement Procedures:** [ENTITY] and its staff are subject to the WSBA's enforcement procedures for the pilot project and the WSBA Pilot Project for Entity Regulation Participant Manual. The entity must comply with reporting requirements and cooperate with the WSBA's review and investigation of complaints and any compliance reviews conducted by the WSBA. An authorized entity may not use the status of information as confidential client information or trade secret as a basis for not providing it to the WSBA or otherwise complying with requests for information and documents under the WSBA's enforcement procedures for the pilot project. The WSBA will report to the Board any findings of failure to comply, noncooperation, or

violation of an authorizing order or applicable rule of ethics by a participating entity or its staff, and may make recommendations to the Board regarding any additional public protection measures that may be necessary, up to and including removal from the Pilot Project. The Board may request further inquiry by the WSBA or may make a recommendation to the Court as appropriate. The entity may be responsible for the costs of such an investigation as ordered by the Court upon recommendation of the Board.

**11. Duration of Authorization:** This authorization is granted for an initial term of [X] months from the date of this Order. This authority is subject to [ENTITY]'s compliance with the conditions and requirements set forth in this Order, Order No. 25700-B-721, the WSBA Pilot Project for Entity Regulation Participant Manual, and the WSBA's Enforcement Procedures.

**12. Removal of Authorization:** This Court may remove [ENTITY]'s authorization upon a finding of non-compliance with conditions, consumer harm as defined in the WSBA's Enforcement Procedures, or for any other reasonable cause the Court deems appropriate in its discretion.

DATED at Olympia, Washington this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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CHIEF JUSTICE

## **Pilot Project for Entity Regulation**

### **Periodic Reporting by Entity – Questions and Data Collection**

For each client matter in which you provided services under your authorization to participate in the entity regulation pilot project, provide the following for all matters in which services are concluded:

- Client ID No. – a unique de-identified alphanumeric number you assign to each client
- Legal Issue – identify the legal that the services addressed

#### **Consumer/Finance**

- 01—Bankruptcy/Debtor Relief
- 02—Collection (Including Repossession/Deficiency/Garnishment)
- 03—Contracts/Warranties
- 04—Collection Practices/Creditor Harassment
- 05—Predatory Lending Practices (Not Mortgages)
- 06—Loans/Installment Purchase (Not Collections)
- 07—Public Utilities
- 08—Unfair and Deceptive Sales and Practices (Not Real Property)
- 09—Other Consumer/Finance

#### **Education**

- 11—Reserved
- 12—Discipline (Including Expulsion and Suspension)
- 13—Special Education/Learning Disabilities
- 14—Access (Including Bilingual, Residency, Testing)
- 15—Vocational Education
- 16—Student Financial Aid
- 19—Other Education

#### **Employment**

- 21—Employment Discrimination
- 22—Wage Claims and other FLSA (Fair Labor Standards Act) Issues
- 23—EITC (Earned Income Tax Credit)
- 24—Taxes (Not EITC)
- 25—Employee Rights
- 26—Agricultural Worker Issues (Not Wage Claims/FLSA Issues)

- 29—Other Employment

#### Family

- 30—Adoption
- 31—Custody/Visitation
- 32—Divorce/Separation/Annulment
- 33—Adult Guardian/Conservatorship
- 34—Name Change
- 35—Parental Rights Termination
- 36—Paternity
- 37—Domestic Abuse
- 38—Support
- 39—Other Family

#### Juvenile

- 41—Delinquent
- 42—Neglected/Abused/Dependent
- 43—Emancipation
- 44—Minor Guardian/Conservatorship
- 49—Other Juvenile

#### Health

- 51—Medicaid
- 52—Medicare
- 53—Government Children’s Health Insurance Programs
- 54—Home and Community Based Care
- 55—Private Health Insurance
- 56—Long Term Health Care Facilities
- 57—State and Local Health
- 59—Other Health

#### Housing

- 61—Federally Subsidized Housing
- 62—Homeownership/Real Property (Not Foreclosure)
- 63—Private Landlord/Tenant
- 64—Public Housing
- 65—Mobile Homes
- 66—Housing Discrimination

- 67—Mortgage Foreclosures (Not Predatory Lending/Practices)
- 68—Mortgage Predatory Lending/Practices
- 69—Other Housing

#### Income Maintenance

- 71—TANF
- 72—Social Security (Not SSDI)
- 73—Food Stamps
- 74—SSDI
- 75—SSI
- 76—Unemployment Compensation
- 77—Veterans Benefits
- 78—State and Local Income Maintenance
- 79—Other Income Maintenance

#### Individual Rights

- 81—Immigration/Naturalization
- 82—Mental Health
- 84—Disability Rights
- 85—Civil Rights
- 86—Human Trafficking
- 87—Criminal Record Expungement
- 89—Other Individual Rights

#### Other

- 91—Legal Assistance to Non-Profit Organization or Group (Including Incorporation/Dissolution)
- 92—Indian/Tribal Law
- 93—Licenses (Drivers, Occupational, and Others)
- 94—Torts
- 95—Wills/Estates
- 96—Advance Directives/Powers of Attorney
- 97—Municipal Legal Needs
- 98—Tribal Court—Criminal
- 99—Other: \_\_\_\_\_
- End Date – date service was completed
- Service Method –
  - Lawyer provided legal service

- Other licensed legal professional (LLLT, LPO) provided legal service
- Person not licensed to practice law provided legal service
- Software or technology with lawyer/LLLT/LPO assistance provided legal service
- Software or technology with person not licensed to practice law provided legal service
- Software or technology alone provided legal service
- Law-related services provided by person
- Law-related services provided by software/technology
- Services Received – general type of services received
  - Legal advice
  - Legal document completion
  - Legal communication
  - Negotiation
  - Trial/hearing
  - Referral
  - Full representation
  - Other: \_\_
  - No services provided
- Amount Paid – amount paid by consumer for services received
- Complaints – were complaints received from the client? Yes/no

#### General

- Number of consumers/clients served
- Number of complaints received from consumers during this period
- Number of FTE

#### Short answer:

Please provide a short self evaluation on the status and progress of your regulatory reform test. Consider the following:

- Do you consider your test and service model to be successful or that it will be successful as a business model?
- How is the entity making progress toward its own business goals using the model in your test?
- Is the regulatory reform under your test and business model achieving or will it achieve the goals of the pilot project?
- How is the entity making progress toward achieving the goals of the pilot project?

Are you considering any changes to your service model? Note: Any changes to the service model or regulatory reform must be submitted to the WSBA and approved by the Washington Supreme Court.

How were complaints resolved generally? Were there any complaints that were not able to be resolved?



## **Pilot Project for Entity Regulation**

### **Client Survey – Questions and Data Collection – Survey link directly to WSBA**

#### **Purpose Statement**

You received legal help from a company that is part of the Washington state Pilot Project for Entity Regulation. This is a test program that is trying to see if new rules for legal services companies can help more people get good, affordable legal help.

Your answers to this short survey will help the Washington State Bar Association (WSBA) see if the program is working. Your answers will be private. They will be mixed in with other people's answers, and will not be traced back to you, so please provide honest feedback.

**[token of appreciation/gift card? If so, adjust private language]**

#### **Survey**

Which entity, company, or firm provided your legal services?

[dropdown of authorized entities]

If you know, who was your primary contact?

On a scale of 1 to 6, with 1 indicating very unhappy and 6 indicating very happy, how happy are you with the legal services you received?

Was this legal provider your first choice?

If this legal service provider was not available, would you have received legal services from a different provider?

What barriers or challenges do you face when looking for legal services? Check all that apply.

- ☐ Geography – Legal services are limited in my area or I need to travel long distances to find legal services
- ☐ Transportation – I rely on public transportation, do not have access to a car, etc.
- ☐ Caregiver – I take care of children, parents, persons with disabilities, etc.
- ☐ Employment – I work during times when most legal services are open, I can't take time off from work, etc.
- ☐ Language – English is not my first language, my English is not very good, etc.
- ☐ Technology – I don't have access to the internet at home, my internet service is poor, etc.

- ☐ Financial – I can't find affordable legal services, I don't have extra money to spend on legal services, etc.

How would you describe the area where you live?

- ☐ City  
☐ Suburb  
☐ Small town  
☐ Rural

What is your zip code?

Is English your first language?

- ☐ Yes  
☐ No  
☐ I choose not to respond

If no, what was your first language?

Do you identify as having a physical or mental disability or impairment?

- ☐ Yes  
☐ No  
☐ I choose not to respond

Please check the box(es) that most closely represents your racial/ethnic identity. Please check all that apply. (Checking more than one box will be reported as "multi-racial.") If you wish to supply a more specific identity, please check "not listed", fill in the blank and also check the box for the most applicable race/ethnicity from the list provided, if any.

- ☐ American Indian, Native American, or Alaskan Native  
☐ Asian—Central Asian  
☐ Asian—East Asian  
☐ Asian—South Asian  
☐ Asian—Southeast Asian  
☐ Black, African American, or African Descent  
☐ Hispanic/Latinx  
☐ Middle Eastern Descent  
☐ Pacific Islander or Native Hawaiian  
☐ White or European Descent  
☐ Not listed: \_\_\_\_\_  
☐ I choose not to respond

What is the size of your family household, including yourself?

- ☐ 1 person
- ☐ 2 people
- ☐ 3 people
- ☐ 4 people
- ☐ 5 people
- ☐ 6+ people
- ☐ I choose not to respond

What is your annual household income?

- ☐ \$0 to \$30,000
- ☐ \$30,001 to \$40,000
- ☐ \$40,001 to \$50,000
- ☐ \$50,001 to \$60,000
- ☐ \$60,001 to \$70,000
- ☐ \$70,001 to \$80,000
- ☐ \$80,001 to \$90,000
- ☐ \$90,001 to \$100,000
- ☐ \$100,001 to \$110,000
- ☐ \$110,001 to \$120,000
- ☐ \$120,001 and above
- ☐ I choose not to respond

### **End of Survey Contact Info Message**

Thank you for taking the time to complete the survey. [token of appreciation?]

If you have additional information you would like to share or discuss with the WSBA, please email [entityregulationpilot@wsba.org](mailto:entityregulationpilot@wsba.org).

Additional information about the Washington State Pilot Project for Entity Regulation can be found online at [www.wsba.org/entityreg](http://www.wsba.org/entityreg).

## ENTITY REGULATION PILOT PROJECT ENFORCEMENT PROCEDURES

### I. GENERAL PROVISIONS

**(a) Authority.** These Enforcement Procedures were developed and adopted under authority delegated to the Washington State Bar Association (WSBA) by the Washington Supreme Court in its Entity Regulation Pilot Project Order No. 25700-B-721 (Pilot Project Order). The Pilot Project Order further authorizes the WSBA and the Practice of Law Board to engage in the enforcement measures provided for in these Enforcement Procedures.<sup>1</sup> Authorized entities consent to being bound by these Enforcement Procedures by participating in the pilot project.

#### **(b) Definitions**

- (1) Authorized entity.** An authorized entity is one authorized by the Washington Supreme Court to participate in the Entity Regulation Pilot Project under the Court's Pilot Project Order No. 25700-B-721 by providing legal services in Washington in accordance with the entity's authorizing order.
- (2) Authorizing order.** An entity's authorizing order is the order entered by the Washington Supreme Court, specific to that entity, authorizing that entity to participate in the Entity Regulation Pilot Project under terms established by the Court.
- (3) Practice of Law Board.** The Practice of Law Board (Board) is a Washington Supreme Court-created board tasked with educating the public about how to receive competent legal assistance and considering and recommending to the Court new and innovative ways to provide legal and law-related services. In furtherance of these objectives, the Court authorized the Board to conduct, in collaboration with the WSBA, a pilot project of entity regulation under Pilot Project Order No. 25700-B-721.
- (4) Complaint.** Complaint as used in these Enforcement Procedures refers to:
  - (A)** a complaint submitted directly to the WSBA by a consumer or other third party alleging consumer harm or other noncompliance by an authorized entity; and
  - (B)** a file opened by the WSBA to conduct a preliminary inquiry and/or investigation based on referrals from WSBA staff primarily responsible for overseeing the pilot project, self-reports from authorized entities, referrals from other stakeholder or partner entities, anonymous tips, publicly available information (e.g., news

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<sup>1</sup> See Pilot Project Order No. 25700-B-721 ("The WSBA shall develop complaint procedures for the public to report an alleged violation by an entity or its staff of an authorizing order or an applicable rule of ethics. The WSBA shall review and may investigate the complaint. The WSBA shall report the results of its review and, if applicable, its investigation to the Board, and may make recommendations to the Board regarding any additional public protection measures that may be necessary, up to and including removal from the pilot project. The Board may request further inquiry by the WSBA or may make a recommendation to the Court as appropriate. The applicant may be responsible for the costs of such an investigation as ordered by the Court upon recommendation of the Board.").

reports), or referrals from the Board, including any referrals of information obtained by the Board during a consumer protection review.

- (5) Consumer harm.** These Enforcement Procedures are intended to address both harms to actual consumers (i.e., customers or clients served by authorized entities) and harms to the public and/or legal system. They are referred to collectively as “consumer harm” for ease of reference. Consumer harm is harm to a consumer, the public, or the legal system that results from an authorized entity’s violation of the Supreme Court’s Pilot Project Order No. 25700-B-721 or the requirements of the entity’s authorizing order, applicable Rules of Professional Conduct, or other law applicable to the entity’s provision of legal services. Consumer harm includes but is not limited to wrongful disclosure of confidential consumer information, misuse of consumer data, sale of inappropriate solutions to consumers, errors in services provided, and inappropriate billing and refunding practices.
- (6) Periodic operational report.** Periodic operational report refers to the periodic reports authorized entities are required to submit to the WSBA under the Supreme Court’s Pilot Project Order No. 25700-B-721 or the entity’s authorizing order.
- (7) Initial review.** All complaints will undergo an initial review by designated WSBA staff. Upon review, staff will exercise discretion about whether further inquiry is appropriate (i.e., whether the allegations constitute a potentially actionable violation) or whether the complaint should be closed without further inquiry.
- (8) Preliminary inquiry.** Complaints not closed during the initial review will undergo a preliminary inquiry by designated WSBA staff to determine whether the complaint should be closed, referred for investigation, or reported directly to the Board without the need for investigation.
- (9) Investigation.** Complaints not closed during the initial review or preliminary inquiry will be referred for investigation by designated WSBA staff. Upon reviewing the recommended resolution of a complaint, the Board may also refer the complaint to the WSBA for investigation or additional investigation.
- (10) Public protection measure.** Public protection measures are remedial actions ordered by the Board (in the case of a warning) or the Washington Supreme Court (in the case of suspension, removal, or other specified remedial action) upon a finding of an actionable violation or noncompliance by an authorized entity.

**(c) Public and Confidential Information**

- (1)** Other than confidential client information and trade secrets, which the WSBA is required to securely maintain and safeguard against unauthorized disclosure,<sup>2</sup> information about matters handled under these Enforcement Procedures is public information.

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<sup>2</sup> See Pilot Project Order No. 25700-B-721 (“The WSBA shall securely maintain and safeguard against the unauthorized disclosure of confidential client information or trade secrets collected through reports of by other means.”).

- (2) Authorized entities providing information to the WSBA are required to identify confidential client information or trade secrets at the time the information is provided in order for it to be considered confidential. Any disputes about the confidentiality of information shall be decided by the Board.
  - (3) An authorized entity may not use the status of information as confidential client information or trade secret as a basis for not providing it to the WSBA or otherwise complying with requests for information and documents under these Enforcement Procedures.
  - (4) The WSBA will keep the complainant (if there is one) reasonably informed about the outcome of the complaint, but the complainant is not entitled to receive confidential information to which they are not already privy as a client.
  - (5) An authorized entity's status in the pilot project and any public protection measures are public information and will be listed on the WSBA's website.
  - (6) The WSBA will publish on its website all orders entered by the Court pursuant to these Enforcement Procedures.
- (d) **Non-Exclusivity.** These Enforcement Procedures are not exclusive and do not preclude disciplinary action against participating licensed legal professionals if their conduct appears to violate otherwise applicable rules of professional conduct.

## II. ACTIONABLE VIOLATIONS AND NONCOMPLIANCE

The following violations and noncompliance with requirements may give rise to enforcement action under these Enforcement Procedures:

- (a) Noncompliance with requirements of the Washington Supreme Court's Pilot Project Order No. 25700-B-721 or with the requirements of the entity's authorizing order.
- (b) Violation of limitations on authorized practice (including but not limited to providing services outside of authorization, misrepresentation of services, or assisting in the unauthorized practice of law by an unapproved entity or individual).
- (c) Misrepresentation in application or failure to timely update information in application (including but not limited to undisclosed ownership, disciplinary sanctions against involved licensed legal service providers, or regulatory enforcement actions against the entity).
- (d) Failure to comply with reporting requirements (including but not limited to reports that are untimely, incomplete, or inaccurate).
- (e) Misrepresentation in reporting (including but not limited to misreporting consumer complaints or other data).
- (f) Failure to cooperate with an investigation or requests for information under these Enforcement Procedures.
- (g) Failure to self-report an actionable violation.
- (h) Violation of applicable Rules of Professional Conduct (RPC) (i.e., any RPC from which the entity has not been specifically excepted by the entity's authorizing order).

- (i) Consumer harms (including but not limited to wrongful disclosure of confidential consumer information, misuse of consumer data, inappropriate services sold to consumer, error in services provided, or inappropriate billing and refunding practices).
- (j) Any other conduct demonstrating unfitness to continue participating in the pilot project.

### III. INITIAL REVIEW AND PRELIMINARY INQUIRY

#### (a) Administrative Requirements

- (1) If an authorized entity fails to submit a periodic operational report or annual fee according to the established schedule or fails to submit all required information, WSBA staff primarily responsible for overseeing the pilot project will contact the entity and require that the report or annual fee be submitted or supplemented no later than 30 days after the notice.
- (2) If the WSBA's review confirms a violation or noncompliance, or if the entity fails to respond or to cooperate after receiving this notice, the WSBA promptly notifies the Board of its findings and public protection measures recommendation.
- (3) Administrative violations and noncompliance that may be reported directly to the Board by WSBA staff primarily responsible for overseeing the pilot project include, but are not limited to:
  - (A) A pattern of late or incomplete periodic operational reports;
  - (B) Failure to submit a periodic operational report;
  - (C) Inaccurate or misleading information in an application or periodic operational report; and
  - (D) Failure to pay an annual fee.
- (4) If a periodic operational report contains information on consumer complaints received by the entity or other information indicative of apparent violations or consumer harms, WSBA staff primarily responsible for overseeing the pilot project refers the matter to WSBA staff designated to review and investigate complaints.

#### (b) Complaints

- (1) **Complaint form.** The WSBA will make available on its website a complaint form that can be submitted electronically. A printable and downloadable version of the form will be available upon request. Authorized entities will be required to make the complaint form, with instructions for submitting it to the WSBA, available on their websites along with their published information regarding the entity's participation in the pilot project.
- (2) **Initial review.** The WSBA will designate staff to review all complaints (to include submitted complaint forms, referrals from WSBA staff primarily responsible for overseeing the pilot project, self-reports from participating entities, referrals from other stakeholder or partner entities, anonymous tips, publicly available information (e.g., news reports), and referrals from the Board). Upon review, staff will exercise discretion about whether further inquiry is appropriate (i.e., whether

the allegations constitute a potentially actionable violation). If not, the complaint is closed.

**(3) Preliminary inquiry.**

**(A)** During the preliminary inquiry, staff may:

- i. Request a response, documents, and other information from the authorized entity.
- ii. Request additional information from the complainant or referral source.
- iii. Conduct preliminary independent research.

**(B)** If the preliminary inquiry confirms a violation or noncompliance, or if the entity fails to respond or cooperate, the WSBA promptly notifies the Board of its findings and public protection measures recommendation.

**(C)** If the preliminary inquiry is inconclusive, the complaint is referred for investigation.

**(D)** If the preliminary inquiry establishes no probable violation, the complaint is closed.

**(4) Reporting to the Board.** The WSBA will periodically report to the Board regarding complaints closed during initial review or preliminary inquiry and those referred for investigation.

IV. INVESTIGATION

**(a) When Investigation is Conducted.** For complaints not resolved during the initial review or preliminary inquiry, and complaints reviewed by the Board and referred back to the WSBA for investigation or additional investigation, designated staff will conduct an investigation.

**(b) Scope of Investigation.** During the investigation, staff may:

- (1)** obtain additional records and information;
- (2)** interview witnesses; and
- (3)** conduct legal and factual research.

**(c) Cooperation Required.** Authorized entities must promptly cooperate with requests for documents or information, make available for questioning witnesses within their control, and make reasonable efforts to obtain records and information from third parties as requested by the WSBA.

**(d) Consequences of Noncooperation.** If the authorized entity fails to cooperate with requests for documents or information, fails to make available for questioning witnesses within its control, and/or fails to make reasonable efforts to obtain records and information from third parties as requested by the WSBA, WSBA staff notifies the entity that it is not in compliance with the investigation. If the entity fails to cure its noncooperation within 10 days, the WSBA notifies the Board of the confirmed noncooperation and public protection measures recommendation.

**(e) Reporting to the Board.** When the investigation is completed, the WSBA notifies the Board of its findings and public protection measures recommendation. If the investigation establishes no probable violation, the WSBA recommends to the Board that the complaint be closed.



## V. BOARD REVIEW

- (a) What the Board Reviews.** The Board reviews all matters in which the WSBA makes a finding of a confirmed violation or noncompliance, and all matters in which the WSBA recommends closure following an investigation.
- (b) Entity Response.** The authorized entity may respond to the WSBA's findings and recommendation by written submission to the Board under the timeline and subject to such reasonable limitations as set by the Board.
- (c) Record Before the Board.** The Board may request additional information from the authorized entity or the WSBA during the review.
- (d) Board Decision.** The Board may close a complaint or recommend public protection measures up to and including removal from the pilot project. Public protection measures include:
  - (1)** Warning;
  - (2)** Specified remedial action (which could include a recommendation for new limitations on the scope of authorization or additional measures for the authorized entity to implement to mitigate the risk of harm);
  - (3)** Suspension; and
  - (4)** Removal.
- (e) Notice of Board Recommendation.** The Board will notify the entity, the complainant (if there is one), and the WSBA of its decision.
- (f) Supreme Court Review.** The Board's recommendation will be presented to the Washington Supreme Court for consideration and entry of an appropriate order. The Court's review is limited to the record before the Board unless the Court requests additional briefing or information.
- (g) Costs.** In any matter in which the Board recommends public protection measures, the authorized entity may be required to pay costs of the investigation and review.

## VI. SUSPENSION AND REMOVAL

- (a) Consequences of a Suspension or Removal**
  - (1)** Authorized entities that are suspended or removed from the Pilot Project will be required to:
    - (A)** Immediately stop taking on new clients for the services that are authorized by its authorizing order;
    - (B)** Immediately remove any reference to authorization or participation in the pilot project from its website and other materials;
    - (C)** Immediately notify all licensed legal professionals involved with the entity of the suspension or removal;
    - (D)** Within 10 days, cease all provision of services that are authorized by its authorizing order;

- (E) Within 10 days, notify all existing clients of the suspension or removal and refer clients to other legal providers; and
- (F) Within 25 days, send an affidavit, signed by the entity's compliance officer, to the WSBA certifying that it has complied with these requirements.
- (2) A suspension or removal from the pilot project may disqualify the managers, owners, compliance officer, and others associated with the entity from submitting future pilot project applications and/or from being authorized to provide legal services under any entity regulation scheme that may follow the pilot project.

**(b) Reinstatement**

- (1) If an authorized entity is suspended, it may apply for reinstatement after the designated term of suspension has passed by filing an affidavit, signed by the entity's compliance officer, explaining how it has fully complied with the requirements of the suspension and establishing that the basis for suspension has been overcome, and paying any applicable fee.
- (2) The WSBA may request additional information and documentation prior to making a recommendation to the Board.
- (3) The authorized entity may respond to the WSBA's recommendation by written submission to the Board under the timeline and subject to such reasonable limitations as set by the Board.
- (4) The Board may request additional information from the authorized entity during the review.
- (5) The Board makes a recommendation to the Court. If the Board's recommendation is in favor of reinstatement, the authorized entity must complete the trust account declaration, professional liability disclosure, and contact information verification, and pay the annual fee. The Board coordinates with WSBA staff primarily responsible for overseeing the pilot project to ensure this is done prior to delivering the Board's recommendation for reinstatement to the Court.
- (6) The Court's review is limited to the record before the Board unless the Court requests additional briefing or information.
- (7) If an authorized entity is removed, it may not apply for reinstatement.



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