

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.

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 Reform¹ that provides a mechanism for 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

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

¹ 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/>.

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 justice² by enhancing access to affordable and reliable legal and law-related services consistent with protection of the public, and whether entity regulation will 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

² 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.

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 reforming one or more regulatory rules governing entities practicing law and, if applicable, other related rules 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. 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 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. 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 make data-driven determinations regarding whether entity regulation should be implemented. In any event, the pilot project shall end after the Board and the WSBA have collected two years of reporting by the entity most recently granted authority by the Supreme Court to participate in the pilot project.

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 and shall propose regulatory reforms necessary to accomplish the implementation. The recommendations must detail how to administer entity regulation, anticipated costs associated with entity regulation, including ongoing authorizing costs, and how the Court can best structure funding for entity regulation.

DATED at Olympia, Washington this *** day of ***, 2024

Chief Justice

DRAFT