NONLAWYER INVESTMENT IN THE LEGAL ECONOMY

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THE CENTER
The Voice of the Civil Defense Bar.

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INTRODUCTION

DRI Center for Law and Public Policy "Economics of Law Practice" Subcommittee

Ownership of law firms by nonlawyers has been a topic of debate since at least 1982, when the American Bar Association's Kutak Commission transformed the aged Model Code of Professional Responsibility into the more modern Rules of Professional Conduct. Despite lobbying from certain sectors of the profession and the business world, the commission maintained the prohibition against nonlawyer ownership through Model Rule of Professional Conduct 5.4 (Rule 5.4). As the global economy changes, the discussion has continued. Globalization, commoditization, technological advances, and shrinking profit margins have all put pressure on the practice and business of law. In response, many inside and outside of the legal profession in North America have begun to reexamine how clients consume legal services. They question whether traditional business arrangements between lawyers and their clients serve either side of the equation, or indeed the ideal of the justice system, in an effective and efficient manner. At the same time, there is concern as to whether the public has access to affordable legal advice and representation. The result, as will be evident through this white paper, is that the way lawyers practice is evolving. And systemically, some U.S. and Canadian jurisdictions have revised lawyer regulation to allow for a variety of nontraditional business structures for lawyers and paraprofessionals who provide "legal services."

The shift in regulation and resultant innovation in the business of law has been dubbed "alternative business structures" (often shortened to "ABS") by the American Bar Association and others involved in advocating for change. The DRI Center for Law and Public Policy (the Center) intends this white paper to be an initial step toward understanding and defining the ABS movement in North America and examining what, if any, aspects of that movement serve the profession and the public. It will explore the history of the traditional law firm model within the context of the Rules of Professional Conduct (particularly Rule 5.4), the perception that access to lawyers is limited by the traditional law firm model, the changes in the regulatory climate, the trends toward innovation, and the economic and ethical challenges that lawyers face. By way of comparison and example, the Canadian experience with innovative regulation will also be explored (see Appendix). The Center anticipates that this paper will introduce DRI members, their clients, DRI's state and local defense organizations, and its sister organizations to the variety of experimental schemes implemented and/or contemplated.

REGULATION OF LAW FIRM OWNERSHIP

The Exclusivity of the Practice of Law

It is generally accepted that across most of North America, only lawyers are permitted to represent clients in court or otherwise provide services that bear upon the law to clients. The principle is sometimes (perhaps often) tested in practice, but a combination of statutes, regulations, and rules of professional conduct carve out this exclusivity on the premise that the public, the court system, and justice/fair play is best served by a well-educated and experienced professional class.

In the United States, the actual entity or entities that regulate the practice of law differ from state to state. In some states, the legislature has a hand in lawyer regulation. Frequently, the state supreme court is the "official" regulator, having been granted that authority by the state constitution or legislation. Bar associations are sometimes the regulatory entity, although often that authority flows to the association through the state supreme court or legislature.[1]

[1] There are any number of issues inherent in the development of innovative regulation when the structure, nature, and extent of regulation varies

What is consistent from state to state, however, is that "regulation" includes two things: (1) permission to practice law in the state after having passed the requisite educational and testing requirements, and (2) requiring compliance with the Rules of Professional Conduct (or similarly named code of conduct) as adopted/enacted by the state. People who do not meet the educational and testing requirements set forth by the regulator cannot obtain a "license" to practice law. Those who gain a license cannot retain the license if they do not comply with the Rules of Professional Conduct. Typically, in the United States, enforcement of Rules of Professional Conduct occurs through prosecution for reported wrongdoing rather than as proactive monitoring of compliance. In Canada, provincial law societies are regulators, and as discussed in this paper's appendix, proactive monitoring of compliance has taken hold in some provinces.

Most lawyers in the United States believe that the profession is "self-regulated," which presumably derives from the fact that those who make/enforce regulatory policy for lawyers tend to be state supreme court justices or work for state bar associations, with input from practitioners. This framework assumes that lawyers are best suited to understanding the issues and risks associated with the practice. Each state determines ethics rules for lawyers in its own way, but most have adopted a form of the Model Rules of Professional Conduct as developed by the American Bar Association through its House of Delegates where state and local bar associations are represented. These Rules of Professional Conduct, by and large, are the regulatory framework for the practice of law.

If only as an act of self-preservation, state supreme courts and state bar associations actively seek input about the Model Rules of Professional Conduct and their local adaptation from practicing lawyers in their state. Bar associations often bring proposed changes to the Rules of Professional Conduct to members through a vote in representative bodies, like the ABA's House of Delegates or the Board of Governors. Rule 5.4 (and its predecessor provisions) has long been the primer on how legal businesses operate.

Canada's lawyers are not regulated by their courts. In fact, Canada is considered the "last bastion of unfettered self-regulation of the legal profession in the common law world."[2] Through the provincial law societies, Canadian lawyers elect representative lawyers who determine the shape of regulations.[3]

between the states, which adds to the complexity of this analysis. Unique to the regulation of the practice of law in most states is that the judicial branch of government (rather than the legislative or administrative branch) takes on the role of regulator.

[2] Rhode, Deborah L. and Wolley, Alice *Comparative Perspectives on Lawyer Regulation: An Agenda for Reform in the United States and Canada*, Fordham Law Review 80 (2012) page 2774.

[3] The Canadian system for lawyer governance and regulation will be more fully explored in "The Reform Landscape" below and the appendix to this white paper.

American Bar Association Model Rule of Professional Conduct 5.4

Starting with the Canons of Professional Ethics (1908–1963), through the adoption of the Model Code of Professional Responsibility (1969–1983), and up to and including the formulation of the Model Rules of Professional Conduct (first version adopted in 1983), a basic tenet of the responsibility owed by a lawyer to a client has been "professional independence." Lawyers have been prohibited from allowing investment in their businesses by nonlawyers on the premise that the client will be adversely impacted if the lawyer is influenced by the economic interest of the investors.[4]

Through these various incarnations, then, the United States has consistently promoted a classic approach to legal services regulation that has been in place since the late nineteenth century: law is a noble profession in which lawyers are held accountable through self-regulating governing bodies. Many other western democracies, however, have come to reject this traditional approach and instead have moved toward marrying business and profession, often by allowing increased direct competition and external regulation.

In the wake of globalization, the issue of who can own legal service businesses, and Rule 5.4,[5] which prohibits nonlawyer ownership of law firms, has been considered repeatedly. The issue was addressed in 1982 by the Kutak Commission in its revamping of the Model Code of Professional Responsibility into the Model Rules of Professional Conduct.[6] The issue came up again in 1999 in the context of multidisciplinary practices[7] with the ABA's Commission on Multidisciplinary Practice (MDP),[8] which resulted in a report[9] and a chart collating until 2005 the state activity on permitting MDPs.[10]
The ABS issue arose again in 2009 when the ABA created the Commission on Ethics 20/20. As part of its work, the Commission created a number of working groups, including its Entity Regulation—Alternative Business Structures Working Group.[11]

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[4] The many Rules related to conflict of interest (RPC 1.7, 1.8 and 1.9) and Rule 1.5 regarding fees confirm that the lawyer, as a professional serving justice, is expected to sublimate her personal economic interests to those of the client.

[5] ABA Model Rule of Professional Conduct 5.4 "Professional Independence of a Lawyer" provides in pertinent part:

> (b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.
> (c) 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
> (d) A lawyer shall not practice with or in the form of a professional corporation or association 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;
> > (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.

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_4_professional_independence_of_a_lawyer.html.

[6] In 1977, a commission of the American Bar Association was created and tasked with an initial review, and eventually a complete restatement, of the then existing Code of Responsibility. See, e.g., https://www.kutakrock.com/general-content/the-kutak-commission.

[7] Jacobs, "Accounting Firms Covert Forbidden Fruit: Piece of the U.S. Legal Market, Wall Street Journal," p.81 (May 31, 2000), Poe, "Multidisciplinary Practice," Defense Counsel J. 245 (Apr. 2000), Cannon, "The Big Six Moves In" 50 Int'l Fin. L. Rev. 49 (October 1997), "Andersen's Giant Step Towards World Law" Australian Fin. Rev. 33 (Jan. 1998), Rubenstein, (Accounting Firm Legal Practices Expand Rapidly. How the Big Six Firms Are Practicing Law in Europe: Europe First and then the World?" Corp. Legal Times 1 (Nov 1997); https://en.wikipedia.org/wiki/Multidisciplinary_professional_services_networks.

[8] The Work of the ABA Commission on Multidisciplinary Practice, http://www.personal.psu.edu/faculty/l/s/lst3/McGarry%20Mutlidisciplinary%20Ch2.PDF.

[9] Report 10F, adopted June 2000, https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_migrated/ethics_8_02.pdf.

[10] The Work of the ABA Commission on Multidisciplinary Practice, http://www.personal.psu.edu/faculty/l/s/lst3/McGarry%20Mutlidisciplinary%20Ch2.PDF.

[11] Snyder, Laura. Modernizing Legal Services in Common Law Countries: Will the US Be Left Behind? Lexington Books, The Rowman & Littlefield Publishing Group, Inc., Lanham, Maryland 2017 Chapter "The Indestructible Rule 5.4" page 171

While the commission never proposed amendments to Rule 5.4, on December 2, 2011, it released for comment a Discussion Draft relating to a form of nonlawyer ownership similar to that which the District of Columbia permitted.[12] The commission made clear in its cover memo for the Discussion Draft that before determining whether to propose any amendments to Model Rule 5.4 to the ABA House of Delegates, if at all, it wanted to hear from the profession and review any supporting materials commenters wished to offer.

In April 2012, the commission announced that based on its "extensive outreach, research, consultation, and the response of the profession, there does not appear to be a sufficient basis for recommending a change to ABA policy on nonlawyer ownership of law firms."[13] As is explored in "The Reform Landscape" below, some states have slowed the pace toward change, or even halted it, finding that ABS did not result in improved access to justice.

In 2013, the ABA issued an opinion subject to Rule 5.4 allowing lawyers to divide fees with other lawyers or firms in jurisdictions where fee sharing is permitted, even if the sharing is with nonlawyers. This change was intended to address multinational law firms with offices in the United States as well as in the United Kingdom or Australia.[14]

In 2014, the ABA Commission on the Future of Legal Services began.[15] The result was much discussion that focused on a variety of interrelated lawyer regulatory topics. Under its auspices, the Model Regulatory Objectives regulation proposal came in 2015.[16] The report says the objectives can "serve as a useful tool for state supreme courts as they consider how to respond to" changes in the "legal landscape," and most specifically legal technology companies. However, it also cautions that the adopting of the rules "does not imply a position on" the broad array of issues the commission was considering, including ABS, which are "viewed by some as controversial, threatening or undesirable." [17]

As ultimately passed in 2016, the resolution added a clause stating that "nothing in this Resolution abrogates in any manner existing ABA policy prohibiting nonlawyer ownership of law firms…." The passage was after a heated debate and forceful opposition from those who saw the resolution as opening the door to ABS. The adoption of the Model Regulatory Objectives Resolution 105[18] likely signaled a recognition that unauthorized practice of law regulation as the sole means to address the new legal technology services entities outside of law firms, i.e., companies owned by nonlawyers, is inadequate.[19] Nonetheless, it is difficult to imagine that nonlawyers view ABA Model Regulatory Objectives as even aspirational goals for their profit-centered businesses.

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[12] ABA Commission on Ethics 20/20 Discussion Draft for Comment Alternative Law Practice Structures https://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20111202-ethics2020-discussion_draft-alps.authcheckdam.pdf.

[13] https://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20120416_news_release_re_nonlawyer_ownership_law_firms.authcheckdam.pdf.

[14] https://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20121029_fee_division_release_ethics_20_20_commission_co_chair_cover_memo.authcheckdam.pdf.

[15] https://www.abajournal.com/magazine/article/new_aba_president_william_hubbard_wants_to_closing_the_gap_in_legal_service.

[16] ABA Commission on the Future of Legal Services "Report to the House of Delegates (105)," November 2015 https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2016/2016-midyear-105.pdf.

[17] Snyder, Laura. *Modernizing Legal Services in Common Law Countries: Will the US Be Left Behind*? Lexington Books, The Rowman & Littlefield Publishing Group, Inc., Lanham, Maryland 2017 Chapter "The Indestructible Rule 5.4" page 181.

[18] https://www.abajournal.com/files/2016_hod_midyear_105.authcheckdam.pdf.

[19] Snyder, Laura. *Modernizing Legal Services in Common Law Countries: Will the US Be Left Behind?* Lexington Books, The Rowman & Littlefield Publishing Group, Inc., Lanham, Maryland 2017 Chapter "The Indestructible Rule 5.4" page 184.

Despite the specific language referencing the ABA policy prohibiting nonlawyer ownership of law firms, the commission issued three issues papers in 2016: "New Categories of Legal Services Providers,"[20] "Unregulated LSP [Legal Service Provider] Entities,"[21] and "Alternative Business Structures."[22] DRI submitted a response to the ABS issues paper in which then-President Laura Proctor called for more analysis and consultation.[23] Indeed, the majority of responses were negative on the topic of ABS, which appears to have caused the commission to let slip its May 10, 2016, deadline to submit proposals for any rule amendments. The final report of the commission (August 2016)[24] "does not endorse the authorization of any LSPs" but merely recommends that states and the courts should look at the provision of legal services. On the ABS topic, it concludes that the ABA should "engage in an organized effort to collect ABS related information and data… creating a centralized repository … ensuring that deliberations on a subject of import to the profession are fact-based, thorough, and professional."[25]

Thus, was born the ABA-created Center for Innovation.[26] The center has an independent "governing council" and declares its mission to be to "encourage and accelerate innovations that improve the affordability, effectiveness, efficiency, and accessibility of legal services." Separate from mission, its "operating principles" include enabling "the profession, including law firms of all sizes, corporate legal departments, courts, legal services lawyer, lawyers in the criminal justice system, law schools and bar association to be creative, daring and powerful forces for change." The center describes itself as "entrepreneurial, experimental and agile in its work…" with the goal of generating "…true innovation in the delivery of legal services."

As a part of its work, the Center for Innovation sponsored ABA Resolution 115,[27] which was voted on and adopted by the ABA House of Delegates in February of 2020. Through this resolution, the "American Bar Association encourages U.S. jurisdictions to consider regulatory innovations that have the potential to improve the accessibility, affordability, and quality of civil legal services, while also assuring necessary and appropriate protections that best serve clients and the public…." Notably, Resolution 115 advocates for access to representation in civil matters in the same fashion that *Gideon v. Wainwright* guaranteed those facing criminal charges the right to legal representation.[28] Nonetheless, Resolution 115 states that "…nothing in this Resolution should be construed as recommending any changes to any ABA Model Rules of Professional Conduct, including Rule 5.4, as they relate to nonlawyer ownership of law firms, the unauthorized practice of law, or any other subject."

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[20] ABA Commission on the Future of Legal Services Issues Paper Concerning New Categories of Legal Services Providers October 16, 2015 https://www.americanbar.org/content/dam/aba/publications/bridge/documents/lspissuespaper.pdf.

[21] ABA Commission on the Future of Legal Services Issues Paper Concerning Unregulated LSP Entities March 31, 2016.

[22] ABA Commission on the Future of Legal Services Issues Paper Regarding Alternative Business Structures April 8, 2016. https://src.bna.com/eeX.

[23] DRI – The Voice of the Defense Bar Letter, President Laura Proctor May 4, 2016, on Issues Paper on Alternative Business Structures http://iframe.dri.org/DRI/webdocs/News/Proctor_Reply_to_ABA_ABS_Report_fnl.pdf.

[24] Report on the Future of Legal Services in the United States 2016 http://abafuturesreport.com/#1.

[25] Report on the Future of Legal Services in the United States 2016 http://abafuturesreport.com/#1 page 43.

[26] ABA Center for Innovation was initially described as "…creating more accessible, efficient, and effective legal services in the United States and around the globe" with "Programs & Projects" to "identify, encourage, and accelerate innovations that improve access to quality legal services" and "train lawyers, judges, academics, and the public about innovative legal services delivery." https://www.americanbar.org/groups/centers_commissions/center-for-innovation/.

[27] https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2020/2020-midyear-115.pdf.

[28] 372 US 335, 83 S.Ct. 792, 9 L.Ed. 799 (1963)

Indeed, Rule 5.4 has not been amended in any way to reflect the "innovations" endorsed by ABA Resolution 115. However, on September 8, 2021, the ABA released Formal Ethics Opinion 499,[29] entitled *Passive Investment in Alternative Business Structures,* which states that "[a] lawyer may passively invest in a law firm that includes nonlawyer owners ("Alternative Business Structures" or "ABS") operating in a jurisdiction that permits ABS entities, even if the lawyer is admitted to practice law in a jurisdiction that does not authorize nonlawyer ownership of law firms."

DEFINING TERMS: THE VOCABULARY OF ALTERNATIVE BUSINESS STRUCTURES

The "Sandbox" Metaphor

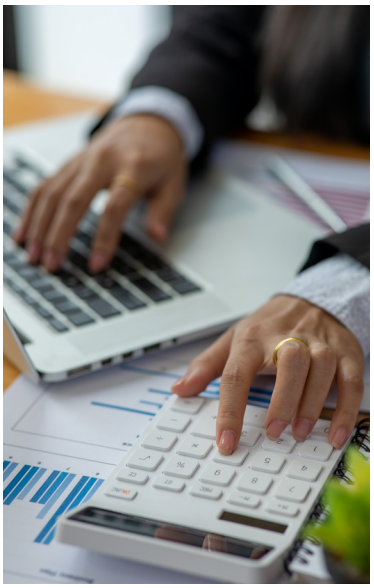
For most of us, the sandbox is a fond memory from childhood, evoking visions of pails and shovels, miniature castles, and mud pies. Educators tell us that sandbox play can help children develop important skills, including the use of imagination, problem solving, sharing, and communicating. In 2015, perhaps drawing a strained analogy, the concept of a "regulatory sandbox" first emerged in the UK. At the time it was described as a way to expand financial inclusion, particularly to underserved and undercapitalized populations. It is generally considered a "regulatory approach, typically summarized in writing and published, that allows live, time-bound testing of innovations under a regulator's oversight."[30] According to Forbes, regulatory sandboxes are "less-regulated environments that allow businesses and non-profits to experiment with new products, services, and business models on a temporary basis. They allow policymakers to gauge the appropriate scope and scale of regulation for new services. At the same time, they allow the provider to evaluate its services in the market."[31]

The parallel between promoting investment in developing nations and promoting the wider availability of legal services to the North American public might be difficult to comprehend. Nonetheless, a wide range of studies have concluded that there is a serious gap between the availability of legal services and the need. For example, the 2020 World Justice Project Rules of Law Index ranks the United States as 109th of 128 in terms of how affordable and accessible civil legal justice is to the average person.[32] Closer to home, in 2017, the US Legal Services Corporation published a study that found that 86 percent of "the civil legal problems reported by low-income Americans received inadequate or no legal help."[33]

[29] https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba-formal-opinion-499.pdf.
[30] https://www.unsgsa.org/sites/default/files/resources-files/2020-09/Fintech_Briefing_Paper_Regulatory_Sandboxes.pdf.
[31] https://www.forbes.com/sites/adammillsap/2021/02/01/utahs-effort-to-expand-regulatory-sandboxes-is-smart-move/?sh=681fbae36a09.
[32] https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf.
[33] Legal Services Corporation, The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans (2017)

Concerns about "access to justice" in the U.S. have grown in recent years, as overall advocacy for deregulation has gained popularity. Coupled with increased economic pressures on lawyers and law firms (the average cost of a legal education was reported in November of 2021 to be in excess of $200,000),[34] these factors have led to efforts to revise lawyer regulation. A number of states have used the regulatory sandbox model as the basis for these revisions, as will be more fully explored in "The Reform Landscape" below.

What Forms Do Alternative Business Structures Take?



According to the ABA, there are three features to ABS that have evolved in other jurisdictions: 1) they allow nonlawyer ownership (restricted or unrestricted); 2) they permit investment by nonlawyers; 3) they can be multidisciplinary practices (MDPs) providing nonlegal as well as legal services.[35]

Nonlawyer ownership is not new. Jacoby and Meyers challenged the New York bar's prohibition on nonlawyer equity investment as unconstitutional over ten years ago. The court dismissed the action, concluding "plaintiffs could not accept nonlawyer equity investments even if they won on the merits of their constitutional claims. Plaintiffs therefore could not, consistent with New York law, practice law and accept equity investments from nonlawyers even if Rule 5.4 were declared unconstitutional. Hence, the ruling that they seek would be a purely advisory declaration of the sort that is forbidden to federal courts under Article III of the U.S. Constitution."[36]

But even before nonlawyer ownership evolved into the more pressing issue that it is today, there were (and still are) instances where nonlawyers are allowed to perform legal work. There are a host of nonlawyer legal service providers, known as "alternative legal service providers" (ALSPs), that permeate the market, despite the ongoing debate over ABS and nonlawyer investment or ownership. Individuals can always represent themselves pro se; in some instances, nonlawyers are permitted to represent other individuals and companies. Even though these instances are not typically thought of ALSPs, we mention them here as part of the overall discussion of the range of legal services offered by nonlawyers. For example, Federal Black Lung claimants can "elect to use a 'lay representative,' someone who is not licensed to practice law, to represent you or you may choose to appear and represent yourself. As with attorneys, a lay representative is not entitled to fees unless you are awarded black lung benefits."[37] In the arbitration arena, "[h]istorically, parties in arbitration did not need and were not required to use representation in arbitration because arbi-

[34] https://educationdata.org/average-cost-of-law-school.
[35] ABA Commission on the Future of Legal Services Issues Paper Regarding Alternative Business Structures April 8, 2016 at page 2.
[36] *Jacoby & Meyers, LLP v. Presiding Justs. of the First, Second, Third & Fourth Departments, App. Div. of the Supreme Ct. of the State of New York, 118 F. Supp. 3d 554, 581 (S.D.N.Y. 2015), aff'd sub nom. Jacoby & Meyers, LLP v. Presiding Justs. of the First, Second, Third & Fourth Departments*, App. Div. of the Supreme Ct. of New York, 852 F.3d 178 (2d Cir. 2017) (Granting defendants' motion to dismiss the third amended complaint).
[37] Information for Black Lung Claimants, U.S. Department of Labor, Office of Administrative Law Judges (online at https://www.dol.gov/agencies/oalj/topics/information/Information_for_Black_Lung_Claimants#:~:text=You%20may%20also%20elect%20to,are%20awarded%20black%20lung%20benefits.).

trators used customs and norms to evaluate and resolve parties' claims."[38] Financial Industry Regulatory Authority (FINRA) Rule 12208 provides that nonlawyers may represent parties in FINRA arbitrations if allowed under state law.[39] And not everything is the practice of law. The government unsuccessfully tried to get a tax appeal dismissed because a nonlawyer filed papers in *Matter of Appeal of Harris Teeter, LLC*.[40] The county argued that filing a notice of appeal and application for hearing was the practice of law and the filing of papers by a nonlawyer was therefore "a jurisdictional bar compelling dismissal of taxpayer's appeal." The court rejected the argument because they did "not believe that filing the Notice of Appeal and Application for Hearing constitutes an appearance or legal representation requiring notice under N.C. Gen. Stat. § 105-290(d2). Nor does it violate the general purpose of North Carolina's prohibition on the corporate practice of law."[41]

Nonlawyer investment in law firms (third party "ownership") is permitted in other countries, where a certain percentage of nonlawyer ownership is permitted: Denmark (10%), Italy (33%), Scotland (up to 49%), Singapore (25%), and Spain (25%).[42]

Multidisciplinary practice is generally defined as "two or more different disciplines (meaning professions) working together to serve a client.[43] They are permitted in some Canadian provinces, the United Kingdom, Australia, Belgium, Germany, Netherlands, Poland, and Spain.[44]

The point is that the current issue of ownership must be examined in the context of what is actually going on in the legal market, both here and abroad. The lines between lawyers doing legal work and nonlawyers doing legal work are not always clear.

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[38] Sarah Rudolph Cole, Blurred Lines: Are Non-Attorneys Who Represent Parties in Arbitrations Involving Statutory Claims Practicing Law?, 48 University of California, Davis, Law Review 921 (2015) (Online at https://lawreview.law.ucdavis.edu/issues/48/3/Articles/48-3_Cole.pdf). See also, Perry A. Zirkel, Non-Attorney Representatives in Labor Arbitration: Unauthorized Practice of Law, 70 Dispute Resolution Journal (2016) ("It is not uncommon for one or both parties at labor arbitration, more often the union but sometimes the employer, to have a representative who is not a lawyer. For the union, it may well be a full-time staff member with various duties in support of several locals. For the company, it may be a member of the human resources staff.").

[39] FINRA Rule 12208 states:

(c) Representation by Others

Parties may be represented in an arbitration by a person who is not an attorney, unless:

- state law prohibits such representation, or
- the person is currently suspended or barred from the securities industry in any capacity, or
- the person is currently suspended from the practice of law or disbarred.

FINRA Rules online at https://www.finra.org/rules-guidance/rulebooks/finra-rules/12208. See also, Report on Non-Lawyers Representing Customers in FINRA Dispute Resolution Arbitrations by the Committee on Professional Responsibility, New York City Bar, Nov. 28, 2018 (online at https://s3.amazonaws.com/documents.nycbar.org/files/2018444-NonLawyer_FINRA_FINAL_11.27.18.pdf).

[40] 271 N.C. App. 589, 595, 845 S.E.2d 131, 137, cert. denied sub nom. *Matter of Harris Teeter, LLC*, 376 N.C. 544, 851 S.E.2d 49 (2020), and aff'd sub nom. *Matter of Harris Teeter, LLC*, 2021-NCSC-80, 378 N.C. 108, 861 S.E.2d 720.

[41] *Id*. at 597, 845 S.E.2d at 138.

[42] ABA Commission on the Future of Legal Services Issues Paper Regarding Alternative Business Structures April 8, 2016 at page 6.

[43] Multidisciplinary Practices Ethical Concerns or Economic Concerns, the American Bankruptcy Institute, Jul/Aug 1999 https://www.abi.org/abi-journal/multidisciplinary-practices-ethical-concerns-or-economic-concerns.

[44] ABA Commission on the Future of Legal Services Issues Paper Regarding Alternative Business Structures April 8, 2016 at page 6.

Law Firms vs. Legal Service Providers

The focus on obtaining and using *legal services*—instead of the presumptively more expensive cost of using *law firms/lawyers*—comes from two very different sources. One source is the corporate world's constant and ever-increasing pressure to reduce legal costs. The second source comes from the other end of the societal spectrum. The average person often has need for legal advice and perhaps even legal representation. The general perception is that lawyers are unaffordable for most, and it is certainly true that lawyers charge more than the poverty population can afford. Moreover, in a "do-it-yourself" world, many consumers believe that they can figure out anything with access to the internet. This "legal gap" between need and affordability is often cited as a primary reason to permit the rendering of legal services by alternative (i.e., nonlawyer owned entity) providers or paraprofessionals.

A fallacy in this argument, however, is the view that paraprofessionals and nonlawyers are less interested in profit than lawyers are. In fact, many lawyers who have trained and practiced under the auspices of the Model Rules of Professional Conduct would suggest that the rules constrain them from profit in a way that nonlawyers are not constrained. In the business world, focus on pleasing the customer is said to lead to success, so businesses often tout their ethics and their customer-focus. However, nonlawyer legal service providers are under no obligation to engage in business practices that consider the client ahead of the bottom line. Lawyers, by contrast, are required by the Rules of Professional Conduct to be loyal to clients and put the clients' best interests ahead of the lawyers' interests.[45]

Alternative Legal Service Providers

Notwithstanding the ABA definition of ABS, then, there are a great many ALSPs that provide services where legal work is performed by a blend of lawyers and paraprofessionals. Thomson Reuters, in conjunction with Georgetown Law Center on Ethics and the Legal Profession, issues a biennial report entitled *Alternative Legal Service Providers*, which reports a broad survey of services being consumed by corporations and law firms in conjunction with what they term the "legal landscape." The 2021 report notes that ALSPs, or "new law companies as they are increasingly known," have grown significantly over the last six years, and the services they provide are now valued at nearly $14 billion.[46,47] The survey confirms that the majority of these services fall within the domain of e-discovery or document review and coding. However, the use of outside legal research providers, regulatory risk and compliance services, and even legal document drafting services, to name a few, is reportedly on the rise.

Even in states that have not amended their rules of professional conduct to allow nonlawyer ownership, there are ALSPs that are not owned by lawyers, but that provide legal services. As the market matures, some suggest these are no longer "alternative." While the blurring between traditional law firms is sometimes seen as driven by the "Big Four" accounting firms (Deloitte, EY, KPMG, and PwC), in response, law firms that increasingly use ALSPs in an effort to provide more

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[45] By way of example, Model Rule of Professional Conduct 1.1 and 1.2 require loyalty and direct the lawyer to abide by the client's decisions (even if contrary to the best interest of the lawyer). Rule 1.5 carefully describes limitations on the manner in which fees can be earned. Rules 1.6–1.9 establish conflict of interest rules which inherently put the client's interests ahead of those of the lawyer.

[46] https://www.thomsonreuters.com/en-us/posts/legal/alsp-report-2021/.

[47] Alternative Legal Service Providers Are Quickly Becoming Mainstream for Law Firms & Corporations, Creating a $14 Billion Market, Thomson Reuters, Feb. 11, 2021, online at https://www.thomsonreuters.com/en/press-releases/2021/february/alternative-legal-service-providers-are-quickly-becoming-mainstream-for-law-firms-and-corporations-creating-a-14-billion-market.html; "Is 2021 the year we should we drop the 'Alternative' from Alternative Legal Service Providers?" Client Talk, https://www.clienttalk.co.uk/post/is-it-time-we-dropped-alternative-from-alternative-legal-service-providers; Clare Rason, The Impact Lawyers, https://theimpactlawyers.com/news/is-2021-the-year-we-should-we-drop-the-alternative-from-alsps#:~:text=In%20their%20latest%20report%2C%20%E2%80%9CAlternative,them%20to%20work%20more%20cost%2D.

efficient services to clients[48] have also formed their own captive ALSPs. "The fastest growth has been among ALSPs that law firms have formed as captive subsidiaries. While it is the smallest segment of the ALSP market, it is growing at a rate of about 30 percent a year. Firms are increasingly adopting a hybrid model where they reap the benefits of ALSPs, such as cost reductions for clients, while retaining full control."[49]

Putting aside for a moment the issue of mixed ownership between lawyers and nonlawyers at the root of the debate of ALSPs under the Model Rules of Professional Conduct, there are several common examples of legal services being provided by entities other than lawyers and traditional lawyer-owned firms. Over time, many different service providers have become a routine part of the legal community, like e-discovery and document review vendors, who work with and under the supervision of lawyers who retain them. The issue with ALSPs is not with the legal services being provided (and supervised), but rather that the legal services are being provided to the public by nonlawyers, or by entities not owned by lawyers.The way legal services are provided has changed, even in the confines of the traditional client/law firm model. The traditional model of in-house counsel—when (or if) it existed—is one of a small group of lawyers in house managing the legal business of the entity, which was largely performed by outside lawyers.[50] Insourcing does not make a company an ALSP. But businesses have increasingly insourced legal work traditionally provided to outside counsel, including handling complex transactions and litigation,[51] and using contract lawyers to provide some services.[52] The Altman Weill annual survey of chief legal officers showed that 54 percent intended to decrease law department spend by shifting law firm work to in-house workforce.[53]

Similarly, insurance carriers routinely employ captive law firms to handle civil actions against their insureds that are covered or subject to a duty to defend under the applicable policy. The ABA found the practice acceptable under its Model Rules of Professional Conduct, concluding that insurance staff counsel ethically may undertake such representations so long as the lawyers "(1) inform all insureds whom they represent that the lawyers are employees of the insurance compa-

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[48] "Both law firms and corporations have 'awakened' to the benefits of collaborating with ALSPs, rather than viewing them as competitors to law firms. They both increasingly realize how ALSPs can improve operational efficiency and reduce costs, while firms can still retain and even grow higher-value work." Alternative Legal Service Providers Are Quickly Becoming Mainstream for Law Firms & Corporations, Creating a $14 Billion Market, Thomson Reuters, Feb. 11, 2021, online at https://www.thomsonreuters.com/en/press-releases/2021/february/alternative-legal-service-providers-are-quickly-becoming-mainstream-for-law-firms-and-corporations-creating-a-14-billion-market.html.

[49] Alternative Legal Service Providers Are Quickly Becoming Mainstream for Law Firms & Corporations, Creating a $14 Billion Market, Thomson Reuters, Feb. 11, 2021, online at https://www.thomsonreuters.com/en/press-releases/2021/february/alternative-legal-service-providers-are-quickly-becoming-mainstream-for-law-firms-and-corporations-creating-a-14-billion-market.html.

[50] One change is reflected in the "convergence" trend, pioneered by Tyco and DuPont, where corporations "use a small number of outside law firms to keep legal costs under control." Martha Neil, "Convergence" Can Benefit Law Firms as Well as Corporate Clients, ABA Journal (June 6, 2008) (online at https://www.abajournal.com/news/article/convergence_can_benefit_law_firms_as_well_as_corporate_clients). "The two-way partnership ties the firm to the client but, just as crucially, ties the client to the firm." *Id.*

[51] Benjamin Whetsell, Why Clients Are Insourcing Legal Work, ABA Journal Dec. 14, 2017 (Citing Altman Weil, "In-house counsel are increasingly doing work that outside counsel used to do. According to Altman Weil, about 80% of large law firms have reported losing business to in-house counsel for the past three years."). The 2020 Altman Weill Survey of Chief Legal Officers reports that in house workloads were either somewhat (51.7%) or significantly increased during the COVID crisis. Altman Weill Survey of Chief Legal Officers at p. 4 (2020).

[52] But in 2020, "few" in house law departments reported a plan to increase use of contract lawyers. Altman Weill Survey of Chief Legal Officers at p. 4 (2020).

[53] Altman Weill Survey of Chief Legal Officers at pp. 21-2 (2020). See, e.g., *Lola v. Skadden, Arps, Slate, Meagher & Flom LLP*, 620 F. App'x 37, 39 (2d Cir. 2015)(Plaintiff alleged "he worked for Defendants for fifteen months in North Carolina," conducting document review for the firm "in connection with a multi-district litigation pending in the United States District Court for the Northern District of Ohio.").

ny, and (2) exercise independent professional judgment in advising or otherwise representing the insureds."[54] And "insurance staff counsel may practice under a trade name or under the names of one or more of the practicing lawyers, provided the lawyers function as a law firm and disclose their affiliation with the insurance company to all insureds whom they represent." Staff counsel represent insureds—and in many states, owe their duty solely to the insured they represent—so the arrangement is not typically seen as an ALSP, although the lawyers are employed by a "non-lawyer" corporation—the insurer.[55]

Law firms and corporations currently purchase significant services from ALSPs. Based on surveys, the Thomson Reuters report found,

> The average law firm has significantly increased the number of services for which they use ALSPs since 2018. The average law firm is now using an ALSP for 3.7 different service lines. It is worth noting that two additional service lines were added to the list in 2020, accounting for around half the growth. Without these additions, the average law firm would have increased use by 0.4 service lines.

And corporations increased their use of ALSPs as well. Included in those services are e-discovery, legal research, litigation and investigation support, document review/coding services, consulting on legal technology, nonlegal/factual research, specialized legal services provided by licensed lawyers, regulatory risk and compliance services, consulting on legal opinions, and intellectual property management. All (or most) are services that were traditionally provided by law firms (owned by lawyers). Here are a few examples—our list is certainly not exhaustive:

1. Title Companies

Title companies employ attorneys to search titles and prepare abstracts of title, deeds, and conveyances. This is consistently held to be the practice of law. See, *Hexter Title & Abstract Co. v. Grievance Committee*, 142 Tex. 506, 179 S.W.2d 946 (1944) (Concluding the title company "was permitted to employ salaried attorneys to advise it on the state of title for its own uses; it was prohibited only from providing the same service to customers and prospective customers for their use."). A title company represents the title insurer, and not the seller or purchaser of the property. While treatment of title firms may differ from state to state, they represent legal services offered to the public by companies often owned by nonlawyers.

2. Accounting Firms

Due perhaps to the "inevitable overlap between the fields of accounting and law," in tax advisory services,[56] accounting firms employ lawyers to provide advice to clients, capitalizing on the ability to offer "one-stop-shopping" or "end to end" service that integrates legal services with their other offerings.[57] Perhaps it started in the 1990s when the then "Big Five" accounting firms "made a concerted effort to enter the legal services market," particularly in Europe.[58] "[T]he Big Five pushed

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[54] ABA Formal Ethics Opinion No. 03-430 (https://www.americanbar.org/products/ecd/chapter/219993/). See Also, West Virginia L.E.I. 99-01, "Ethical Propriety of Insurance Company Captive Law Firms" (http://www.wvodc.org/pdf/lei/LEI%2099-01.pdf) (Finding representation of insureds by employed lawyers in a "captive law firm" is permissible under the Rules of Professional Conduct subject to the criteria set forth in this Legal Ethics Opinion."). See, Unauthorized Prac. Law Committee v. American Home Assurance Company, Inc., 261 SW 3d 24 (Tex. 2008) ("[A] liability insurer does not engage in the practice of law by providing staff attorneys to defend claims against insureds, provided that the insurer's interests and the insured's interests in the defense in the particular case at bar are congruent."). Not all states agreed. See, American Ins. Assoc. v. Kentucky Bar Ass'n, 917 S.W.2d 568 (Ky. 1996); Gardner v. N.C. State Bar, 316 N.C. 285, 341 S.E.2d 517, 518 (1986) (approving North Carolina State Bar, Ethics Op. CPR 326 (1983)).

[55] This means the legal services are being performed by lawyers for the public (although limited to representation of insureds). [56] David B. Wilkins and Maria J. Estaban Ferrer, The Integration of Law into Global Business Solutions: The Rise, Transformation, and Potential Future of the Big Four Accountancy Networks in the Global Legal Services Market, 43 Law & Social Inquiry 981 (Issue 3, Summer 2018).

[57] Mikkel Boris, The Big Four Horsemen of alternative legal services, or the law firm apocalypse, August 31, 2020 (https://contractbook.com/legaltech/the-big-four-horsemen-of-alternative-legal-services-or-the-law-firm-apocalypse).

[58] Wilkins Estaban Ferrer, supra n. 56, at 981.

aggressively to win the right to provide legal services in virtually every important legal market around the world, including the United States."[59] And by 2018, "far from being dead, in recent years the legal service lines linked to the international accountancy networks have grown significantly in size, scope, and importance."[60] Accounting firms are moving beyond tax advice to a much broader offering of legal services.[61] "By the 1980s, all the large accounting firms offered to their broad audit client base a growing arsenal of nonaudit consulting services, particularly in the areas of information technology and financial management."[62] And some large law firms are pushing back by offering the same mix of legal and consultation services (which ironically makes the case for integrative services).[63]

3. Contract Lawyers, Litigation Support, and Document Review

We lump together three related categories—contract lawyers, litigation support, and document review—because they significantly overlap, particularly in litigation matters that involve voluminous (and expensive) document review. As a result, clients seeking to control costs, and firms seeking to ensure that they are offering efficient service turn to e-discovery vendors and contract lawyers to assist. While the practice most certainly extends beyond litigation matters, we focus here on litigation. And because the companies that provide the services are likely nonlawyer owned, we include them in the discussion of ALSPs.[64] "Hiring outside document reviewers is often a better solution. This provides a short-term way to expand your firm without actually hiring new attorneys. Most of the work is done remotely from the reviewers' own computers. The reviewers know the technology and are used to large productions."[65] This is super charged by the need to use technology assisted review. "[C]omputer-assisted review is an available tool and should be seriously considered for use in large-data-volume cases where it may save the producing party (or both parties) significant amounts of legal fees in document review."[66] Legal staffing companies—which can be owned by nonlawyers—provide staffing by contract lawyers for anything from document review to filling a temporary position. These companies are not just working as supervised by lawyers as consultants; they are actively marketing their services directly to clients.[67]

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[59] Id.

[60] Id. at 982.

[61] Id. ("Although tax services remain an important cornerstone, as shown in Appendix 1, by 2011, the Big Four legal networks were already important players in a variety of legal fields, including fast-growing areas (e.g., employment and immigration law, restructuring and insolvency law, and technology, media, and telecommunications law) as well as high-end practices, such as corporate mergers and acquisitions (M&A), capital markets, and finance law.").

[62] Id. at 985.

[63] Id. at 983 ("In the second decade of the twenty-first century, it is now large law firms who are attempting to demonstrate that they can provide the seamless integration of law into effective global business solutions with the same degree of "global presence, ability to understand businesses and operate pragmatically, in close connection with experts from other areas, at costs optimized through efficient processes, and technologies" (Deloitte 2013e) that are currently being promised by the increasingly large and empowered Big Four."). See also, Thomas A. Markle, A ACALL TO PARTNER WITH OUTSIDE CAPITAL: The Non-Lawyer Investment Approach Must Be Updated, 45 Arizona State Law Journal 1251, 1257 () ("A trend of firm mergers and consolidation has resulted, and through domestic and international expansion, global firms are now offering a greater portfolio of client services. Often, expanding firms must employ non-lawyer experts to manage the associated growth, business development, and marketing.").

[64] See, Gardner M. Duvall and Susan E. Gunter, Alternative Business Structures for Law Firm Ownership, For the Defense 6 (March 2017) (Noting that nontraditional legal services providers include Avvo, which supplies contract lawyers, and LegalZoom, which offers "legal products and services.").

[65] Diane Rupprecht, Lenor Marquis Segal, and Scott Meyers, Plus-Sized e-discovery for Medium-Sized Firms, For the Defense 72 (DRI 2014).

[66] Moore v. Publicis Groupe, 287 F.R.D. 182, 193 (S.D.N.Y. 2012), adopted sub nom. Moore v. Publicis Groupe SA, 11 CIV. 1279 ALC AJP, 2012 WL 1446534 (S.D.N.Y. Apr. 26, 2012).

[67] It is worth note that at least one survey showed that in 2020, 51.2% of firms surveyed indicated they were using contract lawyers as an alternative staffing strategy. Eric A. Seeger and Thomas S. Clay, Law Firms in Transition – An Altman Weil Flash Survey, p. 34 (2020) (http://www.altmanweil.com/dir_docs/resource/474829CC-0945-4A99-B321-2BFD3DAB146D_document.pdf).

4. Third Party Litigation Funding (TPLF)

Litigation funding companies "invest in consumer and commercial litigation by funding legal action in return for a percentage of a successful claim sum." In other words, the potential recovery—the legal asset—is the collateral for the loan.[68] This is different from a lawyer paying expenses on behalf of a client, who remains responsible,[69] or a client taking out a loan to cover those expenses—the litigation funder gets an agreed share of the recovery. And the amounts loaned are not just for litigation related expenses but can include living expenses and medical bills.[70] Personal injury plaintiffs are not the only ones who use litigation financing—commercial plaintiffs (particularly in patent cases) and defendants can obtain litigation financing as well.[71] This is big business for firms not owned by lawyers. "Most dedicated funders are privately held, but two of the largest, Burford Capital and Omni Bridgeway, are publicly listed, with assets under management (AUM) of USD 4.5 billion and USD 1.7 billion respectively as of December 31, 2020. Harbour Litigation Funding is the largest privately owned dedicated funder."[72] A complete analysis of Third Party Litigation Funding (TPLF) is beyond the scope of this white paper, but courts have scrutinized TPLF's impact on litigation.[73] The DRI Center for Law and Public Policy has completed a thorough examination of TPLF.[74]

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[68] U.S. Litigation Funding and Social Inflation 6 (Swiss Re Institute Dec. 2021) ("Swiss Re Report")(online at https://www.claimsjournal.com/app/uploads/2021/12/swissre.litigation.funding2021.pdf.pdf). The report notes that "Traditional lenders such as banks typically do not fund litigation as they do not accept legal assets as collateral." See, In re Macaluso, No. AP 16-90157-LT, 2021 WL 5276368, at *1 (B.A.P. 9th Cir. Nov. 9, 2021) (Firm had litigation funding agreements under which it sold to the funder the firm's "interest in the anticipated proceeds from the underlying litigation, and he was required to pay specified amounts in accordance with a payment schedule in the parties' agreements, subject to a condition precedent that the underlying litigation yielded the anticipated proceeds."). We leave the debate over whether this funding is permissible to other papers – here, we define and mention TPLF because it is an instance of direct non-lawyer involvement in legal matters.

[69] See American Bar Association, Model Rule 1.5(c)(Requiring the client be advised in writing of the fee, and "other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party.")

[70] See, Collins v. Benton, et al., No. CV 18-7465, 2021 WL 5283964, at *1 (E.D. La. Nov. 12, 2021)(Addressing whether payments for medical bills made by a third-party litigation funding company should be excluded).

[71] "The investments traditionally have funded plaintiffs in corporate litigation, though funders have begun looking for more creative ways to support defense-side work as the industry has matured." Sara Randozzo, Investors Flock to Back Lawsuits in Exchange for a Cut of Settlements. Wall Street Journal (Sept. 18, 2017) (accessed online at https://www.wsj.com/articles/litigation-funder-longford-raises-500-million-as-industry-surges-1505707261?mod=article_inline). See also, Maya Steinitz, Whose Claim Is This Anyway? Third-Party Litigation Funding, 95 Minnesota Law Review 1268, 1270 (2011)(available online from SSRN at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1586053) ("Facing the risk of an uncertain jury verdict, it transfers that risk to a third party by paying a premium. Thus protected, [the company] enables itself to continue its smooth operation generating profits for its shareholders and jobs for its employees."

[72] Swiss Re Report, supra n. 67, at 9; And funder, like Longford, are creating funds to support portfolios of cases. "Longford said the size of its new fund would allow it to work with law firms to support portfolios of existing cases they are handling. Longford said it hoped to start backing litigation pursued by universities and government agencies, in addition to the corporate litigation it already is funding." Sara Randozzo, supra n. 32.

[73] The direct impact is that the potential investor must evaluate the value of the legal asset before deciding to invest. This can impact litigation in a number of ways. One is whether communications with a potential investor are protected by the attorney client privilege or work product doctrine. "Courts have reached different conclusions on whether the documents provided to a litigation funder are discoverable." 3rd Eye Surveillance, LLC & Discovery Patents, LLC, v. United States, et al., No. 15-501C, 2022 WL 500371 (Fed. Cl. Feb. 9, 2022)(Comparing Leader Techs., Inc. v. Facebook, Inc., 719 F. Supp. 2d 373 (D. Del. 2010) (holding that a magistrate judge had not committed clear error in finding no privilege between plaintiff and a litigation funder), with United States v. Homeward Residential, Inc., No. 4:12-CV-461, 2016 WL 1031154 (E.D. Tex. March 15, 2016) (holding that privilege had not been waived as to documents shared with a litigation funder). See also, Acceleration Bay LLC v. Activision Blizzard, Inc., No. CV 16-453-RGA, 2018 WL 798731, at *2 (D. Del. Feb. 9, 2018)(Documents submitted to litigation funder were relevant and because prepared with a "primary" purpose of obtaining a loan and not protected from discovery by work product doctrine or attorney client privilege); United Access Techs., LLC v. AT&T Corp., No. CV 11-338-LPS, 2020 WL 3128269, at *1 (D. Del. June 12, 2020)([M]otion to compel certain litigation funding-related discovery denied as documents, reviewed in camera were not relevant). Perhaps more significant, the investor will inevitably have a say in whether the case can be settled and may conflict with the client's wishes. Law firms may also be getting into the litigation finance business. See, Lyle Moran, A litigation finance stock market? This law firm plans to launch one, ABA Journal (Feb. 14, 2022) (Law firm created Ryell, an investment platform allowing consumers to invest in litigation) (online at https://www.abajournal.com/web/article/why-a-new-york-law-firm-wants-to-create-a-stock-market-for-litigation-finance?utm_medium=email&utm_source=salesforce_502447&sc_sid=00981975&utm_campaign=monthly_email&promo=&utm_content=&additional4=&additional5=&sfmc_j=502447&sfmc_s=45514177&sfmc_l=1528&sfmc_jb=28003&sfmc_mid=100027443&sfmc_u=14600579).

[74] "Litigation Funding: Civil Justice and the Need for Transparency," DRI Center for Law and Public Policy (2018) (online at https://www.dri.org/docs/default-source/dri-white-papers-and-reports/third-party-litigation.pdf).

DRI calls this practice Third Party Litigation Funding; others, like ABA, call it "Alternative Litigation Funding."[75] As defined by ABA 20/20,[76] the practice "refers to the funding of litigation activities by entities other than the parties themselves, their counsel, or other entities with a preexisting contractual relationship with one of the parties, such as an indemnitor or a liability insurer."[77] Noting a number of limitations, the DRI Center for Law and Public Policy's 2018 white paper, *Litigation Funding: Civil Justice and the Need for Transparency,* describes the ABA's definition as merely a starting point, stating that

> emerging evidence suggests that unlike the situation evaluated in ABA 20/20 in 2012, TPLF continues to evolve from its original roots as a transaction between a party to a litigation and a funding entity. Moreover, while the biggest TPLF entities insist that they do not have any control over litigation or settlement of matters that they finance, they zealously guard the confidentiality of their funding agreements so that neither the public nor litigation opponents can confirm that claim, while evidence mounts that at least some participants in the market actively solicit people who may not have otherwise filed lawsuits or maintain at least some control over the lawsuits they file, including participation in the selection of attorneys.[78]

Regardless of what you call it, litigation funding has become a significant investment business. According to a report issued by Swiss Re, "[m]ore than half of the USD 17 billion investment into litigation funding globally in 2020 was deployed in the US."[79]

5. Legal Form Companies

LegalZoom, a company started by nonlawyers—who also included Robert Shapiro, an attorney—is an example of an ALSP that provides legal services to the public, but is not owned by lawyers; in fact, LegalZoom is now a publicly traded company. LegalZoom, described as a "hybrid between a legal service provider and a source for blank legal forms,"[80] offers legal services in two ways: (1) by providing template legal documents the consumer fills out by adding information, and (2) through prepaid legal service plans. According to its website, legal consumers could "Save time

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[75] American Bar Association Commission on Ethics 20/20 Information Report to the House of Delegates, February 2012 (ABA 20/20) (online at https://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20111212_ethics_20_20_alf_white_paper_final_hod_informational_report.pdf).

[76] ABA 20/20 is the Informational Report issued by ABA in February 2012. Many articles refer to an earlier draft of that Report, referred to as the "White Paper," and issued for comment in 2011.

[77] ABA 20/20, at p. 1.

[78] "Litigation Funding: Civil Justice and the Need for Transparency," supra n. 74, at p. 2 (internal citations omitted).

[79] Swiss Re Report, supra n. 69.

[80] Isaac Figueras, The LegalZoom Identity Crisis: Legal Form Provider or Lawyer in Sheep's Clothing?, 63 Case W. Res. L. Rev. 1419 (2013). LegalZoom is described as sending a "mixed message" as to whether it is a legal service provider or legal forms provider. "LegalZoom's own representations do not provide a clear answer as to whether it is a legal servicer or legal form provider. Even if LegalZoom's representations do not facially represent it as a legal service provider, the actual services LegalZoom provides still blur the line between form provider and service provider. LegalZoom's website, its communications with the public, and the prospectus it filed with the SEC in May of 2012 all demonstrate fundamental ambiguities in its services. A closer look at LegalZoom's representations reveals two opposing self-images: (1) the company seeking to empower consumers by offering them legal tools and (2) the legal servicer hiding in form provider's clothing." Id. at 1422 (footnotes omitted). See also, Emily McClure, LegalZoom and Online Legal Service Providers: Is the Development and Sale of Interactive Questionnaires That Generate Legal Documents the Unauthorized Practice of Law?, 105 Ky. L.J. 563 (2017)("The focus of this Note regards whether the sale of interactive questionnaires, which generate particularized legal documents, constitutes the unauthorized practice of law."); Cody Blades, Crying over Spilt Milk: Why the Legal Community Is Ethically Obligated to Ensure LegalZoom's Survival in the Legal Services Marketplace, 38 Hamline L. Rev. 31, 32 (2015) ("[D]espite LegalZoom's shortfalls, the legal community, due to its inability to provide access to all who need it, is ethically obligated to pass regulations which allow LegalZoom to continue.").

and money on common legal matters!"[81] LegalZoom's website "offers assistance with wills, trusts, incorporations, trademark registrations, divorces, and more. The customer chooses a document, a last will and testament for example, which prompts the software program to ask a series of questions to help the customer fill out the form. LegalZoom employees then review the documents upon completion for accuracy, consistency, spelling, and completeness. Customers pay a fee for the documents and then the papers are mailed to them."[82] Citing the allegations in LegalZoom's complaint against the North Carolina State Bar, one court noted "LegalZoom, through its website, www.LegalZoom.com, offers two services: (1) a legal document preparation service; and (2) in those states where permitted, prepaid legal services plans."[83] LegalZoom has grown from providing DIY legal forms to one that offers legal consultation, offering flat fee pricing for attorney review documents (11–15 pages $39, 16–25 pages $99, over 26 pages contact attorney for pricing).[84] A similar company is Rocket Lawyer, which provides documents, and access to "on call" lawyers, and tax professionals for a monthly fee.[85]

[81] Webster v. LegalZoom.com, Inc., No. B240129, 2014 WL 4908639, at *1 (Cal. Ct. App. Oct. 1, 2014) (Affirming approval of class action settlement) (unpublished).

[82] Caroline E. Brown, LegalZoom: Closing the Justice Gap or Unauthorized Practice of Law?, 17 North Carolina Journal of Law & Technology 219, 233 (2016)(online at (https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=1314&context=ncjolt). "LegalZoom calls its process 'LegalZip,' and refers to it as a 'branching' technology. As the customer proceeds, the pre-existing templates are populated with information the customer provides, and LegalZoom equates the software to the modern technological equivalent of a printed form book or do-it-yourself kit. It contends that it exercises no discretion or independent legal judgment in response to customer choice." LegalZoom.com, Inc. v. N. Carolina State Bar, No. 11 CVS 15111, 2014 WL 1213242, at *5 (N.C. Super. Mar. 24, 2014). LegalZoom argued in that case that by this service it "is not a law firm and does not provide legal advice, and encourages consulting a lawyer for further legal questions or inquiries." Id. at *6. Disputes with LegalZoom appear to be contractually subject to arbitration. Litevich v. Legalzoom.com, Inc., No. X04HHDCV146055757S, 2016 WL 401912, at *5 (Conn. Super. Ct. Jan. 8, 2016) (LegalZoom's motion to compel arbitration granted). See also, LegalZoom.com, Inc. v. McIllwain, 2013 Ark. 370, 11, 429 S.W.3d 261, 266 (2013) (Holding that dispute between the parties over whether LegalZoom engaged in the unauthorized practice of law was subject to arbitration, but that "[g]iven that the circumstances of this case involve allegations of the unauthorized practice of law, we hereby direct the Clerk to forward a copy of this opinion to the Arkansas Supreme Court Committee on the Unauthorized Practice of Law."). Ultimately, the North Carolina State Bar settled the litigation with LegalZoom with a consent judgment. leading to legislation allowing online self-help legal forms. See, Daniel Fisher, LegalZoom Settles Fight With North Carolina Bar Over Online Law, Forbes (Oct. 22, 2015) (https://www.forbes.com/sites/danielfisher/2015/10/22/legalzoom-settles-fight-with-north-carolina-bar-over-online-law/?sh=53479e73eb28). The settlement led to legislation allowing "the online self-help service to provide routine legal documents to consumers in the state." Barry Smith, Legislation Settles Lengthy Dispute Between State Bar, LegalZoom, Carolina Journal (June 20, 2016) (https://www.carolinajournal.com/news-article/legislation-settles-lengthy-dispute-between-state-bar-legalzoom/).

[83] Id., LegalZoom.com, Inc. v. N. Carolina State Bar, at *2.

[84] LegalZoom website, Legal Document Review, online at https://www.legalzoom.com/attorneys/legal-documents-review.html. Compare, In re Est. of Guffy, No. 41-12-0298, 2015 WL 13838812, at *9 (Pa. Com. Pl. Sept. 14, 2015) (Decedent "created his estate documents through the LegalZoom website"), with Heatherly v. Off the Wagon Tours, LLC, No. M201901582COAR3CV, 2021 WL 3722155, at *1 (Tenn. Ct. App. Aug. 23, 2021) (Noting that "LegalZoom drafted and filed Articles of Organization for the [Defendant] LLC.").

[85] RocketLawyer website: https://www.rocketlawyer.com/?partnerid=103&cid=11247831537&adgid=107150869821&loc_int=&loc_phys=9009137&mt=b&ntwk=g&dv=c&adid=469549373024&kw=%2Blegal%20%2Bshield&adpos=&plc=&trgt=&trgtid=kwd-27062972525&gclid=EAIaIQobChMIlpbTgMGO9gIVh21vBB1C1QH1EAMYASAAEgIL4_D_BwE.

Other companies, like LegalShield, offer prepaid legal services, charging customers a monthly fee for access to a panel of lawyers. Legal Shield is a multilevel marketing business that is sold to consumers by its network of lawyers.[86] "LegalShield provides prepaid legal services to members around the country by matching them with qualified attorneys in their geographic area."[87] The entity was initially formed by the Sportsman's Motor Club in 1976 as "Pre-Paid Legal Services" and was publicly traded until 2011 when it was purchased by a private equity firm and changed its name to LegalShield; it remains privately owned by nonlawyers. Insurer ARAG also offers prepaid legal services to consumers for a monthly fee. Its basic plan ($16.25 per month) covers "matters such as wills and trusts, defense of civil matters, consumer issues, adoptions and guardianships, landlord/tenant matters, real estate, tax audits and collections, juvenile crime and misdemeanors. In addition, purchasers of the insurance can save 25 percent off a lawyer's normal rates in matters such as divorce and bankruptcies. Coverage is not available in Alaska."[88] The more expensive plan ($24.50) also covers "financial counseling, identity theft protection and eldercare counseling."[89]

6. Public Adjusters

As defined by the National Association of Public Insurance Adjusters (NAPIA), public adjusters are "experts on property loss adjustment who are retained by policyholders to assist in preparing, filing and adjusting insurance claims. Employed exclusively by a policyholder who has sustained an insured loss, these professionals manage every detail of the claim, working closely with the insured to provide the most equitable and prompt settlement possible."[90] The NAPIA has adopted "Rules of Professional Conduct and Ethics." The rules include such provisions as "Members shall refrain from improper solicitation," "Commission rates shall be fair and equitable," and "[m]embers shall not engage in the unauthorized practice of law."

As is evident from the description provided by their national association, the basic function of a public adjuster is to represent members of the public in preparing documents related to insurance claims, as well as to advocate for members of the public in the negotiation and settlement of insurance claims. In many circumstances, public adjusters are paid a percentage of what is recovered from the insurer. It is, therefore, difficult to differentiate the services provided by a public adjuster from those provided by a lawyer.[91]

Public adjusters operate in many states, sometimes as regulated professionals, and sometimes without regulation. They generally become an obvious presence after a natural disaster, which may explain why Mississippi, Texas, South Carolina, and Louisiana[92] all have enacted laws to regulate them. In Louisiana, the rise of public adjusters came in 2005–06 during the recovery from Hurricanes Katrina and Rita. The move to license public adjusters developed when state law enforcement declined to prosecute for the unauthorized practice of law, and the regulatory

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[86] Best Company, Legal Shield (https://bestcompany.com/online-legal-services/company/legalshield).

[87] Chau v. Pre-Paid Legal Servs., Inc., No. B270277, 2017 WL 604721, at *1 (Cal. Ct. App. Feb. 15, 2017).[88] Debra Cassens Weiss, Insurer offers legal insurance directly to consumers for $16.25 a month, ABA Journal (April 7, 2016)(online at https://www.abajournal.com/news/article/insurer_offers_legal_insurance_directly_to_consumers_for_16.25_a_month).

[89] Id.

[90] https://www.napia.com/aboutnapia1.

[91] For example, La RS 37:212 defines the "Practice of Law" to include "the doing of any act, on behalf of another, tending to obtain or secure for the other the prevention or the redress of a wrong or the enforcement or establishment of a right." A similar function is performed by landmen, who regularly negotiate the purchase of land and mineral rights. "A landman is the public facing side of an oil, gas, mineral or other energy sources exploration and production team who interacts and negotiates directly with landowners to acquire leases for the exploration and development of minerals or other energy sources." American Association of Professional Landmen (AAPL) website, "What is a Landman?, https://www.landman.org/about/who-we-are/what-is-a-landman.

[92] La. R.S. 22:1691-1708 was enacted in the aftermath of Hurricanes Katrina and Rita at the urging of the Louisiana State Bar Association when many members of the public were being solicited by individuals who held themselves out as Public Adjusters.

power of the state supreme court, the Louisiana State Bar Association (LSBA), and the Louisiana Attorney Disciplinary Board did not reach to nonlawyers. Filing for injunctive relief against one of the most prolific "adjusters" claiming to be able to represent those who had lost their homes and businesses proved successful but less than immediate.[93] The bar association concluded that the most effective way to protect the public was an acknowledgement of "public adjusters" as a profession and the enactment of statutory regulation of public adjusters.

THE REFORM LANDSCAPE

Reform can be organized into two main categories: (1) reform of the rules about ownership of the law firm; and (2) reform of the legal marketplace, including entities in the category of "legal service providers." Some states have adopted the "sandbox" metaphor described above in implementing marketplace reform. Some states have considered these reforms but declined to implement them.

The following offers a short overview of the reform efforts from selected states across the United States. The jurisdictions highlighted here are not intended to be exhaustive, but they are representative of the shape of the ABS movement in the U.S.

"Some states have adopted the "sandbox" metaphor [...] in implementing marketplace reform. Some states have considered these reforms but declined to implement them."

[93] Louisiana State Bar Association v. Carr and Associates, 2008-2114 (La.App.1Cir 5/08/09), 15 So.3d 158 (2009).

Nonlawyer Ownership of Law Firms

District of Columbia

D.C. has permitted a limited form of nonlawyer ownership of law firms[94] since 1991,[95] requiring that (1) the entity's sole purpose is to provide legal services; (2) all persons having managerial authority or holding a financial interest abide by the Rules of Professional Conduct; (3) the lawyers having a financial interest or managerial authority in the partnership or organization are responsible for the nonlawyer participants.[96] Nonlawyers must provide services related to the legal practice and cannot be a passive investor.[97] Many lawyers who practice in the District of Columbia are also admitted to the bar in one or more other states where nonlawyer ownership is not permitted. Representatives of the D.C. Bar told the ABA Ethics 20/20 Commission that practical use and experience with the Rules of Professional Conduct has been sparse and the results hard to track.[98]

Arizona

The Arizona Supreme Court's 2019 Task Force on Delivery of Legal Services[99] recommended[100] removing "the explicit barrier to lawyers and nonlawyers co-owning businesses that engage in the practice of law while preserving the dual goals of ensuring the professional independence of lawyers and protecting the public."[101] Effective January 1, 2021, Arizona eliminated the rule prohibiting fee sharing and prohibiting nonlawyers from having economic interests in law firms and created the alternative business structure license.[102] An ABS is "a business entity that includes nonlawyers who have an economic interest or decision-making authority in the firm and provides legal services."[103] As of August, 2021, 10 companies applied for the license, which permitted them to employ lawyers.[104] Both LegalZoom and Rocket Lawyer legal document preparation companies have applied for licenses.[105] LegalZoom was the first U.S. company to, in 2015, obtain an ABS license in the United Kingdom with which it has partnered with and acquired UK law firms.[106] The first three to be approved in Arizona were multidisciplinary partnerships.[107] Arizona's ABS program has been extended for an additional five years.[108] Also as part of Arizona's reforms, the state now permits licensed nonlawyers (legal paraprofessionals) to provide limited legal services to the public, including attending court. There is also a Licensed Legal Advocate Program[109] that will be piloted at the University of Arizona.[110] Arizona has not yet implemented a regulatory sandbox for legal services, but the state does have one for financial technology.[111]

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[94] http://legalinnovationregulatorysurvey.info/district-of-columbia/.
[95] District of Columbia Rule of Professional Conduct 5.4(b).
[96] Id.
[97] Id., comment 8.
[98] Virginia State Bar Association, Report: The Study Committee on the Future of Law Practice, p. 20.
[99] https://www.azcourts.gov/cscommittees/Legal-Services-Task-Force.
[100] By eliminating Arizona Rules of Professional Conduct 5.4 and 5.7.
[101] It was adopted in August 2020 https://www.azcourts.gov/Portals/201/Press%20Releases/2020Releases/082720RulesAgenda.pdf.
[102] https://www.americanbar.org/groups/law_practice/publications/law_practice_magazine/2021/ja21/siegel/.
[103] https://www.americanbar.org/groups/law_practice/publications/law_practice_magazine/2021/ja21/siegel/.
[104] https://www.legalzoom.com/; https://www.legalzoom.com/join-attorney-network.html.
[105] https://news.bloomberglaw.com/business-and-practice/legalzoom-asks-to-employ-lawyers-under-new-arizona-rules.
[106] https://www.reuters.com/legal/legalindustry/changing-stakes-how-evolving-law-firm-ownership-rules-could-or-could-not-re-2021-08-19/.
[107] https://www.lawsitesblog.com/2021/05/arizona-licenses-first-three-alternative-business-structures-for-delivering-legal-services.html.
[108] https://news.bloomberglaw.com/business-and-practice/law-firm-deregulation-programs-pick-up-speed-in-utah-arizona.
[109] https://iaals.du.edu/blog/arizona-s-licensed-legal-advocates-pilot-program-aims-provide-needed-legal-help-certain-cases.
[110] https://law.arizona.edu/news/2020/02/new-licensed-legal-advocates-pilot-program.
[111] Arizona was the first state to create, in 2018, a financial technology regulatory sandbox https://www.azag.gov/fintech; https://www.forbes.com/sites/patrickgleason/2021/12/13/regulatory-sandboxes-give-states-an-edge-attracting-innovation-and-investment/?sh=6855ad327003.

Regulatory Sandboxes Still "In Play"

Utah

Utah is the first state to have a legal regulatory sandbox.[112] In July 2021, the *Innovation Office Activity Executive Summary*[113] reported that since October 2020, 29 entities had been approved to offer Sandbox Legal Services within a four-category risk classification system.[114] The sandbox collects data and tracks complaints. Some companies have more than 50 percent nonlawyer ownership, some have less than 50 percent; some of the legal services are provided by employed lawyers, some by managed lawyers, and some by software under lawyer supervision. In December 2020, the Utah Supreme Court restricted its regulatory sandbox to exclude referral fee models[115] where the fees are paid to nonlawyers because of "potential ethical challenges." Rocket Lawyer, which assists with online legal document drafting (wills, leases),[116] is one company that is participating in the sandbox.[117] As of spring 2021, there is a Utah law firm (Law on Call[118]) owned by 100 percent nonlawyers.[119]

Virginia

In 2019, Virginia's *Future of Law Practice* report[120] recommended study of alternative business structures[121] and fee sharing with nonlawyers and advertising. The state is moving ahead in 2022 with a regulatory sandbox for financial technology.[122]

North Carolina

In August 2021, the North Carolina State Bar Subcommittee to Study Regulatory Reform (which started in February 2020)[123] voted to move a legal sandbox from the study phase to the implementation phase:[124] the Subcommittee to Study Regulatory Change was established[125] and is in the information gathering stage.[126] At the same time the state is embarking on a financial technology regulatory sandbox.[127]

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[112] https://iaals.du.edu/blog/whats-name-reality-behind-rhetoric-regulatory-sandboxes. Utah has experience with regulatory sandboxes in the fintech and insurance sectors.
[113] https://utahinnovationoffice.org/wp-content/uploads/2021/07/Innovation-Office-Public-Report-June-2021.pdf.
[114] https://utahinnovationoffice.org/authorized-entities/.
[115] https://drive.google.com/file/d/1kp_GYv5VLrjyBfLg0QhELC_HmG9zZwKU/view.
[116] https://news.bloomberglaw.com/business-and-practice/law-firm-deregulation-programs-pick-up-speed-in-utah-arizona.
[117] https://www.reuters.com/legal/legalindustry/changing-stakes-how-evolving-law-firm-ownership-rules-could-or-could-not-re-2021-08-19/.
[118] https://www.northwestregisteredagent.com/law-on-call.
[119] https://www.abajournal.com/news/article/first-law-firm-owned-entirely-by-nonlawyers-opens-in-utah.
[120] https://www.vsb.org/docs/2019_SCFLP_Report.pdf.
[121] http://www.vsb.org/docs/FINAL_Report_of_the_Study_Committee.pdf.
[122] https://lis.virginia.gov/cgi-bin/legp604.exe?221+cab+SC10125SB0712+SRREF.
[123] https://ncbarblog.com/pd-limited-licensing-and-regulatory-reform-update/.
[124] https://twitter.com/jeffk_nc/status/1430895366245814279?s=20.
[125] https://www.jdsupra.com/legalnews/nonlawyer-ownership-of-law-firms-coming-2760765/.
[126] https://www.youtube.com/c/NorthCarolinaStateBar/videos; https://www.youtube.com/watch?v=R0TDYisZ9S8.
[127] https://www.natlawreview.com/article/what-proposed-north-carolina-regulatory-sandbox-could-mean-fintech-and-financial.

Regulatory Sandboxes "Timed Out"

California

In 2020, the California State Bar's Task Force on Access Through Innovation of Legal Services (ATILS) released its *Final Report and Recommendations*,[128] and in January 2021, its report *Closing the Justice Gap*,[129] which recommended a legal regulatory sandbox, considering fee sharing, delivery of nonlegal services provided by lawyers and business affiliated with lawyers, and lawyer referral services.[130] In January 2021, California began exploring the development of a regulatory sandbox. The *Closing the Justice Gap* Working Group, which began its work in January 2021, was to submit recommendations to the bar by September 2022.[131] Discussions evolved to focus on projects that would help underserved legal clients.[132] However, on December 7, 2021, the State Bar of California paused its legal regulatory sandbox "to allow time for further conversations and determine the best next steps." [133] This decision came when criticism from state lawmakers suggested the sandbox project was not being limited to underserved clients:[134] "The regulatory sandbox could become an open invitation for profit-driven corporations, hedge funds, or others to offer legal services or directly practice law without appropriate legal training, regulatory oversight, protections inherent in the attorney–client relationship, or adequate discipline to the detriment of Californians in need of legal assistance." [135, 136]

Washington

On July 1, 2021, the Washington Supreme Court's Practice of Law Board released the *Blueprint – a plan for the Legal Regulatory Sandbox*[137] proposing the Utah model but focusing on access to justice initiatives. Washington permitted Limited License Legal Technicians (LLLTs) in family law[138] to fee share with lawyers and to own minority interests in law firms from 2015 to 2021.[139,140] In 2021, the Washington Supreme Court decided to *end* its LLLT program because it was expensive and there were too few applicants.[141]

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[128] https://www.calbar.ca.gov/Portals/0/documents/publicComment/ATILS-Final-Report.pdf.
[129] https://www.calbar.ca.gov/About-Us/Who-We-Are/Committees/Closing-the-Justice-Gap-Working-Group.
[130] http://legalinnovationregulatorysurvey.info/2021/01/california-4/; the Task Force on Access Through Innovation of Legal Services in 2018 recommended regulatory changes to improve access to legal services using technology, artificial intelligence and online legal service delivery models. https://www.americanbar.org/groups/law_practice/publications/law_practice_magazine/2021/ja21/siegel/.
[131] http://legalinnovationregulatorysurvey.info/2021/01/california-4/; https://www.americanbar.org/groups/law_practice/publications/law_practice_magazine/2021/ja21/siegel/.
[132] https://news.bloomberglaw.com/business-and-practice/california-bar-sandbox-may-rattle-legal-competition-for-firms.
[133] https://www.legalcnetwork.com/blog/12211424.
[134] https://news.bloomberglaw.com/business-and-practice/california-bar-sandbox-may-rattle-legal-competition-for-firms.
[135] https://www.law.com/therecorder/2021/12/13/state-bar-pauses-regulatory-sandbox-work-after-criticism-by-lawmakers/?slreturn=20220031153054.
[136] https://www.jdsupra.com/legalnews/nonlawyer-ownership-of-law-firms-coming-2760765/.
[137] https://www.wsba.org/docs/default-source/legal-community/committees/practice-of-law-board/2021-06-21-blueprint-(v7)-sent-to-court.pdf.
[138] Washington's family law LLLTs can "consult with and advise clients, complete and file necessary court documents, assist pro se clients at certain types of hearings, and advise and participate in mediation, arbitration, and settlement conferences."
[139] https://www.courts.wa.gov/court_rules/pdf/APR/GA_APR_28_00_00.pdf.
[140] The entity may be a partnership, professional corporation, association, or other business structure authorized to practice law for a profit. Washington Rule 5.9 (b)(2) and (3).
[141] http://legalinnovationregulatorysurvey.info/2020/06/washington/.

Regulatory Sandboxes Considered but Not Implemented

Florida

On June 28, 2021, the Florida Bar issued its *Final Report of the Special Committee to Improve the Delivery of Legal Services,*[142] recommending that the Florida Supreme Court establish a commission[143] to direct a three-year Law Practice Innovation Lab Program modeled after Utah's legal regulatory sandbox.[144,145] The lab would allow for innovation for noncontrolling equity investment of nonlawyers in law firms (but not passive investment) as well as a limited assistance paralegal program.[146] But in 2022, Florida Bar's Board of Governors voted unanimously to *reject the committee's recommendations to allow minority ownership in law firms by nonlawyers*/firm employees.[147]

Illinois

The Illinois State Bar Association was opposed to nonlawyer "investment, ownership, or management" of law firms as well as "fee sharing with nonlawyers."[148] The Chicago Bar Foundation Task Force on the Sustainable Practice of Law & Innovation reported to the Illinois Supreme Court in October 2020 and recommended a modified version of the traditional sandbox to establish a new category of regulated entities.[149] The task force also recommended formation of a committee to explore the potential benefits and harm associated with eliminating the prohibition of ownership of law firms by people who are not lawyers.[150] *No recommendations were implemented* due to resistance from the bar with reference to the competition that might arise from large accounting firms.[151]

New York

In December 2020, the New York Commission to Reimagine the Future of NY Courts' Working Group on Regulatory Innovation[152] released its report.[153] It concluded *"Alternate Business Structures for law firms should not be permitted in New York at the present time,* but current experiments under way in Arizona, Utah, and California should be followed carefully and, if they are successful, the creation of an ABS model or models in New York State with the use of a 'sandbox' should be reconsidered."[154] New York's bar has resisted ABS "because of deeply held concerns over upholding lawyer independent and legal ethics standards."[155] Notably, as of December 2021, the NYSB Committee issued an opinion that lawyers can enter co-counsel (but not employment) business relationships with law firms that have nonlawyer owners in jurisdictions where such ownership is permitted.[156]

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[142] http://legalinnovationregulatorysurvey.info/2021/07/florida-5/.
https://www-media.floridabar.org/uploads/2021/06/FINAL-REPORT-OF-THE-SPECIAL-COMMITTEE-TO-IMPROVE-THE-DELIVERY-OF-LEGAL-SERVICES.pdf.

[143] https://www.floridabar.org/the-florida-bar-news/special-committee-to-improve-the-delivery-of-legal-services-suggests-legal-labs-and-relaxing-fee-splitting-rules/.

[144] https://www-media.floridabar.org/uploads/2021/06/FINAL-REPORT-OF-THE-SPECIAL-COMMITTEE-TO-IMPROVE-THE-DELIVERY-OF-LEGAL-SERVICES.pdf.

[145] https://news.bloomberglaw.com/business-and-practice/florida-joins-states-in-testing-new-law-firm-ownership-models.

[146] http://legalinnovationregulatorysurvey.info/2021/07/florida-5/.

[147] https://news.bloomberglaw.com/securities-law/florida-bars-rejection-of-non-attorney-ownership-thwarts-innovation.

[148] https://www.isba.org/ibj/2016/07/nonlawyerownershipoflawfirmsarecurr; http://www.chicagobusiness.com/article/20160511/NEWS04/160519959/should-law-firms-be-allowed-to-sell-stakes-to-investors-illinois-bar-says-no.

[149] https://chicagobarfoundation.org/pdf/advocacy/task-force-report.pdf; https://chicagobarfoundation.org/blog/cba-cbf-task-force-releases-report/; https://chicagobarfoundation.org/advocacy/issues/sustainable-practice-innovation/.

[150] https://chicagobarfoundation.org/advocacy/issues/sustainable-practice-innovation/.

[151] https://news.bloomberglaw.com/us-law-week/chicago-bar-group-urges-legal-tech-partnerships-with-nonlawyers.

[152] http://legalinnovationregulatorysurvey.info/2020/06/new-york-2/.

[153] https://www.nycourts.gov/LegacyPDFS/publications/RWG-RegulatoryInnovation_Final_12.2.20.pdf.

[154] https://www.nycourts.gov/LegacyPDFS/publications/RWG-RegulatoryInnovation_Final_12.2.20.pdf.

[155] https://news.bloomberglaw.com/business-and-practice/n-y-others-mull-moves-to-allow-companies-to-co-own-law-firms.

[156] Decision by the New York State Bar Association Commission on Professional Ethics (Opinion 1234 on December 7, 2021) https://nysba.org/ethics-opinion-1234/.

Thinking Outside of the Sandbox

Connecticut

With its recent State of the Legal Profession Task Force, the Connecticut Bar Association aimed to dialogue with the legal community with a view to making recommendations to reduce legal costs, improve efficiency and better manage legal dockets.[157] The topics addressed by five subcommittees were: legal technology, ABS, law schools, referrals, and ethics.[158] The task force aimed for recommendations by the fall of 2021, but so far nothing has been published.[159]

Oregon

In 2017, the Oregon State Bar Future's Task Force released a report, "The Future of Legal Services in Oregon."[160] On September 27, 2019, the Oregon State Bar Board of Governor recommended the creation of a licensed legal paraprofessional program and a path to a law license without a law degree. These recommendations were approved on July 19, 2022, by the Oregon Supreme Court.[161] The issue of nonlawyer ownership of law firms in the context of multidisciplinary practices was raised in 2015 but has not been acted upon by the Oregon State Bar.

The Canadian Sandbox

Canadian lawyer self-regulation is firmly established. Neither the courts nor legislative bodies have a significant role to play in governing the legal profession. The regulators in each province and territory are Law Societies, created by provincial statutes and led by elected lawyers. As noted previously, lawyers in Canada are subject to "unfettered self-regulation" when compared with others in the "legal profession in the common law world."[162] The Federation of Law Societies of Canada,[163] made up of designates from each of Canada's Law Societies, has established model rules of professional conduct. Similar to the American Bar Association's exploration of ABS and related topics, the Canadian Bar Association's (CBA) 2014 *Futures Initiative*[164] recommended relaxing rules preventing nonlawyers from owning law firms in favor of increased access to justice, but these recommendations were not adopted by the CBA and have no binding effect on any of Canada's Law Societies. (For further analysis of Canadian provinces exploring innovation in the delivery of legal services, see Appendix.)

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[157] https://www.ctbar.org/members/sections-and-committees/task-forces/state-of-the-legal-profession-task-force.
[158] https://www.ctbar.org/members/sections-and-committees/task-forces/state-of-the-legal-profession-task-force/sub-committees.
[159] https://www.ctbar.org/members/sections-and-committees/task-forces/state-of-the-legal-profession-task-force.
[160] http://www.osbar.org/_docs/resources/taskforces/futures/FuturesTF_Summary.pdf.
[161] https://www.abajournal.com/news/article/licensed-paralegal-program-in-oregon-gets-final-approval.
[162] Rhode, Deborah L. and Wolley, Alice Comparative Perspectives on Lawyer Regulation: An Agenda for Reform in the United States and Canada, Fordham Law Review 80 (2012) page 2774.
[163] http://flsc.ca.
[164] Canadian Bar Association 2014 "Futures: Transforming the Delivery of Legal Services in Canada" http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf.

THE IMPACT OF CHANGE

The United States prides itself on its democratic institutions and its free market economy. Both purport to be the genesis of the ABS movement. Access to fair adjudication of rights based on the Rule of Law is the cornerstone of democratic systems. Similarly, access to markets where any hard-working individual, regardless of background, can succeed is the cornerstone of the American Dream. Those who advocate for reform of the legal economy claim to be following this orthodoxy. The implication is that the long-standing rules surrounding the practice of law demonstrate paternalistic and elitist principles that have been outpaced in the twenty-first century.[165]

It is true that lawyers and the legal system revere precedent and are slow to adopt sweeping change. Indeed, the reliance on precedent is a foundation of the Rule of Law. This is to assure that new formulations are carefully considered and fully published before being implemented so that consequences are known in advance. The sandboxes and other experimental efforts described in this white paper have begun the process of this sort of consideration. Unfortunately, most of these efforts have been undertaken in a vacuum where few members of the bar are aware of them, or if aware, have little or no information about outcomes.

Tradition and precedent are not always ends unto themselves, but they do embody our core belief systems. The legal profession is centered on service to the public and service to the justice system. It should be axiomatic that advancing the interest of the profession is tied to advancing the interest of justice for the public.... ALSPs are already operating and selling directly to the public without much oversight or regulation. While it is often suggested that laws prohibiting the unauthorized practice of law and/or efforts by bar associations to inhibit the unauthorized practice of law are sufficient, many bar associations' experiences are to the contrary.[166]

It should be axiomatic that advancing the interest of the profession is tied to advancing the interest of justice for the public.... ALSPs are already operating and selling directly to the public without much oversight or regulation.

THE CHALLENGES PRESENTED BY THE ABS MOVEMENT

A great many questions remain to be explored about nonlawyer investment in the legal economy. Does ABS provide the average person with improved access to the courts, to good legal representation, and, ultimately, to justice? Do ABS structures erode professional standards, professional competency, or respect for the legal system as a whole?

[165] Markle, A Call to Partner With Outside Capital: The Non-Lawyer Investment Approach Must Be Updated, 45 Ariz St.LJ 125 (2014).
[166] See the discussion of South Carolina's battles with LegalZoom and Louisiana's efforts to constrain Public Adjusters, pp. 16–17 of this white paper.

Yet, a careful examination of the history of the ABS movement and of the "sandbox" experiments thus far undertaken hint at the answers to these questions and suggest that neither lawyers nor the public are likely to be well-served by commoditization of the profession. Notably, the ABA House of Delegates has repeatedly rejected changes to Rule 5.4. Nonlawyer investment/ownership is simply not a popular concept among the 589 lawyers elected to represent constituencies from across the country and the profession. Similarly, many states that have considered ABS models have rejected them. Some that have "experimented" have not found ABS to make much impact. In truth, only the District of Columbia and Arizona have fully embraced nonlawyer ownership of/investment in law firms. Even at that, the Washington, D.C., expansion is narrow so as only to allow lobbyists to participate in law firm profits. Utah has followed the Arizona lead, but still does so within a "sandbox" framework, and fewer than 50 entities have been authorized within the experimental regulatory scheme. Virginia and North Carolina are just beginning to build their sandboxes. Thus, of 51 jurisdictions, only 13 have even expressed interest in ABS. Five have adopted some form of nonlawyer ownership. Eight took a look at ABS and then abandoned the effort. Those states that have rejected the ABS movement, or slowed down the adoption of sandboxes and/or other experimental efforts, often raise concerns about the unauthorized practice of law and identify one or more of the following additional challenges:

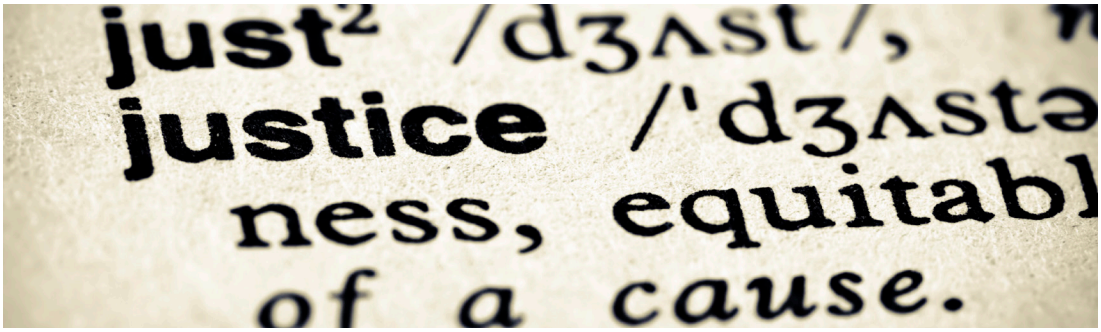
1. ABS May Decrease Access to Justice

As firms shed work that does not provide a return on investment, there is the legitimate question of whether there will be other avenues for the clients who are left behind. Access to justice may be threatened by shareholder agendas. Ironically, the impetus to expand ABS to improve access to legal services might have the exact opposite effect. Initial international data suggests that ABS may not impact access to justice at all.[167]

2. Return on Investment Replaces the Best Interest of the Client and the Public

Generally, the most important question posed by the ABS movement arises from the nonlawyer or corporate investor's drive for profit and how that motivation conflicts with the client's best interest or the interest of the public. Investors seek a return on investment, which inherently diminishes the primacy of the client's interest over that of the firm. Put another way, will the need for profitability replace the best interest of the client as the primary (and ethical) obligation of the lawyers in the firm? Will ABS fundamentally change law from a profession into just another commercial activity?

Thus, of 51 jurisdictions, only 13 have even expressed interest in ABS. Five have adopted some form of nonlawyer ownership. Eight took a look at ABS and then abandoned the effort.



[167] Nick Robinson, When Lawyers Don't Get All the Profits: Non-Lawyer Ownership, Access, and Professionalism, 29:1 Geo. L.J. (2016).

3. Negative Impact on Smaller Firms and Less Lucrative Practices

Nonlawyer investment via ABS may encourage firms to pursue financially lucrative practices at the cost of isolating or eliminating less profitable ones. Acceptance of nonlawyer investment might affect the survival of small firms and solo practitioners and, in turn, affect clients that need those firms to have reasonable access to legal services.

4. Reduction in Pro Bono Work

Pro bono work, required by many states' ethics rules and actively encouraged by many law firms, may suffer because of the need to provide a return on investment. In other words, the argument can be made that investor agendas, by virtue of their drive for profit, may discourage less profitable activities—including pro bono work—that generate no revenue.

5. Regulatory Challenges

There are a myriad of regulatory challenges created by ABS. Most states govern their bars through the supreme court and organized bar associations, which do not have jurisdiction or control over nonlawyer investors or large corporate owners. Governance of the lawyers in firms with nonlawyer investors—who remain subject to the applicable rules of ethics—will be more challenging.

6. Lack of Influence, Direction, and Oversight

State, local, and speciality bar associations currently provide ethical guidance for lawyers. These associations would have no influence or oversight of nonlawyers. Moreover, to date, these associations have been silent on the ABS issue, which leaves lawyers directionless and creates a potential regulatory vacuum.

FURTHER WORK TO BE DONE

The DRI Center for Law and Public Policy sees this white paper as a key step in helping stakeholders examine the ABS movement and its inevitable effect on the traditional practice of law by licensed lawyers. The intent is to be descriptive and explanatory, while acknowledging the need for further analysis, study, and caution on these issues. The Center's work does not stop here, however, because the Center will continue to review the claims by both side of the ABS issue, as well as review the impact of ABS changes where implemented to evaluate whether the intent matches the reality for the profession, the public, and the justice system.

We are hopeful that DRI members and others in our profession will become engaged in this exploration and dialogue, and we look forward to providing additional materials in the future as the Center's work on this very important issue continues.

APPENDIX – CANADIAN SANDBOX: PROVINCIAL ANALYSIS

The Law Societies in several provinces have enacted changes permitting various versions of nonlawyer ownership of law firms and several have implemented legal regulatory sandboxes. Canadian regulators acknowledge that the public already obtains legal services from innovative technology actors who operate in a legal gray area because they are not lawyers and therefore not subject to the controls for lawyers. Prosecution for the unauthorized practice of law is an inadequate tool since it is costly, slow, and uncertain. The purported justification for sandboxes is that while there are risks associated with allowing nonlawyers to provide legal services, so are there risks from ignoring developments in this area. Protection of the public is of paramount importance.

The provinces exploring innovations in the delivery of legal services include British Columbia, Ontario, Alberta, Saskatchewan, Manitoba, and Nova Scotia.

British Columbia

British Columbia has been exploring regulatory reform since 2011.[168] In 2012, legislation was amended to permit the Law Society to regulate not just lawyers but law firms. In October 2015, the Law Society recommended law firm, or entity regulation: *Law Firm Regulation Consultation Brief*.[169] "Regulatory objective regulation" (sometimes referred to as "compliance-based regulation") was recommended in the 2016 *Interim Report of the Law Firm Regulation Task Force*.[170] In British Columbia, multidisciplinary practices have been permitted for over a decade, assuming the lawyers control the partnership and its legal services and the nonlawyers provide services that support the practice of law.[171]

[168] Law Society of British Columbia 2011 Alternative Business Structures in the Legal Profession: Preliminary Discussion and Recommendations. https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/AlternativeBusinessStructures.pdf.
[169] Law Society of British Columbia 2015 Law Firm Regulation Consultation Brief https://www.lawsociety.bc.ca/Website/media/Shared/docs/newsroom/highlights/FirmRegulation-brief.pdf.
[170] Law Society of British Columbia Interim Report of the Law Firm Regulation Task Force, October 3, 2016, https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/LawFirmRegulation-2016.pdf.
[171] https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/lawyers-indemnity-fund-old/the-policy-overview/multidisciplinary-partnerships/multidisciplinary-partnerships/.

British Columbia implemented Canada's first legal regulatory sandbox in 2020[172] to address unmet legal services needs. In 2020, Ipsos-Reid surveyed British Columbians and reported that those surveyed "recognize[d] lawyers' legal expertise, qualifications and knowledge, but cost (either real or perceived) is a significant barrier to use, particularly for lower income" citizens.[173] The British Columbia Innovation Sandbox has approved several applicants to date.[174] They include predominantly paralegal-type legal services including process coaching, court form preparation and filing, and advocacy at tribunals and small claims court.[175] Also included are a will and power of attorney web-platform, an online lawyer referral and payment service, and an online settlement platform.[176] Also in 2020, the Law Society of British Columbia recommended[177] amendments to the *Legal Profession Act* to permit the regulation of licensed paralegals. No action has yet been taken on this recommendation, but as noted, several of the applicants to the Innovation Sandbox are paralegals providing legal services to the public. The Law Society of British Columbia is keeping careful statistics on the work being done within the sandbox and its impact on the public.

In addition to these innovations, it is important to note that the Law Society of British Columbia has embraced "entity regulation" as well as lawyer regulation. "Entity regulation" and "objectives regulation" often go hand-in-hand. They set objective standards for the lawyers or the entities providing legal services. The more traditional approach of assuming compliance with rules of ethical conduct unless breaches are evident (generally through complaint or prosecution) is ceding ground in Canada to direct performance criteria and evaluation by the regulator. This expansion may well be the precursor to regulation of alternative business structures involved in the legal service industry.

Nova Scotia

Nova Scotia was a forerunner in implementing "objectives regulation." While it does not permit the nonlawyer ownership of law firms and does not have a legal regulatory sandbox, since 2018 Nova Scotia law firms self-assess their practice management systems every three years under the Management Systems for Ethical Legal Practice (MSELP) program.[178] Nova Scotia was an early adopter of objectives regulation.

Most recently, the Nova Scotia Barristers Society approved multidisciplinary practices (MDPs) in January 2021.[179]

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[172] https://www.abajournal.com/web/article/law-society-of-british-columbia-launches-an-innovation-sandbox.

[173] https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/Alternate/IPSOSReid2020-LegalServicesSurvey.pdf Interestingly, the majority of serious problems requiring legal assistance were consumer, employment, housing/land and debt problems and 85% of those surveyed who experienced a serious legal problem got no legal help or got help from someone other than a lawyer.

[174] https://www.lawsociety.bc.ca/about-us/news-and-publications/news/2021/first-applicants-accepted-to-the-law-society%E2%80%99s-inn/ - 18 approved applicants as of February 2022.

[175] https://www.lawsociety.bc.ca/our-initiatives/innovation-sandbox/.

[176] https://www.lawsociety.bc.ca/our-initiatives/innovation-sandbox/approved-participants/.

[177] https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/2020LicensedParalegalTaskForceReport.pdf; based on work done by the Alternate Legal Service Providers Working Group and Licensed Paralegal Task Force.

[178] https://nsbs.org/legal-profession/your-practice/practice-support-resources/mselp/.

[179] https://nsbs.org/wp-content/uploads/2021/01/January-Council-Meeting-Package.pdf; https://www.nsbsannualreport.org/executive-director-2021.

Alberta

Alberta technically does not permit nonlawyer ownership of law firms. However, it is noteworthy that shareholders in Albertan lawyers' professional corporations can be family members. This effectively permits income sharing with nonlawyers as long as they are family members, so in that sense nonlawyers do have a minor role to play in the ownership of law firms.[180]

In October 2021, the Law Society of Alberta approved the creation of an Innovation Sandbox.[181] Online applications began in early 2022. On February 8, 2022, the Law Society held a webinar to introduce the Innovation Sandbox.[182] Outside of the Innovation Sandbox, only lawyers who are active and practicing members of the Law Society can provide legal services.

The sandbox eligibility criteria require that the proposed delivery model advance a goal in the Law Society's Strategic Plan, which includes promoting innovation, access, competence and wellness, and equity, diversity, and inclusion. The model must offer "a reasonable prospect of identifiable and clear benefits to the public such as improved efficiencies, lower cost or greater access." It must identify reasonably foreseeable risks posed to the public during the pilot and safeguards to mitigate them.[183] The model must set out an exit strategy to address the chance that the approval will be revoked or will not continue. The provider must provide a report to the Law Society upon conclusion of the pilot. Approvals are not granted to models proposing the delivery of legal advice from nonlawyers. Insurance is required for the sandbox participant if the provider is not a lawyer covered by the mandatory professional insurance. The goal is to "help meet the unmet legal needs of Albertans and not to disrupt the good work already being done" by lawyers. Alberta does not have licensed paralegals.

In addition, the Prairie Law Societies (PLS) of Alberta, Saskatchewan, and Manitoba have been collaborating since 2014 as part of the Innovating Regulation: *A Collaboration of the Prairie Law Societies,*[184] to review regulatory compliance of legal entities like in-house legal departments.[185] The PLS is working on a Practice Management Assessment Tool, which can be used as a regulatory requirement to establish regulatory objectives for practitioners and entities.[186] It sets out best practices, ranging from "appropriate delegation" to "supporting the wellbeing of personnel" with references to the conduct code.[187]

Saskatchewan

Flowing from its participation in *Innovating Regulation: A Collaboration of the Prairie Law Societies,*[188] Saskatchewan has regulated law firms as well as lawyers as members of the Law Society

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[180] Iacobucci, Edward M. and Trebilcock, Michael, University of Toronto Faculty of Law, "An Economic Analysis of Alternative Business Structures for the Practice of Law" for The Law Society of Upper Canada (LSUC) Alternative Business Structures Symposium October 4, 2013. https://www.law.utoronto.ca/utfl_file/count/documents/iacobucci/iacobucci_01_lo.pdf page 15.

[181] https://www.lawsociety.ab.ca/law-society-of-alberta-introduces-innovation-sandbox/.

[182] https://www.lawsociety.ab.ca/event/innovation-sandbox-webinar/.

[183] https://www.lawsociety.ab.ca/about-us/key-initiatives/innovationsandbox/about/.

[184] Innovating Regulation: A Collaboration with the Prairie Law Societies Discussion Paper Nov 2015 https://www.lawsociety.sk.ca/wp-content/uploads/2020/04/INNOVATINGREGULATION.pdf.

[185] Innovating Regulation: A Collaboration with the Prairie Law Societies Consultation Report Sept 2016 https://www.lawsociety.sk.ca/wp-content/uploads/2020/04/Innovating_Regulation_Consultation_Report.pdf.

[186] https://iaals.du.edu/sites/default/files/documents/publications/the-law-society-of-alberta-report-2020-2021.pdf.

[187] https://www.lawsociety.sk.ca/practice-of-law/innovating-regulation-an-update-on-the-prairie-law-societies-law-firm-practice-management-pilot-project/.

[188] Innovating Regulation: A Collaboration with the Prairie Law Societies Discussion Paper Nov 2015 https://www.lawsociety.sk.ca/wp-content/uploads/2020/04/INNOVATINGREGULATION.pdf.

since January 2020.[189] This includes a competency-based approach to firm regulation. Designated representatives act as the liaison between the law firms and the Law Society. The firms use a self-assessment tool in which they report to the Law Society the things the firm is doing well and identify areas for improvement. This tool places the "focus on the firm as a whole as the systems, normal and culture of a firm greatly influence conduct." Recently, a regulatory sandbox to implement the licensing of legal technicians (paralegals) has been proposed in Saskatchewan.[190]

Manitoba

Since 2015, the Manitoba definition of a law firm has been "any other joint arrangement or legal entity that provides legal services." This definition was the result of an amendment to Manitoba's *Legal Profession Act* to give the Law Society the ability to make rules and establish permits for the operation of these entities.[191]

In 2020, Manitoba's Law Society approved changes to the *Code of Professional Conduct* permitting legal services to be delivered through alternative business structures through registered charities or not-for-profit corporations.[192] This change recognizes that some vulnerable members of the public have legal needs that can be identified when they interact with charitable or nonprofit organizations for other purposes. In that circumstance, the organization is permitted to provide legal services through a lawyer, whether an employee, a contractor or volunteer of the organization, as long as there is no cost to the client.[193] Manitoba has also discussed a legal regulatory sandbox to permit legal services to be provided by nonlawyers.[194] In April 2021, the Law Society's Special Committee on regulating Legal Entities recommended consideration of regulatory sandbox models.

Ontario

For over a decade, the Law Society of Ontario (LSO)[195] has permitted licensed paralegals (legal technicians) to provide certain specific legal services to the public without the supervision of a licenced lawyer. Now there are over 9,000 paralegals currently registered (with mandatory insurance, annual filing requirements and mandatory CLE).[196] Ontario has for some time permitted multidisciplinary practices between lawyers or licensed paralegals and "professionals who practice a profession, trade or occupation that supports or supplements their practice of law or provision of legal service"[197] (accountants, for example). However, since February 2021, no prior approval from the Law Society of Ontario is required to enter into a multidisciplinary practice. Notably, the LSO regulates only the practitioner, not the entity through which the practitioner provides services. While the Law Societies in some other provinces regulate both the lawyer and the entity, Ontario has not moved forward with entity regulation, despite having considered doing so[198] as is evidenced by the LSO Compliance Based Entity Regulation Task Force's 2016 report.[199]

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189 https://www.lawsociety.sk.ca/initiatives/innovating-regulation/.
190 https://law.usask.ca/documents/research/deans-forum/llp-deansforumpolicydiscussionpaper-2020.pdf.
191 Manitoba Legislative Assembly Bill 19 2015 https://web2.gov.mb.ca/bills/40-4/b019e.php.
192 This is similar to the "Civil Society Organizations" adopted by Ontario.
193 https://lawsociety.mb.ca/wp-content/uploads/2021/04/Communique-April-2021.pdf.
194 https://lawsociety.mb.ca/wp-content/uploads/2021/04/Bencher-Agenda-April-15-21.pdf.
195 Then known as the Law Society of Upper Canada.
196 https://lso.ca/about-lso.
197 https://lso.ca/paralegals/practice-supports-and-resources/topics/opening,-operating-or-closing-a-practice/business-structures/multi-discipline-partnerships.
198 https://lso.ca/news-events/latest-news/latest-news-2016/law-society-to-move-forward-with-proactive-entity-regulation.
199 Ontario Compliance-Based Entity Regulation Task Force https://www.lsuc.on.ca/better-practices/ and Compliance-Based Entity Regulation Task Force Report May 26, 2016, http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2016/convocation_may_2016_cber.pdf.

Since 2017, the LSO has permitted registered Civil Society Organizations (CSO)—registered charities or not for profit corporations—to employ lawyers and licensed paralegals "to deliver legal services to clients of such organizations in order to facilitate access to justice."[200] There are twenty registered CSOs employing lawyers who provide legal services to the public. The members of the public served are considered clients of the CSO.[201] The Law Society does not directly regulate the registered Civil Society Organization; however, the LSO regulates the lawyers who work for the CSO, and those lawyers are eligible for reduced mandatory insurance premiums.[202] There was some hesitation about the introduction of Civil Society Organizations when implemented, as expressed by the Ontario Trial Lawyers Association: "…within the private bar… there is a concern that permitting CSOs to provide services through embedded licensees is an indirect way of moving towards non-licensee owned for-profit law firms … a slippery slope."[203, 204] The CSO program to employ lawyers supplements Ontario's robust and government-funded civil legal clinics. In the UK and in Australia, CSO models also exist. In the UK, nonprofit Alternative Business Structures have existed since 2013.[205]

In 2021, the Law Society of Ontario passed a five-year pilot program implementing a Regulatory Sandbox for innovative technological legal services (ITLS).[206] The program is called Access to Innovation or A2I.[207] Approved participants will provide legal services to consumers while complying with requirements for risk-based monitoring and reporting. The Law Society was in frequent contact with the Utah Supreme Court based monitoring and reporting. The Law Society was in frequent contact with the Utah Supreme Court about the details of the sandbox,[208] and its *Technology Task Force Report* concluded the sandbox pilot will allow the Law Society to build "evidence to inform longer term decision-making about future regulatory policies."[209] Participants' websites, apps and software will offer "legal information, answer routine legal questions, navigate legal processes, analyze contracts, generate legal documents, and predict outcomes." A2I participants must agree to provide a complaint resolution process, insurance, confidentiality systems, safeguards for the legal product accuracy and data-share regarding consumer demographics, consumer outcomes and unanticipated issues. There is a technical advisory council, with plans to report out to a roundtable of lawyers' associations, as well as the meetings of the Society. These reports will be made public.

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[200] Law Society of Upper Canada, Report of the Alternative Business Structures Working Group, September 28, 2017.
[201] https://lso.ca/about-lso/initiatives/civil-society-organizations as of January 2022.
[202] https://www.lso.ca/about-lso/legislation-rules/by-laws/by-law-7.
[203] Ontario Trial Lawyers Association, OTLA Submissions to the Law Society of Upper Canada: Request for Feedback on an Interim Report on ABS in Ontario September 1, 2017, https://www.otla.com.
[204] Or as another commentator stated: "To allow charity ABS will result in allowing all ABSs." Chasse, Ken, Access to Justice -- Unaffordable Legal Services' Concepts and Solutions (August 28, 2017) https://ssrn.com/abstract=2811627.
[205] McMorrow, Judith A. "UK Alternative Business Structures for Legal Practice: Emerging Models and Lessons for the US." Georgetown Journal of International Law 47, no.2 (2016): 665-711 at page 703. http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=2043&context=lsfp.
[206] https://www.lawtimesnews.com/resources/professional-regulation/law-society-votes-to-approve-regulatory-sandbox-for-innovative-legal-tech-development/355253.
[207] https://lso.ca/news-events/news/latest-news-2021/law-society-announces-team-of-experts-to-support-n.
[208] https://news.bloomberglaw.com/business-and-practice/canada-joins-u-s-in-nonlawyer-legal-service-ownership-tests.
[209] April 2021 https://lawsocietyontario.azureedge.net/media/lso/media/about/convocation/2021/convocation-april-2021-technology-task-force-report.pdf.