

A photograph of a slot canyon with layered sandstone walls and a rocky floor. The walls are composed of horizontal layers of sandstone, with some areas showing more vertical erosion. The floor is covered in small, light-colored rocks. The lighting is warm, highlighting the textures of the rock.

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Legal Industry Disruption May Be Here: A Primer on Regulatory Reform in Utah

by Keith A. Call

Over the past several years, I have watched with wonder and amazement at how the technology revolution has reformed various industries. Printed newspapers have almost disappeared. Ride sharing services, motorized scooters, and shared vehicles are changing the way we move. Brick and mortar retail stores can scarcely survive without taking full advantage of artificial intelligence and the Internet of Things.

I have often wondered how and when technology will disrupt the legal industry in a major way. Oh, the legal industry has been impacted by technology, for sure. Legal research services (some of them free) have changed the way we research. Artificial intelligence has changed evidence review and handling. Words and acronyms like “e-filing” and “ESI” are part of our everyday vernacular. But we have not yet experienced wholesale industry disruption. *Forbes Magazine* described the impacts of technology on the legal industry as “drip, not disruption.” Mark A. Cohen, *Legal Change: Why Drip, Not Disruption?*, FORBES (Apr. 26, 2018), available at <https://www.forbes.com/sites/markcohen/2018/04/26/legal-change-why-drip-not-disruption/#40d985911fbf>.

That might be about to change. In late 2018, the Utah Supreme Court formed a work group to study ways to foster innovation and increase access to and affordability of legal services. The work group issued a report and recommendations in August 2019. See *Narrowing the Access-to-Justice Gap by Reimagining Regulation: Report and Recommendations from the Utah Work Group on Regulatory Reform* (Aug. 2019), available at <http://sandbox.utcourts.gov/> (Report).

The Report begins by highlighting a serious access to justice problem in our country, which has been ranked 99th out of 126 countries in terms of access to and affordability of civil justice. Report at 1. The Report suggests numerous regulatory changes – changes that are sure to have a radical impact on lawyers and

the business of law. As the work group that authored the report candidly acknowledged, “Our proposal will certainly be criticized by some and lauded by others.” Report at 22.

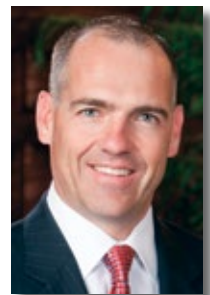
It is likely that you will either love or hate these changes. Because these changes are meant to have a radical impact on the legal industry in Utah, lawyers need to understand them and speak out from an informed perspective. This article provides a short overview of the Report and its most significant proposals. It is a starting point to help you be informed so you can provide knowledge-based input to those responsible for regulating how you and others practice law.

Proposed Changes to the Rules of Professional Conduct

The work group concluded that certain aspects of the Rules of Professional Conduct are contributing to our access to justice problem, and they proposed drastic changes in order to address the issue.

First, the work group proposed easing restrictions on lawyer advertising. The work group did not make any specific proposals but concluded that there is no legitimate purpose to restrict advertising other than to protect against false, misleading, or overreaching solicitations and advertising. The group noted that the Advisory Committee on the Rules of Professional Conduct is already working on an overhaul of lawyer advertising rules.

KEITH A. CALL is a shareholder at Snow, Christensen & Martineau. His practice includes professional liability defense, IP and technology litigation, and general commercial litigation.



Second, the work group suggested amending the ban on lawyer referral fees. Again, without making any specific rule proposal, the group concluded that any restriction on referral fees should better balance the risk of harm to prospective clients with the benefit to lawyers.

Third, and perhaps most significantly, the work group proposed that the rules prohibiting fee sharing with non-lawyers and prohibiting non-lawyer ownership of law firms be eliminated or substantially relaxed. The report states, “We view the elimination or substantial relaxation of Rule 5.4 as key to allowing lawyers to fully and comfortably participate in the technological revolution.” Report at 15. The work group believes this change will engage entrepreneurs from a wide swath of platforms to make legal services more readily available. This means that accounting firms, technology companies, and non-lawyer owned entities will be invited to participate in the legal service industry.

The aim of the proposed changes is to increase access to justice, making legal services more affordable and available to greater numbers of people. In different terms, it is expected that the proposed changes will increase competition, resulting in a corresponding benefit for consumers. The full impact of these changes cannot possibly be known until after they are implemented.

A New Regulatory Body and Experimental “Sandbox”

The work group also proposed creation of a “regulatory sandbox” to encourage innovation and experimentation in the legal industry. The Report describes a regulatory sandbox as “a policy structure that creates a controlled environment in which new consumer-centered innovations, which may be illegal (or unethical) under current regulations, can be piloted and evaluated.” Report at 18.

The work group also proposes the formation of a new regulatory body, acting under the supervision of the Supreme Court, to regulate legal services in Utah. This new regulatory system would be developed in two phases.

During Phase 1, the Utah Bar would continue to have authority over lawyers and licensed paralegal practitioners. The new regulator would be responsible to regulate non-traditional legal services provided in the regulatory sandbox. The regulator would seek proposals from private individuals or entities who want to experiment with providing legal services in the sandbox. Proposals would describe the services to be provided, how they would be provided, and the ethical rules now in place that

would need to be suspended or relaxed in order for the business model to be successful. The regulator would be responsible to approve, oversee, and evaluate the proposed plans. The regulator can use what it learns from this process to shape additional applications or to permanently relax or change regulations for the entire market. The regulator would also make recommendations to the Supreme Court regarding the structure of Phase 2. The work group anticipates that Phase 1 would last approximately two years.

Phase 2 is not yet well defined, because we don’t yet know what we don’t know. The specifics of Phase 2 will largely be defined by what is learned during Phase 1. The work group anticipates some form of non-profit regulator with delegated regulatory authority over some or all legal services. The regulator would be independent of management and control by lawyers, but answerable to the Supreme Court. The regulatory body would be charged with implementing changes learned from the experimental sandbox.

The Report emphasizes that a core policy objective should be the development of a regulatory system that “allows, supports and encourages the growth of a vibrant market for legal services.” Report at 16. The Report also emphasizes that our regulations and regulatory system should shift from a “prescriptive approach” to an “outcomes-based and risk appropriate paradigm.” Report at 4.

Status of Proposals

The work group issued its Report in August 2019. The Utah Supreme Court promptly adopted the report and authorized a task force to implement the report’s recommendations. The task force has been formed and its work is in process. While the full extent and timing of implementation remains to be seen, it appears quite certain that significant changes are coming, and soon.

Whether you laud or hate these proposals, I encourage you to become informed about the coming changes. Get the most current information by frequently checking <http://sandbox.utcourts.gov/>. Doing so will help you speak out as an informed participant in the legal industry. It will also help you prepare for disruption to the legal industry that is sure to come, sooner or later.

Every case is different. This article should not be construed to state enforceable legal standards or to provide guidance for any particular case. The views expressed in this article are solely those of the author.