

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

Sender	Date received	Comments
Charles Patrick	8/3/2021	Personal injury attorney, dislikes chiropractors and other 3rd parties acting as "case brokers" on plaintiffs' cases. Allowing non-lawyers like chiropractors to have partial ownership interests in law firms or to fee split will lead to more insurance fraud and denigrate the legal profession. Report is also wrong in concluding that civil legal services are not readily available to the public in FL - 1000s of lawyers are ready, willing and able.
Charles Patrick (2nd email)	9/24/2021	<p>The Florida legal system has been plagued with chiropractic fraud schemes involving organized criminal activities to defraud insurance companies and clients in auto accident cases. Attached are summaries of the successful prosecution of 2 such fraud rings in South Florida. The summaries detail how these fraud schemes operate including bribing tow truck drivers for information; illegally obtaining copies of accident reports; using runners to solicit accident victims and providing unnecessary and excessive chiropractic treatments and charging excessive fees. The schemes also involve the collaboration of unethical attorneys who accept the cases in referral from the chiropractic groups.</p> <p>Under current Bar Rules an attorney is prohibited from sharing legal fees with chiropractors or other non-attorneys. If the Legal Lab Proposal to allow attorney's fees to be shared with non-lawyers is enacted, that ethical deterrent will no longer exist and the problem will become worse. The Bar should not allow itself to be duped into supporting such a scheme under the guise that there are insufficient legal services available under the current rules. Turn on the 12 noon network television news in any community in Florida and you will see multiple attorney ads for personal injury cases. All of the ads stress that the clients do not have to pay anything in advance and that the attorneys only get paid if the clients recover. There is no shortage of attorney services in Florida for personal injury and wrongful death cases.</p>
David Marcus	8/17/2021	Concerns with non-lawyer ownership interests in law firms and fee splitting. Roofing companies and mitigation companies could own law firms and encourage inflated claims and damage amounts. May directly impact homeowners insurance costs. If non-lawyer ownership allowed, should be limited to interests associated with the practice of law, like tech companies. Fee splitting could lead to abuses. Nonlawyers practicing in a few limited areas, like drafting wills, would be helpful. Using a sandbox sounds like preschool - use a different word.
Alexandra Rieman	8/18/2021	Limited representation should not be allowed for a guardian, PR, or curator who has a fiduciary duty to a ward, beneficiaries, and creditors. The sender has a list of questions - see attached .

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Magda Abdo-Gomez	8/18/2021	Technology and advertising by nonlawyers have sped up the demise of the legal profession. The Bar previously fought against Avvo, and now is "all in" with having non-lawyers perform legal services and ownership interest in law firms. What has changed? Why is fee sharing with a non attorney now considered ok and ethical? Does this signal the end of ethics in our profession? What recourse will consumers have? What impression will consumers get from Florida Bar sanctioned legal technology companies practicing law and sharing fees? Is this how the legal profession should be portrayed to the public? The Florida Bar is no longer a part of protecting our profession and is not about protecting consumers either. There should be no fee sharing and no nonlawyer ownership of firms. It is time for the Florida Bar to protect its members, especially solo and small/medium firms who will be more affected by these proposals than the large firms with large dollar clients.
Marcelo Prado	8/19/2021	Shared his non-attorney experience in drafting documents, scheduling hearings, and communicating for a law firm; also shared that he is from Brazil where the government pays the legal fees of anyone who cannot afford an attorney. "If nonlawyers are requiring to receive training from lawyers and they are also required to do continue education this means of improving in our legal system and more jobs for lawyers. If nonlawyers are bound by similar rules as lawyers this creates a fair competition not like how it is currently where a nonlawyer can open up a shop and compete with a lawyer without being required to be bound by any rules. I respect all of you in your protests or dissents against any changes in our legal system but I will ask for all of you to take your emotions aside and reflect in what is written here by me and see that no lawyers will be losing their current profits in fact the legal field will pose more opportunities to lawyers for-profit and will also help more citizens of this State to access their pursuit of justice."
Adam Rieth	8/19/2021	The ownership of law firms by a minority ownership group of non-lawyers is a terrible idea for Florida consumers and legal clients, likely due to powerful, well-funded companies that want to turn firms into cash machines, instead of what they are meant to be - a service to clients. Lawyers are often guided into murky waters due to greed and other motivations; however, the threat of disbarment keeps most of those unethical actions from occurring. This is a slippery slope to total ownership of firms by non-lawyers, which would exacerbate the above issue, and be financially stressing on lawyers, which is already a flooded market in FL.
Betsey Herd	8/31/2021	Nonlawyers owning law firms is the beginning of the end of our civil justice system as we currently know it. I cannot imagine working for anyone who hasn't taken the oath to uphold our justice system, and who may be looking more closely at the bottom line than any right of any victim. Here is an article that demonstrates an expansion of legal services that I can applaud - https://www.npr.org/sections/health-shots/2021/08/31/1030717388/some-medical-clinics-are-hiring-lawyers-to-improve-patients-health?sc=18&f=1001 .

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Megan Wall	8/31/2021	<p>FL legal services atty since 1991, believes no one in the Bar has any idea how legal aid works, how it is funded, or what these changes to the FBF rules are or what they mean. Doubts legal services' attorneys have followed these changes or understand the magnitude of these changes. Certainly the EDs who run the legal aid organizations have told you their opinions, as well as many former FL Bar Presidents. So why this request to the general bar who has little or no idea what these changes are or what they mean? The purpose cannot be legitimate.</p> <p>If legal services simply assists with a divorce, or writes a will, that does not bring about real changes the poor may need to fight injustice. But this was the agenda of this committee - to take the teeth out of a real "delivery system" that could achieve real change to the forces of injustice. These are "the restrictions" done in the Reagan administration that bound Legal Services' Corporation (LSC) funding - defund any lawyers trying to make impact changes to the lives of the poor, do not enforce the rights of disabled school children, or assist with workers who want to organize, or people on public benefits collectively, or consumer issues, do not lobby for legislative changes, do not assist incarcerated people whose rights are being violated, do not assist anyone who is not a citizen, do not assist farmworkers, do not challenge illegal law enforcement actions, do not bring class actions that could make changes for groups of poor people collectively, do not register the poor to vote. When LSC put in those restrictions, IOTA/BBF continued assisting in larger ways, but now these recommendations are to restrict the FBF funding also. So, a few more divorces, a few more wills instead, and we will act like that is "really helping the poor." But asking what bar members think, so you all can say "no one in the Bar objected" or something? Only a small group understands these funding mechanisms, or what they were designed to achieve, and you have already heard from those educated on this topic. No one else has any idea, and why should they?</p>
George "Dutch" Anderson	9/1/2021	<p>Absolutely opposes allowing non lawyers to practice law in any form. Certainly, allowing nonlawyers to have ownership in law firms and share in fees is absurd. It completely dilutes the practice and abrogates the need for a law degree and the intensive investigation that is required of licensed attorneys.</p>

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Jonathan Corchnoy	9/1/2021	<p>Allowing non-lawyers to own any part of a law firm would be the first step to losing control of the provision of legal services, just as the medical profession has lost control of who decides what actions should be taken for a given medical diagnosis. When the Bar is adamant not to allow non-Florida licensed attorneys to practice Florida law (except on those rare occasions where Pro Hac Vice is appropriate and approved by the local Circuit Court), allowing such an action would be hypocritical at best.</p> <p>As for paralegals' ability to do more, does the Bar intend to set up a professional testing much as is required to be licensed as a Florida Attorney? Otherwise, you can't even tell whether any paralegal meets a minimum level of knowledge and skill. You will be at the mercy of their oversight attorney to determine whether they are acting properly. How much oversight will you require – one to one attorney to paralegal? One to ten? One to hundred? Will the attorney be required to note his oversight of the paralegal as a daily note, weekly assessment, and/or monthly evaluation?</p> <p>As for splitting fees with “with online companies that provide legal services”- presumably like Avvo - so long as the payment is no more than the usual referral fee allowed pursuant to Florida rules, how is this different than if the referral was paid to an attorney (so long as the online service agrees to be subject to audit and oversight by the Florida Bar for any referred Florida work just as any referring attorney would be)?</p>
Jose Seda	9/1/2021	<p>The further attorneys go from the Professional model to a business model, the quicker the Rule of Law and The Constitution will become irrelevant historical footnotes.</p>
Bernie Mazaheri	9/1/2021	<p>Ownership of law firms by non-attorneys is improper. The Florida Bar ought to oppose the suggestion.</p>
Mario Musil	9/1/2021	<p>I'm a fairly young attorney, tech savvy and open to new ideas, but I believe both of these issues would create more problems than good and I'm VERY opposed to them. It will lead to the "business-fiction" and corporate rule of law firms and diminish attorney's independence to use their best judgment. Their goals will be dictated by revenue goals and other performance indicators. My spouse is a Pharmacist for a major national chain, and the amount of corporate pressure she receives to do things that are not always in the very best interest of the patient is immense. This can also be seen in dealing with doctors and insurance companies. The idea may be that fees will be more accessible, but I do not see doctor's offices reducing their fees - instead corporations are profiting by building chain dental offices and urgent cares.</p> <p>Attorneys have a lot riding on their actions and have a lot of pressure to use their best judgment to do the right thing. Their name is on the line, their reputation is on the line, their license and livelihood are on the line. Attorneys take pride in doing the right thing. When the practice of law becomes just another business like a laundromat, corners will be cut by those that do not have much to lose when something goes wrong. A nonlawyer has no license to worry about, no name to protect, they probably didn't spend 3 years in grad school after 4 years of college - pursuing their dreams - they are not invested. I would urge the committee against making any recommendations to allow non-lawyers into the practice of law simply to be more inclusive or more modern, when we have seen time and time again in every other industry that nothing good comes of it.</p>

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Faith Brown	9/1/2021	As a family law practitioner, I am against non-attorneys having ownership interests. This will open up an entirely new can of worms for sole practitioners going through divorces. I am also against allowing non-attorneys performing legal work. There are paralegals operating divorce centers, completing paperwork incorrectly for clients and creating a tremendous mess that an attorney has to figure out how to clean up. I do not believe it should be expanded.
Ronald Rohde	9/1/2021	In favor of allowing non-lawyer ownership, it would be a great step toward increasing ownership and capital to the industry.
Kay Lewis	9/1/2021	<p>Disagrees with allowing non-lawyers to own any interest in a law firm and/or to split fees, based on my experience over 20 years ago. As a young attorney trying to acquire new business/clients, a good referral source was accountants, especially CPAs. But there was pressure to share my legal fee with referring accountants. If the Florida bar were to permit such practices, then young attorneys will become prey to seasoned nonlawyers pressure. It was a very uncomfortable position to be in, and the only power is to say that it is NOT allowed under the bar rules.</p> <p>The sharing of fees is a dangerous issue allowing nonlawyers to de facto practice law informally by giving "legal" opinions to clients and then putting the liability on the attorney for anything that goes wrong. It is so very dangerous especially as so many new and young attorneys are having to go solo to practice especially in these pandemic times. Lesser experienced attorneys are just bait for these other professionals who try to "own" the clients while they know they need an attorney for the work or project, but the seasoned accountant or financial planner just really wants to keep the fees. In my experience NO ownership should be allowed to any non-attorney as that is just a deep whole we will not be able to rescue young attorneys from in the future.</p> <p>The pressure was great, had to turn down referrals from 2 CPAs just to get free of their demands to share my fees or make a partnership.</p>

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Ray Blackledge	9/1/2021	<p>1. Further study on creating a legal lab to test innovative ways of delivering legal services: This is a wonderful idea.</p> <p>2. Allowing nonlawyer employees of law firms to have minority ownership interest in those firms: This is a very bad idea and starts us down a very slippery slope. Our Legal Profession has steadily moved away from being a profession and towards just being a business. Small group of law firms advertising on TV, Radio, Sports Venues, billboards, busses and other vehicles take advantage of loop holes in State laws and crank out thousands of needless law suits on whatever the flavor of the time is. Mold, Cabinets, Flooring, Sinkhole, AOB, Roofs, Wind Shields, Cast Iron Pipes, to name some. Each time the Florida Legislature addressed these problems by limiting attorney fees, the problems go away. Do you remember when everyone in Florida was dying from mold? Then the attorney fees were restricted and a miracle occurred, people in Florida stopped dying from mold. Do you remember when everyone in Florida had a sinkhole under their home? Tens of Thousands of Law Suits were filed until the Florida Legislature restricted attorney fees and then like magic, poof no more Tens of Thousands of sinkhole lawsuits. Allowing non-lawyer employees (who are not regulated by professional ethics or rules) of law firms to have minority interest in those firms would be the next step in turning law firms into enemies of the common good.</p> <p>3. Permitting lawyers to split fees with online companies that provide legal services: Same objections noted in 2 above. Also, permitting lawyers to split fees with online companies that provide legal services opens up a host of problems. How will we be able to regulate what States the Lawyers and online companies practice law in vs what States they are actually licensed to practice law in? Will the online company have employees who are licensed to practice law? If not that also will cause a very difficult oversight problem. Will this arrangement tempt lawyers to perform unlicensed practice of law in other States in order to assist the online company?</p> <p>4. Allowing FRPs to perform more services in a law office under attorney supervision: As long as the work is billed at a paralegal rate, good proposal.</p>
Julian Sanchez	9/1/2021	<p>Practicing for 30 years. Having an attorney with ethical obligations to the court and clients, who has to “answer” to a non-lawyer owner/entity who has no such obligations is concerning. Lawyers do the right thing and try to make sure those in their firms do the right thing, partly because they don’t want to prejudice their livelihood. Not sure how you have that same level of deterrent with non-lawyers.</p>
Marc Gregg	9/1/2021	<p>1. Fine with testing innovative ways of delivering legal services.</p> <p>2. Do not allow nonlawyer employees of law firms to have minority ownership interesting in those firms - this is the road to hell.</p> <p>3. Do not permit lawyers to split fees with online companies that provide legal services - this is another road to hell.</p> <p>4. Allow FRPs to perform more services in a law office under lawyer supervision.</p>
Blair Clarke	9/1/2021	<p>All horrible, horrible ideas.</p>

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Bonnie Jackson	9/1/2021	<p>1. KEEP IT SIMPLE. This is not complicated, so stop making it complicated. The more complicated, the less people understand what is expected and less able they are to follow the rules. 2. ENCOURAGE PEOPLE TO SETTLE THEIR OWN DISPUTES. Delivery of legal services is important, but not everyone needs legal services. Neighbors should be able to argue it out and come up with a solution. Business disputes can often be negotiated in-house. Married couples divorcing should have tools available to resolve basic and repetitive issues. This is not advocating intervention by non-attorneys, but a toolbox for self-guided problem solving. 3. THE JUDICIARY IS PART OF THE PROBLEM. Judges have a myriad of their own rules and they are enforced haphazardly or not at all. Judges complain about their dockets, but they do not move their dockets along or tighten up the time frames for caseloads. Attorneys no-show at hearings and there are no consequences; assert baseless objections to delay and there are no consequences; file motions that they never set for hearing and there are no consequences. It used to be that depositions were the exception, and now everybody takes depositions. Cases should not take years and hundreds of thousands of dollars. It is a corruption of the system and it makes it harder to take smaller cases that need representation. Judges need some uniformity.</p> <p>The recommendation to provide “education” to lawyers in understanding Rule 4-1.2(c) deemed to be underutilized is absurd. The idea that there is a serious problem with attorneys not understanding that they are able to limit the scope of their representation and that this somehow required a committee to convene and study the issue leaves me almost speechless. What a waste of time and resources.</p> <p>The recommendation to establish a “regulatory sandbox” is awful. First, the terminology is offensive. We are not children and we certainly do not need more regulations. The report summary then states that this sandbox will be referred to as the Law Practice Innovation Laboratory Program. Changing the offensive “sandbox” to some Disney-sounding lab demonstrates another bureaucracy in the making. We have enough bureaucracy thank you.</p>

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Bonnie Jackson <i>(continued)</i>	9/1/2021	<p>A committee recommending another committee is not a solution. We do not need a lab or a 109 page report of sweeping recommendations – most of which will do nothing to help deliver legal services. This recommendation creates a supervisory body (i.e., more regulations and more bureaucracy), and the commission (i.e., more regulations and more bureaucracy) and will collect “data” to see if there are “unacceptable levels of consumer harm.” There is utterly no chance of determining “unacceptable levels” with any accuracy. Every legal decision and when to implement that decision necessarily impacts other options. It may foreclose other avenues of relief entirely. A non-attorney cannot possibly evaluate all of those factors, and this recommended bureaucracy could not possibly measure the harm. And what is the meaning of “unacceptable” levels of consumer harm? Are you now creating a new legal standard for professional malpractice? And aren’t you acknowledging that there will be harm? I am just dumbfounded that a group of people took all this time to come up with this as a recommendation.</p> <p>One of the worst recommendations is about changing regulations of nonlawyer providers of limited legal services. With the advent of electronic filing, email, and remote scheduling for hearings, depositions, mediations, etc. I have noticed a lot more unlicensed activity by attorney staff, as well as self-described paralegals giving advice to pro se parties. There is plenty of unlicensed activity already and this recommendation will remove some of the existing barriers and create more competition between attorneys and individuals who do not understand what they are doing. As it stands now, attorneys are using their staff to send email under their name, to draft and file motions and/or notices, and to leverage their connections with Court staff to expedite or block the opposing side or even undermine an opposing party or attorney. I have watched legal assistants cover for their attorneys misconduct over and over again. I am not talking about once or twice, but many times. How about a recommendation to combat this problem instead of empowering staff to misbehave and licensing paralegals to provide limited advice. Plus, who actually believes that paralegals will limit their advice? Clients have questions and those questions will be posed to and answered by non-attorneys. Are you okay with that? Seriously? Are we just highly regulated window dressing as attorneys?</p>

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<p>Bonnie Jackson <i>(continued)</i></p>	<p>9/1/2021</p>	<p>Finally, another horrible recommendation is the idea that we should allow nonlawyers to have a non-controlling equity interest in a law firm. There is no logical connection between that change and improving the delivery of legal services. Furthermore, you will gut the ability of small law firms to compete with large national firms. Also, a nonlawyer owning an equity interest creates a pandoras box when the law firm dissolves, splits, or there is a client fee dispute. This is yet another committee adding further complications to issues that are already too complicated. While the committee, thankfully, is not recommending passive ownership to allow outside investors, it certainly talked about this dubious concept in rather glowing terms. Once again, this will do nothing to improve legal services. Investors exist to make money. They have no ethical obligations to clients. Attorneys will have a conflicting obligation between their client’s interests and their ‘passive investor’ – an oxymoron to be sure.</p> <p>I appreciate the opportunity to comment, but have no illusions about the value you will place on my email.</p>
<p>F.B. Simmons III</p>	<p>9/1/2021</p>	<p>Do not permit non-successful bar examined person(s) to share in the cash flow from the provision of legal services. Alabama thus far permits the cover up by a supervising attorney to adequately cover her assistant's unauthorized practice of law. Plus to permit this attorney to coordinate with a licensed real estate broker, and to completely ignore security sales licensing requirements, to sell stock, or land, in a bogus legal entity through a title agency closing with twin insurance policies on one purchase. I was a row crop farmer in cattle country and a Ohio Yankee in the deep south. Without proper signatures they scammed me and my wife out of over a million dollars. Now with their bogus corporate entity they want me to pay the \$1.5M they evaded paying the federal and state governments in inheritance taxes.</p> <p>Supervision by licensed attorneys can go wrong. What happens when non legal licensed folks get involved? Now Florida wishes to permit those not supervised by attorneys to share in the cash flow from legal efforts? Just say no. Peculiar that a person can graduate from law school, not pass a bar examination, not be permitted to be a member of the bar of a court, yet can become a judge on the court they cannot practice before. See last presidential appointment to the US Supreme Court. Or where a person can graduate from law school, not pass a bar examination, yet get elected to Congress and maybe Chair the House Judiciary Committee after the 2022 elections. Politics influences law school grades. Suffered under their peculiar grading system. Went from top 5 in class of 144 law students in the first semester to last in second semester based on one political course grade. Managed to achieve two graduate degrees of law and pass two bar examinations.</p> <p>Please remove any statute of limitations for efforts made under any legal license to practice law. Be good or be gone. To obtain cash flow from legal services, please keep it a requirement to pass a bar examination and to join the bar of the court you practice before or become its judge.</p>

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Howard Gilbert	9/2/2021	Marked his email as "confidential and privileged" : Lawyers should exclusively own law firms. The Supreme Court loses control of nonlawyers. Paralegals should not own law firms. If you want to practice law go to law school and graduate. Then pass the character and fitness and the Bar exam. Maintain your continuing education mandates. Pay regular dues to support the bar association including pro bono and charitable activities and maintain malpractice insurance and honor the attorney client ethics, trust fund and privilege. Florida has become a television circus of what appears as a never ending stream of money hungry legal factories. Curtail to the extent legally possible advertisement. We are already burdened with a litigious society adding more nonlawyers and corporate business process will only encourage more not less litigation. It will enable unsupervised pseudo law practices all of which will demean and denigrate the profession. Consider allowing "nonlaw school apprenticeships" to take the bar exam and become lawyers. This would reopen another route to becoming a lawyer without huge tuition burdens.
Richard Katzman	9/3/2021	Please, please do not allow non-lawyers to own firms or share in legal fees. Please do not change the rules.
A.J. Grossman III	9/3/2021	100% for finding opportunities to expand the delivery of affordable, high-quality legal services. Non-lawyer minority ownership in law firms will enable lawyers and law firms access to greater business resources. For example, most lawyers are not skilled or knowledgeable about leadership, innovation, systems, and processes which can all drive and support delivery of legal services. If a lawyer/owner can bring other non-lawyer professionals on-board in a minority ownership capacity, it will afford greater opportunities to build, improve, and streamline the business side of the delivery of legal services. Having some form of non-lawyer ownership might open up more possibilities for venture capital or other capital investment to help our practices grow. Also, allowing Florida Registered Paralegals to provide more services will further enhance access to justice and help us provide more affordable legal services to the marketplace. Should a lawyer be the only person allowed to attend all hearings? Or should there be some hearings in which a paralegal could adequately conduct and handle the hearing; maybe a non-evidentiary hearing that is a mere formality? Many lawyers are business owners who happen to be lawyers, not lawyers who happen to be business owners. For those lawyers who want to be firm owners and have a business-minded professional as a co-owner to focus on the entrepreneurial aspects of leading a business, opening firm ownership to non-lawyers could dramatically help law firms grow and thrive. This would create healthy competition in the legal marketplace.

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Latoya Ross	9/3/2021	<p>Not opposed to nonlawyers having an equity interest in law firms to improve access to legal services, likely best for a nonlawyer to have a non-voting interest and to not actively participate in the management of a law firm’s daily operations, to eliminate or reduce conflict of interest and undue influence. As for the remaining recommendations in the Final Report of the Special Committee to Improve the Delivery of Legal Services, I agree with the same in concept. However, it's prudent to note that most lawyers expend considerable time and money to attend undergrad and law school for 7 years and study for and take the bar exam. Thereafter, they make an Oath of Admission to The Florida Bar and pay annual dues and participate in mandatory ongoing legal education. For many lawyers, this gives them a stake in delivering quality legal services and upholding the virtues of the legal profession. It may be quixotic to expect nonlawyers to do the same.</p>
James Powell	9/3/2021	<p>The practice of law is a recognized profession. Allowing non-lawyer employees of a law firm to have a minority ownership interest ends the concept of profession and shifts the practice of law to a business enterprise. I am opposed to this proposal.</p> <p>Permitting lawyers to split fees with online companies that provide legal services is another way to end the practice of law as a profession. Seems to be fee splitting with referral services. Referral companies refer to attorneys for a number of business reasons, but the referral is never based on whether the attorney is question is anything other than a customer of the referral company. I am opposed to this.</p> <p>Allowing Florida Registered Paralegals to perform more services in a law office under lawyer supervision is non-objectionable. The attorney remains the responsible party for the work done by the paralegal. I am not opposed to this.</p>

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Pamela Holcombe	9/14/2021	<p>The solutions proposed appear to be driven primarily by the aspirations of potential service providers and not by the challenges of persons who actually need legal services and cannot access such services. As a regular and dedicated Legal Aid volunteer who conducts one on one consumer client interviews, I have first hand knowledge that most of the folks seeking its assistance are in need of actual legal representation, and neither guidance in self-representation, nor an empowered paralegal, nor tech generated assistance, nor unbundled legal services, would suffice to meet their needs. The economically and educationally disadvantaged, disabled, and elderly, folks who seek assistance of Legal Aid and its volunteer attorneys are most often in desperate need of a real life attorneys to analyze their issues, advise, and assist. These folks are also the least likely to be able to navigate self-representation guidance or benefit from limited representation or assistance. Sadly, many such Legal Aid clients already have been predated upon by disreputable individuals or entities and to consign them to a "sandbox" of untested quasi-legal services does a discredit to our profession.</p> <p>I am unaware of law firms having difficulties attracting nonlawyer talent to provide useful ancillary services to law firms and their clients, whether key technical support staffers or a doctor employee of a personal injury firm who evaluates claims. Law firms are already free to provide generous compensation or bonuses (other than fee splitting and firm ownership) to such employees. As to tech based providers and services, there is no impediment to such providers to obtaining an appropriate amount of revenue from either the law firm itself or as a client cost without being entitled to an actual share of the attorneys' fee or firm ownership. There appears to be an absence of any data or evidence that the sharing of fees with nonlawyers, such as online legal service providers, actually improves the delivery of legal services, however, there is no doubt that this change would improve the revenue stream of the online legal service providers.</p>

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Pamela Holcombe <i>(continued)</i>	9/14/2321	<p>Non-attorney owners of law firms are not governed by the same ethical obligations and duties as attorneys and opening the doors to such non-attorney ownership can only encourage ethical "blurred lines". That the Bar will have no regulatory power over the conduct of these non-attorney owners is another area of concern.</p> <p>It seems that the Bar is investigating this issue from a primarily a single perspective and upon input from those who wish to improve their ability to access firm revenues or ownership by providing such services. If the Bar is sincerely seeking suggestions to improve delivery of legal services, it should devote at least equal effort to investigating this issue from the perspective of potential clients who are having difficulty accessing legal services, the Legal Aid organizations that regularly see the human costs of lack of access to actual legal advice, and the sole practitioners and small practices that are often the only other attorneys providing legal services to those on the margins.</p> <p>Given that the report is being prepared in a relative vacuum of any track record of success of any of the recommendations actually improving the delivery of legal services in a fashion that is meaningful to clients, it seems to proposing a solution without first defining the parameters of the problem or investigating other approaches to improve actual access to representation. At a minimum, any proposed sandbox should be limited to first testing the efficacy of the suggested new methods of delivery of legal services, well prior to enacting any changes to the rules relating to firm ownership or fee splitting.</p>
Timothy Chinaris	9/27/2021	12 page letter attached.
Edward Blumberg	9/28/2021	<p>Against any recommendation or rule change that permits any non-lawyer ownership of a law firm. Against any recommendation or rule change that permits lawyers to share fees with non-lawyers. "The practice of law is a sacred trust. It is the bedrock of our democracy. Non-lawyer ownership of law firms and the splitting of legal fees with non-lawyers unduly places profit over ethics and divides loyalty to clients. As Justice Glenn Terrell astutely observed, 'In a democracy like ours, the administration of justice is one of the most vital essentials of its existence. Corrupt or distort that and the whole structure will crumble.' <i>Ex parte Fla. State Bar Assn Committee on Legal Education & Admission to the Bar</i>, 5 So.2d 1 (Fla. 1941). Tampering with our time-honored practice of law will undermine the integrity and independence of the lawyer and the administration of justice writ large."</p>
Gerald Richman	9/30/2021	Agrees with Blumberg's comments above and opposes the recommendations.

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Chris Turner	9/29/2021	Owns a solo practice in Orlando, thinks this is a terrible idea. We have already seen what “dark money” and special interests have done to our politics. People are already untrusting of politicians and political campaigns because they do not know whose interests are really being represented. The same would happen in the legal field. Take for example any high profile attorney who goes out to the public to defend their client. If there were strings being pulled behind the scenes in that attorney’s firm by non-attorney investors whose only motive is profit, or worse, driving an agenda, the public would lose trust in the system. Attorneys’ capital to their client and the public is their trust. If a client, judge or juror suspects that there may be ulterior motives at play in the legal system it would cast a shadow over the entire process. This is a bell that cannot be un-rung. If you allow non attorney ownership in law firms to happen you will not be able to take it away from them after the fact once everyone realizes what a terrible idea it was. The fact that this is even being bought up tells me that special interests are at work as they are looking for an investment vehicle that that they could potentially corrupt. "My vote is no."
Brian Rush	9/29/2021	35 years old, graduate of the UF College of Law, equity partner in a law firm that serves clients throughout the state. Please do NOT allow non-lawyers to dictate how Florida lawyers do business and deliver legal services. Do you want non-lawyers exerting significant influence over how Florida lawyers provide legal services? If the answer is no, then I hope the Florida Bar will strongly oppose any movement to allow non-lawyers to have ownership rights in Florida law firms.
Maria Sperando	9/29/2021	This is a really really bad idea, particularly if it’s being done to increase access to legal assistance. For one it would wipe out smaller practices.
Karly Christine	9/29/2021	Solo female attorney. Non-lawyer ownership is a really bad idea mainly because it will erode sole practitioners. What will happen, much like it already has across America in the home market with REIT’s and companies like Blackstone, is large investment firms and venture capitalists will come in and take over leaving the “little guys”, like me, to the wayside. Law firms will become corporate run entities controlled by funds. As a result, legal representation will completely falter because competition will be depleted and standards eroded through corporate profitability. How many Gary Kompothrecas, 1-800 Ask Gary’s, will start buying up law firms? How long has the Bar been fighting these entities to ensure compliance with the rules? If we allow non-lawyer ownership then pandora’s box will be open to these types of companies, and that cannot be good for the profession or our citizens. Allowing non-lawyer owners as part of law firms would cut straight through the heart of solo practitioners and small firms across the state like myself. Please don’t allow non-lawyers to invade. The market is already overly saturated because we have too many lawyers in this state, and the profession is already hard enough to manage as it is. The Florida Bar should use its resources to help its current membership of lawyers and stick to helping younger lawyers succeed in an overly saturated market. Non-lawyers can do everything else, except own a firm. That is sacred to having a bar license, and it should be kept as such.

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

Sender	Date received	Comments
David Templer	9/29/2021	Please register my deep disapproval of this suggestion. I objected when it was brought up under a previous Bar president administration and I still object to it. Terrible idea.
David Templer (2nd email)	10/11/2021	Wrote to Ray Abadin and the entire Board of Governors back in 2015. This was also an issue back then. Nothing has changed, still vehemently opposed to this proposal. This is a terrible idea that every Governor should oppose. Let alone that there is no data to support that this will increase access to “legal services”, it is more likely to result in poor legal advice to clients, particularly those of lesser financial means. It also will create conflicts between the profit-oriented non-lawyer owners and any Barred counselor who is subject to the oath and the Rules. Our own Bar survey shows that the vast majority of members are radically opposed to this idea. This is a terrible idea and it should receive a resounding recommendation AGAINST.
Joseph Alvarez	9/29/2021	Reconsider the idea of non-lawyer ownership of law firms. We’ve already seen the civil tort system of law devolve into the polluted business for profits rather than its inherent function to provide justice by obtaining fair compensation for injured victims. Non-lawyer interest ownership is cancer and YOU hold the duty to ensure that the practice of law remains honorable and admirable rather than becoming the business of law. Don’t give in to capitalist interest. This is WRONG!
Rutledge Liles	9/30/2021	President of The Florida Bar in 1988-89, have always stood for the practice of law as being a sacred, time honored profession. In 1949, Guyte P. McCord, Clerk of the Supreme Court, announced that the Florida Supreme Court “today granted the Petition of Florida Bar Association for integration of the Bar.” That was 72 years ago and I shudder when I think of where we have come as it relates to advertising and other impermissible conduct that was once controlled. We are slowly chipping away at the bedrock of why I decided to pursue law as a career—a lawyer's place in society as a time honored profession that people looked up to. When will someone stand strong and shout “Enough!” The time is now. Please do not allow non lawyer ownership of law practices or sharing of fees with non lawyers. Obtain business in the time honored way. When will someone stand strong and shout “Enough!” The time is now. Please do not allow non lawyer ownership of law practices or sharing of fees with non lawyers. Obtain business in the time honored way. Earn it by working for it.

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

Sender	Date received	Comments
Donna Zmijewski	9/30/2021	<p>Non-lawyers should never be allowed to own law firms. Allowing non-lawyer law firm ownership would corporatize the practice of law. Allowing fees and ownership splitting with non-lawyers takes away the attorneys’ ability to use their own legal opinion and the best interest of the client. Allowing non-lawyers to own law firms also creates a whole new level of “conflict” assessment when a case is brought into the firm. For instance, what if hospitals purchase part of a law firm? Could they exert influence over the firm to never take any medical malpractice claims against their own doctors? Think about how much harm that would cause the community. This is not a far fetched idea. Cancer led to her father’s death. After his death, she attempted to hire a medical malpractice lawyer to represent our family, who sat on the case for months and then said he had a conflict. The second lawyer took months to review the case and then said there was no case. She believes the lawyers were in cahoots with the hospital. Ten years later, she started performing defense medical malpractice work and saw that the cancer was obvious and the case should have been handled differently.</p> <p>The practice of law has a profound impact on the world and the protection of citizens. It must stay pure. There is a reason that hundreds of years later – we still have the burden of proof in a criminal case of beyond a reasonable doubt. It is because some values are so important and integral to the way we function and protect our personal liberties that we will not waiver as a society. We don’t want innocent persons to suffer in prison needlessly. Similarly, we MUST protect the independence of the legal professional. It is simply too vital to the protection of the community to allow any weakening. Take the time to speak with nurses and doctors who work for hospitals who are owned by corporate entities. Especially now – during COVID. They will tell you that they used to care for patients. Now they are dictated what to write and when to write. My mother-in-law worked as a labor and delivery nurse for over 30 years. She can tell you how the corporate entities would order her to change the notes that she input into the chart. She can tell you that she refused to do so because what they were telling her to write is not true. She was a nurse of many years at the time and could take the risks associated with fighting the system – but a newer nurse would not have the courage or experience to do so. These types of things WILL happen to law firms if non lawyers are allowed to own and profit from law firms. Now consider a world where corporations own the hospitals and lawyers' offices. The corporations are making tons of money by spreading their staff too thin and then the corporations own the law firms also. The corporations give the law firms mandates that they may NOT take medical malpractice cases against their own hospitals. Just think about how that would destroy our communities. Think about how many people will be harmed with no recourse.</p>

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Donna Zmijewski <i>(continued)</i>	9/30/2021	The persons who cannot make their law firms work without the funding of non-lawyers are simply too influenceable....too inexperienced.....to susceptible to pressures of persons with questionable ethics. Non-lawyers who invest in law firms WILL put the pressure on the lawyers to do questionable things because they are looking out for their own financial risk. There simply is no reason to allow this to happen to the legal profession EVER. Ethics are key to ensuring the independent, competent, effective and accountable legal professional. Allowing a non-lawyers to own firms, allows person who are not subject to the rules of professional responsibility and ethics to pressure lawyers to act in manners that conflict with the high ethical requirements imposed by the Florida Bar. It is a recipe for disaster. I vehemently opposing any such effort to allow non-lawyers to own law firms.
Palm Beach County Bar Assn	9/30/2021	See attached 4 page letter.
Gemma Torcivia	10/5/2021	Attorney with MBA, former Economic Development Manager for Homestead and Executive Director of Homestead CRA. Strongly opposed to non-lawyer employees having minority ownership interest in law firms. The obsession with profit that is paramount in the minds of non-lawyers will taint the legal profession. Moreover, it could likely lead many well intentioned lawyers down a dark path and cause them to violate their sacred oaths. The mindset for owners of businesses that are not law firms and that of owners of law firms is so radically different that allowing the two to be intertwined raises a real risk to the legal profession as a whole. The pressure for profits in private industry is tremendous. It is incredibly taxing to balance the high standards and ethical responsibilities required of attorneys with operating a law firm, but if the pressure of profits that the private industry/business mindset demands slips into the mix (even from a minority owner) there is a great risk of lawyers ignoring or bending their ethical obligations to maximize profits. Non-lawyers do not understand what it means to be a lawyer. I have spent time on both sides of this fence and I know this first hand. Non-lawyers cannot understand how important the rules of the Florida Bar are because they are not subject to them. Non-lawyers do not hold a law license that they have to protect. Non-lawyer businesses often turn to bankruptcy when times get hard and leave devastation in their wake. It is easy to walk away from a business when it is not tied to a license which is your livelihood. Allowing non-lawyers to hold minority ownership interests in law firms will lead to more lawyer discipline, more law firm collapse and bankruptcy. There is no upside, just extreme risk and danger. There are many lawyers who already are tempted by money and make bad decisions and break the rules. Imagine adding to that the pressures from owners/investors/minority owners who really desperately want to make money at all costs. It is a dangerous road, and I strongly urge the Bar to stay well away from it.

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Erskine Rogers III	10/5/2021	<p>At the risk of being put on a committee, here is my idea: As a lawyer that started out more than 40 years ago with the Legal Aid Society of Palm Beach County, I have watched this area of practice changed dramatically, particularly with the introduction of pro se litigants and self-help. Not all of those changes have been for the better. The court system is beginning to bend under the weight of the pro se filings. The frustration of judges is understandable. Many pro se litigants become frustrated understanding the self-help forms and the court system. The two areas most accessed by unrepresented persons, family law and landlord-tenant law, are also two of the most complex areas of law. It is my belief that many pro se litigants who can't afford a lawyer to appear in a case require and can afford, from time to time, targeted legal advice answering a particular question. This needed advice is beyond the do-it-yourself, family law form, YouTube DIY resources that are already available . This needed advice is case specific, and often needs to be provided on a near immediate basis so that pro se litigants can get their questions answered, manage their anxiety and frustration, and move on to the next legal task. Coincidentally, at the same time I was reading in the Florida Bar News about your committee, I received a solicitation from lawyer.com support. That company was offering a service which would take messages, live transfer calls, schedule consultations, do intake, take payments, qualify potential clients, and do collections. They may even use AI for this.</p>
Erskine Rogers III (continued)	10/5/2021	<p>I envision the website, where informational content is posted and qualified attorneys are listed to be contacted for further case specific questions for a fee (there might even be a place for client reviews). The underrepresented person would look at the website, and if they had additional questions, select a couple of attorneys to whom they might like to speak to. They would then follow a link to the referring company. The referring company would do an intake, take the payment, and arrange a videoconference with a particular lawyer who was ruled on the site. I envision the lawyers acting more as legal coaches "on call" helping the pro se litigant navigate this complex world e-filing, scheduling, motion practice, as well as providing more traditional legal advice in terms of tactics and strategies, and perhaps offering some "handholding", which something the electronic world cannot do. From the lawyer's standpoint, such a service would relieve them of the administrative burden of processing payments, doing intake, conducting conflict checks, perhaps cover malpractice insurance concerns, and provide a ready platform to deliver unbundled services without having to file a notice of limited appearance. The only constant is change. I applaud the TFB forward-looking approach.</p>

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Charles Samarkos	10/6/2021	Non-lawyers having some level of ownership in law firms is a terrible idea and will cause disruption in the manner in which legal services are provided to the public. The ethical issues, manner in which client confidences are maintained and independent judgment of attorneys will all be negatively impacted by non-lawyers owning firms. The Florida Bar should vigorously oppose any such efforts.
Garry Adel	10/7/2021	The proposal to allow non-lawyers to own an interest in law firms: Almost everyone who practices law does so to make money. By complying with the requirements of the First Amendment, we have tarnished the reputation of lawyers as professionals. By having too many lawyers, we have bred an era of distrust and antagonism between practitioners. Cries from the bench constantly bemoan the lack of civility between lawyers and between lawyers and judges. If we drop all pretense of professionalism and tie our labors purely to gold, that will not improve the conditions which persuaded the Bar Journal to run a series of stories about mindfulness. It seems to me that the Supreme Court has lost most of its influence and authority over the members of the Bar. How will it affect any restraint on a non-lawyer's bottom line business model? Please don't.
Michael Grife	10/7/2021	Strong opposition to non-lawyer ownership of law firms and fee-sharing with non-lawyers or non-law firms. The practice of law must be held sacred as a profession and be limited to qualified individuals who pass the Bar Exam and pass ethical qualifications. Decisions on cases must not be left to an uncaring corporate board of directors full of non-lawyers who are not bound by the Rules of Ethics and who will make decisions based upon profits and not upon the best interests of the people. The quality of services received by the public would greatly diminish if that were to be allowed. Furthermore, the measures proposed do not address providing lawyer services in poverty-stricken areas or to other people of need. Non-lawyer ownership would likely make it harder for those needy persons to receive legal help as the profit of law will become more profit-driven. The recent Bar opinion surveys show that our colleagues overwhelmingly agree that non-lawyer ownership and fee sharing is a terrible idea that will demean this profession. Strongly urge you to uphold the integrity of our profession by voting NO to the regulatory "laboratory" program, and non-lawyer ownership and fee splitting.

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Bob Joyce	10/7/2021	<p>Re non-lawyers owning law firms, terrible idea, vehemently opposes. If corporations own law firms there are a myriad of problems: (1) Corporations would not be subject to sanctions by the Bar and could do things that are contrary to our ethics and be done without any consequences; (2) the stated purpose in part is that is premised on the proposition that it will increase access to legal services. There is no real data to support that. (3) This is a movement promulgated by the LARGE law firms so they can in essence “go public” and be listed on the stock exchange. The majority of the law firms in FL are the small law firms with 10 or less people involved and this would not be serving the majority of firms' best interests.</p> <p>In a 2021 Florida Bar Survey, members of the Florida Bar were against the very concepts the report is recommending: Only 9% (3% -Yes; 6% -Yes with a condition) believe that non-lawyers who actively support a legal practice in delivering legal services should be permitted to become partners or shareholders, as applicable, in that practice. Only 7% (2% -Yes; 5% -Yes with conditions) believe law firms should be permitted to raise capital by selling ownership interests in their firm to passive investor.</p> <p>Legal advertising has gone crazy, but if this is passed and there are unlimited funds, the advertising will go crazier. Further, Florida does not have reciprocity with other states. If this proposal passes, it will be a backdoor to allow an lawyer from another state to practice here. We have enough lawyers as is!</p>
Emmett Abdoney	10/8/2021	<p>The above subject is a bad idea. It won't be the "PRACTICE OF LAW" any more. It will be the "business of law". Everything we do will run on how much money can be generated by a law firm or law firms. There will be conglomerates, not practices. Morgan and Morgan won't be the largest law firm in the world, but I can live with them. Judges will be selected by those few who can pony up the most money in political campaigns, especially the Governor's race. We will be gobbled up and controlled by hedge funds, like real estate agents are trending now.</p>

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Eric Romano	10/10/2021	<p>1. The primary driver of the report seems to be a desire to provide greater access to affordable legal services. While admirable, this reasoning has no application to most tort claims, which are most often handled on a contingent fee basis. Because a contingent fee provides everyone with access to the best legal representation available, access to quality legal services is a non-factor in such cases. As we are all very well aware, the current advertising climate in Florida makes clear that there is no shortage of law firms willing to represent people on a contingent fee basis.</p> <p>2. Allowing non-lawyer ownership of law firms and fee-sharing with non-lawyers will create inherent and unavoidable conflicts of interest. Lawyers are ethically required to prioritize the interests of the client, even if those interests are at odds with the lawyer’s own. Non-lawyers are not bound by such ethical restrictions. Equity investors typically prioritize profits, cash flow and other business considerations. When the two conflict, as they often do, the client may be caught in the middle, and the client’s interests may be sacrificed for the good of the company or to maximize returns to the investors.</p> <p>3. Lawyers are subject to disciplinary action by the Bar and by the courts. Non-lawyer investors would have no such consequences. Although the proposed changes would require non-lawyer investors to comply with the Rules of Professional Conduct, it’s unclear whether and how non-lawyers would be sanctioned for violating the rules.</p>
Eric Romano (continued)	10/10/2021	<p>4. Section IV of the Report references a 2021 Florida Bar survey in which an overwhelming majority of respondents expressed opposition to non-lawyer ownership and fee sharing. Surprisingly, the Report summarily dismisses these responses and attributes them to “fear of the unknown”, rather than recognizing that these responses represent the carefully considered judgment of a diverse group of experienced attorneys.</p> <p>5. Imagine if State Farm, or an MRI clinic, or a chiropractor, or a towing company, or a car repair shop owns a 49% interest in a plaintiff’s personal injury law firm. Imagine a roofing company owning a law firm that handles property insurance claims. Imagine a court reporting company owning a large defense law firm. The list of possibilities goes on and on, and the inherent conflicts, self-dealing, and potential for client harm are boundless.</p> <p>Allowing non-lawyer ownership of law firms will quickly erode the independent judgment that is a fundamental principle of our profession, and will severely weaken important safeguards that protect those who seek our services. It is a dangerous path, and one that should not be taken.</p>
Charles Leo	10/11/2021	<p>Once again, it appears there is a movement to harm the public by carving out an exception for non-lawyers to practice law. Please note my objection. Don't want CNAs doing surgery or receptionists stamping construction drawings.</p>

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Charles "Cary" David	10/11/2021	Opposed to the proposed deregulation allowing non-lawyer entities to provide legal services and own law firms in Florida. Splitting legal fees with non-attorney creates a conflict between the interest of the client and the interest of the firm. Non-lawyer investors will not have a bar license on the line when seeking to maximize profit, and will inevitably cut corners and adopt business practices negatively affecting client outcomes. The rules of professional responsibility are effective because members of the bar are invested in their profession. Non-lawyer legal business owners will not have that investment. The 2021 FL Bar Survey showed that Florida Lawyers overwhelmingly oppose this deregulation. Please protect the integrity of the legal profession.
Drew Bruner	10/11/2021	Please let this email serve as a resounding “NO” to the issue of non-lawyer ownership of law firms. The profession has been under assault by private investors for years—this further commoditization will only lead to a continued decline in the repute, quality, and opportunity for a profession that simply isn't held in a good light by the public anymore. The practice of law is not, and should never be another commodity. Help us keep doors open for future generations while making the buck stop with someone with the title Esquire beside their name.
William Scott	10/11/2021	Opposed to ownership of law firms by non-lawyers. Hopes President Tanner will oppose this when it comes before the board of governors.
Peggy Bruner	10/11/2021	Please let this email communication serve as a resounding "NO" to the issue of non-lawyer ownership of law firms. I've only been an attorney for a few short years, practice in a small town in the NW part of FL - where trust is everything. The corporatization of law firms in recent years has only garnered greater distrust, skepticism, and distaste for our profession. Similar deregulation in the medical field has led to a dangerous consequence of valuing profits over health outcomes. The practice of law is not, and should never be another commodity. Florida lawyers should advocate on behalf of their clients - never 3rd party investors. Please help maintain trust in our legal system. Make being an attorney in our State, mean something positive.
Vincent Bruner	10/12/2021	The greatest threat to the practice of law and the public is the movement towards non-lawyer ownership of firms, aka "Big Corporate Law". The majority of the legal profession, and the fundamentals of the legal system, have always been rooted in providing individuals with an advocate. We live in a world where nearly every industry has caved to big corporations (Walmart, Amazon, Uber) except for those mainly in Law and Medicine. Unlike a cab ride or trip to the store, law and medicine carry much more serious consequences. In the future when my health eventually declines, I hope I will be able to speak with a Physician who can provide individual care for my issue. The same goes for individuals who need legal representation. The practice of law cannot, and should not, follow the path of Amazon. Every legal issue requires the sincere efforts of an Attorney, and Attorneys should not be handcuffed by corporate business people in a high rise office. Non-Lawyer Ownership of firms is a slippery slope to "Amazon Law" and further erosion of our profession.
Gary Printy	10/13/2021	I am strongly opposed to this. This is totally contrary to the professional independence lawyers must have to support their clients in an ethical way.

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Patrick Iyampillai	10/13/2021	<p>Strong disagreement to the final report that he shares with colleagues:</p> <ul style="list-style-type: none"> * No data to support that the recommendations will increase access to legal services. * The report is not focused on providing legal services to poverty-stricken areas, small businesses or economically challenged individuals. Rather, it is the intent of the Special Committee to provide alternate legal services to companies with 250 employees or less and middle-income Floridians. These entities and individuals have the means to hire an attorney or law firm and are making a conscious decision not to do so. * Constitutional questions as to whether the FSC can regulate a non-attorney or sanction a non-attorney if they cause public harm. * Deregulation in the accounting and medical professions has not resulted in greater access to services in these areas and has not worked in those industries. * Even if the lab is dissolved in the future, any company previously authorized could continue to do so in perpetuity unless license is revoked. * In a 2021 Florida Bar Survey, members of the Florida Bar were against the very concepts the report is recommending: Only 9% (3% -Yes; 6% -Yes with a condition) believe that non-lawyers who actively support a legal practice in delivering legal services should be permitted to become partners or shareholders, as applicable, in that practice. Only 7% (2% -Yes; 5% -Yes with conditions) believe law firms should be permitted to raise capital by selling ownership interests in their firm to passive investors, compared to over four-fifths (84%) of all respondents who believe this should not be permitted.
Patrick Iyampillai (continued)	10/13/2021	<ul style="list-style-type: none"> * The recommendations in this report will create conflicts of interest between the attorney and non-lawyer investors or business partners who are concerned with financial profit more than the institution of law and the judicial process. * This is a “back door” to reciprocity. If a lawyer from another state can still own a law firm in Florida, but a Florida lawyer cannot go into that state to do the same, this sets up one-way reciprocity. * The recommendations jeopardize the sanctity of our Bar’s Rules, Ethics & Professionalism. It devalues them and our Florida Bar licenses, as well as our unique positions as officers of the court to put the law above profits and winning.
Michael Murphy	10/13/2021	Sent the same email as Patrick Iyampillai above.
Susan Ramsey	10/14/2021	Sent the same email as Patrick Iyampillai above.
David Greene	10/19/2021	Sent the same email as Patrick Iyampillai above.
Ray Brady	10/19/2021	Sent the same email as Patrick Iyampillai above.
Takisha Richardson	10/29/2021	Sent the same email as Patrick Iyampillai above.
Doris Laing	10/29/2021	Sent the same email as Patrick Iyampillai above.
Javan Grant	10/29/2021	Sent the same email as Patrick Iyampillai above.

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Shane Newlands	10/20/2021	<p>Sent the same email as Patrick Iyampillai above.</p> <p>Also added: I am a law firm owner. I understand what goes into providing legal services. It is (and ought to be) a profession, not a business. Allowing non-attorney ownership of law firms would be a disaster to the Florida bar and the Florida public. The overall effect is going to provide no boons to individual consumers, and will allow large corporate interests to invade the legal profession and provide substandard legal services with little to no oversight. The result will be a crowding-out of small law firms, a race-to-the-bottom in terms of quality, and an overall collectivization of the legal services market in ways that will enrich large corporate stakeholders and the expense of Floridians and the Florida bar. I cannot express strongly enough how bad of an idea this is.</p>
Joseph Bilotta	10/13/2021	<p>This will ruin the profession, result in more malpractice suits, and hurt clients. More nonsense. But that is the way things are heading anyway. I am glad I am at the end of my career. I would never go to law school now.</p>
Rick Ellsley	10/13/2021	<p>Every person who has gone through the rigorous education and training required to earn a seat at the bar exam table has demonstrated a level of professionalism and ethics as a basic prerequisite to have the honor to represent the citizens of Florida in legal disputes. The law is a profession first and then it is a business. Allowing non-attorney ownership and non-attorney fee-sharing is dangerous. It deeply incentivizes a corporate profit motive for private, for-profit conglomerates to enter the state and provide substandard legal services to Florida's citizens. Neither the FSC nor TFB can truly regulate and enforce the activities non-lawyer entities. This will create confusion, serious expense, likely fraud, and a general lowering of the standard of legal services provided. While the study upon which this movement was based looked at jurisdictions in other parts of the world with completely different judicial systems, the practical effect of trying to create even a lab to experiment with this terrible idea would be to dilute the rule of law in our state and decrease the efficiencies of our judicial system. Much better to direct energies of the Fla Bar and the Fla Sup Ct into supporting programs overseen by lawyers. This includes increasing the funding for legal aid, law school clinics, and young lawyer mentorship programs. Having young lawyers work for those in need is a win for those who receive the legal services and also the lawyers doing the work. More expansion of these and other similar programs is the solution --- the solution is NOT to open the door to multinational and international profit-driven corporations to provide legal services by their UNLICENSED employees.</p>

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Morgan Gaynor	10/13/2021	<p>I have been practicing in Florida for 29 years. Over my career, I have worked in several legal environments with very different people and personalities. However, I have always been able to count on lawyers making decisions about our work and roles in legal disputes. Those decisions were made with legal ethics and priorities at the forefront. There is no way to be sure that will continue when non-lawyers are in a position to influence those decisions. That is especially true for such non-lawyers who view law firms as “profit centers.” I sometimes speak to physicians. Many have told me that ownership of their medical clinics and practices by non-physicians has had a terrible impact on their ability to practice medicine. For example, some face quotas that require them to spend no more than 10 minutes with each patient. That makes it impossible for them to deliver effective care. As lawyers, we could face the same dilemmas if non-lawyers are dictating how we practice. If there was compelling data which showed non-lawyer ownership would lead to increase access to legal services for low and moderate income clients, then this proposal might still be worth considering. However, to my knowledge, there is no such data. It would be a grave mistake to make a sweeping change to ownership rules on an untested and basically experimental basis. The risks to the independence and ethical foundation of our profession are substantial. This is a bad proposal; I urge the Bar of Governors to reject it.</p>
Malinda Lugo	10/13/2021	<p>I understand the need for non-attorneys to provide some legal services, but I vehemently oppose the ownership of law firms by non-lawyers and fee-splitting with non-lawyers. As an attorney who practices personal injury on a contingency basis, should this pass, I can see the arena exploding with non-lawyers procuring clients, creating a factory of cases, and demanding a percentage of the fee from the attorney. I don’t know how this will help clients obtain better representation as PI attorneys may find themselves taking a higher volume of cases to offset the fee split with the non-attorney entities. Secondly, the ownership of law firms by non-lawyers will result in a focus on profits rather than advocating for clients. Would you please vote against these recommendations?</p>

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Lance Berry	10/13/2021	I am emailing to express my opinion on the proposal to allow nonlawyers to have an ownership interest in a law firm. The Special Committee has rationalized this proposal on the idea that making this change would assist firms in attracting “nonlawyer talent who provide useful ancillary services to clients” which would, somehow, provide greater access to legal services. One of the examples given was a doctor evaluating claims for a personal injury firm. This example seems contrived. I have been a personal injury attorney for the entirety of my legal career and I cannot understand how allowing a doctor to hold an ownership interest in a personal injury firm is going to provide an injured person any meaningful increase in access to the legal system. If their case has merit and value, there are countless attorneys throughout the state who are more than willing to handle the case on a contingency basis. If the case lacks merit or value, the case is still going to be turned down even if one of the firm’s owners is a doctor. I fail to see how allowing nonlawyers to have an ownership interest in a law firm would provide any benefit to the members of the public who need legal services or the members of the Bar providing those services. However, allowing a nonlawyer who is not subject to the threat of punishment, including disbarment, to have a say in how a firm is operated invites ethical problems that cannot be adequately addressed. I believe the proposal is ill advised and the rules should remain as they are.
Dion Moniz	10/13/2021	We do NOT need non-lawyers owning law firms. I urge the Committee to vote against this proposal, thank you.
Corbin Sutter	10/13/2021	It has come to my attention that there is consideration about allowing non attorneys to share fees and / or have ownership interest in law firms. This is beyond shocking. I envision the law firm of Amazon.com with individuals practicing law without any bar oversight. Additionally, out of state attorneys could simply purchase / found a firm in state and back door their way in to our legal system. Frankly, I don’t know what positive could be envisioned as coming from something like this. If large corporations are allowed to run law firms they can easily undermine attorneys that currently do and essentially set monopolies on pricing for fees, etc. and drive the pricing up for people that would otherwise have been able to hire an attorney previously. It does not appear to be a pathway to allowing more people access to legal assistance, but the opposite. Is there any data to support this working out? I believe I’ve heard it has been a nightmare when implemented elsewhere. Please avoid this backwards thinking. I don’t understand why anyone would go to law school in Florida or sit for the bar exam if this is where our profession is headed.
Brian Sutter	10/13/2021	The downside is readily apparent. To the extent input from constituents and members of the bar matters, please note that me and the other 3 attorneys in my firm are adamantly opposed. If arguments or rationale for opposition are somehow lacking, let me know and I’ll try to articulate how this dumbs things down and threatens the professionalism and ethics of our bar.

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

Sender	Date received	Comments
Tiffany Fanelli	10/13/2021	Vehemently opposes the regulatory “laboratory” program that would allow non-attorney legal services providers, non-lawyer ownership in law firms, and the splitting of legal fees with non-lawyers. Allowing non-lawyers to own law firms and fee-share with non-lawyers and non-law firms goes against the very spirit of the legal profession. In an already over-saturated legal market in this state, allowing non-lawyers these privileges that lawyers have had to work so hard for would degrade the profession and education we have received. Non-lawyer ownership of law firms will serve only to allow inexperienced persons and corporations that are not members of the Florida Bar to offer haphazard legal services. Moreover, allowing non-lawyer fee splitting would encourage inexperienced persons and corporations to refer cases for their own profit and personal gain.
Albert Lechner	10/13/2021	This is a terrible idea and I strenuously oppose it. I question the Bar’s ability to regulate non-lawyers under this scenario, this is effectively unlimited reciprocity and I’ve yet to see any data supporting the notion this would expand access to legal services.
Stuart Grossman	10/13/2021	The report is not aimed in providing legal services to poverty-stricken areas or economically challenged individuals; but is intended to provide legal services to entities and individuals that have the means to hire an attorney or law firm and are making a conscious decision not to do so. The recommendations in this report will create conflicts of interest between the attorney and non-lawyer investors who are concerned with financial profit more than the institution of law and the judicial process. There are constitutional questions as to whether the Florida Supreme Court can regulate a non-attorney or sanction a non-attorney if they cause public harm. Even if the regulatory “laboratory” is dissolved at a future date, any company previously authorized and approved to provide services can continue to do so unless their license is revoked. In a 2021 Florida Bar Survey, members of the Florida Bar were against the very concepts this report is recommending. For these reasons, I strongly oppose this report.

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

Sender	Date received	Comments
Nicholas Johnson	10/13/2021	<p>The purpose of this email is to express my opposition to the laboratory program regarding non-lawyer ownership of law firms and non-lawyer provision of legal services. Of utmost concern is the financial interest that non-lawyers will place over the ethical practice of law. The primary beneficiary of legal services is each lawyer's client, to whom we owe our zealous advocacy. By having a non-lawyer own a law firm, or partner up with a law firm, creates a conflict of interest between that person's financial interest, and the lawyer's duty to the client.</p> <p>In a 2021 Florida Bar Survey, members of the Florida Bar were against the very concepts the report is recommending: Only 9% (3% - Yes; 6% - Yes with a condition) believe that non-lawyers who actively support a legal practice in delivering legal services should be permitted to become partners or shareholders, as applicable, in that practice; only 7% (2% - Yes; 5% - Yes with conditions) believe law firms should be permitted to raise capital by selling ownership interests in their firm to passive investors, compared to over four-fifths (84%) of all respondents who believe this should not be permitted.</p> <p>In addition to these concerns is the regulation of non-lawyers. It does not appear the Florida Supreme Court would have jurisdiction over non-lawyers in their provision of legal services, permitting them to skirt ethical boundaries that lawyers are expected to abide by. This laboratory program should not be implemented.</p>
David Murray	10/13/2021	<p>There is no data to support that following the proposed recommendations will increase access to legal services. Has deregulation in the accounting and the medical professions resulted in greater access to services, no. Can the Florida Supreme Court regulate a non-attorney or sanction a non-attorney if they cause public harm? In a 2021 Florida Bar Survey, members of the Florida Bar were against the concepts the report is recommending. The report recommendations will create conflicts of interest between the attorney and non-lawyer investors / business partners who are concerned with financial profit more than the institution of law and the judicial process.</p>
David Goldberg	10/14/2021	<p>Wow. Could not think of a proposal that could cause more harm to the public save and accept allowing non trained and non licensed pilots take to the sky. This proposal would create so much fraud and harm to citizens as the Judiciary would have no jurisdiction to discipline non lawyers from filing frivolous complaints.</p> <p>As a personal injury attorney we have seen the effects of allowing non medical providers own medical clinics. When businessmen and women are charged with medical care, as we have here, we have seen rampant fraud and profit over proper medical care and it is the sole reason, the PIP statute is re-examined and tweaked on a yearly basis.</p> <p>This proposal would surely open the doors to the same business people that own the medical clinics to also be owners of the law firms that refer to the clinic and this will create an industry that is so profit driven and the patients and clients would have no idea that the their lawyer is now more concerned with the medical bills being paid then maximizing the settlement for their clients. There will be no real representation because the fees and medical treatment bills will be the driving force of a PI claim, not the client. I should not even have to explain non lawyers soliciting clients to these factories that will be created as they are not subject to discipline for solicitation.</p>

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

Sender	Date received	Comments
David Goldberg <i>(continued)</i>	10/14/2021	<p>Now let's jump to the commercial field, if you have businesses that can buy into big firms for profit, there will be intentionally created conflicts statewide. What would stop a big corporation to buy into several leading firms to create conflicts so they could not be sued by said firms.</p> <p>This proposal would create a slippery slope that could not be undone and would do nothing but cause harm to the public and destroy the profession. You may want to check with the judiciary if they are excited to start receiving a flood of complaints filed by non lawyers to add to their already bulging dockets. And not being able to discipline the filers for the frivolous actions they seek redress upon.</p> <p>I do hope you give this some serious thought as to the consequences of your proposal. It is truly frightening.</p>
James Brewster	10/15/2021	<p>Thanks to the committee and its members for the hard and good work. I support the concept of not-for-profit law firms. I strongly support the "single rule" approach regarding lawyer advertising, as I only surprised how long it took to reach said simply and logical conclusion. I, along with others, have been saying or thinking this for years. The only possible criticism I have is the assumption that many "cannot afford a lawyer". If one truly cannot "afford a lawyer", then I am all for pro bono, legal aid services, etc. I have over the years tried to assist, for free, all individuals who come to me and who don't have a cell phone, a car and a big, flat screen TV. Few meet that criteria. As we all know, life is about choices. AFLAC exists because few Americans have a savings/rainy day fund. Maybe I missed it, as I only read the report once, but perhaps the Bar should be adopting the AFLAC concept for prepaid, not-of-profit legal services for only the "poor". Collect \$10 a month from them, for example, under the Florida Bar not-for-profit prepaid legal program; and have semi-volunteer lawyers on call. Again, just an initial brain-storming idea, which (if accepted) can be properly developed. Just a thought from an aging "boomer" who is winding down his solo practice and who was taught by his parents to budget wisely.</p>
William Large, FL Justice Reform Institute	10/19/2021	3 page letter attached.
Robert Swaine, RPPTL Section	10/19/2021	31 page letter, with 4 appendices, attached.
Keith Pallo	10/20/2021	<p>I am curious and would like to know if any economic impact study was performed in relation to the overall impact on the current Bar membership? What is the economic impact on the sole practitioner or the small law firms currently operating in Florida? I haven't read anything about the economic impact on our industry as a whole. There are always multiple interests to be considered when suggesting such an extensive and revolutionary change to an industry. There are also casualties when such changes are made. So, what are the expected and or anticipated casualties should such a program be implemented as projected?</p>
Ed Walborsky	10/20/2021	<p>The idea of non-attorney legal services will serve only to create more problems for the public than resolve. That this notion is even being considered is abhorrent. Please note my strong opposition to this proposal.</p>

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

Sender	Date received	Comments
Chris Jayson	10/20/2021	<p>Oppose the recommendation for a “laboratory program” that would allow non-lawyer ownership of law firms in Florida. The Florida Supreme Court in <i>The Florida Bar v. TIKD Services, Inc.</i> (page 9-10), aptly describes the inherent problem of allowing non-lawyers to own law firms: "an inherent conflict and corresponding risk to the public arises whenever a nonlawyer like TIKD controls and derives its income from the provision of legal services. Like any other business entity, TIKD is motivated by a desire to maintain and increase profitability. When coupled with the provision of legal services to the public, there is a risk that such motives will eventually give rise to a conflict between the profit demands of the nonlawyer and the professional obligations of attorneys to act in the interests of a client. See, R. Regulating Fla. Bar 4-1.7(a)(2). TIKD is non subject to the Bar’s jurisdiction and, other than Bar discipline proceedings against individual attorneys, there is no means by which to protect the public or guard against such conflicts."</p> <p>Allowing nonlawyer ownership of Florida law firms by public corporations, private equity groups, hedge funds, or other equity investors would surely drive a competition for profitability over the “classic virtues such as courage, truthfulness, diligence, humility, and an internalized ethic that places fidelity to just action, client loyalty, and support for the institutions that make freedom under the rule of law possible above raw financial gain.” TIKD, p. 15-16. Change is inevitable and change can be good for the profession. This change, while seemingly inevitable, would not be good for the legal profession. It also would not serve to expand access to the justice system for the large portion of the public that can’t afford access to the justice system now. The reason there is a lack of access to the justice system now is that people can’t afford it. That won’t change by allowing nonlawyer for-profit entities to own law firms because serving that population is not profitable. Please vote against the recommendation.</p>
Catherine Rinaldo	10/20/2021	<p>I have been licensed to practice law in Florida since 1985. For the majority of these years I have handled plaintiffs' personal injury cases exclusively. My opposition to Non-lawyer Ownership of Firms and Fee Splitting is based on a variety of factors most of which you have under consideration. By analogy, I am offering another important reason not to allow nonlawyers to own law firms or split fees. In our practice, we work very closely with physicians and we intentionally avoid working with clinics that are non-physician owned. Experience has shown that working with non-physician owned clinics is not in the best interest of our clients as the clinic is primarily focused on profit rather than patient recovery. Likewise non-attorney owned firms and fee splitting would not improve the delivery of legal services or improve the client experience but would rather create yet another industry where profits are placed over the needs and well-being of people.</p>

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

Sender	Date received	Comments
James O'Leary	10/21/2021	<p>Numerous concerns regarding the concept of expanding the practice of law to include non attorneys as owners and providers. The greatest of these is the inevitable effect that the concentration of capital in the hands of non lawyers will have to the detriment of justice. This issue drives straight into the heart of our independence as a branch of government. It would be wiser, in my view, to expand the contributions and support we provide the Florida Bar Foundation in ensuring that all legal aid clinics and pro bono counsel are appropriately funded and compensated, even if that means diverting portions of our budget that recur each year toward marketing and other non essential services. Our independent professional judgment is at great risk when we consider putting lawyers at the mercy of corporate America. Thank you for your dedication, commitment and sacrifice to the public and our honored and noble profession.</p>
Tatiane Silva	10/21/2021	<p>Please let this serve as my strong opposition to this proposed change. As an immigration attorney, I have witnessed how notarios, paralegal, and non-attorneys hurt people when they "help" them. I have and have had hundreds of clients who have suffered irreparable harm as a result of hiring such people. I have clients who have been placed in removal/deportation proceedings, had their immigration status taken away, were separated from their families, and had their lives destroyed due to a non-lawyer's negligence. As they are not members of the FL Bar and do not have a license to protect, non-lawyers are extremely careless and are not competent to provide legal advice. They are not updated on the latest laws and regulations, do not know how to conduct legal research, how to prepare a memorandum of law, complete legal reasoning, etc. They hurt the community without care or concern for their actions! This change will only empower these people to continue their harm and negligence. What is the point of having someone go to law school for years, take the FL Bar exam, learn how to practice law, if the Florida Supreme Court and the Florida Bar will simply allow non-lawyers to perform the same work that attorneys do? I strongly believe that this proposed change will not only severely hurt the community, as well as law firms and attorneys' businesses and lives. As a member of the FL Bar, and someone who deeply cares about my clients and takes her profession seriously, I urge you to not move forward with this change.</p>
John Ainsworth	10/22/2021	<p>I cannot believe that you are planning to allow non attorneys to provide legal services or own a law firm in Florida. I cannot tell you how many clients I have had to resolve their horribly submitted immigration cases that were "prepared" by notarios and solo paralegals, it causes irreparable harm to immigrants every day and causes unnecessary deportations and denials of entry to the United States. I thought that the Florida Bar was set up to protect our practice and its integrity, I guess not, you are simply going with the woke whims of the loudest 2% of people in the room, instead of following what the 98% of us know to be the right path. You should be ashamed of yourselves for even considering this type of change. You are degrading our Bar and its members with the consideration of these amendments.</p>

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

Sender	Date received	Comments
Sasha Westerman-Keuning	10/22/2021	<p>I am writing to voice my opposition to proposal's by the Florida Bar to allow non-lawyers to complete legal forms and have ownership in law firms. I believe this will create a race to the bottom in the industry and create a completely profit-driven focus instead of focusing on the quality of legal services and customer service. I am Board Certified in immigration. I hear all the time that it is "just forms." This could not be further from the truth. I often have new clients who went to "notarios" or paralegals to complete forms to save costs whose entire lives have been ruined from either critical mistakes in the application forms or the filing of application forms in which the person was not eligible. The individuals also do not receive proper advice about the potential consequences of filing forms, especially in topics such as asylum applications. Non lawyers preparing forms already causes so much unnecessary pain, sufferings and costs, I cannot even imagine what would happen if this was actually legal.</p> <p>To the point of non lawyer ownership interests, this will only lead to firm's being solely driven by profits. Legal mills will become the norm as non lawyer owners will have one interest in mind: profit. Right now, lawyer-owners must balance profits models with quality-control models to avoid malpractice. This is so scary. Please reconsider these proposals which are only bound to hurt Florida consumers and attorneys.</p>
Cristin Mercer	10/22/2021	<p>I am an immigration attorney with an office in South Florida, and I believe that the Florida Supreme Court and the Florida Bar’s current plan to make it lawful for non-lawyers to provide certain legal services to individuals and to have ownership interest in law firms is a terrible idea. I strongly oppose it.</p> <p>Irreparable harm has already been done to countless applicants/clients in the immigration law process by paralegals, “notaries”, and other “consultants” who are ignorant to the ever changing law and policies of the US government and to what these applicants are actually eligible for. There are already many “immigration preparation” businesses which operate in South Florida. Clients will seek out the cheapest “assistance” with their cases, and will go to these notaries and form preparers even if they have no working knowledge of immigration law beyond typing out of the forms (which they rarely do properly). Once this paperwork is filed with USCIS, or other immigration departments within the government, it is an arduous task to have errors corrected (if it’s possible at all). Some individuals sign their names blindly to these forms thinking they have been properly represented (because the form preparer business is legal) and end up with fraud findings and denials of what would otherwise have been a straight forward case. Some of these errors cannot be remedied. The immigration process is broken as is. Allowing non-lawyers to assist/represent people with their cases will not do these applicants any favors. Florida will be making it easier for individuals to take advantage of the applicants and provide unlicensed legal advice. It will also mean that law offices would now be officially competing with non-lawyers for business. I did not go to school for all of those years, and take out tens of thousands of dollars in student loans, only to have an unlicensed individual LEGALLY steal my profession.</p>

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

Sender	Date received	Comments
Cristin Mercer <i>(continued)</i>	10/22/2021	<p>Why would my own Bar association be in support of this? The immigration process in general is heavily based upon form applications, and it will ruin my office’s business to have to compete with individuals who charge peanuts for their services and then have the ability to back out of the process at the first sign of trouble saying “hey I just prepare the forms, I’m not responsible”. It is also ridiculous to think that these paralegals would not be giving “legal” advice, which they already do and are almost never penalized for. The opportunity for abuse of the legal system would be made limitless, and legal!</p> <p>I can’t imagine why the Supreme Court of Florida or the Florida Bar would even consider making such a change given the significant abuse of the legal system that this would create. These abuses already exist and would become even harder to combat. Never mind that certain “law firms” owned by non-lawyers would be able to operate in our state. It will call in to question whether law firms are operating in the best interest of the client and justice, or whether they are operating to make money for their shareholders. Please do not move forward with this. It will be a disaster. Thank you for your time and consideration.</p>
Maria Ainsworth	10/22/2021	<p>I am embarrassed to learn about the plans to make it lawful for non-lawyers to provide certain legal services to individuals as well as an ownership interest in law firms. As a business immigration attorney in South Florida, I have witnessed first-hand the irreparable harm done by solo-paralegals, notaries, consultants, document preparers, etc. and certain “law firms” owned by non-lawyers that operate in our state. Your plan “legalizes” non-lawyers’ misleading and, many times, illegal activities. A quick Google search will show you hundreds of examples of fraud schemes masterminded by these individuals. For example, there is an infamous notario in Miami with a record of fraudulent labor certification cases with the US Department of Labor. This notario has misled foreigners and companies many many many times. In fact, after reviewing multiple audits of his cases from the DOL, it is clear to me that the government is aware of the fraud scheme. As a result, thousands of dollars and public resources are lost, foreigner’s immigration status is lost, companies cannot get the human resources to run their businesses, etc. Another example is a “law firm” owned by a non-lawyer with operations in Miami, that’s currently facing several lawsuits from foreign pilots that were defrauded by their misleading and unlawful practices. And trust me, these notarios do charge like licensed attorneys or more. I urge the Bar to reassess this plan immediately before is too late. Last, I take these plans as a direct attack to our profession. Why did we go to law school and pass the bar then? Isn’t your role to protect our practice and its integrity?</p>
James Scarmozzino	10/22/2021	See attached letter.
Jason King	10/22/2021	See attached letter.

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

Sender	Date received	Comments
Katherine Gonzalez	10/22/2021	I am 100% against the Florida Bar allowing non attorneys to provide services (such as form preparation) to individuals. I have seen first hand the irreparable harm done by paralegals, notarios, consultants, and certain “law firms” owned by non-lawyers that operate in our state. I have seen individuals fall out of legal status as a direct result of errors committed by paralegals and notarios, who do not understand the intricacies of immigration law. These persons have never read the law or regulations. It is a shame to allow non-lawyers to continue to cause such damage, which in many occasions, causes damages that cannot later be repaired or explained to USCIS. In addition, this new rule will disproportionately affect immigration lawyers, such as myself, as my practices is heavily form-based, and in effect, I would not be “officially” competing with paralegals. I urge you to reconsider these rules, as they will hurt individuals.
Alessandra Piras	10/22/2021	I strongly object to the rule. In my 25 years of experience I have witnessed the damages that non lawyers can do to people’s lives. Giving immigration advice requires a law degree and experience. I had the honor of serving in the UPL committee of AILA (American immigration lawyers Association) and we were hearing horror stories about what some of these non lawyers were doing. Florida is a state with a vast immigrant population which comes from civil law countries where notaries are legal professionals. Authorizing non lawyers to give legal advice will further embolden these non lawyers and damage the most vulnerable people in the state. Filling out forms requires legal advice. A mistake on a form may jeopardize the legal case and put people in dire straits. The unscrupulous notaries that we have been fighting for years will just add the immigration specialist license to their title and further confuse their victims. Please note that the notary associations are already pushing this new line of service to their members. See https://www.nationalnotary.org/notary-bulletin/blog/2017/07/3-reasons-become-immigration-forms-specialist
Rebecca Black	10/22/2021	I am an immigration attorney in Jacksonville and I just heard about the proposed rule change permitting non attorneys to fill out forms. That would be a horrible mistake. Although Immigration is deceptively simple and appears to consist of filling out forms, every line in those forms has a history and contains potential minefields. We see cases all the times where people went to a “Notario” or someone who fills out the forms for a fee. They might simply fill out the on-line citizenship application and not go over all the good moral/arrest questions and not print off the a copy before hitting submit, and the person gets in trouble at the citizenship interview. There are misrepresentation questions, history questions that really are challenging to fill out correctly. I see people who don’t understand what the questions really mean. Giving the indicia that it’s ok for non-attorneys to fill out forms with out attorney supervision is a real problem in our fight against notarios and their on-going abuse and rip-off of the immigrant community. Please don’t do this. I understand we want to make legal services more accessible, but it is a bad idea.
Nicholas Ottaviano	10/22/2021	My concern with the Lab/Sandbox is the lack of details on how it would work. I am concerned about non-lawyers making legal decisions and overriding the decisions of practicing attorneys. There could be conflicts of interest between the law practice and the non-lawyers outside entities. Will there be a concurrent push to limit law school enrollment to reduce the number of lawyers?

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

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Steele Olmstead	10/22/2021 & 10/27/2021	See attached 8 page email for 1st email. 2nd email: In case you missed my point about NLO, here's an article from Bloomberg to drive home the predatory nature of private equity you are contemplating allowing to own law firms. Learn about Ms. Shirley Smith's story of the company she loved and the predation by the Private Equity firm T.H. Lee. "Private equity has quietly taken over nearly every facet of life — from retail and grocery store chains, to housing, health care, media, and more — turning the American Dream into nothing more than a pipe dream for millions of working families." https://www.bloomberg.com/news/features/2021-02-10/private-equity-art-van-workers-fight-for-severance-insurance-after-bankruptcy . NLO is a very, very bad idea for the administrators of justice.
Nadine Brown	10/22/2021	I am writing to submit my support AGAINST allowing non-lawyers to be form prepares for legal matters. Although many would like to broaden the access to justice by allowing notaries, paraprofessionals and other types of non-lawyers to assist clients with document preparation or basic legal matters, in my almost 25 years of experience I have found this practice egregious and damaging to the clients I serve. This has been more harmful than helpful. Programs like Legal Doc or Legal Zoom, likewise, do not provide the in-depth analysis or strategic planning that licensed legal counsel like myself provide. Many cases in which I have had to intervene have been the result of poor advice from these non-lawyers because they function not as just scriveners but have been engaging in the unauthorized practice of law. And if they act only as scriveners, they do the client a tremendous disservice because clients do not always understand why they are submitting the forms. Despite trying to save money with low-cost legal services by non-lawyers, it costs more time to remedy the situation and gluts the judicial mechanism designed to resolve conflict. It is my opinion that were the Florida Bar or Florida Supreme Court to recommend or allow or authorize non-lawyer to assist with form preparation, this would do more harm to my clients whom I serve both in the practice of family law and as an immigration attorney.
Juliana G. Lamardo	10/22/2021	I am a FL Bar Licensed attorney since 2008. I have been practicing Immigration and Nationality Act since I was admitted to the bar. As part of the community of lawyers that deal with the immigration population, I strongly oppose and urge the FL bar to listen to our concerns. The practice of Immigration Law is not just “form filling”. Although parts of the process include filing out forms, there are instances where the wrong answer to a question on a form subjects a non-citizen to be placed in removal proceedings (deportation). In many cases, these non-citizens do not have relief from deportation caused by the incompetence of form fillers. Giving paralegals, notaries (ask notarios), consultations and others that are not supervised by licensed attorneys can cause irreparable damage. I urge the FL Bar and the Supreme Court to allow immigration attorneys the opportunity to be heard on this matter.

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

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Kash Bhavsar	10/22/2021	<p>I just learned that the Florida Bar is entertaining the thought of allowing nonlawyers to provide legal services. I am ABSOLUTELY AGAINST any regulation of a nonlawyer performing legal services. The rules for nonlawyers performing any services should be taken more seriously, should be more scrutinized, and individuals violating the rules should be more prosecuted and more easily. Accountants should not create legal entities and unsupervised paralegals or notaries should not assist anyone in completing or advising on immigration issues. I am shocked that the Florida Bar is even considering such rules. I have been practicing law for 25 years and in this time, the majority of my practice has included 90% + Immigration Law. During this time, I have encountered countless nonlawyer individuals providing legal advice and legal services to the most vulnerable of clients. Notarios and unsupervised paralegals are a BIG problem in my area of the law. After years of trying to pursue UPL of these individuals and the lack of response from the Florida Bar, I simply do not even try anymore. There are well-known individuals just running their unlawful businesses and the Bar have done nothing or take too long to act. I equate them to physician's assistants to that of a medical doctor. They are very knowledgeable and can be very helpful if trained and supervised properly. Unfortunately, they are often not supervised by attorneys and when they practice on their own, they simply do not know the current laws. Immigration law is an ever-changing area of the law and when services are provided poorly or incorrectly, it is the difference of someone living in the US or not. Over the years, I've seen flat out lies as well as poor drafting of applications (a minister who was portrayed as a world-renown opera singer by a notario, a family-based case that should not have been filed because the individual had previously claimed to be a US citizen which would now result in a permanent bar to the US, handling processes incorrectly where the overall process takes 4 years instead of 1 year, families separated because a spouse left the US triggering a 10-year bar, students working unlawfully, etc.).</p>
Kash Bhavsar (continued)	10/22/2021	<p>What is most shocking to me is how often I hear how the notario charged more fees than what a typical attorney would charge. So the argument of individuals not being able to pay for lawyers is clearly incorrect. Scare tactics are often used or simply someone who means well tries to help. USCIS has a running campaign that says "the wrong advice can hurt."</p> <p>In the end, I pride myself as a lawyer. We are held to a higher standard because we hopefully do the "right" thing for clients and are responsible for knowing what to do, when to do it, and how to do it. Immigration law is not simply filling out paperwork. You must know the law, the changes going on in the world, processing times, all the facts, and then decide how best to handle a case. I truly hope the Bar reconsiders their thoughts on the final report. I feel like lawyers are not respected or valued anymore. With ridiculous commercials on tv and being bombarded with them, I think we are hurting our own profession.</p>

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

Sender	Date received	Comments
Michael Mendez	10/22/2021	<p>I am an immigration law practitioner from Orlando and do not support the approval of the rules in Appendix B. During my years of practice I have seen time after time organizations claiming to be nonprofit take advantage of the immigrant community. I have experienced numerous occasions where potential clients come to me after having sought the help of these organizations only to have had their money stolen from them or cases damaged as a result of serious malpractice. While I have been practicing for some time now and have an established practice, I feel this will have a negative effect on many of the new practitioners who wish to enter our field and now must compete with non-lawyers who can fill out a form and claim to know what they are doing. While I agree that improving the delivery of legal services is important, handing unscrupulous people the power to partake in the unlicensed practice of law is not the path the Florida Bar should take. Thus I feel the recommended changes should be struck down.</p>
Elana Laverty	10/22/2021	<p>I am an immigration lawyer in Orlando and am commenting in regards to the Florida Supreme Court and Florida Bar's current plans to make it lawful for non-lawyers to provide certain legal services to individuals as well as have an ownership interest in law firms. I strongly urge you to not proceed with this plan as there will be destructive repercussions for many innocent people. A big portion of my practice is dedicated to helping innocent clients who have come to me after a "paralegal" or "notario" has completely ruined their case. Many times, these "paralegals" mess up the forms so bad that it leaves the client without legal status and with severe issues with immigration that cannot be undone. By this time, the client has wasted tens of thousands and thousands of dollars paying the paralegal and paying USCIS filing fees (for the forms)..... and when things go wrong, then the paralegal disappears and has zero responsibility to the client who is left without even a copy of their forms/case. I have seen several people be placed in deportation or removal proceedings based upon the incorrect filing of forms completed by a paralegal. I have seen complete heartbreak and destruction in people's life's that cannot be undone by these paralegals.</p> <p>Immigration is a very complex area of law with updates that are occurring every day. These paralegals are not trained to study the law and keep up with the changes that can bring about several consequences if not followed. There are also paralegals who have advised clients to lie on forms.... The client is later faced with perjury and/or fraud. This follows them forever and ruins their immigration record. Trust me, they are not assisting people completing forms, they are also providing legal advice as many of the questions on the forms have to be thoroughly considered, contemplated and understood before answering. Answering one question on a form incorrectly can lead a person to serious problems and lifelong issues that cannot be easily fixed.</p>

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

Sender	Date received	Comments
Elana Laverty <i>(continued)</i>	10/22/2021	<p>As a lawyer, I attended 7 years of higher education and passed the bar and have over \$100k in student loans. I now have several years of experience after dedicating myself 100% to my practice. I have a license and a legal responsibility to my clients. These paralegals have nothing to lose and take advantage of innocent people because they offer a lower price to assist with forms. When things go wrong, they disappear and there are no consequences to their actions. I have seen so many life's ruined by these people... I cannot emphasize this enough. Immigrants come to the US and do not understand the law. They often get taken advantage of by paralegals who convince them that they do not need a lawyer... these cases always end up in a denial and leaves the client without any resolution or a long legal battle that they cannot afford to fight.</p> <p>If this new policy passes, it will be a complete insult to everything I have ever worked hard for in my life... not to mention a disrespect to the law itself. This would be completely irresponsible and reckless. More importantly, passing this policy will invite and encourage people to engage in the unlawful practice of law. Please deeply consider my words and the heartbreak that I witness from people who have had their life's ruined by a paralegal completing their immigration forms.</p>
Y. Kris Lee	10/22/2021	<p>Please do not allow non-attorneys to provide legal services or have ownership interest in a law firm. PERIOD. It will be disastrous and damaging to the public. As current UPL claims show, many non-attorneys already deceive and scam the public with legal services which result in money lost and families destroyed with false information and hopes regarding benefits, especially in immigration matters. I personally know the harm to innocent victims as I filed a UPL complaint against a Florida individual who even with a signed FL Bar Cease & Desist continues to advertise and market his immigration services to the public. If allowed ownership in a law firm, the non-attorney predators will use recently licensed attorneys to operate the law firm without regard to the ethical obligations and responsibilities imposed on a license attorney. I learned firsthand these non-attorneys prey on the desperation of immigrants who seek better lives for their families. Allowing non-attorneys to provide legal services will be giving authorization for a pandora's box of unforeseen devastation to the public. Do not allow non-attorneys to provide legal services or have ownership interest in a law firm. Protect the public and licensed attorneys.</p>
Jack Ross	10/25/2021	<p>I write to express my strong reservations to any modification to Bar regulations that allow non-attorneys to own law firms. We were taught from our first week in law school that the law is a profession, not a business. While not all attorneys behave professionally, those that do not are a small minority. This is a concept that is completely foreign to business leaders. The recent revelations about Facebook's conduct sacrificing the public welfare to increase revenues is a perfect example of the danger of allowing business men and women to control law firms. We should not allow control of the practice of law to pass to those who by training and experience have learned to place profit over the welfare of their customers/clients and the public. Please do not make the mistake of allowing this to take place.</p>

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

Sender	Date received	Comments
Salvatore Picataggio	10/25/2021	<p>As an immigration attorney, I have seen the results of non-lawyers participating in the Immigration process ("paralegal" offices, "notarios," "migration support services" and the like). How do I usually see these results? When their former clients bring me a denial, and I review a poorly prepared immigration case. It's more than just filling out forms, and even then, filling out the forms improperly has real consequences! I also, unfortunately, have more direct knowledge of when non-lawyers participate in the operations of a law firm. Once I realized how decisions were being made, I changed employment, but when a non-lawyer has a say in the process, they see the lawyers as, at best, a necessary evil, and at worst, a direct threat to their business goals. You are surely familiar with Hayman Woodward, the immigration service provider who overcharged and underdelivered. I have seen many of their denied cases and have been hired to help fix them. Sometimes, however, the damage is done and there's little we can do, forcing a hard-working family, who thought they were doing everything the right way, to make a life-changing decision they otherwise wouldn't need to make. I understand the benefits of a more business-minded person participating in operations, but a firm with a business manager or operations manager is different than the OWNERS of said company, operating without consequence or respect for the law or the Bar. I urge you to reconsider this proposal.</p>
Shahzad Ahmed	10/25/2021	<p>This is to express my grave concern about allowing non-lawyers to prepare forms for the immigrant community. As a board certified immigration attorney who has been practicing immigration law exclusively for over 20 years, I have seen first-hand the irreparable harm that occurs when unlicensed individuals prepare applications for immigrants. The law related to US immigration is very unforgiving. Once an application is filed containing misrepresentation or errors, there is no statute of limitations that expires it. I have seen such misrepresentation or error become a permanent bar to the immigrant's eligibility to adjust status. Such harm is so serious that it prevents the person from uniting with his or her family in the U.S. legally, even if he or she has a U.S. citizen spouse or child. The harm I have seen has often stemmed from the preparation of forms. The US immigration service has long held that the immigration forms carry the force of the law. The forms are not a simple matter and they carry heavy legal repercussions. "Notaries" or "Notarios" have sprung up everywhere. Many immigrants, who are new to the U.S. and unaware of the procedure, flock toward these unlicensed individuals because they speak their language. These non-citizens do not discover until months or years later what harm has been done to their cases. Further, the U.S. immigration service has long been concerned about the unauthorized practice of law. See https://www.uscis.gov/archive/uscis-initiative-to-combat-the-unauthorized-practice-of-immigration-law-fact-sheet. Therefore, you are requested to not permit the unlicensed practice of immigration law in any form.</p>

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

Sender	Date received	Comments
Jason Odom	10/25/2021	<p>1. It is not in the best interests of our clients or the citizens of the State of Florida to allow non-lawyer ownership of law firms and splitting fees with non-lawyers. We've all seen how difficult this can be when splitting fees with lawyers, so I can only imagine how much more difficult it could be with non-lawyers. Putting aside any constitutional authority for the recommendations, especially as it pertains to the Supreme Court's ability to regulate non-lawyers, I cannot find any reliable data that supports the recommendation.</p> <p>2. The Bar conducted a survey on this issue in 2021, and a resounding 84% of members said no. This leads me to seriously question why it's still be considered and whose interests are truly being looked after.</p> <p>3. It's very clear that deregulation of the medical field did not improve patient care, but rather made it worse in some questions. In fact, the medical community and patients are making the same complaints they made before deregulation. What makes us think the law will be any different?</p> <p>Please count me among the lawyers who oppose this measure.</p>
Anthony Marino	10/25/2021	<p>I have been practicing for 49 years, and have been through a lot of changes: from no advertising to advertising, Internet, laws restricting the practice of law—medical negligence statutes-- PIP, and much more. But the worst thing for the practice of law is the proposition that companies and or non-lawyers can take over the legal profession. We only need to see what this type of practice did to doctors: slaves to the mighty buck that owns the company they work for. I do not want Facebook, Google, political parties, or governments owning law firms and telling lawyers how to practice law or what the loyalties are to. It will not be to the clients nor the Florida Bar. Stop this nonsense and vote no to allowing non-lawyers from participating in the practice of law.</p>
Joshua Lipton	10/25/2021	<p>Please add me to the list of attorneys opposed to non-lawyer firm ownership and fee splitting. The potential harm to Florida consumers seeking competent legal services, coupled with the likelihood of non-lawyer profit seeking abuse, make these recommendations dangerous. Non-lawyer firm ownership has previously been explored in this state, and the overwhelming majority of those actively licensed/practicing, opposed such a measure...nothing has occurred in the few years since, to change said opposition. As for the Lab program – please eliminate presumptive licensing for those entering the Lab, determine more explicitly what would necessitate review of and possible revocation of such licensing (what kind of “harm), and make more explicit guidelines for oversight.</p>
Miriam Acosta Castriz	10/25/2021	<p>I am writing regarding my opposition to the proposed change regarding the Florida Supreme Court and Florida Bar's current plans to make it lawful for non-lawyers to provide certain legal services to individuals (such as preparation of forms) as well as a have an ownership interest in law firms. As an immigration attorney I can first hand tell you that opening up this service to non-lawyers will further fuel the “notario” service industry that currently continues to harm our immigrant population. Their harm and lack of immigration experience often leads to separation of families due to deportation, all of this because of the filing of the wrong paperwork on behalf of immigrants.</p>

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

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Alexandra Friz-Garcia	10/25/2021	The inclusion of the Regulation of Nonlawyer Providers of Limited Legal Services and Nonlawyer Ownership of Law firms is extremely concerning as a Florida bar member and partner in a boutique immigration law firm. I am concerned that the proposed amendments noted in the final report will seriously damage my practice as allowing non lawyers will only further embolden the growing number of con artists and perpetrators that victimize the immigrant population in Florida. Immigration laws require competent legal representation even in selecting filling out forms and non-lawyers often prepare forms or apply for benefits that immigrants are not eligible for. I have had many cases where a non-lawyer has promised a work permit to a foreign national and unbeknownst to the immigrant client the non-lawyer files a frivolously asylum case on behalf of the client. This action will lead the client into deportation court and permanently bar them from any relief available. I would kindly request that the special committee and the Florida Supreme Court include immigration attorneys in this discussion.
Linda Kaplan	10/25/2021	Bar member since 1976. I am writing to request that you not allow non-lawyers to provide legal services and to prepare forms. There is an existing significant problem with non-lawyers engaged in the unauthorized practice of immigration law. I have seen many clients who have been irreparably harmed by Notarios and "Consultants". Many times there is nothing I can do to fix the problems they have caused the clients. The proposed new rules will only allow these unqualified representatives to hurt more people.
Richard Hujber	10/25/2021	I am an immigration attorney practicing for 25 years now. I just recently served 2 consecutive terms on the Fla Bar UPL committee, for a total of six (6) years. I initially volunteered for this committee, run by Ms. Janet Morgan, because I saw first-hand the horrific consequences these "notarios" were having on the vulnerable innocent immigrant communities here in South Florida and elsewhere. I saw this 25 years ago when I worked at the Miami Immigration Court as a law clerk and then Attorney-Advisor, at the Board of Immigration Appeals as Attorney Advisor, and now in private practice for over 20 years. I could spend hours discussing the many examples of this, but for the purpose of this e-mail, I will give my most typical example. A foreign national who does not have status cannot get a driver's license (DL) here in Fla. These unscrupulous notarios utilize this and advertise in Spanish (and other languages) that they can help such a person get a DL. They then take their hard-earned \$ without telling them the specifics of what they are doing. And what they are doing is filling out an important federal immigration application form, and when the receipt comes from Immigration, they use that receipt to get the DL. Meanwhile, this form opens a file with Immigration and a process which cannot be stopped. The usual case is an asylum application, when is then referred to the Immigration Court, but the notario intentionally withholds this information from their "client". Their subsequent failure to appear for this hearing results in an in absentia order of deportation/removal, and a warrant for their arrest. I see this EVERY WEEK in my law firm for over 20 years now. These forms have serious legal consequences. Serious enough that there is NO way that the Fla Bar or Supreme Court of Fla should even consider such a change or proposal.

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

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Sandy Pineda	10/25/2021	<p>It came to my attention that the Florida Supreme Court and Florida Bar's have current plans to make it lawful for non-lawyers to provide certain legal services to individuals (such as preparation of forms) as well as have an ownership interest in law firms. I believe in making this policy or granting it is detrimental to the community. As a pro bono lawyer and as a corporate lawyer for a non-profit organization, I see and become aware of a lot of the issues that occur when these non-lawyers provide legal services. Of course, not all are terrible and out to do wrong but a lot of them do not make it clear that they are not a "notario" or someone with rights to represent them before a judge or a tribunal. The distinction of the authority of these individuals is critical.</p>
Arly Markowitz	10/25/2021	<p>I would like to input my concern with the proposed rule to allow non lawyers to provide legal services. As an immigration attorney I see many people that have been victimized by " notarios" and "paralegals" operating with no legal supervision. Many of my clients have ended up in deportation proceedings and with deportation orders because of these non-lawyers. If this rule were adopted, I believe it would disproportionately affect an already vulnerable population. Additionally, immigration lawyers already have to compete with non-lawyers. This rule would also disproportionately affect immigration attorneys who are notoriously underpaid.</p>
Hedy Tahbaz	10/26/2021	<p>Allowing non-lawyers to fill out forms is a terrible idea since I have witnessed 100s of immigration cases ending up in the ICE detention. Not only immigration attorneys will have to compete with these charlatans but also the immigrants and non citizens communities will also suffer at their hands. US immigration laws and regulations are extremely complicated and filling out forms does not even scratch the surface of the complexities of the law. Thus, to legitimate the notaries to fill out the forms is equivalent of handing the keys to a drunk to drive a bus full of people.</p>

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Tarsila Talarico	10/26/2021	<p>The Florida Supreme Court and Florida Bar’s current plans to make it lawful for non-lawyers to provide certain legal services to individuals (such as preparation of forms) as well as a have an ownership interest in law firms should not proceed because it is against the public interest and proper delivery of justice. I'm an attorney barred in D.C., however, I currently practice Immigration law in Florida. It is a well known fact that many immigrants are initially interested in having a work permit and a driver's license when they come to the U.S. Many come to the U.S. to have a more prosper life, therefore having a work permit and a driver's license, allows them to work in the U.S. Unlicensed professionals or "notarios" know that and take advantage of those immigrants. I've worked on cases where notarios or paralegals filed forms for those immigrants, in many instances without their knowledge, and as a result, they are placed in removal proceedings unknowingly, or can get into a very difficult immigration situation because they didn't know the consequences of hiring an unlicensed professional who was unprepared to take their case. Taking the wrong course of action in a Immigration case can be very damaging and have very negative consequences to the immigrant. For the most part, immigrants are already seeing in a negative light by the American governmental entities, because immigration law is heavily guided by politics. Hence, immigrants already have a very heavy burden to overcome in order to seek relief, if any available. Thus, having a "clean record" is not only essential but crucial to these vulnerable members of our society. Allowing unlicensed professionals to wrongly file for relief for those immigrants is to practically put a gun into the hands of these unlicensed professionals and allow them to destroy someone's life entirely.</p> <p>Allowing non-lawyers to own ownership in a law firm also opens the door to unprepared and unlicensed professionals to take advantage of the population by financing firms or becoming partners of firms, which will perpetrate or facilitate the aforementioned practices, as their only motivation for the most part is to profit, and they are not bound by rules of professional conduct and ethics as licensed attorneys are. I completely oppose this rule, as it is harmful to the most vulnerable members of the American society - the immigrant community - it does not serve the public interest, and it takes away the merit and hard work of people who invested their time and financial resources to go to law school, who pay bar membership dues yearly and put the effort to become licensed professionals in order to provide quality service to the population.</p>

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

Sender	Date received	Comments
Maggie Arias	10/26/2021	<p>I am submitting my comment about the proposed change regarding the Florida Supreme Court and Florida Bar’s current plans to make it lawful for non-lawyers to provide certain legal services to individuals (such as preparation of forms) as well as a have an ownership interest in law firms. I do not support this proposed change for several reasons:</p> <ol style="list-style-type: none"> 1. Non-lawyers making decisions on what forms may or may not be appropriate for filing for a non-U.S. citizen, could be disastrous to any non-citizen, inadvertently placing them into deportation when in reality the individual would have been eligible for lawful status and needed a completely different strategy. It is similar to non-lawyers advising a non-citizen on what, if any, plea agreement to accept in criminal court, even on a basic misdemeanor. For someone on DACA (Deferred Action for Childhood Arrivals), or TPS (Temporary Protected Status), having two misdemeanors on a criminal record, will be fatal to keeping that status. 2. Non-lawyers are not able to advise immigration clients on the best course of action because that would entail legal advice and that advice may not be sufficiently comprehensive. For instance, if a non-lawyer were to advise a client that he or she is eligible for a waiver in immigration court, not knowing how to practice removal defense, the non-lawyer may miss the crucial fact that eligibility for a waiver does not guarantee the non-citizen will be granted relief. There are many factors that can adversely affect removal defense and removal defense strategy. Removal defense attorneys are trial attorneys. And often times, removal defense attorneys are employed by application benefits attorneys (transactional immigration law attorneys) to ensure that a particular route is strategically good for a client. 3. Allowing a non-lawyer to have an ownership interest in law firms opens the door for lawyers to not have professional independence in their own firms when or if a non-lawyer partner wants to weigh in on how a particular legal matter is resolved. The direction that a lawyer or law firm takes on behalf of a client should not be influenced by a non-lawyer.

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Elizabeth Cannon	10/26/2021	<p>There is simply no such things as “just preparing forms” in immigration law. The wrong box chosen on a given form can cost a client time, money, or even get them deported (though we don’t call it that anymore, we call it removal). Example: A woman from Haiti is desperate to bring her husband to the U.S. and an untrained person fills in the box on an I-130 form Petition for Alien relative (one of the “simple” forms) on page 8 that a person plans to adjust status (apply for a “green card”) in a local USCIS office (this happens ALL the time). This will delay a case by about a year right now, because instead of forwarding the case to the National Visa Center (NVC) the case sits, waiting for a next move (because USCIS assumes the person is inside the US and will adjust). The wife now has to file an I-824 and the current processing times are 3-20 months at different service centers. Only after it is approved will her husband’s case be back on track and sent to the Department of State’s NVC. Now, same case, the untrained person now fails to explain that ALL criminal cases EVER must be disclosed on the DS-260. The wife and husband think that his past case of shoplifting is not a conviction because it was dismissed after an alternate sentencing program. Wrong, it is still a conviction for immigration purposes (INA 101(a)(48)(A)). The husband goes to his consular interview for his immigrant visa, and WHAM! The consular officer WOULD have allowed him to have the visa had he disclosed the shoplifting, but because he did not now the husband is inadmissible for misrepresentation. Now the couple have to file an I-601 waiver, the same untrained person submits the form - with no evidence. The wife has now paid this person \$7,000 only to have the I-601 denied for lack of evidence.</p> <p>That’s when she calls me. I prepare another waiver and we win (YAY) but she has now been separated, needlessly, from her husband for more than 30 months beyond what it would have taken if the case had been handled correctly, and I would have only changed her \$2,500 for the damn case. (So the theory that this will “cost less to the immigrants”, that is a fallacy beyond words). This is a BEST CASE scenario, when I can fix the situation. Let's say, instead of her husband, the Haitian client is petitioning for her parent. Same thing occurs, I CANNOT FIX IT. Now the father or mother is inadmissible for LIFE under 212(a)(6)(c)(i). AND THERE IS NO I-601 waiver, children do not qualify. These are not just hypotheticals, I had FOUR such child/parent cases approach me last month. So much time and money spent- for NOTHING. So you see, they are not simply forms, they are people’s lives. Do not allow non-lawyers to do this work!</p>
Nayef Mubarak	10/26/2021	<p>It seems reckless to allow non -attorneys complete immigration forms that will have everlasting affects on the lives of individuals. I have personally met with the UPL committee just a few months ago, for similar situations. The affects are often permanent and devastating. I strongly urge the Bar reconsiders its position on this.</p>

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

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David Guiley	10/26/2021	<p>I am concerned about a consideration presently before the Board, in preparation for a Final Report to the Supreme Court, to allow non-lawyers to share in the ownership of law firms in Florida. I strongly OPPOSE the concept. I am an attorney in Ocala, Florida who has been engaged in the practice of civil litigation in Florida since 1984 and a trial attorney for the past 45 years. During most of that time I have always represented plaintiffs seeking redress and justice for their personal injuries. Overall, I have practiced in four different law offices and particularly with one of those law firms for nearly 25 years in Orlando. Every lawyer I have ever practiced with has always placed the best interests of the client before profit even when the anticipated outcome was not positive for the client, and even when the lawyer's contingency fee was doomed and destined not to be. Obviously, any business, and any professional practice, requires income and profit to survive and to be successful but it is a lawyer's dedication to the best interests of his or her client that is always paramount and must always prevail over the profit motive for a successful legal practice. I believe the same applies also with every lawyer who generates legal fees with billable hours. Of course, sound business judgments regarding the client representation that is either accepted or declined is very important for a successful legal practice. However, once the legal representation has been accepted, the best interests of the client must always be served.</p>
David Guiley (continued)	10/26/2021	<p>The legal profession has a long tradition and ethical responsibility which imposes a duty owed to the client --- to protect and to zealously advocate for the client's best interests. Of course, lawyers in Florida are governed specifically by our code of professional conduct, as I believe all lawyers are similarly governed in their respective states. It is a very dangerous step in the wrong direction to allow non-lawyers to share with lawyers an ownership interest in the business of a legal practice when, generally, in the business world the financial profit motive is paramount. I am concerned that obvious conflicts of interest can arise which may then result in undue influence by non-owners which may affect the sound legal judgments that should be made by the lawyer during the client's legal representation. Also, how will the Florida Supreme Court be able to oversee the conduct of the non-lawyer who shares an ownership interest in a legal practice of the law firm? I foresee the same problems even with the passive non-lawyer investors in a law firm's legal practice. The problems can easily arise and will likely arise with investors or business partners who are concerned with financial profit more than the institution of law and the judicial process. I also see the same kind of problems with the out-of-state lawyer who is not admitted to practice in Florida and who shares an ownership interest in a Florida law firm. Ultimately, the client suffers the adverse consequences, whether it is the corporate client or the American consumer. The practice of law is compromised. The integrity of our legal profession is compromised. Months ago, I participated in a Florida Bar survey in which I also expressed my same views. I strongly OPPOSE a non-lawyer sharing an ownership interest in a law firm and legal practice in Florida. Thank you for your consideration regarding this most important issue.</p>

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

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Abraham Benhayoun	10/26/2021	I am a member of the Florida Bar. I am compelled to write this email as I have recently learned of the Florida Supreme Court and Florida Bar’s current plans to make it lawful for non-lawyers to provide certain legal services to individuals (such as preparation of forms) as well as having an ownership interest in law firms. As a member of the Florida Bar and immigration attorney, I have seen firsthand the irreparable harm done by paralegals, notarios, consultants, and certain “law firms” owned by non-lawyers that operate in our state. In addition, this new rule will disproportionately affect immigration lawyers as our practices are heavily form-based, and we would be “officially” competing with paralegals. I sincerely hope you consider my opposition to this matter.
Juan Picado	10/26/2021	I would like to respectfully advise against adopting the proposed change in the rules to make it lawful for non-lawyers to provide certain legal services to individuals as well as to have an ownership interest in law firms. If this change were to be adopted, it will hurt not only our profession, but also the public at large. As an immigration attorney, I have seen first hand the irreparable harm that unqualified individuals can cause to people seeking proper legal immigration advice. By permitting non-lawyers and unqualified individuals to engage in areas that require due care and legal knowledge, we are simply lowering our value to society, and raising the perceived value of subpar services. For these and many more reasons, I strongly advise against adopting this change. Our duties as attorneys include safeguarding our profession and the public, adopting the proposed change in the rules would have the complete opposite effect.
Jennifer Jordan	10/26/2021	I just wanted to comment on my objection to non-lawyer ownership of firms and fee splitting with non-lawyers. This would instantly diminish credibility and bring upon “backdoor” dealings. I highly oppose to this. I worked too hard for too long, as many fellow lawyers, to start sharing my fees with non-lawyers b/c if allowed, some lawyers will share fees to get cases referred to them which gives me less referrals if I’m not willing to share. In my practice, this will start doctors auctioning off to the highest bidder their patients for referrals. That is not a good look for the practice of law.
Sophie Luchin	10/26/2021	I am an immigration attorney at Jacksonville Area Legal Aid. I represent low-income clients in a Low Bono and Pro Bono capacity. During my years of practice, I have witnessed the negative consequences of having non-attorneys complete forms for clients for immigration relief purposes. In certain instances, the lack of expertise and diligence from the non-attorney completing the forms has had devastating and life-altering consequences. Moreover, the ability for non-attorneys to complete the forms gives them the opportunity and "podium" for conveying legal advice. Lay individuals, especially foreign-born individuals with limited exposure to the U.S. legal system, may consider the advice given by a non-attorney completing their forms as legal advice.

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

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Allan Charles	10/26/2021	I write in opposition to the Committee's recommendation to revise Rule 4-5.4 with respect to Fee Splitting and Law Firm Ownership. This concept was researched twenty years ago by a special committee of the New York State Bar Association chaired by Robert MacCrate. There are other ways to provide law firms with greater access to capital, spur innovation, and increase access to legal services that do not present such considerable risk to the legal profession. Non-lawyer ownership of law firms may be coming to America, but I don't think Florida needs to be on the forefront of this experiment.
Merideth Nagel	10/26/2021	I am writing to object to the plan to allow certain non-attorneys to help members of the public fill out "forms," and provide other services that would otherwise be required to be practiced by attorneys. When I hear this kind of proposal, I wonder if anyone considering it has actually practiced law at a level where they encounter folks who have been burned by these types of services. For example, I have client who have attempted to use estate planning and business formation services by on-line providers (which at least are run by lawyers) and invariably they have signed the wrong types of documents that included provisions that they did not understand and are counter to their intentions. As an estate planning attorney I see these kinds of problems very, very frequently. Similarly, I have seen clients post-divorce who tried to fill out "forms" and then use a notary service, and that is always a problem. They don't know how to address all issues, frequently leave issues out, or, again, include provisions that they don't understand and/or are counter to their intentions. When I consider the harm to the public that I have seen first-hand, I cannot understand why the Florida Bar would even consider such a thing. Isn't it your mission to protect the public? Do you not have a concern for your membership. I urge you in the strongest possible way – please, please do not allow such a provision to pass.
Brendan Gorman	10/26/2021	It has been brought to my attention, and to the attention of many of my colleagues, that the Florida Bar Board of Governors is presently considering a final written report recommending a "regulatory laboratory" that would authorize non-attorney ownership in law firms and the splitting of legal fees with non-attorneys. I am sure I am not alone with the many concerns I have with this possibility. Among those concerns is the constitutional question of whether the Florida Supreme Court may regulate non-attorneys or sanction non-attorneys if they cause public harm. Another grave concern is the inherent conflict of interest that would arise between an attorney and non-attorney business investor; the latter likely being more concerned with the financial profit of the enterprise rather than what is in the best interest of the client, the institution of the law, and the judicial process. Based on the final report, I am clearly not alone. An overwhelming majority of the members surveyed are against this proposal. Based on the final report, I am clearly not alone. I am asking that the Florida Bar Board of Governors please reject this proposal and preserve the status quo with the ownership of law firms and fee splitting.

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

Sender	Date received	Comments
Kendra Bunn	10/26/2021	<p>I would like to comment on the Florida Supreme Court and Florida Bar’s current plans to make it lawful for non-lawyers to provide certain legal services to individuals (such as preparation of forms) as well as a have an ownership interest in law firms. I practice in Immigration Law mostly, and find it inconceivable to allow notaries and non-lawyers to work in such a field that is fraught with serous implications of harm if prepared unintelligently. Our immigration forms do not just cause a financial harm, but they cause serious implications to a family of being deported, separated, and harmed irreparably. An improper filing in the Immigration context can set a family back 10-20 years of progress, and costs thousands and thousands of dollars to repair, if repair can even be done. We do this kind of “repair work” all the time in our practice, and it is incredibly sad. I cannot envision hardly any area of law where this proposed rule would be helpful, other than perhaps corporate entity set-ups and very basic files involving corporations. Please reconsider this proposed rule.</p>
Genilde Guerra	10/26/2021	<p>UPL is already a big problem in the state of Florida and in our society in general. Due to the nature of the Residents of Florida, many of whom are from another country, many clients have been damaged by non-lawyers and have no recourse. Often the non-lawyer may act like a professional; in many countries, a “Notary” is a title reserved only for Lawyers. The UPL problem is huge, with tax preparers and other lay persons holding themselves out as Experts. Immigration and Bankruptcy are form-based, so giving non-lawyers a free reign to complete forms is guaranteed to confuse and exploit the public. Lawyers are subject to ethics rules and regulations of the Florida Bar and constant competency oversight. To take this away is folly! If a non-lawyer is allowed to own a law firm, this will enable fraud and violations of law and ethics, because the non-lawyer can escape the scrutiny of the Bar and the peer review of other attorneys. This also opens the door for failure to conflict-check, trust account violations , money laundering, and all the behavior that lawyers are strictly governed against.</p> <p>If the idea is to make legal services more accessible, law schools graduate a sufficient number of attorneys each year to supply the public. This can be a pro bono effort without prejudicing the consumer. If non-lawyers are permitted, the purpose of Bar regulation, competency requirements, and pride of membership is denigrated, discouraged and discounted. The Florida Bar itself will be disenfranchised because the membership will lose incentive to aspire to and join a robust legal society. The Florida Bar has already dealt with non-lawyer fraudsters who claim firm ownership because Washington D.C. permits this. It is a terrible precedent. It will be devastating to the most vulnerable segment of the population, members of the public least able to understand the law will be the most exposed. I am 100% opposed this rule!</p>
Paul Reed	10/26/2021	<p>Allowing non-lawyer ownership and fee-sharing with non-lawyers is a horrible idea for ALL of the reasons expressed by my colleagues.</p>

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Sender	Date received	Comments
Jeffrey Byrd	10/26/2021	I understand that you are soliciting comments on non-lawyer ownership of law firms, and fee sharing with non-lawyers. I am not sure who has even brought this issue for consideration, but I would strongly oppose this. The Florida Bar has a hard enough time to ensure that lawyers uphold their oath and ethical obligations. Add to that sometimes difficult equation the business men/women who have not worked as hard as a lawyer to earn a Bar license, who have not taken an oath, who have no code of ethics and who only hope to make money off the legal arena, and I fear that the “profession” of law would cease to exist. I strongly oppose any such change and hope that these comments are well received.
Andrew Rader	10/26/2021	I’m writing to voice my opposition to any change by the Florida Bar that permits the corporate ownership of law firms or splitting of legal fees with nonlawyers. Our profession is just that; a profession. We don’t sell widgets, we provide the very best and scholarly advice we can to our clients, limited only by our competency. There should be some venues where a person can seek out advice that is critical to their lives or next moves where there is no implication that a larger nonlawyer corporate force may be exerting pressure to handle the case one way or another. Lawyers, and only lawyers, should own law firms; lawyers and only lawyers should be permitted to give legal advice. No one could seriously argue that the corporate practice of medicine has improved medicine or the doctor-patient relationship. Instead, it has created such a consolidation of power and money within the medical community that patients feel disaffected, have little relationship with their doctor, and has rendered the traditional intimate physician-patient relationship strained and impersonal at best. The same is likely to happen to the attorney-client relationship. Please do not let this happen.
Darian Taylor	10/26/2021	Having read through the Supreme Court Special Committee's Final Report, I heartily endorse the idea of allowing nonprofit law firms. I agree that the exemption for legal aid organizations as "non-firms" is essentially a legal fiction and that more nonprofit firms would be a great benefit to lower income clients. Also, eliminating the preauthorization and approval of advertisements by the FL Bar would free up resources. The stats indicate that most lawyers are showing an appreciation for the existing rule against misleading ads--if not the unwritten rule against bad taste (e.g.: "Size Matters" --Morgan and Morgan), and the Bar, as well as the public, can assess their integrity accordingly. Finally, the Law Practice Innovation Lab sounds like an excellent way to test out some of the ideas proposed. Never heard of it before, but it sounds like a viable way forward with minimal risk. Thanks for this excellent committee report.

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Alicia Whiting-Bozich	10/26/2021	<p>I have reviewed the recommendations from the special committee relative to ownership and fee sharing and I have very serious concerns about these issues. As you know, if the main proposals were implemented, it would mean seismic changes to the practice of law in Florida and potentially pose very serious risk of harm to the citizens of Florida. I have discussed this issue with a number of attorneys in various fields of practice, and everyone I have spoken to provided different scenarios in which permitting fee sharing and non-lawyer ownership could be very problematic. The following example stems from 6.5 years representing banks. There are a number of foreclosure defense attorneys who have been disbarred for various reasons, including tampering with evidence and taking advantage of their clients, keeping settlements, etc. A number of those disbarred attorneys continue to participate in the legal profession under the guise of being a “paralegal.” Now, the committee recommends that these same people be given the opportunity to maintain an ownership interest in a firm believing that these disbarred lawyers will not direct the way in which services are provided or actively participate behind the scenes in directing their “partners.” The proposal states that the rule would require that the non-lawyer be bound to the rules of professional conduct. These would be the same rules that the disbarred attorney previously demonstrated an inability to follow?!? Why even take the chance. Second, the same concerns arise with fee splitting and referrals. Take stucco or first party property cases for example. There are already companies who solicit door to door. I have had companies come to my house in the suburbs trying to convince me that I have stucco defect. These companies file the same or similar report in all cases and you see these same companies begin used by the same law firms over and over. Sometimes, at the end of the day, the homeowner client opens themselves up to liability because the claim is frivolous. The company and the firm were hoping to make a quick buck at the expense of their client. The fee splitting rule encourages more of that behavior, not less. The Stremms bar prosecution and subsequent civil suits should also serve as a warning (I do not even represent insureds as part of my general practice).</p>
Alicia Whiting-Bozich <i>(continued)</i>	10/26/2021	<p>Lastly, simply because Utah (with its approximately 8,700 active attorneys) was able to implement a program last year does not mean that Florida with its over 70,000 active lawyers can and should implement the program. In my experience, the Florida Bar with its various professionalism committees struggles to implement and enforce the rules with consistency around the state. An attorney in Hillsborough is being prosecuted for unknowingly making a false statement and correcting it immediately when she realized what she said was not correct. Meanwhile, in Broward the bar takes no action against an attorney who was permitting a disbarred lawyer to practice law and enters an appearance on behalf of people that never hired him because he was being paid by a third-party to stall a foreclosure. I am skeptical of the bars ability to properly oversee implementation and enforcement, which results in harm to the public.</p>

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Julie Pagni	10/26/2021	<p>It is highly offensive that we would consider allowing nonlawyers to own or have a financial benefit from a law firm. They are not attorneys, they are not regulated by the same rules, ethics, and regulations as attorneys, and they do not have the required education or knowledge of a person who has a Juris Doctorate. This is a regulation nightmare.</p> <p>This also allows non lawyers to come into the profession and manipulate the legal profession and attorneys from the commerce side of legal services. Allowing nonlawyers to now compete for business, cases, and clients in an already highly competitive market takes business away from actually attorneys, bar licensed attorneys. Solo practitioners and younger lawyers already have a daunting task of originating business and keeping the lights on in a market of attorneys vs attorneys. Such an amendment would leave the legal profession open to being overran and controlled by the person who has the most money to buy into the business of the legal profession, the most money to monopolize the market, most likely someone who is a non lawyer, who does not understand the innerworkings of all rules, ethics, professional responsibility, court decorum, the law, and other aspects of the legal system, profession, and what it is to be an attorney. How can the non lawyer who owns a firm be subject to malpractice when they are not actually practicing law? So is it all risk for the bar licensed attorney and no risk for the nonlawyer owner? Where is the incentive for the attorney to be an attorney? At that rate why not give up your bar license and just own a firm, subject to no risk of malpractice since you are not legally allowed to practice law as a nonlawyer.</p>

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Julie Pagni <i>(continued)</i>	10/26/2021	<p>There are already issues with “runners” in personal injury area of the law with advertising law firms improperly hiring people as “runners” who go to the doctors office, the hospital, or someone’s home to sign the injured person up as a client within hours of an incident or crash; there are already issues with improper fee sharing and kickbacks, so why would we open the door and welcome further issues by opening this up to nonlawyers. Again the market would be oversaturated by the few large law firms who can afford to spend tens of thousands of dollars on hiring people just to solicit cases in exchange for a referral fee. This is highly unfair to the average individually attorney. For the large national large firms, the law firms that make 80 million dollars in profit or more a year, nonlawyer owners or nonlawyer referral fees are not a big deal and those larger firms have financial resources to actually take advantage of a change in the rule. However, this change would drastically change the makeup of the legal profession and the ability of the average individual attorney to run their own practice. Entry into the market of the legal profession for a licensed attorney would be jeopardized. The detrimental impact to the individual attorney is too large to allow non lawyer owners of firms or referral fees. Other professions do not allow people outside the profession to compete in their industry so why are attorneys opening the door.</p> <p>To have attorneys go through such tasks and hoops to become licensed, the time, the money, the rules, the dos, the don’ts, all the regulation attorneys are held to and the great responsibility shouldered by attorneys and expected of attorneys, it is offensive to entertain the idea of allowing nonlawyers who did not spend the time/money on education, complete and pass the character and fitness portion of the Florida Bar, no LSAT, No Bar exam, no MPRE, no reoccurring CLEs, etc. to just walk right into the legal profession and start taking profits and financial growth opportunity away from licensed attorneys.</p>
Chelsie Lamie	10/26/2021	<p>I am a member of the Florida Bar (41325) and am opposed to allowing non-attorneys to own law firms or share fees within the state of Florida. This will not increase access to justice for consumers. It's a power grab and will hurt consumers, potentially increase fraud and likely result in consumers being injured by the firms that violate ethical rules (for example trust accounting) as they don't have a law license to lose. Please do not allow this.</p>

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Robert Travieso	10/26/2021	<p>Like many of my colleagues in the Florida Bar, according to a 2021 Florida Bar Survey, I am opposed to non-lawyer ownership in law firms and other non-attorney legal services providers. The legal services industry must be encouraged to maintain the highest ethical standards in the practice of law. Although profit is a necessary aspect of maintaining an enduring law practice, profit is not the only goal—as is too often the case in the private business sector.</p> <p>Opening the flood gates to non-lawyer owners and investors will have the unintended consequence of adding an additional and unnecessary profit motive into the practice of the law. The practice of the law is supposed to be a beacon of integrity and service to the community.</p> <p>Furthermore, proponents of the idea may argue that relaxing fee-sharing and non-lawyer ownership rules will help to expand legal services to underserved communities. Although increasing access to legal services is a laudable goal, such an historic change in the practice of law in Florida should not be based on relatively minimal data obtained by a single Special Committee. We have been down this deregulatory road before—it never ends where we expected it to. I urge you not to make the same mistakes as the medical and accounting professions.</p>
Trent Swift	10/27/2021	<p>I am writing to express my concerns regarding the proposed non-lawyer ownership, partnership, and fee sharing in law firms as discussed in the June 28, 2021 Final Report of the Special Committee to Improve the Delivery of Legal Services. I feel that this decision, if reached, would lead to a significant risk to residents of Florida as such ownership would, in all likelihood, cause a significant imbalance of non-lawyers pushing profit driven interests rather than client based solutions. In my opinion, if the goal is to increase access to the justice system, allowing non-lawyer partners into the legal world would have the opposite effect. I simply see no logical connection between non lawyer firm owners / partners, and decreased legal costs for small businesses and greater access for low income individuals. As a member of the Florida Bar since 2011 and the New York Bar since 2015, I am very familiar with the process of seeking admission and remaining in good standing with the bar. I fear that “deregulating” the legal field in Florida by allowing non-lawyer partners would be incredibly dangerous. As attorneys we are trained to understand the incredibly duty that comes with our profession. We are trusted with clients confidences, concerns, and to act, at all times, in the best interests of our client. There are not many other professions that have the rigid requirements of membership that we do, and I hope it remains that way.</p>
Kevin Smith	10/27/2021	<p>I have been practicing medical malpractice and personal injury law for over thirty years in the Lytal Reiter firm. We have earned a reputation and worked hard to compete with other firms. If hedge funds are permitted to dominate the airwaves with ads and pay huge referral fees to non lawyers such as doctors and toe tuck drivers and er doctors, etc. the legal world of civil trial law will spiral into the Wild West. The country has one third more currency than pre pandemic and large companies and hedge fund managers will use the legal profession in Florida as a cut rate business and tax shelter and the people of Florida and all of the small firms will suffer and close. Please think about the corruption that will ensue if this is approved.</p>

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Michael Cerasa	10/27/2021	I am writing to voice my strong opposition to the proposed rule changes being considered to allow non-lawyer ownership of law firms in Florida. Allowing non-lawyers to become business partners with lawyers would be disastrous to the profession. Having owners of firms who are not bound by professional and ethical standards of lawyers would undoubtedly cause significant problems for the delivery of legal services in the state of Florida. I urge the Board of Governors to dismiss the proposed rule changes outright.
Clell Warriner	10/27/2021	I am strongly against non-lawyers having any type of equity ownership in law firms. The risk of a lawyers independent judgement being compromised and the client's being harmed is too high. Florida's Bar examination is in place for a reason.
Lance Ivey	10/27/2021	<p>Please consider these comments as opposition to proposals in the Final Report of the Special Committee to Improve the Delivery of Legal Services dated June 28, 2021. The recommendations regarding non-lawyer ownership and sharing of attorney's fees with non-lawyers would be the one of the worst decisions in the history of Florida's Civil Justice system. As we all know, the backbone of our legal system in Florida is the legal and ethical requirement that ALL attorneys who practice in Florida are always under a duty to represent his or her client with the utmost degree of honesty, forthrightness, loyalty and fidelity. Allowing non-lawyer ownership and fee splitting with non-lawyers would result in for-profit entities such as hedge funds, insurance companies, Chiropractors, Doctors, Google, Walmart and Amazon to take over the practice of law without regulation. Does anyone believe these entities would have the client's interest placed ahead of profits? This has already happened in the medical industry where policy now allows medicine to be controlled by large corporations that place profits first and foremost (not physicians who should have the patients interest as the primary concern). Health care cost have skyrocketed out of control and the level of care has been greatly damaged.</p> <p>The Florida Supreme Court has recognized for decades that a corporation controlled by non-lawyer commits unlicensed practice of law finding that such a structure would give rise to an inherent conflict of interest between the legal needs of the client and the monetary greed of a corporation whose goal is always profit. It is undisputed that the proposals being considered do not eliminate such conflict but create it. Just recently in the past 5 years the Bar indicated it was considering allowing non-lawyer ownership and reciprocity. This idea was shot down when the Bar realized that 81% of Florida attorneys opposed such policy due to the inherent problems outlined above. This recent policy change is basically allowing reciprocity in a back door manner and creates an inherent conflict of interest. What has changed in such a short period of time? Nothing. For decades, the legal profession has been attacked by outside non-lawyers with perception and concerns that some attorneys do not look out for their client's best interest, only profits.</p> <p>I strongly urge you not to pass a policy that will result in that perception becoming reality. For the reasons outlined above, I respectfully request the Board of Governors strongly oppose the Committee's recommendations regarding non-lawyer ownership and fee sharing.</p>
Trey Lytal	10/27/2021	Sent the same email as Lance Ivey above.
John Eversole	10/27/2021	Sent the same email as Lance Ivey above.

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Todd Fronrath	10/27/2021	<p>The recommendations and stance on non-lawyer ownership and sharing of attorney’s fees with non-lawyers in misguided and will create disastrous results for members of the Florida Bar. And the clients we serve. Additionally, there is zero evidence that the proposals will achieve any increase in access to justice for poor and/or moderate income populations. In all likelihood, the proposals will simply result in non-lawyers attempting to maximize profits at the expense of client interests and the overall public good. There is a reason that the vast majority of lawyers in the state of Florida oppose non-lawyer ownership of law firms. These proposals will inevitably cause serious harm to the legal profession and the clients we took an oath to protect and represent to the highest legal and ethical standards. It is beyond troubling to envision law firms owned by massive entities who only focus on the bottom line and the almighty dollar. Better ways exist to accomplish the goals purportedly sought through these proposals. I respectfully request that you tell the Florida Supreme Court that you strongly oppose and cannot support the Committee’s recommendations on these issues.</p>
Dario Diaz	10/27/2021	<p>It seems, at least to me, that these proposed changes mark the last vestiges of law as a profession, and herald the beginning of law as a business. This has been a slow march of disassembling law as a profession that started with lawyer advertising and will be complete with allowing “businesses” to hold themselves out as counsellors of law. I have personally seen it in the PIP area where unscrupulous individuals, “owned” the clinics and the doctors were the employees; the fraud and distasteful conduct was so rampant such that the rules changed so that doctors had to own the clinics or be medical directors. What these PIP hucksters did to medicine, is the template being applied to the law. I stand in opposition.</p> <p>I have been a member of the Florida Bar since 1996. I have participated in Bar committees, prepared and presented several CLE’s, and maintain an active law practice in Tampa. I have never advertised and built my practice on word of mouth, handshakes, and providing the service expected of my profession. The idea that some faceless, nameless, corporate entity, looking at a spreadsheet determines what area of law provides the best return on investment should be offensive to us.</p> <p>The practice of law has a special place in society. There is a certain innate integrity that accompanies being a lawyer. My father came to the U.S. as a 41 year old adult, with no formal education, and painted cars as a body man. The concept that his son became a lawyer was virtually incomprehensible to him. In Cuba, lawyers were people you heard about in stories, not people you knew personally. Here in the U.S. pretty much everyone knows a lawyer or knows of a lawyer. To somehow magically conclude that non-lawyer ownership is going to provide greater access to legal services is wishful thinking. What it provides is a corporate approach to a very personal service. If the ultimate goal is to make money as a business, well done, but if the goal is to provide professional legal services, these recommendations are repugnant to that goal.</p>

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Greg Zele	10/27/2021	<p>I have serious concerns about the "Final report of the Special Committee to Improve the Delivery of Legal Services" dated June 28, 2021. Just 6 years ago when it was the Bar considering making similar changes under then President Ray Abadin, the bar quickly concluded that such proposals would be contrary to the interests of the majority of its members and the general public. Now, having realized that they could not win by following the traditional method of going through the Bar, it seems that the interests behind that movement have apparently sought a more receptive audience in the Florida Supreme Court. It is not surprising that the small hand-picked committee put together by the Supreme Court virtually overnight and with little public input recommended changes that members of the Bar fought so hard to defeat 6 years ago, which would upend the delivery of legal services virtually overnight.</p> <p>My question to the Court and members of this Board is what has changed in 6 years that suddenly makes non-lawyer ownership of law firms and fee sharing with non-lawyers such a great idea to improve access to legal services? The answer is nothing at all. Indeed, the last 6 years have seen a proliferation of services all designed to make legal services more affordable without non-lawyer ownership of law firms and those businesses seem to be doing just fine (i.e. Avvo, Legal Shield etc.). The current proposal seems to be more of an answer in search of a problem than the other way around. Where are the studies that show that non-lawyer ownership of law firms will reduce the cost of legal services or expand access to the justice system? The crisis in affordability of legal services has many causes (the billable hour being chief among them) and allowing non-lawyers to own law firms or permitting lawyers to share fees with non-lawyers will likely only exacerbate those problems rather than solve them.</p> <p>The proposals endorsed by the special committee will only serve to irreparably harm the legal profession. Who is going to provide regulatory oversight for the non-lawyer owners of law firms? What is a lawyer to do when the non-lawyer owners interests diverge from the best interest of the client? Non-lawyer owners (or investors) will only be concerned with their bottom lines and the profitability of their new business ventures. Such concerns are antithetical to the oath we all took when we were admitted to the bar – namely doing what is in the best interest of our clients no matter the cost.</p>

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Greg Zele <i>(continued)</i>	10/27/2021	<p>The attorney-client relationship is sacrosanct. Permitting non-lawyers to interfere with that relationship – which is exactly what the proposals would do – will only create conflict between lawyers, the non-lawyers owners and our clients. Suddenly doing what is best for the client will have to be balanced against what is in the best interest of the non-lawyer shareholders in the firm. It is hard for me to understand how permitting non-lawyers to have an ownership interest in law firms will in any way expand the access to the justice system for those who cannot currently afford legal services. If anything it will drive up costs as the almighty profit motive becomes the number one driver for law firms and their non-lawyer owners.</p> <p>Again, the committee’s recommendations are an answer in search of a problem and that answer raises a whole host of ethical issues and concerns that were not adequately addressed in the report. Accordingly I urge you to strongly oppose the findings of the special committee and make our concerns known to the Florida Supreme Court before they enact these proposals that would only serve to harm the general public and the legal profession.</p>
Meranda Reifschneider	10/27/2021	<p>Please listen to the 81 percent of Florida attorneys who oppose non-lawyer ownership of law firms and tell the Florida Supreme Court that you strongly oppose the committee’s recommendations on the issue.</p>
Daniel Jensen	10/27/2021	<p>Please consider these comments as my opposition to proposals in the Final Report of the Special Committee to Improve the Delivery of Legal Services dated June 28, 2021. The recommendations regarding non-lawyer ownership and sharing of attorney’s fees with non-lawyers would be a decision that is detrimental to the one thing the Florida Bar is meant to protect – attorneys.</p> <p>The most important thing attorneys have, above all else, is our ethics. All attorneys who practice in Florida are under a duty at all times to represent his or her client with the utmost degree of honesty, forthrightness, loyalty and fidelity. Allowing non-lawyer ownership and fee splitting with non-lawyers would result in for-profit entities such as hedge funds, insurance companies, Google, Walmart and Amazon to take over the practice of law without regulation. These companies have shown time and time again that profits become before people. Does anyone believe these entities actually have their client’s best interests at heart? The Florida Supreme Court has recognized for decades that a corporation controlled by non-lawyer commits unlicensed practice of law finding that such a structure would give rise to an inherent conflict of interest between the legal needs of the client and the monetary greed of a corporation whose goal is always profit. Why now does the same entity meant to protect these fundamental principles wish to jeopardize the legal profession as we know it?</p> <p>For decades, the legal profession has been attacked by outside non-lawyers with perception and concerns that some attorneys do not look out for their client’s best interest, only profits. I strongly urge you not to pass a policy that will guarantee this perception and concern into existence. Your proposal will make it commonplace in the legal profession as we know it.</p> <p>For the reasons outlined above, I respectfully request the Board of Governors strongly oppose the Committee’s recommendations regarding non-lawyer ownership and fee sharing.</p>

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Howard Coker	10/27/2021	I am against the sandbox approach if those who are accepted are grandfathered in an can only be removed” if the data shows that unacceptable levels of consumer harm are occurring”. That is far too nebulous for me. If the lab is dissolved and the non -lawyer entities stay I oppose the concept. If that is the case the Lab is not a testing ground. It becomes an immediate path for non-lawyer owned firms to operate. This would occur before any data has been secured. This proposal is vague and not clearly developed. It also grants the Commission unlimited discretion. On the whole I would scrap the report and start over. Can’t the questions of accessibility and innovation for the underserved be answered through additional funding for Legal Aid. The goals of the Commission would be met without tearing at the fabric that makes us independent.
Angelina Lim	10/27/2021	I have serious reservations regarding the proposal. if the main proposals were implemented, it would mean seismic changes to the practice of law in Florida and potentially pose very serious risk of harm to the citizens of Florida.
Melissa Anguinaga	10/27/2021	I am a Florida Bar licensed attorney since 2012. I practice immigration law exclusively. I wanted to take a moment to mention that if the proposed plan goes into effect, it would be highly detrimental to an individual/non-citizen. I have seen thousands of cases where paralegals, notarios, consultants, and certain “law firms” owned by non-lawyers have caused irreparable harm because of their lack of knowledge about the immigration law. As we know, the immigration field is one of the most complex and constantly changing field. It requires being up to date and informed about the day-to-day changes of case precedent, laws and regulations. Paralegals, notarios, consultants, and “law firms” owned by non-lawyers do not have the knowledge, education or experience to provide competent legal services to non-citizens. It’s also important to note that they are not licensed to practice law. They are not licensed to give legal advice. Most people think or conclude that filling out an immigration form does not require legal knowledge. This is incorrect. The information provided in ANY immigration form has a legal consequence. I have had consultations where nothing can be done to repair or undo the damage caused by paralegals, notarios, consultants, and “law firms” owned by non-lawyers. Their reckless disregard for the legal consequences often time puts non-citizens in removal proceedings, makes them deportable, or makes them ineligible for an immigration relief because they are permanently barred. Additionally, I’ve seen several cases where these paralegals, notarios, consultants, and certain “law firms” owned by non-lawyers defraud non-citizens, when they take their money and disappear by closing their office without informing the non-citizen about the case they started. This is not new in Florida. This has been happening since the early 2000s when notarios would file fictitious applications with U.S. Citizenship and Immigration Services without the knowledge of the non-citizen, which often time results in the deportation of the non-citizen. For this reason, I am opposed to this plan.

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Nina Llerena	10/27/2021	<p>As an Immigration Attorney I understand it is important for the population to access legal services that are adequate, and affordable. That is why the regulations provide that attorneys should charge according to their knowledge and experience. Under the Immigration System there are many organizations that provide assistance at very reduced prices and that are recognized by the USCIS, and the EOIR, which creates confidence in their services. It is true that there is a vast population that cannot afford legal services, however, that population is very vulnerable. Due to lack of knowledge of the legal system, and the "predators" of that community of immigrants performing or promoting their services in social media as "consultants," "experienced paralegals (who work without any attorney supervision)," "notaries" or foreign attorneys that perform Unlicensed Practice of Law under the roof of being just "form fillers". The issue with this is that immigrants believe that a public notary is an experienced attorney as it is in most Latin American, Haiti, and African countries and worst, that a foreign attorney knows how the law works here, which is not true.</p> <p>I have encountered many potential clients that come to my office after they submitted applications for which they would not have qualified. The results in most cases are disastrous. Some people have paid USCIS fees several times because their forms were old, or not complete, or they simply were not qualifying for what they have applied for. The cheapest form in USCIS can be \$85.00 and vary to \$1,225.00. In some other instances, the wrong filing puts the person in removal (deportation) proceedings or even worse, they end up being deported.</p>
Nina Llerena (continued)	10/27/2021	<p>The practice of Immigration Law is very complex and requires deep knowledge of the law of Immigration and Nationality Act and the FAM, to say the least. It is not in any way a form filling practice. That is why as an Immigration Attorney I review the history of the Potential Client or even FOIA the Client to take into consideration which options the Client may have or may not. It takes legal analysis to be applied to an issue. That cannot be determined by saying "you are married to a Lawful Permanent Resident, then we are going to use ... Form". There could be many nuances to that. Risking a person's future in America or in the worst case scenario, the reunification of a family, cannot be placed in consultants or paralegals hands. It would be like placing the life of a patient who needs brain surgery on the cleaning person at the hospital just because it would be more affordable than the brain surgeon.</p>
Michael Perenich	10/27/2021	<p>I have two brothers, both doctors. We have discussed the intrinsic conflicts of interest non-doctors have in owning clinics, and the problems it poses to doctors and patients. Certainly there are good aspects to non-doctor ownership, however, the pros are overshadowed by the cons. The practice of law will face the same issues should non-lawyers be allowed to ownership or control over lawyers. Moreover, any potential benefit for a non-lawyer relationship could fix with a little creativity. Finally, I think non-lawyer ownership creates a fertile ground for ethical problems, conflicts of interest, and the potential degradation of the legal sphere. Please do not allow this to happen.</p>

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

Sender	Date received	Comments
Karen Black	10/28/2021	I have been a practicing attorney for over 30 years. I am concerned about the possibility of allowing non-lawyers the ability to do such things as accompany individuals to court to give them "reassurance", having an individual rely upon their input when it comes to filling out forms and any other matters they would be allowed to do that broadens their present duties. Many paralegals are not regulated or working for a Florida Bar Licensed Attorney. I believe giving paralegals additional authority will not help the legal profession and will end up being a disaster. It is difficult to regulate paralegals right now. It will certainly be difficult to regulate paralegals if their duties were broadened.
Kristy Figueroa-Contreras	10/28/2021	As an immigration attorney, I am very concerned about this proposed rule. Our area of the law is highly technical and complex. I have seen first-hand the irreparable harm done to cases handled by paralegals, notarios, and other non-lawyers, we just don't have the knowledge and experience to properly handle these cases. Often times, the mistakes of these non-lawyers make end up causing people to get deported. Please do not pass this rule.
Karina Acevedo	10/28/2021	<p>I am a lawyer in good standing in the State of Florida and have practicing as such since 2005. I am OPPOSED to this rule for many reasons. First, I have seen the damage "notarios" or those that hold themselves up to be "paralegals" have done to many of my clients' cases, specifically in immigration. These individuals charge hefty prices and make many empty promises to unknowing immigrants as to obtaining some "legal status" in the U.S. Some cases have led to Clients being ordered deported with the "notaries" or "paralegals" nowhere in sight and no accountability to be taken. This proposed rule would give validation to some of these unscrupulous practices and would allow these individuals to appear as they have legal knowledge of the immigration framework, which most unfortunately do not. This would in turn further prejudice the unsuspecting potential client, who is usually desperate for legal help and is easily swayed by false hopes and promises given their lack of experience and knowledge in the U.S. legal process.</p> <p>This rule in turn further diminishes the role and purpose of the attorney who after many years of schooling, experience and maintaining good standing with the Florida Bar and its ethical and moral rules of conduct, will be compelled to compete with paralegals in order to provide legal services. For these same reasons, they should also NOT have an ownership role in a legal practice.</p>
Susanna Martinez	10/28/2021	<p>With deep concern I write to express my opposition to the proposed rules of allowing non-lawyers to own law firms and allow non-lawyers to provide "limited legal advice" related to the preparation and filing of forms in the immigration law field that is a heavily form-related area of law in which I practice. As a FL attorney who practices immigration and naturalization law I can attest firsthand to the negative impact this proposed rules will have in our practices and specially on the vulnerable immigrant population that it looks to protect.</p> <p>This will only open the door to the greedy unlawful practice of law in Florida which is already rampant and we do very little to help the thousands of desperate immigrants who fall into the hands of unscrupulous people who take advantage of those in need of legal representation.</p>

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Akilah Harris	10/28/2021	<p>This rule change is a real threat to not only immigration lawyers, because their practice is mainly form based, but to Family law attorneys as well. I am a family layer and I see so many clients that come to me after they have had a non-lawyer assist them with drafting documents and their file is now a complete mess that I must then fix. It ends up costing those clients, who tried to save money, more than normal because of all the clean-up work I would need to do to get their file back on track. I always have to end up redrafting the same docs the non-lawyer prepared for them already because it's never done correctly. The clients are then upset about the amount of money they are now having to spend on top of what they paid the non-lawyer to do. Having paralegals and non-lawyers draft legal documents and give advice creates irreparable damage to the clients in the community and ends up costing everyone more time and more money. The rule change should not approved.</p>
Rosalva Chaviano	10/28/2021	<p>I do NOT support the Proposed change in rules to allow non-lawyers to provide legal services and have an ownership interest in law firms. I have seen first hand the irreparable harm done by paralegals, notarios, consultants, and certain "law firms" owned by non-lawyers that operate in Florida. This has completely changed the life of many of my clients. Giving these non-lawyers the right to provide legal services lawfully, it will reward them for harming the lives of the people they will represent. Please don't allow for this change in rule. They should not be given this right.</p>
Marc Hernandez	10/28/2021	<p>I write to oppose the recommendations in the Final Report of the Special Committee to Improve the Delivery of Legal Services. After reviewing the report, it appears that many of the points in favor of the proposed changes are unsupported by evidence or supported only by anecdotal evidence. For example, although increasing access to legal services should be a goal for all members of the Bar, there is no data showing that permitting non-lawyer ownership of law firms and fee sharing will do that. To the contrary, experience tells us that corporations seeking to increase profit will increase prices. Likewise, decreased regulation will lead to more consolidation, less competition, and decreased responsiveness to consumers' needs. The proposed changes will turn legal services into a commodity like any other. The report cites some potential benefits from such a change, but it does not adequately address many of the negative effects that will follow.</p> <p>Finally, the report cites 2 states that have recently adopted similar proposals as justification for FL to abandon a prohibition that has been in place since 1955. But this point actually shows that 48 states have serious concerns with these proposals and (up until now) these states have decided against adopting them. It also shows that adoption of the proposed changes would be hasty and unnecessary. Before opening Pandora's box, the Bar should study the issue further and seek additional input from its members. Change for the sake of change is not necessarily good. In fact, it can be quite bad.</p>
Alejandro Roque	10/28/2021	<p>I am against the FI Bar's current plan to make it lawful for Non-Lawyers to provide legal services, such as the preparation of forms and against the regulation that would allow non-lawyers to have an interest in a law firm. The preparation of forms requires legal knowledge, requires knowing whether or not the potential client will qualify for the benefit sought upon submission of a form. Furthermore, there may always be adverse consequences with the submission of a form.</p>

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Deanna Mcswain	10/28/2021	<p>I strongly object to the idea of allowing unlicensed people participate in rendering legal services and own interests in law firms. Such action would allow a high degree of unethical behavior within the provision of legal services. Many paralegal are already doing divorces in Broward County and totally screwing up peoples lives by trying to fit everything into a form filing situation when it is not appropriate! Non lawyer public pays the price. Not to mention that many of us paid a hefty sum to educate ourselves for years to do things properly and cant even draw a decent salary because of the large number of lawyers already! Such a move would cause so much damage to so many.</p>
Joseph Lackey	10/28/2021	<p>It is most distressing that the Florida Bar is considering abdicating some of its most important duties by allowing the unlicensed practice of law in the form or permitting non-licensed people to fill out immigration forms. This problem is already an unmitigated disaster (as the Florida Bar rarely refers over to prosecution such individuals to the State’s Attorney’s Office, and when that does actually happen the SAO lets them off the hook with PTI and a nolle pros).</p> <p>I spend an inordinate amount of my practice dedicated to cleaning up the mess of these “notarios” here in the South Florida area. The problem is, that in Latin American countries, a “notario” is someone of prestige, education, and reverence. We all know that a “notary” in the English language is someone who simply pays an amount of money to the state, and clicks on a few buttons to submit a form to receive a stamp.</p> <p>The most vulnerable among us is always the immigrant. Unaware of our laws, our culture, and in most cases our language. The most important (and usually first) legal contact they have upon entering the United States is their deportation proceeding. These “notarios” know this and await them like a kettle of hungry vultures. These immigrants risk filing frivolous asylum claims which only result in them being barred for life in terms of adjusting their status here in the United States. To further exacerbate the problem, they are then hastily removed so that the problem of their fraud disappears with them.</p> <p>The Florida Bar, at its best, protects the consumer. It should start with the most vulnerable consumer in the state—the desperate immigrant. The fact that these “notarios” are allowed to exist and brazenly conduct business with neon signs in their window with the word “IMMIGRATION” flashing for all the world to see if a disgrace in and of itself. If the Florida Bar gives this disgrace its blessing by allowing them to normalize their fraud (even to a limited degree) this would be tantamount to pouring gasoline on a raging fire that nobody cares enough to do anything about.</p> <p>The situation is already bad being the unmitigated disaster that it is. To bless the aforementioned vultures with even limited legality would defy both logic and ethical standards that form the core purpose and mission of the Florida Bar.</p>

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Calvin Azadi	10/28/2021	I'm not sure that the FL Supreme Court or Bar understand the danger they are putting people in. I'm an immigration attorney in Miami and on a weekly basis I speak to people who were ordered deported and removed from the US due to legal advice that they got from non-lawyers also known as notarios or immigration preparers. These people tell the clients that seeking legal advice is a waste of money and they apply a one-size fits all approach to filling out immigration forms which determine the fate of these families here in the U.S. Passing this law and legalizing these non-lawyers puts immigrants at risk and is a slap in the face to all immigration attorneys who invested the time and money to become members of the bar and are liable to its rules unlike notarios. Please reconsider your decision because the FL Bar should be doing more to stop the unauthorized practice of law.
Jordan Dulcie	10/28/2021	I am writing as a fellow member of the Florida Bar, urging you to vote against changes which would allow non-lawyer ownership of Florida law firms. While this proposal professes to address multiple issues, including access to court for the underserved, it actually does nothing to insure that access will be improved, does not address the current underfunding of Legal Aid Societies throughout Florida, and creates more problems than it purports to solve. I do not understand Mr. Stewart's purpose for advancing this idea because it neither supports the lawyers in the state nor does it help the average Floridian in need of legal counsel. Attorneys can only serve one person, and that person is the client they have been retained to represent. Their loyalty, their decision making, their pre-litigation and litigation strategies and decisions cannot be dictated or influenced by investors (because, let's face it, that is exactly what we are talking about) and their desire for profits. This proposed change would bring irreparable harm to the practice of law in our state. The idea that a "lab" or experiment – which can continue on into perpetuity – is some kind of determining yard stick for this idea is sheer folly. Not just a simple majority of Florida Bar members are opposed to this idea, more than 80 percent are strongly opposed. The integrity of the practice of law in the state of Florida will be eviscerated by the ability for nonlawyers to have a financial ownership stake in law firms without abiding by the oath every attorney takes in this state. Accordingly, please rule AGAINST the Committee's recommendations.
Michael Bass	10/28/2021	I am an attorney practicing law and floater for 42 years. I am strongly opposed to the proposed changes. Non-lawyers must not be allowed to have ownership interests in law firms. Clearly a major conflict of interest. Non-lawyers should not be permitted to have expanded abilities to practice law. Filling out legal forms properly is often far more than just filling in blanks.

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Boris L. Zhadanovskiy	10/28/2021	<p>As a practicing attorney, serving clients all over the state of Florida, I am writing this comment urging you to vote against changes which would allow non-lawyer ownership of Florida law firms. The proposal declares that the proposed change will address multiple issues; including access to court for the underserved, it actually does nothing to ensure that access will be improved, does not address the current underfunding of Legal Aid Societies throughout Florida, and creates more problems than it purports to solve. It is a simple fact, tried and true that Attorneys can only serve one person, and that is the client they have been retained to represent. An attorney retained to zealously represent their client's interest cannot make decisions influenced by investors and other non-lawyers with ownership interests in law firms. Not just a simple majority of Florida Bar members are opposed to this idea, more than 80 percent are strongly opposed. Please tell the Florida Supreme Court that you agree with us, the members you are elected to represent, by your vote AGAINST the Committee's recommendations.</p>
Fernando Orrego	10/28/2021	<p>I am a licensed Florida attorney in good standing. I have a small practice in south Florida. Every decision I make is always in the best interest of my clients and in the strict compliance of Florida Bar Rules of Ethics. Every time that I engage with the public, my license to practice law is at stake. If I ever engage in conduct that hurts the public, I will lose my license to practice and therefore the ability to feed my family. The public, and the livelihood of my employees and my family is always on my mind. It's not just business. If we allow non-attorney ownership, the profession will be forced to answer to investors who are only in it for profit. We will go down the path of healthcare. Everyone complains about the poor conditions of our healthcare system. The cost of service is high with and of low quality. Staff is routinely overworked, undertrained and underpaid. An article from NBC news recently said that "over the past decade, private equity firms like Blackstone, Apollo Global Management, The Carlyle Group, KKR & Co. and Warburg Pincus have deployed more than \$340 billion" According to Bain & Co., a consulting firm, in 2019 alone, acquisitions by private equity firms reached \$79 billion. Private equity's purchases have included rural hospitals, physicians' practices, nursing homes and hospice centers, air ambulance companies and health care billing management and debt collection systems. In the business of healthcare, the drive for profits can run counter to the goal of helping patients and protecting workers. We cannot allow that to happen in the legal profession. An investor's laser focus on cutting costs and finding operational efficiencies can benefit consumers, only if lower costs are actually passed on to end users. However, the reality is different. What actually happens is that the push for profits reduces quality. That can be especially harmful in our profession. Non-attorney ownership sounds like a good idea, but healthcare is a prime example of why it's not. I ask that you not allow non-attorney ownership of law practices in Florida.</p>
Tara David	10/28/2021	<p>I am writing to voice my opposition to Rule 4-5.4. While there is nothing wrong with trying to be innovative and make legal services more accessible to our underserved citizens, this is a program that needs to be thoughtfully implemented. There is so much concern for fraud and abuse in our area of law, this is not something to be jumped into lightly.</p>

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Harry Teichman	10/28/2021	I believe the report fails to state, at least in a clear or concise fashion, any way how these proposed changes advance the objectives of the Florida Bar, which are: Ensure the Judicial System, a Coequal Branch of Government, is Fair, Impartial, Adequately Funded and Open to All. Enhance the Legal Profession and the Public's Trust and Confidence in Attorneys and the Justice System. Strive for Equal Access to and Availability of Legal Services - Before any rational comments can be made to these sweeping proposed changes, some of which are 180 degrees from the historical positions the Bar has held, I would like a clear and concise explanation as to how each and every change serves to advance the Bar's objectives which I listed above. The reason such explanation is needed is that upon first blush, allowing non-lawyers to own law firms and prepare legal documents would appear to erode the traditional role of lawyers and allow untrained and unregulated individuals and entities to engage in the practice of law. It opens the door to accounting firms owning law firms, a European model, that should have no place here in the United States. It will continue to erode law as a profession and push law firms toward a business with no ethics or regulations.
Sari Addicott	10/28/2021	I do not understand why the Florida Bar would allow nonlawyers to own non law firms and to prepare and aid in the execution of legal documents. I think the proposed rule only serves to undermine the legal profession. It is very important in understanding the background. I have so many questions. I note today is deadline to comment. I am on a deadline for other matters, but I did want to voice my opinion and request the background information for this proposal to open our profession to nonlawyers.
Gayle Halligan	10/28/2021	Please do not allow non-lawyer ownership interests in law firms. Non-lawyers should not be controlling the practice of law and, believe me, that is what will happen. I have seen what happened to the practice of dentistry when corporations entered the picture and began acquiring dental practices. Dentists, hygienists, and all other staff are measured in every aspect of their performance and nothing matters but meeting financial goals. Everyone is pushed to be a salesman. The quality of the service suffered, as well as the morale of all involved. The dental offices are simply assets of the corporation and treated as such. Further, it is difficult enough for many lawyers to maintain a practice; I don't think the solution is to further dilute the practice of law by allowing unlicensed entrepreneurs to practice law under the guise of helping customers "fill out forms."
Gaila Anderson	10/28/2021	I disagree with the Florida Supreme Court and Florida Bar's current plans to make it lawful for non-lawyers to provide certain legal services to individuals (such as preparation of forms) as well as a have an ownership interest in law firms.
Tim Barbiarz	10/28/2021	This is a bad idea. Think of more 1800 ask Gary ads and 1800 411 pain ads. Our legal profession needs more professionalism, not for the lawyers who ware regulated by rules of professional conduct to have their votes diluted and voices drowned out by non lawyer corporate interests. One profession that has tried it is the medical practices — and they surely regret letting the corporate profit motive dictate medicine. Please vote against allowing non-lawfirms to own a piece of the legal profession.

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Theodore Babbitt	10/28/2021	I don't know what evil the Court is trying to correct but I am adamantly opposed to non lawyer ownership of law firms. The destruction of professionalism and the inability to sanction unethical conduct of a non lawyer are obvious problems. There would be no such thing as the practice of law and no way to control the quality of representation.
Philip DeBerard	10/28/2021	I join the 81% percent of Florida attorneys who oppose non-lawyer ownership of law firms. At the start of my career I stood in front of a judge I respect and swore an oath to uphold high ethical standards. I fail to see how the Bar can maintain the standard of professionalism expected of Florida lawyers if law firms are owned by 411-PAIN and Walmart. As non-lawyers, those entities cannot practice law. It follows that the only goals for owning a law business would be charity, or profit maximization. Profit maximization without an obligation to the client creates a conflict between the attorney who is striving to handle her client's affairs with the utmost degree of honesty, loyalty, and fidelity, and the non-lawyer shareholders who are clamoring for cost savings and quarterly profits. Additionally this is a back-door to allowing attorneys from other states practice in Florida. The Bar has considered this in the past and rejected reciprocity, and opening this would be a reversion of that policy. I strongly urge you to vote against non-lawyer ownership of firms and sharing of fees, on November 8th.
Betty Charles	10/28/2021	My name is Betty M. Charles, and I am a Florida licensed attorney in good standing. I was admitted to the Florida Bar in September 2005 (Fla. Bar No. 0015093). I am a solo practitioner and have been a solo practitioner since May 2016. This email is to submit my strong objection to the proposed changes to the rules governing the practice of law in Florida that will allow non-lawyers to deliver certain legal services to the public. If such proposed changes were to pass, I believe that all my fellow solo practitioners as well as small and medium-size law firms will go bankrupt. There is no way that solo practitioners, small and medium size firms will be able to compete against the amount of corporate money that will undoubtedly flow in the legal profession if non-lawyers are allowed to own law firms. Further, there are not even enough legal jobs available for Florida licensed attorneys in Florida. Thus, how can the Florida Bar justify allowing non-lawyers to provide legal services. If anything, the Florida Bar should consider rules that will allow reciprocity with other states. At least with reciprocity with other states, Florida licensed attorneys will have more markets and opportunities available to them. I respectfully ask that the Florida Supreme Court rejects any proposals that will allow non-lawyers to provide legal services in Florida and/or own law firms.

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Delrose Facey	10/28/2021	<p>I strongly disapprove of approving nonlawyers to provide limited legal services. I currently practice Immigration law and see firsthand the irreparable damage that a nonlawyer can do to a client's case when they try to offer legal advice without having the required legal competence. Therefore, I would recommend that all legal advice come from a licensed attorney. While the requirement that "all the services must be provided in a law office" is a good parameter. Such expansion in the role of paralegals mean that they will demand an increase in wages; a cost that a law office would have to pass on to the client. Such increase in legal fees would back fire and put legal services further out of reach. On the other hand, if nonlawyers are allowed to provide limited legal services, I would recommend that a law be instituted which makes the preparing and filing of legal forms by someone other than a paralegal in a law office, the unlicensed practice of law.</p> <p>Needless to say the reason legal fees are so expensive is because most attorneys are trying to recoup the huge expense of law school tuition. Therefore, if we try to tackle the real issue of high tuition, maybe the cost of legal services can tilt in favor of providing access to affordable legal services. Lastly, I believe if nonlawyers are allowed to provide legal services it may increase the issues of ineffective assistance of counsel. It's possible for a lawyer to review every written document prepared by a paralegal but it's impossible for a lawyer to review every legal advice that a paralegal may utter.</p>
Dave Sooklal	10/29/2021	<p>I am writing to voice my opposition to the Non-Lawyer ownership proposal. As attorneys, we have taken an oath, are officers of the Court and must abide by rules and regulations regarding our profession. Allowing non-lawyers to have ownership interests in laws firms is to our detriment and the clients we serve as well as the profession that we all hold in high esteem. These individuals would pose a danger to our profession as they are not bound by the same oath, rules or regulations, which would dimmish our practice of law. Please do not approve this proposition.</p>
Michael Lewis	10/29/2021	<p>Non lawyer ownership of law firms is a terrible idea and will only further tarnish our noble profession.</p>
Lori Padillo	10/29/2021	<p>I strongly oppose the proposal of non-lawyer ownership in law firms.</p>
Kelsey Burke	10/29/2021	<p>I am 100% against non-lawyer ownership of law firms. This is a terrible idea for our profession as it will put money over integrity.</p>
Nicole Kruegel	10/29/2021	<p>I am writing to urge you to reject the recent proposal to allow non-lawyer ownership of law firms. There is no data to support that this change will increase access to legal services, and it will likely only serve to increase corporate profits at the expense of attorneys and clients. What governing body would be able to regulate non-lawyer conduct in the operation of a law firm? How would the Supreme Court sanction a non-lawyer firm owner or prevent public harm? Will the non-lawyer owner do what is in the best interests of the clients or the shareholders? This change is not supported by the vast majority of practicing attorneys in the state, and I urge the you to vote against it.</p>
Jack Scarola	10/29/2021	<p>For the reasons detailed in the White Paper submitted by the Trial Lawyers' Section of the Florida Bar, I join in opposing non-lawyer ownership.</p>

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Nelson Baez	10/29/2021	To whom it may concern, I urgently request that the Florida Board of Governors NOT recommend or accept any proposal that includes non-lawyer ownership of law firms or allows fee splitting with non-lawyers.
Nicole Vinson	10/29/2021	Non-lawyer ownership of firms should be voted down. I cannot image trying to have to explain to someone who didn't go to law school or pass the bar all of the issues that are in the best interest of Floridians as we go through litigation. I would imagine Floridians would be worse off if any financial backer could open up a law firm and hire an unexperienced lawyer to run the show.
Sharon Hanlon	10/29/2021	I am a long time small Personal injury law firm in SW Florida. As time has progressed over my 30+ years of practice i have found it increasingly challenging to obtain new clients due to many factors, including the increased advertising by other law firms, especially the larger firms. Should non-legal corporations be allowed to own law firms, this could significantly affect small law firms who rely upon non-advertising means of gaining clients (like myself). Corporations would enter into this relationship knowing they have to conduct large scale advertising and this not only hurts the economic outlook for small law firms, but also forces small firms like myself to consider aligning with such a firm in order to obtain new business. I pride myself on not advertising and work hard to maintain relationships within the community to bring in new business, but this would become increasingly more difficult with unrestricted advertising funding. Non lawyer owned firms would be in it for the dollars, to make money. Quality lawyers are in for both economic reasons and also to do good for our clients. I am an ABOTA member and i believe in quality of the profession. This would cheapen our profession. Please vote NO on this special committee recommendation to allow for non-legal ownership of law firms.
Elizabeth Finizio	10/29/2021	I am writing to express serious concerns with multiple proposals in the Final report to Improve the Delivery of Legal Services, dated June 28, 2021 ("the Report"). My specific concerns are regarding non-lawyer ownership and sharing of attorney's fees with non-lawyers. Neither of these two propositions will accomplish the goal of improving legal services. This proposition was considered and after much public outcry and opposition was voted down under President Abadin. The vast majority of Florida Bar members do not approve of non-lawyer law firm ownership or sharing of attorney's fees with non-lawyers. Non-lawyers are not trained nor is their conduct subject to regulation by the Florida Bar. Neither of these two proposals will increase access to justice for lower income individuals and small businesses, there are far better solutions which should be pursued. Accordingly, it is respectfully requested that the Committee's recommendations be rejected.

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Hardee Bass	10/29/2021	I am writing as a fellow member of the Florida Bar, urging you to vote against changes which would allow non-lawyer ownership of Florida law firms. While some of the ideals that the proposal suggests it will improve, including access to court for the underserved, the truth is that it actually does nothing to insure that access will be improved. Advancing this idea neither supports the lawyers in the state, nor does it help the average Floridian in need of legal counsel. Which begs the question ... what is the actual purpose and driving force behind this proposal? Attorneys can only serve one person, and that person is the client they have been retained to represent. Their loyalty, their decision making, their pre-litigation and litigation strategies and decisions cannot be dictated or influenced by “investors” having ownership shares in law firms. This proposed change would bring irreparable harm to the practice of law in our state. Not just a simple majority of Florida Bar members are opposed to this idea, more than 80 percent are strongly opposed. Please tell the Florida Supreme Court that you agree with us, the members you are elected to represent, by your vote AGAINST the Committee’s recommendations.
Glenn Cooper	10/29/2021	I oppose the plan to make it lawful for non-lawyers to provide certain legal services as well as a have an ownership interest in law firms as provided for in the final report.
Nancy La Vista	10/29/2021	I am aware of the time spent investigating this issue, have listened to both points of view and can only state that in my opinion as a lawyer for 31 years, non lawyer ownership of firms is not in the best interest of clients or lawyers.
Laurie Primus	10/29/2021	I am a practicing attorney duly licensed in the state of Florida. I understand the Florida Bar Board of Governors is presenting considering a final written report by the Special Committee to Improve the Delivery of Legal Services. Among the recommendations in the report regarding advertising regulations and a certified paralegal program, is a regulatory “laboratory” program that would authorize non-attorney legal services providers, non-lawyer ownership in law firms and the splitting of legal fees with non-lawyers. Non-lawyer entities should NOT provide legal services to the public. That is a dangerous practice. There is no historical data that I am aware that supports these measures as being beneficial to the public.
Jeffrey Allen	10/29/2021	I write to express my opposition to the above proposal for consideration. The Non-Lawyer Ownership and Fee Structure will result into the financialization of the legal profession, compromising the integrity and independent judgment of a fellow attorney in his or her resolution of a case. Accordingly, you now will have equity shareholders (outsized interest) beyond lawyers seeking an “IRR”, internal rate of return on said investment. Net result, such model further complicates a lawsuit, as the aforementioned equity partner would need to be consulted to maximize their rate of return, which may not be in best interest of the litigated matter. Moreover, such proposal will invite litigation in behalf of all affected non lawyer owners to protect their interest. Such ownership structure arguably is tantamount to the sale of a security in the debt market (with all of its ramifications), which further invites scrutiny and regulatory oversight (additional cost).

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Alex Gillen	10/29/2021	I truly fail to see how this would benefit those it claims to intend to serve. I'm sure there are some venture capitalists or wealthy investors who would purchase ownership interest in law firms, but those people are going to want a return on their investment, not more low income legal services being provided. If non-attorneys can own law firms, share in fees, and provide legal services, what is the purpose of membership in the Florida Bar? What do we as attorneys get for the time we invested in law school that non-lawyers don't? Will Bar membership become voluntary?
Lorraine Robinson	10/29/2021	I am not optimistic that the views of the general membership of the Florida Bar will be considered. However, it should be noted that the rank and file lawyer opposes these proposals to diminish the essence of the professional nature of the practice of law and commercialize legal practice as a commodity. This has happened in medicine to serve business interests not those of the patient. It will have a similar effect in legal practice. There are better ways to expand access to needy individuals that are not addressed by these proposals.
Richard Shapiro	10/29/2021	After forty years of practicing law in Florida, I am almost without words to address this ill-fated attempt to decimate the practice of law by marrying the profession with some proposed business entity. Will we confer the title of "counsel" on those (if this proposal is approved), who have purchased or won a law firm, reducing us to chattel; yet, as astute business people, are not licensed to practice the law. I had always believed that the practice of our venerable profession is, in some sense, to be cherished and coveted. Surely, there must have been some logic for requiring us to attend three years (at the least) of post-graduate study to attain the nom de plume, lawyer. The public has already ridiculed us, even eyed us as ignoble pikers. Should we open the floodgates to ownership of, or a vested interest in our practices, the hubris of avarice will abound. Please rethink this poorly conceived juxtaposition of law, married to a merchandiser or broker. I became a lawyer to help others. I realize that this is a naive and callow notion, in an age where financial gain has become paramount. Please preserve some measure of dignity. After all, when I commence voir dire on the first day of a trial, list of questions in hand, from opening statement to closing argument, it harkens me back through the centuries, when this time-honored tradition played out in courtrooms throughout our nation. This, people, is our heritage. Wear it as a badge of honor. Preserve our oath to serve others.

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

Sender	Date received	Comments
Lindsay Gale	10/29/2021	<p>I am opposed to the recommendation allowing for a regulatory “laboratory” program that would authorize non-lawyer legal service providers, non-lawyer ownership in law firms, and the splitting of legal fees with non-lawyers. Decisions will no longer be made based on the best interest of the client but instead on the opinion or outside pressures of the non-lawyer individual, investor, or business. I am sure many, if not all, attorneys have been in the situation where a client wants to settle a case for less than what the attorney believes the value is for their own personal reason (financial strain, emotional exhaustion, etc.). Instead of doing what the CLIENT wants and what is in their best interest, an attorney will be forced to take into consideration the opinion or desire of the non-lawyer who has absolutely no ethical obligation to the client. The decisions an attorney makes should not be based on anything other than the clients desires and the attorneys legal and ethical obligations under the law. We should be less concerned about bringing more legal services to Florida and instead should focus on improving the quality of the legal services that are already here. If this recommendation is approved, there will be no more small or solo firms. Instead, the legal industry will consist of Burger Kings and McDonald’s -- large, fast, profit oriented businesses. I hope you strongly consider voting no on the recommendation by the Final Report to allow non-lawyer ownership of law firms and fee splitting with non-lawyers.</p>
Dina Contri	10/29/2021	<p>I have the honor of practicing law in West Palm Beach, Florida. We handle primarily the defense of personal injury and wrongful death matters. As a small business that was established 1988, we vehemently object to the non-lawyer ownership of law firms and/or fee splitting with non-lawyers. Over my career, I have witnessed an explosion of law firm advertising and the exploitation of injured parties with harassing phone calls and contact from non-lawyers seeking to funnel work to clinics/health care facilities, ultimately leading to connections with legal representation. It is my opinion that the public’s perception of the legal profession and faith in our legal system has been negatively impacted as a result of these practices. We are polarizing our jury pool into those who believe anyone bringing a claim is just trying to “cash in” – or the other extreme – every lawsuit yields significant payouts, which we know not to be the case and therefore very misleading.</p> <p>To own a law firm and/or earn a fee from a case, one must be held to a standard of ethics as well as knowledge, appreciation and respect for the law. Those who have licenses in the state are required to prove same by completing law school, passing and bar as well as a thorough background check for fitness and character. Only those learned in the law and ethical standards, should be trusted with preserving the sanctity of the legal system, protecting the public and upholding the Constitution.</p> <p>Allowing this would most certainly dilute the quality of representation, claims and ultimately overwhelm the legal system. It would further corrode the public’s perception of and trust in the legal system. I sincerely hope that this attempt fails as I fear the slippery slope and ultimately flood gates it would unleash onto our already stressed Court system.</p>

Comments on the Final Report of the Special Committee on the Delivery of Legal Services

Sender	Date received	Comments
Below items received after deadline		
Altanese Phenelas	10/30/2021	I am writing to urge your disapproval of the final report from the Special Committee on the Delivery of Legal Services, particularly the amendment to Rule 4-5.4 that would permit nonlawyers to have a non-controlling equity interest in law firms with restriction. This rule change has the potential of extreme negative effects on the practice of law in Florida, including its regulation by the legislature instead of or in addition to its current regulation by the Supreme Court.
Arthur Berger	11/8/2021	<p>There is a reported Florida case where a woman sued a service provider (it may have been regarding medical coverage), and I believe she prevailed, however the opposing side had made a proposal for settlement which she had declined. The result was that she ended up owing more for the legal fees of the opposing counsel than she was originally claiming in her lawsuit.</p> <p>I believe this is the biggest way Florida law denies private individuals the right to bring legal actions in Florida - particularly for consumer related issues. If a typical private citizen sues a major company, the major company will defend with attorneys charging \$400 to \$600 per hour in legal fees. Ten hours of legal time could equate to \$6000 owed pursuant to a proposal for settlement declined by the private citizen. \$6000 is more than many individuals have in their savings.</p> <p>I suggest that the proposal for settlement should not apply to an action under the small claims rules and/or should not apply to a private citizens' action as a consumer of goods or services.</p>

Department of Justice

U.S. Attorney's Office

Operation Sledge Hammer I-VI (2014)

Florida Chiropractic Insurance Fraud



THE UNITED STATES ATTORNEY'S OFFICE
SOUTHERN DISTRICT *of* FLORIDA

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Department of Justice

U.S. Attorney's Office

Southern District of Florida

FOR IMMEDIATE RELEASE

Tuesday, October 14, 2014

Three Chiropractors Sentenced In Staged Automobile Accident Scheme

93 defendants have been charged to date in Operation Sledgehammer I-VI

Wifredo A. Ferrer, United States Attorney for the Southern District of Florida, George L. Piro, Special Agent in Charge, Federal Bureau of Investigation (FBI), Miami Field Office, Kelly R. Jackson, Special Agent in Charge, Internal Revenue Service, Criminal Investigation (IRS-CI), Jeff Atwater, Florida Chief Financial Officer, and Dave Aronberg, State Attorney, Office of the State Attorney for Palm Beach County, announce that defendants **Kenneth Karow**, 54, chiropractor, of West Palm Beach, **Hermann J. Diehl**, 44, chiropractor, of Miami, and **Hal Mark Kreitman**, 50, former chiropractor, of Miami Beach, were sentenced before U.S. District Judge Kenneth A. Marra for their participation in a massive staged automobile accident scheme based in Palm Beach and Miami-Dade Counties.

Defendant Karow was sentenced to 11 years in prison; defendant Diehl was sentenced to nine years in prison; and defendant Kreitman was sentenced to eight years in prison.

After a seven-week trial before U.S. District Judge Kenneth A. Marra, a federal jury in West Palm Beach convicted all of the defendants of one count of conspiracy to commit mail fraud, in violation of Title 18, United States Code, Section 1341, all in violation of Title 18, United States Code, Section 1349; and one count of conspiracy to commit money laundering, in violation of Title 18, United States Code, Sections 1956(a)(1), all in violation of Title 18, United States Code, Section 1956(h). Defendant Karow was convicted of 48 substantive counts of mail fraud, in violation of Title 18, United States Code, Sections 1341 and 2, and 11 substantive counts of money laundering, in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i), 1956(a)(1)(B)(i), 1956(a)(1)(B)(ii) and 2. Defendant Diehl was convicted of two

substantive counts of mail fraud and three substantive counts of money laundering. Defendant Kreitman was convicted of 21 substantive counts of mail fraud and two substantive counts of money laundering.

According to the fourth superseding indictment, these defendants were charged with defrauding insurance companies out of Personal Injury Protection ("PIP") insurance payments through the use of the United States Mails. This indictment alleges that the fraud was committed in a number of ways, including: (1) by soliciting licensed chiropractors, including defendants Karow and Diehl, who would serve as the "named owners" of chiropractic clinics although others would maintain financial control over the businesses in order to avoid Florida's licensing restrictions; (2) by recruiting individuals to participate in staged automobile accidents or persons who had been in real automobile accidents but who had not suffered any injuries to attend chiropractic clinics and make claims for reimbursement for treatments that were neither needed nor received; (3) submitting fraudulent claims to insurance companies stating that the bills were for treatments that were medically necessary and were actually received when neither was true; (4) submitting claims to insurance companies without attempting to collect co-pays and deductibles from the insureds and without disclosing that fact to the insurance companies; and (5) converting the money collected from the insurance companies to cash which would be used to pay recruiters, patients, and other participants, and to enrich the members of the conspiracy.

This superseding indictment was the latest in a series of federal and state charges that have been part of a four-year investigation into a massive staged automobile accident/fraudulent chiropractic clinic scheme based in Palm Beach and Miami-Dade Counties. The joint federal and state law enforcement investigation, dubbed Operation Sledgehammer, has resulted in charges filed against 93 defendants for their participation in this automobile insurance fraud scheme. Of those 93 defendants, 57 have been charged federally by the U.S. Attorney's Office, resulting in court-ordered restitution of more than \$11 million to the defrauded insurance companies, and 51 of those 57 defendants have been convicted by jury or by guilty plea. The remaining six defendants are fugitives. Another thirty-six defendants have been charged by the Palm Beach County State Attorney's Office.

According to the evidence presented at trial, between October 2006 and December 2012, the defendants and their co-conspirators staged automobile accidents and thereafter caused the submission of false insurance claims through chiropractic clinics they controlled. To execute the scheme, the true owners of the chiropractic clinics allegedly recruited individuals, who had the medical or chiropractic licenses required by the state to open a clinic, to act as "nominee owners" of the clinics. The defendants also recruited individuals, whom they referred to as "Macho" and the "Hembra" or the "Perro" and "Perra," to participate in the accidents, and others to help the clinics launder the insurance proceeds. The defendants also hired complicit chiropractors, including Diehl, Karow and Kreitman, and therapists who prescribed and billed for unnecessary treatments and/or for services that had not been rendered. Thereafter, complicit clinic employees prepared and submitted claims to the automobile insurance companies for payment for these unnecessary or non-rendered services. Twenty-one clinics participated in this scheme.

Mr. Ferrer commended the efforts of the FBI, IRS-CI, the Florida Division of Insurance Fraud, the Palm Beach County State Attorney's Office, and the Greater Palm Beach County Health Care Fraud Task Force for their outstanding work in this case. Mr. Ferrer also recognized the National Insurance Crime Bureau (NICB) for its collaboration and assistance in this investigation. This case was handled by Assistant U.S. Attorneys A. Marie Villafaña and E.J. Yera.

A copy of this press release may be found on the website of the United States Attorney's Office for the Southern District of Florida at <http://www.usdoj.gov/usao/fls>. Related court documents and information may be found on the website of the District Court for the Southern District of Florida at

<http://www.flsd.uscourts.gov> or on <http://pacer.flsd.uscourts.gov>.

Component(s):

USAO - Florida, Southern

Updated March 12, 2015

Department of Justice

U.S. Attorney's Office

Florida Chiropractic Insurance Fraud (2017)



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Department of Justice

U.S. Attorney's Office

Southern District of Florida

FOR IMMEDIATE RELEASE

Wednesday, October 4, 2017

Six Individuals Charged in Multi-Million Dollar Insurance Fraud

Six Florida residents have been charged in a multi-million dollar insurance fraud scheme.

Benjamin G. Greenberg, Acting United States Attorney for the Southern District of Florida, and George L. Piro, Special Agent in Charge, Federal Bureau of Investigation (FBI), Miami Field Office, announced today the unsealing of an Indictment and the filing of two Informations charging a total of six individuals.

The seven-count Indictment charges **Felix Filenger**, 41, of Sunny Isles, **Andrew Rubinstein**, 48, of Miami, and **Olga Spivak**, 59, of Hollywood, with RICO conspiracy, conspiracy to commit mail fraud, wire fraud, and health care fraud, and false statements relating to health care matters. The one-count Informations charge **Richard Yonover**, 54, of Boca Raton, **Jason Dalley**, 66, of Lake Worth, and **Linda Varisco**, 55, of Coral Springs, with conspiracy to commit mail fraud, wire fraud, and health care fraud.

Filenger, Rubinstein and Spivak appeared for their initial appearance today before U.S. Magistrate Judge Alicia O. Valle. The defendants were all detained pending a pre-trial detention hearing set for October 10, 2017 at 1:00 p.m. for defendant Spivak and October 11, 2017 at 1:00 p.m. for defendants Filenger and Rubinstein. All three hearings will be before U.S. Magistrate Judge Lurana S. Snow.

According to the Indictment unsealed today, from 2010 to the present, Filenger and Rubinstein ran a criminal enterprise which was engaged in a pattern of racketeering activity that included conspiracy to commit mail, wire, and healthcare fraud and conspiring to commit money laundering. The criminal enterprise owned a dozen chiropractic clinics which were used to facilitate criminal activities involving automobile insurance fraud. Filenger and Rubinstein fraudulently utilized licensed chiropractors as nominee owners in order to obtain licensing for their clinics, including defendant Spivak. Filenger and Rubinstein paid illegal kickbacks ranging from \$500-\$2,100 to persons associated with tow truck

companies and other persons who illegally solicited automobile accident victims in order to induce referrals of accident victims to their chiropractic clinics. Filenger and Rubinstein fraudulently obtained tens of millions of dollars of insurance reimbursement from the Personal Injury Protection (PIP) policies of these accident victims. Filenger and Rubinstein and their employees conspired to bill the insurance companies for clinic visits and treatment modalities, designed to bill the entire \$10,000 PIP coverage and not based on medical necessity. Filenger and Rubinstein directed their employees to falsify the initial pain levels of the accident victims in order to fraudulently ensure payment from the insurance companies. Based upon instructions from Filenger and Rubinstein, the co-conspirator chiropractic clinics would treat the patients based solely on a profit motive and without regard for patient health. This treatment would include costly and invasive nerve conduction velocity tests performed not based upon medical necessity but upon the amount of insurance compensation received.

The scheme involved convincing the accident victims to visit the co-conspirator chiropractic clinics at least thirty times, in order to bill the largest amount of PIP reimbursement. Filenger and Rubinstein would work with corrupt lawyers and would pay illegal kickbacks for patients. If the accident victims failed to treat for at least thirty visits at their chiropractic clinics, Filenger and Rubinstein would refer them back to the corrupt lawyers so that the victims could be instructed to return to the clinics.

Linda Varisco was a chiropractor who was the nominee owner of two chiropractic clinics for Filenger and Rubinstein, Advance Medical Associates and Forme Rehab, Inc., and Hollywood Wellness and Rehabilitation, Inc. Varisco and Olga Spivak filed false affidavits with insurance companies claiming that they were 100% owners of clinics that were, in fact, owned by Filenger and Rubinstein. Richard Yonover was the undisclosed owner of two clinics in Broward County and unlawfully utilized a nominee to obtain licensing for the clinics and to conceal his true ownership interests. Dalley was an attorney who, along with Richard Yonover, paid illegal kickback payments to obtain clients for personal injury lawsuits. Dalley, who paid in excess of one million dollars in illegal solicitation fees, would send the auto accident clients to co-conspirator chiropractic clinics owned by Filenger, Rubinstein, and Yonover.

If convicted, defendants Filenger and Rubinstein face a statutory maximum term of imprisonment of 80 years and a fine of up to the greater of \$1,750,000 or twice the amount of the criminally derived property. If convicted, defendant Spivak faces a statutory maximum term of imprisonment of 70 years and a fine of up to the greater of \$1,250,000 or twice the amount of the criminally derived property. If convicted, defendants Yonover, Dalley, and Varisco face a statutory maximum term of imprisonment of five years and a fine of up to \$250,000.

Mr. Greenberg commended the investigative efforts of the FBI, the Internal Revenue Service, the Sunny Isles Police Department, the Florida Statewide Prosecutor's Office, the Broward Sheriff's Office, the State of Florida Department of Insurance Fraud, and the Department of Homeland Security in connection with the investigation of this matter. The case is being prosecuted by Assistant U.S. Attorneys Jeffrey N. Kaplan and Paul F. Schwartz.

An indictment and information are merely an allegation and the defendant is presumed innocent unless and until proven guilty beyond a reasonable doubt in a court of law.

Related court documents and information may be found on the website of the District Court for the Southern District of Florida at www.flsd.uscourts.gov or on <http://pacer.flsd.uscourts.gov>

Attachment(s):

[Download filenger_felix_et_al_indictment_0.pdf](#)

[Download varisco_linda_information_0.pdf](#)

[Download](#)

[yonover_richard_et_al_information_0.pdf](#)

Topic(s):

Financial Fraud

Component(s):

[USAO - Florida, Southern](#)

Updated October 6, 2017

Massive \$23 million auto insurance fraud was an intricate operation

When the feds started scrutinizing two men accused of running a massive \$23 million auto insurance fraud at chiropractic clinics in South Florida, their defense attorneys say investigators had a theory the ringleaders were part of the Russian mob.

The two men, arrested this month, had much in common – they emigrated from Ukraine and became U.S. citizens more than 20 years ago, settling into South Florida's Orthodox Jewish community.

Felix Filenger was the flashy one who drove a Bentley, bought a \$64,000 watch and carried a black suitcase stuffed with cash he doled out as kickbacks, according to the feds.

Andrew Rubinstein, aka Andrei Rubinsteyn, was the quiet one, and so far, little information has emerged about him. His attorney said Rubinstein is a widower who is raising his 15-year-old daughter alone since his wife died from a stroke a year ago.

Prosecutors did not charge either man with being involved in the Russian mob. They've never even hinted publicly that it had been part of their investigation.

But Filenger's attorney Michael Tein said in court last week that authorities had initially investigated the alleged fraud as if it were an organized crime case.

On Friday, he told the Sun Sentinel his client will fight the fraud charges.

“The government spent years and millions of taxpayer dollars wiring up witnesses and tapping phones thinking these clinics were a front for the Russian organized crime network,” Tein said. “As it turned out, they were dead wrong, but after spending all that time and taxpayer money, it’s perfectly understandable that they felt compelled to save face and bring some charges.”

The feds allege the men ran a highly profitable crime ring of corrupt clinic owners, chiropractors and lawyers that operated mostly in Broward, Palm Beach and Miami-Dade counties. Prosecutors say it was an elaborate operation that – by conservative estimates – defrauded more than \$23 million from 10 auto insurance companies between 2010 and this year.



Filenger, 41, of Sunny Isles, and Rubinstein, 48, of Miami, are jailed on charges of racketeering and mail fraud conspiracies, wire fraud, health care fraud, and making false statements. If convicted, they could face 20 years or more in federal prison, prosecutors said.

Investigators said the men paid kickbacks of \$500 to \$2,100 – per patient – to tow truck drivers and body shop workers who agreed to illegally steer accident victims to chiropractic clinics, which were secretly owned by Filenger and Rubinstein.

Federal agents used wiretaps and cooperating witnesses to record conversations and plowed through medical and financial records in an investigation that went on for several years.

When the men realized they were under criminal investigation, federal agents said they began investing in a kosher bagel shop in North Miami Beach to try to conceal and protect their cash and other assets.

Prosecutors say this is how the fraud operated:

Filenger and Rubinstein recruited tow truck drivers, body shop workers and other people who had access to supposedly confidential traffic crash reports. Their job was to refer drivers or passengers who were involved in a crash to the chiropractor clinics

These so-called “runners” were paid illegal kickbacks, ranging from \$500 to \$2,100 per patient, to solicit accident victims to seek unnecessary treatment at the clinics, according to the charges.

Investigators said Filenger and Rubinstein took over failing and troubled clinics and concealed their ownership by having chiropractors and others register the practices in their names. Filenger had an office in two of the clinics in Sunrise and North Miami, investigators said.

The defendants then told the doctors and chiropractors what treatments they wanted performed, based on the financial return and not the medical need, investigators said. Medical professionals who wouldn't “play ball” were fired, prosecutors said.

Some attorneys also paid kickbacks of \$2,000 per patient to the fraudsters for the clinics to refer patients to them so they could file bodily injury lawsuits on their behalf, investigators said.

Prosecutors say the fraud involved rapidly running up the medical bills by requiring patients to get a lot of treatments – the goal was 30 visits each – and expensive tests in a short period of time. The fraud took advantage of no-fault provisions in Florida’s Personal Injury Protection insurance (PIP), which require auto insurance providers to pay up to \$10,000 for emergency treatment, authorities said.

The patients’ records all indicated they had an “emergency medical condition” and a documented pain level of 7, 8 or 9 – the high end of the scale – regardless of what they had reported to staff, prosecutors said.

Patients were told to show up for a lot of appointments – five sessions a week for the first couple of weeks, then three per week for a while. Many were ordered to undergo unnecessary and painful nerve tests that cost about \$1,000 each and others were sent for unnecessary MRIs, according to investigators.

Clinic staff were told to give all patients a “goody bag” containing neck braces and other medical equipment “whether they need it or not” to run up costs, investigators said.

If patients balked, saying they weren’t benefiting from the treatment or didn’t have time for so many appointments, an attorney or someone else would be assigned to tell them they had to do it if they wanted to try to collect money by filing a lawsuit or insurance claim. Though no patients were criminally charged in the indictment, investigators suggested some of them may have tried to claim compensation for their supposed injuries.

Tein said his client helped make the clinics profitable by running the business side and let the doctors and chiropractors handle the medical side.

In one of many conversations secretly recorded by the feds, one of the chiropractors fretted about what would happen if an insurance company became suspicious and sent an undercover patient or “plant” into the clinics.

Prosecutors referred to the clinics as “PIP mills” – likening them to the pill mill clinics that recently plagued South Florida and made massive profits by illegally dispensing pain pills to drug dealers and “patients” who then sold the drugs on the street.

In related and similar cases, state prosecutors have filed criminal charges against several attorneys and people who illegally recruited patients for the chiropractic clinics.

Federal prosecutors said some of the people facing state and federal charges are cooperating and are expected to testify against Filenger and Rubinstein.

One “runner” told investigators he had referred about 750 “patients” to the corrupt clinics and that he was paid as much as \$2,000 per referral, they said. He estimated he was paid more than \$1 million, much of it in cash over several years.

Rubinstein has agreed to remain locked up, for now.

Filenger, who last week filled the courtroom with more than 35 supporters, including several rabbis, failed during a hearing to persuade a judge to release him. Prosecutors said they were concerned about his concealed assets and his frequent travel and strong connections to Ukraine and Israel.

The judge ruled the risk was too high that Filenger might flee prosecution.

“I would be rather surprised, under these circumstances, if this defendant could resist the temptation to flee,” U.S. Magistrate Judge Lurana Snow said in her ruling.

Filenger told court officials he had no assets and no liabilities but said he earned \$100,000 a year from the bagel store.

“He is moving his money around ... it looks to me, to try to hide it,” FBI Agent Ira Fair testified during the court hearing.

Prosecutors accused Filenger of deliberately hiding his assets, property, cash and luxury items – by placing them in trusts or in his wife’s and mother’s names. He began doing so after federal agents first searched one of his properties in 2015, authorities said in court.

They said he used to own and drive high-end Bentley cars, at least one of which he told witnesses was held under his mother’s name but really belonged to him. Filenger also bought a \$64,000 rose gold Montoya watch, more than \$80,000 worth of designer bags and other very expensive jewelry for his wife and himself, they said.

Filenger received hundreds of thousands of dollars from the clinics, including \$591,000 from two clinics in Hollywood and Sunrise between 2010 and 2015, prosecutors said. They said he also transferred \$500,000 to what appears to be an asset protection or estate planning law firm.

Tein said his client did nothing wrong but took steps to try to protect his family in case his accounts were frozen by the government. Filenger was driving a 2014 Toyota Camry in the months before he was arrested, the lawyer said.

Tein and Rubinstein’s attorney, Marc Seitles, both said they think prosecutors are “overreaching” by filing federal racketeering charges against the men.

“It’s simply over the top,” said Seitles.

Others who have been charged:

Federal prosecutors have also charged chiropractor Olga Spivak, 59, of Hollywood, with racketeering and mail fraud conspiracies, wire fraud, health care fraud, and making false statements.

Richard Yonover, 54, of Boca Raton; Jason Dalley, 66, of Lake Worth; and Linda Varisco, 55, of Coral Springs, are facing charges of conspiracy to commit mail fraud, wire fraud, and health care fraud.

Dalley, an attorney who practices in Delray Beach, is scheduled to surrender in court next week. He is accused of paying more than \$1 million to solicit clients and refer them to the clinics. Spivak, Yonover, who operated clinics in Florida, and Varisco, also a chiropractor, were all released on bond.

Prosecutors said these chiropractic clinics were some of the businesses used in the fraud:

- Advance Medical Associates and Forme Rehab, 7000 Oakland Park Boulevard, Sunrise
- Hollywood Wellness and Rehabilitation Center, 6030 Hollywood Boulevard, Hollywood
- Wellness and Rehabilitation Center, 290 Northwest 165th Street, MiamiAccumed
- Medwell Wellness and Rehabilitation Center, 2250 Palm Beach Lakes Boulevard, West Palm Beach
- Total Wellness Chiropractic Center, 1009 N. Dixie Highway, Hallandale Beach
- West Palm Beach Wellness & Rehabilitation Center 2695 N. Military Trail, West Palm Beach
- Global Wellness and Rehabilitation 601 East Sample Road, Pompano Beach
- Delray Chiropractic and Wellness Center 1200 Northwest 17th Avenue, Delray Beach

- Palm Beach Chiropractic and Wellness Center, 2695 N. Military Trail, West Palm Beach
- Osceola Chiropractic & Wellness Center 1065 N. John Young Parkway, Kissimmee
- Metro Chiropractic & Wellness 5979 Vineland Road, Orlando

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CRIME · Published April 20, 2018

Ringleader in \$23M insurance fraud lived 'lavish lifestyle' with Bentley, \$64G watch and oceanfront home

By Lucia I. Suarez Sang , | Fox News



Felix Filenger, 41, was sentenced to 6 1/2 years in prison for running a massive \$23 million auto insurance fraud scheme.

The ringleader of a massive \$23 million auto insurance fraud drove around in a flashy Bentley, sported a \$64,000 rose gold Juan Pablo Montoya watch and lived in a \$7,500-a-month oceanfront South Florida home -- despite warnings from federal officials that they were on to him, prosecutors said.

Felix Filenger, who emigrated from the former Soviet Union to the United States more than 30

years ago, enjoyed “a somewhat lavish lifestyle” while running an elaborate 7-year fraud scheme that included chiropractors, attorneys, clinic owners and tow-truck drivers.

Prosecutors said the 41-year-old owned and drove several Bentley cars, bought expensive jewelry for himself and his wife, and splurged on more than \$80,000 worth of designer bags. He also appeared to have transferred money to relatives, trusts and an asset production firm, the [Sun Sentinel](#) reported.

Filenger was sentenced Thursday to 6 ½ years in federal prison after pleading guilty to one count of racketeering conspiracy.

Prosecutors said Filenger started the crime ring out of several South Florida chiropractic clinics that he and his co-conspirator Andrew Rubinstein owned or controlled, the [Sun Sentinel](#) reported.

The fraud involved paying kickbacks of \$1,500 to \$2,000 – per patient – to tow truck drivers and body shop workers who illegally steered accident victims to the chiropractic clinics.

Some of the “patients” were then steered to a group of attorneys who told them they might be able to receive compensation from the insurance companies by filing insurance claims or lawsuits.

The patients were also required to attend multiple visits, sometimes 15 or more, while clinic workers documented exaggerated pain levels that were quickly billed to insurance providers for the maximum \$10,000 allowed for rapid emergency treatment under Florida law.

The FBI raided Filenger’s business in 2015, but he didn’t stop the scheme until he was arrested in October.

Prosecutors said investigators wiretapped Filenger and recorded him issuing orders and advising his co-conspirators, who operated mostly in Broward, Palm Beach and Miami-Dade counties.

The fraud raked in more than \$23 million from 10 auto insurance companies between 2010 and 2018, investigators said.

As part of his sentence, Filenger will pay restitution, but the amount owed has not been finalized.

During his sentencing, Filenger's attorney emphasized that he was contrite and was trying to make amends. However, U.S. District Judge Beth Bloom was unmoved.

"There appears to be remorse for your actions, although, in this case, the remorse was after you were caught," she said, according to the Sun Sentinel.

Lucia I. Suarez Sang is a Reporter & Editor for FoxNews.com.



Conversation

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Reiman questions

1. If the non-lawyers agree to comply with the Rules of Professional Conduct will The Florida Bar also disciplinary authority over the non-lawyer?
2. Will the non-lawyer pay dues to offset any administrative costs for oversight?
3. The Washington program that allowed non-lawyers trained in family law to practice law on a limited license by a vote in 2020 is to end. What need did Washington think needed to be filled? Why was the program not successful?
4. What studies have been done to determine who the “lower or moderate income or disadvantaged Floridians” are that will benefit if the purpose is to provide access to justice?
5. Whose credentials are used when the client efiles the legal form?
6. What are ministerial matters for assistance with court matters?
7. Does taking note and telling the client what the notes mean UPL?
8. What areas in guardianship law are being considered? A guardian is required to be represented by an attorney pursuant to Florida Probate Rule 5.030(a). Is the proposal as to the Petition to Determine Incapacity and Petition for Appointment of Guardian? Is it limited to interested persons? Who will make the decision as to whether an individual is an interested person and therefore entitled to receive notice and participate in a guardianship proceeding and utilize the services of a paralegal?
9. Will The Florida Bar support the Supreme Court and State Courts System in securing new funding for case managers for probate cases like what is in place for family cases? It is my opinion that if paralegals are authorized to provide services and assist with filings the courts will need additional support staff for case management. It is my experience as court appointed counsel in guardian advocate cases where an individual is not required to have an attorney for person only, I am often needing to follow up to ensure the order appointing guardian advocate, letters of guardian advocate, and initial plan are filed so that I can statutorily conclude my responsibility as court appointed counsel.
10. While many individuals can do a trust, will, and advance directive online the forms often do not meet the needs of an individual. I know of cases where the documents were created online and then not executed properly or did not meet the needs of the individual resulting the either a guardianship or protracted litigation. What initial and continuing education is necessary for a paralegal to prepare the documents? Is there any study that indicates the fees will be less than an attorney will charge for the documents?
11. What are the initial and continuing education requirements for a paralegal to provide services in family law, residential landlord tenant law on behalf of the tenant, Baker Act, Marchman Act, guardian advocate of the person only, or debt collection defense?
12. What is an ancillary matter and form that a paralegal is authorized to provide assistance?
13. What are relevant facts?
14. How will the paralegal know what other documents are necessary for the client’s case?
15. How will the paralegal know how the additional documents or court filing may affect the case?
16. How will the paralegal know how a court order affects the client’s rights and obligations?
17. How does the paralegal “fit” into any model for sanctions in a court proceeding (e.g., §57.105 fees, §744.331 bad faith filing)?

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September 27, 2021

Via Electronic Mail

Mr. Michael Tanner, President
Mr. Gary Lesser, President-Elect
The Board of Governors
The Florida Bar
651 East Jefferson Street
Tennessee, Florida 32399-2300

Re: Recommendations of the Special Committee to Improve the Delivery of Legal Services

Dear President Tanner, President-elect Lesser, and Governors:

This letter offers comments regarding recommendations made by the Special Committee to Improve the Delivery of Legal Services (the "Special Committee") in its Final Report dated June 28, 2021.¹

For the reasons outlined below, I respectfully suggest that The Florida Bar Board of Governors encourage the Florida Supreme Court to decline to adopt most of the Special Committee's recommendations.²

¹ The Special Committee's Final Report is online at <https://www-media.floridabar.org/uploads/2021/06/FINAL-REPORT-OF-THE-SPECIAL-COMMITTEE-TO-IMPROVE-THE-DELIVERY-OF-LEGAL-SERVICES.pdf>. My comments are offered individually and not on behalf of clients or others. They are based on my 35 years of experience in the legal ethics field, which includes serving as Ethics Director of The Florida Bar, chairing and serving on the Professional Ethics Committee and the Standing Committee on Professionalism, advising and representing lawyers on ethics matters, advising and representing nonlawyer clients on client generation matters, consulting and testifying as an expert witness in legal ethics and unauthorized practice of law cases, and teaching law school professional responsibility courses.

² The only recommendations of the Special Committee that the Board of Governors should support at this time are simplifying the lawyer advertising rules and encouraging greater use of limited-scope legal services under Rule 4-1.2(c), Rules Regulating The Florida Bar.

Almost everyone agrees that access to legal services should be improved. It is my opinion, however, that it is not necessary to adopt the recommendations of the Special Committee in order to make positive strides toward this goal. The rule changes recommended by the Special Committee are likely to have detrimental effects on the legal profession without significantly improving access to legal services.

The purported benefits of the Special Committee's proposed changes are speculative, at best. Instead of opening up the practice of law to nonlawyers by changing or eliminating rules that were put in place to protect the core values of the legal profession, the Board of Governors should suggest that the Supreme Court take measured, incremental steps to make it easier and less costly for licensed lawyers to provide legal services.

The character of the legal profession

The legal profession is distinctive from other professions in a number of ways, most of which are positive. Our profession highly values what often are called its "core values." These core values include loyalty, confidentiality, and independence.

Lawyers have a strong duty of loyalty to their clients, whether they are current, former, or even just prospective clients.³ Most of these duties arise from the fiduciary nature of the lawyer-client relationship. Other professionals also enter into fiduciary relationships, but lawyers value this relationship especially highly. Our ethical rules not only treat the duty of loyalty as a personal one but also impute this duty to other lawyers who are associated together in a practice setting.⁴

A principle closely related to loyalty is that of recognizing and avoiding conflicts of interest. Lawyers have strong rules regulating conflicts, including rules that impute conflicts among lawyers who are associated together. Other businesses and professions may not recognize conflicts, or may deal with them in ways that are less strict than the conflict rules that govern lawyers.

Another core value of the legal profession is confidentiality. It is a bedrock principle of the lawyer-client relationship, and it is owed by a lawyer not only to current clients but to former clients and prospective clients as well.⁵ Confidentiality exists in other professions too, of course, and often is protected by statute.⁶ Despite the statutory recognition of confidentiality for some other

³ See Rules Regulating The Florida Bar 4-1.7, 4-1.8, 4-1.9, 4-1.11, 4-1.18, 4-3.7.

⁴ See Rules Regulating The Florida Bar 4-1.10, 4-1.11, 4-1.12.

⁵ See Rules Regulating The Florida Bar 4-1.6, 4-1.9, 4-1.18.

⁶ See, e.g., § 90.503, Fla. Stat. (2021) (psychotherapist-patient); § 90.5055, Fla. Stat. (2021) (accountant-client); § 456.057, Fla. Stat. (2021) (health care practitioner-patient).

professionals, lawyer-client confidentiality seems to be given a greater degree of protection. For example, although the Florida child abuse reporting law applies to any “person,”⁷ it also provides an exception for lawyer-client privileged communications that is not available for most other professional privileges.⁸

The legal profession’s core value of independence is of primary concern as it relates to the Special Committee’s recommendations. Many of our ethics rules (including those challenged by proponents of allowing greater nonlawyer participation in the provision of legal services) are designed to emphasize the “professional independence” of the lawyer and preserve the lawyer’s ability to exercise this independence.⁹ These rules ensure that only lawyers make decisions involving the practice of law or the giving of legal advice. The purpose of these rules is to keep lawyers free of outside influences that might adversely affect their ability to make these decisions in the best interests of clients.

Very closely tied to the value of lawyer independence is one of the biggest distinctions between the legal profession and other businesses and professions. In Florida, every business or profession is regulated by the Legislature *except* the legal profession. Lawyers are the only professionals licensed and regulated by the Supreme Court.¹⁰ This distinction emphasizes the uniqueness of the legal profession and also reinforces the independent role of the judiciary. Maintaining the core values of the legal profession would be difficult, and perhaps impossible, without continued regulation of the legal profession by the judicial branch of government.

⁷ § 39.201, Fla. Stat. (2021).

⁸ § 39.204, Fla. Stat. (2021) (“The privileged quality of communication between husband and wife and between any professional person and his or her patient or client, and any other privileged communication *except that between attorney and client* or the privilege provided in s. 90.505 [clergy-parishoner], as such communication relates both to the competency of the witness and to the exclusion of confidential communications, shall not apply to any communication involving the perpetrator or alleged perpetrator in any situation involving known or suspected child abuse, abandonment, or neglect and shall not constitute grounds for failure to report . . .” (emphasis added)).

⁹ See Rules Regulating The Florida Bar 4-5.4(a) (generally prohibiting sharing legal fees with nonlawyers); 4-5.4(c) (prohibiting a lawyer from being in partnership with nonlawyers for the practice of law); Rule 4-5.4(d) (prohibiting allowing one who recommends, employs, or pays a lawyer to provide legal services to another from directing or regulating the lawyer’s independence of professional judgment in rendering the services); Rule 4-5.4(e) (prohibiting lawyers from practicing law in business entities in which nonlawyers own an interest, occupy a controlling position, or otherwise have the right to direct or control the lawyer’s professional judgment); Rule 4-7.17(b) (prohibiting lawyers from giving “anything of value” to others for recommendations or referrals, with limited exceptions that include paying for “the reasonable cost of advertising”).

¹⁰ See Art. V, § 15, Fla. Const.

The desire to improve access to legal services

Most observers agree that a substantial number of people need legal services but have trouble obtaining them. Various reasons for this problem have been suggested: the cost of legal services; lack of knowledge on the part of the public about how to locate legal services; and reluctance to interact with lawyers. At the same time, it is often noted that there are many lawyers who have trouble finding clients.

While there is general agreement that we should improve the way potential clients connect with legal services providers, there is a marked lack of agreement how this concern should be addressed.

The Special Committee's proposals

The Special Committee published a Final Report outlining its work and its conclusions. The Special Committee's recommendations for specific action include:

- The Supreme Court should establish a "Law Practice Innovation Laboratory Program" ("Lab"), sometimes called a "regulatory sandbox," to permit the practice of law through entities, persons, activities, and structures that are not allowed under existing Bar rules; and
- The Florida Bar should undertake to promote better understanding of Rule 4-1.2(c), which permits lawyers to represent clients on a limited-scope basis.

Equally important are some far-reaching recommendations that the Special Committee "approved in concept." Among these recommendations are that the Supreme Court should:

- amend Rule 4-5.4 to permit nonlawyers to have a ownership interest in law firms;
- amend Rule 4-5.4 to permit lawyers to share legal fees with nonlawyers;
- amend the Rules Regulating The Florida Bar to permit non-profit law firms;
- create a pilot program to allow Florida Registered Paralegals to provide limited legal services in specific areas of law; and
- substantially revise the lawyer advertising rules.¹¹

¹¹ The Special Committee's Final Report is online at <https://www-media.floridabar.org/uploads/2021/06/FINAL-REPORT-OF-THE-SPECIAL-COMMITTEE-TO-IMPROVE-THE-DELIVERY-OF-LEGAL-SERVICES.pdf>.

The Board of Governors should not support the Special Committee's recommendations

Proponents of recommendations like those in the Special Committee's Final Report blame the disconnect between clients who need legal services and lawyers who lack clients on ethical rules that are designed to protect the legal profession's core values. This theory has found support in the supreme courts of a few jurisdictions: Arizona; Utah; and, to a lesser degree, Washington D.C. Yet there is a notable *lack of any evidence* that changing or eliminating these rules will achieve the desired goal. To the contrary, the experience of jurisdictions that have made such changes seems to argue *against* the idea that these changes will make meaningful headway in improving access to legal services among those who need them most. At the same time, it is easy to see that radical rule changes can result in the inability to maintain effective judicial regulation over the provision of legal services. These concerns are explained more fully below.

Within the past two years Arizona¹² and Utah¹³ have dramatically amended their lawyer ethics rules to permit activities like fee-sharing with nonlawyers, nonlawyer ownership of law firms, and direct client representation by unsupervised paralegals. The changes in those states were models for the Special Committee's recommendations. Although they have not been in place long, the new rules in Arizona and Utah have generated some data that should be important to The Florida Bar Board of Governors as it considers the Special Committee's recommendations – and that data does *not* support the contention that access to legal services will be significantly improved by those changes.

In Arizona, for example, none of the first three pilot programs approved through the state's "regulatory sandbox" meaningfully address the "access" concern that purportedly justified the radical rule changes – the problem that lower income people have finding access to the legal services that they need in their daily lives (*e.g.*, family law, landlord-tenant, employment). The first program approved by the Arizona Supreme Court is an entity in which a lawyer and a wealth management company combined to provide estate planning services to consumers. The second program is a company that provides transactional legal services along with tax and accounting advice. The third program is a company that provides accounting and tax services as well as trust, probate, and corporate transactional services.¹⁴ The most recent "regulatory sandbox" applicant in

¹² See Ariz. R. Sup. Ct. 31, 31.1; Ariz. Code of Jud. Admin. §§ 7-209, 7-210.

¹³ See Utah Sup. Ct. Standing Order No. 15 (effective August 14, 2020).

¹⁴ See "Arizona Licenses First Three Alternative Business Structures for Delivering Legal Services," online at <https://www.lawsitesblog.com/2021/05/arizona-licenses-first-three-alternative-business-structures-for-delivering-legal-services.html> .

Arizona is multi-billion dollar, publicly-traded LegalZoom. LegalZoom plans to hire lawyers who, as its employees, will provide legal services to LegalZoom customers.¹⁵

Another large technology-based entity, Rocket Lawyer, was approved to operate in Utah.¹⁶ Like LegalZoom, Rocket Lawyer employs a staff of lawyers to provide legal services to the company's customers.

The Florida Supreme Court historically has prohibited entities owned or controlled by nonlawyers from employing lawyers for the purpose of providing legal services to the entity's customers.¹⁷ Proponents of the Special Committee's recommendations claim that Supreme Court authorization of this conduct (which has been considered improper due to concerns about protecting the legal profession's core values) will result in more affordable legal services for the public. Do results from Arizona and Utah support this claim? The early data suggests that the answer is "no."

As noted, technology giants like LegalZoom and Rocket Lawyer would hire lawyer/employees in order to provide limited services to consumers at a reasonable cost. But those services are largely form-based services that lawyers themselves can offer directly offer to the public through a technology platform. *Existing ethics rules permit this.* For things other than routine forms-based legal services, a client would have to pay a flat or hourly fee that is not likely to be much different from what lawyers now charge. "Law on Call," the first regulatory sandbox program approved by the Utah Supreme Court, demonstrates this. Law on Call bills itself as the "first entirely nonlawyer-owned law firm in the United States."¹⁸ For a \$9 per month subscription charge, customers get access to licensed lawyers for advice by phone. But, if "legal work" is needed, Law on Call charges for its services by the hour starting at \$100 per hour for its newly-licensed employee lawyers and increasing up to \$250 hour for more experienced employee lawyers.¹⁹ Significantly, these rates

¹⁵ See "LegalZoom is pursuing an alternative business structure license in Arizona", *ABA Journal*, Aug. 16, 2021, online at <https://www.abajournal.com/web/article/after-its-ipo-legalzoom-seeks-alternative-business-structure-license-in-arizona> .

¹⁶ See "Rocket Lawyer is among the first applicants approved to join Utah's regulatory sandbox program," *ABA Journal*, Sept. 8, 2020, online at <https://www.abajournal.com/web/article/rocket-lawyer-given-approval-to-join-utahs-regulatory-sandbox-program> .

¹⁷ See, e.g., *Florida Bar v. Consolidated Business and Legal Forms, Inc.*, 386 So. 2d 797 (Fla. 1980).

¹⁸ See "Law on Call Will Launch the First Nonlawyer-Owned US Law Firm," online at <https://www.prnewswire.com/news-releases/law-on-call-will-launch-the-first-nonlawyer-owned-us-law-firm-301246835.html> .

¹⁹ The listed rates are 1-3 years experience, \$99/hour; 4-7 years experience, \$150/hour; 8-10 years experience, \$200/hour; and 10 or more years experience, \$250/hour. See Law on Call website, online at <https://www.northwestregisteredagent.com/law-on-call> .

appear to be about the same as the average hourly rate for a lawyer in Utah – meaning little savings for the customers.²⁰

Further evidence that extreme rule changes have not had the desired effect of improving access to legal services is found in the experience that Washington had with its Licensed Limited Legal Technician (“LLLT”) program. In 2012 the Washington Supreme Court approved the LLLT program, which authorized nonlawyers who met the program’s criteria to offer legal services *directly* to clients in family law matters. In 2020, however, the state supreme court sunsetted the LLLT program. During the program’s 8-year life, only 45 persons were licensed as LLLTs (with only 39 active LLLTs listed as of 2020).²¹

In addition to the evidence summarized above, there are very real practical difficulties that can arise if greater nonlawyer participation in the provision of legal services is approved by the Supreme Court. Large law firms currently put substantial resources into identifying and dealing with conflicts of interest. This is due to ethics rules that implement the core value of loyalty to clients. We must ask whether it is realistic to expect that a nonlawyer-driven entity that serves millions of “customers” online will be able to effectively check for, identify, and resolve potential conflicts of interest. A concrete example of how a nonlawyer-driven entity is likely to view conflicts is found on the website of “Law on Call.” In pointing out the purported advantages of using Law on Call over traditional law firms, the website asks and answers the question “How do traditional law firms work?” by appearing to minimize conflict concerns:

If you pass their conflict check, you can then schedule an introductory call with a lawyer that might be free or might cost a few hundred bucks.²²

The Board of Governors should also question whether a nonlawyer-driven entity will have much of an incentive to properly deal with conflicts. After all, it is unlikely that a multi-million (or multi-billion) dollar enterprise will worry about losing its authorization to provide legal services due to a few unresolved conflicts – and individual lawyers employed by the entity may be considered expendable in the event a problem does come up. The type of “enterprise regulation” contemplated by the Special Committee’s recommendations contrasts greatly with the existing system of licensing *individual* lawyers. In a law firm, the fact that the law licenses of individual partners are on the line

²⁰ See “How much do lawyers charge in Utah?,” online at <https://www.clio.com/resources/legal-trends/compare-lawyer-rates/ut/#:~:text=How%20much%20do%20lawyers%20charge,%24189%20and%20%24302%20per%20hour.> .

²¹ See “How the Washington Supreme Court’s LLLT program met its demise,” *ABA Journal*, July 9, 2020, online at <https://www.abajournal.com/web/article/how-washingtons-limited-license-legal-technician-program-met-its-demise> .

²² See Law on Call website, online at <https://www.northwestregisteredagent.com/law-on-call> .

at all times gives the firm a meaningful incentive to ensure compliance with ethical rules. This incentive may be lacking in a nonlawyer-driven enterprise.

Further, there are questions of how lawyer-client confidentiality can be protected in an entity composed of lawyers and nonlawyers, especially where the nonlawyers play an active role in the provision of legal services.

Perhaps the most significant possible effect of authorizing nonlawyer practice relates to the traditional professional independence and regulation of the legal profession. Historically there has been a dichotomy in the regulation of professions – lawyers are regulated by the judicial branch of government, while other professionals are regulated by the legislative branch. This structure has been relatively easy to maintain because lawyers generally are limited to working in law firms and similar entities where ownership and decision-making is restricted to persons licensed to practice law by the Court. If the recommendations of the Special Committee regarding nonlawyer involvement and ownership in law firms are adopted, that is likely to change. It would be difficult to legitimately contend that lawyers *must* have judicial regulation when their nonlawyer partners in the same law firm do not.

Moving away from judicial regulation of law practice would affect more than the traditions of the legal profession. It could have societal repercussions. Lawyers and their clients often have to challenge laws passed by the legislature. We should wonder whether lawyers would be as effective in doing this if the same legislature that passed the questionable law is in charge of licensing and regulating them.

Proponents of rule changes like those recommended by the Special Committee argue that allowing increased nonlawyer participation in the provision of legal services by large technology-based companies (such as LegalZoom and Rocket Lawyer) will make legal services more accessible to the public. *Importantly, however, any impediments that keep technology companies from assisting lawyers in providing legal services to clients can be minimized or eliminated by steps short of abrogating ethics rules that protect the core values of the legal profession.* In view of the extremely important interests protected by those ethical rules – including continued regulation of the practice of law by the judiciary – it is apparent that incremental steps, rather than wholesale changes, should be tried first.

Some potentially effective incremental steps are outlined below.

Incremental steps to improve access to legal services

Experience teaches that caution is warranted when moving into an unfamiliar environment. The Board of Governors should have that mindset when evaluating the Special Committee's recommendations. Less radical changes should be adopted first, with their results carefully

evaluated on a measured, step-by-step basis. Using this approach, the Court can make changes that will improve access to legal services *without* taking unnecessary risks that endanger the legal profession's core values of loyalty, confidentiality, independence, and judicial regulation.

Some possible actions are:

- expanding permissible payments for referrals;
- reducing restrictions on the sale or pledging of law firm accounts receivable;
- encouraging innovative use of funding companies;
- simplifying the lawyer advertising rules;
- relaxing rules regarding solicitation of legal business; and
- eliminating costly and unnecessary impediments to law school accreditation and lawyer licensure.

Expand permissible payments for referrals. My experience representing lawyers and nonlawyers in referral-related matters shows that nonlawyers with technology expertise are quite willing to use their skills to help connect potential clients with lawyers in exchange for reasonable compensation. Contrary to the tenor of the Special Committee's Final Report, we can increase this cooperation *without* allowing nonlawyers to become co-owners in law firms or otherwise engage in the practice of law. Existing Rule 4-7.17(b), which generally prohibits paying for referrals, allows lawyers to pay nonlawyers "the reasonable cost of advertising permitted by these rules." This term currently is defined narrowly.²³ The rule can be revised to redefine "the reasonable cost of advertising" in a way that gives lawyers greater latitude when paying nonlawyers who use technology to generate "leads."

Reduce restrictions on selling or pledging law firm accounts receivable. It has been suggested that lawyers must become more involved with technology companies because law firms lack the capital needed to invest in technology themselves. Something that may inhibit law firms from raising capital is the fact that many jurisdictions interpret the ethics rules to require consent of (or at least notification to) clients when a firm sells, assigns, or pledges accounts receivable in financing arrangements. The Florida Bar has no formal opinions on these issues, but other states have

²³ See Florida Ethics Opinion 18-1, which opines that a lawyer may not pay a per-case referral payment to a qualifying provider that varies based on the type of case unless the varying charge "is based on demonstrably different marketing and administrative costs rather than the perceived value of the case." See also Comment, Rule 4-7.22 ("A fee calculated as a percentage of the fee received by a lawyer, or based on the success or perceived value of the case, would be an improper division of fees.").

published restrictive ethics opinions and The Florida Bar Ethics Hotline makes callers aware of these opinions.²⁴ The Board of Governors could direct the adoption of a formal ethics opinion, or recommend a rule change, that makes it easier for law firms to sell or pledge receivables.

Encourage lawyers to work with funding companies. The operation of outside entities that provide financial assistance to clients as well as to law firms, on both plaintiff and defense sides, has greatly expanded in recent years. Bar ethics opinions, however, discourage lawyers from working with these companies when doing so might benefit the firm or the clients.²⁵ Negative ethics opinions can be replaced with opinions encouraging the ethical use of funding company services.

Simplify the lawyer advertising rules. This has been recommended by the Special Committee and should be explored. The existing advertising rules are complicated. Simplifying them to a “not-false-or-misleading” approach might encourage lawyers to advertise more, thus making it easier for members of the public to find a lawyer when they need one.²⁶

Permit limited in-person solicitation of legal business. ABA Model Rule of Professional Conduct 7.3(b)(3) allows lawyer in-person or telephone solicitation of a “person who routinely uses for business purposes the type of legal services offered by the lawyer.” Some states have adopted, or are considering, a similar rule.²⁷ Small businesses often need legal services, and amending the rule to permit in-person solicitation of business clients seems likely to expand access to legal services.

Ease law school accreditation restrictions to reduce the cost of legal education. Legal education is expensive. Most students borrow large amounts of money to attend law school. A recent survey conducted by the ABA Young Lawyers Division found that this debt load affects the lives and careers of law school graduates. For example, more than a third of graduates with \$200,000 in student debt could not qualify for a mortgage or apartment rental without a co-signer, and the same was true for about a quarter of those with a debt load between \$100,000 and \$200,00. A large

²⁴ Regarding selling receivables, *see, e.g.*, South Carolina Opinion 08-02 (client consent required); Texas Opinion 655 (client consent required); Utah Opinion 17-06 (notice to clients required). Regarding pledging receivables only with client consent or non-use of client information, *see, e.g.*, Arizona Opinion 92-4; Illinois Opinion 93-4; Michigan Opinion RI-77; Pennsylvania Opinion 91-31.

²⁵ *See, e.g.*, Florida Ethics Opinion 00-3 (permitting but discouraging firms from working with funding companies); New York State Opinion 2018-05 (firm may not enter agreement with litigation funder under which future payments to funder are contingent on the firm’s receipt of legal fees or amount of legal fees received in specific matters).

²⁶ In 2018 the ABA Model Rules of Professional Conduct were amended to adopt this approach.

²⁷ *See, e.g.*, Tennessee Rule of Professional Conduct 7.3(b)(2) (amended September 1, 2021).

percentage of graduates with student debt reported that their credit scores have been adversely affected.²⁸

The high cost of debt-financed legal education can hinder the ability of new lawyers to take on work at prices the public can afford. It also limits new lawyers' ability to start a law practice that requires an investment in technology.

During my years in legal education I have been intimately involved with the ABA law school accreditation process.²⁹ My conclusion based on this experience is that the accreditation process unnecessarily drives up the cost of attending law school. Some of the more costly law school accreditation standards are based on inputs, rather than on demonstrable outputs. For example, the ABA Standards for Accreditation of Law Schools require that law school faculties be made up of mostly full-time professors, who teach "substantially all" of the first-year curriculum.³⁰ Further, the full-time faculty must be protected by an expensive tenure system.³¹ To my knowledge, however, there is no empirical evidence that a tenured faculty member is a more effective teacher than someone hired on a contract basis. Limits on the use of online courses also drive up costs.³²

Law school does not have to be so expensive. Pursuant to its constitutional authority to regulate the admission of lawyers to the practice of law, the Florida Supreme Court could adopt requirements for Florida law schools that make sense for the legal profession and the public. While authorizing experimentation by law schools might entail some risk to educational quality, the bar examination provides a check on the ultimate product produced by a law school. The Board of Governors and Board of Bar Examiners may wish to explore encouraging the Court to infuse more flexibility into how Florida law schools operate.

Explore alternative paths to lawyer licensure. Almost every applicant for the Florida bar examination must graduate from an ABA accredited law school; there is no exception for "private study, correspondence school, or law office training."³³ In a few other states, however, applicants

²⁸ See "New findings published on law school debt," *ABA Journal*, Sept. 21, 2021, online at <https://www.abajournal.com/news/article/new-findings-published-on-law-school-debt> .

²⁹ Since 1997 I have been an administrator and full-time faculty member at four law schools, all of whom successfully navigated the ABA accreditation process. Additionally, I have been an accreditation consultant for several other law schools.

³⁰ See ABA Standards 401, 402, 403.

³¹ See ABA Standard 405.

³² See ABA Standard 311.

³³ See Rule 4-13.1.b.1, Rules of the Supreme Court Relating to Admissions to the Bar.

are permitted to sit for the bar exam if they complete what is essentially an apprentice period in a law office.³⁴ An apprenticeship path to licensure would be less costly than attending law school. The Board of Governors and the Board of Bar Examiners should consider studying the viability of such a path to bar admission in Florida.

Conclusion

For the foregoing reasons, I respectfully request that the Board of Governors ask the Supreme Court to decline to adopt most of the Special Committee's recommendations. Instead, the Board should suggest that the Court proceed with an incremental approach along the lines of that suggested above.

Proponents of the Special Committee's recommendations undoubtedly will assert that adoption of a "lab" will allow for "experimental" changes that may or may not eventually be adopted across the board. The Board should reject that contention. Any changes of the magnitude recommended by the Special Committee could not be easily undone and almost certainly will be permanent, to the detriment of the legal profession and with no demonstrable benefit to the public.

Thank you for your consideration.

Sincerely,



Timothy P. Chinaris
Florida Bar No. 564052

³⁴ According to the "*Comprehensive Guide to Bar Admissions 2021*" published by the National Conference of Bar Examiners, at Chart 3, these states include: California; Maine; Vermont; and Virginia.



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Sent via electronic mail

The Florida Bar Board of Governors
c/o Gary Lesser, Esq., President-Elect,
Rosalyn Sia Baker-Barnes, Circuit 15, Seat 1,
Robin Bresky, Esq. Circuit 15, Seat 3,
Michael Gelfand, Esq., Circuit 15, Seat 4, and
Ron Ponzoli, Esq., Circuit 15, Seat 2

RE: Special Committee to Improve the Delivery of Legal Services

Dear Fifteenth Circuit Florida Bar Board of Governors Representatives:

On behalf of the Palm Beach County Bar Association (PBCBA), we write to express our concern regarding the recently published recommendations from the Special Committee to Improve the Delivery of Legal Services ("the Special Committee").

The PBCBA is a nonprofit organization. We rely heavily on the proceeds from our Lawyer Referral Service. The Special Committee's recommendations that lawyers be allowed to split fees with online technology companies could have devastating financial implications for the PBCBA. Many of these technology companies are already offering forms and other legal services and are trying to link consumers with attorneys. Giving these companies the ability to now split fees with attorneys will make it difficult, if not impossible, for our Lawyer Referral Service to compete. Local bar associations throughout the State of Florida could be greatly impacted by this.

In addition, on August 17, 2021, the PBCBA hosted its Forum on the Final Report of the Special Committee on the Delivery of Legal Services. The vast majority of our members who attended voiced significant concerns with the recommendations being made by the Special Committee. To prepare for that Forum, we encouraged our members to submit their questions and concerns related to the Special Committee's recommendations. Those questions and concerns were included in a detailed summary which was e-mailed to our circuit's Board of Governors Representatives. That detailed e-mail summary stating our members' concerns is attached to this letter.

We have reached out to Ron Ponzoli to organize a follow up call for our Board to discuss these concerns further.

Sincerely,

A handwritten signature in blue ink, appearing to be 'J. Wyda', with a long horizontal flourish extending to the right.

Julia Wyda, President

Attachment Below

Below are expressed concerns from PBCBA members regarding the recommendations made by the Special Committee on the Delivery of Legal Services:

There is concern about whether the committee looked at other states that address access to justice through the greater provision of funds for Legal Aid. For example, Texas works closely with their legislature to ensure millions go to Legal Aid annually. Our members would like the committee to provide more information to the BOG about whether they studied Texas and spoke with anyone at the Texas Bar about how they help ensure access to justice.

Concerned about the timing as it relates to non-lawyer ownership of firms. The Report is only talking about Arizona, Utah and Washington DC. Why are we rushing into this when so few states are even wading into this? Shouldn't Florida take a more cautious approach and review the data that comes from Arizona, Utah & DC before moving forward with any type of lab/regulatory sandbox?

The Report mentions the possibility of a family law firm employing CPAs and counselors and these people possibly having minority ownership interests. Can the BOG clarify with the Committee what states they spoke to that had actual examples of this working and not being a conflict? Did the committee actually speak with any firms that had this arrangement to hear the alleged pros and cons?

The Report says initially that the Florida Bar pays for the Law Practice Innovation Laboratory Program ("Lab"). Our members would like to understand if their dues will be paying for this. Then the report suggests that the firms and not-for-profit firms that want to participate in the Lab will eventually (not clearly defined—very vague at best) pay the costs for the Lab. There are concerns about self-interest and the Bar allowing firms and not-for-profit firms to buy their way in and then self-report no problems/issues and get the Bar's support to continue operating.

When the Report addresses not-for-profit law firms, it gives an example of allowing an entity to be formed with lawyers and nonlawyers that could provide both legal and nonlegal services. They specifically mention a non-profit legal provider that also provides social work, therapeutic services, or job coaching to its low-income clients. There is concern about non-profit legal providers offering therapeutic services and the lack of neutrality in those services, among other things. Can the BOG ask the committee whether they studied other states that allow non-profit legal providers to also offer therapeutic services and whether they spoke with these providers and actually heard the pros and cons?

For the Limited Assistance Paralegal Pilot Program ("The Pilot Program"), the report says that this program will also be tested in the Lab or in a legal aid office. It says that the Lab will establish an application and review process and criteria for reporting results and data, but we are not given any access to those details. There is concern that the BOG should be able to review the application, understand what the actual review process will be, and the criteria for

reporting results and data before they vote to allow a Pilot Program like this. Will the BOG ask for these details before voting?

For the Paralegal Pilot Program, it says that the Florida Bar's Family Law Section and RPPTL sections have not been consulted on the language in the outline and have not given input regarding the Pilot Program. There is concern about why the Sections are not being given the opportunity to provide their input. Can the BOG ask that more time be provided to allow the Sections to weigh in? Does the BOG think it is important for the Sections to weigh in on this before the Bar spends significant time and money on this Program?

Also related to the Paralegal Pilot Program, every judicial circuit in the state of Florida has a self-help center that assists pro se litigants with various matters. Can the BOG ask the committee whether they truly believe that the proposed extension of services that a Florida Registered Paralegal can provide is a significant upgrade over what already exists?

The Paralegal Pilot Program is not clear. Can the BOG ask for clarification regarding specifics? Is it operating within law firms in cases where the firm represents the client and filed a notice of appearance or is it like a little clinic within the law firm where paralegals are working on matters that the firm has not filed a notice of appearance in but a lawyer is overseeing just for the benefit of access to justice? Does the BOG think it would benefit law firms to provide these services with the risk they have to assume to oversee the paralegals work? What are people paying for these paralegals? How does this make financial sense for firms? Clarification is really needed on this Pilot Program.

In the current scheduling systems required throughout the state of Florida, in order to schedule a hearing or mediation on a particular case, you must log in with a bar number that is attached to the attorney on that particular case. Currently this system is completely inaccessible to pro se litigants, paralegals, or the self-help center. Can the BOG clarify whether the committee envisions a paralegal being allowed to register through their FL Bar number in order to access this system?

There is concern about the committee's recommendation regarding education on limited representation (rule 4-1.2(c)). Will the judges be educated? The judges are the ones who can sometimes make limited representation difficult, especially if a matter gets set for a hearing or trial. How does the committee envision this education and how are new judges going to be educated? Will the FL Bar be organizing this education on a regular basis?

There is great concern that the committee specifically mentions the 2021 FL Bar survey that found that 81% of us did not believe that nonlawyers should be permitted an ownership interest, but then went on to disregard those percentages and our input. The Committee then talks about only one US State, Utah, and the United Kingdom, Ontario and British Columbia to support it's Lab approach. It is concerning that the FL Bar is ignoring our input and relying on one US state and other nations that have different legal systems to support a Lab approach that appears to be very lacking in details, specifics, and structure.



FLORIDA
Justice Reform
INSTITUTE

October 19, 2021

Mike Tanner
Gunster Law Firm
1 Independent Dr Ste 2300
Jacksonville, FL 32202-5039

Dear Mr. Tanner:

The Florida Justice Reform Institute (“the Institute”) is Florida’s leading organization of concerned citizens, business owners and leaders, doctors, and lawyers who seek the adoption of fair legal practices to promote predictability and personal responsibility in the civil justice system. One of the Institute’s core missions is to advocate for practices that build faith in Florida’s legal system. This includes important issues relating to the regulation of the practice of law in Florida.

The Institute submits this comment in response to The Florida Bar’s request for comments regarding the proposals recommended in the Final Report of the Special Committee to Improve the Delivery of Legal Services. These comments are focused on two proposals from the Committee: (1) allowing nonlawyers to have a minority equity ownership in law firms, and (2) allowing nonlawyers to share fees with lawyers. The Institute opposes these recommendations.

While the Institute appreciates the significant time and study the Committee put into its Final Report and applauds the State’s efforts to remain on the forefront of technology and to increase access to justice in modern society, it believes these proposals are premature and not likely to accomplish the results intended by the Committee. Specifically, while the Final Report conclusorily states that allowing nonlawyers to have a minority equity ownership interest in law firms and to split fees with nonlawyers will increase opportunities for lawyers, lower the costs of legal services, and improve access to justice, the Report contains no actual data demonstrating that this will actually come to fruition, or that it has had its desired effects in the states and countries where the same or similar rules have already been implemented.

The Institute believes the adoption of these proposed rules, even if done under a contained pilot program, will adversely impact the stability of the practice of law in our state and lead to a slippery slope of problematic issues as more and more nonlawyer entities seek to gain some semblance of control over law firms in



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the state with their focus on the bottom line of profitability as opposed to the needs of clients. While law firms are, indeed, businesses, the practice of law nonetheless remains a profession, and maintaining the core values of the profession are critical to its continued success.

Consequently, the Institute believes the proposals will threaten the integrity of the profession by, among other things:

- Undermining the core values and protections currently afforded the professional independence of a lawyer's judgment;
- Creating conflict with the lawyer's ability to give truly independent advice that is in the best interest of his or her client, as opposed to a bottom line profitability analysis;
- Endangering the lawyer's duty of loyalty to his or her clients;
- Compromising the attorney-client privilege and confidentiality obligations;
- Shifting the focus away from providing quality legal services to clients to providing unsophisticated services at the lowest possible price;
- Causing a flood of non-regulated nonlawyer entities (who are not immersed in legal ethics) into Florida to gain control over law practices and negatively impact the profession; and
- Creating a practice that is less protective of clients and more focused on the bottom line, resulting in law firms becoming obligated to those with whom they split fees or permit an ownership interest in the law firm.

In short, it is wholly unclear why less invasive measures should not be implemented before overhauling the profession in the manner suggested. Highly talented paralegals and technology professionals can be obtained through aggressive compensation systems, as opposed to needing an ownership interest in a law firm. Indeed, through compensation systems, ancillary businesses, and licensing agreements with technology companies, law firms are already receiving the benefits espoused in the Final Report and are doing so without infringing on the critical firewall between the provision of legal services and the opportunity to sell a portion of a law firm to the highest bidder. The Report points to no definitive data that having an ownership interest or splitting a fee with a nonlawyer will increase Florida citizens' access to the court system. The danger that could result from these proposed changes far outweighs any benefit to starting down that road.

As was made clear by the results of The Florida Bar's 2021 Membership Survey, the majority of Florida Bar members responding to the survey opposed nonlawyer ownership in law firms and fee sharing with non-lawyers. The Final Report disregarded these results merely as a "fear of change" among those in



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the profession. These results, however, should not be so lightly disregarded in favor of the significant shift proposed by the Committee, particularly where less invasive mechanisms can be evaluated and implemented first.

The Institute does wish to note that it strongly supports the Committee's decision not to permit passive ownership of law firms. A step in this direction would increase the detrimental impact that the above proposals could have on the profession exponentially.

Thank you for the opportunity to comment on the important work of the Committee. Of course, if you have any questions, please do not hesitate to contact me. With best regards, I remain

Cordially yours,

William W. Large

Cc: Larry Sellers
Melissa Vansickle

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Re: Final Report of the Special Committee to Improve the Delivery of Legal Services

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Dear President Tanner,

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On behalf of the Real Property, Probate, and Trust Law Section of The Florida Bar, we appreciate this opportunity to provide our commentary and input on the *Final Report of the Special Committee to Improve the Delivery of Legal Services*.

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The Real Property, Probate, and Trust law Section of The Florida Bar serves the State of Florida, the legal community, and its Section members with the highest levels of knowledge, experience and commitment to real property, probate, and trust law¹. We are the largest substantive law section and one of the most active sections of The Florida Bar, with over 11,000 members, and we are dedicated to maintaining our ethical and professional needs and obligations in an ever-changing world. To this end, the Section has and continues to actively evaluate Florida low-income citizens' unmet legal needs, resulting in creating and supporting programs including "No Place Like Home" and "Florida Attorneys Assisting on Evictions". See Appendix A.

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Foremost, we would like to thank the Special Committee for its hard work. The objectives of the Special Committee in seeking out innovative practices within the legal field and increasing access to legal services for our underserved citizens are admirable. As a Section we wholeheartedly agree that these are relevant issues which need to be addressed and researched further within the legal field. We do not,

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¹ See <https://rpptl.org/DrawOnePage.aspx?PageID=7>

however, agree with the report as it currently stands and respectfully submit our commentary and suggestions within for your consideration.

We have no objections to certain proposals of the Special Committee, such as, the promotion of a better understanding of Rule 4-1.2(c), amending the Rules to allow for not-for-profit law firms, not amending Chapter 8 – Lawyer Referral Rule, not amending Rule 4-7.17 and Rule 4-7.22, and the streamlining of lawyer advertising. This letter will address the following items approved in concept by the Special Committee, including:

- Rule 4-5.4, Fee Splitting and Law Firm Ownership;
- Amend Rule 4-5.4 to permit nonlawyers to have a non-controlling equity interest in law firms with restrictions;
- Within the Law Practice Innovation Laboratory Program eliminate the restriction on fee sharing with nonlawyers under Rule 4-5.4;
- Regulation of Nonlawyer Providers of Limited Legal Services; and the
- Law Practice Innovation Laboratory Program.

Concerns of The Real Property, Probate, and Trust law Section. While the proposed items in the Final Report extend to other areas of law, many of the proposals directly affect the areas of law practiced within our Section. We will address these items in further detail below, but overall, we have considerable concerns about relaxing the Rules of Professional Conduct and the resulting harm to the public.

The paramount objectives within our Section are to maintain a high ethical standard in our profession, to provide quality legal services to our clients, and to protect the public from harm. The regulations currently in place are there for a reason and before those protections are relaxed, the Bar and the Court must ensure that any potential entrants to our field will be held to those same standards and that no citizen is left with substandard substitutes.

We cannot disregard that almost all of the data relied upon in the Final Report is from persons in *other states and other countries*. Florida has one of the largest populations over the age of 65 in this country, only second to Maine². Based on estimates provided by the Census Bureau for 2019, Florida has approximately 5,906,182 citizens out of a total 21,477,737 over the age of 65, whereas states such as Arizona and Utah, which are considered as primary examples to the proposed Law Practice Innovation Laboratory, respectively, have populations of 1,308,633 and

² See <https://www.prb.org/resources/which-us-states-are-the-oldest/>, last visited September 11, 2021, and based on the Census Bureau's 2018 population estimates.

365,872 over the age of 65³. The populations over the age of 65 in Arizona and Utah combined amount to only 28% of Florida's elderly population. There is an ever-present concern in our Section for the protection of our most vulnerable citizens. Most of our clients in the areas of probate and trust law are over the age of 65 and the documents we prepare on their behalf have a powerful effect over their families, assets, and finances in life and in death. The potential for fraud and abuse in the areas of "wills"⁴, advanced directives, "guardianship law" and real property⁵ is significant in our state and

the relaxing of regulations that act as a barrier to protect our citizens should not be taken lightly.

In addition to our aging population, Florida also has a large immigrant population. According to the US Census there are 128 languages spoken at home in Miami-Dade, Broward and Palm Beach Counties⁶. In the Miami area, there are "2.7 million bilingual or multilingual speakers, close to half identified themselves as speaking English "less than very well."⁷ We believe that to reach underserved persons within that unique demographic, we need to encourage diversity and inclusion in our practice areas, which has become a priority to our Section. There are communities in Florida who may not seek representation because they do not trust or understand our legal system, they may only feel comfortable dealing with someone who speaks their language or understands their culture, and we believe that increasing the diversity of practicing lawyers within our Section and establishing a rapport within these communities will help close that gap. To this end the Section is devoting ever increasing attention and resources.

While we commend the spirit of the Special Committee's intent to increase innovation in the legal field and make legal services more

³ See <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-detail.html> last visited 9/11/21.

⁴ Appendix D, Page 1 of the Special Committee's Report lists certain authorized areas of law in the outline for the Limited Assistance Paralegal Pilot Program, including the terms "wills" and "guardianship law." These are general and undefined terms and without further clarification we are unclear about the meaning of these terms as used by the Special Committee in its Final Report.

⁵ See <https://protect-us.mimecast.com/s/iFPGC4x9ynflgw6XHZJMhD?domain=fbi.gov> <https://protect-us.mimecast.com/s/V3ndC5yWzof6ErRBJJrzOz?domain=fbi.gov>, See also <https://protect-us.mimecast.com/s/zY5jC680Apfyz4M5HXzY8j?domain=archives.fbi.gov>, See also <https://protect-us.mimecast.com/s/wx30C73ABqFZlByDuXl UN?domain=archives.fbi.gov>, See also <https://protect-us.mimecast.com/s/jHfeC9r2EvH2QwxGh72dZ7?domain=trustrpl.com/>

⁶ See <https://www.wlrn.org/news/2015-11-03/census-128-languages-spoken-in-south-florida-homes> last visited 9/13/21.

⁷ *Id.*

available to persons of limited means, *Florida presents its own very unique set of challenges and there should be a solid understanding of where the legal disparities exist in Florida prior to making such drastic changes suggested by the Special Committee.*

The Special Committee has proposed relaxing Professional Rule 4-5.4 to allow for fee splitting and law firm ownership with nonlawyers, to allow nonlawyers to have limited, non-controlling equity ownership in law firms, and to remove the fee sharing restriction with nonlawyers in the Law Practice Innovation Laboratory.

Our general concerns about relaxing Rule 4-5.4 are as follows:

1. Lawyer independence. How can we ensure that a lawyer's professional judgment is not compromised by someone who may be more concerned about a business's bottom line rather than what is ethically proper?
2. Ethics. Non-lawyers are not held to the same standards of professional responsibility. What preventative measures would be put in place to avoid an ethical violation by a nonlawyer either by accident or on purpose?
3. Conflict of Interest. If a lawyer is employed by a nonlawyer to provide services to clients, what protective measures would be in place to avoid violation of Rules 4-1.7 and 4-1.8?⁸
4. UPL. How to protect against a nonlawyer practicing law?
5. Attorney/Client Privilege. How to protect communication confidentiality? A nonlawyer's communication with a "client" would normally negate attorney/client privilege⁹.
6. Confidential Information. What measures would be put in to place to prevent a nonlawyer from accessing client confidential communications or information?
7. Fee Splitting. What measures would be in place to prevent a nonlawyer from soliciting clients and violating Rule 4-7.18?

⁸ "If the lawyer is employed by the corporation selling the living trust rather than by the client, then the lawyer's duty of loyalty to the client could be compromised." *The Florida Bar RE Advisory Opinion – Nonlawyer Preparation of Living Trusts*, 613 So. 2d 426, 428 (Fla 1992).

⁹ See Memorandum from ABA Commission on the Future of Legal Services to ABA Entities, Courts, Bar Associations (state, local, specialty, and international), Law Schools, Disciplinary Agencies, Individual Clients and Client Entities on Issues Paper Regarding Alternative Business Structures (Apr. 8, 2016), available at http://msbawebdev.mnbar.org/docs/default-source/default-document-library/alternative_business_issues_paper-2.pdf?sfvrsn=0

8. Alternative Business Structures (ABS). Nonlawyer ownership is alleged to increase access to legal services. What measures are in place to prevent an ABS from focusing on the most profitable areas of law, which are often not the areas that are in dire need of improved accesses to justice?
9. Business Liability/Responsibility. Protections to clients includes Rules prohibiting attorney liability avoidance, but many of the potential ABS clearly have models and agreements that limit liability to users, *sometimes to only \$500*.
10. Reliance of the Public. Protections to clients include Rules about honest and effective communications, and many of the potential ABS have disclaimers to users that the information received does not constitute "legal advice."

On pages 6-8 of the report, the Special Committee heavily relies on an article from Stanford Law citing that few law firms have incentive to invest in technology; however, since the publishing of that article in April 2020 the entire landscape of our profession has changed because of the pandemic. We agree that the legal field has lagged in its embrace of technology, but that has changed significantly since the 2nd quarter of 2020. Firms have been investing to a great degree in technology and changing the way they do business because they had to, and this evolution is continuing today¹⁰. While the article's premises may have been true prior to the pandemic, the rapid shift by law firms in the last eighteen months provides tangible proof that those premises are not true today.

The report cites other states and countries who have implemented, or are in the process of implementing, alternate business structures (ABS), which are purportedly a means to increase access to legal services but, research indicates that such ABS do not have the desired effect of improving access to justice but rather risk undesired effects.

Australia, England, Wales, and Quebec (among other jurisdictions) have implemented ABS. The Ontario Trial Lawyers Association commissioned a study that concluded there is "no empirical data to support the argument that [nonlawyer ownership] has improved access to justice" in England or Australia.¹¹ The UK Legal Services Board reported: "Research evidence suggests more people are handling

¹⁰ See <https://www.wolterskluwer.com/en/know/future-ready-lawyer-2021#item1>, last visited October 5, 2021.

¹¹ See Memorandum from Jasminka Kalajdzic to Linda Langston of Ontario Trial Law. Ass'n on ABS Research 1 (Dec. 1, 2014), available at <https://otlablog.com/wp-content/uploads/2015/01/Dr-Kalajdzic-Study-on-NLO.pdf>. See also ABA Center for Innovation, et al., Report to the House of Delegates (Feb. 2020).

legal issues alone and fewer are obtaining professional advice; however, the proportion of those who do nothing when faced with a legal issue appears unchanged."¹²

Further, there are also concerns that the quality of work would be adversely impacted—or at the very least not improved through moving toward a more business-minded versus a legal-services minded model.¹³ While there are studies that suggest that such harm has not occurred in other jurisdictions,¹⁴ it is because the benefits are similarly not substantiated.¹⁵ The Section is not persuaded that the proposed inclusion of ABS in our legal community is a positive direction and we oppose the proposal that ABS be permitted at this time. While we oppose the Special Committee's proposals, we are not suggesting that this be dismissed outright. There is not enough substantive evidence to indicate that this program would result in increasing access to legal services. As we have seen in New York¹⁶, which has also opposed ABS, we believe that the successes and failures of other states, such as Arizona, Utah and California, should be closely evaluated and taken in conjunction with Florida-specific needs so that if, or when, a similar program is structured in the future, it is thoughtfully created with purpose based on reliable data.

Regulation of Nonlawyer Providers of Limited Legal Services.

Overall, our commentary can be focused in the following areas and is expanded upon further in Appendix B:

1. Financial Eligibility Requirements: We suggest a standard of income equal to or below 200% of the then-current Federal Poverty Guidelines for citizens eligible for assistance (rather than the 400% of the Federal Poverty Level as suggested in Paragraph (2) in Appendix B, referencing Rule 4-5.4, Professional Independence of a Lawyer). We need to ensure that underserved population of Florida is the focus of this program.

2. Authorized Areas of Law: The proposed authorized areas of law by the Special Committee include residential landlord tenant law on behalf of the tenant, guardianship law, wills, advanced directives,

¹² See Evaluation: Changes in the legal services market 2006/07 - 2014/15 -Summary, LSB, July 2016.

¹³ See Memorandum from the Ontario Trial Law. Ass'n to the L. Soc'y of Ontario Alternative Business Structures Working Group on Alternative Business Structures 2, 34 (Dec. 15, 2014), available at <http://files.ctctcdn.com/18163298301/9071a07f-257c-4fb6-a2b3-d0ffbcb48d62.pdf>

¹⁴ It is relevant to note that the UK Legal Services Consumer Panel noted that as of its report there was not evidence to support that the dire predictions made regarding the deterioration of the practice of law were proved true.

¹⁵ *Supra*, n. 7.

¹⁶ See https://www-media.floridabar.org/uploads/2021/02/New-York-RegulatoryInnovation_Final_12.2.20.pdf

Baker Act, Marchman Act, guardian advocate of the person only, or debt collection defense.

The scope of these terms is far too broad and needs to be narrowly defined. The term "wills" might include complex estate planning, trusts, will contests, and dispositions impacting surviving spouses and children or creating tax liability or conflicts with fundamental rights, such as homestead, while *the potential harm would not be realized until after the demise of the "limited representation client."* In *Alrich v. Basile*, Justice Pariente remarked, "I therefore take this opportunity to highlight a cautionary tale of the potential dangers of utilizing pre-printed forms and drafting a will without legal assistance. As this case illustrates, that decision can ultimately result in the frustration of the testator's intent, in addition to the payment of extensive attorney's fees—the precise results the testator sought to avoid in the first place." 136 So.3d 530, 538 (Fla. 2014). Similarly, guardianships have been the subject of abuses and inadequate documentation, both of which can cause significant harm to the most vulnerable members of the public. We do not believe that the controlled environment of the "sandbox" will prevent these types of harm.

Another area of great concern is non-lawyers providing legal services related to Florida's construction lien law, which protects those who have provided labor and materials for the improvement of real property. *WMS Construction, Inc. v. Palm Springs Mile Associates, Ltd.* 762 So.2d 973 (Fla. 3d DCA 2000). Lien law is strictly construed; failure to follow its notice and filing requirements are fatal to claims by lienors – those whom it is designed to protect. For example, failure to record a claim of lien within 90 days of the final furnishing of labor, materials or services renders the lien invalid. But the question becomes: What is final furnishing? Also, the willful inclusion of amounts not properly lienable renders the lien not only invalid, but the lienor is responsible for the amount of the overstatement plus attorneys' fees. The Section is concerned that those who should be protected by Florida's lien law may receive less protection should non-lawyers be permitted to practice in this perplexing area of the law.

Apart from noting the unclear and potentially broad application of the areas of law proposed by the Special Committee, the Section points out that no state formerly or currently allowing nonlawyers to provide limited legal services extends those services to the areas of wills, trusts, probate or guardianship.

Arizona, Washington and Utah are currently the only states that extend limited licenses to practice law to nonlawyers. In Arizona, licensed legal paraprofessionals may practice in only four areas: family law, limited civil matters (small claims, landlord-tenant and quiet title),

limited criminal matters (traffic or ordinance violations) and administrative law. Washington, which suspended its licensure of limited license legal technicians as of July 31, 2021, permits those already licensed to provide services only in the area of family law. Utah, identified by the Committee for its sandbox program, authorizes end of life or adult care services provided by participating firms that are still performed by lawyers, though partnered with or supervised by non-lawyers. Utah's sandbox has also admitted a few firms that allow non-lawyer professionals to provide "real estate service" but with lawyer involvement. Despite being touted for its progressiveness, Utah restricts its limited paralegal practitioners to select family law matters, post-eviction or post-foreclosure holdover disputes, landlord-tenant disputes and small value debt collection matters. The very few jurisdictions contemplating the licensing of nonlawyers as legal service providers have also limited their consideration to those three select practice areas. *None have identified wills, trusts, probate or guardianship law among the areas of practice that would be available to nonlawyer practitioners.*

The concept of "forms" prepared by an AFRP is loosely defined and it is difficult to comment on without a much more expansive definition of the authorized areas of law. Are these "forms" to be filed in court? Does a "form" include the preparation of a deed that is not in connection with a sale, or contracts, or easements, or construction liens? Is a "form" a will or a trust? It should be noted that under *The Florida Bar RE Advisory Opinion – Nonlawyer Preparation of Living Trusts*, 613 So.2d 426 (Fla 1992), the Florida Supreme Court held that the assembly, drafting, execution and funding of a living trust constitutes the practice of law and that only the gathering of information for the preparation of the document may be performed by a non-lawyer. In *The Florida Bar re Advisory Opinion- Activities of COMMUNITY ASSOCIATION MANAGERS*, (Fla 2015) the Court affirmed its 1996 ruling that drafting of documents which determine substantial rights is the practice of law. *See also Florida Bar v Town*, 174 So.2d 395 (Fla. 1965). The Court affirmed its 1996 ruling that determining the timing, method, and form of giving notices of meetings requires the interpretation of statutes, administrative rules, governing documents, and rules of civil procedure and that such interpretation constitutes the practice of law.

The Role of the Supervising Attorney: In order to assure protection of the public generally and the "client" specifically, the role, the qualifications and the responsibilities of the supervising attorney must be made abundantly clear.

3. Qualifications of the Advanced Florida Registered Paralegal (AFRP): This Section has provided numerous comments to

the Florida Commission on Access to Civil Justice¹⁷, suggesting the need for classes or significant hours of work experience in the specific area of law in which the AFRP will practice. See Appendix C.

4. Information in the Special Committee's report needs to be taken in context. Two Florida Bar surveys are referenced within the Final Report and for this data to be meaningful, the number of participants needs to be expanded significantly.

A. Delivery of Legal Services Survey – Florida Registered Paralegals. Indicates that 45% of respondents (only 150 persons) were in favor of being allowed to have more responsibility and provide additional services to clients and 37% of respondents indicated that the ability to provide more services would help more people obtain legal services¹⁸. There are currently 4,665 Registered Florida Paralegals and the number of respondents to the survey referenced in the Special Committee's Report is 321 – less than 7% of the Registered Paralegals in the state¹⁹.

B. Florida Bar Member Survey. Page 17-18 of the report indicates that the majority of respondents were against fee sharing with nonlawyers, they were against firm ownership interests with nonlawyers and did not approve of passive ownership by nonlawyers. As of 2015, there were 83,894 licensed attorneys in Florida²⁰ and the number of respondents to this survey are 1,270 - *roughly 1.5% of the licensed attorneys in the state.*

i. The Special Committee concludes that the underlying reasons for these survey results are because lawyers fear change or fear the unknown. We disagree with this notion and believe that a more detailed survey addressing Special Committee's proposals along with a much larger sample size would provide more insight about the opinions of the Florida Bar members.

Recommendations for the Analytic Approach to a Florida Law Practice Innovation Laboratory Program. Our Section recognizes that the idea of “sandboxing” provides a safe space for experimentation with new methods of delivering services, including legal services. A properly defined and designed sandbox environment has the potential to

¹⁷ Note The Florida Commission on Access to Civil Justice was founded by Justice Labarga in 2014 and the work of this Commission has been transferred to the Workgroup on Access to Justice on September 20, 2021, by Chief Justice Canady.

¹⁸ See <https://www-media.floridabar.org/uploads/2021/06/Results-of-the-Delivery-of-Legal-Services-Survey-Florida-Registered-Paralegals.pdf>.

¹⁹ See <https://www.floridabar.org/directories/find-frp/?IName=&INameSdx=N&fName=&fNameSdx=N&eligible=&deceased=&firm=&locValue=florida&locType=S&pracAreas=&lawSchool=&services=&langs=&certValue=&pageNumber=1&pageSize=10>

²⁰ See <https://www.floridabar.org/the-florida-bar-news/how-many-lawyers-practice-in-florida/>

encourage innovation and improve access to justice for underserved Florida residents, while mitigating the risk of potential harm to consumers of those services. We concur with much of the data-driven approach and recommendations discussed in Appendix E of the Special Committee Report. In our review, we offer some additional suggestions and emphasis which are discussed in more detail in Appendix D and are touched on below.

A. Using a data-driven assessment criterion to maximize the evaluative value of the program.

B. Defining stakeholders, resources, functions, and processes and mapping relationships between the same.

C. Considering the environmental factors in which the sandbox operates and where potential consumers reside.

D. Use of the existing network of 44 legal services providers to help identify the areas of greatest need and provide invaluable insight in structuring and administering a successful sandbox of this nature. We also suggest the creation of a clearinghouse for the existing legal aid organizations and programs so that these resources can be identified and utilized by the citizens of Florida as well as by the Special Committee.

E. Collaboration with the Workgroup on Access to Civil Justice established by Chief Justice Canady, formerly the Florida Commission on Access to Civil Justice²¹ which has been studying “the unmet civil legal needs of disadvantaged, low-income, and moderate-income Floridians” for years.

Conclusion. Our members have worked diligently to provide thoughtful commentary to the recommendations of the Special Committee. We believe our feedback is important because there are significant proposals in this Final Report which directly impact our areas of law and given our specialized knowledge, we would like to be involved with this process and be a part of the solution. We encourage the Florida Bar and the Florida Supreme Court to take all of our responses into consideration.

Given the limited period of time for review and response to the Special Committee’s Report, as well as the general lack of specificity of the items approved in concept, we have endeavored to provide constructive commentary on this report. We acknowledge and

²¹ See <https://www.floridasupremecourt.org/content/download/788855/file/AOSC21-48.pdf>. See also <https://atj.flcourts.org/>. The Florida Commission on Access to Civil Justice was founded by Justice Labarga in 2014 and the work of this Commission has been transferred to the Workgroup on Access to Justice on September 20, 2021, by Chief Justice Canady.

appreciate the Special Committee's work in striving to bring innovation and to improve the availability of legal services to the citizens of Florida – this is a common goal of us all. Nevertheless, given the potential for public harm to our citizens and the lack of data to determine if these concepts will be effective at best and detrimental at worst, we respectfully disagree with certain recommendations made by the Special Committee at this time.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'R. S. Swaine', with a long horizontal flourish extending to the right.

Robert S. Swaine
Chair, Real Property, Probate &
Trust Law Section

Appendix A – Programs established by the Real Property, Probate, and Trust Law Section

Our Section has created and supported programs such as No Place Like Home (“NPLH”) and Florida Attorneys Assisting on Evictions (“FACE”) to address issues facing Floridians, specifically our low-income citizens. NPLH, in conjunction with legal aid and legal services offices around the state, provides training and lawyer assistance in addressing longstanding record title defects which preclude residents from accessing relief and community development funds to repair and rebuild residences following individual and collective disasters. The FACE program provides assistance to those who need access to advice and direction in defending their occupancy of residential rental properties in the context of an anticipated wave of residential evictions resulting from COVID 19 related residential tenant issues. The FACE program also coordinates with legal aid organizations across the state and is undertaken in conjunction with The Florida Bar Foundation.

Appendix B – Regulation of Nonlawyer Providers of Limited Legal Services

1. Financial Eligibility Requirements: We suggest a standard of income equal to or below 200% of the then-current Federal Poverty Guidelines for citizens eligible for assistance (rather than the 400% of the Federal Poverty Level as suggested in Paragraph (2) in Appendix B, referencing Rule 4-5.4, Professional Independence of a Lawyer). We need to ensure that underserved population of Florida is the focus of this program. The proposed 400% of the Federal Poverty Guidelines is well above the standards in Florida for legal aid (typically 125% of the Federal Poverty Guidelines) and no longer only includes the underserved community¹. These suggested parameters would include a person with intangible or tangible personal property having an equity value of \$50,000.00 or less excluding homestead and one vehicle having a net worth not exceeding \$5,000.00.

2. Authorized Areas of Law: The proposed authorized areas of law by the Special Committee include residential landlord tenant law on behalf of the tenant, guardianship law, wills, advanced directives, Baker Act, Marchman Act, guardian advocate of the person only, or debt collection defense. The scope of these terms is far too broad and need to be narrowly defined. The term “wills” might include complex estate planning, trusts, will contests, and dispositions impacting surviving spouses and children or creating tax liability or conflicts with fundamental rights, such as homestead, while *the potential harm would not be realized until after the demise of the “limited representation client.”* To illustrate, in *Alrich v. Basile*, the decedent used an “E-Z Legal Form” which failed to include a residuary clause and resulted in part of the decedent’s estate passing by intestacy. 136 So. 3d 530, 531-532 (Fla. 2014). Costly litigation ensued between family members as to who should inherit that portion of the decedent’s estate. *Id.* In her concurring opinion, Justice Pariente remarked, “I therefore take this opportunity to highlight a cautionary tale of the potential dangers of utilizing pre-printed forms and drafting a will without legal assistance. As this case illustrates, that decision can ultimately result in the frustration of the testator’s intent, in addition to the payment of extensive attorney’s fees—the precise results the testator sought to avoid in the first place.” *Id.* at 538. Similarly, guardianships have been the subject of abuses and inadequate documentation, both of which can cause significant harm to the most vulnerable members of the public. We do not believe that the controlled environment of the “sandbox” will prevent these types of harm to the public.

Another area of great concern is non-lawyers providing legal services related to Florida’s construction lien law. The purpose of the lien law is to protect those who have provided labor and materials for the improvement of real property. *WMS Construction,*

¹ See <https://www.clsmf.org/eligibility/>. See also

<http://www.acgov.org/probation/documents/BayAreaLegalAidanditsServices.pdf>

See also <https://thefloridabarfoundation.org/what-we-do/grant-programs/community-based-civil-legal-services/>.

(NOTE: this is Florida Bar Foundation guideline for grants to Community Based Civil Legal Services- to receive grant, must be staffed by full-time attorney or have access to the equivalent of full-time attorney.). See also

<https://www.dadelegalaid.org/do-you-need-help/>.

Inc. v. Palm Springs Mile Associates, Ltd. 762 So. 2d 973 (Fla. 3d DCA 2000). Since the lien law is a deviation from the common law, it is strictly construed; failure to follow its notice and filing requirements are fatal to claims by lienors – those whom it is designed to protect. For example, failure to record a claim of lien within 90 days of the final furnishing of labor, materials or services renders the lien invalid. But the question becomes: What is final furnishing? Also, the willful inclusion of amounts not properly lienable renders the lien not only invalid, but the lienor is responsible for the amount of the overstatement plus attorneys' fees. The Section is concerned that those who should be protected by Florida's lien law may receive less protection should non-lawyers be permitted to practice in this perplexing area of the law.

As a further area of concern, in the area of community association law the Florida Supreme Court reaffirmed its 1996 concerns and prohibitions regarding non-lawyers engaging in drafting what some considered simple forms, but which in reality substantially impacted citizens' rights. *The Florida Bar Re Community Ass'n Managers*, 177 So. 3d 941 (Fla, 2015).

Apart from noting the unclear and potentially broad application of the areas of law proposed by the Special Committee, the Section points out that no state formerly or currently allowing nonlawyers to provide limited legal services extend those services to the areas of wills, trusts, probate or guardianship. Arizona, Washington and Utah are currently the only states that extend limited licenses to practice law to nonlawyers. In Arizona, licensed legal paraprofessionals may practice in only four areas: family law, limited civil matters (small claims, landlord-tenant and quiet title), limited criminal matters (traffic or ordinance violations) and administrative law. Washington, which suspended its licensure of limited license legal technicians as of July 31, 2021, permits those already licensed to provide services only in the area of family law. Utah, identified by the Committee for its sandbox program, authorizes end of life or adult care services provided by participating firms that are still performed by lawyers, though partnered with or supervised by non-lawyers. Utah's sandbox has also admitted a few firms that allow non-lawyer professionals to provide "real estate service" but with lawyer involvement. Despite being touted for its progressiveness, Utah restricts its limited paralegal practitioners to select family law matters, post-eviction or post-foreclosure holdover disputes, landlord-tenant disputes and small value debt collection matters. The very few jurisdictions contemplating the licensing of nonlawyers as legal service providers have also limited their consideration to those three select practice areas. None have identified wills, trusts, probate or guardianship law among the areas of practice that would be available to nonlawyer practitioners.

The concept of "forms" prepared by an AFRP is loosely defined and it is difficult to comment on without a much more expansive definition of the authorized areas of law. Is a form ever filed with the court? If a form includes a will, what happens when there is a will contest? Or if there is a form for landlord tenant, such as a three-day notice, can it be filed in the court, or not? Does a "form" include the preparation of a deed that is not in connection with a sale, or contracts, or easements, or construction liens?

We would also like to point out that under *The Florida Bar RE Advisory Opinion – Nonlawyer Preparation of Living Trusts*, 613 So. 2d 426 (Fla 1992), the Florida Supreme Court held that the assembly, drafting, execution and funding of a living trust constitutes the practice of law and that only the gathering of information for the preparation of the document may be performed by a non-lawyer.

The Report includes in Paragraph (3), Section (D), “taking notes for a limited representation client;” it should be obvious that for one to take notes in a court proceeding, one must understand the legally significant occurrences, one must be extremely accurate, and the notes must provide value. The Section respectfully suggests that a verbatim transcript would not be subject to the limitations of the notetaker and would serve a far more useful purpose to the limited representation client, as the notes would not be admissible in court or acceptable in further judicial proceedings. The suggestion that there is legal value in “notes” taken by a paid person regardless of his or her training taking those notes when compared to a verbatim transcript provided by the official court reporter is misleading and potentially harmful to the public. Potential risk of delayed harm must be considered and mitigated in such a design.

3. The Role of the Supervising Attorney: In order to assure protection of the public generally and the “client” specifically, the role and responsibility of the supervising attorney must be made abundantly clear. The Final Report suggests providing these services in a law office as a means to lessen potential harm to the public, but is the physical presence of a supervising attorney required in his or her supervision? An attorney could “supervise” multiple persons without ever setting foot in a law office. As a supervising lawyer, is there greater detail regarding disclosure to the limited representation client? Should increased recordkeeping be required for the protection of the public? Additionally, we question what effect, if any, this would have on a supervising attorney’s malpractice insurance. Further, after observing adverse issues with current supervising lawyers, criteria that would help alleviate chronic problems would include: qualifications for the supervising attorney such as years of service, lack of disciplinary history, board certification, a limit on the number of persons supervised and a requirement for active review of work product.

4. Qualifications of the Advanced Florida Registered Paralegal: This Section has provided numerous comments to the Florida Commission on Access to Civil Justice², established by Justice Labarga in 2014, suggesting the need for classes or significant hours of specific work experience in the specific area of law in which the Advanced Florida Registered Paralegal will practice. See Appendix C accompanying this response.

5. Information referenced in the Special Committee’s report needs to be taken in context. Two Florida Bar surveys are referenced within the Special

² Note The Florida Commission on Access to Civil Justice was founded by Justice Labarga in 2014 and the work of this Commission has been transferred to the Workgroup on Access to Justice on September 20, 2021, by Chief Justice Canady.

Committee's report and in order for this information to be meaningful, the number of participants needs to be expanded significantly.

A. Delivery of Legal Services Survey – Florida Registered Paralegals. Indicates that 45% of respondents were in favor of being allowed to have more responsibility and provide additional services to clients and 37% of respondents indicated that the ability to provide more services would help more people obtain legal services³. There are currently 4,665 Registered Florida Paralegals and the number of respondents to the survey referenced in the Special Committee's Report is 321 – less than 7% of the Registered Paralegals in the state⁴. Thus, the largest number in favor was less than 150 persons.

i. Even with the limited response to the survey mentioned above, there is not an overwhelming positive response that expanding a Florida Registered Paralegal's role will increase access to legal services in our state.

B. Florida Bar Member Survey. Page 17-18 of the report indicates that a majority of respondents were against fee sharing with nonlawyers, they were against firm ownership interests with nonlawyers and did not approve of passive ownership by nonlawyers. As of 2015, there were 83,894 licensed attorneys in Florida⁵ and the number of respondents to this survey are 1,270 - roughly 1.5% of the licensed attorneys in the state

i. The Special Committee concludes that the underlying reasons for these survey results are because lawyers fear change or fear the unknown. We disagree with this notion and believe that a more detailed survey addressing Special Committee's proposals along with a much larger sample size would provide more insight about the opinions of the Florida Bar members. Further, we remind you that lawyers have consistently risen to the occasion to consider and implement programs benefiting our profession.

³ See <https://www-media.floridabar.org/uploads/2021/06/Results-of-the-Delivery-of-Legal-Services-Survey-Florida-Registered-Paralegals.pdf>.

⁴ See <https://www.floridabar.org/directories/find-frp/?IName=&INameSdx=N&fName=&fNameSdx=N&eligible=&deceased=&firm=&locValue=florida&locType=S&pracAreas=&lawSchool=&services=&langs=&certValue=&pageNumber=1&pageSize=10>

⁵ See <https://www.floridabar.org/the-florida-bar-news/how-many-lawyers-practice-in-florida/>

Appendix C

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**REAL PROPERTY,
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SECTION**



**THE
FLORIDA
BAR**

www.RPPTL.org

April 21, 2020

Ms. Amy S. Farior
Chair, Rules Committee
of the Board of Governors
Buell & Elligett, P.A.
303 W. Azeele Street, Suite 100
Tampa, Florida 33609

Via Email to:
etarbert@floridabar.org

**Re: Revised Proposal - Advanced Florida Registered
Paralegals**

Dear Ms. Farior:

This correspondence is provided in response to the April 14, 2020, email received from Elizabeth Tarbert, Ethics Counsel to The Florida Bar. Ms. Tarbert's email was sent on behalf of the Rules Committee, and included an amended proposed rule for Advanced Florida Registered Paralegals ("AFRPs") as well as an explanatory letter dated April 13, 2020, which was addressed to you by Mr. Gordon Glover on behalf of the Florida Commission on Access to Civil Justice. On behalf of the Real Property, Probate and Trust Law Section ("RPPTL Section") of The Florida Bar and its approximately 11,000 members, we would like to address several points raised in the amended proposed rule and Mr. Glover's letter.

The RPPTL Section, like the other stakeholders, believes in fair, equal and increased access to justice, including measures that will increase the ability of the public to gain access to legal services. The RPPTL Section echoes the sentiment by many that the public should have better access to more affordable legal services. However, at the same time, the RPPTL Section believes that this policy should be balanced with the need to protect the public and the operations of our courts. The RPPTL Section believes that any proposed rule change should meet the needs of the public and protect them from harm.

The RPPTL Section's concerns with the amended proposed rule include the following:

1. The amended proposed rule continues to include guardianship law as an “authorized area of law.” As the RPPTL Section noted in our letter dated September 30, 2019, Fla. Prob. R. 5.030 requires guardians to have counsel, and for good reason, given the complexity of this practice area and the life and death consequences associated with it. Moreover, while Rule 5.030 does not require counsel for the initial pleadings and litigation prior to the appointment of a guardian, any litigation concerning someone’s mental health and civil rights sets in motion a series of events that are intrusive, implicate due process and other constitutional rights, and should require counsel. Accordingly, whether the issue concerns guardianship litigation (which should be conducted by counsel) or guardianship administration (counsel is required pursuant to Rule 5.030 based on good public policy reasons), this is not an area that is appropriate for AFRPs to provide legal advice. The RPPTL Section failed to see any substantive comments on this issue other than a blanket rejection of the RPPTL Section’s recommendation in this regard.

2. Similarly, the amended proposed rule continues to include the ambiguous word “wills” as an “authorized area of law.” As noted by the RPPTL Section in our September 30, 2019 correspondence (a copy of which is attached for your convenience), the failure to specify what is included in “wills” is problematic for several reasons, including confusion regarding whether “wills” includes probate administration. As with guardianship administration, Fla. Prob. R. 5.030 generally requires personal representatives to be represented by counsel for similar reasons. If the RPPTL Section’s firm recommendation to exclude “wills” from the proposed rule is rejected, it is suggested that “wills” be narrowly defined to exclude probate administration (perhaps “wills” should be “wills drafting”).

3. The position expressed in Mr. Glover’s letter glosses over the issues raised by the RPPTL Section in points 1 and 2 above, and instead asserts that the RPPTL Section’s concern is that “wealthy clients or clients with complex matters will use an AFRP instead of a lawyer.” This statement does not accurately reflect the RPPTL Section’s stated positions and concerns and ignores the RPPTL Section’s expertise and experience in these areas of law. Whether a client is wealthy or otherwise, any client should use an attorney with expertise in the given area if the matter is complex or of significance. Drafting a will is a significant matter. Again, the RPPTL Section’s recommendation concerning will drafting is that it be excluded from being considered an “authorized area of law.” The complexity with drafting a will, even what some may refer to as a “simple” will, does not lie in the actual drafting or the use of a one-page form. The complexity lies in the rendering of legal advice, including exercising judgment based upon knowledge and experience, regarding what language to use or what alternatives may exist and understanding the unique legal circumstances of the client and intended beneficiaries. The implications of those actions, including the efficacy of those provisions for the beneficiaries or the tax consequences and the application of homestead law, could have a devastating effect on the testator and his or her family members. Moreover, some of those consequences may not be known for years or even decades after a document is executed. Also, the drafting of trusts should be totally

excluded from the definition of “wills” (which, as noted previously, remains undefined) because of the complexity of those instruments. This again highlights why “wills” as an “authorized area of law” requires a better, more narrowly defined definition. The bottom line is that the RPPTL Section firmly believes that the proposed rule must be safe and effective for the public, and the RPPTL Section has significant concerns that the public will be at risk under the amended proposed rule.

4. The RPPTL Section continues to have concerns that AFRPs are providing legal advice to clients in the areas of debt collection and landlord-tenant disputes which involve litigation that implicate substantive rights, including the possibility of fee shifting against *pro se* individuals. These concerns are exacerbated by the limited education and training required to be an AFRP and the rejection of the requirement for a lawyer to both employ **and** supervise the AFRP.¹ This simple change would ensure that there is a lawyer directly overseeing the AFRP’s work (with legal liability) in order to protect the public.

5. The RPPTL Section respectfully disagrees with the position that the Florida Supreme Court should allow the proposed rule to be promulgated, allow the system to be abused or for harm to befall the public, and then react after the fact. Instead, the RPPTL Section suggests providing safeguards for the public now, and if the system can be optimized later based upon experience, amendments to the rule should be made at that time. To do otherwise would be accepting harm to the public, some of which will be irreparable, and then requiring resources from The Florida Bar and the courts to rectify any harm. Fixing a problem often requires more resources and labor than doing it properly in the first instance (which also lessens the likelihood of harm to the public). While it may have taken ten years to implement Washington’s system (as reflected in the September 30, 2019 correspondence), the fact that Florida would not have to “reinvent the wheel” would allow Florida’s program to begin sooner than Washington’s and this also safeguards Florida from trying to take a shortcut to the detriment of the public. In other words, the RPPTL Section suggests doing it the right way – not the fast way.

6. The RPPTL Section continues to believe that the lack of specificity in the proposed rule will lead to abuse, diminished benefits to the public, lack of confidence in the justice system, future problems that The Florida Bar and the courts will have to resolve, and various unintended consequences which may be harmful to the public as a whole. This current proposed rule may be inferior to increasing funding to legal aid organizations where low-income individuals are given assistance by members of The Florida Bar. Furthermore, the problem has other less-extreme solutions which could be

¹ Much was said in letter sent by Mr. Glover concerning an attorney who may not be the “employing” attorney having supervisory control over an AFRP, necessitating the use of the word “or” in the proposal. However, such response misses or ignores the reality that should the word “or” be utilized in the proposal, an AFRP which is “employed” by an attorney *need not be supervised by an attorney, a very serious public policy concern*.

implemented. Similar to law students (who have 1-2 years of education and training as opposed to the proposed educational requirements in the amended proposed rule), a proposal could include waivers for AFRPs to provide legal services, under the supervision of a licensed attorney directly to legal aid organizations, public defenders, or other non-profit groups, each of which serve the under-served public.

7. While the RPPTL Section respectfully disagrees with the position of the Florida Registered Paralegal Enrichment Committee, the RPPTL Section does agree that AFRPs should be "certified" in the areas in which they are allowed to provide legal advice.

While this letter addresses several points raised in the amended proposed rule and the letter sent by Mr. Glover, the RPPTL Section remains committed to its earlier position as reflected in our September 30, 2019 letter and opposes the proposal as currently drafted. Many of the issues and concerns from the RPPTL Section's previous letter reflect real life situations and not just hypotheticals.

In closing, thank you for giving the RPPTL Section an opportunity to weigh in on this very important issue. The RPPTL Section stands ready to assist, if given the opportunity, in the process of creating rules for AFRPs that protect the public and the operations of our courts.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert S. Freedman".

Robert S. Freedman
Chair, Real Property, Probate and
Trust Law Section

**REAL PROPERTY,
PROBATE &
TRUST LAW
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**THE
FLORIDA
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September 30, 2019

Lori S. Holcomb
Division Director, Ethics and Consumer Protection
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

Re: *Proposal to Expand the Florida Registered Paralegal Program (Chapter 20, Rules Regulating The Florida Bar)*

Dear Ms. Holcomb:

The Florida Commission on Access to Civil Justice ("FCACJ") has requested input from The Florida Bar's Board of Governors regarding its proposal to expand the Florida Registered Paralegal Program (Chapter 20, Rules Regulating The Florida Bar), by amending the rules (the "Proposal"). The Board of Governors has in turn requested input from the Real Property, Probate and Trust Law Section of The Florida Bar ("RPPTL Section"), and this correspondence is sent in response to your email soliciting such input.

The RPPTL Section.

As an introduction, the RPPTL Section historically has been, and continues to be, the largest substantive law section of The Florida Bar. The RPPTL Section assists, represents, and involves well over 10,000+ members practicing in the areas of real estate, construction, probate, trust and estate law. RPPTL Section members' dedication to serving the public in these fields of practice is reflected in just a few of their continuing efforts, including producing educational materials and seminars for attorneys and the public, assisting the public pro bono, drafting proposed legislation, rules of procedure and regulation, and, upon request, providing advice to the judicial, legislative and executive branches on issues related to our fields of practice.

Current Situation.

Currently, there are rules that create and regulate registered paralegals in Chapter 20, Rules Regulating The Florida Bar. The proposed amendments would allow a paralegal, registered as an Advanced Florida Registered Paralegal ("AFRP"), to provide limited legal services to limited representation clients in matters involving family law, landlord tenant law, guardianship law, wills, advance directives or

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debt collection defense. In assisting these clients, the AFRP may help the limited representation client fill out forms, provide general information, and assist the clients in navigating the court system. The Proposal appears to allow AFRPs to provide legal services/advice without lawyer supervision of the work product, which is a major change from the current situation. See Rule 4-5.3(c) of the Rules Regulating The Florida Bar. While many lawyers currently employ paralegals, they have a duty to supervise the work of the paralegals. Under the current Proposal, the "work product" of a Florida Registered Paralegal ("FRP") would continue to be supervised by a lawyer (see Rule 20-2.1(l)(1) of the Proposal), but not for AFRPs.

In addition, many lawyers currently use paralegals to perform client intake without the lawyer's presence. This is permissible when (1) the paralegal identifies that he/she is not a lawyer, (2) it is limited to fact gathering, and (3) no legal advice is given. See Ethics Opinion 88-6. The attorney then makes the decision to either accept or reject a case, provides the opinion as to what documents are required, and provides the required legal services. The Proposal, as currently drafted, appears to allow the AFRP to listen to a potential client's legal issue, recommend a form, and prepare the form, all without lawyer review of the work product. The Proposal would also allow the AFRP to prepare "other documents" in addition to the form in question. See Rule 20-6.3(a)(a) of the Proposal. This may result in the execution of forms which do not properly address an individual's legal needs, resulting in additional time and legal costs to correct the errors.

Opposition to Proposal; Discussion and Analysis.

The RPPTL Section commends the laudable efforts of the FCACJ to provide the poor and underserved persons greater access to quality legal services. It is well known that the cost of legal services can be prohibitive, and the interests of justice and the citizens of Florida are better served by more people having access to quality legal services that they can afford.

However, the RPPTL Section's Executive Committee, taking interim action in accordance with the RPPTL'S Section Bylaws because consideration of the Proposed Probate Rules by the overall RPPTL Section Executive Council was not possible under the time frame required for a response, unanimously approved a RPPTL Section Position on September 27, 2019, **in opposition** to the Proposal. We provide the following comments and discussion for the FCACJ's consideration.

These concerns, and the basis for the RPPTL Section's opposition to the current Proposal, are that the Proposal (a) conflicts with existing unlicensed practice of law ("UPL") and ethics decisions (and the solid public policy reasoning for such decisions), (ii) fails to provide quality control for the legal services being provided, (iii) fails to detail the requisite specificity for a successful program, and (iv) is subject to abuse, fraud, and other potential unforeseen consequences. For the foregoing reasons, the Proposal, as drafted, does not accomplish the goal of access to justice nor does it fix the current problems facing the public. In fact, the Proposal, as currently drafted, potentially creates a host of new problems (which are addressed below).

a. Conflict with Existing Law - Unlicensed Practice of Law.

The Proposal appears to be contrary to Florida Supreme Court decisions, Florida Bar ethics opinions, the Rules Regulating The Florida Bar, and the well-reasoned arguments supporting those decisions and rules. In *The Florida Bar v. Sperry*, 140 So.2d 587, 595 (Fla. 1962), and *The Florida Bar v. Town*, 174 So.2d 385 (Fla. 1965), the Florida Supreme Court announced that if important legal rights of a person are affected by the giving of advice or by the performance of services, including the preparation of legal instruments by which legal rights are

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obtained, secured, or given away, then such act constitutes the practice of law. Clearly, providing assistance in the completion of forms, even the most basic of forms, affects the legal rights of persons and could constitute UPL.

Rule 10-2.1(a) of the Rules Regulating The Florida Bar provides that, “[i]n assisting in the completion of the form, oral communication by nonlawyers is restricted to those communications reasonably necessary to elicit factual information to complete the blanks on the form and inform the self-represented person how to file the form. The nonlawyer may not give legal advice or give advice on remedies or courses of action.” Aside from the ministerial act of taking written instructions (from the client or a Florida attorney) and filling in blanks, any further action taken by a person on behalf of another would constitute UPL.

In *The Florida Bar v. Keehley*, 190 So.2d 173 (Fla. 1966), which dealt with matters relating to the preparation of corporate charters and other related documents, the Florida Supreme Court approved and adopted the conclusions of the circuit court judge acting as a referee which held that neither the absence of compensation, the close personal relationship between the party preparing the documents and those for whom they were prepared, nor the interest of the respondent in the transaction, either present or prospective, served to legalize his actions in formation of the corporations. See also, Advisory Legal Opinion – AGO 75-129, May 5, 1975. The Florida Supreme Court stated in *Keehley*:

“It is equally inimical, dangerous and contrary to the welfare of the public to permit untrained and unqualified persons, who have not been admitted to The Florida Bar, to perform such services for individuals who desire to incorporate and to operate as corporations under the Florida law, whether a fee is charged, whether the parties are closely related, or whether the untrained persons is one of the interested parties.” *Keehley*, 190 So.2d at 175.

The Proposal appears to separate AFRPs from FRPs by allowing AFRPs to provide legal services or prepare documents which are not reviewed by an attorney. Cf. Rule 20-2.1(l)(1) of the Proposal relating to FRPs. If this is the case, this would be in conflict with Rule 4-5.3(c), which states, “the lawyer **must review** and be responsible for the work product of the paralegals or legal assistants.” (Emphasis added.)

b. Harm to the Public.¹

The limited training required under the Proposal does not fully address the concerns regarding protection of the public. Perhaps a significant amount of training and licensing requirement may provide for better protection of the public than what is in the current Proposal (something akin to being licensed members of the Bar but less stringent). The Florida Supreme Court has stated:

“. . . the unauthorized practice of law by those not qualified and admitted actually creates work for the legal profession because of the errors and mistakes of those who for others illegally perform legal work they are not competent to perform. In this, the members of the legal profession gain, but the unfortunate

¹ “[T]he single most important concern in the Court’s defining and regulating the practice of law is the protection of the public from incompetent, unethical, or irresponsible representation.” *The Florida Bar v. Moses*, 380 So.2d 412, 417 (Fla. 1980).

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members of the public who were ill-advised lose, in some instances, quite badly." *Sperry*, 140 So.2d at 595.

Any lawyer who has been hired as successor counsel after prior counsel has made mistakes understands the difficulty and expense of redressing any prior mistakes. Additionally, while some mistakes can be fixed at a minimum cost, others can be very costly to remedy. Even worse, some mistakes simply cannot be repaired and a client who may have a winning case is left losing their case and paying attorney's fees (and possibly the other side's attorney's fees).

The Proposal appears to allow an AFRP to provide services if they are supervised **or** employed by a lawyer. The RPPTL Section believes that any AFRP allowed to provide services must be employed **and** supervised by a lawyer. The failure to require employment with a lawyer and supervision by that lawyer would appear to allow loosely associated individuals to thwart the intent of the Proposal and to otherwise harm the public. Moreover, it provides the "stamp of approval" of The Florida Bar over individuals practicing under the auspices of the AFRP program, when in fact such individuals may be practicing with little or no oversight from The Florida Bar and a licensed attorney. What if an attorney is licensed in Florida but actually practices in another jurisdiction, does not have an office in Florida, but associates with local paralegals? Is this a scenario that is acceptable? The RPPTL Section believes there should be added safeguards, and perhaps requiring the lawyer to be located in Florida (or at least for a percentage of the time) if she/he uses AFRPs may address this concern.

In addition, the Proposal allows the AFRP to prepare "other documents" related to the forms as well without truly defining "other documents." (See Rule 20-6.3(a)(1) of the Proposal.) If a guardianship owes taxes, should the AFRP be allowed to provide tax advice since it relates to the guardianship? There should be limitations on what "other documents" includes.

It is not on account of protectionism for the practice of law, but protection for the general public, that the Proposal, as currently drafted, should be rejected. As stated by the Florida Supreme Court, "[i]t is the effort to reduce this loss by members of the public that primarily justifies the control of admissions to the practice of law, discipline of those who are admitted, and the prohibition of the practice to those who have not proved their qualifications and been admitted." *Sperry*, 140 So.2d at 595. Under the Proposal, AFRPs are not subject to the same ethical rules and standards of care as a member of The Florida Bar. These Rules and standards of care of our profession exist for the protection of the public, and any person providing legal services must adhere to the same. The inability to control the quality of the legal services provided by an AFRP harms the public and fails to provide the requisite protection incumbent to move forward with the Proposal.

c. Practice Areas.

The breadth of the practice areas encompassed by the Proposal, together with the lack of definitions or specificity of what services may be provided within such practice areas, is problematic. While the Proposal may work for some, limited practice areas in limited scope assignments, the Proposal does not contain the requisite specificity to guide the AFRP program. For example, what is meant by "wills"?² Does it include a 100 page "form" will that has been developed by a practitioner over years of experience? Does this include estate planning and probate administration? If it is contemplated that drafting of "simple wills" be allowed, one gets into the slippery slope of what is a "simple" will. Also, it is doubtful that an AFRP has the legal

² The Florida Supreme Court has held that a nonlawyer cannot draft a will for a third party. *The Florida Bar v. Larkin*, 298 So.2d 371 (Fla. 1974).

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ability to advise a client regarding proper alternatives to a "simple will," including using other estate planning tools and techniques, such as lady bird deeds, trust agreements, jointly held assets, and the legal implications of choosing those alternatives, including tax consequences and asset protection.

In probate and guardianship administrations, lawyers are generally required to be involved pursuant to Fla. Prob. R. 5.030(a). This is because probate and guardianships are extremely detailed-oriented practice areas fraught with deadlines and other nuances which present traps for the unwary. Guardianship cases are by their very nature adversarial because the petitioner is seeking to declare someone incapacitated and to remove their civil rights (which is why counsel is appointed for the alleged incapacitated person when a case is initiated pursuant to § 744.331(2), Fla. Stat.) Accordingly, an AFRP should not be allowed to provide legal advice in guardianships and probate cases.

Ethics opinions, such as Ethics Opinion 89-5, demonstrate the specificity necessary for a nonlawyer to engage in a quasi-legal practice. Ethics Opinion 89-5 details five requirements for a nonlawyer in a law firm to conduct a real estate closing, including the requirement that the client understands the closing documents in advance of the closing, the lawyer be available for consultation during closing, and the nonlawyer will not give legal advice at the closing or make impromptu decisions that should be made by the supervising lawyer. Whether a real estate closing, contract, or "simple" will, a nonlawyer will not be able to comply with similar requirements without attorney involvement.

Landlord-tenant law and debt collection often involve litigation. Moreover, without the requisite specificity, each suffer from the same deficiencies enumerated above. The FAR/BAR residential form lease may be one thing (although such lease still has numerous instances of negotiated issues that impact legal rights), but a twenty-five page lease developed by a lawyer, which contains numerous legal waivers and requirements, could be something completely different. Debt collection involves extensive knowledge of Federal and State debt collections law, Florida exemptions, and tenancy by the entirety laws, and traverses bankruptcy protections and the numerous exceptions across each area of the law. Debt collection is not "form" driven.

Notwithstanding the above, with the proper protections, an AFRP may be able to aid clients with filling out certain forms which have been approved by the Florida Supreme Court or by statute, such as forms commonly used in family law or advanced directives, provided that specificity and protections, such as was set forth in Ethics Opinion 89-5, are put in place. Other areas of practice which are not enumerated in the Proposal, but which may also lend themselves to an AFRP's involvement, may include Baker Act and Marchman Act proceedings. Even so, when a limited representation client asks, "what's the difference between Option A and Option B?", a licensed attorney should be available to explain such important legal rights.

Whether a "simple" form or a more complex guardianship or debt collection proceeding, it is clear that lawyer oversight is necessary. Such oversight will necessarily bear a cost, negating or substantially reducing any cost savings intended by the Proposal and reveals the Proposal to not be materially different than what is presently available to lawyers, paralegals, and the public through the Florida Registered Paralegal Program.

d. Concerns Regarding Fraud.

The Proposal opens the door, and may perhaps legitimize, certain unscrupulous activities. One potential unintended consequence of the Proposal would be to allow paralegal mills, conceivably employing scores of AFRPs, headed by one lawyer, with very little, if any, supervision. What if a financial planner obtains the necessary requirements to be an AFRP

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under the Proposal and loosely teams up with a non-estate planning lawyer to then provide an estate planning mill closely tied to the financial planner's investment advice business? There are also concerns regarding UPL with disbarred lawyers or out-of-state lawyers practicing law in Florida through an AFRP loophole.

e. Other Issues Identified.

The unintended consequences of the Proposal should be studied. In addition to the aforementioned issues, the RPPTL Section also identified several other issues and potential unintended consequences of the Proposal as currently drafted. While the target audience of the Proposal is the "underserved" and indigent persons in Florida, AFRPs could be utilized to target other groups, such as the elderly, wealthy, or the public as a whole, through broad marketing campaigns aimed at getting large quantities of clients in the door to provide "one size fits all" legal products, or worse, a "bait and switch" tactic of drastically increasing the cost of services provided after the initial meeting or detracting from presently available sources for quality low or no cost competent legal representation. Without any restriction on services to be provided by the AFRP or fees to be charged, the Proposal could be subject to abuse of citizens outside its target, potentially resulting in an AFRP being tasked with providing legal advice or drafting estate plans for extremely wealthy individuals with major tax consequences. Legal aid organizations have income limits to ensure that the target audience receives their services. The Proposal lacks such limit or any other mechanism to ensure the target audience is served which could result in the target audience, again, being ignored and priced out of the services to be provided.

Cottage industries within practice areas could spring forth from the Proposal. For instance, in corporate legal practice, the Proposal could be utilized for the completion of corporate documents, charters, or articles of incorporation. Such would violate existing law. *The Florida Bar v. Fuentes*, 190 So.2d 748 (Fla. 1966); *Keehley*, 190 So. 2d at 173.

The public may not truly appreciate that the services are being provided by a person who is not authorized to practice law in the state of Florida. Detailed written disclosures and informed consent could alleviate some of these concerns but are absent from the Proposal.

f. State of Washington Limited License Legal Technician (LLLT).

There has been some discussion that the Proposal is based on Washington State's concept of a Limited License Legal Technician ("LLLT").³ However, the requirements for LLLTs appear to be much more in-depth than what is required of AFRPs and the Washington program only has a handful of participants. Some of the requirements of an LLLT include:

1. Education

- o Associate Degree or higher in any subject
- o LLLT Core Curriculum: 45 credits of legal studies courses that must be taken at a school with an ABA-approved or LLLT Board-approved paralegal program or at an ABA-approved law school and that must include the following subjects
 - o Civil Procedure, minimum 8 credits

³ The Washington Lawyer (publication of the District of Columbia Bar), suggests that the program may work in Washington State based on the specific needs of that jurisdiction, but are not appropriate everywhere, including in their own jurisdiction. John Murph, *The Justice Gap & the Rise of Nonlawyer Legal Providers*, Wash. Law., Sept. 2019, at 18-23. A copy of the Article is enclosed with this submission.

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- o Contracts, minimum 3 credits
- o Interviewing and Investigation Techniques, minimum 3 credits
- o Introduction to Law and Legal Process, minimum 3 credits
- o Law Office Procedures and Technology, minimum 3 credits
- o Legal Research, Writing, and Analysis, minimum 8 credits
- o Professional Responsibility, minimum 3 credits
- o 5 credit hours in basic domestic relations subjects
- o 10 credit hours in advanced and Washington-specific domestic relations subjects.

2. Examinations Requirement: 3 examinations

- o Paralegal Core Competency Exam (PCCE)
- o LLLT Practice Area Examination: Tests knowledge of a specific practice area. Currently, the approved practice area is family law.
- o LLLT Professional Responsibility Examination: Tests knowledge of LLLT ethics.

3. Experience Requirement

- o 3,000 hours of substantive law-related work experience as a paralegal or legal assistant supervised by a lawyer prior to licensing.
- o Experience must be acquired no more than three years prior to, or 40 months after, passing the LLLT practice area exam.

The Proposal only requires 3 hours of course credit to sit for national examination. Under the Proposal, an AFRP could take a 3-hour course in contracts and then seek to provide services in family law. How does this benefit the public if the AFRP does not know family law and its nuances? The Proposal only requires a national examination. If an attorney is required to take the Bar Exam which includes Florida-specific law, why should an AFRP not also be subject to an examination on Florida specific law?

Conclusion.

The RPPTL Section supports the push to increase access of the public to justice, but opposes the Proposal in its current form. However, any efforts to increase access should have as its priority Florida's unwavering public policy of protecting its citizens from the unlicensed practice of law, incompetent legal services, and fraud. Regarding the Proposal, the RPPTL Section recommends:

- Eliminating wills, guardianships, landlord tenant and debt collection from the practice areas;
- Studying allowing AFRP to participate in Baker Act and Marchman Act proceedings and/or the completion of Florida Supreme Court-approved forms;
- Strictly defining exactly what services and forms (and limiting each) which can be utilized by the AFRP within any areas of practice allowed (such as family law);
- Providing a better definition (with proper limits) on what "other documents" mean in Rule 20-6.3(a)(1);

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- Increasing the educational/licensing requirement to be an AFRP;
- Requiring an AFRP to be both employed by **and** supervised by a lawyer and perhaps require the lawyer to work or have an office in Florida;
- Adding additional safeguards to prevent fraud, such as paralegal mills with lack of supervision;
- Expanding legal aid or re-routing resources into the existing Florida Bar's Lawyer Referral Source program, or other available no/low cost legal alternatives should be considered in the alternative to the Proposal. There are presently programs and service providers which provide access to justice for underserved and indigent persons, *under the supervision or directly by a licensed attorney*. Increasing funding to such organizations or providing a mechanism for underserved persons to pay a portion of the cost of legal services commensurate to their income level could serve *and* protect the target audience; and
- Providing better public access to legal references, such as legal educational materials, forms, and other tools – even posting such tools online in a centralized location. Computer access at each public library or Clerk of Court could be provided (with no other internet service) to allow persons to research public records, Florida Supreme Court-approved forms, and potential tutorials produced by The Florida Bar on how to complete of the forms.

If revisions to the Proposal are made in this regard, the RPPTL Section would be able to consider providing its support.

Thank you in advance for your courtesies.

Respectfully submitted,



Robert S. Freedman
Chair, Real Property, Probate & Trust
Law Section

Enclosure

Appendix D - Recommendations for the Analytic Approach to a Florida Law Practice Innovation Laboratory Program

We strongly recommend an analytic approach that defines a Florida legal services system model and incorporates data-driven assessment criteria to maximize the evaluative value of the program. A suggested system design for legal services would define stakeholders, resources, functions, and processes and map relationships between the same. The design should also consider environmental factors in which the legal services system operates and where associated consumers reside. Multi-dimensional, rigorous evaluative criteria are then developed to properly assess system components and the aggregate. This type of analytic approach will provide a deeper understanding of the delivery of legal services in Florida and a way to identify and assess key factors and risks in that system. In addition to an advisory body that evaluates applications, such an approach requires a diverse team of subject matter expert lawyers and paralegals that represent the range of practice areas that will be employed in the lab. Similarly, we agree with the Special Committee Report and believe that it will be critical to include technical expertise (members of the Florida Bar or not) with experience in strategic planning, management, and decision analytics.

The logical approach would be to work closely with one or more of our state's excellent Legal Aid Programs. An existing network of 44 legal services providers are devoted to improving access to justice and are uniquely well-situated to help identify the areas of greatest need and provide invaluable insight in structuring and administering a successful sandbox of this nature. And if the technology providers in particular have the ability to better streamline and automate some of the processes involved, so as to enable these services to reach a larger segment of Florida's underserved population, this can be a win-win opportunity for all involved.

Another resource for the Lab is to collaborate with the Workgroup on Access to Civil Justice established by Chief Justice Canady, formerly the Florida Commission on Access to Civil Justice¹. Our Section worked closely with this Commission in the past several years in their analysis of relaxing certain Rules of Professionalism and the implementation of the AFRP program. This Commission has been studying "the unmet civil legal needs of disadvantaged, low-income, and moderate-income Floridians" for years. It makes sense that the Special Committee join forces with a Commission that has such common goals and resources. Our point in making these recommendations is that identifying the legal issues facing our citizens and the areas in need of improvement should be a collaborative effort including all stakeholders in Florida. We should be utilizing the knowledge within in our state in striving for a solution.

¹ See <https://www.floridasupremecourt.org/content/download/788855/file/AOSC21-48.pdf>. See also <https://atj.flcourts.org/>. The Florida Commission on Access to Civil Justice was founded by Justice Labarga in 2014 and the work of this Commission has been transferred to the Workgroup on Access to Justice on September 20, 2021, by Chief Justice Canady.



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October 19, 2021

The Florida Bar Board of Governors
651 E. Jefferson St.
Tallahassee, Florida 32399

Via Email: SCinput@floridabar.org

To whom it may concern:

Please accept this letter as my written comment to the Board with regard to the proposed report by the Special Committee to improve the delivery of legal services. I am in opposition of the proposal that non-lawyers share fees or be permitted to have an ownership interest in a law firm.

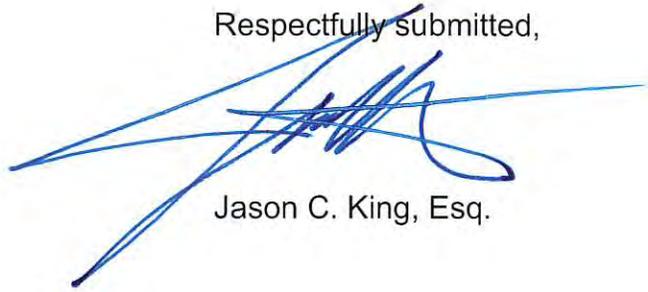
In the proposed report, the Committee is recommending a regulatory "laboratory" program that would authorize non-attorney legal services providers, non-lawyer ownership in law firms, and the splitting of legal fees with non-lawyers.

First, there is not adequate data that would indicate permitting non-lawyers to have an ownership interest in a law firm would increase the availability of legal services to the public. I believe this would actually have the opposite effect. This proposed change would allow private corporations to own a stake in a law firm and put profits over people.

Secondly, if the intent of the Board is to increase the availability of affordable legal services to the public it can be accomplished in two ways. One would be to increase funding for our local legal aid offices. The other would be to implement a mandatory pro bono requirement for members of the Bar.

To open up the ownership of a law firm to non-lawyers would put the quality of legal representation at risk. It would also threaten the duty of confidentiality and the protections of the attorney-client relationship.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'J. King', is written over the text 'Respectfully submitted,'.

Jason C. King, Esq.

CC: John D. Agnew
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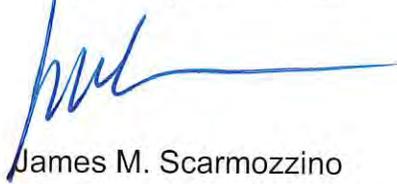
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Respectfully submitted,



James M. Scarmozzino

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Memorandum

To: The Florida Bar Board of Governors
From: Michael Nachwalter and Katherine “Kat” Clark Silverglate¹
Re: Final Report of the Special Committee to Improve the Delivery of Legal Services
Date: October 20, 2021

This memorandum is offered in opposition to the June 28, 2021, Final Report of the (Florida Supreme Court) Special Committee to Improve the Delivery of Legal Services. Twenty years ago, we co-authored, with others, the “con brief” that was used by the Board of Governors to educate itself and the Bar in the debate over alternative ownership structures with nonlawyers.

Two Things are Not at Issue in this Memo:

First, the hard work of the Special Committee is acknowledged. Perhaps only those who have walked a similar path can understand the work it takes to do this kind of volunteer service. The Committee has reopened a highly controversial debate that has an intense, rich history.

Second, everybody agrees, access to justice issues must be addressed. This memo is not an opposition to the *need* to address access to justice. We must. This memo is about the process used to present potential “solutions” to the bench and the bar, the lack of empirical evidence that alternative business structures (ABSs) increase access to justice, and the inherent inconsistency between the Committee’s experimental relaxation of the Rules of Professional Conduct and the core values of the legal profession protected by those rules.

Why We Are Writing this Memo:

With a commitment from the Florida Supreme Court to wait on the Board of Governors’ input on the Special Committee’s Final Report, the Board has solicited comments from the Bar.² It would be difficult to overestimate the magnitude of the issue now before the Board. In the words of Richard Gilbert, Co-Chair of the committee appointed to study this question in the late 1990’s:

¹ Michael Nachwalter is a 50-year member in good standing of The Florida Bar, a former member of the Board of Governors, and one of the co-founding members of Kenny Nachwalter in Miami, Florida. He can be reached at mn@kennynachwalter.com. Katherine “Kat” Clark Silverglate is a 33-year member in good standing of The Florida Bar, is the former Chair of The Florida Bar Committee of Professionalism and she can be reached at photosbykat@gmail.com.

² Blankenship, *Board Plans Response to Court’s Special Committee to Improve the Delivery of Legal Services Report*; The Florida Bar News, July 13, 2021: <https://www.floridabar.org/the-florida-bar-news/board-plans-response-to-courts-special-committee-to-improve-the-delivery-of-legal-services-report/>

*"[The decision on this issue] is going to affect the way we practice law for the next 50 years, and it's the **biggest decision the Bar has faced over the last 100 years.**"*

Richard Gilbert, Co-Chair of the 1998 MDP Committee.³

After *years* of study and intense debate, the Board voted 44-1 **against** any amendment to the Rules of Professional Conduct that would permit firm ownership or fee splitting with non-lawyers.⁴ The June 2000 Resolution reads:

*Multidisciplinary Practice is **inherently inconsistent** with the core values of the legal profession. ...The Florida Bar therefore opposes **any** amendment to the Rules that would permit the sharing of fees for legal services with nonlawyers or permit nonlawyers to own any interest in a law firm."*

¶'s 2-3 of The Florida Bar Resolution Regarding Multidisciplinary Practice and Ancillary Business.

Respectfully, the Florida Bar's history on this very issue is critically relevant, not just to the comments the Board of Governors will make to the Supreme Court, but to the process used to meaningfully educate the Bar on what is actually at stake. Both the final resolution [hereafter "TFB 2000 Resolution"] and the brief supporting the decision [*Facing the Tide of Change*, hereafter "the Con Brief"] are attached to this memo and both are cited as digital links in the footnotes below for ease of access.⁵

The Context of TFB 2000 Resolution:

In July 1997, The Florida Bar Board of Governors created a Special Committee to Study Multidisciplinary Practices and Ancillary Businesses.⁶ MDP was largely an unknown acronym within the Florida Bar at the time.⁷ The MDP phenomenon started to arrive on the radar screen of many lawyers in August of 1998 when the ABA appointed its own MDP Commission. The ABA

³ Jan Pudlow, *MDP Study Group Sharply Divided*; The Florida Bar News, Feb 1, 2000.

<https://www.floridabar.org/the-florida-bar-news/mdp-study-group-sharply-divided/>

⁴ Blankenship, *Board Rejects Multidisciplinary Practices*; The Florida Bar News, June 15, 2000.

<https://www.floridabar.org/the-florida-bar-news/board-rejects-multidisciplinary-practices/>

⁵ The 2000 Resolution can be found at: <https://www-media.floridabar.org/uploads/2017/04/resoltfb.pdf>. The Con Brief, as published in the Florida Bar Journal Vol. LXXIV, No. 3 in March 2000, can be found at:

<https://www.floridabar.org/the-florida-bar-journal/facing-the-tide-of-change/>

⁶ While the term "alternative business structure," or ABS, is used today, "multidisciplinary practice," or MDP, was the term used in the late 90's.

⁷ The Florida Bar Journal, V LXXIV, No.3 (March 2000) President's Page: *Y2K's, JNC's, MDP's – Who Knew?*

Commission took 60 hours of testimony from 56 national and international witnesses and held several public hearings over the course of about a year. See Comments to TFB 2000 Resolution.

In May of 1999, The Florida Bar became aware that the ABA intended to vote on the MDP issue as early as their August 1999 meeting.⁸ The ABA MDP Commission report was going to favor MDPs. While the ABA *Report* was just that, a report with *recommendations* that would have no efficacy unless adopted by the ABA Delegates after fully informed debate – it was also a report recommending a radical departure from the practice of law as we know it. The Board of Governors expanded the work of the Florida MDP Committee to include an evaluation of the ABA Report⁹ and it opposed the ABA vote in order “to reach an intelligent and logical position” about a report that was suggesting such “sweeping changes.” See the August 9, 1999 Statement by Former Bar President Edith Osman referenced at footnote 8 below.

In August 1999, the ABA resolved to make no change allowing MDPs “unless and until additional study demonstrates that such changes will further the public interest without sacrificing or compromising lawyer independence and the legal profession’s tradition of loyalty to clients.” See Comments, TFB 2000 Resolution.

To fully understand the lengths to which the Board of Governors went to educate itself and the Bar before landing firmly on the MDP question, one must read an excerpt from Osman’s August 1999 Statement:

*The Florida Bar appointed a committee to study the issues of multidisciplinary practice and ancillary business two years ago. That committee has held a public hearing, sponsored a seminar, hosted an All Bar Conference, and gathered thousands of pages of documents from the ABA, other states, and other learned sources relating to these topics. **The committee has currently split into subcommittees: one to draft a report and recommendation in favor of allowing multidisciplinary practice, which will include all the attendant implications, one to draft a report and recommendation against allowing multidisciplinary practice, with attendant implications, and one to draft a rule regulating ancillary businesses of attorneys, which is the opposite side of the coin of multidisciplinary practice.***

The logic behind creating the best “pro” report and the best “con” report with a mandate to identify “*all the attendant implications*” is summarized in the TFB 2000 Resolution.

⁸ <https://www.floridabar.org/news/publications/publications031/>

⁹ <https://www-media.floridabar.org/uploads/2017/04/mdpaba.pdf> Report at Page 2.



The Special Committee, believing that an answer is frequently best illuminated if strong advocates of differing sides present the best arguments for their respective positions, directed the preparation of Pro and Con Reports presenting the most poignant arguments on each side of the issue.

As the con committee dug deeper to clarify the true implications for the public and the bar, something became clear -- the Florida Bar's decision to look at the issue from opposing views was a master stroke. The Florida approach was commended in the national arena.¹⁰

Only after this degree of preparation, publication of the pro and con reports, and intense pro/con debate was the Board prepared to make an informed decision. It decided 44-1 against multijurisdictional practices as *inherently* inconsistent with the core values of the legal profession. The Florida Bar Board of Governors followed its decision with a Report with Recommendation to the ABA House of Delegates to recommend no changes to the rules to allow MDPs:¹¹

*Thorough evaluation of this issue has been a prodigious effort... Rule 4-5.4 of the Rules Regulating the Florida Bar and ABA Model Rule 5.4 have long prohibited the sharing of fees generated by the rendition of legal services with nonlawyers because of the lawyer's duty of independence and the lawyer's duty to exercise loyalty to the client over and above any duty to the lawyer or to the organization employing the lawyer. There is no prohibition against a lawyer participating in an Ancillary Business so long as the Rules Regulating the Florida Bar are honored, including but not limited to the Rules prohibiting the sharing of fees... and the unauthorized practice of law by nonlawyers... The Florida Bar Board of Governors, after hearing the report of the Special Committee, and comments by several divisions and sections of The Florida Bar, voted 44-1 to make no change to the Rules of Professional Conduct to allow the division of legal fees with nonlawyers or partnership with nonlawyers... **The Florida Bar therefore urges that the ABA make no changes to the Model Rules... to permit the sharing of fees for legal services with nonlawyer [sic] or permit nonlawyers to own any interest in a law firm.** Excerpts from BOG Report referenced at FN 11 below, emphasis added.*

In July 2000, the MDP issue before the ABA was defeated.

¹⁰ <https://www.floridabar.org/the-florida-bar-journal/the-final-daze/> "Experts have told audiences at national meetings that Florida's papers were the best in the country."

¹¹ The June 2000 Report with Recommendations to the House of Delegates, Executive Summary and General Information Form can be found at: <https://www-media.floridabar.org/uploads/2017/04/mdpaba.pdf>

The Context for the July 2021 Report Now Before the Board of Governors for Comment:

The Report before the Board of Governors comes for comment from a far different context. The Supreme Court Committee to Improve the Delivery of Legal Services was created in response to a September 27, 2019 letter written by former Florida Bar President John Stewart directly to the Supreme Court. While his initial letter is not attached to the Committee's Final Report, the Court quotes from it and models recommendations from it. Without even reading Stewart's letter, the genuine and heartfelt belief of the proponent in regulatory reexamination as it relates to access to justice is palpable.

The agenda for the first meeting of the committee, published on the Bar website, outlines what it planned to do each month for a year. It discloses *in advance* what the committee thought it would be doing one year later – outlining regulatory change through a “sandbox” as a mechanism to address access to justice issues. See June 15, 2020, Agenda Item 5.

*“5. Proposed work schedule (Stewart)... June 2021 – In person meeting – finalize any rule changes and **outline of regulatory sandbox.**”*

This is exactly where the Committee ended up – with a “pro report” advocating a sandbox for regulatory change as a solution for access to justice issues.

What is at Issue in this Memo:

This memo addresses the recommendation of the Special Committee to create a regulatory “sandbox” to experiment with relaxing the rules on fee splitting and nonlawyer participation in the delivery of legal services. In language from Florida Bar Board of Governors’ deep dive on this issue in 2000:

...an answer is frequently best illuminated if strong advocates of differing sides present the best arguments for their respective positions

Respectfully, the Final Report before the Board of Governors presents its best arguments for one side – the “pro” side -- of a broader national controversial debate. Without the resources of a full committee and a year to examine the issues on the other side, it is difficult to imagine how the average Florida Bar member, much less the Board of Governors, is expected to give more than an overview of the issues implicated by the report.

The February 2021 Florida Bar Survey and Overwhelming Opposition from the Bar:

We'll begin with the February 2021 Bar Survey where lawyers were asked their opinion about changing rule 4-5.4 in various ways. The response was overwhelmingly clear. No changes should be made.

Partnerships with non-lawyers was addressed in questions 62 and 63. Currently Rule 4-5.4(c) states "A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law." The survey question asks bar members if they would approve the reversal of this prohibition.

62. Should non-lawyers who actively support a legal practice in delivering legal services be permitted to become partners or shareholders, as applicable, in that practice?

The response was overwhelmingly clear. Ninety-one percent (91%) gave either a flat "No" (81%) or a "not sure/no opinion" (10%).

63. Should law firms be permitted to raise capital by selling ownership interest in their firm to passive investors?

Ninety-three percent (93%) gave either a flat "No" (84%) or a "not sure/no opinion" (9%).

Fee splitting with non-lawyers was addressed in questions 60 and 61. Currently Rule 4-5.4(a) states "A lawyer or law firm shall not share legal fees with a non-lawyer..."¹²

60. Do you feel that eliminating or relaxing the rule prohibiting a lawyer from sharing fees with non-lawyers would increase business development opportunities for lawyers?

Again, the response was overwhelming. Seventy-six percent (76%) gave either a flat "No" (53%), a "not sure/no opinion" (18%) or "not applicable" (5%). The next question put the reversal of the current rule in the context of the "innovation" and "access to legal services" the Committee promotes with its report.

¹² Exceptions, not listed here, relate to a lawyer's death, the unwinding of a practice, bonuses, and court awarded fees.

61. Should a technology company that develops a platform designed to attract consumers of legal services, and which matches them with lawyers having the requisite experience, be permitted to retain a portion of the fee paid by the consumer?

The negative response was even larger to this question. Eight-two percent (82%) gave either a flat “No” (65%) or a “not sure/no opinion” (17%).

The Committee Dismisses the Voice of the Bar with One Explanation – Fear

The Committee explains away these strong responses with one motive – fear. On Page 18 of the Report, the Committee summarizes the negative responses and then concludes:

Most lawyers responding did not want to see any change. Unfortunately, the reality is that the current rules are not addressing ‘the challenges facing Florida lawyers, and the difficulties that many Floridians encounter in securing legal services. **The fear of change is likely more fear of the unknown** – how will relaxing the rules on firm ownership, fee splitting, and nonlawyer practice affect the practice of law. While this is understandable, it is no reason to keep the status quo when the status quo is not working.

Is it possible that the members of the Florida Bar have a different rationale for their clear objection? Perhaps they remember the Board of Governors’ rationale for rejecting “relaxation” of these rules 20 years ago? “Inherent inconsistency” with the core values of loyalty, independence, client confidences and avoidance of conflicts of interest is a difficult standard to overcome. The Committee has not met its heavy burden. Indeed, it simply says that the impact on core values can be part of an experiment in a legal sandbox.

Core Values Unaddressed by the Committee and Inherent Inconsistency

Rather than address the inherent inconsistencies between the existence of alternative business structures and the core values the Board of Governors identified in 2000, the Committee focuses on a different core value -- access to justice. In short, it reasons that if access to justice is a core value that is not inherently inconsistent with alternative business structures, then the other core values do not need to be addressed up front. It seems to reason that if ABSs will increase access to justice, then the hurdle of “inherent inconsistency” is overcome.

New York Rejects the Access to Justice Rationale for ABS Experimental Sandboxes

In December 2020, the Regulatory Innovation Working Group of the Commission to Reimagine the Future of New York Courts issued its report and recommendations on access to justice

questions.¹³ Specifically, it looked at the regulatory experiments going on in Arizona, Utah and California and concluded that there was ***no reliable data*** to support the conclusion that ABSs improve access to justice.

*“An important question for our Working Group was whether ABS firms would actually increase access to justice or improve the delivery of legal services in addition to improving lawyer productivity. We closely examined the recent proposals that have been adopted in Arizona, Utah, and California to learn whether those proposals would have that effect and the short answer is that we just don’t know. **There are no reliable data.**” NY Report at 33.*

Specifically with respect to the program in Arizona, New York notes:

*“What is curious about Arizona’s program is that it was adopted even though there were **no data suggesting that it would have any effect on the access-to-justice gap.**” NY Report, 33.*

Regarding Utah, the jurisdiction the Committee uses as its model for its sandbox recommendation, New York concludes:

*“...**we do not believe that such an ABS would ipso facto improve access to justice even though it might improve law firm profitability.**” NY Report at 34-35*

Regarding California’s ABS sandbox:

*“... the suggestion that “loosening existing restrictions” on lawyers might increase access to justice is not obvious to us. In fact, **this proposal appears, at least to us, not to be a useful means of increasing access to justice.**” NY Report at 35.*

As to ABSs in England and Wales, New York cites a law professor who spoke at a Virtual Convening of experts on regulatory innovation in October 2020:

¹³ The Final Report can be found here: https://www.nycourts.gov/LegacyPDFS/publications/RWG-RegulatoryInnovation_Final_12.2.20.pdf

Professor Stephen Mayson... reported that ABS's in England and Wales have not had any meaningful impact on the access-to-justice gap. NY Report at 36, fn 54.

The NY Report concludes that evidence with respect to access to justice is non-existent:

In fact, there is no empirical evidence that in the U.S. an alliance between lawyers and non-lawyers would ipso facto increase either access to justice or the delivery of legal services for the simple reason that it has never been tried in this country. In fact, every time we put that question to those with whom we consulted, we were told that the primary reason for an ABS was to increase profitability and there is no evidence that it will increase access to justice... the evidence with respect to access to justice and improved delivery of legal services today is non-existent. NY Report at 35-36.

Fee Fi Foe Fum, Look Out Lawyers Here We Come: When this issue came before the Board of Governors for debate in 2000, an article had just been published in CPA Today titled “The Future of the CPA Profession in the United States: Fee Fi Foe Fum! Look Out Lawyer Here We Come!”

The Big Five are the giants of the accounting world. They are buying law firms in other countries left and right. The legal profession has no giants like the Big Five to become consolidators of the legal profession. See Con Brief at 42 quoting Fee Fi Foe Fum.

In short, it was a declaration of victory. They were going to win the MDP debate and become the big box consolidator of the U.S. legal market. See Con Brief at pages 40-43. The ethos in this article and others was similar: it's too late to fight it; it's already happening; jump on board or get swept away by the tidal wave. Law as you know it will never be the same. Id.

First Utah Non-Lawyer Owned Law Firm Declares: “lawyering as we know it is at an end.”

On the web, we located at least one product of the Utah regulatory experiment. We encourage the BOG to read the entire web page: <https://www.northwestregisteredagent.com/law-on-call>. Excerpts appear below [emphasis added]:

Law on Call is the first nonlawyer-owned licensed law firm in the United States of America, and we formed at the end of 2020. Yeah. Let that sink in for a minute. **It probably should have happened 30 years ago... but it happened in 2020**, and we're the first ones out of the gate.

What does Law on Call mean for me? It means a lot. It means easier access to legal services. It means no retainers. It means low prices a traditional law firm can't afford. ***It means lawyering as we know it is at an end.***

...available now for our Utah clients and ***more states are to come.*** So, for those who don't live or work in Utah—stay tuned.

Law on Call is not a legal service plan or a lawyer referral service. It's a licensed law firm. And as the first nonlawyer-owned law firm legally licensed to practice law in the U.S., ***we aren't bound by the same archaic rules traditional law firms must abide by...***

Law on Call is owned by nonlawyers. Here's some legalese that says more about what that means: This law firm is owned by nonlawyers. Some of the people who own or manage this entity are not lawyers. This means that some services or ***protections, like attorney-client privilege, may be different from those you could get from a traditional law firm.***

Law on Call further distinguishes itself from a traditional law firm this way:

The path to hiring a traditional law firm can be as annoying as it is long. Here's how the hiring process usually works: You call or email and leave a message with a legal assistant. You hope to get a call or email back from a paralegal who gathers your info and finds out what you need, and ***the law firm does a conflict check. If you pass their conflict check, you can then schedule an introductory call*** with a lawyer that might be free or might cost a few hundred bucks. ***If your initial song and dance meeting goes okay,*** you might get a letter of engagement emailed to you in a week or two for your review. You can review it, sign it, and get it back to the lawyer along with what is called a retainer. Retainers are upfront costs typically based on what the lawyer thinks you'll rack up in initial fees. Most lawyers will ask for a retainer of between \$1,000 and \$5,000. After your agreement gets back to the lawyer, their office staff processes your retainer and sets up a profile for you in their system. Then you might get a call or email back, and you can schedule a phone call or meeting with your lawyer. 1-3 weeks later, you get your meeting—and spend hundreds of dollars for it. The lawyer might lay out a plan to get to work, and you can wait another week or more to start seeing results.

[Our lawyers'] salaries are based on their years of experience and ***their client satisfaction ratings,*** and they receive a cost of living adjustment and a performance-based raise once a year.

And all of this comes to the public with the official stamp of the Utah Supreme Court Office of Legal Services Innovation.



For more information or to file a complaint, please visit innovationoffice.org

Let that sink in just a moment. The words **REGULATED** and **UTAH SUPREME COURT** are at the top of a web page that boasts **“we aren’t bound by the same archaic rules traditional law firms must abide by,”** that puts conflict checks in the category of “annoying” and places in its “legalese” the fact that protections like the attorney client privilege may be “different than what you **could get** from a traditional law firm.” Could get? The attorney client privilege?

Once you move beyond the \$9 monthly fee for guidance, “full blown legal work” ranges from \$99 per hour (1-3 years experience) to \$250 per hour (10+ years of experience).

Is this access to justice?

The Proposed Florida Experiment:

In the various minutes made available by the Committee on the Florida Bar website, one of the redline drafts regarding the Legal Lab carries this title: Florida Legal Laboratory and Program to Improve Access to Justice and Legal Services. The following comment bubble appears beside a paragraph titled “controlled experimentation.”

“Will calling it an experiment freak people out? It makes sense to call it that, but I am wondering if there is a synonym that provides a less frightening subject. For example, you could say the Lab provides an insulated environment to encourage innovative practices while maintaining client protection. Projects accepted into the Lab will do so with the understanding that the project may be terminated at any time”

if evidence indicates harm to consumers or the profession.” Attachment to April 20, 2021 Minutes, page 2 found at the May 6, 2021 Agenda link.

If it is indeed an experiment, that is what it should be called. We submit that the core values of the legal profession should not be the subject of experiments.

While the workings of the “three-year” experimental lab are difficult to understand, what seems straight forward in reading the document is that the experiment creates a new regulatory scheme that selectively deconstructs the rules which frame the core values of the profession. The entities under this scheme operate in a parallel universe to traditional law practices who remain subject to the current Rules of Professional Conduct. The bodies that are delegated the authority to approve and/or govern these experimental entities will evaluate and assess risks *for each new legal service provider* (in other words, it seems that the following may be different for each new entity?):

1. “Which rules or regulations need to be revised” in order for the aspiring innovator’s proposed business to be allowed to operate.
2. What kind of “letter of non-enforcement” will be issued to allow them to operate outside select existing regulations that govern lawyers.
3. The “applicable level of acceptable harm” that will be “outlined in the *individual* risk assessment” for each entity.

In assessing whether a non-enforcement letter may be suspended or cancelled, the supervisory body MAY, but is not required to, consider whether the service improves access to justice:

The supervisory body can recommend that the Commission suspend or cancel the non-enforcement letter at any time if the participant is not performing according to the agreement, if its services do not engage an audience, or if the services result in harms above what the supervisory body has deemed acceptable. Whether the services help increase access to justice or the availability of legal services may also be considered. Appendix E, page 7.

And if the experiment fails and the Lab folds, it appears that the entities that have been approved, will continue to compete in the Florida legal market against firms that continue to be governed by the Rules of Professional Conduct.

A condition of the Lab is that participants which successfully exit the Lab may continue providing their services as long as the risks of harm were demonstrably within appropriate levels even if the lab is formally concluded. Appendix E, page 7.

Why? Because, in the words of the Special Committee:

Organizations and individuals will not invest the capital necessary to ensure that the venture is a success if the venture will automatically be terminated after 3 years. It is the opinion of the Committee that the lab will be successful and will be made a permanent Commission by the Court at the conclusion of the initial 3 year period. Special Committee Report at page 20.

In other words, if this lab experiment fails, this alternative regulatory structure must remain in place to regulate the entities that have been authorized to compete in the Florida legal market under relaxed, modified, or altered rules and regulations.

In short, this is not a three-year experiment that may or may not succeed. This is a long-term regulatory change. As the Committee notes on page 7 of its proposed plan:

The supervisory body might also use the data to recommend to the Commission permanent changes to the existing regulations for the entire market.

The entire Florida legal market? The entire ABS market? At best, the language is unclear. What is clear is that once we go down this road, there will be no going back. If we are in for an inch on this sandbox experiment, we are in for miles.

Access to Justice without Sandboxes

Perhaps the simple and very practical question that remains after all this hard work is why a sandbox is necessary at all to consider expanded paralegal programs? Or court navigator programs? Or other programs carefully targeted toward access to justice issues?

Independence, Loyalty, Client Confidences, and Conflicts of Interest

We cannot afford to experiment with the attorney client privilege, guards against conflicts of interest, independent judgment, and undivided loyalty. We are different than traditional businesses for a reason. We have a duty to the public. The “archaic rules” that a traditional law firm is bound

by are the same rules which protect the core values of the profession. See Con Brief at 39, 45-53 for a deep dive on the fundamental core values of the profession.

Conclusion:

In sum, improving the delivery of legal services, of course, is a good idea. Improving access to justice, of course, is a good idea. But doing it through the process suggested by the Committee, with respect, is far too complicated and comes with far too many risks to the core values of the legal profession. The inherent inconsistency between the core values of the legal profession and alternative business structures is even more apparent in a sandbox context than it was 20 years ago when the Board of Governors conducted its own extensive evaluation of MDPs.

Respectfully submitted,

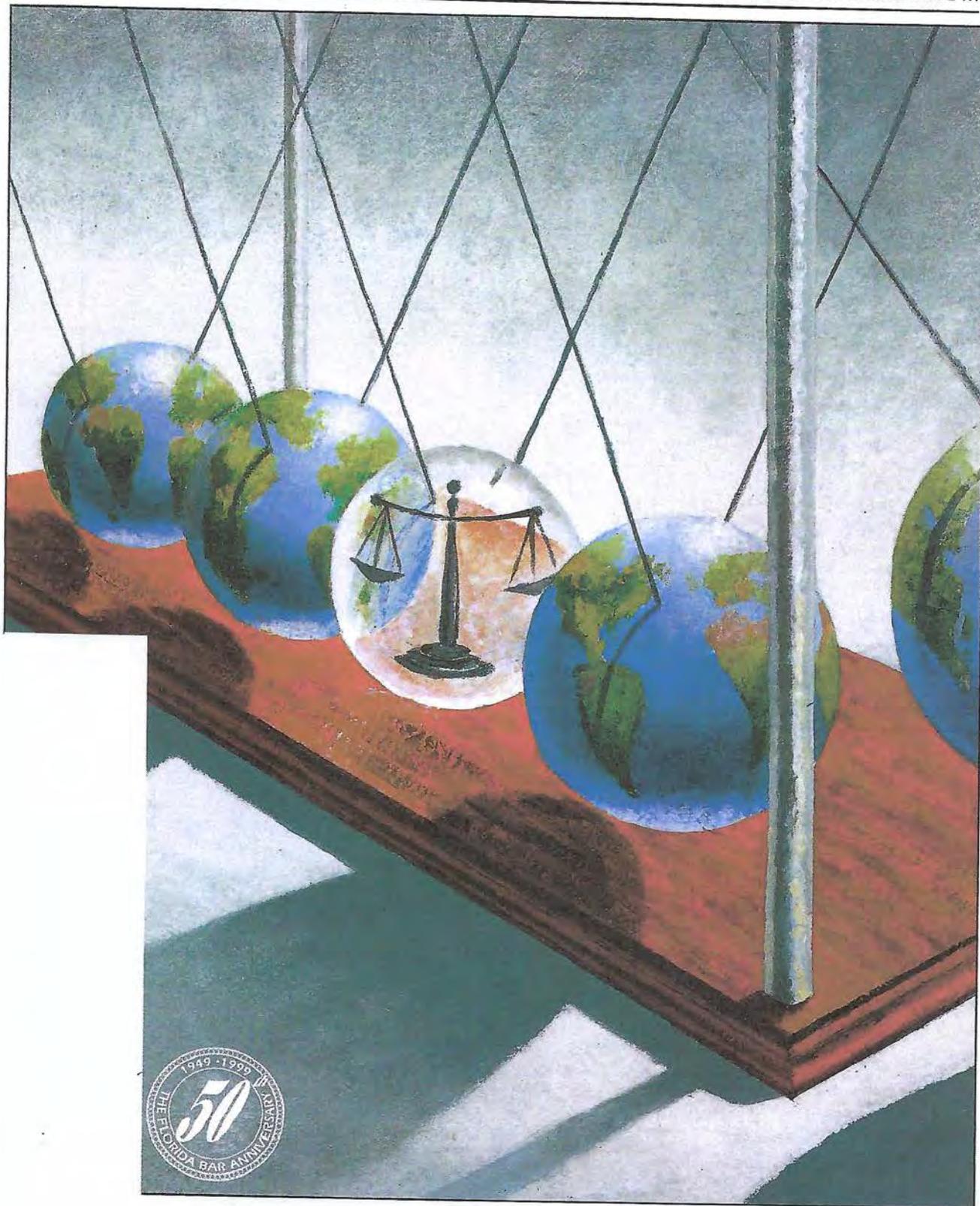
Two concerned members of The Florida Bar

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THE DEBATE OVER MULTIDISCIPLINARY PRACTICES

Facing the Tide of Change

by the Con-MDP Subcommittee

Carol McLean Brewer, John Hume, Michael Nachwalter,
Katherine Clark Silvergate¹

Consistent with the mandate of the president of The Florida Bar, the Con-MDP Subcommittee of The Florida Bar Special Committee on Multidisciplinary Practice prepared this report.

This position paper sets forth the primary issues, as we see them, which are presented by the MDP debate. Clearly, the implications are far reaching. The existing Rules of Professional Conduct are implicated in many more ways than those suggested here. However, it was our goal to address the threshold or primary implications for the Bar and the public. We believe we have done so here. In doing so, we have concluded that the proponents of change have not met their heavy burden of showing that the substantial impact on the core values of the legal profession which are designed to and do protect the public justifies any change to long-standing Supreme Court precedent.

Accordingly, the con subcommittee respectfully recommends that The Florida Bar take the following position on multidisciplinary practice in Florida.

1) It is in the public interest to preserve the lawyer's duty of undivided loyalty to the client.

2) The Florida Bar finds no credible evidence or persuasive argument that it would be in the public interest

to amend the Rules Regulating The Florida Bar or the Code of Professional Responsibility to allow the sharing or splitting of fees for legal services with non-lawyers.

3) It is in the public interest for the Supreme Court of Florida to regulate the practice of law by regulating the admission of persons to the practice of law and the discipline of persons admitted.

4) The Florida Bar shall vigorously enforce the Rules Regulating The Florida Bar and will devote such assets as may be necessary to diligently prosecute all violations thereof.

ABOUT THIS SPECIAL REPORT

During the past year The Florida Bar's Special Committee on Multidisciplinary Practice and Ancillary Businesses has studied the issues discussed in these position papers, and presents them here as an adjunct to its series of public hearings in an effort to receive as much membership input as possible.

The Board of Governors received the reports and an update from the committee at the board's February 2 meeting in Tallahassee. President Edith Osman has scheduled time at the board's April 7 meeting in Tampa to discuss the reports in detail and possibly adopt a position on rules proposed within these reports.

As this *Journal* went to press the American Bar Association's parallel study committee was scheduled to make an interim report to its House of Delegates February 13, with an eye toward a final House vote on proposed model rules at the ABA's 2001 Midyear Meeting.

More background information from the ABA and Florida Bar studies is available on the Internet, www.FLABAR.org. Members' comments may be directed to the Bar's ethics counsel, Elizabeth Tarbert, c/o The Florida Bar, 650 Apalachee Parkway, Tallahassee 32399-2300, or eto@flabar.org.

Let me [start] with the moving words of John W. Davis, one of America's greatest advocates before the Supreme Court: "Every would-be despot has found it necessary to silence the tongues of his countries' lawyers. For this, brethren of the Bar, is our supreme function—to be sleepless sentinels on the ramparts of human liberty and there to sound the alarm when-

Continued on page 39

Facing the Tide of Change

Continued from page 13

ever an enemy appears. What duty could be more transcendent and sublime? What cause more holy?"

Comments by the Honorable William M. Hoeveler, Senior District Judge, United States District Court, Southern District of Florida.

We are facing an issue which may forever transform the practice of law. The legal profession as we know it may never be the same. Our duty as sleepless sentinels cannot drown in the tide of change. Our duty requires us to *face* the tide of change. Dramatic? Perhaps. Too? You decide.

Consider this: A personal injury lawyer is permanently disbarred for conduct involving dishonesty and moral turpitude. The law was his life. He misses it. He can't stand not being a part of it. While he knows he cannot practice law, he decides that he has other skills that may indirectly facilitate a licensed lawyer but wouldn't cross the line of actually practicing law. So he decides to form a corporation and offer "document management services." He also hires licensed lawyers to work for the corporation and the corporation advertises "document management services" and "legal services." He manages the operation, makes the hiring and firing decisions, decides the compensation of the lawyers in the group, meets regularly with clients on "non-law-related matters," and gets a percentage of all legal fees generated by his document management business. Possible? If MDPs are allowed in the State of Florida, combinations such as this are not only possible but far from the extreme of absurd combinations which may soon grace our noble profession.²

What are MDPs and Why is the Term Novel to Most Lawyers and Lay Persons in Florida?

Until the summer of 1999, very few Florida attorneys and even fewer members of the public at large had even heard the term "MDP."³ As

we write this article, virtually every bar association in the country is busy learning everything they can about this animal. Before we explain *why*, first let us tell you *what* they are. Multidisciplinary practices, or MDPs as they have become known, are professional associations, partnerships or other business organizations owned jointly by lawyers and nonlawyers. At least one of its functions is the provision of legal services. Fees are shared amongst the members, including fees earned for the provision of legal services.⁴

These entities, as defined above, have had little presence in the vocabulary of most lawyers across the country because canons and rules regulating the practice of law in every jurisdiction of this country, save one,⁵ have heretofore prohibited lawyers from sharing fees or forming partnerships with nonlawyers. For the current iteration of these rules, see ABA Model Rule of Professional Conduct 5.4 and Rule 4-5.4 of the Rules Regulating The Florida Bar.

This restriction and others intertwined with it are centered on the notion that lawyers, unlike any other business person, are an arm of the judicial branch of government and integral to the development and maintenance of the law. Comment to Rule 4-1.6 of the Rules Regulating The Florida Bar; *Florida Bar v. Murrell*, 74 So. 2d 221 (Fla. 1954). Entry into the profession is restricted to those who take an oath to uphold the constitutions which create the judicial branch of which we are a crucial part. Rule 2-2.1 of the Rules Regulating The Florida Bar; Oath of Admission to The Florida Bar. Public confidence in our justice system is considered so crucial to the function of the law, that entry into the profession can be denied to or taken away from those who damage the public's faith in our system and its ability to function free of influences counter to its purpose. *The Florida Bar, Petition of*

Rubin for Reinstatement, 323 So. 2d 257 (Fla. 1975).

In Florida, as in most jurisdictions in this country, the state's highest court regulates the practice of law. Fla. Const. Art. V, §15. Acting in a quasi-legislative capacity, these courts have a legitimate state interest in implementing regulations which "are designed to safeguard the public, maintain the integrity of the legal profession, and protect the administration of justice from reproach." The fee splitting prohibitions are rationally related to this important state interest because they promote the independence of lawyers by attempting to "minimize the number of situations in which lawyers will be motivated by economic incentives rather than by their client's best interests" and "prevent . . . nonlawyers from controlling how lawyers practice law." *Lawline v. American Bar Association*, 956 F.2d 1378 (7th Cir. 1992), *cert. denied*, 510 U.S. 992 (1993) (declining to declare ABA Model Rule 5.4 unconstitutional).

Origin of the Fee Splitting/ Partnership Prohibitions

In 1854, concerned that the Bar had no formal written code of ethics, Judge George Sharswood published a series of articles titled *Professional Ethics*. See Annotated Model Rules of Professional Conduct, Preface (Third Edition). It was not until 1908 that the ABA transformed the principles contained in these articles into the first formal Canons of Professional Ethics. *Id.* The canons were aspirational and intended to guide states in the adoption of their own codes. In 1922, the ABA expanded its role in the ethics movement when it began issuing opinions "concerning professional conduct, and particularly concerning the application of the tenets of ethics thereto." *Id.* While the original canons did not have a fee splitting prohibition, the ABA issued at least one formal opinion in 1925 which found it unethical for an attorney to accept employment with an automobile club to serve the club members. That opinion stated in

relevant part:

Society has seen fit, for its own benefit and protection, to limit the practice of law to those individuals whom it found duly qualified in education and character. The permissive right conferred on the lawyer is an *individual* and limited *privilege* subject to withdrawal if he fails to maintain proper standards of moral and professional conduct. Neither this privilege, nor any responsibility or duty connected therewith, can be delegated to or be shared with a layman. As the lawyer cannot share his professional responsibility with a layman or lay agency, he cannot properly share his professional emoluments with them. This of itself is sufficient to render it improper for a lawyer to allow his services to be sold or dealt in by any layman or lay agency.

See ABA Formal Opinion 8 (emphasis added).

The ABA concluded that exploitation of professional legal services "is derogatory to the dignity and self-standards of professional character and conduct and thus lessens the usefulness of the profession to the public . . ." *Id.*

A few years later, the ABA formally adopted Canons 33, 34, and 35 prohibiting fee splitting with nonlawyers. The canons evolved over the years and took on various forms and jurisdictions across the country generally followed the models created by the ABA, with amendments as they saw appropriate. The rules substantially took on their current form in 1983 when the ABA transformed the canon/code format into a restatement format containing formal Rules of Professional Conduct.

In its current form, Florida's version of Model Rule 5.4 is titled to reflect the essential purpose of its existence: to promote the *professional independence of a lawyer*. The body of the rule provides, in pertinent part:

(a) Sharing Fees with Nonlawyers: A lawyer or law firm shall not share legal fees with a nonlawyer.⁶

(c) Partnership with Nonlawyer: A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.
(d) Exercise of Independent Professional Judgment: A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services

for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(e) Nonlawyer Ownership of Authorized Business Entity: A lawyer shall not practice with or in the form of a business entity authorized to practice law for profit if: (1) a nonlawyer owns any interest therein . . . ; or (2) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

The comment recognizes the historical acceptance of the rule: "The provisions of this rule express *traditional* limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment." (emphasis added)

The Florida Supreme Court has vigilantly enforced both the letter and the spirit of this rule. See, e.g., *The Florida Bar v. Beach*, 675 So. 2d 106 (Fla. 1996); *The Florida Bar v. Beach*, 699 So. 2d 657 (Fla. 1997) (using prior violation of 4-5.4 as aggravating factor in later disciplinary action); *The Florida Bar v. Bratzel*, 444 So. 2d 954 (Fla. 1984) (accepting permanent resignation for admitted violation of 4-5.4 and other rules); *The Florida Bar v. Budish*, 421 So. 2d 501 (Fla. 1982) (public reprimand); *The Florida Bar v. Hunt*, 429 So. 2d 1201 (Fla. 1983) (P.A. listed nonlawyers as officers and disbarred attorney provided services to P.A. The facts of this case are not unlike the hypothetical at the start of this paper); *The Florida Bar v. Hunt*, 441 So. 2d 618 (Fla. 1983) (violation of 4-5.4 used as enhancement factor in subsequent disbarment); *The Florida Bar v. James*, 478 So. 2d 27 (Fla. 1985); *The Florida Bar v. Rue*, 643 So. 2d 1080 (Fla. 1994); *The Florida Bar v. Sagrans*, 388 So. 2d 1040 (Fla. 1980); *The Florida Bar v. Shapiro*, 413 So. 2d 842 (Fla. 1982); *The Florida Bar v. Stafford*, 542 So. 2d 1321 (Fla. 1989). Even judges are not above the restriction. *In re JQC No. 84-200 Inquiry Concerning a Judge*, 496 So. 2d 133 (Fla. 1986). (Supreme Court affirms JQC recommendation of public reprimand of judge who, prior to taking the bench, engaged in fee splitting with a non-lawyer).

The force with which the Supreme

Court has expressed the sound policies behind the prohibition have been, at times, intense. Of note is the Supreme Court's condemnation of the commercial "business arrangement" between a lawyer and a nonlawyer in *The Florida Bar v. James*, 478 So. 2d 27 (Fla. 1985). In *James*, a lawyer agreed to act as the sole attorney for a corporation engaged in the collection of bad debts. The lawyer and the corporation set up operations in the same building with a shared receptionist-secretary. The nonlawyer had separate offices and phones but ready access to the lawyer's files and dealt with clients who attempted to contact the lawyer. The standard contract offered by the corporation authorized the corporation to provide legal services on behalf of the client. And the nonlawyer manager filtered the cases and decided when and if legal action was needed. The fee arrangement was based on extracting judgments in excess of debts owed and the lawyer was paid out of certain portions of the recovery with the corporation receiving the rest. At the disciplinary phase, the lawyer and nonlawyer could not agree on who was responsible for different aspects of the business. Indeed, communication was so poor between the lawyer and nonlawyer, that the lawyer filed actions against debts already satisfied and at least one debtor obtained a judgment against the lawyer and his client in excess of \$1,000 for doing so. It was this client that hired independent counsel who exposed the activities to the court.

In affirming the referee's recommendation of suspension, the Supreme Court stated: "The record in these cases documents the disastrous results that occur when a practicing member of the Bar enters into a profit-making enterprise with a commercial business which *subordinates the practice of law to the activities of the commercial business.*" *Id.* (emphasis added)

Even some of the court's oldest pronouncements on the importance of independence have been revived by the Supreme Court in recent years. In *The Florida Bar v.*

Stafford, 542 So. 2d 1321 (Fla. 1989), the Supreme Court exacted a greater penalty than that recommended by a referee against a lawyer who engaged in fee splitting with a police officer. The lawyer agreed to pay the officer 15 percent of fees collected from personal injury referrals from the officer's car accident victims. Citing *State ex rel. The Florida Bar v. Murrell*, 74 So. 2d 221 (Fla. 1954), the court stated: "Thirty-five years ago in . . . *Murrell*, . . . this Court differentiated the practice of law from other business pursuits and explained why the solicitation of clients could not be tolerated." *Id.* (emphasis added). Indeed, the court's decision in *Murrell* is perhaps the most eloquent discussion ever written on the difference between lawyers and all other business professionals and the concomitant need for independence. "The law is not a business—it is a profession, a noble one, with standards in certain respects different from those applicable to business, which standards it is the duty of the bar to uphold."

The court supports its distinction between the law and other businesses in three ways:

The lawyer is *an officer and right arm of the court* in the administration of justice, he has the major responsibility for making and administering the law of the nation, the State, the county and lesser governmental entities.

He is the trustee of his client and is expected to execute that trust in obedience to the Canons of the profession, the constitution of his State and the United States. His relation to his client is *fiduciary* and his integrity should be of that discriminating quality that he readily distinguishes where his duty to client and his duty to country clash; and if it does, he will be led by the higher duty to country.

There is in fact, no vocation in life where moral character counts for so much or where it is subjected to more crucial tests by *citizen and the public* than is that of members of the bar. His client's life, liberty, property, reputation, the future of his family, in fact all that is closest to him are often in his lawyer's keeping. The fidelity and candor with which he performs his trust, point up reasons that distinguish the legal profession from other business. Every lawyer who fails to withstand the test will subject the profession to merited criticism.

The court concludes by acknowledging but rejecting "the contention that the practice of law is a competitive business controlled by standards not materially different from those which control other competitive businesses."

If that were true, then all we have said about the law being a great profession, that the primary function of the lawyer is that of officer of the court for the administration of justice, that his relation to client is highly fiduciary and that his relation to the court and his brethren at the bar must be characterized by such candor and rectitude of conduct as to preclude him from advertising or appro-

issue is highly contextual and, if taken out of context, can become distorted and confused. The history of the movement will shed some light on its path and destination. It also sheds light on the sudden awakening in the legal profession toward this issue.

A true flavor of the driving force behind the issue facing The Florida Bar is probably best conveyed by an August 1999 article which appeared in *CPA Today*. Only a duplication of the title page could convey the spirit of the issue. It is reprinted on

The Future of the CPA Profession in the United States:

"Fee, Fi, Foe, Fum! Look Out Lawyers Here We Come!"

By Lloyd A. "Buddy" Turman, Executive Director,
Florida Institute of CPA's

priating other methods common to commercial ventures to attract clients—all this would amount to nothing more than empty trade talk. However, this is not true and while *there are differences that distinguish those who administer justice from those who sell goods, the canons clearly point out these differences.*⁷

Id. (emphasis added).

Nowhere are those differences better reflected than in Rule 4-5.4.

So What Is Driving the Consideration to Alter Rules Aimed at Protecting the Professional Independence of Lawyers?

Debunking the Myth of Public Demand

Some proponents of MDPs proclaim that the movement grew out of a groundswell of public demand. While the con subcommittee does not agree, we agree that protection of the public is an important consideration as are the Bar's independent duties as officers of the court. Regardless, this report would be incomplete without addressing the origins of the MDP issue. The MDP

this page so that nothing is lost in the translation.

This and other recent articles outline the accounting firm's movement away from traditional accounting services into globalized bundled services. Approximately 10 years ago, the accounting profession was feeling a dip in their business. This was due largely to simplification of the Internal Revenue Code by Congress. The meat and potatoes of the accounting profession, income tax preparation, flattened. Accountants responded by offering other services to their clients and businesses responded favorably. See John Gibeaut, *Squeeze Play*, *ABA Journal* (Feb. 1998), quoting Irwin L. Treiger, ABA co-chair of the National Conference of Lawyers and CPAs. The large national accounting firms added the provision of legal services to their buffet by hiring lawyers in their foreign offices in countries which did not prohibit fee splitting and legal practice by accountants. The result, according to

the accounting profession, has been a financial bonanza for the multi-billion dollar accounting industry.

MDPs have spread throughout Western Europe, and from those modest beginnings, have grown to the point that *the Big Five firms are now the largest law firms in the world*. For example, in Europe, Ernst & Young have more lawyers than any other law firm. KPMG owns the biggest law firm in France. And Arthur Anderson reportedly has publicly said it wants to have the world's largest law firm by 2000.

According to the most recent survey available through Bowman Reports, worldwide in 1998, the Big Five employed a staggering 414,498 professionals and partners and generated worldwide revenues of roughly \$56.6 billion.

Fee, Fi, Foe, Fum! at page 4 (emphasis added).

Domestically, however, accountants expressed deep frustration at

The giants launched an all out offensive designed to exert whatever pressure they could bring to bear on the legal profession to force change. To execute their plan, they needed to bring lawyers into the fold, convert them to their cause, and make these their advocates of change. They started by amending their own rules which, ironically, prohibited ownership of a CPA firm by non-accountants.

[Accountants] revised the laws to enable CPAs to accept commissions and contingent fees, and more, importantly, to allow up to 33 percent non-CPA ownership of a Licensed Audit Firm. Our counterparts in the legal profession watched intently as CPA's changed their regulatory structure in order to level the competitive playing field and strategically align with other professions to provide a *nearly* full array of services and the

this limited scope of services, Pricewaterhouse Coopers and Deloitte & Touche already employ approximately 2,000 lawyers domestically.

Id. at 4.

Finally, they had to make these lawyers proponents of change.

Pressure is coming from within the profession itself. . . . [I]t will be people like the 1,000 lawyers at Ernst and Young that will demand the ability to deliver a full range of legal services and be eligible for ownership opportunities in a MDP. And of course, history shows us that the Big Five will find ways to accommodate them, just like they currently do for engineers, investment advisors, and consultants.

Id. at 33.

So confident is this giant that it declares that the ultimate driving force of change for lawyers will not be service of the best interests of the public, but service of the best interests of the lawyers financially: "When lawyers working in MDPs are allowed to advertise and trade on the fact that they are lawyers, the competitive pressure within the legal profession will drive the opponents and proponents alike to seek and demand a level *economic playing field*." *Id.* (emphasis added).

As predicted, at the hearings before the Commission on Multidisciplinary Practice, lawyers working for accounting firms testified overwhelmingly in support of MDPs.⁹

In addition, the accountants have openly challenged lawyers to think about their own interests over that of the public. Think about yourself. Think about the bottom line. *Think about the money*:

Will the end result be the creation of a . . . regulatory system [similar to accountants]? I believe it will. Why? Because the same forces that have driven many professions and businesses to "adapt or die" are pressing the legal profession to modify and accommodate MDPs [T]he incentives are huge and the resources exist. First and foremost, the incentive is a piece of the roughly \$100 billion-a-year market for legal advice which the law firms have monopolized for centuries.

Id.

The reasons given by the accounting profession at the MDP hearings, however, were somewhat modified. The approach at the hearings was

Accountants expressed deep frustration at their inability to expand their multibillion dollar buffet to include legal services in the United States, where lawyers are actually an arm of a separate branch of government.

their inability to expand their multibillion dollar buffet to include legal services in the United States where lawyers are actually an arm of a separate judicial branch of government.

The Big Five are the giants of the accounting world. They are buying law firms in other countries left and right. *The legal profession has no giants* like the Big Five to become the consolidators of the legal profession In the U.S. alone, the Big Five employ 174,939 staff. Of those . . . 125,383 are 'other' professionals such as engineers, actuaries, nurses, and even lawyers [I]n 1998, the Big Five . . . generated worldwide revenues of roughly \$56.6 billion. 'Even the largest independent law firms pale in comparison to the scale of the Big Five Firms.' Which leads me to the creation of [the] subtitle *Fee, Fi, Foe, Fum! Look Out Lawyers Here We Come!*

convenience of one-stop shopping to their clients.

Id. at 5 (emphasis added).

Next, they had to carefully navigate the Rules Regulating The Florida Bar and convince lawyers that they could come on board without ethical repercussions.

In the U.S. today, lawyers work for accounting firms providing advice and consultation to clients in tax and business matters. But only in ways that the ABA has deemed "do not constitute the practice of law by a layman." In other words, if a layperson could provide that same service and not inadvertently step into the area of the unauthorized practice of law . . . then so can a lawyer. The remaining restriction on domestic lawyers working in these non-traditional entities include a prohibition against preparing legal documents, providing legal advice, and "holding out" as a lawyer. Even with

directed more toward the public. At the hearings, the accountants urged that it was not them that was really the driving force, it was the public. It's not so much our interest in expanding out multibillion dollar buffet. It's really the public that is demanding change. The public is demanding "one stop shopping," "bundled services," "a complete buffet" because the consolidation of legal services will create efficiency and that means savings—dollars—additions to the bottom line.

Another theme in the accountant offensive carried the tag line—lawyers, all dressed up with no place to go. If you don't capitulate voluntarily, *when we win this battle* either by change or market forces, you will not be prepared to compete. We will have the market and you will be all dressed up with no place to go.

Professional service firms with their roots in the accounting profession are well positioned to offer MDP services. Lawyers, by virtue of their self-imposed restrictions, are not . . . "Efforts by corporate purchasers of services to obtain optimal comprehensive solutions carry with them the real possibility that, in the absence of change, lawyers practicing in traditional law firms in the coming century might find themselves all dressed up with no place to go." (quoting Steven Bennett).

Written remarks of Treiger and Lipton, co-chairs, National Conference of Lawyers and CPAs (emphasis added).

Finally, they urged, the tide of change is so far advanced that you cannot stop the momentum even if you try. Essentially, you will be crushed by the wave. Your choices are really quite limited:

To address these changes and to prepare for the twenty-first century, the bar has essentially three choices:

- To do nothing, in which event external forces will become the sole determinants;
- To wage a defensive and seemingly selfish battle;
- To recognize the *tides of change* and attempt to help shape things to come by *working with, not against, the agents of change.*

See written remarks of Treiger and Lipton, co-chairs of National Conference of Lawyers and CPAs, emphasis and spacing added. See also

Squeeze Play, supra, picturing a bench of accountants from the Big Five with a lone lawyer struggling to stay on the edge.

Let there be no doubt about it. The MDP issue did not arise out of a groundswell of public demand. Even the ABA Commission Report on MDPs admits this.¹⁰ The MDP issue was a skillfully maneuvered operation.

And It Almost Worked—Almost

In August 1998, the ABA appointed a commission to study the MDP issue. In the course of one year, the commission was appointed, studied the issue, heard 60 hours of testimony from 56 witnesses from around the world, and received written and oral comments from others. See Report at p. 1. As the accountants predicted, the ABA study was driven by "urgency" due to the already existing "tide" of change:

What urgency exists which requires action at this meeting of the House? The

ABA president has called this the most important issue facing the legal profession today. Today lawyers are practicing in increasing numbers in professional services firms in the U.S., while claiming that they are not delivering legal services, and abroad such firms are holding themselves out as delivering legal services. The legal profession must address these issues now to ensure that the public interest is served.

See General Information Form from ABA at ABA website.

The commission rushed to complete a report within one year—and it did.

The report and accompanying documents are anything but an overwhelming endorsement of MDPs. To the contrary, the report carries with it a definite undertone of "we have no choice." The theme is almost exactly as the accountants predicted: It's already happening, we can't stop it, we might as well allow it so we can control it.

Lawyers already practice in various forms of such relationships outside the U.S. An increasing number of U.S. lawyers with significant practice experience

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are leaving law firms to join organizations such as the Big 5 accounting firms that provide a variety of professional services, and those organizations have also substantially stepped up their hiring of recent law school graduates. As those organizations expand the use of lawyers to design and help sell products for use by clients of the organization, additional care must be taken to assure that the lawyer members or employees of the organization are not aiding the unauthorized practice of law.

Report at 1.

One lawyer member of the MDP commission commented in an article in *The National Law Journal* in January 1999:

In my estimate, it will be fruitless to attempt to curtail or suppress these accounting firm activities So what should the bar do? The only sensible answer is to compete more effectively. This would require many changes in the way that most lawyers "package and sell" themselves. It would also require us to reconsider provisions in our rules

all. It gives an illustration of "possible" amendments but limits its recommendations as follows: that the ABA amend the Model Rules "consistent with the following principles." The principles describe the core principles which are implicated by such a sweeping change. It opines that "it is possible" to protect these values primarily through requiring members of MDPs to report to the highest court of the land certifying their promise to hold and keep these values just as a lawyer would. This promise is based on a "trust me" system and the penalty for violation is "decertification" of the MDP. The lawyer is responsible for the conduct of the nonlawyer members of the MDP who violate the rules and, as a matter of jurisdictional reality, is the only member within the power of the court for disciplinary pur-

It carried the day. Which brings us to where we are now.

While this committee has been in existence since July 1997, it has been unable to agree on the issues which are implicated in Florida by the MDP debate. It has tried, heartfully. It appointed issues subcommittees who exchanged drafts. It held meetings. It debated, endlessly. It wrote letters, and articles, and speeches. But the process, quite frankly, faced the danger of becoming bogged down. It is against this backdrop that the committee decided to appoint subcommittees to study the pros and the cons of the issue from the Florida perspective.

The foregoing is not a criticism of the committee. It recognizes the dedication and heart of this collection of volunteers. And more than this, the efforts of the committee and all of the debate and the process bringing us to this point has had valuable results. It revealed that the implications of this potential change are so far reaching and drastic for our profession and the public that it would be irresponsible to undertake such a change without clear and convincing evidence that the public and our system of justice will not be harmed. The con subcommittee respectfully submits that this brief reveals sufficient evidence of public harm that it would be irresponsible to vote for change in the face of those dangers. Sufficient evidence exists to decide that Florida should not be the guinea pig for change in the face of these substantial issues. At bottom, the advocates of change have not carried their burden.

Where Do We Begin?

Steven Covey, the national best-selling author of *The Seven Habits of Highly Effective People*, says that we must "begin with the end in mind." No matter how you chose to package the MDP issue, it boils essentially down to the question of whether Rule 4-5.4 should be amended. This rule, as with all the Rules Regulating The Florida Bar, is a result of an order of our highest court. It has a longstanding and rich

While this committee has been in existence since July of 1997, it has been unable to agree on the issues which are implicated in Florida by the MDP debate.

of ethics that hamper lawyers' competitive capability. Money is the Key.¹¹ The relevant rules for reconsideration are those governing financial relationships between lawyers and other service providers, and the rules governing imputation of conflicts of interest.

See G. Hazard, *Lawyers and Accountants Must Make it Work*, *National Law Journal* (Jan. 11, 1999) (emphasis original).

The report raised more questions than answers for the Bar. The report begins with an acknowledgment of the "need to protect at all times the interests of clients and the public and the core values of the legal profession." And it concludes that this is important. But it does not recommend a model which is capable of this. Indeed, the commission does not recommend a model at

poses. The proposal simply ignores jurisdictional realities and constitutionally mandated protections.

Florida Steps In

Of course, as all members of this committee know, Florida was the leader in stopping the tidal wave before it came crashing down as the final word on the subject by the ABA. The recommendation of The Florida Bar stated:

RESOLVED, that the American Bar Association make no change, addition or amendment to the Model Rules of Professional Conduct which permits a lawyer to offer legal services through a multidisciplinary practice unless and until additional studies demonstrate that such changes will further the public interest without sacrificing or compromising lawyer independence and the legal profession's tradition of loyalty.

history intended to protect the most essential core value of our profession—*independent professional judgment*. The Supreme Court has vigorously enforced its provisions and has intensely criticized the “disastrous results” that can occur when a practicing member of the Bar enters into a profit-making enterprise with a commercial business which *subordinates the practice of law to the activities of the commercial business*.” See *The Florida Bar v. James*, 478 So. 2d 27 (Fla. 1985).

The Rules Regulating The Florida Bar clearly define the obligations of the Board of Governors when considering any rule amendment:

The board of governors shall review proposed amendments by referral of the proposal to an appropriate committee thereof for substantive review. After substantive review, an appropriate committee of the board shall review the proposal for *consistency with these rules and the policies of The Florida Bar*.

Although only the philosophical concept of an amendment has been suggested, this rule will ultimately determine the duties of the Board if and when such a proposal is made.

Policies of The Florida Bar

The Rules Regulating The Florida Bar direct that the purpose of The Florida Bar shall be:

- To inculcate in its members the principles of *duty and service to the public*,
- To *improve the administration of justice*,
- And to *advance the science of jurisprudence*.

See Rule 1-2, Rules Regulating The Florida Bar.

At no time in history has The Florida Bar been more dedicated to the importance of independence and public trust. Indeed, in May 1990, The Florida Bar adopted one of its most sweeping pronouncements intended to recapture the public trust in our system of justice—The Ideals and Goals of Professionalism. This statement by the Board of Governors provides that “a lawyer should counsel and encourage other lawyers to abide by these ideals of professionalism” which include: contributing one’s skill, knowledge and

influence as a lawyer to further the profession’s commitment to serving others and to promoting the public good, including efforts to provide all persons, regardless of their means or popularity of their causes, with access to the law and the judicial system.

So important is the principle of independence to the public’s confidence in our system, that the Board of Governors has articulated the ideal related to this principle as follows:

Ideal: A lawyer should exercise independent judgment and should not be governed by a client’s ill will or deceit. Goals: A lawyer should counsel the client or prospective client, even with respect to a meritorious claim or defense, concerning the public and private burdens of pursuing the claim as compared with the benefits to be achieved. . . .

Id.

Professionalism and instilling the trust of the public in our system has become the mission of most of the Bar presidents of the last 10 years. This term, an all-out publicity campaign has started in this direction. Even the logo of The Florida Bar has

changed to include the promotion of professionalism, the pursuit of justice, and the protection of rights. Never in history has The Florida Bar been more dedicated to the professional aspect of our business existence. It is in this context that this problem must be addressed.

Consistency With Rules Regulating The Florida Bar

Even proponents of change admit that any change to Rule 4-5.4 will have far-reaching implications on other core values within the rules and on the administration and continuation of those rules as drafted. The following is an analysis of these core values in the context of the Rules Regulating The Florida Bar. As our mandate suggests, no analysis is complete without an eye toward *consistency with these rules*.

A Lawyer’s Duty of Confidentiality

The MDP model has been built on an underlying assumption that the

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bundling of services creates efficiency and efficiency creates savings. Part of this efficiency and savings is found in the notion that clients can simply walk down the hall from one professional to the next. The client will have economy through the ability to speak with multiple professionals at once and there will be a reduction in "up to speed time" or knowledge of various aspects of the client's problem. In the context of any other profession, this may be wise, efficient, and even advisable. In the context of the legal profession, it is not possible without substantially threatening the protections afforded by the attorney client privilege and duties of confidentiality.

In three distinct areas, the law takes special care to encourage such a free flow of information that challenges to the confidentiality of that information are fiercely resisted. This is because certain elemental societal functions would be threatened by anything less than complete honesty.

The priest-penitent privilege recognizes the human need to disclose to a spiritual counselor, in total and absolute confidence, what are believed to be flawed acts or thoughts and to receive priestly consolation and guidance in return. The lawyer-client privilege rests on the need for the advocate and counselor to know all that relates to the client's reasons for seeking representation if the professional mission is to be carried out. Similarly, the physician must know all that a patient can articulate in order to identify and to treat disease; barriers to full disclosure would impair diagnosis and treatment.

In the words of the U.S. Supreme Court, "These privileges are rooted in the imperative need for confidence and trust." *Trammel v. United States*, 445 U.S. 40, 51 (1980).

The principle of lawyer-client confidentiality is given effect in two related bodies of law, the attorney client privilege (which includes the work product doctrine) in the law of evidence and the rule of confidentiality established in professional rules of ethics. Both have ancient roots and predate any formal rule enactments:

The principle of lawyer-client confiden-

tiality is a cornerstone of legal ethics and has ancient roots. The attorney client privilege . . . was already established at the time of reign of Elizabeth I in England . . . The origin of the legal duty to preserve secrets, as distinct from the evidentiary privilege, has been traced back at least as far as the mid-19th century in England . . . The lawyer's obligation of confidentiality also draws from the common law of agency, which governs obligations arising from fiduciary relationships generally . . . An agent is prohibited from disclosing or using information revealed in confidence by the principal or acquired by the agent in the course of the agency, relating to the principal or to matters which the agent has been employed . . . This rule governs lawyers as well as agents.

ABA/BNA Lawyers' Manual on Professional Conduct, 55:301-302. See also *Keir v. State*, 11 So. 2d 886 (Fla. 1943) (Florida has long recognized and enforced the common law doctrines).

The lawyer's ethical obligation to protect these confidences appears in two places. First, as a condition to licensure, every member of The Florida Bar must swear to the Oath of Admission to The Florida Bar which states:

The general principles which should ever control the lawyer in the practice of the legal profession are clearly set forth in the following oath of admission to the Bar, which the lawyer is sworn on admission to obey and for the willful violation to which disbarment may be had . . . I do solemnly swear: . . . I will maintain the confidence and preserve inviolate the secrets of my clients . . . so help me God.

Second, Rule 4-1.6 of the Rules Regulating The Florida Bar provides:

A lawyer shall not reveal information relating to representation of a client except as stated in subdivisions (b), (c) and (d), unless the client consents after disclosure to the client.

This rule of confidentiality applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. See Comment. As the comment suggests, the entire system of justice is dependent on confidence by the public in providing all information related to a legal matter. A lawyer is part of that system and cannot uphold the law without complete and

accurate information.

The lawyer is part of a judicial system charged with upholding the law.

The observance of the ethical obligation of a lawyer to hold inviolate confidential information of the client not only facilitates the full development of facts essential to proper representation of the client but encourages people to seek early legal assistance.

A fundamental principle in the client-lawyer relationship is that the lawyer maintain confidentiality of information relating to the representation. The client is thereby encouraged to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter.

Comment, Rule 4-1.6.

"The attorney client privilege is in fact the oldest confidential communications privilege known in the common law. It is therefore not only an interest long recognized by society but also one traditionally deemed worthy of maximum legal protection." *American Tobacco Co. v. State*, 697 So. 2d 1249 (Fla. 4th DCA 1997). The relative certainty and predictability of this protection is essential to the public's confidence in the legal system.

But if the purpose of the attorney-client privilege is to be served, the attorney and client must be able to predict with some degree of certainty whether particular discussions will be protected. An uncertain privilege, or one which purports to be certain but results in widely varying applications by the courts, is little better than no privilege at all.

Upjohn Co. v. U.S., 449 U.S. 383 (1981).

The MDP proponents admit that there will be an impact on client confidentiality. Combined services, by definition, will implicate combined discussions, sharing of documents, etc. But, they contend, this impact can be minimized by mandatory disclosures by lawyers to clients that certain conversations may not be protected by the duty of confidentiality. See Report at 3. They further argue that the issues can be resolved through screening devices.

In addition, it may be necessary for an MDP to implement special procedures to protect confidential information such as building firewalls in the firm's computer information system, restricting access to client files by the use of special passwords, and physically separating the lawyers and their non-lawyer assistants,

paralegals, and secretaries from other service units within the MDP.

See Proposed Comment 3 to Model 5.8 in Appendix to Report. Ironically, this defeats the alleged justification of MDPs: efficiency which leads to savings.

At least one observer notes, "Under existing case law, the ABA commission's multidisciplinary proposal would *increase the costs of asserting the privilege.*" See Paul Rice, *Perils of the Law-Plus Firm*, Miami Daily Business Review, June 25, 1999, (emphasis added). Rice analyzes each element of proof in a privilege assertion. In a law firm setting, each of these elements is either easy to prove given the minimal number of nonlegal professionals exposed to the information or are presumed because of the way a law firm setting is known to exist. When the lawyer is providing legal and nonlegal advice or is in a setting where others provide such, the analysis will be more akin to an in-house counsel analysis. Each communication must be shown to have been for legal advice and not business advice. While the author does not cite it, this is the heightened standard which was articulated by the Florida Supreme Court in *Deason*.

The complications which are caused by mixing business advice with legal advice are demonstrated aptly in *Southern Bell Telephone and Telegraph Company v. Deason*, 632 So. 2d 1377 (Fla. 1994). In *Deason*, in house counsel for Southern Bell conducted an internal review of alleged illegal behavior. The documents were touched, read, and used for a myriad of purposes which related to Southern Bell's business. The Public Service Commission sought discovery of these documents. The Florida Supreme Court reviewed an administrative order compelling production on the basis that they were used in connection with *ordinary business purposes and not solely for legal purposes*. The Supreme Court noted that the "line between law-related communications and business communications [was] particularly blurry." It then

analyzed the complications caused by the mixing of business advice with legal advice and outlined a heightened standard for upholding the attorney client privilege in the corporate context.

[A] corporation relies on its attorney for business advice more than the natural person. Thus, it is likely that the "zone of silence" will be enlarged by virtue of the corporation's continual contact with its legal counsel . . . [C]laims of the privilege in the corporate context will be subjected to a heightened level of scrutiny.

The five-part test attempts to separate the world of business from the world of law and limits the protection to latter with possible waiver if the information is disseminated beyond those with a need to know. Much of the information was deemed unprotected because of the overlap. The combination of business and legal advice in the context of MDPs will be even more extreme. Unlike an in-house lawyer who serves one client, an MDP lawyer will serve many. In the words of the

U.S. Supreme Court, this arrangement will threaten the certainty which is essential to the function of the system. See *Upjohn*, 449 U.S. 383.

Conjecture about whether clients will *in fact* be inclined to withhold information because of fear of waiver should be viewed with caution. In the U.S. Supreme Court's most recent analysis of the privilege, the high Court refused to retreat from the long standing policies which underlie the privilege and rejected any speculation about how client disclosure may or may not be affected if protections were reduced. *Swidler & Berlin v. U.S.*, 118 S. Ct. 2081 (1998). In *Swidler*, the Court held that the privilege survives the death of the client:

Knowing that communications will remain confidential even after death encourages the client to communicate fully and frankly with counsel . . . Clients may be concerned about reputation, civil liability, or possible harm to friends or family. Posthumous disclosure of such communications may be feared as dis-

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closure during the client's lifetime [T]he loss of evidence admittedly caused by the privilege is justified in part by the fact that without the privilege, the client may not have made such communications in the first place Without assurances of the privilege's posthumous application, the client may very well not have made disclosures to his attorney at all, so the loss of evidence is more apparent than real.

The Court rejected the argument that there would be no harm in one limited exception in a criminal context because the limited times the issue would arise would likely reduce the impediment to the free flow of information.

A "no harm in one more exception" rationale could contribute to the general erosion of the privilege, without reference to common law principles or "reason and experience." While arguments against survival of the privilege are by no means frivolous, they are based in large part on speculation—thoughtful speculation, but speculation nonetheless—as to whether posthumous termination of the privilege would diminish a client's willingness to confide in an attorney.

At least one more compelling reason remains to reject this possible encroachment on these core values—and that is the affirmative disclosure obligations of various professions. More compelling than the affirmative obligation to remain silent is the affirmative obligation to disclose and the limitations on that obligation for lawyers compared to all other professionals. The ABA and other bar associations have dedicated great time and effort comparing the AICPA rules on confidentiality and a lawyer's obligations in this regard.¹² But this is not an issue about accountants. This is an issue about the combination of lawyers and *any* other nonlawyer that wishes to combine. This conceivably could include anything from a used car salesperson to an emergency room physician, to a clinical psychologist.¹³ Little attention is given to the myriad other business persons which may combine with a lawyer if MDPs were permitted. Indeed, most of the business interests which may conceivably combine with a law firm have no confidentiality restrictions whatsoever. To the extent that others have such restrictions, or af-

firmative disclosure obligations, the ability to chart and graph the possible conflicts and inconsistencies would be impossible.

The ramifications to the public of the erosion of confidentiality is simply too severe to justify change for the sake of the bottom line.

A Lawyer's Duty of Competence and Loyalty

Equality before the law is a basic ideal of American civilization and, indeed, of civilization itself. Despite de facto inequality of intelligence, education, experience, wealth and character, the ideal of the rule of law is de jure equality, that all are entitled to equal treatment before the law.

A society's legal system which reflects the society itself and the American legal system, founded on the notion of individual rights and procedural fairness, is complex. An understanding of the legal system requires extensive specialized education and years of practice. Those who have achieved minimum levels of the expertise necessary to advise the public on legal matters and who meet minimum standards of conduct and good character are admitted to the practice of law. Only then is an individual deemed a lawyer. And even this threshold acceptance is conditioned on continuing obligations to maintain a level of expertise and competence worthy to qualify one as a public advisor on the law.

While there may be wide disparities of ability among lawyers, the establishment of minimum standards of education and character assures the public of at least a basic level of competency and trustworthiness. It is this basic competency which assures de jure equality before the law. It is lawyers who help even the odds.

Lawyers protect client's rights. Loyalty is axiomatic to the lawyer's duty of protecting the client's rights. The unique relationship between a lawyer and a client is perhaps the ultimate fiduciary relationship and loyalty is at the heart of that relationship.

While a lawyer is rarely obligated to accept a client's cause, once accepted, the lawyer's loyalty is defined. It is to that client and that client's cause, within the bounds of the law. The function of the system would surely falter if clients feared that the fiduciary entrusted with their cause could later accept benefits and burdens which advanced the lawyer's or others' interests over the client's. So important is the public's trust in that unwavering loyalty, that the law imposes restrictions designed to limit the circumstances which are more likely than not to interfere with the lawyer's ability to place the client over the lawyer's own interests or the interests of others.

Nowhere in the rules is this duty more prominent than in Rule 4-1.7 prohibiting conflicts of interest. This rule prohibits both the representation of a client with interests adverse to another client and it prohibits representation of a client if that representation will be limited by the lawyer's responsibilities to another client, a third person, or the lawyer's own interests.

The comment to Rule 4-1.7 illustrates the meaning and purpose of the rule in terms of loyalty:

Loyalty to a Client

Loyalty is an essential element in the lawyer's relationship to a client.

Loyalty to a client is also impaired when a lawyer cannot consider, recommend, or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests.

The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Thus, the duties of loyalty and independence are inextricably intertwined. The lawyer must maintain an undivided loyalty to the client to enable the lawyer to exercise the lawyer's independent professional judgment. Conversely, the lawyer's ability to practice in an environment of independence makes loyalty possible.

Limitations Caused by Duties to Other Clients

Without express and informed client consent, a lawyer may not accept a representation directly adverse to a current client. Even with the consent of both parties, the lawyer may not do so if it is unreasonable to believe that the new representation will not adversely affect the lawyer's responsibilities to the first client. Rule 4-1.7. Appearing on both sides of the same transaction inevitably presents an unwaivable conflict for the lawyer. See Comment, Rule 4-1.7. So important is this duty to the public's confidence in our system, that it is imputed to members of the organization in which the lawyer practices. See Rule 4-1.10. The duty survives the termination of the representation and prohibits the lawyer from taking on interests adverse to the former client in the same or substantially related matter. See Rule 4-1.9. As the comments to these rules suggest, no reasonable person would truthfully confide in their lawyer about an adversary if that adversary could later obtain the lawyer's unwavering duty of loyalty in the same matter.

While other business organizations permit the use of screening devices to allow the business to profit from work for *and* against a client, or do not require screening at all,¹⁴ the legal profession has found the potential impact on the public confidence in the system too great to allow such a profit over duty exception to exist. Rule 4-1.7 does not recognize or permit screening to cure this type of conflict. Even voluntary screening of the most impenetrable force will not save a lawyer from disqualification in these circumstances. *Edward J. DeBartolo Corp. v. Petrin*, 516 So. 2d 6 (Fla. 5th DCA 1987). No amount of profit is more important than the public's perception that the lawyer can function within his duties of loyalty and confidentiality.

Indeed, the limited area where the court has made exception to this rule reflects just this premise. The recognition of screening devices, or "Chinese walls" as they are known,

appears in the rules in the context of transition from public to private employment. Rule Regulating The Florida Bar 4-1.11. The comments to the rules make it clear that the limited exception is made to encourage public service, not to protect profit.

[T]he rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. The provisions for screening and waiver are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service.

Accordingly, where such a transition is made, three requirements exist: A Chinese wall must be erected; no portion of the fee from the overlapping representation must be directly apportioned to the screened lawyer; and written notice must be given to the government to enable it to marshal strict compliance with the rule. The Supreme Court did not choose to extend such an exception in the context of private employment and courts have refused to extend it. *Edward J. DeBartolo Corp. v. Petrin*, 516 So. 2d 6 (Fla. 5th DCA 1987).

Even in contexts where Chinese walls have been allowed or used, they have been subject to heavy criticism. See written remarks of William Hannay, chair, Section of International Law and Practice ("there is no Chinese wall that a grapevine cannot climb over"). See also testimony of Sydney Cone (discussing the arrogance and unworkability of a "trust me" rule over a rule subject to independent safeguards for the client).

Limitations Caused by Duties to the Lawyer

Perhaps the most important limitation imposed upon a lawyer is the duty to put his or her client's interests above his or her own financial and other interests. Above all, the prohibition on fee sharing and partnerships with nonlawyers recognizes the natural human instinct to protect self over others—particu-

larly others not related by blood or marriage but by the mere payment of money for service. No lawyer can serve two masters and to suggest otherwise is to fly in the face of the human experience. The fee splitting prohibitions recognize this by minimizing the number of situations in which lawyers are motivated by their own economic incentives rather than by their client's best interests. *Lawline v. American Bar*



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Association, 956 F.2d 1378 (7th Cir. 1992), cert. denied, 510 U.S. 992 (1993).

Maintenance of this loyalty is recognized repeatedly in the rules and elsewhere.

- The lawyer's own interests should not be permitted to have adverse effect on representation of a client. —See Comment, Rule 4-1.7.

- [A] lawyer's need for income should not lead the lawyer to undertake matters that cannot be handled competently and at a reasonable fee *Id.*

- A lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest. *Id.*

- I will never reject, from any consideration personal to myself, the cause of the defenseless and oppressed, or delay anyone's cause for lucre or malice. So help me God. —Oath of Admission to The Florida Bar.

- I will exercise independent judgment —Creed of Professionalism.

- A lawyer should exercise independent judgment —Ideals and Goals of Professionalism, adopted by Board of Governors of The Florida Bar, May 16, 1990.

A financial interest in a lawyer's billing or financial control over a lawyer's practice by a nonlawyer would give such nonlawyer the economic power to compromise the lawyer's professional obligations of undivided loyalty to the client and freedom of exercise of the lawyer's professional independence of judgment. While modern culture holds that virtually anything can be made a "commodity" that can be bundled, consolidated and resold, neither loyalty nor any other virtue can be made a commodity. *It's not all about money.* The attorney/client relationship, the very practice of law, is grounded on the virtue of loyalty and any business organization where fees for legal services are shared with nonlawyers will destroy that virtue.

Regulation of Legal Profession and Adverse Effects on Independence

The proponents of MDPs admit that there are regulatory implications on any scheme which affirmatively co-mingles the practice of law with the practice of other professions. Indeed, some of the proponents at the ABA level even went so far as suggesting that a "super-regulator" may ultimately be required to adequately monitor these newly created entities. Clearly the theme of the comments, report, and testimony are that only lawyers in MDPs can be regulated by the state's highest court, this leaves much room for abuse, and the model appended by the ABA commission to the report gives a minimum possible solution which is not complete if these things take hold. The system would be based on a "trust me" reporting scheme that depends almost entirely on the organization itself and puts the burden of compliance and discipline on the lawyer members. How great for public confidence in the justice system! There is no real enforcement ability because there is no disciplinary jurisdiction over nonlawyers. The primary long term solution discussed by many proponents involves a revamping of the current system regulating lawyers and replacing it with either a global regulator (Department of Business and Professional Regulation) or a newly created regulator.

This issue has radical implications for the public. First, it impacts a separation of powers doctrine that has deep meaning in the administration of justice. Quoting one of our most well respected jurists:

We must never lose our independence or permit incursions into it. The danger is clearly present; an independent judiciary without an independent bar is like a scabbard without a sword.

Comments by Judge William M. Hoeveler, senior district judge, U.S. District Court, Southern District of Florida to ABOTA on Professionalism.

A Rich History

Every civilization that has embraced the notion of lawyers as ad-

vocates of client's rights has likewise embraced the necessity of the regulation of lawyers. Traditionally, admission to the Bar was literally the permission granted by a sitting court for an individual to cross the bar of justice and argue before the bench of sitting judges. A person so admitted who thereafter did not live up to the required societal standards was disbarred and that permission was withdrawn. Today, constitutionally, that duty lies exclusively with the Florida Supreme Court. Fla. Const. Art. V, §15.

Earlier in this century, Florida lawyers had no mandatory organization. In the 1930s, it was first proposed that all lawyers, upon admission to practice, be required to be members of the state Bar system. The Supreme Court initially rejected this proposal. But in 1947, Bar leaders once again approached the court to ask for compulsory membership requirements. Those Bar leaders argued that only through an integrated organization of all Florida lawyers could lawyers receive uniform education on changes in Florida law and court procedures. An integrated Bar would also pave the way for a uniform discipline system, capable of weeding out unethical lawyers and assuring the public that only lawyers with high standards would be allowed to practice law. In the summer of 1949, the Florida Supreme Court told Bar leaders to form an integrated Bar. Since then, all lawyers who practice in Florida must be members of The Florida Bar.

We cherish our independent judiciary, a hallmark of our legal system. The judiciary balances and, where necessary, checks the power of the other two branches. Judges are necessarily protected from the influence of partisan politics in order to render decisions based on the law, rather than on popular opinion. The Florida Bar has long maintained that Florida's separation of powers doctrine precludes legislative entry into lawyer regulation. Rather, regulation of the legal profession is a unique and proper power of the courts in the exclusive exercise of

the Supreme Court's judicial function, under Fla. Const. Art. V, §15.

However, regulation of The Florida Bar by the Supreme Court has regularly come under attack. Proposals are made to place disciplinary regulation of lawyers under the executive branch or to subject the practice of law to legislative control. For example, an effort to have the legal profession regulated by the Department of Professional Regulation went before the Florida House of Representatives for the first time in 1984. (The measure failed by a close vote, 62-51.) In 1993, a bill was proposed to provide that admission of persons to practice law and discipline of persons admitted should be pursuant to general law rather than by exclusive jurisdiction of the Supreme Court. Similar measures, all calling for the restructure of regulation of Florida lawyers, were proposed in each subsequent legislative session, from 1994 through 1999.

The Florida Bar has responded that lawyers are members of the judicial branch in a real sense. They are "officers of the court." Their duties, which extend beyond representing a client's best interest, include duties to the system of justice itself. Regulation of the Bar and the practice of law is unlike regulation of any other profession because the court's functions are inextricably intertwined with the practice of law. Lawyers' conduct, therefore, is subject to special and stringent regulatory supervision because what lawyers

do is an integral element of the judicial process. As the Florida Supreme Court asserted when it unified the former Florida State Bar: "It is hardly necessary to assert that the bar has responsibility to the public that is unique and different in degree from that exacted from the members of other professions." *Petition of Florida State Bar Association*, 40 So. 2d 902, 908 (Fla. 1949).

The preamble to our Rules of Professional Conduct expressly affirms the importance of this commitment:

Lawyers are officers of the court and they are responsible to the judiciary for the propriety of their professional activities. Within that context, the legal profession has been granted powers of self-government. Self-regulation helps maintain the legal profession's independence from undue government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on the executive and legislative branches of government for the right to practice. Supervision by an independent judiciary, and conformity with the rules the judiciary adopts for the profession, assures both independence and responsibility.

Thus, every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest that it serves.

The Tallahassee Democrat eloquently communicated the same idea in a different way during one of the legislative attacks on regulation

of the legal profession, April 8, 1988:

There is no doubt that lawyers are a unique group, charged as officers of the court with a higher calling—the stewardship of our justice system—and that there are valid reasons for that status. The Bar, supervised by the Supreme Court, does a better job of regulating its fraternity than DPR does of policing any of the other professions, and there is no good reason to change that unique status . . . This extraordinary power of self regulation requires an equally extraordinary sense of public responsibility and . . . restraint. Or it will surely one day be lost. And both the profession and the public would be the worse for that.

The inevitable conclusion of a mixed business entity will be the need for a different regulatory scheme. Unless and until the Constitution of the State of Florida is radically amended to grant the Florida Supreme Court sweeping new powers to regulate nonlawyers, any change to the Rules of Professional Conduct permitting the splitting of fees for legal services with nonlawyers will effectively strip the Florida Supreme Court of its constitutional mandate to regulate the practice of law. The separation of powers so integral to the function of our system will be seriously threatened thereby harming the public. In the words of Judge William Hoeverler, "the scabbard will have no sword."

What Is the Relevant Inquiry?

Much of the MDP debate has centered around the concept that MDPs

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are already operating and that we will not be able to stop them so we might as well join them and regulate it as much as we can. The purported "support" for this conclusion is mixed. Some opine that the accounting profession has billions behind its offensive and would crush any bar association daring to challenge their public proclamations that the lawyers in their doors are not technically "practicing law." Some believe that other Bar associations have not pursued the accounting profession to conclusion in this context because the Bar did not have the resources to fight the fight. Others believe that the UPL laws will not be sufficient to stop the behavior because the facts are so incapable of independent verification and big business wants to add to the bottom line by consolidating service. Some believe that at least some segment of the public will endorse this and, therefore, the public harm element will be difficult to prove. Others simply focus on the potential adverse financial impact on lawyers and run for solutions before considering the consequences.

A quote from *Florida Bar v. Murrell*, 74 So. 2d 221 (Fla. 1954) is poignant in response:

Chief Justice Stacy epitomized the essential quality of an upright lawyer to be that which "expresses itself, not in negatives nor in following the line of least resistance, but quite often in the will to do the unpleasant thing if it is right, and the resolve not to do the pleasant thing if it is wrong."

Citing *In re Farmer*, 191 N.C. 235, 131 S.E. 661, 663.

If the conclusion of the Bar is that the public will be harmed by such a change,¹⁶ which we believe this brief clearly reveals, it is duty bound to do the right thing, regardless of the obstacles which stand in the way, regardless of the chance of success in the long run and regardless of impact to the bottom line of lawyers. No cause in recent history has made a more blatant attempt to elevate money over the public interest.¹⁶ The fact that the financial impact most likely to be made is on the pocket books of lawyers places our motives at the center of public scrutiny. And

our duty to do the right thing is heightened in this environment.

UPL Implications

As Edith Osman, president of The Florida Bar, so aptly noted in presenting The Florida Bar's recommendation to the ABA Commission on Multidisciplinary Practice: No analysis would be complete without consideration of the UPL implications. The UPL implications are accordingly analyzed below.

• *The Public Will Be Harmed if Nonlawyers Who Are Neither Licensed nor Regulated Participate in Giving Legal Advice.*

What is the "practice of law"? Since the seminal case of *State ex rel. Florida Bar v. Sperry*, 140 So. 2d 587 (Fla. 1962), the Florida Supreme Court has recognized that protecting the public and reducing the financial loss that individuals suffer at the hands of unlicensed practitioners remain the primary rationales for prohibiting the unlicensed practice of law. See *The Florida Bar re Amendments to Rules Regulating The Florida Bar*, 685 So. 2d 1203 (Fla. 1996).

In *Sperry*, the court recognized that:

The reason for prohibiting the practice of law by those who have not been examined and found qualified to practice is frequently misunderstood. It is not done to aid or protect the members of the legal profession either in creating or maintaining a monopoly or closed shop. It is done to protect the public from being advised and represented in legal matters by unqualified persons over whom the judicial department can exercise little, if any, control in the matter of infractions of the code of conduct which, in the public interest, lawyers are bound to observe.

Id. at 595.

The *Sperry* court also provided comprehensive guidelines to determine what activities constitute the practice of law. It determined that practicing law includes not only services in representing another before the courts, but also giving legal advice and counsel to others as to their rights and obligations under the law and preparing legal instruments, by which rights are either obtained, secured or given away. *Sperry* at

591. The court said it was safe to follow the rule that:

[I]f the giving of such advice and performance of such services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law.

Id.

Since *Sperry*, the Supreme Court has had many occasions to consider whether various activities, when performed by nonlawyers, constitute the practice of law. The court has consistently been guided by twin pole stars—whether the activity *promotes public access* and whether it either actually or potentially *causes public harm*.

In *In re: The Florida Bar*, 215 So. 2d 613 (Fla. 1968), the court determined that certain activities, when performed by a securities broker, constituted the unauthorized practice of law. These activities included legal advice given concerning the application, preparation, advisability, or quality of any legal instrument, document, or form in connection with the disposition of property, either *inter vivos* or upon death.

Distinguishing the preparation of living trusts from the preparation of pension plans, the court held that nonlawyer companies selling living trusts were engaging in the unlicensed practice of law, and *that the public was either actually being harmed or had the potential of being harmed*, in *The Florida Bar Re: Advisory Opinion—Nonlawyer Preparation of Living Trusts*, 613 So. 2d 426 (Fla. 1992) (emphasis added). The court reasoned that practice in the pension area was before administrative agencies by authorized professionals, and thus the public was afforded protection through federal regulation and licensing. However, nonlawyer sellers and drafters of living trusts were not held accountable to any governmental agency or body. The court further noted in its opinion the conflict

of interest present when a lawyer was employed by a corporation selling the living trust, rather than by the client. In that event, the court said that a lawyer who assembled, reviewed, executed, and funded a living trust document should be an independent counsel paid by the client and representing the client's interest alone. *Id.* at 428.

Further guidance on what activities constitute practicing law is found in UPL enforcement cases. The Supreme Court determined that preparing legal documents relating to domestic relations, and appearing in court on behalf of others in cases relating to domestic relations, is the unauthorized practice of law, in *The Florida Bar v. Strickland*, 468 So. 2d 983 (Fla. 1985). In *The Florida Bar v. Mickens*, 465 So. 2d 524 (Fla. 1985), the court found that preparing legal documents and appearing in court in tenant eviction proceedings is the practice of law. And in *The Florida Bar v. Kaufmann*, the court determined that the practice of law includes appearing in court or in proceedings which are part of the judicial process.

Are MDPs Engaged in the "Practice of Law?"

There isn't much challenge to the conclusion that lawyers employed by MDPs are engaged in the practice of law. Anecdotally, many have reached this conclusion. One lawyer was offered a position with an accounting firm, and was assured that the lawyer's day-to-day practice would be virtually the same as it is with the lawyer's private law firm. Accounting firms' websites confirm to the inquiring public that they offer legal services.

Moreover, activities MDPs are likely to perform include those which the Supreme Court has specifically prohibited nonlawyers to engage in, because they result in public harm or have the potential of doing so. For example, MDPs likely give legal advice concerning the application, preparation, advisability or quality of legal instruments, documents, or forms in connection with the disposition of property, either inter vivos

or upon death, an activity prohibited by *In re: The Florida Bar*, 215 So. 2d 613 (Fla. 1968). The concept of "one stop shopping," in which MDPs employ various personnel to perform multiple tasks for the same client, also presents conflict of interest problems. The Supreme Court has recognized, in *The Florida Bar Re: Advisory Opinion—Nonlawyer Preparation of Living Trusts*, 613 So. 2d 426 (Fla. 1992), the inherent conflict of interest when a lawyer employed by a corporation—such as an MDP—assembles, reviews, executes, and funds a living trust document for a client. Unless the client pays for independent counsel who will represent the client's interest alone, the MDP's interest is likely to be paramount to the client's.

In sum, the Supreme Court has quite specifically defined a good number of activities which nonlawyers may not perform, because they constitute the unauthorized practice of law. Cases such as *Sperry* provide general guidelines, while other cases either condone or prohibit distinct activities. The competing goals of public access versus public harm provide the constant tension.

Based on the information available, MDPs are providing legal services, as specifically defined by the Supreme Court. Its definitions are never made in a vacuum, but always take the public access versus public harm tension into consideration. If it considered the issue today, the court would likely find that the public is being harmed by the MDPs' unauthorized practice of law.

What Is Our Duty?

• *The Florida Bar Should Investigate and Vigorously Enforce the Rules Regulating The Florida Bar and Devote Such Assets as May Be Necessary to Diligently Prosecute All Violations Thereof.*

By rule, the Supreme Court has vested three entities as "agencies of the Supreme Court" with all of the "jurisdiction . . . necessary to conduct the proper and speedy disposition of any investigation or cause." Rule 3-3.1. One such agency is The Board

of Governors of The Florida Bar. The BOG has the authority and responsibility to govern and administer The Florida Bar and to take action it considers necessary to accomplish its purposes. [RRTFB 1-4.2]. By express delegation, the BOG has been charged with "the responsibility of enforcing the Rules of Discipline and the Rules of Professional Conduct;" the obligation to "supervise and conduct disciplinary proceedings in accordance with" the Rules Regulating

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The Florida Bar; and "is assigned the responsibility of maintaining high ethical standards among the members of The Florida Bar." See RRTFB 3-2.1(b); 3-3.2; 1-8.1; 2-3.1. According to the Grievance Committee Handbook: "The bar is required to assume the initiative in disciplinary investigations. Therefore, if any member of the board of governors, a grievance committee, bar staff or a member of the bar is aware of potential unethical conduct or allegations thereof, *it is their duty* to report that action to the appropriate authorities and to undertake appropriate action. See Handbook, p. 5, citing RRTFB 4-8.3(a). See RRTFB 3-7.3c, stating that complaints by The Florida Bar need not be in writing.

Enforcement is not only possible; it is mandated. And it can be accomplished in more than one way. Most who throw up their hands at the Bar's ability to investigate and prosecute such conduct focus only on the first of these options.

Enforcement by UPL Committee

The UPL Committee is empowered to handle this function. Critics have expressed little confidence in this option as funding is limited or resources limited. The fact is, if this is an issue of compelling importance, the Bar has the obligation to do what it takes to give this department the proper support. We think we can win the battle, but that is ultimately up to the Supreme Court of Florida. Sufficient evidence exists to investigate the practice.

Enforcement by Grievance Procedures

The second enforcement option is the formal grievance procedure. This option is little discussed by proponents or opponents but carries benefits for the marshaling of the MDP issue. The Florida Bar takes the position that only lawyers and law firms can render legal services in Florida. Thus, if multidisciplinary firms are rendering legal services, the lawyers who are part of those firms are assisting the unauthorized practice of law and violating other

independent duties. MDPs such as Arthur Andersen advertise on their websites that their services include "legal services." If these services are provided to consumers (as opposed to in-house counsel types of services), the lawyers within the MDPs necessarily share their fees with nonlawyers. If one of the lawyer's defenses is that he or she is not practicing law or doing legal business, there would be no privilege and thus no prohibition against discovery because of confidentiality.

One of the differences of pursuing enforcement of the Bar's rules through the grievance procedure, as opposed to UPL, is that each prosecution is individual. MDPs would not be permitted to intervene in the grievance process. Also, a UPL action would be filed directly against the MDP. Such an action would directly affect the MDPs rights and trigger its vast resources. On the other hand, in a lawyer regulatory or disciplinary action, the only private rights involved are those of the respondent lawyer. Although the MDP would undoubtedly participate behind the scenes in any action against a lawyer employee, the litigation should be somewhat tempered, compared to the potential hurricane forces other bar associations have feared.

At bottom, the UPL/enforcement implications are this: If lawyers in MDPs are violating the law or the regulations of the profession, they are subject to regulation. Period. The Bar must decide to put its forces behind the effort.

Empirical Data

Proponents and opponents have debated the need for empirical data. But the question inevitably becomes, what kind of empirical data? How are you going to get the true sentiments of the "public" rather than the views of interest groups that have a stake in the issue? Indeed, this is an issue on which lawyers are not fully informed. How can we credibly go to the public without understanding the issue ourselves? We submit that it would be irresponsible to do so. There are core values

of the legal profession involved in this issue and to this date we have not seen any "empirical" data that comes close to overcoming these core values.

Conclusions and Recommendations

Consistent with the recommendation at the beginning of this report, the Con-MDP Subcommittee of The Florida Bar Special Committee on Multidisciplinary Practice respectfully recommends that The Florida Bar adopt the following position:

Position of The Florida Bar on Multidisciplinary Practice

I. It is in the public interest to preserve the lawyer's duty of undivided loyalty to the client.

II. The Florida Bar finds no credible evidence or persuasive argument that it would be in the public interest to amend the Rules Regulating The Florida Bar or the Code of Professional Responsibility to allow the sharing or splitting of fees for legal services with nonlawyers.

III. It is in the public interest for the Supreme Court of Florida to regulate the practice of law by regulating the admission of persons to the practice of law and the discipline of persons admitted.

IV. The Florida Bar shall vigorously enforce the Rules Regulating The Florida Bar and devote such assets as may be necessary to diligently prosecute all violations thereof. □

¹ Ms. Silvergate is not an official member of the committee but contributed substantially to this brief. The Con Subcommittee recognizes and appreciates her contribution.

² In point of fact, The Florida Bar has already received actual inquiries from attorneys who wish to either own or have partnerships with the following: "used car lots, coffee shops, MRI centers, physicians, accountants, financial planners, guardians, elder care helpers, title insurance companies, stock brokers, patent research companies, investigators, dentists, mental health counselors, mediators, arbitrators, lease audit firms, paralegals, and sports agents, to name but a few." As stated in *The Florida Bar's Report and Recommendation 10B to the American Bar*

Association House of Delegates on August 9, 1999.

³ "All lawyers should have some concern . . . Most of them don't even know what is happening." *Squeeze Play* by John Gibeaut, ABA J. (February 1998), quoting Irwin L. Treiger, ABA co-chair of the National Conference of Lawyers and CPAs.

⁴ The American Bar Association Commission on Multidisciplinary Practice defines MDP as: "a partnership, professional corporation, or other association or entity that includes lawyers and non-lawyers and has as one, but not all, of its purposes the delivery of legal services to a client other than the organization itself or that holds itself out to the public as providing nonlegal, as well as legal, services. It includes an arrangement by which a law firm joins with one or more other professional firms to provide services, and there is a direct or indirect sharing of profits as part of the arrangement." See *Appendix C to Report of ABA Commission on Multidisciplinary Practice*.

⁵ Washington, D.C., is the only jurisdiction which allows some restricted form of fee splitting.

⁶ The exceptions include: various payments due to the death of a lawyer or due to the conclusion of business due to the absence of a lawyer; bonuses to non-lawyer employees not tied to client generation or a percentage of fees; qualified pension plans.

⁷ The central issue in the case was solicitation and other advertising by lawyers. To this day, lawyers may not advertise in the same way any other business can, may not puff its wares as any other commodity sold to the public, and may not engage in outright solicitation for pecuniary gain. See Rules Reg. The Florida Bar 4-7. These restrictions "prevent abuses, including potential interferences with the fair and proper administration of justice and the creation of incorrect public perceptions or assumptions about the manner in which our legal system works, and to promote the public's confidence in the legal profession and this country's system of justice . . ." See Comment to Rules Reg. The Florida Bar 4-7.2 (emphasis added).

⁸ Quoting Ward Bower, an "international expert on multidisciplinary practices."

⁹ "Four out of five of the *Big Five* testified before the Commission that the most efficient way to provide a seamless web of services to clients was through an integrated services entity." See Reporters Notes, ABA Report on MDP (emphasis added).

¹⁰ The ABA report states: "While detailed empirical data is not available, representatives of both individual and corporate clients expressed support for relaxing the rules of professional conduct that currently either foreclose or make it extremely difficult to choose such an option." Indeed, consumer witnesses admitted: "The fact is that the average consumer isn't aware that there is the possibility of getting legal services any way other than the current way [law firm] . . . Most con-

sumers, in other words, aren't aware of what they are missing. But if you lift the restrictions barring multidisciplinary practices, I think you'll find just how great that hidden demand is." Testimony of Lora H. Weber, President and Executive Director of Consumers Alliance of the Southeast (emphasis added). Later the report reveals: "Four out of five of the *Big Five* testified before the Commission that the most efficient way to provide a seamless web of services to clients was through an integrated services entity." See Reporters Notes, ABA Report on MDP (emphasis added).

¹¹ This bolded phrase appears as a sub-heading in the article.

¹² AICPA rules provide that a member in public practice shall not disclose any confidential client information without the specific consent of the client. The Rules go on to provide that it shall not be construed to relieve his/her professional obligations under certain other rules, to affect in any way the member's obligation to comply with a validly issued and enforceable subpoena or summons, or to prohibit a member's compliance with applicable laws and government regulations. Moreover, §10A of the Securities Exchange Act of 1934 imposes upon the auditor under certain circumstances an obligation to report certain illegal acts directly to the SEC. SEC officials have opined that it is impossible to reconcile the role as private advocate with certain duties accountants

and auditors owe to the investing public.

¹³ See note 2, *supra*.

¹⁴ The conflict rules of the accounting profession are less restrictive than the conflict rules of the legal profession. Under the AICPA rules, accountants cannot simultaneously counsel current, or current and former clients, who are directly adverse. However, the rules allow a waiver and the use of screening devices. The legal ethics rules are more restrictive. The legal rules should be changed, accountants urge. Testimony of Richard Spivak, Arthur Anderson partner and lawyer, 3/31/99. Indirect conflicts are not imputed in accounting firms. Consider a situation in which one professional in the firm is representing client A. A second professional is representing B in an unrelated matter. A and B, however, are adverse in a third matter. The accounting rules do not require consent or disclosure. The legal rules should be changed, accountants urge. Testimony of Richard Spivak, Arthur Anderson partner and lawyer, 3/31/99.

¹⁵ Ironically, many addressing the issue fear a public backlash at a decision not to allow MDPs. A real understanding of the issue reveals that the back lash should come publically from a decision to allow MDPs for the protection of lawyers over any harm to the public.

¹⁶ The HMO issue comes close. The epilogue to that story is so well known that the mere mention of HMOs makes the point. But the analogy is apt.

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THE FLORIDA BAR RESOLUTION REGARDING
MULTIDISCIPLINARY PRACTICE AND ANCILLARY BUSINESS

WHEREAS, The Florida Bar has exhaustively studied and debated the merits of amending the Rules Regulating The Florida Bar (the "Rules") and the Model Rules of Professional Conduct to:

1. permit the sharing of fees for legal services with nonlawyers, ("Multidisciplinary Practice"); and
2. clarify the ethical duties of lawyers engaged in business other than the practice of law ("Ancillary Business"); and

WHEREAS, any change to the Rules must be based on the public interest; and

WHEREAS, The Florida Bar recognizes the accelerating rate of socioeconomic change affecting the practice of law;

NOW THEREFORE, be it resolved that:

1. It is in the public interest to preserve the core values of the legal profession and that among these are:
 - a. the lawyer's duty of undivided loyalty to the client;
 - b. the lawyer's duty to competently exercise independent legal judgment for the benefit of the client;
 - c. the lawyer's duty to hold client confidences inviolate; and
 - d. the lawyer's duty of avoiding conflicts of interest with the client.
2. Multidisciplinary Practice is inherently inconsistent with the core values of the legal profession.
3. The Rules were adopted by the Supreme Court of the State of Florida to protect the public interest by preserving the core values of the legal profession and The Florida Bar therefore opposes any amendment to the Rules that would permit the sharing of fees for legal services with nonlawyers or permit nonlawyers to own any interest in a law firm.
4. The core values of the legal profession are essential to the proper function of the American Judicial System.
5. The Florida Bar reaffirms its commitment to vigorously enforce the Rules.
6. The Florida Bar shall provide guidance to those lawyers who wish to engage in Ancillary Business in conformance with the Rules.
7. The Florida Bar shall establish a special commission to study the evolution of the practice of law in the new millennium in the face of accelerating socioeconomic change.
8. The Florida Bar shall oppose any attempt by the American Bar Association to change any of the Model Rules of Professional Conduct which would compromise the core values of the legal profession by permitting the sharing of fees for legal services with nonlawyers or permitting nonlawyers to own any interest in a law firm.

COMMENT TO THE FLORIDA BAR'S RESOLUTION
REGARDING MULTIDISCIPLINARY PRACTICE AND ANCILLARY BUSINESS

The Florida Bar has endeavored to achieve clarity, simplicity and brevity in its Resolution. This effort has been difficult and time consuming but the current debate on these issues has generated an overwhelming volume of information, argument and opinion. It should be noted that The Florida Bar has been commended for providing a wide range of materials on this debate through its web site, <http://www.flbar.org/newflabar/organization/committees/scanc.html>. Thorough evaluation of this issue has been a prodigious effort. The Florida Bar believes that if it is to communicate effectively, it must distill its message to the very essence of the issues.

The Board of Governors appointed a Special Committee (the "Special Committee") in July of 1997 to study Multidisciplinary Practice and Ancillary Business. Multidisciplinary Practices were understood to be organizations owned by lawyers and non lawyers which provide legal services and non-legal services and share the fees generated from the practice of law. Ancillary businesses were understood to mean separate businesses which do not render legal services but offer goods and services to customers, in which a lawyer has an economic interest.

In August of 1998, the American Bar Association (the "ABA") appointed a Special Commission (the "ABA Commission") to study Multidisciplinary Practices.

After extensive study and taking 60 hours of testimony from 56 national and international witnesses, the ABA Commission issued a Final Report to the ABA House of Delegates in June of 1999. That report recommended that the Model Rules of Professional Conduct be modified to eliminate the prohibition on fee sharing between lawyers and nonlawyers, thereby formally approving for the first time the ethical existence of Multidisciplinary Practices in the United States.

The mission of the Special Committee was expanded to include the evaluation of the ABA Commission's recommendation and an analysis of the MDP issue in Florida. Based on the recommendation of the Special Committee and the resolution of the Board of Governors of The Florida Bar, the Florida delegation to the ABA formally opposed the Final Report of the ABA Commission and presented a Resolution to reject the Commission's proposal.

An amended version of The Florida Bar's Resolution was passed by the ABA in August of 1999 as follows:

"Resolved, that the American Bar Association make no change, addition or amendment to the Model Rules of Professional Conduct to permit a lawyer to offer legal services through a Multidisciplinary Practice unless and until additional study demonstrates that such changes will further the public interest without sacrificing or compromising lawyer independence and the legal profession's tradition of loyalty to clients."

The Special Committee studied the ABA Report, the record support for its report, its investigatory materials to the extent publicly available, testimony before the ABA Commission and essays and analyses from around the country.



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OMAR A. GIRALDO
PAST PRESIDENT

October 21, 2021

Dear President Michael G. Tanner and The Florida Bar Board of Governors:

The Broward County Bar Association (“BCBA”) opposes amending Rule 4-5.4, Fee Splitting and Law Firm Ownership to permit non-lawyer fee-splitting and non-lawyers owning law firms, as recommended by the Final Report of the Special Committee to Improve the Delivery of Legal Services, dated June 28, 2021 (the “Report”). Specifically, it is the position of the BCBA that the Florida Bar maintains an ethical duty to protect consumers seeking legal services. The basis for ethics rules and professionalism guidelines are to ensure that members of the Florida Bar have been vetted and found capable of meeting those requirements in the law. Lawyers are held to a standard that, if not met, may subject them to punishment up to and including the loss of their license to practice law in the State of Florida. Those rules are set in place to protect consumers. Allowing non-lawyers to participate in the provision of legal services places the public at risk, without any appropriate safeguards¹. In order to place the public at such a risk, there should be a showing of substantial need for these proposed changes to occur. Based on the information outlined in the Report, there is not sufficient evidence of such an overwhelming public need for these rule changes that could justify the risks that they will expose consumers to.

While the BCBA supports studying and revising the Rules governing Florida lawyers to improve delivering legal services to Florida’s consumers, non-lawyer fee-splitting and non-lawyer’s owning law firms will not accomplish that objective. These changes will not benefit consumers. And, they will weaken the Florida Supreme Court’s responsibility “to regulate . . . the discipline of persons admitted” to the Bar and harm lawyer professionalism.

Rather than the Report’s proposed changes, the BCBA supports and recommends studying how legal aid, pro bono, and “low bono” legal service programs can be enhanced or expanded, and how Florida Bar members can be required or encouraged to assist in increasing access to legal services. This can serve more than one interest of the Florida Bar; to wit: expand the job market for the recent law school graduates that have opportunities to work in varied fields with mentorship and guidance as well as provide additional legal options for consumers.

¹ On October 14, 2021, the Florida Supreme Court addressed the unlicensed practice of law and the increased risk to the public at length in the case of The Florida Bar v. TIKD Services, LLC (FL Sup Court Case No. SC18-149). The Court plainly reiterates and affirms existing law: “The inherent conflict that arises when a nonlawyer either derives income from or exercises a degree of control over the provision of legal services presents a substantial risk that the public will be exposed to and harm by “incompetent, unethical or irresponsible representation.” (citing Fla. Bar v. Moses, 380 So. 2d 412 (Fla. 1980)).

Fee-Splitting and Non-Lawyer Ownership of Law Firms is Not the Solution

The Report supports non-lawyer ownership because consumer access to legal services is impeded by law firms lacking capital, and thereby, “suffer[ing] from a lack of marketing, finance systems, project management, and more.” The Report relies heavily on one study looking at England, Wales, and Australia, which provides little support for the Report’s conclusions.²

However, law firms, from solo practitioners to large, multi-national law firms, have access to nearly unlimited technical resources that enhance legal practice. For example, the Florida Bar Member Benefits page provides numerous practice resources and software, ranging from file sharing and storage, practice management, education, legal research, and e-discovery. [Member Benefits Program: Practice Resources & Software – The Florida Bar](#); *see also* Resources for Financial Services, [Member Benefits Program: Financial Services – The Florida Bar](#); Internet Marketing, [Member Benefits Program: Internet Marketing – The Florida Bar](#); Legal Forms, [Member Benefits Program: Legal Forms – The Florida Bar](#); Legal Publications, [Member Benefits Program: Legal Publications – The Florida Bar](#).

It is simply unnecessary to give such companies, which are already providing such services, or venture capital firms an ownership interest or the ability to share fees. Florida firms already have access to technological enhancements to legal practice, and more are available each day. Indeed, one need only tour the lobby of the Florida Bar annual meetings to see the available vendors providing such services.

The BCBA believes that non-lawyer ownership and non-lawyer fee-splitting will unfortunately not lower the cost for legal services to consumers. Non-lawyers have always been prohibited from owning law firms and sharing legal fees. These prohibitions have not inhibited resources for the simplest legal matters. *See, e.g.*, Legal Zoom, Rocket Lawyer, Zen Business, Incfile, Trust and Will, Divorce Forms Filler, CSC Global, and many, many more. Other than the simplest matters, legal services are not commodities whose cost can be purchased from Wal-Mart, Home Depot, or Amazon.com. Non-lawyer ownership and fee-splitting will ultimately benefit large, corporate entities, motivated by increasing shareholder value, not by benefiting consumers or Florida Bar members. (It is interesting that the Report’s primary support comes from a paper produced by authors from Stanford University, which is known to have deep ties with some of the largest technological companies.)

On the other hand, non-lawyer ownership and non-lawyer fee-splitting will undermine law firm independence, professional standards, and attorney discipline. If for profit companies have an ownership interest in law firms or the ability to share legal fees, such non-lawyers’ financial considerations will impair lawyers’ code of professional conduct. Moreover, even if such non-lawyers become regulated by the Florida Supreme Court, such non-lawyers may discount the threat of discipline, as being outweighed by the financial benefits from firm ownership or fee splitting. In the end, the Court’s constitutional responsibility to regulate members of the Florida Bar will be weakened, and consumers’ access to legal services will be harmed.

Recommended Alternatives

The BCBA recognizes that the high cost of legal services impairs many consumers access to legal services. The Report’s recommendations favoring non-lawyer ownership and fee splitting are based on a very limited data source. At a minimum, before such recommendations are implemented, even in a limited manner through an innovative laboratory, a much more definitive review of the peer-published literature should be conducted.

² Report, at 6, n.20 (relying on [Microsoft Word - Rule 5.4 Whitepaper.docx \(stanford.edu\)](#)) For example, the whitepaper points to success where non-lawyer ownership was permitted in England and Wales by supporting the increase in firms’ having websites, but such is nearly universal in Florida (besides the already existing marketing of legal services on radio, TV, mailings, and print). The Whitepaper provides little or no evidence that the changes actually lowered the cost for legal sources, which the BCBA believes is the primary issue for Florida consumers.

Suggestions to Expand Access to Legal Services while protecting consumers

Rather than the recommendations of the Report, the BCBA suggests further studying the following items, which it believes may improve access without impairing professionalism and the Court's ability to discipline persons admitted to the Bar:

Expand the use of legal aid services through an additional, dedicated funding source such as user fees for Circuit Court filings, Florida Bar and Voluntary Bar dues, or sales/property taxes.

Current funding models require legal aid programs to apply for single-issue funding, staff programs, and hope that funding is sustainable. Instead, a general funding model allows legal aid programs to utilize funding dollars for the specific needs of their community and not the perceived needs of the grantors. Grant funders retain the opportunity to review funding uses therefore encouraging legal aid programs to base the programs that they fund with this money on data and research.

By creating general funding sources for legal aid services, those populations most in need of accessible legal services can ensure that their issues are addressed. Often is the case that legal aid programs have to turn away vulnerable individuals due to a lack of resources provided by single-issue funding.

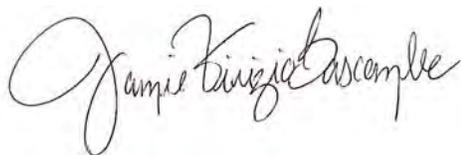
Nontraditional legal service needs vs traditional legal service needs.

Legal service programs have the ability to increase available resources in the areas of pro bono and low-bono through innovative programs such as broad pro bono programs, pro se clinics, legal education programs to the public, sliding scale legal services models, mediation and other ADR models, and embedding legal services in community resources (i.e. courthouse, medical facilities, social services). By promoting legal education to the public, attorneys can take a preventative role in addressing potential legal issues before they arise.

In conclusion, it is the position of the BCBA that in order to further the interests of the Florida Bar by protecting consumers of legal services, the proposed changes to the rules from the Final Report of the Special Committee submitted June 28, 2021, should be rejected as it related to non-attorney ownership of law firms and fee splitting with non-attorneys. The public's ability to rely on the professionalism and ethical standards of Florida attorneys would be compromised and the public can be placed at risk should those proposed rules changes take effect. Feasible alternatives can and should be reviewed and considered by a dedicated committee of the Florida Bar. This proposed committee and its findings can perhaps serve a dual purpose by providing increased employment opportunities to new law graduates entering the practice, in combination with the public's need for alternative legal options.

The questions posed in the Report can and should be answered using the existing vast resources of the Florida Bar's membership to ensure ethical regulation, professionalism in provision of services and protection to Florida's consumers of legal services.

Respectfully,



Jamie Finizio Bascombe
President
Broward County Bar Association

From: [J. Steele Olmstead](#)
To: [SCinput](#)
Subject: I wish to register my objection to "non-lawyer ownership."
Date: Friday, October 22, 2021 12:35:05 PM
Attachments: [JSteele.vcf](#)

Dear Committee members:

Non-lawyer ownership (NLO) is an appallingly bad idea.

Justice is not a business. Government is not "a business." It is a union; a union of citizens who agree to be governed. Governments all have judicial system to resolve conflicts and promote an orderly, just, equitable society. We lawyers are a part of that judicial system. We are officers who bring cases before the judiciary to resolve conflicts and promote an orderly, just equitable society. The ideal of that judicial system has two advocates dedicated solely to their clients, an impartial judge, a jury selected by both advocates is the heart of justice in a society. Neither of those advocates can have goals beside zealously and ethically representing their clients.

What you have been told is that allowing non-lawyer ownership (NLO) will "increase competition" "provide better value" "deliver more legal services." This is the same happy chatter of the Larry Vaughan, Amity Island mayor. This is the same lie that privatization advocates have foisted on the government of the US, U.K. and France with spectacular failure to deliver promises by the privatizers. <https://hbr.org/1991/11/does-privatization-serve-the-public-interest> None of those NLO purported goals will be the goal will be after the corporatization of law firms when "investors" - i.e. venture capitalists ("vulture capitalists" in many circles) and hedge funds/investment bankers on Wall Street take the control of lawyers and privatize their actions for profit of the vulture capitalists/investment bankers. It does not keep the practice of law serving the public interest. This idea for NLO is a Chamber of Commerce pitch. It is sheer sophistry.

Perhaps I have lost you already, and your members believe this "isn't what we're referring to with NLO." Oh, but it is. And speaking of the Chamber of Commerce, what does the Chamber of Commerce of the United States of America and Florida Chamber of Commerce, Florida Justice Reform Institute, Product Liability Advisory Council, Inc., Florida Health Care Association and Associated Industries of Florida (all business-backed PAC) and Florida Trucking Association (a business trade group) have to do with justice? Nothing. They want to bend it to business interests (so as to make it easier for profits) and they have plenty of money to coerce legal institutions like the Florida Bar. Look at the amici curiae who importuned the Florida Supreme Court in *Wilsonart, LLC v. Lopez*, 308 So. 3d 961 (Fla. 2020). It's a litany of all the anti-justice, anti-lawyer players. This was one weird, out of the blue, decision where our right-wing, activist Florida Supreme Court, *sua sponte*, chose to change the Florida summary judgment rule which had been in place since 1966 reversing it's own precedent which it also did to adopt the *Daubert* standard for expert witnesses. The list of amici clearly show business' interest in their desired version of "justice." However, that is false "justice." It is not in the public interest, it is only to make profit easier and avoid accountability for damages. This is why the push by business for NLO: profits.

Now, instead of just controlling the legislature with dark money to pass anti-consumer and anti-small business law or changing the legal rules with a right-wing Florida Supreme Court, business wants now to control law firms to make money off the practice of law, not just impair

it from serving the public and rendering fairness and accountability against uncontrolled corporate actors. This proposal to allow NLO is sheer homicide for the members of Florida's legal profession. The practice of law is the sole profession that aids Florida's judiciary in dispensing justice, resolving disputes, maintaining our community institutions, protecting our Constitutional, property and environmental rights, and correcting the wrongs done under color of law. What happens when some of those lawyers are controlled by Wall Street vulture capitalists? Well, lawyers take an oath. The NLO owner does not and it will control the actions of lawyers if this NLO proposal ever hits the barn stall floor.

This proposal to allow non-lawyer ownership is, full stop, corporatization of the practice of law in Florida. It's difficult enough for lawyers old or young to provide legal services with the constant focus required of a lawyer or law firm to pay overhead or student loan debts or pay higher salaries to associates because of their prodigious student loan debts. When the venture capitalists own law firms, the focus on income generation by the practice of law will solely determine the law firm's policies. The public be damned. The welfare of the lawyers and their pro-bono work be damned.

The disastrous effects of corporatization are replete in U.S. businesses and industry after industry. It manifests once those industries are streamlined for the venture capitalists or Wall Street hedge funds. The examples abound.

The **music** business has been corporatized. Now, individual musicians can no longer make money making and selling songs but have to do so by selling branded merchandise and on strenuous tours to promote the songs they don't get money from playing on Spotify or iHeart Radio or Apple Tunes. Before the corporatization of music, musicians received money from record, CD, or download sales. ASCAP and BMI would keep track of the sales or plays of the song and the musicians would receive a nice royalty check. Now, with the corporatization of music, a song which may have taken a year to write, record, and produce creates, as one industry joke puts it is only a "river of nickels" for the musicians who formerly could earn a real living. <https://www.nytimes.com/2013/01/29/business/media/streaming-shakes-up-music-industrys-model-for-royalties.html>
<https://www.nytimes.com/2021/05/07/arts/music/streaming-music-payments.html>

In addition to arts, in **medicine** professions and professionals have also suffered as well from corporatization. This now profit-centered medical industry has created a steady stream of doctors' suicide, depression, and leaving the medical profession. <https://emedicine.medscape.com/article/806779-overview> . The burnout, depression and suicide is caused by among other things insurance company paperwork and insufficient reimbursement (payments for services) by insurance companies. All from the corporatization of health care. <https://www.medscape.com/slideshow/2019-lifestyle-burnout-depression-6011056#5> The patients, the people depending on these doctors have suffered as well from corporatization. Please stop right now and imagine the suicides by attorneys after the corporatization of the Florida's legal profession.

Let's also examine **health care** industry itself. Hospital, diagnostic centers, ED have all been corporatized for the benefit of "investors" - i.e. venture capitalists, hedge funds/investment bankers on Wall Street. This shifted the health care industry from protecting patients to solely seeking profits. <https://stanmed.stanford.edu/2017spring/how-health-insurance-changed-from-protecting-patients-to-seeking-profit.html>. The United States spends more money on health

care driven by the profit motive than any other country in the world *with a poorer result*.

Again, a result of the corporatization of health care.

<https://news.harvard.edu/gazette/story/2018/03/u-s-pays-more-for-health-care-with-worse-population-health-outcomes/>. And the appetite for profits of these venture capitalist and Wall Street predators are whetted by the availability of money. This has all resulted in several incidents of *astounding theft of governmental money*. Examples abound, such as the theft by HCA from Medicare while under the leadership of our current junior Senator from Florida Richard Scott. <https://www.politifact.com/factchecks/2014/mar/03/florida-democratic-party/rick-scott-rick-scott-oversaw-largest-medicare-fra/>. A questionable billing practice padding the symptoms of patients, nets \$9.2 billion for just 20 insurers as seen in the Wall Street Journal: <https://www.wsj.com/articles/most-of-9-2-billion-in-questionable-medicare-payments-went-to-20-insurers-federal-investigators-say-11632303001>.

Now, peruse the headlines from whatever media source and you'll find stories of outrageous bills from corporatized health companies to see just what venture capitalists and Wall Street investment bankers are up to in health care: The story of a \$54,000 Covid test, from NPR: <https://www.npr.org/sections/health-shots/2021/09/30/1039788368/covid-test-high-bill-er?sc=18&f=1001> A Medicare scam that netted \$1 billion dollars found in the Miami Herald: <https://www.miamiherald.com/news/local/community/miami-dade/article91231277.html>. A \$2,659 bill to pull out a dolls shoe from a child's nose from public radio WGBH in Boston: <https://www.wgbh.org/news/national-news/2019/11/26/nothing-to-sneeze-at-2-659-bill-to-pluck-dolls-shoe-from-girls-nose>. And on it goes. This is the service from a corporatized health care industry - seeking a profit before service to people. Less expensive? More services provided? Not at all. Less costs? *Hardly*. This is what the new master venture capitalist/investment bankers of law firms will cause in the cost and delivery of legal services if allowed in Florida.

Real estate has also been corporatized. Housing prices have skyrocketed as vulture capitalist firms from Wall Street swooped in after the Wall Street-caused housing market crash to buy up real estate. Homebuilders devastated in the crash cut back building housing. Tech real estate giants like Zillow and Redfin have swooped in to further inflate housing prices and devastated affordable housing needed to house the majority of the U.S.A's working middle and lower economically disposed citizens. <https://www.marketwatch.com/story/a-viral-tiktok-accuses-zillow-and-its-competitors-of-manipulating-the-housing-market-heres-whats-really-going-on-11632511943>

Here's a local story of the venture capitalist, profit hungry business from Wall Street in central Florida. The town of "Celebration" was created by the Disney company in search of profits. Now Celebration High School has the highest population of homeless high school students in the entire United States. The downtown of Celebration, long touted by Disney is a shell, gutted and dilapidated. What happened? Corporatization. The Disney company was not making the amount of money it wanted so it sold the downtown Celebration facilities, to a Wall Street "venture capitalist" company which stripped the assets, sold off what it could and cut off all the amenities to the people who believed in the community that was "Celebration." In the town started by an entertainment and movie company, the only movie theater there, is closed for good. This is corporatization. It's all in the book to be released on October 26, 2021 entitled "Sunbelt Blues" by Dr. Andrew Ross, Professor of Social and Cultural Analysis at New York University.

Let's look at the corporatized **food industry**. Salmonella outbreaks from the large food

processing companies which kill and cause food recalls are routine.

<https://www.newsweek.com/salmonella-outbreak-unknown-food-source-has-spread-36-states-1639548>.. Fast food workers, paid minimum wage are being forced to sign non-compete agreements for minimum wage jobs.

<https://www.nytimes.com/2021/09/29/opinion/noncompete-agreement-workers.html>

McDonald's admits it sells a beef sandwich which has the meat from 100 individual cows in it. <https://www.washingtonpost.com/news/wonk/wp/2015/08/05/there-are-a-lot-more-cows-in-a-single-hamburger-than-you-realize/> There are only four major (4) beef processors in the United States and beef producers are at the whim of these four big corporations.

<https://www.reuters.com/business/how-four-big-companies-control-us-beef-industry-2021-06-17/>

Farming has become the province of the mega corporation owned by Wall Street predators. Farmers are under the thumb of seed growers who force them to buy their seed every year and sue farmers whose crops show genetic signs of the "copyrighted" genetic material which came for free to those farmers' fields on the back of honey bees who were too stupid to know Monsanto didn't want the bees to spread it's "patented" pollen.

<https://www.theguardian.com/environment/2013/feb/12/monsanto-sues-farmers-seed-patents>

The other examples of corporatization are everywhere and damaging the U.S. consumer:

There's only one **eyeglasses manufacturer** in the US - EssilorLuxottica. That's why you pay \$500.00 for a simple piece plastic carved into a shape of a eyeglasses lens.

<https://www.axios.com/monopolies-acquisitions-essilorluxottica-subscrips-96072eef-3ae4-46fa-9b5f-8c82daad6224.html>.

There are only three major **credit rating agencies** in the United States - a monopoly. There are only four (4) major **credit card companies** in the U.S. Visa, MasterCard, Discover and American Express. **Medical prescriptions** are even corporatized. There is only one (1) major clearing house for medical prescriptions - a profit hungry company known as Surescripts which processes 80% of all prescriptions in the United States. <https://www.axios.com/monopoly-medication-history-surescripts-pillpack-52fa0265-4814-403e-84f6-8b28d253e800.html>

The **newspaper industry** has been corporatized by venture capitalists and gutted. Newspapers like the storied Chicago Tribune whose Art Deco building in downtown Chicago is an architectural touchstone is now in a single office the size of a Taco Bell. Who is behind the killing of the "Fourth Estate"? The very same people the Florida Bar is considering to allow ownership of law firms: the vulture capitalists of Wall Street.

<https://www.theatlantic.com/magazine/archive/2021/11/alden-global-capital-killing-americas-newspapers/620171/> These same predators are going after small papers as well.

<https://tinyurl.com/3ab9vzpb>

We know the large social media monopoly business FaceBook has poisoned our democracy and misinformed our citizens with monopolistic power not seen since the subjugation of U.S. governments by the Robber Barons. Fifteen thousand of Facebook's "pages" are produced by the Russian Internet Research Agency (IRA) which spreads destabilizing posts and foments unrest in democracies. Here in the U.S. these so-called "troll farms" reach 140 million Americans. <https://www.technologyreview.com/2021/09/16/1035851/facebook-troll-farms-report-us-2020-election/?s=07> Shockingly, this report reveals the top ten African American Facebook pages, nineteen of the top twenty Facebook pages for "Christian" pages and four of the top Native American pages are run by the Russian IRA. Like good Wall Street vulture capitalists, *Facebook has done nothing to damage it's income*. A recent whistle blower has revealed Facebook knows it's products damage young girls and democracy and democratic

institutions. Facebook has done nothing to damage its income. Its goal? Every business' goal is, the same as any venture capitalist, **to make money** for itself or its Wall Street shareholders. <https://www.npr.org/2021/10/05/1043207218/whistleblower-to-congress-facebook-products-harm-children-and-weaken-democracy>. However, the venture capitalists and Wall Street approve because Facebook is a business and it's making money. Democracy be damned. The democratic institutions be damned. Citizens accurately informed be damned. This is what a business does for profits. This is what NLO of law firms will do as well if allowed.

Please understand this is not a diatribe against business. Business has its place in a society. This is a diatribe against business invading the practice of law forcing lawyers to focus only on profit. That is what businesses do. However, the place of business is not in a government. Lawyers are the ministerial officers of a government's judiciary. The U.S. Constitution states: "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general welfare..." Profit is mentioned nowhere in the U.S. or Florida Constitution. So clearly our U.S. and Florida government is not a business. Nor is a government in the "business" of making money. Clearly it is a union; we lawyers are the guardians of those Constitutions and the rights they bestow. We are not here for the sole sake of profit. As lawyers, we are part of the government. Although law practice does have aspects of business, it is in charge of dispensing justice, applying the laws, advocating for the rights provided by the U. S. and Florida Constitution and creating and maintaining an orderly and just society. This is not the province of "a for-profit business." Although lawyers must support themselves, the money thereby made does not return to investors or shareholders of a venture capitalist corporation located in Wall Street. Ronald Reagan said "In this present crisis, government is not the solution to our problem; government is the problem." The crisis he referred to was caused by Arthur F. Burns, the former Federal Reserve Chairman whose monetary policy gave way to the runaway inflation caused by the Venture Capitalists on Wall Street. President Reagan could not have been more wrong. Our government is a union of the citizens of this state in this country "to promote the general welfare." That "crisis" he was supposed to fix with "the market"? It was solved famously by government under Federal Reserve Chairman Paul Volker.

Venture capitalists which will invade the practice of law if NLO is permitted and will do as they always do and drive the "legal industry" (as it will then be called) to one thing: make money for those venture capitalists and send it outside of Florida. This is what Wall Street, Venture capitalist and businesses do. Bloomberg admits this even. <https://www.bloomberg.com/news/articles/2021-10-20/warren-renews-assault-on-private-equity-payouts-worker-policies> Law firms controlled by non-lawyers will cast aside service to and protection of the client as it has been done in the music community, the medical profession, the health care delivery profession, credit rating, eyeglasses market, the housing market, and the food industry. It may very well kill parts of the legal community's practice.

We already have NLO law "firms" in Florida, so we can review them and see how that experiment failed. The currently and still are doing damage to our justice system. When I began practicing in Florida, there were multiple small defense firms who represented the insureds of insurance companies. Many were firms composed of two to five people. We plaintiff lawyers got to know them, they were very familiar with their clients, their cases and they were excellent advocates. They were not employees of anything but their own law firms. Sometime in the 1980s, the Florida Bar was convinced apparently by insurance companies to permit the absurd fiction by such insurance companies of the so-called "house counsel." I know, I was one for nine months in 1991. These "house counsel" are nothing more than

lawyers employed by insurance companies to do what these small defense firms use to do. However, they do not do that. To begin with, they operate under false pretenses by claiming on letter head and communications, that they are "The law office of [a lawyer's name]." An insured having been instructed to contact this law "firm" thinks they are getting an independent advocate interested in the best outcome for the insured. This is not true. This fictional law "firm" is directed by and controlled by the insurance company and the assigned adjuster. This morning I sent my third letter to one of these "house counsel firms" requesting it provide documents it subpoenaed from non-parties three months ago. I have yet to receive a response. A mediation with this law "firm" can't take place for five months because the lawyers are overwhelmed with cases assigned to them by the parsimonious insurance company. I had to ask permission from the adjuster to talk to the adjuster instead of asking the lawyer "representing" the insured. The address for the lawyer, located physically here in Florida, handling a case in Hillsborough County, Florida, is in *Kentucky*. So, all mail is directed there. When they first started, they had Florida locations and phone numbers. Now, because it's cheaper for the insurance carrier, they've moved. Coordinating hearing times with this "law firm" is a true *Waiting for Godot* experience. The deposition of our respective clients cannot be made because they "have no dates available for four months" or the ones they have, my staff can't confirm so they evanesce without hearing from their staff. Justice is not being served by these fake "law firms," only the profits for the insurance companies. The only one not in on the joke is the insured person who believes their lawyer's "law firm" is looking out for their interests. That lawyer is not, unless the adjuster allows it. What perfidy is this? Florida Bar sanctioned perfidy.

Seems harmless, right? No. These "house counsel" fake law "firms" have wiped out small medium-size defense firms who were real advocate for the insureds. They lost the work from the insurance carriers to these fake law firms. The point? The insurance company is saving money. The downside? One is, the innocent insured thinks she or he has an advocate who is solely interested in the best results for them. They do not. These insurance company lawyers are stacked up with cases that the only person we have direct contact with is the paralegal(?), secretary(?) clerk(?) who answers our emails. Sometimes we even get a phone call from them, never the lawyer because it's not cost effective for the NLO "house counsel."

Another downside for these fake firms is at court they introduce themselves, not saying who their actual employer is but by this fake "law firm" name. It's a charade-Kabuki-Theater-pantomime of twisted proportions. It couldn't get any more disingenuous to the court, the venire, the parties, or their hapless client.

In these fake law firms, that "best result" must entail a large saving of money for the insurance company resulting in a concomitant and unnecessary stress on the insured who just wants the case to get quickly resolved. It may be resolved, but only as long as the insurance company saves money.

And that is the whole point of a profit driven business. They care not for justice, only profits. That's what Wall Street companies, venture capitalists will do to the practice of law once the Florida Bar says they can buy law firms. Do we want the legal services, as poor as your committee may think they are currently, to be monetized for the sole sake of generating income? I have read the proposal

In the long run non-lawyer representation will result in substandard representation for citizens of Florida and it will not cost less. Services will be adjusted around to look like these NLO

firms are providing legal representation at an efficient price, but will be a white-wash to cover up the ugly truth, the clients are not being served at a reasonable fee. The non-lawyer company must make a profit, that's what its investors are counting on.

I vehemently protest our Florida Bar allowing any ownership of law firms by non-lawyers. It will be the death of justice, fairness, client service, is incompatible with the role of lawyers as officers of the court and is antithetical to the Oath we Florida licensed lawyers have taken.* While you are at this inquiry of delivery of legal services, who's supervising the deceptive house counsel programs?

So, how to improve the delivery of legal services? I can't object to the corporatization of law firms without making suggestions.

I humbly submit the requirement of pro-bono is far too soft. Thirty hours per three year CLE reporting period or \$300 is of no help to the public. Instead, each lawyer must dedicate 40 /one full work week each year or \$1,000.00 each year for pro-bono or community work. Each and every lawyer must be obligated document pro-bono services she or he provides in a legal-aid services, public defender's office, public community center (e.g. "Ask A Lawyer" day) or at a County Bar associations lawyer's referral service. This time served should be confirmed by the agency receiving the lawyer's assistance.

I am 36 years a Florida lawyer, so I am not long for this job or life perhaps. However, I'd like to see the service of my colleagues and the careers of younger lawyers unlimited by the controls of vulture capitalists or Wall Street investment bankers bent on the sole goal of "shareholder value" and flipping (read *Sunbelt Blues*). Whatever this committee does make as a finding in NLO, it should be with an eye toward service to the citizens and in furtherance of justice, fairness, integrity and civility and not for lucre or malice. Why? It's in the Oath of the Florida lawyer all you took. None of those goals have anything to do with profit. In fact, I am pretty sure *lucre* is not a goal you swore and oath to. You can't have a Wall Street Venture Capitalist running a lawyer's practice if the goal of a Florida lawyer is contained in that Oath of Admission to the Florida Bar we all swore.

J. Steele Olmstead

*Oath of Admission to The Florida Bar

"I do solemnly swear:

I will support the Constitution of the United States and the Constitution of the State of Florida;
I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust,
nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are
consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice
or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept
no compensation in connection with their business except from them or with their knowledge
and approval;

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in
court, but also in all written and oral communications;

I will abstain from all offensive personality and advance no fact prejudicial to the honor or
reputation of a party or witness, unless required by the justice of the cause with which I am

charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice. So help me God."

Please note: Florida has very broad public records laws. Many written communications to or from The Florida Bar regarding Bar business may be considered public records, which must be made available to anyone upon request. Your e-mail communications may therefore be subject to public disclosure.



October 22, 2021

The Florida Bar Board of Governors
651 E Jefferson Street
Tallahassee, Florida, 32399

To whom it may concern,

Please accept my written comment to the Board in regard to the proposed report by the Special Committee to improve the delivery of legal services. I am opposed to the proposal that would permit non-lawyers to share fees or have an ownership interest in a law firm.

In the proposed report, the Special Committee is recommending a regulatory “laboratory” program that would allow non-attorney providers of legal services, non-lawyer ownership in law firms, and would authorize the splitting of legal fees with non-attorneys.

There is no supporting data to indicate that permitting non-lawyers to have an ownership interest in a law firm would increase the availability of legal services to the public. I believe that the opposite would be the case, as this proposed change would allow private corporations to own a stake in a law firm and place profits over people.

To open the possibility of ownership of a law firm to non-lawyers would put the integrity of legal representation at risk. I believe it would also jeopardize the duty of confidentiality and the protections of the attorney-client relationship.

Respectfully submitted,

Logan Goldberg, Esq.



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Michael Noone, Esq.



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Scot Goldberg, Esq.



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Respectfully submitted,

Sheba Abraham, Esq.

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†Certified Circuit Court Mediator

♦Also Licensed in Georgia

October 21, 2021

VIA EMAIL ONLY

Member of the Florida Bar Board of Governors:

Dear Sir/Madam:

I am writing this letter in opposition to the pending proposal to allow nonlawyers to own law firms in Florida. I have been a member of the Florida Bar since October of 1992 and am approaching my 30th year of practice as a civil trial lawyer.

As you know, the current rule against nonlawyer ownership of law firms is intended to safeguard lawyers' professional independence by insulating them from the supervision of nonlawyers who prioritize profit over duty to clients. This rule has worked well and has kept our profession independent and thriving.

The proponents of nonlawyer owned law firms' arguments that it will provide greater access to legal services and lead to more innovation are hollow and unsupported by any empirical data.

If we permit Florida law firms to be owned by equity funded corporations, the traditional law firm will be transformed into the equivalent of a modern-day medical facility. The ugly truth is that businesspeople will run law firms in the exact same manner they run modern day medical practices: Low-cost services at a high profit margin. No physician will ever proclaim that the change to corporate ownership of medical practices was beneficial to them or their patients. Most physicians want to retire because of the low pay and long work hours. Most question why they went to medical school in the first place.

No rational person can argue that a modern-day medical practice provides "higher quality" or "better" services because of corporate ownership. In fact, the services provided at corporate-owned medical facilities are generally the worst. This is because the services at such facilities are mostly performed by assistants with minimal training at a low cost. In such

EXPERIENCE • COMMITMENT • INTEGRITY

In the pursuit of Justice

October 21, 2021

Page 2 of 2

facilities, licensed professionals, physicians and registered nurses, rarely provide hands-on care and when they do, it is for brief periods of time due to quotas on the number of patients that need to be seen in a day. These medical professionals are no longer in charge of their practices. Rather, their practices are dictated by MBA-types who “know how to do it better” (i.e., how to turn a large profit at the expense of physicians and patients). Medical professionals and patients suffer as a result.

Please do not allow Florida’s legal profession to be decimated by voting for nonlawyer ownership of law firms. Please vote no on any proposal for non-lawyer ownership of law firms.

I appreciate your time and consideration.

Very Truly Yours,



STEPHEN WATREL

SW/sw

From: [Timothy Finkenbinder](#)
To: [SCinput](#)
Subject: Rule 4-5.4, Fee Splitting and Law Firm Ownership
Date: Friday, October 22, 2021 4:17:35 PM

I write to express my opposition to specific elements of the following proposed Amendments to the Florida Bar rules:

1. Rule 4-5.4, Fee Splitting and Law Firm Ownership –

- a. Permitting non-lawyers to own an interest in law firms does not further the stated goal of providing access to cost effective legal services. It will; however, allow corporations, marketing firms, and legal software providers, as well as other individuals and organizations to enter the legal profession, reducing competition, driving out small and medium size law firms and resulting in less availability, less choice and less competition. Further, these firms will ultimately be majority owned on paper only. There is nothing which prevents non-lawyers from exerting control over the firm regardless of the “percentage” of ownership, particularly when these third parties provide or control the means of marketing, purse strings and ultimately drive the “business” side of the firm regardless of paper ownership. It is naive to believe this will not happen or that the bar, which has demonstrated an unwillingness or inability to combat UPL will have any effective ability to regulate or prevent abuse. Further, this simply opens the door to marketing firms which already dominate the legal landscape and enable them to use their resources to direct all work to firms in which they own an interest. This will effectively lead to attorneys renting their licenses to non-attorneys.
- b. Fee sharing with non-attorneys creates the same situation discussed above. It turns marketers into lawyers. They aren’t! It also places the emphasis on “money” and not legal services.
- c. Not-for-profit law firms. There is no need for not-profit-law firms. Not-profit organizations can and do employ attorneys and regularly render legal services. Catholic Charities is a prime example. The purpose, presumably, is to skate around tax laws, not to improve access to legal services. If paying legal fees is tax deductible as a donation when the services provided are identical as “for profit” firms, there is no logical reason why there would be any for-profit firms. Further, you create an incentive for large law firms to create not-for-profit firms and move taxable assets, such as real property, into those firms where they presumably become non-taxable. It is a disastrous idea.
- d. Advertising rules. I agree with these provisions except to the extent they permit non-attorneys to advertise.
- e. Regulation of Nonlawyer Providers of Limited Legal Services. Numerous programs are cited to justify this change. Ironically, allowing these programs to exist has apparently not addressed the issue which these proposals claim to address. If allowing non-attorneys to provide legal services increases access, then one would presume that each time a jurisdiction does this the situation improves, yet we are told it is growing worse not better. The simple fact is that even the simple act of completing a form, such as an immigration form, requires knowledge of the underlying legal requirements including knowledge of administrative and federal case law. Materiality matters. Omission of material facts is fraud. We know this because of our legal training and background.

Non-attorneys do not know this, do not understand the gravity of failing to disclose material information, cannot be disciplined in any meaningful way when they permanently harm an applicant by failing to properly “advise” them of the consequences of providing or not providing information as part of the application process. It is wrongheaded. If we are going to allow non-attorneys to render legal services then let them into court rooms – there is no rational distinction between the rendering of legal services, such as document preparation in immigration matters, and representation before a tribunal. Both require knowledge of the underlying law and evidentiary standards. Indeed, the idea that transactional law is not the practice of law and therefore doesn’t require a law degree or licensure is ridiculous. This is especially true in the field of immigration where many, many individuals facing deportation end up there because of a “form” completed by a notario.

2. It strikes me as bizarre that the Florida Bar would put forth a proposal like this while refusing to permit reciprocity with other jurisdictions for licensed attorneys. These proposals create a situation where attorneys from all other jurisdictions can practice in Florida but Florida licensed attorneys cannot practice law in those jurisdictions. All non-licensed attorneys need to do is rent a license from a Florida lawyer or subcontract as legal service provider. Indeed, they could even own interests in Florida law firms while Florida attorneys are prohibited from owning interests in law firms in other states unless admitted. These proposals penalize Florida lawyers for being lawyers.
3. If one can practice law and render legal services without a law degree or license, why is a law degree or licensure required?
4. Finally the premises upon which these proposals rests is that legal services are not valuable. I respectfully disagree. It is precisely because they are valuable that they cost money.

These proposals will not provide greater access to legal services. They will increase pressure on legal fees, reduce competition, reduce the ability of attorneys to earn a living, reduce the willingness of attorneys to provide pro bono services, and discourage quality individuals from pursuing careers in law. You would be far better off getting rid of the bar exam and permitting anyone with a law degree to obtain licensure. At least they would have legal training and a JD.

A better proposal would be to require bar exams for individuals appearing in court and law degrees for transactional work; i.e., the solicitor v. barrister distinction). This would provide a high degree of protection to the public by ensuring that individuals possess at least a minimum understanding of law, regulation, the court system, administrative laws, civil and criminal procedures and related items. You would instantly increase the number of qualified lawyers, increasing competition and impacting access to legal services.

Sincerely,
Timothy L. Finkenbinder
Attorney at law

Please note: Florida has very broad public records laws. Many written communications to or from The Florida Bar regarding Bar business may be considered public records, which must

be made available to anyone upon request. Your e-mail communications may therefore be subject to public disclosure.

My name is Steven L. Barcus. I have been a practicing lawyer for 43 years. I practiced the first 7 and ½ years in NY and the last 36 in Florida. I write because I am strongly opposed to the concept of non-lawyers/business people becoming “partners” in a law firm.

By definition, businessmen/women are mostly concerned with profits. Lawyers are or should be concerned with rendering professional services to their clients. There are rules regulating the Florida Bar and set obligations that lawyers adhere to. The desire for profit by non-lawyers can adversely affect the lawyer-client relationship, as making money is the primary goal. That conflict is rife for destruction of the lawyer-client relationship and puts a non-lawyer on board making decisions that can be adverse to the clients.

For example, it should be the clients’ decision whether to proceed with litigation or settle his/her case. That decision is personal to the client and the prospect of quick-guaranteed money while a factor for the client to consider, should not enter influence the lawyer’s advice vis-à-vis the firm’s bottom line. Were the lawyer influenced by a partner/shareholder for whom profit is the motive, then the lawyer could be advising the client in derogation of his loyalty to the client. Clearly I

would not want a non-lawyer(s) exerting power or influence over my duties and obligations.

Further, as lawyers, we must be candid with the tribunal. That picture may not comport with business ethics. Want an example, imagine a businessman such as Donald Trump calling the shots.

Business folks can invest elsewhere. Lawyers are an ancient profession who by their undertaking, must exercise independent judgment.

From: [Maritza Choisser](#)
To: [SCinput](#)
Subject: Comments: Improve the Delivery of Legal Services- (allowing for profit non-attorneys to provide certain legal services and have ownership interest in for profit law firms)
Date: Monday, October 25, 2021 12:21:14 PM

Dear Special Committee,

Please consider underserved immigrants will be more vulnerable to predatory immigration scams if non-lawyers are allowed to practice law (prepare forms for profit) and to have ownership interest in (for profit) law firms.

Allowing non-lawyers to own "firms" or practice law would not increase the access to legal services or quality. Instead, it will provide a legal cloak to predatory notario/paralegal/consultants/ and make believe "law firms" scammers to continue defrauding desperate and vulnerable immigrants.

During my short practice, I have met several immigrants whose cases have been irreparably hurt by non-attorneys and make believe "law firms" that blatantly advertise offering legal services (ULP) and solicit in violation of the rules Florida attorneys are bound to. The most frustrating part is that such establishments remain open despite of being reported.

There are many immigration scams establishments in Florida requiring federal and state authorities to execute the law and regulate social media. Facebook does not provide a tool to report immigration scams.

Unfortunately, many immigration scams go unreported because the victims are simply scared or intimidated by the scammers who took advantage of their vulnerability.

Vulnerable and desperate immigrants are victimized because they:

- do not speak English or speak broken English.
- are unaware that a notario/paralegal/consultant is not an attorney in the U.S.
- had their case(s) closed/denied because of basic mistakes such as providing an incorrect address or insufficient evidence leading to case denial based on abandonment because the agency notifications never arrived.
- were rendered unable to obtain a work permit they would have obtained but for the non-lawyer incorrect advice.
- were told by non-lawyers to apply for benefits they were not eligible for, leading to denial and subsequent initiation of removal proceedings (deportation).
- were told by non-lawyers what forms to file and how to answer the questions in such forms.
- were defrauded by non-lawyers who filed frivolous applications or forms in English containing false information (without the victim's knowledge). Subjecting the victim to severe civil/criminal consequences and/or permanent (lifetime)

ineligibility to obtain immigration benefits regardless of the legal remedy available in the future.

- paid exorbitant fees to non-lawyers for unnecessary or substandard work.
- have been irreparably hurt and rendered more vulnerable for human and labor traffic and exploitation.

Non-lawyer immigration scam artists also refuse to return documents to victims and threaten to report their victims' immigration status to authorities (to have ICE pick up the victim(s) at their home with their family) after the scam is discovered.

Immigration law is a very nuanced and complicated practice that can be difficult even for trained/licensed/experienced attorneys. Allowing non-lawyers to practice law for profit will disproportionately affect immigration lawyers as immigration is a form-based practice, resulting in attorneys "officially competing" with non-lawyers.

Giving a legal cloak to non-lawyers to practice law (for profit) or to own legal interest in a law firm will not improve the situation and vulnerability of underserved immigrants. According to immigration advocates, this virtually invisible crime affects thousands of people in Florida each year.

<https://cliniclegal.org/file-download/download/public/265>

<https://www.fl-ilc.com/fraud-crime-immigrant-scams-business/>

<https://www.miamiherald.com/news/state/florida/article247886900.html>

<https://www.justice.gov/usao-mdfl/pr/phony-immigration-attorney-who-filed-hundreds-fraudulent-asylum-applications-sentenced>

<https://www.miamiherald.com/news/local/immigration/article249340460.html>

<https://www.washingtonpost.com/nation/2021/04/13/florida-elvis-reyes-immigration-fraud/>

<https://www.ice.gov/news/releases/phony-immigration-attorney-filed-hundreds-fraudulent-claims-sentenced-more-20-years>

<https://www.sun-sentinel.com/news/crime/fl-ne-laura-torres-fraud-immigrants-20201230-qbt4q43rzc2vp3oqfzmyqfjma-story.html>

https://www.oregonlive.com/portland/2018/01/florida_men_posing_as_lawyers.html

<https://www.floridabulldog.org/2017/06/invisible-crime-immigrant-scams-are-big-business-in-south-florida-but-few-crooks-are-caught/>



Invisible Crime: Immigrant scams are big business in South Florida, but few crooks are caught

The Pew Institute, using 2014 data from the U.S. Census Bureau, estimated that there are more than 450,000 undocumented immigrants alone in the areas encompassing Miami-Dade, Broward and Palm Beach counties, the most vulnerable

target group for immigration fraud.

www.floridabulldog.org

<https://www.newsobserver.com/news/nation-world/national/article255201306.html>

Thank you,

Best Regards,

Maritza Choisser

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October 25, 2021

The Florida Bar

Via email: SCinput@floridabar.org

Re: Special Committee to Improve the Delivery of Legal Services
Comments from the American Immigration Lawyers Association – South Florida
Chapter regarding the Regulation of Nonlawyer Providers of Limited Legal
Services and Non-Lawyer Ownership of Law Firms

Dear Sir or Madam:

The American Immigration Lawyers Association (AILA) is a national association of more than 15,000 attorneys and law professors who practice and teach immigration law. Founded in 1946, AILA is a nonpartisan, not-for-profit organization that provides continuing legal education, information, professional services, and expertise through its 39 chapters and over 50 national committees. It is the world's largest legal professional association related to immigration matters.

AILA member attorneys represent U.S. families seeking permanent residence for close relatives, foreigners seeking humanitarian support, U.S. businesses seeking talent from the global marketplace, as well as talented professionals and entrepreneurs who want to invest in the United States and bring their unique know-how to our country. AILA members also represent many foreigners in their temporary travel to the country, such as foreign students, entertainers, athletes, treaty investors, tourists and much more. Importantly, AILA provides many opportunities for members to engage in pro bono legal services to the community and provides expert information about immigration to local and federal legislators and leaders.

In Florida, AILA has two chapters: the South Florida Chapter, with over 1,000 members, encompassing the counties of Miami-Dade, Broward, Palm Beach, Monroe, Collier, Martin, St. Lucie, Indian River, Okeechobee, Highlands and Glades; and the Central Florida Chapter, with over 500 members, which covers the remaining counties in the state. AILA South Florida is one of the largest and most highly regarded chapters in the nation. AILA South Florida aims to facilitate the administration of justice for immigrants in the U.S. legal system and promotes positive reforms in immigration and nationality laws. Our members are well-versed in all aspects of immigration law and our chapter provides numerous opportunities for continuing education, mentorship, and volunteering.

In response to the Final Report of the Special Committee to Improve the Delivery of Legal Services, we would like to comment on the issues of the Regulation of Nonlawyer Providers of Limited Legal Services and Nonlawyer Ownership of Law firms. The concerns of the immigration



bar in Florida can be summarized in three main points, which will be further discussed below: 1) immigration laws are too complex for nonlawyers and consequences of errors too harsh for the public; 2) authorizing even a small group of non-lawyers to practice law in Florida or own law firms in the state would further embolden the growing number of con-artists and perpetrators and severely hurt the public; 3) these actions directly and disproportionately affect immigration lawyers and could potentially extinguish the livelihood of many immigration attorneys who, in most part, practice law in solo or small law firms.

1. The Complexity of Immigration Law Requires Competent Legal Representation, even in the selection and filling out of forms

Codified under Title 8 of the Federal Code, immigration law is extremely complex, as it involves an interplay of various areas and sources of law:

- the U.S. Constitution;
- the Immigration and Nationality Act (INA);
- the Administrative Procedures Act (APA) (agency's actions vis-à-vis the regulations and the law);
- the Freedom of Information Act (FOIA);
- the Controlled Substances Act (CSA)
- federal regulations (Title 8, Aliens and Nationality; and other relevant areas, such as Title 6, Domestic Security; Title 20 Employees and Benefits; Title 22 Foreign Relations; etc.);
- jurisprudence from the Supreme Court, Federal Courts of Appeal, and Federal District Courts;
- precedent set by agency appellate bodies, such as the Board of Immigration Appeals (BIA), the Administrative Appeals Office (AAO), Board of Alien Labor Certification Appeals (BALCA);
- federal policies and memoranda (many times found in obscure places such as form instructions or field office adjudication manuals);
- state, federal, and international criminal law (the intersection of immigration law and the various consequences of criminal activity is commonly referred to as "crimmigration");
- domestic and international family law (issues involving validity of marriages and divorces; adoption; domestic violence; dependency; vis-à-vis immigration benefits).

Depending on the type of immigration matter, immigration lawyers must be familiar with a number of governmental agencies and their current regulations and policies (the following include common agencies with which immigration practitioners are usually familiar):

- Department of Homeland Security (DHS)
- Homeland Security Investigations (HSI)
- Customs and Border Protection (CBP)
- National Visa Center (NVC)



- Department of State (DOS)
- Department of Labor (DOL)
- Immigration Customs Enforcement (ICE)
- Immigration Customs Enforcement – Enforcement Removal Operations (ICE-ERO)
- Executive Office for Immigration Review (EOIR) (Immigration Court)
- Office of the Chief Administrative Hearing Officer (OCAHO)
- United States Citizenship & Immigration Services (USCIS)
- Office of Immigration Litigation (OIL)

In light of this maze of various overlapping issues, federal courts often characterize immigration law as extremely complex. See Padilla v. Kentucky, 559 U.S. 356, 369 (2010) (“Immigration law can be complex, and it is a legal specialty of its own. Some members of the bar who represent clients facing criminal charges, in either state or federal court or both, may not be well versed in it.”); Carachurri-Rosendo v. Holder, 560 U.S. 563, 567(2010) (noting the “maze of statutory cross-references” in analyzing removability vis-à-vis criminal convictions); see also Filja v. Gonzales, 447 F.3d 241, 253 (3d Cir. 2006) (characterizing the immigration regulations as “labyrinthine”); Baltazar-Alcazar v. INS, 386 F.3d 940, 947-48 (9th Cir. 2004) (“It is no wonder we have observed ‘[w]ith only a small degree of hyperbole, the immigration laws have been termed second only to the Internal Revenue Code in complexity. A lawyer is often the only person who could thread the labyrinth.’”); Drax v. Reno, 338 F.3d 98, 99 (2d Cir. 2003) (describing “the labyrinthine character of modern immigration law” as “a maze of hyper-technical statutes and regulations that engender waste, delay, and confusion for the Government and petitioners alike”).

To be competent and effective as an immigration attorney, the practitioner must remain well-informed within this ever-changing area of law through CLEs, and through participation in professional organizations, such as AILA. The immigration lawyer must also have knowledge of the overlapping legal issues which directly affect those applying for immigration benefits: criminal law, taxation, corporate law, etc. Non-lawyers are not competent to provide legal guidance regarding immigration strategies vis-à-vis the complexity of issues involved in each case. And the complexity of this area of practice makes it difficult (if not impossible) for clients to self-represent. The risk of insurmountable hurdles that can result with errors and/or misrepresentations contained in applications for immigration benefits is even greater when clients are represented by non-lawyers.

Immigration law is administrative law, and most types of cases are form-based, supported by extensive documentation and evidence. It is important to point out that even the selection of a form to be submitted to immigration authorities require competent legal advice. Different than other areas of law, the selection of a form in the immigration realm is aligned with the selection of the legal strategy. For example, a company who wants to bring an executive from abroad has many options, depending on the individual strategy of the case: it could use form I-129-L Supplement if it is doing a temporary L-1 intracompany transfer; a form I-129-O Supplement if the executive has extraordinary abilities; a Form DS-160 if the case is being done as an E-2 based on international treaty of commerce and navigation; a form I-140 for an EB-1C permanent



intracompany transfer, or even for an individual whose work is of national interest, under the EB2 category, among many other possibilities. Each immigration petition requires specific and robust evidentiary support, which varies greatly depending to the type of case. In addition, the timing of the submission is equally relevant, as it could affect someone's lawful status in the United States or even their qualification for certain types of processes, such as asylum. In addition, certain petitions cannot be filed if individuals are out of status or entered under the Visa Waiver Program or through Parole, even if they are lawfully present in the United States.

Importantly, immigration forms contain specific questions that require legal knowledge such as whether someone is inadmissible to the United States or what Particular Social Group an individual seeking asylum belongs to. Immigration form instructions have the weight of regulations, and a failure to submit a properly filed form and the required evidentiary package can result in an irreversible denial, placing individuals and families at risk of removal or detention. Worse yet, all forms are signed by the applicant under the penalty of perjury and the submission of forms with misleading or omitted information could result in a finding of fraud that the immigrant will likely not be able to overcome.

In light of the complexity of immigration law and processes, we often see the tragic and very sad outcomes of forms prepared by paralegals, "notarios", "consultants" and the like: cases denied, families in jeopardy, and financial loss. These individuals often charge the same or more than an attorney would charge for the same type of case, and the foreign national then has to spend more money to hire an attorney to try to correct the situation, or at least provide defense during removal proceedings.

Because of the severe harm caused by these non-attorneys to members of the community over the years, the Miami Dade County recently passed an ordinance forbidding the practice of immigration law by these individuals, including filling out immigration forms. The immigrant community is extremely vulnerable to these types of schemes as there are cultural and language barriers, as well as lack a comprehensive knowledge of U.S. laws and regulations. These factors place the immigrant community at risk of becoming victims of non-attorneys offering ineffective – and even fraudulent – assistance with their immigration cases.

2. Unlicensed Practice of Immigration Law is Pervasive in Florida and it is going to get worse if the Florida Supreme Court allows Nonlawyer practice and Nonlawyer law firm ownership

Florida has a very robust and dynamic immigration bar. Because of its strategic location, thriving industries, renowned universities, and pleasant weather, Florida is often the state of choice for multi-national companies, foreign investors, international students, and immigrating families. As such, the practice of immigration law is extremely vital in the state, and some of the greatest national names in the field are Florida barred attorneys.



On the other hand, our state has attracted an equally great number of individuals and con-artists who practice law without a license and without authorization (the Unlicensed Practice of Law or UPL). The perpetrators range from paralegals working solo and the so-called notarios, to elaborate schemes where non-lawyer “consultants” own a law firm with a “straw” attorney in the District of Columbia, but openly practice law in Florida, in fancy “law” offices. The immigrant community is extremely vulnerable to these types of schemes as there are cultural and language barriers, as well as lack a comprehensive knowledge of U.S. laws and regulations. These factors place the immigrant community at risk of becoming victims of non-attorneys offering ineffective – and even fraudulent – assistance with their immigration cases.

Unfortunately, the Florida Bar has not been able to satisfactorily deter such practices through its current investigation methods, and law enforcement has been similarly complacent in the criminal prosecution of these individuals. In Florida, UPL is a third-degree felony that does not require evidence of harm to the victim for a conviction to result, and prosecution of these offenses would be straightforward and simple. Fla. Stat. § 454.23. Nonetheless, arrests are rare, and these paralegals, “notarios”, and consultants multiply and grow bolder, openly advertising, making false promises (including guaranteed approvals or your money back), and causing great harm to the vulnerable immigrant population.

Considering that these individuals have been able to boldly act without consequences, despite the robust penalties and limitations in our State laws and Florida Bar regulations, the immigration bar is extremely concerned that allowing non-lawyer practice of law in our state would further encourage these individuals. The harm to the public can be catastrophic.

A. Florida residents and business have been severely and permanently harmed by nonlawyers practicing immigration law and this will get worse if the Florida Supreme Court authorizes the practice of law by nonlawyers

Even though immigration law is extremely complex and difficult, the unlicensed practice of law (UPL) in the field is pervasive in Florida, and it has been growing exponentially, with perpetrators acting openly and boldly. Some UPL practices have evolved into elaborate schemes and multi-million-dollar operations that not only defraud the public and cause irreparable harm to individuals and families, but also severely impact U.S. businesses and overwhelm courts and agencies with frivolous and fraudulent cases. UPL also greatly affects licensed attorneys, as it dilutes the legal representation market and diminishes credibility with the public and with governmental agencies due to the increased number of problematic cases submitted by UPL perpetrators.

Typically, in the immigration law field, those who “practice” law without a license are identified as: Notario, Notary, Immigration Consultant, Cross Border Consultant, or Paralegal. There are also foreign-licensed attorneys that improperly portray themselves as “abogados” or “advogados”— “attorneys”—authorized to practice law in the United States.

Real life examples of the consequences of UPL in South Florida:



- Brazilian executive and her family find out, after 4 years, that they are out of status and at risk of removal. Marketing executive who was in the U.S. on a student visa hired a well-known Brazilian “cross-border consultant”, who dissuaded her from doing an E-2 investor visa, and “sold” her an EB-2 National Interest Waiver visa with concurrent adjustment of status, without fully explaining the process and its possible risks. Case is denied. Consultant re-submits case, including adjustment of status applications, even though family no longer qualifies for adjustment. Case is again denied. At this point, family finds out that they have been out of status for over 2 years. Their 18-year-old son, who had been in the United States had just been admitted at University of Florida and now they have to return to Brazil and possibly never return because they are subject to a 10-year-bar.
- Family hires “accountant” to do an L-1 petition for them. Unbeknownst to them, accountant forges documents and signatures, embellishing the case, and submits the case with the fraudulent information. Case is initially approved, but later flagged by the U.S. Government as possibly fraudulent, and family loses their status, loses their business, is removed from the U.S. and will likely never be able to return.
- Notario promises a work permit to a foreign national. Unbeknownst to foreign national, Notario submits a frivolous asylum case on behalf of the foreign national and his family, as if it was a pro se submission. Family is placed in removal proceedings and is ordered removed. Family is permanently barred from every entering in the United States because submitting a frivolous asylum petition forecloses all possible future visa applications.

In addition to these examples, there are many others: poorly drafted and incomplete petitions submitted to the USCIS that result in denials; submission of fraudulent documents; submission of applications too soon, and prior to the applicant’s eligibility; submission of documents without consideration of prior immigration history or aging out children, etc. Most of the time, the foreign national is unaware of these issues until it is too late. In immigration, an error can be fatal. For instance, launching a process before one is eligible or submitting an application with incorrect information can be detrimental to a case: errors or misrepresentations can cause the immigration agency to issue Notices of Intent to Deny, Requests for Evidence, or worse, Denials. In many cases, a failure on the part of the preparer of an immigration application can result unnecessarily in the commencement of deportation proceedings, bars to reentry to the United States, and permanent separation from one’s family.

Unlike licensed attorneys, UPL perpetrators do not have a fiduciary duty towards the foreign national seeking an immigration benefit. On the contrary, their interests often conflict with the foreign nationals’ interests in that their sole goal is financial gain. Even those who are “well-intentioned” and “just trying to help” place foreign nationals at great risk of removal/deportation due to errors and misrepresentations made in the application process for benefits.



B. Non-lawyer owned law firms have been operating in Florida in the past 4 years, in the immigration field, harming the public with misleading information and improper legal advice given by non-lawyers

Of great concern, in the past four years we have seen a proliferation of non-lawyers who enter in partnerships with a lawyer and form an immigration law firm in the District of Columbia, where such practice is authorized. However, the “firm” operates in Florida and the non-lawyers are the ones giving advice and preparing the cases, without legal supervision. These “firms” charge much more than regular firms and offer “money back guarantees” and other false and misleading information. The Florida Bar’s UPL Committees are aware of these issues, and have even issued cease and desist letters to a few perpetrators.

These “law firms” seem legitimate to the public but fail to adhere to the requirements enforced by the Florida Bar: they have “non-lawyers” overseeing lawyers and giving legal advice in consultations and presentations; they have a branch in Florida without lawyers on staff (only paralegals); and the offering of multi-services through the firm (accounting, franchising, tax preparation, etc.).

Immigration attorneys in Florida have seen a growth of frivolous or improperly filed cases prepared by these individuals, and many of these cases cannot be salvaged – there are many families in unlawful status in Florida today because they were victimized by these actors.

These individuals have been openly acting with impunity in our state, circumventing Florida Bar rules and evading “cease and desist” letters. We are very concerned that once Florida officially opens the opportunity for non-lawyer ownership of law firms, these individuals will similarly use the “loophole” improperly, not seeking the best interest of the client as the attorney must always do as a fiduciary, but rather seeking financial gain.

3. In addition to harming the public, the proposed changes will disproportionately harm immigration lawyers

Immigration law is often divided into the following topics:

- Family Unification (family petitions and waivers);
- Business (encompasses multi-national intercompany transfers; specialty occupation and advanced degree professions; athletes and artists competing and performing in the U.S. in major events; individuals with extraordinary abilities in the sports, arts, sciences, education and businesses; occupations in the national interest; religious visas; non-skilled and seasonal workers; and investment visas);
- Removal Defense, including “crimmigration” (the practice of defending a client in deportation proceedings on the basis of immigration law violations that may or may not have resulted from contact with law enforcement or a prior criminal history);
- Humanitarian (asylum seekers, victims of crimes, unaccompanied minors, etc.);



- Naturalization and Citizenship issues (including derivation and acquisition of citizenship, bars to naturalization, etc.);
- Consular Processing of immigrant and non-immigrant visas;
- Denaturalization (the civil proceedings that may commence at the direction of the Office of Immigration Litigation, to revoke a person's U.S. citizenship).
- Appellate practice, both at the agency level and at the Federal Court of Appeals and Supreme Court
- Federal litigation of immigration cases at Federal District Courts

Because each topic is very broad and complex on its own, some attorneys and law firms specialize in certain sub-categories. **In the immigration field, it is more common for attorneys to practice in small to medium-sized firms or as solo practitioners, and to charge flat fees, which are already significantly lower than legal fees charged in other fields.**

The proposed changes will directly affect the immigration law field in Florida. Not only there will be a proliferation of UPL, emboldened by the proposed changes, **but also it will directly and disproportionately harm immigration lawyers.** As explained above, the practice of immigration law is heavily form-based, and the selection of forms and evidence to be submitted is directly linked to the legal strategy of the case. Nonetheless, by allowing non-lawyers to fill out forms and do consultations, the Florida Supreme Court will be, in practice, eliminating the work of immigration lawyers. By introducing paralegals and non-lawyers as authorized to fill out forms and do consultations, foreign nationals will believe that they can use the services of these individuals, despite the legal complexities involved. It will be disastrous. Also, many solo and small immigration law firms will close their doors as immigration lawyers will not be able to survive the unfair competition.

Of great concern, the Florida Bar will likely be inundated with complaints, as the number of problematic cases will increase – and one of the few remedies in immigration court for the foreign national who was harmed is a bar complaint, as described in Matter of Lozada, 19 I&N Dec. 637 (BIA 1988) (setting the standard for ineffective assistance of counsel in immigration litigation cases).

4. Conclusion

Considering the importance and vastness of the practice areas within immigration law in the State of Florida, we believe that the authorization of non-lawyers in the practice of law, as preparers or partners in law firms, will cause great harm to the public in Florida, in particular those seeking assistance in immigration law. Similarly, it will be very problematic to immigration attorneys in our state. We urge the Florida Supreme Court to include immigration attorneys in its discussions and considerations, as we will bring a unique perspective that has not been addressed by the Special Committee.



The South Florida Chapter of the American Immigration Lawyers Association is available and ready to assist the Florida Supreme Court and the Florida Bar with questions they may have regarding the impact of the proposed rules on the community and the immigration law bar in Florida.

Sincerely,

Elina M. Santana, Esq.
President, AILA South Florida Chapter
Florida Bar Number 72751
Elina@srlawpa.com

Andrea M. Canona, Esq.
Chair, UPL Committee
AILA South Florida Chapter
Florida Bar Number 104923

Alexandra P. Friz-Garcia, Esq.
Chair, State and Local Congressional Committee
AILA South Florida Chapter
Florida Bar Number 111496

From: [Frank D. Butler, Esq](#)
To: [SCinput](#)
Subject: Non-Lawyer Ownership of Law Firms
Date: Monday, October 25, 2021 3:18:57 PM

Distinguished Florida Supreme Court Justices:

Thank you for the opportunity to speak with you through the following.

I am a practitioner since 1992, employing eleven people, including four attorneys and seven staff. At age 32 I was sworn into the Florida Bar and defied the odds of completing college, and law school, when only some of my generation in my immediate and extended family had completed high school. In that time since being a sworn member of the Bar I have represented claimants, and many of them had cases that were overtly not profitable when I agreed to represent them. One of the challenges of a small law firm is to compete with others who seem to have unlimited advertising budgets. Does that mean the delivery of better services to potential clients? I do not know of any studies done on that topic but anecdotally I can only relay that the assembly-lining of cases by larger firms has produced new clients to my firm who were unhappy with bigger-money law firms. Would then having corporate ownership of larger firms be a boom to my firm, perhaps, but what happens to the clients whose cases are assembly-lined by ownership seeking greater quarterly profits?

Interjecting corporate ownership, influence, or control by non-lawyers in my view will not enhance quality legal counsel to clients in need. I agree with some who note that automobile insurer-controlled law firms have changed the direction of those law firms—and not for the positive, nor seemingly for the better representation of their insured clients. Insurer-controlled firms, or those whose attorneys are outright employees of automobile insurers, are forced to make decisions based on the employers' profit and loss calculations rather than strictly what is in the insured's best interest.

I would prefer and urge the Florida Supreme Court to revise the obligations of Florida licensed attorneys to provide more pro bono hours to enable those who cannot afford legal services to be able to obtain legal services. I question that allowing non-attorney ownership of law firms will result in more availability for cases which are not being handled right now. The trend to corporatizing any segment of business is to place profits as the primary motivator as opposed to meeting the needs of those who cannot afford the service. Other members have noted this profit-first progression in the context of medical care and health insurance is not causing medical care to become more affordable. I read in the Tampa Bay Times (October 24, 2021) how national companies like Zillow, Redfin, Offerpad and Opendoor are causing housing prices to rise in a regional community like the Tampa Bay area. The companies—owners of significant data and resources—swoop in to displace local resident buyers, again for profit only, and not due to any particular burden for home buyers, sellers, or the region in general. While the article notes that these corporations have not perfected their model it does offer insight into yet another business genre where profit is the motivator and everything else is secondary.

If the endeavor is to provide more availability of legal services to the general population and to those who cannot otherwise afford legal services, then increase the pro bono requirements. This, it would seem directs the solution directly to the stated problem/deficiency without the potential for profit motivated corporations to change the client-first approach which is still now more so prevalent. Let us also be mindful of the *thousands* of small law firms who do not have six-figure or seven-figure marketing campaigns—who will not be attractive as takeover targets—but who presently provide quality legal representation and who employ thousands upon thousands of employees in their practice.

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October 25, 2021
(adding Howard Coker as a signatory)

While the undersigned practice in different law firms, in different specialties and in different cities, we are united in being against any recommendation or rule change allowing any form of non-lawyer ownership of a law firm or the sharing of legal fees with non-lawyers. Since the founding of the Republic, lawyers have served as the backstop for the Independence of the Judiciary. Notwithstanding the limited scope of the committee's report, we are opposed to the underlying concepts of non-lawyer ownership and fee splitting. Non-lawyer ownership of law firms and the splitting of legal fees with non-lawyers will shift the focus of lawyers away from the administration of justice and will jeopardize the status of the judiciary as a free and independent co-equal branch of government.

The lawyer is draped with the insignia of the noble and learned cause of supporting the administration of justice. The last profession in our country that should denigrate to a dishonorable calling is the legal profession. (Principals espoused by Justice Glenn Terrell.)

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From: [Martha L. Arias](#)
To: [SCinput](#)
Subject: final report of the Special Committee to Improve the Delivery of Legal Services
Date: Monday, October 25, 2021 5:58:58 PM
Importance: High

Dear Supreme Court of Florida and Florida Bar,

**As a licensed Florida Attorney, this is my COMMENT AND STRONG
OPPOSITION TO the final report of the Special Committee to Improve the
Delivery of Legal Services.**

It is extremely SAD and DISAPPOINTING that the same organization that purports to protect the rights of attorneys, professionalism, and ethics, is even considering such a proposal. This proposal MUST NOT PASS!! Because it will strongly and gravely impact our legal profession and livelihood.

First, a non-attorney owning a law firm will certainly allow for MANY, MANY, AND MORE MANY huge corporations, with a lot of money, come to Florida and “create law firms” with expensive software that will do the job of the attorney.... These firms, might employ a couple of attorneys, maybe, to do basic things or to show certain ‘law firm-image.’ These poor attorneys will certainly have a minimal pay and will certainly be treated as puppets rather than attorneys. Who would want to invest over US\$200,000 in school tuition to be paid a minimal salary and become a blue-collar employee? The CEO of the company will have more weigh in the “company’s” decisions than the attorney.

The attorney will probably be puppets to an organization that mandates what to do, regardless of ethics and professionalism. The goal of a “business law firm” such as this is to MAKE MONEY, MONEY, MONEY without any regard to the client and his/her case. A total disaster. Indeed, I am pretty sure a lot of these HUGE corporations are already lobbying for this change. We may be certain that “Mary or Joe in the corner is not doing this.” This proposal must come from big corporations flooding money to have this change.... Thus, those proposing the change must show their relation to these type of firms or what their interest in this is... **I am sure that solo practitioners ARE NOT supporting**

this outrages proposal.

Second, this terrible proposal WILL BE THE END OF SOLO PRACTITIONERS in many areas such as labor, family, probate, and immigration law, just to mention some. Most attorneys in Florida are solo practitioners or work for small law firms. By these CORPORATIONS coming to Florida with their MONEY AND EXPENSIVE SOFTWARE AND SETTINGS, they will be destroying an important part of the legal services in Florida. This will impact attorneys' jobs, clients' ability to obtain ethical and professional representation, and this will also create loss of jobs for many paralegals and legal assistants. All of the above is disastrous for our profession and the Florida economy.

Law school will be impacted as well. Who will pay an expensive tuition if the standard of the legal profession and payment is going to be very low? Law schools will probably close and some few will survive. Do we want this for our economy?

Third, professionalism and ethics will be lost for Florida Attorneys. There will be no way a 'second-hand' attorney employee, this is what we will be, can overwrite the CEO's decision. We may even have a Chinese investor coming with huge money and employees in China to offer and provide legal services in Florida, at a very discounted rate!!! Yes! For that, they might hire some other puppet attorneys in Florida to show an image of a Florida law firm. But, services are rendered in China..... Is this really what you, the Supreme Court of Florida and the Florida Bar want for our legal profession? For our children that are in law school investing a lot of money to be hired by a Chinese investor? Please, please, think about this and the huge damage to our profession. Our salaries as attorneys will be controlled by China, Russia, or the Middle East?? The ones proposing this may just think that these will be American corporations investing in the legal profession, but where do you draw the line? How would you prevent China and Russia from investing in law firms in Florida?

If the profits of the organization are more important than the legal service and ethics, there will be no JUSTICE. Justice is the basis for democracy and society. You, the Supreme Court of Florida and the Florida Bar will be destroying our

democracy and Society!!! Once people cannot get proper, ethical, professional legal services, chaos penetrates the legal system. Attorneys are the pillar of justice and YOU are destroying our profession. You are destroying the pillar of justice with this proposal.

Four, Let's say the argument is that these HUGE CORPORATIONS or investors that come to invest in law firms may be able to give lower prices so more people can afford legal services (of course, China products!!....). Again, smart and educated people will not hire these money machines. They certainly will not! Smart and wealthy people will see the difference and those will probably hire ethical and professional, and independent, attorneys. But, we are then putting the less privileged at risk. Those who cannot afford the best service will have to hire that Chinese law firm in Florida... Or maybe Mr. LegalZoom???? Which is going to provide an automated services handled by a software that costs billions of dollars...

Fifth, I demand that the smart attorneys presenting this awful proposal tell us WHO will be responsible for malpractice: the CEO or the attorney?? So, we will be the ones putting our license and livelihood at risk, making less money, and losing the professional respect, but Mr. CEO, or Mr. LegalZoom will not be liable because he is just the CEO.... They are the ones making millions from the public and the ones subject to the malpractice will be the poor attorney? Is this real? Is this really what YOU, the ones proposing this, or the Florida Bar wants for our human being attorney? As it is now, the partners and associates hold the legal responsibility for malpractice, and that is the way it should be. But, Mr. business person living in China and investing in Florida will NEVER be held accountable for malpractice. Mr. Investor in Delaware.... (who knows where this investors really lives....) will NEVER be subject to any liability. Yet, the puppet attorneys working at the factory law firm will be putting their license at risk.... Ah, yes, there is malpractice insurance... sure, but what about our reputation? What about our dignity as professionals? Who will bring back our reputations once the CEO takes a "business" decision for the Floridians seeking legal advice?

It is a shame that attorneys licensed in Florida are taking the time to destroy

our practice and livelihood. It is a shame that money flooding, for sure, from big corporations or big Legal investors have the voice in this huge change to the legal profession. Why these attorneys do not think in our children who dream to be attorneys? Oh yes, they will die with a lot of money in their package and who cares about the ones that come later?

This MUST NOT PASS. This will be the end of a reputable profession and will become the profession amenable to the highest bidder? Or better? (or beater??).....

If this proposal passes, the Florida Bar and all those proposing this should pay every single Florida attorney their law school student loans...because we will lose our livelihood because of this; something we DID NOT SIGN FOR. I strongly ask for an amendment to include this clause in case this passes. And, also it should include a clause that if we, solo practitioners, lose our businesses because of this proposal, the Florida Bar and the ones proposing this must pay for our loss of business in the same amount we produced for the past five years and return our tuition and Florida Bar dues since we obtained our licenses. This will help to eat while we find another career...

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The Florida Bar FAMILY LAW SECTION

October 25, 2021

Email: scinput@floridabar.org
President Michael G. Tanner
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399

Re: Final Report of the Special Committee to Improve the
Delivery of Legal Services

Dear President Tanner:

On behalf of the Family Law Section of the Florida Bar, we truly appreciate the opportunity to provide our input on the *Final Report of the Special Committee to Improve the Delivery of Legal Services*. The Family Law Section joins the Real Property, Probate and Trust Law Section in recognizing the hard work performed by the Special Committee specifically in striving to improve the availability of legal services to the citizens of Florida. However, for reasons set forth in our Comment, the Family Law Section has significant concerns primarily related to the proposed Limited Assistance Paralegal Pilot Program, hereinafter "Paralegal Program" and Law Practice Innovation Laboratory Program (i.e. Lab) and the detrimental impact the same may have on Florida's families. Therefore, we respectfully disagree with the recommendation of the Special Committee in this regard.

Respectfully Submitted,

Heather L. Apicella
Chair of The Family Law Section

**COMMENT OF THE FAMILY LAW SECTION OF THE FLORIDA BAR
TO THE FINAL REPORT OF SPECIAL COMMITTEE TO IMPROVE THE
DELIVERY OF LEGAL SERVICES**

On behalf of The Family Law Section of The Florida Bar, the Chair, Heather Apicella, Esquire, submits the following comments regarding the Final Report of the Special Committee to Improve the Delivery of Legal Services.

**GENERAL COMMENT ON THE FINAL REPORT OF THE SPECIAL COMMITTEE
TO IMPROVE THE DELIVERY OF LEGAL SERVICES**

The Section acknowledges the Special Committee’s work in bridging the justice gap within Florida. We commend the efforts of the Special Committee to work towards greater access and ease to both the court system and individuals caught in the justice gap; however, we have a number of concerns related to the report. The Family Law Section’s concerns stated herein are primarily related to the proposed Limited Assistance Paralegal Pilot Program, hereinafter “Paralegal Program” and Law Practice Innovation Laboratory Program, hereinafter “Lab”. While this is the primary focus of our comment, it should not suggest that the Section is without concerns as to the other suggested changes. Due to limitations in time and the belief that others would likely focus on the advertising and other proposed rule changes, the Family Law Section has opted to focus on the issue of the Paralegal Program and the Lab which we believe directly impacts the practice of family law.

I. The history and background of the Family Law Section’s opposition to the Limited Assistance Paralegal Pilot Program.

The Family Law Section opposed the proposed previous rule changes to create an Advanced Florida Registered Paralegal. This proposed rule was ultimately voted down by the Florida Bar Board of Governors after extensive discussion and comments submitted by various sections and members of the Florida Bar. While the Family Law Section opposed the rule, we

did offer suggested changes and revisions to the proposed rule as an alternative in the event the rule was passed. These alternatives were in the event there was an insistence that a rule be passed and were not intended to be an approval of the rule itself.

While we appreciate the work done to create improved, revised rule, ultimately the revisions fell significantly short of the what the Family Law Section believes was and is necessary. The suggested Paralegal Program is proposing changes similar to the proposed rule creating an Advanced Florida Registered Paralegal, but goes further by expanding the role of paralegals to even attend court with clients. The Family Law Section remains opposed to expanding the role of non-lawyers and the creation of a pilot project in a Lab.

2. The Family Law Section Opposes the creation of a Limited Assistance Paralegal Pilot Program.

The Family Law Section opposes the addition of any revisions to the paralegal rule or other rules which would allow for non-lawyers to provide limited legal services. This includes the creation of a Paralegal Program within the Lab. While the Section supports better access to justice, the expansion of the role of non-lawyers will not provide more access to justice, and may create more difficulty for low-income individuals seeking civil justice in our judicial system.

Paralegals play an important role in our legal system; however, they are not the appropriate solution to fill the justice gap. Most self-represented individuals need assistance that exceeds the mere filling out of paperwork. Finding forms, providing litigation “packets” and filling out paperwork already exists with paralegals, laypersons and clerk employees having the authority to serve in these functions. Litigants need competent legal advice and representation in the courtroom by Florida Bar licensed attorneys. They need advice and guidance on how to seek appropriate relief, understand the range of relief to which he or she may be entitled, and to otherwise move their case through the court system. They need to know how to present evidence

during a hearing, match the facts to the appropriate cause of action and statutory framework, and draft agreements and orders that resolve their legal issues. While filling out forms may create access to the legal system, it does not by itself create access to justice. Access to justice only occurs when a litigant is able to meaningfully present his or her case to the court within the confines of a courtroom in accordance with the rules of evidence, the rules of procedure, apply the applicable statutes and case law. A paralegal cannot fulfill this function.

The use of paralegals or other non-lawyer providers to fill the access to justice gap will be detrimental to the public. The Family Law Section specifically identifies this detriment as extensive clean-up of improperly completed work, failure to properly supervise paralegals and overall lack of accountability of the paralegal themselves, thus, leaving the public without a sufficient remedy.

The general public will not fully understand the limited scope of representation and will find themselves embroiled in their legal issue without sufficient support or resources to successfully complete their case. Even worse, they will face the consequences of needing to pay a lawyer more than what it would have cost to hire an attorney from the beginning in order to rectify issues created by a paralegal or unlicensed individual. The American Bar Association's preliminary evaluation of the Washington State Limited License Legal Technician Program indicated that this was, in fact, an issue. *Preliminary Evaluation of the Washington State Limited License Legal Technician Program*, Thomas M. Clarke National Center for State Courts) & Rebecca L. Sandefur (American Bar Foundation), March 2017. Page 8. This problem will be exacerbated by allowing a paralegal to accompany clients to court.

The Family Law Section opposes allowing any non-licensed individual to accompany a client to court for the purpose of providing administrative support. Inside the courtroom, the lines

between the support a paralegal or other individual is authorized to provide will most likely quickly become blurred between mere assistance and advocacy. Unless the supervising attorney is present, the paralegal would have no direction as to their limited role. Allowing administrative support in the courtroom is highly likely to create a belief by the client that the paralegal can provide legal advice or services beyond what is allowed. It serves to create confusion not only for clients but also for the judiciary and all other participants in the proceeding.

Creation of a Paralegal Program and Lab raises substantial concerns by the Family Law Section. There are fears this could lead to the creation of “mills” analogous to the situation that arose in the wake of Florida’s recent flood of foreclosure litigation. This concern is heightened when coupled with the proposed changes to Rule 4-5.4 allowing for fee sharing with non-lawyers. These “mills” could easily set up on-line access similar to the “foreclosure mills” and “robo-signers” of the past.

There is currently no malpractice insurance required of, or available to, paralegals. Thus, the lawyer would be the only individual carrying this insurance and fully liable for the work of a non-licensed individual or paralegal. This puts a heavy burden on the supervising or employing attorney. It potentially creates a system where young attorneys that do not fully grasp the implications of their own supervisory roles; however, they are directly liable for the work of one, a couple or numerous paralegals. It further may increase the cost of malpractice insurance further limiting young attorneys and others from providing lower cost fees to their clients (given the hard costs that they must now cover). Without the benefit of malpractice insurance, clients could be left without the benefit of malpractice insurance.

The impact on young attorneys as well as those attorneys currently charging lower hourly rates is the opposite of what is likely intended. For example, a young attorney would know how to

seek appropriate relief, understand the range of relief to which the client may be entitled, and to otherwise move the client's case through the court system. The young attorney would know how to present evidence during a hearing, match the facts to the appropriate cause of action and statutory framework, and draft agreements and orders that resolve their legal issues. The creation of a Paralegal Program would create another layer of competition in an already overly competitive field without meaningfully ensuring access to justice within the courtroom.

The implementation of the proposed Paralegal Program could harm the overall integrity of the practice of law as The Florida Bar's stated core functions are to:

“Regulate the practice of law in the state; ensure the highest standards of legal professionalism in Florida; and protect the public by prosecuting unethical attorneys and preventing the unlicensed practice of law.”

These core functions are designed to protect the integrity of the practice of law. Despite its desire to increase access to justice, The Florida Bar must ensure that any program which expands those who can assist the public with legal matters must first and foremost adequately protect the consumer. The proposed Paralegal Program is ripe with the potential to take advantage of consumers, damage the careers of lawyers, and adversely impact the integrity of the profession.

3. The Family Law Section opposes the creation of the proposed Law Practice Innovation Laboratory Program.

The Family Law Section expresses concerns regarding the creation of the Law Practice Innovation Laboratory Program. While the Lab offers an opportunity to experiment with innovative ideas, it also creates the potential to harm the public and the reputation of lawyers. A particular concern is the ability of the Lab to allow the Supervising Body to selectively modify current rules and regulations. The Florida Bar Rules were developed in part to protect the public. Selective changes to the rules which were developed over time and with the input of numerous

individuals and attorneys, could result in the unintended harm to the public. In summary, The Family Law Section is concerned that this is slippery slope with systemic unintended consequences.

In addition, the Lab itself would create a controlled environment that is less likely to produce real world results. Outside of the Lab's controlled environment, the paralegal rule would be subject to potential use as a mill and/or the failure to properly and carefully supervise paralegal's work. The Lab's controlled environment will create a perfect environment and will fail to test the rule with the realities of those who would manipulate the rule to financial gain without an emphasis on proper supervision or protecting the clients.

The fiscal impact for funding the Lab model was not fully explored by the Committee. Specifically, The Family Law Section has concerns about the logistics of how the seed money for this Lab model will be funded by The Florida Bar.

Most importantly, if it is the intent that the Lab model be adopted throughout the State, there is currently no independent methodology for evaluating the success or failure of the Lab. The Section references the portion of the Committee report that states: "The Lab model puts the burden on the applicants to determine how their services should be measured in terms of benefits, harms and risks."

We respect the hard work and contributions of those working on the Special Committee to Improve the Delivery of Legal Services in identifying possible solutions. However, allowing non-lawyers to provide limited legal services potentially creates more problems for litigants than solutions. The Family Law Section firmly believes that increasing attorney availability and incentivizing representation of low to moderate-income litigants will bridge the justice gap. Determining how to do that is the real challenge. We strongly encourage the Florida Bar to not

support any programs or rule changes which would allow non-lawyers to provide limited legal services or place such a project in the Law Practice Innovation Program.

Respectfully submitted this 25th day of October 2021.



HEATHER L. APICELLA
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From: [Stefanie Crespo](#)
To: [SCinput](#)
Subject: RE: Objection to Proposed Rules regarding non-lawyer legal services & ownership of law firms
Date: Monday, October 25, 2021 9:20:05 PM

Dear Committee Members,

My name is Stefanie Crespo, I'm a solo practitioner in the area of immigration law, and have been a Florida barred lawyer for over 8 years. I have had my solo practice for more than 6 years now. I am a member of the American Immigration Lawyer's Association, with the South Florida and Central Florida Chapters. I have spent much of my time in practice in South Florida and moved my practice to Tampa in July 2019. My practice primarily focuses on representing clients in deportation proceeds, asylum seekers, and family-based immigration matters.

When I was 16 years old, I decided to become an immigration attorney. I was inspired by my mother who at the time, was seeking to apply for her citizenship but the person she hired to do her paperwork tried running off with her money. Thankfully, at that time, she was able to put a stop-payment on the check. I'll never forget the look on her face of disappointment of having to start the process all over again. It clicked for me at that moment, many immigrants don't have that option because many of them pay in cash for services and they're either unaware or too afraid to report the people who defraud them. I decided then, to be one of the good lawyers to provide people with what they needed AND what they paid for. It has been an honor for me to be able to live that dream throughout my legal career.

As many of you can attest, experience is the best teacher. Unfortunately, it does not appear that anyone on this committee has experience with immigration law practice and therefore cannot understand, firsthand, the irreparable harm done within this area of practice by paralegals, notarios, consultants, and certain "law firms" owned by non-lawyers that operate in our state. The most heart-wrenching consultations I have had are with potential clients who were sold a bag of lies about what they could apply for and after they've spent years and thousands of dollars on a pipe dream, I have to be the one explaining to them why all that information was outdated or incorrect. It's disheartening hearing the desperate pleas of someone facing deportation and sometimes, sure death, that the actions taken by a paralegal/notario/ consultant/non-lawyer legal service provider are what landed them in ICE's hands and into immigration proceedings. I am often the second or third person my clients come to seeking a solution for their immigration problems and the work that I have to put in correcting the mistakes of people wholly incompetent, greedy or careless with these matters, makes me feel like I'm running a non-profit because I do not have the heart to charge them all the work that goes into what I do. Many of my clients struggle to make ends meet and are scared of the prospects of having to return to a country they desperately fled.

I have a client, a father of 4 U.S. citizen children, who has been in the U.S. for over 10 years and is now facing deportation because a notario filed an incorrect asylum application. This notario was under investigation even with DHS but nothing

indicates this notario was jailed, fined, or punished in any way. To hear that this committee is seriously proposing to allow non-lawyers to provide certain legal services to individuals (such as preparation of forms), is repulsive. The recommendations will gut many practices, not just immigration. But for those of us who do practice immigration, we will be especially affected because many of us are solo practitioners. Essentially, our sacrifices and law license will be pointless. We are already competing with the undisciplined paralegals and notarios and instead of taking a more hardened approach on those committing fraud, this committee's recommendation seems to be giving them an open invitation. Immigration law is not solely comprised of filling out forms. The real-life consequences of an unrelenting, scrupulous government, meticulously requiring a heightened standard of worthiness to be granted even the most basic human rights, requires the dedication of an informed and caring practitioner to ensure more lives are not being placed at stake.

If the real issue is access to justice, then the cost of being admitted into law school, attending law school, and being admitted into the bar should be reviewed. Claiming that part of the problem, is not allowing investment from non-lawyers, completely misses the mark. Having to pay off student loans requires us to have our fees set at certain rates so we could also afford to live. I do not live lavishly, I barely make \$70,000 annually even at this stage of my career because I'd rather be fair to my clients than take advantage of them. Rule 4.5 is not what is actually preventing lawyers from meeting the needs of their clientele, it's greedy companies not paying their workers a living wage, it's the exorbitant cost of post-graduate education, it's financial institutions red-lining minority-owned businesses from funding and it's law schools not properly preparing law students how to run the business of a law firm. The research cited in the report that claims, "[C]omparative research finds no evidence that [alternative business] models result in adverse effects on consumers..." This report could not have contemplated the effects on immigration clients because people get deported every single day as a result of the shoddy work of a non-lawyer in these cases. But I suspect these are not the consumers this report contemplated anyway. Footnote 47 of the report states Washington state's program "was not an effective way to address the issue of the unmet legal needs of individuals who could not hire a lawyer." So why would the committee still reference it as something to try? None of the states referenced with pilot programs have fully implemented them.

It appears clear from the report that investment and technology companies stand to make a great deal of money from the passage of this proposed rule, interests that seem represented within the committee itself. Referring to people needing legal services as "consumers" informs on the monetary goal being sought, this is not about access to justice. Despite the glaring rejection of Florida practitioners to relax the rules, the committee's response to the survey basically tells us all to kick rocks. Your minds seem to be made up already. If the Lab is implemented, I request that special note be taken of the number of people who are deported as a result of this pilot program, how many families will be ripped apart, how many children are placed in the foster care system or orphaned, ancillary issues to be considered. Stating "Allowing the venture to continue is necessary to encourage innovators to apply to the Lab. Organizations and individuals will not invest the capital necessary to ensure that the venture is a success if the venture will automatically be terminated after 3 years."

further reiterates the committee's commitment to the monetary gain versus whether access to justice will actually improve, none of the other pilot programs have proven they worked. I don't expect my email to carry much weight or make much of a difference. But I want my objection noted.

--

Warm Regards,

Stefanie Crespo, Esq.

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Hablo Español



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October 26, 2021

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RE: NON-LAWYER OWNERSHIP OF LAW FIRM FEE SPLITTING WITH NON-LAWYERS

Dear Sirs:

I write in opposition to any recommendation or rule change that allows any form of non-lawyer ownership of a law firm or any recommendation or rule change that will allow lawyers to share fees with non-lawyers.

Access to legal services are important and access certainly may be helped by more innovation. However, these recommendations strike at the core of what makes us independent. They will ultimately undermine the independence of our judiciary. Can't we find other recommendations that would provide access and innovation without ripping at the fabric that makes us independent?

The practice of law is a profession and should not be governed by market analysis or ROI (return on investment). Because Utah, Arizona and the U.K. have seen fit to authorize non-lawyer ownership of law firms and fee splitting with non-lawyers does not mean that the State of Florida should also do so. Would it not seem prudent to see how "their" experiment works out before walking into the unknown?

Certainly, non-lawyer ownership of a law practice would create an inherent conflict for any lawyer. There are certain principles that should not be subject to a tinkering experience called a "sandbox." Nor should companies that participate be given a permanent law license for non-lawyers.

The need for lawyer services will not be better served by non-lawyer ownership or by splitting of fees with non-lawyers. In fact, the exact opposite will occur. One only needs to look at the course of non-medical ownership of medical practices to believe that non-lawyer ownership of law practices would not be beneficial to the client or our individual practices of law.

Profit over professionalism is not the answer. Non-lawyer ownership of law firms and fee splitting with non-lawyers are steps in the wrong direction.

There are a multitude of issues not the least of which is the issue of discipline and who controls same. Additionally, the data seems insufficient for these recommendations. More empirical data is needed to show the long term effect of these recommendations.

These changes will ultimately harm those who are supposedly being served. We should not be willing to gamble our clients wellbeing. In my close to 50 years of practicing personal injury law, I have seen no situations that I believe would warrant non-lawyer ownership of law firms or fee splitting with non-lawyers.

For all of these reasons I am against any recommendation to allow non-lawyer ownership of a law practice and/or the sharing of fees with non-lawyers.

Very truly yours,



HOWARD C. COKER

HCC/eljt

SCinput@floridabar.org

October 27, 2021

To the Members of the Special Committee:

The Final Report of the Special Committee to Improve the Delivery of Legal Services (Final Report) indicates that the Florida Supreme Court and Florida Bar are entertaining plans to allow non-lawyers to provide certain legal services (such as form preparation) to individuals as well as have ownership in law firms in part because the practice is common in other countries. The use of the word "improve" is ironic, especially in the immigration context. It is precisely the unstable and corrupt conditions in foreign countries that lead to so many to seek legal protections in this country.

As Chair of the American Immigration Lawyers Association Central Florida Chapter's Unlicensed Practice of Law Committee and having practiced immigration law for over 20 years in Florida, I have seen first-hand the irreparable harm caused by nonlawyers ranging from unnecessary deportations to having to pay additional USCIS and attorney fees to correct the damages.

The Florida Supreme Court, the Florida Bar, and American Bar Association have traditionally agreed that nonlawyers should not be permitted to prepare forms or have ownership interests in law firms. Please consider the following:

- A nonlawyer who has direct contact with individuals in the nature of the completion of legal forms engages in the unlicensed practice of law. *Florida Bar v. Catarcio*, 709 So.2d 96 (Fla.1998)
- A corporation engaged in the unlicensed practice of law where its officers and stockholders were nonlawyers with no legal training who supervised and maintained a degree of control over the legal services it furnished through its lawyer employees and noting the inherent conflict of interest between the legal needs of the client and the monetary policy of the corporation and how such a business structure permits unlicensed and unregulated persons to profit from the providing of services which by law they are prohibited from providing. *Florida Bar v. Consol. Bus. & Legal Forms, Inc.*, 386 So.2d 797 (Fla.1980)
- ABA Model Rule 5.4 prohibits law firms from having nonlawyer owners. The purpose of the rule is to protect our professional autonomy by shielding us from the supervision of nonlawyers who might put profit before clients' best interests.
- 8 CFR 1.2 prohibits non-lawyers from engaging in legal practice or preparation of forms other than by notaries who may only receive only nominal pay. See 8 C.F.R. § 1001.1(i), (k). The Final Report, however, makes no mention of notaries whatsoever.
- There is no recourse against non-attorneys who commit errors in their form preparation. In contrast, the ineffective assistance of licensed counsel is a defense that could allow a harmed immigrant recourse. *Padilla v. Kentucky*, 559 U.S. 356 (2010)

- non-attorneys who have no license to lose are more willing to file weak cases. Doing so puts legitimate cases under tighter scrutiny and increases processing times exponentially for all applicants.

For all these reasons, Florida should continue the American tradition of protecting both the integrity of the legal profession and the public. Therefore, I urge Florida Supreme Court and Florida Bar not to adopt the Final Report as it pertains to nonlawyers providing legal services or having law firm ownership.

Thank you for your consideration.

Elizabeth Ricci, Esq.

UPL Chair, American Immigration Lawyers Association Central Florida Chapter

850 224 4529 • elizabeth@rambana.com

From: [Gina M. Fraga, Esq](#)
To: [SCinput](#)
Subject: Comments on Special Committee to Improve the Delivery of Legal Services
Date: Wednesday, October 27, 2021 12:02:49 PM
Attachments: [image001.png](#)

In response to the Final Report of the Special Committee to Improve the Delivery of Legal Services, I would like to comment on the issues of the Regulation of Nonlawyer Providers of Limited Legal Services and Nonlawyer Ownership of Law firms. The committee should oppose these changes as these would cause irreparable harm to our undocumented and immigrant population, to our Hispanic and Latino community (who believe that certain paralegal notaries “notarios” are in fact authorized to practice law as in their countries) and most of our low-income citizens of the State of Florida.

This is a cultural issue. Please understand that in many Central American countries only attorneys are authorized to be Notaries. Thus, when a nonlawyer provider or paralegal currently calls themselves “notario” many think they are authorized to practice law and hire them, pay thousands of dollars to later find out their money was stolen, they submitted fraudulent documentation to federal agencies such as the Department of Homeland Security, they filed incorrect information in their divorce proceedings and never get a final hearing, etc. As of 2020 almost 30% of our population in Florida consists of Hispanics/Latinos.

Specifically, Rule 4-5.4 should not be amended to permit nonlawyers to have a non-controlling equity interest in law firms with restrictions. In addition, the committee should not allow Florida Registered Paralegals to provide limited legal services in specific areas and within a law office under the proposed review of regulations of Nonlawyer Providers of Limited Legal Services. Again, this will disproportionately affect our immigrant community as registered paralegals have already been taking advantage of the lax rules currently in place which only result in criminal convictions after they have hurt thousands of immigrants who suffer irreparable harm (breaking up of families, final order of deportations that may not be reopened, allegations of fraud by DHS when client never read or signed paperwork, promises to get immigration benefits by filing fraudulent forms, etc.). If you want specific examples please see:

1) 2002 Indictment of 6 persons in Miami, some of which were registered paralegals. See The Florida Bar vs. Olga Hedman, Case no. SC02-2058.

<https://www.sun-sentinel.com/news/fl-xpm-2002-04-25-0204240815-story.html>

Note that after scamming thousands of people and getting a slap in the wrist. Mrs. Hedman’s daughter is still working with the public in real estate.

2) 2012, US v Levy Garcia Crespo, See

<https://www.palmbeachpost.com/article/20120330/NEWS/812035744>

Mr. Garcia Crespo worked as a paralegal in the office of a criminal attorney, Gerald Salerno, in West Palm Beach where he assumed the attorney’s identity (possibly with the attorney’s knowledge) and represented thousands of immigrants before the Department of Homeland Security and before immigration court. He submitted more than 3,000 false or fraudulent immigration applications on behalf of unsuspected foreign nationals who paid him hefty “attorney’s” fees. From the Palm Beach

Post article: “The driveway of his nearly half-million Lake Clarke Shores house was a testament to his success. It featured a seemingly never-ending stream of Lamborghinis, Maseratis, Porches, boats and motorcycles he bought with the money he earned in his burgeoning practice as an attorney. The only problem was....he wasn’t an attorney.”

3) 2020, US v Laura Luz Maria Torres Romero. See <https://www.justice.gov/usao-sdfl/pr/owner-immigration-business-pleads-guilty-defrauding-uscis-and-irs>

I personally assisted over five clients in filing UPL complaints against this paralegal since the year 2016. She scammed thousands of immigrants in Florida and California. She worked with two or three attorneys in other states who would fly in just to go to the hearings. I also contacted the State Attorney’s office, filed a complaint with the Fraud Detection and National Security Directorate of DHS, contacted the Florida Attorney General’s office and nothing was done. She scammed immigrants from 2012 until 2020 when Immigration and Customs Enforcement HSI office submitted a complaint to the United States’ Attorney’s Office. The HSI agent investigating this case admitted the only reason it was prosecuted was because she filed fraudulent tax returns since the immigration charges could not stick and their investigation lasted three years before she could be indicted. At least one of my clients was separated from his family, deported due to her mistakes and false information on forms submitted. He will never be able to join his wife in the United States due to the harsh consequences in the immigration laws.

I have many more of these examples if you need them. Again, the committee should show they care about our Hispanic and Latino immigrant population and should not approve these changes.

Sincerely,
Gina M. Fraga, Esq.
Florida Bar #41016



Gina M. Fraga, Esq

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VIA E-MAIL to SCinput@Floridabar.org

Florida Bar Board of Governors
The Florida Bar
651 E Jefferson Street
Tallahassee, FL 32399

RE: *Final Report of the Special Committee to Improve the Delivery of Legal Services*

Dear Members of the Florida Bar Board of Governors:

I write to express my grave concerns with multiple proposals in the *Final Report of the Special Committee to Improve the Delivery of Legal Services*, dated June 28, 2021. While the intent of the Committee is commendable, I am deeply concerned that the results will have deleterious effects upon the residents and citizens of Florida. Specifically, I am greatly concerned about the recommendations regarding non-lawyer ownership and sharing of attorneys' fees with non-lawyers.

My first concern is that these proposals will greatly dilute the noble calling of the legal profession. Attorneys, specifically members of The Florida Bar, have a *fiduciary relationship* with their clients. If an attorney ever runs afoul from the Florida Bar Rules of Professional Conduct or the Rules Regulating The Florida Bar, then the attorney must answer to the Florida Bar and the Supreme Court of Florida's inherent power (and duty) regulating the standards of conduct for lawyers. I greatly fear that these proposed amendments will increase the prevalence of acts within our profession that are contrary to honesty or justice. Non-lawyers seeking an equity interest or ownership in law firms lack the "sweat equity" and vested interests that Florida Bar members inherently possess by their application, acceptance and graduation from law school and subsequent admission to the Florida Bar. If non-lawyers are permitted to maintain an ownership interest in a law firm or share attorneys' fees, how can these non-lawyers hold our professional standards with the same regard?

I am further concerned of the ability for lawyers to contemporaneously monitor and enforce non-lawyers to comply with the Florida Bar Rules. These proposals, if accepted, will result in a lack of oversight and enforceability to which our profession has never seen. Such a result is not in the best interest of Floridians.

While I commend your efforts to increase access to justice for all, I do not believe that these measures are the appropriate way to achieve that goal. Instead, if the Committee's recommendations are implemented, they will likely cause irreparable harm to clients, litigants, lawyers, and the legal profession as a whole. There are far better solutions which can and should be pursued to ensure uniform access to justice.

I respectfully request that you, as elected representatives of the Florida Bar, *strongly oppose* the Committee's recommendations on these issues.

Sincerely,



Hutch Pinder, Esquire

From: [Ksenia Maiorova, Esq.](#)
To: [SCinput](#)
Cc: [Caminez-Bentley, April](#)
Subject: input on proposed program permitting non-lawyers to provide limited legal services
Date: Wednesday, October 27, 2021 3:47:18 PM

Dear Madam or Sir:

I am writing to provide commentary and input on the proposed FL Bar program, which would allow certain non-lawyers to provide legal services, such as form filling. My comments are informed by several years of serving as the UPL Chair at the Central Florida Chapter of the American Immigration Lawyers Association. Over this time, I have encountered hundreds of victims who suffered **irreparable harm** from immigration services performed by notaries, immigration consultants, paralegals not supervised by an attorney, and other unqualified and unlicensed individuals. The victims were often intimidated by the unlicensed practitioners and thus did not report them to the FL Bar or other authorities. Accordingly, I do not think the Bar is sufficiently aware of the scope and extent of the harm.

Immigration law is complex and unforgiving. Filing the right form, filled out perfectly, but at the wrong time can result in a denial and loss of status with a charge of fraud or preconceived intent. Immigration practitioners are charged with navigating an exceptionally complex legal and regulatory landscape which even licensed attorneys from other fields struggle to grasp. We cannot expect that individuals who have no education requirements would be competent and qualified to fully understand the moving parts of each case. **A well-intentioned non-attorney who does not understand these nuances may very well select the right form, fill it out absolutely correctly, and still rob the client of his immigration future.** He or she may file a petition without an attendant change or adjustment of status, not understanding that the latter is required. He or she may file an appeal, thinking that the applicant remains in status while the appeal is pending, causing the client to accumulate unlawful presence and trigger a 3 or 10 year bar. He or she may file an application for someone who is permanently barred from receiving status in the US. With stakes this high, it is important to protect consumers from such harm. Because the consumer who is most likely to use the services of a non-attorney is less sophisticated, has a lesser command of English and the law, we cannot, in good faith, transfer responsibility for knowing these nuances to them.

Fundamentally, immigration cases are not won and lost on the basis of filling out forms, but rather on the knowledge of the body of law, policies and the ability to apply them competently. **We are not adding any value by authorizing someone to just fill out forms.** Moreover, doing so will lead to the exacerbation of pervasive confusion about the differences between attorneys and non-attorneys and what each can do. Unlicensed individuals rely on these confusing distinctions to legitimize services that they are not authorized to provide. For example, I am currently working with a client who was victimized by a California non-attorney, claiming to be an immigration consultant registered and bonded in the state. While CA law does authorize activities as a consultant, such a consultant cannot provide services beyond basic form filling. In this case, they included disclosures on their website and contract that limited their services to form filling only, but what happened in reality was very different. They prepared an entire extraordinary ability package, complete with legal arguments and case law citations.

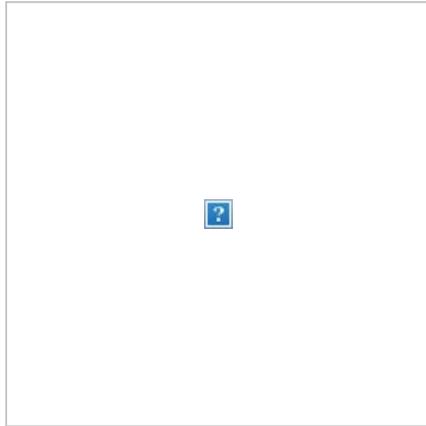
Literally no one goes to a non-attorney to ask them to type answers that they provide orally or on a handwritten version of the same form. While their disclosures all say they do not do anything beyond form-filling, these non-attorneys in fact select forms, provide advice about how to answer questions, and what evidence to attach. Otherwise, no one would pay them hundreds or thousands of dollars. If it is the intention of the Bar to ensure that non-attorneys do nothing more than fill forms at the total direction of the customer, they should impose a record-keeping requirement showing how the client supplied all the information to them, and b) impose a limit on the fee that can be charged for such services. If it's actually just filling out a form based entirely on information provided by a client, the services should have a very nominal cost of no more than \$100.

While it may be tempting to offer a solution for consumers who cannot afford the services of a private bar attorney, the experience of our organization dictates that notaries and other non-attorneys frequently charge as much if not more than licensed attorneys and engage in extortion, blackmail, intimidation of vulnerable communities to ensure that payment for their services is received. Florida is a state rich with legal aid organizations offering competent and qualified services by licensed individuals (attorneys, paralegals working under the direct supervision of those attorneys, and Accredited Representatives). The access to legal services problem is best addressed by thinking about how we can support those organizations. I would suggest imposing fines on those who engage in UPL and directing those funds towards the organizations that actually deliver competent and qualified services.

I would further note that the practice of law by a non-attorney is currently a third-degree felony in the state of Florida. The only way to pass this program without changing the statute is to redefine the practice of law. While the FL Bar has this authority, doing so sets a dangerous precedent.

Thank you for your time and consideration.

Kind regards,



Ksenia Maiorova
The Sports Visa Lawyer® at **Maiorova Law, LLC**

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Sports Immigration Lawyer of the Year - 2021

Please note: Florida has very broad public records laws. Many written communications to or from The Florida Bar regarding Bar business may be considered public records, which must be made available to anyone upon request. Your e-mail communications may therefore be subject to public disclosure.

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October 27, 2021

Mr. Michael Grant Tanner
President
The Florida Bar
651 E Jefferson Street
Tallahassee, Florida 32399

Dear President Tanner

On November 6, 2019, the Supreme Court of Florida (the Court) sent a letter to John Stewart, then president of The Florida Bar, requesting that a study be conducted “into whether and how the rules governing the practice of law in Florida may be revised to improve the delivery of legal services to Florida’s consumers and to assure Florida lawyers play a proper and prominent role in the provision of these services.” More specifically, the Court requested that the study address:

- Lawyer Advertising
- Referral Fees
- Fee Splitting
- Entity Regulation
- Regulation of Online Service Providers
- Regulation of Nonlawyer Providers of Limited Legal Services
- Additional Topics Consistent with the Subject of the Study.

As a member of the Florida Bar, I feel I have the obligation to raise my concerns regarding the possibility of Nonlawyers providing limited legal services in our state. Over the years I have been involved in the practice of immigration law, first as a paralegal, and now as an immigration attorney, I have seen first-hand how detrimental, nonlawyers have been to the public and to the practice of law in this state, especially those engaged in “Notario” fraud.

First and foremost, it is crucial to understand that the immigrant community, regardless of nationality, tends to be more vulnerable to unscrupulous fraudulent tactics at the hand of those who take advantage of their lack of understanding of the American legal system. This, paired with the financial hardship posed by the immigration system and how complex it is to navigate it, increases their risk of falling into the trap of nonlawyers, who lack the legal and professional knowledge to provide competent representation, thus causing irreparable harm

It is understandable that nonlawyers could be beneficial to the public in the sense that they will be able to assist with immigration matters at a lower cost. Nevertheless, the Florida Bar has already recognized that some people in Florida have been harmed after mistakenly seeking legal assistance

Mr. Michael Grant Tanner

October 27, 2021

Page Two

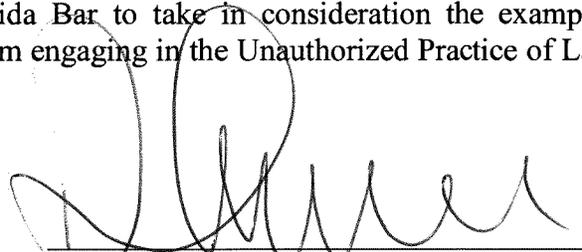
from notaries or other nonlawyers who offer such services in immigration matters. In fact, incorrect advice can even begin or accelerate a deportation process.¹

In my practice, I have seen several instances where clients' cases have been handled inappropriately by nonlawyers. Recently, our office was retained by a client who was placed in deportation proceedings after a nonlawyer improperly submitted an Application for Extension of Nonimmigrant Status. The same nonlawyer, failed to submit crucial documentation needed to prove the relationship between the petitioner and our client in a family petition, thus, causing lengthy delays on our client's case and putting her at risk of aging out of the immigration benefit she now qualifies for.

In addition, our office has been retained by several clients who were defrauded by an Immigration "Notario" known as Laura Mena². Mena fraudulently applied for immigration benefits such as asylum and cancellation of removal for several individuals who did not qualify for those benefits, all for the purpose of obtaining an Employment Authorization Cards. Many of our clients are now in removal proceedings because of these fraudulent applications.

This issue has also been addressed by the Federal Trade Commission who recognizes that "notarios" and other nonlawyers do more harm than good to those seeking immigration help³. With this mind, I would like to ask the Florida Bar to take in consideration the examples described herein, and to prohibit nonlawyers from engaging in the Unauthorized Practice of Law in this state.

Sincerely,



Diego Alejandro Gomez, Esq.
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¹ Consumer Pamphlet: Notaries, Immigration and the Law <https://www.floridabar.org/public/consumer/pamphlet024/>

² Owner of Immigration Business Pleads Guilty to Defrauding USCIS and IRS; <https://www.justice.gov/usao-sdfl/pr/owner-immigration-business-pleads-guilty-defrauding-uscis-and-irs>

³ Notarios are no help with immigration; <https://www.consumer.ftc.gov/blog/2019/09/notarios-are-no-help-immigration>

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October 28, 2021

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RE: NON-LAWYER OWNERSHIP OF LAW FIRM FEE SPLITTING WITH NON-LAWYERS

Dear Sirs:

I am writing this letter in opposition to any recommendation or rule change that allows any form of non-lawyer ownership of a law firm or any recommendation or rule change that will allow lawyers to share fees with non-lawyers.

Access to legal services is important and access certainly may be helped by more innovation. However, these recommendations strike at the core of what makes us independent. They will ultimately undermine the independence of our judiciary. There must be another way to find other recommendations that would provide access and innovation without ripping at the fabric that makes us independent.

The practice of law is a profession and should not be governed by market analysis or ROI (return on investment). Just because Utah, Arizona and the U.K. have authorized non-lawyer ownership of law firms and fee splitting with non-lawyers does not mean the State of Florida should do the same. It would be more prudent to see how this "experiment" plays out for them before walking into the unknown.

The non-lawyer ownership of a law practice would create an inherent conflict for any lawyer. There are certain principles that should not be subject to a tinkering experience called a

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"sandbox." Nor should companies that participate be given a permanent law license for non-lawyers.

The need for lawyer services will not be better served by non-lawyer ownership or by splitting of fees with non-lawyers. In fact, the exact opposite will occur. One only needs to look at the course of non-medical ownership of medical practices to believe that non-lawyer ownership of law practices would not be beneficial to the client or our individual practices of law.

Profit over professionalism is not the answer. Non-lawyer ownership of law firms and fee splitting with non-lawyers are steps in the wrong direction. There are a multitude of issues not the least of which is the issue of discipline and who controls same. Additionally, the data seems insufficient for these recommendations. More empirical data is needed to show the long-term effect of these recommendations.

These changes will ultimately harm those who are supposedly being served. We should not be willing to gamble our clients wellbeing. I have been practicing personal injury law for more than a decade, and during that time I have not seen any situations I believe would warrant non-lawyer ownership of law firms or fee splitting with non-lawyers.

For all of these reasons, I am against any recommendation to allow non-lawyer ownership of a law practice and/or the sharing of fees with non-lawyers.

Very truly yours,

/s/ Dana A. Jacobs

Dana A. Jacobs

DAJ/ml

From: [Shawn Mesa](#)
To: [SCinput](#)
Subject: Non-lawyer Legal Services
Date: Wednesday, October 27, 2021 5:49:23 PM

This email comments on the proposed changes to improve the delivery of legal services as written about in the Final Report of the Special Committee to Improve the Delivery of Legal Services, dated June 28, 2021. My comments refer to the Section 3. Regulation of Nonlawyer Providers of Limited Legal Services beginning on page 13 of the report, and Appendix D, Outline for Limited Assistance Paralegal Pilot Program.

The outline of the pilot program states that Supreme Court approved forms may be selected, completed, and filed by registered paralegals under attorney supervision. I mainly practice immigration law, which is federal law and not state law. In immigration practice we have a huge problem with paralegals, notaries public, tax preparers, and anyone else who advertises as an immigration form preparer. The problem is that many people are hurt by uneducated advice. Immigration law is statutorily complex and federal agency operations change often by memorandum.

The request for immigration benefits normally begins with agency forms. If the information requested was only name and demographic information, then there would be no issue. However, often the difference between answering yes or no on one question can result in deportation. I have personally met hundreds of people who came to me after using a non-lawyer who gave the potential client incorrect information. Many times, if they had only received correct advice upfront, their case would have been successful. Many times the mistake cannot be cured even with an ineffective assistance of counsel claim..

In immigration law, Matter of Lozada is used as the standard for ineffective assistance of counsel claims. The three-part Lozada test requires each of the following: (1) that the motion be “supported by an affidavit of the allegedly aggrieved respondent . . . set[ting] forth in detail the agreement that was entered into with former counsel” with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that “former counsel must be informed of the allegations and allowed the opportunity to respond,” and (3) that the motion must “reflect whether a complaint has been filed with appropriate disciplinary authorities” with respect to any violation of counsel's ethical or legal responsibilities, “and if not, why not.” Lozada, 19 I&N Dec. at 639. The test refers to a Counselor, meaning a lawyer. Many federal circuits will rule against the claim if advice was given by non-lawyer because non-attorney consultants “simply lack the expertise and legal and professional duties to their clients that are the necessary preconditions for ineffective assistance of counsel claims.”

Most clients do not know the differences between federal law and state law. If they hear that paralegals can provide services, I believe many more will receive advice that results in deportation and family separation. I urge you to not include immigration law in the future as an area appropriate for paralegal services. And more urgently, if the pilot program turns into a permanent one, that a robust marketing program

blanket Florida to inform the public of the areas appropriate for non-lawyer services and the risks of such services.

Regards,

Shawn Mesa
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*****VIA E-MAIL: SCinput@Floridabar.org*****

October 28, 2021

Florida Bar Board of Governors
The Florida Bar
651 E Jefferson Street
Tallahassee, FL 32399

RE: Final Report of the Special Committee to Improve the Delivery of Legal Services

WOW, THE PRACTICE OF LAW TEETERING ON THE VERGE OF NO LONGER BEING A PROFESSION.

I have had the pleasure and the privilege of practicing law in this state for forty years, and being board certified in civil trial practice for about 30 years. To think that consideration is being given to allow ownership of law firms by businessmen, non-lawyers, is, to say the least, unfathomable, and hard to believe that it is even under consideration.

I can imagine the pressure that is going to be placed upon attorneys who are forced to choose between their ethical obligations under the Florida rules of professional conduct and their business owner employers who have one purpose: to make money. This is because when I first started out, I did work for a commodities firm and what they were asking for me to do, had I done it, I would've lost my 'ticket' to practice law. And I'm sure that you who deal with unscrupulous requests from some of your clients, business people, would know exactly what I'm talking about. Because they (non-lawyer business people) don't have the same rules of professional responsibility or even anybody to really answer to (unless of course the conduct is criminal, or constitutes such that, if done, would subject them to money damages)

I'm shaking my head at the stories that we will hear if this is allowed. Even though I've always been an employer, the reason I have been an employer is because I really don't like to work for anybody. I can't imagine what it would be like to work for a non-lawyer business corporation with a Board of Directors figuring out new ways to finagle how to make money. What interest do they have in upholding the law or the ethical rules of professional conduct? The only interest that they have is making money.

Please prevent the madness and don't allow this to happen!

Very truly yours,

Dan Cytryn

Dan Cytryn, Esquire
(Signed in the absence of
Dan Cytryn to avoid delay)

DC: nk

Cc: mtanner@gunster.com; glessner@lesserlawfirm.com; jbranning@clarkpartington.com; larry.sellers@hkllaw.com; melissa.vansickle@nelsonmullis.com; kbr@rkkattorneys.com; morr@orrcook.com; bgillam@milamhoward.com; gordon@gloverlawfirm.com; josh@jpfirm.com; sandra@diamondlawfirm.com; pbonamo@ricelawflorida.com; stephanie.marchman@gray-robinson.com; twert@deanmead.com; julie.frey@lowndes-law.com; tad@tadyates.com; richard.nail@gray-robinson.com; roland@smgqlaw.com; simonn@gtlaw.com; jordanresnick@gmail.com; jpiedra@kttl.com; jrynor@mitrani.com; lbr@ferrarolaw.com; sumal@sec.gov; swestheimer@smrl.com; kturkel@bajocuva.com; farrior@belawtampa.com; canderson@bushross.com; paige@greenleelawtampa.com; chigby@bryanthigby.com; rsb@searcylaw.com; ron.ponzoli@gray-robinson.com; rbresky@bresky-law.com; mjgelfand@gelfandarpe.com; wsmith@thesmithlawfirm.com; jkim@kvllaw.com; diana@santamarialaw.com; lornab@lebburtonlaw.com; hilarycreary@hcpalegal.com; adam@mr-lawyers.com; jim@vickaryous.com; gweiss@mrachek-law.com; llile@lairdalile.com; johna@bapfirm.com; edmyrtetus@eckertseamans.com; dworkman@bakerlaw.com; emeeks@meekslawfirm.com; burgoon@burgoonlaw.com; tbaker@injurylawyers.com; ielijah@fiu.edu; jodyhudson@ffibank.com; lingoldcom@aol.com

From: [Vilerka Bilbao](#)
To: [SCinput](#)
Subject: Comment Opposing Proposed Rule to Allow Nonlawyers to Perform Legal Services (THIS IS A BAD IDEA!)
Date: Thursday, October 28, 2021 10:29:56 AM

Good morning,

My name is Vilerka Bilbao, and I am a Florida Bar licensed attorney. I want to comment on the proposed rule that would allow non-lawyers to perform certain legal services, including filling out forms. This rule would highly prejudice the CLIENT, especially in the area of immigration law where we already have a HUGE problem with notarios and paralegals who give legal advice that is often contrary to the client's best interest.

My practice focuses on immigration law and I can speak to the number of problems that arise when a client does not have an attorney handle their case. First, non-lawyers have no educational program to vet them. They are taking information they learn from the internet, friends, family, even employers, and computing answers to give to a client that are not necessarily correct. In the immigration context, this is a big problem because people believe it is "just filling out a form." A simple error or omission on the forms can cause years of delay and even prohibit an individual from continuing to pursue legal status in the United States. Second, to even decide what forms are necessary for each case, there needs to be a legal analysis performed for the entire case (legal advice). This requires extensive knowledge of how immigration laws interact with each, and how the several agencies that are involved will handle the case. Third, the forms are the basis for application on the form of relief, but there is an evidentiary component to actually win the case. The evidence is compiled based on each individual client and their needs. Based on what we need to prove, there are certain burdens of proof that we need to meet. None of this is explained in instructions for forms, but it is found in code, precedent case law, and the ever changing agency memos and policies that seem to contradict each other. Because there are no educational programs that can vet non-lawyers to ensure they understand all those intricacies in each case, how can we be sure that the CLIENT is getting the correct service?

I understand the concern is that Clients are often unable to pay for legal services, and a large number of individuals will go without services. But, I would argue that is not the case. If lawyers are able to provide affordable

payment plans, clients are very happy to pay for their services. I know this from experience. I worked first in the nonprofit industry and had the belief that the client is "too poor" to pay for services. Yet, in my private practice now, I find that most people are willing to sacrifice and pay little by little to fix their immigration problems. Even clients who are struggling to make ends meet, know the importance of the service and are willing to sacrifice other luxuries to fix their legal status. Maybe the answer is helping lawyers with their business structures so that we can serve our communities better, but not opening the door to non-lawyers to create more problems in cases (that will ultimately be more expensive to the Client to fix!). We have a great organization in Central Florida that has figured this out and provides low-cost immigration services to the community. They have been able to figure out how to serve a client who is unable to pay for their case. Let's expand this business model so that it is an attractive business venture for lawyers.

One example of a case I currently have is a Client who went to a "lawyer" to apply for asylum. This "lawyer" charged the client a considerable fee to represent him in court and fill out immigration paperwork to begin the asylum process. The "lawyer" insisted that the client lie in his application for asylum as to his manner of entry. The "lawyer" forced the client to say he entered on a raft and told him to wet his passport to erase evidence of his travels. The client, believing this was the advice of a licensed attorney, lied in his application for asylum and wet his passport. Months after applying, the client sought the "lawyer" to prep him for court hearings and the alleged lawyers' assistant informed him that he never appears in court because he is an employee of the court. My client felt like he had been scammed and sought out a new attorney. If the government considers my client made a fraudulent representation, *he may be barred forever on obtaining legal status!* This case is a total mess because of the advice of ONE nonlawyer. We have even found a Facebook Group where this nonlawyer continues to give legal advice to thousands of Cuban immigrants. And this is just ONE NONLAWYER. (P.S. we are working to bring state and federal criminal charges against this nonlawyer).

People believe that because they can read the instructions on government forms on the internet, that they understand all the laws and their complex interactions. Real licensed attorneys spend YEARS trying to master even one small area of the law. And, because it is constantly changing and evolving, even we (lawyers) have to take CLEs, seminars, classes, and

consult with other lawyers, to ensure that we are providing the correct advice to clients.

How can we control the QUALITY of the legal profession if we allow unsupervised non-lawyers to provide legal services? How can we be sure that the services provided by non-lawyers are actually helping the Client and not creating a bigger mess? Most of my clients begin their processes with notarios and non-lawyers, and their cases are actually MORE expensive than if they had just started with an attorney in the first place. Why? Because the non-lawyers are not doing all the steps necessary to protect the client...they actually harm the client in the long run. How many times have I seen applications for benefits where the client does not even qualify to apply? (Likely in the hundreds, and I've only been practicing since 2018!) And yet, the notarios and non-lawyers charged the client a fee (often comparable to what a licensed lawyer would have charged!), gave the client false hope (knowingly or unknowingly ---both are a problem!), and required the client to expend fees to pay the government for processing...no wonder people in our communities are angry, lost, and frustrated!

The solution to this problem is not to open the door for more scams and legal errors. The solution is to start informing the public about the need to have professional legal representation. Without information, people will always be lost and will not make the best choices. Information frees us.

I am happy to testify and provide more examples as to the harms that notarios and non-lawyers make to clients. **I urge the Florida Bar to consider carefully the ramifications of opening up the legal profession to unsupervised individuals who are not licensed to understand the delicate intricacies of the law.**

Vilerka Solange Bilbao, Esq.



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From: [Law Office of Olivia C. Cummings](#)
To: [SCinput](#)
Subject: Comment on FL's plan to allow non-lawyers to provide legal services and have an ownership interest in law firms
Date: Thursday, October 28, 2021 11:12:28 AM

Good morning:

I am very surprised to hear that the Florida Supreme Court and the Florida Bar are contemplating the idea that allowing non-lawyers to complete legal forms would somehow "improve the delivery of legal services in Florida". I would assume that the very reason lawyers undergo years of schooling only to have their knowledge and understanding of the law tested via a 2- or 3-day bar exam was to ensure that the individual was competent and grounded enough to provide legal representation.

Even as a fairly new practitioner, being licensed to practice law in the State of Florida for roughly 3 years, I cannot tell you the countless amount of times that a client has come to me for proper and effective legal assistance after receiving a case denial, or failing to correct/adjust their status and/or seek relief out of fear, due to terrible and incorrect information provided by a non-lawyer.

The obvious fact is, "completing legal forms" is not as plain and simple as the statement appears. In order to effectively complete a legal form, not solely based on the form's instructions, but based upon the specific facts and circumstances of the client and their case, the individual completing the form must possess the legal knowledge and analytical capacity to do so. Don't get me wrong, once in a blue moon, I'll come across a client whose case is as simple as they come, and can easily be completed without the use of my legal services. However, 97% of my practice involves working with clients whose cases are completely the opposite. While a potential client may come to me under the impression that they have a straightforward case just like their neighbor's wife, I have to advise them about how untrue that is. One simple change in fact can drastically change the way that a client's form is to be completed, or better yet, can completely rule out various options to correct or change status or to pursue certain forms of relief. Unfortunately for the non-lawyer, the form's instructions do not provide guidance on what to do in those situations.

I've had clients come to me after receiving "help" from a non-lawyer with their immigration matter, and after applying for let's say adjustment of status and getting called in for an interview with the USCIS, they realize that they were unable to adjust because of their unlawful entry and that they actually needed a waiver to pursue consular processing. I've had one client recently who was advised by some tax preparer to adjust under 245i when the client was not at all qualified. The tax preparer "prepared the immigration forms" for my client, had my client pay almost \$3,000 in application fees to the DHS, and once an RFE was issued because the reviewing official realized my client did not qualify to adjust under 245i based on lack of evidence, only THEN did tax preparer tell my client to seek assistance from an immigration lawyer..... and so the client ended up contacting me for assistance in an attempt to correct the mistake. What could have very easily happened is that the client could have received a denial and potentially been referred to immigration court based on their history because the facts of his case weren't as simple as completing the forms and receiving a green card.

Another example, I recently received two young clients who both wanted to apply for TPS. A

couple of years back, they too sought the assistance of a tax preparer to file the application on their behalves. Unfortunately, again, these clients did not qualify for TPS at the time because they were unable to prove their eligibility. The tax preparer not only submitted a late-filed petition without providing sufficient documentation to establish that my clients' qualified for late filing, but the tax preparer also failed to simply screen the clients to ensure that they met the basic requirements to even qualify for this relief. Again, the clients came to me afterward for assistance where, by using my legal knowledge as a licensed attorney, I reviewed their case and conducted a proper screening, advised them of the correct TPS designation that they would qualify under, and to help them recover from the money that they wasted with the tax preparer, also advised them that they were eligible to apply for a fee waiver.

I could write a book about the mess that is created by non-lawyers, paralegals, tax preparers, notorios, etc. when they take an innocent and naive immigrant client's money only to complicate their case even more and place the immigrant in more harm than before.

Completing forms is just one of the many tasks that must be done when representing a client in an immigration matter. Legal research has to be performed because the laws/procedures are constantly changing, especially when we see a change in administration. What may have worked 4 years ago probably does not work now and every case is different and unique in its own way (i.e., not all clients have the exact same set of facts).

Clients must be thoroughly screened before the application process can begin. Even after screening, you may run into a hiccup during the processing of the case, and if that happens, you must be prepared to deal with it to protect your client and any form of relief they may have (something the form instructions don't provide instructions for). I may take a case where I pursue one form of relief on the client's behalf, but I've already anticipated a backup plan should the client be referred to immigration proceedings, or should the case be denied and we have to pursue an alternative application. In doing so, I was also able to advise the client of the potential risks (including the anticipated financial risks because that is also a significant factor) in moving forward with their case and allowed them to make a conscious and informed decision about whether or not they are ok with those risks.

Additionally, documents and evidence have to be reviewed for compliance. Just because the USCIS asks for a birth certificate/marriage certificate/criminal records/bank statements, etc. does not mean the documents that the client currently has in their possession are the acceptable forms of evidence. Submitting the wrong evidence with the application forms may sometimes open a can of worms because a proper review of the document was not conducted.

I certainly hope that the Florida Supreme Court and the Florida Bar understand that more harm than good will occur to many vulnerable people seeking legal assistance if it becomes legal for non-lawyers to complete legal forms and basically practice law without authorization.

I pray that our comments and concerns as individuals who practice law in this field every day will be heard and heavily considered.

Respectfully,

Olivia C Cummings, Esq.

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Re: Workers' Compensation Section's comments regarding the June 28 Final Report of the
Special Committee to Improve the Delivery of Legal Services

Board of Governors,

On behalf of the Executive Council of the Workers' Compensation Section of The Florida Bar, we ask the Board of Governors to vote NO on the request of the Special Committee for additional time, and ask the Board to adopt a resolution to disavow the findings, recommendations and those matters "approved in concept" in the Final Report.

I write to express concern regarding the above - referenced report. Although the report referenced a number of issues, the concerns of our section are directed to recommendations regarding the creation of the "Lab" and "experiments within its parameters" to include permitting non - lawyer ownership of law firms and permitting greater authority for non - lawyers to perform services currently viewed as the practice of law. Our opinions are based upon a thorough review of the entire June 28 Final Report, a review of the minutes of all meetings of the Special Committee, articles regarding the work of the committee available in the Florida Bar News, attendance at the October 26 Zoom meeting, and information available from other sources researched by members of our section, including an article from the 29 Georgetown Journal of Legal Ethics entitled "When Lawyers Don't Get All The Profits: Non - Lawyer Ownership, Access, and Professionalism."

At the outset, the 10/26 Zoom meeting was illuminating regarding the origins of the Special Committee's work. Rather than the Florida Supreme Court initiating the project, the 11/6/19 letter from Chief Justice Canady to then - president Stewart indicates that president Stewart initiated the process with a 9/27/19 letter suggesting a study into how rules governing the practice of law could be modified "to improve the delivery of legal services to Florida consumers". This study was not motivated by the Supreme Court's belief that a problem of access to legal services existed and sought a study; this was a project spearheaded by some members in leadership of The Florida Bar.

Our section questions the methodology and data relied upon by the Special Committee. In response to questions raised during the 10/26/21 meeting, Committee Chair Stewart acknowledged that the mission of the Special Committee was to improve access to legal assistance to all consumers but also acknowledged there was no attempt to explore the distinction between access issues in different areas of the law or amounts in controversy. Despite this, the Special Committee's Final Report simply concluded that the proposed lab needed to be open to changes in all fields of law because the "system is broken", "the status quo is not working" and the business model of the traditional law firm is "extremely antiquated". These statements are unsupported by any data provided in the Final Report or the appendix.

In our judgment, the Final Report fails to identify areas of the law that are truly underserved and instead paints all fields of law with the same broad brush. This creates the risk of implementing change to practice areas where change is not required and increasing the risk of consumer harm. Special Committee member Adriana Gonzalez raised these concerns when she urged the committee to focus narrowly on areas where consumers are unable to obtain legal services (6/18/20 Florida Bar News article by Gary Blankenship). Chairman Stewart, on the other hand, stated on 10/26 that the committee resisted this type of narrow focus. Our section believes the failure to

adopt a narrow focus created a dangerous misconception regarding the need for both non - lawyer ownership and broadened involvement of non - lawyers. Committee member Gonzalez also clearly indicated that the process used by the Special Committee was flawed in numerous ways including the failure to consider the viewpoints of those entities and individuals who oppose changes to the rule as well as ignoring data that was contrary to the Committee's final recommendations.

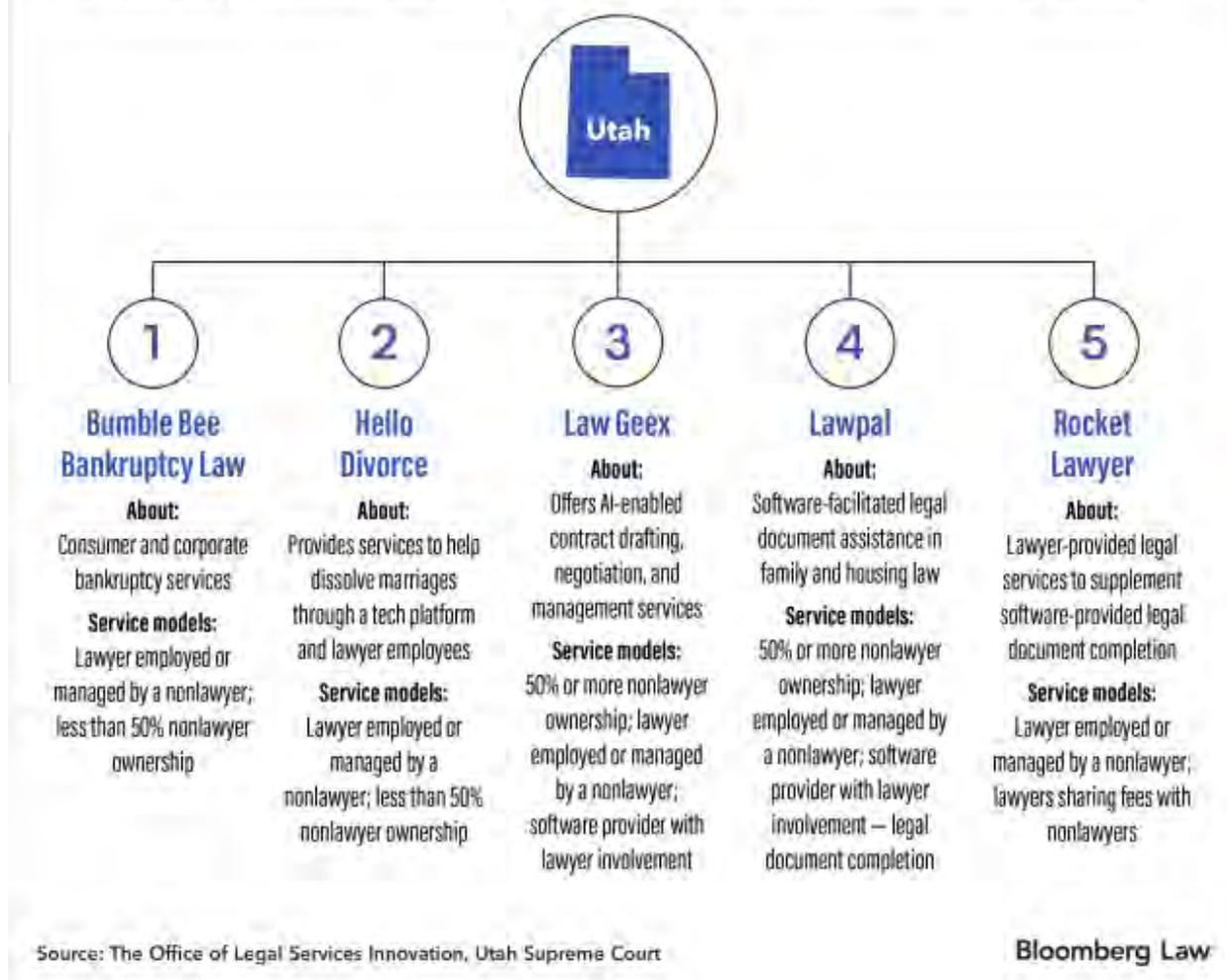
Furthermore, our section is concerned with the premise underlying the project. Page seven of the Final Report states that law firms "suffer from a lack of innovation and marketing...because law firms cannot offer equity to non - lawyers...(which)...leaves law firms strapped for capital and makes it harder for law firms to keep up with modern innovations and business practices...few have incentive to invest in technology and business practices". These assertions are attributed to an article written by members of the Stanford Center on Legal Profession, yet there is no effort to determine whether these statements are applicable to Florida law firms. There is no evidence that surveys were conducted on these topics among Florida lawyers and law firms. Our section of The Bar categorically denies that its member attorneys and firms lack incentive to invest in technology or business practices and considers it completely irresponsible to suggest that our members are incapable of determining the resources needed to properly manage their firms.

We understand that the Special Committee's request is to be allotted six additional months to "fine tune" the report. It was made clear by Chair Stewart that no additional information would be obtained that would help determine the effectiveness of any of the changes that the Special Committee "approved in concept". It was also made clear that the Special Committee is not "requesting" any rule changes at this time, but those statements seem to be contradicted by the language in the Final Report.

Of particular concern is the creation of a "Lab" which is intended to function in concept similarly to the "sandbox" model created in Utah. These concerns include, the report's provision that those non - lawyer entities granted access to participation in the lab are essentially "grandfathered" into permanent access to maintain their position even if the ultimate conclusion of the lab is that the proposed changes do not lead to greater consumer access and should therefore not be pursued. In fact, a statement made by Governor Brian Burgoon (referenced in the 9/13/21 Florida Bar News article by Gary Blankenship) expressed the concern that companies given licenses to operate under the lab program would have an advantage if the lab program ended, because they could realize a windfall if they sold their company to another company wishing to enjoy the continued existence associated with admission into the lab. We believe granting such companies permanent access to the legal market despite these concerns, merely because they have expended capital in the process of their involvement in the lab, is dangerous to the public's perception of the practice of law and potentially harmful to the consumers of those services. Our research into the current Utah "sand box" participants revealed that many appear to be technology companies acquiring law firm interests in order to roll out computer based and artificial intelligence legal services.

Utah's "Sandbox" Tests New Legal Service Ownership Models

The regulatory structure has signed on more than 25 businesses. Here's a sample.



Another area of concern is the very premise that non-lawyer ownership will expand the availability of legal services. Availability means either more attorneys to handle legal matters or less expensive legal services. There is no evidence in the report as to how allowing non-lawyers to own a minority share of a law firm adds additional attorneys to handle the anticipated additional work or makes the legal services less expensive. Non-lawyer ownership would demand the same profits as are currently sought by attorney-owned firms, and the report makes no attempt to explain how consumers would pay less for legal services from firms owned in part by non-attorneys.

Our section is comprised of both claimant and defense practitioners. On the defense side, attorneys typically receive their cases from either insurance carriers or employers. Workers' compensation coverage is mandatory for all employers with four or more employees. On the claimant side, attorneys obtain cases in a variety of ways, including internet presence and advertising. The

Supreme Court of Florida has upheld constitutional provisions which ensure access to legal services for injured workers even when the amount in controversy is small. See *Castellanos v. Next Door Co.*, 192 So. 3d 431 (Fla. 2016). As such, there appears to be no basis for an argument that financial concerns currently act as a barrier to retaining an attorney, thus contradicting the notion that there is presently a lack of access to legal services.

Conclusion

For the reasons set forth above, the Workers' Compensation Section of The Florida Bar requests that The Florida Bar Board of Governors vote NO to providing additional time for furtherance of the Special Committee. We also request that the Board issue a clear message to reject the recommendations included in the Final Report of the Special Committee to Improve the Delivery of Legal Services and disavow the findings, recommendations and matters "approved in concept" in the Final Report. The report suggests experimenting with comprehensive changes to all fields of law without any evidence or data to support that the changes would make any impact on the stated purpose. To the extent that the report makes no attempt to narrowly tailor its proposed recommendations to only those practice areas that proper study might reveal are inadequately served, we view the report's conclusions as flawed. Furthermore, although the report characterizes the "Lab" proposal as merely a study that might result in a recommendation that suggested changes not be implemented through a rule change, the provision allowing lab participants to function permanently even if the rules are not formally adopted creates a dangerous risk that non-lawyer entities granted access to the lab would be permitted to remain in business to the detriment of consumer protections.

Respectfully submitted,

Mark A. Touby, Esq.

Chair, Workers' Compensation Section of the Florida Bar

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October 29, 2021

Via E-mail: scinput@floridabar.org

The Florida Bar Board of Governors
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399

RE: FINAL REPORT ON THE SPECIAL COMMITTEE TO IMPROVE THE DELIVERY OF LEGAL SERVICES – NON-LAWYER OWNERSHIP OF LAW FIRM AND FEE SPLITTING WITH NON-LAWYERS

Dear Members of The Florida Bar Board of Governors:

I write in opposition to a rule change that allows any form of non-lawyer ownership of a law firm or any rule change that allows lawyers to share fees with non-lawyers. Likewise, the proposal for experimenting in a “sandbox” is flawed and I respectfully oppose the approach recommended.

INTRODUCTION

Before addressing these issues, it may assist the Board Members to understand my background relating to the “delivery of legal services”. Some of my recent background in this arena includes the following:

1. Board of Directors of our area Legal Aid organization – 6 years;

2. Florida Supreme Court Judicial Management Council - 2013 to present;

The “JMC” is an “advisory body” advising the Chief Justice and the Court on management of the legal system in the State of Florida;

- Nominated by the BOG in 2013, appointed by Chief Justice Ricky Polston; reappointed by Chief Justice Labarga; then Chief Justice Canaday. My work on the JMC includes:
 - Chair - Access to Civil Justice Work Group for approximately six (6) years;
 - Work on other Work Groups the last couple of years; and
 - Reappointment to the Access to Civil Justice Work Group this year.
3. Florida Commission on Access to Civil Justice (2014 – 2020) – One of the founding members appointed by the Florida Supreme Court;
 4. The Florida Bar Special Committee on Lawyer Referral Services (2011 – 2012) – Among other things, this Special Committee dealt with issues of joint lawyer referral services serving both personal injury lawyers and medical professionals. Issues addressed included: lawyer conflicts of interest; adverse impact on clients caused by integration of conflicting business interests; and the ability of The Florida Bar and the Florida Supreme Court to manage or regulate the non-lawyer portions of these services.

I preface my comments with thanks to the Special Committee for their work studying the issue of improving delivery of legal services in our state. The work is important as there is an unmet need we must address.

In the civil arena, most of the poor are not able to obtain legal counsel, either independently or through Legal Aid services. Likewise, those in the lower middle-class find themselves struggling to find affordable and adequate legal representation.

Far and away, the most prevalent areas of need are family law, landlord/tenant, and small claims. Covid surely exacerbated these issues and will for some time to come.

MY COMMENT

Based upon the work I have been involved in described above, fee sharing with non-lawyers and non-lawyer ownership of law firms lend nothing identifiable toward a solution for these areas of unmet need. There are other potential solutions which hold more promise and do not risk disrupting the integrity of our system of justice, the independence of the Florida lawyer, and the independence of the judiciary.

Among the reasons I oppose the proposal as it relates to non-lawyer ownership of law firms and fee splitting with non-lawyers, are the following:

1. There is no evidence that the proposals will increase the availability and/or affordability of legal services in the areas of need for either the poor or the middle-class, there is at least some evidence that it will not help these problems in any meaningful way, and this will detract from other potential solutions that should be advanced;

2. The changes proposed present a change in the operational model of the legal system which has a substantial risk of creating a new world of potentially unmanageable and potentially undetectable conflicts of interest, and promises to undermine the independence of the legal profession, thereby directly impacting the independence of the judiciary and the checks and balances of our governmental model. This model

will require more regulation, more attorney administrative time, and will invite governmental intrusion into regulation of the legal profession, impairing the independence of the third branch of government; and

3. The proposal for the experimentation within a “sandbox” includes a provision that would permit a permanent legacy of non-lawyer ownership of law firms and/or fee splitting with non-lawyers even in the face of ineffectiveness of the program and/or potential problems identified through the experimentation.

Out of respect for your time, I wanted to keep my comments short and to the point. I am happy to provide support for my statements to the Board or to individuals. However, as a past or present leader of FJA, the Trial Lawyer’s Section Executive Council and ABOTA, I am aware of work being done on other comments from these organizations or their members. I anticipate some will address the flawed reasoning and studies relied on, as well as addressing counter studies and issues.

The national board of ABOTA (I am a member) focuses on issues adversely affecting the independence of the judiciary and the right to trial by jury. It is a group of prominent civil trial lawyers composed of plaintiff, defense, and commercial trial lawyers. After committee study, ABOTA resolved to oppose these types of regulatory changes since 2000 and continues to oppose it. The National Board passed the following:

Multidisciplinary Practice

ABOTA resolves to oppose efforts to change the ethical rules governing the practice of law to allow the sharing of ownership, control, and legal fees of law practices with non-lawyers (i.e., multidisciplinary practices, or “MDP”). (January 29, 2000/July 1, 2000)

Some of the ideas advanced in this report are good. Examples are:

- Education regarding limited scope of representation and unbundled legal services;
- the lawyer referral rule does not need amendment;
- amendment of the rule to allow for non-profit law firms is helpful; and
- amendment of the advertising rules to reduce complexity and administration, while preserving a safe harbor review process.

But there is much more that can be done – and is being done. There is hard work being advanced by other work groups, task forces, OSCA, and the Court that hold more promise for positive results, without the meaningful risk of damaging the foundation of our system of justice and the relevance of the third branch. The Special Committee touched on Limited Legal Services Licensure. The Florida Access Commission recommended a similar concept akin to a Physician’s Assistant program where an attorney always had ultimate responsibility for the subordinate provider. Likewise, OSCA and Legal Aid organizations are advancing technology as a means of increasing access for the poor and middle class with the “DIY” project as well as “Florida Courts Help”, an app. These make pleadings available in the biggest areas of self-representation and provide guidance for those in need in finding legal help, as well as social or governmental services.

The point is that the Bar and the Court are proceeding with numerous programs to address this necessary and important need in ways that do not potentially impair the foundation of our legal system, nor invite regulatory intrusion by the other branches of government. I support work to improve access to the legal system for those in need but oppose these proposals due to the potential for more harm than good.

CONCLUSION

In the Preamble to the Rules of Professional Conduct, we state:

An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on the executive and legislative branches of government for the right to practice. Supervision by an independent judiciary, and conformity with the rules the judiciary adopts for the profession, assures both independence and responsibility.

Our Court and the integrated Bar have a responsibility to provide reasonable and appropriate access to the courts to meet the needs of the public. However, we should not risk sacrificing the other fundamental responsibilities of the Court and the Bar in meeting those needs. Other solutions should be explored and advanced that do not carry the risks identified.

Yours very truly,

Thomas S. Edwards, Jr.

Thomas S. Edwards, Jr.

Electronically signed to avoid delay

TSE/pj

cc: Michael Tanner, Esq., President of The Florida Bar (via email)
Gary Lesser, Esq., President Elect of The Florida Bar (via email)
Braxton Gillam, Esq., 4th Judicial Circuit Board of Governors (via email)
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THE FLORIDA BAR
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October 28, 2021

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Re: Special Committee to Improve the Delivery of Legal Services

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Dear President Tanner:

EXECUTIVE COUNCIL:

Terms Expiring 2022:

Rosalyn S. Baker-Barnes, West Palm Beach
Dianne O. Fischer, Miami
James Gassenheimer, Miami
Wiley B. Gillam, IV, Jacksonville
John M. Howe, West Palm Beach
Mark McLaughlin, Tampa

Thank you for the opportunity for the Trial Lawyers Section of The Florida Bar (the "Section") to provide written comments to you and the members of the Board of Governors regarding the *Final Report of the Special Committee to Improve the Delivery of Legal Services* dated June 28, 2021 (the "Report"). The Executive Council of the Section appointed a Committee to review and evaluate the recommendations contained within the Report, and the Committee focused on two of the primary issues identified in the Report, namely (i) non-lawyer ownership of law firms and entity regulation, and (ii) fee-sharing between lawyers and non-lawyers.

Terms Expiring 2023:

Jeremy C. Branning, Pensacola
J. Charles Ingram, Maitland
Dennis O'Connor, Winter Park
Andrew Reiss, Naples
Michele McCaul Ricca, Fort Lauderdale
Whitney M. Untiedt, Miami
Shirin M. Vesely, St. Petersburg

The Section does not endorse the recommendations of the Special Committee relating to non-lawyers acquiring an equity interest in law firms, and similarly does not endorse the proposed recommendations regarding fee-sharing.

Terms Expiring 2024:

Kurt E. Alexander, Merritt Island
Geddes D. Anderson, Jr., Jacksonville
Kimberly A. Ashby, Orlando
Mitchell J. Burnstein, Fort Lauderdale
Kimberly A. Kohn, Tampa
Yohance A. Pettis, Tampa
Wayde Seidensticker, Jr., Naples

We are pleased to submit the attached White Paper on behalf of the Trial Lawyers Section for consideration by the Board of Governors, and we remain available to assist you and The Bar on these very important issues presently facing our membership.

Respectfully submitted,

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JUDICIAL LIAISON:

Hon. Nicholas P. Mizell
U.S. District Court
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Enclosure:

Trial Lawyers Section's Comments on the *Final Report of the Special Committee to Improve the Delivery of Legal Services*

Hon. Jeffrey Levenson
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Leslie Reithmiller, Assistant to the President

TRIAL LAWYERS SECTION'S COMMENTS ON THE FINAL REPORT OF THE SPECIAL COMMITTEE TO IMPROVE THE DELIVERY OF LEGAL SERVICES

I. INTRODUCTION

A. BACKGROUND AND HISTORY OF TRIAL LAWYERS SECTION

The Trial Lawyers Section of The Florida Bar (“TLS”) provides a forum for discussion and exchange of ideas leading to the improvement of individual trial ability. The essential purposes of TLS are threefold: to assist the courts in improving the administration of justice, and the efficiency of our legal system; to promote the art of advocacy; and to preserve and protect the jury system. TLS includes both plaintiff and defense attorneys as well as prosecutors. TLS was first established in 1967 and has over 5,500 members. Membership in TLS is open to Florida Bar members and any student enrolled in any law school who is interested in the purposes of TLS.

B. FLORIDA BAR PRESIDENT’S INVITATION FOR COMMENT

On August 30, 2021, Michael G. Tanner, President of The Florida Bar invited TLS to provide written comments on the recommendations contained in the Final Report of the Special Committee to Improve the Delivery of Legal Services dated June 28, 2021 (“the Report”). The Executive Council of TLS studied the Report, the references contained in the Report, and additional resources specifically identified in this paper. As a result of this research, TLS submits its written comments specifically regarding: 1) non-lawyer ownership of law firms, and entity regulation, and; 2) fee-sharing between lawyers and non-lawyers. This includes the recommendations regarding the Special Committee’s approval and recommendations regarding amendments to Rule 4-5.4, Florida Rules of Professional Conduct (Professional Independence of a Lawyer). This Rule currently governs the parameters for sharing fees with non-lawyers, partnership of lawyers with non-lawyers and non-lawyer ownership of a business entity authorized to practice law for a profit. A copy of the current version of Rule 4-5.4 is attached as Exhibit “A”.

For the reasons stated herein, TLS does not endorse the recommendations of the Special Committee as they relate to non-lawyers acquiring an equity interest in law firms, or the Special Committee’s proposed recommendations regarding fee-sharing. TLS takes no position on the Special Committee’s recommendations

regarding legal advertising and the proposed limited assistance paralegal pilot program.

II. SPECIAL COMMITTEE’S RECOMMENDED CHANGES TO RULE 4-5.4

A. SPECIAL COMMITTEE RECOMMENDATION TO PERMIT NON-LAWYERS TO HAVE A NONCONTROLLING EQUITY INTEREST IN LAW FIRMS WITH RESTRICTIONS

The Special Committee recommends amending Rule 4-5.4 to permit non-lawyers to have a non-controlling equity interest in a law firm, subject to restrictions. *See Report at p.6-8.* The “restrictions” to be imposed with the implementation of the new proposed Rule amendment would be: 1) the work of the non-lawyer must actively support the work of the law firm; 2) the lawyers in the firm must retain a controlling interest in the firm such that the aggregate non-lawyer equity interest is less than 50%; 3) lawyers licensed by The Florida Bar would remain responsible for the actions of the non-lawyers; 4) the non-lawyers would be required to comply with the Florida Rules of Professional Conduct, and; 5) the proposed Rule amendment would not abrogate the lawyers’ ethical obligation to exercise independent professional judgment. *See Report at p. 8.* This recommendation would require amendments to Rule 4-5.4(a) (Sharing Fees with Nonlawyers); Rule 4-5.4(c)(Partnership with Nonlawyer); and Rule 4-5.4(e)(Nonlawyer Ownership of Authorized Business Entity). *See Ex. A.*

As support for making the Special Committee’s recommendation, in the Report the Special Committee relies in large part on an article published in April, 2020 by Stanford Law School in California. *See J. Solomon, D. Rhode, A. Wanless, How Reforming Rule 5.4 Would Benefit Lawyers and Consumers, Promote Innovation, and Increase Access to Justice, Stanford Center on the Legal Profession (“the Stanford Article”)* (a copy of the Stanford Article is attached as Exhibit “B”). Rule 5.4 is the Model Rule created by the ABA, and Florida’s Rule 4-5.4 follows the existing ABA Model.

In the Stanford Article, the authors declared there is an access to justice crisis that is principally attributable to the existing Rule 5.4. The Stanford Article authors conclude Rule 5.4 limits choices for consumers seeking to access legal services because of the ban on non-lawyer equity ownership of law firms and fee-sharing by lawyers with non-lawyers. According to the Stanford Article, the ban imposed by Rule 5.4 has the following inescapable consequences: 1) it leaves law firms strapped for capital, and; 2) it makes it more difficult for law firms to keep up with modern

innovations in business practices. *Id.* at 4 (citing D. Rhode, *The Trouble with Lawyers* 100 (2015)). Because of the lack of capital to invest in modern innovations, the Stanford Article concludes that law firms lag far behind other industries such as accounting, consulting and medicine in area of technological innovations. *Id.* at 6-9. (citing M. Cohen, *Law is Lacking Digital Transformation-Why it Matters*, Forbes Dec. 20, 2018). The premise is therefore that non-lawyer equity ownership of law firms will provide additional capital and innovative methodology for the delivery of legal services which will, in turn, make legal services more accessible to those potential consumers of legal service currently unserved. There is no description for any particular “innovations” that will assist lawyers or their practice nor how innovations in general result in improved availability of legal services.

The logic of the Stanford Article is in conflict because it posits that if lawyers had non-lawyer equity owners, there would be lessened limitations on “mass-market law firms” who may benefit from economies of scale. *Id.* at 6. Yet, there is no explanation as to how this translates to greater availability to consumers. Instead, the Stanford Article cites as a result law firms losing business to in-sourcing by law departments in businesses, “alternative legal providers” and Big Four accounting firms. *Id.* at 6. According to the authors of the Stanford Article, the shortfall of digital transformation in law firms is largely affecting legal services sought by larger corporate legal departments as a consumer. *Id.* at p. 6. The citations cited in the Stanford Article do not provide a connection between the delivery of additional capital to the nonlawyer-owned law firm or the development of more technology in the delivery of legal services to an increase in the availability of legal services to consumers who are desiring such services but unable to get them.

Additionally, the Stanford Article states that law compares unfavorably to medicine in developing technical advancements, since doctors have more flexibility in the contractual and organizational arrangements and may now be employees of healthcare organizations such as hospitals or HMOs not owned by physicians. The Stanford Article does not discuss what impact, if any, there may be on the exercise of independent professional judgment in the medical profession as a consequence. *See Id.* at 7.

The Stanford Article is also used by the Special Committee as its resource for comparison of affordability of civil legal services in the United States with other countries internationally. *See Report at pp. 6-7.* Specifically, the Stanford Article references the experiences of Alternative Business Structures (“ABS”) in England and Wales which are reported to allow for increased choice and competition in the delivery of legal services, improved services to consumers, reduced prices, and increased innovation in the provision of legal services. *Id.* at 8 (citing [Impact](#)

Evaluation of SRA's Regulatory Reform Programme, Solicitors Regulation Authority (Apr. 2018) (“Programme Report”)¹. The SRA reports that its law firm members were using advanced technology to help deliver services by using videoconferencing for meeting clients, storing data in the cloud and using practice management or legal research software. *Id.* Of the foreign law firms that were not using legal tech, reasons given included uncertainty by SRA members regarding client confidentiality and data protection requirements, as well as a general uncertainty of the business benefits from using more advanced technology. Using this SRA source to support the findings on greater access to justice internationally, the Report of the Special Committee does not explore the SRA’s own attribution to the biggest hurdle in supporting access to justice: consumers did not realize that their problem was legal and did not consider looking for legal help. *Id.* Also, paradoxically, in the SRA findings, improving technology was found to actually hamper access to justice because some consumers could not, or did not want to, use services delivered using technology². *Id.*

The Special Committee Report states that 60% of small business owners who have at least one legal issue (which these businesses described as one of the greatest threats to their business) and do not have a lawyer to assist them, citing the Stanford Article. *Report at p. 6 (citing Stanford Article)*. For this data, the Stanford Article relied on a study prepared by a Texas marketing research and analytical consulting firm, Decision Analyst. *See Stanford Article, n.3*. The Decision Analyst study was conducted over the Internet with “a sample of owners and top executives of small businesses.” *Id.* The Decision Analyst study recites that there were 1007 interviews completed online in May, 2013, but does not indicate how many separate businesses were consulted, nor does it contain any other data regarding the statistical pool of interviewees, such as the size or type of the business, geographic location or number of employees or owners. In this Decision Analyst study, the ten legal issues that needed to be addressed by the small businesses interviewed concerned debt collection, contract review, product liability issues, employee theft, tax audits, employee confidentiality issues, threats of consumer lawsuits, and Internet security breaches. According to the study, 60% of the business owners interviewed decided to forgo legal services because they believed they could handle the issue better on their own. *Id.* Therefore, the Decision Analyst study does not accord with any of the basic methods for performing statistical analysis.

The Report references the delivery of pro bono service and that legal aid and pro bono cannot solve the problem of delivery to consumers in need of civil legal

¹ <https://www.sra.org.uk/sra/how-we-work/reports>

² <https://www.legalservicesboard.org.uk/wp-content/media/FINAL-Small-Business-Report-FEB-2018.pdf>

services. *Report at 6-7.* Again citing to the Stanford Article, the Report does not give guidance as to what finding reported in the Stanford Article references the \$40 billion cost to address unmet legal problems or the total amount currently spent on legal aid. TLS contacted the Legal Aid Society of Central Florida (“LASCF”) to get a better understanding of what this organization was experiencing in the inability to deliver legal services to consumers that want them, but are unable to pay. The composite of the information received is attached as Exhibit “C”. The findings of this agency was not that the model for delivery of services was broken, though funding could always be an improvement. The majority of consumers seeking legal aid from LASCF who were not served by this agency were not left without access to legal services but instead referred to other legal aid providers more specific to the legal needs of the consumer. TLS does not propose that this isolated inquiry to LASCF answers the question regarding the potential scale of unmet legal services, but offers this information as a guide to a more studied approach to what consumers of legal services experience in Florida, as opposed to other global markets.

III. SPECIAL COMMITTEE RECOMMENDS A “SANDBOX” SUPPORTED BY OTHER FORUMS THAT HAVE ELIMINATED RULE 5.4 AS IT RELATES TO NONLAWYER EQUITY OWNERSHIP AND FEE SHARING

The Report recounts the abrogation, or partial abrogation, of Rule 5.4 in the United States in the states of Arizona and Utah, and in the District of Columbia. The Report does not include reference to changes attempted in the states of Washington or California, a review of which may be instructive. TLS reviewed data available on these jurisdictions and offers the following information.

A. ARIZONA- COMPLETELY ABROGATED RULE 5.4 IN 2020

As the Report notes, Arizona completely abrogated Rule 5.4 in 2020. The Arizona Supreme Court maintains the responsibility to approve the alternative business structure and grant a license in Arizona. Of those businesses that have applied for the ABS arrangement, and have passive and active nonlawyer ownership of the law firm, license-holders now include estate planning services, personal injury law and mass tort. The purpose for approving ABS in Arizona was to provide additional capital to be infused in legal firms which in turn would allow for greater technological innovations in the delivery of legal services, and one-stop shopping to provide legal and nonlegal services to a client. At least one member of the Arizona Supreme Court has reflected that Arizona is imposing more regulation, not less, which may explain why large accounting firms are not seeking entry into an ABS

arrangement due to the fact that it would impose more regulation than already in place. See (*Interview of Vice Chief Justice Ann A. Scott Timmer, 10/22/20*).³

B. DIST. OF COLUMBIA-IMPLEMENTED NON-LAWYER OWNERSHIP WITH ACTIVE SUPPORT OF THE LAW FIRM WORK

The Special Committee cites as support for this recommendation the District of Columbia Bar’s treatment of Rule 5.4 that permits nonlawyers to have a non-controlling equity interest in law firms. *Report p.8*. D.C.’s version of Rule 5.4 has allowed nonlawyer ownership since 1991, and reports show that a small minority of D.C. firms have one or more partners who are lobbyists or public relations professionals, rather than lawyers. ABA Formal Opinion 360 prevents those firms from expanding into jurisdictions that follow ABA Model Rule 5.4, such as Florida’s Rule 4-5.4. See *D.C. Rules of Professional Conduct 5.4(b)* (“(b) A lawyer may practice law in a partnership or other form of organization in which a financial interest is held or managerial authority is exercised by an individual nonlawyer who performs professional services which assist the organization in providing legal services to clients, but only if:

(1) The partnership or organization has as its sole purpose providing legal services to clients;

(2) All persons having such managerial authority or holding a financial interest undertake to abide by these Rules of Professional Conduct;

(3) The lawyers who have a financial interest or managerial authority in the partnership or organization undertake to be responsible for the nonlawyer participants to the same extent as if nonlawyer participants were lawyers under Rule 5.1”).

In the Comment to the D.C. Rule, the rationale the D.C. Bar gave for the change to Rule 5.4 was: “...the purpose of liberalizing the Rules regarding the possession of a financial interest or the exercise of management authority by a nonlawyer is to permit nonlawyer professionals to work with lawyers in the delivery of legal services without being relegated to the role of an employee. For example, the Rule permits economists to work in a firm with antitrust or public utility practitioners, psychologists or psychiatric social workers to work with family law practitioners to assist in counseling clients, nonlawyer lobbyists to work with lawyers who perform legislative services, certified public accountants to work in

³ <https://legaltalknetwork.com/podcasts/digital-edge/2020/10/arizona-first-state-to-approve-non-lawyer-ownership-of-law-firms/>

conjunction with tax lawyers or others who use accountants' services in performing legal services, and professional managers to serve as office managers, executive directors, or in similar positions. In all of these situations, the professionals may be given financial interests or managerial responsibility, so long as all of the requirements of paragraph (c) are met. “

The references cited in the Special Committee's Report do not address the relatively unique legal services market encapsulated in the nation's Capital. In addition, the references that do analyze the impact of the D.C. version of Rule 5.4 note that limited application has been made by non-lawyer ownership due to the restrictions imposed on nonlawyer ownership in the majority of states. For these reasons, the available reference sources have limited data from which to extrapolate the impact on the delivery of legal services in a broader context.

C. UTAH-CREATED “SANDBOX” CONCEPT TO EXPERIMENT WITH RELAXATION/ELIMINATION OF SAME RULE

The Utah Supreme Court implemented a “sandbox” approach to relaxing Rule 5.4 to allow for nonlawyer ownership. In so doing it created the Office of Legal Services Innovation. The success of the program is being calibrated by the self-reported complaints from the companies (non-lawyer owned) that are part of the program, as well as by complaints posted by the “consumer” on the public website. This reporting system relies on the tenacity of the complainant. The complainant has to have the inclination to come forward and list a complaint, as well as potentially waiving its/her/his confidentiality regarding seeking and receiving legal services from a participant of the program. The reporting system in Utah requires a complainant to expose and report the nature of the legal problem/issue, information into a non-privileged database that would otherwise be kept confidential. This system embeds a reporting mechanism which completely destroys any confidentiality in the delivery of legal services. Reporting a claim requires the complainant to state his/her/its identity, email address and the content of the complaint. *See (Sandbox Consumer Complaint)*.⁴ According to its website, the Innovation Office uses a regulatory framework to identify three categories of consumer harm: ~~one~~ 1) the consumer achieves an inaccurate or inappropriate legal result; ~~two~~ 2) the consumer fails to exercise legal rights through ignorance or bad advice; ~~three~~ 3) the consumer purchases an unnecessary or inappropriate legal service. *Id.* Regulation by the Utah Innovation Office ends upon application to exit the sandbox based on satisfactory performance. Criteria thresholds for satisfactory performance are measured by the Innovation Office by the duration and scope of

⁴ <https://utahinnovationoffice.org/sandbox-customer-complaint/>

appropriate service delivery as specified in the Innovation Office Manual. Although the Manual is not available on the website, the exit criteria include legal outcomes, financial outcomes, amount the consumer paid for the service, what the consumer asked for and received, and consumer complaints. The current Utah Sandbox ends in seven years after which entities that have not already exited the sandbox will be considered on an individual basis as to whether they can continue to deliver legal services. The Office does not offer a remedy to complainants.

The Utah project reports an estimate that the percentage of complaints in the program (1-2% of the delivery of services) is far lower than the average error rate of practicing lawyers which is 10%. No empirical data is given for these figures. TLS could not identify any support for a statistical finding that 10% of the civil legal services delivered in Florida are in error. One would typically seek information from such sources as malpractice carriers, and possibly The Florida Bar, before using such an estimate to support such a conclusion. The Report of the Special Committee does not reflect that this was done.

The current list of entities that are authorized to provide services across specific legal service categories in Utah are catalogued at *Authorized Entities*.⁵

D. CALIFORNIA'S RULE 5.4

California has undertaken several studies to examine the accessibility of legal services to consumers with civil law issues. *See, e.g., Task Force on Self-Represented Litigants: Final Report on Implementation of the Judicial Council Statewide Action Plan for Serving Self-Represented Litigants (Sept. 15, 2014)*, aAs a result of the various studies conducted by the State Bar of California, rule 5.4, Financial and Similar Arrangements with Nonlawyers, effective March 22, 2021, leaves California in the position of restricting sharing legal fees with a nonlawyer or with an organization that is not authorized to practice law to the same five exceptions that Florida Rule 4-5.4(a) has. California Rule 5.4(b) provides that a lawyer shall not form a partnership or other organization with a nonlawyer if any of the activities of the partnership or other organization consists of the practice of law. The California Rule does not prohibit a lawyer from paying a bonus to, or otherwise compensating a nonlawyer employee from general revenues, and is not intended to affect case law regarding the relationship between insurers and lawyers providing legal services to insureds. *See Comment to Rule 5.4.*

E. WASHINGTON'S LIMITED LICENSE LEGAL TECHNICIANS

⁵ <https://utahinnovationoffice.org/authorized-entities/>

The state of Washington underwent an experimental program that allowed nonlawyers trained in family law to practice law under a limited license, legal technician. The purpose of the LLLT rule was to increase access to legal services, particularly in certain practice areas with high demand. The first identified high demand practice area was family law⁶. On June 4, 2020, the Washington Supreme Court sunset the initiative. The sunset permits LLLT's in good standing to remain licensed and keep providing services. It is unclear what caused the Court to sunset the program other than an observation that the program was "unsustainable", and the chairman of the program was disappointed by the number of applicants. *See* L. Moran, *How the Washington Supreme Courts LLLT Program Met Its Demise* (ABA Journal July 9, 2020).⁷ The Washington State Bar Treasurer recommended the court deny approval of new practice areas given the LLLT program inability to become self-sustaining in its first practice area. *Id.*

IV. ANALYSIS OF EMPIRICAL BASES FOR SPECIAL COMMITTEE RECOMMENDATIONS

TLS commends the Special Committee on the extraordinary effort underlying the Report. The amount of time committed, as reflected in the Report, demonstrates the earnestness that the Special Committee embodied during the process in its efforts to capture, study, digest and report on the available research, data and experience to date in other jurisdictions that have considered and implemented amendments to Rule 5.4 in an effort to address challenges to access to legal services in civil cases. The fact remains, however, that there are limits to the facts as to whether the proposed Rule amendments, and the implementation of a regulated "sandbox" in Florida, addresses the problem sought to be solved, or whether such an experiment would cause more harm than good to the consumers of legal services in Florida.

The available resources upon which the Special Committee relied have a commonality in the authors advocating for nonlawyer ownership and fee-sharing beyond what is currently authorized. The arguments of these advocates have a uniformity that include the need for more technology in the law practice as a vehicle for advancing the availability of services. Yet, references relied upon by these advocates reflect that the underserved in the civil legal services market may actually be less attracted to the use of advanced technology, and more importantly, have reduced means for accessing and utilizing advanced technology vehicles.

⁶ <https://lib.law.uw.edu/ref/wa-lllt.html>

⁷ <https://www.abajournal.com/web/article/how-washingtons-limited-license-legal-technician-program-met-its-demise>

Nonlawyer capitalization into law firms as a cure for the legal services accessibility issue dovetails back to the development of more technology. If the use of more investment money into the law firms is a reason supporting the nonlawyer to be an equity stakeholder, there is a disconnect between that investing nonlawyer and the incentive for being such an investor. It may be that the sandbox model in Washington failed due to the lack of interest by the putative nonlawyer investor. The references underlying the Special Committee's Report blame lawyer-owned law firms' unwillingness to make needed capital investments, which if made, would somehow lead to a more robust ability to serve those currently unserved. Yet, none of these references offer a logical reason why nonlawyer investment in the same firm would yield more profits. If the proposal was to open the avenue for a sizeable increase in the traditional practice of law to unlicensed practitioners, there could perhaps be a profit to be made by the nonlawyer-owned firm. However, the Florida Supreme Court has opined that this is not in the best interests of the consumers of legal services in Florida. *See The Florida Bar v. Tikd Services LLC*, slip op. (Fla. Oct. 14, 2021).

The other jurisdictions that have considered licensing nonlawyers, and including nonlawyers as equity owners of law firms have faced the administrative expenses for regulation of these new licensees. Unanswered issues include the ethical questions of how the independence of the licensed lawyer may be maintained, especially when up to 49% of the firm is owned by nonlawyers. While a protection may be recited in the new Rule 4-5.4, that the lawyer owners have a responsibility to ensure that the nonlawyers comply with the Rules Regulating the Florida Bar, the oversight will require that the nonlawyers do not give advice and counsel that affects important rights of a person under the law, which would constitute unauthorized practice of law. *See State e. rel. Fla. Bar v. Sperry*, 140 So. 2d 587, 591 (Fla. 1962), *approved, TIKD Services, LLC*, at p. 6. To the extent one of the component reasons given for the Rule change is to give lawyers more time to practice law and less time in administrative tasks, the enormous additional oversight requirement is completely antithetical to such an argument.

Creating an experimental sandbox statewide, with a sunset provision, presents additional problems in the event of a sunset or other wind-down. As the state of Washington has discovered, businesses admitted to the sandbox are unable to wind down, and can rightly claim loss of investment at the termination of the program. With the assumption that ethical and other objections overcame the results produced by the sandbox, causing the sunset event, if the applicants who were given the sandbox license are allowed to continue to do business, the Court will be placed in a position of having to condone unethical conduct in the hands of the previously

approved applicants. Upon a wind down of the program, left unanswered is whether there would continue to be regulation by the Court and with what authority to continue to regulate.

A sustainable logical conclusion is a form of reasoning in which a conclusion is drawn from valid propositions. In this case, the analysis of the Special Committee Report starts with the premise that there is a lack of available, accessible civil legal services in Florida. From this premise, the resources cited in the Report contend that nonlawyer ownership will solve the problem because it will infuse additional capital which will lead to improvements in technology, which will then lead to increased accessibility to the consuming public. Missing from this analysis is why this would be so. Also missing is why nonlawyer equity investors would infuse additional capital magnanimously with no or limited expectation of making a profit on that investment.

V. ISSUES IDENTIFIED AND REPORTED TO TLS BY FLORIDA BAR MEMBERS: ETHICAL CONCERNS REGARDING CONFLICTS OF INTEREST, ATTORNEY/CLIENT PRIVILEGE, CONFIDENTIALITY, AND ADMINISTRATIVE CHALLENGES CREATED BY PROPOSED CHANGES TO RULE 4-5.4

As previously mentioned, TLS has over 5,500 members. The Executive Council of TLS has the responsibility to represent all of those members. As such, TLS endeavored to obtain the sentiment of its members toward the Special Committee Report recommendations. In the preparation of these Comments, TLS received additional input from members of ~~The Florida Bar~~ TLS raising concerns regarding the proposed Rule amendments contained in the Report. The issues and concerns raised and reported are summarized as follows.

The proposed Rule amendments:

1. add a layer of conflicts of interest;
2. deteriorate the attorney/client privilege;
3. lack proof as a solution to improving access to legal services;
4. add responsibility of lawyer oversight over non-lawyers;
5. lacks a method by which The Florida Bar can enforce rules against non-lawyers and non-lawyer businesses, and;
6. do not recognize that advances in technology can be accomplished by law firms outsourcing such needs to technology firms or employment of non-equity technology professionals, especially given the pace of advancement in this area.

VI. SPECIAL COMMITTEE RECOMMENDED AGAINST RULE AMENDMENT TO PERMIT PASSIVE OWNERSHIP OF LAW FIRMS

In the Report, the Special Committee explicitly voted that the professional rules should not be amended to permit *passive* ownership of law firms. *See Report at p.8; Fla. R. Prof. Conduct 4-5.4(e)*. Given that no recommendation for revision or amendment to passive nonlawyer ownership has been made, TLS has no further response.

VII. CONCLUSION

TLS greatly appreciates the opportunity to present comment on this very important issue. The interests of not only Section members and the Florida trial Bar at large, but essentially all of the consumers of civil legal services in Florida is at stake. Such an undertaking should not be undertaken without the solid foundation that the resources spent on it have a likelihood of success. Most important, the sandbox and proposed Rule changes should have a statistical basis for insuring that consumers of legal services will not be unduly harmed. The few states that have undertaken such an approach have underscored the many pitfalls that are presented by a sandbox implementation, and which have left a trail of irremediable licensed service providers who would not otherwise be authorized to provide legal services but may into the future with no regulation by the state Bar. This is not an outcome to be recommended to the people and businesses in the State of Florida.

Amended July 23, 1992, effective January 1, 1993 (605 So.2d 252); amended April 25, 2002 (820 So.2d 210); amended March 23, 2006, effective May 22, 2006 (933 So.2d 417); amended June 11, 2015, effective October 1, 2015 (167 So.3d 412).

RULE 4-5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) Sharing Fees with Nonlawyers. A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to 1 or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation that fairly represents the services rendered by the deceased lawyer;

(3) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, in accordance with the provisions of rule 4-1.17, pay to the estate or other legally authorized representative of that lawyer the agreed upon purchase price;

(4) bonuses may be paid to nonlawyer employees for work performed, and may be based on their extraordinary efforts on a particular case or over a specified time period. Bonus payments shall not be based on cases or clients brought to the lawyer or law firm by the actions of the nonlawyer. A lawyer shall not provide a bonus payment that is calculated as a percentage of legal fees received by the lawyer or law firm; and

(5) a lawyer may share court-awarded fees with a nonprofit, pro bono legal services organization that employed, retained, or recommended employment of the lawyer in the matter.

(b) Qualified Pension Plans. A lawyer or law firm may include nonlawyer employees in a qualified pension, profit-sharing, or retirement plan, even though the lawyer's or law firm's contribution to the plan is based in whole or in part on a profit-sharing arrangement.

(c) Partnership with Nonlawyer. A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(d) Exercise of Independent Professional Judgment. A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(e) Nonlawyer Ownership of Authorized Business Entity. A lawyer shall not practice with or in the form of a business entity authorized to practice law for a profit if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration; or

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Comment

The provisions of this rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in subdivision (d), such arrangements should not interfere with the lawyer's professional judgment.

This rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also rule 4-1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).

The prohibition against sharing legal fees with nonlawyer employees is not intended to prohibit profit-sharing arrangements that are part of a qualified pension, profit-sharing, or retirement plan. Compensation plans, as opposed to retirement plans, may not be based on legal fees.

Amended June 8, 1989 (544 So.2d 193); amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended October 20, 1994 (644 So.2d 282); amended June 27, 1996, effective July 1, 1996 (677 So.2d 272); amended October 6, 2005, effective January 1, 2006 (916 So.2d 655); amended March 23, 2006, effective May 22, 2006 (933 So.2d 417).

RULE 4-5.5 UNLICENSED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) Practice of Law. A lawyer may not practice law in a jurisdiction other than the lawyer's home state, in violation of the regulation of the legal profession in that jurisdiction, or in violation of the regulation of the legal profession in the lawyer's home state or assist another in doing so.

(b) Prohibited Conduct. A lawyer who is not admitted to practice in Florida may not:

(1) except as authorized by other law, establish an office or other regular presence in Florida for the practice of law;

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in Florida; or

(3) appear in court, before an administrative agency, or before any other tribunal unless authorized to do so by the court, administrative agency, or tribunal pursuant to the applicable rules of the court, administrative agency, or tribunal.

(c) Authorized Temporary Practice by Lawyer Admitted in Another United States Jurisdiction. A lawyer admitted and authorized to practice law in another United States jurisdiction who has been neither disbarred or suspended from practice in any jurisdiction, nor disciplined or held in contempt in Florida by reason of misconduct committed while engaged in the practice of law permitted pursuant to this rule, may provide legal services on a temporary basis in Florida that are:

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How Reforming Rule 5.4 Would Benefit Lawyers and Consumers, Promote Innovation, and Increase Access to Justice

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EXHIBIT B

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Introduction: The Access to Justice Crisis and Rule 5.4

It is a shameful irony that the nation with one of the world's highest concentrations of lawyers has done so little to make them accessible to those who need them most. The U.S. ranks just 109 out of 128 countries in access to justice and affordability of civil legal services, below Zambia, Nicaragua, and Afghanistan.¹ Two-thirds of American adults reported having a civil legal problem in the past year, but only one-third of those received any help.² The human costs are often staggering, with domestic violence, illness and serious economic hardships among them. Small businesses have significant legal issues as well, and yet 60% of small business owners who have at least one such issue – which they describe as one of the “greatest threats to their business” – do not have a lawyer to assist them.³ Nor is the problem getting better. Today, nearly 80% of civil cases involve at least one party without an attorney – double the percentage of self-represented litigants in 1980.⁴

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Legal aid and pro bono alone cannot solve the problem. Providing even one hour of attorney time to everyone in the United States with a legal problem would cost around \$40 billion, but total expenditures on legal aid (both public and private) are just 3.5% of that amount.⁵

Providing one hour of pro bono per justice problem would require over 200 hours of pro bono work per attorney per year, but the average pro bono hours worked per attorney is only 42.8.⁶

Why hasn't the market offered more solutions to serve individuals and small businesses who can pay something for legal services, but not upwards of \$200 per hour? One significant reason – as explained further be-

low – is that regulations on legal service providers limit the ability to create solutions. The American Bar Association’s (ABA) Model Rule of Professional Conduct 5.4, Professional Independence of a Lawyer, includes several provisions: “A lawyer or law firm shall not share legal fees with a nonlawyer;”⁷ a “lawyer shall not form a partnership with a nonlawyer;”⁸ and a lawyer shall not practice law for profit if “a nonlawyer owns any interest therein.”⁹ The Rule aims to protect the “professional judgment of a lawyer” but is both a poor fit for that task and has negative consequences for the legal services market.

“We need new ideas. We are one-fifth into the 21st century, yet we continue to rely on 20th-century processes, procedures and regulations.”

Judy Perry Martinez, ABA President

Under this rule, “[l]egal services must be provided by a law firm that is owned, managed, and financed exclusively by lawyers.”¹⁰ Yet forbidding outside ownership and investment in legal services providers contributes to the low innovation and high cost of services that characterize the U.S. legal market today. In short, the rule is a “major contributing factor” to America’s access to justice problem.¹¹ Indeed, countries that allow lay investment in or ownership of legal service providers consistently rank ahead of the United States in access to and affordability of legal services.¹² Without the ability to offer equity stakes to business leaders or investors – or to have a diverse, independent board of directors through the corporate form – legal service providers are not able to enlist the best business expertise.

For these reasons, there has long been a consensus among both legal ethics scholars and experts on the legal services market that Rule 5.4 should be repealed. Leaders of the bar are increasingly voicing this view as well. In February 2020, the ABA’s House of Delegates passed a resolution calling for “regulatory innovations that have the potential to improve the ac-

cessibility, affordability, and quality of civil legal services.”¹³ As ABA President Judy Perry Martinez put it, “We need new ideas. We are one-fifth into the 21st century, yet we continue to rely on 20th-century processes, procedures and regulations.”¹⁴ The Conference of Chief Justices passed a similar resolution, specifically citing “consideration of alternative business structures” as an area to consider.¹⁵ And the outgoing president of the Legal Services Corporation, James Sandman, has also pointed to regulatory reform as a key priority to help increase collaboration with other professionals and drive access to justice.¹⁶

Bans on Outside Investment and Ownership Limit Choice and Services for Consumers

Rule 5.4, which prohibits lawyers from partnering with non-lawyers and prohibits non-lawyers from investing in law firms, harms the legal market in two primary ways.¹⁷ First, prohibiting investment from non-lawyers leaves law firms strapped for capital. Second, it makes it harder for law firms to keep up with modern innovations in business practices. Firms cannot form cost-effective multidisciplinary practices with other service providers, and few have incentive to invest in technology and business processes. Consumers today expect seamless, integrated services, and Rule 5.4 prevents lawyers from meeting the needs of their clientele.

Legal Service Providers Have Limited Access to Capital

Under the ABA’s regulations, private-sector lawyers can only deliver legal services through three kinds of entities: sole proprietorships, legal partnerships, or LLCs.¹⁸ As Gillian Hadfield has pointed out, these first two structures are the most common in law but play a limited role in the modern economy generally, and are much less common even among other professional services firms.¹⁹ For law firms, money comes in as fees, and partners receive profits annually. Because law firms cannot obtain equity investments from non-lawyers, firms’ only sources of capital are revenues and loans.²⁰ Indeed, a part of rule 5.4 has been interpreted to preclude revenue-sharing or profit-sharing arrangements with entities or individuals who are not lawyers. As such, “[a]nxiety over the negative effect that

inadequate capital has on attorneys in private practice has been a constant source of concern for the bar.”²¹

Law firms’ financing structures are especially poorly suited to today’s workforce.

Law firms’ financing structures are especially poorly suited to today’s workforce. Currently, a firm’s capital comes almost entirely from its equity partners, but as lateral movement among firms increases, more and more lawyers “may be reluctant to invest in firms’ long-term needs.”²² Because partners must bear all the financial risk, firms are left more vulnerable to economic downturns.²³ As analysts observed during the 2008 recession, “the fact that the only outside source of capital available to law firms was conventional debt put them in an especially vulnerable position.”²⁴ Lawyers are only able to use financial tools that are “primitive” compared to modern advances in finance.²⁵

The lack of access to capital also means firms are less likely to invest in efforts that have a long time horizon in which to deliver a return.²⁶ This has limited law firms’ capacity to build the economies of scale needed to provide the level of service now expected of most customer-oriented businesses. “Prohibition of lay investment cuts legal organizations off from the sources of funds that fuel innovation elsewhere in the economy: angel investors, venture capital, private equity, and public capital markets.”²⁷ As a result, law firms lag far behind other industries – including other professional services like accounting, consulting and medicine – in adopting business processes and technology to provide better service at lower cost. As other industries – including law firm clients – undergo “digital transformation” to improve their own operations and services, the legal industry’s limited access to investment capital has become increasingly stark and problematic.²⁸

The Legal Profession Is Ill-Equipped to Benefit From Business Expertise

Rule 5.4 prevents law firms from utilizing the best business practices both by inhibiting long-term investment in firm-specific capital like business processes and technology, and by preventing firms from offering equity stakes, or revenue or profit-sharing opportunities, to individuals or organizations with business expertise.

The ban on nonlawyer ownership means lawyers – who receive no training on how best to manage a business during their three years in law school – are expected to run businesses. Private-sector lawyers spend much of their time on business development and administrative tasks, with an average of only 2.5 hours of billable time per 8 hour work day.²⁹ Allowing non-lawyers to have a larger stake in the business side of the law firm would free up lawyers to focus on their strength of practicing law.

Private-sector lawyers spend much of their time on business development and administrative tasks, with an average of only 2.5 hours of billable time per 8 hour work day.

Meanwhile, other professionals with significant business-development expertise cannot obtain equity in law firms, which may deter them from taking otherwise desirable jobs in the legal field. In business, the majority of compensation of most executive pay packages comes in the form of equity, so the ability to offer stock options becomes key to attracting talent.³⁰ Thus, law firms suffer from a lack of innovation in marketing, finance systems, project management, and more.³¹ Indeed, the need for expertise in marketing to consumers is particularly important when seeking to develop a business that provides a “one to many” solution for routine legal matters.

These limitations have prevented real mass-market law firms for consumers from emerging. Jacoby & Meyers, a consumer law firm with offices across the U.S., has repeatedly explained that restrictions on non-lawyer ownership hamper its ability to grow and become such a mass-market law firm. It sued the state bars in New York, New Jersey, and Connecticut to try to overcome these barriers.³² The firm argued that it cannot upgrade technology, take advantage of scale, or expand its offices because of the prohibition on obtaining outside capital. And it maintained that it could give more clients access to justice if the prohibitions were eliminated.³³ Erin Levine, a family lawyer in California, started a successful, award-winning low-cost divorce platform (“Hello Divorce”), but said that “one thing that has been really difficult for me is the lack of ability for a nonlawyer to have an ownership interest in a law firm. Another is this lack of our ability as a law firm to take any sort of outside investment from a nonlawyer.”³⁴

“One thing that has been really difficult for me is the lack of ability for a nonlawyer to have an ownership interest in a law firm. Another is this lack of our ability as a law firm to take any sort of outside investment from a nonlawyer.”

Erin Levine, Founder & CEO, Hello Divorce

Individuals and small businesses are turning to legal businesses like LegalZoom and Rocket Lawyer that have little to no lawyer ownership at all, and lie largely outside the existing regulatory scheme. And corporate clients are also turning towards entities that are better suited to their needs. A 2019 survey found 63% of traditional law firms were losing business to in-sourcing by law departments in businesses, 14% were losing business to alternative legal providers, and 9% were losing business to the Big 4 accounting firms.³⁵ Accounting firms can provide similar services to law firms on matters such as tax, estate planning, intellectual property, and litigation support. But since these firms do not have the same restrictions on access to capital, accounting firms “generally offer a wider range of

services, greater economies of scale, and more effective marketing and managerial capacities.”³⁶

Meanwhile, lawyers continue to rely on a “narrow, outdated business model” – individual lawyers providing service billed by the hour to individual clients – that is isolated from the tools that other industries use to “create incentives to reduce costs, improve quality, and figure out better ways to meet economic demand.”³⁷

In this respect, law compares unfavorably to medicine, where doctors have considerably more flexibility in the contractual and organizational arrangements that they use to deliver care. Many doctors are employees of health care organizations such as hospitals or HMOs (not owned by physicians), which offers them a salary in exchange for the revenue they bring in. That is a practice that the bar’s ethical rules prohibit. Other doctors are part of a group medical practice where they may have an ownership stake, but also have revenue or profit-sharing arrangements with other entities – another structure impermissible in law.

To be sure, the presence of third-party payers such as private insurance or government programs has played a major role in expanding access to medical care. However, the delivery of those services has been achieved through a variety of contractual and organizational structures that share the risks, rewards, and incentives among physicians, people with business and management expertise, and investors.³⁸ Like lawyers, doctors have ethical obligations to their patients, which may conflict with financial considerations, but the profession has found ways to regulate such conflicts without banning cost-effective service delivery structures.

Evidence from Other Jurisdictions and Innovative U.S. Companies Indicates Reforms Would Benefit the Public

Many jurisdictions and entities have recognized that changing the prohibition on non-lawyer ownership may create stronger, more stable law firms, as well as free up lawyers to focus on more on legal practice, which

is what they are trained in and interested in doing. Jurisdictions that have eliminated regulations similar to Rule 5.4 (and the innovative U.S. legal businesses that have developed outside the “practice of law”) demonstrate that involvement of non-lawyers fuels innovation without compromising legal services. These jurisdictions include England & Wales, Scotland, Australia, Canada, Germany, the Netherlands, and Brussels.³⁹ To date, no jurisdiction that eliminated its prohibition on non-lawyer ownership has reinstated it.⁴⁰

Other Countries’ Reforms Led to More Choice and Better Services for Consumers

Much of the recent data on outside ownership of law firms comes from England and Wales, which recently implemented the Legal Services Act of 2007 (LSA). The reforms eliminated bans on non-lawyer ownership, and lawyers and non-lawyers can now work together in Alternative Business Structures (ABS). England and Wales began licensing ABS firms in 2011. Precise evaluations of these new structures has been challenging, particularly because England and Wales were significantly impacted by the 2008 global economic crisis, which led to severe cuts to legal aid throughout the 2010s.⁴¹ Regardless, preliminary data indicate that the ABS model has allowed law firms to develop more innovative practices than traditional counterparts:

- ABS firms are more likely to use technology, with 91% of ABS firms using a website to deliver information and services, compared to only 52% of solicitor firms⁴²
- ABS firms are 13 to 15% more likely to introduce new legal services⁴³
- ABS firms are “particularly likely to have delivered radical service innovations or organizational innovations”⁴⁴

Most importantly, comparative research finds no evidence that ABS models result in adverse effects on consumers. Rather, they allow for increased choice and competition, improved services to consumers, reduced prices, and increased innovation in the provision of legal services.⁴⁵ ABS reforms also made it possible for 45% of consumers with family law

needs to pay a fixed fee for services, compared to only 12% of consumers in 2012, which made it easier for individuals to make informed choices among providers.⁴⁶ The proportion of family law clients who reported that they received value for their money increased from 50% to 62%.⁴⁷

Examples of the innovative firms and services that have emerged include:

- Z Group, a firm in London that employs architects, accountants and solicitors, and so serves as a “one stop shop” for design planning, architecture, feasibility analysis, tax and legal;
- Parental Choice, which helps parents find a nanny or au pair and also helps them understand their legal obligations as employers; and
- Co-Op Legal Services, operated by a well-established consumer-owned grocery chain that has used its brand and consumer-facing expertise to provide will-writing, family, employment and other consumer legal services at affordable prices.⁴⁸

These innovative practices have not just improved services for consumers; lawyers have benefited as well. They have experienced no loss of employment after the LSA; in fact, job vacancies advertised at law firms increased 48% in 2014.⁴⁹ Introducing ABS firms has also alleviated concerns of financial vulnerability: “Extending law firm ownership to include non-lawyers has contributed to the improvement of the financial stability of some law firms through attracting, promoting and retaining people with corporate management skills and encouraging external investment.”⁵⁰

Australia offers another example. The country was the first common law jurisdiction to create alternative business structures. In 2001, New South Wales passed legislation permitting legal practices to incorporate, share receipts, and provide services in conjunction with non-lawyer legal practitioners.⁵¹ Much of the impetus came from attorneys who felt that traditional law firm ownership structures were not meeting their needs, or those of consumers.

While the reforms have been less studied in Australia than in England and Wales, most evidence indicates that the reforms were successful. After witnessing New South Wales's reforms in 2001, all Australian jurisdictions have since decided to permit alternative business structures.⁵² And almost a third of law firms have taken advantage of the ability to alter their practice structures through incorporation.⁵³ Removing regulatory barriers has also increased seamless legal services across state lines.⁵⁴

Slater and Gordon, Australia's first publicly traded law firm, has reported that the "consequent capital raising has allowed national expansion and growth that would not otherwise have been possible."⁵⁵ The firm used that capital to grow (in just six years) from seven equity partners to a mass-market national firm that serves consumers with a range of legal needs, including help with pensions and disability insurance, workers' compensation, and estate planning.⁵⁶ In addition to raising necessary capital, the firm has been able to access business expertise through their independent board and by hiring people from other consumer-facing industries to build efficient processes that have kept prices down while enabling high-quality client experiences.⁵⁷

Allowing Outside Ownership Would Be Particularly Beneficial in the U.S.

In general, studies from other countries "provide support to the argument that non-lawyer ownership can, and in some circumstances does, lead to new innovation in legal services, larger economies of scale and scope, and new compensation structures."⁵⁸ In the U.S., there is reason to believe that non-lawyer ownership could bring even greater benefits to consumers.

First of all, the U.S. legal market is currently more heavily regulated than the U.K. market was before the Legal Services Act. The U.K. market had already undergone significant deregulation since the Thatcher era.⁵⁹ Historically, there have also been different kinds of legal professionals and "citizen advice bureaus" in the U.K. to provide services to a broad range of consumers. The U.S. market has always been strictly limited to lawyers,

so reforms would alter the status quo more substantially and with larger benefits.

Moreover, the U.S. legal market is substantially larger and the capital markets “more robust” than the markets in England and Wales or Australia, so the environment is well-suited to scale online legal services that could reach low and middle income Americans.⁶⁰ The U.S. has already demonstrated significantly more innovation in the online legal sphere than comparable countries.⁶¹ Given the size, money, and entrepreneurial spirit in the U.S., reforming Rule 5.4 could result in new delivery methods for legal services that no one could have imagined even a few years ago. Indeed in the U.K., innovations in marketing – critical to expanding mass-market legal services – were used by 58% of alternative business structures, as opposed to just 35% of non-ABS organizations and 37% of all solicitors.⁶²

Given the size, money, and entrepreneurial spirit in the U.S., reforming Rule 5.4 could result in new delivery methods for legal services that no one could have imagined even a few years ago.

Within the U.S., some legal businesses – which escape Rule 5.4 regulation by offering legal services that do not constitute the “practice of law”⁶³ – have already demonstrated the innovation that occurs with increased access to capital. These new, mostly online legal services companies have benefited from venture capital funding. It has helped fuel the rapid growth of online legal services companies such as LegalZoom, which offers guided document preparation; Rocket Lawyer, which provides documents for starting businesses; and UpCounsel, which is a business law marketplace. But the scope of what these new businesses can offer is limited by the combination of Rule 5.4 and unauthorized practice of law (UPL) restrictions.⁶⁴

Ethical Concerns Should Not Preclude Reform

Lawyers' Professional Judgment Is Unlikely to Be Impaired

Some worry that if multidisciplinary practices and non-lawyer investment were allowed, lawyers' professional judgment would be compromised as they strive to build their bottom line.⁶⁵ However, these concerns are unsupported in practice and founded on a questionable premise. This is why we see broad support among legal ethics experts for eliminating Rule 5.4.

In practice, jurisdictions that allow for nonlawyer ownership or partnership do not report increased ethical concerns. For example, the District of Columbia has allowed nonlawyer ownership for more than two decades, and experienced no escalation of related disciplinary violations.⁶⁶ Lawyers who have worked in both traditional law firms and firms that allow for partnerships with nonlawyers testified to the ABA House of Delegates that "there were not significant differences in the ethical cultures of the two kinds of organizations."⁶⁷ Indeed, in the United Kingdom, the alternative business structures have so far dealt better with complaints and had no more regulatory action taken against them than traditional 100% lawyer-owned practices.⁶⁸

In practice, jurisdictions that allow for nonlawyer ownership or partnership do not report increased ethical concerns.

Furthermore, this critique of nonlawyer ownership implies that lawyers in traditional firms are driven only by what is best for the client. It is naive to argue that lawyers now are immune from competing financial concerns or pressure from nonlawyers that could impair their professional judgment. In-house lawyers and government lawyers, for instance, must please non-lawyer managers to meet business or policy goals.⁶⁹ Solo practitioners are under pressure to pay their bills, and lawyers at large

firms are under pressure to meet their hours.⁷⁰ Moreover, reliance on borrowing may also put pressure on lawyers' judgment.⁷¹

Indeed, lawyers are already driven by their desire to maximize their own profits – an interest that is no doubt stronger than any pressure to increase profits for someone else. Law firms are, at their core, businesses, and survival compels finding ways to constrain financial pressures. Moreover, the overwhelming majority of private-sector lawyers work in partnerships whose revenue is distributed right back to lawyer-partners in profit every year – a structure which places the financial motive front and center in lawyers' minds in a way it might not be in other professional services firms. In fact, the key metric by which major law firms are compared is Am Law 100's annual "Profits Per Equity Partner" ranking – a metric that plays a critical role in the market for talent.⁷²

Alternative business structures in the U.K. such as Riverview Law have found that separating ownership from management helps incentivize firm-specific investments that both benefit clients and produce long-term returns.

There is, moreover, reason to believe that outside ownership or investment will both help insulate lawyers' judgment from financial pressures as well as insulate business decision-making from lawyers' individual interests. The latter was the effect at Slaters and Gordon, Australia's first publicly traded law firm. Its managing director reported that their corporate structure has the benefit of creating greater separation between the interests of the business, and the personal interests and careers of employees.⁷³ Similarly, alternative business structures in the U.K. such as Riverview Law – a technology and process-driven legal managed services company – have found that separating ownership from management helps incentivize firm-specific investments that both benefit clients and produce long-term returns.⁷⁴ The U.K. and Australian legal experience suggests that allowing the "corporate practice of law" would better align interests for the benefit of the firm and its clients.

Established Mechanisms Exist for Mitigating Risk

In other common-law jurisdictions that have implemented reforms to allow lawyers and non-lawyers to own businesses together, regulatory systems exist to mitigate ethical concerns. These jurisdictions all use some form of entity-based regulation, meaning that both law firms and lawyers are regulated (e.g., the entity is regulated separately from the authorized legal practitioners who work there, who are regulated as individuals).⁷⁵ In short, “since most lawyers now practice in firms, and most firms operate as businesses, ethical regulation of the legal profession can no longer afford to focus only on individual lawyers.”⁷⁶

Under this system, the firm – rather than just the individual lawyer – can be sanctioned for violations committed by its employees. A common practice is to require each business to have one legal compliance officer who is responsible for ensuring that the organization meets all ethical and confidentiality requirements. The idea is that “specialized management positions, such as ethics advisor and law firm general counsel, will promote individual accountability by promoting ethical awareness and monitoring within firms.”⁷⁷

For example, in England, where lawyers and non-lawyers can now work together in ABS firms, each ABS has a Head of Legal Practice who acts as a compliance officer.⁷⁸ While individual lawyers remain subject to traditional disciplinary sanctions, the firm must also report on rule breaches; maintain appropriate systems for governance and compliance; and provide indemnity insurance coverage appropriate for the work they do, among other requirements.⁷⁹

Similarly, incorporated legal practices in Australia must have at least one legal practitioner director who is responsible for managing the legal services provided by the firm and preventing or remedying professional misconduct by employees.⁸⁰ Australia uses a proactive, management-based approach to regulation (PMBR), under which Australian oversight officials identify regulatory objectives, and each firm is responsible for de-

signing their own management systems and using a system of self-assessments to ensure compliance.⁸¹ Research in New South Wales showed that the rate of complaints against entities that were subject to management-based regulation was two-thirds lower than the rate for entities that weren't subject to such regulation.⁸² Several Canadian regulators are instituting similar approaches.⁸³

Research in New South Wales showed that the rate of complaints against entities that were subject to management-based regulation was two-thirds lower than the rate for entities that weren't subject to such regulation.

This kind of management-based approach to regulation is also catching on in the United States: The Colorado Supreme Court Office of Attorney Regulation Counsel has developed a voluntary self-assessment tool for lawyers to assess their systems for ensuring ethical behavior in their practice, and Illinois has implemented a self-assessment program that is mandatory for some lawyers and available to all.⁸⁴ New Mexico is considering similar changes.⁸⁵ The evidence from Australia indicates that focusing on proactive efforts to prevent ethical problems before they occur is a more cost effective way to mitigate harm than after-the-fact discipline.

Although most U.S. jurisdictions still only discipline individual lawyers for ethical violations, two jurisdictions— New York and New Jersey – have already laid the groundwork for stronger entity-based regulation, though in the context of exclusively lawyer-owned firms. New Jersey has asserted its authority to discipline entire law firms since 1984.⁸⁶ New York similarly extended each law firm's duty to ensure their lawyers comply with disciplinary rules.⁸⁷ Although few prosecutions of firms has occurred in either state, the disciplinary structure exists to deter violations under a more permissive approach to lawyer and nonlawyer jointly owned organizations.⁸⁸

Conclusion

Reforming Rule 5.4 is an opportunity to regulate in a way that benefits both lawyers and consumers. The current rule prohibiting lawyers from jointly investing with non-lawyers discourages profitable business practices, leaving law firms unable to access capital and vulnerable to economic downturns. State bar associations also remain targets for threats of litigation for antitrust claims. And critically, consumers suffer from a lack of access to affordable, easy-to-use legal services. U.S. jurisdictions should follow in the footsteps of other countries and allow lawyer and non-lawyer partnerships to better serve the public and the profession.

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¹ See World Justice Project, *Rule of Law Index*, <https://www.worldjusticeproject.org/rule-of-law-index/factors/2020/Civil%20Justice/> (last accessed April 6, 2020).

² *Id.*

³ The Legal Needs of Small Business: A Research Study Conducted by Decision Analyst (LegalShield 2013).

⁴ *Task Force on Self-Represented Litigants: Final Report*, JUDICIAL COUNCIL OF CALIFORNIA, October 2014.

⁵ Gillian Hadfield & Deborah Rhode, *How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering*, 67 HASTINGS L.J. 1191, 1193 (2016)..

⁶ *Id.*; Am. Bar Ass'n Standing Comm. on Pro Bono & Pub. Serv., Supporting Justice III: A Report on the Pro Bono Work of America's Lawyers 6 (2013).

⁷ MODEL CODE OF PROF'L CONDUCT r. 5.4(a) (AM. BAR ASS'N 1983).

⁸ *Id.* at r. 5.4(b).

⁹ *Id.* at r. 5.4(d)(1).

¹⁰ Hadfield and Rhode, *supra* note 5, at 1194.

¹¹ *Id.*

¹² World Justice Project, *Rule of Law Index 2020*, at 154; <https://www.worldjusticeproject.org/rule-of-law-index/factors/2020/Civil%20Justice/> (U.S. at 109th out of 128 countries, with Netherlands 2, Germany 3, Australia 46, and U.K. 79) .

¹³ Resolution 115, passed at 2020 Midyear Meeting.

¹⁴ ABA Journal, President's Letter, "Innovation and Access to Justice: We must not squander the future of legal services," Feb-March 2020.

¹⁵ Resolution 2: Urging Consideration of Regulatory Innovations Regarding the Delivery of Legal Services.

¹⁶ Remarks of James Sandman, Stanford Center on the Legal Profession Panel, *Will Changing Legal Services Regulation Increase Access to Justice?*, at 24:50 (Oct. 31, 2019), available at <https://law.stanford.edu/videos/will-changing-legal-services-regulation-increase-access-to-justice/>.

¹⁷ Jayne Reardon, *How Reregulation Could Benefit Lawyers*, IAALS (Dec. 5, 2019), <https://iaals.du.edu/blog/how-reregulation-could-benefit-lawyers>.

¹⁸ *Id.*

¹⁹ GILLIAN HADFIELD, RULES FOR A FLAT WORLD 238 (2017); Gillian Hadfield, *The Cost of Law: Promoting Access to Justice Through the (Un)Corporate Practice of Law*, 38 INTERNATIONAL REV. OF LAW & ECON. 43, 53-56 (2014) (citing Greenwood and Empson 2003).

²⁰ Anthony Sebok, *Making Sense of the Fee-Splitting Rule*, Legal Profession (Feb. 27, 2018), <https://legalpro.jotwell.com/making-sense-fee-splitting-rule/>.

²¹ Anthony Sebok, *Selling Attorney's Fees*, 2018 U. ILL. L. REV. 1207, 1209 (2018).

²² DEBORAH RHODE, THE TROUBLE WITH LAWYERS 100 (2015).

²³ Sebok, *Making Sense*, *supra* note 20.

²⁴ Sebok, *Selling Attorney's Fees*, *supra* note 21, at 1211-12.

²⁵ *Id.* (citing Gillian Hadfield, *Legal Barriers to Innovation: The Growing Economic Cost of Professional Control Over Corporate Legal Markets*, STAN. L. REV. 1689, 1726-27 (2008)).

²⁶ Sebok, *Selling Attorney's Fees*, *supra* note 21, at 1211.

²⁷ Rhode, *supra* note 22, at 100.

²⁸ Mark Cohen, *Law is Lagging Digital Transformation – Why it Matters*, FORBES, Dec. 20, 2018.

²⁹ Clio, 2019 Legal Trends Report, at 48.

³⁰ See *Basics of Executive Compensation*, CENTER ON EXECUTIVE COMPENSATION, <https://excecomp.org/Basics/Basic/Equity-Compensation> (last visited Jan. 15, 2020); Gary McCarthy, *Using Stock Options to Reward and Retain Key Talent*, MCCARTHY WEIDLER (Sept. 6, 2017), <http://mccarthypc.com/business-planning/using-stock-options-reward-retain-key-talent>; David Stack, *How Stock Options Can Help Your Startup Attract and Retain Top Talent*, ENTREPRENEUR (Jan 1, 2016), <https://excecomp.org/Basics/Basic/Equity-Compensation>.

³¹ See William Henderson & Rachel Zahorsky, *Paradigm Shift*, 2011 ABA J. 40, 45-47.

³² See *The Case Against Clones*, ECONOMIST (Feb. 2, 2013), <https://www.economist.com/business/2013/02/02/the-case-against-clones>; see also Nathan Koppel, *Jacoby & Meyers' Newest Fight: Helping Nonlawyers Own Law Firms*, WALL STREET J., May 19, 2011, <https://www.wsj.com/articles/SB10001424052748703421204576331531008464712>. See also Second Amended Complaint for Declaratory and Injunctive Relief, *Jacoby & Meyers Law Offices v. Presiding Justices*, No. 11-3387 (LAK) (S.D.N.Y. June 21, 2013), 2013 WL 9580965. The lawsuits against New York and Connecticut were ultimately rejected in *Jacoby & Meyers, LLP v. Presiding Justices of the First, Second, Third and Fourth Departments*, Appellate Division of the Supreme Court of New York, 852 F.3d 178 (2nd Cir. 2017).

³³ Second Amended Complaint for Declaratory and Injunctive Relief, *Jacoby & Meyers Law Offices*, 2013 WL 9580965; *The Case Against Clones*, *supra* note 32. See also William Henderson, *The Failed Storefront Revolution and the Inner Guild in All of Us*, LEGAL EVOLUTION, July 29, 2018 (suggesting that the regulations limiting what paraprofessionals can do in providing legal services prevented Jacoby and Meyers from building a sustainable business model).

³⁴ Lawyers Gone Ethical podcast 34, *Ethics Issues in the Development of Innovative Legal Products* with Erin Levine, at 8:00.

³⁵ *Law Firms in Transition 2019: An Altman Weil Flash Survey*, ALTMAN WEIL, <http://www.altmanweil.com/LFiT2019/>.

³⁶ Rhode, *supra* note 22, at 95.

³⁷ Hadfield, RULES FOR A FLAT WORLD, *supra* note 19, at 240.

³⁸ Hadfield, *The Cost of Law*, *supra* note 19, at 47-50.

³⁹ James McCauley, *The Future of the Practice of Law: Can Alternative Business Structures for the Legal Profession Improve Access to Legal Services?*, 51 U. RICHMOND L. R. 53, 59 (2016).

⁴⁰ *Id.* at 65.

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- ⁴¹ See Nick Robinson, *When Lawyers Don't Get All the Profits: Non-Lawyer Ownership, Access, and Professionalism*, 29 GEORGETOWN J. OF L. ETHICS 1, 17-19 (2016).
- ⁴² Hadfield & Rhode, *supra* note 5, at 1212-13. To find the latest studies on the impact of the LSA and ABS implementation in England & Wales, visit <https://www.legalservicesboard.org.uk/reports> and <https://www.sra.org.uk/sra/how-we-work/reports/>.
- ⁴³ *Id.*
- ⁴⁴ Impact Evaluation of SRA's Regulatory Reform Programme, SOLICITORS REGULATION AUTHORITY (Apr. 2018), <https://www.sra.org.uk/sra/how-we-work/reports/abs-evaluation/>.
- ⁴⁵ *Id.*
- ⁴⁶ Hadfield & Rhode, *supra* note 5, at 1212-13.
- ⁴⁷ *Id.*
- ⁴⁸ Crispin Passmore, submission to CA Bar ATILS, at 11, 20 (Sept. 20, 2019); Hadfield, *The Cost of Law*, *supra* note 19, at 43.
- ⁴⁹ Hadfield & Rhode, *supra* note 5, at 1212-13.
- ⁵⁰ Impact Evaluation, *supra* note 44.
- ⁵¹ McCauley, *supra* note 39, at 58.
- ⁵² *Id.* at 58-61.
- ⁵³ *Id.*
- ⁵⁴ *Id.*
- ⁵⁵ Submission from Slater and Gordon to Judy Perry Martinez, Chair, Commission on the Future of Legal Services (Dec. 29, 2014), available at https://www.americanbar.org/content/dam/aba/images/office_president/slater_and_gordon_submission.pdf.
- ⁵⁶ See MITCHELL KOWALSKI, THE GREAT LEGAL REFORMATION: NOTES FROM THE FIELD 4 (2017); SLATER AND GORDON, <https://www.slatergordon.com.au/>.
- ⁵⁷ Kowalski, *supra* note 56, at 10-14.
- ⁵⁸ Robinson, *supra* note 41, at 44.
- ⁵⁹ *Id.* at 18.
- ⁶⁰ *Id.* at 44.
- ⁶¹ *Id.*
- ⁶² Innovations in Legal Services: A Report for the Solicitors Regulation Authority and the Legal Services Board 69 (July 2015).
- ⁶³ According to some commentators: "What is clear is that wherever you look in the US legal market change has already happened. New ideas have broken through guild like walls and new law companies are meeting the needs of clients of traditional law firms in ways that simply bypass regulators." Crispin Passmore, *Re-Regulating Legal Services in the U.S.*, PASSMORE CONSULTING (Jan. 9, 2020), <https://www.passmoreconsulting.co.uk/re-regulating-legal-services-in-the-us>.
- ⁶⁴ For a discussion of the challenges legal innovators face, see William Henderson, *Are We Asking the Wrong Questions About Lawyer Regulation?*, TRUTH ON THE MARKET (Sept. 19, 2011), <https://truthonthemarket.com/2011/09/19/william-henderson-on-are-we-asking-the-wrong-questions-about-lawyer-regulation/>.
- ⁶⁵ See, e.g., New York State Bar Association, Special Committee on the Law Governing Firm Structure and Operation, Preserving the Core Values of the American Legal Profession: The Place of Multidisciplinary Practice in the Law Governing Lawyers 324 (2000).
- ⁶⁶ Rhode, *supra* note 22, at 99; see, e.g., Catherine Ho, *Can Someone Who Is Not a Lawyer Own Part of a Law Firm? In D.C., Yes.*, WASH. POST. (Apr. 8, 2012), https://www.washingtonpost.com/business/capitalbusiness/can-someone-who-is-not-a-lawyer-own-part-of-a-law-firm-in-dc-yes/2012/04/06/gIQAnrvd4S_story.html.
- ⁶⁷ Rhode, *supra* note 22, at 96.

⁶⁸ Crispin Passmore, submission to CA Bar ATILS, at 8 (Sept. 20, 2019).

⁶⁹ Rhode, *supra* note 22, at 97.

⁷⁰ *Id.* at 99-100; Letter from Thomas Gordon, Executive Director, Responsive Law, to the ABA Commission on Ethics 20/20 Working Group on Alternative Business Structures, May 31, 2011.

⁷¹ See, e.g., Bernard Sharfman, Note, *Modifying Model Rule 5.4 to Allow for Minority Ownership of Law Firms by Nonlawyers*, 13 GEO. J. LEGAL ETHICS 477, 486 (2000) (“Overdependence on bank borrowings may put a severe financial strain on a law firm and its lawyers, putting pressure on their independence of judgment about what is best for the client.”).

⁷² *The 2019 Global 100: Ranked by Profits Per Equity Partner*, AM. LAWYER (Sept. 24, 2019), <https://www.law.com/americanlawyer/2019/09/24/the-2019-global-100-ranked-by-profits-per-equity-partner/>; see also Kathryn Rubino, *Good News for the Am Law 100 – Profits Per Partner Were Up In 2018*, ABOVE THE LAW (Apr. 24, 2019), <https://abovethelaw.com/2019/04/good-news-for-the-am-law-100-profits-per-partner-were-up-in-2018/>.

⁷³ Kowalski, *supra* note 56, at 21.

⁷⁴ *Id.* at 51.

⁷⁵ Hadfield & Rhode, *supra* note 5, at 1208-09; Jayne Reardon, *Would Entity Regulation Improve Consumer Protection?*, 2Civility Blog, ILL. SUPREME. CT. COMM’N ON PROFESSIONALISM (Feb. 21, 2019), <https://www.2civility.org/can-entity-regulation-protect-consumers/>.

⁷⁶ Christine Parker et al., *Regulating Law Firm Ethics Management: An Empirical Assessment of an Innovation in Regulation of the Legal Profession in New South Wales*, 37 J. L. & SOCIETY 466, 469 (2010).

⁷⁷ Elizabeth Chambliss, *The Nirvana Fallacy in Law Firm Regulation Debate*, 33 FORDHAM URBAN L.J. 101, 104 (2005).

⁷⁸ For an in-depth discussion of professional regulation under the LSA, see Andrew Boon, *Professionalism Under the Legal Services Act of 2007*, 17 INT’L J. L. PROF. 195 (2010). All standards and regulations issued by the Solicitors Regulatory Authority (SRA) can be found at <https://www.sra.org.uk/solicitors/standards-regulations/>. Additionally, the Law Society, an independent professional body for solicitors in England and Wales, issued a guide to entity based regulation for firms and practitioners authorized by the SRA. It is available at <https://www.lawsociety.org.uk/support-services/advice/practice-notes/entity-based-regulation/>.

⁷⁹ See SRA Code of Conduct for Firms, at <https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/>; SRA Indemnity Insurance Rules, at <https://www.sra.org.uk/solicitors/standards-regulations/indemnity-insurance-rules/>.

⁸⁰ Parker et al, *supra* note 76, at 471.

⁸¹ Gregory Mize, *Law Practice Regulation in the United States & Issues Raised by Cross Board Legal Practice*, National Center for State Courts (Jan. 2018), at 3, available at <https://ccj.ncsc.org/~media/Microsites/Files/CCJ/Web%20Documents/Law-Practice-Regulation-in-the-USA.pdf>.

⁸² Parker et al, *supra* note 76, at 488.

⁸³ Mize, *supra* note 81, at 3.

⁸⁴ Cecil Morris, *Colorado’s New Lawyer Self-Assessment Program*, TRIAL TALK (Dec./Jan. 2018), available at <http://www.coloradosupremecourt.com/PDF/AboutUs/PMBR/Morris%20Trial%20Talk%20Colorado%20Lawyer%20Self%20Assessment%20Program.pdf>; Supreme Court of Illinois, *Illinois Becomes First State to Adopt Proactive Management-Based Regulation* (January 25, 2017), available at <https://courts.illinois.gov/Media/PressRel/2017/012417.pdf>.

⁸⁵ Reardon, *Would Entity Regulation Improve Consumer Protection?*, *supra* note 75.

⁸⁶ N.J. CT. R. 1:20-1(a).

⁸⁷ Ted Schneyer, *On Further Reflection: How “Professional Self-Regulation” Should Promote Compliance with Broad Ethical Duties of Law Firm Management*, 53 ARIZ. L. REV. 577, 585 (2011).

⁸⁸ Reardon, *Would Entity Regulation Improve Consumer Protection?*, *supra* note 75.

EXHIBIT “C”

LEGAL AID SOCIETY OR ORANGE COUNTY AND COMMUNITY LEGAL SERVICES OF MID-FLORIDA

TOTAL APPLICANTS FOR LEGAL SERVICES

Applicants Who Were Served/ Provided Services

2016: 13,043 applicants were provided services

2017: 14,364 applicants were provided services

2018: 13,829 applicants were provided services

2019: 13,640 applicants were provided services

Applicants Not Served and Referred To Another Legal Services Entity

2016: 10,125 applicants were declined and referred to another entity

2017: 9,450 applicants were declined and referred to another entity

2018: 7,965 applicants were declined and referred to another entity

2019: 6,967 applicants were declined and referred to another entity



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criminal - immigration - personal injury

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Harry Shorstein - Former Elected State Attorney
Paul Shorstein - Also Licensed in Georgia
Jeremy Lasnetski - Florida Bar Board Certified in Criminal Trial Law
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October 28, 2021

The Florida Bar

Via email: SCinput@floridabar.org

Re: Special Committee to Improve the Delivery of Legal Services
Comments regarding the Regulation of Nonlawyer Providers of Limited Legal Services and
Non-Lawyer Ownership of Law Firms

Good day,

I write to you today to express my grave concern about the Bar's Final Report of the Special Committee to Improve the Delivery of Legal Services (Final Report). The Final Report indicates that the Florida Supreme Court and Florida Bar are entertaining plans to allow non-lawyers to provide certain legal services (such as form preparation) to individuals as well as have ownership in law firms. As a Florida Bar Board Certified Attorney in Immigration and Nationality Law and someone who has practiced immigration law almost exclusively for over a decade I have seen first hand how non-attorneys have destroyed the lives of thousands of immigrants.

Immigration Law is not an area of law that even experienced attorneys who do not practice it on a regular basis can quickly and easily understand. It is an extremely complicated and constantly changing area of law. I have been on the Florida Bar Board Certification Committee for the last five years, currently serving as the chair and previously as the vice chair. I see every year how dedicated, intelligent and experienced immigration attorneys are unable to pass the exam because immigration law is so diverse and so difficult. Allowing non-attorneys to provide legal services in the area of immigration law will have long-lasting and devastating effects on the residents of Florida.

Immigration Law is not simply about filling out forms and mailing them in. Often times, knowing the correct forms to file or more importantly, knowing which forms NOT to submit can make the difference between becoming a U.S. citizen or being deported to permanent exile in another country. As immigration attorneys, we see on a daily basis how non-attorneys, in violation of the law and Bar rules, provide legal services to immigrants with often negative results. Not only should the Bar not allow non-attorneys to provide legal services, but he Bar



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should undertake more of an effort to stop these non-attorneys from participating in the practice of law.

I completely understand and support rules and changes that can provide greater access to justice for the population of the State of Florida. However, there are numerous low and pro-bono organizations across the state who have experienced immigration attorneys that assist needy individuals with immigration case work. We do not need more non-attorneys destroying the lives of immigrants through their ignorance of the law or worse, their greed.

Immigration law is also not an area of the law that is terribly profitable for most attorneys. Allowing for non-attorney ownership in law firms in the area of immigration would likely divert the focus of the practice of immigration law from helping people to purely profit.

I implore the Bar and the Supreme Court not to adopt the findings in the Final Report and to strongly reconsider this push for non-attorneys to provide legal services and obtain an ownership stake in law firms. I am more than happy to provide more information, testimony and my time on this issue to the Bar and to the Supreme Court should you request it.

Thank you for your time.

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From: [Robin Kriberney](#)
To: [SCinput](#)
Subject: FROM: Chris Searcy - Voting against non-lawyer ownership of Florida law firms
Date: Thursday, October 28, 2021 3:50:20 PM
Attachments: [kvoScan-10.28.2021-14.51.20.pdf](#)
Importance: High

Good Afternoon,

I am reaching out today to request your vote against changes allowing non-lawyer ownership of Florida law firms.

This proposal claims to address access to justice for the underserved, but instead does nothing to ensure that access will be improved. It does not address the current underfunding of Legal Aid Societies throughout Florida and would create many more issues than it promises to solve. This proposal does not support Florida lawyers or assist the average Floridian desperately in need of legal counsel.

There is absolutely no evidence to support the claim that allowing non-lawyers to own Florida law firms and share attorney's fees will provide any increased access to the judicial system. It is much more likely that non-lawyers would violate ethical obligations for financial gain as there is little to no punishment as they are not trained or duty-bound to uphold many of our professional rules and standards.

One thing is certain - this proposed change would bring irreparable harm to the practice of law in our state.

More than **80 percent of Florida Bar members are strongly opposed** to these changes. Please tell the Florida Supreme Court that you agree with the Florida Bar members you are elected to represent, and vote **AGAINST** the Committee's recommendations.

Thank you for your consideration,

Christian D. Searcy
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October 28, 2021

ATTORNEYS AT LAW:

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*THEODORE "TED" BABBITT
*ROSALYN SIA BAKER-BARNES
*F. GREGORY BARNHART
*T. HARDEE BASS, III
LAURIE J. BRIGGS
*BRIAN R. DENNEY
JORDAN A. DULCIE
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SHAREHOLDERS

*BOARD CERTIFIED IN
CIVIL TRIAL
*BOARD CERTIFIED IN
HEALTHCARE
*BOARD CERTIFIED IN
COMMERCIAL & BUSINESS
LITIGATION

ALSO ADMITTED

¹ GEORGIA
² MISSISSIPPI
³ NEW JERSEY
⁴ VIRGINIA
⁵ WASHINGTON DC

PARALEGALS:

KIMBERLEY AGUILERA
LAZARO BECERRA
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RANDY M. DUFRESNE
MICHAEL GAJGER
JOHN C. HOPKINS
VINCENT L. LEONARD, JR.
LESLIE A. McCOWN
HELEM ORTIZ
ROBERT W. PITCHER
CHRIS R. RODGERS
NYDIA SERRANO
STEVE M. SMITH
BONNIE S. STARK

Good Afternoon,

I am reaching out today to request your vote against changes allowing non-lawyer ownership of Florida law firms.

This proposal claims to address access to justice for the underserved, but instead does nothing to ensure that access will be improved. It does not address the current underfunding of Legal Aid Societies throughout Florida and would create many more issues than it promises to solve. This proposal does not support Florida lawyers or assist the average Floridian desperately in need of legal counsel.

There is absolutely no evidence to support the claim that allowing non-lawyers to own Florida law firms and share attorney's fees will provide any increased access to the judicial system. It is much more likely that non-lawyers would violate ethical obligations for financial gain as there is little to no punishment as they are not trained or duty-bound to uphold many of our professional rules and standards.

One thing is certain - this proposed change would bring irreparable harm to the practice of law in our state.

More than **80 percent of Florida Bar members are strongly opposed** to these changes. Please tell the Florida Supreme Court that you agree with the Florida Bar members you are elected to represent, and vote **AGAINST** the Committee's recommendations.

Thank you for your consideration,

Christian D. Searcy

Florida Bar #158298



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From: [Brent Steinberg](#)
To: [SCinput](#)
Cc: [Tanner, Michael G](#); [Lesser, Gary](#); [Branning, Jeremy C](#); [Sellers, Lawrence](#); melissa.vansickle@nelsonmullis.com; [Robinson, Kris](#); [Orr, Michael](#); [Gillam, Wiley](#); [Glover, Gordon](#); [Chilson, Joshua T](#); sandra@diamondlawfirm.com; [Bonamo, Philip](#); [Marchman, Stephanie M](#); julie.frey@lowndes-law.com; [Yates, Tad](#); [Nail, Charles R](#); [Sanchez-Medina, Roland](#); [Simon, Nikki L](#); jordanresnick@gmail.com; [Wert, Thomas P](#); [Piedra, Jorge L](#); [Rynor, Jeffrey](#); [Rothenberg, Leslie B](#); [Sum, Alice](#); [Westheimer, F. Scott](#); [Turkel, Kenneth](#); [Farrior, Amy](#); canderson@bushross.com; [Greenlee, Paige A](#); [Higby, Clifford](#); [Baker-Barnes, Rosalyn S](#); [Ponzoli, Ronald P](#); [Bresky, Robin I](#); [Gelfand, Michael J](#); [Smith, Wayne L](#); [Kim, Jay](#); diana@santamarialaw.com; [Brown-Burton, Lorna E](#); [Creary, Hilary](#); [Rabinowitz, Adam](#); [Vickaryous, James G](#); [Weiss, Gregory](#); [Lile, Laird](#); [Agnew, John D](#); [Myrtetus, Edward](#); [Workman, Donald](#); [Meeks, Eric](#); [Burgoon, Brian](#); [Baker, Todd L](#); [Elijah, Iris](#); [Joseph D. Hudgins](#); [Goldstein, Linda](#); [Stewart, John M](#); [Alvarez, Cesar](#); [Corsmeier, Joseph A](#); [Dewey, Josias](#); [DiGangi, Santo](#); [Gonzalez, Adriana](#); [Harkness, John](#); [Scriven, Lansing C](#); [Sullivan, Sarah R](#)
Subject: Comment opposing non-lawyer ownership of law firms
Date: Thursday, October 28, 2021 5:55:58 PM
Attachments: [Steinberg Comment Opposing Non-Lawyer Ownership.pdf](#)

Dear Members of the Florida Bar Board of Governors:

Attached please find a comment which opposes the Special Committee's proposals regarding non-lawyer ownership of law firms, sharing of attorney's fees with non-lawyers, and certain aspects of the Law Practice Innovation Laboratory Program.

I am submitting this comment on behalf of myself and the 326 Florida attorneys (listed on pages 11-23) who have endorsed it.

Should you have any questions or concerns, please do not hesitate to contact me.

Respectfully submitted,

[Brent Steinberg](#)

PARTNER

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Swope, Rodante P.A.
Ranked as a Top Tier
Personal Injury Firm
by US News & World
Report Since 2013



S W O P E  R O D A N T E 

Please note: Florida has very broad public records laws. Many written communications to or from The Florida Bar regarding Bar business may be considered public records, which must be made available to anyone upon request. Your e-mail communications may therefore be subject to public disclosure.

VIA E-MAIL (SCinput@Floridabar.org)

Florida Bar Board of Governors
The Florida Bar
651 E Jefferson Street
Tallahassee, FL 32399

RE: *Final Report of the Special Committee to Improve the Delivery of Legal Services*

Dear Members of The Florida Bar Board of Governors:

On behalf of myself and the 326 undersigned attorneys, I am writing to express serious concerns with multiple proposals in the *Final Report of the Special Committee to Improve the Delivery of Legal Services*, dated June 28, 2021 (“the Report”). Although the Committee’s stated goals are laudable, we believe the recommendations regarding non-lawyer ownership and sharing of attorney’s fees with non-lawyers are horribly misguided. The proposal regarding the Law Practice Innovation Laboratory Program (“the Lab”), as presently drafted, also has glaring loopholes which could be easily exploited by nefarious actors.

It seems like only yesterday when President Abadin announced the Bar was considering allowing non-lawyer ownership and reciprocity. And after a public outcry of opposition, the Bar listened to its membership and abandoned the proposals.

Now, just six years later, the issues are before you once again. Except that this time, the Florida Supreme Court – at the request of then Florida Bar President John Stewart – created a 10-person special committee to make recommendations on these most important issues.

As will be discussed below, there is no evidence the proposals will achieve the Committee’s stated justification for the changes – increasing access to justice. Quite the contrary, if the Committee’s recommendations are implemented, they will likely cause irreparable harm to clients, lawyers, and the legal profession as a whole. If the goal is expanding access to the justice system for lower income individuals and small businesses, there are far better solutions which should be pursued.

Accordingly, we respectfully request that you – the elected representatives of the members of The Florida Bar – listen to the *81 percent* of Florida attorneys who oppose non-lawyer ownership of law firms.¹ Please tell the Florida Supreme Court you *strongly oppose* the Committee’s recommendations on these issues.

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I. RULE 4-5.4 – FEE SPLITTING AND LAW FIRM OWNERSHIP

A. There is no evidence that allowing non-lawyers to own law firms and share attorneys' fees will increase access to the justice system.

The Report, citing to a 2016 American Bar Association (“ABA”) commissioned study, states that “legal services are growing more expensive, time-consuming, and complex, making them increasingly out of reach for most Americans.”² It concludes that “significant changes” must be made to increase access to the legal system for those who cannot afford to hire a lawyer or handle the legal matter without one.

These conclusions are derived from criticisms of the traditional “billable hour model” which, according to the ABA, “provides less of an incentive to develop more efficient delivery methods than other ways to charge for services (for example, flat fees)” and hinders innovations “in scalability, branding, marketing, and technology that are found in most industries.”³ However, both the ABA study and the Committee’s Report fail to account for the tens (if not hundreds) of thousands of clients represented each year under contingency-fee agreements – most often with the law firm agreeing to advance all litigation expenses, to be repaid by the client only if a recovery is made. Contingency fee agreements and contingency risk multipliers play a vital role in granting access to the legal system to those victimized by another’s wrongful conduct, who would otherwise be unable to obtain competent counsel to represent them.⁴ That should not be overlooked.

That said, we agree with the fundamental premise that certain aspects of the legal system should be reformed to afford greater access to the justice system, particularly for those cases where a contingency fee agreement is prohibited or otherwise inappropriate.⁵ According to a 2017 study conducted by the Legal Services Corporation, of low-income Americans with civil legal problems, 86 percent of the civil legal problems of low-income Americans received no or inadequate help.⁶ The pandemic has only exacerbated the problem, significantly increasing the need for assistance with evictions, unemployment insurance, domestic violence and health issues.⁷

And while we generally agree with the Report’s identified problems, we strongly disagree that amendment of Rule 4-5.4 to permit non-lawyer ownership and sharing of fees with non-lawyers is a viable solution.

The Report concludes that existing prohibitions on non-lawyer ownership and sharing fees with non-lawyers is “a major contributing factor to America’s access to justice problem” because the prohibition on non-lawyer investment “leaves law firms strapped for capital [and] . . . makes it harder for law firms to keep up with modern innovations in business practices.” The sole support for this conclusion is a white paper co-authored by Stanford professor Deborah L. Rhode which, in turn, cites to a *Hastings Law Journal* article that *she* co-authored.⁸



Beyond the opinions of Ms. Rhode and a few of her colleagues/students, the Final Report provides no support for its conclusion that its proposed revisions to Rule 4-5.4 will somehow increase access to justice. Nor does it appear that the Committee considered other academic literature which reached the opposite conclusion.⁹

For instance, a widely-cited 2016 article authored by a research fellow at Harvard Law and published in the Georgetown Journal of Legal Ethics concluded that “the existing academic literature has been almost entirely speculative and largely favored non-lawyer ownership on theoretical grounds.”¹⁰ It analyzed case studies and quantitative data from Australia, England and Wales – each of which adopted some form of non-lawyer ownership in the past two decades – to evaluate non-lawyer ownership’s impact on access to courts. The article concluded that “for reasons under-explored in the literature, the access benefits of non-lawyer ownership are generally oversold, potentially diverting attention from more promising access strategies.”¹¹

Although non-lawyer ownership may lead to “new innovation in legal services, larger economies of scale and scope, and new compensation structures, . . . there is little evidence indicating that these changes have substantially improved access to civil legal services for poor to moderate-income populations.”¹² The author attributes four reasons why non-lawyer ownership is unlikely to lead to significant access gains:

- 1) Even a deregulated legal market “is unlikely to address the legal needs of poor and middle income persons, who either cannot or will not spend the money to purchase the legal services they require.”¹³ If someone simply has no money to pay for legal services, it is unlikely that non-lawyer ownership will provide them with any new options.
- 2) The legal sectors that have seen the greatest investment by non-lawyers (i.e., personal injury – which accounts for one-third of all non-lawyer owned firms in England, the highest of any sector)¹⁴ will likely *not* see corresponding increases in access. “In these sectors clients are less sensitive to cost considerations since their lawyers are largely paid through conditional or contingency fees or by insurance companies.”¹⁵
- 3) Non-lawyer investment may not take place in some areas of the legal market because the legal work is too complicated and requires individualized attention, making it difficult if not impossible to standardize.¹⁶
- 4) Even if legal services were affordable, those who could most benefit from them may be resistant to purchasing legal services because they do not believe they need it or because of cultural or psychological barriers (i.e., someone not purchasing a will because they do



not believe they need it or wish to contemplate their own death). As a result, “there may not be as much price elasticity in the market as proponents of deregulation suggest.”¹⁷

Unfortunately, the Committee appears to have been persuaded by the “almost entirely speculative” and “theoretical” academic writings that advocate for non-lawyer ownership, without giving adequate (or perhaps any) consideration to contrary literature.¹⁸

The Report concludes that eliminating the prohibitions against non-lawyer ownership and fee sharing *must be* successful because, “to date, no jurisdiction that eliminated its prohibition has reinstated it.”¹⁹ That is a logical fallacy. The fact that jurisdictions have not reimposed prohibitions does not mean they are functioning any better than jurisdictions with more stringent prohibitions or have been successful at increasing access to justice. And we cannot really conclude anything from the Arizona and Utah experiences, since they first amended their rules only *one year ago* (during a global pandemic). Moreover, the Committee is overlooking the very real threat of “regulatory capture” – that the regulatory authorities and/or Bar leadership may seek to protect their own and non-lawyer investors’ commercial interests over the public interest.

In sum, the Report’s conclusions that the proposed revisions to Rule 4-5.4 will increase access to courts are largely unsupported.

B. There are far better solutions that would increase access to the justice system.

As discussed above, there is no evidence that amending Rule 4-5.4 will significantly improve access to courts for poor and moderate-income populations. Equally concerning is the possibility that these amendments may be seen as a substitute for other access strategies, like legal aid. As the above-cited Georgetown Journal of Legal Ethics article concluded:

There is a danger that the push to deregulate legal services may come to dominate the access to justice agenda as deregulation and competition become central tenants of a new set of ideals about how to organize the delivery of legal services. Instead, the goal of regulation of legal services should not be deregulation for its own sake, but rather to increase access to legal services that the public can trust delivered by legal service providers who are part of a larger community that sees furthering the public good as a fundamental commitment.²⁰

The Report notes that legal aid organizations are presently unable to meet the demand of those individuals and small businesses who cannot afford (or perhaps simply do not wish to pay) a lawyer.²¹ Although the 2016 ABA report cited by the Committee recommended that “[l]egal aid and pro bono efforts must be expanded, fully funded, and better promoted,”²² the Committee’s recommendations do not seek to accomplish those goals.



Instead, the Report proposes the rules be amended to allow for not-for-profit law firms. We do not object to experimentation with non-profit law firms in the “Lab,” but this proposed deregulation does not address the root of the problem: inadequate funding.

Florida has 23 legal aid organizations,²³ of which only 7 are partially funded by the Legal Services Corporation.²⁴ As of 2019, less than 39 percent of Florida’s legal aid funding came from LSC basic field grants.²⁵ The balance must come from an amalgamation of federal, state and local governments, The Florida Bar Foundation, The Florida Bar, local bar associations, special grants, and donations.²⁶ And it is universally accepted that those funding sources are inadequate.

“Florida’s courts typically generate about \$1 billion a year, which is more than what is needed to support court operations. However, a significant portion is spent on non-court programs and services.”²⁷ If some of that “excess” revenue was simply reallocated to legal aid organizations, it would assuredly go a long way in allowing those organizations to expand and better promote their services to the public.

We recognize that neither The Florida Bar nor the Supreme Court get to decide how much, if any, money should be allocated to legal aid out of court revenues. But both should be more vocal about the need to properly fund our state’s legal aid organizations.

Finally, the Report also recommends establishing a pilot program with non-lawyer providers of limited legal services. We agree with this concept, so long as those non-lawyer providers have proper oversight and training. Although it would be premature to analyze whether this proposal will increase access to the justice system, it seems axiomatic that it will have some positive impact.

C. Allowing non-lawyer ownership and fee splitting with non-lawyers would harm clients, lawyers, and the legal profession.

It has long been held that “attorneys are not permitted to hide behind the ordinary laws of the marketplace, but instead are held to ‘the punctilio of an honor the most sensitive’.”²⁸ Indeed, as the Second District Court of Appeal held 56 years ago:

There is no relationship between individuals which involves a greater degree of trust and confidence than that of attorney and client. The attorney is under a duty at all times to represent his client and handle his client's affairs with the utmost degree of honesty, forthrightness, loyalty and fidelity.²⁹

Notwithstanding, the Committee seeks to dismantle the “traditional practice structures” and create a new “legal marketplace” which transforms how “legal services are delivered.”³⁰ It is not



hyperbole to say that these proposals pose an existential threat to the attorney-client relationship and the legal profession as a whole.

Even the Committee acknowledges that passive non-lawyer ownership creates a “risk of conflicts of interest and a possible impact on the lawyer’s independent professional judgment.”³¹ But the Committee’s suggested solution is to prohibit non-lawyers from becoming majority shareholders in the law firm. That limitation will not eliminate the risks.

Assume “The Ask Gary Law Firm” has 50.1% of the firm’s shares owned by 501 lawyers (with each lawyer owning 0.1%) and 49.9% owned by a single non-lawyer chiropractor. Are we to assume the lawyer shareholders will vote in a unified block and overcome the pressures placed upon them by the non-lawyer whose ownership interest is 499 times larger than every other individual shareholder? Nothing in the committee’s proposal would stop this from occurring.

Allowing *any* non-lawyer ownership will “undercut professionalism by promoting commoditization, creating more conflicts of interests, and [] increasing the likelihood that non-lawyers will be in a position to undercut professional standards.”³² Consider the following:

- 1) Perhaps most concerning is the likelihood that non-lawyer owners will focus exclusively on enhancing profits with little regard for the client’s interests or the public good. This would force lawyers to simultaneously serve the competing interests of their non-lawyer partners/owners on one hand and their clients on the other, inevitably threatening the lawyer’s independent professional judgment.

The Florida Supreme Court has previously recognized that a corporation controlled by non-lawyers commits unlicensed practice of law if it provides legal services, even if those services are provided by employees of the organization who themselves are licensed to practice law in Florida.³³ The court noted that such a business structure “gives rise to an inherent conflict of interest between the legal needs of the client and the monetary policy of the corporation.”³⁴ After all, “one cannot serve two masters.”³⁵

While it may be acceptable for other industries to single-mindedly pursue profit above all else, law firms should not be governed by profit alone. We must ensure clients are given the best possible legal services and representation, despite the countervailing pressures of profitability. And the only way to do that is to ensure our legal service providers are regulated both by the market and professional obligations.

Anecdotally, we can look to the corporatization of medical practices through non-physician ownership for a preview of what lies ahead. “The decline of private practice is hiking costs, harming patients and destroying the doctor-patient relationship that is foundational to healthcare itself.”³⁶ Now corporate executives tell physicians how long they should



spend with their patients in the clinic, and providers are incentivized to perform unnecessary diagnostic testing or treatments on patients with insurance. Those corporations have now committed some of the largest frauds in the history of our country and have caused our medical system to be the most expensive, by far, but with the worst quality among the high-income countries.³⁷

We do not want to become like the medical profession where the quality of medical service is secondary to corporate profit and doctors are simply part of a profit-creating enterprise.

- 2) There is also the risk that non-lawyer owners/managers will be more likely to violate ethical obligations than their lawyer counterparts, as lawyers are trained and duty-bound to identify and analyze conflicts of interest, maintain confidentiality, and uphold other professional rules.

Moreover, the threat of losing one's bar license serves to deter unscrupulous lawyers who seek to violate ethical obligations for financial gain, and suspension or revocation of that license serves to punish those who are undeterred. Non-lawyers, whose entire livelihood and professional identity are *not* dependent on a bar license, will not face the same external pressures to play by the rules.

- 3) Non-lawyer ownership creates new possibilities for self-dealing. For example, if a chiropractor owns a stake in a personal injury law firm, it increases the likelihood the law firm will refer the client to the chiropractor's clinics, whether or not it is in the client's/patient's best interests.
- 4) The Committee's proposals open a back door to out-of-state lawyers, effectively granting them reciprocity as "non-Florida lawyer" owners of a Florida law firm. Again, just six years ago, the Bar considered, and rejected, proposals for permitting unlimited reciprocity. There is no compelling reason the Bar should reverse course now.

Florida is not suffering from a shortage of lawyers, and the current *pro hac vice* rules provide sufficient opportunity for out-of-state lawyers to associate with an experienced Florida lawyer when necessary. If an out-of-state lawyer desires to practice law in Florida, they should be required to pass the bar exam and character and fitness screening like every other lawyer in Florida. These tests remain the best, if not only, way to identify those individuals who lack the most basic understandings of state law or are otherwise unfit to practice in the forum state. Without them, the floodgates will be open to more out-of-state practitioners, leaving both the public and the Bar ill-equipped to ferret out the additional "bad apples" that inevitably come with it.



We can also look to other jurisdictions who have adopted non-lawyer ownership and permitted fee sharing with non-lawyers for some real-world examples of how non-lawyer ownership has negatively impacted the legal profession.

- In the United Kingdom, there are insurance companies and insurance claims management service providers who own plaintiffs' personal injury firms. While it may be in their short-term interest to succeed in claims against unaffiliated third-party insurance companies, the insurance companies and service providers have a longer-term interest of keeping average settlement payments low and depressing claims.³⁸ That inherently creates a serious conflict of interest between the non-lawyer owners' financial interests and the clients' interests.

And yet, the Committee's proposal would allow a major liability insurer to create a wholly owned subsidiary "that actively support[s] the work of the law firm"³⁹ and acquire the single largest ownership interest in a personal injury law firm.

- In Australia, commentators have "expressed concern that non-lawyer ownership has led to an unhealthy consolidation of the Australian personal injury market leading to a decrease in choice for consumers without necessarily improving the quality of services or making them less expensive."⁴⁰

Florida is already facing issues with an increasing consolidation of the personal injury law firm market, putting out of business smaller law firms who are unable to spend millions of dollars per year on advertising. Allowing non-lawyer ownership will only serve to exacerbate these issues.

- Critics also note that to protect the commercial interests of non-lawyer owners, Australian firms have shied away from riskier cases (such as large consumer class actions) and shun pro bono work (particularly in controversial cases).⁴¹ Looking at it solely from an economic perspective, it would make sense for law firms to decline cases that could negatively affect the outside commercial interests of the non-lawyer owners. But does that further the public good?

And we can look within our own borders at the one narrow exception to the prohibition on non-lawyer ownership that already exists: insurance staff attorneys.

As a preliminary matter, insurance staff counsel may not represent an insured if there is a conflict of interest between the insurer and the insured, or when the insurer interferes with the lawyer's independent professional judgment or the insured's client-lawyer relationship.⁴² If this ever occurs, the insurer may simply transfer the case away from staff counsel to outside retained counsel. That happens frequently. But what will happen if the non-lawyer owner's interest creates



a conflict or otherwise threatens the lawyer’s independent professional judgment – is it realistic to think the lawyer would withdraw from representation and refer the client to a competitor?

Even when staff counsel can defend an insured without running afoul of the Bar rules, the level of service they provide is far inferior to that which is provided by most outside law firms. Staff counsel attorneys are virtually always overworked, understaffed and, despite working for a multi-billion corporation, are expected to incur as few litigation expenses as possible. Staff counsel attorneys also typically operate with virtually no oversight or mentorship from more senior attorneys.⁴³ It is a world apart from private firms.

Learning from the staff counsel experience, it is easy to envision two classes of legal enterprises: one non-lawyer-owned class driven only by profits without regard to quality, and then those “traditional law firms.” Unfortunately, the unsophisticated consumer/client would be none the wiser.

In sum, the Report failed to consider all the deleterious effects of non-lawyer ownership of law firms and fee sharing with non-lawyers, largely ignoring the literature and evidence that did not support its desired outcome. The overwhelming majority of Florida lawyers – this Board’s constituents – also oppose these measures. We ask the Board to make its recommendations accordingly.

II. LAW PRACTICE INNOVATION LABORATORY PROGRAM

The Committee submits that “the Lab,” or regulatory sandbox, will serve as the testing ground for “new and innovative methods, ideas, and types of legal services without a wholesale amendment of the rules.” It further states that this Lab is intended to serve as “a policy tool through which new models or services can be offered and tested to assess marketability and impact and inform future policy-making.”⁴⁴

Although those goals are laudable and the description sounds benign, the proposal regarding the Lab has a glaring loophole that could easily be exploited: those accepted to the Lab are effectively grandfathered in and can only be removed “if the data shows that unacceptable levels of consumer harm are occurring” in the opinion of a specially appointed Commission. The Report continues:

If consumer harm is not taking place and the other requirements imposed on the regulated entity are met within the designated period, the entity will be granted a license by the Court and can continue offering the approved services outside of the Lab under the guidelines established by the Commission and the supervisory body.⁴⁵



This means that even if the Lab is dissolved, any company previously authorized and approved to provide services can continue to do so in perpetuity unless their license is revoked. As such, the Lab is not merely a testing ground; it is a path to immediate approval of non-lawyer-owned law firms and other alternative business structures before *any* study has been conducted upon them.

Additionally, it is unclear what “data” will ever show “unacceptable levels of consumer harm are occurring.” What “data” will be collected? What level is “unacceptable?” What is “consumer harm?” Who will have standing to allege that consumer harm is occurring? Will there be an appeal process? The vague and undeveloped proposal will grant the Commission unlimited discretion.

The questions do not end there. Who will be eligible to serve on the Commission? How will they be appointed? What steps, if any, will be taken to ensure regulatory capture does not occur?

Once more details emerge regarding the Lab and supervisory Commission, additional issues will likely emerge. But before any “regulatory sandbox” is established, at a minimum, the following changes should be made:

- 1) eliminate the presumptive licensing of entities entering the Lab, and instead put the burden on the Lab participants to demonstrate they are worthy of a license based on objective benchmarks;
- 2) define what constitutes “consumer harm” and provide clear criteria and the process for revocation of a license, even after the entity leaves the Lab and is granted a license; and
- 3) provide more robust guidelines for the Commission to avoid regulatory capture and to ensure all entrants into the Lab have adequate oversight.

III. CONCLUSION

For the foregoing reasons, we respectfully request that the Board of Governors strongly oppose the Committee’s recommendations regarding non-lawyer ownership and fee sharing with non-lawyers. We also respectfully request the Board advocate for the Lab proposal be revised to address the concerns discussed above.

Respectfully submitted on October 28, 2021, by:

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¹ The Report at 18.

² *Id.* at 4 (quoting American Bar Association Report on the Future of Legal Services in the United States, American Bar Association Commission on the Future of Legal Services (2016) at 8. https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf) (hereinafter “ABA Report”).

³ ABA Report at 16.

⁴ *See, e.g., Florida Patient's Comp. Fund v. Rowe*, 472 So. 2d 1145, 1151 (Fla. 1985) (“The contingency risk factor is significant in personal injury cases. Plaintiffs benefit from the contingent fee system because it provides them with increased access to the court system and the services of attorneys.”); *Joyce v. Federated Nat'l Ins. Co.*, 228 So. 3d 1122, 1130 (Fla. 2017) (noting the court had continued to allow the use of multipliers because of their “usefulness in helping parties secure legal representation and their importance in ensuring access to courts”).

⁵ *See* R. Reg. Fla. Bar 4-1.5(f)(3) (prohibiting contingency fee agreements in most “domestic relations matters” and for representing a defendant in a criminal case).

⁶ *See* Legal Services Corporation, FY2022 Budget Request, p.2, <https://lsc-live.box.com/s/qy5hspwdu0ljnrxr8vp09ohopu2esdl1>).

⁷ *Id.* at p.3.

⁸ Jason Solomon, Deborah Rhode & Annie Wanless, *How Reforming Rule 5.4 Would Benefit Lawyers and Consumers, Promote Innovation, and Increase Access to Justice*, Stanford Center on the Legal Profession, April 2020 at 1, https://www-cdn.law.stanford.edu/wp-content/uploads/2020/04/Rule_5.4_Whitepaper_-_Final.pdf (citing to Gillian Hadfield & Deborah Rhode, *How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering*, 67 HASTINGS L.J. 1191, 1194 (2016)).

⁹ *See* “Background Materials,” Special Committee to Improve the Delivery of Legal Services, <https://www.floridabar.org/about/cmtes/cmtes-me/special-committee-to-improve-the-delivery-of-legal-services/#background>.

¹⁰ Nick Robinson, *When Lawyers Don't Get All the Profits: Non-Lawyer Ownership, Access, and Professionalism*, 29 *Geo. J. Legal Ethics* 1 (2016).

¹¹ *Id.*

¹² *Id.* at 44.

¹³ *Id.* at 45.

¹⁴ *Id.* at 20.

¹⁵ *Id.* at 45.

¹⁶ *Id.*

¹⁷ *Id.* at 46.

¹⁸ *Id.* at 1.

¹⁹ The Report, *supra* note 2 at 8 (cleaned up).

²⁰ Robinson, *supra* note 10 at 61.

²¹ The Report, p.6-7.

²² ABA Report, *supra* note 2 at 54.

²³ “Legal Aid,” Florida Courts, <https://www.flcourts.org/Resources-Services/Court-Improvement/Self-Help-Information/Legal-Aid>.

²⁴ FY2022 Budget Request, *supra* n.6 at 98. Congress created the Legal Services Corporation (LSC) in 1974 to ensure that low-income individuals and families have access to assistance to resolve civil legal problems. LSC is the largest single funder of civil legal aid in the country. *Id.* at II.

²⁵ *Id.* at 6.



²⁶ “Consumer Pamphlet: Legal Aid in Florida, The Florida Bar,

<https://www.floridabar.org/public/consumer/pamphlet022/>.

²⁷ “Court Funding & Budget,” Florida Courts, <https://www.flcourts.org/Administration-Funding/Court-Funding-Budget>.

²⁸ *Searcy, Denney, Scarola, Barnhart & Shipley, P.A. v. Scheller*, 629 So. 2d 947, 953 (Fla. 4th DCA 1993) (quoting Cardozo, J., writing for the Court in *Meinhard v. Salmon*, 249 N.Y. 458, 464, 164 N.E. 545, 546 (1928)).

²⁹ *Smyrna Developers, Inc. v. Bornstein*, 177 So. 2d 16, 18 (Fla. 2d DCA 1965).

³⁰ The Report, *supra* note 2 at 4.

³¹ The Report, *supra* note 2 at 8.

³² Robinson, *supra* note 10 at 13.

³³ *See The Florida Bar v. Consolidated Business & Legal Forms, Inc.*, 386 So. 2d 797, 798-801 (Fla. 1980); *see also* R. Reg. Fla. Bar 4-5.4(e).

³⁴ *Consol. Bus. & Legal Forms*, 386 So. 2d at 800.

³⁵ *Id.*

³⁶ Reed Wilson, M.D., “Why Private Practice Is Dying,” Forbes,

<https://www.forbes.com/sites/realspin/2016/09/07/why-private-practice-is-dying/?sh=121d17d927c8>

³⁷ “U.S. Health Care from a Global Perspective, 2019: Higher Spending, Worse Outcomes?,” The Commonwealth Fund (Jan. 30, 2020), <https://www.commonwealthfund.org/publications/issue-briefs/2020/jan/us-health-care-global-perspective-2019>.

³⁸ Robinson, *supra* note 10 at 22-25.

³⁹ The Report, *supra* note 2 at 8.

⁴⁰ Robinson, *supra* note 10 at 33.

⁴¹ *Id.* at 32-33.

⁴² *See* R. Reg. Fla. Bar 4-1.7(a) and (e) and Comment (indicating that all conflict-of-interest rules apply to staff counsel’s defense of an insured, and that such representation is prohibited when the lawyer will be materially limited by his responsibilities to the insurer client); R. Reg. Fla. Bar 4-1.8(f) (stating a lawyer may not accept compensation for representing a client if there is “interference with the lawyer’s independence of professional judgment or with the client-lawyer relationship”); R. Reg. Fla. Bar 4-5.4(d) and (e); R. Reg. Fla. Bar 4-7.9(g) and Comment (permitting staff attorneys employed by a liability insurer to operate under a firm name only if certain conditions are met and such practice is “otherwise consistent with these rules,” including the rules relating to conflicts of interest); *In re Rules Governing Conduct of Attorneys in Florida*, 220 So. 2d 6, 7 (Fla. 1969) (recognizing that use of salaried staff counsel to concurrently represent the interests of policyholders and the insurer is problematic “when a conflict develops between insurer and insured, such as when a claim exceeds policy coverage” and stating that “[t]here may come a time when the lawyer must decide which of two ‘masters’ he will continue to serve because the presence of a conflict makes it ethically impossible to serve both”).

⁴³ *See* Millard C. Glancy, “In-House Counsel,” Fla. B. News Vol. 30, No. 6 (March 15, 2003).

⁴⁴ The Report, *supra* note 2 at 18.

⁴⁵ *Id.* at 19-20.

LAW OFFICE OF SAMUEL D. BLANCO, P.A.

I M M I G R A T I O N A T T O R N E Y

Member of the American
Immigration Lawyers Association

Member of the
Florida Bar Since 1997

October 28, 2021

The Florida Bar
651 E Jefferson St
Tallahassee, FL 32399

SCinput@floridabar.org

Re: *Comment on Final Report of the Special Committee to Improve the Delivery of Legal Services, June 28, 2021*

Dear Sir or Madam,

My name is Samuel D. Blanco and I am a Florida licensed attorney in good standing with the Bar. I write you to provide comment on the Bar's *Final Report of the Special Committee to Improve the Delivery of Legal Services*, released June 28, 2021. The following comments I make in the context of an immigration law practitioner. I have been practicing immigration law for over 24 years and 99% of my practice is dedicated to immigration related matters.

It is a common sentiment among immigration attorneys that, as a group, our needs and concerns are overlooked by the Florida Bar while, at the same time, we are bound to the same set of rules as state-law practitioners. For example, in the 109-page *Report*, the word "immigration" appears once, and that entry refers only to attorneys licensed in other jurisdictions wishing to practice in the areas of "immigration, patent, and tax law". I am given pause to wonder whether the diversity which the Special Committee to Improve the Delivery of Legal Services (the Committee) states it tried to create included any immigration attorneys.

While I appreciate that the Florida Bar and the Supreme Court of Florida are and should be primarily concerned with matters of the laws and practices of the State of Florida, and not Federal administrative law and procedure, the reality is that the two overlap to such an extent that some of the proposals made in the *Report* could have a significantly harmful impact on some of the citizens of our State. Specifically, I refer to the proposal to permit non-attorneys to provide legal advice.

In the *Report's* conclusion, the Committee finds that "Protection of the public has been of paramount importance in all of the Committee's recommendations, but that protection must be

weighed against the current harm the public faces in receiving no legal services." While I am generally in agreement with this conclusion, I must respectfully disagree that some of the recommended changes should not be "rejected based on the fear of the of the unknown". I am in disagreement because, again, in the context of immigration law, the "fear" and actual harm is not "unknown", but very real and very well documented.

Without exaggeration, I affirm to you that not one week goes by that I do not have a prospective client come to me for advice or help because they have been misled, intentionally or not, by a "notario" or "forms preparer" who has provided them with legal and procedural advice that has turned out to not only be wrong, but harmful. Immigrants, in particular but not exclusively, are taken advantage of by the similarities in the term "Notary Public" which, in Spanish, is "Notario Publico". As we are all aware, a notary public can perform notarial acts (i.e., verification of signatures, identity and oaths), but is not permitted to practice law. In most if not all Latin American countries, a "notario" is an attorney, or attorney equivalent, authorized to provide legal advice and represent clients before the courts and government. The ground for confusion is therefore ripe for predatory behavior. And there is no shortage of it.

Here are just a few examples of actual cases in which a client¹ has been harmed by wrong or incomplete legal and procedural advice provided by a non-lawyer, a "notario":

1. Beatriz's Case – A practicing Catholic nun and registered nurse, Beatriz was sexually assaulted (raped) by soldiers, in her convent, during a civil war in her Latin American country. After giving herself trauma treatment, she fled her convent and made her way to the United States. She ended up in the hands of a "notario" who prepared an asylum application for her and had *her* file it with the affirmative asylum unit. (The "notario" did not sign the application, as is required.) Beatriz lost her asylum case and was referred to the Immigration Court for a second review of her claim. It was at that point that she was referred to me and I assumed responsibility for her case. Upon my initial review of her case, I was horrified to learn that the "notario" had not mentioned anything about her sexual assault, or that she was even a Catholic nun. Although I represented Beatriz on a pro bono basis, I don't think I would have been able to recover a fee even if I had wanted to as the "notario" had charged her \$5,000 for his "services" – a fee that most attorneys could not have reasonable charged at that time. In the end, through the help of the Immigration Court and counsel for the government, we were able to secure an approval of her claim for asylum. Today she is a very proud and grateful United States citizen, living a peaceful and safe life. That, however, very nearly did not happen.

2. Peter's Case – Peter and his wife had lawfully entered the United States, but then overstayed their tourist status by several years. As they had no lawful status, they could not secure work permits or social security numbers. This became a more serious issue once they started a family. Having to provide for his wife and, now, two young U.S. citizen children, Peter approached a "notario" who told him he could get him a work permit if he applied for asylum. Peter took his advice, paid the "notario" \$2,500 and had him prepare an application for asylum. This notario,

¹ The names of the clients have been changed for purposes of confidentiality.

also, did not sign the application. Besides not having a winnable claim for asylum, the "notario" also failed to tell Peter that, since he was applying for asylum more than one year after his most recent entry into the U.S., the Department of Homeland Security, Citizenship and Immigration Services, did not have the legal authority to grant his application but, instead, had to refer his case to an immigration judge. In other words, the moment Peter mailed his asylum application to the affirmative asylum unit, he placed himself into removal ("deportation") proceedings. In court Peter was not able establish claim for asylum, let alone an excuse for having filed so many years after his last entry, and he and his wife were ordered removed ("deported"). This absolutely avoidable outcome cost the family over \$12,000, including an appeal and what the "notario" charged them.

3. Matt's Case – Through the services of a "notario", Matt had become a lawful permanent resident based on his marriage to a United States citizen. Within months of acquiring his resident status, Matt divorced his wife and married a different woman, for whom he then filed a family petition. When Matt later applied for his own naturalization ("citizenship"), he was denied because he had remarried and filed a family petition for his new spouse within five years of his acquiring resident status through marriage – something which immigration law clearly states cannot be done. This prohibition against "spouse-jumping" exists in order to discourage marriage fraud. An attorney would have known to advise Matt to neither remarry or file a family petition for his new wife until after more than five years after he acquired his resident status. Furthermore, if in fact Matt's marriage to his first wife was not a bona fide one, but one entered into to evade immigration law, an attorney would have likely been able to see that and advise Matt on a different, lawful course of action. The "notario" did neither of these things and not only is Matt ineligible to become a U.S. citizen, he and his new wife are now in jeopardy of losing their resident status' and being removed ("deported").

These are just three examples of not the "unknown", but the very known, very common and very harmful outcomes caused by individuals engaged in the unlicensed practice of law. This practice is so rampant that a dark joke exists among immigration attorney who take on cases of persons who have already been to a notario: We now have to work twice as hard to get our client out of the hole in which the notario *put* them, but we have to do it for half the compensation because of what the notario took *from* them.

Recognizing the scope of the problem of the unlicensed practice of law, other jurisdictions in Florida have taken steps, in what I believe is the right direction, to penalize UPL "notarios". I have attached for your review an ordinance passed by Miami Dade County on October 6, 2021 which aims to curtail UPL predation on citizens of the State of Florida by "notarios". "Although UPL is already a third-degree felony in the state, the additional scrutiny placed on UPL through this ordinance will further help deter perpetrators that have preyed on the immigrant community. In addition, it sheds additional light to the very problematic issue of UPL." (Preamble to Section 1. Article XX, Section 21-288 of the Code of Miami-Dade County, Florida.)

I cannot stress vehemently enough that the idea of permitting non-lawyers to give advice, at least in the context of immigration law and procedure, is misinformed, or misguided, but definitely

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harmful to the very public we are dedicated to serve. Please do not do this. Even if protecting our ability to earn a livable income is not the Bar's top priority, at the very least protecting the all citizens of this State should be.

I invite you to contact me should you have any questions or otherwise wish to discuss any issues raised in this letter. Thank you for your time.

Most sincerely,

sdb/

Samuel D. Blanco

FBN 104302

LAW OFFICE OF SAMUEL D. BLANCO, P.A.

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**Miami Dade County Unlawful Immigration Services Ordinance
October 6, 2021**

Miami Dade County passed today a historical Ordinance making the Unlicensed Practice of Law a county violation, punishable by civil penalties. The ordinance also forbids the use of the deceptive term Notario or Notario Publico by Public Notaries throughout the county. Although UPL is already a third-degree felony in the state, the additional scrutiny placed on UPL through this ordinance will further help deter perpetrators that have preyed on the immigrant community. In addition, it sheds additional light to the very problematic issue of UPL.

This project was an initiative of Miami Dade County Office of New Americans and counted on the support and active collaboration of the UPL Committee of AILA South Florida, as well as Catholic Legal Services, Americans for Immigrant Justice, FWS.us, Florida Immigrant and We Count. The Ordinance was sponsored by Commissioner Danielle Cohen Higgins and co-sponsored by Commissioner Sally A. Heyman. Please remember to thank them for this amazing effort!

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Article XX, Section 21-288 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

>>Art. XX. Sec. 21-288. Unlawful Immigration Services.

(a) It shall be unlawful and a violation of this section for any person not licensed or otherwise authorized to practice law in this state to provide legal services in the area of immigration law, accept any fee to provide such legal services, or hold himself or herself out to the public as qualified to practice immigration law, or pretend to be, or take or use any name, title, addition, or description implying that he or she is qualified, or recognized by law as qualified, to practice immigration law. Such unlicensed persons shall not draft, fill out, draw up or assist in the drafting, filling out, or drawing up of immigration forms or documents on behalf of another.

(b) A notary public who is not an attorney who advertises the services of a notary public in a language other than English, whether by radio, television, signs, pamphlets, newspapers, or other written communication, with the exception of a single desk plaque, shall post or otherwise include with the advertisement a notice in English and in the language used for the advertisement. The notice shall be of a conspicuous size, if in writing, and shall state: **“I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF FLORIDA, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.”** If the advertisement is by radio or television, the statement may be modified but must include substantially the same message.

(c) It shall be unlawful for advertisements for notarial services to include the literal translation of the phrase “Notary Public” into a language other than English. Such prohibited phrases shall include but not be limited to notarios and notarios publicos.

(d) Enforcement. Failure to comply with the provisions of this section shall constitute a violation. Each violation shall be deemed a separate offense. Violations of this section may be punished in accordance with chapter 8CC.<<

Section 2. Section 8CC-10 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows: Unlawful Immigration Services – First Offense: \$2,500; Second or subsequent offenses: \$5,000.

From: [Lee Haas](#)
To: [SCinput](#)
Subject: Final Report of the Special Committee to Improve the Delivery of Legal Services
Date: Thursday, October 28, 2021 12:32:59 PM
Attachments: [image001.png](#)

To whom it may concern:

I'm writing to express concerns about the Final Report of the Special Committee to Improve the Delivery of Legal Services ("Final Report"). By way of background, I have been a member of The Florida Bar for 38 years, board certified in business litigation law for 20 years, served 6 years on the Professional Ethics Committee of The Florida Bar, served on The Florida Supreme Court Standard Jury Instructions Committee – Contract and Business Cases since 2009, and been appointed by two different governors to serve on the Sixth Circuit Judicial Nominating Commission.

My first concern, based upon my practice background, is that the report does not appear to take into account the implications for law firms that choose to admit nonlawyers as members or shareholders or nonprofit law firms that allow for nonlawyer membership. Sections 621.09 and 621.10, Florida Statutes, would preclude any law firm that wished to remain a professional service corporation or professional limited liability company from having nonlawyer members. *Street v. Sugarman*, 202 So. 2d 749 (Fla. 1967) and *Corlett, Killian, Hardeman, McIntosh & Levi, P.A. v. Merritt*, 478 So. 2d 828 (Fla. 3d DCA 1985) are clear on this point. Thus, these firms would need to file with the state to reflect a name change to "Inc." or "Corp." or "Corporation" to avoid dissolution. At that point, they would be regular corporations or limited liability companies, regulated under Chapter 607 or Chapter 605, Florida Statutes (or Chapter 617, if a not for profit corporation).

If these law firms become regular corporations, with lawyer and non-lawyer members, what is the basis for opposing regulation by the Department of Business and Professional Regulation ("DBPR") rather than the Florida Supreme Court? If DBPR takes over regulation of law firms with non-lawyer members, what is the justification for an Integrated Bar? If these law firms are regular corporations, does the lawyer employee owe a greater duty to the corporation and its shareholders under general corporate law principles or a greater duty to the client under fiduciary principles applicable to professionals? Who decides?

My second concern is that fee-sharing might run afoul of federal fraud and abuse laws (e.g. Physician Self-Referral Law a/k/a Stark law) and state law (e.g. section 817.505, Florida Statutes). I see no mention in the Final Report of any consideration of this potential issue. Was it considered? If so, what was the analysis?

My third concern is that the Lab is too vaguely identified and too disconnected from regulation by the Florida Supreme Court. If lawyers are directly regulated by the Florida Supreme Court, why shouldn't the participants in the Lab be also? Having the Court appoint a commission which in turn appoints a supervisory body to supervise the participants appears to invite a lack of direct oversight. It also raises the possibility of conflict between the Florida Supreme Court and DBPR over regulation of the participants. The creation of the Lab appears to be a means to circumvent the normal rule-making process by allowing a faceless supervisory body to decide what law practice non-lawyers are permitted to engage in.

In conclusion, I oppose the concept of allowing non-lawyer ownership of law firms and

oppose fee-sharing with non-lawyers. I oppose the current proposal for the Lab because of my stated concerns.

Lee L. Haas, B.C.S.

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From: [Matthew Posgay](#)
To: [SCinput](#); [Doyle, Joshua](#); [Gillam,Wiley](#); [Orr,Michael](#); [Michael Tanner](#)
Subject: Opposition to Final Report of Special Committee to Improve the Delivery of Legal Services
Date: Thursday, October 28, 2021 6:12:41 PM
Attachments: [image001.png](#)
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[image009.png](#)
[image010.png](#)

Dear President Tanner, Executive Director Doyle, Governor Gillam, and Governor Orr,

Please accept this email as my written response and objection to a significant portion of the recommendations put forth in the June 28, 2021 Final Report of the Special Committee to Improve the Delivery of Legal Services. I do not question the need to provide better access to legal services in the State of Florida to our residents who are unable to afford those services, but the recommendations put forth by the Special Committee to Improve the Delivery of Legal Services to allow nonlawyer ownership of law firms, fee sharing with non-lawyers and the establishment of a legal laboratory/sandbox would cause irreparable harm to the residents of our state.

I have read through the report and listened to many of the multiple presentations given regarding the recommendations put forth in the report. Unfortunately, the presentations provided do not match the actual content of the report in significant ways. I also have other concerns that require I speak out against the recommendations.

It appears the initial formation of the special committee was to address the unmet legal needs of people in the State of Florida. The unmet legal needs of people in our state have previously been documented and typically fall within three categories: landlord/tenant issues, family law/domestic violence issues and small claims court matters. Pursuant to the final report, there is no requirement that an entity that will be practicing through the legal laboratory must be serving an unmet need. The final report only indicates that an entity must prove they are providing a consumer benefit to receive approval to practice law through the legal laboratory. An unmet need is far different from a consumer benefit. A "consumer benefit" has no limitation at all, but instead could be used by many corporations to justify changing the practice of law in Florida, just to save a consumer one dollar. We should not be taking a penny wise, but pound foolish approach when it comes to fundamentally changing legal services in our state.

We have been told this should be a data-driven process, but there is no data that shows it is necessary to fundamentally change the providing of legal services in our state. No analysis has been done to determine the harmful effects of these significant changes in the practice of law in other jurisdictions that have moved forward with some of these changes. Our state is the third most populous state in our nation and we should not be proceeding with fundamental changes to our legal system based upon things that have occurred in a handful of other states. Additionally, we should not fundamentally change our legal system based upon what occurs in other countries.

I have also heard that the committee is only requesting a pilot program to move forward with the legal laboratory. Any suggestion that a pilot program with the legal laboratory would not fundamentally change the legal system in our state is not true. Page 20 of the report provides information that an entity approved in the legal laboratory will continue indefinitely. Even if the legal laboratory eventually goes away, an entity will continue in perpetuity, unless it is found to be doing harm. Unfortunately, there is no definition of harm.

This lack of specificity in the report is not limited to failing to describe how our state's residents will be protected, as there is also a lack of specificity regarding the legal laboratory itself. It has not been clearly defined who will manage the legal laboratory. Further, it has not been stated how the people managing the legal laboratory will be selected. Additionally, there is no information regarding whether there will be any oversight of anyone managing the legal laboratory. Even without any of these details, page 19 of the final report still indicates whoever is managing the legal laboratory should have the ability to modify rules or regulations as they see fit, without providing any limitation or oversight whatsoever. This is far from the clarity and transparency that is needed before anyone should consider fundamentally changing the practice of law in our state.

It is also interesting to note that "alternative legal service provider" is the phrase being used to describe nonlawyer entities practicing law in our state. Florida lawyers clearly and loudly spoke several years ago when the issues of nonlawyer ownership of law firms, sharing fees with nonlawyers and reciprocity be given to out of state lawyers was presented to them. The overwhelming voice of Florida lawyers was that these significant changes should never occur. The repudiation of these significant changes by Florida lawyers was not based on "fear of the unknown" (a reference on page 18 of the final report that was confirmed to have no basis in fact), but instead was based on making sure the residents of our state were protected from harm in their use of the legal system. The legal laboratory would allow nonlawyer, corporate entities, to have a controlling interest in a law firm. Even though the report indicated this type of ownership would be limited to 49%, it does not take much to see how a corporation would still control the law firm with that level of ownership. The corporation could purchase a law firm with 10 lawyer partners, each lawyer partner would have an equal share of the remaining 51% of the firm (which means each lawyer partner owns 5.1% of the firm), and the largest owner of the law firm would be the corporation with its 49%. It is also clear the legal laboratory would allow for a backdoor for reciprocity. A lawyer from another state could own a corporation that purchases a Florida law firm. In the example I just gave you, that out-of-state lawyer would then own 49% of the Florida law firm, without ever having to be licensed to practice law in our state.

There is a significant difference that exists between a lawyer owning/managing their own law firm/business and a nonlawyer owning/managing a business. The lawyer's first and foremost duty is to protect their client. The nonlawyer's first and foremost duty is to make a profit for the shareholder. Our legal and ethical obligations to our clients mean that we will not put profit above our client's interests. A nonlawyer that owns a law firm would not have that same legal and ethical obligation. Instead, they would first be looking to maximize profit for the economic benefit of their shareholders. Anyone who tries to minimize this significant difference is ignoring the special role lawyers have played and must continue to play in our society.

I appreciate your time in reading this response.

Sincerely,

Matthew Posgay
Board Certified Civil Trial Lawyer

COKERLAW

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From: [R. Scott Costantino](#)
To: [SCinput](#)
Cc: [Tanner, Michael G](#); [Orr, Michael](#); [Gillam, Wiley](#)
Subject: Opposition to Recommendations by the Special Committee to Improve the Delivery of Legal Services
Date: Thursday, October 28, 2021 9:20:46 PM

Dear Florida Bar Board of Governors,

I am writing to express my strong opposition to non-lawyer ownership or law firms, non-attorney legal services providers, and the splitting of legal fees with non-lawyers. The following considerations weigh heavily in favor of rejecting these recommendations.

- If these recommendations are followed there are constitutional questions as to whether the Florida Supreme Court would be able to regulate a non-attorney, much less sanction a non-attorney, if they cause harm to the public. This has the potential to drastically erode the level of professionalism and ethics in the delivery of legal services in Florida and public confidence in the judicial process.
- Non-lawyer investors or business partners are not likely to be concerned with providing more legal access to the economically challenged or small businesses. Their concern will more likely focus on financial profit more than any concern over a fair judicial process.
- This seems to me to be another way to skin the cat of reciprocity. These recommendations, once again, attempt to create a system where a lawyer from another state can own a Florida law firm but a Florida lawyer would not be able to do the same in another state. This is the same one-way reciprocity rejected by the Florida Bar a few years ago.
- The “laboratory” created by these recommendations, even if dissolved in the future, would still allow those companies authorized and approved to provide legal services to continue to do so in perpetuity.
- There is no data which supports that these recommendations will accomplish the stated goal of increasing access to legal services. Indeed, this report is not focused on providing legal services to the economically challenged, the poverty stricken or small businesses. Rather the focus seemed to be on entities and individuals who likely have the means to hire lawyers but chose not to do so.
- Other professions such as the accounting and the medical professions have tried various forms of deregulation which did not result in greater access to services in those areas.

- Last, but certainly not least, the vast majority of the Florida lawyers you represent do not want this. A 2021 Florida Bar Survey showed that the most members of the Florida Bar surveyed were strongly against the very concepts behind these recommendations.

I strongly encourage you to reject these recommendations. Thank you for your consideration.

Scott

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From: sandra.echavarria
To: [SCinput](#)
Subject: Comments on Proposed Changes to Florida Bar to allow practice of paralegals and Notaries.
Date: Thursday, October 28, 2021 11:21:39 PM

The Florida Supreme Court and the Florida Bar established a committee to come up with ideas to improve the delivery of legal services in Florida. You can find the committee's final report here: <https://www-media.floridabar.org/uploads/2021/06/FINAL-REPORT-OF-THE-SPECIAL-COMMITTEE-TO-IMPROVE-THE-DELIVERY-OF-LEGAL-SERVICES.pdf>

I am an Immigration Attorney for past 17 years . In South Florida, there is an ordinance specifically prohibiting the Unlicensed Practice of immigration Law. We have very complex Immigration Laws where if a form can be filled out incorrectly, it can denied, and the alien could be deported for trusting a non lawyer. Also a false Asylum Application is considered a frivolous asylum application if information within it is wrong. If not properly done, it will be subject alien to getting placed in removal proceedings after docs are denied and deported. In immigration law, there are a lot of deadlines that must be met for Court and for Government. If things are not done in a timely fashion, the alien will never be eligible to fix his status and May need deported. The rule notes:

ARTICLE XX, SECTION 21-288 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROHIBITS THE UNLICENSED PRACTICE OF LAW FOR THE PROVISION OF IMMIGRATION SERVICES; REQUIRING NOTARIES PUBLIC WHO ARE NOT ATTORNEYS TO INCLUDE CERTAIN LANGUAGE IN ADVERTISEMENTS, AND PROHIBITING ADVERTISEMENTS AMENDING SECTION 8CC-10 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA TO IMPOSE CIVIL PENALTIES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE.

They noted prior to passing this ordinance that many illegal immigrants fall prey Notaries who helped immigrants—more than any other country—many of whom enlist the assistance of an immigration attorney or other legal professional to guide them in determining visa eligibility, filling out their immigration application forms, translating documents, gathering evidence, and representing them before an immigration judge”.

They made this ordinance because of the complexity in Immigration Law and because of the high level of complaints by immigrants who fall prey to individuals unauthorized to provide immigration services (Paralegal) or (Notaries) who:

(1) often charge exorbitant fees for unnecessary or substandard work,(2) refuse to return documents to clients, (3) and threaten to report their clients' immigration status to authorities.

WHEREAS, although allowed in some states, Florida does not authorize non-attorneys to offer limited immigration services such as filling out forms and translating documents; and

WHEREAS, these individuals, sometimes known as notarios or notarios públicos, have created a public safety crisis in many communities, including Miami-Dade County, where immigrants who utilize their services often end up paying thousands of dollars, falling out of legal status, missing opportunities to obtain a visa, or getting deported due to falsified information or untimely applications.

I believe the proposed rules and the Miami Dade Ordinance cannot coexist with the proposed rules allowing unlicensed entities to practice law in Florida. I hope that this is helpful and that these comments are considered.

Respectfully,

Sandra Echevarria, Esquire

Sent from my iPhone

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VIA EMAIL ONLY: SCinput@Floridabar.org

Florida Bar Board of Governors
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399

Re: *Final Report of the Special Committee to Improve the Delivery of Legal Services*

Dear Members of The Florida Bar Board of Governors:

As a 17-year member of the Florida Bar, I am writing to express my serious concerns with the multiple proposals in the Final Report of the Special Committee to Improve the Delivery of Legal Services, dated June 28, 2021 (“the Report”). While the Committee’s stated goals are commendable, I believe that the recommendations regarding non-lawyer ownership and sharing of attorney’s fees with non-lawyers are both misguided and predicated upon a mistaken premise.

The proposals in the Report are predicated upon *how* legal services are provided. The Report states that allowing non-lawyers to share in legal fees and form partnerships with lawyers in the practice of law will “increase innovation in how legal services are provided with the hope of addressing unmet legal needs in the United States.” The Report also states that the United States “ranks just 109 out of 128 countries in *access to justice* and affordability of civil legal services.” (emphasis added).

The civil practice of law is driven much more by whether it is feasible to provide legal services than how legal services are provided. Unfortunately, whether an individual has “access to justice” is largely dependent upon two factors: 1) a meritorious case and 2) a collectible defendant. The threshold question during case intake in every civil practice asks: is it legally, ethically, and economically feasible to provide legal services to this individual or entity under the facts and circumstances as they are known? If a case or defense has no legal merit, the attorney has a legal obligation to turn the case down or risk potentially exposing himself/herself and the client to sanctions. If a potential defendant is judgment proof, it will not be economically feasible to represent that client nine (9) times out of ten (10).

Allowing non-lawyers to have ownership interests in law firms and share in legal fees will not transform the facts, circumstances, and merits of individual cases. At best, it may permit law firms to throw more good money at bad money, which does not result in “access to justice.” It appears that the proposed changes are based upon the opinions of lay persons who were interviewed by the ABA and believe that they had been denied “access to justice.” However, nothing suggests that

the individuals polled by the ABA had meritorious cases. This begs the question – if those individuals had cases that were without merit, were they, in fact, denied “access to justice?”

“Access to justice” is also driven, in part, by the Florida Legislature and the laws it enacts. Earlier this year, SB 54 passed, requiring all Florida drivers to carry \$25,000 in mandatory bodily injury (“BI”) insurance. However, Governor DeSantis vetoed the bill. As a consequence, individuals injured in auto accidents in Florida will continue to be denied “access to justice” for the foreseeable future if they themselves have no UM/UIM coverage, if the tortfeasor driver has no BI coverage, and if the tortfeasor is not collectible. This is a significant number easily totaling in the thousands annually. Allowing non-lawyers to have ownership interests in law firms and share in legal fees will not make judgment proof tortfeasors suddenly collectible in auto cases.

Having served as a former assistant public defender in the Fifteenth Judicial Circuit of Florida for nearly 6 years and another ten (10) representing civil defendants at two private firms, I am sympathetic to individuals who cannot afford to retain counsel of their choosing. However, non-lawyer fee sharing and law firm ownership is not the answer. If anything, the quality of the civil practice of law in Florida will suffer because civil defense firms, infused with non-lawyer funding, could effectively model themselves after the public defender’s office by taking on unmanageable caseloads while slashing their fees. This would spawn the bargain-bin legal service industry, bringing with it a proliferation in legal malpractice and new meaning to the phrase “access to justice denied.”

For the foregoing reasons, I respectfully request that the Board of Governors strongly oppose the Committee’s recommendations regarding non-lawyer ownership and fee sharing with non-lawyers.

Respectfully submitted on October 28, 2021, by:

/s/Timothy D. Kenison

Keen Law Group

Florida Bar No. 742201

From: [Rachael Flanagan](#)
To: [SCinput](#)
Subject: Comment on Non-Lawyer Ownership of Law Firms
Date: Friday, October 29, 2021 12:20:32 PM

I have been a member of the Florida Bar since September 2019. Prior to my admission to the bar, I worked as a litigation paralegal for 19 years. My entire career has been dedicated to the pursuit of civil justice.

I have read the proposal of the Special Committee regarding non-lawyer ownership of law firms. Please accept this brief comment in **strong opposition** to the proposals set forth by the committee. My initial overwhelming concern is for the consumer. At present the Florida Bar is a self-governing body of professionals who are subject to discipline by the Bar. The proposition would subject the public to undertrained persons who are not subject to the discipline.

Additionally, and perhaps most critically, the proposition has no clear data or evidence that it will alleviate the very issue it claims to be a resolution for – increasing access to justice. While I agree that there is a need for increased access to justice, particularly in practice areas that are prohibited from working under a contingency retainer, the proposal of the Special Committee **is not** the solution to that need. I dare say that investors will not come flocking to become part owners of firms providing services that are needed by those who cannot afford access to an attorney – what would that benefit the investor?

In short, I see this proposal as creating three significant but non-exhaustive problems in the state of Florida:

1. Danger to the consumer of legal services due to deregulation, substandard services, inability to discipline non-bar members, and potential for non-lawyer influence over the practice;
2. The non-lawyer ownership will not increase access to justice; and
3. Open the door to corporate governance of law firms, where the fiduciary duty to share holders could become paramount to the best interest of the client.

For these reasons, I strongly urge the Board to oppose the recommendations of the Special Committee.

Sincerely,

Rachael Flanagan

Staff Attorney

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From: [Michelle N DeLong](#)
To: [SCinput](#)
Cc: [Baker-Barnes, Rosalyn S](#); [Bresky, Robin I](#); [Ponzoli, Ronald P](#); [Gelfand, Michael J](#)
Subject: Comment re: Final Written Report by the Special Committee to Improve the Delivery of Legal Services
Date: Friday, October 29, 2021 12:11:19 PM

To: The Florida Bar Board of Governors

My name is Michelle DeLong and I am a practicing attorney in Palm Beach Gardens, Florida. I am writing to voice my opposition to the recommendations made in the Final Written Report by the Special Committee to Improve the Delivery of Legal Services. Specifically, I am opposed to the recommendation allowing for a regulatory “laboratory” program that would authorize non-lawyer legal service providers, non-lawyer ownership in law firms, and the splitting of legal fees with non-lawyers. I firmly believe, along with many of my colleagues, that the introduction of such a program will degrade the practice of law in the state of Florida. Rather than increasing access to courts and justice, it will have the opposite effect.

For some background, I primarily represent victims who are injured or killed from medical malpractice across the state of Florida. I have been practicing in this area for almost five years exclusively. Prior to that I represented large corporations in areas of business litigation. What I have seen firsthand in my practice as a medical negligence lawyer is how a deregulated medical system, owned by corporations has ruined the practice of medicine in the state of Florida. Physicians and nurses can no longer rely upon their own experience. They cannot spend the necessary time with their patients to ensure that their patients receive the best medical treatment possible. No. Instead, as a result of allowing corporations to own medical practice groups and hospitals, I see firsthand daily how physicians and nurses are crunched for time. They are required to see X number of patients in the hour no matter what that patient’s condition may be or what treatment that patient may need. It comes as no surprise that due to the restraints put on physicians and nurses by corporations to churn a profit, short cuts are taken and people get hurt or die.

I predict that changes to the legal industry allowing corporations (non-lawyers) to manage and control law firms would be detrimental to the practice of law. Like the profits over people theme we see currently in the practice of medicine, the same theme would percolate the legal industry in the state. Rather than lawyers determining the best strategy to progress their client’s cause of action, lawyers would be met with constraints placed on them by corporations (decided by people who never went to law school, have never practiced law, and do not understand the idiosyncrasies that can occur within the practice of law). Like the doctors and nurses who are told how much time they should have with a patient, lawyers would be controlled by corporations as to how much time you can spend on a case, manage a client, or take lower settlements because of arbitrary constraints put on the lawyer by the corporation. Lawyers will inevitably have conflicts with their clients because they will be serving two masters, (1) the non-lawyer corporation; and (2) the client. The interests of the non-lawyer corporation will conflict with the interests of the client, and who will win the conflict? The non-lawyer corporation will win because it is larger, has more power, deeper pockets, and will ultimately decide where to spend its money to make the most profit in return. Ultimately, non-lawyer ownership will destroy the practice of law in the state of Florida.

There is so much more I could say in opposition to this recommendation, but have limited time to do so. After all, like many of you, I am busy serving my clients to the best of my ability in the limited time constraints I have. But I continue to be accessible to my clients and seek justice on their behalf in the best possible way I can.

On a personal note, I do want to point out one last thing. Allowing non-lawyer ownership in law firms will kill a part of what's left of the American dream. I am a daughter of blue collar workers. My father is a construction worker who never learned how to read or write. My mother is a CPA, one of the first members of her family to go to college. Both grew up in large families, who were very poor. My parents worked hard to provide my siblings and I the best life they could offer us. My parents started a small business, a construction company, during my childhood. My father ran the field, while my mom quit her accounting firm job to run the books by my father's side. Together, they sacrificed much to enable my siblings and I to live a good lower middle class life and provide us the best education they could afford. Because of my parents, I had more opportunities than they did. Eventually, I went to law school and became a lawyer. I am now experiencing success at a higher level than them. My family is an example of the American dream. The dream where you don't have to be born into money to have money. You can work hard and through opportunities you can build and grow a family legacy. Today that dream is under attack across the nation. That dream is primarily under attack because large corporations have been able to grow too big and take over the small mom and pop shops, or businesses, that used to be the heart and soul of this nation. Non-lawyer ownership would have the same effect as big box retailers have had on small mom and pop stores over the last 20-30 years. Only this time, it will affect us – lawyers. I am a younger lawyer (age 38). I still have a long career ahead of me. Allowing non-lawyer ownership will change the trajectory of my career and future success drastically. It will destroy the financial opportunity that comes with becoming a lawyer, because like other industries where it has already happened, large corporations will siphon out the profits and lawyers will be the ones to suffer from it. Ultimately, law will be a less than desirable area for people to go into and you will have less qualified people going to law school. You have seen this very same effect in the medical industry.

In any event, I hope you will strongly consider voting no on the recommendation by the Final Report to allow non-lawyer ownership of law firms and fee splitting with non-lawyers.

Thank you for your consideration,

MICHELLE N. DELONG

Attorney

DomnickCunningham&Whalen

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From: [Christa Carpenter](#)
To: [SCinput](#)
Subject: Opposition to Non-Lawyer Firm Ownership
Date: Friday, October 29, 2021 12:05:36 PM
Attachments: [image001.png](#)
[image002.png](#)

To Whom It May Concern:

I am opposed to this prospect on an ethical level primarily. I wish to make that known in two paragraphs here.

The only reason this is even being discussed is that someone without a law license thinks that money is to be made in the business practice of law. This is solely about money and it cannot be spun convincingly otherwise. I see this issue as analogous to employed doctors. A lot of hospital chains employ doctors, nationally and in Florida; its infrequent now to see a deviation from that norm. This is because doctors make hospital chains money. The hospital cart hooked itself to the doctor horse, who became subservient to that cart because it is paying the horse's bills. Little does the horse realize that it could have shirked that cart a while ago, and if all members collectively refused to pull that cart, the hospital would not function. However, the daily need to pay bills inevitably sucks up most of the doctors, who would rather not rock the boat and take a pay cut to take a stand. If anyone talks to an "industrial medicine complex" employed doctor, you will hear they feel like they "work for the man," and they have autonomy and patient care concerns by being limited by non-medical administrators telling them how to practice in cost-cutting ways. Yet they still have Board of Medicine and professional, ethical obligations that stay the same.

What a shame it would be to have lawyers in the same boat – and our ethical and professional duties unchanged while trying to do our jobs as employees of the bigger industrial complex of big business law. I believe the profession will have an ethical conflict of interest at a mass level. Now, most lawyers are employed...by lawyers and law firms who are regulated by the bar. If the terrain of employment changes in 10 or fewer years to non-lawyer employer ownership, can we state as a profession that our lawyers' duties remain equally strong to the clients as they did *before* they were working for a non-lawyer corporation? I doubt it. I do not see how one can serve the master of Big Law Business in cost-cutting and profiting, while serving the client's best interests without allegiance to such goals. And how will the Bar regulate ethical concerns when the lawyers will now have the added layer of defending on "I had to do this or I would be fired," while the Bar cannot regulate the powerful entities imposing such an ethical dilemma on the employed lawyer? This is a problem that does not need to be invited into our home.

Thank you,
Chrissy

*****Please note firm name change and new website. All other contact information remains the same. Thank you!*****



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From: [Kari Peterson](#)
To: [SCinput](#)
Subject: Concerns In Opposition to Non-Lawyer Ownership of Law Firms and Fee Sharing
Date: Friday, October 29, 2021 11:50:46 AM

Dear Members of The Florida Bar Board of Governors:

Please consider these comments as opposition to proposals in the Final Report of the Special Committee to Improve the Delivery of Legal Services dated June 28, 2021, particularly, the recommendations regarding non-lawyer ownership and sharing of attorney's fees with non-lawyers.

As a new member of the Florida Bar, I would like to reflect on requirements that are prerequisites to becoming a member of the Florida Bar.

The first requirement is to successfully complete an undergraduate degree. During studies at an undergraduate institution, some but not all, begin studying for the LSAT. If a satisfactory score is achieved on the LSAT, the law school application process begins. If selected to attend law school, the challenges continue. Graduating from law school is another requirement of the Florida Bar. A scaled score of 80 on the Multistate Professional Responsibility Examination is required, which must be taken within 25 months of the general bar exam. Next is the bar exam application process which requires extensive personal information, references, fingerprints, and background checks. After law school graduation and completing bar exam applications, the following months are dedicated to studying for the bar exam. An averaged scaled score of 136 on the Bar exam is required to be considered for admission to practice law in Florida. The final and perhaps most important requirement is satisfying the Florida Bar's character and fitness standards.

These requirements were not created arbitrarily. These requirements gave us the tools necessary to represent our clients to the Florida Bar's standards. Application of these tools were then tested extensively. There is a reason that not everyone who tries, makes it to the finish line.

Through these tests and requirements, the Florida Bar has ingrained in us that our duties are to our clients. How can we maintain the ethical standards, competence, and character that the Florida Bar demands of us if those that did not complete and pass the Florida Bar requirements have a hand (but actually a financial interest) in "the best interest of our clients?"

For the purpose of maintaining the foundation for which the members of the Florida Bar serve, I respectfully request the Board of Governors strongly oppose the Committee's recommendations regarding non-lawyer ownership and fee sharing.

**KARI A. PETERSON,
ESQUIRE**



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Port Saint Lucie.

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From: [Todd Romano](#)
To: [SCinput](#)
Cc: [Baker-Barnes, Rosalyn S](#); [Bresky, Robin I](#); [Ponzoli, Ronald P](#); [Gelfand, Michael J](#); [Tanner, Michael G](#); [Lesser, Gary](#)
Subject: Special Committee to Improve the Delivery of Legal Services
Date: Friday, October 29, 2021 10:25:13 AM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)

Dear Board of Governors Members:

I want to first thank you all for your many years of honorable and dedicated service to the Florida Bar, its members, the legal profession, and to the Floridians we represent and serve. I also want to thank you in advance for considering my comments and the comments of other Bar members.

In short, I am concerned about a number of the recommendations contained in the Final Report of the Special Committee to Improve the Delivery of Legal Services. My concerns are as follows:

1. There seems to be very little consensus among members of the Florida Bar for many of the concepts the report is recommending. A very small minority of responding Bar members who completed a 2021 survey support the concept of non-lawyer ownership and fee sharing, yet the report seems dismissive of the overwhelming majority.
2. There are significant constitutional questions as to whether the Florida Supreme Court can regulate a non-lawyer or sanction a non-lawyer if they cause public harm. Lawyers are subject to disciplinary action by the Bar and by the courts. Non-lawyer investors would have no such consequences. Although the proposed changes would require non-lawyer investors to comply with the Rules of Professional Conduct, it's unclear whether and how non-lawyers would be sanctioned for violating the rules.

3. While the report's lauded aim seems to be a desire to provide greater access to affordable legal services, the reasoning seems to have little to no application to most tort claims since those are almost always handled on a contingent fee basis. Because contingent fee representation in tort claims and certain other claims affords individuals access to the best legal representation available, access to affordable and quality legal services seems to be a non-factor in such cases. It also goes without saying that the loosening of advertising restrictions in recent years and the proliferation of self-help or online legal services demonstrates there is an abundance of affordable legal services and law firms willing to undertake claims on a contingent fee basis.
4. The recommendations in the report, if implemented, would create conflicts of interest between the attorney and non-lawyer investors or business partners who are more concerned with financial profit than adherence to providing quality and ethical legal services. This is a "back door" to reciprocity. If a lawyer from another state can own a law firm in Florida, but a Florida lawyer cannot go into another state to do the same, this sets up the potential for one-way reciprocity.
5. Allowing non-lawyer ownership of law firms and fee-sharing with non-lawyers will undoubtedly create inherent and unavoidable conflicts of interest, given the fact that lawyers are ethically required to prioritize the interests of clients, even if those interests are at odds with the lawyer's own. Non-lawyers are not bound by such ethical restrictions. Equity investors would undoubtedly seek to prioritize profits, cash flow, and other self-interests and business considerations that could adversely impact clients. When interests like these conflict, as is often the case, clients will be caught in the middle, and the client's interests may be sacrificed for the good of the company or to maximize returns to the investors.

For the reasons noted above, I respectfully request that the Board of Governors oppose the Special Committee's recommendations regarding non-lawyer ownership and fee-sharing with non-lawyers. Thank you again for your consideration of my comments.

With kindest personal regards,

Todd Romano



Todd Romano

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BERNHEIM KELLEY BATTISTA & BLISS

VIA EMAIL: SCinput@FloridaBar.Org

Florida Bar Board of Governors

The Florida Bar

651 E Jefferson Street

Tallahassee, FL 32399

Dear Members of the Florida Bar Board of Governors,

We write to you out of concern today regarding proposals contained in The Final Report of the Special Committee to Improve the Delivery of Legal Services. It is our belief that the Report has falsely concluded that the practice of law will improve by the acceptance of non-lawyer ownership and fee splitting within law firms.

We believe that this proposal is motivated by monetary purposes, rather leading to a greater access of the justice system to the public. The argument made in the Report focuses on the fact that by allowing non lawyers to have a stake in the practice of legal services, the justice system will thus be afforded an opportunity to serve the greater public. However, the rule of law cannot be preserved once these entities, who are not proficient in the practice of law, are allowed to have a stake in ownership of a law firm. An individual who has obtained a Juris Doctor Degree and holds a Florida Bar License is more likely to uphold the self-regulating system that this Profession entails. We believe this proposal, if accepted, will lead to the marketization of law. If we allow corporate entities, such as Walmart or certified Banks, to own law firms, the legal landscape will alter from the goals of achieving justice and client's rights to instead focus on profitability and lead to attempts to monopolize the market.



BERNHEIM KELLEY BATTISTA & BLISS

The Report also attempts to rely on the premise that the Supreme Court, in previous practices, have allowed entrance of non-Florida Bar approved entities to work for law firms. The report notes that

“For example, chapter 17 of the Rules Regulating The Florida Bar admits out-of-state lawyers to the practice of law for the limited purpose of acting as in-house counsel for a corporation located in Florida. Those lawyers may be admitted without having to successfully complete The Florida Bar examination.”

This practice of allowing out of state attorneys to serve as council for law firms is vastly different than allowing non-lawyer entities, who have no previous experience or have studied the practice of law, to enter the legal field with ownership.

The Report also proposes that the amended 4-5.4 rule would require the nonlawyer owners to comply with the Rules of Professional Conduct. The Rules of Professional Conduct is a course offered, and sometimes mandated, in many law schools across the country. The proposal lacks to enforce any form of education or testing involved with the eligibility of these entities to own a stake in a law firm and does not mandate the Multistate Professional Responsibility Examination.

Ultimately, we respectfully oppose the proposal to allow non-lawyer ownership and fee sharing within law firms and hope that this is one of many comments you have received on the matter.

Respectfully,

The Attorneys of Bernheim, Kelley, Battista & Bliss LLC



Friday, October 29, 2021

Michael Tanner, Esq., President
The Florida Bar
via electronic mail

Re: Final Report of the Special Committee to Improve the Delivery of Legal Services

Dear President Tanner,

I hope this message reaches you well. I understand that the impetus for the Special Committee to improve the delivery of legal services did not originate with the Florida Bar Board of Governors. Nonetheless, I am grateful that you still invited comments from all members on the *Final Report of the Special Committee to Improve the Delivery of Legal Services* (the “Final Report”). As a young lawyer, I care particularly about the outcome of the recommended changes by the Special Committee. The deleterious effects to the public and the profession from the parade of horrors that would occur far outweigh any theoretical benefits. I vehemently oppose the changes in the Final Report and ask The Florida Bar Board of Governors to vote unanimously against the adoption of any of the proposals from the Special Committee. Though I disagree with almost all proposed changes in the Final Report, I will focus this letter on the most aberrant proposal-- non-equity ownership in law firms.

The changes proposed by the Special Committee are not borne of data; they’re not borne of a desire to “strive for equal access to and availability of legal services;” they’re not borne from the concerns or outcry of the Florida public; they’re borne purely from fear. These proposed changes are borne from the fear that lawyers will eventually be pushed out of the profession by venture capitalists. The recommended changes in the Final Report only, if adopted, will promulgate a self-fulfilling prophecy of the aforementioned fear. This underlying rationale is patently absent from the material; still, it seems to be the engine driving the Special Committee, well, all but one, to change the entire landscape of the one profession charged with upholding a branch of government.

Accepting *arguendo* that the Special Committee was operating solely on the letter from The Florida Supreme Court, the proposed changes it recommends are still substantively flawed in a myriad of ways. The fundamental tenet relied on by the Special Committee seems to be that firms can only be “capitalized adequately” by allowing non-equity interests in law firms. There is, however, not a scintilla of any evidence that the current state of Florida’s legal industry is such that its firms should be considered “cash-strapped,” poorly leveraged, or undercapitalized. This belief dismisses the litany of multimillion-dollar firms in Florida, some of which, ironically, employ some of the members of the Special Committee. Their erroneously held belief also ignores the entire legal finance and banking industry, which currently services our profession and ensures that firms can make whatever investments they deem fit into their practices. Moreover, the Special Committee relied heavily on an opinion piece from an author who did not even conclude that a well-funded law firm would invest in technological advances. The opinion piece the Special Committee



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venerates is riddled with logical fallacies and is nothing more than a circular argument wrapped in a bandwagon fallacy.

To assuage the concerns of many who, rightfully, worry about venture capitalists taking over law firms, the Special Committee proposed changes to the rule that also tie in these non-equity partners to work which “actively support the work of the law firm.” The members of the Special Committee use examples such as a physician who reviews medical information or a lobbyist who handles testifying before the Legislature. Those examples are nothing more than red herrings hiding the fact that a challenge is likely to lead to a holding that financing the expansion, growth, or operations of a law firm is unequivocally “actively support[ing] the work of the law firm.”

The above is not the only place that the Special Committee contorts itself to reach a self-serving conclusion. The same analytical gymnastics occur with the Special Committee’s assertion that The Florida Supreme Court will be able to regulate these non-practicing, non-equity partners. Admittedly, this past year, I have witnessed the Supreme Court its Article V powers in unprecedented and unfortunate ways; with that stated, they cannot wield a power they simply do not possess. It will only be a matter of time before the proposed rule changes, if adopted, get in the way of commerce enough to be challenged. There will be no oversight of these non-equity partners, which will open up the opportunities for the Executive branch, through DBPR or another agency, to begin to regulate our profession. Even without the pressures of dealing with non-lawyer ownership, The Florida Bar currently pushes backs on attempts from the other branches of government to regulate us.

I am deeply committed to The Florida Bar and this profession—I was in the inaugural class of the Leadership Academy, I was elected to serve on The Florida Bar Young Lawyers Division Board of Governors, and I was the youngest person to Chair the Code and Rules of Evidence Committee. The Bar means a great deal to me, and it is with no secret evasion of the mind that I read these proposals and interpret them as devastating to everyone’s future ability to practice law in Florida. I think these proposed changes will hurt the profession, which invariably will hurt the public. I do not pretend to know all of the answers, but I respect that the question of how do we continue to evolve to serve the public is a real one. These proposals, however, are not the answer.

In Unity,

G.C. Murray II, Esq., DPL

cc: Gary S. Lesser, President-Elect of The Florida Bar
Iris Elijah, President-Elect of The Florida Bar Young Lawyers Division
Josuah Doyle, Executive Director of The Florida Bar
The Florida Bar Board of Governors



PHILIP M. BURLINGTON*
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*BOARD CERTIFIED IN APPELLATE PRACTICE

October 29, 2021

VIA E-MAIL (SCinput@Floridabar.org)

Florida Bar Board of Governors
The Florida Bar
651 E Jefferson Street
Tallahassee, FL 32399

Dear Members of the Florida Bar Board of Governors:

Thank you for the opportunity to comment on Final Report of the Special Committee to Improve the Delivery of Legal Services. It is readily apparent that the Committee spent a great deal of time and energy on the project. I would like to provide my perspective on the portion of the report recommending the “sandbox” in which nonlawyers would be allowed to have a minority ownership of law firms.

While I agree that changes should be made to help provide access to legal services, I question the wisdom of allowing nonlawyers to own even a minority share of a law firm, and I cannot conceive of how that will cure the problem. As a primary matter, while the committee apparently reviewed research outlining the areas of law in which people have difficulty obtaining legal services, the concept of allowing nonlawyer ownership is not directly related to those areas of the law. In my experience, the areas of law in which people have trouble obtaining legal counsel are the areas most needed by the less affluent members of society: renters in disputes with landlords, low-wage employees being victimized by their employers, people needing help to navigate medical insurance and payments, and divorce or other family law matters.

The obvious truth of the situation is that the people who have a hard time obtaining the services of a lawyer now are the ones who cannot afford to hire an

attorney, and they need the type of legal work that offers the least profit. Outside investors will have no desire to invest their money in a law firm so underprivileged and impecunious people can have a lawyer. Following economic incentives, investors might even invest in a law firm just so they can prevent the law firm from taking cases against them. Imagine if GEICO, Allstate Insurance and all other insurers started buying small parts of law firms. The availability of legal services would go down, not up. Those insurers would prevent “their” law firm from taking cases and doing so would not be contrary to the provision in Rule 4-5.4 prohibiting the nonlawyer from influencing the lawyer’s “professional judgment.” The decision whether to take a case is a business decision, not a professional one.

All of the perceived benefits of allowing nonlawyer ownership discussed in Final Report can already be done by law firms. On page 9 of the Report, the committee outlined the perceived benefits of nonlawyer ownership:

“The benefits include opening up new ways that lawyers can work with technology companies or other nonlawyer companies and individuals to provide more innovative ways to deliver services, and in some cases, provide consumers with more information useful to the selection of legal counsel. An innovation that is hindered by the current rule could include an arrangement between a technology company and law firm to streamline referrals, the engagement process, or case flow for situations where the client wants extra help. By not allowing a revenue share between others and the law firm, these types of relationships are inhibited.”

The sources for finding and engaging lawyers are copious to anyone with a cell phone or a computer. A Google search for lawyers handling landlord/tenant disputes returns results from many already-established technology companies such as Findlaw, Superlawyers, Justia, and Avvo, along with results from various individual law firms who provide landlord/tenant dispute legal services. Many of the databases also have reviews which allow potential clients to obtain some information about the quality-of-service others have received. If the regulatory rules are changed so Findlaw and Superlawyers (and others) can own some law firms, those databases will undoubtedly be altered so traffic is directed toward the law firms those technology companies own. Nonlawyer technology companies could even route traffic so the only law firms potential clients will be exposed to are law firms owned by technology companies. While the committee anticipates that technology companies would “streamline referrals,” the type of streamlining we see will undoubtedly be unwelcome, because it will be manipulated to serve investors’ profit

interests. The current situation works well because technology companies have an interest in providing the most reliable information they can obtain so they are perceived as being the best source to find a lawyer by the public. The main problem with these sites is that lawyers are allowed to claim they perform work in an area of law they don't actually provide, or claim they are geographically located in an area nowhere near their actual geographic area of practice. It is a form of misleading advertising that perhaps should be addressed.

On page 7 of the report the committee states that where nonlawyer ownership has been used it has “fueled innovation without compromising legal services” and has resulted in “no adverse effects on consumers.” I reviewed dozens of articles discussing how nonlawyer ownership has changed the practice of law in places where it has been allowed. I found that while there was an occasional article pointing out modest benefits, a large majority of the articles exposed how the results were vastly different from expectations. There has been little to no perceived increase in the availability of legal services to those who previously had none. Most of the investment was in personal injury firms because they are the most profitable. That result did not surprise me because nonlawyer investors invest only to make a profit, and personal injury is an area of law with great profit potential. What did increase was advertising and marketing of law firms, especially personal injury firms. In the United Kingdom, some law firms have gone “public” and are now listed on the London Stock Exchange, but that has not increased the availability of legal services.

Also, on page 7 the committee states that nonlawyer ownership is needed because the “prohibition is seen as a major contributing factor to America’s access to justice problem because prohibiting investment from non-lawyers leaves law firms strapped for capital [and] . . . makes it harder for law firms to keep up with modern innovations in business practices. Firms cannot form cost-effective multidisciplinary practices with other service providers, and few have incentive to invest in technology and business processes. Consumers today expect seamless, integrated services, and Rule 5.4 prevents lawyers from meeting the needs of their clientele.”

That conclusion comes solely from a single paper, Jason Solomon, Deborah Rhode & Annie Wanless, *How Reforming Rule 5.4 Would Benefit Lawyers and Consumers, Promote Innovation, and Increase Access to Justice*, Stanford Center on the Legal Profession, April 2020. That paper itself makes great leaps in logic and fact, taking statements from a small number of lawyers or law firms who claim to be hindered in their ability to expand. Authors Solomon, Rhode and Wanless also claim that the medical profession has benefited from innovative corporate ownership, but

they ignore how that ownership has affected the general public. The cost of healthcare has risen dramatically year after year due to corporate owners seeking to maximize profits, and practitioners themselves regularly complain that they are unable to devote time to their patients while still adhering to efficiency benchmarks set by corporate owners. It is not a business model the legal profession should seek to emulate.

As to whether law firms need nonlawyer ownership to innovate, the committee's conclusion is contrary to at least my experience. In 1995 the law firm I worked for agreed to let me use voice dictation hardware and software, which at the time cost several thousand dollars, to see if it would speed up the time it took to create written documents, and we were early adopters of Westlaw to reduce the amount of time it took to research. Both innovations reduced the cost of services to our clients. In my current firm I use artificial intelligence to analyze appellate records and prepare briefs to reduce the cost to clients. None of these required nonlawyer investment. They required education and a willingness to look at new ideas.

Which brings me to my final general comment. On page 7 the committee describes how outside investment is needed because lawyers are not equipped to run a business. While many, if not most, lawyers are not equipped to run a business, that is a deficiency in the education requirements for law school and to obtain a license to practice law. The problem is that lawyers are permitted to obtain their undergraduate degrees in non-business-related subjects such as political science, history and English, and can obtain a license to practice law without any business training at all. Knowing that I intended to become a lawyer, I received my undergraduate degree in accounting so I would be knowledgeable about business and finance. Instead of making fundamental, drastic changes to the structure of the practice of law to solve the problem that lawyers are not educated to run a business, it would be better to change the education requirements for lawyers. Lawyers should be required to take a certain number college or law school credit hours in business, accounting and finance.

I also reviewed the proposed rule and have the following comments about the specific provisions:

Subsection (c) allows for the business entity be in the form of a partnership. In *Frates v. Nichols*, 167 So. 2d 77, 80 (Fla. 3d DCA 1964), the Third District wrote, "the proposition is universally accepted that a law partner in dissolution owes a duty to his old firm to wind up the old firm's pending business, and that he is not entitled to any extra compensation therefor." A partnership which includes nonlawyers

would mean that every partner has a coequal duty to provide legal services to the client. However, nonlawyers cannot legally provide legal services to the client. The end result is that the client gets less protection from a law firm made up of lawyers and nonlawyers. The nonlawyers are free to abandon the client without repercussion because they are legally prohibited from performing the contract to provide legal services to the client. A law firm that has only lawyer partners has no similar disability. *See also Welsh v. Carroll*, 378 So. 2d 1255, 1257 (Fla. 3d DCA 1979) (determining that dissolution of professional association did not terminate the parties' employment contracts, and so the income from pending cases, both contingent and fee, would be decided according to the percentages set forth in the employment contracts). I question how a law firm that includes nonlawyers could be in the form of a partnership.

Subsection (2) is also problematic. Although subsection (2) provides that “all persons having an ownership interest in the partnership or authorized business entity agrees to abide by these Rules of Professional Conduct,” that provision is likely meaningless. The only punishments that can be meted out for violation of the Rules of Professional Conduct are probation, suspension or revocation of the license to practice law. But because the nonlawyers have no license to practice law, their violation of the rules cannot be punished. The proposed rule gives nonlawyers the ability to profit from legal services provided to clients, but no corresponding responsibility to the clients. I note that in discussing the creation of the Limited Assistance Paralegal Pilot Program, the committee discusses licensing of paralegals. If the paralegals are required to have a license, then that license can be taken away so it provides the Court with the ability to punish paralegals for violations of ethical rules. However, nonlawyer owners would have no similar licensing requirement.

I recognize that in Section II of the Final Report of the Special Committee, the committee concludes that this Court has the constitutional authority to regulate any aspect of the practice of law, including the participation of nonlawyers. From that discussion, it appears the committee's sole focus was on whether this Court has the authority to permit law firms to include nonlawyers, not on whether this Court has any authority over those nonlawyers. This Court has limited tools available to punish transgressions of the ethical rules, none of which apply to nonlawyers.

Subsection (3) appears to be an attempt to create some recourse for unethical conduct by the nonlawyer participants. However, making the lawyers responsible for the nonlawyers merely duplicates the obligation the lawyers currently have. Lawyers are already responsible for the conduct of their nonlawyer employees. *See Florida Bar v. Beach*, 675 So. 2d 106 (Fla.1996)(90-day suspension for allowing

paralegal to act as a conduit for legal advice) and *The Florida Bar v. Abrams*, 919 So. 2d 425, 430 (Fla. 2006)(one year suspension for attorney who was listed as “Managing Attorney” for paralegal’s corporation providing immigration services).

Current conflict of interest rules do not account for the interest or knowledge of nonlawyer owners. Currently, Rule 4-1.10 provides limitations on the involvement of lawyers with a conflict of interest in a law firm engaged in litigation against a former client or to use confidential information against a former client. Nonlawyers who have confidential information through their association or former employment, however, are free to provide that information to the lawyers engaged in litigation with the nonlawyer’s former employer. As long as the nonlawyer doesn’t tell the lawyer it is confidential information, the lawyer will be unwittingly duped into using the confidential information.

Sincerely,

/s/ Bard D. Rockenbach

Bard D. Rockenbach
Fla. Bar. #771783



JUSTUS REID*
BERNARD LEBEDEKER
JEFFREY C. PEPIN
ROBERT MACHATE
RICHARD SLAWSON*, **

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*Board Certified, Civil Trial Law

**Of Counsel

October 29, 2021

Via Email: SCinput@floridabar.org

Florida Supreme Court

c/o Florida Bar Board of Governors and FL Bar President-Elect

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RE: Special Committee to Improve the Delivery of Legal Services

To Whom it May Concern:

The undersigned attorneys, constituting over 170 years of experience practicing law in Florida, write this letter to voice our **strong opposition** to the findings of the “Special Committee to Improve the Delivery of Legal Services,” and more specifically any proposal which would permit non-lawyer employees or entities from having *any* ownership interest in law firms, to authorize non-attorney legal providers and the splitting of fees with non-lawyers. While there are many reasons why this idea is not right for Florida and why it will not improve the delivery of legal services to Florida citizens or increase access to justice, we will concentrate on three main issues.

First, put in its most basic form, the fixation with profit that is dominant in the minds of non-lawyer business owners will taint the legal profession and the delivery of legal services to the public. As we all know, the approach for any business owner in this country is profit, nothing is wrong with that. However, no other businesses also have a strict code of ethics and Rules of Professional Conduct which govern how businesses are to be operated, like law firms and lawyers do. These ethical considerations **must** come before profit. Non-lawyers often cannot comprehend this dichotomy and when you put profit ahead of ethics, the legal profession will suffer thereby resulting in the provision of legal services to the public suffering as well.

ONE CLEARLAKE CENTRE, 250 S. AUSTRALIAN AVE., #602, WEST PALM BEACH, FLORIDA 33401

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As has long been the case in Florida and our country as a whole, the pressure to be a profitable business in private industry is tremendous. There are numerous financial media outlets constantly monitoring the “bottom line” of each business, including how they run their business, how profitable they have been and how profitable they will become. But those businesses do not have to answer to the Florida Bar. As we all know, since non-lawyers often do not understand what it means to be a lawyer, they cannot understand how important the rules of the Florida Bar are because they are not subject to them, nor can they be sanctioned by the Bar.

More importantly, non-lawyers do not hold law licenses that they have to protect, a license that is required for them to have a source of income and the pride of accomplishment. They did not have to pass a stringent character and fitness review. They did not have to study for, take, and pass the Bar Exam. They have no stake in our profession and will not care about our clients like lawyers do. There are no consequences for their actions. In the business world, non-lawyer owned businesses just file bankruptcy when times get tough and move on, leaving financial devastation in their wake to their creditors and shareholders. That is because it is easy to walk away from a business when it is not tied to a license which is your livelihood and your way of life.

So, if non-lawyers are permitted to own even a minority share in a law firm, they will no doubt pressure that lawyer to ride the line, or even cross it, or face withdrawal of the funding which the non-lawyer is providing and which the lawyer has now relied upon. Going down this route will lead to increased lawyer discipline, law firm collapse and bankruptcy. Unfortunately, there are already lawyers who have been lured by money to make bad decisions and break the rules. When you add the stresses from non-lawyer financial investors and shareholders who want to make money no matter the consequences, it is a recipe for disaster.

Second, but no less important, is the issue involving small and solo law firms, the bulk of the law firms in this state. Once you permit inflow of capital from any source, those law firms will either die or be forced to take on non-lawyer partners for fear of going out of business, as they will be unable to compete with firms being backed with unlimited financial resources. This will result in the exact opposite effect that the Special Committee apparently wants, access to the legal system by more clients. The big fish will kill the small fish and you will be left with a small subset of large law firms that can set whatever price they want for legal services and may not be interested in helping clients unless they have tens of thousands of dollars to spend on legal fees. This proposal will stifle competition and kill the solo/small firm as we know it.

Third, in the personal injury context, what is to stop non-lawyer owners from also owning urgent care centers, MRI facilities and other medical providers and then funneling those clients to their other owned entity, their law firm? Or *vice versa*, having their law firm refer clients to those medical facilities which the non-lawyer owner has an ownership interest in? This is a slippery slope that would be rife with self-dealing and solicitation issues. Enforcement of these violations would be impossible. Again, this harms the public.

In conclusion, there are no real advantages to allowing non-lawyers to own any portion of a law firm in Florida and will serve only to the decline of the legal profession, while damaging the citizens of Florida in the process. As such, we voice our strong opposition to same.

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Very truly yours,

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October 29, 2021

VIA EMAIL: SCinput@floridabar.org and gordon@gloverlawfirm.com

Florida Board of Governors

Dear Madams and Sirs:

I have been a licensed lawyer since 1965—admitted to the State Bar of Michigan that year and to The Florida Bar in 1975. I am still practicing full-time with my daughter and partner, Katherine P. Glynn.

The Florida Bar should not let non-lawyers own any interest in any Florida law firm. The law is a profession which should not be diluted by persons who are not legal professionals, the interests of whom would likely conflict with the goals of our profession. It is hard to believe that non-lawyers, whose obvious motivation for ownership would be profitability, would be motivated to uphold the professional standards and ethical rules of the Florida Bar given their non-legal education and moorings, and their lack of regulation and, therefore, lack of accountability.

In these times of societal dissent and “alternative facts,” why would our profession want to allow non-lawyers or law firms with non-lawyer owners to steer critical decisions about who to represent, how to represent them or whether or not a case has legal merit? Would politics motivate those non-lawyer decision makers who aren’t held in check by legal ethics and standards? Would those non-lawyers pressure the lawyers they employ to pursue the most ethically questionable cases to score political points, grab headlines, or even use litigation as a weapon against political foes? Even if efforts were made to try to assert some accountability over non-lawyer owners, I see only additional grounds for distrusting the Bar and I fail to see how that would help expand legal services for those who can least afford it. There is no data to support the claim that non-lawyers’ involvement will increase access to legal services.

The 2021 Florida Bar Survey shows that our membership is overwhelmingly against the idea of diluting The Bar. Such dilution would inevitably and irreparably result in consumer harm. My

Florida Board of Governors
October 29, 2021
Page 2

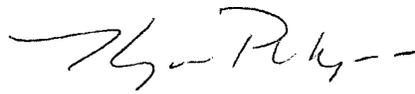
law partner and I are strongly against allowing non-lawyers to have any ownership interests in law firms in Florida.

Very truly yours,

A handwritten signature in black ink, appearing to read "JHPiccin".

John H. Piccin

and

A handwritten signature in black ink, appearing to read "K-P-Glynn".

Katherine P. Glynn

JHP/KPG/lcd



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October 29, 2021

Board of Governors
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399

**Re: Florida Justice Association Comment on the Final Report
of the Special Committee to Improve the Delivery of Legal Services**

Dear Members of the Board of Governors:

The Florida Justice Association (FJA) is a state-wide voluntary bar association of more than 3,000 members, including attorneys and members of the Florida Bar. FJA members are pledged to the preservation of the American legal system, the protection of individual rights and liberties, the common law, and the right of access to courts.

The FJA created a select committee of experienced attorneys to review the *Final Report of the Special Committee to Improve the Delivery of Legal Services* (hereafter “Final Report”). We would like to thank the Chair of the Special Committee, John Stewart, for the time he spent meeting with our committee, as well as the members of the Special Committee for their work on these important issues. The FJA would also like to thank the members of the Florida Bar Board of Governors for your attention to the Final Report, for raising questions and seeking answers to those questions, and for receiving comments from the Florida Bar membership.

The FJA committee spent a great deal of time and effort reviewing the Final Report. We met with Chair Stewart via video conference to listen to the position of the Special Committee, to seek answers to questions raised during our review, and to relay our deep concerns of the consequences we see with the recommendations and concepts contained in the Final Report. The FJA committee reviewed information on similar initiatives in other states and countries, and members of the FJA committee virtually attended the September 8th and October 27th meetings between the Board of Governors and Special Committee Chair John Stewart.

For the reasons stated herein, **the Florida Justice Association has serious concerns with the recommendations and concepts contained in the Final Report, specifically, the issues on non-lawyer ownership, fee splitting, and the regulatory laboratory. The FJA strongly opposes the recommendations of the Final Report on those issues.**

The represented intent of the Special Committee to Improve the Delivery of Legal Services (“Special Committee”) was to improve the access and delivery of legal services for those wishing to retain legal counsel but are not doing so. However, the Final Report fails to identify in what sectors of law legal services are not being provided due to a lack of access to those services. Nor does the Final Report differentiate between someone who cannot “find” an attorney, and

someone that simply makes the decision not to hire an attorney. We do not see how you can propose a solution to a problem if there is no data to show where a problem may exist.

The Final Report does not rely upon any data that shows the concepts contained in the Final Report will lead to the stated goal of improved access to legal services. We are not aware of any historical data from existing initiatives in other jurisdictions, that supports the notion that these measures will increase the percentage of litigants who obtain legal representation. Rather, the report recommends and “approves in concept” proposals that would remove regulations intended to protect the consumer, and may foreseeably cause harm to Florida consumers, to licensed attorneys, and the public’s confidence in the legal system. We are concerned that most of the recommendations and concepts are the proverbial bell that you cannot unring once they are implemented.

Although we will address specific areas below, there are substantial concerns which cover multiple concepts and recommendations contained in the Final Report. These are:

- There is nothing contained in the Final Report that identifies the specific need for legal services that is not currently being met.
- The report fails to identify specific areas of law not being serviced due to the cost or access to legal services (e.g., consumer debt services, landlord tenant, immigration, small claims, etc.).
- There is no data evidencing that similar proposals implemented in other jurisdictions have *increased* legal representation for those who seek to be represented by counsel, rather than just *shifting* who is providing the legal services.
- We believe the recommendations and approved concepts create a constitutional question as to whether the Florida Supreme Court or the Florida Bar has enforcement and disciplinary authority over a non-lawyer owner or non-lawyer entity approved by the Lab. This would lead to the legislative branch having regulatory authority, which calls into question the independence of the judiciary.
- As stated by Chair Stewart during his meeting with the FJA, as well as during his meetings with the Board of Governors, the recommendations and approved concepts contained in the Final Report are not sought to increase access to legal services in poverty-stricken areas or for economically challenged individuals. Rather they are intended to provide alternate legal service providers to companies with 250 employees or less and middle-income Floridians. These entities and individuals have the resources and sophistication to find and hire an attorney or law firm - they are making a business decision not to do so.

We recognize there is a need to improve the delivery of legal services in areas where someone seeking services is unable to afford it. We also recognize that there are areas of law that suffer from under representation by qualified attorneys to meet the demand in that specific area of law. However, much of the findings in the Final Report are based on conjecture. The approved concepts and recommendations may be viewed as an effort by out-of-state entities seeking to remove protective regulations in order to expand market share by entering what is perceived as a profitable Florida market.

Lawyers are bound by ethics rules that require them to exercise professional judgment and to provide the services their clients need, regardless of financial motives. Non-lawyer owners of law firms and lab approved entities may have a different standard that prioritize market share and profits above the lawyer’s duty to his or her client, and the public’s confidence in the judiciary. Although the concept is to expand access to legal services through innovation, the likely outcome of the recommendation’s approved concepts would not be innovation in the interest of the client who can’t find an attorney, but rather the commoditization of the legal industry.

One only has to look at how movements for “innovation” and capital investment failed to protect the consumer in the health care industry and how access to medical services deteriorated at the expense of patient care and confidence in the industry.ⁱ

*But some doctors say that the private equity playbook, which involves buying companies, drastically cutting costs, and then selling for a profit ...creates problems that are unique to health care. "I know private equity does this in other industries, but in medicine you're dealing with people's health and their lives," "You can't serve two masters. You can't serve patients and investors."*ⁱⁱ

In healthcare it was private equity firms bringing an influx of capital to the marketplace. However, the concerns and consequences of corporate entities approved by the lab, non-lawyer ownership, and fee splitting raise similar risks and concerns. The Final Report does not address when a Lab approved business entity can be sold, to whom it can be sold, or how often. In law, just as in medicine, you can't serve two masters.

Looking at Utah's "sandbox"

Although Utah only approved their regulatory sandbox concept in 2020ⁱⁱⁱ, we are able to see what types of "alternative legal service providers" have applied and in what areas of law. In reviewing the Utah Innovation Office Activity Report August 2021^{iv}, the legal categories addressed by service are as follows:

- Accident/Injury (25.9%)
- Business (19.7%) e.g., intellectual property, contracts/warranties, and entity incorporation
- End of [Life] Planning (15.2%)
- Marriage/Family (12%)
- Financial (7.4%) e.g., bankruptcy and collection practices

These five legal categories accounted for 80% of legal services being offered by Utah sandbox entities.^v To put this in perspective, an area of law that is based upon contingency fee representation (i.e.: no cost barrier to legal representation) accounted for 25.9% of legal services in the Utah sandbox and was the largest legal area of representation.

Upon review, you can see that many of the approved Utah entities offer so many different types of legal services, they can logically be categorized as *internet based general practice law firms* or alternatively, as *internet referral services* (Rocket Lawyer, 18 categories; R&R Legal Services, 9 categories; Xira Connect, 19 categories; ILaw, 18 categories; DSD Solutions, 12 categories).^{vi} One of Utah's first approved entities, *Rocket Lawyer*, is approved under 18 different legal categories and promotes to attorneys - "get matched with clients."^{vii} In an ABA Journal article, the CEO of Rocket Lawyer says, "by participating in the sandbox program, his company will also have the ability to connect its users with Utah lawyers it hires as staff."^{viii}

Although the Final Report uses many buzz words such as "consumer-centered innovations," "aspiring innovators," and "emerging innovations," they are given no substance in the report. What is the innovation the Special Committee is wanting to foster? Is it more than a internet based operation and matching service? These are several unanswered questions from the Final Report.

Rule 4-5.4 Professional Independence of a Lawyer

Although the heading used in the Final Report is "Rule 4-5.4, Fee Splitting and Law Firm Ownership," the actual title of Rule 4-5.4 is "**Professional Independence of a Lawyer.**"^{ix} The irony cannot be lost, as the approved in concept provisions of law firm ownership and fee splitting threaten professional independence.

Non-Lawyer Ownership and Fee Sharing

In a 2021 Florida Bar Survey, attorneys were asked if they support non-lawyer ownership in law firms and legal fee splitting.^x The results of these survey questions were definitive and in opposition to these concepts:

- Only 9% (3% - Yes; 6% - Yes with a condition) believe that non-lawyers who actively support a legal practice in delivering legal services should be permitted to become partners or shareholders, as applicable, in that practice.^{xi}

- Only 7% (2% - Yes; 5% - Yes with conditions) believe law firms should be permitted to raise capital by selling ownership interests in their firm to passive investors, compared to over four-fifths (84%) of all respondents who believe this should not be permitted.^{xii}

The timing of the survey leads one to speculate that the survey questions presented are not a coincidence to the Special Committee's work on this issue. However, this overwhelming renouncement of these issues by Florida Bar members were summarily dismissed in the Final Report as merely being a "fear of the unknown."^{xiii} Although the Special Committee rejected the position of Florida Bar members on this issue, the representatives of the Florida Bar Board of Governors, who are chosen by their peers in their respective judicial circuits, should not. Non-lawyer ownership in law firms raises the risk of harm to the consumer, raises questions regarding attorney / client confidentiality, and increases conflicts of interest which may lead to disciplinary action.

Under the approved concept, a non-lawyer would be permitted to own 49.9% of a law firm and prohibits passive ownership. This raises a red flag as to the extent of the influence the non-lawyer "active owner" will have over the lawyer. It is realistic to foresee a situation where a non-lawyer has a 49% ownership interest and is responsible for providing operating capital; and you have 5 attorneys with a 10.2% ownership interest each. To assume the non-lawyer owner would not control the operations and influence decisions is unrealistic and could easily compromise the true minority shareholders. In this scenario, it can reasonably be foreseen that the non-lawyer in the firm may make demands on the lawyers to prioritize commercial interests to the detriment legal services and clients.

Attorneys are trained in the law, to spot legal issues, abide by the professional rules of conduct, maintain client confidentiality, and to identify conflicts of interest. The lawyer's bar license, and therefore their professional career depends on this. This does not mean that a non-lawyer is unethical, but there are problems associated with integrating non-law firm businesses with the practice of law. "[A]s legal and non-legal work becomes more integrated, and entangled, within the firm employees may also be more likely to engage in the unauthorized practice of law or share confidential client information across different departments of the company."^{xiv} The recommendations in this report create conflicts of interest between the attorney and a non-lawyer investors or business partners who is concerned with financial profit more than the institution of law and the judicial process.

Law Practice Innovation Laboratory Program - The "Lab"

The concept of a regulatory sandbox, or "Lab" is not new. England and Wales adopted non-lawyer ownership in 2011 and Australia adopted it in the early 2000s.^{xv} Although the legal systems are notably different in these countries, their experiences can provide insight should Florida go down this path.

In 2014 a Harvard fellow researched the UK and Australian initiative of non-lawyer ownership in law firms and published his results in 2016.^{xvi} The study revealed that after private equity investors entered the legal industry: 1) law practice was commoditized; 2) law firms were listed on the stock exchange; 3) a known grocery brand became the largest supplier of legal services in the area of family law; and 4) services representing accident victims were owned by major insurance companies.^{xvii}

The findings of this study indicate that in the United Kingdom, the initiatives did not appear to have increased access to legal services, but rather shifted who is providing the services. "Between 2011 and the first half of 2014 the percentage of private family law disputes where neither party was represented by a lawyer more than doubled, and the percent of cases where both parties were represented by a lawyer dropped from 49% to 25.8%."^{xviii}

We believe the Lab also creates a constitutional issue as to who the proper disciplinary authority is. The authority vested in the Florida Supreme Court is limited to "persons" and does not contemplate enforcement over a business entity such as one approved under the Lab.^{xix} Article V, Section 15 of Florida's Constitution states:

The supreme court shall have exclusive jurisdiction to regulate the admission of **persons** to the practice of law and the discipline of the **person** admitted."^{xx}

This is problematic under the Lab as well as with non-lawyer ownership. If the court does not have the constitutional authority over the non-lawyer owner or the business entity providing services, then authority belongs with the legislature.

This fundamentally jeopardizes judicial independence as the Lab approved entity would not be within the purview of the Florida Bar as indicated in the Final Report.

In addressing the harm to the consumer, “The Lab model puts the burden on applicants to define how their services should be measured regarding benefits, harms, and risks.”^{xxi} It is also the experimental entity that determines the data metrics to determine and track any harm caused.^{xxii} Measuring and tracking this harm would be difficult because in many instances, such as an estate plan, a partnership agreement, or intellectual property rights, the harm is likely not ascertainable until well after the legal services were provided. By the time the harm is discovered (it may be years) it would be too late as numerous consumers would have been exposed to the misconduct. Those consumers would now be required to hire another lawyer in an attempt to mitigate any damage caused.

In other situations, such as immigration, personal injury, criminal law, property deeds etc. the harm causes may be catastrophic to a person’s rights and freedoms. When a person hires an attorney, it is often in their darkest hour, and it is their only opportunity for redress or to assert a right. The harm they experience from an “alternate business structure” or “innovation” entity is not an “metric” – it is real harm to that individual. The Final Report recognizes this problem and attempts to address it by creating a figurative wall between the Lab and the general public: “The Lab provides an insulated environment to encourage innovative practices while maintaining consumer protection. ... Safeguards can be installed to protect approved ventures from spilling over into the general market for the provision of legal services.”^{xxiii} However, the Lab is operating in the public. Will the consumer who hires services from a Lab participant just be looking for the least expensive option, without fully understanding the risks associated with being part of a testing metric? Caveat emptor.

In the event the regulatory Lab is dissolved “those who have been licensed and exited the Lab will be allowed to continue offering the approved services under the regulation of the supervisory body after the Lab is formally concluded, provided there is continued showing of low consumer harm.”^{xxiv} In practicality, the entity may operate in perpetuity so long as the consumer harm metric remains low. This raises the question as to whether the supervising body will also operate in perpetuity and if so, with the Lab dissolved, where will the funding be? What if there are only a handful of approved entities still operating (whether due to approval numbers, closing of businesses, etc.), will the regulation shift to a different oversight entity for economic reasons?

Conclusion

Although the recommendations and concepts approved in the Final Report are attempting to address the important issue of access to legal representation, there is no evidence that the concepts put forth will succeed. The Final Report fails to identify where the need exists, both in consumer demographics as well as within what legal sectors. The FJA files this written comment in objection to the Final Report of the Special Committee to Improve the Delivery of Legal Services. Our objection is based on concerns for public safety, the integrity of the legal profession, an increase in conflicts of interest, and the constitutional oversight authority over non-lawyers and corporate entities approved under the Lab.

Sincerely,



William T. Cotterall, Esq.
General Counsel
Florida Justice Association

ⁱ How Private Equity is Ruining American Healthcare, Bloomberg Businessweek, May 20, 2020
<https://www.bloomberg.com/news/features/2020-05-20/private-equity-is-ruining-health-care-covid-is-making-it-worse>

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- ii *Id.*
- iii See <https://utahinnovationoffice.org/about/what-we-do/>
- iv See <https://utahinnovationoffice.org/wp-content/uploads/2021/09/IO-Public-Monthly-Report-August-2021.pdf>
- v *Id.*
- vi *Id.*; Rocket Lawyer (18 legal categories); R&R Legal Services (9 legal categories); Xira Connect (19 legal categories); 1Law (18 legal categories); DSD Solutions (12 legal categories).
- vii See <https://www.rocketlawyer.com/on-call-signup.rl>
- viii See <https://www.abajournal.com/web/article/rocket-lawyer-given-approval-to-join-utahs-regulatory-sandbox-program>
- ix Rules Regulating the Florida Bar, Rule 4-5.4 Professional Independence of a Lawyer
- x See <https://www-media.floridabar.org/uploads/2021/02/2021-Florida-Bar-Member-Survey-Final-2-17-21.pdf>
- xi *Id.* question 62.
- xii *Id.* question 63.
- xiii Final Report of the Special Committee to improve the Delivery of Legal Services, p. 18.
- xiv Nick Robinson, *When Lawyers Don't Get All the Profits: Non-Lawyer Ownership, Access, and Professionalism* (August 27, 2014). 29 *Georgetown Journal of Legal Ethics*, 1, 1 (2016).
- xv *Id.*
- xvi *Id.* at 5
- xvii *Id.*
- xviii Nick Robinson, *When Lawyers Don't Get All the Profits: Non-Lawyer Ownership, Access, and Professionalism* (August 27, 2014). 29 *Georgetown Journal of Legal Ethics*, 1, 1 (2016) at 27
- xix Constitution of the State of Florida, Article V, Sec. 15.
- xx *Id.* (emphasis added)
- xxi Final Report of the Special Committee to Improve the Delivery of Legal Services, Appendix E, p.1.
- xxii *Id.* p. 2 “[the Lab] can incentivize more companies to evaluate their service through rigorous understanding of benefits and harms to the public...”
- xxiii *Id.* p. 2.
- xxiv Final Report of the Special Committee to Improve the Delivery of Legal Services, p. 20.



Joseph Stephen (Stef) Zielezienski
Executive Vice President, Chief Legal Officer

October 29, 2021

Mike Tanner, President
Florida Bar Board of Governors
email: SCinput@floridabar.org

RE: APCIA Comments Opposing the Recommendations in the June 28, 2021 Final Report of the Florida Bar Special Committee to Improve the Delivery of Legal Services

Dear Florida Bar Board of Governors:

The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe.

Property casualty insurers are high-volume consumers of legal services and have a genuine interest in preserving the integrity of a fair, predictable, legal system. APCIA appreciates the opportunity to submit these comments responding to the reform recommendations developed by the *Florida Bar Special Committee to Improve the Delivery of Legal Services (Special Committee)* as set forth in its June 28, 2021 Final Report. This letter is intended to highlight some of APCIA's concerns but is not intended as an exhaustive exploration of all potential unintended consequences that would result from implementing the recommendations of the *Special Committee*. For the reasons set forth below, APCIA urges the Florida Bar Board of Governors to reject the *Special Committee's* "approved in concept" recommendation to create a *Law Practice Innovation Lab*. APCIA specifically opposes the "approved in concept" recommendations to "[a]mend Rule 4-5.4 to permit nonlawyers to have a noncontrolling equity interest in law firms with restrictions;" to ". . . eliminate the restriction on fee-sharing with nonlawyers under Rule 4-5.4;" and to amend the ethics rules to "streamline the advertising rules, make the language of the rules more succinct, and eliminate any processes or requirements that are no longer as appropriate or necessary as they may have been in the past." APCIA agrees that "professional rules should **not** be amended to permit passive ownership of law firms."

APCIA's objections to the "approved in concept" recommendations are not grounded in territorialism or a misguided perception that lawyers are somehow superior to other professional service providers. Rather, APCIA's objections are based on a studied assessment of the risks that adoption of the "approved in concept" recommendations would pose to the public and to a properly functioning legal system in Florida.

The Final Report of the *Special Committee* sets forth a series of recommendations offered under the guise of improving the delivery of legal services and increasing access to justice. However, if adopted, the proposals to allow noncontrolling nonlawyer law firm ownership and fee-splitting with nonlawyers are not likely to have the desired effect. Increasing the ability of underserved citizens to access the justice system is a laudable goal but it cannot be accomplished by diluting the rules governing the ethical conduct of lawyers and by reshaping the attorney/client relationship to make room for the profit margins of investors and entrepreneurs. This would disincentivize lawyers from taking low value cases, risky cases, and pro bono cases and instead incentivize lawyers to embrace the influx of nonlawyer capital and technology tools to refine the selection of better, higher value cases to attract and reward those nonlawyer investors. Adoption of less stringent ethical rules that would tie the financial fate of nonlawyers to case outcomes would ultimately make the lawyer a servant of two masters – his nonlawyer business investors and his client. Rather than increasing access to justice for underserved citizens, these proposals risk closing the door to justice for many.

The Final Report offers an example of a potential minority nonlawyer investor – a nurse who performs medical record reviews for the firm. The Final Report does not explain how a nurse sharing ownership of the firm would create any public benefit or even a benefit for an individual firm client. Nor does it grapple with the risk that such an arrangement might pose, not only to the independent professional judgment of the lawyer, but the independent professional judgment of the nurse. The financial well-being of a nurse who performs independent medical reviews as a retained consultant is not directly tied to case outcomes. The same is true for a nurse employed as salaried staff by a law firm. But a nurse whose financial security rests on successful case outcomes would be subjected to different pressures. A nurse experiencing financial distress may feel pressured to skew the information provided to the lawyer to impact the timing of a settlement; or a nurse who determines that a client’s claim is not supported by the medical records may feel pressured by a lawyer to withhold that opinion in a report. What regulatory body would have the authority to discipline a nurse that succumbs to the pressure? Would the lawyer be subject to discipline for interfering with the independent professional judgment of the nurse?

The *Special Committee* contemplated the scope of the Florida Supreme Court’s authority and concluded that its “constitutional authority to regulate the admission of persons to the practice of law and the discipline of persons who are admitted allows the Court to admit or authorize anyone to the practice of law and, once admitted, regulate the admittee’s conduct.” However, the Final Report does not discuss the import of this conclusion. Is the *Special Committee* suggesting that nonlawyer owners be subject to regulation by the Florida Supreme Court? Is the nurse in the example to be considered “admitted” to the practice of law and thus subject to regulation by the Florida Supreme Court? Would the nurse still be subject to discipline by the State Nursing Board? Does the reverse apply? Is the lawyer subject to regulation under the Florida Nurse Practice Act by sharing ownership of the law firm with a nursing professional? The Final Report fails to adequately address the role, if any, of other regulatory bodies in governing the conduct of law firms owned by both lawyers and nonlawyers.

Lawyers are ethically obligated to provide competent legal representation, to protect client confidentiality, and to represent clients zealously, within the bounds of the law. Allowing nonlawyer law firm ownership, even with the imposition of conditions, would potentially put nonlawyers in possession of confidential client information without an enforceable restriction against disclosure. Even if the nonlawyer agrees to maintain confidentiality as a condition of ownership, there would be an insufficient enforcement mechanism in place to address a breach. The *Special Committee* has not adequately resolved the conflict between the obligations owed to clients and the obligations that would be owed to nonlawyer colleagues should the proposed rule changes be adopted.

The rules governing lawyer conduct exist, in large part, to protect the public and ensure that lawyers act in the best interests of their clients. Actions that lower the bar by which lawyer conduct is measured, and that allow outsiders to unduly influence lawyer conduct, run counter to that purpose. APCI is concerned that the loosening of rules governing the practice of law would exacerbate the prevalence of insurance fraud in Florida, which heavily impacts our members. As reported by Jeffrey Schweers, in the February 5, 2021 online edition of the *Tallahassee Democrat*, insurance fraud involving lawyers and third-party vendors already exists in Florida per a July [2020] letter from Florida State Senator Jeff Brandes to then-Senator Bill Galvano, which described:

. . . a system where alliances are formed between law firms, contractors, adjusters, and vendors who work in concert to defraud homeowners.

Should the recommendations of the *Special Committee* be implemented, it is unlikely that the doors to a *Law Practice Innovation Lab* will be flung open by wealthy philanthropists looking to invest money in providing low-cost legal services to underserved communities. Instead, it is likely that there will be a rush to enter the *Lab* by entrepreneurs, shared service providers (e.g., accounting and consulting firms,) and technology companies seeking new opportunities to create and grow capital – monetizing the legal system and transforming litigation from a final, last-resort tool for resolution of legal disputes to a lucrative investment vehicle. If started, there would be no turning back as the *Special Committee* recommends rewarding early entrants to the *Law Practice Innovation Lab* with lifetime membership, even if the proposed 6-month experimentation period reveals that allowing nonlawyer ownership is a disaster.

In a letter dated April 2, 2021 to the Chair of the Florida House of Representatives Commerce Committee, the Honorable Blaise Ingoglia, Florida Insurance Commissioner David Altmaier reported that information mined from a Market Conduct Exam Annual Statement data call initiated by the National Association of Insurance Commissioners (NAIC) revealed that: in 2019, Florida accounted for **8.16%** of all homeowners' claims opened by insurance companies in the U.S. However, in 2019, Florida accounted for **76.45%** of all homeowners' suits opened against insurance companies in the U.S. The results for 2019 are not an anomaly. As the chart below depicts, litigation trends in Florida have been consistently many times higher than any other state.

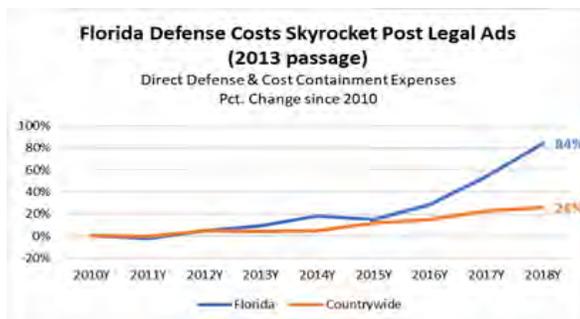
Year	Percent of Nationwide Homeowners' Claims Opened in Florida	Percent of Nationwide Homeowners' Suits Opened in Florida
2016	7.75%	64.43%
2017	16.46%	68.07%
2018	11.85%	79.91%
2019	8.16%	76.45%

[emphasis added.] It is difficult to imagine any way that the citizens of Florida would derive a benefit from the injection of additional costs into an already flooded litigation system.

The *Special Committee* proposal to amend the rules regarding fee-splitting suggest that lawyer ethics rules operate as barriers to the use of technology to enhance the delivery of legal services. Yet, legal technology services are already prevalent in the legal marketplace: computerized legal research; electronic discovery; trial and presentation solutions, to name a few. The current rules are sufficiently flexible to permit the expansive use of technology. The client is best protected, though, when lawyers are required to exercise independent professional judgment to evaluate the technologies to be used, and the purposes for which such use is appropriate.

The Final Report makes a series of recommendations to expand the ability of nonlawyer legal professionals to prepare legal documents and provide other services that are currently required to be provided by lawyers. The Final Report cites a survey of paraprofessionals that explored their desire to be charged with these additional responsibilities. Interestingly, the proposals did not yield a majority “yes” response from the group. The *Special Committee* minimized the low “yes” rate by focusing on the “need more information” or “not sure” responses. The proposal to allow experimentation of these expanded responsibilities within a *Law Practice Innovation Lab* is not sufficiently justified by the findings of the *Special Committee*.

The Final Report acknowledges that Florida’s lawyer advertising rules were amended as recently as 2013. Research conducted by APCIA in 2019 determined that insurance defense costs in Florida spiked after the 2013 rule amendments.



Defense costs are a component of allocated legal expense and are necessarily factored into the formula used in insurance ratemaking. Increased defense costs impact insurance premium. The 2013 amendments did not benefit Florida consumers and there is no data contained within the

Mr. Mike Turner
October 29, 2021
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Final Report to suggest that further changes to the lawyer advertising rules will benefit Florida consumers.

Appendix C to the Final Report notes that some additional changes to the rules governing lawyer advertising have already been approved by the Florida Bar Board of Governors but not have not yet been approved by the Court. The Final Report recommends even more amendments to further relax the rules governing lawyer advertising. The Florida Bar has a Standing *Advertising Committee* that is “charged with the responsibility of advising members of The Florida Bar on permissible advertising and solicitation practices” and “empowered to recommend to the board of governors such amendments to the Rules of Professional Conduct as the committee believes are appropriate.” There is no indication that the *Special Committee* conferred with the *Advertising Committee* regarding the proposals contained within the Final Report.

For the reasons set forth above, we urge the Florida Bar Board of Governors to reject the recommendation of the *Special Committee* to create a *Law Practice Innovation Lab* to experiment with the series of proposed rule changes “approved in concept.”

Thank you for the opportunity to comment and for your consideration of our perspective.

Please contact me directly at stef.zielezienski@apci.org with any questions.

Sincerely,



Joseph Stephen (Stef) Zielezienski
Florida Bar No. 0940720
American Property Casualty Insurance Association
555 12th St. N.W., Suite 550
Washington, DC 20004

From: [Mara R. Hatfield](#)
To: [SCinput](#)
Subject: COMMENTS ON THE FINAL REPORT OF THE SPECIAL COMMITTEE TO IMPROVE THE DELIVERY OF LEGAL SERVICES
Date: Friday, October 29, 2021 5:40:41 PM

It is axiomatic that lawyers have a fiduciary duty to their clients and that the members with a controlling equity interest of any business entity have a fiduciary duty to their shareholders.

A lawyer cannot and should not be expected to juggle the competing fiduciary duties that will occur if the changes suggested by the special committee take place. On the one hand, she will have a duty to her non-lawyer and less aware/less encumbered shareholders; and on the other hand, she will have a duty to her client.

This is nonsense. It frankly does not matter that these non-lawyer equity holders will not have a controlling interest. The fact is that their interest will have a modicum of control over the lawyer-members that non-lawyers should not have. The fact that the lawyers will be the controlling equity holders answering to non-lawyer members only makes their competing duties more dire, not less so.

As such, I concur with the conclusions of the White Paper submitted by the Trial Lawyers' Section of the Florida Bar, opposing non-lawyer ownership of Florida law firms.

The proposed Rule amendments:

1. add a layer of conflicts of interest;
2. deteriorate the attorney/client privilege;
3. lack proof as a solution to improving access to legal services;
4. add responsibility of lawyer oversight over non-lawyers;
5. lacks a method by which The Florida Bar can enforce rules against non-lawyers and non-lawyer businesses, and;
6. do not recognize that advances in technology can be accomplished by law firms outsourcing such needs to technology firms or employment of non- equity technology professionals, especially given the pace of advancement in this area.

I believe this neatly sums up the opinions of each of my colleagues. Moreover, I join in the opinion expressed by Ms. Laurie Briggs in her recent comment to the Board:

While this proposal professes to address multiple issues, including access to court for the underserved, it actually does nothing to insure that access will be improved, does not address the current underfunding of Legal Aid Societies throughout Florida, and creates more problems than it purports to solve...Attorneys can only serve one person, and that person is the client they have been retained to represent. Their loyalty, their decision making, their pre-litigation and litigation strategies and decisions cannot be dictated or influenced by investors (because, let's face it, that is exactly what we are talking about) and their desire for profits.

Thank you for your fine and consideration.

s/ Mara R. P. Hatfield
MARA R. P. HATFIELD
Florida Bar No.: 37053
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From: [Sean C. Dornick](#)
To: [SCinput](#)
Subject: Comments on the Report of the Special Committee to Improve the Delivery of Legal Services Report
Date: Friday, October 29, 2021 3:52:26 PM

To: The Florida Bar Board of Governors

I would like to register my opposition to the report and its recommendations. It seems like here we go again. The incredibly divisive issue of non-lawyer practice of law, fee sharing and non-lawyer ownership raises its ugly head again. Despite the fact that this issue was soundly rebuffed a few years ago, despite the surveys showing the vast majority of Florida Bar members think this is a bad idea, another committee from the Florida Bar, led by past president Jon Stewart, is pushing this idea forward. Dismissing the concerns of the lawyers who make up the Florida Bar as “This fear of change is likely more fear of the unknown” is unsupported by any citation or study. It is also an outrageous condemnation of our membership, the vast majority of whom work hard every day putting the interests of their clients at the forefront.

We all applaud efforts to legitimately increase access to justice. However, allowing nonlawyers to own or manage law firms is not the solution. In fact, it is a recipe for disaster.

I believe there is a great potential for conflicts of interest to arise, and there may well be conflicts of interest that are undetectable without significant investigation. For example, imagine the circumstance where a major insurance company creates a corporation for the purpose of purchasing a law firm. Once created, that corporation then buys a law firm, or a significant equity position in a law firm. When a client is injured in an automobile collision, they could well find themselves being represented by a firm that is owned by a corporation that is tied to the insurance company that is on the other side of the lawsuit. This situation is not limited to tort claims, these problems will exist with real property disputes, contract disputes, and a myriad of situations.

When we consider the fact that multiple levels of corporate ownership can be used to conceal, or at least make it difficult, to identify the true owners and

decision makers, there may be conflicts that exist but will be difficult to identify. I believe this will create many problems for the bench and the bar.

The rule appears to put forth an idea without adequate protections for the public. What type of investigation will need to be made in every instance to determine that conflicts of interest do not exist? Also, how will the bar monitor this situation? Will law firms owned by corporations and non-lawyers be required to identify those owners, and will those corporations be required to disclose other relationships with corporations and individuals related to those owners?

Non-lawyers and corporations are not required to attend mandatory CLE on ethics. What requirements will be imposed upon the non-lawyer owners? We used to be a profession. We hear complaints from the bench and bar about a lack of civility and professionalism by lawyers. Does anyone think that adding non-lawyers as owners will improve that problem? If non-lawyers own law firms, they will likely push back when the lawyers in the firm insist on conduct required by the ethics rules. Ethical lawyers will follow the rules, but they may face pressures—including the loss of their job—if the firm is owned by a non-lawyer. The non-lawyers could terminate the lawyer, bring in a new lawyer, and conceal the information that created the conflict or ethical violation from the new lawyer.

This rule change is fraught with peril and should not be adopted.

Thank you.

Sean C. Domnick
Shareholder
DomnickCunningham&Whalen

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From: [Jason A. McIntosh](#)
To: [SCinput](#)
Subject: Comments in Opposition to Non-Lawyer Ownership of Law Firms and Fee Sharing
Date: Friday, October 29, 2021 3:02:51 PM

Dear Members of The Florida Bar Board of Governors:

Please consider these comments as opposition to proposals in the Final Report of the Special Committee to Improve the Delivery of Legal Services dated June 28, 2021. These recommendations regarding non-lawyer ownership and sharing of attorney's fees with non-lawyers would be terrible for Florida's Civil Justice system for many reasons but here are just a few of them.

- We are told that this should be a data-driven process, but there is a push to fundamentally change the practice of law in the state of Florida with no data that such a fundamental change is necessary. If the committee wants to have a good education process, then data must be collected over several years from other states, before Florida even considers changing anything.
- There is no requirement that an entity that will be practicing through the lab must be serving an unmet need. According to the report, all that must be shown for an entity to be approved is that they are providing a consumer benefit. There is clearly a difference between the two phrases. The unmet needs have been discussed in multiple forms through various Florida Bar related groups. "Consumer benefit" has no real restrictions, but instead could be used by many corporations to justify changing the practice of law in Florida, just to save a consumer one dollar. The penny wise but pound foolish phrase comes to mind. What areas are truly in need of improved delivery of legal services in Florida and are those the areas that the non-lawyer/corporate interests will truly provide assistance?
- Page 20 of the report provides information that an entity approved in the lab will continue indefinitely. No matter what we are told, even if the lab goes away, an entity will continue in perpetuity, unless it is found to be doing harm. Unfortunately, there is no definition of harm.
- This is a backdoor for reciprocity and a way for a non-Florida lawyer to control a Florida law firm. A lawyer from another state can be the 49% owner of a law practice in Florida. If the other 51% of the firm is owned by five different people, then the majority owner is the non-Florida lawyer. How can anyone claim this is not a backdoor for reciprocity?
- The regulation of lawyers, law firms and the legal system in the state of Florida may ultimately turn over to the legislature if these changes are approved. This is based on the understanding that the Florida Supreme Court has no authority to regulate nonlawyers and corporate entities that are not law firms. I expect there are powerful forces already involved with the legislative process that would enjoy regulating legal services in the state of Florida, in addition to regulating lawyers and judges. This means

the independence of the judiciary will be gone. This obviously presents a major constitutional issue.

Just recently in the past 5 years the Bar indicated it was considering allowing non-lawyer ownership and reciprocity. This idea was shot down when the Bar realized that 81% of Florida attorneys opposed such policy due to the inherent problems outlined above. Nothing has changed but here we are yet again.

For the reasons outlined above and many others that I am sure you are hearing from my colleagues and peers in this important profession, I respectfully request the Board of Governors strongly oppose the Committee's recommendations regarding non-lawyer ownership and fee sharing.

Regards,

JASON A. MCINTOSH, ESQUIRE

PARTNER



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American Board of Trial Advocates™



November 7, 2021

The Florida Bar Board of Governors
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399

Re: **ABOTA Resolution 34 opposing non-lawyer ownership of law practices**

Dear Board of Governors:

This letter is to respectfully offer that the American Board of Trial Advocates (ABOTA) opposes any rules governing the conduct of attorneys that permit any of form of non-lawyer ownership of a law firm or the sharing of fees with non-lawyers.

As you may know, ABOTA is an invitation-only national association of 7,600 experienced trial lawyers and judges founded in 1958 and dedicated to the preservation and promotion of the Seventh Amendment to the U.S. Constitution, which guarantees the right to civil jury trials. ABOTA has embraced innovations and improvements in the civil justice system for decades. However, we have a longstanding position against the non-lawyer ownership of law firms.

The recent rule changes regarding the non-lawyer ownership of law firms and fee splitting with non-lawyers should not be adopted by the State of Florida.

In 2000, the ABOTA National Board passed Resolution 34:

Multidisciplinary Practice

ABOTA resolves to oppose efforts to change the ethical rules governing the practice of law to allow the sharing of ownership, control, and legal fees of law practices with non-lawyers (i.e., multidisciplinary practices, or “MDP”).

(January 29, 2000/July 1, 2000)

Our position against revision of ABA Model Rule 5.4 and its Florida iteration remains unchanged, whether the non-lawyer owned firms are labeled Multidisciplinary Practices, Alternative Business Structures or otherwise. While it is inarguable that the ever-increasing cost of legal services has created a barrier to the courthouse for low-income individuals and small businesses with civil claims, there have been no studies that we have found that demonstrate that Alternative Business Structures and the like improve access to justice for the poor or the middle class.

On the contrary, a 2014 study commissioned by the ABA found the following:

Access to affordable legal services is critical in a society that depends on the rule of law. Yet legal services are growing more expensive, time-consuming, and complex, making them increasingly out of reach for most Americans. Many who need legal advice cannot afford to hire a lawyer and are forced to either represent themselves or avoid accessing the legal system altogether. Even those who can afford a lawyer often do not use one because they do not recognize that their problems have a legal dimension or because they prefer less expensive alternatives. For those whose legal problems require use of the courts but who cannot afford a lawyer, the **persistent and deepening underfunding of the court systems** further aggravates the access to justice crisis, as court programs designed to assist these individuals are being cut or not implemented in the first place.

There is no evidence that non-lawyer owned law firms or fee-sharing with non-lawyers increases access to justice, they do hinder the ability of the attorney to comply with their fiduciary duty to put the interests of the client ahead of their own and that of their firm's shareholders. If Florida's commitment to increasing the access to justice is to be taken seriously, we urge the Board of Governors to examine more closely whether the tenants of the ABA study have come to fruition and ensure that court programs designed to assist low income individuals and small businesses have been implemented and fully-funded.

I have raised this issue in 2021 with the National Board of Directors and at ABOTA's State and Regional Organization meetings. I have urged lawyers among the ranks of ABOTA to come forward if they have changed their minds and now believe that rules of professional responsibility that follow ABA Model Rule 5.4 should be revised. Nobody has spoken in favor of the Alternative Business Structure. It appears that the newly-labeled access to justice push for revision of the rule is not supported by lawyers, but instead is the product of accountants and financial consultants who would profit from having access to client confidences and information that is currently protected by attorney-client privilege.

In your deliberations, we request that you consider the following:

- What type of information must be disclosed to a client to obtain informed consent of a waiver of attorney-client privilege by attorneys who practice in firms wholly or partially owned by non-lawyers?
- How will attorneys resolve inevitable conflicts with non-lawyer partners or co-owners who do not have a duty to put the client's interests before the firm's?
- How can bar associations, private lawyer groups, and the affected communities determine whether ABS is expanding legal representation to small businesses and mid and low-income individuals at the expense of eliminating jobs in those same groups?
- May an existing client invest in its law firm? If so, how could the attorneys maintaining independent judgment in legal matters? Hopefully, the rules regarding doing business with a client will not change, but as a practical matter, attorneys may be put under incredible pressure from large clients to allow them to invest in their firms.
- Can a lawyer be a passive investor in another state, even if the state licensing the attorney forbids it? ABA Formal Opinion 499 suggests the answer is "yes," but would the lawyer be subject to disciplinary action by her state bar?

- Are there other ways to provide legal services for working Americans and small businesses that avoid the creation of massive firms owned by non-lawyers?

Many of these questions have been studied for decades; none have an obvious answer. We trust that the Board of Governors will seriously consider the negative effects to the quality of legal services that will be provided in the State of Florida if the existing prohibition against non-lawyer firm ownership and fee-splitting is lifted.

Respectfully yours,

A handwritten signature in blue ink that reads "Grace Weatherly". The signature is written in a cursive, flowing style.

Grace Weatherly
President, American Board of Trial Advocates



The Manatee County Bar Association, Inc.

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November 4, 2021

The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399

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Dear President Michael G. Tanner and The Florida Bar Board of Governors:

The Manatee County Bar Association ("MCBA") opposes amending Rule 4-5.4, Fee Splitting and Law Firm Ownership to permit non-lawyer fee-splitting and non-lawyers owning law firms, as recommended by the Final Report of the Special Committee to Improve the Delivery of Legal Services, dated June 28, 2021 (the "Report").

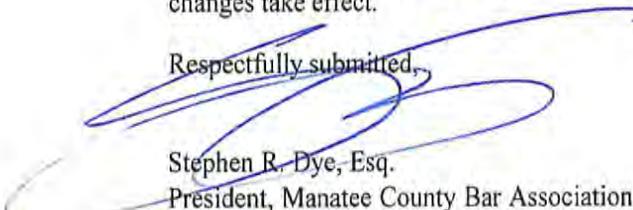
It is the position of the MCBA that the Florida Bar has the dual duty to protect citizens seeking legal services as well as to regulate, assist and protect the Bar membership which in turn protects all citizens by ensuring the orderly rule of law in American society. Florida lawyers are highly trained professionals who have passed a rigorous exam and take continuing education to stay current in the law. To suggest that lay persons be allowed to provide legal services is truly difficult to comprehend coming from the State Bar Association of all places. The basis for ethical rules and professionalism guidelines are to ensure that members of the Florida Bar have been vetted and found capable of meeting those requirements in the law. Lawyers are held to a high standard that, if not met, may subject them to punishment up to and including the loss of their license to practice law in the State of Florida. Those rules are set in place to protect all US citizens. Allowing non-lawyers to participate in the provision of legal services places both the public and society at great risk.

In order to place the public and society at such a risk, there should be a showing of substantial need for these proposed radical changes to occur. Based on the information outlined in the Report, there is not sufficient evidence of the need for these proposed changes that could justify the risks to which they will expose the public.

While the MCBA has no objection to the bar studying and revising the Rules governing Florida lawyers to improve delivering legal services to Florida's citizens, non-lawyer fee-splitting and non-lawyer's owning law firms will not accomplish that objective and in fact create an environment that will do just the opposite. In addition, the proposed changes will weaken the Florida Supreme Court's responsibility "to regulate . . . the discipline of persons admitted" to the Bar and harm lawyer professionalism.

In conclusion, it is the position of the MCBA that the proposed changes to the rules from the Final Report of the Special Committee submitted June 28, 2021, should be rejected as it related to non-attorney ownership of law firms and fee splitting with non-attorneys. The public's ability to rely on the professionalism and ethical standards of Florida attorneys would be compromised and the public can be placed at great risk should those proposed rules changes take effect.

Respectfully submitted,


Stephen R. Dye, Esq.
President, Manatee County Bar Association

From: [Doyle, Joshua](#)
To: [Bailey, Gypsy](#)
Subject: FW: Board of governors consideration of the Stewart report.
Date: Friday, November 5, 2021 4:42:08 PM
Attachments: [143 So.2d 201.pdf](#)
[152 So.2d 723.pdf](#)
[153 So.2d 343.pdf](#)

From: Burton Young <burton@ybkklaw.com>
Sent: Friday, November 5, 2021 4:39 PM
To: Tanner, Michael G <MTanner@gunster.com>; Doyle, Joshua <jdoyle@floridabar.org>
Cc: Blumberg,Robert <bblumberg@deutschblumberg.com>; Liles, Rutledge R <rliles@thelilesfirm.com>; Russomanno, Herman <hrussomanno@russomanno.com>; Aronovitz, Tod <ta@aronovitzlaw.com>; Richard F. Barry (EMERITUS) (rflaw@pacbell.net) <rflaw@pacbell.net>
Subject: Board of governors consideration of the Stewart report.

Michael, I am attaching a couple of decisions that I think should be considered by the Board when they review the Stewart report. They deal with the history of a former lawyers right to individually prohibit the unauthorized practice of law in our judicial system.

Back in 1962 my then law firm, Schnyder and Young, together with a lawyer from North Dade county, W. Barry Swope, handled a law suit seeking to enjoin a title company from

engaging in the unauthorized practice of law. That case was filed in the Circuit Court of Dade county. The Chancellor in the Circuit Court rendered a decision declaring only the Florida Bar would have a standing to sue in such a case and subsequently dismissed the case. The North Dade Bar filed an appeal in the Third District Court. The District Court reversed, that decision granted any Florida lawyer or any voluntary bar member the right to sue or prevent the unauthorized practice of law.

The District Court opinion was appealed by the title company to the Florida Supreme Court. The Florida supreme court reversed the district court as per the decision attached. At that time the Florida bar had no rule that prevented the unauthorized practice of law.

Thereafter the Supreme Court decision

was picked up by Yale Law school to become its Moot Court and pellet case for consideration. I was invited to serve as one of the Justices of Yale Law schools Moot Court of appeal. My opponent, Vincent C Giblin, was also invited to sit as one of the Justices. He declined. A North Carolina Supreme Court Justice served as another member on the court together with a senior Yale law school student. Following an “exciting” oral argument, pro et con of Yale law students before the court. The Moot Court then decided to “reverse” the Florida Supreme Court’s decision and “reinstate” the Third District’s decision granting the right of many member of the Florida Bar to restrict the unauthorized practice of law. We immediately transmitted a copy of our opinion to the “Yale Law school Court of appeals” executive director, Marshall Cassidy and his assistant Dick McFarland.

The BOG almost immediately adopted the first unauthorized practice of law rule.

Indeed, the forgoing is the Florida Bar's history of the rule on the unauthorized practice of law. It may be of interest to the BOG at the present time.

Personally, I think it would be a major mistake to have any layman involved in Law Firms as owners or otherwise. With every good wish. Burt

From: Jake Leon <jakeleon1798@gmail.com>

Date: Friday, November 5, 2021 at 12:29 PM

To: Burton Young <burton@ybkklaw.com>

Subject: Cases

I attached the Supreme Court case and two appellate decisions. I could not find the trial court decision anywhere.

Love,
Jake

Please note: Florida has very broad public records laws. Many written communications to or from The Florida Bar regarding Bar business may be considered public records, which must be made available to anyone upon request. Your e-mail communications may therefore be subject to public disclosure.

ably find that payments of unearned premiums to policyholders were properly made.

[5, 6] Appellant further assigns as error that any indebtedness to appellee had been paid prior to the filing of this suit, namely, July 31, 1954. This is an affirmative defense and the burden of proof was upon the appellant to convince the jury that all such payments had been made to the appellee, if any were due. The jury chose to return a verdict for the appellee, based on the evidence before it.

We have considered the remaining questions presented by appellant, but fail to find any harmful or prejudicial error. We conclude the evidence presented to the jury was sufficient, if believed, to support the judgment.

[7] The appellee has cross assigned as error the failure of the court to charge the jury that there should be included in the verdict, if they found for the appellee, interest on the amount due at the rate of six per cent from the date such sum became finally due. The appellee contends under this assignment that this court should remand the cause with directions that the judgment should be amended to include interest on the amount of the verdict returned by the jury, but does not ask that the cause be reversed on the basis that the failure to give the charge was error. Although it may have been error to fail to give the charge as requested, nevertheless, the relief now sought in this court is the addition of interest to the judgment returned by the jury as a part of the judgment. This court is not in a position, nor does it have the authority under the current decisions, to direct the trial court to add interest to a judgment which was not included in the jury verdict. We conclude that the appellee's cross assignment is not well taken and in light of the relief requested is governed by the case of *Bailey v. Swartz*, Fla.App.1957, 97 So.2d 310, and the cases cited therein.

Accordingly the judgment appealed is affirmed.

Affirmed.

CARROLL, Judge (concurring specially).

I concur in the judgment, and agree that the action was upon an obligation founded on a written instrument and therefore was maintainable within the five-year limitation period, as provided for in § 95.11(3), Fla. Stat., F.S.A.

However, I do not agree that the paragraph of the written agency contract, quoted in the opinion, furnishes a direct basis for the claim asserted by plaintiff. That provision of the contract related to payments and duties other than those directly involved here. Although not spelled out by the particular paragraph, it seems clear that the agent's right to be reimbursed for premiums returned by it to former policyholders is derived from the agency contract. This right, implied from the relation of the parties as created by the written contract, is as much a part of that contract as any express term thereof. See *McGill v. Cockrell*, 88 Fla. 54, 101 So. 199.



NORTH DADE BAR ASSOCIATION, INC.,
a non-profit corporation of Florida, and
Joe E. Ludick, Appellants,

v.

DADE-COMMONWEALTH TITLE INSURANCE CO., a Florida corporation; **The Drummond-Blow Co.,** a Florida corporation; and **National Title Insurance Co.,** a Florida, corporation, **Appellees.**

No. 61-529.

District Court of Appeal of Florida.

Third District.

June 26, 1962.

Rehearing Denied Aug. 10, 1962.

A voluntary area bar association brought suit against title companies for a declaratory decree that certain practices

of the title companies constituted an unauthorized practice of law and for an injunction to restrain such practice. An attorney, who was a member of the association, filed a petition to intervene as a party plaintiff. The Circuit Court for Dade County, John J. Kehoe, J., rendered a final decree dismissing the complaint and denying the petition to intervene, and the association and the attorney appealed. The District Court of Appeal, Pearson, Tillman, C. J., held that the association and the attorney could maintain the suit.

Reversed and remanded.

Attorney and Client ⇨11

Declaratory Judgment ⇨292

Voluntary area bar association and attorney, who was member thereof, had right to maintain suit for declaratory decree that certain practices by title companies constituted unauthorized practice of law and for injunction to restrain such practice. 31 F.S.A. Integration Rule of Florida Bar, Preamble, subd. (a); art. 2, subd. 2; art. 3, subd. 3.

Snyder, Young & Stern, North Miami Beach, and W. Barry Swope, Miami Shores, for appellants.

Sibley, Grusmark, Giblin, King & Levenson, Miami Beach, for appellees.

William H. Rogers, Jacksonville, Amicus Curiae.

Before PEARSON, TILLMAN, C. J., and CARROLL and HENDRY, JJ.

PEARSON, TILLMAN, Chief Judge.

The North Dade Bar Association, Inc., is a nonprofit corporation, the members of which constitute a voluntary, area bar association. All of the members of this voluntary association are also members of The Florida Bar as required by Section 2, Article 2, Integration Rule, The

Florida Bar, 31 F.S.A. The North Dade Bar Association is one of the appellants here. Joe E. Ludick, the individual appellant, is a practicing attorney in the North Dade area and is also a member of the North Dade Bar Association and The Florida Bar.

Dade-Commonwealth Title Insurance Company, The Drummond-Blow Title Company and National Title Insurance Company are all corporations for profit doing business in the North Dade area. They are the appellees. The North Dade Bar Association appeals the final decree which dismissed a complaint brought by it against the title companies; and appellant, Ludick, joins in the appeal and assigns as error that portion of the final decree which denied his petition to intervene as a party plaintiff. We reverse.

The voluntary bar association filed its complaint against the companies named seeking a declaratory decree as to whether certain claimed practices by the title companies constituted the practice of law. The complaint further prayed that if it were determined that the corporations were engaged in the unauthorized practice of law, the court would grant an injunction prohibiting such practice. Mr. Ludick sought to intervene. Subsequently, the circuit judge entered the decree appealed. The decree of dismissal set forth the basis of the court's decision:

"The court is of the opinion, and holds, that neither a private nonprofit corporation (such as the plaintiff) nor an individual lawyer has the standing to sue in a case of this character; and that such a suit may be instituted and maintained only by the integrated Florida Bar.

"Accordingly, the motions of the defendants Dade Commonwealth Title Insurance Co. and The Drummond-Blow Title Co. and the motion of the defendant National Title Insurance Co. for a decree on the pleadings are,

and each of them is, granted, without leave to the plaintiff to amend its complaint.

"The motion of Joe E. Ludick for leave to intervene is denied."

The question of the jurisdiction of the circuit court to entertain an action of this type has not been raised. Nevertheless, because of the recent opinion of the Supreme Court of Florida (filed after the decree of dismissal herein appealed) in *State of Florida ex rel. Florida Bar v. Sperry*, Fla.1962, 140 So.2d 587, we think the question of jurisdiction must be considered. The *Sperry* case points out that under the Constitution of the State the Supreme Court has exclusive control over admissions to the practice of law and the discipline of persons admitted; and by virtue of this constitutional grant the Supreme Court has original jurisdiction of a petition filed by The Florida Bar to require one allegedly engaged in the unauthorized practice to show cause why he should not be enjoined from such practice.

Even though the holding of that case (as it pertains to jurisdiction) is that the Supreme Court of Florida has the power to prevent the practice of law by those who are not admitted to practice in Florida, it does not follow that such jurisdiction precludes the exercise of a like power by other courts of this State. See *State v. Sullivan*, 95 Fla. 191, 116 So. 255, 259. *State ex rel. York v. Beckham*, 160 Fla. 810, 36 So.2d 769, 772. We therefore proceed to a discussion of the questions presented by this appeal.

The appeal turns upon the question of whether or not a voluntary bar association and an individual lawyer, or either of them, have a right to bring an action seeking to prevent the unauthorized practice of law. There are strong arguments for allowing a local bar association or an individual lawyer to call to a court's attention those who engage in the unauthorized

practice of law. The local lawyer is closest to the problem. He sees and is affected by the continuing erosion of those fields of activity which are traditionally the area in which the lawyer works and makes his living. If enforcement of this matter is to be upon a complaint basis, who is in a better position to make the complaint than those upon the scene and vitally interested?

It is to ignore the obvious to overlook the fact that the local lawyer is the first to realize the economic loss which results from the unauthorized practice of law in his community. But it is nevertheless true that lawyers have no interest in any field of activity to the exclusion of the interests of the public. As so clearly expressed by Mr. Justice O'Connell in *State of Florida ex rel. Florida Bar v. Sperry*, Fla.1962, 140 So.2d 587, 595:

"The reason for prohibiting the practice of law by those who have not been examined and found qualified to practice is frequently misunderstood. It is not done to aid or protect the members of the legal profession either in creating or maintaining a monopoly or closed shop. It is done to protect the public from being advised and represented in legal matters by unqualified persons over whom the judicial department can exercise little, if any, control in the matter of infractions of the code of conduct which, in the public interest, lawyers are bound to observe."

It appears, therefore, that it is the public's right to protection which is being asserted. Our question thus narrows: Does a voluntary bar association or an individual lawyer have standing in court to enforce this public right?¹

Turning to the Florida cases, we find that voluntary bar associations and individual lawyers have been unchallenged in their capacity as plaintiffs in suits to restrain

1. See cases collected in *Annots.*, 73 A.L.R. 1327; 94 A.L.R. 359; 157 A.L.R. 282.

the unauthorized practice of law. The Florida Bar was integrated by rule of the Supreme Court in 1949. *Petition of Florida State Bar Association*, Fla.1949, 40 So.2d 902. In 1950, the appeal in *Keyes Co. v. Dade County Bar Association*, Fla. 1950, 46 So.2d 605, was decided. It is apparent that although the opinion was subsequent to the integration rule, the action was instituted prior to the rule. We must assume from the opinion that no question was raised as to the right of the voluntary bar association to bring a suit to clarify the line of demarcation between the field of activity of the lawyer and that of the real estate broker. The injunctive order secured by the voluntary bar association was affirmed in part.

In *Cooperman v. West Coast Title Company*, Fla.1954, 75 So.2d 818, the original plaintiffs were members of The Florida Bar and officers of the St. Petersburg Bar Association. The Florida Bar was permitted to intervene in the trial court. The question of the capacity of the plaintiffs to sue is not discussed.

More recently, the Florida Supreme Court considered the case of *Jacksonville Bar Association v. Wilson*, Fla.1958, 102 So.2d 292. The suit was instituted by a member of The Florida Bar suing for himself and as a representative of a class described as "all attorneys who are not members of the Jacksonville Bar Association * * *." The issue was whether the local voluntary bar association could advertise its lawyer reference service. Again the question of the capacity of the individual lawyer to bring the action for declaratory decree was not questioned.

It thus appears that we have no direct precedent in Florida, but it can be said that the right of individual lawyers and voluntary bar associations to bring similar suits has not been questioned in the past.

We have examined the reported cases from several other jurisdictions as cited by the parties. In addition we have sup-

plemented this list by further search. Those cases decided after the integration of the bar in the various states having done so are of particular interest.

We are impressed by the reasoning of the Court of Civil Appeals of Texas set forth in *Bar Association of Dallas v. Hexter Title and Abstract Co.*, 175 S.W.2d 108 (Tex.Ct.Civ.App.1943). The court held that the rule of the Supreme Court of Texas relating to the State Bar of Texas was cumulative; and any interested lawyer or group of lawyers, or any bar association composed of licensed Texas lawyers, might avail themselves of the right to enjoin the unauthorized practice of law. The case was taken upon writ of error to the Supreme Court of Texas and the judgment affirmed, *Hexter Title & Abstract Co. v. Grievance Committee*, 142 Tex. 506, 179 S.W.2d 946, 157 A.L.R. 268 (1944); but the question of the right of the Bar Association of Dallas to bring the suit was not dealt with further because that bar association had been eliminated from the suit in the trial court upon a different ground. We recognize that the discussion of the lower court in this case may have been obiter dicta.

A most complete citation of authority for the proposition that a court of equity has jurisdiction to prevent by injunction the unauthorized practice of law by a layman when such relief is sought by attorneys at law acting for themselves and other affected members of the legal profession or by a duly constituted and recognized bar association, is found in *West Virginia State Bar v. Earley*, 144 W.Va. 504, 109 S.E.2d 420, 428, 429 (1959). The suit was by the West Virginia State Bar, a statutory association, and by individual lawyers to enjoin a layman from the practice of law. The injunctive decree was affirmed. The case has been cited with approval (upon another point) in the opinion of the Supreme Court of Florida prepared by Mr. Justice O'Connell and discussed above. *State of Florida ex rel. Florida Bar v. Sperry*, Fla.1962, 140 So.2d 587.

The appellee suggests that the chancellor relied heavily upon the reasoning of the Court of Appeals of Maryland in *Bar Association of Montgomery Co. v. District Title Ins. Co.*, 224 Md. 474, 168 A.2d 395 (1961). This case dealt exclusively with the right of a voluntary bar association to bring an action to prevent the unauthorized practice of law. It was held that in the absence of statutory authority there was no basis for holding that bar associations, in the guise of private nonprofit membership corporations, have a right to sue to restrain the unlawful practice of their profession. The opinion is closely reasoned, and it represents the view of a number of states. We decline to follow it because in our opinion it is not in agreement with the law of this State, where for many years the courts have not questioned the right of local bar associations to raise the issue. *Keyes Co. v. Dade County Bar Ass'n*, Fla.1950, 46 So.2d 605. *Cooperman v. West Coast Title Company*, Fla.1954, 75 So.2d 818.

Rather than decide whether or not the appellants are the only proper parties to bring a suit of this nature, we choose to decide that appellants, voluntary bar association and individual practitioner, may do so. We recognize, however, that strong reasons exist to support the rule advanced by the chancellor that only The Florida Bar could be a proper party plaintiff in this suit. Among these reasons are those portions of the Integration Rule (1) recognizing The Florida Bar as an official arm of the Supreme Court;² (2) prohibiting the practice of law in this State unless a person is an active member in good standing of The Florida Bar;³ and (3) granting the Board of Governors the power and duty to administer the rule.⁴

2. Section (a), Preamble, Integration Rule, The Florida Bar, 31 F.S.A.

3. Section 2, Article 2, Integration Rule, The Florida Bar, 31 F.S.A.

Further, it can be argued that it was the intention of the Supreme Court to designate The Florida Bar as the exclusive body to aid the courts in stemming the flow of unauthorized practice of law; and that sense dictates the public will be better served by the unification in The Florida Bar of the efforts directed toward the problem since sporadic suits by individuals or local organizations can accomplish little.

We do not overlook those cases holding that the right to practice law is in the nature of a property right, and the practicing attorney may therefore seek to enjoin unauthorized practice. *Dworken v. Apartment House Owners' Ass'n of Cleveland*, 38 Ohio App. 265, 176 N.E. 577 (1931). *Fitchette v. Taylor*, 191 Minn. 582, 254 N.W. 910, 94 A.L.R. 356 (1934). However, we base our holding upon a different ground.

It is strongly argued that neither the voluntary bar association nor the individual lawyer is a proper party plaintiff in a suit to enjoin the alleged unauthorized practice of law because neither alleged any injury or damage peculiar to itself and which is not being sustained by the general public. Thus, appellee argues that the rule which has grown out of suits to enjoin public nuisances should be applied to a suit to enjoin the illegal practice of law because the public is being protected in each case.

This general rule is, we believe, best stated in Restatement, Torts, Chapter 40, Invasion of Interests in Private Use of Land (Private Nuisance), Introductory Note:

“* * * A public nuisance is an offense against the State, and as such is subject to abatement or indictment

4. Section 3, Article 3, Integration Rule, The Florida Bar, 31 F.S.A.

on the motion of the proper governmental agency. A private nuisance is a tort to a private person, and actionable by him as such. A public nuisance may arise from an interference with the use by the public of a public place, such as a highway, navigable river, or park, the privilege to use which is given by the State or a municipal subdivision. Other acts and omissions may be found to be public nuisances at common law or declared to be such by statute. This is often the case in respect to such things as gambling dens and houses of ill fame. So also an activity or a physical condition which endangers the health, safety or property of a considerable number of persons may be a matter of public concern and may be a public nuisance.

* * * * *

"* * * An individual cannot maintain an action for a public nuisance as such. But when an individual suffers special damage from a public nuisance, he may maintain an action."

See also 1 Harper & James, *The Law of Torts* § 1.23 at 64-65. This rule has been applied in Florida to suits to enjoin a zoning violation. *Boucher v. Novotny*, Fla. 1958, 102 So.2d 132.

In the instant case, it is true that it is the public's right and not the lawyer's right which is invaded by the unauthorized practice of law. We have seen that by definition a public nuisance is one where a public right is obstructed; but is the right which the public has in proper access to the courts the same type of right that the public has to unobstructed roads? It appears to us that there is room for a distinction, and we need not extend that application of the rule into this area.

From another viewpoint, it readily seems that every lawyer, as an officer of the court, has a special interest in the proper functioning of the judicial processes. Thus, he ought not be barred from

the privilege of calling the court's attention to those who strike at its strongest ally—a cohesive and dedicated bar. It follows that if the individual lawyer may be a plaintiff in a suit asking the court to enjoin the unauthorized practice of law, a voluntary association of lawyers ought also be a proper party plaintiff.

The history of the law demonstrates that such associations have had a large part in the organization and training of the bar. The Integration Rule of The Florida Bar, and that of other state bars, is a recognition of this function; but this is a relatively new approach to a very old problem. It may be a part of wisdom not to cast aside so quickly the time-tested approach to these same problems. Having reached this conclusion, the order dismissing the complaint of the North Dade Bar Association is reversed as is the order denying the petition of Attorney Joe E. Ludick; and the cause is remanded for further proceeding in accordance with the views expressed in this opinion.

Reversed and remanded.



CENTRAL BANK AND TRUST COMPANY,
a Florida banking corporation, Appellant,

v.

A. M. TYLER, Appellee.

No. 61-679.

District Court of Appeal of Florida.

Third District.

June 26, 1962.

Rehearing Denied Aug. 8, 1962.

Action on guaranty contract. The Circuit Court, Dade County, Pat Cannon, J., entered summary judgment for the guarantor, and the obligee appealed. The

effort or strain on the history related to him by the claimant.

It is worthy of note here that Dr. Halpern expressed the view that seems to relate strain and the question of whether it is excessive or unusual to the individual involved, rather than to the ordinary requirements of the employment. It was his opinion that unusual strain or stress could be unusual every day even though it arose out of work which was habitually or regularly performed by the individual and normally required by his employment.

Dr. Halpern's view is interesting and understandable, but it is directly opposed to the position adopted by this Court in the Victor Wine case in which we established the usual and ordinary requirements of the employment as the norm and held that a disabling heart condition occasioned by exertion or strain normal to the employment would not be compensable.

[3] Returning to the testimony of Dr. Halpern indicating that his opinion, that the lifting incident here involved constituted unusual effort or strain, was based on the history given him by claimant, we are forced to the conclusion that there is no evidence in the record to support this history and therefore the opinion must be held to have no evidentiary value. Arkin Construction Co. v. Simpkins, Fla.1957, 99 So.2d 557.

Neither the claimant's testimony nor any other evidence in the record establishes that the lifting incident of August 27th was unusual or not routine to his employment. He testified that he had handled the identical type gas refrigerator on several occasions prior to the pertinent date. There is no evidence showing that moving appliances of the size and weight of these refrigerators was not routine to the employment. The absence of a helper on this date is not significant for claimant testified that the helper assigned to him on other occasions was an elderly man who gave little or no assistance.

Claimant's employer testified that the moving of appliances weighing as much as 350 pounds was routine to claimant's work.

[4] With Dr. Halpern's opinion stripped of evidentiary value the record is left devoid of competent substantial evidence that the lifting incident of August 27th constituted unusual strain or overexertion not routine to the type of employment in which claimant was engaged so as to bring it within the rule laid down in the Victor Wine case. It follows that the orders of the deputy and the full commission must be reversed on authority of that case.

Accordingly, the petition for writ of certiorari is hereby granted, the order of the full commission quashed, and the cause remanded with directions to the commission to enter an order quashing the order of the deputy commissioner.

ROBERTS, C. J., and TERRELL,
THOMAS and CALDWELL, JJ., concur.



DADE-COMMONWEALTH TITLE INSURANCE CO., the Drummond-Blow Title Co., and National Title Insurance Company, Petitioners,

v.

NORTH DADE BAR ASSOCIATION, INC.,
and Joe E. Ludick, Respondents.

No. 32079.

Supreme Court of Florida.

April 19, 1963.

Rehearing Denied May 21, 1963.

Suit by local bar association and an individual attorney brought against title companies for a declaratory decree that certain practices of title companies constituted unauthorized practice of the law. The Cir-

cuit Court, Dade County, dismissed the complaint, and the association and the attorney appealed. The District Court of Appeal, Third District, 143 So.2d 201, reversed and remanded, and certiorari was granted. The Supreme Court, Thomas, J., held that local bar association and individual lawyer did not have standing to bring an action against title companies for declaratory judgment that acts of title companies in causing legal documents to be prepared by servants or agents in consummating real estate transfers and mortgages amounted to unauthorized practice of law.

Decision of District Court of Appeal quashed and the decree of the chancellor reinstated.

1. Declaratory Judgment \S 300

Local bar association and individual lawyer did not have standing to bring an action against title companies for declaratory judgment that acts of title companies in causing legal documents to be prepared by servants or agents in consummating real estate transfers and mortgages amounted to unauthorized practice of law. F.S.A.Const. art. 5, §§ 4(2), 5, 23; 31 F.S.A. Integration Rule of Florida Bar, art. 1 et seq.

2. Injunction \S 114(2)

Rule concerning the interest that need be shown to entitle an individual to bring suit to enjoin a public nuisance is applicable to a suit by an attorney to enjoin allegedly unauthorized practice of law. F.S.A.Const. art. 5, §§ 4(2), 5, 23; 31 F.S.A. Integration Rule of Florida Bar, art. 1 et seq.

Sibley, Grusmark, Giblin, King & Levenson and Vincent C. Giblin, Miami Beach, for petitioners.

Snyder, Young & Stern, No. Miami Beach, and W. Barry Swope, Miami Shores, for respondents.

Wm. H. Rogers, Jacksonville, amicus curiae.

THOMAS, Justice.

This controversy had its inception in a complaint filed by North Dade Bar Association described as a corporation not for profit composed of lawyers practicing in the northern section of Dade County. The defendants were averred to be corporations engaged in business as title companies representing dealers in real estate and receiving compensation for their services "under the guise or subterfuge" that the money was received as "escrow" fees and so on. Furthermore, the defendants were alleged to be causing legal documents to be prepared by servants or agents in consummating real estate transfers and mortgages all of which activities on the part of the defendants were charged by the plaintiffs to be unlawful and unethical.

It was prayed that the court declare that such actions of the defendants amounted to practicing law and enjoin their continuance.

The chancellor held the opinion that neither a private non-profit corporation nor an individual lawyer had standing to bring such a suit and that it could be instituted only by The Florida Bar. So he dismissed the cause.

When the matter reached the District Court of Appeal it was recognized that the Supreme Court had "exclusive jurisdiction over the admission to the practice of law and the discipline of persons admitted," Sec. 23, Art. V of the Constitution, F.S.A., and the power to punish for contempt anyone indulging in the unauthorized practice of law, State of Florida ex rel. The Florida Bar v. Sperry, Fla., 140 So.2d 587, but the court thought it did not follow that such jurisdiction precluded other courts from exercising a like power. We pause here to observe that this thought does not seem to give full meaning to the word "exclusive" used in the quoted organic law.

The court then proceeded to give reasons why a local bar association or an individual lawyer might well be fitted by familiarity with the locale "to call to a court's atten-

tion those who engage in the unauthorized practice of law." The court pointed to the expression in *State v. Sperry*, supra, that, after all, the chief concern in curbing or prohibiting the unauthorized practice is the protection of the public and continued by posing this rhetorical question: "Does a voluntary bar association or an individual lawyer have standing in court to enforce this public right?"

Then the court meticulously reviewed cases in this and other jurisdictions relevant to the question framed and concluded, as it was conceded by respondents, that there was no direct precedent to be followed but that the right of individuals and local bars to institute and maintain such suits had not been questioned, citing among other decisions *Petition of Florida State Bar Association*, Fla., 40 So.2d 902; *Keyes Co. v. Dade County Bar Association*, et al., Fla., 46 So.2d 605; *Cooperman et al. v. West Coast Title Co.*, et al., Fla., 75 So.2d 818, and *Jacksonville Bar Association v. Wilson*, Fla., 102 So.2d 292.

The court also referred to a decision of the Supreme Court of West Virginia, *West Virginia State Bar et al. v. Earley*, 144 W. Va. 504, 109 S.E.2d 420, in which a decree granted at the behest of a statutory association and individual lawyers was affirmed.

The chancellor had leaned heavily on a decision of the Court of Appeals of Maryland in *Bar Association of Montgomery Co. v. District Title Ins. Co.*, 224 Md. 474, 168 A.2d 395, that without statutory authority bar associations acting as private corporations could not sue to enjoin unlawful practice. The District Court of Appeal declined to follow the case, however, because it was thought to be inharmonious with decisions in this State where for many years the courts had not "questioned" the right of bar associations to maintain such suits.

The district court observed that there were cogent reasons supporting the chan-

cellor's decision that The Florida Bar alone could bring a suit of this nature, namely, the integration rules naming The Florida Bar an official arm of the Supreme Court, which as we have written, has exclusive jurisdiction over admission to practice and discipline of those admitted, the prohibiting of practice by persons not members of The Florida Bar in good standing and the grant to the Board of Governors of The Florida Bar of the power and duty to enforce the rule. Moreover, thought the court, there would be considerable strength to the position that procedure by the one agency of the court would be more effective in accomplishing the purpose in mind than sporadic action by individuals or corporations.

Upshot of the court's opinion on this phase of the litigation was that the suit was properly brought by the respondents.

The court then proceeded to decide the second feature of the case, that is, whether or not the respondents were proper parties plaintiff since none of them had shown a damage not being suffered by the general public, it having been the argument of appellees, now petitioners, that the rule with reference to public nuisances should apply and that pursuant to it the appellants-respondents could not prevail in the absence of a showing that the injury to them was different in kind, as distinguished from degree, from that undergone by the general public. This contention is based primarily on the expression of this court in *State ex rel. The Florida Bar v. Sperry*, supra, that the purpose of prohibiting the practice of law by those unqualified is the protection of the public not the protection of the members of the legal profession. This afforded the foundation for the district court's succinct pronouncement that it was "the public's right to protection which [was] being asserted" in this case.

The court held the view that the rule should not be extended to cases such as the present one.

When the controversy was terminated by reversal of the chancellor's decree the district court certified the question as being one of great public interest, Sec. 4(2), Art. V, so the condition precedent to our exercise of jurisdiction was met and we will decide it.

[1] The full purpose of integrating the bar was expounded in the opinion of this court in *Petition of Florida State Bar Association et al.*, supra. Paramount in the thorough consideration of the movement was the protection of the public by consolidation of the attorneys in one body and under one supervision. The movement was studied deliberately and unhurriedly with great care and when that decision was adopted the die was cast.

After the petition to integrate the bar was approved, in 1949, the court implemented the decision by adopting rules, governing the Integrated Bar, designed to "inculcate in its members the principles of duty and service to the *public*, to improve the administration of justice" and "The Florida Bar, a body created by and existing under the authority of this Court, [was] charged with the maintenance of the highest standards and obligations of the profession of law, and to that end [was] vested by this Court, in the exercise of its inherent powers over The Florida Bar *as an official* arm of this Court, with the necessary powers and authority." (Italics supplied.)

It is obvious to us that it was the intention and purpose of this court, as well as those who sponsored the integration movement, to place the admission of attorneys and the discipline of those admitted, all of it in this court and the plan was clinched when by the adoption of the amendment of Art. V of the Constitution in 1956 the provision we cited at the outset was included. It was stipulated in the same section that the court could provide for the handling of disciplinary matters by "commissions consisting of members of the bar to be designated by it, the supreme court, subject to its supervision and review." And that is precisely

what the court has achieved by making The Florida Bar its arm for the entertainment and disposition of such matters under the court's supervision.

The petitioners pose the pertinent question whether support could be mustered for the position that corporations or individuals could prosecute some sort of proceeding to discipline a member of the bar.

We think order has been brought to the whole subject by the integration of the bar and the adoption of the integration rule, and that confusion, if not chaos, would result from independent proceedings of this sort by the 8500 lawyers and 57 bar associations now present in this State. Were we to adopt the attitude of the District Court of Appeal that although the Supreme Court has the power to prevent the unauthorized practice of law, it does not follow that the power of other courts is precluded, we think it would be necessary to ignore the word "exclusive" in the relevant Constitutional provision already quoted.

For the reasons stated we decide that the respondents were not authorized to bring the suit.

[2] Moreover, we must disagree with the District Court's conclusion that the rule with reference to the interest that need be shown to entitle an individual to bring suit to enjoin a public nuisance is not applicable to a factual situation such as that with which we are now dealing. We discern no difference in the basic principle. We cannot accept as accurate the statement of the District Court of Appeal that since "every lawyer * * * has a special interest in the proper functioning of the judicial processes" he therefore "ought not to be barred from the privilege of calling the court's attention to those who strike at its strongest ally—a cohesive and dedicated bar." True, every upright lawyer has an interest in the fair, efficient and speedy administration of justice but it cannot be said that an injury to his sense of proper judicial administration is different in kind,

as distinguished from degree, from the injury to another of his status and ideals. And certainly to hold that he individually cannot sue does not mean that he is prevented from directing this Court's attention to any infraction or misdeed of another. He simply must go to the proper court so the matter may be determined by procedure in channels which have been charted long since. But in all such instances the ultimate decision shall rest in the Supreme Court.

We have endeavored to solve both problems embedded in the question certified.

It is our conclusion that the decision of the District Court of Appeal be quashed and the decree of the chancellor reinstated.

**ROBERTS, C. J., and TERRELL,
DREW and THORNAL, JJ., concur.**



Dennis Manafort WHITNEY, Petitioner,
v.

**H. G. COCHRAN, Jr., as Director of the
Division of Corrections, Respondent.**

No. 31516.

Supreme Court of Florida.

April 19, 1963.

Rehearing Denied May 22, 1963.

Original proceeding on petition for writ of habeas corpus after conviction and death sentence for murder. The Supreme Court, Thornal, J., held, inter alia, that the evidence established that in preparing stipulation of essential but unembellished facts of homicide, defense counsel acted in good faith without collusion, and that defendant and his family joined therein with full knowledge of the risk assumed and without

promise of leniency as a tactical maneuver in effort to obtain recommendation of mercy, and that defendant thereby knowingly waived constitutional rights to confront and cross-examine witnesses against him and to be protected against self-incrimination and was not deprived of due process of law.

Writ discharged and petitioner remanded to custody.

1. Habeas Corpus ⇨90

In post conviction habeas corpus proceedings involving factual issues requiring evidentiary support, practice of Supreme Court is to appoint a commissioner to receive evidence and submit his findings and recommendations to the court.

2. Criminal Law ⇨885

Where trial is had before jury, recommendation of leniency is solely within province of jury. F.S.A. § 919.23(2).

3. Constitutional Law ⇨268

Criminal Law ⇨662(8)

Habeas Corpus ⇨85.5(1)

In habeas corpus proceeding after conviction and death sentence for murder, evidence established that in preparing stipulation of essential but unembellished facts of homicide, court-appointed defense counsel acted in good faith without collusion with state and that defendant and his family joined in stipulation with full knowledge of risk assumed and without promise of leniency as tactical maneuver in effort to obtain recommendation of mercy and that defendant thereby knowingly waived constitutional rights to confront and cross-examine witnesses against him and to be protected against self-incrimination and was not deprived of due process of law. F.S.A. §§ 782.04, 919.23(2).

4. Habeas Corpus ⇨25.1(1)

Any tactical error by defense counsel in preparing stipulation of essential but un-

the parsonage or specific personalty in the minority and insofar as it decrees reimbursements concerning that property. In all other respects the decree is affirmed.

SHANNON, C. J., and SMITH, J., concur.



NORTH DADE BAR ASSOCIATION, INC.,
a non-profit corporation of Florida, and
Joe E. Ludlck, Appellants,

v.

DADE-COMMONWEALTH TITLE INSURANCE CO., a Florida corporation; **The Drummond-Blow Co.,** a Florida corporation; and **National Title Insurance Co.,** a Florida corporation, **Appellees.**

No. 61-529.

District Court of Appeal of Florida.

Third District.

May 23, 1963.

Appeal from Circuit Court for Dade County; John J. Kehoe, Judge.

Conforming to opinion, 152 So.2d 723, which quashed 143 So.2d 201.

Snyder, Young & Stern, North Miami Beach and W. Barry Swope, Miami Shores, for appellants.

Sibley, Grusmark, Giblin, King & Levenson, Miami Beach, for appellees.

William H. Rogers, Jacksonville, amicus curiae.

Before PEARSON, TILLMAN, C. J., and CARROLL and HENDRY, JJ.

PER CURIAM.

Whereas, the judgment of this court was entered on the 26th day of June, 1962 (Fla.

App., 143 So.2d 201) reversing the decree of the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, in the above styled cause; and

Whereas, on review of this court's judgment, by certiorari, the Supreme Court of Florida, by its opinion and judgment filed April 19, 1963 (152 So.2d 723) and mandate dated May 21, 1963, now lodged in this court, quashed this court's judgment of reversal and directed that the decree of the chancellor be reinstated;

Therefore, it is Ordered that the mandate of this court issued in this cause on August 10, 1962, is withdrawn, the judgment of this court filed June 26, 1962, is vacated, the opinion and judgment of the Supreme Court of Florida is herewith made the opinion and judgment of this court, and the said decree of the circuit court appealed from in this cause is reinstated and affirmed; costs allowed shall be taxed in the circuit court (Rule 3.16, subd. b, F.A.R., 31 F.S.A.).



John R. BROXSON, Appellant,

v.

DONALD S. LAVIGNE, INC., a Florida corporation, **Appellee.**

No. 62-683.

District Court of Appeal of Florida.

Third District.

May 21, 1963.

Action for goods sold to the defendant while he was sheriff. The Civil Court of Record for Dade County, J. Gwynn Parker, J., rendered summary final judgment against the defendant, and he appealed. The District Court of Appeal held that sheriff was personally liable for goods which he had

From: [Ysabel Hernandez](#)
To: [SCinput](#)
Subject: Re: FL's plan to allow non-lawyers to provide legal services and have an ownership interest in law firms
Date: Wednesday, November 10, 2021 3:23:38 PM

Thanks for your response. While allowing non-lawyers to provide legal services is a very dangerous proposition, if done carefully and with specific and strict parameters as to what non-lawyers are allowed to do, it can be very beneficial to the public. I will speak about the area of law I specialize in, Immigration Law. A lot of my colleagues are up in arms about this idea because they see it as a threat to our practices. However, even though immigration law necessarily includes a heavy form driven process, I consider completing and filing the appropriate forms a fraction of the case and not the case itself. In my experience strategy, keeping up with the quickly changing immigration landscape and setting realistic and viable expectations is what we lawyers should be focusing on and not filling out forms. I believe leveraging technology to be used by non-lawyers structured in a way that would either allow the non-lawyer to move forward with the process or identify red flags that will warn the non-lawyer to refer the case to a lawyer who will employ their experience and expertise to handle the difficult more intricate matters. For example, I came to the United States as a green card holder when I was 16 years old. I never lived in the United States illegally and obtained my status through my mother at the American Embassy in my home country before entering the United States. About three years later, I lost my green card. I went to the local USCIS office, got the form to replace the lost document, completed it and sent it in. A few months later, I had my new green card. This was an easy process for me because I spoke English. Now change the facts to someone who doesn't speak English or doesn't know where to go to obtain the documents or simply doesn't have the time or desire to handle the process by themselves. In this situation, I see no real need to hire a high level expensive attorney to handle this matter. A competent person who can read and comprehend English and follow the form instructions could easily complete the necessary paperwork and file it with the corresponding authorities without a lawyer's involvement. Now let's change the facts again. Say the person has been arrested or obtained their residence through a short-lived marriage. In this instance the same process may require a competent immigration attorney who can explain to the person potential pitfalls and risks they may find along the way. A competent attorney may be required in this instance because, depending on the arrest type and charges, the person may be putting themselves at risk of deportation. An assessment as to whether the criminal matter makes the person deportable needs to be made and then, if the person is deportable, they need to be made aware of the risks associated with going through the process. Additionally, the person needs to be aware of any defenses in immigration court should they find themselves in deportation proceedings. The latter is an example of a seemingly simple process morph into an extremely complex legal issue.

I believe the non-lawyer needs to use tools to green-light the process and move forward in a given matter and red-light when they have to stop and refer to a competent attorney. Perhaps immigration lawyers could buy into a scheme where the lawyer gets the referrals from a certain number of offices where a non-lawyer has an interest but the attorney will structure reliable systems using technology to alert the non-lawyer to refer the matter to the lawyer overseeing their office. I look forward to seeing some positive change that will open up more opportunities for the public to access competent services in the legal immigration landscape allowing lawyers to focus on the more complex legal issues while giving some autonomy to competent non lawyers to help our communities with the less complex pieces of legal matters. I would love to be involved in this process if possible.

Sincerely,

Ysabel M. Hernández, Attorney-at-Law
Hernández Law Center, P.A.
3015 Tina Marie Drive
Wesley Chapel, FL 33543
Local: 305-384-6235
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On Nov 9, 2021, at 2:16 PM, SCinput <scinput@floridabar.org> wrote:

Good afternoon.

The committee's work has concluded -

<https://www.floridabar.org/about/cmtes/cmtes-me/special-committee-to-improve-the-delivery-of-legal-services/>. While the deadline for comments was 10/29/2021, if you have comments now, I will be happy to accept them and pass them along to the Board of Governors.

Gypsy Bailey

General Counsel

Director of Ethics & Consumer Protection

661 E. Jefferson St. #319

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From: Ysabel Hernandez <ysabel@visausa.pro>
Sent: Tuesday, November 9, 2021 11:17 AM
To: SCinput <scinput@floridabar.org>
Subject: FL's plan to allow non-lawyers to provide legal services and have an ownership interest in law firms

I'm interested in learning more about the issue and also potentially getting involved as a member of the Florida Bar. I understand there is a committee that was created to study the issue and make recommendations. What is the name of the committee? How can I get involved in the conversation and offer my insight and opinions? I am an immigration attorney who has been involved in the profession since 1992 starting at the very bottom of the totem pole and believe that I can offer insight from different perspectives because of my unique experience. Please let me know whether and how I can get involved.

--

Ysabel M. Hernandez, Attorney-at-Law
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