
IN THE SUPREME COURT OF THE STATE OF WASHINGTON

RECOMMENDATION FOR A NEW AVENUE FOR PERSONS NOT CURRENTLY AUTHORIZED TO PRACTICE LAW VIA DATA-DRIVEN LEGAL REGULATORY REFORM

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I. IDENTITY AND INTERESTS OF RECOMMENDATION PREPARER

Under GR 25 Practice of Law Board,[1] the Practice of Law Board is charged with the responsibility to consider 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 GR 24 Practice of Law.[2]

Such recommendations must be accompanied by a determination:

> (A) that access to affordable and reliable legal and law-related services consistent with protection of the public will be enhanced by authorizing the recommended legal service provider or legal service delivery model; (B) that the defined activities outlined in the recommendation can be reasonably and competently provided by skilled and trained legal service providers; (C) that if the public interest requires regulation under Supreme Court authority, such regulation considers any regulatory objectives in GR 12 et seq. and is tailored to promote access to affordable legal and law-related services while ensuring that those

[1] WA. Gen. R. 25(b)(2).
[2] WA. Gen. R. 24.

> whose important rights are at stake can reasonably rely on the quality, skill and ability of the authorized legal service providers; (D) that, to the extent that the activities authorized will involve the handling of client trust funds, provision has been made to ensure that such funds are handled in a manner consistent with all applicable court rules, including the requirement that such funds be placed in interest-bearing accounts, with interest paid to the Legal Foundation of Washington; and (E) that the recommended program, including the costs of regulation, is financially self-supporting within a reasonable period of time.[3]

To fulfill this responsibility, the Practice of Law Board is filing this recommendation with the Supreme Court for data-driven legal regulatory reform processes to add a new path to the existing processes for the Supreme Court to approve reforms to legal rules and regulations.

II. RECOMMENDATION PRESENTED

Data-driven legal regulatory reform adds a new data-focused pathway to the existing processes for approving legal regulatory reform to encourage more innovation in the delivery

[3] WA. Gen. R. 25(b)(2).

of legal services to the public and to allow the public to bring ideas for legal reform to the Supreme Court for approval.

III. DATA-DRIVEN LEGAL REGULATORY REFORM

Data-driven legal regulatory reform is a set of processes that uses scientific methods as a framework for reforming legal rules, regulations, or procedures. Generally, the scientific method is based on a willingness to change based on new evidence, after significant peer review and criticism that considers relevant data, and verifiable results. It naturally tends to limit claims of usefulness until there is accurate measurement of positive and negative effects.

As applied to legal regulatory reform, the scientific method relies on testing any proposed reform by collecting and analyzing data to ensure the anticipated benefits are achievable and outweigh and minimize any harm.

The scientific method begins by stating a hypothesis, then designing an experiment to validate the hypothesis,

conducting the experiment in a safe environment, analyzing the results of the experiment, and publishing the results.

Applied to legal reform, the hypothesis is the proposed rule change or reform. For example, a hypothesis might define a more efficient approach to testing the competency of law school graduates than a bar exam. A test would then be designed to evaluate the benefits and potential harms of the hypothesis, in this case a different measure of legal competency. This test would then be run using safe and monitored processes, and the data from the experiment would be collected and evaluated. Such a process would allow debate surrounding the legal reform to be more data-driven. If the benefits are achievable and the risks manageable, then the Supreme Court could approve a court order to implement the reform.

Other parties, including other entities, states, or jurisdictions should be capable of replicating the legal reform experiment and obtaining similar results to further validate the hypothesis and ensure the experiment produces a consistent

outcome. The scientific method also allows for iterative change to the hypothesis based on the data and revising the test to evaluate the modified hypothesis.

Data-driven legal regulatory reform could facilitate timely changes to legal rules and help the judiciary address the access to justice gap by streamlining and improving the work of existing legal practitioners and introducing new and innovative legal services to the existing market for legal services.

The existing market for legal services is changing rapidly. A study in 2019 shows there are more than 130 technology companies entering the legal services market in 16 different categories from drafting, contract management and review, and services which offer legal services primarily to legal professions.[4] This does not include online legal services that provide legal services to consumers, which are gaining

[4] LawGeex, *2019 Legal Tech Buyer's Guide*, available at https://ltbg2019.lawgeex.com/?utm_source=blog&utm_campaign=ltbg121119.

investments from venture capitalists as well as gaining public use and acceptance as sources of legal services.[5]

"The combining of law with technology is driven by powerful economic forces. Now more so than at any other time in history, law is in the process of moving from a pervasive model of one-to-one consultative legal services to one where technology enables one-to-many legal solutions."[6]

Although there can be no guarantee that the introduction of data-driven legal reform will result in new legal services and make it easier for people to get access to affordable legal services and reduce the access to justice gap, the addition of new and innovative services that scale better than the existing

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[5] See Hannah Green*, Hello Prenup Finalizes Shark Tank Deal*, BOSTON BUS. J., Feb. 24, 2022, available at https://www.bizjournals.com/boston/inno/stories/news/2022/02/24/helloprenup-finalizes-its-shark-tank-deal.html

[6] William D. Henderson, *Legal Market Landscape Report, Commissioned by the State Bar of California,* July 19, 2018, at 11, available at https://live-iclr.pantheonsite.io/wp-content/uploads/2019/10/Henderson-report.pdf.

services have traditionally reduced costs and made services more available.[7]

Regardless, the advantage of data-driven legal regulatory reform is that the collection of data that quantifies the benefits and any harms, has the potential to catch any harm as soon as possible, and to address such harms while they are most amenable to correction and mitigation.

The Practice of Law Board has designed a system for data-driven legal regulatory reform which is currently documented in a blueprint that will become an operation manual for data-driven legal regulatory reform. [8] This blueprint

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[7] See generally, Tim Stobierski, *What are Network Effects*, HARVARD BUS. SCHOOL ONLINE, Nov. 2020, available at https://online.hbs.edu/blog/post/what-are-network-effects, discussing how the value of a product, service, or platform depends on the number of buyers, sellers, or users who leverage it and how typically, the greater the number of buyers, sellers, or users, the greater the network effect—and the greater the value created by the offering.

[8] See generally, Washington Court Practice of Law Board, *Blueprint for a Legal Regulatory Lab*, Feb. 2022, available at https://www.wsba.org/docs/default-source/legal-

expands the work of the Utah Supreme Court Office of Innovation's regulatory sandbox.[9]

Data-driven legal regulatory reform is additive to, rather than a replacement for existing reform processes. That is, while it provides a new set of processes for accomplishing legal regulatory reform, it does not replace existing or traditional methods of enacting such reform.

IV. THE NEED FOR DATA-DRIVEN LEGAL REGULATORY REFORM

People in Washington State with a legal problem have difficulty finding assistance from a legal professional. Using 2020 US Census Data[10] and extrapolating based on the 2015

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community/committees/practice-of-law-board/polb_legal-regulatory-lab_2.0_02-2022.pdf?sfvrsn=b67110f1_5.

[9] See generally, David Freeman Engstrom, Lucy Ricca, Graham Ambrose, Maddie Walsh, *Legal Innovation After Reform: Evidence from Regulatory Change,* Deborah L. Rhode Center on the Legal Profession, September 2022, available at https://law.stanford.edu/publications/legal-innovation-after-reform-evidence-from-regulatory-change/.

[10] See US Census data, available at https://www.census.gov/library/stories/state-by-

Washington Civil Needs Study, over 543,953 people faced legal problems (71%), but only 157,746 of these people got help for their legal problem (29%).[11] This means 386,207 people with a legal problem faced the prospect of handling their problem alone—without competent legal representation or guidance.

This gap between people with and without access to competent legal assistance may be growing rather than shrinking. Judicial and legislative changes, as well as the COVID-19 pandemic,[12] have likely increased the number of people looking for assistance with legal matters.[13] In *State v.*

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state/washington-population-change-between-census-decade.html

[11] Washington Supreme Court Civil Legal Needs Study Update Committee, *2015 Washington State Civil Legal Needs Study Update*, Oct. 2015, at 5, available at https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf.

[12] Closure of the courts during lockdowns to prevent the spread of the virus as the courts adapted to remote trials and hearings, likely added to the backlog of both criminal and civil cases.

[13] Michael Houlberg, Janet Drobinske, *The Landscape of Allied Legal Professionals in the United States*, IAALS, Nov. 2022, at

Blake, 197 Wn.2d 170, 481 P.3d 521 (2021), the Supreme Court held Washington's drug possession laws unconstitutional, entitling many people previously convicted of drug possession to get their convictions vacated.[14] In April 2021, Governor Inslee signed Senate Bill 5160 into law, which established a "right to appointed counsel for indigent tenants."[15] Although these changes increase available judicial remedies for legal issues, the availability of competent legal assistance from authorized legal professionals likely remains elusive.

Addressing the access to justice gap is difficult, in part because the provision of legal services by legal professionals

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3, available at https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf.

[14] See generally, Washington Law Help, *How to Clear (vacate) Your Drug Possession Conviction After State v. Blake*, available at https://www.washingtonlawhelp.org/resource/blake.

[15] See generally, Washington State Office of Civil Legal Aid, *Right to Counsel for Indigent Tenants: Implementation Plan*, at 4, Final Rev. 10-2021, available at https://ocla.wa.gov/wp-content/uploads/2021/10/Implementation-Plan-Right-to-Counsel-for-Indigent-Tenants-Rev-10-8-21-Final.pdf.

does not appear to scale. For example, although pro bono and legal aid are critically important and socially valuable in addressing the access to justice gap, some have argued that "we can't rely on lawyers alone," and "even a doubling or tripling of pro bono hours won't put a dent in the problem."[16]

Therefore, addressing the access to justice gap will require innovation. One such innovation is implementing data-driven legal regulatory reform to address the problem with the current methods of legal regulatory reform being too slow and failing to measure whether the result achieved met the desired goal. Such innovation has the potential to add to the market new legal services that are more affordable and better serve consumers when they are looking for legal assistance.

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[16] David Freeman Engstrom, *Stanford Law's David Freeman Engstrom on California's Access-to-Justice Crisis and the State Bar's Working Group,* STANFORD LAW SCHOOL, Dec. 17, 2021, available at https://law.stanford.edu/2021/12/17/stanford-laws-david-freeman-engstrom-on-californias-access-to-justice-crisis-and-the-state-bars-closing-the-justice-gap-working-group/.

At least one jurisdiction, Arizona, has decided that the value of innovation exceeds the risk and is moving forward by instituting reforms that permit alternative business structures, without using data-driven legal regulatory reform or a sandbox.[17]

V. A MODEL FOR DATA-DRIVEN LEGAL REGULTORY REFORM

Borrowing heavily from the Utah Supreme Court's Office of Innovation, the Practice of Law Board has designed a model for data-driven legal regulatory reform. The Board used Utah as a model because the Utah sandbox is operating and showing success in bringing new legal services to the market.[18]

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[17] Supreme Court of Arizona, *Order Amending the Arizona Rules of the Supreme Court and the Arizona Rules of Evidence*, No. R-20-0034, Aug. 27, 2020, available at https://www.azcourts.gov/Portals/215/Documents/082720FOrderR-20-0034LPABS.pdf?ver=2020-08-27-153342-037 (eliminating Rule 5.4).

[18] Logan Cornett and Zachariah DeMeola, *Data from Utah's Sandbox Shows Extraordinary Promise, Refutes Fears of Harm*, IAALS, Sept. 15, 2021, https://iaals.du.edu/blog/data-utahs-sandbox-shows-extraordinary-promise-refutes-fears-harm.

As stated previously, the complete design for a data-driven legal reform model for Washington is documented as a blueprint. This evolving document is intended to be continually revised as data is analyzed and benefits and risks of the model are better understood.

Under the proposed data-driven legal regulatory reform model, a person or entity with an idea for legal regulatory reform completes an application documenting the anticipated benefits of the proposed service or reform, impact on the access to justice gap, risks, including risks of harm, and a cost estimate for the testing and data analysis. The application materials would be reviewed by a new Supreme Court Board set up to supervise data-driven legal regulatory reform for initial analysis and review.

Managing data-driven legal regulatory reform would not be a role of the Practice of Law Board, as it is conflicted due to its role in the coordination of the unauthorized practice of law. Nor would it be a role for WSBA, as WSBA members are

market participants. Rather, the supervising board would be a new Supreme Court board, modelled on the current Practice of Law Board and the Access to Justice Board.

During the application review process, the Supreme Court Board (herein supervisory board) would work with the applicant to understand the metes and bounds of the proposed legal regulatory reform, including whether the benefits appear achievable, and whether the risks can be adequately managed. If the applicant—after determining the costs for using the data-driven legal regulatory reform processes during the application process—is willing to pay the costs for testing, the supervisory board would prepare a recommendation for the Supreme Court. The Supreme Court would review the supervisory board recommendation and may issue a time-limited (typically two or three year) court order granting the authority for the applicant to test the legal reform under the documented test conditions and supervision of the Supreme Court through the supervising board.

As the applicant provides the legal service defined by the court order, they would file quarterly reports with the supervising board, which would monitor and review the data for the duration of the testing period. People who are getting the legal service would have the ability to immediately report any problems to the supervising board for the appropriate investigation and action.

The supervising board would analyze the data and work with the applicant to determine whether the tested reform should continue as designed, or whether the test and type and amount of data being collected needs modification. The supervising board will thus need appointed members who can evaluate the collected data.

At the end of the testing period, the applicant would file a final report with the supervising board, which would review the report and the data, and prepare a final report for the Supreme Court. The Supreme Court, upon a determination that the regulatory reform provides benefits without undue risk to the

public, may license the new legal services via a court order that defines supported limitations or conditions, and includes a requirement for a license fee and annual review.

The role of the supervising board in this model is to work with the applicant to find a way to test the applicant's hypothesis, that minimizes the potential of harm to the public. The supervising board should not act as a gatekeeper that throttles reform.

This model replaces the more hope-driven model that a reform produces the intended result with a data-driven model that collects and analyzes data designed to scientifically determine whether the reform has the desired positive impact. Because the developing services and regulations can be modified as the data is analyzed, reform should take less time than the traditional reform process. In the first year of operation, only three to five applications will be accepted to allow the process to be modified or improved as data about the processes is collected and analyzed.

Another key benefit of data-driven legal regulatory reform is that the public would be an active participant in the reform, rather than a stakeholder who may be involved only if they hear about the change and choose to comment. This is because the public would be involved with full transparency in the testing of the proposed reform.

The collection and analysis of data distinguishes this approach to regulatory reform from traditional methods of legal reform, which generally rely on subject matter experts drafting documents and debating their impact. Much time is spent on each word and comma, but little analysis of any data is used as a basis for decisions. Therefore, much of the traditional reform of legal regulatory matters is based on anecdotal evidence. For example, consider the recent regulatory reform to the RPC 1.4 Communications. There, WSBA as the proponent recommended adoption of amendments and six new comments to this RPC that would require disclosure of a lawyer's malpractice insurance status to clients and prospective clients if

the lawyer's insurance did not meet minimum levels.[19] This reform came after several years of rule drafting and debate among a group of interested legal practitioners, with little active involvement from stakeholders such as insurance brokers and the public.[20] Although this rule was revised after several years of study, this change took far longer than it should have, and was made without any plan to measure the impact. It was assumed it would have a desired effect of encouraging more lawyers to acquire malpractice insurance. Therefore, it is unknown whether the change has resulted in more legal professionals acquiring insurance, or more legal professionals choosing to merely report and disclose while remaining essentially self-insured or uninsured.

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[19] See generally, GR 9 Cover Sheet, Suggested Amendments to Rules of Professional Conduct Rule 1.4, available at https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=5794.

[20] It should be noted that an individual harmed by a lawyer who was uninsured did voice his opinion on the change, advocating for mandatory insurance at BOG meetings where this change was presented to the governors.

When legal reform takes too long, and the traditional method can take up to sixty months, risk increases such that by the time the reform is implemented, the issues have evolved and thus it no longer addresses the problem it targeted.[21] This is because many of the matters that reform is intended to address do not stop while reform is being debated. Rather, the matter tends to evolve and change and become more entrenched or have additional complications or issues. Allowing iterative changes to reform based on data gathered during the testing phase will significantly improve the issue of timely reform.

Although the model and processes being recommended in Washington for data-driven legal regulatory reform borrow heavily from the experiences of the Utah Courts' Office of Innovation, the Practice of Law Board benefits from being able

[21] Consider for example, changes to lawyer advertising and RPC 7.1, which began in Apr. 2015, were published for comment by the Supreme Court in Apr. 2019 (available at https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=2698), and ultimately adopted in Jan. 2021.

to observe Utah's sandbox and data, and modify its plan as needed. [22] For example, the Practice of Law Board has designed a more nuanced approach to assigning and measuring risk and has determined that from the beginning, it is important to measure impact on the access to justice gap, rather than assuming any increase of legal services will reduce the gap.

In working with the Utah Office of Innovation, the Practice of Law Board has shared the proposed processes for risk analysis, measuring access to justice, and the applicant-based payment model.

VI. SUPERVISING DATA-DRIVEN LEGAL REGULATORY REFORM

To address matters important to the Supreme Court, such as addressing access to justice and the practice of law, the Washington Supreme Court has chosen to create boards that

[22] See generally, *Innovation Office Activity Report,* Utah Office of Innovation, Nov. 18, 2022, available at https://utahinnovationoffice.org/wp-content/uploads/2022/11/IO-Monthly-Public-Report-October-2022.pdf.

report to the Supreme Court, while being administered by WSBA. Such administration functions include staffing, budgeting, and oversight.

The Supreme Court boards are particularly important in areas that have the potential to be considered to violate antitrust law under *North Carolina State Board of Dental Examiners v. Federal Trade Commission,* 574 U.S. 494, 135 S.Ct. 1101, 191 L.Ed.2d 35 (2015), where the U.S. Supreme Court held that because "a controlling number of decision makers on a board were 'active market participants in the occupation the board regulates,' the board would not enjoy immunity unless it was subject to a clear articulation of state policy and active supervision by a non-market participant."[23] For example, the Practice of Law Board, not WSBA, has the responsibility to

[23] Benjamin Baron and Deborah Rhode, "*Access to Justice and Routine Legal Services: New Technologies Meet Bar Regulators*," Hastings Law Journal, Vol. 70:955, May 2019, at 977, available at https://hastingslawjournal.org/wp-content/uploads/70.4-Barton-Rhode1.pdf.

collect and refer complaints alleging the unauthorized practice of law to the appropriate authority per GR 25, under the active supervision of the Supreme Court.[24]

Therefore, the Practice of Law Board is recommending that the Supreme Court authorize another independent board that reports to the Supreme Court to supervise data-driven legal regulatory reform.

Like the Practice of Law Board, the new supervisory board for data-driven legal regulatory reform would be composed of volunteer members. The supervisory board would include a core set of volunteer members, representing legal professionals who are active members of WSBA, and an equal number of members of the public. Additional at-large-members would be appointed due to their expertise in a particular field relevant to an applicant with an idea for legal regulatory reform. For example, if an applicant had a proposal to reform the

[24] WA. Gen. R. 25(b)(3).

practice of family law, the at-large-members for this application could include a family practice lawyer, a limited license legal technician, and a data scientist to help analyze the data. The number of at-large members could differ based on the applicant, the complexity of the proposed reform, and the number of applicants who are in process. Therefore, the size of the board could grow as needed, but each recommendation would be based on the concurrence of the legal representative and public members.

Should the supervisory board need to acquire expertise in a particular area, such as data science, and such expertise had an associated cost, then such costs would be paid by the applicant.

In addition, for continuity between the Practice of Law Board, which is bringing this data-driven legal regulatory reform proposal to the Supreme Court, and the new supervisory board, for at least the first year of the new supervisory board's operation, one or two members of the supervisory board would

be members of the Practice of Law Board to advise and help resolve any issues not anticipated in the design of the process.[25]

Like the other Supreme Court Boards, the new supervisory board would be administered by WSBA under GR12.3.[26]

It should be noted that because this supervisory board would be administered by WSBA per GR 12, some WSBA member funds would be spent on such administration. For the purposes of this document and the Blueprint as revised per this recommendation, these direct costs, including for example, meeting costs, should not be substantially different from the direct cost for the other court-created boards.

VII. WHO CAN USE DATA-DRIVEN LEGAL REGULATORY REFORM?

Legal professionals, members of the public, and entities can apply to take part in data-driven legal regulatory reform.

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[25] This will require a rule change to GR 24 and a new General Rule to create the new supervisory board.
[26] WA. Gen. R. 12.3.

Experience in Utah shows that the largest number of applicants are legal professionals, who were mostly interested in investigating alternative business structures for their legal firms. Many applicants to Utah's sandbox were proposed reform to the RPCs such as RPC 5.4 (a), which generally prohibits fee-splitting with non-lawyers, and 5.4 (b), which generally prohibits formation of a partnership or professional corporation with a non-lawyer for the practice of law.[27]

Based on the Utah sandbox's experience, the Practice of Law Board anticipates that online legal service providers who offer a variety of legal services in areas such as family law (primarily divorce) and immigration will apply to reform regulations, such as the court rules defining the unauthorized practice of law.

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[27] See generally, *Innovation Office Activity Report,* Utah Office of Innovation, Nov. 18, 2022, available at https://utahinnovationoffice.org/wp-content/uploads/2022/11/IO-Monthly-Public-Report-October-2022.pdf.

Many online service providers are already offering legal services primarily from internet websites hosted in a variety of states, including Washington. Such firms have no path to authorized practice under the current statutes and regulations, despite strong support from consumers who are using and benefiting from these alternative but possibly unauthorized legal services.

Although it is conceivable that some entities with an idea for legal regulatory reform may not have access to legal professionals, this would not prevent them from participating in data-driven legal regulatory reform, but it would make their application require additional scrutiny to ensure sufficient information is available to decide whether the proposal adequately protects the public from undue risk of harm.

VIII. FUNDING DATA-DRIVEN LEGAL REGULATORY REFORM

The Utah Supreme Court Office of Innovation initially funded its activities via legal grants. As these grants run out, Utah will need to look for funding from a variety of sources.[28]

Under GR 25(b)(2)(E), any innovation that the Practice of Law Board proposes to the Supreme Court must at a reasonable point cover its costs, "including the costs of regulation," and be "financially self-supporting within a reasonable period of time."[29] Although reasonable is undefined in the court rule, the Practice of Law Board recommends that a five-year period is reasonable.

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[28] See *Utah Supreme Court Standing Order No. 15*, stating that the Innovation Office will be funded initially by a grant from the State Justice Institute and in-kind contributions from the National Center for State Courts and the Institute for the Advancement of the American Legal System. The Innovation Office will have the authority to seek additional grant funding and may also be supported through licensing fees as noted in Section 4.9., available at https://legacy.utcourts.gov/utc/rules-approved/wp-content/uploads/sites/4/2020/09/REVISED-Utah-Supreme-Court-Standing-Order-No.-15.Clean_.pdf.

[29] WA. Gen. R. 25(b)(2)(E).

Therefore, the Practice of Law Board's initial plans for data-driven legal regulatory reform attempted to find a funding mechanism that would not use WSBA member dues. It investigated a variety of funding mechanisms including grants, but the Board has never obtained a definitive answer as to whether a Supreme Court Board can solicit grants, and if a grant was awarded, whether the Supreme Court Board could accept the monies as it is an entity administered by the bar but is not an entity that has its own bank account or non-exempt status.

The Practice of Law Board, in conjunction with the executive staff of the WSBA, built an extensive budget model showing what a fully permanent staffed board, based on the cost structures of WSBA might cost. This budget model used WSBA member funding to start the data-driven legal regulatory reform. The model is based on liberal costs, and conservative numbers of applicants and eventual licensing fees for any successful applicant who receives a court order license to

provide new legal services. Based on this model a five-to-seven-year payback, with continued profitable operation beyond that point is feasible. Although one could debate line items in this budget model, doing so would not likely change the model by plus or minus ten percent, and therefore, the Board accepts this as a conservative budget for a full-time, staffed supervisory board.

However, this budget model does not address whether it is equitable to use WSBA member license fees to fund the business activities of other members or non-members. For example, the use of such funds to bootstrap the LLLT program led to an expense of $1.4 million and only thirty-eight active LLLTs. [30]

[30] Lacy Ashworth, *Nonlawyers in the Legal Profession: Lessons from the Sunsetting of Washington's LLLT Program*, 74 Ark. L. Rev., Jan. 2022, at 691, available at https://www.wsba.org/docs/default-source/licensing/lllt/nonlawyers-in-the-legal-profession_-lessons-from-the-sunsetting-of-washington's-lllt-program.pdf?sfvrsn=e5b11f1_4.

Therefore, the Practice of Law Board is recommending a volunteer-based supervisory board, and that applicants pay the costs of their data-driven legal regulatory reform. That is, they must be willing to cover all costs for their application during the data-driven legal regulatory reform process and up to final authorization. After final authorization, if granted, they would continue to pay an annual fee to cover ongoing monitoring and the costs of licensing.

Bootstrapping data-driven legal regulatory reform has an added positive effect: It ensures applicants have assessed their business model and the impact of the data-driven legal regulatory reform on that model, and therefore, are willing to invest in the process as a path to authorized practice under the regulatory reform they propose.

Applicants, in particular non-government organizations (NGOs), and other non-profits providing legal services, will be encouraged to apply for their own grants to fund their participation in data-driven legal regulatory reform.

However, to the extent that the board as a Supreme Court board is subject to GR 12.3, WSBA would remain responsible for budgeting for and paying such the costs of GR 12.3 administration.

IX. UNSUITABLE REFORMS FOR DATA-DRIVEN LEGAL REGULATORY REFORM

Not every rule or regulation is suitable for data-driven legal regulatory reform, not because of any problem inherent in the data-driven legal regulatory reform processes, but rather, because the rules are so central and core to the duties of legal professionals to their clients. This includes such rules and regulations as RPC 1.1 Competence, 1.3 Diligence, 1.4 Communications, 1.6 Confidentiality, 1.7 Conflicts, 1.8 Conflicts, 1.9 Duties to Former Clients, 1.10 Imputation of Conflicts of Interest, 1.15A Safeguarding Property, and 1.15B Required Trust Accounts.

The testing of these rules would not be strictly prohibited, but rather, applicants would be warned that these

areas would be subject to the highest levels of scrutiny to ensure there are measurable benefits, and with the highest suspicion that harm would both easily occur and be virtually impossible to mitigate.

It is important to consider the duty of Confidentiality and the collection of data in this model. RPC 1.6 prohibits disclosing "information relating to the representation of a client" unless an exception applies.[31] Although foundational to the attorney client relationship and to the provision of justice, this rule may be being used as an to excuse any attempt to collect data about legal services. There are still significant amounts of data about legal services which can be collected without violating confidentiality, such as the start and end dates of the legal service. Data can also be anonymized, the remove references to a particular individual or event, while still having value for measuring the effectiveness and efficiency of a legal

[31] WASHINGTON LEGAL ETHICS (Wash. St. Bar Assoc.) 2d ed. 2020, at 7.3.

service. In addition to anonymizing data, informed consent, where a prospective client or client has been given adequate information and explanation about the material risks and reasonable alternatives, consents to the collection of the data solely for the purposes of measuring the data-driven legal regulatory reform.[32]

X. SUITABLE REFORMS FOR DATA-DRIVEN LEGAL REGULATORY REFORM

A large spectrum of reforms should be possible using data-driven legal regulatory reform. The Practice of Law Board anticipates that, as with Utah's Office of Innovation, most applications will likely look to change the RPCs that affect the business of offering legal services or alternative business structures, including but not limited to RPC 1.5 Fees, Title 5 Law Firms and Associations, and Title 7 Information About Legal Services.

[32] *Id.* at 7.6

In addition, it would be the completely feasible to use data-driven legal regulatory reform to evaluate several other potential reforms such as whether the LSAT is a valid measure of a candidate's likelihood of success in law school, or whether the bar exam is a valid and equitable measure of competency in the law to be licensed as an attorney and counselor at law or other authorized legal professional designation.

XI. CONCLUSION

For these reasons, the Practice of Law Board asks this Court to authorize the Practice of Law Board to prepare the necessary court orders and changes to the court rules, to allow data-driven legal regulatory reform and to create a Supreme Court Regulatory Reform Board, tasked with the responsibility of working with the Practice of Law Board to begin implementing data-driven legal regulatory reform.