



# The Florida Bar



Michael G. Tanner  
President

Joshua E. Doyle  
Executive Director

Gary S. Lesser  
President-Elect

December 29, 2021

Honorable Charles T. Canady  
Chief Justice, Supreme Court of Florida  
500 South Duval Street  
Tallahassee, FL 32399-1925

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

Dear Chief Justice Canady:

This correspondence is to provide the Supreme Court of Florida with the responses of The Florida Bar Board of Governors to the recommendations of the Special Committee for the Improvement of the Delivery of Legal Services (the “Special Committee”) set forth in the Special Committee’s June 28, 2021 Final Report to the Court (the “Report”).

The Board is grateful for this opportunity to provide its input on the very important issues raised by the Report.

## INTRODUCTION AND PROCESS

By its letter dated November 6, 2019, the Court directed the formation of the Special Committee and asked it to address lawyer advertising, referral fees, fee splitting, entity regulation, regulation of online service providers, and regulation of nonlawyer providers of limited legal services. The Board has had no involvement in forming the Special Committee, in defining the scope of its inquiry, or in overseeing its work.

The Special Committee’s Report recommended:

- Creating a Law Practice Innovation Lab Program, also referred to as a “legal lab” or “regulatory sandbox,” the stated purpose of which would be to test certain other Report recommendations in a confined regulatory environment;

- Within the legal lab, allowing nonlawyer employees of law firms, whose activities directly support the firm, to acquire a minority ownership interest in the firm;
- Within the legal lab, eliminating the Rule Reg. Fla. Bar 4-5.4 restrictions on sharing fees with nonlawyers;
- Within the legal lab, allowing Florida Registered Paralegals to provide certain legal services in specific practice areas under the supervision of lawyers within their law offices;
- Within the legal lab, allowing not-for-profit legal service providers to organize as corporations and to have nonlawyer members of their boards of directors;
- Streamlining Bar advertising rules, including the elimination of the advance screening requirement; and
- Promoting a better understanding among members of The Florida Bar (lawyers and judges) of existing Rule Reg. Fla. Bar 4-1.2(c), which allows limited scope representation by lawyers.

Each member of the Board has carefully reviewed the Report and various background materials posted on the Special Committee's website. Additionally, the board held two multi-hour special meetings (on September 8 and October 26, 2021) during which board members were able to question Special Committee Chair John Stewart about the Report and its recommendations. Several Board members also hosted town hall meetings within their respective circuits to obtain input from Bar members about the recommendations in the Report. Finally, at the invitation of the Board, Bar members submitted nearly three hundred written comments on the Report that may be accessed [here](#).

Following this review process, the Board met twice (on November 8 and December 2, 2021) to discuss the recommendations in the Report and to vote on the responses of the Board to the recommendations.

### SUMMARY OF BOARD VOTES AND DISCUSSION

This section summarizes the Board's votes on the Special Committee's recommendations and the key comments made during the Board's discussions. Board member comments are discussed in greater detail in the Discussion section below.

#### 1. Non-lawyer Ownership of Law Firms

- The Board *unanimously rejected* the Special Committee's recommendation to amend Bar rules, within the proposed legal lab and potentially thereafter, to permit nonlawyers to have a non-controlling equity interest in law firms.

- The Rules Regulating The Florida Bar exist primarily to protect the public and ensure that lawyers act in the best interests of their clients. Board members expressed concern that allowing nonlawyers to own interests in law firms inevitably would compromise the independence of the self-regulated legal profession by creating an inherent conflict of interest between lawyer-owners of firms, who must adhere to ethical obligations and advance principles of public service, and unregulated nonlawyer-owners, whose primary goal would be to increase firm profitability.
- Other Board members noted the lack of data from any jurisdiction which has allowed nonlawyer ownership demonstrating that it improves or expands the delivery of legal services. Board members noted that the medical profession's experience over recent decades, in which practices can be structured so that persons and entities other than physicians can profit from the practice, has improved neither consumers' access to medical care nor the overall quality of care.
- Board members reported widespread, vocal, and near unanimous opposition to the nonlawyer ownership recommendation by lawyers in their circuits.

### **2. Fee Sharing with Nonlawyers**

- The Board *unanimously rejected* the Special Committee's recommendation to amend Bar rules, within the proposed lab and potentially thereafter, to eliminate the restriction on fee sharing with nonlawyers.
- Board members' comments on this recommendation mirrored those regarding nonlawyer ownership of law firms.

### **3. Expanded Use of Florida Registered Paralegals**

- The Board voted to *accept* the Special Committee's recommendation, *in part*, by allowing a limited pilot program to utilize Florida Registered Paralegals. This limited pilot program would be conducted within an existing legal aid organization (i.e., not within the proposed lab) and would limit the paralegals' activities to residential landlord tenant law on behalf of the tenant, and debt collection defense. Otherwise, the Board rejected the recommendation on the expanded use of paralegals.

- Board members' concerns focused on the broad scope of the recommendation that included "Assistance with Court Proceedings" and would seemingly also permit paralegals to perform critical services in practice areas such as family law and wills, trusts and estates where the consequences of errors can be both catastrophic and undetected for years or even decades. Board members also questioned whether this recommendation would meaningfully improve access to justice, as highly experienced paralegals often charge more than younger lawyers. Finally, Board members noted the absence of statistical (or even anecdotal) evidence from jurisdictions which have allowed the expanded use of paralegals that this has improved the delivery of legal services.

#### 4. Lawyer Advertising

- The Board *unanimously rejected* the Special Committee's recommendations to simplify and streamline Bar advertising rules and to eliminate the requirement for advance approval of lawyer advertising by the Bar.
- The Board noted a statistic that more than one-half of the advertisements reviewed by Bar staff in Bar year 2020-21 did not comply with Bar rules. This statistic suggests a substantial risk that in the absence of advance review, many lawyer advertisements would be false, misleading, or otherwise noncompliant.
- Board members also discussed that eliminating advance review would reduce the opportunity to provide constructive guidance to lawyers.

#### 5. Promote Better Understanding of Rule 4-1.2(c)

- Although some Board members commented that no further "education" about the rule among Bar members is needed because the comment to the rule is sufficiently detailed, a majority of Board members concluded that promoting the rule would lead to its more widespread use and the associated benefit to the public by making limited legal services more available. For these reasons, the Board voted to *accept* the Special Committee's recommendation that the Bar increase education about the rule.

**6. Not-for-Profit Legal Service Providers**

- The Board voted to *accept* the Special Committee's recommendations, *in part*, to amend Bar rules to permit not-for-profit legal aid organizations to organize as corporations and to allow nonlawyers to serve on their boards of directors. The board rejected the recommendations' use of the ambiguous term "not-for-profit legal service providers" and the recommendations that the proposed changes take place within the proposed lab.
- Board members agreed that the recommendations would correct an historical oversight which failed to allow legal aid organizations to be structured as corporations. The Board also noted that federal law requires such organizations to include nonlawyers on their boards of directors and that full compliance with federal law is necessary for them to obtain federal funding.

**7. Law Practice Innovation Lab Program**

- The Board *unanimously rejected, as moot*, the Special Committee's recommendation to create a Law Practice Innovation Laboratory Program to test certain concepts. The Board considered the lab recommendation after it had considered and voted on all of the other recommendations in the Report and after it had rejected all of the recommendations the Report proposed to study within the lab.
- In addition to mootness, Board members expressed concerns about the lab concept in general, including an apparent waiver of applicable Bar rules in perpetuity for participants in the various lab experiments, even if the experiments ultimately were not adopted by the Court. In the Board's view, this proposal, as structured, would amount to *de facto* rule changes for the lab participants.

**FURTHER BOARD OF GOVERNORS' DISCUSSION**

The following are additional points considered and expressed by Board members in connection with the votes on the Special Committee's recommendations.

**Recommendations to Allow Nonlawyer Ownership of Law Firms and Fee Sharing with Nonlawyers**

Over the course of nearly two hours during the Board's October 26 special meeting, Mr. Stewart responded to Board Members' questions about the Special Committee's recommendations to allow nonlawyer ownership of law firms and fee sharing with nonlawyers.

According to Mr. Stewart, those recommendations responded, in part, to legal services needs of individuals and small businesses who can afford such services, but for unknown reasons have elected not to use them. The Special Committee posits that a general difficulty in seeking out legal services is a reason for this, but the committee did not identify any specific access challenges that the law firm ownership and fee sharing proposals would address, or provide any Florida-specific data, or even anecdotal evidence, showing that the proposed changes would increase access.

These two Special Committee recommendations are apparently drawn entirely from academic articles and a California survey indicating significant access to justice needs there.

According to Mr. Stewart and the Report itself, the best method to test whether the proposed rule changes would have the desired effect is to experiment with them within the legal lab. Yet Mr. Stewart concedes that while one U.S jurisdiction (the District of Columbia) has had relaxed rules on nonlawyer ownership for many years (and it has thereby “tested” this hypothesis in actual practice), there has been no demonstrated material improvement in access to justice as a result.

Other comments from Board members during the Board’s special meeting on November 8 when these proposals were discussed and voted on were as follows:

The Report starts with an incorrect premise to support its recommendations when it asserts that the United States ranks “109 out of 128 countries in access to justice and affordability of civil services, below Zambia, Nicaragua, and Afghanistan.” The Committee cites for this statistic to the *World Justice Project Rule of Law Index 2020*. However, this document actually ranks the United States as 36 of 128 countries in the “Civil Justice” category which includes “accessibility & affordability” among the 7 interrelated components of the ranking.

Many Board members believe these proposals compromise a lawyer’s independent judgment, which is critical to the fair administration of justice, by creating conflicts of interest between regulated lawyers and their ethical obligations and unregulated nonlawyers with ownership interests driven by profits. As this Court stated in the October 14, 2021 majority opinion in *The Florida Bar v. TIKD Services, LLC*, “[t]he 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 harmed by incompetent, unethical, or irresponsible representation.” (citations and internal quotations omitted).

A similar proposal was fully considered and rejected by The Florida Bar approximately twenty years ago, yet the Special Committee did not review this prior work or attempt to refute or distinguish its conclusions. The basic response to the Special Committee's arguments in the Report on these two proposed changes is essentially the same response made twenty years ago in opposition to nonlawyer ownership law firms: it is undeniable that the incentive of nonlawyers to own a law firm is to make money.

Slater & Gordon, an Australian law firm that was once the seventh largest firm in the world, is a cautionary tale for those jurisdictions which would consider allowing nonlawyer ownership of law firms. Slater & Gordon embarked on a campaign to greatly expand its services, borrowed heavily to do so, and eventually defaulted on its financial obligations leaving it, and the lawyers it employed, controlled by the firm's creditors.

Allowing a path where out-of-state lawyers not barred in Florida might obtain ownership stakes in Florida law firms would create a backdoor to Bar admission reciprocity—a proposal soundly rejected by The Florida Bar in 2015.

We need to focus on finding ways to connect unemployed and underemployed lawyers to those needing greater access to legal services – not on making fundamental and potentially devastating changes to our Bar rules.

### **Recommendation to Allow Qualified Florida Registered Paralegals to Perform Certain Limited Legal Services**

The Special Committee recommended allowing Florida Registered Paralegals to provide certain legal services within the proposed lab and within a law office or legal aid organization, as described in Appendix D to the Special Committee's Report.

Many Board members raised concerns regarding the proposed scope of the services that paralegals would be allowed to provide. They referenced the concerns raised in the detailed and thoughtful comments received from various sections of The Florida Bar, including the Real Property Probate and Trust Law Section and the Family Law Section. Generally speaking, those concerns focused on the fact that family law and wills, trusts and estate matters can be highly nuanced and complex, and that mistakes can affect individuals and families for generations.

Based on discussions with representatives of a notable Florida legal aid organization, one member suggested narrowing the pilot program's scope to focus on clearly defined practice areas that: (1) use short, non-complex decision-making methods; (2) use standardized forms that have been thoroughly tested; and (3) allow for a reasonable level of supervision. This Board member suggested evictions and unpaid wage claims as possible practice areas to explore for expanded paralegal use within a pilot program.

Another Board member noted the strong opposition by immigration law attorneys who reported abuses by unsupervised notaries, the resulting confusion and harm to clients seeking help with their immigration status, and the severe consequences under U.S. immigration law from mistakes.

Although the Special Committee referred to the expanded use of paralegals in several other states, it did not provide data on whether that expanded use improved the delivery of legal services in those jurisdictions.

The Special Committee supplied scant information regarding the required training and supervision of the paralegals, whether specific credentialing and malpractice insurance would be required, or regarding how discipline would be handled.

### **Recommendations as to Lawyer Advertising**

The Special Committee makes two recommendations concerning lawyer advertising. First, it recommends streamlining and simplifying the advertising rule language to say only that it prohibits advertisements that are deceptive or misleading. This recommendation would move a substantial amount of the existing rule language to the comments sections of the rules.

Second, the Special Committee recommends eliminating the requirement for advance Florida Bar approval of lawyer advertisements. Optional reviews would still provide protection from grievance prosecution if the Bar later found an advertisement to be noncompliant with the rules.

Board members were reminded during the discussion that the Board and its Board Review Committee on Professional Ethics (BRCPE) previously undertook a comprehensive review and revision of the advertising rules and have continued to regularly update and revise the rules to make them more understandable. The predominant sentiment expressed by Board members was that the Board and its BRCPE should continue their practice of regularly reviewing and revising the advertising rules on a case-by-case basis, perhaps with an eye to revisions that would simplify the rules, eliminate or streamline advance review for some types of advertising, or otherwise improve the delivery of legal services rather than adopt the Special Committee proposal.

### **Recommendation as to Rule 4-1.2(c)**

The Special Committee recommends that The Florida Bar promote a better understanding of Rule 4-1.2(c) by educating lawyers about this provision, which allows lawyers and clients to agree to limit the scope of the representation.

Many Board members noted that this recommendation promotes an existing Bar rule designed to assist the underserved, although the Report does not indicate how widely the rule is being used.



While some Board members spoke against this recommendation as serving no real purpose, most agreed the rule is beneficial and that further education efforts should include the judiciary.

### **Recommendations as To Not-For-Profit Legal Service Providers**

The Special Committee recommends amending the rules to permit “not-for-profit legal service providers” to organize as corporations, to allow nonlawyers to serve on their boards of directors, and test these recommendations within the proposed legal lab.

One member requested an amendment to include a specific reference to entities qualified under Internal Revenue Code section 501(c)(3) to avoid the possibility of other legal service providers that may be organized as “non-profits” to establish not-for-profit law firms. Another Board member pointed out that whereas the Report referred in places to “not-for-profit legal service providers,” the recommendations are apparently intended to relate only to organizations that provide legal aid services to qualifying individuals. The Board therefore voted to accept the recommendations, but specified that they applied only to “not-for-profit legal aid organizations.”

### **Recommendation to Create a Law Practice Innovation Laboratory Program**

The Special Committee used as its model for this concept the “sandbox” experiment now underway in Utah. During one Board meeting, Mr. Stewart said the committee does not support waiting to see the results of Utah’s sandbox experiment before Florida proceeds with its own.

In addition to rejecting the lab recommendation as moot, several Board members expressed concerns about how the lab would be structured and administered.

One key concern is the proposed waiver of applicable Bar rules for entities approved to participate in the lab. As proposed, the participating entity would be allowed to continue to operate under the rule waiver after the termination of the lab, even if the Court ultimately were to disapprove the experimental rule change. In other words, the lab could achieve for those participating entities a *de facto* rule change.

The proposed concept also does not limit the types of legal services that can be performed by entities in the lab. There are practice areas that do not present access to justice issues, such as personal injury law, for which there is no justification to waive or change Bar rules, even on a test basis.

Further, the concept does not specify or restrict who can own an interest in an entity approved for the lab or restrict the transfer of ownership of such entities either during or after testing in the lab. Potential scenarios include convicted felons or disbarred lawyers obtaining ownership interests in approved entities, particularly if the ownership transfer occurred after lab testing concluded.

Finally, there is no restriction against individuals who served on the Special Committee or their law firms participating in the lab, creating the appearance, and perhaps the reality, that they would profit from their service on the Special Committee.

### **CONCLUSION**

To conclude, in addition to the specific objections described above, there are two fundamental concerns that underlie all of the Board's votes of disapproval of recommendations in the Report.

The first is the concern over unintended consequences. This is the principal objection to the Special Committee's seemingly benign assertion that it is not proposing rule changes in its recommendations, but simply asking the Court for the opportunity to "test" nonlawyer ownership, or fee sharing, or a broad expanded use of paralegals. Yet these changes would be so profoundly transformative of the practice of law in Florida that they should not be allowed, even on a test basis, without clear and compelling empirical data that they will help solve access to justice in a meaningful way with little or no risk to the public.

The second fundamental concern is the absence of such data. Certainly, data is currently available from other jurisdictions that are experimenting with changes to their law firm ownership and fee sharing rules, and the expanded use of paralegals. Yet that data either fails to show that these changes will improve access or it shows the negative effects of the changes. Indeed, the data from Arizona clearly demonstrates the peril of unintended consequences of allowing nonlawyer firm ownership; witness the efforts by large litigation finance entities to acquire ownership of law firms underway *now* in [Arizona](#).

Again, the Board is grateful for this opportunity to provide its responses to the Special Committee's recommendations. It also asks for the opportunity to provide further responses in the event the Court decides to pursue any of the recommendations. Finally, the Board urges the Court to review the comments of our members [here](#).

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael G. Tanner". The signature is fluid and cursive, with the first name "Michael" and last name "Tanner" clearly distinguishable.

Michael G. Tanner  
President, The Florida Bar