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GRAPHIC DESIGN

Georgina Corbalan

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Message from the President

Connie Akridge, Esq., State Bar of Nevada President



NONLAWYER OWNERSHIP OF LAW FIRMS

“Only the District of Columbia in its Rule of Professional Conduct 5.4 allows, with certain restrictions, a lawyer to practice law in a partnership or other form of organization in which nonlawyers hold a financial interest or have management responsibility.”

Nonlawyer ownership of law firms — is it an idea whose time has come? Consider the following:

On March 8, 2011 a North Carolina state senator and lawyer introduced a bill in the General Assembly of North Carolina that would permit non-attorney ownership of law firms. Under the proposed measure, non-lawyers would be able to own up to 49 percent of a law firm so long as lawyers continue to control the company. Stock certificates must state that “no nonlicensee shareholder shall interfere with the exercise of professional judgment by licensed attorneys in their representation of clients.” The certificates must also provide that any conflict between the company’s duties to its clients and the court versus shareholders will be resolved by giving the duty to the court first priority, followed by the duty to the client. See *An Act to Allow Nonattorney Ownership of Professional Corporation Law Firms, Subject to Certain Requirements* available at <http://www.ncleg.net/Sessions/2011/Bills/Senate/HTML/S254v0.html>.

On May 19, 2011 the *Wall Street Journal* (WSJ) reported that Jacoby & Meyers Law Offices LLP filed lawsuits challenging state laws in New York, New Jersey and Connecticut that prohibit nonattorneys from owning stakes in law firms. According to the WSJ article, “The firm, which has more than 60 lawyers and specializes in personal-injury cases, claims that the restrictions have hurt its ability to raise capital to cover technology and expansion costs, and have hampered it in providing affordable legal services to its working-class clients.” See Nathan Koppel, *Jacoby & Meyers’ Newest Fight: Helping Nonlawyers Own Law Firms*, *Wall Street Journal* (May 19, 2011) (<http://online.wsj.com/article/SB10001424052748703421204576331531008464712.html>)

Only the District of Columbia in its Rule of Professional Conduct 5.4 allows, with certain restrictions, a lawyer to practice law in a partnership or other form of organization in

which nonlawyers hold a financial interest or have management responsibility.

Nevada follows the ABA Model Rule of Professional Conduct 5.4 which prohibits:

1. A lawyer or law firm from sharing legal fees with a nonlawyer;
2. A lawyer from forming a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law; and
3. A lawyer from practicing in a professional corporation or association authorized to practice law for a profit if:
 - (i) 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;
 - (ii) 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
 - (iii) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

The American Bar Association Commission on Ethics 20/20 conducted a hearing on August 5, 2011 during the ABA Annual Meeting in Toronto, Ontario, regarding Alternative Business Structures (ABS). In its Notice of Public Hearing, the commission stated, "The commission seeks information to assist it in determining whether to propose any forms of alternative business structures that, consistent with professional core values, would enhance access to legal services for those otherwise unable to afford them, and would provide new and varied opportunities for U.S. lawyers and law firms to better serve clients. The commission has decided it would be inappropriate to recommend that either passive equity investment or public trading of shares in law firms be permitted in the United States at this time, though both policies have been adopted elsewhere in recent years." See the Commission's Issues Paper concerning ABS at http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20.html.

Some of the questions about which the ABA is seeking input are as follows:

1. Are there client services that U.S. lawyers and law firms should be permitted to offer, but currently are not permitted to offer due to restrictions set forth in Rule of Professional Conduct 5.4, including the prohibitions on sharing fees with nonlawyers?
2. Would maintaining the present restrictions contained in the Rules of Professional

Conduct impede U.S. lawyers from participating on a level playing field in a global legal services marketplace that includes the increased use of one or more forms of alternative business structures (e.g., including but limited to, the cost of services or the ability to recruit lawyers and nonlawyers)? If so, in what ways?

- a. What guidance is required for U.S. lawyers and law firms practicing in countries that currently permit forms of ABS?
3. What types of nonlawyer service providers (other than administrative assistants, paralegals, receptionists and other support staff) currently assist you in serving your clients?
4. The District of Columbia's version of Model Rule of Professional Conduct 5.4 permits (with certain restrictions) a lawyer to practice law in a partnership or other form of organization in which nonlawyers hold a financial interest or have managerial authority.
 - a. Do you believe that the District of Columbia Rule provides adequate protections to clients?
 - b. If not, do you believe that District of Columbia Rule 5.4, along with limitations on the percentage of nonlawyer participation, would adequately protect clients?

Please e-mail me at conniea@nvbar.org any thoughts you have about alternative business structures.

2011 Annual Meeting Kudos—Thanks to all to members of the judiciary, attorneys and guests for making the SBN's Annual Meeting in Kauai such a great success! Particular thanks to Kim Farmer and her staff, Immediate Past President Cam Ferenbach, the Board of Governors, the Annual Meeting Committee members, my co-chair Bryan Scott, all of the sections and their members who participated in delivering excellent CLE programming, and to former YLS Chair Ryan Works and his members for another stellar Trial Academy.

ANNUAL MEETING 2012 FACTOID:

In 1959 the Hotel Del Coronado (The Del) was the backdrop for the movie *Some Like It Hot* starring Marilyn Monroe, Jack Lemon and Tony Curtis. Join us June 28 to June 30, 2012 at The Del for the State Bar of Nevada's Annual Meeting.